Twelfth Client Freed by the Northern California Innocence Project

On March 28, 2011, after more than 20 years in prison, Maurice Antwone Caldwell was released from the San Francisco County Jail after San Francisco Superior Court Judge Charles Haines ordered him freed. Haines set aside Mr. Caldwell's 1991 conviction last December and ordered a new trial after lawyers for the Northern California Innocence Project (NCIP) at Santa Clara University School of Law demonstrated evidence of actual innocence and that Mr. Caldwell's defense attorney at trial was incompetent.

The exoneration was the second for NCIP in 2011. (See Franky Carrillo, page 2.) San Francisco County prosecutors subsequently decided to drop the case.

Mr. Caldwell was convicted and sentenced to life behind bars for a San Francisco murder based on the testimony of a single eyewitness, Mary Cobbs, who originally told police that the shooters did not live in the area and that she did not know their names or nicknames. During an initial interview, police brought Mr. Caldwell, who had been the witness' neighbor, to her door and referred to him by his name and nickname. Cobbs did not identify Mr. Caldwell at the time, but two weeks later picked him out of a photo lineup identifying him by his nickname “Twan.”

NCIP began representing Mr. Caldwell in 2008 and unearthed new evidence showing Cobb's testimony was wrong. NCIP located two eyewitnesses who, in sworn declarations, said Mr. Caldwell was not involved in any way. Moreover, the real killer confessed to NCIP that he committed the murder. That man is now serving a life sentence in a Nevada prison for a subsequent murder.

Maurice is a free man!

NCIP to District Attorney: Admit Convicting Innocent Man

After Maurice Antwone Caldwell was released from prison, NCIP staff attorney Paige Kaneb penned an eloquent editorial for the San Francisco Chronicle criticizing the San Francisco District Attorney's Office.

Even though the DA's office dropped the charges, prosecutors pronounced that Mr. Caldwell was free on a "technicality," and that he was, in fact, guilty, despite evidence uncovered by NCIP that another man committed the crime.

"It's difficult, sometimes, to admit making a mistake, but when the integrity and public perception of the criminal justice system is at stake, one would hope that the prosecution would admit the wrong man was convicted instead of clinging to a misguided perception of the evidence," Kaneb wrote.

"And citing a technicality is insulting. Unless you believe that rights guaranteed by the Constitution are no more than a technicality."

"The Constitution is not a technicality," Kaneb wrote. "Neither is spending 20 years, 6 months and 3 days incarcerated for a crime he did not commit. Caldwell lost his mother, grandmother and brother while in prison. He lost nearly half of his life. We can’t give him back that time, but let’s at least give him back his reputation and admit that the evidence overwhelmingly demonstrates his innocence."
Francisco Carrillo Jr. was exonerated after spending nearly 20 years incarcerated for a crime he did not commit. Evidence shows others committed the murder.

On March 14, 2011, the Los Angeles County Superior Court reversed Francisco “Franky” Carrillo Jr.’s 1992 conviction for the murder of Donald Sarpy, and ordered his release after nearly two decades behind bars.

Linda Starr, Legal Director of the Northern California Innocence Project at Santa Clara University School of Law and a member of Carrillo’s legal team, said, “Franky’s conviction is another stark example of major problems that contribute to so many wrongful convictions—bad eyewitness identifications caused by poor police identification procedures and tunnel vision by police that not only keeps them from even considering that they may have made a mistake, but results in their continuing to work to vindicate their original bad work.”

Carrillo, now 37, was arrested in 1991 for the January 1991 murder of Donald Sarpy, 41, who was shot as he stepped out of his home in Lynwood. Sarpy’s son, Dameon, and five others were nearby, but were not injured.

Carrillo was convicted based on identification testimony from Dameon and the five others. All six now admit that they did not really see anything, and were influenced to make their identifications of Carrillo. In addition, two other men have confessed to the shooting and said that Carrillo was not involved.

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Carrillo’s legal team consisted of attorney Ellen Eggers; attorneys Alison Tucker, George Harris and Erika Droux from the law firm of Morrison and Foerster; Starr and attorney Paige Kaneb from NCIP, and investigators Pam Siller and Jesus Castillo. The attorneys and investigators conducted a lengthy investigation and developed the evidence of innocence that led to an evidentiary hearing that began March 7.

The real break in the case came when Dameon Sarpy, son of the murder victim, read a handwritten confession from one of the true perpetrators and then admitted that he could not then nor now identify anyone in the car and that he had relied on the word of another witness, Scott Turner, to identify Mr. Carrillo.

Carrillo’s legal team then tracked down four of the other five witnesses and all recanted their testimony, saying they did not actually see the shooter because it was dark
After Witnesses Recant

Franky's family rejoices

and everything happened so quickly.

The District Attorney's Office tracked down the remaining eyewitness who also recanted his identification.

During six days of testimony before Superior Court Judge Paul Bacigalupo, the eyewitnesses testified that they could not really see the shooter's face, and the true perpetrators asserted their rights against self-incrimination and refused to testify. Carrillo also testified that he was not involved in the shooting. Defense investigator David Lynn testified to a confession he obtained from another man who exonerated Carrillo.

The original prosecuting attorney testified that the initial investigation was “shoddy at best” and tearfully questioned the conviction. A court visit to the scene for a re-enactment of the shooting conclusively documented that no one could have seen the shooter to identify him.

“Franky's release is a miracle,” Eggers said after the ruling. “Franky Carrillo himself deserves the most credit—for keeping the faith and never giving up on himself or his case, even when all seemed hopeless. Franky is a true hero.”

Kaneb said, “This exoneration was a huge team effort. Everyone, including Franky, contributed to his release and to developing and presenting the evidence of innocence to the court in a way that compelled this ruling.”

Family and friends welcome Franky home

Twelve Freed in Ten Years

We celebrate the exoneration of 12 innocent men and women freed during our 10 years of work. The following people collectively served more than 130 years for crimes they did not commit. Today, they walk free through the efforts of the Northern California Innocence Project, its donors, volunteers, students and friends:

Mashelle Bullington
Incarcerated 4 years

Bismarck Dinius
Acquitted after 3 years

Martin Laiwa
Incarcerated 15 years

Jeffrey Rodriguez
Incarcerated 5 years

Maurice Caldwell
Incarcerated 20 years

Kenneth Foley
Incarcerated 12 years

Armando Ortiz
Incarcerated 7 years

Peter Rose
Incarcerated 9 years

Francisco Carrillo
Incarcerated 20 years

Albert Johnson
Incarcerated 11 years

Ron Reno
Incarcerated 5 years

John Stoll
Incarcerated 20 years

Thank you for your tremendous support which made this important work possible!

The Veritas Initiative is NCIP’s research and policy arm devoted to advancing the integrity of our justice system through data-driven reform.

“Policy work and reform have been core missions of NCIP, so establishing this organization was a logical step in the fight for justice in preventing wrongful convictions,” said Cookie Ridolfi, NCIP Executive Director. “Veritas in Latin means truth, and in gathering the data upon which to base any meaningful reform, the Veritas Initiative will serve as a resource to those seeking to understand issues of wrongful conviction and promote law reform to underlying problems.”

NCIP’s Veritas Initiative has received widespread national attention. On the day the Initiative was officially announced and its prosecutorial misconduct report published, over 8,000 hits were recorded on the Veritas website. Law schools, innocence projects, media organizations and others are seeking the assistance of Veritas staff to conduct studies similar to the Veritas Initiative.

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

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

Through the Veritas Initiative, our policy reform efforts are currently focused on learning what procedures are being used by police and sheriff’s departments statewide by asking them to provide their eyewitness training procedures and policies under the Public Records Act.

Preliminary analysis of the data shows the news is not dismal, but neither is it promising.

Most of the “best practices” identified by the California Commission on the Fair Administration of Justice in its 2008 report as most likely to protect innocent suspects and lead to reliable identifications of actual perpetrators have been adopted by fewer than 6% of investigative agencies across the state.

The Veritas findings on California identification practices, to be published later in 2011, will reform at the ground level—in the police and sheriff’s departments where the actual investigations are being done.

If the bottom-up approach meets resistance, Veritas will move to influence the enactment of legislation requiring that police uniformly apply the best practices, as have been successfully implemented in several states, such as North Carolina and New Jersey.

The follow up report, *First Annual Report*, researched and written by Maurice Possley and Jessica Seargeant, provides more evidence that prosecutors in California who commit misconduct are rarely reported by the courts or by prosecutors.

The reports have prompted a stream of tips and leads to the Veritas research team and calls from organizations across the country for help in duplicating the work in other states. To date, Veritas has uncovered more than 800 cases in which courts found that prosecutors committed misconduct, with more than 200 of them resulting in reversals of convictions, mistrials being declared, new trials being granted or evidence being barred. Veritas found that more than 100 prosecutors committed misconduct in more than one case. Two did so in five cases and one prosecutor committed misconduct six times.

As a result of the Veritas work, the State Bar has opened investigations in about two dozen cases. "One of the many exciting outcomes of these reports is that CalBar and others are starting conversations with us," said Possley. "State Bar officials and many prosecutor offices acknowledge the importance of this report—I look forward to productive conversations leading to real reform."

To obtain copies of the reports as well as view a map of prosecutorial misconduct in California by county and by the names of prosecutors found to have committed misconduct visit: www.veritasinitiative.org.
10 Years of NCIP

Breakfast Briefing: Franky and Maurice Exonerations

California DNA Project Team

Witch Hunt screening

Mayor Chuck Reed honors NCIP for service to City of San Jose

Robin Wright and Cookie

Ken Foley’s release

Franky throws the victory sign

District Attorney Jeff Rosen, Assistant District Attorney David Angel, Professor Jerry Uelmen, Cookie

Mashelle Bullington and Katie Ross

Jeffrey Rodriguez is welcomed home

Pete Rose Team

Danny Glover and Cookie

John Hollway
Northern California Innocence Project

Linda with John Stoll

Ken Foley

Armando Ortiz and legal team

Witch Hunt filmmakers and NCIP team with John Stoll

Maurice Caldwell, Paige Kaneb, Franky Carrillo, Cookie

First NCIP Alumni Reunion

John Stoll, Kyle MacLachlan

Witch Hunt screening tickets

Maurice Possley, Cookie, Dean Don Polden

The Witch Hunt Three: Don Hardy, John Stoll, Dana Nachman

Audience gives Witch Hunt a standing ovation

Robin Wright and John Stoll

Mashelle Bullington

Antoine Goff, Dr. Rubin “Hurricane” Carter, Tony Lindsay, Douglas Fitch

Antoine Goff, Maurice Caldwell, Paige Kaneb, Franky Carrillo

Cookie receives 2011 CLAY Award from California Lawyer Magazine

Seth Flagsberg, NCIP Supervising Attorney

Roshell and Bismarck Dinius
U.S. Supreme Court Excuses New Orleans Prosecutors for Admitted Constitutional Rights Violations that Put an Innocent Man on Death Row

In a stunning decision on March 29, 2011, the United States Supreme Court reversed the decision of the Fifth Circuit Court of Appeals that had awarded exoneree John Thompson $14 million for his wrongful conviction and death row imprisonment for a murder he did not commit—one million dollars for each of the 14 years John spent languishing on death row (out of 18 total years wrongfully imprisoned) because of the admitted misconduct of multiple New Orleans prosecutors assigned to his case.

Journalists called the opinion “mean” and “cruel,” and noted that Justices Thomas and Scalia in their separate opinions willfully ignored the facts in order to make a flimsy argument that the constitutional question boiled down to the single act of one rogue prosecutor.

Justice Ginsburg dissented, pointing out that there were multiple instances of multiple prosecutors withholding different pieces of evidence in Mr. Thompson’s case—hardly the single incident of withholding that Justices Thomas and Scalia would have us believe occurred.

In his opinion, Justice Thomas acknowledged there was prosecutorial misconduct in the case, stating, “The role of a prosecutor is to see that justice is done... By their own admission, the prosecutors who tried Thompson’s armed robbery case failed to carry out that responsibility.”

Nevertheless, Thomas and four other Supreme Court justices allowed this misconduct to go unpunished and, with their majority opinion, expanded the scope of immunity for prosecutors to just short of total and absolute immunity for intentional acts of misconduct. In fact, the Court provided prosecutors who engage in such misconduct a roadmap for ensuring their actions fall within a “misconduct safe harbor.”

The Prosecution Rests, I Can’t

John Thompson, New Orleans

John Thompson wrote the following article for the New York Times. It is excerpted slightly.

I spent 18 years in prison for robbery and murder, 14 of them on death row. I’ve been free since 2003, exonerated after evidence covered up by prosecutors surfaced just weeks before my execution date. Those prosecutors were never punished. Last month, the Supreme Court decided 5-4 to overturn a case I’d won against them and the district attorney who oversaw my case, ruling that they were not liable for the failure to turn over that evidence—which included proof that blood at the robbery scene wasn’t mine.

Because of that, prosecutors are free to do the same thing to someone else today.

I was arrested in January 1985 in New Orleans. …They took me to the homicide division, and played a cassette tape on which a man I knew named Kevin Freeman accused me of shooting a man. He had also been arrested as a suspect in the murder. A few weeks earlier he had sold me a ring and a gun; it turned out that the ring belonged to the victim and the gun was the murder weapon.

My picture was on the news, and a man called in to report that I looked like someone who had recently tried to rob his children. Suddenly I was accused of that crime, too.

I was tried for the robbery first. My lawyers never knew there was blood evidence at the scene, and I was convicted based on the victims’ identification.

After that, my lawyers thought it was best if I didn’t testify at the murder trial. So I never defended myself, or got to explain that I got the ring and the gun from Kevin Freeman. And now that I officially had a history of violent crime because of the robbery conviction, the prosecutors used it to get the death penalty.


continued on next page
I was put in a dead man's cell. His things were still there; he had been executed only a few days before. Over the years, I was given six execution dates, but all of them were delayed until finally my appeals were exhausted. The seventh—and last—date was set for May 20, 1999. My lawyers had been with me for 11 years by then; they flew in from Philadelphia to give me the news. They didn't want me to hear it from the prison officials. They said it would take a miracle to avoid this execution. I told them it was fine—I was innocent, but it was time to give up.

…Amazingly, I got a miracle. The same day that my lawyers visited, an investigator they had hired to look through the evidence one last time found, on some forgotten microfiche, a report sent to the prosecutors on the blood type of the perpetrator of the armed robbery. It didn't match mine; the report, hidden for 15 years, had never been turned over to my lawyers. The investigator later found the names of witnesses and police reports from the murder case that hadn't been turned over either.

As a result, the armed robbery conviction was thrown out in 1999, and I was taken off death row. Then, in 2002, my murder conviction was thrown out. At a retrial the following year, the jury took only 35 minutes to acquit me.

The prosecutors involved in my two cases, from the office of the Orleans Parish district attorney, Harry Connick Sr., helped to cover up 10 separate pieces of evidence. And most of them are still able to practice law today.

…In 2005, I sued the prosecutors and the district attorney's office for what they did to me…

The jury awarded me $14 million in damages — $1 million for every year on death row —

which would have been paid by the district attorney's office. That jury verdict is what the Supreme Court has just overturned.

I don't care about the money. I just want to know why the prosecutors, who hid evidence, sent me to prison for something I didn't do and nearly had me killed are not in jail themselves. There were no ethics charges against them, no criminal charges, no one was fired and now, according to the Supreme Court, no one can be sued. …A crime was definitely committed in this case, but not by me. ✶

John Thompson is the director of Resurrection After Exoneration, a support group for exonerated inmates.

This article first appeared in The New York Times on April 9, 2011.

Everybody’s Talking About Connick vs. Thompson

From retired Supreme Court Justice John Paul Stevens to legal commentators to journalists to exonerated men and women around the country, people are fired up over the U.S. Supreme Court’s recent decision overturning the award John Thompson received for his wrongful conviction and the 14 years he spent on Louisiana’s death row because of blatant and admitted prosecutorial misconduct. Visit our website at www.ncip.scu.edu to find links to what everybody’s saying and to find out what you can do to hold prosecutors accountable when they commit misconduct.
The story of John Thompson is revealed in a compelling new book, *Killing Time: An 18-year Odyssey from Death Row to Freedom*. Authors John Hollway and Ronald M. Gauthier take readers inside the mind and heart of Thompson from the moment of his arrest for the December 6, 1984, murder of Ray Liuzza Jr. until Thompson’s release from prison on May 10, 2003, when he was given back his 18-year-old clothes (which amazingly still fit) and $10 for bus fare. Since his release from prison Thompson has formed an organization called Resurrection After Exoneration, which helps wrongly convicted inmates re-enter society. A portion of the sales proceeds from the book goes directly to Thompson.

The rest of the story played out in the U.S. Supreme Court, which overturned a jury award of $14 million to Thompson ($1 million for every year he spent on death row) that had been upheld by the Fifth Circuit Court of Appeals sitting en banc. For lawyers, judges and those who love a historic legal drama, *Killing Time* should be required reading.

Excerpted with the permission of Daily Journal Corp. (2010)

Order a copy of *Killing Time* and support NCIP at http://amzn.to/bNEd1S.

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**Federally Funded California DNA Program Reducing Case Backlog**

The California DNA Program (CDP) is the most concerted effort undertaken in California to identify potential cases for post conviction DNA testing.

Funded by a grant from the U.S. Department of Justice, the program is designed to provide access to DNA testing for those qualifying inmates who otherwise would not be able to receive such testing.

Although the use of DNA technology has become increasingly common in the last 12 years, many counties in California lack funding for testing. Moreover, in May 2009, the state crime lab had a backlog of 53,000 cases.

California District Attorney and Public Defender offices do not have the resources to help prisoners obtain DNA testing for wrongful conviction claims. In fact, indigent California prisoners with wrongful conviction claims have little access to the resources needed to obtain DNA testing. As a result, these inmates seek help from NCIP or contact other justice agencies who regularly refer the requests to NCIP.

Beginning in 2009 and with the cooperation of the California Department of Corrections and Rehabilitation, 18,000 informational packets were sent to prisoners convicted of homicide or sexual assault offenses through the year 1999, an outreach to more than 10% of California inmates.

CDP has received and screened more than 1,000 responses for Northern California inmates, as well as nearly 700 cases in the NCIP backlog. In Northern California, CDP has opened over 100 cases for investigation and location of evidence, and has closed more than 500 cases.

CDP attorneys are co-counsel on seven cases with NCIP attorneys and assisting in one case with an outside attorney. CDP attorneys are currently appointed to investigate and, if necessary, file motions for post-conviction DNA testing in 12 cases in Northern California.

A significant number of cases have yet to be reviewed, and without additional federal funding, NCIP and the state will be unable to proactively identify, locate and assist innocent individuals among California’s 162,000 inmates. There is a clear need for post conviction DNA outreach and case review and funding is needed to support that effort. CDP recently submitted a grant proposal for additional funding from the National Institute for Justice. In the current budget environment, such funding may be cut. NCIP and CDP urge you to write Senator Patrick Leahy, chairman of the Senate Judiciary Committee, committee member Senator Diane Feinstein and Congresswoman Zoe Lofgren, a member of the House Judiciary Committee, to demand that this vital funding be continued so that the innocent do not languish in prison for lack of funding for DNA testing.
“It is tragic that it has taken 20 years to finally win his release,” said NCIP Legal Director Linda Starr, who represented Mr. Caldwell with NCIP attorney Paige Kaneb. “In the meantime, the actual perpetrators have committed more crimes, including another homicide. Had law enforcement followed up on information they had at the time of this shooting, they could have not only apprehended the actual killer but also prevented the subsequent homicide.”

The case is yet another example of how eyewitness identification can go wrong and lead to the conviction of the innocent. Eyewitness misidentification is the single largest source of wrongful conviction in the United States, Starr explained. “Eyewitness misidentifications played a role in more than 75 percent of convictions overturned through DNA testing,” she said. “Unfortunately, it played a role in Maurice Caldwell’s case as well.”

**Mr. Caldwell is thrilled to be free.**

“All the things I dreamed about when I was young, I can now bring to life,” said Mr. Caldwell. “I can’t find a way to say what this means to me and what NCIP means to me. I’m just sorry my mother isn’t here to see this day finally come.” ✤
You Can Help

3 Things You Can Do
to Help Exonerate Innocent People and Prevent Wrongful Convictions

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

2 STAY INFORMED.
Read, watch, then share a book or movie to learn more about wrongful convictions. There are dozens of books, films, television specials and other resources available. See our recommended reading list at http://amzn.to/bNEd1S.

3 SUPPORT NCIP.
NCIP is a nonprofit organization that relies on financial support from individuals and foundations. Your donation will help pay for DNA testing, forensic research, investigative trips to interview eyewitnesses, and other essential activities. Use the form enclosed or go to www.ncip.scu.edu.