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**SENATE JUDICIARY COMMITTEE HEARING ON
“IMPROVING FORENSIC SCIENCE IN THE CRIMINAL JUSTICE SYSTEM”**

Question for the Record for

Scott Burns

**Executive Director
National District Attorneys Association (NDAA)**

Question from Senator Franken:

1. In your written testimony, you say this:

As stated on the Innocence Project’s webpage [citation], since 1989 there have been 289 post-conviction DNA exonerations in the United States. . . . [T]his number needs to be taken into proper context[.] . . . In the United States there are, at minimum, 10 million cases per year (not including traffic offenses) where serious crimes have been committed, meaning since 1989 there have been at least 220 million cases in America involving serious crimes. While 289 post-conviction exonerations are of real concern to NDAA, in reality these wrongful convictions occurs [sic] less than one-hundredth of one percent of the time in America’s courtrooms. . . . [I]t is important for us to remember that the vast majority of the time during criminal cases – more than 99.99% of the time – the prosecutor . . . gets the case right.

Thus, you compare the total number of Innocence Project exonerations to the total number of cases, but it seems to me that the relevant comparison – the proper context – is a comparison of total wrongful convictions to all convictions.

a. What is the source of your data regarding the 10 million cases per year?

“Examining the Work of State Courts: An Analysis of 2009 State Court Caseloads”, which was a joint project of the Conference of State Court Administrators, the Bureau of Justice Statistics at the U.S. Department of Justice and the National Center for State Courts. A copy of this study can be found at the following:

<http://www.courtstatistics.org/Other-Pages/CSP2009.aspx>

- b. Of those 10 million cases, how many resulted in convictions?

While this specific study doesn't address this question, most public resources on the subject estimate that the conviction rate in U.S. state courts for felony charges since 2000 is between 75-85%, while the federal conviction rate for felonies is above 90%.

<http://bjs.ojp.usdoj.gov/content/pub/ascii/dccc.txt>

http://www.justice.gov/usao/reading_room/reports/asr2010/10statrpt.pdf

- c. Is it true that, since 1989, there have been more wrongful convictions than the 293 that the Innocence Project has identified?

While it is speculative for NDAA to answer "yes" or "no" to this question, in my written testimony I do acknowledge that it is very likely that there have been more wrongful convictions than the 293 that the Innocence Project has identified to date. The excerpt from my written testimony is below:

"While no one from NDAA is naive enough to think that the Innocence Project has uncovered every single wrongful conviction in America..."

- d. In total, how many wrongful convictions have there been since 1989? If it is not possible to answer this question, please explain why.

It is not possible for me to answer this question at this time. In order to give you a definitive answer to this question, Senator, every case since 1989 would need to be reviewed – it is simply not possible, both monetarily and logistically, to perform such a task. During troubling financial times, it would cost America's taxpayers hundreds of millions of dollars and take years to complete, never mind the additional burdens this would place on state and federal court dockets which are stretched to begin with.

To ensure fairness for all for those convicted of a crime in either a state or federal court, there is an appeals process in order to confirm or overturn the initial ruling:

<http://www.uscourts.gov/federalcourts/understandingthefederalcourts/howcourtswork/TheAppealsProcess.aspx>

One way the American taxpayer can help ensure fairness within the court system is to fund programs which adequately train both prosecutors and public defenders to ensure a fair and impartial trial for the accused. Programs such as the National Advocacy Center for State and Local Prosecutor Training and training programs for prosecutors and public defenders administered through the Byrne Competitive Program have been gutted over the past 10 years or, in the case of the National Advocacy Center, have been eliminated altogether.

2. In May 2012, Professor Samuel Gross of Michigan Law School produced a report in which he stated the following:

[Exonerations] merely point to a much larger number of tragedies that we do not know about. The most important conclusion of this Report is that there are far more false convictions than exonerations. That should come as no surprise. The essential fact about false convictions is that they are generally invisible: if we could spot them, they'd never happen in the first place.

- e. Do you agree with this statement? If not, with which aspects of it do you disagree?

Professor Gross's report is, frankly, absurd. He is essentially making a claim about something that is "unknowable" and without any basis in fact. The only response I can give you is that I believe that America has the best criminal justice system in the world, that America's 39,000 prosecutors go to work every day to do justice in each individual case on behalf of the victims of crime, and that a wrongful conviction is our worst nightmare, but such cases are a gross anomaly – as I stated in my written testimony - and anyone that professes anything else is intellectually dishonest.