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THE INNOCENCE QUARTERLY • FALL 2002

Innocence update: California man exonerated

By Cookie Ridolfi

Since the publication of our last newsletter, there have been significant developments in innocence work across the country. Nine more people have been exonerated as a result of DNA testing. One man, Albert Johnson, was wrongly convicted in California and sentenced to 24 years in prison after a jury found him guilty of dragging a young woman from a running track and raping her. The victim testified that she had had ample time to view her attacker who, she said, raped her and then stayed around talking with her for another half-hour.

Although there were major discrepancies between the victims' same-day description of the rapist and Albert Johnson's appearance, Johnson's picture was included in a photo spread presented to the victim 2½ months after the attack. It was during this procedure that the victim first identified Johnson. Although Albert Johnson asserted his innocence from the outset, his voice was not enough to overcome the impact of this mistaken eyewitness testimony.

The Johnson case is important not only because it demonstrates the enormity of the problem of wrongful conviction in the United States, but also because it disproves claims made by police and prosecutors that California does not suffer from the problems plaguing other states. This claim is unsupported.

In another recent California case, Jorge Hernandez, an 18-year-old Palo Alto man, was charged with brutally beating and raping a 94-year-old woman. According to police, Hernandez made incriminating statements during the hours he was interrogated. Two months later, police dropped the charges after DNA tests excluded him as the rapist. To this day, police have yet to explain how they extracted an incriminating statement from an innocent man, nor have they offered an apology to Hernandez or to his family.

Although police and prosecutors expressed shock and disbelief when news of Hernandez's innocence was first reported, just two weeks later it happened again in Santa Clara County. This time, allegations that An Vinh Nguyen had beaten and raped his mother were dismissed after DNA testing proved he was innocent. Nguyen spent three months in jail while he waited for testing.

The official line now is that Hernandez and Nguyen are isolated cases that demonstrate why Californians should have confidence in their justice system. After all, the system worked in these cases—these men were freed before they were convicted. This response, however, fails to answer the much larger question of what happens to others with claims of factual innocence in cases where there is no biological evidence to test.

Johnson, Hernandez, and Nguyen are not the only instances of wrongful arrest



Public Defender Mallory Street and Jorge Hernandez spoke at the NCIP's forum on DNA evidence and wrongful convictions. Photos © Shoestrung Productions.

NCIP holds public forum on local wrongful arrests

In September 2002, the NCIP held a public forum to discuss and raise awareness about the frequency of wrongful arrest and wrongful conviction. Mallory Street spoke about her client, An Vinh Nguyen, who was held for three months before police finally cleared him through a DNA test. Jorge Hernandez gave a moving account of his arrest for a brutal rape and how the arrest changed his life. Hernandez was arrested in July, and the media widely reported that he confessed to raping an elderly woman in his neighborhood. Hernandez was ultimately cleared as the prime suspect through DNA testing. NCIP Executive Director Cookie Ridolfi questioned how prosecutors could be sure they had convicted the right person in non-DNA cases when DNA showed these two prime suspects to be innocent. Also speaking at the forum were Hernandez's attorney, Maria Fonseca, Santa Clara University School of Law professor Ellen Kreitzberg, former SCU Law Dean Gerald Uelmen, and NCIP legal director Linda Starr.

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Golden Gate University: NCIP's satellite program

By Susan Rutberg

In August of 2001, Golden Gate University School of Law joined the NCIP to assist with cases where there were Northern Bay Area convictions. GGU students and faculty had a strong interest in working on wrongful conviction cases, and collaboration with NCIP/Santa Clara seemed a perfect fit.

Once a public defender, I am currently the Director of our Criminal Litigation Clinic and the Supervising



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Attorney for the Project. During our first year, Kris Ward, a graduate fellow in litigation, and Linda Colfax, Adjunct Professor and Deputy Public Defender, also provided supervision and assistance. Twenty students participated in the project, and we assessed and investigated approximately two dozen NCIP cases.

This year, I am the sole supervising attorney, but the project staff has been expanded to include administrative assistant Pat Paulson, teaching assistant Linda Berkowitz, and this year's Baxter Litigation Fellow Lizel Cerezo. We also have eight new students and thirteen cases in the pipeline.

This semester's students bring enthusiasm and valuable life experiences to the project. Some students add an interdisciplinary view to the course, including two joint degree (JD/PhD psychology) candidates, while others offer knowledge developed from past work experience at death penalty projects or as Street Law instructors and mental health counselors. Others draw on experiences that are more personal. One student spent time in custody himself as a youth and now works as an intern with Prisoner Legal Services at the San Francisco County Jail, and another grew up watching her Korean immigrant mother struggle with the justice system.

Previous students have described their participation in the project as "a life-transforming experience" (Linda Berkowitz, '03), "the most important work I have ever done, a chance to right a wrong, to insist on due process of the law" (Karen Rega, '04) and, "a reminder of the reasons I went to law school" (Agate Zweirzchowski, '02).

The slow pace of investigating prisoners' claims can be frustrating, but we have high hopes of eventually adding to the growing list of the exonerated.

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or conviction in California—just the most recent ones. What is different about these cases is that for the first time, pressure is being put on police and prosecutors to explain why mistakes are being made and what is being done to address their causes. The mistakes are not new, but public recognition of the problem in California is.

Recent developments in New York City's famed Central Park jogger case have also brought renewed attention to issues of wrongful conviction. Thirteen years ago, that case received national attention after five boys were said to have "confessed" to the brutal rape and beating of a young investment banker. The five were convicted and sentenced after prosecutors presented portions of videotaped confessions showing the boys telling inconsistent stories, accounts that were not only inconsistent with one another but also with the physical evidence in the case. The jogger case has since been turned on its head. The unraveling began a year ago when Matias Reyes, a convicted serial rapist and murderer, contacted prosecutors and admitted that he alone raped and beat the young jogger. DNA tests have since confirmed his account. These startling revelations underscore again the risk of wrongful conviction posed by overly-aggressive police interrogations techniques.

The work of innocence projects also continues to be the single most important force in eroding support for the death penalty. The possibility that we have killed innocent people has become real to most Americans. Politicians like Governor George Ryan of Illinois are now politically safe to voice concern that the death penalty might in some cases be state-sponsored murder. In October, Ryan held clemency hearings for many of Illinois' 160 death row inmates. This dramatic development came after investigations demonstrated that innocent prisoners may already have been put to death.

Innocence work is having a profound effect on our justice system, and the work of innocence projects in maintaining that momentum is crucial. At the Northern California Innocence Project we are investigating the problems of wrongful conviction in this state and we are working to educate students and the public about these important issues. At the same time, we are moving forward with investigations into the actual innocence claims of hundreds of Northern California inmates. Your support is critical to the success of our project, and I thank you on behalf of NCIP staff and students.

Humanizing the post-conviction appellate process

A student's perspective

By Jennifer Martin

We walked into the lobby to find approximately seventy-five people sitting around the room. Spotting a sign that said 'appointments,' we headed to the counter. Eventually addressed by one of the ten armed officers behind the counter, we were given numbers and processed. This included removing our shoes, having our papers searched, passing through a metal detector, and throwing away a tube of chapstick. We were pointed in the direction of the visiting area and passed through two electronically monitored doors and two twenty feet tall barbed wire fences before we were ushered into a tiny room in the corner where we sat behind wired glass, waiting. The table we sat at wobbled; one of its legs was shorter than the other. It had now been almost an hour and a half since we had arrived.

As we watched visitor after visitor arriving and reuniting with loved ones, all residents of Mule Creek State Prison, I began to wonder what I would feel when our appointment arrived. Until this very moment, I hadn't been nervous. Now, surrounded by armed guards, wired glass, and one hundred inmates, I was beginning to be so. What was I doing here? Was this necessary? What had I hoped to gain from this interview? Then a large, muscular, hard-looking man walked up to the door. I would soon know the answers to my questions.

We introduced ourselves and began to talk to him about his life. He told us about growing up, the challenges and trouble he faced in high school, and about his relationships with everyone of significance in his life. We talked about the crime he was convicted of and about the progress on the investigation. We spent about two and a half hours with him before we left.



They say justice is blind. In the post-conviction work I have done thus far, I've waded through cold transcripts, lists of physical evidence, complex and sometimes cumbersome briefs, and verbose opinions involving varied interpretations of the law. This work has been blind, blind to emotion and life. When reading transcripts, there is no way to feel the emotion of the courtroom trial, hear the intonation of the witness' testimony, or see the body language of the jury or defendant.

Intuition is an intangible sense. We read body language for information. We hear fear in a voice and see pain in a face. We can feel tension in the air. These things are not available for review in the transcripts of a trial. Juror's perceptions of the credibility of a seemingly solid witness (in the transcripts) can be changed by a defensive tone, a wavering voice, or an anxious physical tick. We only see testimony that lacks substance, where the jurors instead watched a nervous victim, perhaps with whom they sympathized.

Interviewing the convicted may help bring life back into the process.

I hadn't hoped to get much out of the interview. I had researched the case extensively and read a considerable amount of trial testimony. I had spoken to the trial attorney and investigators and read numerous media files as well. I knew what I thought had happened and what the prosecution and defense had argued. I went into the interview completely convinced that it would not change my view.

I came out of the interview completely changed. I did not learn any new facts about the case, but I learned plenty about the person. The post-conviction process can be very dry. Interviewing defendants, witnesses, and others involved with the case allows us to use our sensory perception to help evaluate. It allows a more complete analysis of the facts and brings new life to what can appear to be a one-dimensional case.

SAVE THE DATE

Mark your calendars for
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