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## Seeking justice, overturning unlawful conviction cases

**Arizona Justice Project works for release of those wrongfully convicted of crimes**



Lindsay Herf, executive director of the Arizona Justice Project, left, describes the organization April 5 at Pronghorn Ranch. The project works to free those unlawfully convicted and incarcerated. (Sue Tone/Tribune)



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It can take more than a year to recreate a file on a criminal conviction that took place decades ago, and years to represent inmates in post-conviction relief proceedings. For the staff of six with the Arizona Justice Project (AJP), it is well worth the time and effort it has taken to free 24 people since 1998.

Lindsay Herf, executive director for AJP, presented information about the project Friday, April 5, at the Pronghorn Ranch clubhouse, along with several other staff members and Khalil Rushdan, Community Partnerships coordinator with American Civil Liberties Union Arizona (ACLU).

Herf provided background information on AJP and how the project works, but it was Rushdan's personal account of what goes in in prison and what happens upon release that grabbed the attention of the 30 people in the audience.

## **AN EXONERATION**

Rushdan was sentenced to life in prison at age 22. "I was scared. It was uncharted territory in a prison in another state," he said.

He was involved in a murder investigation in which he had introduced a drug seller to a drug buyer. After he left, the buyer killed the seller. When Rushdan and his family received death threats and the police promised him protection – but never gave it – he stopped cooperating, and the prosecutor filed a first degree murder charge against him. The conviction was overturned based on "vindictive prosecution" for that and for other failures the prosecution made.

After 15 years behind bars, thanks to efforts by the Arizona Justice Project, Rushdan, an African American, was released in 2012. "I didn't realize how much love and respect I had on the yard. As I was leaving, a skinhead walked over and gave me a hug," he said. His release occurred in the middle of the day and others he knew were at work, so he was unable to say goodbye to friends.

## **REALITY OF ANXIETY**

Rushdan now advocates for individuals re-entering society after time in prison.

"When a person is released from jail or prison, they are afraid because you are asking them to walk a different path," he said, adding that he teaches a "Realities of Re-entry" orientation class to those newly discharged.

Being in prison is an abnormal, often hopeless, situation and when released, a time to decompress and plan for the future is necessary but not always a reality. Rushdan said those released on parole are given a list of possible employment opportunities, but maybe the companies don't hire felons or just filled the last slot.

Housing, another requirement, might be a halfway house – especially if family members live in crime-free housing where those with a criminal history cannot live.

Then it may take 15 days to acquire the identification paperwork necessary to get a job, and another two weeks before a paycheck arrives. In the meantime, the weekly rent is overdue, the person is kicked out, and the parole officer is threatening to file a violation.

Rushdan also helps identify behaviors stemming from “institutionalization,” which some people don’t recognize or understand. Too many choices in the cereal aisle, someone standing too close in the checkout line, looking for exits as soon as one enters a room, all these things experienced after incarceration bring on anxiety.

“When anxiety levels are high, they make mistakes because of the fear of going back into the system,” Rushdan said.

### **A PROMISE TO HELP**

Although he didn’t have the best relationship with his mother growing up, he credits her belief in his intelligence to the help he now provides to others. Nearly in tears, Rushdan said he was able to see her four times after his release before she passed away. Fulfilling his promise to her has been therapeutic, he said.

One of Rushdan’s goals is to eliminate the stigmas and stereotypes given to felons upon their release. “We have to evaluate at what point do we forgive people for their transgressions?” he said, especially about those who have served lengthy sentences and have undergone positive changes.

One member of the audience commented afterward how sad that someone makes a bad decision at age 18 and pay for it the rest of their lives.

### **JUSTICE**

Herf said, out of the 42,000 people incarcerated in Arizona, she receives about 400 inquiries for help; every case is vetted to figure out who has a meritorious claim.

“We are the last resort for those whose appeals have been exhausted,” she said.

Once a decision is made to take a case, the staff file requests for police and investigation reports, evidence that was uncovered and evidence that was actually brought to court, lab analyses, and court transcripts.

Sometimes there may be two witnesses in the police report but only one appeared in court. They wonder why; were they scared off? Sometimes they visit the scene of the crime and look out windows as described by witnesses. Does the testimony match what could actually be seen from that position?

## **NEW TECHNOLOGY**

New developments in science and forensic methods may determine that a fire was not deliberately set, for example, or a death occurred in a manner not previously established.

“Lawyers aren’t trained in science and medicine,” Herf said. “We consult with experts, we look at physical evidence differently because of our new technology.”

DNA and hair microscopy have helped in many of the 2,417 cases of exoneration in the United States since 1989. Tim Agan, AJP strategic litigation counsel, said DNA kits are far more sensitive today, and with some cases, law enforcement has agreed to retest evidence.

Agan described “touch transfer,” for example, where shaking hands with someone may leave their DNA on the bottle he was holding in his hand.

DNA evidence helped exonerate Ray Krone, wrongfully convicted of murder based on a bite mark left on the victim. The deputy coroner, Dr. Raymond Rawson, had created a home video comparing the bite and Krone’s teeth through manipulation of computer images. Other evidence also came to light, and Krone was released 10 years after his conviction.

## **OBJECTIVES**

AJP also takes cases where convictions rely on witness misidentification, outdated and/or flawed forensic science, false confessions, prosecutorial misconduct, ineffective assistance of counsel, or government misconduct, its website states ([azjusticeproject.org](http://azjusticeproject.org)).

Agan said AJP would like to see all interrogations, not just confessions, videotaped. There should be a record of what was said and how it was obtained, he said, but law enforcement agencies have fought this.

Methodology in the use of photo lineups also needs improvement. “It’s funny to think about how bad our memories are,” Agan said. “Eye witness accounts are the number one cause of wrongful convictions.”

## **YAVAPAI COUNTY**

Since it is essentially a statewide organization, AJP takes cases from all over the state, Herf reports. It has no cases currently under consideration from Yavapai County.

Prescott Valley resident Christina Howden, a law student who was nominated to serve as student representative on the AJP board of directors, organized the presentation. She is instrumental in tracking down vital information and evidence on clients’ cases.

For more information on the Arizona Justice Project, call Megan Ealick, Development and Communications director, at 602-496-1046 or email [info@azjusticeproject.org](mailto:info@azjusticeproject.org). All communications with the Arizona Justice Project are kept confidential. The project also works

with manifest injustice cases, where something is obviously unfair or shocking to the conscience; an unfairness that is direct, obvious, and observable, such as egregious sentences.