



10-1-2009

The Innocence Quarterly [Fall 2009]

Northern California Innocence Project

Follow this and additional works at: <http://digitalcommons.law.scu.edu/ncipnewsletter>

Automated Citation

Northern California Innocence Project, "The Innocence Quarterly [Fall 2009]" (2009). *Northern California Innocence Project Newsletter*. Book 4.

<http://digitalcommons.law.scu.edu/ncipnewsletter/4>

This Article is brought to you for free and open access by the Northern California Innocence Project at Santa Clara Law Digital Commons. It has been accepted for inclusion in Northern California Innocence Project Newsletter by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com.

Northern California Innocence Project



NCIP Wins Unconventional Case Martin Laiwa Released on Parole after 15 Years

NCIP does not typically represent inmates in parole proceedings, instead seeking to have convictions overturned and charges dismissed. Sometimes, no matter how firmly convinced of an inmate's innocence we are, circumstances prevent us from advancing a successful challenge to a conviction. Then we may seek another way to help. Martin "Tate" Laiwa's was just such a case.

Laiwa's case was among our first when we opened our doors in 2001. Eight years later, on June 15, 2009, Laiwa was released from prison on parole after serving 15 years on a 15-to-life sentence for a homicide. Laiwa has always maintained his innocence.

On the morning of August 15, 1992, Joe Poe was shot at point-blank

range with a rifle owned by Laiwa. The shooting occurred in Laiwa's home on the Pomo Indian Reservation in Mendocino County. Five other men were present that morning, having spent the night together drinking and partying. Two of the men, Mr. M and Mr. D, testified that they saw Laiwa shoot Poe. Mr. D also testified that after the shooting, he took the gun from Laiwa, wiped it down, drove away from the house, and threw the gun into a nearby marshy area. But police were unable to locate the weapon.

Although an officer testified that Laiwa had confessed to the murder, a tape recording of the interrogation demonstrated no confession – just anguish that the shooting had occurred at his home. The officer claimed that the confession had taken place in a few moments that the recorder had been turned off, yet when the recorder was turned back on, there was no reference to the alleged confession.

Laiwa testified on his own behalf, maintaining that at the time of the shooting he was in the bathroom. He ran out of the bathroom and saw Mr.

D holding a gun. Laiwa took the gun from Mr. D, though Mr. D took it back and left the house with it. The defense also established that Mr. D had been wearing a red tank top that evening, consistent with a witness' description of the shooter's attire immediately after the shooting.

Finally, Laiwa had no motive for killing Poe and no history of violence. There was, however, a history of "bad blood" and hostility between the families of Mr. D and Poe. Further, Mr. D had previously been convicted of other crimes and at the time of the shooting was on probation for armed robbery. Despite this, Laiwa was convicted and sentenced to 15-years-to-life for the murder of Poe.



Attorney Jennifer Klem (right) with Martin "Tate" Laiwa after his release from prison.



Advisory Board Members

Fred Anderson	Dennis McBride
Jim Anderson	Robin Wright Penn
Margalynne Armstrong	Donald Polden
James Donato	Nikki Pope
Gordon Eubanks	Frank Quattrone, Chair
Barbara Fargo	Dennis Riordan
Nancy Heinen	Kathleen Rydar
Pat Kern	Barry Scheck
Gloria Killian	Paul Sunshine
Ellen Kreitzberg	Anthony Williams
Paul Locatelli, S.J.	Elizabeth Zitrin
Andrew Ludwick	

NCIP Faculty/Staff

Cookie Ridolfi, Executive Director
Linda Starr, Legal Director
Lee Raney, Associate Director

Rhonda Donato, Supervising Attorney
Rhonda Dyer, Database Administrator
Seth Gordon, Clinical Fellow
Paige Kaneb, Clinical Fellow
Amy Kennedy, Acting Case Manager
Jill Kent, Supervising Attorney
Sandy Lichau, Office Manager
Sarah Perez, Special Assistant to the Director
Maurice Possley, Visiting Research Fellow
Audrey Redmond, Marketing and Communications
Tina Yang, Special Projects

Managing Editor

Audrey Redmond

Copy Editor

Suruchi Mohan

Designer

Texto Graphic Design

Photography

Allan Chen
Jen Kennedy
Benjamin Martin

Special Acknowledgements

Michelle Waters
Julia Yaffee

Guest Contributors

Supriya Bhat
Dana Nachman

This newsletter is published twice a year for friends of the Northern California Innocence Project at Santa Clara Law, 900 Lafayette Street, Santa Clara, CA, 95050; 408-554-4790 (tel), 408-554-5440 (fax); ncip@scu.edu. We welcome your comments.

The Northern California Innocence Project at Santa Clara Law, a part of the Innocence Network, operates as a law school clinical program where student interns, clinical fellows, attorneys, and volunteers work to identify and provide legal representation to wrongfully convicted prisoners. NCIP is also dedicated to raising public awareness about the prevalence and causes of wrongful conviction as well as promoting substantive legal reforms to prevent future wrongful convictions.

From the Executive Director



CHARLES BARRY

There are times in this work when no matter what we try to do to reverse the injustices of wrongful convictions and reform the law to address their causes, it seems we're spinning our wheels. I am excited to report this is *not* one of those times.

In March, criminal justice reform gained significant momentum when the National Academy of Science (NAS) released its long-anticipated comprehensive report on the reliability of forensic sciences. Their finding, which confirms what post-mortem review of DNA exoneration cases have been telling us for more than a decade, is that there are serious problems with what has long been considered unassailable forensic science. It is no longer a matter of debate – there is now ample proof that much of what has passed for forensic science in the past has been the root cause of countless wrongful convictions.

The release of the NAS report carries significant influence. Its conclusion that the forensic sciences require significantly strengthened oversight, research and support before they can be relied on to identify the correct perpetrator of crime and ensure public safety provides much reason to be encouraged.

We have also seen increased attention, not only by the media but more importantly by the courts, to the serious problem of prosecutorial misconduct. Courts are overturning more and more convictions citing serious misconduct by prosecutors as the reason for the reversal. The recent decision in the case of Greg Reyes, former Brocade CEO, is yet another example. Mr. Reyes was indicted on charges that he backdated stock options and committed a crime by deceiving Brocade's finance department about it. Now, five years and millions of taxpayer dollars later, the Ninth Circuit Court of Appeals has overturned the case ironically because prosecutors deliberately deceived the jury to get the conviction. See page 10 for more on this.

On the day after the *Reyes* decision came down, two other federal cases of prosecutorial misconduct made news in California — in *U.S. v. Harrison*, also a Ninth Circuit case, and a bank robbery case in which a federal judge in San Francisco delivered a blistering lecture to a prosecutor for his improper argument in the case.

And in one of our own cases the same week, a Lake County jury acquitted Bismarck Dinius in a case in which the prosecutor committed outrageous misconduct. Not only was he found to have withheld exculpatory evidence but he engaged in blatant misconduct by writing an open letter to the press prior to trial expressing his personal opinion of Mr. Dinius' guilt. Despite the prosecutor's shocking action, the jury found the evidence did not support conviction and acquitted Mr. Dinius. Look for more about this case on page 4, on our web site, and in upcoming e-newsletters.

Given these recent events and the widespread public interest in these issues, we know reform is possible. We are energized, invigorated, and encouraged by what we have been able to accomplish, and embrace with passion and commitment the work still left to do.

We thank you for all you do to make this work possible.

Cookie Ridolfi
Cookie Ridolfi

National Academy of Sciences Urges Comprehensive Reform of U.S. Forensic Sciences

At least 241 people nationwide have been exonerated through post-conviction DNA testing. Based on post-conviction analysis of these cases, unvalidated or improper forensic science was found to have been a factor in roughly half of the wrongful convictions.

In a development that could transform forensic science nationwide, the National Academy of Sciences (NAS) recently released a comprehensive report finding that the forensic sciences, encompassing a wide range of forensic disciplines, need significantly strengthened oversight, research and support.

Despite the efforts of many forensic science professionals to achieve excellence in their fields, the NAS reported finding significant disparity in the depth, quality, and overall reliability of the forensic information being generated.

According to the report, with the exception of DNA analysis “no forensic method has been rigorously shown to have the capacity to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual or source.” Because experts agree that only five to ten percent of a crime lab’s work involves DNA analysis, these findings raise significant concerns about the reliability of the thousands of convictions that relied upon the other less rigorously employed and evaluated techniques.

“The report confirms empirically what we in the trenches have seen in case after case,” said NCIP Director Cookie Ridolfi. “It shows the extent to which the lack of standards and critical analysis of forensic evidence can lead to wrongful conviction.”

NAS Calls for National Oversight

In 2007, at the behest of Congress, a diverse committee of scientific and legal experts convened to examine the delivery of forensic science evidence in the courtroom and make recommendations to address any identified problems. The NAS conducted research and held hearings — culminating in the release of the NAS report in February, 2009.

The committee reported that analytically based disciplines, like DNA analysis, toxicology and drug testing, are significantly more reliable than disciplines that depend on an expert’s subjective interpretation of evidence such as arson, bite mark, and fingerprint analysis. The committee studied accuracy and error rates, the collection and flow of evidence from crime scenes to courtrooms, and bias and human error in the interpretation by forensic experts. Despite the efforts of many forensic science professionals to achieve excellence



Left: This stain on Jeffrey Rodriguez’s jeans was consistent with hundreds of household products. Right: DNA has been proven to be one of the most reliable disciplines in forensic science.

in their fields, the NAS reported finding significant disparity in the depth, quality, and overall reliability of the forensic information being generated. To address these concerns, the committee recommended that a “national institute of forensic science” be created — a recommendation gaining support from policymakers, legal experts, and forensic professionals.

Risks associated with the misinterpretation of forensic evidence and the manner in which forensic practitioners testify is illustrated in the case of Jeffrey Rodriguez, who was represented by Santa Clara County Public Defender Andy Gutierrez with help from NCIP. After a first trial ended in a hung jury, Rodriguez was convicted in 2003 of armed robbery and sentenced to 25-years-to-life. His conviction was based in part on forensic expert testimony presented by a prosecution expert, that a stain found on Rodriguez’s jeans was “indicative” of motor oil, evidence critical to establishing Rodriguez’s presence at the crime scene. The criminalist later said “by indicative” he never meant to give the impression that the stain contained motor oil, only that it was consistent with motor oil. The problem with the testimony however, was that the stain was also consistent with hundreds of ordinary household products,

continued on page 19

From Tragedy to Travesty to Truth

NCIP Helps Attorney Victor Haltom Prevent a Wrongful Conviction

On a pitch black night on Clear Lake, as a sailboat headed back to shore, an off-duty police officer traveling 40–55 mph in his power boat rammed into the sailboat, jumped its entire length and landed back in the water, injuring all five people on the sailboat and killing one. Rather than charging the officer, the Lake County District Attorney's Office charged Bismarck Dinius — who happened to be sitting at the tiller of the sailboat — with manslaughter and boating under the influence.

The Tragedy

It began three years ago, as five acquaintances decided to go for a sunset sail on Clear Lake the night of April 29, 2006. Experienced sailor Mark Weber owned the 27-foot sailboat, and he manned the sails as Bismarck Dinius sat at the tiller. Weber and Dinius had both participated in a sailing regatta earlier in the day, with Weber claiming second place. The sun set, and according to all accounts it was dark — an almost moonless night — with barely a hint of wind. As the group headed back to shore at approximately 9:15 p.m., they were struck from behind by a 385 horsepower, 24-foot Baja Outlaw speed boat, operated by off-duty Lake County Deputy Sheriff Russell Perdock.

All five of the sailboat passengers suffered injuries as a result of the accident. One passenger, 51-year-old Lynn Thornton, Weber's fiancée, suffered severe head injuries and died a few days later.

The Travesty

One year after the crash, following an investigation conducted primarily by the Lake County Sheriff's Department, Dinius, who admitted to drinking a beer and sampling a few wines at a wine tasting held after the regatta, was charged with manslaughter — a charge that could have resulted in up to four years in state prison. The DA failed to charge Deputy Perdock, who witnesses reported seeing at a local bar the evening in question.

The prosecution's primary case against Dinius hinged on the sailboat lights. Although multiple witnesses saw the sailboat with its lights on that night, Perdock claimed that the lights were off. The prosecution argued it was Dinius' duty to make sure the sailboat's lights were on and that his failure to do so was the cause of Thornton's death.

The defense refuted this pillar of the prosecution's case during the trial. Renowned boating safety and light expert Dr. William Chilcott testified that the obvious wave and distortion in the stern light's filament demonstrated that the light was on immediately prior to the impact, because filaments do not bend unless they are hot.

The investigation and prosecution of this case were conducted with countless examples of bias, corruption and incompetence, including:

- Sergeant James Beland, on duty the night of the accident, offered to administer a breathalyzer to Perdock after the crash, but a superior ordered him not to do so.
- Beland, who was fired after he testified at the preliminary hearing, testified at the trial that he was also ordered to alter his reports from the night of the accident.

- The time and date on Perdock's blood sample indicated it was drawn over 27 hours after the accident — well past the time for it to be meaningful as to blood alcohol content.



Bismarck Dinius and wife Roshell smile with relief after Dinius' acquittal.

- For approximately 16 hours the Lake County Sheriff's Office left Perdock's blood sample in a locker — a locker Perdock had a key to.
- Resident Doug Jones saw the sailboat pass his home with its stern and cabin lights on. When he told this to a Lake County Deputy Sheriff the day after the accident, the deputy told him they had already concluded the lights were off. The deputy made no report of this conversation.



LATITUDE8.COM

Mark Weber's boat after being struck by Deputy Perdock's speedboat.

Dubbed “The Strange Case of Bismarck Dinius” by online observers, Dinius’s case was unusual for a number of reasons — among them the fact that NCIP was involved. Those familiar with NCIP’s work know that the Project ordinarily comes onto the scene post-conviction; that is, after a person has been wrongfully convicted. Why then was the Project involved in this trial? In the words of Dinius’ attorney Victor Haltom, “I’ve worked with NCIP on other cases, and this one seemed like a good fit because Bismarck is clearly innocent.” It was also clear from the outset that the case was riddled with government misconduct, one of the primary causes of wrongful conviction, and an area in which the Project is actively seeking reform.

In addition, in a display of misconduct and attempt to influence the jury pool, District Attorney Hopkins posted an “Open Letter” on his website during jury selection in which he called Dinius “a drunken sailor,” misrepresented the facts of the case, and referred to evidence that had already been ruled inadmissible at trial. This letter was quickly reproduced in numerous news publications.

Justice is Served

In Dinius’ defense, attorney Victor Haltom argued that Dinius was nothing more than a scapegoat; that the entire prosecution was a concerted effort to protect Perdock; and that the prosecution demonstrated overt incompetence, corruption, and prosecutorial misconduct.

Haltom did an outstanding job representing Dinius and ensuring the jury was apprised of all the facts so they could make an informed decision. NCIP attorneys Seth Gordon and Paige Kaneb and Legal Director Linda Starr assisted Haltom with research, strategizing, trial preparation, and general support. Kaneb sat second chair and questioned two witnesses during the trial.

During closing arguments, Haltom asked the jury to send a clear message to Lake County law enforcement and the District Attorney’s Office that the citizens of Lake County will not put up with such corruption.

The jury’s response was clear: on August 20, 2009, after seven hours of deliberation, the jury found Dinius not guilty of causing the boat accident death

of Thornton. Not only did they acquit Dinius of the felony charge, but they also found Dinius not guilty of the lesser misdemeanor charge of boating under the influence.

“We were ecstatic and relieved that the right thing happened in this case,” said Kaneb. “Now Bismarck and his family can move forward with their lives.”❖



PAIGE KANEK

Roshell & Bismarck Dinius, NCIP Attorney Paige Kaneb, and Defense Attorney Victor Haltom, elated that justice prevailed.

Exonerees Struggle for Compensation as Fight to Re-establish their Innocence Proves Challenging

In 2000, legislation passed in California providing for compensation to exonerees of \$100 a day for each day they spent wrongly incarcerated. In reality, exonerees are often denied this compensation.

John “JJ” Tennison and Antoine Goff were wrongfully convicted of the 1989 murder of Roderick Shannon in San Francisco. Both men spent nearly 14 years in prison before the court overturned their convictions, finding that the prosecution team had withheld evidence of their innocence, and issued a declaration of factual innocence. Despite this, the State of California has denied them any compensation.

The State’s case against both men was weak from the start and involved two of the main causes for wrongful conviction: mistaken eyewitness identification and prosecutorial misconduct. It consisted only of eyewitness identifications by two young

girl had asked her to lie, and that police had coerced her into claiming she had seen Tennison and Goff at the crime scene when she had not.

Re-investigating the case years later, attorneys discovered that the prosecution had failed to disclose exculpatory evidence, including a confession to the murder by Lovinsky Ricard, who said neither Tennison nor Goff was involved. Multiple eyewitnesses confirmed

Despite California’s statute providing the wrongfully convicted \$100 a day, Mr. Tennison and Mr. Goff were denied such compensation.

Ricard’s confession. The prosecution also hid from the defense the existence of a \$2,500 reward fund that may have influenced the two girls who implicated Tennison and Goff.

Due to the efforts of Goff’s attorney, Diana Samuelson, and Tennison’s attorneys, Elliot Peters, Ethan Balogh, Daniel Purcell, Steven Ragland and Stacey Wexler of Kecker & Van Nest LLP on August 26, 2003, the United States District Court reversed Tennison’s conviction; on September 23, 2003, the San Francisco County Superior Court reversed Goff’s conviction. On October 27, 2003, the San Francisco County Superior Court, with the agreement of the San Francisco County District Attorney’s Office, issued an order declaring both Tennison and Goff factually innocent. Both men were released with no work experience, job offers, or savings.

Despite California’s statute providing the wrongfully convicted \$100 a day, Mr. Tennison and Mr. Goff were denied

such compensation. The Board of Control found that the men had failed to establish their innocence, and also “had contributed” to their wrongful convictions by failing to tell their attorneys that the word on the streets was that Ricard, the person who confessed to the crime, was responsible – ignoring that the prosecution already had that evidence. The Board claimed it was difficult to believe that neither Tennison nor Goff was aware of what people on the streets were saying during the year they were in jail awaiting trial.

“It is so frustrating how difficult if not impossible it is to get exonerees compensation from the State for what the State put them through,” said Linda Starr, NCIP legal director. “We secure exonerations for our clients, and years later, we may secure civil settlements for them, but the State vigorously opposes paying these paltry statutory amounts that will permit them to survive.”

In addition to applying for state compensation, Tennison and Goff sued the city for violating their civil rights. Fortunately, their civil suits have resulted in the compensation these men deserve: Goff’s civil case recently settled for \$2.9 million and Tennison’s for \$4.6 million. However, no amount of money can replace the years these men have lost. ❖

For more information on compensation issues, watch “\$100 A Day” on Thursday, November 5th, at 6:30pm on KTEH. The film depicts Palo Alto exoneree Rick Walker’s battle for compensation after his exoneration. To view a trailer of the film visit www.ontopix.com/watchtrailer.html.



Antoine Goff was denied compensation for his wrongful conviction by the state, but was successful in his civil suit.

girls whose stories were contradictory, internally inconsistent, and incompatible with the physical evidence. One of those witnesses later admitted she had never been at the crime scene, that the other

NCIP Welcomes New Advisory Board Members

Andy Ludwick: A Fresh Perspective

Frank Quattrone's encounter with the justice system left friends, such as Andy Ludwick, stunned. Ludwick, a fellow business leader, has seen two other friends endure years of a grueling fight with the system that at times seems so heavily stacked against the innocent. He decided to make a difference by joining NCIP's advisory board.

"I have been personally touched several times by what can happen to individuals, their families, and society when the justice system breaks down. I am excited about doing something about it," Ludwick said.

Ludwick is well equipped to help make a difference. After earning his bachelor's degree ('67) and MBA ('69) from Harvard University, Ludwick began his career at Xerox Corp., where he held several positions. He co-founded SynOptics Communications, served as its CEO, and later CEO of Bay Networks. In 1996, he was awarded Harvard Business School's prestigious Alumni Achievement Award for his entrepreneurial success. He now serves on the Dean's Council for the School of Engineering & Applied Sciences at Harvard.

"Andy is one of the brightest, most successful, and thoughtful CEOs with whom I have ever worked," said Quattrone. "I first met him in 1988 when my firm, Morgan Stanley, led the IPO of SynOptics. We later served on



Andy Ludwick

the board of a private technology company, where I experienced firsthand Andy's outstanding leadership,

creativity, and strategic thinking as a board member. These qualities will serve NCIP well as we continue to broaden our network of contacts, board members, and donors."

Cookie Ridolfi agrees. "We are beyond lucky to have Andy on our board," she said. "He is extraordinarily thoughtful and creative, and brings a fresh perspective to our board." ❖

Nancy Heinen: Focusing on Social Justice

Following 25 years of corporate and law firm experience, Nancy Heinen is now focused on philanthropy and matters of social justice. As a part of that career shift, she recently joined the NCIP advisory board.

Heinen was most recently the chief legal officer at Apple. In September 1997 Steve Jobs recruited her as a key member of a small executive team at Apple focused on leading its successful re-emergence as an industry leader and consumer product powerhouse. Heinen was the chief legal officer responsible for overseeing all legal matters and government affairs for Apple worldwide until May 2006.

Heinen first learned about NCIP when she attended NCIP's *Justice for All* awards dinner in 2008. "I was inspired by the resiliency and strength of those exonerees that had been victims of a justice system gone terribly wrong," she said.

Her own experience with a government enforcement action made her appreciate the difficulties faced by innocent people thrust into a system tilted toward guilt — many of whom may be denied access to competent defense counsel and exculpatory evidence. "The criminal justice system needs independent agents challenging its work in order to make sure it is only convicting those whose guilt is proven beyond a reasonable doubt," Heinen said. "And there needs to be recourse when that doesn't happen."

"Nancy is a great lawyer, understands the shortcomings of government and our legal process, and has genuine compassion for the less fortunate members of our society and a desire to help," said advisory board member Fred Anderson.

"Nancy brings so much to our Board," commented Cookie Ridolfi, NCIP Executive Director. "Her broad business background and deep



Nancy Heinen

understanding of the legal system are huge assets. We are truly lucky to have her."

A partner of SV2 Social Venture Fund, Heinen currently

serves on several advisory boards, including the Advisory Board of the University of California Berkeley Center for Law, Business and the Economy. She also consults with individuals, start-ups and nonprofit institutions looking to develop their organizational capacity for growth.

Heinen received an A.B. with honors in Psychology and English from the University of California at Berkeley and holds a J.D. from the University of California at Berkeley School of Law (Boalt Hall). ❖

Former Prosecutor Leads NCIP Innocence Investigation

Sometimes it takes a prosecutor to pursue a claim of innocence. Not long ago, partner Neal Stephens in the Palo Alto office of Cooley Godward Kronish was leading the Major Narcotics Section in the U.S. Attorney's Office in Miami, Florida. Today, Stephens is driving NCIP's investigation into the innocence claim of Mr. B, an inmate in a California prison who was convicted in 1994 of multiple murders. Mr. B has maintained his innocence since he was arrested and claims the conviction was premised on faulty eyewitness identifications. Because it is an ongoing case names have been changed and details omitted.

How did a former prosecutor find the motivation to take on this effort? The answer for Stephens was simple. He says he wanted to take an Innocence Project case because, as a former prosecutor, he knows that the system doesn't always get it right. "This is particularly true when you have a politically charged murder case in state court where the prosecution relies exclusively on eyewitness identifications and has no forensic evidence that ties the defendant to the crime." Stephens added, "Having put many defendants in jail, I know how

bad conditions can be in prison. I can't imagine being wrongfully convicted of a crime and serving a sentence in any of the prisons I've visited." So he wanted to

As a former prosecutor, he knows that the system doesn't always get it right.

do his part on a pro bono basis to help someone that NCIP thought needed representation.

Stephens' experience at the U.S. Attorney's office has given him some unique insights into pursuing innocence claims. "Mr. B's case is similar to my previous work because you need to understand life on the street in a poor urban area to properly conduct the investigation," he said. "You won't get very far if you can't appreciate the perspective and motivations of the witnesses and investigators." On the other hand, he said Mr. B's case is different from the proactive narcotics cases he prosecuted because identity was never at issue in his cases. "We typically caught defendants in the act of committing the crime, either by using wiretaps or undercover agents," Stephens said. "That's the biggest difference with a reactive homicide investigation, where establishing the identity of the defendant may be much harder to do and can result in the wrong person being accused of the crime."

Stephens, who now specializes in white collar criminal defense, internal investigations, and complex civil litigation, has assembled a team of young associates at Cooley that includes associates Chris Durbin, Shannon Eagan, Meghana Raorane and Ben Jones. As

Stephens notes, "They all volunteered for the project understanding the challenges ahead, because they believe in the case and NCIP's mission."

"NCIP and its clients are fortunate to have such talented and committed volunteers as Neal Stephens and his colleagues," said Supervising Attorney Rhonda Donato. "They make a tremendous difference as we continue to work through our backlog of cases waiting for justice." ❖



Neal Stephens, Partner
Cooley Godward Kronish, LLP

If you or your firm would like to assist an NCIP client with a case, please contact NCIP supervising attorney Rhonda Donato at 408-554-4790, rdonato@scu.edu.

Why I Give

Dr. & Mrs. Birt Harvey: NCIP is a Worthy Cause

When Dr. & Mrs. Harvey made their initial donation to NCIP in 2007, it was in honor of Eleanor Kraft, another supporter of the Project. But as they learned more about NCIP, they continued to donate and are now consistent supporters of the Project's work.

"As we read more about the Northern California Innocence Project, we were struck by the worthiness of the cause," said Dr. Harvey.

In October 2008, Dr. Harvey invited NCIP Director Cookie Ridolfi to speak at the Fellowship Forum, a group of leaders from the Palo Alto and Stanford community who gather to discuss matters of general interest. "Cookie gave a great talk about the issue of wrongful conviction and further convinced me that the work they do at the Innocence Project is extremely worthwhile."

"Dr. Harvey is a very gracious man," said Ridolfi. "He and his wife make the time to support important causes like ours, and we really respect them for it."

A pediatrician in Palo Alto for many years, Dr. Harvey served on the Stanford faculty before retiring in 1996. In addition to supporting the causes important to them, he and his wife now enjoy visiting San Francisco, attending the symphony and ballet, and traveling.

"We are truly grateful for the continuous support of the Harveys and others like them," said Lee Raney, NCIP's Associate Director. "As our list of open cases grows, continuous donations like those of the Harveys make a tremendous impact on our ability to address our backlog of almost 900 cases." ❖



Dr. & Mrs. Birt Harvey

Become a consistent donor! See page 21 to learn about the options for consistent giving or visit our web site at www.ncip.scu.edu.

Ken Goldman: NCIP has Commendable Objectives

Frank Quattrone's conviction shook Ken Goldman's faith in the justice system. "The current system presumes guilt without looking at the facts, then the burden is on you to prove your innocence," he said.



Ken Goldman

Goldman then went through his own experience with the SEC at Siebel Systems, which provided him an up-close-and-personal account of how the system can function. The Siebel case was dismissed but still left an impression on him. "It reinforced my feeling that once you're in the system, the onus is on you to prove your innocence, because the presumption is guilt."

Goldman's donations to NCIP began in 2004 in support of Quattrone, but he has continued to give for many reasons, including his own personal experience, all the stories of the wrongly convicted he has read about in the press, and a long and positive association with Santa Clara University, his wife's alma mater.

But it was at the *Justice for All* dinner where Goldman heard firsthand the stories from people wrongly convicted.

"All of the stories were outstanding and highlight what happens to real people when the justice system gets it wrong. It is so important to bring about awareness on the federal, state, and local levels about this issue," he said.

"My philosophy is that when you believe in something, you put your name behind it," Goldman said. "And the objectives of NCIP couldn't be more commendable." ❖

See back page or visit www.justiceforalldinner.com to learn more about NCIP's upcoming *Justice for All* awards dinner March 11, 2010.

Prosecutors Run Amok

By Kathleen “Cookie” Ridolfi

As printed in the *San Francisco Daily Journal*, September 2, 2009

Reprinted with Permission of Daily Journal Corp. (2009)



These are just the latest examples of a pernicious problem in our nation’s criminal justice system — prosecutors who breach their ethical duty for the sake of convictions, some of them repeatedly. Even more disturbing is the reality that prosecutors have no reason for concern — despite evidence that prosecutorial misconduct is among the leading causes of wrongful conviction.

I was a contributor to a recent study published by the California Commission on the Fair Administration of Justice that detailed how California appellate courts found prosecutors committed misconduct in 444 cases. Research identified 347 of the prosecutors and 30 of them were found to have committed misconduct more than once. Two of them actually did it three times. So what happened to them?

In only one case was there a sanction — the prosecutor was disciplined by the State Bar. This will continue as long as there are virtually no consequences for engaging in misconduct. Reyes faced prison and personal ruin on charges that he deceived his company. So what happens to a prosecutor who obtains a conviction based on lies? The answer

On August 18, speaking for the 9th Circuit Court of Appeals in *U.S. v. Reyes*, Judge Mary Schroeder sent a much-needed reminder that “In representing the United States, a federal prosecutor has a special duty not to impede the truth.”

Too often prosecutors are so intent on winning a conviction that they disregard the truth and their ethical duty. Two weeks ago in California, prosecutorial misconduct surfaced in three cases in federal court— the most publicized being the reversal of the conviction of former Brocade CEO Greg Reyes.

is nothing. Prosecutors have legal immunity from damages, even when their conduct is as foul as that in the case against Reyes.

And this is just the tip of the iceberg.

There is a much larger body of cases where prosecutorial misconduct is alleged, but appellate courts declare the conduct to be “harmless error.” That’s a legal determination that even if the misconduct had not occurred, the outcome of the trial would still have been the same — a conviction. On the face of it, this rule basically means that misconduct is acceptable in cases where evidence is strong, but not acceptable in the close cases. Said another way—misconduct is legal in the cases of the really guilty, but not legal in the cases of the not-so guilty.

The harmless error rule emboldens prosecutors to roll the dice and hope

a reviewing court will not reverse the conviction. The harmless error rule allows prosecutors to engage in misconduct without even losing the conviction. And, just as appalling, because appellate rulings rarely actually identify by name the prosecutors who engage in misconduct — whether the cases are reversed or not — there is no accountability. And so, there are no sanctions.

Often, by the time the misconduct is identified and upheld by an appellate court, the prosecutors have moved on to other work as private lawyers, judges and politicians. And a defendant who would see to sue a prosecutor faces an almost impossible task.

Prosecutors acting as advocates have absolute immunity, even if there is evidence that they acted intentionally, in bad faith and with malice. If prosecutors

“Where an attorney in a criminal proceeding has engaged in egregious misconduct, appropriate corrective action should include a report to the State Bar, even if the misconduct did not affect the judgment of the court.”

—The final report of the California Commission on the Fair Administration of Justice

act as investigators, they are entitled to qualified immunity—they can be held liable for damages only if the misconduct violated the law.

Fortunately for Reyes, an appeals court recognized the egregious nature of the misconduct and reversed the conviction. Reyes was indicted on charges that he backdated stock options — a legal act— but thereafter deliberately deceived Brocade’s finance department by keeping that information from it. Now, five years and millions of taxpayer dollars later, the 9th Circuit Court of Appeals has ruled, ironically, that prosecutors deliberately deceived the jury to get the conviction.

Backdating is not illegal as long as the transactions are properly recorded. Record-keeping is the responsibility of the finance department, not the CEO. Prosecutors knew that in interviews with the FBI well before the trial that Brocade’s CFO and controller said they were aware of the backdating.

With such testimony in hand, one wonders why an indictment was even brought. The CFO and the controller never testified at trial — the prosecution did not call them and they declined to cooperate with the defense. Despite these statements, the prosecution told the jury that “the entire finance department did not know about the backdating.”

That was a lie.

And the 9th Circuit saw it for what it was — an instance of prosecutorial misconduct so damaging to Reyes’ constitutional right to a fair trial that the conviction had to be voided.

And in the very same week, two other such cases unfolded in California. The 9th Circuit found prosecutorial misconduct in *U.S. v. Harrison*, and a federal judge in San Francisco blistered a prosecutor who improperly argued a bank robbery case.

We have a very big problem in our justice system and it’s not Reyes. The case has already wasted millions of taxpayer dollars. To retry it in an effort to save face — if that were even possible in light of what we now know the evidence to be — would only further dirty the face of our justice system.

Once touted as a poster prosecution of corporate fraud, the case now stands as an example of a much bigger problem— prosecutors who abuse their discretion to win convictions instead of following their ethical duty.

For too long, virtually the only consequence of prosecutorial misconduct has been the reversal of a conviction, forcing retrials many years later when memories often have faded and where victims must relive their terrors all over again.

Our tax dollars would be much better spent addressing the need for prosecutorial accountability, starting with a re-examination of immunity protection. Absolute immunity protects only the unethical prosecutor.

The ethical prosecutor does not need it. ❖

Leading Causes of Wrongful Conviction

As the pace of exonerations has increased across the country in recent years, wrongful convictions have revealed disturbing fissures and trends in our criminal justice system. Together, these cases show us how the criminal justice system is broken — and how urgently it needs to be fixed.

Common Causes

Here are some of the most common causes of wrongful convictions:

- Eyewitness Misidentification
- Unvalidated or Improper Forensic Science
- False Confessions / Admissions
- Informant or Snitch Testimony
- Government Misconduct or Prosecutorial Misconduct
- Bad Defense Lawyering

These factors are not the only causes of wrongful conviction. Each case is unique and many include a combination of the above issues.

Robin Wright Penn Honors the Exonerated at Justice

“I just could not believe that this could happen in America,” proclaimed actress Robin Wright Penn as she recognized the exonerees at the Northern California Innocence Project Awards Dinner. The awards ceremony on April 16th in San Francisco honored many who raise awareness about wrongful convictions and fight to rectify and prevent them.

Wright Penn, a member of the advisory board of the Project, awarded exoneree Kevin Green the 2009 Freedom Award. Green, an ex-Marine from Orange County, spent over 15 years in prison for aggravated assault and attempted murder of his wife and murder of his unborn child before he was exonerated. His conviction and subsequent incarceration was based on mistaken eyewitness identification, a leading cause of wrongful convictions.

Many of the exonerated were present on stage with Green, including Palo Alto exoneree Rick Walker, Santa Clara County exonerees Mashelle Bullington and Ken Foley, San Francisco exoneree Antoine Goff, and Bakersfield exoneree John Stoll, as well as Texas exoneree David Pope, and Sacramento exoneree and NCIP advisory board member Gloria Killian.

Dr. Rubin “Hurricane” Carter

presented the 2009 Justice Award to former federal district court Judge H. Lee Sarokin, who granted Carter’s release from prison 24 years ago. Carter, a former middleweight boxer, had been sentenced to three life terms for a triple homicide which he consistently maintained he did not commit. Judge Sarokin found that Carter had been denied his right to a fair trial and that his prosecution had been “based on racism rather than reason, and concealment rather than disclosure.”

In an unforgettable moment during his introduction, Carter reached into his jacket pocket and unfolded the writ of habeas corpus signed by Judge Sarokin which authorized his release. Holding the writ in his hand, Carter declared to the audience, “I never leave home without it.”

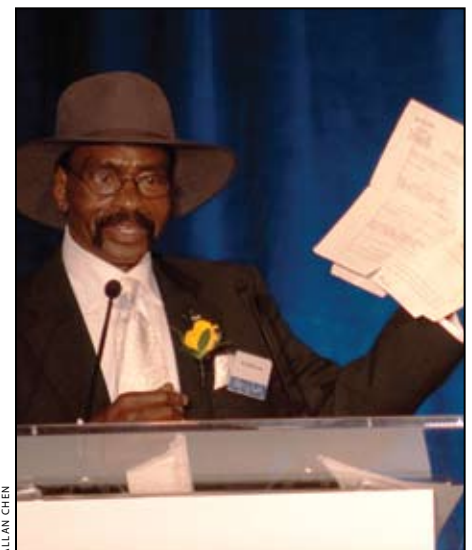
Judge Sarokin, with his characteristic humility, said he had “just been doing his job” when he had pronounced Carter’s freedom. Judge Sarokin added that even though he knew the outcome of the story, seeing clips from the film “The Hurricane” featuring Denzel Washington still brought tears to his eyes.

Frank Quattrone, founder and CEO of Qatalyst and advisory board chair of the Project, honored Donna Dubinsky, Russ Hall, Deborah Hall, John Hodge, and Stacey Keare with the 2009 Leadership Award for their fundraising

efforts and financial contributions. These colleagues and loyal friends of Frank and Denise Quattrone secretly organized an enormous and successful fundraising effort for the Project in a show of support for the Quattrones whose own experiences with the justice system precipitated their involvement in the Project.

Keynote Speaker Jennifer Thompson Cannino was the epitome of strength and grace as she told the audience of her horrific experience as a college student, being attacked and raped at knifepoint in her apartment. She spoke of her vivid memories of the features and physical characteristics of the perpetrator, a man who she mistakenly identified as Ronald Cotton. Eleven years later, DNA testing demonstrated what Cotton had insisted was true: he was innocent.

Two years after his release, Cannino and Cotton finally met, and their journey resulted in a remarkable friendship. Cannino, Cotton and Erin Torneo collaborated to write “Picking Cotton: Our Memoir of Injustice and Redemption.” This New York Times bestseller is not only a tale of courage; it is also a powerful example of the problems of eyewitness identification. (See related sidebar article on page 11 on the causes of wrongful conviction.)





for All Awards Dinner

Northern California Innocence Project Director Cookie Ridolfi concluded the dinner by urging the audience to get involved in any way possible: by volunteering, fundraising, and raising awareness regarding wrongful convictions. ♦

— *Supriya Bhat*

PHOTO CAPTIONS: Opposite page left to right: Robin Wright Penn with exonerees Rick Walker, Ken Foley and Mashelle Bullington; Dr. Rubin Carter holds his writ of habeas corpus saying, "I never leave home without it." This page clockwise from left: exoneree Kevin Green speaks after accepting the Freedom Award on behalf of all exonerees; Exonerees with Judge Sarokin; Robin Wright Penn & Cookie Ridolfi; Judge Sarokin speaks after accepting the Justice Award; Jennifer Thompson Cannino; center: Frank Quattrone with Russ Hall, Debbie Hall, Stacey Keare and John Hodge.

**Don't miss JFA 2010 on March 11, 2010
at the San Jose Fairmont Hotel — Save the Date!**



BEN MARTIN



ALLAN CHEN



BEN MARTIN



ALLAN CHEN



ALLAN CHEN



BEN MARTIN

Recent Faculty and Staff Additions

Maurice Possley

Pulitzer Prize-winning journalist Maurice Possley recently joined the Northern California Innocence Project (NCIP) staff as a Visiting Research Fellow.

Possley left the Chicago Tribune in 2008 after nearly 25 years as an investigative reporter specializing in criminal justice. A journalist since 1972, he has a deep familiarity with actual innocence cases and the systemic problems in our justice system. He was a three-time finalist for the Pulitzer Prize for his work on wrongful convictions and wrongful executions. His work has helped free innocent people from prison as well as expose the tragic executions

of innocent people.

In 2008, he was part of a team of Tribune reporters awarded a Pulitzer Prize for investigative reporting for a series of articles on hazardous children's products. The articles prompted numerous recalls as well as the most comprehensive overhaul of the U.S. Consumer Product Safety Commission in its history.

In his new role at NCIP, Possley will continue pursuing his commitment to justice. He will use his skills as an investigative journalist to collaborate with NCIP Executive Director Cookie Ridolfi to build upon her landmark study on prosecutorial misconduct and publish the results. He will also work with law students and interface with other Santa Clara University departments on the issues of ethics, law, and policy.

"We couldn't have hired a more accomplished journalist than Maurice

Possley," said Ridolfi. "His investigations have not only led to exonerations in individual cases but his research helped convince Illinois Governor Ryan to call a moratorium on the death penalty in that state. Law reform is a priority for NCIP and with Maurice's experience, we have the potential to make a significant difference in California."

"I am very pleased to work with Cookie and the Northern California Innocence Project," said Possley. "I am very much committed to working for a fair and equitable justice system and I look forward to continuing to investigate systemic problems and wrongful convictions."

Possley is the author of two non-fiction books: "Everybody Pays: Two Men, One Murder and the Price of Truth" and "The Brown's Chicken Massacre." He is currently working on his third book, "Hitler's Pistol," to be published in 2010. "Hitler's Pistol" is the never-before-told story of a U.S. Army officer who led a team of soldiers sent to capture Adolf Hitler in Munich in the waning days of World War II.

Possley taught investigative journalism at Northwestern University's Medill School of Journalism, the University of Montana School of Journalism, and the University of Michigan Law School.

Lee Raney

What are the chances that a successful career businesswoman, founder and CEO of a well-established consulting firm, would suspend her career and agree to take a pay cut to become Associate Director of an Innocence Project?

In an extraordinary move by an extraordinary person, Lee Raney made that choice. She had no idea when she volunteered four years ago to teach an entrepreneurial class to a group of

12-year-olds at The Girls' Middle School in Mountain View that it would lead her to becoming a vital member of NCIP's Advisory Board and eventually codirect the program.

"I was coaching a group of four girls, one of whom was Cookie and Linda's daughter Zoe," she said. "The girls had to create a product and build a business around it, then present their proposals to a team of Venture Capitalists, and ask them for money—just like in the real world."

At the VC presentations in Google's Mountain View auditorium, Lee met Zoe's mom Linda, and they started chatting. When Lee learned that Linda worked for NCIP, Lee asked if Linda knew her friend Frank Quattrone, who Lee had known since they attended Stanford Business School in the 1980s. Linda answered yes then immediately brought Cookie over to meet Lee.

Cookie quickly persuaded Lee to join NCIP's Advisory Board. "As a long-time friend of the Quattrones, I saw what he went through in his criminal case, so when the opportunity to join the board was presented, I knew I had to get involved," Lee said.

Lee is the founder and CEO of Pivot Point Strategies, a consulting firm focused on revenue acceleration for companies and non-profits. She is active in fundraising for the Stanford Graduate School of Business and for the Leukemia & Lymphoma Society's Team in Training, and is also a founding board member of EGGs for Foster Children.



ALLAN CHEN

Maurice Possley



NORMAN DAVIDSON

Lee Raney

Alumni Profile

Seth Gordon

Attorney Seth Gordon is practicing the kind of law that first inspired him to enter the profession. Seth is the newest member of the Northern California Innocence Project's legal team.



NORMAN DAVIDSON

Seth Gordon

Seth is a graduate of Boise State University and earned his J.D. degree at the University of Idaho. While studying in Idaho, Seth

participated in the school's Immigration/Human Rights Clinic, where he represented clients facing deportation proceedings, as well as clients seeking asylum in the United States because of political, religious and social persecution in their home countries.

As a law student, Seth had the opportunity to argue an immigration/duress case at the Ninth Circuit Federal Court of Appeals and ultimately won the right of a man to return to the United States for a fair hearing. After returning to California, Seth completed an LL.M at UC Berkeley and landed a position practicing corporate law. But his heart just was not in it.

He says his interest in the Innocence Project is personal and longstanding. While he was in high school, a close family member was wrongfully convicted and spent two years in state prison. He is the first to admit that the lure of corporate law and large civil litigation firms was tempting. In the end, however, he is back to his original plan.

Seth puts it this way: "After a brief detour into corporate law and complex civil litigation, I realized that the path I found myself traveling was a far cry from the reason I decided to go to law school in the first place: protecting the rights of those who have been wrongfully accused."

Malika Wright-Brown

Malika Wright-Brown began her studies at Santa Clara Law School intending to be a district attorney. During the summer following her first year in law school, she participated in the NCIP clinical program and worked on a complex innocence case with two other NCIP students. The case involved investigating and interviewing often hostile witnesses to put together the story of what actually happened during an incident. After working on this case, she realized she would be a better defense attorney. "I knew I could do my best to keep my clients from writing to NCIP in the future," she said.

After her admission to the Bar in 2006, Wright-Brown joined the Stanislaus County Public Defender's office. Wright-Brown says that working with indigent clients gives her a chance to help regular people, to feel she is making a difference in society. She sees her challenge and her satisfaction in making it hard for the district attorney to look at each of her clients as a number. Instead, she forces them to think about the face, the background, and the situation of each person she represents, particularly her mental health clients who all too often are steamrolled by the system. In her defense of her clients, she "make[s] a mosaic of the person's life."

Over the summer of 2008, Wright-Brown spent five weeks working in Nevada on the Obama campaign. She reads historical fiction as an escape from the rigors of work. But what she cannot avoid are thoughts about the well being of the man whose case she and her classmates worked on while at NCIP. She believes he is innocent, yet still in prison.



PROVIDED BY MALIKA WRIGHT-BROWN

Malika Wright-Brown

Fund-a-Fellow

Your contributions help us hire recent law school graduates like Seth into our NCIP Fellowship Program.

Given our clinical program and the nature of our cases, we usually only hire more experienced lawyers and professionals. With this program, NCIP Fellows are able to work closely with our Supervising Attorneys on NCIP cases and to develop expertise in post-conviction litigation.

Donate online today at www.ncip.scu.edu to support this Fellowship Program.

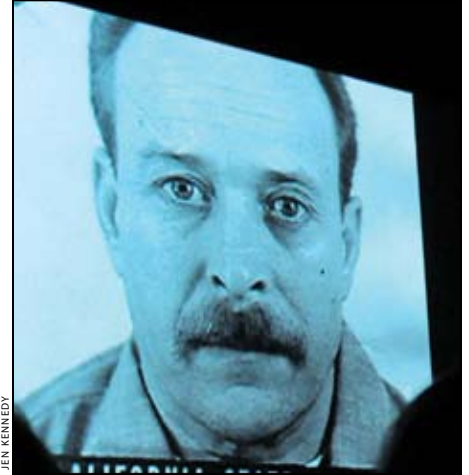
***Witch Hunt* Makes its Television Debut**

Story of NCIP’s exoneration of John Stoll takes nation by storm

Witch Hunt, the documentary executive-produced and narrated by Sean Penn, made its television debut on MSNBC in April and has since been shown numerous times to audiences totaling more than four million. Comments in support of John Stoll and the wrongfully convicted in the film flooded MSNBC and film websites after the showings.

In April, the filmmakers took the movie to Bakersfield, the scene of the ultimate injustice that put John Stoll and his codefendants away for a combined 72 years.

Filmmakers Dana Nachman and Don Hardy and Executive Producer Sean Penn led a rally at the Kern County courthouse in advance of the screening, calling on the citizens in Bakersfield to demand more from their justice system. They announced the formation of CLEAR — the Committee for Legislation, Education, and Reform — in Bakersfield. The wrongfully convicted men and women and their children, all depicted in the film, spoke to the audience of more than 200, and the Bakersfield media came out in force. After the rally, the crowd moved to the historic Fox Theater where the emotional audience audibly reacted to the twists



John Stoll, the day he was arrested.

and turns of the heart-wrenching story. The audience gave the cast, crew, and NCIP attorneys a standing ovation and participated in a vigorous question and answer session after the movie ended.



The audience gives exonerees and their families, filmmakers, and NCIP attorneys a standing ovation at the movie’s end.

In addition to impacting millions of people over the last several months, the documentary continued to collect awards, receiving the Audience Award at the Cinequest Film Festival in San Jose and the Grand Jury Prize at the Washington D.C. Independent Film Festival. ❖

— Dana Nachman

DVDs of *Witch Hunt* are available for purchase at www.justicecrisis.org. A portion of the proceeds of the DVDs and movie downloads support NCIP and our mission of seeking out and representing wrongfully convicted men and women like those portrayed in the film.



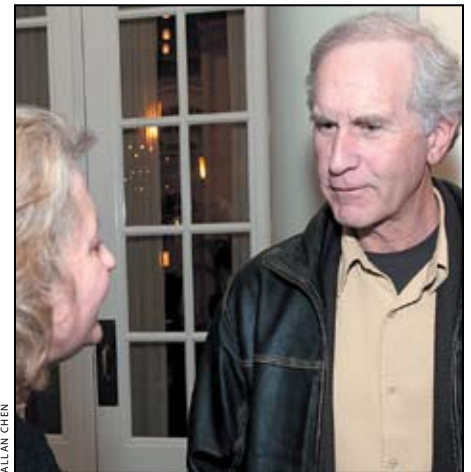
Victor Monge (far right) who as a child was pressured into falsely testifying against Stoll, tells how it has affected his relationship with his own children. Exoneree Jeff Modahl comforts him while attorneys Michael Snedeker, Jill Kent, Linda Starr and Cookie Rldolfi look on.



John Stoll, NCIP board chair Frank Quattrone, and former Hewlett Packard Board Chairwoman Patricia Dunn after the *Witch Hunt* viewing.



Santa Clara Law School Dean Donald Polden and wife Susie.



NCIP Associate Director Lee Raney and former San Jose Mayor Tom McEnery.



Exonerees Jackie and Jack Cummings (far right) and family.



Photos from San Jose's *Witch Hunt* screening at Cinequest Festival on February 28, 2009.

Martin Laiwa: An Unconventional Case

continued from page 1

Laiwa Supporters Afraid to Testify

With the assistance of 12 students over many semesters, we spoke with dozens of people, most of whom had close ties to the reservation and to the Native American community. Many of them told us that Mr. D, incarcerated at various times for other offenses, had bragged to them that he had committed the shooting or threatened to do to them what he did to Poe. All were too afraid of Mr. D, his friends, and family to testify.

As it became apparent that those who could help demonstrate Laiwa's innocence were too frightened to do so publicly, NCIP decided to represent him in parole proceedings. In 2004, 2005, and 2006, NCIP represented Laiwa before the Board of Prison Terms (BPT), which considered whether he should be released on parole or whether he represented a danger to society. Each year Laiwa demonstrated his continued progress and suitability for parole. And while each year the BPT denied him parole, the members of the Board provided positive feedback regarding his extraordinary efforts to make the most of his incarceration.

Laiwa Becomes Leader to Other Inmates

Facing frequent threats on his life while in prison, Laiwa remained deeply connected to his Native American heritage and spiritual practice. He participated in all prison sweat-lodge activities and became a leader in Native American spiritual organizations. He maintained a discipline-free record throughout his incarceration and took the initiative to accomplish every self-improvement goal available to him

in prison. He completed nearly every course offered at Avenal State Prison and consistently received outstanding reviews for his performance. When he had successfully exhausted the curriculum of available courses, he volunteered to teach other inmates.

While an officer testified that Laiwa had 'confessed,' a tape recording of the interrogation demonstrated no confession.

While Laiwa has steadfastly maintained his innocence since the day of the shooting, he recognized the destructive role of alcohol in his life. He diligently participated in both Alcoholics Anonymous and Narcotics Anonymous meetings, rarely missed a session, and expressed his deep remorse for the abuse of alcohol that had contributed to the situation resulting in Poe's death.

He worked to acquire the skills needed to obtain a job upon his release from prison, earning his master landscape engineer certification. He maintained close ties with his devoted and supportive family. Before his release, Laiwa received at least three offers of employment, had secured a number of viable places to live, and won support from many people in the community who pledged to assist him on his return.

Even the law enforcement agencies involved in Laiwa's incarceration expressed doubt in the necessity of his continued incarceration. The Sheriff-Coroner of Mendocino County explicitly withdrew his prior opposition to Laiwa's release. The District Attorney's Office of

Mendocino County filed a letter of non-opposition to Laiwa's release. And the State's psychologist unequivocally stated that Laiwa would not pose a threat to the community.

Board Grants Laiwa's Parole

In 2007, NCIP enlisted the assistance of the law firm McDermott, Will and Emery. Associate Jennifer Klem, partner David Alexander and others from the firm began working with NCIP to obtain Laiwa's freedom. After assembling all the needed information and preparing a brief in support of his parole, Klem and Alexander represented Laiwa at his 2007 parole hearing. At the conclusion of the hearing, they called NCIP Legal Director Linda Starr and said, "Are you sitting down? The Board granted Tate's parole."

Of the 98,396 men on parole in the state of California, only 48, or .05 percent, were convicted of first degree murder.* This is such a statistically insignificant number it is reflected in the State's report as 0 percent.

*According to California Parole Census Data, Dept of Corrections and Rehabilitation, Offender Information Services Branch as of June 30, 2009.

DNA: most reliable forensic tool

continued from page 3

But the process was not over.

The decision went to the entire Parole Board, which let the decision stand. In a highly unusual move, the Governor, who has the authority to veto the parole “declined” to reconsider the Board’s grant, permitting Laiwa’s release.

Laiwa’s release date still needed to be set. After waiting 18 months and participating in a reclassification hearing in February 2009, the Board granted Laiwa additional credits for time in custody based upon his excellent work and school performance, and set his release back to his home in Mendocino County for June 2009. His family, most of whom still live on the reservation, continued their plans to prepare for his return.

On the day before Laiwa’s release, the parole agent found out Laiwa would not be released back to his home in Mendocino County amid concerns about hostility and safety from an unnamed member of the victim’s family, most of whom had supported Laiwa’s release. After several days of delay and rearrangements, Laiwa was finally paroled to a halfway house in Los Angeles, far from home and his Native American way of life. But it is freedom, and he hopes he can return to his home after he has established himself on parole.

Thank You

The Northern California Innocence Project is deeply grateful for the assistance of Jennifer Klem and David Alexander of the law firm McDermott, Will and Emery for their role in helping secure Martin Laiwa’s release. We also want to thank the many students for their assistance. We wish Martin Laiwa the best as he moves forward and begins a new chapter of his life. ❖

including soap and ordinary cooking oil, a detail the expert failed to mention in his testimony before the jury.

In Rodriguez’s case, the expert’s mischaracterization suggested a strong but false connection between the defendant and the crime scene. And although ethically obligated to do so, neither the prosecutor nor the criminalist made any effort to correct the misimpression. Re-testing by two different laboratories successfully challenged the expert’s testimony, and after serving nearly six years, Rodriguez’s conviction was reversed.

Sever Crime Labs from Law Enforcement

Compounding the risks associated with lack of standard terminology, the report cited significant potential bias stemming from lack of independence between prosecution experts and prosecutors. Again, the Rodriguez case provides an example with the Santa Clara County crime lab operating under the authority of the Santa Clara County District Attorney — introducing bias into the forensic process. To prevent undue influence on crime lab analysts by prosecutors who oversee them, NAS recommended separating the forensic laboratory from law enforcement and from prosecutor’s offices.

In Rodriguez’s case, the police investigator told the criminalist to test the material to find out whether a stain contained motor oil. The criminalist should have been directed to test the stain and report on his findings. Instead, the criminalist examined the fabric looking for the evidence that was crucial to the prosecutor’s case. Not surprisingly, the criminalist testified about motor oil and not any of the hundreds of household products the stain was also consistent with.

“The NAS report highlights the problems with forensic science and opens the door for law reform,” said Ridolfi. “It’s a huge step in the right direction.” ❖

—*Santa Clara Law students Joie Rodolfa, Jacqueline Mahoney, and the New York Innocence Project contributed to this article.*

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 cumulative gifts and pledges received between January 1, 2008 to July 31, 2009. 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 408-554-4790 or email lraney@scu.edu.

Names in red indicate consistent giving

EXONERATORS (100,000+)

Frank and Denise Quattrone Foundation/Frank and Denise Quattrone

LIBERATORS (\$50,000–\$99,999)

The Campbell Family Foundation/
William and Roberta Campbell Gerbode Family Foundation
Listwin Family Foundation/
Don Listwin

FREEDOM FIGHTERS (\$25,000–\$49,999)

George and Danielle Boutros
William Brady
Howard Rice Nemerovski Canady Falk & Rabkin
Kenneth and Elaine Langone Paul, Weiss, Rifkind, Wharton & Garrison

JUSTICE SEEKERS (\$10,000–\$24,999)

Anonymous (5)
Albert and Jeanne Abramson
Fred and Marilyn Anderson
James Anderson
Harris Barton
Cooley Godward Kronish
DLA Piper
Adrian and Anne Dollard
Donna Dubinsky and
Leonard Shustek

Patricia Dunn and William Jahnke
Judith Estrin
Gordon and Ronda Eubanks
Forbes & Manhattan (USA), Inc.
John Gunn and Cynthia Fry
HRJ Capital, LLC
Sean Kali-Rai
Keare/Hodge Family Foundation/
Stacy Keare and John Hodge
Keker & Van Nest, LLP
Richard and Kathryn Kimball
Ronnie Lott
Stan and Sherry McKee
Morgan, Lewis & Bockius
Gib and Susan Myers
Michael Nachman
O'Melveny & Myers
Orrick, Herrington, Sutcliffe Foundation
Nikki Pope
Qatalyst Partners
Doug Ring
Rosenblum/Greene Family Fund/
Mendel Rosenblum and Diane Greene
Kathy Schlein
Ted and Linda Schlein
Ken Schroeder and Frances Codispoti
Shearman & Sterling
Simpson Thacher & Bartlett
Skadden, Arps, Slate, Meagher & Flom
Steve Young Family Foundation/
Steve and Barbara Young
Paul Sunshine
Thelen Reid Brown Raysman & Steiner, LLP
Van and Eddi Van Auken

Weil, Gotshal & Manges
Wilson Sonsini Goodrich & Rosati Foundation

PATRIOTS (\$5,000–\$9,999)

Anonymous (3)
Asset Management Co.
Alan and Marianne Austin
Thomas and Polly Bredt
William Carrico and Suzan Woods
John and Claire Davis
Davis Polk & Wardwell
Dewey & LeBoeuf
Mory and Stephanie Ejabat
Farella Braun & Martel
Peter Freiss
Kenneth Goldman and Susan Valeriote
Mike and Joan Hackworth
Harbourton Foundation/
Jay and Amy Regan
Leonard and Eileen Herman
Franklin (Pitch) Johnson
William and Mary Jane Kelly
Mitchell and Julie Kertzman
Andrew Ludwick
Mayer Brown LLP
Ed and Lee Nigro
TJ and Valeta Rodgers
Allen and Cynthia Ruby
Karen Rudolph and Jimi Simmons
Lee and Marjorie Sarokin
Kathy Schlein
Silicon Valley Bank
Kenneth and Alice Starr
The Tech Museum of Innovation
Jonathan Turner
Zhone Technologies
Anthony and Teresa Zingale

ADVOCATES (\$2,500–\$4,999)

Anonymous (1)
John Burton
Francis and Christine Currie
The Davidson Family Foundation/
Charles Davidson
Pamela Dougherty
Russell and Deborah Hall
Robert and Allyson Kavner
Latham & Watkins
Tom Lehrer
David and Julia Popowitz
Larry and Jane Solomon
Dennis and Margie Sullivan

DEFENDERS (\$1,000–\$2,499)

Anonymous (3)
Ronald and Jeryl Abelmann
William S. and Janice R. Anderson
Margalynne Armstrong and Andrew Pierce
Robert and Sara Beles
Jeff and Becky Bleich
John and Sally Bourgoin
Lanita Burkhead
California Commission on the Fair Administration of Justice
Caufield Family Foundation/Frank Caufield
Cohn Family Fund/Robert and Martha Cohn
Comcast Cable Communications
Conte's Generator Service/
Frank and Laurel Conte
Jennifer Crum
Crystal Springs Foundation/
Mike and Joyce Murray
Alan and Lauren Denenberg
Reid and Margaret Dennis
Jason and Sarah Dilullo
Khoa Do and Donna Nguyen Do
Bill Donahoe and Kris Klein
The Draper Foundation/
Timothy and Melissa Draper
Barbara Fargo and Marty Williams
Kurtis Fechtmeyer
Irwin and Concepcion Federman
Gregory Gallo
Charles and Dianne Giancarlo
Ron Gonzales and Guisselle Nunez
Melinda Haag
Dennis Hall
Hanson Family Law Group
Dr. and Mrs. Birt Harvey
Kenneth Hausman and Elynn Lazarus
Robert Kent
Robert Kieve
John Kispert
Ellen Kreitzberg and Tom Hoglund
Michael Kresser and Darby Siempelkamp
Steve LaVaute
James and Ann Lazarus
Legacy Venture Management
William Lehrer
Leslie Family Foundation/
Mark and Debra Leslie
Mr. and Mrs. Craig Lighty
Shaun Maguire
Mark Magner and Wendy Hawkins

Donor Honor Roll

Shaun Maguire
 Dennis and Lori McBride
 Robert McIntosh
 Stanley and Sharon Meresman
 Forrest and Cynthia Miller
 Tony and Suzanne Narducci
 Armond and Elaine Neukermans
 Notkin Family Trust/Shelby Notkin
 Mihir and Nancy Parikh
 Donald and Susan Polden
 Andrew and Debra Rachleff
 Debra Reed
 Riordan & Horgan
 Dave and Barbara Roux
 Greg Ryan
 Kathleen Rydar
 Hank Scherf and Vicki Sanders
 Albert Schreck
 Dhiren Shah
 Alan Shanken
 Edward and Kate Smith
 Larry Solomon
 Allan and Margaret Steyer
 Steyer, Lowenthal, Boodrookas,
 Alvarez & Smith LLP
 Don and Linda Strand
 Stephen and Patricia Sultz
 Stephen and Jean Sullivan
 Gerald and Martha Uelman
 Richard and Anne Van Horne
 Stephen and Aimee West
 William Lehrer Charitable Fund
 Wilson Sonsini Goodrich & Rosati
 Geoffrey and Amy Yang
 Cyril and Jeanne Yansouni
 Charlotte & Arthur Zitrin
 Foundation/Elizabeth Zitrin

PARTNERS (\$500–\$999)

Anonymous (3)
 Ilene and Robert Adler
 Arnof Family Foundation/Ian Arnof
 Allen and Michele Asch
 Charles and Jennifer Beeler
 Richard and Jackie Boberg
 Bonora D'Andrea, LLC
 Aldo and Diane Branch
 Mark Broughton
 Dolores Carr
 Emmett Carson
 John Cline
 David and Julie Cruickshank
 John and Susan Diekman
 James Dirks
 Donald Field

Andy and Karen Fisher
 Jean Gill
 Allen Hammond and Linda Darling
 Don Horgan
 Adam Huff
 Patricia Kern and Lawrence Rosania
 Eleanor Kraft and Kathleen Ladd
 Joan Lonergan
 David Mahony
 Michael and Jo McCarver
 Richard and Jessica Millard
 Courtney Minick
 Trudy Niehans
 Noke Charitable Foundation/
 Craig and Mary Noke
 Alexandra and George Pantazis
 The Praisner Family Foundation/
 Michael and Jan Praisner
 Lee Raney
 Mari Ellen Reynolds
 Wendy Richards
 Dennis Riordan
 William Roundtree
 William and Barbara Schwartz
 Chrissy Kaloudi Souliotes
 Joshua Tanzer
 Jack and Mary Lois Wheatley
 Anthony Williams
 Peter Yessne and Gail Bates

ASSOCIATES (\$250–\$499)

Anonymous (3)
 Georgia Bacil
 Michael and Pamela Barnes
 Jeff and Eva Camp
 Richard Ciummo
 Melissa Davidson
 Dermer Law Firm/Joe Dermer
 V.M. and Anjula Dewan
 Janice Dong
 John and Bernadine Dutra
 Mary Emery
 Tanya Friedman
 Ross and Mary Gilbert
 Mary Jean Greenwood
 Brian and Michele Gustafson
 Donald Hardy
 Daniel Kelly
 David and Maureen Kennedy
 William and Teresa Krivan
 Jeanette Leach
 Jaime Leanos
 Casey Lilienfeld
 Mark and Carole Louie
 Leanne Hull MacDougall

Larry Marshall
 Cynthia Mertens and Jim Rowan
 Christian Nielsen
 Beverly Norman-Cooper
 Michele Oberman
 Nancy Oliveira
 Arthur and Karyn Plank
 Stefanie Rosenberg
 Margaret Russell and
 Lee Halterman
 Nilima Sabharwal
 Harvey Sherman
 Carolyn Silberman
 Chrissy Kaloudi Soulioti
 Dena Spanos-Hawkey
 J. Daniel and Vonda Tibbitts
 Victor and Jennifer Tirva
 Lynne Woodward

COUNSELORS (\$100–\$249)

Anonymous (5)
 Helen Abruzzini
 Louis and Maureen Basile
 Karen Bernosky
 Ashvini Bhave
 Chris Boscia
 Tanya Bracegirdle
 Emma Bradford and Nigel Pavao
 Geoffrey Braun
 Luis Calero
 Marco Campagna
 Edward and Jeanne Cavallini
 Colleen Chien
 Jesse Choper
 Mary Conner

The Cooper Law Offices/
 Colin Cooper
 Roy Crawford
 Madeline Delone
 Richard Doctoroff
 Marty Feldman
 Thomas Ferrito
 Barry and Susan Fisher
 John F. Font, PhD
 Susan Frank
 Larry Gerston
 Peter and Leanne Giles
 Peter Golcher and Michelle Waters
 Barbara Gooding
 Jack Grandcolas
 Roger and Marian Gray
 David Gregorio
 Brad Gross
 Harrington & Ingram/
 Richard Ingram
 Tim Heck and Varda Treibach-Heck
 Dale and Deborah Ikeda
 Arthur Jackson
 John and Karin Jelavich
 Gretchen Kenney
 Joanne Kirchner
 KKR Financial LLC
 Conrad Klein and
 Joan Dempsey Klein
 Richard Leo
 Jeremy Manning
 Shelly Masur
 Margaret McAuliffe
 Sachin Mehta
 Charles Mesirow
 Thomas Mitchell
 John and Elizabeth Moulds

Consistent Giving

How do I get my name in red?

There are several ways to make sure your giving pattern is consistent and to join the supporters who are highlighted this year.

EFT: Set up an electronic funds transfer with your bank on a monthly, quarterly, or annual basis.

Recurring Gifts: Set up recurring payments with your credit card. You can decide the frequency.

Pledge: Make a pledge commitment over five years. We will remind you annually.

Grant: Recommend a multiyear grant to your charitable trust or community or family foundation. Most foundations can set up annual installments over a five-year period.

Donor Honor Roll

Theresa Newman and Charles Clotfelter
 Glenn and Merry Nolte
 Laura Noss
 Frank O'Neill
 Meghan Piano
 Helene Pier
 Michael Pressman
 Ann Ratcliffe
 Jennifer Rogar
 N.F. Rusteen
 Agnes Rymmer
 Carol Sanger
 Harriet Siegel
 Morton and Carol Siegler
 Mike and Francie Silva
 Alan Siraco and Amanda Roze
 Social Planet Communications
 Scott Solis
 Stephen Sperber and Roberta Silverstein
 Neal and Kathleen Stephens
 Augusto and Jaime Syjuco
 Beau Takahara
 Vivian Tan
 Nina Tolentino
 H. Anton and Carolyn Tucher
 Rob and Jennifer Warden
 Matthew H. Wilson
 Erich Winkler
 Michael Zampelli

FRIENDS (UP TO \$100)

Anonymous (1)
 Carleen Arlidge
 William and Cecilia Arzbaecher
 Stacey Beggs
 Mary Margaret Blanchard
 Marshall and Grace Bowers
 Meri Lisa Bozzini
 Jeremy Carroll
 Lauren Case
 Bridget Cash
 Kathleen Christensen
 Stephanie Clarke
 Bernadette Codrington
 Vince Cogan
 Paul Couming
 Laurel Davidson
 Daniel Dean
 Ellen Eggers
 Laura Eggers
 Alan Feller
 Jerry and Jan Finney
 Rabbi Allen Freehling
 Amanda Freel

Eugenio Garcia
 Lauren Geller
 Cliff Glickman
 E. Jackson and Audrey Going
 Traci Grant
 Abby Green
 Minoo Gupta
 Wilbur Haines
 Orlinda Hamel
 Liz Hamm
 Rob Harper
 Joie Healy
 Brette Hudacek
 Claudia Hyslop
 Josh Kaminker
 Marina Kanau
 Christine Kawamoto
 Silvia Keller
 Kelly King
 Kristi Kovacich
 Joseph Kral
 Laurie Laird
 Linda Levy
 Marilou Lieman
 Suzanne Loew
 Nicholas and Jody Long
 Carolyn MacKenzie
 Roger Malina
 Roger Marks and Judy Gottlieb
 Ben Martin
 Kevin and Silvia Martinez
 Miguel Mateos
 Terence McCaffrey
 Mary McComb and Gregory Clark
 Jessica McGuire
 Marie McEnery
 Liza Meak
 Meg Mettler
 Michael Millman and Cynthia Taylor
 Jo Ann Morgan
 Robert and Susan Morse
 Karen Mudurian
 Job and Maria Muhumuza
 Kristi Nevarez
 Sally Norvell-Graham
 Kevin and Barbara O'Reilly
 Henry Organ
 Sylvia Palma
 Stewart Park
 Alison Pease
 Marina Perelman
 Ricky and Marcella Pitts
 Darien Provence
 Sharon Raab
 Teresa Ramos
 Gregory and Kathryn Reader
 Samantha Reardon

Audrey Redmond
 Arthur and Julie Renninger
 Mariam Rodriguez
 Jessica Rosenberg
 Jared Rowe
 Donna Rowell
 Saundra Kae Rubel
 James Rudoy
 Maureen Pettibone Ryan
 Marian Sanders
 Kylee Sargenti
 Brian and Lauren Schryver
 Gregory Schultz
 Kirstin Sego
 Ashley Selman
 David Shelton
 Margaret Stevenson and David Flamm
 Mary Strong
 Henry and Mary Talifer
 Eloise Trainor
 Alejandra Vera-Vischer
 Charles Wallau
 Marjorie Waters and Louis Rose
 Alec Woodward
 Norma Yuriar

HONORING

In Honor of JUDGE GREGORY BROWN
 William and Donna Brown

In Honor of RUSS AND DEBBIE HALL
 Mark and Carole Louie

In Honor of JOHN HODGE AND STACY KEARE
 Alan Shanken

In Honor of ELLEN KREITZBERG
 Henry Organ

In Honor of JUDGE LEE SAROKIN
 Gordon and Ronda Eubanks
 Ross and Mary Gilbert
 Leonard and Eileen Herman
 Agnes Rymmer
 Kathy Schlein
 Ted and Linda Schlein
 Morton and Carol Siegler

In Honor of DENNIS MCBRIDE
 Kevin and Silvia Martinez

In Honor of JULIE SHAYESTEHMEHR
 Lee Raney

REMEMBERING

In Memory of WALT GILL
 Jean Gill

In Memory of DOROTHEA EGGERS MCARDLE
 Mary Conner
 Ellen Eggers
 Meg Mettler
 Job and Maria Muhumuza
 Alison Pease
 Gregory and Kathryn Reader

In Memory of GREGORY AND JAKE MILLER
 Michael and Pamela Barnes

In Memory of ERLE STANLEY GARDNER
 Eloise Trainer

In Memory of LEE SACHS
 Harriet Siegel

IN-KIND DONATIONS

Cooley Godward Kronish
 Design Resource
 Jennifer Piper
 Santa Clara Law
 Wilson, Sonsini, Goodrich & Rosati

MATCHING GIFTS

American Express Foundation
 BAE Systems
 The Capital Group Companies
 eBay Foundation
 Kaiser Permanente
 Merrill Lynch & Co.
 Microsoft
 Sun Microsystems
 Rockwell Collins International Inc.

Sign up for NCIP e-news

Get NCIP news delivered directly to your inbox. Sign up by emailing us at ncip@scu.edu.

Give the Gift of Freedom!

Your generosity helps to free the wrongly convicted.

Your donation provides the opportunity to achieve even greater success in 2009.

In 2009 the Innocence Project will process over 1,000 requests for assistance received from inmates who are among California's 172,000 prisoners. Currently, Innocence Project attorneys, staff and dozens of Santa Clara University law students are investigating or litigating over 100 active cases! Your support gives us the means to free the innocent and fight for systemic changes to ensure innocent people are not imprisoned for crimes they did not commit.

To donate by phone please call 408.554.4790

Please accept my gift to the Northern California Innocence Project.

My company will match my gift. Company name _____

Amount \$5,000 \$1,000 \$500 \$250 \$100 Other _____

Name _____

Address _____ City _____ State _____ Zip _____

Home phone _____ Work phone _____ E-mail _____

Please charge my credit card. Check one: Visa Mastercard American Express Discover

Card # _____

Expiration date _____ Name on card _____

Signature _____

My check, payable to Northern California Innocence Project, is enclosed.

Mail to Northern California Innocence Project at Santa Clara Law, 900 Lafayette St., Suite 105, Santa Clara Ca 95050

I would like to donate stock. Please contact me.

I would like to include NCIP in my estate planning.
Please contact me about your planned giving program.

My gift is in honor of _____

My gift is in memory of _____

Please list my name(s) in your donor publications as _____

No, thank you. Please do not list me in your donor publications.

*Your contribution is tax deductible under Internal Revenue Service Act section 501(c)(3).
Our Tax ID number is 94-1156617.*

Thank you for your generosity!

To donate at our website, go to www.ncip.scu.edu



Nonprofit Organization
U.S. Postage
PAID
Permit No. 22
Santa Clara, CA

Santa Clara University
Northern California Innocence Project
500 El Camino Real
Santa Clara, CA 95053-0422

RETURN SERVICE REQUESTED

www.ncip.scu.edu

You Can Help

5 Things you Can Do to Help Exonerate Innocent People and Prevent Wrongful Convictions

- 5** Get Connected, Stay Informed and Take Action. Join our Facebook page (search for Northern California Innocence Project) and invite your friends to do the same. Read our blog (<http://law.scu.edu/ncip/blog/index.cfm>).
- 4** Learn About your Local Procedures and Elected Officials. Many of the causes of wrongful convictions are decided locally, like policies for conducting lineups and recording interrogations. You have the right to know what these practices are. Contact your city police, county sheriff and/or other agencies to find out what their policies and procedures are. Do your research before voting for district attorneys and judges to ensure they value justice over winning a conviction at all costs.
- 3** Learn More about Wrongful Convictions and Spread the Word. There are dozens of books, films, television specials and other resources that can deepen people's understanding of the issues. See our recommended reading list on www.ncip.scu.edu, in the "Get Involved" section. Watch Sean Penn's *Witch Hunt* (purchase it on www.justicecrisis.org). Then, share the books and films with your friends, family and colleagues.
- 2** Donate to the Northern California Innocence Project. The Project is a nonprofit organization that relies on financial support from individuals and foundations. Your donation will help pay for DNA testing, forensic research, and investigative trips to interview eye witnesses, among other essential items. Use the form enclosed or go to www.ncip.scu.edu.
- 1** And the #1 thing you can do... Support NCIP's 2010 *Justice for All* Awards Dinner on March 11, 2010! Sponsor and join us for our Third Annual *Justice for All* awards dinner, where we honor individuals who raise awareness about wrongful convictions. Email or call Lee Raney lraney@scu.edu or 408-554-5521 for information and sponsorship opportunities.