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Excerpts from Transcript of Proceedings: Systemic Issues and the Media

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EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS: SYSTEMIC ISSUES AND THE MEDIA[†]

Karen Smith,* Gerald Uelmen** & Henry Weinstein***

KAREN SMITH: Good afternoon, ladies and gentlemen, and welcome to the panel on Systemic Issues and the Media. I'm Professor Karen Smith, the moderator for this distinguished panel. May I introduce the individuals and then we'll start. To my far right is Attorney Gigi Gordon, who is the directing attorney for the Post Conviction Assistance Center.¹ To her immediate left is Henry Weinstein, who is a distinguished journalist, award winning I might point out, of the *Los Angeles Times*, who will be speaking about his vast experience in this particular area, and as you see, he does represent the media in our panel. And, of course, professor, dean, and the multi-talented Gerry Uelmen, who will start off our panel discussion. He is, as you may recognize, the Executive Director of the California Commission for the Fair Administration of Justice, and he is also the Director of the Edwin A. Heafey Jr. Center For Trial And Appellate Advocacy at Santa Clara University School of Law. Professor Uelmen has been such a diverse, active person in our landscape of California practice in law. He has been both a prosecutor and defense counsel. In academics, he has also, I learned, been a playwright in another life and he is quite obviously conversant with the issues that the panel will be discussing today. Without further ado, Gerry Uelmen.

GERALD UELMEN: Thank you, Karen. I had the pleasure of being on a panel at the ABA conference this morning with Peter Neufeld and I

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1. Unpublished transcript on file with the Southwestern University Law Review.

thought, jeez, I'm gonna have to hear Peter give the same speech twice and I'm happy to report that I didn't hear a word that he said at this luncheon presentation today that I heard this morning at the ABA conference. And then he challenged me. He said, I hope you can do the same thing. So I'm really under the gun. But actually, I was not that impressed that Peter gave two different speeches because I'm one of the few people in the United States who knows that Peter Neufeld has been cloned. All of this DNA work he does there. There are really two Peter Neufelds. In fact, cloning has become quite a trend among law professors.

I remember the first law professor who got cloned. They had developed the technique at Stanford and the first guy in line was a guy who taught criminal law at Stanford. He talked them into it. They gave him a clone, he took him back to his office, gave him all the Bluebooks and he went off to conferences and giving speeches and blah, blah, blah, while his poor clone was slaving away in his office, grading exams and writing footnotes for law review articles. The only hang-up was that the clone was just a filthy mouthed complainer. And every time the poor professor went back to his office, the clone would say, you dirty son-of-a-bitch. You're off having all the fun, eating all the dinners. I got to sit here and grade all these exams. It got so that the guy hated to go back to his office, and finally one day, he just lost it. He went to his office, top of Hoover Tower on the Stanford campus, and the clone started complaining, and the professor just picked him up by the collar and the seat of his pants and pitched him out the window. Splat, that was the end of the clone. But there happened to be a cop down there who saw the whole thing, went running up, said, "I'm arresting you! I saw you throw that guy out the window. I'm arresting you for murder." And the law professor said, "You can't arrest me for murder. Murder is the unlawful killing of a human being with malice aforethought. That wasn't a human being. That was a clone." The cop gets a little flustered, he says, "Well, all right, I'll charge you with manslaughter." Professor says, "Same problem. You don't need malice but it's still got to be a human being." By this time the cop was so flustered he says, "Well, what can I charge you with?" And the professor says, "The only crime with which I can be charged is making an obscene clone fall."

Let me tell you a little bit about the California Commission on the Fair Administration of Justice. We were established by the California State Senate, and we were given a mandate to look at the extent to which the process of the administration of justice has failed in California, to examine safeguards and improvements, and recommend proposals to ensure that the administration of justice is fair. Very clear, easy mandate, and then they added on to that, why not also take a look at the death penalty in California

and tell us if there's any way that we can improve the death penalty. So we've been at it now for three years. Our charge runs out in June of this year. We are into the final phase of our work. We are conducting public hearings on the death penalty. In fact, we will have a very interesting hearing back here in Los Angeles on February twentieth, to which you are all invited. We're going to be hearing from the head of every office in California that's directly involved in the litigation of death cases, responding to the proposal of the Chief Justice that we start routing some of those cases back to the Courts of Appeal. So, it'll be a very, very interesting hearing.

One of the first things that our Chair, John Van de Kamp, insisted on when he took over the Commission was that we would issue interim reports as we address each topic, rather than just sitting for three years and issuing a final report and disappearing into the sunset, because he wanted us to be actively involved in promoting the agenda of reform that we're going to come up with. And if we made those proposals *seriatim* as we looked at each topic, we could be actively engaged in relating with the legislature and promoting public support for these measures. So that's what we did, and we've issued eight reports now.

The task of identifying the causes of wrongful conviction and what goes wrong in these cases was easy. We all know what causes wrongful convictions. It's mistaken eyewitness identifications, it's false confessions, it's jail snitch testimony, it's bad forensic evidence, it's misconduct of prosecutors, it's incompetence of lawyers, and frequently, it's a combination of a number of these all in the same, sad case.

So, we started with mistaken identification. We held public hearings. We brought in the experts. We read all the literature, and to my surprise, with the Commission covering the full spectrum, we all agreed. We have police and sheriffs. The Police Chief of Los Angeles is on our Commission. We have prosecutors, the Attorney General of California, the District Attorneys of three different counties. We have defenders. We have the Public Defender of L.A. County, the Public Defender of Alameda County, the state Public Defender, the head of the Habeas Resource Center. They're all on the Commission. And at first, I thought, how are we ever going to get these people to agree on everything? But the amazing thing is, with very few exceptions, every recommendation of our Commission has been unanimous. And we unanimously proposed that the way we should deal with misidentification is to simply require that the police follow agreed upon best practices in the way that they conduct eyewitness identification procedures. Do it double-blind. Do it by presenting the suspects one at a time, rather than all at the same time. And we thought the way to

accomplish that was to get a state-wide set of standards and then require every police department to follow them. That proposal actually made it through the legislature and was vetoed by the governor. In the second year, we went back with a new bill. The new bill was really a watered-down version. It didn't mandate anything. It just said we want to put together the police and all other involved criminal justice elements to come up with a set of proposed guidelines and give it back to the legislature, and then let the legislature decide whether they want to mandate it, whether they want to recommend it, or whatever. Again, legislature passed it, and the governor vetoed it on October thirteenth.

With respect to false confessions, we had a very similar experience. We concluded, as most groups that have looked at this problem have concluded, that the solution here is to make sure that the interrogation is recorded so you can reconstruct what happened and make a judgment about whether there was a risk of this confession being coerced or being a false one. We wanted to require a videotaping of all interrogations in homicide cases and serious felony cases. We were talked out of that. The problem in California is whenever we mandate something, the state has to pay for it and the state does not fund our local police departments, or sheriffs' departments. A lot of departments are already video-taping or audio-taping interrogation and they would then present the bill to the state and say, "Now you have to pay for it." So, we compromised and decided, well, at least let's get it on audio-tape. So, we proposed a bill to require that all custodial interrogations in serious felony cases has to be audio-taped, and if it isn't, the jury will be instructed to treat the testimony with great caution and care. We couldn't propose an exclusionary ruling in California because constitutionally now, we cannot impose exclusionary rules that keep out relevant evidence in criminal cases unless we get a two-thirds approval of the legislature. Well, this proposal made it through the legislature. Again, the governor vetoed it. We went back the second year. We took out the part about instructing the jury. We just said, everybody's got to record interrogations and we'll let the judges deal with what they're going to do if it wasn't done. Again, October thirteenth, the governor vetoed it.

We looked at jail snitches. We decided, treat jail snitches the same way you treat accomplices, require corroboration. When we put that on the table, the reaction of prosecutors was, we never use un-corroborated informants—this isn't really a problem. When the bill went to the legislature, the prosecutors came in and said, this is going to affect thousands of cases in California. They're going to be turning hundreds of criminals loose based on this loophole. Nonetheless, the legislature passed it and the governor vetoed. So, what's going on here? What's going on? I

learned what I think are five valuable lessons from the governor's vetoes.

We're continuing our work, of course. We're going to present the governor with more than three bills this year and we're trying to learn some lessons about how we can have greater success in achieving reform in California. And I have five lessons that I'm going to throw out at Henry and Gigi and see how they react to them.

Lesson number one: with regard to the reform of the criminal justice system because of wrongful convictions, we are still flying below the radar. I can tell you that the governor got away with vetoing these bills with very little criticism, very little loss of any of his political clout. It was essentially an opportunity for him to throw a bone to law enforcement and to the Republicans in the legislature without taking any flak for doing so. There were newspaper editorials urging him to sign the bills. Newspaper editorials apparently don't cut much ice with this governor. There were newspaper editorials criticizing him for the veto. But by and large, I think in terms of public awareness, nobody even knows that these issues were presented to the governor twice and he vetoed them twice.

Peter made a very important point in his luncheon presentation talking about the importance of the narratives, the importance of putting a face on this issue, and people understanding that what we're dealing with here are innocent people that are serving years and years in prison while the guy who really did the crime is still out victimizing us—and let them see the face. Let them see the Herman Atkins. Let them see the individuals who had been victimized by wrongful convictions. We've tried to do that with some of our public hearings, but in retrospect, I wish we'd done more of it. I think inevitably that was the aspect of the public hearings that gained the most attention, the stories of these people that were subjected to these injustices. We need to do more to present those narratives to get those faces in front of the public.

Number two lesson: law enforcement reigns in Sacramento. Our Chair, John Van de Kamp, really made an effort to reach out to law enforcement, getting law enforcement onto the commission, participating in our deliberations, and we quickly learned having law enforcement participation on your commission does not guarantee law enforcement support for your legislation. So, we're realizing we need to do even more reaching out to law enforcement, making them feel as though they're part of the process that we're going through, of trying to push this agenda, trying to educate them to realize that a lot of these reforms are going to work to their benefit. Tom Sullivan, who's one of the leading advocates of the recording of police interrogation, has done a masterful job of going all over the country identifying the police departments that do it. And, inevitably, he finds they

all say this is great. “I wish we’d started doing it years ago. We have fewer motions to suppress when the defendant comes in and says, we didn’t give him his *Miranda* warning, we just turn on the tape and there it is. There is no dispute about it.” So we’re doing better by recording the interrogation, and somehow we’ve got to get that message to police departments that aren’t doing it that this could actually work to your benefit. I think the work that Peter and his colleagues are doing in bringing lawsuits also sends a very significant message to law enforcement and to county governments that if you don’t institute these reforms, you are increasing the risk that your ass is going to be in the ringer for a multi-million dollar judgment. Peter just recovered a multi-million-dollar judgment against Riverside County on behalf of Herman Atkins. We just had a settlement, a case in Santa Clara County for \$3 million on behalf of a wrongfully convicted defendant. As we start seeing these judgments roll in, counties are going to start saying, good Lord, what can we do to protect ourselves from this, and we can say the way you protect yourself is by instituting these reforms to reduce the risk.

Lesson number three: for me this is still regarded as a partisan issue—we have a Republican governor; we have a Democratic legislature. When the governor gets a bill, he looks at who was for this, who was against this. On our bills, we had very few Republican crossovers vote for the bill. They sailed through the legislature because we have a very solid democratic majority in the legislature, but our governor, despite his posturing about non-partisanship, does have to appease some interests in the Republican Party and appear to be a little bit Republican now and then, and this was one issue where he could throw a bone to the Republicans in the legislature.

Lesson number four: legislation is not the only game in town. I was delighted to hear Judge Burnett talk about the proposals in the courts to require jury instructions to put closer tabs on certain kinds of evidence. But there are also other avenues, and as an example of that, I included in your materials our report on the professional responsibility of prosecutors and defense lawyer.² This is our take on the problems of prosecutorial misconduct and defense lawyer incompetence. I’m quite proud of that report because it really does break new ground based on research that we conducted in the Commission of all of the California cases where claims of prosecutorial misconduct or defense lawyer incompetence had been upheld by the courts and then searching through what happened to those cases, what happened to the lawyers in those cases. And we learned that none of them had ever been reported to the state bar. So we looked at what rules

2. California Commission on the Fair Administration of Justice, <http://www.ccfaj.org> (last visited Nov. 18, 2008); also on file with the Southwestern University Law Review.

govern who gets reported to the state bar and we found that judges are guided by judicial rules of ethics. So, what we proposed was an amendment of the judicial rules of ethics to say it doesn't make any difference whether the conviction is reversed or not. Every case of egregious misconduct by a lawyer that a judge witnesses should be reported to the state bar. Whether they initiate disciplinary proceedings or not, at least we've got a track record being kept somewhere. I mean we uncovered egregious cases where the same prosecutor had three cases reversed because of prosecutorial misconduct, where the same defense lawyer had two death judgments set aside because of ineffective assistance of counsel, and what we discovered is somebody's got to start keeping track of who these lawyers are and holding them accountable, and the best place to do that is in the tremendous disciplinary mechanism we have in the state bar. Let's put it to work and we can put it to work by a few simple changes in the rules of judicial conduct, and we propose those changes and have gotten a very favorable reception so far from the Administrative Office of the Courts and from the Chief Justice.

My final lesson is simply that reform of the criminal justice system is not a sport for the short-winded. We have to be persistent. We have to keep at it. We're going to send those bills back to the governor again and we're going to keep plugging away. Eventually, these reforms will come to pass. I'm absolutely certain of that. I don't know whether I'll live to see it but we just got to keep at it.

Thank you.

HENRY WEINSTEIN: Good afternoon. No, I'm just a reporter with the *L.A. Times* and I'm a member of the California Bar—for a long time. I have sort of a mixed message to deliver as my opening comment and that is, good journalism will get you a commission. In fact, I think most of these commissions, I'm going to advocate a position. I'm sure people are free to disagree with me about this, that a lot of these commissions were formed because of the fact that there was good journalism reporting about very bad things that had happened in the criminal justice system. But journalism is not always the most consistent or steadfast and you can't count on journalism to get you results at the end, and I think there are a variety of reasons for that. One is, that they're called newspapers, and I'm not even going to talk about television for the moment, people at newspapers, particularly editors, have a very, very short attention span for the most part. And although you can have a lot of front-page stories about individual outrages when people get around to doing what people like Gerry³ are doing

3. See Gerald Uelmen discussion *supra* page 1149.

or people in some other states, getting coverage of those stories like that is much more difficult. I can tell you, not that I would present myself as a sterling example, but I know I have written more stories than any other newspaper reporter about this Commission than any other reporter in California. I mean, I haven't written about every commission meeting here but I've been in most of them and all the ones that I went to I wrote a story. Not one of those stories ever made the front page. Some of them made the front of the Metro section and some of them were inside the Metro section. Needless to say, that was not to my delight. It wasn't my idea. And the one that actually got the best play that I recall, there's a couple of them, was one that was a story that in fact had a gripping narrative about a very interesting guy named Christopher Ochoa from Texas, who had been a victim of a very bad prosecution and he came together with the mother of the person that he had allegedly killed, and the two of them made an incredible combination together. I had written first about Chris Ochoa during the 2000 presidential election when his case first came on the radar screen; when a lot of reporters were paying attention to what was going on in Texas for obvious reasons, their biggest death row—I mean not the biggest death row, but the most executions ever presided over by one governor and the most executions in any state. And there were a lot of reporters from national newspapers that went down to Texas to look at this system. And as a result of contacts I made, I found out about Ochoa's case and some of the problems of the case and wrote a story about it then, and then wrote about it again here; and it was pretty striking to have these two people together.

If you want to, I can also tell you, by drawing a comparison to something else that I did much earlier in my reporting career, which was outside the realm of criminal justice although it verged on it was, if you want to have journalism achieve a positive end result, you've got to have other social forces working, and that means good advocacy groups and people, say for example, in the legislature who can do something.

In the late '70s and early '80s when I first joined the *L.A. Times*, I wrote a bunch of stories about mortgage fraud and home improvement fraud in South Central Los Angeles. People literally getting their houses stolen. Somebody would come up, offer to give you texture coating, aluminum sidings, something like that. These were little houses in poor neighborhoods that had vastly inflated equity themselves as a result of one of the real estate booms, and all these deals had hidden second mortgages. They were structured. They were literally structured, these deals, to steal the house out from under an unknowing person, and I wrote a lot of stories about this. I mean, we wrote stories about a variety of companies that were doing this. We got some people prosecuted.

The other thing we did was—I was sort of young and the paper was very behind us. And these people were, what I would refer to as, the worthy poor, as opposed to what some people would think of as the unworthy poor, criminal defendants. I just went up to Sacramento and I just watched all these hearings, sat in on them. I was very, kind of nasty to the lobbyists on the other side. Fortunately, this cause had several very tough legislators who were willing to push these bills through. And the stuff was so egregious that the governor was too embarrassed to veto any of these bills. There were a bunch of reforms passed, and then these crooks figured out how to steal people's houses some other way. And still, now you are seeing more of that in the subprime scandal.

I actually think that, but that's not a reason for journalists not to do this stuff. I mean wrongful conviction stories have been part of good journalism for a long time. A guy named Gene Miller for the *Miami Herald* won a couple of Pulitzers in the '70s and the '80s for some wrongful convictions. I think the landscape, in a way, really started to change in the fall of 1998, when Northwestern had the first big death row innocence conference.⁴ And it was a very well-orchestrated event. A bunch of people came from the press from all over. We wrote stories about 30, 40 people getting up onstage, describing both collectively and then individually in sessions about how they had been wrongfully convicted for one reason or another, and that they all would have been dead but for the fact that they were lucky enough to, at some point, have gotten a good lawyer to do a habeas for them.

I know the *L.A. Times* ran that story on the front page. And I know that conference got good play in a lot of other places. And I also think that spurred the *Chicago Tribune* to do a bunch of stories about their system which led to Governor Ryan declaring this death-penalty moratorium. And at the same time Barry and Peter had already started their Innocence Project⁵ and they lobbied other people at that conference to start other Innocence Projects. And I think editors really started to take seriously the fact that there were a lot of problems in the system. Now that, obviously, people should've known in a lot of places that there were problems well before that. After all, Gigi [Gordon] had played a key role in exposing the jailhouse snitch scandal here a decade before that. But, as I say, the attention span of the press tends to be not very long. And I think that the

4. The National Conference on Wrongful Conviction and the Death Penalty at Northwestern University Law Center Chicago, Illinois was held November 13 - 15, 1998. See Northwestern University School of Law, Bluhm Legal Clinic, Center on Wrongful Convictions, About us, <http://www.law.northwestern.edu/wrongfulconvictions/aboutus/> (last visited Nov. 18, 2008).

5. Barry C. Scheck & Peter J. Neufeld, www.innocenceproject.org, About the organization, <http://www.innocenceproject.org/Content/137.php> (last visited Nov. 18, 2008).

best way you can do it for somebody that believes in these issues is to tell a journalist in your area or somebody there about a particular situation that can be brought to public attention. And once we get some of these things to public attention then, maybe, some other people will get involved in the process and you can have some more systemic reform. It's much more difficult. I mean, I'm probably telling you something you already know. But sometimes it's important to state the obvious. It's much more difficult to get systemic reform than it is to get an individual exoneration or an individual wrongful conviction overturned. But that's not a reason not to do that. It's just that you need a much more limited number of actors to solve one problem than to solve a lot bigger problems. And I guess with that I'll stop to take some questions later.

GERALD UELMEN: Gigi Gordon's comments about jailhouse snitches were very troubling to me because I think one of the reasons that our Bill 609 failed was because using jail snitches doesn't bother anybody unless the defendant was innocent. But what we learned was the greatest use of jailhouse informants in California is in the penalty phase of death penalty cases. They want to persuade the jury to execute the defendant so they bring in some guy from the jailhouse who says he was bragging about it, he was bragging about how much fun it was to rape that little girl and kill her. And then they can argue, he has no remorse, he should be executed. This guy wasn't innocent. He did it but he wasn't bragging about it to his cellmate. Now, what kind of sympathy is that going to engage with the media or the public? We use this term, "wrongful convictions," a lot. One of the issues we're looking at right now in the Commission is remedies for the wrongfully convicted. And, of course, we learned as in most states, somebody gets a habeas corpus granted, they take him to the jailhouse door at midnight, he walks out, he doesn't have a dime in his pocket. You know, at least somebody who committed a crime and is paroled gets \$200, so he at least has bus fare into town. Now, in some locations, they actually deliver on the California public policy to assist paroled inmates in reintegrating into society to help them find housing, get them at least a suit of clothes so they can look for a job. If you're wrongfully convicted, you get nothing. You just get put out on the street. So we contemplated changing California law to say, at least give to the wrongfully convicted all of the services that you give to parolees and the resistance to that was well, we should only give that to the innocent wrongfully convicted.

HENRY WEINSTEIN: Yeah, I'd like to just pick up a little bit on that, like a couple of things that were said, Gigi made a comment about a situation she'd been in where there was resistance to the people where I guess she said defending the honor of an office even though nobody

currently in the office, or nobody in any position of power, had anything to do with that particular case and one of the things that I have found the most troubling about writing about this case and I, one guy that I wrote a series of stories about four or five years ago about Thomas Goldstein who got out after serving twenty-four years on a wrongful murder conviction—not a death-penalty case—down in Long Beach. What was really stunning, the guy who had prosecuted the case was retired; nobody who was currently involved in the case had had anything to do with this before, and—without giving you all the gory details because it was a terrible case—there was a browbeating identification and there was a jailhouse snitch who played a key role and the informant's name was Edward Fink. This was a reporter's dream. Edward Fink. When I first saw this, I thought, my God, you know, there is a God. And I mean, he had been used time and time again. He was a multi-time loser and in fact he played a key role unfortunately in somebody who got executed in this state a number of years ago. It was amazing when I got all the files and I looked through a lot of boxes and there was even a memo from one D.A. who was a very straight-up guy to other people in the D.A.'s office—don't use this guy: "Fink is a fink." And you can imagine that made it into the story. What is really stunning is that not all of these cases are all the same. Some of these cases involve what I'll call subtle screw-ups. Some of these cases don't involve subtle screw-ups. And to my way of thinking, this was one of these cases. They had about as much on this guy as they had on me. And I've written about cases like that where they had. There was one case that Peter and Barry⁶ turned me on to up in Idaho, of a guy named Charles Fain. He was just walking on the wrong street at the wrong time and a little girl was murdered. It was a terrible case involving hair and I still think the worst case I ever wrote about.

I want to describe this other case briefly to you. I think Barry or Peter first turned me on to this. It was a murder of a grocery store owner in a little town just across the Mississippi River from New Orleans and the guy was shot. Maybe about twenty or thirty minutes later, two young African American males, both of them had minor records, get picked up in the adjoining town and they are subject to what is known, as I think the term of art is, a "show-up-line-up." Which is, to say the least, not exactly what you call a rigorous procedure and they then take these two guys into custody. And they question them in separate rooms and they sweated them for hours and one of the guys holds to his claim, didn't do anything at all. And then finally after seven or eight hours, they crack the other guy but it's not that

6. *See id.*

the other guy admits that he did it. He sort of goes along with this creative narrative that they drove to this area and then he says his friend decided that he was hungry. And the guy who is getting sweated and making this “confession” his name is Travis Hayes and the other guy’s name is Ryan Matthews. He says Ryan got hungry so we drove near the store and Ryan got out of the car and he walked to the store and a few minutes later I heard something, like a bang, and then Ryan came back to the car and we drove away. I mean, they don’t have a gun. They don’t have anything. And so Ryan, the alleged perp, gets charged with murder one, and the other guy also gets charged with murder one, but they try them separately. And this guy, Ryan Matthews, gets convicted and he goes to death row and the other guy gets a life sentence. Hey, okay. So meanwhile, down the road, Peter, Barry,⁷ other people, get involved and it turns out that they have multiple exonerating DNA tests on this guy, Ryan Matthews. He’s out. He eventually gets out, over the great resistance of the prosecutor’s office in Jefferson Parish, Louisiana, it was I think seven years.

Okay, so you now have a situation where one guy is out of prison on a clear DNA exoneration. And, in addition to that, there is another guy in the prison in Angola, which is where they have all the people convicted of heavy stuff, who has bragged that he committed this crime. Not only did he brag that he committed this crime, but he was already in for slashing a woman within a few blocks of where this crime occurred. But they’re not doing any investigation on him. And meanwhile, the other guy who admitted to this “event” that did not occur, meaning that his buddy went into this place, they are not letting him out. And it took many, many months of very hard work by lawyers, and then they finally agreed, they finally had to concede. But the D.A.’s office just sort of came out with some what I’ll call sort of perfunctory statement that the evidence did not now warrant keeping him in jail. Now just think about the fact that you’re keeping somebody in jail for “making a statement” that you know, based on hard science did not occur. Now I would say in that case at least that was the product of what they taught us in the first-year of law school—a “malevolent heart.”

I know lots of good, upright prosecutors who do very good work. But these people were really bad. I think those are the kind of things that the public needs to know.

GERALD UELMEN: We got an endorsement of our Jail Snitch Bill by the District Attorney of Los Angeles County, the only D.A. in the state that supported it, but you know, we’re making some progress here. There are

7. *Id.*

prosecutors who recognize there are problems and that we need to do something and we've got three of them on our commission who signed off on these reforms.

And in fact, I think where our Commission is making the most progress is not in proposing legislation, but in proposing that written policies be adopted within each District Attorney's office laying out what their *Brady* policy is, laying out what their policy is with respect to eyewitness identification, a lot of the reforms that we've proposed are already in place. In Santa Clara County, for example, where we had a very progressive D.A., he just got all the police together and said, "This is the way we're going to do it, and we aren't going to prosecute your cases if you don't do it this way.

So, yes, there is certainly that vehicle available, but let me offer this comment. I was a prosecutor thirty-five years ago. And I remember the camaraderie that existed between the prosecutors and the defense lawyers, and most of the defense lawyers I was up against had been prosecutors in my office. The past thirty-five years that has changed dramatically. The whole career orientation now of the defenders and the prosecutors has led to a culture of "We're the good guys, they're the bad guys," you know. A lot of prosecutors think that every defense lawyer is just a slime bag, a lot of defense lawyers think every prosecutor is a Nazi. We got to break that down, we really do. I think one of the ways we do it is joint training. We actually got the Santa Clara County Public Defender and the D.A. to do a joint training session for deputies from both offices at the same time, so they had to sit next to each other while we walk through what *Brady* requires, and, you know, some of the nuances of the *Brady* policies. I think that's the kind of steps we need to take to break that down. I'm a big fan of the British system. I think, you know, lawyers shouldn't be prosecutors and defense, they should just be lawyers and one week they're prosecuting the case, and the next week, they're retained by the Crown and they prosecute their case and there's a mutual respect for the roles that they each play in the system, but unfortunately that's not our system.

One of my personal heroes is Charlie Swift, the Judge Advocate assigned to represent the case that went to the Supreme Court on the guy who was incarcerated in Guantánamo. This guy, at great jeopardy to his career in the military really became a very vigorous advocate on behalf of his client. So I think the military does give us a very great example of the professional sense that we're all in the same business and that business is to do justice.

....

If you look at the exonerations. What are we, up into 215 now? They

are all murder or rape cases. Are they not? Okay, okay, so here we have 215 exonerations, murders, and rapes. Does that mean, wrongful convictions only occur in murder and rape cases? Obviously not. I think there're lots of reasons why murder and rape: number one, because there's DNA; number two, because these cases get a lot of scrutiny because they're very serious cases and a lot is at stake and many of the murder cases we're dealing with death row inmates. But intuitively, you've got to say there's a hell of a lot more innocent people in the system, who aren't getting out because there isn't DNA. End of inquiry. Our law school hosts the Northern California Innocence Project. They, get about 4,000 letters a year from people in prison, saying I'm innocent, get me out of here and they end up investigating about 200 of those cases. And out of those 200, maybe there are 50, where there's evidence available they can even check out. So, we're talking about, a very limited category.

....

I have to say that we're in the process now of preparing our final report and our role model is the final report done by the Virginia Commission. It's available online.⁸ I think it's one of the best reports that's been done on wrongful conviction but one correction, we have not gotten a nickel of state money. No. No. We had to go out and raise private funding to finance the entire commission. All the state senate did was create us and said, go find some money and do what we want you to do. So, our entire first year was occupied in getting the grants that we needed to carry on our work.

8. Innocence Commission for Virginia, <http://www.icva.us/> (last visited Nov. 8, 2008).