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The Boston Globe

April 12, 2003, Saturday ,THIRD EDITION

SECTION: OP-ED; Pg. A13

LENGTH: 858 words

HEADLINE: FREDERICK R. BIEBER AND DAVID LAZER Frederick R. Bieber, an associate professor at Harvard Medical School, reviewed the evidence in the Maher case for District Attorney Martha Coakley. David Lazer is a professor at Harvard's John F. Kennedy School of Government.;
LESSONS LEARNED FROM A MISCARRIAGE OF JUSTICE

BYLINE: BY FREDERICK R. BIEBER AND DAVID LAZER

BODY:

IN 1984 DENNIS MAHER WAS SENTENCED TO LIFE IN PRISON FOR TWO SEXUAL ASSAULTS AND AN ATTEMPTED ASSAULT. AFTER SERVING 19 YEARS IN PRISON, HE WAS RELEASED LAST WEEK BECAUSE DNA testing of old evidence excluded him as the source of the biological evidence in the two assaults. While no one can restore 19 years of Maher's life, a just society is obligated to glean lessons from his case and others like it to prevent future injustices.

Maher joins the ranks of 126 others whose original convictions were overturned based on retrospective DNA analysis of biological evidence. These cases have moved through the system largely through the efforts of the Innocence Project, founded in 1992 by law professors and law students from around the nation. They scour old court records for convictions based in large part on circumstantial or eyewitness testimony and in which biological evidence was available but was not previously tested using modern DNA technologies.

While some seem assured that the majority of worthy cases have been processed, in fact, the next wave of post-conviction cases will come soon, as contemporary DNA-based studies reveal that a large proportion of purported microscopic human hair matches are incorrect. Before it confronts this second generation of post-conviction cases, the criminal justice system needs to learn several lessons from the first.

First, the system needs to provide access to post-conviction review. Middlesex DA Martha Oakley deserves credit for her openness to DNA testing in Maher's case, and for her unconditional support of his prompt release. But it is wrong that the system relies so heavily on the sound judgment of individual DAs and provides no funding to perform the tasks so ably done on a shoestring budget by the Innocence Project.

Reanalysis of old evidence using new methods should be imbedded within the existing system and not dependent on pleas from the outside and good will from the inside. Legislatively mandated funding and external oversight would assure that other cases receive fair and equitable scientific and legal review. Thirty other states have moved toward such legislation, and Massachusetts should as well.

Second, the system needs to do a better job at managing eyewitness memories. Research over the last three decades has shed light on how we constantly construct and reconstruct our memories. Of the 127 convictions now reversed after DNA testing, 80 percent involved mistaken eyewitness identifications, a rate that improved witness identification

methods can greatly reduce. For example, studies suggest that sequential presentation of lineups to witnesses may reduce erroneous identifications by roughly 50 percent. New Jersey and select other jurisdictions have adopted this procedure, and Massachusetts should, too.

Third, physical evidence needs to be better safeguarded. In the Maher case, access to such evidence was delayed almost a decade because it had been misplaced. A law student investigating the case eventually found it in the basement of a courthouse. This is appalling, and, unfortunately, not an aberration. The Innocence Project estimates that key physical evidence is missing in 75 percent of the cases it reviews nationwide. The criminal justice system needs additional funding to properly implement a massive, but clearly necessary, improvement in the storage and inventory of crime-scene evidence.

Fourth, the system needs to adapt to the technology of DNA so that the same DNA analysis that exonerates the innocent also convicts the guilty. The DNA profile(s) of the actual perpetrator(s) of the crimes for which Maher was convicted will be sent to the national DNA database, where it may match that of a known offender. But while Maher was unjustly incarcerated, the statutes of limitation on the assaults expired, and the real perpetrator(s), if found, cannot be prosecuted. This final injustice to the victims and to society is unnecessary. Massachusetts should join the dozen states that have lengthened or abolished the statutes of limitation in cases where DNA evidence is newly available.

Finally, the wrongfully convicted should be compensated. Maher, like most who have been exonerated, was incarcerated during his most productive years. As he put it, he should be married with children, collecting a pension from the Army, and starting a second career. While no amount of money can compensate for these losses, financial restitution for the exonerated would enable them to more successfully begin their free lives? A goal that is both just, and in society's interest. Unlike in some states, under current Massachusetts law, Maher will receive neither compensation nor social services.

The success of DNA testing reminds those of us involved in forensics and the criminal justice system of what we know all too well? The system is not perfect. Even with our collective care and diligence, justice does not always prevail. Not for the victims of crime, and not for those falsely accused or convicted of them. A fair justice system must remain continually open to review so that justice is truly served.

LOAD-DATE: April 14, 2003