

FALSE EVIDENCE, ACTUAL INNOCENCE AND 11.073 WRITS

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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

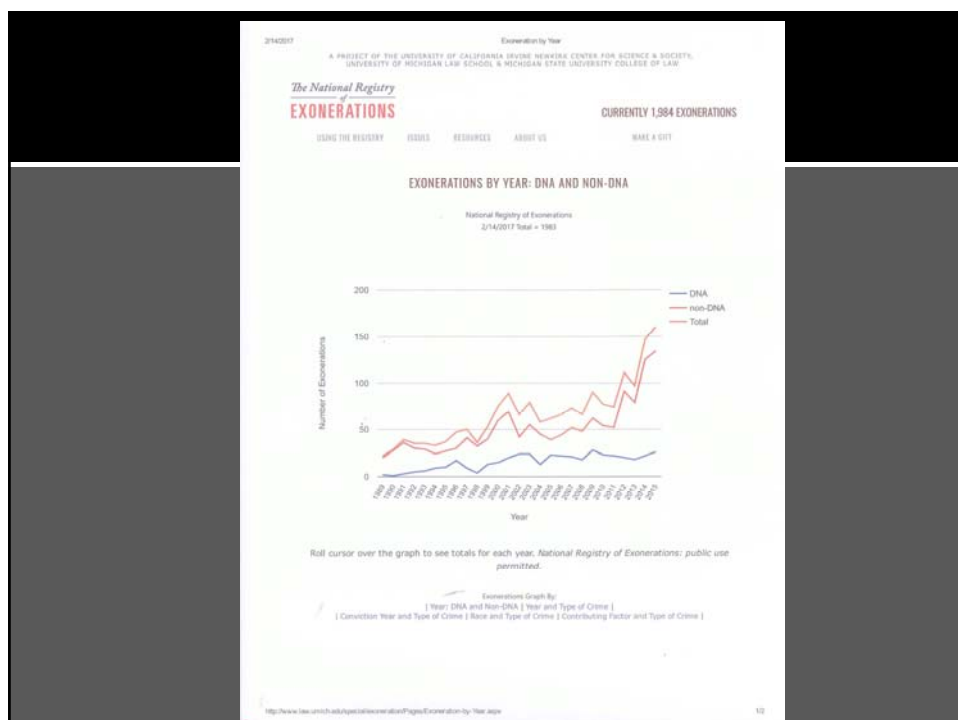
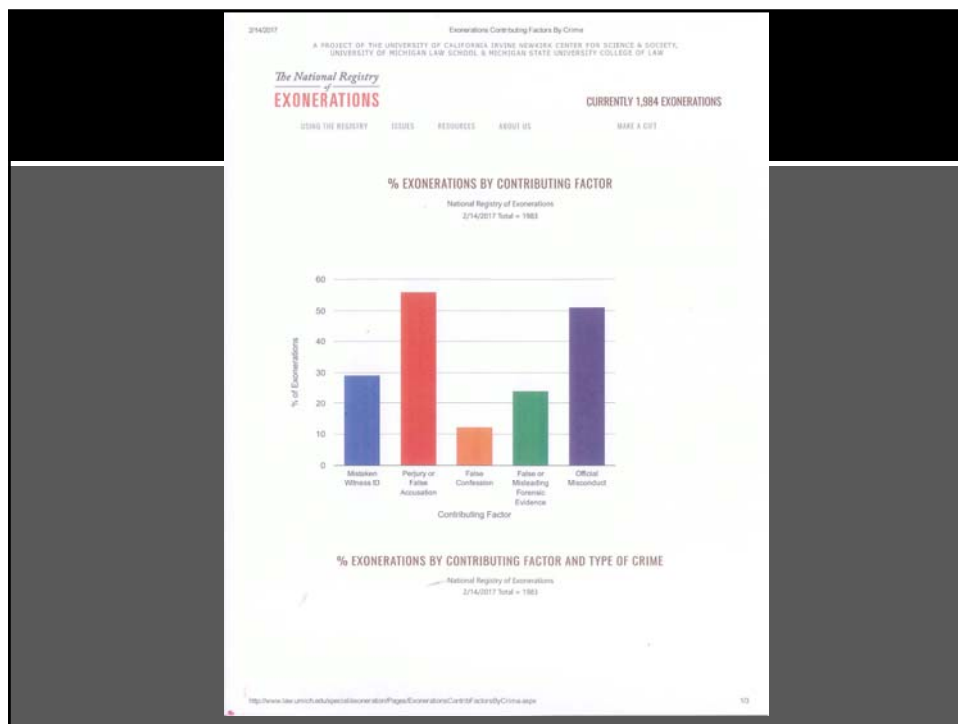


TIM COLE STATUE UNVEILING



TIM COLE STATUE UNVEILING





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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