Eric R. Holtzclaw
[redacted]
Enid, OK [redacted]

Jan. 9, 2018

Oklahoma Pardon and Parole Board
Attn: Board Communications
2915 N. Classen Blvd, Suite 405
Oklahoma City, OK 73106

Dear Oklahoma Pardon and Parole Board Members,

I am speaking on behalf of my son Daniel Holtzclaw, who is currently serving 263 years for crimes he allegedly committed on-duty as a police officer in Oklahoma City. His case received a lot of publicity and shocked the nation. The accusations came during the Ferguson, Missouri, riots and other similar incidents that sparked strong racial tension and anti-police feelings throughout the country. As in many other high-profile cases in which police were accused of wrongdoing, there was a rush to judgment based on biased media coverage and the anti-police political climate. Just looking at the number of years given to Daniel in a case where there were no eyewitnesses and no direct forensic evidence linking him to any alleged crime demonstrates that something went seriously awry in the findings of the jury and sentencing.

I have been a law enforcement police officer for more than 40 years and never have I seen a case in which the reasonable doubt created by witness credibility issues and lack of evidence was thrown out the window for political correctness and to pacify a mob surrounding the trial. I realize you may think I am biased in my thinking since Daniel is my son, but I invite you to look closely at Daniel's case and consider the facts as opposed to what you may have heard in the media.

I know that you are supposed to consider whether the inmate has been rehabilitated, his work and behavior while in confinement, past criminal behavior, and his ability to return to society. In Daniel's case, however, I ask you also to consider the circumstances that led to his conviction. Daniel was a role model -- a top-notch police officer -- in the community until he was falsely accused of sexual assaults. During his confinement he has done everything asked of him, except for participating in classes or courses for rehabilitation designed for guilty inmates. Daniel rightly feels that participation in such classes would amount to a tacit admission that he had done

something wrong. Certainly, if Daniel had committed any of the crimes alleged he would accept responsibility for his actions and do whatever was needed to fulfill his commitment to society.

Please consider the following issues in making your determination:

(1) Daniel is innocent of all the allegations that led to his 18 convictions, including Count 1, based on the wrongful allegations of Tabitha Barnes that resulted in the 8-year conviction for which he is up for parole.

(2) Daniel did not enroll in the Sex Offender Treatment Monitor Program because he is innocent and has had no sexual contact or sexual interactions or inappropriate behavior with any of the women who accused him of sexual misconduct. The program is designed for people who are guilty of crimes, not people who are innocent, such as Daniel. Daniel does not need Sex Offender treatment because he is innocent of all the allegations leveled at him.

(3) Parole for Count 1 should not be denied based on the 17 other convictions because they were also wrongful. The 13 accusers who testified in the trial made false allegations against Daniel. In addition, there were also eight other individuals who made false allegations that police determined right away were false, and so their allegations did not go to trial. This shows how common wrongful allegations against Daniel were.

(4) Concerning Count 1, the accuser Tabitha Barnes had serious credibility issues that created reasonable doubt and should have led to an acquittal.

Barnes only reported an allegation of inappropriate behavior after the sex crimes detective, Det. Gregory, contacted Barnes and advised her that police "had a tip that maybe she had been the victim of an unreported sexual assault." During trial, Barnes lied to the judge about her drug use. At first she denied under oath that she had taken anything other than her prescribed medications. Then she admitted she would test positive for THC because she had smoked marijuana. Finally, just before a urine test, she admitted to a female police officer that she would also test hot for PCP. Results showed that she did test positive for PCP within hours of testifying at trial (R.1962-69). Barnes was allowed to testify during the trial while under the influence of PCP.

Barnes's lack of credibility is also suggested by her recent arrest: she was booked on Dec. 20, 2017, by the Oklahoma County Sheriff's Office for "false personation; interfering with official process; larceny; and threatening to perform an act of violence." (Case # CPC-2017-11899 in Oklahoma County, Date Filed: 12/20/2017.)

(5) There are many reasons that Daniel was convicted of allegations despite a lack of evidence that crimes had occurred.

Daniel was an upstanding police officer who was railroaded by the police department due to a presumption of guilt, flawed forensic science, incompetent detective work, and officials who cared more about obtaining a conviction to placate the public than about discovering the truth.

First, detectives and government officials believed Daniel was guilty and they sought out and solicited allegations from, specifically, African American women with criminal records whom Daniel had stopped while doing his job as a police officer. (See attached "REPORT ON SCIENTIFIC ISSUES IN OKLAHOMA V. DANIEL K. HOLTZCLAW BY AN INTERNATIONAL PANEL OF FORENSIC EXPERTS," hereafter referred to as "REPORT ON SCIENTIFIC ISSUES," published in July 2017.) Police detectives, not Daniel, targeted at-risk African American women.

As is described in the REPORT ON SCIENTIFIC ISSUES, "An OCPD lieutenant created a victim profile by assuming that Mr. Holtzclaw had targeted African American females with criminal histories and arrest warrants. The lieutenant looked back through 6 months of police records prior to June 18, 2014. He identified hundreds of women whose criminal histories had been checked by Mr. Holtzclaw, noting those whom Mr. Holtzclaw had also run for warrants, and then the lieutenant created a list containing 'specifically names of black females' (Tr. 2385) 'who had a drug history, prostitution history or significant criminal history.' The lieutenant gave packets of the women's information to the two sex crimes detectives to use to contact them." (REPORT ON SCIENTIFIC ISSUES, pp. 6-7).

The REPORT explains the errors that occurred in this investigation method: "The State's investigational error was to assume that only sexual contact could have resulted in the DNA evidence, and that female DNA on the fly of the uniform pants was incriminating; to assume [...] that African American women with warrants and criminal histories were targets, based on two complainants, Ms. C2 and Ms. C9, the former lacking warrants and convictions [...]; and to allow flawed assumptions to cause detectives to use leading interview methods when soliciting testimony from the chosen women, telling them that police had 'received a tip' that the women were 'possibly sexually assaulted by an Oklahoma City police officer' [...], and encouraging interviewees to help catch the 'really bad guy,' the Appellant, because police had a long list of victims." (REPORT ON SCIENTIFIC ISSUES, pp. 42-43.)

Second, detectives and the prosecution ignored evidence of Daniel's innocence. He was convicted of the allegations even though there was no evidence of crime and the women gave inconsistent testimony, lied on the stand, and also gave testimony that did not match the

evidence, such as Daniel's physical appearance, his patrol car's appearance, and his patrol car's whereabouts.

For example, Tabitha Barnes said that her assailant's skin was an "Indian tan color" and his hair was a light brown, while Daniel's skin is pale and his hair is black. Barnes told the detective that she had lifted up her shirt and bra and the officer had touched her bare breasts, but during the trial she testified that she had not been wearing a bra. Daniel's appeal brief also points out that Daniel's trial attorney failed to call a witness who "indicated that Ms. Barnes was put in handcuffs," which was inconsistent with Ms. Barnes's testimony and "could have repudiated the notion that she was made to expose herself," as she had claimed. (Appellant's Brief, pp. 41-42). Despite these inconsistencies and contradictions, Barnes' testimony led to Daniel's wrongful conviction on Count 1.

Another woman, Sherry Ellis, said her assailant was a black police officer several inches shorter than her own height of 5'11", which would mean around 5' 9" tall, while Daniel is 6'1", Japanese American, and light-skinned. She also said the police officer parked his patrol car in a public park/abandoned school yard, and then raped her for 5-10 minutes. Yet the AVL/GPS evidence from Daniel's patrol car shows that it could only have been motionless in the school yard for less than 4 minutes, simply not enough time to do what was alleged. Nevertheless, Daniel was found guilty of her accusations.

Third, the trial judge improperly combined multiple allegations into one trial, which persuaded the jury and the public that Daniel was guilty because of the sheer number of accusers. Yet the existence of eight additional accusers who were found to be lying right away by police and prosecutors such that their allegations never made it to trial shows that false allegations against Daniel were common.

Fourth, the prosecutor misled the jury, claiming there was vaginal fluid on the fly of Daniel's uniform pants when in fact no evidence of vaginal fluid was detected, no stains or deposits were observed on the fly of the uniform pants, and no tests for body fluids were completed by the forensic analyst. The DNA found on the fly of the uniform pants is explained by the transfer of skin cell DNA that could be present on Daniel's hands after he completed pat searches of a teenager and others, and searched the teenager's possessions for drugs and weapons. The presence of unknown male skin cell DNA on the fly of the uniform pants shows that vaginal fluid was not needed for DNA to transfer to the fly of the uniform pants, since males do not make vaginal fluid. The forensic analyst in the case made false and unscientific claims about the presence of male DNA and the likelihood that body fluid was present.

These forensic science errors are described in the aforementioned report by six international forensic experts, Dr. Peter Gill, Dr. Jane Goodman-Delahunty, J.D., Ms. Suzanna Ryan, M.S., Dr. Moses S. Schanfield, Mr. George Schiro, M.S., and Dr. Brent Turvey, who reviewed the DNA evidence and testimony in the case. The forensic experts' REPORT ON SCIENTIFIC ISSUES was based on their *amicus* brief that the Oklahoma Court of Criminal Appeals chose not to accept in June 2016.

The six forensic experts conclude, "We believe that Mr. Holtzclaw was deprived of his due process right to a fair trial because the State misused DNA evidence -- a powerful form of forensic evidence -- and trial defense counsel did not correct crucial forensic science misrepresentations and omissions, such that the DNA evidence at the heart of the trial and lacking probative value was extremely prejudicial, corrupting the investigation of Mr. Holtzclaw and impacting the verdict. We believe that Mr. Holtzclaw's conviction should be overturned and he should be given a new trial." (REPORT ON SCIENTIFIC ISSUES, p. 45.)

Fifth, a mob mentality impacted the trial as protestors chanted that Daniel was guilty and took photos during the trial, interfering in the trial proceedings, and depriving Daniel of a fair trial. (See attached "BRIEF OF *AMICI CURIAE* RANDALL T. COYNE AND J. CHRISTIAN ADAMS IN SUPPORT OF APPELLANT," hereafter referred to as the "Mob Rule *Amicus* Brief," submitted to Oklahoma Court of Criminal Appeals in March 2017.)

As described in the Mob Rule *Amicus* Brief, "The undisputed record shows that Holtzclaw's trial was indeed so dominated by the mob that there was actual interference with the course of justice, rendering the trial void." (Mob Rule *Amicus* Brief, p. 11.)

On Aug. 20, 2014, "a crowd of around 100 activists gathered at the Capitol in Oklahoma City to protest [Michael] Brown's death and equate it with that of Luis Rodriguez, a 44-year-old Hispanic man who died six months earlier in Moore, while being restrained by five officers who were not charged. [...] Against this backdrop of mounting political pressure and social agitation, including protests coordinated by a group called OKC Artists for Justice, police *the very next day*, Aug. 21, arrested Holtzclaw - who had been on administrative leave since June -- and released his mugshot to the media." (*Id*. at 3.)

The Mob Rule *Amicus* Brief continues: "Once the jury was seated and testimony began, things only became more chaotic. While one witness testified on the stand, a member of the gallery, Royal Long, tried to take a picture; after the deputy confiscated his camera, Long lied to the judge about what he had been doing. [...] A throng of more than 100 protesters choked a blocked-off street one floor below the courtroom window, chanting at length in a manner the judge acknowledged could 'clearly' be heard in the courtroom and by the jury. [...] During the

testimony of one alleged victim, the mob's shouts of 'give him life, give him life' were so loud the trial had to be interrupted because defense counsel couldn't hear the witness. [...] By the end of the trial, jurors exiting the courtroom were themselves subject to harangues and shouting demonstrations, and cries of 'racist jury' and 'racist cop.'" (*Id.* at 6-7.)

The court denied Daniel's request that jurors "be sequestered to insulate them from the escalating hostile environment and 'all the protesting and yelling and screaming.'" (*Id*. at 8.) In so doing, "The trial court wrongly subordinated Holtzclaw's rights to a fair trial and due process to protesters' First Amendment rights." (*Id.* at 14.)

The *amicus* brief informs us that "efforts by spectators at a trial to intimidate judge, jury, or witnesses violate the most elementary principles of a fair trial." Lambert v. State, 743 N.E.2d 719, 733 (Ind. 2001), quoting Smith v. Farley, 59 F.3d 659, 664 (7th Cir. 1995). (*Id.* at 10.) "Every American, of every color, is equally entitled to due process, and an unpressured jury hearing the evidence and deliberating in an atmosphere free from the howling mob." (*Id.* at 11.)

The Mob Rule *Amicus* Brief and the *Amicus* Brief on Scientific Issues, upon which the REPORT ON SCIENTIFIC ISSUES was based, were both rejected by the Oklahoma Court of Criminal Appeals. The Parole Board has the opportunity to make sure justice is served by considering these documents and granting parole to an innocent man, Daniel, who should not be in prison.

(6) Daniel was correctly and entirely acquitted of the allegations of 5 of the 13 women whose allegations went to trial, and he was also acquitted on many of the counts by the 8 women whose allegations led to the 18 convictions. He was acquitted of allegations because the women gave inconsistent testimony and lied on the stand – which is also true of all the allegations for which Daniel was wrongfully found guilty. Daniel was acquitted of several allegations in part because his accusers contradicted their own claims that they had been sexually assaulted (examples being accusers Shardayreon Hill and Carla Raines).

(7) Daniel is not a danger to the community. He not only has no prior criminal history, but also did not commit any of the crimes alleged against him that led to his wrongful conviction and incarceration. Far from bring a threat to his community, Daniel routinely put his life in harm's way in the course of *protecting* his community.

Two false claims have been made about Daniel by the police department and Attorney General to try to argue that he is a danger to the community: first, the claim that he is a "psychopath" or "sociopath"; second, the claim that the alleged assaults were "escalating" in severity.

The notion that Daniel is a "psychopath" or "sociopath" has been put forth by people who are not mental health professionals and who therefore have no business evaluating Daniel's mental state. One of the lead detectives in Daniel's case -- former OCPD Det. Kim Davis -- reportedly told a colleague that Daniel was a "sociopath" before any forensic evidence had been analyzed. In fact, she made this unsupported claim even before her interrogation of Daniel had concluded (Adam Kemp, "HUNTING HOLTZCLAW," The Oklahoman [May 15, 2016]; available online at: http://newsok.com/article/5480916). She also said she "knew" in her gut that accuser Jannie Ligons was telling the truth even before she spoke to Daniel. (*Ibid*; see also https://soundcloud.com/newsok/davis-ligons).

Thus began a biased and deeply flawed investigation that led to one of the greatest travesties of justice in the history of Oklahoma's criminal justice system. The result is that a hard-working, dedicated police officer and an innocent man who deeply loves his family and friends, and is loved in return, has been ripped from his life and thrown into prison after having committed no crimes, while the nation watched and ridiculed.

The claim has been made that the alleged assaults "increased in severity and frequency until Daniel finally made a reckless mistake and was discovered" (Attorney General's version of events), but in reality the allegations against Daniel do not fit any model of a "progression."

By order of alleged incidents, the first one was the alleged oral rape of Shardayreon Hill, high on PCP in the busy ER while she was handcuffed to the bed and nurses streamed in and out to take her pulse and monitor her after she ingested PCP. Ms. Hill later told the investigating detective, "So this is good evidence? I think so, 'cause even if he didn't like rape nobody or nothing, he's still getting in contact with people that he's arrested." (See https://www.youtube.com/watch?v=oowVn7zbZ1g). Daniel was acquitted of her allegations.

After that, the incidents that Daniel allegedly "progressed" to, in chronological order of the allegations, were:

- Inappropriate touching;
- Accuser who felt forced to expose her breasts;
- Fondling of breasts;
- Oral, vaginal rape;
- Vaginal rape;
- Inappropriate touching; oral, vaginal rape;
- Procuring lewd exhibition; oral rape;
- Oral, vaginal rape;
- Inappropriate touching;

- Inappropriate touching; vaginal rape;
- Procuring lewd exhibition; oral, vaginal rape;
- Forced to expose; oral rape.

The allegations regressed *backwards* from the boldest of public oral rapes to inappropriate touching, back and forth between fondling, oral sodomy, and vaginal rape, back to inappropriate touching and "forcing" someone to expose herself, more rape, back to touching, oral and vaginal rape, and finishing off with the Ligons encounter in which she alleged that Daniel exposed himself swiftly through the unzipped fly of his uniform pants (despite his wearing compression underwear and two shirts plus his bulletproof vest that would make exposing himself difficult and time-consuming). Then Ms. Ligons alleged that he orally raped her for just seconds before stopping at her request.

The idea that there was a progression in the severity of allegations makes no sense and yet the police, prosecutors, Attorney General's office and media keep repeating this lie blindly.

An additional part of the allegation that there was a “progression” in severity of the alleged assaults is that Daniel turned off his patrol car computer/AVL before stopping Ms. Ligons, which he had not done before stopping the previous accusers. Yet this was the case only because Daniel was off duty at the time he stopped Ms. Ligons for swerving while driving. Daniel acknowledged that he always turned off his patrol car computer after leaving the Springlake Division and before getting home. This policy violation was so common among police officers that an OCPD e-mail had been sent to remind officers to keep their patrol car computers on until they reached home. Daniel violated a policy, but he did not commit a crime or violate anyone’s rights.

(8) Daniel has maintained good behavior while in prison, even though he was threatened by an inmate who believed he was guilty, and on Thanksgiving Day, Nov. 23, 2017, prison officers improperly placed Daniel on Restricted Privileges (RP) for 9 days before the prison recognized and admitted that prison officers had erred and had wrongfully accused Daniel of breaking a rule, when he had not done so. His RP was expunged and he was released from RP because the prison recognized that he had done nothing wrong. I commend prison officials for recognizing that they wrongly punished Daniel. I urge the prosecutor who mischaracterized the forensic evidence at Daniel’s trial and the police whose flawed investigation put Daniel in prison in the first place to do the same.

(9) Daniel has significant family and community support that he deeply appreciates from people around the world who realize he is innocent. The petition “Free Daniel Holtzclaw, an Innocent Man Wrongfully Convicted,” started by friends and family, has more than 6,500 signatures, and

the number grows every day as more and more people take the time to learn about all the injustices in Daniel's case and conclude that he is an innocent man, just like he has always stated from the start of this nightmare. (Please see the petition at: https://www.change.org/p/mary-fallin-free-daniel-holtzclaw-an-innocent-man-wrongfully-convicted)

Please consider these matters in determining my innocent son's eligibility for parole.

Sincerely,

Eric R. Holtzclaw

[redacted]