

# FALSE EVIDENCE, ACTUAL INNOCENCE AND 11.073 WRITS

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**Powerpoint and Presentation by:**

Gary A. Udashen  
Sorrels, Udashen & Anton  
2311 Cedar Springs Rd., Suite 250  
Dallas, Texas 75201  
214-468-8100  
gau@sualaw.com  
Board President -  
Innocence Project of Texas

**Presentation by:**

Jay Brandon  
Bexar County District Attorney's Office  
101 W. Nueva Street  
San Antonio, Texas 78205  
210-335-2311  
jay.brandon@bexar.org

Cory Session of Fort Worth, center, wipes his eyes as Texas Gov. Rick Perry, right, and Texas state Senator Wendy Davis, left, bow their heads in prayer during a ceremony to unveil a Timothy Cole memorial in Lubbock, Wednesday, Sept. 17, 2014. Twenty-eight years to the day after Timothy Cole was falsely convicted of raping a Texas Tech student, Lubbock and state officials unveiled a statue honoring the U. S. Army veteran on a street corner not far from where the student was abducted. AP/Lubbock Avalanche-Journal

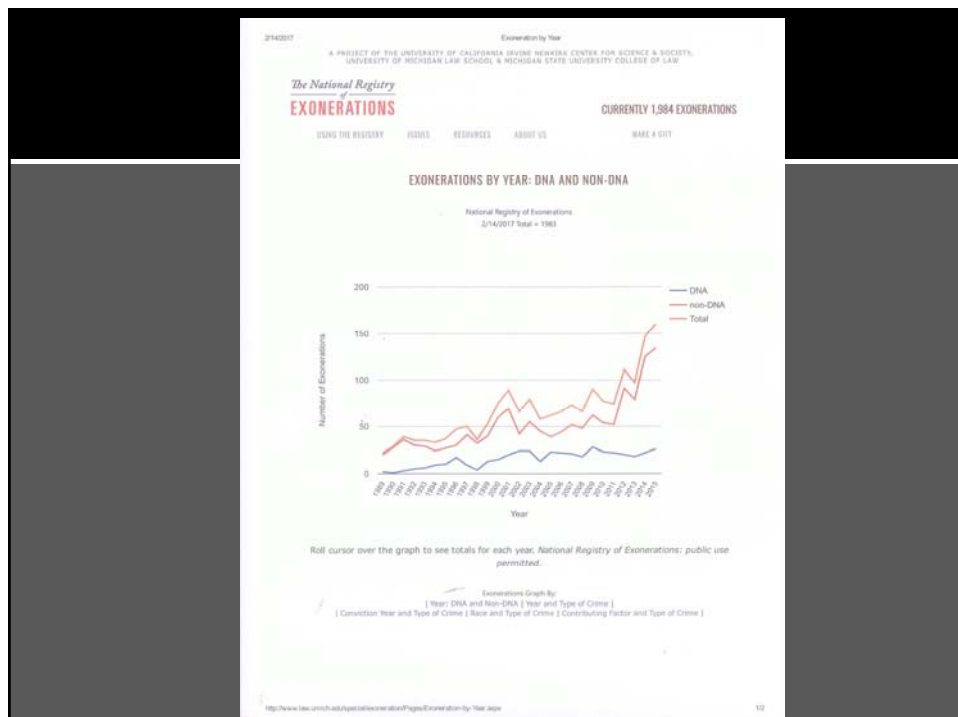
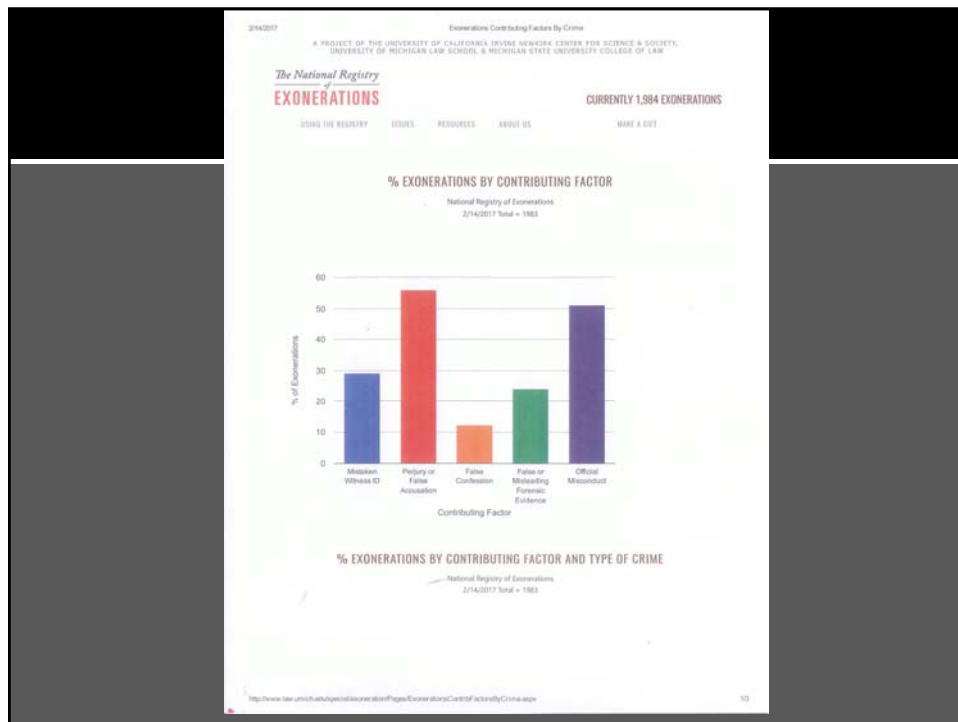


## TIM COLE STATUE UNVEILING



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## **TEXAS ACTUAL INNOCENCE STANDARD**

**Free Standing Actual Innocence Claim:**

**Ex Parte Elizondo, 947 S.W.2d 202  
(1996)**

**Applicant must show, by clear and  
convincing evidence, that newly  
discovered or newly available  
evidence of actual innocence  
unquestionably established  
innocence.**

## **NEWLY DISCOVERED OR AVAILABLE EVIDENCE**

- **Newly discovered evidence is  
evidence that was not known to the  
applicant at the time of trial and  
could not have been known to him  
even with the exercise of due  
diligence. *Brown, 205 S.W.3d 538***
- **Newly available evidence is evidence  
that may have been known to the  
applicant but was not available for his  
use based on factors beyond his  
control. *Calderon, 309 S.W.3d 64***

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