

INNOCENT BUT INCARCERATED

10,000 LOST YEARS

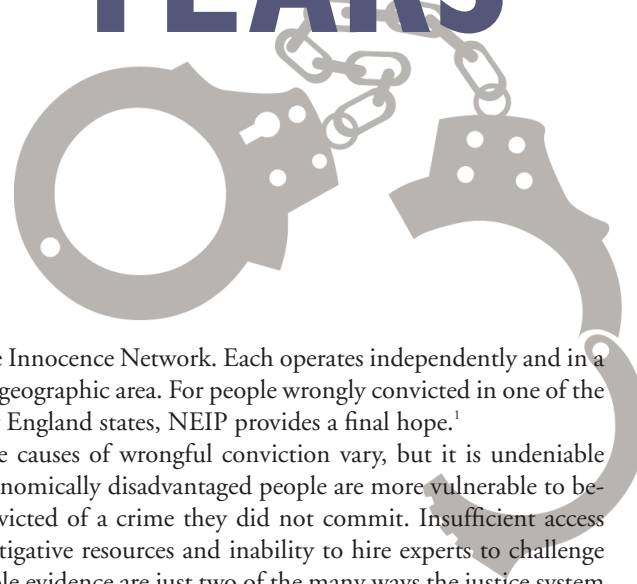


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THE NEW ENGLAND INNOCENCE PROJECT

The United States criminal justice system provides for two stages of review for people accused of a crime—the trial stage, where facts are presented and evaluated by a judge or jury, and the appellate stage, where the way the law was applied to those facts may be questioned. The facts themselves are typically not reexamined.

After the appellate stage, there is no guaranteed right to counsel. But what happens when the system gets it wrong and facts are missed or misinterpreted? When someone is convicted of a crime he or she did not commit, the system does not guarantee any recourse. If the innocent do not have private resources to hire lawyers or investigators, they may spend years, decades, and even life in prison, while the guilty person remains free to commit more crimes.

Mounting a Defense

Consider what happened in the case of Kenny Waters, wrongly convicted in Massachusetts in 1983 of a murder he did not commit. The 2010 film *Conviction* tells the story of Kenny's sister Betty Anne, a 29-year-old mother of two small boys with a high school general equivalency degree who, when all available resources were exhausted, dedicated more than 18 years of her life to proving her brother's innocence.

Betty Anne did what most people in her situation would think impossible. While raising her sons, she graduated from college and then law school. She passed the bar in Rhode Island and Massachusetts. She then hunted down the DNA evidence authorities repeatedly told her had been destroyed, fought to have it tested, and ultimately won her brother's freedom. Most people don't have a sister like Betty Anne.

For most people in Kenny's situation, organizations like The New England Innocence Project (NEIP) offer their only chance at freedom. There are currently 65 organizations worldwide affiliated

with the Innocence Network. Each operates independently and in a specific geographic area. For people wrongly convicted in one of the six New England states, NEIP provides a final hope.¹

The causes of wrongful conviction vary, but it is undeniable that economically disadvantaged people are more vulnerable to being convicted of a crime they did not commit. Insufficient access to investigative resources and inability to hire experts to challenge unreliable evidence are just two of the many ways the justice system may fail a factually innocent defendant who does not have sufficient private resources.

This is a nationwide problem. A 2011 report by the Justice Policy Institute in Washington, DC, found that “only 7 percent of all county-based public defender offices have enough investigators to meet national guidelines; 87 percent of small, county-based public defender offices do not have a single full-time investigator; and only 27 percent of county-based public defender offices and 21 percent of reporting state public defender systems have enough attorneys to meet caseload guidelines.”²

Tackling the Challenge

Earlier this year, the University of Michigan Law School and Northwestern Law School joined forces to compile national data on all exonerations. The project produced startling numbers. Nationwide, between 1989 and the report's release in March 2012, 891 people were proved innocent of crimes for which they were convicted. As a group, they had served an almost unimaginable 10,000 years behind bars while the actual criminals went free.

DNA evidence is the most compelling means for proving innocence and is most often found in homicide or sexual assault cases. Because of that, 83 percent of those proved innocent by DNA evidence were serving time for those types of violent felonies.³ An

additional 1,170 people were released following “major police scandals.” Although these people are not included as official exonerees in the report, the researchers concluded that many of them are innocent. Meanwhile, there is no way to accurately estimate the number of people who are currently serving time for crimes they did not commit, but it is apparent that the problem is significant.

With 27 verified exonerations, Massachusetts ranks fifth in the country for exonerations per capita. Three additional exonerations were achieved in Massachusetts at the federal level, including the 2011 exoneration of Jimmy Hebshie, who was convicted in 2006 of setting fire to his small newsstand, a fire that experts now say was most likely an electrical fire that could not have started in Hebshie’s store.

While an innocent person was serving time for those crimes, the real criminals went on to commit 123 violent crimes.

The fire science that ultimately helped to free him existed at the time of his trial and could have been discovered and produced by his attorney. In 2009, when his case came to the attention of The New England Innocence Project, Jimmy Hebshie had exhausted his appeals. He was freed only when a federal judge found that his counsel was legally ineffective for failing to adequately challenge the scientific evidence (never validated) that was brought against him at trial.

Ten other people have been exonerated so far across the New England states since 1990, bringing the total to 40 people. Reinvestigating, locating evidence, and finding ways to bring these cases back into the court system often takes many years and enormous resources. Altogether, the 40 New England exonerees served 565 years of prison time, with an average of more than 14 years each.

Reentry

If and when innocent people are finally freed, they are often ill-equipped to reenter a society that has moved on without them. Many are unfamiliar with things that the average person today takes for granted. Cell phones and the Internet did not exist when some of these people were incarcerated.

Ironically, although reentry programs are available to guilty inmates who are released after serving their sentence, people who are released because they are found innocent may not be eligible for the same programs. Even though a conviction is overturned, the stigma may follow an exoneree for years as he tries to rebuild his life. Jimmy Hebshie, for example, has now been deemed ineligible for the housing assistance he previously received simply because he

served time in prison. He is now forced to prove his innocence all over again to the housing authority.

When the wrong person is convicted of a crime, the community suffers, too. The innocent person and his or her family have to endure the horror of incarceration. The victim is made an unwitting party to a terrible injustice. Valuable law enforcement and court resources are wasted, and the community at large remains in danger from the real perpetrator remaining free to commit more crimes. In 142 of the first 292 DNA-based exonerations, the real perpetrator was identified. While an innocent person was serving time for those crimes, the real criminals went on to commit 123 violent crimes, including 32 homicides and 68 sexual assaults.⁴

The New England Innocence Project provides pro bono assistance to inmates who have claims of actual innocence. The nonprofit does not do criminal defense work. If during the course of an investigation, NEIP discovers evidence tending to prove guilt rather than innocence, the organization will no longer represent that individual.

As a nonprofit, the organization is dependent on donations and grants and the assistance of volunteer attorneys and law students. Its mission is to assist persons wrongly convicted in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, or Vermont—and to advocate for the reform of our criminal justice system. It considers cases in which a conviction is final and in which scientific testing or other investigative leads could establish a strong likelihood that the individual is factually innocent. NEIP also seeks to aid exonerated persons by helping to connect them to educational, health, and other services to improve their chances of a successful reentry into society.

In addition to its work on behalf of individual inmates, NEIP seeks to raise public awareness of the prevalence, causes, and costs of wrongful convictions, and it advocates for legal reforms that will hasten the identification and release of innocent prisoners.

It is the New England Innocence Project’s vision that no one in New England will ever go to prison for a crime he or she did not commit.

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Endnotes

¹ See www.newenglandinnocence.org.

² Kate Taylor, “System Overload: The Costs of Under-Resourcing Public Defense” (report, Justice Policy Institute, Washington, DC, July 2011), www.justicepolicy.org/research/2756.

³ “Exoneration Detail Lists” (The National Registry of Exonerations, University of Michigan Law School and Northwestern Law School, Ann Arbor, Michigan, 2012), <http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx>.

⁴ See www.innocenceproject.org/Content/Facts_on_PostConviction_DNA_Exonerations.php.