

# FALSE EVIDENCE, ACTUAL INNOCENCE AND 11.073 WRITS

2017 Robert O. Dawson  
Conference on Criminal Appeals  
May 10-12, 2017  
Austin, Texas

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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

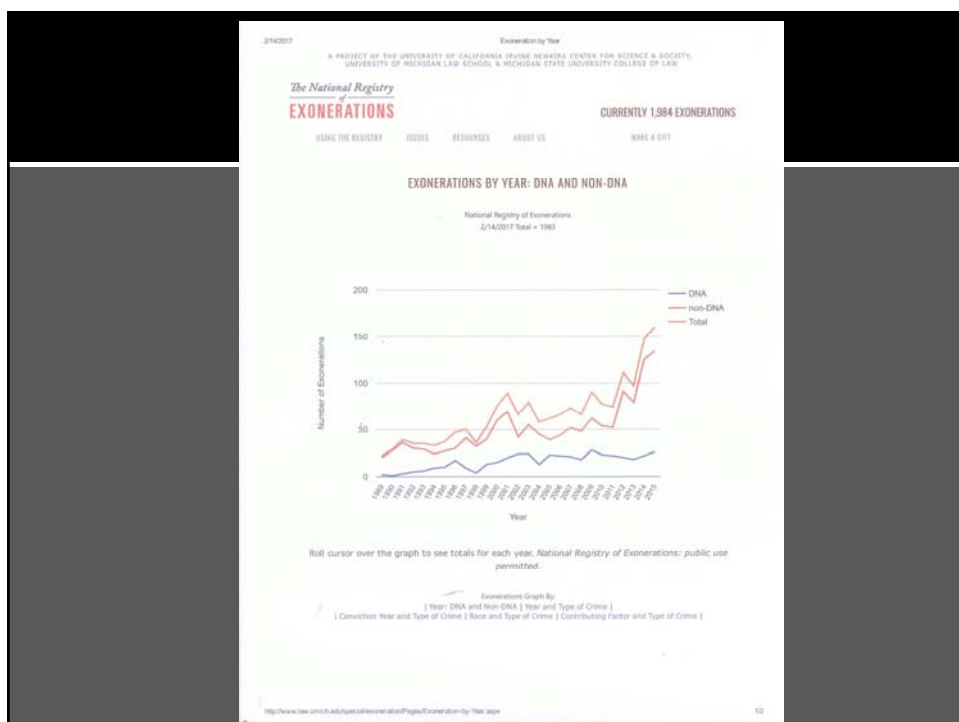
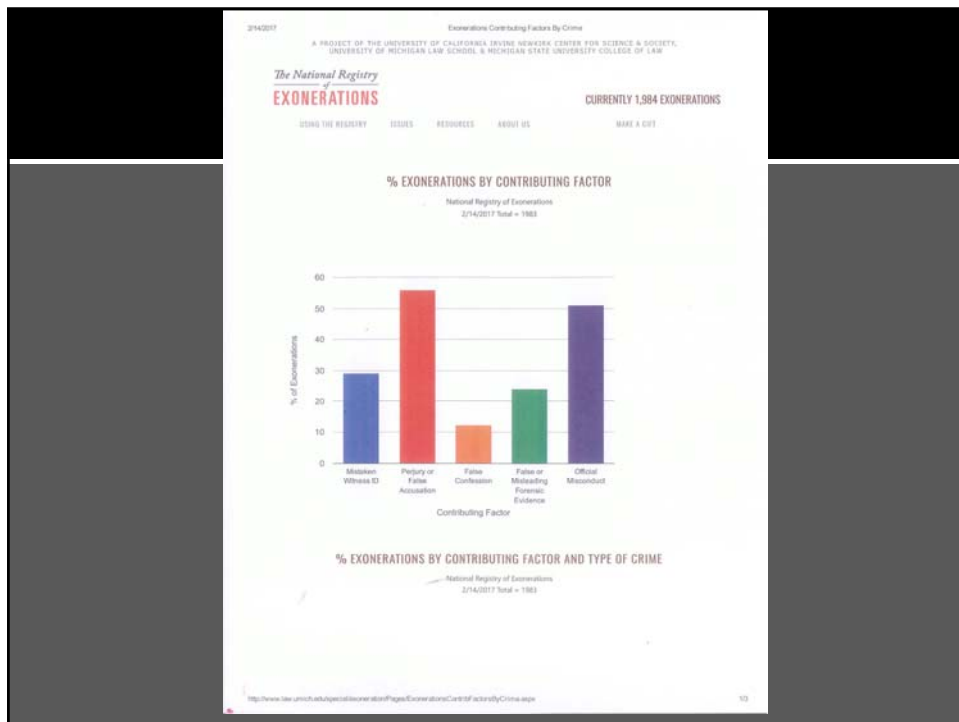


## TIM COLE STATUE UNVEILING



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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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First appeared as part of the conference materials for the  
2017 Robert O. Dawson Conference on Criminal Appeals session  
"False Evidence, Actual Innocence, and 11.073 Writs"