On November 20, 2008, the last chapter in Mashelle Bullington’s heartrending story of wrongful imprisonment was finally written. A decade after she was released from prison—having served over four years for a crime she did not commit—Mashelle’s name was cleared. At last.

On January 17, 1995, Robert Buck, while sleeping at his business, heard a noise outside. He claimed that when he went outside he saw Kenneth Foley breaking into his truck. He also claimed that Mashelle Bullington, while inside of her car, pointed a gun at him when he confronted them. These claims were not true. Kenneth Foley was not present. Mashelle Bullington did not have a gun.

On September 26, 1995, Bullington and Foley were convicted of second degree auto burglary with a personal use gun enhancement. Foley was sentenced to 25 years-to-life on a “third strike.” With no prior record, but because she was found to have used a gun, Bullington received four years four months in prison. Without the gun enhancement, at most she would have been convicted of a misdemeanor with little, if any, incarceration in the local county jail.

NCIP initially became involved in the case to represent Foley in a post-conviction petition for writ of habeas corpus. At trial, Bullington exposed herself to punishment by testifying that while she was involved as an accessory to the auto burglary, Foley was not present. She also fervently maintained that she never had a gun. The actual perpetrator also testified at trial that he in fact committed the offense and that no gun was ever used.

Through an open-minded and comprehensive re-investigation of this case, Deputy District Attorney David Angel and District Attorney Investigator David Hendrickson discovered that the victim in the case
From the Executive Director

January 20, 2009. Home with my children and partner, we watch the inauguration of Barack Obama. Listening to his address, we are reminded not only of the hard work ahead, but all that we’ve accomplished as a nation.

2008: Looking Back

January and February: NCIP worked feverishly on litigation while organizing our first awards dinner and preparing to host the international Innocence Network conference.

March 27th: Over 650 supporters attended our inaugural Justice for All dinner honoring exonerees and innocence supporters. Not a soul was unmoved by the extraordinary stories told by exonerees and their families. We raised $1 million! March 28–30: Innocence conference at SCU – 350 attorneys and community workers learned and shared developments in litigation and legislative strategies, while exonerees learned to cope with freedom.

June: Double murder charges against Armando Ortiz—NCIP’s 7th exoneree—were finally dismissed! July: Toronto International Film Festival premiered Witch Hunt movie documenting an NCIP case originating in the mid-’80s in which children were forced to tell false stories about horrific sexual abuse by parents, then left behind while the parents spent years in prison. We were impressed and gratified by the public outrage over this injustice and raised $10,000. August: Same incredible response when Witch Hunt made its American debut at AFI Fest in Los Angeles.

September: Santa Clara County Superior Court granted our petition, filed in cooperation with the District Attorney’s office, overturning and vacating the case against Mashelle Bullington. NCIP ended the year with its 8th exoneration!

2009: Looking Forward

President Obama’s call for a renewed commitment to service invigorates us all. We know we have an enormous job ahead. But consider what we have accomplished: Since the first DNA exoneration in 1989, Innocence Projects have overturned hundreds of wrongful convictions. We’ve led the way to the passage of post-conviction DNA testing statutes in 44 states and made significant inroads in law reform. We have raised public awareness about wrongful conviction and the astonishing price paid by the wrongfully convicted and their families, and by the victims when they learn that an innocent person was imprisoned while the real criminal was free.

We have more cases to litigate and more legislative collaborations to forge. But, as part of a country with a renewed commitment to Justice for All, NCIP is invigorated, has confidence, and will succeed.

Thank you all for your support. We could not do this without you.
NCIP Welcomes New Advisory Board Members

FRED ANDERSON, PARTNER
Managing Director and Co-Founder, Elevation Partners

NCIP is thrilled to welcome Fred Anderson to our Advisory Board. Fred co-founded Elevation Partners, a private equity firm focused on investments in media, entertainment, and consumer related businesses. Prior to Elevation Partners, Fred had extensive operating and financial experience as a senior executive in the technology industry. From 1996-2004, Fred was Executive Vice President and Chief Financial Officer of Apple, and made major contributions to Apple’s turnaround and re-emergence as an industry leader.

Before joining Apple, Fred served as a senior financial executive of several public companies, where he was involved in numerous acquisitions and a wide range of other corporate finance transactions, including complex equity and debt financings and recapitalizations. Fred holds a B.A. from Whittier College and an M.B.A. from UCLA.

In addition to his responsibilities as Managing Director of Elevation Partners, Fred is a director of eBay, Move, Inc., Palm, and is a former director of Apple, E.piphany and 3COM.

JAMES DONATO, PARTNER
Partner, Cooley Godward Kronish LLP

NCIP is fortunate to have James Donato as a new member of our Advisory Board. He is an experienced trial lawyer whose practice focuses on class actions and antitrust and competition disputes. Jim is actively committed to pro bono service, and has litigated a number of pro bono cases including a major public housing case before the U.S. Supreme Court. He has been recognized as a Northern California “Super Lawyer” in 2004, 2005, 2006, 2007 and 2008. He has served as chair of Cooley’s Diversity Committee since 2006. Jim is also the immediate past president of the Bar Association of San Francisco.

Before joining Cooley, Jim served as a trial attorney in the San Francisco City Attorney’s Office. As a deputy city attorney, Jim tried several federal and state jury trials in actions ranging from alleged federal civil rights violations to negligence.

Jim received a J.D. degree in 1988 from Stanford Law School, serving as senior editor of the Stanford Law Review. After obtaining his law degree, he served as a judicial law clerk to the Honorable Procter R. Hug, Jr., U.S. Court of Appeals for the Ninth Circuit. Jim graduated Phi Beta Kappa with a B.A. degree in history from U.C. Berkeley in 1983. He received an M.A. degree in history from Harvard University in 1984.

Justice for All Awards Dinner Set for April 16th
Actress Robin Wright Penn to Present Award

We are privileged to host many distinguished presenters and honorees at this year’s annual awards dinner, including exonerees who will share their remarkable stories and special individuals chosen to receive the 2009 Justice for All awards for their outstanding contributions to freeing the innocent and preventing wrongful conviction.

Among the presenters and honorees slated for this year’s event is award-winning actress and social advocate Robin Wright Penn who will be presenting an award to Kevin Green, a young Marine wrongfully convicted of aggravated assault and murder who served 15.5 years of a life sentence before being exonerated in 1996. Robin was drawn to the Innocence Project after seeing the film Witch Hunt, a documentary narrated and produced by her husband Sean Penn. (See related article.) “The work NCIP does struck a chord with me that propelled me to act,” she explains. Since seeing the movie, Robin has immersed herself in the issue of wrongful conviction, become increasingly active in helping the Project, and recently joined the NCIP Advisory Board.

Other esteemed presenters include Dr. Rubin “Hurricane” Carter who will be presenting an award to The Honorable H. Lee Sarokin, the judge who finally freed him after he fought 55 years to prove his innocence.

Leadership Award recipients are the NCIP Justice League Superheroes—Donna Dubinsky, Debbie Hall, Russ Hall, John Hodge and Stacey Keare, for their fundraising efforts when the State of California eliminated the NCIP budget in 2004. Presenting this award is long time supporter and NCIP Advisory Board Chair Frank Quattrone.

Your participation in this event will make a huge difference in helping the Innocence Project accomplish one of the most important goals of our time—achieving justice for all.

For more information on the April 16th dinner, table sponsorship and ticket purchase please contact Lee Raney at 408-554-1945, or justiceforalldinner.com.
Witch Hunt: Some Convictions are Criminal

Documentary shocks audiences with story of justice gone wrong

**SEPT. 7, 2008:** Waves of anticipation swept through the AMC Movie Theatre in Toronto, Canada. It was the fourth day of the Toronto International Film Festival and most of those jam-packed into the large auditorium knew only that they were about to see the world premiere of the provocatively-titled documentary, *Witch Hunt.*

Actor Sean Penn, who narrates the film, eased into a seat in the reserved section, setting off the kind of tsunami generated only by A-list celebrities.

The house lights dimmed. The movie began. For the next 91 minutes, the audience remained spellbound. Early buzz had been favorable. But no one was prepared for the sheer power of this film—for the way they were moved to tears and fury.

“How could this happen?” many asked as the closing credits scrolled across the screen. “How could the legal system in a country that promises ‘justice for all’ experience such a catastrophic collapse?”

**JUNE 1984:** On a chilly, early spring night in Bakersfield, CA, John Stoll was startled awake by two policemen standing by his bed. He didn’t know it at the time—in fact, he thought this was just the next development in his ongoing nasty divorce—but he was about to embark on a terrifying journey that would stretch into the next millennium.

Downtown at the station house, John was bewildered and incredulous when he learned the real reason for his arrest. He’d been accused of a most heinous crime: child sexual molestation. And what struck him, like a bullet to his heart, was that the accuser was his own 6-year-old son, Jed.

In jail, John, an affable, easy-going carpenter, was certain his innocence would set him free. But that was before he met another prisoner whose story was eerily similar to his own.

There are others just like us, Ricky Pitts told him. Many, many others.

By the time the “tough on crime” Kern County District Attorney wrapped up his investigation, dozens of men and women had been rounded up and slammed behind bars.

Most of them did not know each other, but common threads united them.

They were all young parents.

They were all accused of sexual child abuse.

They were all unable to hire top-notch lawyers.

They were all living in Bakersfield.

They were all innocent.

**SEPTEMBER 1985:** The charges against John had escalated. Six children had testified against him. He was convicted of 17 counts of child molestation and sentenced to 40 years in prison.

**1985-2002:** John served his sentence in some of California’s meanest prisons. Now and then, he’d hear about a Bakersfield man or woman who was released from prison when their conviction was reversed. But his countless attempts to find legal help were met with failure. Hope, which once burned brightly, had dulled to a dying ember.

**2002:** An appellate lawyer, Mike Snedeker, contacted the Northern California Innocence Project about John’s plight. NCIP took on his case. Attorneys Cookie Ridolfi, Linda Starr and Jill Kent, along with their students at the Santa Clara University School of Law spent hundreds of hours reinvestigating. They discovered that the evidence against John rested solely on the testimony of six young boys, ranging in age from 6 to 9. All but one now said the sexual abuse stories were lies, explaining how they were intimidated and coerced into making
For the next 91 minutes, the audience remained spellbound. Early buzz had been favorable. But no one was prepared for the sheer power of this film—for the way they were moved to tears and fury.

false allegations. Only John’s son, who had no memory of the abuse, did not recant. On the basis of 5 of the 6 boys recanting, NCIP was granted an evidentiary hearing.

JANUARY-APRIL 2004: The evidentiary hearings took place in three parts. Dana Nachman, a special projects producer, and Don Hardy, a photographer, covered the hearings for their San Francisco Bay Area television station.

MAY 4, 2004: On his 60th birthday, with a jaunty bow and a wide grin, John walked out of prison, taking his first steps in 20 years as a free man. Dana and Don were waiting outside to capture this exhilarating moment for their viewers.

2004-2005: Dana and Don kept in touch with John, who was living nearby in the San Francisco Bay Area. Through conversations, they discovered the scope of the Bakersfield “child abuse” cases and were moved to bring this story of crimeless punishment to the American public.

The two journalists pursued their story in Nevada, Nebraska, Oklahoma, and of course, Bakersfield. They interviewed parents wrenching from their children; children forced to grow up without mothers and fathers; and the haunted, guilt-ridden accusers, who’d been betrayed by the very people who were supposed to protect them.

2005-2007: Dana and Don wove these interviews together with archival footage and created a rough cut of the still unnamed documentary. A mutual friend encouraged them to send the film to Sean Penn.

SEPTEMBER 2007: Sean watched the film and immediately signed on as narrator.

JUNE 3, 2008: Dana and Don submitted Witch Hunt to the Toronto International Film Festival, considered one of the most prestigious film festivals in the world.

JULY 29, 2008: The festival announced its lineup and Witch Hunt made the cut. Cheers resonated from California to New York (where both Don and Dana’s parents live).

SEPT. 7, 2008: At the AMC Theatre in Toronto, Dana and Don took the stage with John and his NCIP lawyers, Cookie, Linda and Jill. Joining them were several other parents and now grown children who’d been ensnared in the DA’s web. If there was a dry eye in the house, it was only because a tissue had dabbed away the tears.

SEPT. 11, 2008: In her blog, festival moderator Kate Lawrie wrote, “I’ve never had to fight back tears while moderating a Q&A after a film. Not until this past Sunday, September 7, that is—at the world premiere of directors Don Hardy and Dana Nachman’s documentary Witch Hunt.”
The Confounding Case of Mr. S

Is Mr. S innocent? Or is he guilty? Lawyers for the Northern California Innocence Project have been wrestling with that question for five years. Now, it seems the answer may elude them—forever.

The saga of Mr. S began in 1985 when he was arrested for robbing and assaulting two priests. A month after his arrest, the charge was elevated to murder when one of the priests died from complications stemming from the attack. In 1986, Mr. S was convicted of these crimes and sentenced to life in prison. And that's where he's been for the last 23 years, and where he will likely spend the rest of his life.

But evidence connecting Mr. S to the crime was scanty at best. He was about the same height as one of the perpetrators and the surviving victim was certain he could identify the perpetrator's voice. However, after Mr. S spoke the requested statements, the victim's certainty vanished and he stated that he did not recognize Mr. S's voice.

The linchpin of the prosecution's case was a partial latent fingerprint lifted from the suspected point of entry and supposedly matched to Mr. S. No other credible evidence connected Mr. S to the crime. Problems involving the print—and with fingerprint identifications in general—have been substantial.

To begin: The technician who lifted the print in question was fired less than a month later for drug use and misconduct.

Even under the best circumstances, fingerprint comparison is not the exact science portrayed on television crime shows. The U.S. has no set standards for fingerprint examination and no critical peer review, nor are there required certification processes for fingerprint examiners. The typical human fingerprint has between 75 and 175 ridge characteristics. In other countries, between 24 and 30 identical comparison points are required before an expert can declare it a match, but the U.S. employs no minimum number of identical comparison points before experts can declare the prints match.

Testifying in a 2004 federal trial, Dr. David Stoney, director of Chicago’s McCrone Research Institute, a non-profit group that teaches and researches forensic sciences, says “[t]he determination that a fingerprint examiner...makes when comparing a latent fingerprint with a known fingerprint, specifically the determination that there is sufficient basis for an absolute identification, is not a scientific determination.... It is a subjective determination without objective standards to it.”

Making matters murkier, Mr. S’s attorney never looked at the print, nor did he have an expert do so. The California Supreme Court found this same attorney ineffective in a death penalty case from the same time period.

And as if all this wasn't problematic enough, in 2008—aft five years of trying to gain access to the latent print and after finally obtaining the necessary court order—NCIP learned that the print had been destroyed eight years earlier.

Even under the best circumstances, fingerprint comparison is not the exact science portrayed on television crime shows. The U.S. has no set standards for fingerprint examination and no critical peer review, nor are there required certification processes for fingerprint examiners.
Finally, in the past ten years, there have been many instances in which even the most experienced experts have erroneously matched latent fingerprints with disastrous results. The most famous case is that of Brandon Mayfield, Oregon attorney and Muslim convert, who was implicated in the March 11, 2004 bombing in Madrid. He was identified on the basis of a latent print matched by an FBI Senior Fingerprint Examiner and verified by two other examiners. The FBI issued an apology and retracted the identification after learning that Spanish authorities had matched the print to the real perpetrator.

The Los Angeles Police Department (LAPD) recently acknowledged in a confidential report that their fingerprint experts wrongly identified numerous people who were then falsely implicated in crimes. LAPD officials have stated they do not know how many people may have been wrongfully accused and they did not have the funds to pay for the comprehensive audit necessary to find out. Numerous organizations are now planning to review the matter, holding hearings and conducting reviews of the latent print unit.

Meanwhile, Mr. S has spent more than two decades bringing new meaning to the term “model prisoner.” He has received a high school diploma, taken up a trade in silk screening, become an auto body technician, and learned welding and fiberglass repair. He has also participated in many self-help groups, including Alcoholics Anonymous, Narcotics Anonymous, Anger Management, Attitudinal Healing, parenting and numerous courses in spirituality.

While Mr. S seems to have adjusted to his circumstances, those who’ve worked on his case are destined to remain haunted by the question:

Is Mr. S guilty? Or is he innocent?
Don Listwin: A Long Time NCIP Supporter

Don was introduced to NCIP by Frank Quattrone, a long-time NCIP patron and Advisory Board member. After visiting NCIP and talking with co-founders Cookie Ridolfi and Linda Starr, Listwin decided to become involved with the Innocence Project and he has made significant contributions. Besides the extremely generous personal gifts he and his wife have made over the past two years, he has helped with other fundraising efforts. He hosted a fundraising event at John Bentley’s Restaurant and sponsored a successful $100,000 challenge grant, doubling his gift and attracting new donors.

“The Innocence Project at that point had been doing good work, but was very much a start-up organization when it came to raising funds. One of the things I knew I could help them with is the understanding of how to do the next level of professional fundraising – specifically by introducing more events and the idea of challenge grants,” says Listwin.

“Don Listwin is one of those people whose passion, intellect and marketing genius make him an asset in any endeavor he focuses on,” remarks Frank Quattrone. “Donations from individuals and private organizations like The Listwin Family Foundation are critical to our efforts.”

“Don Listwin is a terrific guy—we’re so lucky to have him to work with,” Cookie Ridolfi, Executive Director of NCIP says. “He’s smart, creative and extremely generous—he’s been a great resource for us from the very beginning. On top of all that he has a great sense of humor and that goes a long way…. I would have to say, ‘Don is the bomb!’”

Says NCIP Legal Director Linda Starr, “Generous gifts like Don’s have made a significant impact on the number of cases we can take on. As of now, we have had over 7,000 requests for assistance. Of that, we are litigating 26 cases, with 1,171 on the waiting list pending more attorney resources. Our goal is to evaluate these requests, put the cases we accept on the waiting list and move the cases in the process more quickly. All that research on each and every request is time and labor intensive, and gifts like Don’s help us advance these cases.”

Listwin formerly held senior executive roles at technology companies including Cisco Systems, Openwave, and Sana Security. He is the founder of the Canary Foundation, a non-profit organization focused on the development of simple blood tests for the early detection of cancer. He also serves on numerous boards, including that of Sana Security, Calix Networks, and the Fred Hutchinson Cancer Research Center.

In March 20 to 22 of this year, the Innocence Network Conference will celebrate its 10th anniversary. Hosted this year by the Innocence Project of Texas, the conference will be held at the South Texas College of Law.

The Network Conference, hosted at Santa Clara University last year, provides a rich educational forum for members of the Innocence Network, an affiliation of 49 innocence projects from across the United States, Australia, Canada, England and New Zealand to meet and explore policy and litigation concerns involving wrongful conviction. It also provides a critical opportunity for exonerees to meet and is a place where they can find social and emotional support from others who have suffered the same extraordinary and difficult experience of wrongful conviction and imprisonment. The conference is open to students, exonerees, Innocence Network members, public interest attorneys, and the general public.

When: March 20-22
Where: South Texas College of Law
Address: 1303 San Jacinto, Houston, Texas 77002

For more information or to register, go to: http://ipoftexas.org/network-conference/
Latham & Watkins Partners With NCIP to Serve Justice

California Chief Justice Ronald George often says that giving back to the community through pro bono service is a privilege and obligation that belongs to every attorney. NCIP volunteer lawyer Michele Kyrouz, a litigation partner in the San Francisco office of Latham & Watkins LLP, has made that service a way of life.

Frank Quattrone, who is NCIP’s Advisory Board Chair and a 2008 Justice for All Award recipient, originally recruited Michele to the Innocence Project. “Frank made the point that even folks with the best and most expensive lawyers face serious challenges when wrongly accused,” Michele recalls. “People who are indigent and lack that type of representation face an even greater disadvantage.”

After reading stories about people who were wrongly convicted and later exonerated, Michele and her colleagues felt their firm could lend its expertise to similar cases. Michele, her partner Steve Bauer, and their associate Vivian Stapp put together a litigation team for NCIP client Oscar Clifton, who has been in prison for more than 32 years. Despite serious questions about the validity of his conviction, he has been denied access to biological evidence for DNA testing that could exonerate him.

Michele says the practice skills of the Latham team were a great fit for the issues and challenges they have encountered in handling NCIP cases. In addition, they’ve experienced a tremendous sense of reward in working with NCIP. “We have really enjoyed working with the phenomenal staff at NCIP,” Michele says. “They have a broad and deep base of experience with these cases, and it is particularly gratifying to be able to help prisoners like Oscar Clifton. Latham’s associates and summer associates have been very excited to work with NCIP and find the work extremely interesting and rewarding. We look forward to continuing to partner with NCIP to assist them in helping prisoners with claims of factual innocence.”

NCIP supervising attorney Rhonda Donato, who coordinates the Innocence Project’s work with outside law firms and attorneys, is awed by the commitment firms like Latham bring to NCIP cases. “We all know the tremendous pressure firms and attorneys are under with billable hour requirements and client demands,” says Rhonda, who is always on the lookout for new law firms and attorneys to assist with the NCIP case load. “We are grateful and impressed that firms like Latham and our other pro bono partners take on our clients and treat them with the same energy, enthusiasm and respect they show to clients paying hundreds of dollars an hour for representation. Our cases require substantial investments of time and money to litigate. The eagerness of our partner firms to take these matters on a pro bono basis is truly heartwarming.”
T he Governor has once again vetoed critical legislation that would have helped prevent wrongful conviction and provided support for exonerees after their release. The two recent bills, Sen. Bill No. 1589 and Assem. Bill No. 2937, are the sixth and seventh pieces of legislation sponsored by the California Commission on the Fair Administration of Justice (CCFAJ) over the last three years. All seven bills passed the Legislature; all seven bills were vetoed by the Governor.

When the Governor vetoed Sen. Bill No. 1589, a bill authored by Sen. Gloria Romero (D-East Los Angeles), he said “No” to legislation that would require corroboration for jailhouse informant testimony. This bill would have codified reforms that the Los Angeles County District Attorney implemented after the infamous snitch Leslie White went on the CBS News program “60 Minutes” and explained to the nation how he could win favors from police and prosecutors by fingering innocent defendants. While the LA county DA supported the bill, the California District Attorneys’ Association inexplicably opposed it by arguing simultaneously that the use of jailhouse informant testimony is rare in California, but this bill would affect a large number of cases. That twisted logic was all the Governor needed to say “No.”

The State currently treats wrongfully convicted Californians worse than actual perpetrators who are released on parole. The stunning examples of the inequities generated bipartisan support for the bill that would have implemented measures to rectify this. The effect of Assem. Bill No. 2937, co-authored by Asm. Jose Solorio (D-Anaheim) and Asm. Todd Spitzer (R-Orange), would have been as follows:

- The clock starts ticking for the wrongfully convicted as soon as they emerge from prison. Most are shell-shocked from the experience. Assem. Bill No. 2937 would have extended the time a wrongfully convicted person has to file a claim before the California Victim Compensation and Government Claims Board from six months to two years. It also would have extended the time in which an innocent person must bring a claim of misconduct against his defense attorney from one year to two.

- The wrongfully convicted are routinely denied jobs because their criminal records are not properly expunged or sealed. Assem. Bill No. 2937 would have sealed and expunged records relating to conviction for those who are found factually innocent by a court.

- Wrongfully convicted persons are barred by law from introducing evidence of their declaration of factual innocence before the Victim Compensation and Government Claim Board (VCGCB). Assem. Bill No. 2937 would have made findings of factual innocence admissible in VCGCB hearings.

- When a wrongfully convicted person is released from prison, ironically, he has less access to services than a parolee, someone actually guilty of a crime. Assem. Bill No. 2937 would have provided the wrongfully convicted with a case manager who could assist in finding appropriate services to help with the transition back into society.

The Governor’s reason for rejecting the measures was his claim that the State Board of Control already compensates the wrongfully convicted. Yet, in a letter to the CCFAJ dated October 11, 2007, VCGCB Executive Officer Karen McGagin wrote that of the 59 claims of compensation for wrongful conviction received by the Board from 1984 to 2007, only 15 were approved.

What have we learned from the Governor’s latest vetoes? Criminal justice reform is a marathon, not a sprint. Governors come and go. Meanwhile, NCIP should and will continue to drive reform both through the legislative process and through other non-legislative means.

Shockingly…

…if DNA evidence exists that could potentially exonerate you, you may not have the right to access to that evidence after you have been convicted.

… if you are wrongly convicted and later found innocent by our legal system, it is extremely cumbersome to have your records sealed or expunged. So your record as a convicted criminal stands, affecting your livelihood, the ability to get a job, your social standing and your reputation.

…when you, as a wrongfully convicted person, are released from prison, ironically, you have less access to services than a parolee, someone actually guilty of a crime.

…some members of the U.S. Supreme Court have deliberately left open the question of whether the constitution permits the state to imprison and execute you even though you are innocent, and two justices rendered the opinion that the constitution does permit the state to execute you despite your innocence.

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As the number of DNA exonerations across the country has grown, they provide a unique window into how and why those wrongful convictions happened in the first place. Together, these DNA exonerations and insights into the causes of wrongful convictions demonstrate how the criminal justice system is broken—and what we need to do to fix it.

Over 225 people in the United States have been released from prison as a result of DNA tests that proved their innocence. However, these cases are only the tip of the iceberg because so few cases, estimated at fewer than 3%, have the biological evidence necessary for DNA testing. And in approximately a third of the cases where biological material was collected at the crime scene, the evidence has since been lost, destroyed, or is too deteriorated to test.

The vast majority of convictions, such as burglaries, robberies, assaults, arsons, property crimes and most murders, do not involve any biological evidence—only the tip of the iceberg. The causes of wrongful convictions are the same and there is no greater or lesser likelihood of wrongful conviction in a DNA or a non-DNA case.

Of the first 225 DNA exonerations, 220 of the exonerees were convicted of rape or sexual assault, the type of crime most likely to result in recovery of biological evidence. In 12 of the remaining 25 cases, the exonerees, although not convicted of a sex offense, had originally been charged with a sex crime. It was DNA testing of evidence recovered in connection with the uncharged sex offenses that resulted in their exonerations. With sex crimes making up fewer than 4% of all crimes in the U.S. and over 94% of DNA exonerations coming from this small pool of cases, it is clear that the problem of wrongful conviction is much greater than would appear from DNA exonerations.

Thus DNA testing alone is not the answer. Wrongful conviction, without substantive policy reform, will continue to blight our legal system. While Innocence Projects across the country are focused on the work of freeing the innocent, there are few resources to address systemic reform necessary to prevent wrongful convictions.

To date, the lack of significant policy reform is a result of three interrelated realities:

- Policy makers are still skeptical of the need for reform. Pertinent scholarly research is needed to expose both the depth and breadth of the problem.
- Access to data needed for research is limited by polarized and caustic debate within the criminal justice community.
- No comprehensive strategy to review and use data to influence state policy-makers and drive reform exists.

In California, for example, the legislature’s passage of criminal justice reform laws aimed at eliminating wrongful convictions is encouraging, but the Governor’s subsequent vetoes of those bills, and the information gathered by the California Commission on the Fair Administration of Justice, which completed its mission on June 30, 2008, make clear that a major roadblock in enacting such laws is the lack of empirical data on the subject. Research into the leading causes of wrongful convictions has been disparate, leaving little consensus for reform among policy-makers. NCIP proposes taking the next step: a research and public policy institute that combines top rate scholarship with an aggressive public information campaign.

The Institute will attract top scholars from across the country to conduct groundbreaking research on the leading causes of wrongful convictions and identify ways to remedy those problems. All research, whether conducted in California or elsewhere, will support the work of all Innocence Projects. That research will be coupled with a coordinated reform effort that targets policy makers in Washington, state capitols, and our local communities.

The first step is exploratory. NCIP is conducting a feasibility study under the direction of Ridolfi, which will be concluded in 2009.
The Most Frustrating and Rewarding Thing I Do . . .

Nikki Pope had no idea what she was getting into three years ago when Cookie Ridolfi roped her into joining the NCIP Advisory Board. The two met in 2003 when Nikki was a law student at Santa Clara. Ridolfi, as a member of the law faculty, had heard Nikki Pope stories from colleague and board member Ellen Kreitzberg who had Nikki in class. But even without Kreitzberg’s entertaining accounts, Ridolfi had noticed Nikki and realized that she possessed exceptional intelligence, energy and judgment and ...and that she was just what NCIP needed.

Nikki didn’t have a chance after that. Standing by the library in her second year of law school, she was approached by Professor Ridolfi who introduced herself and then explained that she ran the Innocence Project at the Law School. Ridolfi further explained that she had heard about Nikki and told her NCIP needed help. Nikki thought the woman was crazy. In fact, she still does, but has realized it is the passionate kind of crazy —the kind of crazy that is visionary, inspiring and energizing. And Ridolfi was right, NCIP did need Nikki, she has been working with the Innocence Project ever since and neither has ever looked back.

Now a member of the NCIP Advisory Board, Nikki is tireless in promoting NCIP. Her marketing experience and Masters in Business Administration from Kellogg have been indispensable background in helping get the word out about NCIP and helping the project with fundraising. “Nikki constantly pushes us to think bigger,” comments Ridolfi, “while quietly just making things happen—from getting press releases out, to editing op-ed pieces, to creating an ad sales program for the annual Justice for All Awards Dinner.”

While Nikki jokes about how Cookie badgered her into being on the Board, she sincerely values her experience with NCIP as one of the most rewarding things that she does (but don’t tell Cookie).

“Growing up watching television shows like Perry Mason gave me a clear notion of what justice is. During my time on the NCIP Board I’ve found that notion of justice for all is not always played out in our system today,” Nikki said. “It is astonishing and frustrating that these injustices are still present, and it’s important for people to inform others about this issue and help in any way we can.”

Upon graduating from SCU Law School in 2004, Nikki spent a year with the U.S. Department of Justice Antitrust Division in Washington D.C. She then returned to the Bay Area to work for Cooley Godward Kronish LLP in Palo Alto, where she works in the Business Department. NCIP is truly indebted to Nikki for her “can do” attitude, her creative fundraising ideas and her ability to step in and make things happen.

Fighting Injustice

Board member Pat Kern’s fight for justice has deep roots.

In 1985, more than a decade before that acronym “DNA” was uttered in a criminal courtroom, back when few could contemplate innocent people being convicted in this country, Rubin “Hurricane” Carter was in the fight of his life—one he’d been waging for 20-some years. He was claiming wrongful conviction. This heated and highly publicized case was being heard in a New Jersey federal courtroom before Judge Lee Sarokin. As it happened, just a few miles down the road, Pat and Cookie were law students at Rutgers University. Idealistic and young, Pat and Cookie were good friends and very aware of the “Hurricane” Carter case—a topic of much discussion at the law school.

Little did they know that more than 25 years later, they would find themselves once again working together—this time 3,000 miles away—fighting the injustice of wrongful conviction in California.

A long-time NCIP Board member, Pat is truly a trusted advisor. “Pat is one of those rare people in your life whose judgment you can absolutely
trust, who is unflappable and who you know you can count on,” Cookie says. “It is my privilege to work with Pat and NCIP’s good fortune that she also happens to have the supernatural ability to balance 11-hour work days with quality family time, and make it all look easy.” As Deputy Director of the California Appellate Project (CAP), Pat manages all the day-to-day operations of the office, handling finances, overseeing information technology issues, supervising attorneys, as well as carrying her own case load. CAP supervises approximately 200 attorneys who are appointed by the court to represent inmates on California’s death row.

Amidst all of that, Pat somehow manages to squeeze in time to advise NCIP on pressing criminal justice issues in the state and suggests ways the Project can best serve the needs of the hundreds of prisoners who are asking for help. NCIP is fortunate to have a Board member with such long standing ties to the fight for true justice and who also brings an understanding of the challenges of managing a growing non-profit.

Taking Action

When Jim Anderson’s good friend Frank Quattrone was caught up unexpectedly in the criminal justice system, it was an eye-opener for him. “It was very disturbing to me knowing that if this could happen to someone like Frank, it could happen to anyone,” Jim said. “Once someone steps inside the justice system, they are guilty until proven innocent.”

Jim took action, joining the NCIP Board and contributing significantly to the growth of NCIP and its continued success. Thoughtful and deliberate, as an advisory board member Jim asks the hard questions relating to finances, strategic planning and growth. “Jim can be very understated but when he has something to say, he’s bringing something of value to the conversation. He’s really good at explaining and helping some of us really appreciate differing points of view. I know he’s helped me. Of course, I’m still working on appreciating his views,” says Cookie laughingly, then adds with clear affection that she is, “just kidding, of course, Jim is brilliant and I truly adore him.”

Jim has over two decades of experience in Silicon Valley venture capital, including founding partnership positions in Merrill Pickard Anderson & Eyre, and in Foundation Capital. During that time, he has helped coach and develop hundreds of early-stage companies into industry leaders.

In 1999, Jim took his knowledge of venture funds into the world of philanthropy, and married the two worlds by joining with others to create Legacy Venture. He saw a need to provide a philanthropic vehicle to Silicon Valley leaders and formed Legacy as a way to amplify philanthropy and to magnify its impact by offering a way to make charitable contributions through investments in premier venture capital funds. In doing so, Legacy has also created a collaborative community of philanthropists who work together, learning from and sharing philanthropic practices and opportunities.

Jim uses this background of both finance and philanthropy to advise NCIP as it grows and launches new initiatives. Quattrone, a fellow board member, describes Jim as an amazing man, saying “he is intelligent, powerful, generous, always centered and very humble, an incredible combination in one person.”

Many are surprised to learn that Jim also has a background in music, which he studied along with electrical engineering at Purdue University. Though Jim does not have enough time to play the trombone anymore, he feels as though this skill gave him a well-rounded education that serves him well in the Silicon Valley.

Jim is optimistic about NCIP’s future. He feels that there is great potential for the NCIP’s proposed Policy Institute to make real changes in the current criminal justice system. We look forward to Jim’s thoughtful questioning as he continues his contribution to the work of NCIP.
Working Alumni Give Credit to Their NCIP Experiences

The Northern California Innocence Project is both a non-profit law firm that works to obtain the freedom of innocent people and a legal clinic offered to students of Santa Clara Law. Our alumni reflect on the NCIP experiences that offered them the chance to do life-changing work while learning to practice law.

AN NGUYEN
When the NCIP clinical program began in 2001, 10 students were enrolled in the first class. NCIP has recently begun to follow up with some of those earliest students to see what they are doing now. Imagine our delight when we found that in her firm profile, An Nguyen, who graduated from Santa Clara law magna cum laude in 2001, lists as one of her accomplishments that she was “part of the founding class of the Northern California Innocence Project.”

An says that the investigative and fact development skills she learned in working at NCIP have served her well in her current work. “Whether you are representing a convicted felon or the president of a Fortune 500 company, you must always do an exhaustive and complete investigation to truly understand the facts.” An explains that because that is what she did at NCIP, “I have had a tendency to dig deep into all my cases and never be satisfied until I really understand the issues and the facts.”

As part of the founding class, An was here when we first began accepting requests for assistance. She remembers how overwhelming it was when we were deluged with letters and requests and how we worked to devise and implement systems for evaluating the requests. She also recalls working hard to obtain DNA testing for an inmate who insisted it would demonstrate his innocence, and the excitement because it was one of the first cases for testing under the then brand new post-conviction DNA testing statute. When the tests indicated that the inmate had in fact participated in the offense, she was at first disappointed, but then gratified to know that NCIP had participated in providing certainty to the conviction.

After graduating from SCU law, An worked as an associate doing general litigation before moving to Los Angeles 2 1/2 years ago. She currently works as an associate at Jeffers Mangels Butler and Marmaro in Los Angeles doing employment and labor law. An has remained committed to public interest work as well, and is involved with the Asian American Bar Association and has worked as a volunteer judge with the Youth Moot Court in Alameda County.

PHILIP SIMPKINS
As an NCIP student in 2005-2006, Philip Simpkins promoted collaborative justice by discussing actual innocence with his law enforcement in-laws. He let them know that NCIP’s work was not focused on freeing people on technicalities and that NCIP’s work actually helped to ensure that the right person had been convicted. After all, if the wrong person was incarcerated for a crime, then the actual perpetrator was free and likely to commit more crimes.

Phil, an associate at Pillsbury Winthrop Shaw Pittman, practices commercial civil litigation. He likes the mix of subject areas and range of issues, but, mostly, he says, it’s the great people that he works with that he enjoys. And when not working, you can find Phil and his wife on the slopes, snowboarding.

Phil says he was most impressed by the critical and objective evaluation of the cases taught and practiced by NCIP. The substantive classes, including the causes and possible remedies for wrongful conviction and the pre- and post-conviction legal process, were interesting and challenging.

Much of what he learned from his work at NCIP he has taken with him into the workplace—how just being pleasant can help break-down barriers between opposing counsel or others who stand in the way of your objectives, how to manage and keep track of time spent on a case, and how to evaluate a case with a critical eye. He notes that other lessons learned include that anyone can make mistakes, including law enforcement and—more relevant to his current practice—juries.

He emphasizes that it is not just the skills he learned that he took from NCIP but the relationships with the people. He relished the camaraderie among the students as they helped one another make sense of their complex and interesting cases. And he says, “The supervising attorneys were awesome. They viewed students as more than temporary staff on the cases; they used every moment to teach the students about the criminal justice system, ethical issues, and how to think like a lawyer. NCIP is not just a class students take to get clinical credit, but an experience that students truly care about.”
Down to a Science

Norah Rudin is a forensic science consultant. Think CSI. She believes that science must be objectively examined and re-examined to ensure the integrity of convictions.

During the last two years, Norah has become an indispensable asset to the Innocence Project. She reviews and interprets forensic reports to make certain that the science is neither obsolete, nor improperly applied. She also observes the county crime lab’s testing of samples on behalf of NCIP and is a guest lecturer in the project’s forensic science class.

Norah thinks of the many pro bono hours she donates to NCIP as her contribution to society. She travels extensively as an expert witness on retained cases, but she always finds time for her volunteer work. She’s been known to return phone calls from airports during layovers and meet with students and staff in her meager spare time between trips.

As an NCIP volunteer, Norah demystifies the science on criminal cases and serves as a link between the scientists and attorneys handling a case to make sure every possibility is considered. Indeed, Norah has proven that “cases benefit from external review.” She has uncovered mistakes made during sample testing, as well as inaccuracies in reports.

Norah earned her Ph.D. in Molecular Biology and Genetics from Brandeis University in Waltham, Massachusetts. She says she stumbled into the field of forensic science. In 1990, just prior to the completion of her post-doctoral fellowship, she answered a posting for a consulting position with California’s DNA lab, which operates under the state’s Department of Justice.

Norah remained with the lab for three years before becoming a private consultant. Today, she is a leading authority in the forensic science community, an accomplished author and a sought-after speaker.

What has been her biggest challenge as an NCIP volunteer? “Getting information from labs!” she says without hesitation. She enumerates the many obstacles put in her path by law enforcement agencies when she requests reports and evidence. Norah believes that when science is used in criminal cases it must be subjected to open testing. “Open and vigorous review is the best path to the truth,” she says.

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Without experts like Norah Rudin, NCIP’s goal of uncovering the truth would be far more difficult. NCIP cannot thank Norah enough for her generosity and valuable assistance.

Investigating Innocence

Think of it as a Cold Case. Or maybe—lukewarm.

In June, six years after he was convicted of a double murder for which he received two life sentences, Armando Ortiz appeared in the Fresno County courthouse to learn that all of these charges against him had been dismissed.

One man he has to thank for his reversal of fortune is Charles Hallman, Private Investigator.

After NCIP obtained the reversal of Ortiz’ convictions, court appointed lawyer Mark Broughton and Hallman painstakingly reinvestigated the case against Ortiz, who was 16 years old at the time of his arrest. They spoke with not one, not two—but ten—alibi witnesses who were never interviewed by Ortiz’s original trial attorney. Based on their persistence and the evidence of Ortiz’s innocence, Assistant District Attorney Jonathan Skiles dismissed the murder charges against Ortiz.

During the re-investigation, and even after the charges against Ortiz were dismissed, Hallman has generously volunteered his time to help the Innocence Project. He has worked with NCIP’s students and attorneys to find witnesses, conduct interviews, gather necessary documents and obtain signed declarations. Hallman taught the students and attorneys who accompanied him in these efforts countless investigative skills, solutions to language barriers and gated communities, and most importantly, how to get witnesses and clients to open up and be truthful. His services have been invaluable and yet Hallman never charges the Innocence Project a cent.

Hallman has been a private investigator for the last eight years. He had been a security police officer in the United States Air Force and in the New Jersey National Guard. After serving his country, he spent years raising his four children, volunteering at their schools and coaching their sports teams, before founding Hallman Investigations in Fresno. While Hallman has plenty of paid work, he continues to volunteer on other Innocence Project cases in the Fresno area.

NCIP students and attorneys truly enjoy and appreciate working with Hallman. They describe him as “a wonderful investigator,” “a warm, friendly, generous person” and “hilarious.”

The Northern California Innocence Project would like to thank Charles Hallman for all his hard work and for his generosity in donating his time and skills to uncovering and correcting wrongful convictions.
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. We deeply appreciate all those who helped us raise a record breaking amount of money this year.

Please note: This list reflects cumulative gifts and pledges received between January 1, 2008 to December 31, 2008. We make every effort to compile an accurate list. If your name is missing, misspelled or there are other inaccuracies, please contact Lee Raney, Associate Director, at 408-554-1945 or email lraney@scu.edu.

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Benefiting the Northern California Innocence Project

April 16, 2009
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HONORING:
The Honorable H. Lee Sarokin, (ret.), who served as a U.S. district judge for many years, and also served on the U.S. Court of Appeals for the Third Circuit from 1994 until 1996.

The NCIP Justice League: Donna Dubinsky, Debbie Hall, Russ Hall, John Hodge, and Stacey Keare, for spearheading major financial contributions, either in their own right or by encouraging donations from others, to help support the needs of NCIP.

Kevin Green, who was wrongfully convicted of murder in California and served over 15 years of a life sentence before being exonerated in 1996.