TESTIMONY OF THE HON. JOSHUA MARQUIS

DISTRICT ATTORNEY OF CLATSOP COUNTY, OREGON

BEFORE THE UNITED STATES SENATE JUDICIARY COMMITTEE

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Chair Leahy, Senator Grassley, and distinguished members of the Committee.

Thank you for giving me the opportunity to testify before you today on the subject of "Justice for All: Convicting the Guilty and Exonerating the Innocent." That statement is, in fact, the mission statement of my office – "Protect the Innocent and Prosecute the Guilty," and I come before you as someone who has been a lawyer for over 30 years, more than 25 of them as a prosecutor, first a Deputy DA, then a Chief Deputy DA, and the last 19 years as the appointed and then 5-times elected DA in Clatsop County – located on the mouth of the Columbia River where it pours into the Pacific – the site where Lewis and Clark ended their trek 207 years ago.

I am also here today as a member of the Executive Committee of the Board of Directors of the National District Attorneys Association, an organization on which your chair, Senator Leahy, once served - as did I - as Vice President and Sen. Whitehouse, who represented his state on the NDAA's Board of Directors. While I am not speaking on their behalf today, I also serve on the American Bar Association's Criminal Justice Counsel, where I have just finished a three-year term and was just informed I have been re-elected and am now Vice Chair of the CJS. Since graduating from the University of Oregon, I have also worked as a newspaper reporter and columnist in Los Angeles, as the speechwriter for the California Attorney General, and almost two years mid-career as a criminal defense attorney, which included serving as lead counsel in capital murder cases.

I am also here today on my own dime, because I feel very strongly about this subject, and years ago I promised my constituents they would never have to pay for any of my out-of-state travel. I care because a prosecutor's worst nightmare is not losing a case – as all of you who were trial lawyers know, any attorney worth their salt is going to lose some cases, even when they are absolutely right. No, the worst possible outcome is convicting an innocent person.

I do not come here today to tell you wrongful convictions never happen, because they do, although the frequency with which it happens is in great dispute – probably most vividly emphasized by an op-ed I wrote in the NEW YORK TIMES in 2006 (attached) where I attempted to quantify the percentage of wrongful convictions in the context of the universe of serious crime – forcible rapes and willful homicides as the Bureau of Justice Statistics defines those terms.

I would also like to make clear that this is not a partisan issue. Although I am here invited by minority staff, I am an active Democrat (we run non-partisan for DA and judge in Oregon) but I

was a super-delegate to the 1996 Democratic National Convention and have never voted for a Republican for national office and am unlikely to do so in the coming election.

One way I know that miscarriages of justice occur is that I have my job because my immediate predecessor was arrested, indicted, recalled, convicted, jailed, and disbarred - in that order. She abused her office in the worst way possible. She framed two entirely innocent police officers on charges they had stolen cocaine from evidence lockers. Her motivation was anger over their refusal to tear up a reckless driving charge against her boyfriend, who was on federal parole. After I became DA, I encountered a couple of other cases – much less spectacular – but ones that gave me great pause. One of the wonderful things about being a prosecutor is that your only client is the public, and your sole allegiance is to the truth – not to a particular client. I dismissed those cases, and in one case went back and asked a conviction be vacated. I did this not because I was certain of the defendant's innocence, but because prosecutors have a much higher standard – we have to be convinced of the defendant's guilt. If not, that case should not be prosecuted.

When I was a defense attorney, I had no such luxury and my job was to mitigate the damage to my overwhelmingly guilty clients. I stand in great admiration to the many skilled defense attorneys who do an excellent job of representing their clients.

I was also a journalist once and as Walter Cronkite said "it's not news how many planes landed safely today." It is news when an innocent person is convicted, and today you have a very newsworthy example in that of Mr. Thomas Haynesworth – a man who served over a quarter century for crimes he did not commit. He deserves our apologies and probably compensation for the years he can never get back. If DNA had been in existence and widely available back in 1984, his case may have turned out very differently.

If it has not already been pointed out, the WASHINGTON POST – in a series of articles last year on Mr. Haynesworth case – pointed out how two local prosecutors, one a Democrat , the other a Republican and the Republican state attorney general, fought to help the Innocence Project get Mr. Haynesworth first free, and then declared actually as innocent, - the latter over the clear skepticism of some of the Virginia appellate judges. The headline of the article written in the POST on September 28, 2011 was "In Virginia, an unlikely alliance between parolee, prosecutor." Not so rare in real life, however. Again, a prosecutor's job is not just to seek convictions, but justice, however corny that sounds. But the Virginia prosecutors are not the first to help bring exonerated cases to light.

In two of the Innocence Projects most famous cases -

Chris Ochoa - convicted and sentenced to life in Texas for what was called the "Pizza Hut Murder" of Nancy DuPriest in 1988. He made a false confession that sent him and a friend to prison for life. Another man wrote the DA's office AFTER Ochoa had pled guilty and essentially confessed to the murder. Agents of the DA and police went to Ochoa in prison and confronted him with this other confession. Although Ochoa continued to assert his GUILT in prison, he eventually reached out to the Innocence Project who has acknowledged that without the help of the prosecutor's office who put Ochoa in prison, he might never have been released.

In a similar case, Eddie Joe Lloyd was convicted of the murder of 16-year-old Michelle Jackson (the victims all have names too). He was sentenced to life in Michigan and as the Innocence Project says on its website, "All of Lloyd's appeals failed. Lloyd contacted the Innocence Project in 1995, seeking assistance in having the biological evidence subjected to DNA testing. For years, Project students searched for the evidence. Finally, a number of evidence items were found with assistance from the Wayne County Prosecuting Attorney's Office." In 2002 Lloyd was released and later received a large settlement. But for the active assistance of the Wayne County Prosecutor, this exoneration would have either never happened or been seriously delayed, something particularly critical because Lloyd died in 2004.

For every case of a "plane crashing" there are far more where the planes landed safely, but "Guilty man convicted by DNA" is just not that compelling a story. For years two of the poster boys for wrongful convictions in capital cases were Roger Coleman of Virginia and Ricky McGinn of Texas. Each graced the covers of what were then major news magazines - Coleman was on the cover of TIME in 1992, and McGinn's picture appears 12 times on the cover of NEWSWEEK dated June 13, 2000 – the very same day many of us gathered in this same room, with Senator Leahy also presiding, to discuss the "Innocence Protection Act," a version of which was eventually passed into law.

But back in 2000, McGinn was held out as a possibly innocent man about to be executed by a state that didn't care about the facts. Coleman's name was all over the news and Internet as an example of an innocent man who had, in fact, been executed. I was recently asked to respond to an essay in the CATO Institute's online magazine Unbound where I discussed these two cases. (Copy attached).

In 1992, Roger Coleman was sentenced to die for the 1981 rape and murder of Wanda McCoy in a tiny Virginia coal mining town. In addition to a TIME cover story, Coleman protested his innocence to Ted Koppel on ABC's *Nightline* shortly before execution. Coleman was represented, like many death row inmates, by a top-flight law firm—Washington, D.C.'s Arnold & Porter.

The 11 years Coleman spent between his crime and his execution is much shorter than occurs in most states with the death penalty. (I have three times prosecuted Randy Lee Guzek for two murders in 1987 in Central Oregon. The first jury gave him a death sentence, as did the three I tried in 1991, 1997, and 2010 and he likely is at least 15 years from possible execution).

Coleman's last words were, *"An innocent man is going to be murdered tonight. When my innocence is proven, I hope America will realize the injustice of the death penalty as all other civilized countries have."* Defense expert and acknowledged DNA guru Dr. Edward Blake had the one remaining biological sample from Coleman. It was too small to be tested under the PCR testing available in 1992. When Virginia authorities tried to get the sample post-execution, Blake refused, telling the BBC it was an act of civil disobedience on his part because he was so sure Virginia would try to cover up the execution of an innocent man.

This standoff continued until January 2006, when outgoing Governor Mark Warner brokered a deal to have a neutral Canadian lab test the sample using the latest DNA technology. Coleman's most dogged supporter, Jim McCloskey of Centurion Ministries, which fights to free the wrongfully imprisoned, planned to announce the results on live TV. He didn't. The test came back with a 1 in 19 *million* probability that anyone other than Roger Coleman could have murdered and raped Wanda McCoy.

During the election summer of 2000, the death row practices of Texas came under particular scrutiny. Barry Scheck and the Innocence Project represented Ricky McGinn who had been on Texas' death row for six years for the rape and murder of his 12-year old step-daughter, Stephanie Flannery. There was a tiny speck of biological material that could not be tested when McGinn went to trial. A *Newsweek* cover featured McGinn's face, coincidentally on the same day Scheck testified before the U.S. Senate Judiciary Committee, citing McGinn's case. (I testified that same day).

Texas Gov. George W. Bush allowed a single 30-day reprieve so that the speck on Stephanie's underwear could be tested. But again, you never heard about it.

Newsweek never published an update. Hardly anyone remembers the now-executed McGinn because the DNA test proved beyond any possible doubt that he was both a killer and a rapist.

There is a play called "The Exonerated" which is still performed on college campuses after a tour Off Broadway. The theme is the story of people, once on death row and now not all on death row, and the implication is that they were… "exonerated."

Exonerated is a very powerful word and understandably evokes revulsion if we think a person spent many years in prison, worse yet, on death row. Again, I have no doubt there have been innocent men on death row in the "modern era" of capital punishment – since Gregg vs. Georgia in 1976. The dispute is whether that number is 30 or 130.

One can certainly argue that either number is unacceptable, and we strive for a system where the number is zero. But as Cass Sunstein in his 2005 essay "Is Capital Punishment Morally Required; A Life for Life Trade-Off" posits, if 12 years of more recent studies about the deterrent effect of capital punishment is true, and between 10 and 24 truly innocent people do NOT get murdered because we execute a guilty killer, how can you morally NOT have the death penalty as an option? http://papers.ssrn.com/sol3/papers.cfm?abstract_id=691447

Back to "The Exonerated." My wife says I should get a hobby. Unfortunately it is researching cases like those in the play. I wrote the original prosecutors, got copies of the trial transcripts, even audio tapes of statements made by one of the killers but never heard by the jury.

What I discovered is that despite what this much-acclaimed play, turned into a CourtTV movie starring Susan Sarandon claims, the main character – Sonia Jacobs – was almost certainly factually guilty of gunning down Florida State Trooper Phillip Black and his friend, Canadian Constable Donald Irwin on Feb. 20, 1976. After a jury recommended a life sentence for her and a

death sentence for her ex-con boyfriend, Jesse Tafero, the trial judge gave her a death sentence anyway. The Florida Supreme Court reduced the death sentence to life in 1981, and eventually the federal circuit court of appeals ordered a new trial based on information they ruled should have been turned over to the defense. The original trial prosecutor was by then the Broward States Attorney, and after conferring with the victims' families and recognizing that one key witness had recanted and un-recanted at least once each, but nonetheless confident of Jacobs' guilt, Jacobs entered an Alford plea to two counts of Murder in the Second Degree and was freed with time served. The New York TIMES just recently wrote a breezy piece about her marriage to an Irish man who had himself been convicted of a murder whose conviction was also overturned. The story did not mention she was a convicted murderer.

Despite the fact that she is both factually and certainly legally guilty of murder, the website at Northwestern's Center on Wrongful Convictions still describes her as "Exonerated" on their website:
http://www.law.northwestern.edu/wrongfulconvictions/exonerations/flJacobsSummary.html

Another character in the play is Kerry Max Cook, who pled no contest to murdering Debra Jo Edwards in 1977 after three trials in 1999 when the prosecutors succumbed to what I call "prosecutorial fatigue." I know what that is because I've been through it. You are certain of the defendant's guilt. Often two or more juries agree but after 20 years witnesses die, move away, sometimes lose their recollections, and often the victims' families are begging for resolution (not closure – no one ever gets closure in these cases). Cook originally claimed never to have been in the victim's home, but then his fingerprint was found on the inside of her sliding glass window.

For unfathomable reasons, the prosecutor in the first trial got the fingerprint expert to say he could "age" the print – something that is impossible, and the Texas appellate courts appropriately reversed the conviction. After a mistrial Cook was convicted AGAIN in 1994 and again given another death sentence. Northwestern is a little more circumspect about Cook and doesn't define him as "exonerated," only as "wrongly incarcerated." If ever asked on a job application, "Have you ever been convicted of a felony?" he would legally have to answer "Yes, Murder in the Second Degree."

A third person in the play is Robert Hayes, a young black man convicted in the murder of a female groom, Pamela Albertson, at a Pompana Beach, Florida race track in 1990. DNA was a new science, and it played a major part in Hayes' conviction, which resulted in his being convicted and sentenced to death. But the Florida Supreme Court held that DNA was not sufficiently reliable as a scientific standard at that time and ordered the case retried without the DNA. The prosecution went back and without the DNA the jury found Hayes not guilty. While "not guilty" is not the same thing as exoneration, it is at least closer than Jacobs or Cook, but there is a critical postscript. The Florida investigators didn't let the case go and found that Hayes had traveled around the country working in racetracks. In 1987 Leslie Dickensen was found dead, and at the time it was written off as a suicide. But by 2004, DNA was far more accepted, and in November of 2004 Hayes pled guilty to first-degree manslaughter for Dickensen's homicide 17 years earlier, based largely on DNA evidence.

The list does not end there. One oft-stated claim is that upper-middle class men never go to death row. Tell that to Jay Smith, a principal in Pennsylvania sentenced to die for the murder of teacher Susan Reinert and her two children. The case was written about by Joseph Wambaugh in "Echoes in the Darkness" and made into a movie. Reinert, who worked for Smith and was ensnared in a bizarre plot to kill her for insurance, was found dead but her children's bodies have never been found. In 1992 the Pennsylvania Supreme Court overturned Smith's conviction, holding that the special prosecutor failed to turn over to the defense several grains of sand removed from the "lifters" of Smith's shoes, which could have supported Smith's alibi claim that he was on the Jersey Shore when the murders happened. The court ruled this failure constituted such a grave Brady violation that Smith should be freed and the state could not re-prosecute him. He went on to sue everyone connected with the case, but got nowhere, primarily because all the courts hearing the case concluded he was factually guilty.

The Third U.S. Circuit Court of Appeals ruled in affirming dismissal of Smith's civil claims "Our confidence in Smith's convictions for the murder of Susan Reinert and her two children is not the least bit diminished . . . and Smith has therefore not established that he is entitled to compensation . . . "

The point is that men like Mr. Haynesworth are really exonerated, and to attach that label to killers like Smith and Jacobs cheapens the true injustice suffered by Mr. Haynesworth and the handful of other people who really did not do it. That hasn't stopped organizations like the Death Penalty Information Center from listing – on the same page of their list of wrongly convicted both Jay Smith's case and that of Kirk Bloodsworth, a man who was the first DNA exoneration off death row, and someone who is actually innocent. Knowing that wrongful convictions take place, but that they are in fact episodic – not epidemic – makes it no less important that we strive to what is really an unattainable goal, but one we should pursue nonetheless because justice is, and always will be, a work in progress.

What can be done to make sure people like Mr. Haynesworth don't spend 27 years in prison for crimes they did not commit? Equally important how do we make sure that bureaucracy doesn't hamstring police from having the tools to actually identify the REAL killers or rapists.

Let's start with DNA. What was originally a "magical" science, DNA was brought into America's courtrooms, usually state by state because prosecutors had to prove it met Daubert or similar standards for scientific reliability. That took almost a decade, and in my home state it wasn't until 1994 when a prosecutor that preceded me in the county where I am now DA (no, NOT the one who was disbarred) put on months of hearings, and DNA was finally accepted. Eventually defense attorneys, including the Innocence Project, realized that the very tool that was sending many of their clients to prison could actually free a tiny number of them. Better yet, if police had access to DNA during the investigation the wrong person would never even be charged. That is becoming more and more common as you can see when you look at charts of how post-trial DNA exonerations have started to drop.

But for DNA to work we need a broad database and unrestricted access. For some time the FBI was very reluctant to process so-called "warm hits" or familial DNA. These comparisons cannot

provide the virtual absolute certainty of a "hot" or exact match but can go a long way towards telling investigators if the suspect even MIGHT be the person they are looking for.

New York State should be commended for just passing – last week – a DNA database that includes ALL crime, not just felonies or in some states just sex crimes that were felonies.

http://cityroom.blogs.nytimes.com/2012/03/14/dna-database-deal-reached-in-albany/?scp=1&sq=DNA%20data%20base&st=cse

The manner in which DNA is obtained has changed, and now all one needs is to take a Q-tip like swab to the inside of the subject's mouth. It used to require a rather invasive needle stick. Another concern raised by some is that the government would have DNA profiles of citizens that, if ending up in the wrong hands, might be used to deny someone medical insurance, on the theory their DNA might indicate they were more likely to develop a serious congenital illness. The DNA we use to identify people is considered "junk DA" by medical scientists – it answers almost nothing for them, and we can easily write severe penalties into any misuse of DNA databases. In New York it was a non-partisan effort, as it should be.

Fingerprints were to the late 19th and early 20th Century what DNA has been to the late 20th and early 21st. Yet there are some now trying to claim that fingerprints are junk science. They are extremely reliable … if performed correctly. One of the most notorious failures – the arrest and detention as a material witness of Oregon lawyer Brandon Mayfield, occurred not because fingerprints failed but that examiners weren't rigorous enough in examining the original prints – not a fax copy. A mistake, by the way, duplicated by the independent fingerprint expert hired by the defense. Once a real-time comparison was made, Mayfield was cleared.

There are scientific methods that have been tested by courts, and others that have failed that test. Polygraph tests are an example of the latter, and most states ban their use in court. So when someone claims they were "cleared by a lie detector," remember that by taking certain drugs or simply being a sociopath who isn't bothered by the thought of molesting a 6-year-old, one can easily pass a "lie box." There is some value in using polygraphs in probation cases but simply because the degree to which the parolee THINKS the test will reveal his lies may cause him to fess up to whatever he did.

On the other hand remember that a defense attorney's job, despite the commendable successes of the Innocence Project, is not to seek the truth – it is to defend their client, guilty or innocent. So expect defense lawyers generally to oppose efforts to get more accurate identification of a criminal. Defense attorneys are doing their job, ethically and properly, when they work as hard as possible to make my job as hard as possible. It is through those challenges to the state's evidence and testing that ensure that the trier of fact – usually a jury – can make the judgment of whether the state has proven its case beyond a reasonable doubt.

That brings us to another critical part of what can be done where Congress has helped, and Senator Durbin deserves a particular shout-out for his leadership on this issue.

In order for the justice system to work right, you need good lawyers on both sides, not just people putting in time until they move on to far more lucrative private practice. In public service law, as either a public defender or a prosecutor, there are many non-monetary rewards but new attorneys incur enormous student loan debts – often exceeding $100,000. They enter professions that might pay them that amount after a decade or more if they are fortunate.

Senator Durbin led the efforts several years ago, first to get authorization of what is called the John R. Justice Act – named after the now-deceased President of the NDAA from South Carolina. The funding goes through USDOJ and was originally funded at twice the current $4 million level – which is to be evenly split between defenders and prosecutors. I teach ethics and other subjects across the country to groups of state prosecutors, and as a 17-year board member of the NDAA the number one question I am asked by young prosecutors is "I want to stay in prosecution. Is there any possibility of any loan forgiveness on the way?"

If Congress is inclined to help those of us in state and local prosecutions (or defense) who do the vast majority of violent crime I would urge you work on funding things like lawyer loan forgiveness or the opening of a Public Safety Training Academy for lawyers similar to one NDAA operated in conjunction with USDOJ in South Carolina from 1996 to last year. The idea is not Quantico or Glynco, but one aimed at training at both the basic and advanced levels for trial attorneys.

This would be money much better spent than the so-called Webb Commission.
That proposal would seek to - in 18 months, with absolutely no dedicated positions for any stakeholders (defense attorneys, trial, judges, or prosecutors) study the entire American justice system and presumably come up with some quick fixes. When we undertook a similar task in the late 1960s it massive financial investment in programs like the LEAA .

Frankly if Congress wants to study a justice system it should do so with the system in which you are literally invested - the federal courts and justice system. It would a much better idea to have the Commission examine the workings of the federal system and not attempt to figure out 50 different state systems with different funding streams and laws made not by Congress but by state legislatures, or in my state of Oregon often by direct referenda. Congress advises and consents as to the appointments of US Attorneys, US Marshals, and federal judges from District to Supreme Court.

The issue of eyewitness identification remains a controversial one. There are a group of experts, who make a handsome living telling juries that an eyewitness is the least reliable sort of witness. Either because of trauma or cross-racial identification or other issues.

I have tried hundreds of jury trials – and certainly haven't won all of them – although every person I prosecuted I was personally convinced they were guilty (as I said before I have the luxury of dismissing cases right up to and including during trial if I have or develop doubts). But I think that the woman who is dragged from her car and beaten by her ex-boyfriend is often in a very good position to identify her attacker. If it is a total stranger of a different race it might be less reliable. Again I trust juries. And even they are the not the last word in our system.

I strongly believe that these are issues that go to weight, not sufficiency. In other words, let both sides make their case, including experts (although experts are almost always within the ability of the defense to call, the urban myth being that the state has unlimited resources is simply false) and let the trier of fact decide.

As a prosecutor in a jurisdiction with seven different police agencies, I would prefer to have all statements and certainly anything that would qualify as an admission or confession recorded, preferably on video but minimally on audio. I have purchased thousands of dollars of recorders over the years, often for small police departments that simply can't afford the few hundred dollars extra. But in my state in EVERY criminal case the jury is told by the judge regarding any statement claimed to be made by the defendant that:

When a witness testifies about statements made by the defendant, you should consider such testimony with caution.
In reviewing such testimony, you should consider, among other things, the following:
(1) Did the defendant make the statement, and, if so, did the defendant clearly express what [he / she] intended to say?
(2) Did the witness correctly hear and understand what the defendant said?
(3) Did the witness correctly remember and relate what the defendant said?
(4) Did the witness intentionally or mistakenly alter some of the words used by the defendant, thereby changing the meaning of what was actually said?
If, after weighing such factors, you conclude that the defendant said what [he / she] intended to say and that the witness to the statement correctly understood, remembered, and related to you what the defendant said, then you are authorized to consider such statements for what you deem them to be worth) Oregon Uniform Criminal Jury Instruction 1024)

Other states have similar instructions so jurors are told to be suspicious of statements made by a defendant. One proposal is to limit or even ban unrecorded statements, on the theory that by punishing the police and denying otherwise truthful testimony to the jury eventually we'll get the cops to record everything.

Among other problems is the fact that machines fail, some officers forget to re-stock batteries, some departments may not be able to furnish every single car with a recording device, etc. If I wasn't clear before, let me be more so now; as a prosecutor I WANT all the defendant's statements recorded so a jury is not leery of what really happened; that the officers did NOT promise him a special deal or threaten his family or any of the other staples of popular culture which would make many Americans think at least 50 percent of those prosecuted are totally innocent and police and DAs get frequent flyer points for prosecuting and convicting innocent people.

Instead of punishing police, some of whom see their job as over once an arrest is made, why not create an incentive to record. Encourage new uniform instructions that tell jurors that if they are sure that ALL the defendant's words were recorded they should give those statements special weight.

If our goal is to seek truth, let's not find ways to deny otherwise valid evidence, let's explore ways to get MORE information to jurors.

Similar caveats extend to photo line-ups. While rarely appropriate, most attention is given to what we call "show-ups" distinguished from a line-up by the fact that the witness or victim is usually taken to a place where the suspect is either known to be or detained and asked if they recognize him. These show-ups can be dangerously suggestive so the courts have tight restrictions on when they are allowed.

Much more common is a photo "throw-down" usually in place of the more time consuming but iconic line-up (by TV and movie standards). There are claims that sequential photo line ups where witnesses are shown photos individually are better than the tradition 6-person thrown-down. There are also claims that the officer involved in the line-up should not have any involvement in the case to avoid "non-verbal" cues, intentional or otherwise.

However as the Duke University Chronicle noted in April 2006 *"a recent study conducted in Illinois found that the new strategy is not necessarily more effective. The study was recommended by the Governor's Commission on Capital Punishment in 2002, after several death row inmates were exonerated through DNA evidence. The experiment, run by the Chicago Police Department, found that sequential lineups were less accurate than the traditional ones. The correct suspect was chosen 45 percent of the time when a sequential lineup was used, and 60 percent of the time with the simultaneous lineup."*

http://www.dukechronicle.com/article/lax-case-shines-light-police-lineup-process

The way to ensure that an appropriate warning is given to witnesses that they may…or may NOT…see the person involved. Whenever possible the throw-down is video recorded, and most importantly the trier of fact can examine the same photos, in the same format in which they were shown to the witness for the jury to determine if the throw-down was in any way suggestible. Like other issues involving smaller police departments, it is desirable to have another officer involved but for example in my county, which is considered mid-sized by national comparative standards, none of the seven police agencies has more than a single full-time assigned detective position.

Again it is most desirable to let a jury decide the weight to be given evidence rather than allowing a professional expert telling a judge that "the latest research doesn't favor its use."

If we were to believe some defense experts, we would think that virtually all confessions are false and coerced, that almost no eyewitness can ever accurately remember what happened, that any tests offered by the prosecution are junk science, and that wrongful convictions are the norm, not the exception.

None of this means we should cease from trying to improve all these areas, but crime is down significantly in this country over 15 years ago. It is due in part to the professionalization of police agencies, something spearheaded in the 60s and 70s by things like the federally-funded Law Enforcement Assistance Administration. In 1981 when I started as a Deputy DA in Eugene,

Oregon the usual tenure was about three years before heading into far more lucrative private practice. That has changed as well as prosecution as a meritocracy, which has meant an increasing number of women and members of racial minorities becoming the elected prosecutors.

We need to work to make sure that cases like Mr. Haynesworth don't happen but also be proud that if they do, the prosecutors acted the way Commonwealth's Attorneys Kizer and Herring and Attorney General Cuccinelli did.

We owe that to the people who are victims of crime, a group too often ignored by the entire system.

Joshua Marquis has been Clatsop County District Attorney since 1994 and was re-elected in 1998, 2002, 2006, and 2012. He has served as President of the Oregon District Attorneys Association, Vice-President of the National District Attorneys Association, on whose board he has sat since 1997. He was just named Vice-Chair of the American Bar Association's Criminal Justice Section, where he has served since 2009. From 2005 to 2009 he served on Oregon's Criminal Justice Commission and he is Vice-Chair of the Board of Directors of the Animal Legal Defense Fund. He was given the "Jolene Malone Aggressive Enforcement Award" in 1995 by ALDF and the "William Shaefer Award" in 2006 by the Association of Government Attorneys in Capital Litigation. He is one of the co-authors of "Debating the Death Penalty" Oxford University Press, 2005, and is the author of numerous op-eds and book reviews in the NY TIMES, the LA TIMES, the WALL STREET JOURNAL, USATODAY, and the NATIONAL LAW REVIEW.