

CHAD EVANS WRONGLY CONVICTED COMMITTEE

71 Sullivan Street, Keene, NH 03431, with chapters in Keene & Rochester

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7 January 2013

Re: Seeking your support for permission to schedule a privately funded polygraph for Chad Evans, a wrongly convicted inmate at the New Hampshire State Prison.

Maggie Hassan
Governor, State of New Hampshire
State House, 107 North Main Street
Concord, NH 03301

Dear Governor Hassan:

Chad Evans is an innocent man in the New Hampshire State Prison.

We request your support for permission for Chad to take a polygraph exam which has been arranged and funded by his family and supporters. Chad seeks to take this polygraph exam to speak the truth about his case and augment his claim of innocence. Your support is needed because the Dept. of Corrections has, so far, declined to permit him to take a second polygraph exam.

The history of this request is contained in the enclosed correspondence:

1. Nov. 13. My email request to Warden Richard Gerry to schedule an exam.
2. Nov. 15. Warden Gerry's initial email response.
3. Nov. 16. My letter to Warden Gerry asking reconsideration of our request.
(with its enclosures: Consigli resume, Report of April 30, 2012 polygraph examination, August 22 State Police review of April 30 exam.)
4. Nov. 20. Warden Gerry's letter declining request, subject to Mr. Strelzin's view.
5. Nov. 29. My email to Sr. Asst. A.G. Jeffery Strelzin requesting his support.
(The attachments to this email were items #3 and #4 above.)
6. Nov. 30. S.A.G. Strelzin letter to Warden Gerry declining support for polygraph.
7. Dec. 17. My email to Commissioner William Wrenn requesting support.
(The attachments to this email were the items above, and an ecopy of the book, EYE CONTACT - The Mysterious Death in 2000 of Cassidy Bortner and the Wrongful Convictions of Chad Evans and Amanda Bortner)
8. Dec. 17. S.A.G. Strelzin email to Commissioner Wrenn opposing polygraph.
9. Dec. 17. My email to Comm'r Wrenn in response to Mr. Strelzin's 12/17 email.
10. Dec. 30. Commissioner Wrenn letter to me declining to permit polygraph exam.

In addition to, and sometimes repeating, what I wrote in my letters and emails above, several issues are presented here.

A. The burden to the Corrections Department of permitting this exam will be extremely small. There will be no additional cost to New Hampshire taxpayers. The only work required by prison employees will be to schedule the exam and then on the scheduled date escort the polygraphist, John Consigli, to the polygraph room, and to open the doors to give Chad similar access; and then to leave Chad and Mr. Consigli there for about three hours, and then to reverse the process at conclusion. The time and wages spent by State employees in denying this request has already exceeded the time that would have been required to fulfill it.

Commissioner Wrenn quoted Warden Gerry's statement that the "logistics of conducting a polygraph at the prison are even more challenging for security reasons," but there was no explanation of how the logistics could be challenging. Inmates at the State Prison are out of their cells for most of every day engaging in a large number of work and recreational activities. Inmates are frequently transported outside the prison for medical or court appointments.

B. The prison conducts many polygraph examinations weekly for its sex offender treatment program, so no unusual or challenging "logistics" are required to fulfill this request. The stated purpose of those exams, according to D.O.C. regulations, is to verify the truth of statements by sex offenders. The exams are conducted in what is known as the "polygraph room." I've actually been in that room, during a pre-Voice Stress Analysis (VSA) test interview of Chad in 2010. That was before his VSA examination, which is described below in paragraph G. No special equipment from the prison will be required for Chad's requested polygraph, as the planned polygraphist, John Consigli, a former president of the American Polygraph Association, will bring his own examination device which includes a laptop computer.

C. Mr. Strelzin's statement in his emails that the results of polygraph examinations are not allowed as evidence in trials is correct, but the purpose of the exam was never to develop such evidence for a trial. Instead, the purpose is to help persuade other people and decision-makers, including, ironically, the Office of the Attorney General itself, of Chad's innocence, at least to the extent that it would re-investigate the case and even move to dismiss the charges. Other decision-makers include State Representatives and Senators and employees of the Executive Branch. The Office of the Attorney General and other law enforcement agencies often use polygraphs to assess the credibility of witnesses and suspects even though the results of those tests are not admissible at a trial. Mr. Strelzin has personally prosecuted several such cases.

D. In the Judicial Branch, polygraphs have played a role, even if not directly presented as evidence. The Supreme Court is well aware of the role of polygraphs as they are used to find truth. In 1983, the court reversed ordered a new criminal trial where evidence of a defendant's interview was admitted over objection, where the questioning of that defendant during a polygraph exam exceeded the scope of the Government's agreement with the defendant. *State v. Baillargeon*. In 2006, the New Hampshire Supreme Court has upheld the firing of a State Police employee who declined to take a polygraph as ordered by her supervisor. *Appeal of Tracy Waterman*. In 2010, the Supreme Court discussed at length how the defendant's police polygraph exam affected what could be said in court about his confession. *State v. Oakes*. Also, in 2010, in a child custody case, the petitioner told the court in his brief that he had passed a polygraph test to refute allegations of abuse, and the court ruled in his favor. *In the Matter of James J. Miller and Janet S. Todd*.

Thus, judges are often well-aware that polygraph examinations have been conducted in cases, and they often know the results, even if those results cannot be presented as evidence in a criminal case.

Chad expects to file soon a *pro se* Petition for Habeas Corpus, a civil action, and his statement of facts will likely include a summary of his efforts to prove his claim of innocence by voluntarily submitting to lie detector tests.

E. Chad has applied to the New England Innocence Project of Boston and to Centurion Ministries of Princeton, New Jersey for legal representation assistance. While neither group specifically asked Chad to take a polygraph exam, both groups have used polygraphs in their work in exonerating other wrongly convicted people.

F. The New Hampshire State Police's "Investigation Plan" for this case included polygraph examinations for the primary alternate suspect, who was also a key prosecution witness, and two other witnesses. In addition, the police asked Amanda Bortner, the mother of Cassidy Bortner, to ask Chad if he was willing to take a polygraph exam. She returned to tell the police in a recorded and transcribed interview that he said he would. However, when the alternate suspect came to the site of his scheduled polygraph exam on November 14, 2000, he declined to take that exam. After that refusal, there was no further effort by the State Police to conduct any polygraph examinations in this case. The earlier-stated confidence by the police that such polygraphs would support their theory of the case seemed to have evaporated.

G. In July 2010, Chad took a voluntary Voice Stress Analysis (VSA) lie detector test in the prison. He answered many questions about the case, and there was "no deception indicated," in any of his answers. However, as there is less public confidence in the reliability of VSA tests than exists for polygraphs, a polygraph exam was planned.

H. Beginning with his November and December 2010 letters to the Governors and Attorneys General of Maine and New Hampshire, copies of which I presented to your staff person last Thursday, Chad has requested a re-investigation of his case. A successful result, or even an inconclusive result, on a second polygraph exam would support that request in the minds of many.

I. On April 30, 2012, Chad took a polygraph exam conducted by a former New Hampshire State Police Lieutenant, who was a recent polygraph school graduate. That exam was permitted by Warden Gerry and Commissioner Wrenn. The first scorings of that exam were that Chad told the truth in denying murdering Cassidy Bortner. However, in an effort to gain acceptance of the exam's results, he asked the Attorney General's Office and State Police to review the exam. The State Police Polygraph Unit recommended that the results be voided because of irregularities in the conduct of the exam. Despite those irregularities, two state police polygraphists scored the exam and found the results to be "inconclusive." (A copy of that report was attached to my Nov. 16, 2012 email to Commissioner Wrenn, and is therefore enclosed here.) Significantly, the result was not that Chad was "deceptive." So far, those scorings by themselves have not been cause for the State of New Hampshire to re-investigate this case. One would have expected that a person convicted beyond a reasonable doubt who denies culpability would be found to be deceptive. Any other finding should be seen as casting doubt on that conviction.

In view of the permission granted for the April 30 exam, and the State Police recommendation that the April exam be considered void, it doesn't seem fair for the same State of New Hampshire to now say that Chad cannot take another exam.

J. There have been many articles and books about the reliability of the polygraph. While exam results are not, as Mr. Strelzin noted, admissible as evidence in a trial, polygraphs are sufficiently reliable that the State of New Hampshire funds a State Police Polygraph Unit. Further, every candidate for a police position in New Hampshire is required to undergo a polygraph test. If polygraphs were not reliable, then the taxpayers of New Hampshire would not fund such activity.

K. It should mean something to the State of New Hampshire that Chad is volunteering to take a polygraph exam, despite the risk of a false positive, i.e. found to be deceptive when being truthful. To my knowledge, only one other New Hampshire inmate has made such a request, and that was Brian Chevalier, who also claims innocence. He passed his polygraph exam at the Berlin prison in 2010.

L. I have researched 132 cases of actual wrongful conviction where polygraphs have been used for people wrongly convicted, but subsequently exonerated, or for witnesses. The ratio of the polygraph results being right to wrong is about 4:1. Many of those polygraphs were conducted in prison on the pre-exonerated wrongly convicted inmates. As I noted in my letter to Warden Gerry and my email to

Commissioner Wrenn, the first use of a polygraph to test an inmate claiming wrongful conviction was in 1939 in Colorado. In that case, the inmate tested truthful, which led to other developments, and he was exonerated and the State of Colorado appropriated money to compensate him. The polygraph had opened the door to the government's reconsideration of the case. In the more recent case of Marty Tankleff, in prison from the wrongful conviction for murdering his parents after his confession to the police, a private investigator required that Marty pass a polygraph examination before commencing work on his case. Marty passed, and the journey to his exoneration accelerated.

Incidentally, in my research of such use of polygraphs in prisons, I found no instances where a Corrections Department refused an inmate's request to have a polygraph in support of his or her claim of innocence. New Hampshire should not want to be the first such state.

M. It's been estimated that between 1 to 5% of convictions in the U.S. are wrongful convictions. If the New Hampshire inmate population is approximately 2,000, that would mean there are between 20-100 wrongly convicted people in New Hampshire prisons. Don't you want New Hampshire to be known as one of the states that works hard to avoid and correct such wrongful convictions?

N. In his December 17 email to Commissioner Wrenn, Mr. Strelzin wrote that he was "confident that justice was done in this case." Given such confidence, a neutral observer might wonder why Mr. Strelzin does not support another polygraph test, as he would expect such a test to support that confidence. However, the issue about this request for a second polygraph is not whether Mr. Strelzin believes that justice was done or whether I believe that it was not. The issue is whether the request is substantial, and not frivolous, and therefore worth a serious response. Most assuredly, Chad's request and claim of innocence are not frivolous. Chad has assembled a substantial and well-documented claim to his innocence. I gave to your assistant last Thursday my letter to you, together with a copy of my 600 page book, EYE CONTACT - The Mysterious Death in 2000 of Kassidy Bortner and the Wrongful Convictions of Chad Evans and Amanda Bortner, The title speaks for itself, and no one has come forward with statements of any errors in the book which detract from its conclusions that Chad was wrongly convicted. I gave your assistant a list of 1,035 supporters of Chad Evans, assembled from three online petitions and Facebook friends and Twitter followers. People who abuse and kill children do not often receive such support.

O. There are some aspects of public service where appearance is almost as important as reality. For example, the appearance of conflicts of interest should be avoided, even if there is no actual conflict. In this case of a polygraph request, I would think that the State of New Hampshire would want to avoid the appearance that it is trying

to block the truth, or that it supports polygraphs only when it believes that the results will be favorable to prosecutors' theories of cases.

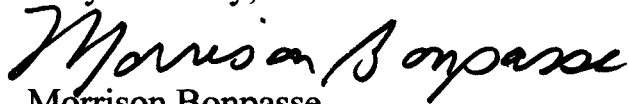
P. The New Hampshire Supreme Court has said many times that the job of prosecutors is to provide justice and not merely obtain convictions. Most recently in the 2010 case of *New Hampshire v. Roger Leveille*, the court stated, "As we have previously noted, it is the prosecutor's duty to seek justice, not merely to convict. *State v. Bujnowski*, 130 N.H. 1, 5 (1987)." Presumably, that caution also means that the prosecutor's duty is not merely to preserve convictions. Indeed, it has been said by many that the primary work of government itself, and not just prosecutors, is to provide justice, e.g. Federalist Papers #51, "Justice is the end of government." Similarly, New Hampshire's Daniel Webster said, "Justice, sir, is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together." Article 38 of the New Hampshire Constitution urges the people of New Hampshire to consider a "constant adherence to justice" and other virtues when choosing elected officials.

Considering all of the above, it is impossible to see how refusing permission to take the planned polygraph exam can be said to be in the interest of justice.

In the interest of justice, please permit Chad Evans to take a second polygraph exam. It would only take a few minutes to schedule the exam and only a few minutes for corrections officers to bring Chad and Mr. Consigli to and from the exam room. We don't need to spend more time debating and corresponding about this unexpected issue.

Thank you very much for your consideration.

Very sincerely,



Morrison Bonpasse
Executive Director

CC: Chad Evans, #75414, New Hampshire State Prison, P.O. Box 14, Concord, NH
03302-0014

CC by email:

Warden Richard Gerry
Commissioner William Wrenn
Senior Asst. Attorney General Jeffery Strelzin
John Consigli, Consigli Polygraph Examinations