

INNOCENCE MATTERS

An Innocence Project of Florida Newsletter • March 2011

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2011 LEGISLATIVE UPDATE

Every year, the Florida legislature considers hundreds of bills, few of which affect the work of the Innocence Project of Florida (IPF). This year, legislators have filed three bills that you might want to keep your eye on.

Eyewitness Identification Reform

Eyewitness misidentification is the leading cause of wrongful convictions. To date, of the 266 people who have been exonerated through post-conviction DNA testing, 80% of those individuals' convictions were caused, at least in part, by a mistaken identification.

This issue is also at the forefront of the work of the Florida Innocence Commission, who we expect to issue a recommendation for reforming eyewitness identification procedures by the end of March 2011.



Senator Joe Negron (R – Palm City) has filed SB 1206 and Representative

Perry Thurston (D – Ft. Lauderdale) has filed HB 821. These bills provide a comprehensive, uniform, statewide reform package for removing the suggestiveness from witness identification procedures. Specifically, the bills provide that (1) live lineups and photo lineups be composed in a manner that diminishes their suggestiveness, (2) these procedures be administered in a “double-blind” fashion, which means that neither the witness nor the administrator knows whether the suspect is in the lineup, (3) the lineup participants must be shown to the witness sequentially rather than simultaneously, (4) proven instructions must be given before the lineup is administered and no confirmatory comments should be made during or after the lineup procedure, and (5) agencies without manpower to comply with certain aspects of the legislation may use prescribed cost-effective measures to still blind the administrator of the lineup.

If passed, this legislation would bring Florida in line with states like North Carolina and Ohio, who have passed similar laws.

DNA TESTING: VITAL & COSTLY

Although 99% of DNA is the same for every human, it is the 1% difference that provides the unique identification of an individual. The unique differences in human DNA are found in short tandem repeat (STR) patterns.

The Federal Bureau of Investigation (FBI) has chosen 13 specific STR genetic regions, called loci, to serve as the standard for profiling and discriminating one profile from another. The purpose of establishing a core set of STR loci is to ensure that all forensic laboratories can share valuable forensic information.

Because there is an infinitesimal chance that two individuals will match in all 13 loci, unless they are identical twins, DNA testing can and does provide very definitive answers to the identity of the contributor and can prove actual innocence.

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EXONEREE UPDATE

As part of IPF's mission, we work with the exonerees to rebuild their lives after wrongful incarceration. We want to let you know about some of their accomplishments.

Orlando Boquete

Late in 2010, Florida DNA Exoneree Orlando Boquete received news of his new permanent resident status from the U.S. Citizenship and Immigration Services. He was accompanied in Miami by his immigration lawyer, Tal Winer with the Florida Immigrant Advocacy Center, who steadfastly worked to make this happen. Orlando's permanent resident status is calculated from April 2007



Orlando Boquete and Tal Winer on the day Orlando received his permanent resident status.

which means he can petition for U.S. Citizenship in two years instead of three. This can also lead to Orlando finally having the opportunity to visit his family in Cuba after nearly 30 years of separation.

Orlando's conviction of attempted sexual battery and burglary in 1982 was overturned on May 23, 2006, with full cooperation from the Monroe County State Attorney, Mark Kohl, after post-conviction DNA testing proved his innocence. Because he had escaped from wrongful incarceration in 1983 for ten years, and again in 1995 for one year, the Immigrations and Customs Enforcement Agency detained him upon his release from prison until August 22, 2006.

James Bain

James Bain, who was freed in December 2009 after post-conviction DNA testing proved his innocence of a 1974 rape and kidnapping, appeared on German television twice in 2010.

In March, James traveled to Hamburg, where he appeared on the popular *Markus Lanz Show*, which aired across Europe for Zweites Deutsches Fernsehen (ZDF), a widely viewed German public service television channel. European audiences reacted so positively to James' story that ZDF invited him back for *Menschen 2010*, which featured persons who had made significant impressions during the year. The show aired in December.

James is currently waiting for the financial compensation due him from the State of Florida for his 35 years of wrongful incarceration. He plans to buy a home for his family, ride motorcycles and enjoy life.



James Bain with Thomas Gottschalk, famous German television personality and host of Menschen 2010.

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LEGISLATIVE UPDATE (CONTINUED FROM PAGE 1)

Most importantly, this legislation would move us closer to having uniform justice in criminal investigations, regardless of geography.

Please call Senator Negrón at (850) 487-5088 and Rep. Thurston at (850) 488-1084 to thank them for their leadership on this issue.

Unanimous Jury Verdicts in Capital Sentencing

Florida is the only state in the nation which requires a unanimous jury verdict to convict someone of capital murder and make them eligible for the death penalty, but then requires only a majority jury vote to sentence them to death. Identical bills filed by Senator Thad Altman (R – Melbourne) and Representative John Patrick Julien (D – North Miami Beach) would change that, if passed.

SB 1066 and HB 979 would require a jury to come to a unanimous verdict during capital sentencing proceedings in order for the judge to be able to sentence the defendant to death. This bill will save Florida from exorbitant spending on years of capital appeal and post-conviction proceedings. Currently, the closer a jury sentencing vote is to a 7-5 majority vote for death, the more likely the Florida Supreme Court is to overturn the death sentence and start the process all over again.



Most importantly, a higher standard for imposing a death sentence will help prevent those innocent individuals wrongfully convicted of capital murder from being wrongfully incarcerated on death row and possibly executed.

Please call Senator Altman at (850) 487-5053 and Representative Julien at (850) 488-7088 to thank them for sponsoring such an important bill.

Wrongful Conviction Compensation

In 2008, the Florida Legislature passed the Victims of Wrongful Compensation Act, which set up a streamlined process to pay exonerees \$50,000 per year of wrongful incarceration as well as provide them access to tuition-free

education. While the Act was a step in the right direction, it came with a number of provisions which have had the effect of excluding most of Florida's exonerees from compensation.

Specifically, the Act included a "Clean Hands" provision, which excludes from compensation those individuals who were convicted of a felony prior to or during their wrongful incarceration. This provision denies compensation to Bill Dillon, who was convicted of felony possession of one Quaalude pill two years before being wrongfully convicted for murder and spending 27 years wrongfully incarcerated. It also excludes Orlando Boquete who had the audacity to escape from his wrongful incarceration, which is a felony.

For the past two legislative sessions, bills have been sponsored to amend this Act. Senator Arthenia Joyner (D – Tampa) has sponsored a similar bill (SB 250) this year. Unfortunately, SB 250 does not address the clean hands provision, nor does it help more innocent people get compensated.

Please call Senator Joyner at (850) 487-5059, thank her for caring about this issue, but urge her to amend the bill to remove the clean hands provision which further victimizes Florida's exonerees.

Call to Action

Change in our criminal justice system cannot happen unless we stand together and demand it. **Call your local legislators to let them know that these issues are important to you and urge their support for these reforms.**

FLORIDA INNOCENCE COMMISSION SEEKS TO FIND SYSTEM REFORMS

In 2010, after a petition by IPF Board Member Talbot "Sandy" D'Alemberte urging its creation, the Florida Supreme Court created and the Florida Legislature funded the Florida Innocence Commission. Over the next two years, the Commission will study cases of wrongful conviction, find out how and why they happened, and make recommendations for reform based on those findings.

IPF Board Member Kenneth Nunn was selected as one of the 23 members of the Commission. IPF attorneys and board members are working with the Commission to ensure that the causes are clearly understood and to help make useful recommendations for reform that are practical and easily implementable.

LITIGATION UPDATE

IPF receives hundreds of new requests for assistance each year and is constantly screening, reviewing and accepting new cases that meet our stringent criteria for representation. The following is a brief update on just a few of our cases that are currently in litigation:

Derrick Williams was convicted of a Manatee County, Florida, kidnapping and rape in 1993 and sentenced to life in prison. In July 2010, IPF released DNA results from the perpetrator's t-shirt, which was left in the victim's car after the rape. The results excluded Derrick as the contributor of the DNA on the inside collar of the shirt.

IPF's legal staff, along with local counsel Derek Byrd, filed a motion to vacate Derrick's convictions and sentences based on these DNA results as well as unlawful destruction of other evidence, which was uncovered through investigation by IPF. A hearing for this motion was heard on March 15-16 and 22, 2011; we are awaiting the ruling.

Tavaris Knight was convicted in 2001, at the age of 13, of a Tampa, Florida, rape and sentenced to 15 years in prison. He had DNA testing before trial on items from the rape kit and the condom worn by the perpetrator, but the results were inconclusive as to the identity of the perpetrator.

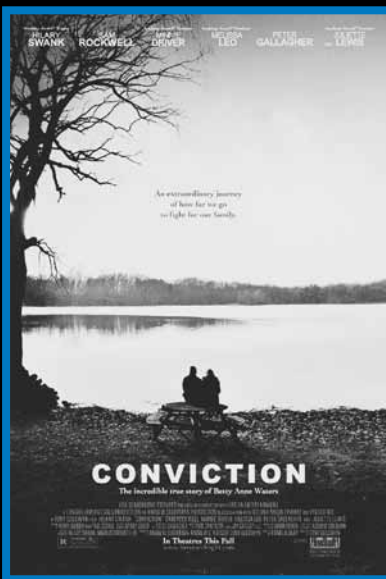
In Summer 2010, IPF filed for new DNA testing of those and other items at an independent, private laboratory and the testing was granted in March 2011. The testing is currently ongoing.

Billy Holton was convicted in 1987 of a Jacksonville, Florida, rape and sentenced to life in prison. IPF has represented Billy since 2006, received favorable DNA test results in his case in 2007, and filed a motion to vacate his conviction and sentence based on those results.

In the interim, in December 2010, Billy was granted a resentencing. A hearing on his motion to vacate and his resentencing will take place in early Summer 2011.

Dean McKee was convicted, at the age of 16, of a 1988 stabbing murder of a homeless man in Tampa, Florida. He was sentenced to life in prison. Dean sought DNA testing on his own and that testing was partially performed before the court improperly cut off the testing despite the fact that preliminary results indicated DNA foreign to the victim under the victim's fingernails.

IPF now represents Dean and has been granted a motion to complete his DNA testing by making a comparison of Dean's DNA profile to the foreign DNA profile found under the victim's fingernails. The results of the DNA testing are pending.



CONVICTION

IN NOVEMBER 2010, FOX STUDIOS RELEASED THE MOVIE, CONVICTION, WHICH IS BASED ON THE TRUE STORY OF BETTY ANNE WATERS' QUEST TO FREE HER BROTHER, KENNY, WHO HAD BEEN WRONGFULLY CONVICTED OF MURDER IN 1983. THE MOVIE STARS HILARY SWANK, MINNIE DRIVER AND SAM ROCKWELL. IT WAS THRILLING TO WATCH THE STORY OF OUR WORK ON THE BIG SCREEN.

CONVICTION IS NOW AVAILABLE ON DVD. YOU CAN PURCHASE IT AND OTHER BOOKS AND VIDEOS RELATED TO WRONGFUL CONVICTIONS ON IPF'S BOOKS & VIDEOS WEB PAGE. A PORTION OF THE PURCHASE BENEFITS IPF.

DNA TESTING (CONTINUED FROM PAGE 1)

Hence, DNA testing is vital to IPF's operations, but it is costly. The average cost of DNA testing per case is \$5,000. Several factors influence the cost, including:

- Which laboratory is used for the testing,
- Type of DNA testing done (STR, YSTR or mitochondrial),
- Type of sample tested, e.g., mouth swab, hair, finger nail clippings, or biological material such as semen or saliva on physical evidence from the case, and
- Number of tests needed per case.

Each case requires at least two tests, because a reference sample from the IPF client must be tested for comparison to the evidence. Typically, there are at least four tests per case. For hair with its root and other biological material on physical evidence, the average cost per test can range from \$650 to \$1,200 per sample. For hair without the root, a mitochondrial test is needed and costs approximately \$2,500 per hair.

Each case is different; DNA testing for Bill Dillon's case cost more than \$18,000.

STAFF UPDATE

Because our organization is funded solely through grants and donations, IPF decided to add a fundraising professional to the staff. Jackie Pugh, Development Coordinator, joined us in July 2010 with more than 15 years of marketing and fundraising experience.



"Injustice is a concept that everyone can relate to regardless of ethnic or social background," observed Jackie. "I want people to understand that those who have been wrongfully

convicted are people – brothers or sisters – and they have families who have been torn apart by this injustice that can and does last for decades."

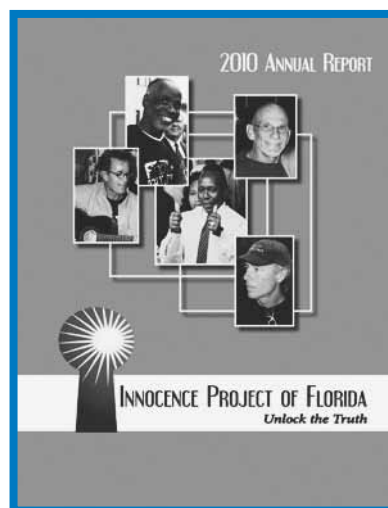
Before joining IPF, Jackie served as the first Director of Development for the Arc of Alachua, building a successful program from its infancy. She is a graduate of Leadership Gainesville and a member of the Association of Fundraising Professionals. She has a BS from the University of Florida.

2010 ANNUAL REPORT AVAILABLE ONLINE

The IPF Annual Report for 2010 is available on-line at www.floridainnocence.org under Resources on the menu bar.

Highlights for 2010 include:

- Exoneration of James Bain in December 2009 and Anthony Caravella in May 2010;
- Litigation of cases in 15 counties, three of Florida's five appellate courts, the Florida Supreme Court and the United States Supreme Court;
- Exclusionary DNA test results for IPF client Derrick Williams, who is still imprisoned awaiting results from his evidentiary hearing; and
- Formation of the Florida Innocence Commission.



You'll find much more information about our work, financial performance and an acknowledgement of our donors in the report. If you would like copies to share with friends and colleagues, please contact Jackie Pugh, IPF Development Coordinator at jpugh@floridainnocence.org or (850) 561-6767.

INTERNS PLAY A KEY ROLE AT IPF

Each semester IPF welcomes students from around the world to participate in our Intern/Extern Program. The program is an opportunity for students to earn class credits while gaining real-world experience working in a law office.

Each intern is assigned one or two cases which they work on during their internship under the supervision of an IPF attorney or intake coordinator. They play a key role in case review and litigation.

WE WANT TO THANK EACH OF OUR INTERNS WHO HAVE WORKED SO DILIGENTLY DURING THE PAST YEAR.



SPRING 2011



Above: (left to right): Marshawn Griffin (FSU College of Law), Jeremy Monckton (FSU College of Law), Jennifer Fowler (FSU College of Law), Chelsay Denman (FSU), and Katherine Concepcion (FSU). Left: Melanie DeMuttiis (University of South Florida), and Giselle Bodden (FSU)



FALL 2010

From left to right: Martin Mueller (FSU College of Law), Jesse Adams (FSU College of Law), and Matt Davenport (FSU College of Law). Not pictured: Christian Nunez (FSU), Marcus McCutcheon (FSU College of Law), Virginia Jones (Florida Gulf Coast University) and Amanda Kayfus (FSU College of Law).



SUMMER 2010

From left to right: Sara Strickland (FSU College of Law), Safiah Afify (FSU College of Law), Alex Moore (FSU College of Law), Angela Senich (FSU College of Law), Randy Barcelo (FSU), Stefan Cange (FSU College of Law), Stephanie Johnson (FSU College of Law), Amanda Blair (FSU College of Law), Kaitlyn Stavish (FSU College of Law), Whitney Green (FSU College of Law), & Liridona Sinani (UF College of Law). Not pictured: Nicole Bamberski (FSU College of Law), Virginia Jones (Florida Gulf Coast University), Octavio Ponce (UF College of Law).

JOIN THE ONGOING DISCUSSION OF WRONGFUL CONVICTIONS AT OUR BLOG, PLAIN ERROR, ON OUR WEB SITE WWW.FLORIDAINNOCENCE.ORG

GIVE THE GIFT OF FREEDOM

YOUR GENEROSITY HELPS TO FREE THE WRONGFULLY CONVICTED.

In 2010 IPF processed more than 700 requests for assistance from inmates and is currently litigating more than two dozen cases with hundreds more in various stages of review and investigation. Your support will enable IPF to more quickly unlock the truth for innocent individuals languishing in Florida's prisons, help those whose innocence has been proven to rebuild their lives, and work to reform Florida's criminal justice system.

Please accept my gift to the Innocence Project of Florida, Inc. Amount \$ _____

Name _____

Address _____

City _____ State _____ Zip Code _____

Home Phone _____ Work Phone _____ Email _____

My check, payable to the Innocence Project of Florida, is enclosed.

Mail to: Innocence Project of Florida, Inc., 1100 East Park Avenue, Tallahassee, FL 32301

My gift is in honor of _____

My gift is in memory of _____

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

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

TO DONATE ONLINE, GO TO WWW.FLORIDAINNOCENCE.ORG

Thank you for your generosity!

IPF is certified as a nonprofit organization under the Internal Revenue Service Act section 501(C)(3).

Our Federal Tax ID is 20-0210812.

All gifts are tax deductible to the fullest extent of the law.

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RETURN SERVICE REQUESTED

FROM OUR CLIENTS

Imagine being wrongfully incarcerated for years. How would you cope? A couple of IPF clients have shared with us how they handle this very difficult and emotional time.

Where We Meet A Friend

So many things in the line of duty
Drain us of effort and leave us no beauty
And the dust of the soil grows thick and unswept
And spirit is drenched in tears unwept
But just as we fall beside the road
Discouraged with life and bowed down with our load
We lift our eyes, and what seemed a dead end
Is the street of dreams where we meet a friend

-by **Tavaris Knight**
Incarcerated since 2000 at age 13



-by **Dean McKee**
Incarcerated since 1988 at age 16

This newsletter is supported in part by a grant from The Florida Bar Foundation.