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Michael Phillips is Exonerated by the Dallas County District Attorney's Conviction Integrity Unit's Systematic DNA Testing Project

The Exoneration of Michael Phillips

On Friday, July 25, the Dallas County District Attorney's Office will join in a petition seeking the exoneration of Mr. Michael Phillips who was falsely convicted of sexual assault in Dallas in 1990.

In most respects this tragic case resembles many of the 33 previous exonérations obtained by the Conviction Integrity Unit of the Dallas District Attorney's Office since its inception in 2007. But one aspect of the exoneration of Mr. Phillips is unique. As far as we know, it is the first case in the nation in which an innocent defendant was identified and exonerated as a result of a systematic program of screening and DNA testing of past convictions by a prosecutor's office, rather than as part of an investigation initiated by the defendant himself or his representatives.

On September 28, 1990, a 16 year old white woman was raped in a Dallas motel where she lived. The rapist wore a ski mask, but the victim was able to pull it partially up and believed she recognized her assailant as Michael Phillips, an African American resident of the motel. She later picked a picture of Mr. Phillips from a photographic lineup. Mr. Phillips was arrested on November 2, 1990. While Mr. Phillips denied committing this offense, he nevertheless entered a plea of guilty, and was convicted of sexual assault on November 30, 1990, and sentenced to 12 years in prison.

In May 2014, the Conviction Integrity Unit (CIU) of the Dallas County District Attorney's Office determined that Mr. Phillips is innocent of this crime. DNA testing in 2011 by the Southwest Institute for Forensic Science (SWIFS) developed a single male profile from evidence collected from the victim during the sexual assault medical examination at the time of the offense. At that time, however, the CIU had no DNA profile from Mr. Phillips with which to compare the profile found by SWIFS because in 1990 DNA samples were not routinely collected

from sexual assault suspects. Instead the male profile developed by SWIFS was uploaded to the FBI's Combined DNA Index System (CODIS), which – in 2014 – identified the source of the semen as Lee Marvin Banks, an African American male. Mr. Banks was interviewed by the CIU at a State Jail detention facility where he was being held because his probation for a 2012 burglary conviction had been revoked.¹ He denied committing the rape but provided no explanation for his semen being found on the victim's vaginal swab. Mr. Banks also denied having consensual relationships with white women, but he admitted living at the motel where the rape took place in the relevant time period. The victim was also interviewed by the CIU. She denied knowing Mr. Banks, and denied having consensual relationships with African American men. A DNA sample collected from Mr. Phillips proved that none of the DNA recovered from the crime scene evidence in this case came from him.

After a thorough investigation, the Dallas County District Attorney has concluded that Mr. Banks rather than Mr. Phillips committed the rape for which Mr. Phillips was convicted. Accordingly, on Friday, July 25, 2014, the Dallas County District Attorney's Office will join Mr. Phillips in asking the Dallas County District Court to recommend to the Texas Court of Criminal Appeals that it grant relief to Mr. Phillips based on Actual Innocence, and vacate the conviction against Mr. Phillips.

The false conviction of Michael Phillips in 1990 was a terrible tragedy for Mr. Phillips and his family, for the victim and her family, and for the community. The victim suffered a terrifying and traumatizing sexual assault. However, DNA has proven that Mr. Phillips was not the perpetrator of this heinous crime. Nonetheless, Mr. Phillips spent 12 years in prison and on his release was required to register as a sex offender. In 2004, Mr. Phillips was charged with violating his sex offender registration requirements and was sentenced to 180 days in State Jail. We sincerely apologize to Mr. Phillips for this miscarriage of justice and failure of our criminal justice system.

In many ways the wrongful conviction of Mr. Phillips resembles other cases in which the Conviction Integrity Unit of the Dallas DA's Office has identified and exonerated innocent defendants. Mr. Phillips, like 22 of the 33 Dallas CIU exonerees, was convicted of rape and exonerated by DNA years later. The conviction in Mr. Phillips case, like those in 29 of the Unit's cases, was based on an erroneous eyewitness identification. Mr. Phillips, who is African American, was misidentified by a white woman. Cross racial identifications are known to be particularly error prone; they occurred in many of the exonerations obtained by the Dallas CIU.

¹ Mr. Banks' DNA profile was added to the CODIS database in 2014, when he was sentenced to serve 6 months in state jail for his burglary conviction. It was at that time that the database produced a "hit," identifying Banks as a match to the male DNA profile obtained in this case.

Unlike most defendants exonerated by the Dallas County CIU, Mr. Phillips pled guilty rather than risk trial and the possibility of an even longer sentence than the one he received. Exonerations of defendants who pled guilty are uncommon but have become more frequent in recent years as prosecutors and courts have come to realize that some innocent people accept plea bargains rather than risk the high penalties that often accompany conviction after trial. According to the National Registry of Exonerations, exonerations after guilty pleas now account for over 10% of all exonerations in the United States since 1989 (146/1,397). Mr. Phillips' case is the sixth exoneration of a defendant who pled guilty by the Dallas DA's Conviction Integrity Unit.

Mr. Phillips case, however, is entirely different from other Dallas Conviction Integrity Unit exonerations in one important respect: It was not initiated at the request of the exonerated defendant.

Mr. Phillips did raise the issue of DNA testing ten years ago, but his request was denied and then forgotten. In 2004, after he was convicted for failing to register as a sex offender, Mr. Phillips filed pro se petitions for writs of habeas corpus challenging his sexual assault conviction as well as his conviction for failing to register on grounds of innocence and alleging that DNA testing had exonerated him. These petitions were denied, in part because he had not shown that physical evidence existed on which DNA testing could be done, or that DNA testing had been done, or that DNA testing could prove his innocence.

The investigation that finally led to Mr. Phillips' exoneration was not conducted at Mr. Phillips' request or at the request of anybody acting on his behalf. Instead it is the first exoneration that was obtained by an on-going proactive project by the Dallas County District Attorney's Office – a systematic review of available but untested DNA evidence across a large set of convictions for sexual assault in which DNA testing had *not* been requested by the defendants.

The remainder of this report describes that project.

The Dallas County Conviction Integrity Unit's Systematic DNA Testing Project

The concept

The basic idea of this project is simple: To use DNA testing to conduct, in effect, an audit of all convictions in a particular jurisdiction for which that testing may conclusively prove the guilt or innocence of the defendant.

The usual practice, by prosecutors and innocence projects alike, is to focus on cases in which convicted defendants actively contest their guilt. That process has led to 318 DNA exonerations that are listed by the Innocence Project,² and over a thousand additional exonerations listed by the National Registry of Exonerations.³ In this project, by contrast, we did not review any cases in which there was an active investigation of the defendant's guilt. It turns out that Mr. Phillips himself had protested his innocence years earlier, but by the time we reviewed his case he had long since given up pursuing that claim; in any event, we were not aware of that history when we ordered DNA testing in his case. As far as we know, the other defendants for whom we obtained DNA testing never requested it themselves, but it's possible that some might have done so unsuccessfully.

This project was planned and carried out by Dallas County Conviction Integrity Unit – the first such unit in the country. The CIU was conceived by District Attorney Craig Watkins and his former First Assistant District Attorney Terri Moore soon after Mr. Watkins took office in January 2007, and began to function in July of that year. Shortly after that, Professor Samuel Gross of the University of Michigan Law School contacted the founding supervisor of the Unit, Assistant District Attorney Michael Ware, and suggested a project of this nature. An August 2007 memo from Professor Gross to Mr. Ware outlined the concept:

The basic idea is to test untested DNA that has been preserved by the Southwest Institute of Forensic Sciences (SWIFS) in rape cases that led to convictions. Ultimately, it would be good to test all cases; initially, we should do a representative sample. ... Here's what we're looking for:

Every case in Dallas County in which a defendant who was originally charged with rape was convicted of any crime, after a prosecution in which the identity of the rapist was at issue, and for which SWIFS has untested biological evidence that could confirm or refute the guilt of the defendant.

² See: <http://www.innocenceproject.org/>

³ See: <https://www.law.umich.edu/special/exoneration/Pages/about.aspx>

It was an ambitious proposal for a project that had never been tried. Not surprisingly, Mr. Ware and his superiors decided to postpone consideration of this notion until the Unit was better established. Two years later, however, in July 2009, District Attorney Watkins approved the project. It has been running ever since, first under the direction of Mr. Ware, and since July 2011, under the direction of Assistant District Attorney Russell Wilson II, Mr. Ware's successor as supervisor of the Dallas CIU.

The Southwest Institute of Forensic Science

The Systematic DNA Testing Project is as much a project of SWIFS, the Southwest Institute of Forensic Science, as it is a project of the Dallas DA's Office. SWIFS, the publicly operated crime laboratory that serves Dallas County and some neighboring jurisdictions, has a policy of retaining and preserving all biological samples that are sent to it for testing. Most American crime labs return biological samples to the police departments that sent them in for testing, after which they are frequently destroyed pursuant to file maintenance and destruction protocols, or lost even if they are not destroyed, and – in any event – are far harder to locate even if in theory they remain available. If SWIFS had such a policy, this project might not have been attempted.

The project requires a great deal of work by employees of SWIFS – both to identify cases that might be tested, and to conduct the DNA tests. SWIFS undertook this work in 2009 under the direction of Dr. Timothy J. Sliter, Chief of Physical Evidence, who agreed to participate at the same time that District Attorney Watkins approved of the project for the DA's Office.

Dr. Sliter rejected the idea of organizing the work as short-term push and attempting to obtain external funding to hire additional employees to do the searches and tests on an expedited schedule. Instead, the work was performed by regular staff using the laboratory's standard methodologies for processing cold cases and post-conviction testing requests. That was a wise choice, considering the difficulties and uncertainties that were entailed. It set a practical tone for a project that has required a great deal of patience, trial and error.

Basic structure

Outside advisors. Early in the process, all participants agreed that this is a law-enforcement project rather than a research project. It may produce valuable research lessons, as many government projects do, but the primary goal is to do justice to the parties and to the community in the cases the project reviews - and in the process, to learn how to pursue similar prosecutions more effectively in the future. Moreover, the work of the project requires access to confidential

information, and entails decisions about criminal cases that under our system of justice may only be made by prosecutors.

Accordingly, in August 2009 Professor Gross and the Dallas County District Attorney's Office executed a written agreement specifying that Professor Gross would work on this project, without compensation, as a special consulting attorney to the Dallas District Attorney – specifically, that he would “work under the supervision and subject to the direction of Michael Ware Esq., Assistant District Attorney in the Office of the District Attorney of Dallas County, Texas,” and Mr. Ware's successors. This status was later extended to Professor Colin Starger of the University of Baltimore School of Law, as we describe below.

Cases. There are thousands of rape cases for which SWIFS has retained biological evidence that has not been subject to DNA testing. It would not be feasible or productive to test them all. In deciding which cases to test, we are guided by two principles: First, we only conduct DNA tests in cases where it might “confirm or refute the guilt of [a] defendant” who was convicted of a crime. Second, because we had no experience in conducting this sort of systematic review, and knew of no similar attempt by others, we decided to limit the project initially to cases for which the process of investigation and testing is comparatively easy, to look first for the low hanging fruit.

In operation, that has meant that we considered cases in which (1) SWIFS had biological samples from a rape investigation in Dallas County that were not previously tested for DNA; (2) the biological samples tested positive for the presence of sperm or seminal fluid or both; (3) a defendant was arrested for the crime; (4) the defendant was convicted of rape or any related offense; (5) the identity of the assailant was in question in the court proceedings; and (5) the biological evidence at SWIFS is an “unmixed sample.”

The reasons for the first four criteria are obvious: We are only interested in cases in which there is testable DNA evidence that might bear on the accuracy of a criminal conviction, and most such cases are rape prosecutions.

The last two conditions require a word of explanation.

- DNA testing of crime scene samples in a rape case is time-consuming process that answers only one question: did the defendant leave the biological evidence that was found in or on or near the body of the victim? There is no point in DNA testing if the identity of the defendant as the person who had sexual contact with the complainant is not subject to plausible dispute. That is clearest when the defendant admits having sex with the complainant but claims that it was consensual. However, it also applies in some cases where the defendant denies the conduct but is well known to the complainant – for

example, a close relative. We spent a considerable amount of time reviewing the cases to determine if the identity of the contributor of the biological evidence was in fact in question at trial.

- In some cases the victim was raped by more than one person. In others, the crime scene samples are known to have biological material from multiple people for other reasons – most frequently because the victim reported that she had consensual sex without a condom within 72 hours of the rape. It is possible to conduct DNA testing on mixed samples, to identify separate DNA profiles from such samples, and to use that information to prove the guilt or innocence of particular suspects or defendants. It is done reasonably often. But testing and analyzing mixed samples is far more difficult than doing so for an unmixed sample.⁴ In addition, in multiple assailant cases the rape kit evidence may not include seminal fluid from all of the assailants, so the exclusion of a particular suspect from the seminal fluid DNA may not be a clear demonstration of innocence. Accordingly, in this initial effort, we limited ourselves to unmixed samples.

We also decided to exclude cases in which the defendant is believed to be a serial rapist. By serial rapist we mean a person who is accused of committing multiple rapes across a substantial period of time, usually in more than one jurisdiction. It is possible that some identified serial rapists are innocent of all the crimes with which they were charged, but we consider that extremely unlikely. It is more likely that some serial rapists – while guilty of most of the crimes attributed to them – are innocent of some rapes with which they were charged. Nonetheless, because the issues in such cases are very different from those in ordinary rape prosecutions, we decided to set serial rape cases aside for separate consideration.

Finally, we began the project by looking at Dallas County rape prosecutions for a single year – 1990. This again was a choice of convenience. Our plan has been to examine rape cases in which biological evidence was sent to SWIFS before such evidence was regularly tested for DNA as part of the pre-trial investigation process. DNA testing began at SWIFS in about 1992. By choosing to begin with 1990 cases, we were assured that there would be many cases which were adjudicated prior to the beginning of routine DNA analysis. For operational ease, we chose

⁴ A major reason for this limitation is the need for comparison DNA samples from all possible contributors of the crime scene DNA. The project was designed to proceed without obtaining DNA samples that had not previously been collected unless testing indicates that the defendant is likely innocent. In theory such samples could be collected, even in multiple perpetrator cases, but the cost in time and resources would be prohibitive in this exploratory project. A related issue occurred in Mr. Phillips case: he was not excluded at the time that a crime scene profile was developed by SWIFS because we had no comparison sample, and in the absence of any testing indicating innocence we have not sought such samples. Instead we posted the profile on CODIS which produced the hit that led to Mr. Phillips exoneration. In our experience, CODIS is a highly useful tool for this purpose because in most (but not all) cases, the DNA profiles of the actual perpetrators of forcible sexual assaults eventually end up in CODIS, whether the perpetrator is the defendant who was originally convicted or someone else.

to begin with the most recent available year. Having finished reviewing 1990 cases, we are now looking at earlier years.

Personnel

Many people contributed to the work of this project. We have already mentioned the essential support of the leadership of the Dallas District Attorney's Office – District Attorney Craig Watkins, former First Assistant District Attorney Terri Moore, and the past and current supervisors of the Conviction Integrity Unit, Michael Ware and Russell Wilson – and that of Dr. Timothy Sliter, Chief of Physical Evidence at SWIFS.

Several other members of the staff of the Dallas District Attorney's Office provided essential help at various stages of the project, including especially James Hammond, an investigator for the office who has been assigned to the CIU since its inception, and who participated in every aspect of the investigation of Mr. Phillips' case. Jena Parker, assistant to Michael Ware, organized the initial stages of the project; Jessica Perez, assistant to Russell Wilson, helped gather information during Mr. Phillips' case investigation; and former CIU interns Kama Lawrence, Zack Allen and Gene Jung helped with scanning, organizing, and research.

In addition, the project depended on the work of several staff members at SWIFS. Case research and identification of evidence samples was performed by Amanda Webb; DNA testing for the project was performed by Kristin Lehman, Kenneth Balagot, Angela Fitzwater, and Kimberlee Allen.

Samuel Gross, Professor of Law at the University of Michigan Law School and Editor of the National Registry of Exonerations, first suggested this project in 2007, as we have mentioned, and has been involved in every stage of its operation. In June 2010 Professor Colin Starger of the University of Baltimore School of Law agreed to join the project as a consulting attorney, and executed an agreement identical to that signed by Professor Gross to work without compensation under the supervision of the supervisor of the Dallas County Conviction Integrity Unit. Before moving to teaching, Professor Starger worked for four years as a staff attorney for the Innocence Project, a background that has proved valuable in this work.

Finally, in early 2010 Assistant District Attorney Cynthia Garza took over the task managing the project: organizing the cases under consideration; collecting electronic and physical records from the District Attorney's Office, SWIFS, the courts, and the various Dallas County police departments; developing a record keeping system; and managing the work flow. This was a considerable challenge, especially given the number of agencies involved and the age of the cases. When we began our work it was not at all clear that it would be possible to obtain the

records we needed. Ms. Garza made it happen. It is impossible to overstate her contribution to the project.

Screening cases

For the first year of its operation, cases were screened for testing by all participants in the project collectively. Starting in August, 2010, that task was assigned to Assistant District Attorney Garza and Professors Gross and Starger – a working group that includes a career prosecutor, a former innocence attorney with substantial experience in DNA exonerations, and a long-time researcher on false convictions and exonerations. The hardest decisions were on whether the attacker's identity was in question in the proceedings that led to conviction. These cases sometimes required judgment calls. We have tried to err on the side of inclusion, and only excluded cases in which all three screeners agreed that the identification of the defendant was not subject to reasonable dispute.

It is important to remember that there may be some innocent defendants among the cases we did *not* test. Some innocent defendants may have been convicted in multiple perpetrator rapes or other cases with mixed biological samples. In other cases convicted defendants may be innocent even though their identity did not appear to be 'in dispute' at the time of conviction. And some cases with innocent defendants may not have made it to the screening process at all because SWIFS did not have biological samples that tested positive for sperm or seminal fluid.

Cases reviewed

Our starting point was the set of cases in which SWIFS received a sexual assault kit (SAK) as part of an investigation of a reported rape in 1990. Overall, SWIFS received 1,421 SAKs in 1990, of which 855 or 60% tested positive for sperm or seminal fluid. Of these 68 were cases outside Dallas County, which left us with 787 reported rapes in Dallas County in 1990 with biological evidence that tested positive for semen.⁵

In 181 of the 787 reported rapes with testable rape kits a defendant was identified and arrested, a clearance rate of 23%.

⁵ These 787 cases came from the following Police Departments (PDs) in Dallas County: Addison PD, Balch Springs PD, Carrollton PD, Cedar Hill PD, Cockrell Hill PD, Coppell PD, Dallas County Sheriff's Office, Dallas PD, DCME, DCSO, Desoto PD, Duncanville PD, Farmers Branch PD, Garland PD, Glenn Heights PD, Grand Prairie PD, Irving PD, Lancaster PD, Mesquite PD, Richardson PD, Rowlett PD, Sachse PD, Seagoville PD, SMU, and University Park PD.

In 94 of the 181 cases with arrested defendants, 52%, a criminal conviction was obtained. Twenty-eight of the 94 convicted defendants went to trial, and 66 pled guilty. (Of the 87 defendants who were not convicted, five were acquitted at trial; in other 83 cases charges were dismissed at one stage or another of the proceedings.)

The 94 Dallas County rapes with convicted defendants and testable biological evidence were reviewed individually to determine if they were eligible for DNA testing under the project. Ultimately 11 cases were selected for DNA testing, 12% of those screened. The remaining 83 cases were rejected for one of the following reasons, which we have already discussed:

One case was rejected because we had too little information to evaluate it.

10 cases – 11% of the total of 94 – were rejected because the perpetrator was believed to be a serial rapist.

12 cases, 13%, were rejected for lack of “unmixed biological samples.”

60 cases, 64% of the 94 cases screened, were rejected because we determined that the attacker’s “identity was not in question” in the prosecution.

In 7 of the 11 cases identified as suitable for DNA testing, the defendant had pled guilty; in 4 the case went to trial. In four of these 11 cases (two guilty pleas and two trials) DNA testing had already been done, and in each it confirmed the guilt of the defendant. That left 7 cases in which new DNA tests were conducted.

In one case no male DNA was found in the biological sample. In four cases (three guilty pleas and one trial) the testing confirmed the defendant’s guilt. In one case a male DNA profile was obtained but we could not determine whether it came from the defendant because we have no comparison sample or DNA profile and the defendant is not available to provide one. And in one case the DNA testing exonerated the defendant – the case of Michael Phillips.

There are many ways to try to summarize the results of these tests. For example, operationally, if we consider the number of tests done, 1 of the 7 DNA tests conducted under the auspices of the project, or 14%, resulted in exoneration – or, more telling 1 in 11 if we consider the 4 DNA tests that had previously been performed but that we didn’t know about at the outset, or 9%. However, two of those tests did not provide useable results (no male DNA or no comparison sample), so the best summary is probably one exoneration in 9 DNA tests with probative results, or 11%.

On the other hand, we might focus on the total number of cases screened, and what we know about those cases at the end of day. We considered a total of 83 non-serial rape convictions for which we had sufficient information to screen, but 12 of them we did not have suitable “unmixed” samples and in two others DNA tests were done but did not provide useful information. That leaves 69 cases in which we either did DNA testing to determine the guilt or innocence of the convicted defendant and obtained useful results, or decided that such testing was unnecessary because the identity of the assailant was not in question. In one of those 69 cases, or 1.4%, the defendant was exonerated.

It’s essential to keep these numbers in context. *First*, these are very small samples – 11 DNA tests (counting four that had already been done before the project) and one exoneration. As a result, the true proportions could be very different from what we have seen so far.

Second, as we have said, there may well be innocent defendants who were convicted of rape in Dallas County in 1990 and that we did not consider for testing. This might be true in some cases with “mixed” biological sample; or in the cases in which DNA testing did not provide useful results; or among cases without rape kits; or cases with rape kits that did not test positive for sperm or seminal fluid; or in cases in which we determined that the assailants’ identities did not appear to be in question at the time of conviction but the defendants were innocent all the same.

Concluding Remarks

As far as we know, this is the first DNA exoneration in the United States that was identified by a systematic search by a prosecutor’s office of old criminal convictions that were not subject to an active challenge by any party.

We know of two similar prosecutorial projects in other states – both of which operated on a state-wide basis – but neither identified any innocent defendants whose innocence was not already in active dispute.

- In 2009 the Connecticut Chief State’s Attorney’s Office, in cooperation with the Chief Public Defender’s Office and the state forensic lab, received a grant of approximately \$1.5 million from the National Institute of Justice of the United States Department of Justice (NIJ) for The Connecticut Post Conviction DNA Testing Program, a project that was designed to search Connecticut criminal convictions for possible innocence cases that might be resolved by DNA testing, and to conduct tests in those that warrant it.⁶ In

⁶See: <http://grants.ojp.usdoj.gov:85/selector/awardeeDetail?awardee=STATE%20OF%20CONNECTICUT&po=NIJ>

May 2014 the Deputy Chief State's Attorney of Connecticut reported that the program had not resulted in the reversal of any conviction.⁷

- Also in 2009, the Attorney General of Colorado received an NIJ grant of nearly \$1.2 million for the Colorado Justice Review Project, which had a similar mandate for the State of Colorado.⁸ The Colorado Justice Review Project did obtain an exoneration, that of Robert Dewey who was imprisoned for rape in 1994 and released based on DNA evidence in April of 2012. Mr. Dewey's case, however, was brought to the attention of the Justice Review Project in 2011 by the Innocence Project, after initial DNA testing had provided strong evidence of Mr. Dewey's innocence.⁹ It was not found in a systematic review of unchallenged convictions.

The Dallas project could be reproduced, in some form, in other jurisdictions – especially since it was done without any grant support or other special allocation of resources. A few observations might be useful.

First, as we've said, this sort of project can only be conducted by a government law enforcement agency, and as a practical matter probably only by a prosecutor's office.

Second, this work takes time but it need not be a crushing burden. The Dallas Systematic DNA Testing Project, for example, was not for any one month the primary focus of the work of any of the participants. That sort of limitation has costs. The Dallas Project is continuing, and we may find additional innocent defendants in months and years to come, but it has moved slowly. With more resources we may have found more exonerations by now. But that is always true. The more important lesson is that there is no reason not to start small.

Third, for this sort of work a county level project probably has substantial advantages over state-wide efforts. Criminal justice information in this country is deeply fragmented, and the primary unit for action and record keeping is the county rather than the state. Our ability to operate efficiently has depended entirely on the participation of the staff of SWIFS – who of course know their own institution and it's records from the inside – and on the local knowledge of the Dallas CIU lawyers, who have worked for years with the local courts and police agencies and are deeply familiar with their operations, paper work and computer systems.

⁷ See: <http://www.ct.gov/csao/cwp/view.asp?a=1801&q=545362>

⁸ See:

<http://grants.ojp.usdoj.gov:85/selector/awardeeDetail?awardee=ATTORNEY%20GENERAL%20COLORADO&po=NIJ>

⁹ See: <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3910>

Fourth, an essential aspect of the screening process is the need to avoid trying to judge the likelihood of innocence in individual cases and instead to consider only whether or not each case meets the criteria for testing. For that purpose it is important to have screening decisions made by a group rather than an individual, and it probably helps to have one or more participants from outside prosecutor's office (but working under the authority of the county prosecutor).

Fifth, this project illustrates the value of retaining biological sample in criminal cases. If SWIFS had not stored the crime scene evidence in his case, Mr. Phillips would never be exonerated. Such retention is now required in Texas since 2011, under Senate Bill 1616. In 1990 there was no legal requirement that biological sample be retained in cases like Mr. Phillips', largely because nobody foresaw the extraordinary importance of post-conviction DNA testing. The lesson for the future, of course, is not that we should preserve material that may be useful for DNA testing – we already know to do that – but that we should keep crime scene evidence even if its future use is not obvious because we cannot foresee future developments in technology.

Last, the organization of such a project must reflect local conditions. The operational structure of the Dallas Systematic DNA Testing Project revolves around the record keeping at SWIFS. A similar structure could be used in another large urban county with a crime lab that like SWIFS has retained the biological samples sent to it for testing since the 1980s. In smaller counties or those with crime labs with different policies, a different structure may work instead. For example, in some jurisdictions it might work better to first screen cases to determine whether DNA testing should be done, and then search for biological material in the minority of cases in which testing is indicated.

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