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**TESTIMONY SUBMITTED BY
ANDY HOOVER, LEGISLATIVE DIRECTOR
AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA
TO
HOUSE DEMOCRATIC POLICY COMMITTEE
RE: THE CONVICTION AND INCARCERATION OF INNOCENT PEOPLE
OCTOBER 29, 2009
TEMPLE UNIVERSITY, PHILADELPHIA**

Good afternoon, Chairman Sturla and members of the committee. My name is Andy Hoover, and I am the legislative director for the American Civil Liberties Union of Pennsylvania. Founded in 1920, the ACLU is one of the oldest civil rights organizations in the country and currently boasts half a million members nationwide. ACLU activity in Pennsylvania dates back to the 1930s, and we currently have more than 15,000 members in the commonwealth.

Imprisoning a person, while necessary at times, is the ultimate loss of liberty, and that loss of liberty is compounded when an innocent person is imprisoned. The conviction and incarceration of innocent people is a reality in Pennsylvania and across the country. At least ten people in the commonwealth have been exonerated by DNA evidence, including one person on death row, and several others have been cleared after conviction through means other than DNA evidence. Exonerees in the latter category include Steven Crawford and David Gladden of Dauphin County, whose wrongful convictions for separate crimes were revealed through the dogged investigative journalism of the late Pete Shellem of The Patriot News.

To place my testimony in context, I have to tell you briefly about my background. I became the legislative director for the ACLU of PA in July, 2008, but first joined the ACLU-PA staff in 2004 as a community organizer. Before that, I was a volunteer in Pennsylvania's anti-death penalty movement, starting in 2000.

Public education has been a major component of this work, so I have had the opportunity to spend many hours working with people who were imprisoned for crimes they did not commit. As a result, I have seen the wounds that these men suffer up close. (An overwhelming majority of exonerees are men, but there are some women who have been cleared of crimes they did not commit.) The struggles of the exonerated upon their return to society include a lack of healthcare, mental health issues, drug and alcohol abuse, financial instability, and little or no job training and skills building opportunities.

William Nieves of Philadelphia is one example of the nightmare of wrongful conviction. In 1994, Nieves was convicted and sentenced to death for the 1992 murder of Eric McAiley. No physical evidence tied Nieves to the scene. Several eyewitnesses told investigators that the perpetrator was a short African-American. Nieves, meanwhile, was a Puerto Rican of average height.

Nearly a year into the investigation, one of the witnesses was charged with an unrelated crime. Her story about what happened to Mr. McAiley changed, and she claimed that Nieves committed the crime. The other witnesses were withheld from defense counsel, and Nieves was convicted and sentence to death based largely on the testimony of the witness who changed her story.

Several years later, Nieves won a new trial because his trial attorney had given him bad advice. Defense counsel told him that he could not testify on his own behalf because Nieves had minor drug convictions on his record. After winning the new trial, Nieves raised enough money to hire attorney Jack McMahon, who had worked in the Philadelphia District Attorney's office when Nieves was first prosecuted. With the suppressed witnesses available to testify, a jury returned a verdict of "not guilty" in 2000. After six years on death row, William Nieves would be free.

Sadly, Nieves did not live happily ever after. First, he was held in Philadelphia County Jail for several days after his acquittal. No one can say for certain why, but many speculate that he was held a few days because the inmate count affected the funding the jail received. Then when he was finally released, Nieves was released through the back door of the prison. At 1am. The jail gave him a SEPTA token and a set of clothes. After that, Nieves received nothing from the government. He was never compensated for his wrongful conviction, and he received no reentry services.

Nieves long contended that he received inadequate healthcare while in the custody of the Department of Corrections. He claimed that he was diagnosed with a condition that adversely affected his liver early in his prison term but was never treated for it and only discovered it when he looked at his chart during a routine examination years after the initial diagnosis. After his release, Nieves continued to struggle with a bad liver and with no healthcare. In 2005, he passed away at the age of 39.

William Nieves' story is one of numerous examples of how the commonwealth fails to make right the wrong of incarcerating innocent people. Nick Yarris, who spent 21 years on Pennsylvania's death row for a crime he did not commit, once noted that he would have received more services if he had been guilty of something and had been paroled than he did after he was exonerated.

Pennsylvania can aid people who have been wrongly imprisoned by the state in multiple ways. First and foremost, exonerees need a hand up from the commonwealth that includes compensation for the years they've lost behind bars. A few exonerees have won lawsuits against the government that wrongly prosecuted and persecuted them, including Neil Ferber, Nick Yarris, and Steven

Crawford, but most are not so lucky. When innocent people are incarcerated for crimes they did not commit, they are losing valuable work time during which they could have been earning a salary. Along with the loss of a paycheck, they are losing years in which they could be honing their work skills, which could lead to future earnings. Finally, technology passes by these innocent people as they sit in prison.

A model for aiding these innocent men and women comes from an unlikely place—Texas. This year Texas enacted a new law to help exonerated inmates. The law pays exonerees \$80,000 for every year they were wrongly incarcerated and pays them a lifetime annuity payment of \$40,000-\$50,000 per year. The state also gives exonerees access to job training, tuition credits to further their education, and medical and dental care.

No current legislation at the General Assembly goes quite this far, but Representative Michael McGeehan has bills that start the process of helping wrongly imprisoned people. House Bill 1924 would give exonerees a payment calculated by multiplying the number of days the person spent in prison by the current per diem rate of state legislators or the person's annual salary at the time he was incarcerated multiplied by the number of years he was imprisoned, whichever number is higher. HB 1924 would also give wrongly convicted people access to healthcare through the state employees' healthcare system for ten years after release.

In addition, Representative McGeehan has introduced House Bill 1925 to deal with the expungement of criminal records of persons who are wrongly convicted. HB 1925 would require an automatic expungement of all conviction data related to the crime for which the person was wrongly convicted and would allow the exoneree to petition a court to have arrest data expunged.

Representative McGeehan has introduced bills like this for several sessions with little movement. The ACLU of Pennsylvania supports these bills and urges House leadership and the House Judiciary Committee to move these bills as soon as possible. A wrongful conviction does life-altering damage. It is the morally right thing for the state to help those who have been wronged in this way.

Finally, I want to briefly discuss capital punishment, an issue that many legislators and others have sidelined when discussing wrongful convictions. In 2007, the American Bar Association released a report from its Pennsylvania Death Penalty Assessment Team. The ABA created the team to examine the functionality of capital punishment in Pennsylvania, and it was made up of five legal professionals in Pennsylvania, including several former prosecutors, a judge who once served as the head of the Pennsylvania District Attorneys Association when he was a DA, and a defense lawyer.

The ABA team concluded that the commonwealth is at serious risk of executing an innocent person. Pennsylvania has the fourth-largest death row in the country with 221 people awaiting execution, as of October 1. In addition, six people have been exonerated after being sentenced to death since the commonwealth reinstated the death penalty in 1978. Nationwide, 138 have been cleared of all wrongdoing after spending time on death row.

Innocence alone is reason enough to temporarily suspend executions in order to conduct a thorough, state-sponsored study of the death penalty in Pennsylvania. The ABA's assessment team recommended a government-sponsored study of capital punishment. Supporters of a suspension of executions include the ABA, the Pennsylvania Bar Association, the NAACP of Pennsylvania, the Pennsylvania Catholic Conference, and the Pennsylvania Council of Churches. The

Pennsylvania Supreme Court Committee on Racial and Gender Bias recommended a suspension of executions in the report it released in 2003.

The cost of ignoring this problem is high. Last month *The New Yorker* published an investigative report indicating that the state of Texas probably executed an innocent man, Cameron Todd Willingham, in 2004. This conclusion was supported by forensics experts who studied the house fire in which Willingham's children died and for which he was sentenced to death.

This is a price that Pennsylvania should not pay. There is no House legislation to create a death penalty study commission and suspend executions, but there is a Senate bill, SB 1110. In the 2007-08 session, Representative Thomas Tangretti introduced a similar bill, HB 2565, with more than 30 co-sponsors and with co-sponsors from both parties. The ACLU of PA supports SB 1110 and supported HB 2565 and urges the House to take up this issue. The possibility of executing an innocent person hangs in the balance.

In conclusion, it is imperative that the legislature deal with the reality of wrongful convictions. The people of Pennsylvania need to trust that the justice system is effective and functional. When an innocent person is convicted, that person's life is forever damaged and a guilty person goes free. We cannot create a system that guarantees that an innocent person will never be convicted, but it makes sense to implement policies that reduce that possibility and that help people when they've faced that nightmare.

Mr. Chairman, thank you for the opportunity to address the committee today.