

Ted Bradford in front of the Yakima County jail where he spent six months between his arrest and sentencing; he subsequently spent more than nine years in prison before a judge overturned his guilty conviction last September

At the Innocence Project Northwest, a professor and her law students work to exonerate the wrongly accused

Finding

Guilty.

THAT LABEL HAS FOLLOWED Ted Bradford for 10 years. It was given to him in 1996 when a Yakima County jury said he was responsible for a brutal rape in Yakima, Washington. It followed him to prisons in Walla Walla, Shelton, Aberdeen and Spokane, where he served nine years and two months behind bars for the crime. And it clung to him after he was released from prison in 2005.

He was a rapist. He was a felon. He was guilty.

It wasn't until last September 12 and 13 that Bradford had an opportunity to shake that label, when the Washington State Court of Appeals ordered a new hearing. On those days, Bradford, 33, arrived at Yakima County Superior Court—an outdated, 40-year-old, three-story building downtown—for a chance to clear his name. While a custody battle waged in a courtroom next door and drivers paid parking tickets at a window downstairs, Bradford, his attorneys—Jacqueline McMurtrie, a law professor at the University of Washington and director of the Innocence Project Northwest, and Felix Luna, a partner at Heller Ehrman in Seattle working on the case pro bono—and a county deputy prosecutor convened in Judge Robert Hackett's courtroom to argue whether or not the judge should deliver a ruling that would establish, according to McMurtrie and Luna, the first postconviction DNA exoneration in Washington state. More simply, it was up to McMurtrie and Luna to prove to Judge Hackett something Bradford had asserted for a decade: He was innocent.

Bradford's mom, siblings, aunts, uncles—even his ex-wife (the mother of his two children)—filled the first two rows of the courtroom to show support. On both days, Bradford arrived early to court, dressed in clean blue jeans and a colored shirt, and sporting a neatly shaved black goatee and buzz haircut. The courtroom environment was staid: a bookcase stretching the length of one wall; two court reporters clicking away on computers; Judge Hackett, a

innocence

By **Todd Matthews**

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PHOTOGRAPHS
BY BRIAN SMALE

slender man with wire-rimmed glasses, thinning gray hair and tanned skin watching the proceedings intently, pausing to type notes into a laptop.

This hearing was markedly different from Bradford's jury trial. He wasn't worrying about how much time he might have to spend in prison: He'd already served his time. The court had been convened to decide Bradford's guilt in light of new evidence. If he were exonerated, Bradford could clear his criminal record; if not, the state would be comfortable knowing Bradford had gone to prison for a crime he committed.

For Bradford, the drama was high. From his seat behind the defense table, next to McMurtrie and Luna, his face flushed and his body tensed at times as details of the crime, his arrest and the trial were recounted.

On September 29, 1995, an assailant wearing a nylon stocking over his head broke into a Yakima woman's home, handcuffed her, forced a Lone Ranger-style mask over her face (the eyeholes were covered with electrical tape) and proceeded to rape her while her infant child screamed from a crib in a nearby room. Six months later, Bradford was arrested and charged with indecent exposure in an area near the victim's home. While he was held in jail, detectives thought there might be a connection between the rape and his indecent exposure charge.

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Despite his conviction, his confession details never matched details from the crime scene or police report. Bradford said there wasn't a baby in the home; according to the victim, her infant child wailed, and the attacker paused in the middle of the rape to allow her to quiet the child. Bradford said he quickly fled after the rape; the victim said the attacker rifled through her purse afterward and even used a wire hanger to tie her to the baby's crib. The victim claimed her attacker was over 6 feet tall; Bradford stands 5 feet, 7 inches tall. And Bradford's co-workers testified at his trial that he was at work when the assault occurred. In all, more than a dozen details Bradford provided in his confession didn't match evidence collected from the witness and the crime scene.

Bradford had little knowledge of the criminal justice system. A Yakima native and father of two children, his career consisted of manual labor at local manufacturing companies for low pay. At the time of his arrest, Bradford was working at a lumber mill; at the time of his hearing, last September, he was working at a container company repairing and manufacturing pallets.

In 1996, a jury found Bradford guilty and sent him to prison.

During Bradford's hearing last September, an expert witness in interrogation techniques was flown from San Francisco by

wasn't available in 1996. The evidence he found cast doubt on Bradford's guilt. Bradford's DNA was absent from the victim's panties, a coat hanger used to tie the victim, a belt used during the attack and the victim's black jeans. More importantly, the mask placed over the victim's face—a mask presumably prepared by the perpetrator with much precision—didn't contain Bradford's DNA; instead, it contained DNA evidence of a third, unknown person.

"I could not detect through DNA analysis that [Mr. Bradford] contributed any DNA to any evidence," Philip Hodge, the state patrol's forensic scientist, told the judge at the hearing.

Over the past decade, innocence projects—organizations often connected to universities and law schools that work to free wrongly accused inmates—have become a growing part of the criminal justice landscape. According to the Innocence Project at the Benjamin N. Cardozo School of Law in New York City, the first and most well known of these projects, 180 people in the United States have been exonerated thanks to the work of these organizations, including 14 who were at one time on death row.

The notion that innocent people serve time in prison for crimes they didn't commit has received mainstream attention through a number of movies and television

"Why confess to a crime you didn't commit?" asked McMurtrie during Bradford's hearing. "I've been asking myself that for a long time," he replied. "I didn't know what else to do. I thought for sure the DNA evidence would clear me. I thought the DNA evidence would speak for itself."

Over a nine-hour period, Bradford was questioned about the earlier rape. He claimed officers provided him one bathroom break, no food and little water during the interrogation. When officers claimed to have DNA evidence that would tie him to the scene, an exhausted and famished Bradford confessed to the crime.

"Why confess to a crime you didn't commit?" asked McMurtrie during Bradford's hearing.

"I've been asking myself that for a long time," he replied, twisting his hands nervously as he sat in the witness stand. He choked up a moment before composing himself. "I didn't know what else to do. I thought for sure the DNA evidence would

McMurtrie and Luna to support the defense's claim that police effectively bullied Bradford into a confession (only the last 38 minutes of the nine-hour interrogation were recorded, when Bradford confessed). And Bradford's chief interrogator, a former detective (now police officer) with the Yakima County Police Department, had a difficult time at the hearing recalling specifics of how Bradford was questioned and eventually confessed.

But the key witness at the hearing was a forensics scientist for the Washington State Patrol crime lab who told the judge how he conducted a DNA test in 2004 on evidence originally collected at the crime scene. The technology used in that test

shows. *Paradise Lost*, a 1996 documentary about the so-called West Memphis Three, is a film that people associated with innocence projects often point to as an example of a failure in the criminal justice system and a reason why innocence projects are important. In that film, three teenagers from West Memphis, Arkansas, are sentenced to life in prison (one receives the death penalty) for the brutal mutilation and murders of three boys in the backwoods of Arkansas—even though no physical evidence tied the defendants to the scene. The three men are still in prison. A grassroots organization called Free the West Memphis Three has provided legal resources to the trio with the help of



Jacqueline McMurtrie, center, with Matt Ficaglia and Theresa Connor, 2006 law school grads who worked on the Bradford case. They're standing outside the William H. Gates Hall at the UW

celebrities such as Eddie Vedder, Tom Waits, Henry Rollins, Winona Ryder, Steve Earle and Jack Black.

In 2005, an Oscar-nominated documentary entitled *After Innocence* followed several wrongly convicted men freed by DNA evidence after many years in prison, showing some of the difficulties these people face as they reenter society. And a short-lived ABC television show last year, *In Justice*, followed attorneys at a fictional innocence project as they freed wrongly accused individuals.

"[In the TV show], they would get a case and, at the end of the hour, the person would be released," says McMurtrie, shaking her head, amused by such swift justice. Speaking just weeks before Bradford's hearing from her office inside the William H. Gates Hall, home to the law school on the UW campus, she notes, "It's much less glamorous than it appears on television. First of all, it's really difficult to overturn a conviction. Courts are very reluctant to overturn convictions. The work on cases can go on for years and years. And the likelihood that students here are going to see somebody walk out of prison during their year [here] is not good. It's probably not going to happen."

A former staff attorney and supervising attorney for the Seattle-King County Public

Defender Association who joined the UW School of Law in 1989, McMurtrie remembers being moved by the issue after watching a 1997 PBS documentary entitled *What Jennifer Saw*. In the documentary, an inmate named Ronald Cotton is exonerated for the rape of Jennifer Thompson and released from prison, with help from innocence projects at the University of North Carolina and Cardozo School of Law. "The amazing thing about this case was that there was nobody that actually did anything wrong in the case," she recalls. "The police did a good job investigating the case. There wasn't misconduct. Cotton had a great trial attorney. But he was convicted and served a substantial amount of time in prison before post-conviction DNA testing exonerated him. It not only exonerated him, but it identified the true perpetrator."

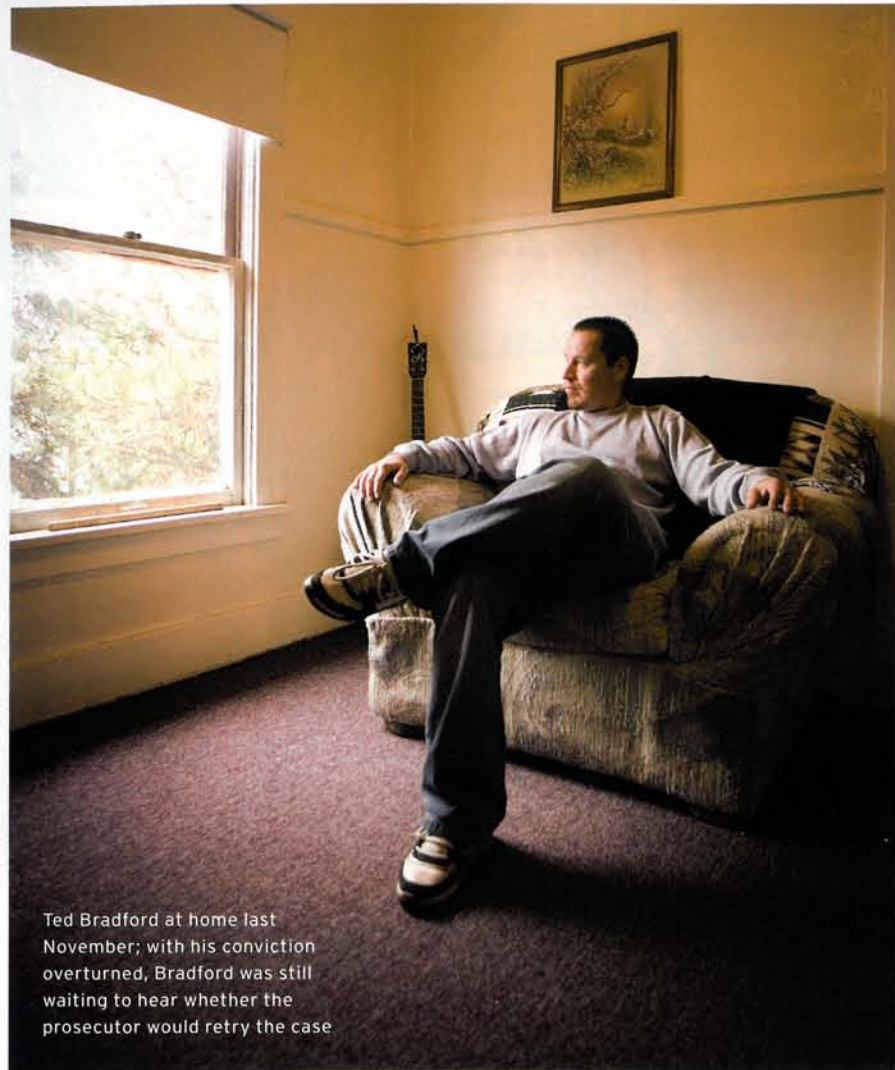
The documentary prompted McMurtrie to look into creating an innocence project in the Pacific Northwest. In 1997, over dinner one night with Barry C. Scheck, co-founder of the Innocence Project at the Cardozo School of Law; attorney John Rapp; and DNA expert Fred Leatherman, McMurtrie decided to start a project here with their help. The upstart program launched by McMurtrie, Rapp and

Leatherman was truly grassroots for its first few years. It was little known by inmates and handled very few cases. "But that all changed when we got involved in the Wenatchee sex investigation," says McMurtrie.

In 1994, after a wide-ranging and extensive investigation, a police detective in Wenatchee arrested parents, foster parents, parishioners and the pastor of a local church for the rape and molestation of 60 children in Wenatchee. Forty-three people were arrested in a case that received national attention. Eventually, 26 were convicted and sent to prison. But in 1997, an investigative series by the *Seattle Post-Intelligencer* revealed misconduct by police, judges, defense attorneys and state child services workers.

The case troubled McMurtrie.

Through the Innocence Project, she gathered 40 lawyers and more than 25 law students to examine the cases and represent 13 people in prison. McMurtrie and her colleagues found that many defendants were illiterate or developmentally disabled, with poor English skills. They also found evidence that many defendants were pressured into pleading guilty by a Wenatchee police detective. Between 1997 and 2000, McMurtrie and her team of



Ted Bradford at home last November; with his conviction overturned, Bradford was still waiting to hear whether the prosecutor would retry the case

volunteer lawyers wrote personal restraint petitions and argued that there was police misconduct and that the original defense attorneys provided ineffective counsel by failing to interview witnesses, overlooking medical evidence and coercing their own clients to plead guilty. By 2000, all of the project's clients were freed from prison.

"That was the case that ensured we wouldn't have problems with a lack of work to do or lack of requests," says McMurtrie.

In 2002, the project was folded into the UW's law school to the mutual benefit of students, who receive hands-on learning, and the project, which receives steady funding from the university. Today, McMurtrie picks 10 second- and third-year law students from a competitive pool of applicants to work in the project's clinic.

Students have been inspired to pursue law based on innocence projects. One such student is Kelly Canary, in her third year at the UW law school.

"I had a fleeting interest in the issue [of wrongful imprisonment]," says Canary, 36, at a coffee shop on Capitol Hill during an interview last summer. "Did I do anything about it? No. I would read the paper and think, 'Wow, that's a shame.' Then I would go to work like everyone else. I don't know if I ever believed that innocent people were thrown in prison."

But like McMurtrie, Canary was moved to take action after watching a documentary; for her, it was *Paradise Lost*. Later on, when Canary learned the West Memphis Three were still in prison, she was outraged. She turned toward law school as an opportunity to effect change in the criminal justice system.

"I think the film itself wasn't what made me go back to school," she says. "After I saw the film, I thought, 'Oh, they will be out in a year. Some intelligent lawyer will see this film, and they will be out in a year.' Because in that film, what happens is the criminal justice system

doesn't work at all. It wasn't so much that people were wrongly convicted. It was that people were wrongly convicted and not getting out of prison. I really thought it would be so easy, and some lawyer could take this movie to a judge and say, 'Look, these kids are innocent.' Now it's 13 years later and they are still locked up."

Canary had to start from scratch. She took an evening job as a bartender to free up her days for classes. She earned a bachelor's degree and applied to the UW law school; she will graduate this year.

"Kelly is kind of an über-student who came here passionate about this kind of work," says McMurtrie.

Last summer, Canary was the first Innocence Project Northwest student to intern at the innocence project at Cardozo. She was there when Alan Newton walked out of a Bronx courtroom a free man as a result of work done by students and professors at Cardozo. Newton had spent 22 years in a New York state prison for rape, robbery and assault—crimes that postconviction DNA evidence showed he didn't commit. She's also volunteered at the annual national innocence project conference, which brings attorneys, law students and exonerees together to share their stories (last year, the three-day conference was held in Seattle).

"The first time I ever went to the innocence project conference was a couple years ago," Canary recalls. "Every time I would look at the exonerees, I would start to cry. They all had this dead look behind their eyes. They were trying really hard. Some had gotten married. Some had gotten settlements from the state, so they were financially set. But they all had that look behind their eyes that they had been through hell. Prison is terrible, especially if you're innocent."

Currently, Canary is working with another law student to write a motion for DNA testing for a client in prison. Like Bradford, her client could receive another hearing that could determine his innocence. The motion could also be denied, and Canary's client could remain in prison. The work can be heartbreaking at times, says Canary. She remembers another case this summer in New York. She was convinced the inmate was innocent. "I grew really fond of him and believed he was innocent," she explains. "But they had destroyed all the evidence in this case. When I went in the evidence room, it was really depressing. I had to tell him sorry, but there was absolutely nothing we could do."

Students accepted to the program get

practical experience while earning law school credit. They sift through 50 requests on average each month from inmates seeking assistance. In those letters, inmates describe their claims of innocence. Students, in turn, search for any kind of legal claim, such as ineffective assistance of counsel or prosecutory misconduct claims, which can determine whether the Innocence Project Northwest will take a particular case. If the project decides to accept a case, students investigate by gathering police reports and trial transcripts, interviewing inmates and witnesses, writing court motions and appellate briefs, and even arguing before the federal and state Court of Appeals. If cases are headed to the Court of Appeals, work prepared by students is peer-reviewed and often argued in mock court prior to a hearing. Students also determine whether to bring a motion for postconviction DNA testing.

That's how Bradford's case reached the project. In 2001, while in prison in Aberdeen, Bradford wrote a letter requesting help. Two students reviewed court transcripts and wrote a request for postconviction DNA testing. They also visited

zations getting DNA exonerations and representing the wrongly convicted."

For Bradford's case, Ficcaglia and a fellow student wrote court briefs and researched case law. "The real challenge for me, in the briefs we revised or drafted, was to explain a relatively scientific DNA process that was helpful to the court," explains Ficcaglia. Ficcaglia also had the opportunity to argue two other cases, one in the Washington State Court of Appeals and the other in the Ninth Circuit Court of Appeals.

The innocence project changed Ficcaglia's long-term career goal.

"It's interesting that coming into law school, I really didn't see myself getting involved in criminal law," he explains. "The innocence project really changed that. That's what I want to do—criminal defense work, particularly at the appellate level."

Back in the Yakima courtroom, Bradford's hearing was closing.

He had already served almost 10 years in prison for the crime. Still, the outcome of the hearing was important to Bradford. "I want to get the charges off my record,"

"Every time I would look at the exonerees, I would start to cry. ... Some had gotten settlements from the state, so they were financially set. But they all had that look behind their eyes that they had been through hell. Prison is terrible, especially if you're innocent."

Bradford in prison. "They came back from that convinced he was innocent," says McMurtrie. DNA tests were conducted on evidence collected and stored for a decade. By that time, another team of students was handed the case because the previous students had graduated. In the time it took for them to write briefs for the Court of Appeals, Bradford was released from prison, having served his sentence. Still, they pursued the case. A year later, they were granted the hearing in Yakima County Court.

Matthew Ficcaglia, 36, a former Innocence Project Northwest student who graduated last summer, worked on Bradford's case for a year, beginning in 2005. "The opportunity to learn more about people wrongly convicted, and do something about it, drew me to the program," he says. "I had heard about innocence projects and was starting to see a lot of things in the news about these organi-

he told McMurtrie on the hearing's first day. "I want to clear my name."

The prosecutor and defense attorneys expected Judge Hackett to adjourn court and issue a ruling several weeks later. When he announced he was prepared to deliver his opinion, a murmur of surprise went through the courtroom. The judge spent some time explaining the case from his perspective. He agreed that DNA testing on the mask was crucial. "The mask is the key piece of evidence that tips the scale on this issue of identification," he explained. "When you put it together, Ted Bradford has produced new evidence that could result in some reasonable juror having doubt."

In the end, Judge Hackett found sufficient evidence for a new trial and referred the case to the Court of Appeals. His decision overturned the jury's verdict. Most importantly, in the eyes of law, Bradford was an innocent man.

Bradford's family gasped. McMurtrie, Luna and Bradford embraced. Bradford wiped away tears as family members joined in congratulating him at the defense table.

Outside the courtroom, two journalists waited to speak with him. He huddled near a window with family and friends—shaken, excited, overwhelmed, speechless. "He's too keyed up to talk right now," said McMurtrie. "But I can tell you he's thrilled with the result today—and that he's innocent."

The following morning, the *Yakima Herald-Republic* told the story in six columns, under a top-of-the-page headline: "Rape Conviction Overturned: Man who spent nine years in prison wins appeal based on new DNA evidence."

Still, the prosecutor could decide to retry Bradford. If not, the case will be closed.

Two weeks after Judge Hackett's decision, Bradford was in good spirits. During a phone interview from his home in Yakima, he reflected on his experience. "It was very important that we continue in getting a new trial and getting back in the court system," he explained. "We just wanted the truth to be known."

Ficcaglia, the former innocence project student who worked on Bradford's case, agreed.

"There's this thing called collateral consequences," he says. "You still have that conviction weighing on you. It continues to limit your freedom. There's a profound stigma in having a conviction for rape. I can only imagine that has got to be a huge weight off Ted Bradford's shoulders. Certainly, I wish the evidence would have been available at his trial. But in the end, the system worked."

"Of course, I am upset, as anyone would be," Bradford noted. "I do feel that maybe the system isn't exactly perfect. I think we all know that. That's what's great about innocence projects. They help people who don't have any other course of action. It's been really great working with Jackie and the university students. Without their help, it's hard saying exactly where I would be today." ☺