IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA Plaintiff, v. JOHN K. YOUNG, Defendant-Petitioner.	))))))))	#324-EAL-2005

BRIEF OF THE INNOCENCE PROJECT, INC. AS *AMICUS CURIAE* IN SUPPORT OF MR. YOUNG'S PETITION FOR ALLOWANCE OF APPEAL

Pursuant to Pa. R.A.P. 531(a), having been granted leave to file by this Court, the Innocence Project through undersigned counsel respectfully submits this brief as *Amicus Curiae* in Support of Mr. Young's Petition for Allowance of Appeal of the ruling of the Superior Court filed April 21, 2005 affirming the order of the Court of Common Pleas of Philadelphia County entered July 3, 2003.

This Court should review the decision of the Superior Court because it proposes a harsh and unjustified new rule that would effectively prevent individuals who have confessed to a crime, but subsequently recanted, from securing DNA testing that could prove their actual innocence. This new rule is not supported by the plain language of Pennsylvania's postconviction DNA statute and stands in direct contradiction to its fundamental purpose -- protection of the wrongfully convicted. As explained more fully below, both empirical data of postconviction DNA exonerations and contemporary social science research clearly demonstrate that innocent people make false confessions; these individuals should not be denied the opportunity to prove their innocence through the uniquely objective science of DNA testing.

I. INTEREST OF AMICUS CURIAE

The Innocence Project, Inc. ("IP" or "the Project") is a nonprofit legal clinic and criminal justice resource center. Founded by Professors Barry C. Scheck and Peter J. Neufeld at the Benjamin N. Cardozo School of Law/Yeshiva University in 1992, the Project provides *pro bono* legal services to indigent prisoners for whom post-conviction DNA testing can provide conclusive proof of innocence. The Project pioneered the litigation model that has exonerated, to date, at least 159 innocent persons through postconviction DNA testing.

In addition to seeking relief for its clients under state DNA testing statutes, the Project has also served as chief counsel in the leading cases heard in the federal courts to date concerning the federal constitutional right of access to potentially exculpatory DNA evidence. See, e.g., Harvey v. Horan, 285 F.3d 298 (4th Cir. 2002); Godschalk v. Montgomery County Dist. Attorney's Office, 177 F. Supp. 2d 366 (E.D. Pa. 2001). The Project also regularly consults with legislators and law enforcement officials on the state, local, and federal level, conducts research and training, produces scholarship, and proposes a wide range of remedies to prevent wrongful convictions.

The IP thus has an institutional interest in ensuring that all potentially innocent individuals have access to relevant postconviction DNA testing. The holding of the Superior Court in this case -- that a prisoner cannot assert a claim of "actual innocence" if he confessed, and "the validity of the confession has been finally litigated, found not be coerced, and was knowingly and voluntarily given," Commonwealth v. Young, 2005 PA Super. 142 at 12-- is patently contradicted by the experience of many Innocence Project clients who have been conclusively exonerated by DNA after their confessions were

admitted at trial and survived all subsequent legal challenges. Because the Superior Court's decision would have prevented past IP clients from proving their innocence, and because it threatens to sustain present or future wrongful convictions, we submit this brief as *Amicus Curiae*.

II. ARGUMENT

In evaluating Mr. Young's application for DNA testing, the Superior Court correctly identified the two relevant substantive requirements of 42 Pa. C.S.A. § 9543.1 as being whether petitioner made a prima facie case demonstrating that (1) "identity or participation" in the crime was an issue; and (2) DNA testing, assuming exculpatory results, would establish Mr. Young's "actual innocence." 2005 PA Super. 142 at 8-13. While the court acknowledged that Mr. Young's vigorous assertion of his innocence at trial made identity an issue and thus met the first prong of the test, 2005 PA Super. 142 at 11, it concluded that Mr. Young's confession inherently negated the second prong:

> [W]e find that his confession to the murder bars him from asserting a claim of actual innocence for the offense for which he was convicted. While a confession, in and of itself, generally would not bar such a request, an appellant cannot assert a claim of actual innocence where, as here, the validity of the confession has been finally litigated, found not to be coerced, and was knowingly and voluntarily given.

2005 PA Super. 142 at 12 (citing Commonwealth v. Star, 541 Pa. 564, 574, 664 A.2d 1326, 1331 (1995)).

Of course, the Superior Court could not cite to a statutory basis for concluding that fully-litigated confession cases can never qualify for DNA testing -- the statute itself presents no such bar. Rather, the Superior Court's decision rests upon the assumption that

when the validity of a confession has been finally litigated, found not to be coerced, and was knowingly and voluntarily given, it is literally impossible for DNA to demonstrate "actual innocence." Unfortunately, this assumption is deeply flawed as the experience of DNA exonerations in Pennsylvania and elsewhere have conclusively demonstrated. The grim fact is that false confessions do happen, and that legal protections against the admission of coerced, unknowing, or involuntary confessions at trial are not always sufficient to ensure that actually innocent people do not get wrongfully convicted. Since DNA is uniquely capable of showing whether confessions are indeed true or false, the presence of a fully litigated confession should not by itself prohibit granting of postconviction DNA testing. DNA testing should be granted to conclusively prove whether Mr. Young is innocent.[1]

A. Actually innocent people have confessed, had the validity of their confession finally litigated, and later been exonerated by DNA testing.

Postconviction exonerations have demonstrated time and time again that innocent people falsely confess. See Saul M. Kassin and Gisli H. Gudjonsson, True Crimes, False Confessions, Scientific American Mind, June 2005, at 26 (attached as Exhibit A)("Typically 20 to 25 percent of [postconviction] DNA exonerations had false confessions in evidence."); see also Steven A. Drizin & Richard A. Leo, The Problem of False Confessions in the Post-DNA World, 82 N.C. L. Rev. 891, 932-43 (2004). Many of these exonerations involved scenarios analogous to the situation of Mr. Young -- the defendant recanted the confession, proceeded to trial, had the confession deemed

[1] Besides helping to exonerate those wrongfully convicted, it bears noting that DNA testing has also been used as a powerful tool in solving crimes. More than 500 criminal investigations have benefited from DNA testing since Pennsylvania began collecting DNA samples from inmates in 1996. Mark Scolforo, Influx of Prisoner DNA Swamps Testing Laboratories, Sunday Voice (Wilkes-Barre, PA), May 15, 2005, at A5.

admissible despite objection, was found guilty, lost all appeals, but was finally exonerated by DNA testing.

The case of Bruce Godschalk provides a relevant initial example of an innocent defendant who was convicted in Pennsylvania. Godschalk was convicted of two rapes that occurred in 1986, and the primary evidence against him at trial was (1) the identification testimony of one of the victims; and (2) his own detailed confession made to police. See Godschalk v. Montgomery County Dist. Attorney's Office, 177 F. Supp. 2d 366 (E.D. Pa. 2001). Godschalk's confession, which he made after being read his Miranda rights and after stating he had been treated "very well" by investigators, contained details of the crimes not revealed to the public; the record reflected "no evidence" that Godschalk had been subjected to "coercion, undue pressure or other improper police interrogation techniques."[2] Id. at 369. At trial, Godschalk sought suppression of his confession, but his motion was denied, and this denial was affirmed by all higher courts. See Commonwealth v. Godschalk, 564 A.2d 915 (Pa. 1989) (denying allocatur); Commonwealth v. Godschalk, 560 A.2d 826 (Pa. Super. 1989) (confession was voluntary and trial court properly refused to suppress). In affirming the denial of a PCRA motion for DNA testing,[3] the Superior Court in 1996 specifically found that Godschalk's conviction "rests largely on his own confession." Commonwealth v. Godschalk, 679 A.2d 1295, 1297 (Pa. Super. 1996). The Court of Common Pleas had

[2] The details in Godschalk's taped confession were explicit and not public information. Of one victim's rape, Godschalk told investigators that she was wearing a robe, that he entered through a rec-room window, that he took a pillow from another room, and that he raped her while she was on her back on the floor. 177 F. Supp. 2d at 268. Of the other crime in the same housing complex where Godschalk had been working for a landscaper, he relayed similarly secret details, including that he removed a tampon from the victim before having sex with her. Id. Of course, DNA testing results showed that investigators intentionally or unintentionally provided Godschalk with these details.

[3] This motion was made before the passage of the current postconviction DNA testing statute, 42 Pa. C.S.A § 9543.1.

found that Godschalk's admissible, valid confession presented "overwhelming evidence" of his guilt, independent of other incriminating factors. 177 F. Supp. 2d at 369. Yet Godschalk was an innocent man serving time for a crime he had falsely confessed to, as DNA testing later demonstrated.

Godschalk, through counsel at the Innocence Project, subsequently brought a Section 1983 action in the Eastern District of Pennsylvania seeking release of items from the victims' rape kits for DNA testing. This action was successful, and DNA testing ultimately proved beyond all doubt that Godschalk could not have committed the rapes for which he was convicted. Semen samples from both victims showed an identical genetic profile, a profile that did not match Bruce Godschalk. The results of the DNA testing were attained independently by separate labs hired by the prosecution and defense, and were confirmed by several forensics experts, one of whom called the chance of lab error "[n]onexistent." Sara Rimer, Convict's DNA Sways Labs, Not a Determined Prosecutor, N.Y. Times, Feb. 6, 2002, at A14. See also Yet Another DNA Exoneration, Editorial, Wash. Post, Feb. 18, 2002, at A22 ("There have been more than enough [DNA exonerations] . . . to demonstrate that a certain humility—the flexibility to correct errors—needs to be built into the criminal justice system."); After 15 Years, DNA Opens Prison Door, Chicago Tribune, Feb. 15, 2002, at N26.

Godschalk initiated his federal action for DNA testing before Pennsylvania passed its state statute. Had Godschalk waited to file under the statute, it is clear that he would not have qualified for DNA testing under the Superior Court's present logic. Indeed, the Superior Court now is repeating the mistake that it made in Godschalk's case—holding that an inmate's confession bars him from seeking DNA testing which may prove his

innocence.[4] Of course, such an unjust result was never envisioned by the legislature when it enacted the postconviction DNA statute, and that explains why the statute itself contains no exception prohibiting DNA testing in confession cases.

The infamous Central Park Jogger cases provides a second, even more dramatic, example of how DNA testing can prevent an injustice by demonstrating how false confessions lead to wrongful convictions. After a white female jogger was brutally attacked in Manhattan's Central Park in 1989, prosecutors brought charges against five African- and Hispanic-American youths who all had allegedly confessed to police. See Kassin and Gudjonsson at 24. *Four* of these confessions were videotaped and later presented at trial. Id. The defense sought to suppress the confessions as the youths had recanted, explaining that they had believed that making confessions would have enabled them to go home. Id. at 26. Of course, the confessions were admitted and defendants were all convicted. Arguments that the inculpatory statements were improperly admitted were duly litigated and ultimately rejected by the New York courts. See, e.g., People v. Salaam, 83 N.Y.2d 51, 607 N.Y.S.2d 899 (N.Y. 1993); People v. McCray, 198 A.D.2d 200, 604 N.Y.S.2d 93 (N.Y. App. Div. 1993).

Thirteen years after the crime, an individual named Matias Reyes, who was incarcerated for three other rapes and a murder, came forward and admitted that he had committed the heinous crime alone. The Manhattan DA's office questioned Reyes and discovered that he had accurate, privileged, and independently corroborated knowledge or the crime and crime scene. Kassin and Gudjonsson at 26. Critically, DNA testing was

[4] The Superior Court held, in Godschalk's case, that since his conviction rested largely upon his confession, his petition for DNA testing failed a then-applicable standard allowing testing only where conviction "rests largely on identification evidence." Godschalk, 679 A.2d 1295, 1297 (1996). That standard has been replaced by § 9543.1, requiring only that identity was raised as an issue during trial.

used to show that semen recovered from the crime scene did belong to Reyes and not to any of the convicted youths. In December 2002, the convictions of the youths were vacated with the consent of the prosecutor's office. Id.

The Central Park Jogger case thus strongly demonstrates that a court imprimatur declaring a confession voluntary does not mean that the confession was truthful or that the confessor is guilty. Multiple reviewing courts upheld the confessions in the Central Park jogger case, and it was only the conscience of the real assailant combined with the proof of DNA testing that cured the injustice. The Superior Court's reasoning in this case would have prevented such critical DNA testing from occurring and kept innocent people imprisoned, the very circumstance 42 Pa. C.S.A. § 9543.1 intended to rectify.

B. The authority cited by the Superior Court does not support finding DNA testing barred when a confession is on the record

While the Superior Court could cite to no statutory provision barring confession cases from DNA testing, it did cite to one Pennsylvania Supreme Court case -- Commonwealth v. Starr, 541 Pa. 564, 664 A.2d 1326 (1995) -- and one other Superior Court case -- Williams v. Erie County Dist. Attorney's Office, 848 A.2d 967 (Pa. Super. 2004) -- as authority for its conclusion. However, these cases are not on point and the analogy argued by the Superior Court should be rejected.

The Superior Court relied on Starr for the proposition that the law of the case doctrine requires that the confession in Mr. Young's case, previously determined to be voluntary by the Superior Court, cannot be relitigated. While this is certainly true, it does not logically follow that Mr. Young cannot therefore assert a claim of actual innocence.

Indeed, the *admissibility* of a confession is distinct from its *veracity*; and it is the veracity of the confession that Mr. Young contests. In other words, the law of the case governs only the legal question of the confession's admissibility, not the factual question of its truth. The Superior Court's conflation of admissibility with veracity would have rendered Mr. Young's actual trial wholly unnecessary once the court deemed his confession admissible. There would be no sense asking the jury to decide anything if the confession proved he was factually guilty. Of course, the trial court did not make the same error as the Superior Court and permitted Mr. Young to assert his actual innocence at trial by recanting and contesting the truth of his confession. There is simply no logical reason why Mr. Young should not be permitted to make the same assertion in the postconviction context.

The Superior Court's finding that Mr. Young's confession was voluntary need not be disturbed in order to grant Mr. Young's request for DNA testing. As discussed further below, it may well be that Mr. Young gave a voluntary confession at a young age and yet is nonetheless innocent of his crime. It is worth noting that while Mr. Young's confession, contested in pre-trial suppression hearings and subsequent PCRA appeals, was ultimately deemed admissible and freely given, it was not introduced into evidence at his trial. 2005 PA Super. 142 at 10. The PCRA court observed that it was the physical evidence in Mr. Young's case which "constituted overwhelming indicia of guilt . . ." 2005 PA Super. 142 at 11, quoting PCRA Court Opinion, 3/17/04, at 9-11. It is this physical evidence which Mr. Young should be allowed to pursue DNA testing on, for it is this physical evidence which may conclusively illustrate his innocence.

The Superior Court's passing reference to Williams also fails to support finding a bar to DNA testing in confession cases. Williams is wholly distinguishable because it concerned the impact of guilty pleas on the identity prong of the statute at issue. The Williams court held that negotiations between prosecutors and the defense regarding plea bargains did not qualify as "proceedings" under the statute. 848 A.2d at 972. By contrast, both identity and innocence of the defendant were thoroughly contested in bona fide trial proceedings in this case.[5]

Moreover, DNA testing has actually exonerated prisoners in cases where there was both a confession *and* a guilty plea. For example, Christopher Ochoa confessed after an extensive interrogation to the murder of Nancy DePriest in a Texas Pizza Hut restaurant in 1988. After providing police with a long and detailed confession, Ochoa pled guilty and later testified at the trial of Richard Danziger, a fellow employee that Ochoa implicated in his confession. While Danziger contested his guilt at a trial, he was nonetheless convicted on the basis of Ochoa's testimony and that of a state hair examiner who concluded that a single pubic hair found near the victim's body was microscopically similar to Danziger's. In February 1998, another inmate wrote to then-Governor George W. Bush, admitting sole responsibility for the DePriest murder. Twelve years after the crime, post-conviction DNA testing conclusively exonerated both Ochoa and Danziger by excluding both men as the source of the semen found in the victim's body, while the single DNA profile obtained a perfect match to the inmate who confessed. See Terrence

[5] It is worth noting that the Williams court's logic was rejected by the Supreme Court of Missouri when it found that it would undermine the very purpose of DNA testing to hold that a guilty plea precluded a petitioner from seeking such testing; the Court dismissed as "absurd" the argument that a guilty plea would provide an inherent bar on the identity prong to a petition for DNA testing. Weeks v. State, 140 S.W.3d 39, 47 (Mo. 2004).

Stutz, City of Austin's Multimillion-Dollar Mea Culpa, Dallas Morning News, Dec. 7, 2003, at A31.

Once again, the Superior Court's approach would not have allowed this injustice to be caught and corrected.

C. The wisdom of the new rule proposed by the Superior Court is belied by modern social science

While it should now be evident that false confessions do indeed occur and that postconviction DNA testing can expose the problem[6], this Court may still not understand why the phenomenon occurs. Why would an innocent person confess?

In a recent article summarizing much of the latest research in the field, Kassin and Gudjonsson suggest three different groups of false confessions: voluntary, compliant, and internalized. Kassin and Gudjonsson at 30-31. Voluntary false confessions are given

> for reasons including a pathological desire for notoriety; a conscious or unconscious need to expiate feelings of guilt over prior trangressions; an inability to distinguish fact from fantasy; and a desire to aid and protect the real criminal.

Id. at 30. Complaint false confessions are where "the suspect confesses to achieve some end: to escape an adverse situation, to avoid an explicit or implied threat, or to gain a promised or implied reward." Id. The Central Park jogger case provides an example of compliant false confessions as each boy said he confessed despite innocence because he was stressed and expected to go home if he cooperated. Id. Finally, internalized false

[6] Of course, sometimes a false confession can be caught *before* trial with the aid of DNA testing. Recently, the *Pittsburg Post-Gazette* reported that a man in Crothersville, IN confessed to a well-publicized murder, describing the crime in detail. Prosecutors subsequently dropped charges against him after DNA testing revealed that he had conveyed entirely false information and that another man was responsible for the crime. See Ryan Lenz, Confession to Murder; of Girl, 10, Tossed Out, Pittsburg Post-Gazette, May 21, 2005, at A7.

confessions result when "[d]uring interrogation – particularly those who are young, tired, confused, suggestible and exposed to false information – come to believe that they committed the crime in question, even though they did not." Id.

While conventional legal inquiries into whether or not a confession was coerced theoretically afford protection from raw threats or violence, experience shows that these inquiries generally do not screen well for subtler forms of coercion that lead to compliant false confessions or for the interrogation tactics that lead to internalized false confessions. Indeed, the latitude given interrogators (permitting the introduction of false evidence, etc.) and their various techniques pose particular risks for eliciting false confessions. See, e.g., Richard J. Ofshe & Richard A. Leo, The Decision to Confess Falsely: Rational Choice and Irrational Action, 74 Denv. U.L. Rev. 979 (1997) (analyzing tactics used by interrogators that result in false confessions).

Of course, it is impossible to tell which, if any, of the types of false confessions may be at issue in Mr. Young's case. It is worth noting that, like the men convicted and ultimately freed in the Central Park jogger case, Mr. Young confessed when a minor and without the presence of a parent or interested adult. It is clear that the Superior Court did not entertain the very real possibility that his confession, though freely given and admissible, was still untrue and perhaps the product of fatigue, interrogation tactics, or of genuine confusion under intense stress. Since modern research has shown all of these possibilities to be real, this Court should allow for appeal of the Superior Court's ruling.

D. Eyewitness identification does not bar a claim of actual innocence

As an alternative to its finding Mr. Young's confession a bar to DNA testing, the Superior Court held that, "even assuming that the DNA testing of the pants, shoes, knife and washcloth produced exculpatory results, it would not be enough to establish Appellant's actual innocence" because of the eyewitness testimony of seven-year-old Larry Mapp, who identified his neighbor Mr. Young as his mother's murderer at trial for the first time. Commonwealth v. Young, 2005 PA Super. 142 at 13. This last-ditch effort to justify the denial of testing does not withstand scrutiny.

The identification made by a single child witness is not sufficient to make actual innocence an impossibility. Indeed, eyewitness misidentifications are the most common cause of wrongful convictions. See Elizabeth Loftus, Ten Years in the Life of an Expert Witness, 10 L. & Hum. Behav. 241, 243 (1986) (estimating that over half of all wrongful convictions are "due to faulty eyewitness testimony").

The case of Kirk Bloodsworth provides an instructive example. Bloodsworth was convicted and sentenced to death in 1985 for the rape and murder of a young girl in Maryland. See Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial, Nat'l Inst. Just., Off. Just. Programs, U.S. Dep't Just., NC J161258, at 35-7, *at* http://www.ncjrs.org/pdffiles/dnaevid.pdf (June 1996). At trial, no less than *five* eyewitnesses testified that they were certain that Bloodsworth was the man they saw with the victim just prior to her murder. In 1992, however, Bloodsworth became the first death-row inmate in the nation to be exonerated based on post-conviction DNA testing, when tests excluded him as the source of semen that was found on the young victim's underwear, an autopsy slide, and a stick found near

her body. A decade later, after the Project convinced the prosecutors to retest the remaining evidence with DNA technology that would permit the assailant's profile to be entered into state and federal DNA data banks, the sample yielded a data bank "hit" to the DNA profile of the true assailant, who was another Maryland inmate serving time for a subsequent attempted rape and murder. See Rob Hiaasen, Writing a Wrong; The Latest Chapter in the Tale of Kirk Bloodsworth Begins Today, Baltimore Sun, Sept. 9, 2004, at C1.

If it is possible for five adult witnesses to be wrong, it is certainly possible for a single child to be wrong. As defense counsel argued at trial, the child knew Mr. Young as a neighbor yet never once mentioned him as the perpetrator to police or others; rather, the first time the boy identified Mr. Young as the perpetrator was at trial after police and representatives from the district attorney's office may have suggested to him that Mr. Young murdered his mother. 2005 PA Super. 142 at 11. The child's eyewitness identification of Mr. Young should not prevent his pursuit of DNA testing, and § 9543.1 provides no such bar.

E. DNA testing could exonerate Mr. Young

It is uncontested that the bloody pants, shoes, knife and washcloth were used to link Mr. Young to the crime scene. Indeed, the PCRA court, in denying Mr. Young's allowance of appeal, stated that "[e]ven without the confession and the eyewitness identification, the physical evidence alone constituted overwhelming indicia of guilt . . ."

2005 PA Super. 142 at 11, quoting PCRA Court Opinion, 3/17/04, at 9-11.[7] It is circular logic to hold, as the PCRA court did, that the incriminating physical evidence precludes Mr. Young from using DNA testing to show how it exculpates him. See also State v. Peterson, 836 A.2d 821, 826 (N.J. Super. 2003) (holding that it would be "anomalous" to construe postconviction DNA testing statute to exclude cases in which the defendant's identity rested on the very scientific evidence the defendant now wants subjected to more sophisticated testing). The prosecution's theory, argued to the jury, was that blood found on the items in Mr. Young's home was that of the victim. This would have been persuasive evidence and it seems beyond dispute that this powerful forensic evidence played a major role in the jury's determination of guilt. Thus, at the very least, DNA testing could conclusively disprove the theory used to convict Mr. Young. The prosecution should not be permitted to abandon this theory of the crime in order to preclude DNA testing. See, e.g., Commonwealth v. Reese, 663 A.2d 206, 209-10 (Pa. Super. 1995) (holding that the Commonwealth's argument appealing an order granting DNA testing was weakened by its reliance on a theory of physical evidence it did not introduce at trial).

Put another way, since guilt or innocence is a determination ultimately made by a jury, whether or not DNA testing can prove "actual innocence" must be judged in terms of the claims heard by the jury. In this case, DNA testing could disprove the prosecution's claim about blood linking Mr. Young to the crime scene – DNA testing is therefore appropriate. As the district court pointed out in Bruce Godschalk's case, "[w]hile plaintiff's detailed confessions . . . are powerful inculpatory evidence, so to any

[7] The PCRA court concluded that the physical evidence showed Mr. Young's identity was not at issue and that he was thus barred by the first prong of § 9543.1. The Superior Court held that identity was at issue in Mr. Young's case, contested throughout his trial and in subsequent appeals.

DNA testing that would exclude plaintiff . . . would be powerful exculpatory evidence. Such contradictive results could well raise reasonable doubts in the minds of jurors as to plaintiff's guilt." 177 F.Supp.2d at 370. DNA testing should simply not be barred because of incriminating eyewitness testimony or Mr. Young's confession. Testing ultimately serves the interest of justice and so should be allowed to proceed. DNA testing has the potential to exonerate Mr. Young. In the words of former Attorney General John Ashcroft, "DNA can operate as a kind of truth machine, ensuring justice by identifying the guilty and clearing the innocent." Jonathan Peterson, "Funds for DNA Testing of Criminals are Diverted," L.A. Times, Dec. 27, 2001, at A22.

III. CONCLUSION

For the reasons stated, the Innocence Project urges the court to grant petitioner's Allowance of Appeal and enable him to obtain DNA testing which may ultimately exonerate him of the crimes for which he is incarcerated.

Respectfully Submitted,

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