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NCIP’s State Prosecutorial Misconduct Study Gains National Attention

NCIP has gained national attention for its research report on prosecutorial misconduct in California. *Preventable Error: A Report on Prosecutorial Misconduct in California, 1997–2009*, by Cookie Ridolfi and Maurice Possley, released on October 4, is the most comprehensive of its kind and was reported in the *Wall Street Journal, LA Times, New York Times* and *USA Today*.

The report and the news coverage almost immediately triggered a response by the California State Bar, and has started conversations across the nation but particularly in California—Ridolfi’s hope when she embarked on the research project several years ago.

After completing an initial study of prosecutorial misconduct in 2008 as a commissioner on the California Commission on the Fair Administration of Justice (CCFAJ), Ridolfi set out to more fully document the scope of the problem with the goal of sparking reform. She enlisted the help of Possley, a Pulitzer Prize-winning journalist, and together with a cadre of Santa Clara law students, they reviewed more than 4,000 state and federal appellate rulings, as well as scores of media reports and trial court decisions covering a period of 13 years, from 1997 through 2009.

This examination revealed 707 cases in which courts found that prosecutors committed misconduct. In about 3,000 of the 4,000 appellate cases reviewed, the courts rejected the prosecutorial misconduct allegations, and in an additional 282, the courts did not decide whether prosecutors’ actions were improper, finding that the trials were nonetheless fair. “Identifying 707 cases where the court explicitly found prosecutorial misconduct undoubtedly understates the total number of these cases,” declared Ridolfi. “These 707 are just the cases identified in the review of appellate cases and a handful of others found through media searches and other means. About 97 percent of felony criminal cases are resolved without trial—almost all through guilty pleas.”

The study’s findings: In the vast majority—548 of the 707 cases—courts found misconduct but upheld the convictions, ruling that the misconduct was “harmless”—that the defendants received fair trials despite the prosecutor’s misconduct. Only in 159 of the 707 cases—about 20 percent—did the courts find that the misconduct was “harmful,” adversely affecting the prosecution; in these cases they either set aside the continued on page 18
From the Executive Director

In January 2011, NCIP will celebrate its 10-year anniversary. Questions about why we would launch an innocence project in California have finally stopped. With 10 innocent people freed, people finally understand that wrongful convictions don’t only happen in places like Texas but exist everywhere.

While public awareness about wrongful conviction has grown dramatically in these years, the systemic problems at their root remain deep-seated. But as our work has already shown, law reform, though hard to achieve, is attainable.

Preventable Error: A Report on Prosecutorial Misconduct in California 1997-2009 is our most recent accomplishment. The report chronicles the judicial findings of prosecutorial misconduct in California from January 1997 through 2009 and the response when it occurred. Shockingly, of 707 cases of misconduct, the California State Bar, the agency charged with the regulation of the state’s lawyers, disciplined a total of seven prosecutors for their conduct in a trial.

This report marks the launch of the Veritas Initiative, NCIP’s investigative watchdog organization devoted to advancing the integrity of our justice system through research and data-driven reform. Under this initiative we are also continuing research on access to DNA testing and eyewitness misidentification, the single greatest cause of wrongful conviction. See pages 3 and 5 for more information.

NCIP’s goals are to exonerate, educate and reform. There is great overlap in our goals and all three are needed to be successful. Exonerating the innocent exposes flaws in the system. Spreading the word about wrongful convictions ensures that people not intimately involved in the criminal justice system know that something must be done. Reform helps ensure accountability and fairness.

As a law school clinical program, we share Santa Clara law school’s mission to train students to be lawyers of competence, conscience and compassion. They are seeing firsthand through cases the root causes of wrongful conviction and are exploring with faculty the ways to address some of its underlying problems.

As we move into our 11th year, we are pleased to announce our Innocence Matters Breakfast Briefing series, a distinguished speaker series focusing on the causes of wrongful convictions and the legal reforms necessary to ensure the integrity of our justice system. This program is designed to extend discourse about NCIP cases, hurdles to justice and proposed law reform to the broader community, and they have already been well-attended. Details on page 14.

We also invite you to follow us on Twitter or become Facebook fans to receive updates on these stories and events. See page 17 for information on joining.

We are incredibly excited to celebrate our anniversary with you at events throughout the year, including the Breakfast Briefings and the Justice for All Annual Awards Dinner. Thank you for an amazing 10 years!
Northern California Innocence Project

Policy & Reform

NCIP Study Reveals Reform Needed in California Eyewitness Identifications

Misidentification by eyewitnesses is the single largest contributor to the wrongful convictions of innocent people.

NCIP seeks to address this problem in both aspects of our work: policy reform and individual litigation.

Our policy reform efforts are focused on learning what procedures are being used by police and sheriff's departments statewide by asking them to provide their eyewitness training procedures and policies under the Public Records Act. With responses received from about three-quarters of the 434 surveyed departments, the news is not dismal, but is not promising either. The “best practices” identified by the California Commission on the Fair Administration of Justice in their 2008 report as most likely to protect innocent suspects and lead to reliable identifications of actual perpetrators have not been adopted in any large-scale way by investigative agencies across the state. By publishing the results of the survey, NCIP hopes to influence reform at the ground level—in the police and sheriff’s departments where the actual investigations are being done.

If the bottom-up approach proves too slow, we hope to influence the enactment of top-down legislation requiring that police uniformly apply the best practices, which has been the case in several states such as North Carolina and Ohio.

On the litigation front, NCIP continues to challenge improper identification procedures in our clients’ cases, as well as in amicus curiae filings in support of other attorneys’ cases. We recently filed an amicus letter in the California Supreme Court (People v. Jeffrey Romero), in support of Jeffrey Romero’s petition for review in a case where the primary evidence against him was a highly suggestive eyewitness identification—an identification procedure that should not have been permitted based on current knowledge of best practices.

Most importantly, both the Wisconsin and New Jersey Supreme Courts recognized that the current test simply does not adequately protect innocent suspects.

The amicus letter urged the court to adopt the reasoning expressed by two other state supreme courts in recent cases. In Wisconsin (State v. Dubose) and New Jersey (State v. Henderson), the courts recognized that the current legal framework for analyzing a defendant’s challenge to an eyewitness identification procedure is inadequate. The legal test for validity of a pretrial identification procedure was established 30 years ago by the U.S. Supreme Court. As such, it doesn’t take into account the critical information that social science has revealed over the past 30 years about how easily witness perception and memory can be influenced without proper precautions by investigators.

Most importantly, both of those courts recognized that the current test simply does not adequately protect innocent suspects. In its amicus letter, NCIP urged the California Supreme Court to adopt the updated legal standards established in Dubose and Henderson. Unfortunately, the state Supreme Court declined to do so, denying review in Mr. Romero’s case. His attorney is preparing a petition for writ of certiorari for filing in the U.S. Supreme Court.

Despite this disappointment, our efforts to reform eyewitness identification procedures in California will continue on all fronts: at the crime scene, in the courthouse and in the legislature. ❖

Visit www.veritasinitiative.org/our-work/eyewitness-identification/to read the amicus letter NCIP sent to the court on Romero’s case. Also see related breakfast briefing article on page 14.
After a conviction, defendants have no Constitutional right to the physical evidence in their cases. If biological evidence exists that could potentially exonerate them through DNA testing, they may not be able to access that evidence post-conviction.

Even if prisoners want to pay for DNA testing to prove their innocence, they cannot do so without the State’s permission. California, along with 46 other states, has a statute that provides for DNA testing in cases with a reasonable probability of a different outcome if test results demonstrate that the convicted person is not the source of the DNA.

Despite this existing statute, NCIP has worked on numerous cases in which DNA testing has been denied to people whom NCIP contends should fit within the statute. The case of Mr. X detailed here is one of those troubling cases.

A crime spree in the spring of 1984 involved multiple incidents of murder, rape, sodomy, theft and burglary. In their investigations of the crimes, police believed some of the crimes had been committed by two people and some others by three people. Because some of the incidents had similarities, police believed they exhibited a modus operandi, and that the same perpetrators committed all of those crimes.

Police suspected that Mr. X and his brother were two of the perpetrators. They arrested Mr. X’s brother on August 16, 1984, in a van that contained numerous items stolen during the robberies. He was arrested along with another person who was identified by one of the victims as a perpetrator, but never prosecuted. Mr. X, NCIP’s client, turned himself in on August 20. The brothers shared an apartment in which police found many stolen items as well as guns used in the murders, hidden outside the apartment. On September 10, police placed Mr. X in a live lineup that 25 victims attended. Only two of those victims even tentatively identified him; however, Mr. X’s brother was identified by many of the victims. While his brother’s fingerprints were recovered from some of the houses that were robbed, Mr. X’s were not.

Mr. X has always maintained his innocence of these crimes, with the exception of stealing a truck from a car dealership—a robbery that did not match the modus operandi of the other crimes. The only physical evidence linking Mr. X to any of the crimes is a fingerprint lifted from the truck that he admitted to stealing. Ironically, one of the series of rapes with which Mr. X was charged (because it supposedly matched the modus operandi) was committed when he was in jail, proving he could not have committed it. It was later dropped, but the other crimes in the “spree” were not dropped, despite this lack of physical evidence tying Mr. X to the crimes.

The jury convicted both Mr. X and his brother of the many crimes involved in the crime spree on the modus operandi theory, but the jury did not believe that Mr. X shot anyone.
Test DNA Confounds

As a result, his brother was sentenced to death, while Mr. X was sentenced to life without the possibility of parole. His brother, who suffered from severe mental health issues, hanged himself in prison. The third suspected perpetrator was never apprehended. Mr. X remains incarcerated. For the past nine years, he has been fighting for DNA testing to prove his innocence.

The State collected and has retained a rape kit from one of the victims whom Mr. X was convicted of raping. Because the District Attorney’s Office refused to test the kit, Mr. X requested that the court order DNA testing under California’s statute. In an incorrect application of the statute, the court refused, finding no reasonable probability of a different outcome if Mr. X is exonerated of this particular crime, given he was convicted of so many other crimes—ignoring that the rape kit could provide dispositive results as to Mr. X’s guilt of that rape. The higher state courts affirmed this decision.

Mr. X then filed in federal court, claiming the State violated his civil rights by refusing to allow him access to the physical evidence in his case. The district court and the Ninth Circuit ruled that, although there is a constitutional right to access evidence for DNA testing when there is a reasonable probability of a different outcome, because the State court had already determined Mr. X couldn’t meet that standard, they were prevented from overruling that decision. And in the recent 5-4 decision in the case of William Osborne of Alaska, the U.S. Supreme Court found there is no constitutional right to access evidence for DNA testing after a person is convicted. This decision will affect many people in addition to Mr. X, by empowering states to continue denying requests for DNA testing.

Mr. X now has exhausted all options for clearing his name of these charges. His only hope is that the State of California will reverse its decision and allow the DNA testing. The State could have spared great time and expense had the District Attorney’s and Attorney General’s offices simply agreed to test the evidence. Instead, they spent eight years fighting this case all the way to the Ninth Circuit, using taxpayer money. We are left to wonder, why wouldn’t the State want to test evidence that could identify the true perpetrator of that rape? And, as the Ninth Circuit and numerous spectators asked, what interest could the State possibly have in refusing to test this evidence?

The evidence is still available and could still be tested. It is not too late for fairness and reason to prevail.
Ed Easley

On November 19, 1993, Ed Easley pled no contest to two counts of lewd and lascivious conduct for allegedly molesting the 9-year-old daughter of his girlfriend. He did so because his attorney advised him that taking the prosecution’s offer of a maximum 10-year sentence with the possibility of probation was probably better than being convicted at trial and facing a possible sentence of nearly 40 years.

Though Mr. Easley knew he was not guilty and that the alleged victim knew it as well, he was reluctant to put her through the ordeal of testifying at trial. He agreed to plead to the deal, hoping to receive probation. When he realized that despite the plea of no contest he would have to admit to criminal conduct, Mr. Easley moved to withdraw the plea, but the court denied his motion.

He was sentenced to 10 years, served five, and was paroled. He was then required to register as a sex offender.

In the meantime, the girl, Nichole, had become a young adult and had recanted her allegations.

She tried to recant to the District Attorney’s office when she was 14, but they sent her away, threatening to have her aunt arrested for convincing Nichole to recant to “get her boyfriend back.” She also recanted to a therapist, family members, friends, co-workers, and others.

Finally Nichole contacted NCIP, saying that she had falsely accused Mr. Easley and that she wanted to try to help him clear his name. She explained that she had in fact been molested, by her teenage cousin and his friend—and that her mother and her cousin’s mother had told her to implicate Mr. Easley so her cousin wouldn’t get into trouble.

On June 4, 2007, NCIP filed a petition to have the conviction reversed. Ultimately an evidentiary hearing was ordered in Shasta County Superior Court, where Nichole and others testified. Nichole said unequivocally, “X and Y touched me inappropriately and Mr. Easley did not. That’s the truth.” Mr. Easley also testified, denying all allegations, and explaining why, despite his innocence, he had pled no contest.

Nichole’s cousin also testified that Mr. Easley had done nothing wrong, and that he himself had engaged in inappropriate conduct with Nichole. While the judge did not find Nichole untruthful, he did not overturn the conviction. The court of appeal upheld that denial.

NCIP then filed a petition for a writ of habeas corpus challenging the ruling in the California Supreme Court. In July 2010, the Court denied the petition with a single sentence, saying Mr. Easley had done nothing wrong, and that he himself had engaged in inappropriate conduct with Nichole. While the judge did not find Nichole untruthful, he did not overturn the conviction. The court of appeal upheld that denial.

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Willis Randolph

On June 24, 1981, a 10-year-old boy was murdered.

Seven years later, Willis Randolph was charged with the murder. Although the prosecution theorized that the victim’s father (who had made threats to the victim’s mother) hired Randolph to kill his son so that he would no longer have to pay child support, the victim’s father was never charged.

No evidence linked Randolph to the father, or even suggested that the two knew each other.

The first jury deadlocked, but the second convicted Randolph on December 4, 1988. He was sentenced to 18 years to life, served 10 and was paroled.

Randolph argued that his conviction was wrongful and that he was innocent. He wrote repeatedly to his parole officer asking for a change in his status to “parolee” on grounds of innocence. His request was denied.

Randolph then filed a petition for writ of habeas corpus in the California Court of Appeals, which denied his request.

Randolph argued that because he was on parole as a sex offender and not because of the underlying sex offense, he was deemed to be “in custody” when he filed the petition, and therefore, lacked standing. Apparently, his innocence is immaterial.

Randolph is still in prison, serving a life sentence while the California courts maintain that “an innocent defendant in Mr. Easley’s position can pursue an action to have his conviction reversed.”

Habeas Corpus

Literally in Latin, “you have the body,” habeas corpus is a judicial mandate requiring that a prisoner be brought before the court to determine whether the government has the right to continue detaining them. The individual being held or their representative can petition the court for such a writ.

restraint on his liberty imposed by the sex offender requirements, as well as the ever-present threat that even a technical violation could land him in prison with a life sentence.

And because the California courts have, we believe incorrectly, interpreted the state statute for the writ of habeas corpus to require custody to challenge even a wrongful conviction, the only possibility is to amend the law to clarify that an innocent defendant in Mr. Easley’s position can pursue an action to have his conviction reversed.

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8, 1989. Randolph was sentenced to 27 years to life.

The difference between the two trials was the testimony of jailhouse informants.

One informant, Ronald Moore, who was facing charges for possessing multiple stolen cars and a probation violation, claimed that Randolph had confessed the murder to him. The other, Jack Konkle, claimed that Randolph had said he would not serve time even if convicted because he would “get off” by testifying against the victim’s father. In return for their testimony, Konkle served no time and Moore served a year in county jail with no prison time. Konkle has since admitted under oath that he lied to get out of jail, and Moore has signed a declaration and testified under oath that he fabricated his trial testimony.

Randolph became a suspect five years after the murder when Randall McKinney, who was being interrogated regarding another homicide, claimed that he had seen Randolph near where the boy’s body was found. When asked at Randolph’s trial why he had not come forward sooner, McKinney claimed that he had told his mother and relied on her to “take care of it.” The remaining evidence consisted of witnesses who reported seeing a car similar to Randolph’s near the murder scene.

However, none described the stickers, the hydraulically-operated raised rear end, or the unusual antenna that made Randolph’s car distinct. Further, the tire tracks did not match. Finally, expert testimony eliminated any suggestion that the victim was transported in Randolph’s trunk because the solenoid batteries used to operate the hydraulic lifter would have left a residue. Testing failed to identify any of the residue on the victim’s clothing or body.

Before the second trial, the defense moved to exclude the jailhouse informants’ testimony as so unreliable that it violated due process. After the hearing, the court expressed serious doubt about the informants’ credibility and said that he was the trier of fact (the jury in this case), he would disregard the main informant’s testimony completely.

Suzanne Luban, a superb private attorney, has been fighting on Mr. Randolph’s behalf since 1993 in the California Supreme Court, the federal district court, and the Ninth Circuit Court of Appeal. Ultimately all of the courts have turned aside his claim.

Mr. Randolph, who has now been in prison for more than 10 years, is now considering petitioning the U.S. Supreme Court to hear the lower court’s decision. NCIP hopes that justice will be done for Mr. Randolph.

What Constitutes Standing for Writ of Habeas Corpus Claims?

California Penal Code section 1473(a) states: “Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint.” If a person is imprisoned or in constructive custody of the government (for example, on parole, probation, or released from custody on bail), he or she is eligible to file a petition for the writ of habeas corpus with the court. The court then has the power to grant relief for the petitioner. When a person has finished serving his sentence, either in prison or on parole, he is no longer eligible for relief under a habeas corpus petition.

NCIP has argued that Mr. Easley is in the constructive custody of the state because his freedom is restrained in being required to register as a sex offender, and the court is incorrectly interpreting the statute in holding that he does not have standing to petition for relief based on his evidence of innocence. There is case law in support of this argument. As it stands, regardless of the facts, Mr. Easley must register as a sex offender for a crime he did not commit. If a parolee can file a petition for writ of habeas corpus, a person wrongly convicted and required to register as a sex offender should be able to file a habeas corpus petition as well.
Shearman Partner and NCIP Board Member Leads Firm in Innocence Case

“Our attorneys combine compassion with legal knowledge to make a significant difference in the lives of some of the world’s most vulnerable individuals and communities.”

—Senior Partner Rohan Weerasinghe

Shearman & Sterling has a distinguished history of pro bono work in its 135 years of legal practice. Its commitment is reflected in the 53,000 hours of pro bono work in the U.S. and internationally that the firm provided in 2009 on cases ranging from assisting low-income military veterans with housing and medical needs to working in Tanzania with the International Criminal Tribunal on genocide and human rights crimes in Rwanda.

Here in the Bay Area, Shearman Partner Jim Donato not only serves as an indispensable member of NCIP’s advisory board but also leverages his two decades of legal experience to lead Shearman’s pro bono involvement in its first NCIP innocence case.

Donato put together a Shearman litigation team that includes Bay Area associates Jiyoun Chung and Justin Chang to represent an incarcerated man who has already served 24 years for a murder NCIP believes he did not commit. He was convicted on little more than the testimony of two jailhouse snitches who had long records of questionable credibility and motivations.

Attorneys at NCIP and Shearman are currently fighting in California state court for fair access to the evidence that could identify the real murderer and exonerate our client. In an initial victory, NCIP won a court order for preliminary DNA testing of crime scene evidence. The initial tests showed that our client was not the source of any of the biological material at the scene. (See related story on access to DNA tests and evidence retention on page 4.)

As a key next step, the Shearman and NCIP team sought an order requiring the California Department of Justice to compare the DNA profiles from the crime scene for matches to profiles of convicted felons in the Combined DNA Index System (CODIS). This step will potentially reveal who committed the murder for which our client is in prison.

The Shearman lawyers have been delighted by the opportunity to work with NCIP. Donato notes that this and other exoneration cases are a core part of NCIP’s mission, “It’s a privilege to work with NCIP to obtain justice for innocent individuals,” Donato says. Jiyoun Chung adds that “it is really gratifying to have the opportunity to work on a cutting-edge legal issue such as whether a convicted person granted the right to conduct DNA testing under California Penal Code Section 1405 also has the right to then test the results against the national and state DNA databases.”

NCIP is grateful to have the generous and tangible support of the Shearman & Sterling pro bono team.
Update on NCIP’s Federal Grants

California DNA Project Finds Frustration in Potential DNA Innocence Cases

Despite the significant progress made in identifying and reviewing post-conviction cases for potential DNA testing, attorneys for the California DNA Project (CDP) are encountering challenges in finding evidence that could lead to the exoneration of the wrongfully convicted. CDP attorneys and students have completed initial screenings of the approximately 2,000 responses they have received to date. They are currently investigating hundreds of claims of innocence, with about 200 open cases under more extensive investigation.

The crux of CDP’s investigation lies in locating biological evidence in cases that are decades old. The CDP has run into a number of obstacles, similar to those faced by NCIP and indicative of the hurdles to proving innocence, even when DNA evidence exists. The two biggest hurdles attorneys encounter are a) DNA testing access, including locating and gaining access to trial documents, and b) evidence preservation, including confirming whether biological material has been preserved by police agencies and crime labs. To date, of the 200 cases under investigation, biological evidence has been located in 21 cases, evidence preservation requests have been sent in 21 cases, and biological evidence has been confirmed destroyed or lost in 16 cases.

“There is nothing more frustrating than finding that all evidence in a case has been destroyed,” said CDP Attorney Kelley Fleming. “Believing there is a good chance an inmate is innocent, and that evidence once existed that might have led to exoneration but is now gone is heartbreaking.”

From these difficult circumstances, CDP is confronting issues for future policy debate, including providing innocence projects the right to view discovery in their clients’ cases without litigation. They also would like to align California Penal Code Section 1405, which allows for post-conviction DNA testing, with Section 1417.9, which permits the destruction of evidence when an inmate’s sentence is completed or when the government sends a notice of intent to destroy the property to involved parties.

“The problem with allowing destruction of evidence under Penal Code section 1417.9 is that it does not factor into consideration how long it takes to investigate and litigate a case post conviction,” explained Melissa Dague O’Connell, CDP attorney. “A motion for DNA testing might not be sought until years following an inmate’s conviction. If Penal Code section 1417.9 allows for destruction by mere notice at an agency’s discretion, then a lot of our clients lose the fundamental opportunity to prove their innocence. Preserving the evidence until an inmate’s sentence has been served would be best.”

With the number of DNA exonerations increasing nationwide, CDP is optimistic that the information gathered by its investigations will both add to the data-driven research on the need for access to DNA testing and evidence retention, and be used to reform California legislation.


Wrongful Conviction Grant Attorney Helping Reduce NCIP Case Backlog

As you may recall from previous newsletters, Charles Press was hired as a Senior Supervising Attorney under the Wrongful Prosecutions Grant awarded to NCIP by the Department of Justice to help reduce the backlog of uninvestigated cases. He began working on the backlog on February 15, 2010, identifying potential claims of innocence and closing cases as necessary.

NCIP had identified 643 cases in our backlog as it existed on January 1, 2010. Press reviewed 218 of these cases as of October 31, 2010. One hundred twenty-three of these cases have been closed because they did not present provable claims of actual innocence, and the rest are being investigated further. Supervising students is a major role for NCIP attorneys and Press supervises students in 11 cases moving toward litigation, teaches seminars, and consults with other NCIP supervising attorneys on their cases. Additionally, Press has been consulting with several attorneys throughout the state and country on potential claims of actual innocence and has assisted on Innocence Network amicus briefs filed in cases raising issues regarding innocence claims.

As a result of Press’s work in moving through the backlog, NCIP has been able to move five additional cases into litigation and close 527 additional cases beyond the 123 Mt. Press alone has closed. NCIP anticipates his work will help eliminate our backlog, identify and close cases where we cannot assist, and move more cases into litigation where we may be able to obtain relief for the inmate.

For more information on the number of overall cases in various stages of investigation and litigation, see the article in our last issue entitled “Innocence Cases Picked After Intense Review.” Available online at www.ncip.scu.edu, Archived Newsletters.
Tying Things Up: Roberto Rivera

Roberto Rivera has always had a strong passion for criminal defense work and claims of innocence. With a long history of volunteerism, Rivera immediately offered his investigative services, pro bono, when he learned about NCIP in 2001.

Since then, he has been an invaluable part of several NCIP cases.

In pursuing his early passion and interest in criminal justice, Rivera received his bachelor’s degree in criminal justice administration with a concentration in law enforcement and a minor in sociology. He has run his own investigative firm, Rivera & Associates, for the past 12 years. His bilingual skills enable him to get into many different types of investigations. He has undertaken thousands of cases of all types, but has always held criminal defense work and the work of NCIP in high regard.

Working with NCIP Legal Director Linda Starr, attorneys and clinical students, Rivera has developed a strong respect for NCIP. He has always been impressed with how prepared NCIP students are coming onto their cases. Rivera often invites them along on witness interviews. “It is a tremendous opportunity for law students to get involved in the interviewing process in a real world case,” he said.

“Working with Roberto was great,” said Christine Reinhardt, an NCIP student who recently interviewed a witness with Rivera. “He has a keen sense of how people respond to interviews and the types of information that they are willing to reveal. Roberto is experienced in this profession and is a great resource for the Northern California Innocence Project.”

Rivera says, “You’re never the first or last investigator on a case,” he said. “Coming onto a case is an opportunity to tie a lot of resources together. From attorney research to previous investigative work to investigating officers’ results, your job is to tie it all together.”

NCIP thanks Roberto Rivera for his ability to connect the dots in our cases, and for contributing to our mission of educating students and exonerating the wrongfully convicted.

Paolo Broggi, 2b1 Inc.

Two years ago Paolo Broggi had never heard of NCIP, but that all changed when he received a phone call one day from Rhonda Dyer, NCIP’s database administrator, asking him to work on NCIP’s case management software, Amicus Attorney. The program is designed to help attorneys keep records and organize their cases, providing ongoing case status, statistics and data on the more than 8,500 cases that NCIP has reviewed since its inception in 2001. Little did he imagine in just two short years, he would go on to volunteer over $10,000 of his time and computer expertise.

Broggi was shocked to learn about the flaws in the justice system that result in the incarceration of innocent people. “I learned more about what they do and I thought it was quite a fascinating organization,” said Broggi. “And if I can contribute a little bit of my knowledge to make them more efficient at what they are doing, I am happy to help.”

Specialized legal software is no stranger to Broggi, an information systems engineer and owner of 2b1 Inc., a small San Francisco-based company that provides IT solutions, including email and backup services, to small and medium size law offices nationwide. Since 1996, his company has enabled hundreds of law office clients to optimize their return on practice management software like Amicus Attorney and others. This professional background provided Broggi with the skills to enhance what Amy Kennedy, NCIP case manager, describes as an “indispensable” service to NCIP’s work.

As time went on, Broggi’s fascination with the Project evolved into something more personal. “The fact that I can contribute in helping innocent people reunite with their families by helping the attorneys at NCIP keep track of the necessary information through Amicus Attorney gives me the feeling that I am helping make this a better world,” said Broggi. “The system we have isn’t perfect… it would be better if NCIP didn’t need to exist, but I don’t see that happening any time soon. So until then, I’ll continue helping.”

NCIP is deeply indebted to Broggi and 2b1 Inc. (www.2b1inc.com) for their unparalleled technical knowledge, counsel, guidance through the landmines of upgrades, updates and inevitable troubleshooting.

Sign up for NCIP e-news

Get NCIP news delivered directly to your inbox. Sign up by emailing us at ncip@scu.edu.
Betty Anne Waters to Speak at 2011 Justice for All Dinner

NCIP is proud to announce Betty Anne Waters as keynote speaker for the 2011 Justice for All Annual Awards Dinner, to be held June 2, 2011. It was Waters whose remarkable fight for justice inspired “Conviction”, a new feature film from Fox Searchlight Pictures.

When Betty Anne’s brother, Kenneth, was wrongfully convicted of murder in 1983, she devoted her life to proving his innocence. A mother of two and undereducated at the time of his imprisonment, Betty Anne earned her GED and put herself through college and law school. After years of studying and searching for evidence, she found old blood samples in a long-forgotten box in the courthouse basement. With the help of the Innocence Project, she fought for and obtained DNA testing on those samples, which proved her brother’s innocence. Kenneth Waters was freed from prison in 2001 after spending 18 years in prison for a crime he did not commit.

NCIP is incredibly fortunate to have Betty Anne Waters speaking at the Justice for All 2011 Dinner. Join us to hear her amazing story at this truly inspiring event.

For more details and sponsorship information, visit www.JusticeForAllDinner.com or contact Lee Raney at 408-554-4790 or lraney@scu.edu.

‘Conviction’ Film Brings Innocence Movement to Big Screen

“Conviction”, which opened in October 2010, brings the issue of wrongful conviction to the silver screen. The film revolves around the harrowing true story of Kenneth Waters, a man who was wrongly convicted of murder, and his sister, Betty Anne, who fights for 18 years, devoting her life to proving her brother’s innocence.

“Conviction” has an all-star cast, with Hilary Swank portraying Betty Anne Waters and Sam Rockwell playing the role of her brother Kenneth. The star-studded cast also includes Minnie Driver, Melissa Leo and Juliette Lewis.

The film recently earned several top awards at the 26th Annual Boston Film Festival, including Best Film and Best Actor for Sam Rockwell. It also received great acclaim at the prestigious Toronto International Film Festival. The film’s wide reach—and the related exposure on programs like Larry King Live—provide extraordinary opportunities to raise awareness of wrongful convictions and the need to reform our criminal justice system. It is a “must-see” film!

Ten Freed in Ten Years

Join us at Justice for All 2011 on June 2 when we will celebrate 10 freed in 10 years. The following people walk free through the efforts of the Northern California Innocence Project, its donors, volunteers, students and friends:

Mashelle Bullington
Incarcerated 4 years

Bismarck Dinius
Acquitted after 3 years

Kenneth Foley
Incarcerated 12 years

Albert Johnson
Incarcerated 11 years

Martin Laiwa
Incarcerated 15 years

Armando Ortiz
Incarcerated 7 years

Ron Reno
Incarcerated 5 years

Jeffrey Rodriguez
Incarcerated 5 years

Peter Rose
Incarcerated 9 years

John Stoll
Incarcerated 20 years

Thank you for your tremendous support which made this possible!
In February 2001, the Northern California Innocence Project opened its doors, armed with an enthusiastic cadre of 43 students, $70,000 in donations, and a fierce determination to make a difference in the California criminal justice system and bring justice to the wrongfully convicted.

Looking back over the past decade, NCIP Executive Director Cookie Ridolfi points to the “passion, dedication and enthusiasm of the people who care about this work,” including the hundreds of volunteers and many more donors, as the paramount reasons for the project’s success in obtaining the freedom of 10 defendants.

It is difficult to fully measure the success of the project after 10 years. Dry statistics—arranged in pie charts and bar graphs—cannot begin to illustrate the true impact of obtaining freedom for the wrongfully convicted.

How does one measure a man’s gratitude for being able to raise his son instead of spending his days behind bars? For exoneree Jeffrey Rodriguez, the work of NCIP means: “I’m with my son. I’m able to get involved with his life and help mold the man he’s going to be.”

The exonerations are surely NCIP’s greatest achievements.

Ten Freed in Ten Years
Since the exoneration in January 2002 of Ron Reno, who had been in prison six years, NCIP has freed nine others. Other exonerees include John Stoll, who served 20 years for wrongful charges of child molestation based on false testimony coerced by overzealous investigators, and Pete Rose, who served 10 years for the same reason. NCIP went on to win state compensation for both men’s years of wrongful incarceration, $704,700 for Stoll and $327,200 for Rose.

Clinics Provide Legal Experience
Working on these cases has proved to be a profound experience for student volunteers. “The most meaningful part of the class was being involved in someone else’s life in such an intimate way,” explained Matt Curry, former NCIP intern. “It is powerful to know that a client was given a second chance at justice.”

Since the clinic’s inception in 2001, enrollment has grown by 250 percent. Due to the popularity of the beginning class, in 2008 NCIP added an advanced clinic for students who completed the beginning clinic but wanted to continue with the program.

Not only does involvement with the program expand the students’ social awareness, but it provides important legal experience and knowledge. “It’s a great place to build skills necessary in all areas of law and it also builds case management skills that law school just doesn’t teach you,” said Sean Cooney, an NCIP alum.

NCIP Broadens its Work
Over the years, NCIP expanded beyond its legal work to spread knowledge of inequities in the criminal justice system and raise awareness of the fundamental problems that cause wrongful

2001

2001 – Linda Starr (top), exoneree Ron Reno and girlfriend Debbie Brown

2002 – John Stoll is released

2004 – Pet e Rose is exonerated

2004 – John Stoll is released

2005 – Danny Glover and Cookie Ridolfi working on Barred from Life

2007 – Exoneree Jeffrey Rodriguez (left), with his mother and NCIP student Curtis Macon

2007 – Exoneree Jeffrey Rodriguez (left), with his mother and NCIP student Curtis Macon

2007 – Cookie testifies before the CCFAJ
Northern California Innocence Project

convictions. It has accomplished this through public forums, conferences, awards dinners, books and even movies. These notable events include a public forum on local wrongful arrests in 2002 and the Actual Innocence event in the fall of 2003, as well as “The Exonerated” in Mayer Theatre, which featured interviews with former death row inmates released with evidence of innocence.

In 2006, the program hosted “The Innocents,” and in 2008, Santa Clara University hosted the annual Innocence Network Conference.

Celebrities Help Raise Awareness

NCIP has also managed to shine a spotlight on wrongful convictions with the help of celebrity appearances.

In 2005, David J. Poplisky and Cookie Ridolfi co-created the production “Barred From Life,” in which renowned actor Danny Glover performed. In 2008, the documentary “Witch Hunt” garnered the celebrity attention of Academy Award-winner Sean Penn, who narrated the film about NCIP exoneree John Stoll’s struggle for freedom. In 2009 actress Robin Wright joined NCIP’s board and presented the Freedom Award to exoneree Kevin Green at the Justice for All Awards Dinner.

In 2010, award-winning actor Brian Dennehy joined the NCIP board and introduced keynote speaker Joyce Ann Brown at the Justice for All Awards Dinner.

Throughout the years, NCIP’s own stars have shone for their notable achievements. In 2005 Ridolfi was appointed to the California Commission on the Fair Administration of Justice created by the State Senate. More recently, Ridolfi was honored by the Association of Women Defenders, and she and NCIP Co-Founder Linda Starr were presented with the 2010 Don Edwards Civil Liberties Award in honor of their outstanding work in restoring the civil liberties of the wrongfully incarcerated.

Grants, Private Donors Help Sustain the Work

Since 2002 when NCIP was awarded its last state grant for its work, the Project has depended on the generous support of private donors to continue its most important work. In 2009, NCIP was awarded a $236,000 grant from the Department of Justice to fund a supervising attorney position for a period of 18 months. That same year NCIP also was awarded a $2.4 million grant from the National Institute of Justice to create the California DNA Project, which will systematically identify and review select California cases for testable DNA evidence and, when appropriate, seek testing for those cases.

The grants coincide with NCIP’s goals for the next decade: freeing more wrongfully convicted prisoners as well as engaging in significant policy reform and other preventative measures. The Project’s eyewitness identification study and ground-breaking report on prosecutorial misconduct are among the first of its forays into policy work.

This work is just an example of what to expect from NCIP in the future. All of us at NCIP are deeply grateful for the enthusiastic support of the donors, volunteers and students who have made possible the achievements since 2001.

❖
NCIP’s Innocence Matters Breakfast Briefing Speaker

To kick off the celebration of its tenth anniversary, NCIP introduced its Breakfast Briefing Speaker Series in September 2010. The series brings prominent thought leaders to NCIP to discuss the prevalence and causes of wrongful convictions and the legal reforms needed to ensure the integrity of the American criminal justice system.

Attendance for the September briefing, featuring author John Hollway, surpassed expectations. Nearly 40 donors, prosecutors, students, public defenders and community members came to NCIP’s office to learn more about the story behind Hollway’s book, Killing Time: An 18-year Odyssey from Death Row to Freedom.

Hollway began researching the facts about John Thompson’s wrongful conviction in 2004. Thompson was wrongfully convicted and spent 18 years in prison, including 14 on death row, in part because prosecutors didn’t turn over exculpatory evidence to the defense. One month before he was scheduled to be executed, a defense investigator discovered on microfiche the result of the blood test that proved his innocence. The judge threw out Thompson’s first conviction on armed burglary charges and granted the defense motion for a retrial of the murder case. The jury deliberated for a mere 35 minutes before declaring Thompson innocent of all charges. “With studies that estimate between 2.5 percent to 3 percent of all prisoners are innocent, a seemingly small percentage translates to 40,000 to 100,000 innocent people in prison,” Hollway stated. “The issue isn’t 3 percent or 5 percent; it’s your dad, or your daughter, or your brother, or even you. It’s an issue of accuracy and truth. We are obligated to not be satisfied with a 3 percent screw up rate,” he concluded.

As word of the briefings got around, turnout rose. A crowd of almost 70, including law enforcement officers and prosecutors, came to hear Maitreya Badami, NCIP Supervising Attorney, and Garen J. Horst, Senior Deputy District Attorney from the Placer County District Attorney’s Office, talk about the Law of Eyewitness Identification. They discussed how unreliable eyewitness tactics are used to wrongfully convict innocent individuals and that they constitute the single greatest source of wrongful convictions.

“The only person that benefits from mistaken identification is the perpetrator,” explained Horst as he gave the background of his successful efforts to use established best practices for eyewitness identification in Placer County. Badami and Horst commented on the results of social science research revealing the malleability of memory, resulting in mistaken eyewitness identification. The solution, they said, lies in the uniformity of policy and training, part of the best practices study which identifies ideal eyewitness tactics used by law enforcement. An example of a best practice includes blind administration of photo spreads. This means the administrator does not know who the police believe is the real perpetrator, thus decreasing the likelihood that the administrator will inadvertently influence the witness’s identification.
Series Attracts Enthusiastic Crowds

Emphasizing the similarity between the missions of NCIP and prosecutors, Horst cited a 1935 Supreme Court statement: “It is the job of prosecutors not to win a case but to see that justice be done. The role of prosecutors is as servants of the law.” Horst added, “Personally I feel just as successful if I get a conviction as if I secure the release of someone who’s truly innocent.”

Looking Forward to More Briefings

NCIP looks forward to seeing more guests at upcoming briefings. These events are free (but registration is required) and held the second Wednesday of each month. A continental breakfast is provided.

Breakfast starts at 7:30 a.m. and the sessions run from 8 a.m. to 9 a.m. Here is the schedule:

December 8, 2010:
Hurdles to Justice: Case Updates

January 12, 2011:
The Big Dig: The Archeology of Post Conviction DNA Case Investigation

February 9, 2011:
Prosecutors: Accountable or Not?

We hope to see you! Register today at http://breakfastbriefing2010.eventbrite.com
Craig and Mary Noke

After moving to San Jose in 2001, Mary and Craig Noke met their new neighbors Linda Starr and Cookie Ridolfi. “I don’t remember if it was Cookie or Linda who mentioned NCIP, but it immediately resonated with us,” said Craig Noke. The couple have been avid NCIP supporters ever since.

A few years later, John Stoll, recently exonerated, moved into the little studio on Cookie and Linda’s property while trying to restart his life. One day, Craig was cutting the grass in his front yard and saw Stoll walking by. “Welcome to the neighborhood!” Craig said. Years later, Noke found out that his simple greeting had deeply touched Stoll. “He said that really sealed it for him—that it made him feel human again,” explained Noke.

Noke once asked Stoll if he was bitter. “Stoll responded by saying he didn’t have time for that,” he recalled. “He spent one-third of his life outside, another third of his life inside, and he didn’t have the time to spend the final third of his life hating.”

“If I’m ever in a situation even vaguely as traumatic as that, I would just hope I’d have half the grace that guys like Stoll have,” Noke said. “If anybody has a right to be angry, it’s them.”

Believing the justice system does not always mete out justice fairly in the United States, the couple continues to support NCIP because it helps exonerate people the justice system has failed.

“You can’t ask for a better return on a donation.”

NCIP thanks the Nokes for their unwavering support. ❖

Marilyn Proffitt

Although Marilyn Proffitt was aware of Innocence Projects across the United States before she attended the showing of “Witch Hunt” in Redwood City’s Public Library last spring, she didn’t think there was anything she could do to help. “I thought lawyers did pro bono work and the University sponsored the rest,” she said. “I didn’t know what I could do help because I’m not an attorney.”

Touched by the “eye-opening” movie, she learned there was a way she could help NCIP—by making a donation. “If anyone could walk out and not be moved, they must be dead,” Ms. Proffitt declared.

Ms. Proffitt, who is retired and on a fixed income, says she doesn’t have a large amount of money to give, but realized NCIP was doing a lot to address the problem of wrongful convictions. “I approve of the work you do. If you are doing it, it must be good and I’m glad to be part of it, however small.”

Proffitt sees herself as an example of how community outreach can raise awareness of NCIP and hopes to see more activities, such as movie screenings and local events. “I believe that even if those who saw the movie didn’t donate, they couldn’t have walked away without taking something from it.” ❖

Erica Arena-Camarillo

The NCIP clinical program left a lasting impression on NCIP alumna Erica Arena-Camarillo. Taking the clinic taught by NCIP Legal Director Linda Starr, working on cases, and seeing the faces of people who spent time wrongfully incarcerated all influence her work as an attorney today.

Arena-Camarillo took the basic NCIP clinic in 2007, graduated Santa Clara Law in 2008 and spent a year as an assistant public defender in Georgia. “Working at the public defender’s office, with the long hours and endless stream of clients, it would be easy to spend the minimum amount of time necessary on each case,” Arena-Camarillo said. “However, working at NCIP taught me that injustice really does occur, much more frequently than most people are aware. As a result, I took my job very seriously and took all the time necessary to ensure that both myself and my client were satisfied with the outcome.”

Through her hands-on work on NCIP cases, she learned that people in authority can err, both maliciously as well as unintentionally. As a result, working at the public defender’s office, Arena-Camarillo did not take a report at face value, did not take an officer’s statement as the only truth, and did not blindly trust the eyewitness report.

Arena-Camarillo now works as a family law attorney at Stearns-Montgomery & Proctor in Georgia, and has taken the same lessons from NCIP with her there as well. “The training and experiences I gained while at NCIP were unlike any other course in law school,” she said. “They will continue to serve me well throughout my career.” ❖
In Memoriam
Father Paul Locatelli

On July 12, 2010, the Northern California Innocence Project lost an advisory board member, advocate, and dear friend. Fr. Paul Locatelli, S.J., served as the president of Santa Clara University from 1988 to 2008, and most recently as its Chancellor. In that time, he oversaw the growth and development of many programs that foster the Jesuit mission of social justice, including the creation of NCIP in 2001.

Fr. Locatelli not only said that the students of Santa Clara University should be men and women for others—he actively promoted this message by overseeing the creation of programs such as NCIP, which continue to provide students with the opportunity to serve those most in need. “Papa Loc,” as he was lovingly referred to by the students of SCU, showed competence, conscience, and compassion are more than simply a motto for our university. Rather, the three “C’s” were the way that Fr. Locatelli both framed his own life and the greater university which he loved so much.

Executive Director Cookie Ridolfi has said, “Even amidst Paul’s demanding schedule, we always felt his support for our work and knew how strongly he felt about protecting the innocent. We will miss his leadership and guidance tremendously.”

Dean Donald J. Polden

Santa Clara University Law School Dean Donald Polden first became familiar with NCIP in 2003 when he left his position as dean of the University of Memphis School of Law to join Santa Clara Law. NCIP’s resources were in jeopardy at the time, and Dean Polden, a fan of clinical education, worked with the program directors and staff to fight for their funding. A few weeks later, he sat in on a new student orientation to get a feel for the work and scope of the program. “I was immediately struck by the enthusiasm of the students and staff alike,” he said.

As an NCIP advisory board member, the Dean still recognizes ongoing funding as a concern for NCIP. But he applauds the hard work of NCIP directors, staff and advisory board members in securing resources, which allows them to tackle more ambitious goals. “Now NCIP is able to drill deeply into key areas like prosecutorial misconduct and eyewitness misidentification and look at the causes of wrongful conviction, in addition to dealing with its consequences,” said Polden.

NCIP’s value to Santa Clara Law is clear to Dean Polden. He stressed the importance of legal clinics like NCIP as part of a law student’s education. He remembers going through law school himself, where he graduated cum laude from Indiana University School of Law. “Legal clinics were not as much of a focus of my law school’s program as they are of SCU’s today. A lot of that has to do with the changing expectations of employers,” he explained.

Part of his vision for the next centennial involves more incorporation of legal clinics into the curriculum, and he believes the greater reliance on experience is a trend in the right direction.

“Everything the law school values is encapsulated in NCIP,” concluded Dean Polden. “The Project is important to Santa Clara Law’s goals of educating first rate ethical and compassionate lawyers.”

NCIP thanks Dean Polden and Santa Clara Law for their ongoing support and commitment to social justice, our clinical program, and our research and policy initiatives.

Stay Connected!

Join us on Facebook, LinkedIn and Twitter (search for Northern California Innocence Project), and email us at ncip@scu.edu to receive our e-newsletters, to stay abreast on NCIP cases and other news as it happens.

Twitter  Facebook  LinkedIn
conviction or sentence, declared a mistrial, or barred evidence.

The study also uncovered flaws in the current system for reporting and disciplining prosecutors. “This study reveals that those empowered to address the problem—California state and federal courts, prosecutors, and the California State Bar—repeatedly fail to take meaningful action,” explained Possley. “Courts fail to report prosecutorial misconduct, prosecutors deny that it occurred, and the California State Bar rarely disciplines it.”

Indeed, of the 4,741 public disciplinary actions reported in the California State Bar Journal from January 1997 to September 2009, only 11 involved prosecutors, and only seven of these were for conduct in the handling of a criminal case.

In addition, the study found that some prosecutors have committed misconduct repeatedly. In the subset of the 707 cases in which NCIP was able to identify the prosecutor involved (600 cases), 67 prosecutors—11.2 percent—committed misconduct in more than one case. Three prosecutors committed misconduct in four cases, and two did so in five.

The conduct of prosecutors need not be deliberate or intentional to be improper. Moreover, not all misconduct is egregious. Misconduct does however always foster injustice and in California, the study shows prosecutors continue to engage in misconduct, sometimes multiple times, almost always without consequence. And the courts’ reluctance to report prosecutorial misconduct and the State Bar’s failure to discipline it empowers prosecutors to continue to commit misconduct. While the majority of California prosecutors do their jobs with integrity, the findings of the Misconduct Study demonstrate the alarming scope and persistence of the problem. Reform is critical, the authors state.

Reform may be on the way.

With the release of its report on prosecutorial misconduct, NCIP also launched the Veritas Initiative, its new research unit devoted to advancing the integrity of the justice system through research and data-driven reform. See article on page 5.

“One of the many exciting outcomes of this study is that CalBar and others are starting conversations with us,” said Ridolfi. “Folks are taking this seriously—researching the cases in the report and talking to us in more detail. We look forward to seeing these conversations develop into reforms in the future.”

Visit www.veritasinitiative.org to:

• learn more about prosecutorial misconduct and what you can do to help reform efforts,
• search instances of prosecutorial misconduct in your county, and
• request a pdf copy of the report.

Summary of Recommendations

• The California State Bar, in conjunction with the California District Attorneys Association, California Public Defenders Association and California Attorneys for Criminal Justice, should develop a course specifically designed to address ethical issues that commonly arise in criminal cases.
• District Attorney offices should adopt internal policies that do not tolerate misconduct and include establishing internal reviews of error.
• District Attorney offices and law enforcement agencies should adopt written administrative exculpatory evidence policies to govern Brady compliance.
• The reporting statute should be expanded to require judicial reporting of any finding of “egregious” misconduct as defined by the California Commission on the Fair Administration of Justice (CCFAJ). The reporting should include any constitutional violation by a prosecutor or defense attorney, regardless of whether it resulted in modification or reversal of the judgment, including violations of ethical rules.
• Judges should be required to list attorneys’ full names in opinions finding misconduct.
• The California Supreme Court should actively monitor compliance with the requirements of judicial reporting and notification of attorneys mandated by Business and Professions Code section 6086.7.
• Records of compliance—a list of cases reported to the State Bar by the court—should be publicly available.
• Prosecutors should be entitled at best to qualified immunity.
• California should adopt the American Bar Association’s Model Rule 3.8, which sets out the special responsibilities of a prosecutor.
• The State Bar should expand disciplinary proceedings for prosecutorial misconduct and increase transparency.
The devastating effects of prosecutorial misconduct cannot be overestimated. The costs are financial, emotional, psychological and societal. The adversely affected include innocent defendants wrongly convicted, taxpayers forced to bear the massive expenses of protracted litigation and incarceration, crime victims and their family members required to relive their pain, and more broadly, the public in general, whose trust in the entire criminal justice system is undermined.

Consequences for Innocent Defendants Wrongly Convicted

There is no more harmful consequence of prosecutorial misconduct than the conviction of the innocent. The impact of incarceration is devastating; yet defendants lose much more than their freedom. Imprisonment can result in loss of education, employment, job skills, earnings and physical health. The innocent further must deal with the psychological dissonance of having been profoundly wronged by society.

Economic harm, of course, is significant. Studies have found that more than 90 percent of exonerees lost all their assets—savings, vehicles, houses—while imprisoned. Of those who were able to obtain jobs after their release, 43 percent were paid less than they earned prior to their imprisonment.

Financial Costs to Taxpayers

Prosecutorial misconduct imposes a heavy financial cost on cities and counties, primarily borne by taxpayers, through prolonged criminal litigation and incarceration.

Costs from Prolonged Criminal Litigation. The costs are staggering, primarily associated with retrials—some defendants were tried as many as four times—and multiple appeals.

Costs of Incarcerating an Innocent Person. There are significant costs to taxpayers for housing prisoners. And investigating, litigating and freeing the innocent is a lengthy process, filled with hurdles (see our ongoing series “Hurdles to Justice” including an article in this issue, page 4). In 2009 California spent $45,000 per year per inmate. Fifteen people have been exonerated in California in the last 10 years through the efforts of NCIP and CIP, for a total of 166 years spent in prison. Using 2009 prison expenses that is a $7.47 million cost to California taxpayers.

Costs from Civil Lawsuits. In August 2010, the city of Long Beach paid out an $8 million settlement in a case alleging prosecutorial misconduct brought by Thomas Goldstein. Goldstein, who was convicted of a 1979 murder in Long Beach, spent 24 years in prison before being released after a federal judge ruled that Los Angeles County prosecutors withheld evidence of deals with a jailhouse informant and failed to correct perjured testimony.

In Santa Clara County, four lawsuits alleging prosecutorial misconduct have cost taxpayers over $5 million in settlements over the past five years, in addition to litigation costs. And lawsuits are still pending.

Costs of Compensation. Taxpayers also are liable for the statutory costs of compensation to victims of wrongful imprisonment. California’s compensation statute requires that exonerees receive compensation in the amount of $100 a day for each day of wrongful incarceration. To date, the California Compensation Board has approved payout of over $3 million.

Emotional Costs of Protracted Litigation for Victims of Crime

Surviving crime victims and their families, as they endure the unraveling of convictions, are forced to relive the crime on retrial.

Consequences for the Criminal Justice System

Prosecutorial misconduct also has significant adverse implications for the criminal justice system as a whole:

• There can be major damage to the viability of the prosecutions in proceedings drawn out due to prosecutorial misconduct.

• When the innocent are convicted, the guilty remain free and often commit other crimes.

• Prosecutorial misconduct undermines public confidence in the entire criminal justice system.

See the Preventable Error report at www.veritasinitiative.org for more information.
Donor Honor Roll

Thanks to the generous support of our donors, we can continue our important work—fighting for justice for those who have been wrongly convicted, raising public awareness about the prevalence and causes of wrongful conviction, and promoting substantive legal reforms to prevent future wrongful convictions.

Please note: This list reflects the cumulative gifts and pledges received between January 1, 2009, and December 6, 2010. We make every effort to compile an accurate list. If your name is missing, misspelled, or if there are other inaccuracies, please contact Lee Raney, Associate Director, at 408-554-4790 or email lraney@scu.edu.

Names in red indicate consistent giving

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2010 In Review  Progress on our core initiatives...

1. Exoneration Initiative

With 10 innocent people freed in its first 10 years, NCIP looks forward to continuing this success. In addition to NCIP’s progress in 2010, the two 18-month grants NCIP was awarded late in 2009 made a significant impact. (See page 9) The California DNA Project funded by a National Institute of Justice grant has 200 cases under investigation, with evidence located in 21 cases, evidence preservation requests sent in 21 more cases, and biological evidence confirmed destroyed or lost in 16 cases. And as a result of the U.S. Department of Justice grant, 123 additional cases in NCIP’s backlog have been closed, and five additional cases have moved into litigation.

2. Education Initiative

NCIP’s clinical program provides law students opportunities to develop and apply key lawyering skills through hands-on experience working on real cases, performing legal analysis, writing and research. NCIP students recently won awards in several moot court competitions, where students litigate controversial legal issues as though they were practicing lawyers—and many credit their NCIP training. Since the clinic’s inception in 2001, enrollment has grown by 250 percent. NCIP also has five students participating in post-graduate fellowships to improve their legal skills and gain experience.

3. Reform Initiative

NCIP continues to study and research the causes of wrongful convictions and to pursue policy changes designed to improve the justice system. Here are a few recent initiatives:

Prosecutorial Misconduct Study (page 1): This year NCIP released Preventable Error: A Report on Prosecutorial Misconduct in California 1997–2009. It is the most comprehensive, up-to-date study on the extent of prosecutorial misconduct in California.

Eyewitness Misidentifications (page 3): NCIP received a research grant from the van Loben Sels/RembeRock Foundation to examine how eyewitness identifications are currently being performed in California. By publishing the results of the survey, NCIP hopes to prompt agencies throughout the state that have not incorporated the best practices to reform.

Veritas Initiative (page 5): NCIP launched the Veritas Initiative (www.veritasinitiative.org), dedicated to advancing the integrity of our justice system through data-driven reform.

Help us fund these core initiatives by donating today!