

Written Testimony of Nancy J. Diehl

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To the Senate Judiciary Committee

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I was appointed an Assistant Wayne County Prosecutor in 1981. I founded and headed up the Child Abuse Unit in 1986, expanded it to the Child and Family Abuse Bureau in 1994, took over the Trial Division in 2004( overseeing general trials, child and family abuse, homicide, auto theft, major drugs, and victim services), and retired as Trial Division Chief in 2009. While a prosecutor and since retirement I remain committed to criminal justice issues. I co-chaired the State Bar of Michigan's Custodial Interrogation Recording and Eyewitness Identification Task Forces. I presently sit on the Michigan Indigent Defense Commission and the Wayne County Kids-TALK Children's Advocacy Center.

As a prosecutor, I regarded my role as a vanguard of justice and public safety. But this great responsibility did not end with the acquisition of convictions; it extended to protecting the public good by helping to prevent wrongful convictions and right any criminal justice outcome that did not promote justice. Our criminal justice system is set up to ensure that the innocent are not found guilty with the principles of presumption of innocence, burden on the prosecutor and proof beyond a reasonable doubt. Tragically however, innocent people are convicted. In certain instances, mistaken eyewitness identification is discovered, advancements in the scientific and medical fields shows previous expert testimony to be unreliable, ineffective representation

resulted in a failure to present relevant testimony, confessions are revealed to be false, new evidence is discovered and, on some occasions, mistakes are found and the time comes to re-visit convictions to unearth error and injustice.

Whenever I learned of new and credible information that may exonerate a person, I believed it was my responsibility to make sure it was reinvestigated and, when appropriate, vacate a wrongful conviction. When wrongful convictions are revealed on the basis of actual innocence, prosecutors must act to see that the innocent are set free and placed in a situation that enables them to thrive again. That is why I am before you today, seeking your help in assuring Michigan's wrongfully convicted are treated with dignity and respect in our great state.

When Robert Dewey walked out of a Colorado prison three years ago after having served 16 years for a murder he did not commit, he was penniless. He was not even provided with "gate money" or even the \$100 debit card that parolees receive to get back on their feet. In the face of this injustice, it was Colorado prosecutors who banded together to demand that the legislature craft a statutory framework to ensure that Colorado's innocent receive the compensation they so richly deserve. At the time, Mesa County Prosecutor Pete Hautzinger stated publicly, "For someone like Dewey who clearly was wronged but not by injustice and not by malicious misconduct, there ought to be something." Mr. Hautzinger was making the case for a global compensation framework that was not predicated on fault, but rather on decency.

Since its U.S. introduction, forensic DNA testing has proven the innocence of 330 people who had been wrongly convicted of serious crimes. During the same period of time, more than a thousand other people have been exonerated by other kinds of evidence. Not only have these exonerations led to a growing public awareness of the possibility of wrongful conviction, but

media accounts accompanying these exonerations have brought into stark focus those issues facing individuals who are attempting to re-enter society following protracted incarceration. The exoneration of each wrongfully convicted individual provides us all with an opportunity to examine and consider the re-entry needs and appropriate compensation due to the victims of those errors who, innocent of the crime accused, were nonetheless stripped of their lives and liberty and forced to endure the horror of prison.

I come before you as a person deeply committed to justice, but that sensibility is not limited to seeking convictions; it extends to doing the right thing in all cases, including those rare instances when innocence is revealed. As a prosecutor, it is unbearable to think about the actually innocent thrown back onto the streets with nothing after years behind bars. We can and we must do better than this. I implore you to pass this critical legislation.

