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## REDINOCENTE: THE CHALLENGE OF BRINGING INNOCENCE WORK TO LATIN AMERICA

*Justin Brooks\*†*

In 2008, I traveled to Oruro, Bolivia to train defense attorneys on DNA technology. I had done similar trainings in Chile, Paraguay, Mexico, and other countries in Latin America, but nowhere that felt quite so remote. The 143-mile bus trip from La Paz passed through dusty villages filled with mud huts and lacking basic infrastructure. The bus stopped many times, picking up Chola women wearing shawls and derby hats, and carrying their huge satchels of goods to sell and trade. It seemed unlikely that the technology I would be talking about would have much value in this remote outpost.

My fears were confirmed when I talked to the lawyers I was training in Oruro. They lacked access to basic technology and there were certainly no DNA labs readily available to them. On the other hand, I became optimistic when I talked to the local judges. They seemed very willing to allow test results from labs in the United States to be introduced in their courts and to allow expert witnesses from the United States to testify telephonically. Further, there seemed to be much less procedure involved in re-opening cases where there had been a possible wrongful conviction. There was no need for complex habeas litigation. A simple petition to the court explaining the circumstances of the case was enough to get a hearing.

The bus ride back to La Paz gave me the opportunity to think through a new model for innocence work. Although I was graciously made a member of the local bar at the end of my training program, I knew there was no way I could take on cases in Bolivia. Instead, I could initiate a program that would create a pipeline between American technology and the need for it in the criminal justice systems in Latin America. I could also work within countries in Latin America supporting the launching of their own domestic innocence efforts. The idea for Redinocente was born.<sup>1</sup>

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\* Director of the California Innocence Project and Institute Professor of Law at California Western School of Law. He is also the co-founder and co-director of Redinocente, an organization devoted to creating and networking innocence projects in Latin America. Thanks to Audrey McGinn for her outstanding research used throughout this article.

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## I. A BRIEF HISTORY OF POST-CONVICTION INNOCENCE WORK

There is nothing new about raising the defense of innocence. It is, after all, the most fundamental of all defenses and has existed as long as there have been criminal justice systems and long before DNA technology. One example is the 1883 case of *Marion v. State*.<sup>2</sup> The defendant, William Marion, was convicted of murdering his friend based on evidence that the two of them had left town on a journey and then Marion showed up back in town alone, but with his friend's belongings.<sup>3</sup> The court did not believe Marion's story that his friend had decided to carry on without him or his belongings, and Marion was sentenced to death.<sup>4</sup> Marion went to the gallows on March 25, 1887, continuing to profess his innocence.<sup>5</sup> Four years later, the alleged victim returned to town after finding out his friend had been convicted of murder and sentenced to death.<sup>6</sup>

James McCloskey is largely credited as the pioneer of the modern innocence movement.<sup>7</sup> He left his business career behind to begin the work of Centurion Ministries as a student chaplain at Trenton State Prison in 1980.<sup>8</sup> Since then, his organization has investigated and exonerated dozens of innocent people serving long prison sentences or sitting on death row.<sup>9</sup>

In 1992, Barry Scheck and Peter Neufeld founded the Innocence

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by the author at the symposium. Therefore, the articles published in this symposium may not comply with all standards set forth in Texas Law Review and the Bluebook.

1. RED INOCENTE, <http://www.redinocente.org> (last visited Dec. 1, 2012).

2. *Marion v. State*, 29 N.W. 911, 913 (1886) (stating that on April 20, 1883, the defendant was indicted for the murder of John Cameron on May 15, 1872).

3. In an opinion by the Supreme Court of Nebraska, the defendant, William Jackson Marion, insisted that he purchased a team and wagon for \$315, paying \$30 down, from his friend (and supposed victim, John Cameron). Within a few days, Marion returned alone to Nebraska without Cameron, saying that his friend had gone to Clay County, Kansas. Marion also returned wearing part of his friend's clothes and also had in his possession his friend's team and wagon. *Id.* at 914.

4. *Id.* at 920.

5. Rob Warden, *William Jackson Marion: Mistaken identity of a corpse led to his mistaken execution*, NORTHWESTERN LAW CENTER ON WRONGFUL CONVICTIONS, <http://www.law.northwestern.edu/wrongfulconvictions/exonerations/neMarionSummary.html> (last visited Dec. 1, 2012).

6. Cameron, the alleged victim, explained that he had absconded to Mexico in 1872 to avoid a shotgun wedding in Kansas. *Id.* Nearly 100 years after Marion's execution, Marion's grandson officially petitioned for his posthumous pardon. It was not until the centennial of Marion's execution that Nebraska's governor, Bob Kerrey, signed *In the Matter of a Posthumous Pardon to William Jackson Marion*, which took formal effect on March 25, 1987. *1887: William Jackson Marion, who'd be pardoned 100 years later*, EXECUTEDTODAY.COM, <http://www.executedtoday.com/2011/03/25/1887-william-jackson-marion-wrongful-execution-pardon/> (last visited Dec. 1, 2012).

7. *About Us*, CENTURION MINISTRIES, <http://www.centurionministries.org/about/> (last visited Dec. 1, 2012).

8. *Our History—1980s*, CENTURION MINISTRIES, *supra* note 7.

9. *Our History—2000s*, CENTURION MINISTRIES, *supra* note 7.

Project as a law school clinic at Cardozo Law School.<sup>10</sup> Armed with new advances in DNA technology, the project became a fixture on national news as exonerated inmate after exonerated inmate walked out of prison after findings of actual innocence.<sup>11</sup>

Throughout the 1990s, the concept of freeing the innocent while teaching lawyering skills inspired law school based programs in Arizona,<sup>12</sup> California,<sup>13</sup> Florida,<sup>14</sup> Illinois,<sup>15</sup> Washington,<sup>16</sup> and Wisconsin.<sup>17</sup> International efforts to free the innocent spread to Canada,<sup>18</sup> where legendary exoneree Rubin “Hurricane” Carter was the first executive director of the Association in Defense of the Wrongly Convicted.<sup>19</sup>

Since the turn of the century, the innocence movement has picked up tremendous steam. Hundreds of innocent men and women around the world have been exonerated due to the hard work of programs in 40 states, as well as those in Australia, Canada, Ireland, New Zealand, and the United Kingdom.<sup>20</sup> These programs have come together to form the Innocence Network, “an affiliation of organizations dedicated to providing pro bono legal and investigative services to individuals seeking to prove innocence of crimes for which they have been convicted and working to redress the causes of wrongful convictions.”<sup>21</sup>

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10. *About the Organization*, INNOCENCE PROJECT, [http://www.innocenceproject.org/Content/What\\_is\\_the\\_Innocence\\_Project\\_How\\_did\\_it\\_get\\_started.php](http://www.innocenceproject.org/Content/What_is_the_Innocence_Project_How_did_it_get_started.php) (last visited Dec. 1, 2012).

11. *Id.*

12. ARIZONA JUSTICE PROJECT, <http://www.azjusticeproject.org/> (last visited Dec. 1, 2012).

13. CALIFORNIA INNOCENCE PROJECT, <http://www.californiainnocenceproject.org> (last visited Dec. 1, 2012); NORTHERN CALIFORNIA INNOCENCE PROJECT, <http://www.law.scu.edu/ncip/> (last visited Dec. 1, 2012).

14. INNOCENCE PROJECT OF FLORIDA, <http://www.floridainnocence.org/> (last visited Dec. 1, 2012).

15. *About Us*, NORTHWESTERN LAW BLUHM LEGAL CLINIC: CENTER ON WRONGFUL CONVICTIONS, <http://www.law.northwestern.edu/wrongfulconvictions/aboutus/> (last visited Dec. 1, 2012).

16. *Innocence Project Northwest Clinic*, UNIVERSITY OF WASHINGTON SCHOOL OF LAW, <http://www.law.washington.edu/Clinics/IPNW/> (last visited Dec. 1, 2012).

17. *Wisconsin Innocence Project*, UNIVERSITY OF WISCONSIN LAW SCHOOL, <http://www.law.wisc.edu/fjr/clinicals/ip/index.html> (last visited Dec. 1, 2012).

18. *About Us: AIDWYC History*, THE ASSOCIATION IN DEFENCE OF THE WRONGLY CONVICTED, <http://www.aidwyc.org/history.html> (last visited Dec. 1, 2012).

19. *Rubin “Hurricane” Carter*, AMERICAN PROGRAM BUREAU, <http://www.apbspeakers.com/speaker/rubin-hurricane-carter> (last visited Dec. 1, 2012).

20. *Other Projects Around the World*, INNOCENCE PROJECT, <http://www.innocenceproject.org/about/Other-Projects.php> (last visited Dec. 1, 2012).

21. THE INNOCENCE NETWORK, <http://www.innocencenetwork.org/> (last visited Dec. 1, 2012).

## II. THE RULE OF LAW MOVEMENT IN LATIN AMERICA

Redressing the causes of wrongful convictions has a different meaning in Latin America than it does in the United States. In the United States, the innocence movement has focused on changing the way eyewitness identifications are done and how confessions are obtained, creating healthy cynicism for jailhouse snitch testimony, and investigating and remedying poor practices in crime labs.<sup>22</sup> In Latin America, however, there has been a much larger and spectacular reform movement in several countries which involves a complete rethinking and reshaping of their systems.<sup>23</sup>

The so-called “rule of law” movement in Latin America goes well beyond reforming the criminal justice system.<sup>24</sup> This reformation involves creating countrywide stability, with a transparent, reliable, governmental system, that will lead to social order and economic development.<sup>25</sup> While in the United States, Australia, Canada, Ireland, and New Zealand, the innocence movement has focused on getting citizens to recognize that our systems are imperfect and sometimes get it wrong and convict the innocent, in Latin America there have been changes to instill confidence in systems the citizens already profoundly distrust.<sup>26</sup>

Reforming the relationship between the government and citizens in Latin America has been and still remains a difficult task. There is a long history of corruption which has allowed some citizens to operate outside the law, either due to their connections to the power structure in the government or due to the government’s inability to control organized crime.<sup>27</sup> Dictators such as Chile’s Pinochet created an environment where citizens feared the government.<sup>28</sup> Creating transparency where

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22. *Understand the Causes*, INNOCENCE PROJECT, <http://www.innocenceproject.org/understand/> (last visited Dec 1, 2012).

23. RULE OF LAW IN LATIN AMERICA: THE INTERNATIONAL PROMOTION OF JUDICIAL REFORM 143 (Pilar Domingo & Rachel Sieder eds., University of London, 2001); see also William Ratliff and Edgardo Buscaglia, *Judicial Reform: The Neglected Priority in Latin America*, 550 ANNALS AM. ACAD. POL. & SOC. SCI. 59, 59 (Mar. 1997).

24. *Id.* at 152.

25. *Id.* at 147.

26. Maria Dakolias, *A Strategy for Judicial Reform: The Experience in Latin America*, 36 VA. J. INT’L L. 167, 168 (1995-96); see also Ratliff and Buscaglia, *supra* note 23, at 62 (stating that surveys in the late 1990s showed that 55-75% of citizens in Argentina, Brazil, Ecuador, and Peru had a very low perception of their judicial system; 46-67% of the citizens in Argentina, Brazil, Ecuador, and Venezuela considered the judicial sector inaccessible; 77% of the judges interviewed in Brazil thought there was a crisis in the judiciary).

27. RULE OF LAW IN LATIN AMERICA, *supra* note 23; see also Ratliff and Buscaglia, *supra* note 23, at 59.

28. Monte Reel and J.Y. Smith, *A Chilean Dictator’s Dark Legacy*, WASH. POST (Dec. 11, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/12/10/AR2006121000302.html>.

citizens see fair and just results in the criminal justice system is thus critical in repairing this relationship.<sup>29</sup>

One of the cornerstones of the reforms in Latin America has been a shift from inquisitorial to adversarial systems.<sup>30</sup> In the inquisitorial systems, the focus was on truth finding and judges were neither neutral nor detached.<sup>31</sup> Defendants were often unrepresented and overcome by the lack of independent judges to counteract potential bias against defendants.<sup>32</sup> As one commentator has stated, “the quality and integrity of a judicial system can be measured best by the quality and integrity of its judges. Efforts to promote judicial independence are, thus, at the heart of insuring judicial reform.”<sup>33</sup>

In countries such as Chile, the shift from an inquisitorial to an adversarial system required a complete makeover of their criminal justice system. A new *defensoría* was created and public defenders represented the accused for the first time. Prosecutors became more involved in the legal process because they “feel personally responsible for the outcome of their cases, in part because the adversary system accepts the consequence that the outcome of a trial may be a reflection of the quality of the advocacy.”<sup>34</sup> This created incredible challenges because the same people were serving new roles.<sup>35</sup>

Another change in the systems has been the introduction of oral trials. Over the past twenty years, most of the countries in Latin America have moved to the Anglo-style trials with opening statements, direct examination, cross examination, and closing arguments, which are all open to the public.<sup>36</sup> These trials create the opportunity for more transparency, but also for better development of facts through direct and cross examination, presentation of the evidence, and rebuttal testimony.<sup>37</sup>

Currently, Mexico is struggling with the change to oral trials. It is a change in how legal professionals do their jobs, and those changes are always difficult, but the change to oral trials goes beyond the simple notion that it is a different way to develop facts in a criminal case. Oral trials create the opportunity to reveal false testimony and police corruption. In the long term, transparency should lead to reform and

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29. OFFICE OF THE ASSISTANT SECRETARY OF LEGAL AFFAIRS, JUDICIAL REFORMS OF CRIMINAL JUSTICE IN LATIN AMERICA 2, available at <http://www.oas.org/legal/english/osla/pubs.htm> [hereinafter JUDICIAL REFORMS].

30. *Id.* at 5.

31. *Id.*

32. *Id.*

33. Dakolias, *supra* note 26, at 172.

34. JUDICIAL REFORMS, *supra* note 29, at 5.

35. *Id.* at 6.

36. *Id.*

37. *Id.*

increased confidence in the criminal justice system. In the short term, there are great challenges.

### III. WRONGFUL CONVICTIONS IN LATIN AMERICA

When I talk in Latin America about the successful exonerations we have had in the United States there is generally surprise that our system is so flawed as to allow an innocent person to be convicted. I find it important to talk about cases that do not involve misconduct in order to send the message that reforms need to be made in systems beyond getting rid of corrupt officials, because Latin America has struggled with much bigger process reforms than the United States over the past twenty years. Now, though, is the time to focus on the narrower reforms such as how identifications are done and how confessions are obtained.

Mistaken eyewitness identification is a universal problem. In Mexico, the problem was highlighted in the 2010 once-banned documentary *Presunto Culpable*, the highest grossing Mexican documentary in cinematic history.<sup>38</sup> The film documents the story of José Antonio Zúñiga, a young musician convicted of murder for the shooting death of another young man in a gang-ridden section of Iztapalapa, México.<sup>39</sup> Zúñiga was convicted despite tests showing he had never fired a gun and the testimony of numerous alibi witnesses who all said they saw Zúñiga throughout the day of the murder working on computers at his market stall.<sup>40</sup>

Zúñiga's conviction centered on the testimony of a single 17-year-old eyewitness, who was also the victim's cousin, who stated he saw Zúñiga shoot the victim.<sup>41</sup> Zúñiga was granted a retrial only after his supporters discovered that his lawyer had faked his license.<sup>42</sup> During the retrial, Zúñiga himself questioned the witness in a dramatic procedure known as a *faceoff* where defendants may question witnesses face to face.<sup>43</sup> It was

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38. *Presunto Culpable* is the highest grossing Mexican documentary as of February 28, 2011. John Hecht, 'Presunto Culpable' Is Mexico's Highest-Grossing Documentary, HOLLYWOOD REPORTER (Feb. 28, 2011), <http://www.hollywoodreporter.com/news/presunto-culpable-is-mexicos-highest-162501>.

39. Elisabeth Malkin, *A Free Man Still Looks Over His Shoulder in Mexico*, N.Y. TIMES (Mar. 4, 2011), <http://www.nytimes.com/2011/03/05/world/americas/05mexico.html>.

40. *Id.*

41. *Id.*

42. *Id.*

43. The Mexican *faceoff* procedure (in Spanish, *careo de garantía constitucional*) is where the defendant has the ability to literally come face to face with the witnesses testifying against him or her. The defendant is given the opportunity to ask the witness questions, which is in contrast to the American system where only the attorney can examine a witness. The defendant is allowed to examine the witness and ask questions important to the defense and clear up the contradictions that exist in the case. The *faceoff* procedure is no longer as widely used due to recent Mexican penal reforms and the use of oral

during this *faceoff* that the eyewitness finally admitted that he never saw Zúñiga kill the victim.<sup>44</sup>

Similarly, in Belize, a jury convicted Juan Pop on March 15, 2009, for rape of a 13-year-old girl at the police station where he was a constable.<sup>45</sup> Pop was convicted solely based on the testimony of the victim.<sup>46</sup> On appeal, Pop claimed he was misidentified because there was no identification and the victim only described her assailant as a short “Spanish” policeman dressed in plainclothes who entered the room where she was sleeping.<sup>47</sup> His conviction was subsequently quashed on the grounds that there was insufficient evidence for the case to have been submitted to the jury.<sup>48</sup> Pop was released after spending six and a half months in prison.<sup>49</sup>

Leroy Gomez also fell prey to an unreliable eyewitness identification process in Belize. Gomez was convicted in 2010 of rape, robbery, and aggravated assault.<sup>50</sup> The Belize Court of Appeal quashed his convictions because of a highly prejudicial identification process after his face was broadcast on television before the victim identified him as her assailant.<sup>51</sup> The court held that the victim’s identification of Gomez was unreliable, preventing him from getting a fair trial.<sup>52</sup> Gomez was exonerated and released only two months after his conviction.<sup>53</sup>

In 2010, faulty eyewitness testimony was the reason for the Cristian Lopez Rocha’s detention for rape and sexual abuse in Ñuñoa, Santiago de Chile.<sup>54</sup> Lopez Rocha was detained when the Chilean police maintained he was identified by a drawing done through a sketch artist

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trials. *Boletín Mexicano de Derecho Comparado*, BIBLIOTECA JURÍDICA VIRTUAL, <http://www.juridicas.unam.mx/publica/rev/boletin/cont/83/art/art8.htm> (last visited Dec. 3, 2012).

44. *Id.*

45. *Police constable wins carnal knowledge appeal case*, NEWS 5 (Oct. 14, 2009), <http://edition.channel5belize.com/archives/312>.

46. *Juan Pop v. The Queen*, No. 4 of 2009, at 2 (Ct. App. 2009) (Belize), available at [http://www.belizelaw.org/supreme\\_court/judgements/COA2010/Criminal%20Appeal%20No.%204%20of%202009%20-%20Juan%20Pop%20and%20The%20Queen.pdf](http://www.belizelaw.org/supreme_court/judgements/COA2010/Criminal%20Appeal%20No.%204%20of%202009%20-%20Juan%20Pop%20and%20The%20Queen.pdf) (last visited Dec. 3, 2012).

47. *Id.*

48. *Id.* at 1. The victim testified that the policeman entered a room at the Dangriga Police Station at night between May 23rd and May 24th of 2007. She could not remember how long the policeman had stayed in the room, from what distance she saw him, in what light she saw him, and how often he entered. *Id.* at 2.

49. *Police constable wins*, *supra* note 45.

50. Hans Sherrer, *Leroy Gomez*, WRONGLY CONVICTED DATABASE RECORD, <http://forejustice.org/db/location/Gomez--Leroy.html> (last visited Dec. 3, 2012).

51. *Id.*

52. *Id.*

53. *Id.*

54. Waldo Ortega Jarpa, *Prueba de ADN demuestra inocencia de hombre imputado de violación*, BLOG CRIMINAL (June 22, 2010), <http://blogcriminal.com/?p=255>.

and was identified by the victims.<sup>55</sup> He was later released when his case was dismissed by a judge after DNA testing proved he was not responsible for the crimes.<sup>56</sup>

In Nicaragua, Eric Volz was released from prison after spending more than a year incarcerated for the murder of his ex-girlfriend, Doris Jimenez, in San Juan del Sur.<sup>57</sup> Prior to his conviction, Volz, a United States citizen, had lived in Nicaragua for years and founded a magazine called *El Puente*, which he hoped would bridge the gap between Nicaraguans and Americans.<sup>58</sup> At the time of the crime, Volz was a two-hour drive from the crime scene, and had an alibi corroborated by ten other witnesses.<sup>59</sup>

In spite of this seemingly airtight alibi, the presiding judge chose to believe a lone witness, Nelson Dangla, who said he saw Volz in San Juan del Sur on the day of the murder.<sup>60</sup> In a twist of events, Dangla also happened to be the person originally charged with Jimenez's murder, and was granted immunity in exchange for his testimony against Volz.<sup>61</sup> This snitch testimony convicted Volz of murder, but he was eventually released a year later when a three-judge panel overturned Volz's conviction and ordered his immediate release.<sup>62</sup>

Snitch testimony continuously proves to be extremely unreliable around the world. In Belize, co-defendants Francis Eiley, Lenton Polonio, and Ernest Savery were convicted of murdering an elderly man in San Pedro.<sup>63</sup> All three men were sentenced to life in prison.<sup>64</sup> The prosecution's only witness was the original suspect who was found at the crime scene with the

55. *Id.*

56. *Libre acusado de violación*, LA ESTRELLA (June 23, 2010), [http://www.estrellavalpo.cl/prontus4\\_noticias/site/artic/20100623/pags/20100623001135.html](http://www.estrellavalpo.cl/prontus4_noticias/site/artic/20100623/pags/20100623001135.html).

57. Eric Volz, a native of Nashville, Tennessee, was released from a Nicaraguan prison in 2007, when he was exonerated of his conviction for the 2006 strangulation of Doris Jimenez in San Juan del Sur. Brittany Harris, *Freed American, Eric Volz, says he still can't rest*, CNN WORLD (Jan. 11, 2008), [http://articles.cnn.com/2008-01-11/world/eric.volz.interview\\_1\\_san-juan-del-doris-jimenez-innocent-man?\\_s=PM:WORLD](http://articles.cnn.com/2008-01-11/world/eric.volz.interview_1_san-juan-del-doris-jimenez-innocent-man?_s=PM:WORLD).

58. *El Puente* means "The Bridge" in English. *Id.* In addition to publishing his own magazine, Volz also authored a book after his conviction was overturned entitled *Gringo Nightmare* to document his story in a Nicaraguan prison. More information about Volz's book and his history can be found at his website. *Eric Volz*, GRINGO NIGHTMARE, <http://www.gringonightmare.com> (last visited Dec. 16, 2012).

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* The Nicaraguan judges who ruled in Volz's favor may face jail time because of their decisions. Nicaraguan prosecutors are appealing his exoneration to the Nicaraguan Supreme Court to try to get his conviction reinstated. *Id.*

63. Hans Sherrer, *Ernest Savery*, WRONGLY CONVICTED DATABASE RECORD, <http://forejustice.org/db/location/Savery--Ernest.html> (last visited Dec. 3, 2012).

64. *Id.*

victim's blood on his shoes and clothing.<sup>65</sup> The man was originally charged with the murder, but the charge was dismissed in exchange for his testimony against Eiley, Polonio, and Savery.<sup>66</sup> After numerous appeals through Belize courts, the convictions were overturned in 2009 for lack of evidence and all three men were released.<sup>67</sup>

False confessions also lead to wrongful convictions. In Mexico, Victor Javier Garcia was convicted of being a serial killer in 2002.<sup>68</sup> Garcia confessed to the crimes after the police tortured him by pressing burning cigarettes into his abdomen and genitals.<sup>69</sup> A lower court in Mexico used this coerced confession to convict Garcia even though DNA tests on the bodies identified as his victims were inconclusive, a forensic expert testified that his superiors forced him to plant false evidence, and the witnesses retracted their testimony stating that they were threatened by the police into making false statements.<sup>70</sup> The State Supreme Court of Chihuahua overturned his conviction in 2005 after Garcia served three and a half years in prison.<sup>71</sup>

A few months before Garcia's release, Mexican prosecutors also dismissed the case against an American woman, Cynthia Kiecker Perzabal, and her Mexican husband, Ulises Perzabal, which was brought in large part because of the couple's lifestyle which included long hair, tattoos, and a fondness for tarot cards.<sup>72</sup> After they were arrested for the murder of a 16 year old girl, police separated Kiecker from her husband.<sup>73</sup> Mexican officers then "stripped off her clothes and tortured her with electric shocks for two days and nights."<sup>74</sup> Kiecker could also hear her husband's screams from another room, often being forced to watch officers torture him.<sup>75</sup> Not surprisingly, Kiecker confessed in

65. *Id.*

66. *Id.*

67. *Id.*

68. Hans Sherrer, *Victor Javier Garcia*, WRONGLY CONVICTED DATABASE RECORD, <http://forejustice.org/db/location/Garcia--V-ctor-Javier.html> (last visited Dec. 16, 2012).

69. *Id.*

70. Garcia was sentenced to 50 years in a Mexican prison. Garcia was released in 2006, but only after he lost his business, his savings, and his wife to another man. Ginger Thompson, *In Mexico's Murders, Fury is Aimed at Officials*, N.Y. TIMES (Sept. 26, 2005), <http://www.nytimes.com/2005/09/26/international/americas/26juarez.html?scp=1&sq=victor%20javier%20garcia&st=cse>.

71. Cases like Garcia's led officials to uncover corruption and abuses at high levels in Mexican government, including former Mexican state prosecutor, Jesús José Solís Silva, and the former head of state police, Vicente González García. Both men, along with three other state police deputies, resigned from their positions when federal authorities found 12 male bodies in a backyard in Ciudad Juárez, México. The killings were believed to involve drug-related disputes. Authorities arrested at least 16 state police officers connected to the discovery of the bodies. *Id.*

72. Kiecker was 46 years old and Perzabal was 47 years old when the case was dismissed. *Id.*

73. Kiecker and Perzabal were arrested in their home in Chihuahua, México. *Id.*

74. Thompson, *supra* note 70.

75. *Id.*

order to stop the torture.<sup>76</sup> The false, forced confession was the couple's only connection to the crime.<sup>77</sup>

Chilean police also extracted false confessions from José Alfredo Soto Ruz, Juan Manuel Contreras San Martín, and Víctor Eduardo Osses for the murder of María Soledad Opazo on June 25, 1989.<sup>78</sup> Opazo was found with 30 stab wounds and police believed she was raped.<sup>79</sup> Seven months after the murder, confessions were obtained from the three men under duress and none were allowed to consult an attorney.<sup>80</sup> After five years in prison, the court found them all innocent and ordered their immediate release.<sup>81</sup> In January of 2000, the details of the men's settlement with the Chilean government were made public, providing the men with a life-time pension and a public apology for the great miscarriage of justice.<sup>82</sup>

Poor police investigation often leads to wrongful convictions, and it was poor police work that led to the wrongful conviction of Francisco Rivera and Alfonso Calderon in 2002.<sup>83</sup> Rivera, a Mexican businessman, was convicted with his brother-in-law, Calderon, of drug trafficking after 37 pounds of marijuana was found in the door of a Nissan Pathfinder that Rivera bought for \$2,600 at a United States government auction.<sup>84</sup> The marijuana in the door, however, was moldy and worthless.<sup>85</sup> The Pathfinder was originally seized before the auction when marijuana was found in the gasoline tank, but agents did not conduct a thorough search in the rest of the car.<sup>86</sup> Both Rivera and Calderon had their convictions overturned on appeal after attorneys established that the marijuana had been in the Pathfinder for more than a year when the two men were arrested, matching the time when the

76. Kiecker said in an interview with the *New York Times*, "I would have confessed to anything to stop them." In her confession, Kiecker agreed that her and her husband had killed Rayas as part of a satanic cult. *Id.*

77. The police used the couple's lifestyle to portray them in a false light to the court to create an image of satanic devil-worshipping to horrify the public and increase their chances of conviction, Kiecker said. *Id.*

78. COMISIÓN INTERAMERICANAN DE DERECHOS HUMANOS INFORME NÚMERO 32/02, IUS ET PRAXIS 665 (2002), available at <http://redalyc.uaemex.mx/pdf/197/19780222.pdf>.

79. *Id.*

80. *Id.*

81. *Id.* at 666.

82. *Id.* at 666-667.

83. Hans Sherrer, *Francisco Rivera, WRONGLY CONVICTED DATABASE RECORD*, <http://forejustice.org/db/location/Rivera--Francisco.html> (last visited Dec. 16, 2012).

84. *Id.*

85. The moldy marijuana was found tucked deep behind the wheel wells and back seats of the Pathfinder. *Men File Suit Against U.S. Customs over Car Purchase*, ABC 10 NEWS (June 5, 2007), <http://www.10news.com/news/13448644/detail.html>.

86. Channel 10 News in San Diego obtained documents using the Freedom of Information Act, which showed the truck's former owner was detained for attempting to smuggle marijuana. *Id.*

vehicle was originally seized.<sup>87</sup> United States Customs had missed the extra 37 pounds of marijuana in the door.<sup>88</sup>

On January 28, 1993, Juana Lazo left her home at 4:30 a.m. to get medicine for her son Alvaro, leaving him in the care of her husband, Victor Maco.<sup>89</sup> Unfortunately for Lazo, the terrorist movement Shining Path launched a general strike early the same day<sup>90</sup> and while she was attempting to flag down a cab, she caught the attention of the Peruvian police.<sup>91</sup>

Police subsequently accused Lazo of terrorism and refused to believe or confirm her story with her husband, Maco, or with the pharmacist.<sup>92</sup> Police also concluded she was working with her husband to stash a cache of arms in their home.<sup>93</sup> Lazo and Maco were tortured until they confessed.<sup>94</sup> Later, when the police tried to question the pharmacist where Lazo bought the medicine, the pharmacist denied seeing her out for fear of being accused of also supporting the Shining Path.<sup>95</sup> A

87. Sherrer, *supra* note 83.

88. In response to the investigation and release of Rivera and Calderon, U.S. Customs officials said “they would change its auction policies, promising to search vehicles more thoroughly.” *Id.* On March 15, 2011, the United States House of Representatives was introduced a bill of resolution to compensate Rivera and Calderon for costs related to their arrest, prosecution, and incarceration in Mexico, further described in Claim No. 05-608C, filed in the United States Court of Federal Claims. For the relief of Francisco Rivera and Alfonso Calderon, H.R. 1108, 112th Cong. (2011). The bill was assigned to a congressional committee on March 15, 2011, “which will consider it before possibly sending it on to the House or Senate as a whole. [Unfortunately for Rivera and Calderon] [t]he majority of bills never make it past this point.” *H.R. 1108: For the relief of Francisco Rivera and Alfonso Calderon*, POP VOX, <https://www.popvox.com/bills/us/112/hr1108> (last visited Dec. 16, 2012).

89. Lazo and Maco were law students in Lima’s public San Marcos University. San Marcos was known by some for its students’ sympathy, and often support, for Shining Path, a terrorist movement during the 1980s and early 1990s. Deann Alford, *Peruvian Couple Wrongly Convicted Awaits Pardons*, NETWORK FOR STRATEGIC MISSIONS (December 1, 2001), <http://strategicnetwork.org/index.php?loc=kb&view=v&id=9060&fto=280&>.

90. *Id.* While traveling, Lazo was ordered to evacuate the bus she was traveling on because of gunfire and bombing. Lazo found herself stranded in an area of Lima where the Shining Path terrorist movement was active. The violence that stopped the traffic was caused by a strike ordered by the Shining Path through flyers sent out to its members. Ruiz, Lazo and Maco’s lawyer, stated that “everyone in that area was suspected of being with Shining Path.” *Id.*

91. *Id.*

92. *Id.*

93. Police found pistols, shotguns, bulletproof vests, incendiary devices, and Shining Path literature the police claimed were found under the stairs. To support the accusation that the arsenal belonged to Maco and Lazo, police found textbooks from Maco’s class in Marxism, which was required at San Marcos and other public universities in Peru. *Id.*

94. Deann Alford, *Presidential Pardon Reunites Family In Peru—Couple Spend First Christmas Together Since 1993*, COMPASS DIRECT (Jan. 18, 2002), <http://old.lff.net/resources/compass/cd102t.txt>. Compass Direct is a news service dedicated to providing exclusive news and analyses of situations and events facing Christians persecuted for their faith. Lazo and her husband, Maco are evangelicals and were represented by lawyer Wuille Ruiz of the Peace and Hope Association, a Lima-based evangelical legal aid group.

95. Alford, *supra* note 89.

military judge convicted both Lazo and Maco of treason and sentenced them to life in prison.<sup>96</sup> Peru's Human Rights Commission conducted an investigation and concluded that both Lazo and Maco were innocent, begging Peruvian President Alejandro Toledo to pardon Lazo and Maco for their supposed crimes.<sup>97</sup> Finally, after each spending eight years in prison, President Toledo signed their pardons.<sup>98</sup>

#### IV. BRINGING INNOCENCE WORK TO LATIN AMERICA

##### *A. Law Reform*

Innocence project work has always combined exonerating the innocent and pushing for reforms to stop the same case from happening again. When there is a human face on the reforms—the innocent person who has often spent years of their life in prison for a crime he or she did not commit—they become much more concrete and compelling. Latin America clearly has stories of innocent people and now is the time to focus on the narrower reforms that they have been struggling with over the past decades.

For example, whereas Chile restructured their entire system from the inquisitorial to the adversarial system, decreased the chances of wrongful convictions by placing an advocate next to the defendant in the criminal process, and reassigned judges to a more neutral role, narrower reforms are needed to deal with preservation and access to DNA evidence and testing, as well as further education on the inherent limitations of eyewitness identification, and the risks of false confessions and snitch testimony. Model legislation and policing procedures in these areas has been developed in the United States and Canada, and many of these could be readily adopted in Latin America.<sup>99</sup>

DNA testing is a worthless post-conviction tool without access to the evidence to be tested and the ability to conduct testing. As a result, 48 states have passed post-conviction testing statutes, each with different rules regarding the right to testing and the state's obligation to preserve

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96. In Peruvian military courts, judges were faceless and the judge's identity was hidden by a hood or by one-way mirrors. On appeal, in 1993, a second military trial upheld Lazo's verdict and sentence. In 1994, a third trial reduced the life sentence to 30 years, holding that the court had not proved that Lazo or Maco were, in fact, Shining Path militants, but that the arms still belonged to Lazo and Maco. *Id.*

97. *Id.*

98. Alford, *supra* note 94. After Lazo and Maco's release, they both intended to complete their law studies, which were interrupted three years into their six-year course.

99. *Fix the System: Model Legislation*, INNOCENCE PROJECT, <http://www.innocenceproject.org/fix/> (last visited Dec. 1, 2012).

the biological evidence.<sup>100</sup> These statutes could be modeled in Latin America, using the experience of years of litigating them as a guide.

In the area of identification, traditional identification processes have proven flawed by many respected researchers.<sup>101</sup> For example, all agree that the lack of “double blind” procedures, where the witness and the investigator are unaware of who the suspects are in a lineup, is critical to getting good identifications.<sup>102</sup> This prevents the administrator of the lineup from affecting the identification by giving off intentional or unintentional verbal or non-verbal cues.<sup>103</sup> Although there is still a great deal of work to be done in convincing every jurisdiction in the United States to adopt double blind identification procedures, it has been fully implemented in some jurisdictions.<sup>104</sup> Double blind identification procedures could be implemented throughout Latin America. It is a simple reform that requires neither expensive equipment nor significant training, yet it leads to better identifications. With misidentification as the leading cause of wrongful convictions these types of reforms are critical.<sup>105</sup>

Coercive interrogation techniques have been a problem throughout Latin America for some time.<sup>106</sup> We have learned in the United States that

100. See Justin Brooks & Alexander Simpson, *Blood Sugar Sex Magik: A Review of Post-Conviction DNA Testing Statutes and Legislative Recommendations*, 59 *DRAKE L. REV.* 799, 804 (2011).

101. See generally *State v. Henderson*, No. A-8-08 (N.J. Sept. 8, 2008), submitted by Geoffrey Gaulkin, P.J.A.D. (retired and temporarily assigned on recall), summarizing existing scientific and academic research on the flaws of traditional eyewitness identification procedures.

102. See Gary L. Wells & Eric P. Seelau, *Eyewitness Identification: Psychological Research and Legal Policy on Lineups*, 1(4) *PSYCHOL., PUB. POL’Y, & LAW* 765, 768 (1995); R.M. Haw & R.P. Fisher, *Effects of Administrator-Witness Contact Identification Accuracy*, 89(6) *J. APPL. PSYCHOL.* 1106 (2004).

103. *State v. Henderson*, 27 A.3d 872 (NJ 2011).

104. As of June 2011, the following jurisdictions have implemented the sequential “double-blind” as standard procedure: the state of New Jersey; the state of North Carolina; Boston, Massachusetts; Northampton, Massachusetts; Madison, Wisconsin; Winston-Salem, North Carolina; Hennepin, Minnesota (Minneapolis); Ramsey County, Minnesota (St. Paul); Santa Clara County, California; and Virginia Beach, Virginia. Additionally, the state of Wisconsin has “promulgated double-blind sequential voluntary guidelines and incorporated them into law enforcement training.” *News and Information: Eyewitness Identification Reform*, INNOCENCE PROJECT, [http://www.innocenceproject.org/Content/Eyewitness\\_Identification\\_Reform.php](http://www.innocenceproject.org/Content/Eyewitness_Identification_Reform.php) (last visited Dec. 1, 2012) (internal quotations omitted).

105. John Turtle, R.C.L. Lindsay & Gary L. Wells, *Best Practice Recommendations for Eyewitness Evidence Procedures*, 1 *CAN. J. POLICE & SEC. PRAC.* 5 (2003); *Eyewitness Evidence: A Guide for Law Enforcement*, NAT’L INST. JUST. (Oct. 1999), available at <https://www.ncjrs.gov/txtfiles/nij/178240.txt>; INNOCENCE PROJECT, *EYEWITNESS IDENTIFICATION RESOURCE GUIDE: A PRIMER FOR REFORM* (2007), available at <http://www.wisspd.org/htm/ATPracGuides/Training/ProgMaterials/Conf2007/EF/EI2007.pdf>.

106. See generally BUREAU DEMOCRACY, HUMAN RIGHTS, AND LABOR, *2010 Human Rights Report: Paraguay*, U.S. DEP’T STATE (Apr. 8, 2011), <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154515.htm>; BUREAU DEMOCRACY, HUMAN RIGHTS, AND LABOR, *2010 Human Rights Report: Mexico*, U.S. DEP’T STATE (Apr. 8, 2011), <http://www.state.gov/g/drl/rls/hrrpt/2010/>

as a result of these techniques, innocent people confess to crimes they did not commit.<sup>107</sup> The simple reform of videotaping confessions decreases the likely use of coercive techniques, and if not, allows the courts to consider confessions in the context they were obtained. This simple, low cost reform could easily be adopted throughout Latin America.

Jailhouse snitch testimony has led to many wrongful convictions.<sup>108</sup> This testimony often has no credibility as inmates are incentivized to testify against their cellmates. Defense lawyers in the United States continue to struggle with this issue, but Canada has been a leader in limiting the use of snitch testimony, for example the Attorney General of Ontario only permits snitch testimony “where this evidence is justified by a compelling public interest, founded on an objective assessment of reliability” and “requires a rigorous, objective assessment of the informer's account of the accused person's alleged statement, the circumstances in which that account was provided to the authorities and the in-custody informer's general reliability.”<sup>109</sup> These reforms could be adopted in Latin America.

### *B. Case Assistance*

Although it is absolutely critical that countries within the Latin America justice system run their own cases and courts, it is incumbent upon the global defense community to assist these countries with with cases of actual innocence. These cases are often very complicated and often rely on technology that is unavailable in Latin America.<sup>110</sup>

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wha/154512.htm; BUREAU DEMOCRACY, HUMAN RIGHTS, AND LABOR, *2010 Human Rights Report: Ecuador*, U.S. DEP'T STATE (Apr. 8, 2011), <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154504.htm>.

107. See Robert Kolker, *Why Do People Confess to Crimes They Didn't Commit?*, N.Y. MAG. (Oct. 3, 2010), <http://nymag.com/news/crimelaw/68715/> (stating that 25% of DNA exonerations involve false confessions).

108. See THE JUSTICE PROJECT, *JAILHOUSE SNITCH TESTIMONY: A POLICY REVIEW 1* (2007), available at [http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Death\\_penalty\\_reform/Jailhouse%20snitch%20testimony%20policy%20brief.pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Death_penalty_reform/Jailhouse%20snitch%20testimony%20policy%20brief.pdf) (stating that over 15% of DNA exonerations involve jailhouse snitch testimony).

109. See ONTARIO MINISTRY ATTORNEY GEN., *IN-CUSTODY INFORMERS* (2005), available at <http://www.attorneygeneral.jus.gov.on.ca/english/crim/cpm/2005/InCustodyInformers.pdf> (stating that the Attorney General of Ontario only permits snitch testimony “where this evidence is justified by a compelling public interest, founded on an objective assessment of reliability” and “requires a rigorous, objective assessment of the informer's account of the accused person's alleged statement, the circumstances in which that account was provided to the authorities and the in-custody informer's general reliability”); ONTARIO MINISTRY ATTORNEY GEN., *REPORT OF THE COMMISSION ON PROCEEDINGS INVOLVING GUY PAUL MORIN* (1998), available at <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/morin/> (summarizing several factors from the Canadian Department of Justice Policy Handbook that must be assessed in order to determine the reliability and truthfulness of an informant's evidence).

110. For example, Chile's primary DNA testing laboratory is located in Santiago de Chile, the capital city. Recently, another laboratory was inaugurated in Valparaíso, another will be implemented in

The goal of Redinocente is to create a pipeline to provide this type of assistance to Latin America while assisting in the development of domestic projects. New technologies connect the world as it has never been connected in the past. It wasn't too long ago that it was difficult to identify forensic experts even in major U.S. cities. Criminal defense attorneys faced with their first case involving a technology they had never dealt with would ask around and get referrals. Now referrals are requested on a global scale and experts can be found with a few internet inquiries. However, the ability for lawyers in smaller cities in Latin America to acquire Spanish-speaking experts is still a challenge.

For the past fifteen years, California Western School of Law (CWSL), through Proyecto ACCESO, has been conducting trainings for criminal defense attorneys, prosecutors, judges, and law enforcement throughout Latin America.<sup>111</sup> For the past five years CWSL has been hosting a week-long training program to give Latin American attorneys a set of practical trial skills to take back to their native country.<sup>112</sup> Other organizations such as the National Institute for Trial Advocacy (NITA),<sup>113</sup> the Conference of Western Attorneys General (CWAG),<sup>114</sup>

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Concepción, and yet another is being built in Iquique, Chile. In Santiago, researchers are working with the Ministerio de Justicia (Prosecutor's Office) to build a DNA laboratory to also work in mitochondrial DNA. Chile is one of the more advanced justice systems in Latin America and yet these labs still will not be able to handle the thousands of criminal cases that are processed each year. Daniel Fajardo C., *Avances en el Servicio Médico Legal: Banco de ADN chileno listo para la partida oficial*, EDICIONES ESPECIALES ONLINE, <http://www.edicionesespeciales.elmercurio.com/destacadas/detalle/index.asp?idnoticia=0124112005021X0060039> (last visited on Dec. 16, 2012). Countries like Bolivia and Paraguay have nothing like these resources.

111. ACCESO Capacitación is a program of Proyecto ACCESO, whose Spanish acronym translates as Creative Lawyers Collaborating to Find Optimal Solutions Project. In the midst of Latin America's transformation from the inquisitorial system to the adversarial system, Proyecto ACCESO developed courses to meet the rising demand for attorneys as effective oral advocates. With the new adversarial system, lawyers needed to shift from primarily written trials, to new oral trials in front of a panel of judges. ACCESO CAPACITACIÓN, <http://www.accesocapacitacion.com/> (last visited Dec. 16, 2012).

112. Legal professionals from Argentina, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, Guatemala, Mexico, and Peru take part in the program to teach attorneys and judges to "become more efficient in trial techniques and strategies through role-playing the defense and prosecution in a simulated case. Participants learn to make better opening statements, direct and cross examine with confidence, present more comprehensive and powerful closing arguments, and develop trial strategies that work." *California Western Welcomes 100 Distinguished International Dignitaries, Lawyers, and Judges for 20th Trial Skills Academy*, CAL. W. SCH. L. (Feb. 15, 2011), [http://www.cwsl.edu/main/default.asp?nav=news.asp&body=news/tsa\\_20th\\_class\\_021511.asp](http://www.cwsl.edu/main/default.asp?nav=news.asp&body=news/tsa_20th_class_021511.asp).

113. NITA was founded in 1971 by three organizations: The Section of Judicial Administration of the ABA; the American College of Trial Lawyers; and the Association of Trial Lawyers of America. NITA is an organization dedicated to promoting effective and ethical advocacy by developing and teaching trial advocacy skills. NITA also conducts one to two-day workshops in trial advocacy in North and South America. *About*, NAT'L INST. TRIAL ADVOCACY, <http://www.nita.org/About> (last visited Dec. 16, 2012).

114. Since 2006, CWAG has an Alliance Partnership (a cooperative program between many U.S. government agencies) aimed to strengthen the legal systems of both the United States and Mexico.

and the International Training Programme on the Criminal Justice System Reforms in Latin America (ILANUD)<sup>115</sup> also host trial skills training programs throughout Latin America.

These trainings have brought together lawyers from Latin America with their colleagues from the north to search for solutions to universal problems. The continuation and expansion of this networking and training will lead to exonerations and reforms as we help each other with our cases and our systemic problems.

#### V. CONCLUSION

Just over a decade ago, a handful of innocence projects were working in isolation when they decided to start meeting to talk about their common missions. That group grew to over 500 participants at the 2011 meeting hosted by the Ohio Innocence Project with representatives from around the world running innocence projects and looking to start them in various countries in Africa, Asia, South America, and Europe.<sup>116</sup>

This past year the Latin American Innocence Network (Redinocente) held its first conference in Santiago de Chile.<sup>117</sup> More than 100 participants came from countries throughout Latin America, shared their common experiences working in their various criminal justice systems, and laid the foundations for launching innocence efforts. This next year the conference will be held in Buenos Aires where a project has already been launched. It is an exciting time to be doing this work as we reach out to our colleagues in Latin America to join us on our mission of freeing the innocent and reforming systems to decrease the chances of wrongful convictions.

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Through this, capacity trainings for a focus on trial skills have been implemented throughout Mexico. *CWAG Alliance Partnership Backgrounder*, CWAG, <http://www.cwagweb.org/AP/index.html> (last visited Dec. 16, 2012).

115. ILANUD was established in San José, Costa Rica, on June 11, 1975, between the United Nations and the Government of the Republic of Costa Rica. *Constitucion de ILANUD*, INSTITUTE LATINOAMERICANO DE LAS NACIONES UNIDAS PARA LA PREVENCIÓN DEL DELITO Y EL TRATAMIENTO DEL DELINCUENTE, <http://www.ilanud.or.cr/acerca-del-ilanud/constitucion-del-ilanud.html> (last visited Dec. 16, 2012). The objective of ILANUD is to collaborate with the governments for the economic development and social balancing in Latin American countries and the Caribbean. *Objetivo del ILANUD*, INSTITUTE LATINOAMERICANO DE LAS NACIONES UNIDAS PARA LA PREVENCIÓN DEL DELITO Y EL TRATAMIENTO DEL DELINCUENTE, <http://www.ilanud.or.cr/acerca-del-ilanud/objetivo-principal.html> (last visited Dec. 16, 2012).

116. OHIO INNOCENCE PROJECT, *2011 Innocence Network Conference: An International Exploration of Wrongful Conviction*, UNIV. OF CINCINNATI COLLEGE OF LAW, <http://www.law.uc.edu/institutes-centers/ohio-innocence-project/past-events/2011-innocence-network-conference> (last visited Dec. 16, 2012).

117. RED INOCENTE, *supra* note 1.