

CHAD EVANS WRONGLY CONVICTED COMMITTEE

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Written Testimony of Morrison Bonpasse before the House Judiciary Committee on House Resolution 10 – Urging the Department of Justice to Re- examine the Conviction of Chad Evans

Dear Chairman Rowe and members of the House Judiciary Committee:

Regretfully, I cannot present this testimony in person as I am out of the country.

Chad Evans is a wrongly convicted man in the New Hampshire State Prison, where he has been since 2001.

House Resolution 10 is not an effort to change the courts' processes regarding Chad's conviction. He currently has an attorney, Catherine Costanzo, who will soon be filing a petition for habeas corpus in Merrimack Superior Court.

Instead, HR10 is a request that the Attorney General retain an independent attorney and independent pathologist to re-examine the Chad Evans case, including the death of Kassidy Bortner. Again, despite the assignment of HR10 to this committee, this resolution is a request from the legislative branch to the executive branch and not to the judiciary.

I began working for Chad Evans when his father called me in 2010, first for a modest fee, and pro bono since 2013. I have worked for more than two thousand hours for him, including the writing of the book, EYE CONTACT – The Mysterious Death in 2000 of Kassidy Bortner and the Wrongful Convictions of Chad Evans and Amanda Bortner. Volumes 2 and 3 of EYE CONTACT contain Chad's letters to me in 2010 and 2011. Since the publication of those books, none of the facts presented, and relevant to his wrongful conviction and the cause of Kassidy Bortner's death, has been successfully challenged by anyone.

In 2014, 125 people were exonerated in the United States from convictions which had been decided by a judge or jury "beyond a reasonable doubt." Since 1989, over 1540 people have been similarly exonerated, including one from New Hampshire. Of the 125 exonerations last year, more than 50 were supported by prosecutors who

were reviewing claims of wrongful conviction. That is what supporters of Chad Evans hope will happen with an independent examination of his case pursuant to HR10. That is, we believe that when the Attorney General sees what really happened to Kassidy Bortner, he will withdraw the prosecution of Chad Evans and petition the courts to dismiss his case.

I firmly believe that when an independent person interviews Chad Evans, and makes solid eye contact with him, he or she will quickly see what went wrong in this case and that Chad Evans is innocent. Chad is not just legally “not guilty,” but factually innocent. As the preamble in HR10 states, no New Hampshire law enforcement person has yet interviewed Chad. Over the past several years, he has asked the Attorney General to send someone come to the prison to interview him, but it did not happen. To the credit of Assistant Attorney General Jeff Strelzin, he did examine documents in the case and met with members of Chad’s committee, but no one has interviewed Chad Evans. Mr. Strelzin’s review of the case was incomplete, in part because the medical evidence was incomplete, and not performed by a person independent of the Dept. of Justice.

As the preamble of HR10 states, Chad Evans has asked for the opportunity to take another polygraph examination, because his 2012 examination was declared inconclusive by New Hampshire State police polygraph experts. It is a common practice to take a second polygraph exam under such circumstances, but the Dept. of Corrections has refused to allow Chad to take a second exam. To my knowledge, this is only instance in the United States where an inmate claiming innocence has been forbidden to take a polygraph examination.

Since working for Chad, I have written an unchallenged article about the use of polygraphs in wrongful conviction cases. It was published in the journal of the American Polygraph Assn and it reported that polygraphs were correct about 80% of the time. That’s a higher percentage of accuracy than eyewitness identifications. The State of New Hampshire State Police has a polygraph unit because the state believes that polygraphs assist in the determination of the truth. Why is the Dept. of Correction, joined by the Attorney General, opposed to the exploration of the truth in this case? HR10 provides that Chad Evans be given the option of taking a second examination. We have already identified the prospective examiner who is a former Massachusetts State Police polygraph examiner and former president of the American Polygraph Association.

Continuing the list of what Chad’s jury did not know, paragraph VII in the Preamble to HR 10 states, “That 4 days before Kassidy Bortner died, Evans took her to a family gathering, attended by a school nurse who saw nothing amiss with Kassidy’s appearance.” Exploring this fact statement provides a good example of

what happened in Chad's case. During his interview with the Maine State Police, Chad vaguely referred to this gathering, when he talked about changing Kassidy's diaper, "But I found out you know like after this weekend, actually my sister was there and it stunk so bad I couldn't talk her into changing it." The police did not ask the necessary followup questions about "this weekend" and "my sister was there."

Similarly, when Chad's sister and her husband were interviewed, they both referenced the gathering the Sunday before Kassidy's death on Thursday, November 9, 2000, but there were no followup questions about that gathering. Chad's attorneys did not explore or present the facts about the gathering, either, and therefore the jury knew nothing about it. I personally did not realize the importance of these references until seeing the pre-sentencing letter from Chad's sister's mother-in-law, Gerri Harvey, the elementary school nurse, to the trial judge. She wrote, "Several days before Kassidy Bortner died, I saw Chad with her. She climbed onto his lap and lay her head against him. This was within an informal family context, as Chad is the brother of my daughter-in-law. I have also seen Chad with his own son on more than one occasion and saw nothing except a loving and comfortable relationship." However, by the time of this letter, Chad had already been wrongly convicted.

Please know that HR10's list of exculpatory facts not known by the jury, is not the complete list. It does not include, for example, the fact that Chad and Amanda took Kassidy to dinner with adult friends on Friday or Saturday, November 3rd or 4th, five or six days before she died. This is important because a major part of the prosecution's case was that Chad and Amanda were hiding Kassidy's bruises from others.

Yes, it would cost money to re-examine the Chad Evans case, but it will be far less than the money now spent annually to incarcerate this innocent man, and far less than the money that has been spent since 2001 and the money that will be spent on his further incarceration until the end of his prison term. If the re-examination reaches the conclusion that I expect, the Attorney General save the considerable money his office would be expected to spend in defending the prosecution of Chad Evans in upcoming State and Federal court cases. Why not take the low cost route now and re-examine the case?

Further, in the state with the motto, "Live Free Or Die," what is the value of an innocent man's loss of freedom?

For the reasons stated in HR10 and as I've provided above, I respectfully urge you to recommend HR10 for approval by the full House of Representatives. As you consider this Resolution, may I also suggest that one or more members of your committee go to the Berlin prison, to which Chad was transferred on New Year's

Day, and interview him. A sponsor of HR10, Representative Dick Patten, has visited Chad several times over the past few years.

Thank you for your consideration of HR10.