

Mackinac Center for Public Policy

Issues and Ideas Forum

“Laws of Evidence: How Sound Forensic Science Policy Can Help Prevent Wrongful Convictions”

Speakers:

**Amshula Jayaram,
State Policy Advocate,
The Innocence Project**

**Lauren Krisai,
Director of Criminal Justice Reform,
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**Julie Baumer,
Wrongly Convicted of Child Abuse and Subsequently Exonerated;
Real Estate Agent, Coldwell Banker**

Introduction and Moderator:

**Kahryn Riley,
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Location: Radisson at the Capitol, Lansing, Michigan

Time: 12:00 p.m. EST

Date: Thursday, January 18, 2018

*Transcript By
Superior Transcriptions LLC
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KAHRYN RILEY: Good afternoon, everyone. Thank you so much for joining us. I appreciate you all coming out in the cold to attend our Issues and Ideas Luncheon on the Laws of Evidence: How Sound Forensic Science Policy can help prevent wrongful convictions.

Just to start, we'd like to thank our sponsor, Auto-Owners Insurance, for making today's event possible.

Before we get started, just one housekeeping item. We're going to allow a generous time period for Q&A at the end of the presentation. And the way that we do Q&A here at these I&Is is to actually have everyone write their question down on this comment card, which can be found at the center of your table. When the Q&A portion arrives, we'll have my colleague Jarrett come around. And he'll collect these cards from you and bring them to me, and then we'll present them to our panelists that way. And that makes it possible for people who are watching via the web to hear the question.

Amshula Jayaram is a state policy advocate for The Innocence Project, where she leads state-level campaigns to enact policies and laws that benefit wrongfully convicted individuals, improve public safety, and prevent future injustices. Previously, she worked for the American Civil Liberties Union, the Leadership Conference on Civil and Human Rights, and spent a number of years coordinating the pro bono efforts of private sector law firms.

Lauren Krisai is the director of criminal justice reform at the Reason Foundation, a national Libertarian nonprofit organization that publishes Reason Magazine and Reason TV. Her work focuses on a variety of criminal justice policy issues, including sentencing reform, pretrial reform, drug policy and more, particularly at the state level.

Julie Baumer is a Michigander who was tried and convicted for a crime she didn't commit. She spent four years in prison before being found innocent and released. Her story has been extensively documented in the media, and she has also appeared on "60 Minutes" to share her experience, and has graciously agreed to share that experience with us here today.

So now we'll allow each of our panelists a few minutes to make a presentation on sound forensic science policy. And then we'll rejoin as a group to do Q&A thereafter. Thank you. Please join me in welcoming our panelists. (Applause.)

AMSHULA JAYARAM: Good afternoon, everyone. Can you all hear me? OK, great. My name is Amshula Jayaram, as Kahryn said. And I wanted to just take a second to thank the Mackinac Center and thank our partners at the Reason Foundation for making this happen. This is really incredible. And thank you to all of you for taking time out of your day.

We are here today because, as most of you probably know, the Innocence Project works around the country to free innocent people from prison and to advance the kinds of reforms that will really strengthen our justice system, and prevent that from ever happening again. And our reforms are all grounded in scientific knowledge – whether that means social science and

behavioral science research or the hard sciences like chemistry and biology. And all of these are relevant to the topic of today, which is forensic science.

But before I delve into specifically what we're hoping to accomplish in Michigan, I just wanted to share a couple of stats with you about kind of the picture of wrongful conviction in this country. So, for the folks who were exonerated through DNA, there are 353 of them. So that number is actually pretty extraordinary considering that less than 10 percent of cases even involve biological evidence, and then – even then a lot of times the evidence has been lost, it's been contaminated, it's degraded so much you can't test it. So if there's any way in the world that one could think of an exoneree as being lucky, in that sense they are.

And another – in terms of the system in general, one way that I like to think about it is – and they often say this in media and reports as well – that even 1 percent of our prison population is innocent, we are talking about tens of thousands of people, because our system is so vast, right? We have a population of millions. And to expect any system to have a zero error rate is ridiculous, right? So what do we do to address the errors that we know of now? One last statistic before I move on, but a study from the National Academy of Sciences actually found that about 4 percent of defendants facing the death penalty are innocent, meaning 1 in 25. So, you know, and obviously we're not here to debate the death penalty, but it's just to kind of illustrate in, you know, the starkest possible terms what is at stake here.

The impact on public safety is equally chilling. So we have some data from our cases that shows that in about half of our cases the person who actually committed the crime was ultimately found. And those individuals went on to commit 150 more crimes, all violent. Eighty of them were rapes, 35 were homicides. And, you know, this is – this is not justice, right? This is not justice for anybody. You know, and the other reality is that in many of our cases the true perpetrators went on to commit multiple additional violent crimes before they were ultimately caught. So this is very much about keeping the public safe as well.

Forensic evidence and what we call misapplied forensic evidence accounts for about 45 percent of our cases. So that's close to half. A lot of this is because these disciplines really originated in investigative practice rather than – rather than coming from the scientific community. So what we're here today to try to do is to bring science and justice together, to really marry the two so that, you know, these disciplines are really vetted by scientists, the standards we use to test are set by scientists, and the evidence that we present is as accurate as it can be to juries across the country.

Two other pieces that contribute to the problem. Of course, is – one is the various kinds of drug epidemics we've had in this country. Since 2000, there's been a 74 percent increase of the workload for crime labs. There are only about 400 in the country that are publicly funded. And so you can just imagine, you know, what the end product looks like, just because of, you know, a lack of resources by itself.

When we talk about misapplication of forensic science, which is the term that we now use, it kind of – it encompasses a broad range of things. So at one end it can talk about simple human mistakes – when samples are mixed up, when evidence is contaminated by accident. And

then we can move from that to actually, you know, analysts to who have hid evidence, to thinks like exaggerating what the evidence can actually tell you.

So many of these disciplines, there may be some evidentiary value there, but it is – it has to be very precisely articulated. Otherwise, you know, you come out with statements – and we've seen this again and again where, you know, an expert will come and say, you know, there's a one in a million chance that this hair came from anyone but the defendant. But in fact, there is no scientific validity to that statement. You cannot say it's a one in a million chance. But, you know, these are the things that are articulated to juries who are then, you know, taking that away and trusting the expert.

In Detroit, as many of you may know, in 2008 the Michigan State Police did an audit of the lab and found such a high rate of error that they actually shut down the lab. And so all of that evidence that could be used to solve crimes, for instance, is now lost. Kym Worthy, the Wayne County prosecutor, said at the time it would cost about \$800,000 to review five years' worth of cases. And that's just – you know, that's just five years.

In a particularly kind of interesting example of the what – the role that forensic science has played in crime and justice, there – apparently there recently was a review of the bullets that were used to assassinate President Kennedy. And the – a scientist at Texas A&M actually reported out that the analysis that was done and conveyed to the Warren Commission was wrong. So I think that is a great example of how really strong science can actually help us ultimately get to the truth, which is, you know, what we're all here for.

So we are hoping to put together a forensic science commission, with the help of the legislature, that would bring both the scientists and the stakeholders together to oversee the crime labs, to set high-quality standards, to get the labs the resources that they need, and also to serve as kind of an investigative body in the event that issues arise. What we want is to catch the error when it happens.

Otherwise, you might end up with a situation like in Detroit, or a situation like in, for instance, Massachusetts, where they just had to dismiss 21,000 cases because a single analyst had contaminated so many – so many sample of evidence over the course of a decade that, you know, thousands of cases were now invalidated. And some of those people may have, in fact, committed the crime. So, you know, there is – down the road there's such a high cost that you really want to make sure that there's some kind of safety valve along the way to prevent those kinds of extreme outcomes.

And the kind of gold standard in this country actually comes from Texas. It took them some time to get it right, but they have really done a great job. Again, they have a nine-member commission, majority are scientists, but then we also have representatives from the criminal justice community from both sides, defense and prosecution as well as the judiciary. And they have really succeeded both in being reactive in terms of reacting when issues arise and proactive, in terms of looking at disciplines, and researching and coming to conclusions about how useful, how valid that discipline is.

And if it is valid, you know, what is the right way for us to talk about it? So Texas, for example, has put a moratorium on the use of bite mark evidence because as of how they – the scientific community has said there is no valid basis for bite marks. And these are the kinds of contributions that state-based commissions can make, and make in the right way for that state because the stakeholders will know how the system works here and what works for Michigan.

And so, with that, the last piece I will leave you with is that a lot of this is really about creating transparency in the system. I think we can all agree there are many points at which we just don't have enough information. Evidence goes into the lab, a report comes out, and what happens in between is kind of unknown. So we want to use a commission – a forensic science commission to really bring some sunshine into the picture, make findings public, make meetings public, and engage all the stakeholders and the public in the process to make sure that we have a safe and just system.

So I'm going to stop talking now and hand it over to Lauren. Lauren is – Lauren Krisai and I have been working together on a number of issues because, again, I think as Lauren will articulate, there is a natural alliance for conservatives and liberals on a lot of these issues. So thank you. (Applause.)

LAUREN KRISAI: So yes. Amshula said and Kahryn earlier, my name is Lauren Krisai. I direct the criminal justice reform program at Reason Foundation which – it's OK if you don't know it. (Laughs.) You probably don't. But it's the national Libertarian organization. And we focus on a number of different issues. We primarily work in the state level on policy fixes. And oftentimes, we're aligning ourselves with conservatives on these issues. But criminal justice reform is one of those kind of interesting issues that is more bipartisan, especially in states like Michigan.

And so I'm here today just to kind of talk about why – you know, just our work with the Innocence Project and why this issue in particular is something that conservatives should support, because I think a lot of the time when we're doing state-level policy stuff, the heavy lifting does come with, you know, getting conservative lawmakers on board with these issues. So this is the perspective that I'm kind of bringing to this talk today.

So, like I said, I mostly focus on sentencing reform and other issues related to that – drug policy and things like that. But over the last couple years, I realized that was, like, an opportunity to expand our program on the type of issues that we were working on. And I got connected to the Innocence Project just because we have somebody who used to work at Reason, his name is Radley Balko who now works at The Washington Post, who while he was at Reason was writing about a lot of this stuff.

He was writing about two medical examiners in Mississippi which actually are at the heart of his – I just realized I'm about to, like, plug his book for him. But he has a book in February that's coming out on these two medical examiners in Mississippi who had, like, an unusually large case load, were using all types of science like bite mark analysis, which were talking about before, that turned out to be, you know, junk science. And there's been a number

of different wrongful convictions. So he was writing about that stuff at Reason while he was a journalist there.

And so this has always been kind of an issue that's been on our radar, but I thought that over the past couple years where there was this new sort of resurgence – well, I shouldn't say resurgence because there never really was one – but this push for criminal justice reform, sentencing reform, especially amongst conservatives. This was a natural sort of fit for the type of work that we were doing at the state level on policy work.

So, to me, I think that the fixes that Amshula has talked about, and just the – and other issues as well, not just with forensics but with, you know, the use of jailhouse informants, eyewitness identification, things like that – I think that these – the fixes to these – the use of these things is just kind of commonsense conservative issues. No one wants an innocent person to go to prison, while – especially in crimes where there are victims, because that means the real perpetrator walks free. Like Amshula was saying, half of the exonerees that they've represented, the real perpetrator was found, and they went on to commit 150 more crimes.

To me, that's fundamentally a public safety issue. If we're not getting this right, we're creating more victims, we're allowing more crimes to happen. And so – and on the other side, no one wants an innocent person who's been convicted of a crime she didn't commit to remain in prison and not have a way to get out. So, you know, I know this is kind of a bipartisan audience. I guess I should have surveyed you guys before. I hope this is a safe space to say this. But Reason is a member of ALEC, which is a conservative organization.

And I sit on the criminal justice reform taskforce. And we pass – or, we talk about different policies. We pass model policies. And so I brought a couple of the issues that we've been working with Innocence Project on to ALEC. And, you know, they were received very well. I think that one of the bills that we passed in particular that resonated with ALEC members and conservatives was the changes in science bill. We're also working on another issue – another piece of legislation related to jailhouse informants.

But the first time I brought forensic – or innocence issues to ALEC, I focused on those who were wrongfully incarcerated and the policies that many states have to prevent people from getting back into court to challenge their convictions. Oftentimes when a person is convicted of a crime they didn't commit, the only way that they can become exonerated is if – you know, you see it in the news all the time: New DNA evidence was discovered that showed that this person actually didn't commit the crime. Well, not everybody is lucky enough to have DNA just kind of become uncovered 20, 30 years after they committed the crime.

And so for those cases, I think there needs to be a way for these individuals to get back into court, especially when junk science was used in their cases, I should say. So we presented on the issue at ALEC with Keith Harward, a man who while he was serving the Navy he was convicted of a rape and a murder that he did not commit. The only piece of evidence used to convict Harward was bite mark analysis. There were five different bite mark – or forensic odontologists, that's what they're called.

There were five different forensic odontologists who testified that his teeth 100 percent matched the bite marks on the victim's body. And he was convicted. There was no other evidence to convict him, no DNA, nothing that was available at trial. That was the only evidence that was presented. He served 33 years in prison before DNA was discovered – oh, they had it, but they didn't present it at trial, it was never tested. And it ended up matching a man who had died in a prison in Ohio for other violent crimes that he went on to commit.

And so to me the fact that Harward served 33 years for a crime he didn't commit was disturbing enough. I mean, anybody who's innocent who spends a day in prison, it's just a horrifying thought, right? But I think what's worse is that because Harward was the person that was convicted, the real perpetrator was able to walk free and commit other violent crimes and create new victims.

The other issue, I think, that is really compelling, especially to conservatives, is that victims of these crimes, where a person – an innocent person is sent to prison and it's later discovered that that person is innocent – imagine being a victim of that crime, thinking that the perpetrator has been, you know, sent away. You kind of – you don't have to think about it anymore. And then discovering that it was the wrong person the whole time. I mean, I can't even imagine what that would feel like, to be revictimized like that, and the guilt you must feel if an innocent person is incarcerated. I mean, I simply can't imagine.

So I think that making sure that we get this system right, are using up-to-date science, are allowing for mechanisms for these individuals to get back into court when there's faulty forensics that were used in their trial, it ultimately puts – it prioritizes victims. It makes sure that we don't create new ones. And it makes sure that the people who were victims of the original crimes get justice. I think that that's really at the heart of why conservatives should care about this.

And I think beyond the public safety issue and the victims issue, conservatives understand how incentives work, right? So crime labs and forensics science community, they operate under the same incentives that all of us do in our everyday life. Humans are fallible. They make mistakes. Crime lab analysts are supposed to be objective. They're supposed to test evidence and tell, you know, people what it says. But, you know, some of our crime labs don't necessarily operate in that way. Sometimes people who work at the crime labs, they – you know, they make mistakes, or they respond to incentives that exist.

Like, for example, we work with a professor at Syracuse University who put out a study that showed that a number of crime labs across the country are paid per conviction that they obtain. I mean, when your budget relies on convictions – (laughs) – you know what kind of incentive that creates, right, whether or not you're even thinking about it. I mean, just the fact that that is even a thing. It could remove objectivity from the testing of the scientific evidence that you're presented.

And, for example, sometimes crime labs operate in the same building as the prosecutor or the police. And so a prosecutor could actually go over to a crime lab analyst and say: We think this is the guy, you should test it, right? Well, once you hear, we think this is the guy, you're no

longer an objective person. You know, so I think that there are ways to kind of tinker on the edge with that too.

So basically, I will wrap up because Julie is going to be the most compelling speaker on this panel. I fully realize that, which is why I think we went first, so we wouldn't have to follow her. But basically, I will wrap up and say that, you know, again, this is a pretty bipartisan issue. To me, it's the most commonsense issue when I'm talking about just criminal justice issues in general. We're talking about innocent people – preventing innocent people from going to prison and allowing those who have been incarcerated to get a way out. But basically, all we're advocating for is for states and municipalities to use the strongest and more accurate evidence, and present it in an accurate way.

If the state is going to take somebody's liberty, I think that they have a responsibility to prove it beyond a reasonable doubt. That's the standard for a reason. And if they can't meet that burden with the evidence they have then, you know, it is what it is. And when mistakes happen, and innocent people are incarcerated for crimes they didn't commit, we should have procedures and safeguards in place to allow them to be freed. And that's really at the heart of what we're discussing – or, why we're discussing these issues today, and why I think this is a no-brainer conservative issue, along with, you know, liberals, and anybody. It's just – to me, it's the most commonsense issue that we can discuss.

So I want to thank the Mackinac Center for allowing me to speak on this issue today. Kahryn especially, I mean, she's just been amazing. So – and, yeah. I'll turn it over to Julie, who is, again, the real star of the show, I think, on this panel. So. (Laughs.) (Applause.) Thank you.

JULIE BAUMER: Thank you, Lauren and Amshula, and, of course, the Mackinac Center for inviting me.

I'm actually quite honored, obviously, through the comments, and a little surprised, humbly. But I don't – I don't view myself – (coughs) – excuse me – as being any superstar, if you will. I'm simply just an ordinary, you know, citizen who happened to fall victim to a miscarriage of justice. I have to admit that being in this environment right now at this time, the intimacy if you will, I have to – I feel that I can really, really make an impact, because generally unless we're – on a day-to-day basis, unless we're exposed to issues, we're not – we move on with our lives. We – you know, we go blind, if you will, unless we're exposed to issues, such as wrongful convictions and the miscarriages that lead up to it. And as was pointed out by Lauren, just a lot of human error.

And that is where my story falls into. Again, I want to thank everyone for the opportunity here for me to testify in support of this Forensic Science Commission here in Michigan. Hopefully by my testimony as an exoneree, who was once wrongfully convicted and imprisoned for a crime that I did not commit, may be able to help you all in understanding the real-life implications that underlie this proposal.

In 2003, I was 27 years old. I had a good job as a mortgage loan officer. I was looking forward to marriage, a family, and a whole life ahead of me. My younger sister at the time was unmarried, and she gave birth to a son whom she had planned to give to adoption. With my family's blessing, and with the support of my colleagues and my circle of support, if you will, I began to – legal proceeding to adopt my nephew and raise him as my own.

My nephew, he was born prematurely. After a prolonged and very difficult delivery, he needed to spend his first week in the hospital's neonatal intensive care unit. Six weeks later, when he was in my care, he suddenly became very ill. A doctor incorrectly determined that he was a victim of shaken baby syndrome. And as the person who had been caring for him, I was charged with first-degree child abuse.

I was shocked and devastated. I was certain that the truth would come out and I would be acquitted, because I loved him and I had done everything right in caring for my soon-to-be adopted son. However, my trial lawyer provided only a single expert witness, whose specialty was not even qualified to read the CT scans of the baby's brain. And I was found guilty and sentenced to 10 to 15 years in prison. I was unable to testify on my own behalf. I was unable – I was not allowed to have any character witnesses.

And of course, being in my mid-20s with limited resources, I – my savings account was gone. I couldn't afford any more – I didn't have any more money for any more legal resources. Unfortunately, my attorney at the time, he did not feel that he could go to the courts and request assistance for experts to come in and testify on my behalf. Essentially, during the hearings that resulted in my charges, in my conviction being overturned, he actually testified that he had dropped the ball. And that's unfortunate, obviously.

After four-and-a-half years in jail, my innocence was proven and my conviction was overturned. My nephew was diagnosed with a form of childhood stroke. I was completely exonerated because there was never a crime committed, only a wrong medical diagnosis. During my second trial, several world-renowned experts – pediatric medical experts, including a neurosurgeon, a radiologist, and an ophthalmologist, they unanimously concluded and testified on my behalf – pro bono, may I add – that I was not guilty of any crime and that, of course, my nephew suffered not any form of abuse, but, sadly, venous sinus thrombosis, a form of childhood stroke.

So, after four-and-a-half years in prison, suddenly I was back out into the community. I didn't know what to do for housing or employment. My former job at the bank was not there anymore. Reconnecting with friends and family proved very difficult, as they still do. My mother died two weeks after my exoneration. My other nephews and nieces, with whom I had shared a very close relationship, favorite-aunt type, were grown and were now obviously uncertain about what to think about their aunt's reappearance in the family after so long an absence in jail convicted of abusing a family member.

In short – excuse me – I had to start over from scratch as an older single woman with nothing to show for my previous years of toil and effort. The missing years can never come back. And they were critical years in building relationships, establishing a family, and acquiring

a profession and building a career. Since my exoneration, I have been working hard and struggling to pull myself together on my own. I have no family of my own. And after several years of menial jobs, I am still struggling to find where I fit in.

This is certainly not the future I had always planned for. Certainly not the future my parents, who provided a conservative upbringing engulfed in Catholic morals and traditions, seasoned with the Ignatian Way, had planned for me. For no reason of mine, all this was taken from me. And after having received no help at all from the state, although I am not in jail anymore, the effects of my wrongful conviction continues to ruin my life and have an everlasting devastating effect. Obviously, a lot of emotional issues.

Like most exonerees, there's no one I can sue for my wrongful conviction. The statute of limitations to sue my lawyer passed while I was still in prison. And I cannot sue the doctors who misdiagnosed my nephew's illness, because they were treating him and not me. Thankfully, in December of 2016 Governor Snyder did sign into law that one who has been wrongfully convicted and imprisoned may file a claim to be compensated. However, myself and several other exonerees, we're still waiting for our day in court.

Having shared all of this, I cannot help but to look back and contemplate on the more than probably acquittal at my first trial had a Forensic Science Commission been implemented so that the scientific and medical facts surrounding my nephew's condition would have been not overlooked. I thank you for your time. Thank you. (Applause.)

MS. RILEY: I want to start by thanking the panelists so much for the work. These women work tirelessly to resolve policy issues surrounding forensic science and protect our rights and freedoms. So thank you so much for sharing all this with us.

And now we would like to give an opportunity for the audience to ask questions to our panelists. Just a reminder that these cards can be found in the middle of your table. Please write your question on a card and then if you see my colleagues moving about the room, they will collect these from you and bring them to me, and we can ask them to our panelists, so that the people watching via web can hear the question.

Bear with me just a minute.

I'm going to kick off the Q&A, moderator's privilege. The first one for Amshula. Julie testified really movingly about the need to develop a commission to make sure that we have some guardrails around the way that we use forensic science in the state. Can you talk really specifically about what it would take to establish a commission like that in Michigan, who would populate it, and what it would do?

MS. JAYARAM: Sure. So thank you for asking that question. We do have a proposal. And what we are envisioning is an 11-member commission, which would include in addition – which would include a representative from the crime lab who has experience with supervising a lab. We have research scientists, someone with an expertise in cognitive bias, because as Lauren was saying, you know, if there's – if you know something about the case, that might mar your

objectivity. Folks with an expertise in forensic science, a statistician. And then on the stakeholder side, a representative from the attorney general's office, a representative from the defense bar, a representative from the prosecutor's association, and a representative from law enforcement.

So this 11-member commission would be empowered to, first of all, convene meetings where they can review the – start reviewing the research, seeing what's out there, and establishing at the end of the year one, and annually thereafter, they would put out a report to really kind of identify and articulate what the lab's needs are. They would be empowered to assist the lab with implementing those recommendations. So implementing systems for quality management, implementing systems that might tweak or alter or replace methods of analyses. If there are inefficiencies in any of the processes, the commission would deal with that. The commission is also empowered to seek information when they receive information that there may be errors.

So we envision a commission that can both receive these complaints anonymous, either from somebody inside the lab or outside the lab, can investigate if the majority of the commission feels that there is reason to investigate. The commission can also take a proactive role if and when they feel that there are issues that have arisen, say, in a whole discipline, from the larger scientific community that need to be addressed.

And finally, the commission would be empowered to create a system for defendant notification. So some of these disciplines, again, that have been used for decades and we now have a different understanding about their validity – how do we contact all of those Julie Baumers out there, right, to let them know that there has been a shift in the science and that their cases do need to be reviewed? So a commission could create a system to do that effectively and efficiently. But most important, as Julie herself articulated so nicely, a commission can help us from getting to the point where we have to do that.

MS. RILEY: Julie, I have a couple questions for you from audience members wanting to know, will you qualify for compensation under the new law for wrongful conviction? And what is the procedure for people like you to claim that compensation?

MS. BAUMER: Well, yes, I believe I do qualify. My attorney has filed a claim on my behalf to the Michigan Federal Court of Claims. However, with the bill being signed in December of 2016, it actually went into effect in March of 2017. And my attorney filed in June. It's a new process for everybody. And so even though we can look at our sister states, if you will, who already have compensation for those who have been wrongfully convicted, I'm not a lawyer. I don't know if they used their template or how – or how everything's going to resolve itself. But right now, from my understanding, we're just waiting for a court date to go in and have the judge determine whether or not I qualify.

There's a list of, you know, a certain – there's a strict list of criteria, if you will. Well, obviously I've been exonerated, so I fall into that. But just for technical purposes, if you will, or whatever else, I do have to go in front of a judge and be, you know, deemed qualified to receive this. Like I said, I don't know when that'll be. And then, of course, I don't know what type of

payout system that they have in place, if any, because currently right now there's – it's under 20 that qualify for this. And I'm in direct contact with several of them. And nobody's been compensated yet, so.

MS. RILEY: Thank you.

Lauren, here's a clarifying question. Are the panelists trying to say that the use of forensic science is illegitimate in criminal justice, or are you guys trying to say that the way it's currently being used needs to be reformed?

MS. KRISAI: I just think – I think everybody would agree that we just need stronger protections. I think – and, you know, like Amshula, I think, has been saying, and I think that what the Forensic Science Commission could do, is ensure that scientists are more involved with, you know, what is being used to test evidence. I think that a lot of the, quote, unquote, "science" that has been used in some of these cases has been shown to not be valid. And so, you know, what do we do about that? Do we still allow that to be heard in court? In a lot of states, they still are allowing, for example, bit mark analysts to testify in cases.

There are still convictions that are being obtained based upon science that other – you know, what is the 2009 study – has shown are not as valid as we once believed. And so I think it's not about saying that, like, all forensic science is invalid. It's just about using the right kind of science or just making juries aware of how valid a certain piece of evidence is. Because if they're saying, you know, it's one in a million chances that it could be somebody else, when actually the chances are much lower, I think just making juries aware of, you know, what they're hearing.

And, again, I'm not as much of an expert on the specifics of the science or anything like that, especially I don't do this every day. But I will say that what we're getting at is just to make sure that we have a system where safeguards are in place and so wrongful convictions don't happen. And one of the ways to do that is ensure that only the best, more valid science, is being used in these types of cases. And it's always evolving as science evolves, so.

MS. RILEY: Thank you.

Julie, just a quick follow-up for you, again, on the compensation question. What sort of compensation is available under the 2016 law? What is your lawyer seeking? And do you actually know the citation, the name of the law or the number?

MS. BAUMER: Well, yeah, I believe it was 40 – bill number – don't quote me. No, I don't have that on me. But I want to 460 – I would –

MS. RILEY: We can follow up after this.

MS. BAUMER: Yeah, we'll get that information. Under the – under the law, though, one who has wrongfully been convicted and imprisoned is entitled up to \$50,000 per year. And then the legal fees for their – for the attorney filing it, their fees are not to exceed it's 10 percent,

or \$50,000. However, that's separate from the inmate's – or, excuse me – the ex-inmate's payout, if you will. The state takes care of that on a separate bill. And, yeah, it's a – it's a laughable number, if you will. I mean, let's be real. If somebody handed you 50,000 (dollars) and said: Go into a prison cell for a year, you know, to lose everything – you know. But it is what it is.

Personally, myself, everything that I've lost, you know, it's priceless. You can't put a number on it. But after it was – the bill was signed into law, for myself it was a form of an apology, you know, that the state acknowledged that I was wrongfully convicted.

MS. RILEY: Thank you.

Amshula, there's two related questions that I'd like to pitch your way. One says some advocates separating crime lab administration from law enforcement organizations. Michigan has its state crime lab under the state police department, and how many states actually separate these functions? And then a related question, only 400 crime labs are publicly funded. That's a good thing. Do you doubt it? How about the Detroit evidence samples that were lost? That was a public lab. So can you just –

MS. JAYARAM: So I'm not sure I understand the second question. But for the first one, I actually have to admit I don't know how many states actually separate out the crime lab from the – from the state police or the prosecutor's office. I do think generally the norm is that they are sort of annexed to one another. But the – you know, again, our purpose here, this is not – this is not an indictment on anybody. And there is certainly forensic evidence that has a lot of value. I mean, the Innocence Project was started because of the revolution created by DNA evidence. So we absolutely believe in the value of forensic science. But again, as Lauren was saying, we just – we really want to make sure we're getting it right.

And to the second question, I'm sorry, I don't understand what the question is.

MS. RILEY: Maybe the distinction between public and private crime labs.

MS. JAYARAM: So they – yeah, right. So there are – from what I know, there are 400 publicly funded labs, that absolutely is a good thing. What we are finding, though, is that labs are chronically underfunded. And private labs, I don't know what the ratio is, but, again, we want to make sure that the – you know, the state is bringing cases, then the state really needs to fund these labs and fund them properly.

MS. RILEY: Thank you.

Lauren, here's one for you. Is the commission – does that just make it a proposal to create another level of bureaucratic oversight?

MS. KRISAI: Well, again, I'm not as familiar with, like, the specifics of the commission in Michigan. So I might want to kick this over to Amshula, to talk about how this doesn't create a new level of bureaucracy. It's just placing safeguards on the system.

MS. JAYARAM: Yeah, I mean, I guess it depends on what you think of bureaucracy. I mean, I understand, you know, there's – we don't want to create more red tape. But this is really about convening experts so that we have some really solid standards. There are already some great standards at the Michigan State Crime Lab. And we just want to improve on that. So it's not creating bureaucracy in the sense of there's no, like, service that's being processed through here. It's just – it's just a commission to regulate something that has to be regulated.

And, you know, there's unintended consequences or pros and cons to every policy, but we know what the pro is, which is that it will protect the people and ensure that in cases where they do have solid evidence against someone that they are charged accordingly.

MS. RILEY: Do you have any proposals to address in inequity between low-income people charged with crimes and more affluent people, regarding sound legal representation? This is a problem with those of limited resources being especially vulnerable. Julie, I know you referenced this. Do you have any thoughts?

MS. BAUMER: Oh, yeah, absolutely. Being – of course, we're entitled to a court-appointed attorney but, of course, after being told by my adoption attorney at the time that he was reliving himself from my services and that I needed to seek out a criminal defense attorney, that's not something that you take lightly. And so I didn't – you know, just being a lay person, you don't have general knowledge. I mean, well, you have general – you know what you see on "Law & Order." You know what you see portrayed by, you know, movies and whatnot. There's no reference book anywhere that's going to say, OK, if you're charged with this crime, this is the type of attorney that you're going to get, you know, outside of the scope of, oh, a criminal defense.

I actually looked up a bail bondsman and then had him refer me to this attorney, who clearly did not do his job. And even – I had less than 10,000 in my savings, but I exhausted it, you know, just for the – for that effort. You know, some people don't even have that much. So they have to do a court-appointed attorney. And the prosecutor, they have unlimited resources. Despite the case, despite the crime, despite the defendant, the prosecutor is going to have the same ammo. And the defense, they only have what they can afford. And that's realistic. They only have what they can afford.

And even with my – retaining my attorney and his services, as limited as he had placed them, I would have to believe that if – you know, he even asked me at one point for more money, and I told him I didn't have any. I would have to believe that, you know, somebody who takes an oath, such as attorneys do, to, you know, do their job respectfully and ethically, you would think that he would think, OK, well, too bad she can't come up with another thousand. But you know what? I know she's innocent, so I'm going to do everything I can do. And unfortunately, he didn't do that.

But like I said, the prosecutors – you know, the prosecution, they have unlimited resources. And, no, I don't think that that's fair at all.

MS. RILEY: Amshula, do you want to jump in? Do you know what other states have done to address this disparity?

MS. JAYARAM: Indigent defense?

MS. RILEY: Mmm hmm.

MS. JAYARAM: I mean, so this is not – obviously this is very much part and parcel of what leads to wrongful convictions. We've had a lot of cases where we have – in effect, have assistance of counsel, defense attorneys who were asleep on the job – sometimes literally. It is not a policy issue that we work on directly, however. So I – you know, I'm not – I'm not an expert on what kinds of schemes are out there for indigent defense. I do know that the quality of the funding of the public defender system varies a lot all over the country. So New Hampshire, for instance, has a very, very well-funded public defender system, whereas in Idaho they are currently being sued by the ACLU because of a failure to provide adequate defense – public defense to the people. So it really varies quite a lot.

MS. RILEY: Just a quick follow up point on the compensation law that we've been talking about, my colleagues looked that up for you. And I have the number here. It's the Public Act 343 of 2016 – 343 of 2016.

So, Lauren, you referenced that we're not taking as hardline an approach to criminal justice policy as we have done in the past. So what is the appropriate balance between public safety and protecting innocents?

MS. KRISAI: I mean, I think just getting it right the first time, right? (Laughs.) You know, you don't want to have a situation, especially like Julie's, you know, where there was no crime committed at all and an innocent person goes to prison. But in cases where there are victims, incarcerating the wrong person or using, you know, junk science that results in convictions of innocent people, I mean, nobody wants that. I think that that fundamentally is a public safety issue.

And when we're talking about this, I think that that's always the thing that I keep in mind, is just that the more wrongful convictions we have the more victims there are, because when the perpetrator isn't caught the first time he goes off and does something else. I mean, in half of the Innocence Project cases, the real perpetrator was found. That means in the other half, the perpetrators are still out there, the real perpetrators. They were never caught. They were never brought to justice. And I don't think that's fair to victims. And it's definitely not a good policy to have in place as far as public safety is concerned.

So I really view this issue as that. And, yeah.

MS. RILEY: Yeah. Thank you. Yeah.

Amshula, here's a pretty specific question: Has the NAS been involved in setting national standards for certain types of evidence – particularly, fire and arson, fingerprints, bite marks, blind testing in the lab, and forced confessions – am I getting that right?

MS. JAYARAM: False confessions maybe.

MS. RILEY: Yes.

MS. JAYARAM: Yeah. So I think I can guess who submitted that question. The NAS has really been a terrific leader on lots of important issues surrounding wrongful convictions, forensic science reform, the report came out in 2009. And they also did a groundbreaking report on eyewitness identification in 2015. In terms of federal standards, there are – the DOJ has guidelines. NAS has helped inform those guidelines, but the – you know, the issue is that there's no way to enforce them. So that is actually part of the reason that we are now really in the states and looking to the states to take the lead on this because, first of all, you know, you all have lots of rich experts here in the state of Michigan, just like Texas has. And, you know, there are going to be differences from system to system, state by state. So, you know, using some of the federal research and the DOJ guidelines as kind of a road map, states are now using them to map out their own course on forensic science.

MS. RILEY: Thank you.

MR. : Just (permit me ?) to say NAS is National Academy of Sciences.

MS. RILEY: Yes, thank you for clarifying that. NAS stands for the National Academy of Sciences.

So, Lauren, here's one more for you. I'm just curious to know your thoughts on the future of tech in this space. I know conservatives and liberals sometimes don't always see eye to eye in terms of using tech and policy together. Can you give us, like, maybe reasons – are you optimistic about the future?

MS. KRISAI: I didn't know that conservatives and liberals were against each other in using tech.

MS. RILEY: Not against each other, I think they're just in different places when it comes to the use of technology, right? I think maybe conservatives occasionally get a bad rap for not being as willing to embrace things like that. Maybe I'm wrong, but –

MS. KRISAI: It sounds like you're calling conservatives old, maybe. (Laughter.) I don't really feel qualified to answer this question, just because I think it's one that I would have to comment on the exact uses of, like, tech in forensic science. And I'm not a scientist. And so I feel like – I don't mean to punt the question, but I also don't want to give a BS answer. So I'm just going to say I'm not really sure.

MS. RILEY: OK. Well, if you want to leave us with one thing to think about from a conservative perspective on this issue generally, just by way of wrapping up.

MS. KRISAI: Sure. So one of the – I think a couple questions that came up is just, like, the cost of this, right? I think as conservatives or libertarians, as soon as you hear that something is going to cost something you're like, well, you know, we don't support it. Or, it sounds like you're growing the size of the government. But I think the important thing to keep in mind is that there are certain things that the government is supposed to do, right? We do have a government in place that is supposed to perform certain functions, right?

And so I think, especially when it comes to the right to defense or making sure that we get the system right when it comes to forensic science, I personally don't see this – especially for, like, a Forensic Science Commission or ensuring that indigent defense is adequately funded as, like, a big government program. To me, those are the things that governments should be doing. I mean, we never say that the police is a big-government program. We would never say that, right? Or that prosecutors are a big government program that is increasing the size of government. Those are just things that we pay for because that's – as conservatives, those are the things that we, you know, know that we need.

So to me, whenever we're talking about the forensic science system or just paying those who are wrongfully incarcerated, I mean, to me that's not a big government thing. So I would encourage all of the conservatives in the room to look at this a little bit differently. Just as – you know, any money that we're talking about to perform these functions are just functions that are supposed to be performed. And so I would just ask all conservatives to kind of take a look at it that way, if you're not already convinced that we've done a good job selling what we're supposed to.

MS. RILEY: Yes, thank you.

Amshula, you referenced something that I think is really important, which is that when people hold themselves out as experts, we tend to believe them. So I'm just – you know, I'm a lay person. I don't have a science background to judge certain statements about bite marks or anything else. So can you leave us, if possible, with some type of rule of thumb or just something to keep front of mind when we're having these conversations about how we can appropriately judge the truth of statements about forensic evidence?

MS. JAYARAM: So that's a tough one. It does also make me think of, you know, we've had jurors who have said, when the person that they, you know, convicted was exonerated, that they felt duped because they were presented with science that was not accurate. In terms of what one can do, that's really why we need these commissions. There are some legal safeguards in terms of pretrial hearings and certain standards that judges look to say whether or not a certain piece of scientific evidence will be admissible.

But by the time it's gotten to that stage, you're already in a place of danger. And so you really want to, again, get it right at the front end. I would say, don't look to "CSI" for what's scientific, right? And, you know, we're not – we're not putting all forensic science under the

bus, by any stretch. We're just saying we need to be really, really precise about what each discipline does and what it can tell us.

MS. RILEY: Thank you. And Julie, I'd like to give you the last word. Do you have any parting thoughts for us as we wrap up today?

MS. BAUMER: Yeah. Again, just on behalf of – on all exonerees, and those who are still in prison awaiting their day, and those unfortunately who have yet to even come into the system, if you will, thank you on behalf of all of them, and myself, for, you know, taking your time to consider such a proposal that is obviously needed. And if anyone should have any questions or concerns about any need for reform in the actual Department of Corrections, I'm more than willing to share, you know, a few horror stories that might help in aiding some correcting that needs to be done in that area as well. So thank you.

MS. RILEY: Well, our panelists are going to hang around for a few minutes if there are any lingering questions, but this will conclude our formal program. Thank you for joining us. And please thank me in joining – or, join me in thanking our panelists. (Laughter, applause.)

(END)