

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

May 6, 2015

The Honorable Richard Shelby
Chairman
Subcommittee on Commerce, Justice,
and Related Agencies
Senate Appropriations Committee
Washington, DC 20510

The Honorable Barbara Mikulski
Ranking Member
Subcommittee on Commerce, Justice,
Science and Related Agencies
Senate Appropriations Committee
Washington, DC 20510

The Honorable John Culberson
Chairman
Subcommittee on Commerce, Justice,
Science and Related Agencies
Committee on Appropriations
Washington, DC 20510

The Honorable Chaka Fattah
Ranking Member
Subcommittee on Commerce, Justice,
Science and Related Agencies
Committee on Appropriations
Washington, DC 20510

Dear Chairmen Shelby and Culberson and Ranking Members Mikulski and Fattah:

We are a former Director of the Federal Bureau of Investigation and Federal District Court Judge, Governor of the State of Texas, Chief Justice of the Florida Supreme Court, and a special prosecutor in the Oklahoma City bombing case. We have each dedicated our lives to public service and the safety of our communities. We know well the need to hold offenders accountable for their actions. But we also know that our criminal justice system is capable of making mistakes. For this reason, we write today regarding our appropriations priorities for Fiscal Year 2016 (FY16). We urge you to support the critical programs aimed at reducing and correcting miscarriages of justice in our criminal justice system, including:

- \$5.4 Million for Answering Gideon's Call (Indigent Defense Initiative);
- \$4 Million for the Wrongful Conviction Review Program, a part of the Capital Litigation Improvement Program;
- \$2 Million for the John R. Justice Loan Repayment Grant Program;
- \$4 Million for the Kirk Bloodsworth Post-Conviction DNA Testing Program;
- \$12 Million for the Paul Coverdell Forensic Sciences Improvement Grant Program;
- \$6 Million to support the National Commission on Forensic Science; research at the National Institute of Justice and standard-setting activities at the National Institute of Standards and Technology (NIST); and
- \$11 Million for NIST to support forensic science research.

There is urgent need to improve the accuracy and reliability of our nation's criminal justice system. **While systemic reform is vital to prevent conviction of the innocent, we know that the use of faulty science – as well as representation of the accused by under-resourced, ill-equipped defense counsel – are too often contributing factors to wrongful convictions throughout the country.** The National Registry of Exonerations reveals that since 1989, over 25% of wrongful convictions were due, in part, to bad lawyering or bad science.¹ Just two weeks ago the Federal

Bureau of Investigation (FBI) acknowledged that flawed testimony of its forensic unit analysts over the course of three decades has affected the integrity of thousands of convictions in the United States. We now know that 26 FBI microscopic hair analysts overstated hair “matches” in 96% of cases reviewed *so far* in states all across the country. In some instances, these revelations come far too late to correct errors: the examined cases include 32 in which defendants were sentenced to death – 14 of whom have already been executed or died in prison.² Research is needed to define the scientific limits of the forensic science disciplines, and standards must be set from that research to ensure that valid science is applied uniformly in the criminal justice system.³

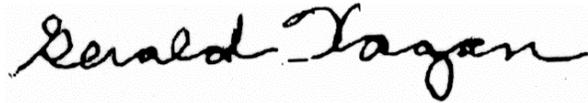
We draw special attention to our request for:

- **Increased funding to support the critical role of defense counsel to protect individuals from wrongful convictions.** While effective counsel is a constitutional prerequisite in every criminal case in which a person faces a possible loss of liberty or life, one of the most important functions of defense counsel is as a critical safeguard against any number of other causes of unjust and unfair trials and sentences, including the admission of unreliable or erroneous evidence and prosecutorial overreach. In essence, the defender is a key frontline protection against wrongful conviction. The federal government’s increased attention to and support of the critical defense function is a welcome development. We encourage you to continue to expand support for these programs to level the playing field in criminal prosecutions, as well as continue funding of the John R. Justice loan assistance program that is so essential to attracting motivated and talented individuals to serve as public defenders (and prosecutors) throughout the country.
- **Two programs that help support post-conviction investigation and representation in potential wrongful conviction cases.** First, the Wrongful Conviction Review Program ensures that experts are available to navigate the complex landscape of post-conviction litigation and to oversee the thousands of volunteer hours local innocence organizations leverage to help investigate these complex cases and to support the significant legal work they require, resulting in several exonerations this year. Second, the Bloodsworth Program provides support for states to more actively pursue post-conviction DNA testing in appropriate situations, and to partner with law enforcement, innocence organizations, or crime labs to investigate and finalize the outcomes of these cases. *This program has resulted in the exoneration of 26 wrongfully convicted persons in 10 states, and the true perpetrator was identified in 10 of those cases.*⁴ We urge you to increase funding for these effective and efficient programs that provide essential investigation and representation in the post-conviction context.

Our experience has taught us that when wrongful convictions occur, the damage is actually multi-faceted: the innocent are convicted – even facing execution in some cases – while a guilty perpetrator remains free to commit additional crimes. These miscarriages of justice also exact additional and needless suffering on crime victims and their families. Improved forensic science and effective counsel in criminal trials promotes apprehension of the guilty, protects the innocent, and improves the public’s confidence in our system of justice. For these reasons, **we respectfully request that you enhance federal funding of forensic science, defender and post-conviction investigation and representation programs** administered through the Department of Justice, the National Institute of Standards and Technology, and the Department of Commerce in FY16 appropriations as described in this letter.

We thank you for your leadership and your continued commitment to ensuring that our criminal justice process promotes fairness and accuracy at all stages.

Sincerely,



Gerald Kogan
Chief Justice, Florida Supreme Court, 1996-1998;
Justice, Florida Supreme Court, 1987-1996



William S. Sessions
Director, Federal Bureau of Investigation,
1987-1993; Judge, United States District Court,
Western District of Texas, 1974-1987



Mark White
Governor, Texas, 1983-1987;
Attorney General, Texas, 1979-1983



Beth Wilkinson
Special Attorney to the U.S. Attorney General,
Oklahoma City bombing case,
1995-2001; Assistant U.S. Attorney,
Eastern District of New York, 1991-1995

Cc'd

Members of the United State House and Senate Appropriations Subcommittees on Commerce,
Justice and Science

ENDNOTES

¹ See Nat'l Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx> (last visited Apr. 28, 2015). The Registry confirms that since 1989, 428 people have been wrongly convicted due to use of "false or misleading forensic evidence" and/or "Inadequate legal defense." *Id.*

² Spencer S. Hsu, *FBI Admits Flaws in Hair Analysis Over Decades*, Wash. Post, Apr. 18, 2015, at http://www.washingtonpost.com/local/crime/fbi-overstated-forensic-hair-matches-in-nearly-all-criminal-trials-for-decades/2015/04/18/39c8d8c6-e515-11e4-b510-962fcfab310_story.html.

³ The Constitution Project (TCP) [Death Penalty Committee](#), of which all signatories to this letter are members, examined the systemic problems facing our capital punishment system in its 2014 report, *Irreversible Error*. The Committee – which comprises both opponents and supporters of the death penalty – takes no view on the use of the death penalty *per se*. Instead, *Irreversible Error* sets forth a number of systemic reforms to safeguard innocence; improve the collection, storage and testing for forensic evidence; and ensure resources for and access to effective counsel in the criminal justice system. For more information on this report or any of TCP's other bipartisan committees, please contact TCP Senior Counsel Sarah Turberville at sturberville@constitutionproject.org or 202.580.6938.

⁴ See Nat'l Institutes of Justice, <http://www.nij.gov/topics/justice-system/wrongful-convictions/Pages/exonerations.aspx> (listing exonerations via Bloodsworth program through 2014); see also Innocence Project, http://www.innocenceproject.org/cases-false-imprisonment/front-page#c10=published&b_start=0&c4=Exonerated+by+DNA&c8=yes (containing profiles of the exonerated in whose cases the actual perpetrator was identified).