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SUPREME COURT
OF THE STATE OF WASHINGTON

WASHINGTON COUNTIES RISK POOL; AMERICAN
INTERNATIONAL GROUP, INC.; LEXINGTON INSURANCE
COMPANY, INC.; VYRLE HILL; J. WILLIAM ASHBAUGH; and ACE
AMERICAN INSURANCE COMPANY,

Plaintiff-Respondents,

v.

CLARK COUNTY, a municipal corporation; DONALD SLAGLE, an
individual, LARRY DAVID, an individual, and ALAN NORTHROP, an
individual,

Defendant-Appellants.

BRIEF OF *AMICUS CURIAE* THE INNOCENCE NETWORK

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ORIGINAL

TABLE OF CONTENTS

	Page
I. INTRODUCTION AND INTEREST OF AMICUS	1
II. ISSUES TO BE ADDRESSED BY AMICUS	3
III. FACTUAL BACKGROUND	4
A. Initial Investigation	4
B. DNA Tests Exclude Larry Davis and Alan Northrop	5
IV. ARGUMENT	8
A. Brady Violations Have Caused a Significant Number of Wrongful Convictions But Often Take Years to Discover.....	8
B. The “Complicated Chronology” of Brady Violations Makes It Difficult to Determine A Precise Moment When the Violation First Occurs	12
C. Public Policy Favors Just Compensation for Exonerees	15
D. When Insurers Succeed in Avoiding Coverage for Wrongful Conviction Using Tactics Such as Those Used by Insurers Here, Exonerees are Re- Victimized, Contrary to Public Policy	16
E. The Wrongfully Convicted Suffer Injuries Beyond Their Years of Wrongful Incarceration.....	19
V. CONCLUSION.....	20

TABLE OF AUTHORITIES

Page

FEDERAL CASES

<i>Aquilar v. Woodford</i> , 725 F.3d 970 (9th Cir. 2013)	12
<i>Broam v. Bogan</i> , 320 F.3d 1023 (9th Cir. 2003)	14
<i>Davis v. Clark County</i> , 966 F. Supp. 2d 1106 (W.D. Wash. 2013).....	Passim
<i>Douglas v. Workman</i> , 560 F.3d 1156 (10th Cir. 2009)	12, 14
<i>Harris v. Lafler</i> , 553 F.3d 1028 (6th Cir. 2009)	12
<i>Limone v. United States</i> 497 F. Supp. 2d 143 (D. Mass. 2007)	15-16
<i>Newton v. City of New York</i> , No. 07 CIV 6211, slip op. (S.D.N.Y. March 4, 2016).....	16
<i>Restivo v. Nassau County</i> , No. 06 Civ. 6720, 2015 WL 5796966 (E.D.N.Y. Sept. 30, 2015).....	16
<i>Smith v. Cain</i> , 132 S.Ct.627 (2012).....	12
<i>Strickler v. Greene</i> , 527 U.S. 263, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999).....	13
<i>United States v. Kohring</i> , 637 F.3d 895 (9th Cir. 2010)	12
<i>United States v. Sedaghaty</i> , 728 F.3d 885 (9th Cir. 2013)	12

STATE CASES

<i>Commonwealth v. Adams</i> , 374 Mass. 722, 375 N.E.2d 681 (1978)	9
--	---

TABLE OF AUTHORITIES
(continued)

	Page
<i>Expedia, Inc. v. Steadfast Ins. Co.</i> , 180 Wn.2d 793, 329 P.3d 59 (2014).....	5
<i>In the Matter of Personal Restraint of Clyde R. Spencer</i> , 152 Wn. App. 698, 218 P.3d 924 (2009).....	11-13
<i>In re Stenson</i> , 174 Wn.2d 474, 276 P.3d 286 (2012).....	13
 STATUTES, RULES, REGULATIONS, CONSTITUTIONAL PROVISIONS	
42 U.S.C. § 1983.....	1
RCW 10.73.170	5
 OTHER AUTHORITIES	
Cadene A. Russell, <i>When Justice is Done: Expanding a Defendant’s Right to the Disclosure of Exculpatory Evidence on the 51st Anniversary of Brady v. Maryland</i> 58 How. L.J. 237 (2014).....	8
Dan Hinkel et al., <i>Tribune Exclusive: Man free after 30 years says ‘It’s just scary to be out’</i> , CHICAGO TRIBUNE, Feb. 11, 2015	9
Joe Delich, Note, <i>Ensuring Insurance: Adequate and Appropriate Coverage for Brady Claims in Illinois</i> 110 Nw. U. L. Rev. 223 (2015).....	8
John Simerman, <i>Reginald Adams, who spent 34 years in prison for murder, to receive \$250K after Louisiana declared him ‘factually innocent’</i> , The New Orleans Advocate, March 16, 2015.....	10
Mary C. Delaney et al., <i>Exonorees’ Hardships After Freedom</i> , WIS. LAWYER Feb. 2010	20
Karen F. Parker, Mari A. DeWees, Michael L. Redelet, <i>Racial Bias and the Conviction of the Innocent</i> 114-128, in <i>Wrongly Convicted: Perspectives on Failed Justice</i> (Saundra Davis Westervelt, John A. Humphrey, eds., Rutgers University Press 2001)	17

I. INTRODUCTION AND INTEREST OF *AMICUS*

This appeal principally presents technical statutory and common law insurance arguments for this Court's consideration. But the Court's decisions on these issues are both informed by and will impact the lives of the wrongly convicted and incarcerated throughout Washington, in particular the two gentlemen, Larry Davis and Alan Northrop, who were wrongly convicted by Clark County in 1993 and lost seventeen years of their lives to prison before DNA testing exonerated them in 2010. Because their seventeen year wrongful incarceration was borne of and perpetuated by official misconduct by Clark County and its investigator, Mr. Davis and Mr. Northrop brought claims under 42 U.S.C. § 1983 alleging numerous ongoing and discrete constitutional violations. Ten days into their civil rights trial and immediately following the testimony of Clark County's lead investigator, they were able to settle their claims. But Clark County's insurers have refused to pay this settlement, just as they refused to defend Clark County and its investigator in the litigation, inexplicably on the grounds that they are not "insurers" after all.

The insurance issues are ably briefed by counsel for Mr. Davis, Mr. Northrop, and Clark County. The Innocence Network offers this separate amicus brief to describe the role that *Brady* violations play in wrongful convictions and incarcerations across the country and draw the Court's attention to the extreme injuries the wrongly convicted suffer while incarcerated and the ongoing victimization that continues following their release. The Innocence Network believes its brief will assist the

Court in understanding the full context for determining how the complicated chronology of *Brady* violations impacts the insurance coverage questions raised in this case. The Innocence Network also provides context for the settlement between Clark County and Mr. Davis and Mr. Northrop for the many years they spent wrongly incarcerated, the actual physical and emotional injuries they each suffered while incarcerated, and the “insuperable hurdles” they face upon release.

The Innocence Network is an association of organizations dedicated to providing pro bono legal and investigative services to prisoners seeking relief based on conclusive proof of innocence. The current members of the Network represent hundreds of prisoners with innocence claims in all 50 States, the District of Columbia, Puerto Rico, and around the world.¹ One of its members, the Innocence Project Northwest (“IPNW”), represented Mr. Davis and Mr. Northrop in their efforts to obtain DNA testing beginning in 2004. In 2010, after six years of IPNW’s efforts, the two were released and exonerated based on the DNA tests that were eventually obtained. Although IPNW played a critical role in obtaining evidence that led to the exonerations, the Network does not have private interests in this case. It does have an interest in assisting courts around the world understand the causes of wrongful conviction and in helping exonerees recover compensation for their periods of wrongful incarceration so that they may rebuild their lost lives.

¹ For a list of the Network’s members, see <http://www.innocencenetwork.org/index.html>.

II. ISSUES TO BE ADDRESSED BY *AMICUS*

First, this brief informs the Court about the role *Brady* violations play in wrongful convictions, and how the government's ongoing failure to correct the violations and disclose the exculpatory evidence contributes to the harms suffered by the wrongly convicted and incarcerated. The lower court incorrectly concluded that the insurers had no duty to defend Clark County because it determined that the claims accrued in 1993, when Mr. Davis and Mr. Northrop were arrested, convicted, and incarcerated. That conclusion not only oversimplifies the complicated chronology of *Brady* violations generally, it ignores the separate violations that occurred much later, including when Clark County destroyed evidence that was subject to a DNA testing order in 2006 and Clark County's failure to disclose exculpatory evidence of alternative suspects until 2013.

Second, this brief provides some context for the settlement amount agreed to by Clark County during the civil rights litigation below and discusses how compensation for the civil rights violations alleged by Mr. Davis and Mr. Northrop recognizes the actual and substantial physical and emotional injuries they suffered while they were wrongly incarcerated, as well as the serious hardships and obstacles they face when re-entering society after imprisonment. Other courts have concluded that one million dollars per year of incarceration, the settlement amount here, is appropriate for exonerees, particularly those who, like Mr. Davis and Mr. Northrop, suffer physical illnesses and injuries during the wrongful incarceration, had little or no criminal histories and who, upon release,

have been diagnosed with debilitating PTSD and placed on disability as a consequence.

III. FACTUAL BACKGROUND

The Innocence Network adopts the factual background set out in the *Davis/Northrop* briefs.

Larry Davis and Alan Northrop endured seventeen years of wrongful imprisonment. While imprisoned, they lost everything—their freedom, employment, relationships with family and friends, and reputations. Following nearly two decades of incarceration, they then had to reenter a new world and try to rebuild their lives. At every turn, their wrongful convictions and their continued wrongful incarceration were the avoidable consequences of the misconduct of Clark County, which Clark County's insurers now seek to compound in their effort to avoid insuring, defending, or indemnifying Clark County.

A. Initial Investigation

In May and June of 1993, Larry Davis and Alan Northrop were convicted of charges stemming from a January 11, 1993 rape, kidnapping and burglary. Between the date of the rape and their convictions, the investigation by Clark County and its law enforcement officials was botched, bungled and myopically focused on these two men, despite the absence of any physical evidence linking either man to the crimes alleged and the victim's inability to identify either man without assistance from

law enforcement. *See* Am. Compl. 1.2.² Based on the victim’s testimony alone, Mr. Davis was sentenced to 20 ½ years in prison and Mr. Northrop received a 23 ½ year sentence.

B. DNA Tests Exclude Larry Davis and Alan Northrop

Efforts to conduct DNA tests of the physical evidence in these cases formally began with an April 28, 2004 request to the Clark County prosecutor made by IPNW. *Davis v. Clark County*, 966 F. Supp. 2d 1106, 1121 (W.D. Wash. 2013). Clark County denied that request and refused to permit DNA testing under a previous version of RCW 10.73.170 (the post-conviction DNA testing statute), which gave it and the State authority to grant or deny the request. *Id.* After the legislature amended RCW 10.73.170 to give the courts decision-making authority on post-conviction DNA requests, Clark County Superior Court granted a motion for DNA testing on January 31, 2006. *Id.*

Even after DNA testing was ordered by the court, Clark County engaged in conduct that delayed the eventual exoneration of Mr. Davis and Mr. Northrop by several more years. First, Clark County destroyed critical pieces of evidence—the pants and shirt worn by the victim on the day of the crime—on November 15, 2006, almost four months *after* the

² This case involves the failure of insurers to defend their insured. Because an insurer’s duty to defend is evaluated based on the four corners of the complaint, the Network cites the Amended Complaint as the factual support for its discussion. *See, e.g., Expedia, Inc. v. Steadfast Ins. Co.*, 180 Wn.2d 793, 802, 329 P.3d 59 (2014) (reaffirming that the “duty to defend is triggered if the insurance policy conceivably covers allegations in the complaint”).

court ordered that they be tested. Am. Compl. 4.40. Second, even after DNA testing definitively excluded both Mr. Davis and Mr. Northrop as possible contributors to all the biological material recovered from the crime scene, Clark County vigorously opposed their efforts to vacate their convictions. The County claimed that Mr. Davis and Mr. Northrop failed to show that the conclusive DNA evidence of their innocence would have been likely to change the outcome of the trial. Once charges had been refiled, the County continued to insist it would not release the men until it had tracked down and tested other possible sources of the DNA found at the crime scene. Am. Compl. 4.43. These actions only served Clark County's interest in preserving a conviction, at the expense of the two innocent men who remained behind bars. Third, unbeknownst to Mr. Davis or Mr. Northrop, Clark County possessed additional exculpatory evidence of alternative suspects that it failed to provide to them until 2013, three years after their release and then only because it was requested in discovery during their civil rights case. *Davis*, 966 F. Supp. 2d at 1122; Am. Compl. 4.41. This information included evidence of alternative suspects including a known sex offender who matched the description of one of the perpetrators, witness statements that contradicted the prosecution's theory of the vehicle involved, and Detective Slagle's entire desk file containing hand-written notes, phone messages, and witness statements that were never put into reports. *Davis*, 966 F. Supp. 2d at 1122-23.

It was not until June 30, 2010—after Mr. Davis had spent more than seventeen years behind bars, fully served his sentence, and was forced to register as a sex offender, and after Mr. Northrop had served more than seventeen years—that the guilty verdicts against Mr. Davis and Mr. Northrop were set aside. Nearly as egregious, Clark County stalled for six years from their first request for DNA testing (testing that ultimately exonerated both men) before it agreed to dismiss the charges.

During the time of their incarceration, Mr. Davis and Mr. Northrop suffered not only the emotional trauma of knowing that they were behind bars for crimes they did not commit, but they sustained other physical and emotional injuries. Mr. Davis contracted Hepatitis C during his imprisonment; he was forced to undergo a psychosexual evaluation in February of 2010; he filed a disability claim in June 2011 due to Post-Traumatic Stress Disorder, back and shoulder problems, paranoia, anxiety, and neurological disorders such as Willis-Ekbom Disease, all of which began during or stem from his imprisonment and ordeal. Am. Compl. 9.2. Mr. Northrop was also subjected to various physical and mental injuries during and after his imprisonment, including burns to his face and eyes, threats that he had been “targeted for termination,” witnessing the shooting of other prisoners, having his two young children grow up without him, and not being allowed to see his mother before her death in 2003. *Id.*

IV. ARGUMENT

A. ***Brady* Violations Have Caused a Significant Number of Wrongful Convictions But Often Take Years to Discover.**

As the number of exonerations of the wrongly convicted rise every year, there has been increasing scrutiny of the causes of wrongful convictions and the unimaginable costs to those who languish in prison for crimes they didn't commit. This scrutiny has confirmed that official misconduct, such as the misconduct that occurred here, plays a significant role in wrongful convictions. See Joe Delich, Note, *Ensuring Insurance: Adequate and Appropriate Coverage for Brady Claims in Illinois* 110 Nw. U. L. Rev. 223, 224 (2015).

Of the recorded exonerations examined as of May 18, 2015, official misconduct played a role in almost half. *Id.* at 228. One Innocence Project study of the first seventy-four DNA-based exonerations found that “37% of the cases involved the suppression of exculpatory evidence, 25% involved the knowing use of false testimony, and 11% involved the undisclosed use of coerced witness testimony.” Cadene A. Russell, *When Justice is Done: Expanding a Defendant's Right to the Disclosure of Exculpatory Evidence on the 51st Anniversary of Brady v. Maryland* 58 How. L.J. 237, 246 (2014). The percentage of murder cases in which official misconduct contributed to a wrongful conviction was even higher. Delich, *supra* at 223, n.16.

The actual stories of the exonerees wrongly convicted because of official misconduct illustrate that *Brady* violations are often continuous,

ongoing, and by their very nature, unlikely to come to light until many years after the suppression of the material evidence that leads to conviction.

For instance, Christopher Abernathy was convicted of rape and murder in 1987; he was exonerated twenty-eight years later, in February 2015, after an investigation by Northwestern University journalism students uncovered evidence that police had pressured the witness against Abernathy to implicate Abernathy, promised to help the witness take care of pending charges, and gave the witness \$300 to buy clothes for the trial. See Dan Hinkel et al., *Tribune Exclusive: Man free after 30 years says 'It's just scary to be out'*, CHICAGO TRIBUNE, Feb. 11, 2015.³

Similarly, Laurence Adams was 19 years old when he was sentenced to life without parole for the robbery and murder of a Massachusetts transit worker; he was finally exonerated thirty years later. See *Commonwealth v. Adams*, 374 Mass. 722, 722, 375 N.E.2d 681 (1978).⁴ In securing Adams' conviction, the State failed to disclose that criminal charges pending against two witnesses were either dropped or reduced following their testimony against Adams, that a third witness was

³ Further facts regarding Christopher Abernathy's alleged crime, conviction and exoneration are available at <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4418>.

⁴ More facts on Laurence Adams' alleged crime, conviction and exoneration are available at <http://www.law.umich.edu/special/exoneration/pages/casedetail.aspx?caseid=2983>. Adams initially faced the death penalty until the Massachusetts Supreme Court invalidated that state's death penalty law. Without that decision, Adams may not have lived long enough to discover the *Brady* violations and be exonerated.

actually incarcerated at the time he claimed to have heard Adams confess at his family's home, and that the State suppressed police records containing statements in which Adams' codefendant admitted that he committed the crime with his brother.

Reginald Adams was convicted in 1983 for the 1979 murder of a young woman based largely on his recanted confession that did not fit the actual facts of the crime. After that conviction was reversed, Adams was retried and again convicted. He ultimately faced trial four times, up to and including the one that resulted in his 1990 conviction. See John Simerman, *Reginald Adams, who spent 34 years in prison for murder, to receive \$250K after Louisiana declared him 'factually innocent'*, The New Orleans Advocate, March 16, 2015.⁵ Adams was finally exonerated after spending over 30 years in prison, following an investigation by the Innocence Project New Orleans that discovered substantial evidence pointing to Adams' innocence was deliberately suppressed by the police and the prosecutor. The concealed evidence included documents showing that the murder weapon had been recovered within a month of the murder and was linked to other individuals, and stolen evidence also recovered shortly after the murder, was found in the possession of others. Law enforcement falsely claimed that neither the murder weapon nor any of the stolen property was ever found, and the prosecutor told defense counsel

⁵ Additional facts regarding Reginald Adams' alleged crime, conviction and exoneration are available at <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4430>.

that no evidence of the crime was ever recovered and no forensics testing was ever conducted.

The experience around the country of the wrongly convicted uncovering *Brady* violations years after conviction and incarceration has also been repeated in Washington. For instance, in 1997, David Kunze was convicted of murder, robbery and burglary. *See* James Morton, *Justice Denied: Extraordinary Miscarriages of Justice*, Robinson (2015).⁶ Fourteen years later, the State ultimately dismissed the charges against Kunze after defense counsel discovered that the State had failed to disclose that the primary witness against Kunze had been paid by the State for his testimony.

In 1985, Clyde Ray Spencer entered an *Alford* plea to multiple counts of rape of his son, daughter and stepson. *In the Matter of Personal Restraint of Clyde R. Spencer*, 152 Wn. App. 698, 701, 218 P.3d 924 (2009). Twenty-four years later, the Washington Court of Appeals determined that Spencer was entitled to withdraw his *Alford* plea—the State had withheld exculpatory evidence, including previously undisclosed medical reports that showed no evidence of sexual abuse and that the mother of the children was having an affair with a supervisory officer during the investigation. In addition, two of the victims recanted their testimony against Spencer, and one claimed that he repeatedly told

⁶ Further facts regarding David Wayne Kunze's conviction and exoneration are available at <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4418>.

investigators that Spencer did not abuse him. *Id.* at 710. Spencer served nineteen years in jail, additional time in community custody and was forced to register as a sex offender.

B. The “Complicated Chronology” of *Brady* Violations Makes It Difficult to Determine A Precise Moment When the Violation First Occurs.

As the above cases, and many just like them,⁷ show, it often takes years for individuals to discover that they have been wrongly convicted because of *Brady* violations. In many cases, as in this one, additional *Brady* violations are revealed during the civil rights litigation that occurs subsequent to the exoneration. And even with the benefit of hindsight, it is very difficult to determine whether there is even a particular point at which a *Brady* violation occurs. One commentator considering the same question faced by this Court—when a civil rights claim based on *Brady* violations accrues for insurance coverage purposes—attributes the difficulty in identifying a “trigger” for *Brady* violations to a multitude of intersecting and overlapping factors, including:

- (1) “the complexity arising from potentially large numbers of individual tortfeasors and multiple violations involving the same piece of evidence,
- (2) the temporal disconnect between the ‘harm’ at trial and the actual *Brady* violation,
- (3) The long timespans involved and the potential for retrials, appeals, and post-conviction proceedings, and

⁷See, e.g., *Smith v. Cain*, 132 S.Ct.627 (2012); *United States v. Sedaghaty*, 728 F.3d 885 (9th Cir. 2013); *Aquilar v. Woodford*, 725 F.3d 970 (9th Cir. 2013); *United States v. Kohring*, 637 F.3d 895 (9th Cir. 2010); *Douglas v. Workman*, 560 F.3d 1156 (10th Cir. 2009); *Harris v. Lafler*, 553 F.3d 1028 (6th Cir. 2009).

(4) The secretive nature of the violations themselves.” Delich, *supra* at 236 (suggesting that the continuous trigger approach applied to asbestos exposure cases might be doctrinally appropriate when considering *Brady* violations). He concludes that failure to adopt a broader approach to accrual of insurance claims “threaten[s] to leave municipalities underinsured for wrongful convictions,” “burden[s] already debt-laden communities,” and “threaten[s] to deprive the wrongfully convicted of adequate recoveries,” just as it has done in this case. *Id.*

A *Brady* violation requires three components: “the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.” *Strickler v. Greene*, 527 U.S. 263, 281-82, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999). By its terms and by the significant body of case law that has developed since the *Brady* decision in 1963, the “prejudice” prong is satisfied anytime the State’s withholding of favorable evidence “undermine[s] confidence in the outcome in the trial.” *In re Stenson*, 174 Wn.2d 474, 491, 276 P.3d 286 (2012) (holding that the State’s failure to disclose photographs and an FBI file for more than fifteen years violated *Brady* and required reversal of Stenson’s aggravated first degree murder conviction and death sentence and a new trial). Courts recognize that the duty to disclose favorable, material information is ongoing, rendering a prosecutor’s “decision not to preserve or turn over exculpatory material before trial, during trial, or after conviction” a *Brady* violation.

Broam v. Bogan, 320 F.3d 1023, 1030 (9th Cir. 2003); *see also Douglas v. Workman*, 560 F.3d 1156, 1173 (10th Cir. 2010). Accordingly, it is incorrect to conclude, as the lower court did in this case, that the *Brady* violations that occurred here—the destruction of exculpatory evidence in 2006 and the withholding of evidence in 2013--somehow accrued in 1993.

Not only are *Brady* violations often discovered long after they are committed, but there are often other official acts that compound the initial act of suppression. For instance, in the case of Mr. Davis and Mr. Northrop, not only did Clark County fight and delay DNA tests that ultimately exonerated both men for six years and destroy evidence that was supposed to be tested, Clark County investigators concealed a box containing evidence of alternative suspects *until 2013* and only produced those documents during discovery conducted in the federal civil rights case. *See Davis*, 966 F. Supp. 2d at 1121-22.

The chronology of *Brady* violations, their secretive nature and the aggregation of acts of misconduct complicate a court's ability to determine when *Brady* violations "occur" and, as in this case, when insurance coverage for the municipality that commits the *Brady* violation begins. In this case, Mr. Davis and Mr. Northrop have alleged several discrete and ongoing *Brady* violations, including Clark County's refusal to conduct DNA testing starting in 2004, the County's destruction of critical evidence in 2006 that was subject to a DNA testing order by the lower court, the inexplicable delay between the DNA testing that excluded these men and the County's dismissal of the charges against them, and the County's

failure to disclose a box of evidence, including evidence of alternative suspects, until discovery that was conducted *during their civil rights trial*. Each of these acts is separate from Clark County's initial investigatory failures that led to the improper convictions in 1993, including improper photo laydowns and suggestive questioning of the victim, failure to disclose evidence of other suspects, and the failure to properly supervise the investigation team as shown by the numerous reprimands received by the Clark County investigator related to his tactics in other cases. These acts ensured that Mr. Davis and Mr. Northrop stayed incarcerated and lost additional years of their lives.

C. Public Policy Favors Just Compensation for Exonerees.

During the middle of the federal civil rights trial and after the testimony of the lead investigator, Clark County settled the constitutional claims brought by Mr. Davis and Mr. Northrop for \$35 million, or \$17.5 million each. This settlement—a little more than \$1 million for each year of incarceration⁸—is consistent with verdicts in comparable cases. For instance, in *Limone v. United States*, four exonerees were awarded \$1 million per year of incarceration. 497 F. Supp. 2d 143, 243-44 (D. Mass. 2007). In awarding the *Limone* exonerees \$1 million for each year of incarceration, the court examined other cases and concluded that “both juries and courts sitting without juries have found that wrongfully

⁸ Mr. Davis was first arrested on February 4, 1993 and released more than seventeen years later, in April 2010. Mr. Northrop was arrested on April 7, 1993 and released seventeen years later, in April 2010. *Davis*, 966 at 1118-19; Am. Compl. ¶ 4.44.

imprisoned plaintiffs were entitled to compensation of at least \$1 million per year of imprisonment.” *Id.*⁹ Plaintiffs who similarly had their rape convictions overturned by DNA evidence were awarded \$18 million in 2014 by a jury for eighteen years of wrongful incarceration. *See Restivo v. Nassau County*, No. 06 Civ. 6720, 2015 WL 5796966 (E.D.N.Y. Sept. 30, 2015). A recent case concluded that \$1 million per year of incarceration was an appropriate award for an exoneree who was already serving time for a lawful incarceration and whose wrongful conviction was attributed to “poor administration” not governmental misconduct. *Newton v. City of New York*, No. 07 CIV 6211, slip op. at 44-45 (S.D.N.Y. March 4, 2016). Unlike Mr. Davis and Mr. Northrop, the plaintiff did not seek compensation for physical injuries and abuse while in prison. *Id.* The court’s decision also included a lengthy canvas of similar awards, which supported the court’s conclusion that \$1 million per year for a civil rights plaintiff was appropriate.

D. When Insurers Succeed in Avoiding Coverage for Wrongful Conviction Using Tactics Such as Those Used by Insurers Here, Exonerees are Re-Victimized, Contrary to Public Policy

As described in detail in Mr. Davis and Mr. Northrop's Amended Complaint, and above, the investigation and prosecution leading to Mr. Davis and Mr. Northrop's imprisonment—during which investigating

⁹ The court cited cases that awarded \$18 million for ten months’ incarceration, \$1,095,000 per year of incarceration in addition to emotional damages; \$1 million per year of incarceration; \$711,000 per month of incarceration; and \$100,000 for six days of incarceration. *See Limone*, 497 F. Supp. 2d at 243-44.

authorities deliberately misled them, their counsel, the public, and the court about the evidence of guilt and the absence of exculpatory *Brady* evidence—represented a failure of the criminal justice system.

This kind of failure, resulting in the deprivation of the liberty of two innocent men for more than seventeen years, shocks the conscience, and is cause for just compensation for each year of wrongful incarceration as noted above. It is also cause for many to question institutions—such as the police, the prosecution, and the courts—whose claimed *raison d'être* is protection of the public's safety and well-being.¹⁰

As detailed in the Davis/Northrop briefs, WCRP/Lexington's conduct here has not only violated the letter of Washington common-law standards of conduct for liability insurance carriers, but went beyond, resorting to conduct as damaging and disingenuous as the conduct by the County that led to Mr. Davis and Mr. Northrop's incarcerations and frustrated attempts to prove their innocence.¹¹ In other words, this is no run-of-the-mill case of insurer bad faith. The underhanded conduct of WCRP/Lexington alleged by Mr. Davis, Mr. Northrop, the County and Slagle mirrors the conduct of the investigators and prosecutors who orchestrated the wrongful convictions of Mr. Davis and Mr. Northrop.

¹⁰ See generally Karen F. Parker, Mari A. DeWees, Michael L. Redelet, *Racial Bias and the Conviction of the Innocent* 114-128, in *Wrongly Convicted: Perspectives on Failed Justice* (Saundra Davis Westervelt, John A. Humphrey, eds., Rutgers University Press 2001).

¹¹ *Brief of Appellants Davis and Northrop* at 24 n.19; 35-36; 38 n.35; 43 and 43-44 n.43; 45 n.44; *Reply Brief of Appellants Davis and Northrop to Lexington Insurance Company* at 6 n.6 and 7-8.

This Court is therefore faced with a situation in which two innocent men were failed by the system of justice not once, but twice. Mr. Davis and Mr. Northrop were first failed by the Clark County system of justice and wrongfully convicted. Their victimization persisted as they tried to have DNA evidence examined in the face of years of resistance by the County, including the County's spoliation of evidence. Their victimization continued through the discovery of exculpatory *Brady* evidence hidden for decades by Slagle during the civil trial.

Larry Davis and Alan Northrop would have been forgiven for believing, however, that they would see justice through their federal civil rights action. And that is where the system, of which WCRP/Lexington is unquestionably a part, failed them a second time. When the County did not pay in full itself, WCRP/Lexington was obligated to pay, notwithstanding the prior denial of a defense. But WCRP/Lexington not only refused to pay but mounted an aggressive and bad-faith litigation campaign against Mr. Davis and Mr. Northrop to deny them recovery: to deny them recompense for the wrongs for which WCRP/Lexington had clearly taken responsibility as Clark County's insurer. WCRP/Lexington thus acted contrary to the public policy of compensating the wrongfully incarcerated, as expressed in the case law cited above.

This Court should therefore carefully examine WCRP/Lexington's conduct and statements against the backdrop of the dual victimization that has occurred here. When evaluating the legal arguments and fine points here, this Court should also not lose sight of the very real damage to the

public's faith in our system of justice that will occur (a system of which the County, and WCRP/Lexington are part) if Appellees' positions are adopted.

E. The Wrongfully Convicted Suffer Injuries Beyond Their Years of Wrongful Incarceration.

The stories of Mr. Davis and Mr. Northrop painfully illustrate the unique victimization of the wrongfully convicted and incarcerated. During seventeen years behind bars, their personal lives and reputations were destroyed; they suffered injuries; they experienced and witnessed real horrors.

Since their release and exonerations, they continue to face the significant victimization that results from the destruction of their personal lives over almost two decades. Their reputations have been damaged, children have grown up without fathers, family members have passed away, and friends have moved on. Mr. Davis has been forced to bear the stigma of being labelled a "registered sex offender."

Their experience is, unfortunately, consistent with years of research that shows that once freed from confinement, the wrongfully convicted endure even more significant burdens than properly convicted defendants face upon reentry. As one scholar has observed:

For most, the long awaited and hard won exoneration is the beginning of a new struggle. Exonerees face insuperable hurdles upon release. Lacking recent employment history or experience, work is difficult to secure. Without education or funds, most can't access necessary counseling or relevant training. Often without family, they live alone and lonely. Money alone can never repair damage done by an undeserved prison sentence or fully compensate for pain

and suffering. A monetary award, however, does provide a springboard from which to begin life again.

Adele Bernhard, *Justice Still Fails: A Review of Recent Efforts To Compensate Individuals Who Have Been Unjustly Convicted and Later Exonerated*, 52 *DRAKE L. REV.* 703, 707 (2004). The burdens on exonerees like Mr. Davis and Mr. Northrop include the inability to find employment and housing, alienation from their families, and loss of civil rights on account of felony convictions, not to mention other terrible scars, physical and psychological, from tremendous injustice of innocent citizens being stripped of their lives and liberty. Mary C. Delaney et al., *Exonorees' Hardships After Freedom*, *WIS. LAWYER* Feb. 2010, at 18, 20 (describing the extraordinarily negative and powerful effects of imprisonment).

V. CONCLUSION

In addressing the insurance questions posed in this appeal, the Court should consider the nature of *Brady* violations and their impact on wrongful conviction, the injuries caused wrongful conviction, and the unique challenges exonerees must overcome when rebuilding their lost lives.

RESPECTFULLY SUBMITTED this 8th day of April, 2016.

By/s/Diane M. Meyers

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I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge.

DATED 8th day of April, 2016, at Seattle, Washington.

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Supreme Court,

Attached for filing is an amended BRIEF OF AMICUS CURIAE THE INNOCENCE NETWORK re: Wash. Counties Risk Pool, et al. v. Clark County, Wash., et al.; Cause No. 91154-1.

As instructed by the court we have removed the appendix.

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