

**Life After "Life":
Wrongly Convicted But Never Truly Free**

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Abstract

The United States criminal justice system, proclaimed as “the best in the world,” has been rocked in recent years by numerous cases of wrongly convicted individuals being saved from life and death sentences or being freed from institutional settings after unjust convictions were brought to light; oftentimes meeting staunch resistance from state prosecutors until the shackles were ordered removed. While our methods of investigation, rules of criminal procedure, and appellate processes are designed to ensure that the guilty are apprehended, convicted, held accountable, and afforded rehabilitation - and that the innocent are shielded from erroneous legal maneuvers - the ideals of justice are far from the reality of its application. This paper echoes the growing call to action to right such wrongs through the words of one innocent “lifer’s” experience in the black hole of the American criminal justice system.

About the Authors

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Life After “Life”: Wrongly Convicted But Never Truly Free

Introduction

The most devastating fate an innocent person can face is imprisonment for a crime he or she did not commit. Routinely, innocent people find themselves caught in the turmoil of an overtaxed criminal justice system because of mistaken eyewitness identifications, police misconduct, prosecutorial misconduct, bad lawyering by defense counsel, false testimony of jailhouse snitches and informants, false confessions, and bad science (Dwyer, Neufeld, & Scheck 2000). We use the term "innocence" to differentiate this concept from a finding of "not guilty" at trial, which only means that the fact finder had a reasonable doubt as to guilt. Actual innocence refers to cases in which evidence surfaces following a conviction which establishes that the person did not commit the crime. As of September 26, 2007, over 200 innocent people have been exonerated by post-conviction DNA testing (Innocence Project 2007). However, a comprehensive study of all exonerations - DNA and non-DNA, death row and non-death row - has found that there are more than 350 people wrongfully convicted and subsequently exonerated in the United States (Gross et al. 2005).

The increasing number of exonerations occurring in recent years has brought to light the shocking truth that innocent people are wrongfully convicted in our criminal justice system. Almost everyone would agree that it is wrong to put a person to death or in prison for something they actually did not do, something for which they are “actually innocent.” That has been an accepted tenet of our criminal justice system since time immemorial, exemplified by the familiar adage “it is better to let ten guilty men go free than to convict one innocent man.” Early in the twentieth century, however, scholars and authors began to question whether innocent persons were being convicted in American courts and published a number of landmark books arguing

that they were (Borchard 1932; Gardner 1952; Bedau 1964; Radelet, Bedau & Putnam 1992).

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Despite such scholarly studies, there were few cases in which everyone agreed that the person convicted was actually innocent of the crime. Traditional investigation techniques had occasionally resulted in exoneration of a wrongfully convicted person, but still left questions about whether the person's innocence was really established. Cases of agreement, where the convicted person had been in a prison or a jail when the murder was committed, or where the "murder victim" turned up alive after conviction and sentencing, were written off by some as isolated mistakes that were bound to happen occasionally. On the broader question, there remained sharp disagreement and little definitive evidence to convince skeptics that actually innocent people had been convicted in courts in the United States on a larger scale.

In the 1980s, science delivered the prosecution a powerful new tool, DNA testing, which could link a specific person to a crime by analyzing bodily materials or fluids from a victim or a suspect. By the late 1980s, DNA testing began to be used by defense attorneys as a means of proving that a person convicted of a rape or murder did not commit that crime. This post-conviction use of DNA analysis altered the wrongful conviction debate forever by providing proof positive that actually innocent people had been convicted in American criminal courts (Saks & Koehler 2005).

In the early 1990s, Barry Scheck and Peter Neufeld, two lawyers already familiar with DNA analysis, believed that there were many actually innocent persons who had been wrongly convicted and realized that a coordinated effort, an "innocence project," was necessary to address the depth and national scope of the problem they perceived. They founded the first Innocence Project in conjunction with Cardozo Law School in New York, and began reviewing

cases and assisting inmates from across the country who claimed they were actually innocent. The story of the Innocence Project, and the stories of some of the innocent people whose lives had been tragically affected by wrongful conviction, are recounted in two major publications (Dwyer, Neufeld, & Scheck 2000; 2003).

This paper brings voice to the topic of exoneration by sharing the experiences of a veteran Rhode Island police officer convicted of a murder he did not commit, and exonerated by the real killer's confession. His story highlights the reality that most Americans are blind to: exoneration does not result in the automatic, hassle-free re-assimilation of the individual to their pre-incarceration status. A new set of challenges and legal hurdles are presented and can be as overwhelming and as imprisoning as the incarceration experience. There is no such thing as a smooth transition for any person who attempts to move beyond being an officially-labeled social pariah to a condition-free, happily embraced, fully-functioning lawful member of society. Once a prisoner, always a prisoner of injustice. This is Jeffrey Scott Hornoff's exoneration story.

Scott's Story - Musings

Of course there is life after a life sentence for individuals who have been wrongfully imprisoned, then exonerated; however, this is a qualitative and subjective proposition to consider, dependent on a host of variables.

Today's culture does not favor when an individual advocates for himself, and I do not wish to offend here by doing so. I have been asked to contribute to this paper by sharing my own experiences during 25 years of a life largely devoted to America's judicial system, a system that failed me and my loved ones. It is also my hope that in doing so, my efforts will not be taken as hollow whining from someone who should be thankful to be free. Our system of justice is not flawed, it is broken. In considering factors surrounding a person being wrongfully imprisoned,

exonerated, and then reintegrating back into a different world, I wonder if the enormity of loss could ever be fully understood. Certainly, people throughout time have endured far worse; at least, that was one of the prison mantras that kept me fighting for freedom.

I will not delve deeply into the flaws of our historically entrenched adversarial system. My hope and intent is to devote a portion of my remaining life promoting its deconstruction and replacing its modern ruin with a body that is united in seeking truth, liberty and justice for all rather than the current win-at-all-costs grandstanding. To leap into the shortcomings of the subcategory audaciously labeled as America's 'correctional' facilities also would require a greater amount of time and space as well, though I will also share some of my experiences opposing its focus on punishment, confinement, control and expectation, guilty or innocent, to be model citizens once thrown back into society.

My contribution is a first-person account of how our judicial system failed at every step of the process - a process established to protect and serve the innocent - and of how struggles do not end once shackles are removed, charges are dismissed, sentences vacated and, for some, records expunged.

A Murder in Warwick

In 1983, I followed one of my brothers' career paths into the Warwick Police Department, a city force of just under 200 men and women sworn to protect and serve approximately 80,000 residents and others within the city's jurisdiction. I had also married in 1987, attended the BCI Scientific Investigation School, and decided to join the newly-formed police dive team in 1988. The dive team was created after a young boy went missing in one of our city parks, and we were forced to call in another city's police dive team to help find him; camaraderie aside, we didn't like relying on others to do our jobs.

We were trained by PADI instructors through Alpine Ski & Sports, a now-defunct sports retail chain, and I became one of their frequent customers. During one of my visits to Alpine I met an employee named Victoria Cushman. I didn't realize at the time that I had left any lasting impression with her, however, one July night she let me know that she was interested in being more than friends. Though I am not proud of the fact that we were intimate while I was married, it is an important factor in circumstances that would follow. Within days of the life-changing choice to become intimate, the relationship returned to being friends.

On August 10, 1989, I attended a fellow police officer's annual summer party. It was a typical cop party: plenty of drink, food, loud music and a large turnout. I was awakened the next morning by a telephone call from my brother, informing me that there had been a murder on Maple Street. I knew that Vicky lived on Maple Street, but so did dozens of other people. What were the odds?

Journey Into The Criminal Justice System

A. The Investigation and Interrogations Begin

Arriving for work a little before 4 P.M. on August 11th, I was securing my weapon in its belt holster, clipping my badge to my belt and otherwise preparing for my tour of duty. I called over to day detective Mike Babula, and asked who was murdered that night — to see if anyone was arrested, any suspects, anything for us to follow up on. Mike, in his typical dramatic fashion of eyes closed, head tilted, finger and thumb pinched to the bridge of his nose, informed me that Vicky was the victim. I dropped into my chair, called somebody (probably my brother), then went into the detectives' conference room, where the Major Crimes Unit congregated during such investigations, to see about any progress. I was advised that I would be spoken with momentarily; a red flag immediately went up. Soon, thereafter, I was called into the detective

captain's office. After being read my rights while a tape recorder recorded my interrogation, I divulged my previous night's activities, requested a polygraph examination, took it and passed, and was promptly eliminated as a suspect. Unfortunately, Vicky's murder went unsolved.

Unbeknownst to me, certain Warwick detectives were denied the opportunity to question me again. I would have readily agreed. These same detectives took it upon themselves to express their complaint to the Rhode Island Attorneys General Office who assigned the Rhode Island State Police the task of investigating me rather than Vicky's murder in 1991.

A year later I was informed by reporters from the state's newspaper that I was the sole target of the state police investigation, and eventually questioned. Not wanting to rehearse our testimony, I refused my brother's attempts to go over what he, my ex-wife and I recalled from events three years prior, believing that the investigator's common sense would dictate the realization that inconsistencies would be the norm. Though I was familiar with how some officers conducted investigations, being innocent, I freely responded to two interrogations without an attorney. I had told my trial attorney that I didn't have anything to hide, not knowing the State Police detectives' agenda and preconceived conclusions; he allowed my interrogations without recommending or insisting on being present. The detectives told me, my brother, ex-wife and others to take our best guesses when we could not recall times and events from the summer of '89, later deeming mine and my family's inconsistencies to be lies while others' were simply due to the lapse of time or consumption of too much alcohol at the party.

B. The Indictment and Arraignment

I testified at the second grand jury in December of '94. The jurors had brought in plates of food for a party afterwards, appeared to be on a first name basis with the detectives; two women thumbed through a bridal magazine; and two men dozed while I spoke. The prosecutor loudly

and abusively hurled accusations at me. Knowing how easy it was to get an indictment, I had a strong inclination as to the inevitable outcome.

Without evidence or witnesses linking me to the crime, I was arraigned on a charge of first degree murder in late December 1994, based upon speculation, conjecture and a scenario that was forced and manipulated to fit around the inconsistent statements gleaned over three years of guesswork.

The media had already sensationalized the account, and by the time the trial began in 1996, most people already took it for granted that I was guilty. A Providence Journal editorial dated Saturday, January 14, 1995, and titled 'Warwick's loss of faith' posited, 'Of course, a swift and scrupulously conducted trial of Mr. Hornoff may be the most help of all . . . doubt-filled residents have had to stomach the sight of Mr. Hornoff's distinctive license plate, emblazoned with the letters INOCNT.'

C. The Trial

My six-week trial began in May and ended with a guilty verdict on June 19, 1996. I can still hear the clapping and cheering from Vicky's sister and other family members as handcuffs and shackles were placed on my hands and feet. Prosecutor Randall White did a good job in getting the jury to dislike me for having an adulterous affair. Though we felt it was a stretch to believe someone capable of adultery was also likely to have committed a murder, the jurors apparently held no similar sentiment. When I mentioned to my trial attorney that two jurors napped (as had the grand jurors), he simply said that was in our favor. As my brother's best friend and a former Assistant A.G., I thought he knew what he was doing.

The most damaging testimony likely came from famed forensic expert Dr. Henry Lee, who testified that the inside of Vicky's window screen had tested positive for blood. It appeared

to have been transferred by a smooth object, likely the rubber dishwashing gloves that the killer had apparently worn, likely after Vicky's murder and while staging a break in. Dr. Lee agreed with the prosecutor's open-ended question that this was something that a trained police detective would know how to do.

We had learned shortly before trial that Vicky had been found with her dental guard in her mouth, a device that is worn to prevent teeth grinding at night. Though the State argued that I had gone to Vicky's apartment the night of her murder and killed her after she and I had a heated argument that ended with threats of telling my wife about our relationship, we felt that the dental guard sufficiently removed such possibility. I always maintained that Vicky may have known her killer, but that he had surprised her, that there was no reasonable belief that Vicky would have left the dental device in her mouth while talking or arguing with someone, especially someone who the State alleged she had such strong feelings for.

Rhode Islanders love a good story and have come to expect corruption from our politicians and others in positions of trust. Police officers are doubly damned due to the false impression that fraternal members invariably cover for one another; the resulting predisposition from jurors is that for the police to arrest and try one of their own then he must certainly be guilty. Being innocent, I had placed my faith in a system that a major part of my life had revolved around.

D. Big House Blues: The Legal Battle Continues

I was placed in the Protective Custody unit of Rhode Island's prison system, housed with other cops, guards, convicted child molesters and rapists, juveniles, gangsters and gang members, confidential informants (rats), the mentally ill, and anyone else who would pose a risk or threat to the smooth functioning of the prison.

At one point, three black Muslims in the general population admitted that another individual was bragging that he had killed Vicky, and put me away for life. My Mom had sold our family home to pay my trial attorney and investigators. Investigator Boris de Korczak had found a footprint impression in low traffic areas of crime scene photographs using computer technology. Chicago footprint expert Paul Sahs concluded that the impression could not have come from me, but that it matched the characteristics of the individual bragging he had killed Vicky. I never was convinced of his guilt, but I knew it wasn't mine. I was feeling like Andy Dufresne in the motion picture 'The Shawshank Redemption;' I felt that I was certain to get a new trial. The RI Supreme Court reviewed our motion for new trial based on newly discovered evidence about two years into my life sentence, and immediately remanded the case to my trial judge for a hearing. My trial judge denied our motion without even holding the hearing that the higher Court had ordered. This was another sledgehammer to the gut, and I had to somehow find a way to pick myself back up and keep fighting.

We began preparing for my state level appeal in front of the RI Supreme Court. I was provided a court appointed appellate attorney. She met with me, my family, trial attorney and others, and we all shared our thoughts on points she should cover. As a law clerk, I had been vigorously researching case law. My court-appointed appellate attorney failed to cover any of the points of law we researched and provided and that she promised to address; my conviction was unanimously affirmed. The sledgehammer had found its mark once again.

Tina Dauphinais was a friend who I had met in 1995. After divorce papers were served on me, she became my biggest advocate in researching people and organizations who might help win my freedom. Tina provided me with The Innocence Project's New York address. After months of correspondence and questionnaires, my case was handed over to the newly-formed

New England Innocence Project. Attorneys Robert Feldman and Amanda Metts worked closely with my loved ones, tolerated control issues from my trial attorney and argued with the prosecutor for the release of the rubber dishwashing gloves and window screen. An hourglass-shaped bandage, seen in crime scene photos between the gloves and having apparent infectious seepage on it, was lost, missing, destroyed or otherwise unaccounted for. Eventually, we were granted the release of the gloves and window screen for testing at SERI Labs in California. What Dr. Lee had testified to at trial as being blood on Vicky's window screen was not blood.

According to SERI Lab Director Brian Wraxall, if Lee had conducted a second test, he would have determined that the first result was a false positive, and that the substance was either rust or fruit juice. The other possible DNA on the everted index finger of one of the gloves is also lost, missing or otherwise unaccounted for, as is other evidence, including hairs and fibers which we were not told about during discovery.

E. The Life Support of Loved Ones

Here came that sledgehammer again. Each time the force was a little greater on impact. Mind you that throughout this time I was forced to exist and occasionally be double bunked with some potentially dangerous and, in some instances, criminally insane individuals. I also regularly passed whole modules of general population inmates as I went to the law library or to the hospital; and endured the frequent strip searches, ridicule and scorn, unprofessional cell searches and other demonstrations of power by frustrated guards (not correctional officers, as they insisted on being called), piss tests and other humiliations; inadequate health care or exercise opportunities; poor nutrition; not to mention the enormous weight of frustration from being innocent. My family and friends would later confess that, though they believed in my innocence, they secretly began to hope that I was guilty so that the time would be less of a

burden.

I did have my moments of weakness. Suicides are more frequent than you realize, and I did consider taking my life as a way of freeing my spirit and freeing my loved ones from the nightmare, the sky-high phone bills and humiliation of visits. My biggest fear was that my Mom's last breaths would be taken with thoughts of me in there. But I still believed spiritually that my path wasn't meant to end there, not that I was any more special than any other innocent, but that my mission in this life would take me past that point. Tina's and my belief system were similar; we shared a connection that I had not experienced before, and her growing belief in me and love for me was as strong as any impetus for my survival. Yes, I endured in hopes of being reunited with my sons, for my Mom, to touch a blade of grass . . . for many reasons, but none stronger than to continue my path with Tina.

At this point I had been wrongfully imprisoned for six years, four months and 16 days; I had seen plenty, enough to keep the book I'll eventually get around to writing fairly interesting. We had been transferred from Intake to High Security, an even more restrictive facility. My Innocence Project attorneys were exploring a second round of DNA testing. I had filed a 1983 Federal civil suit pro-se against the prison for its treatment of protective custody inmates, and I had felt the retribution, being double bunked with some of the worst individuals you don't want me to describe in detail. My Mom's health was failing. The brother I had emulated had long ago escaped to Florida to become a tattoo-covered biker. It didn't hurt so much that he left me, but that he abandoned my Mom.

F. The Big Tease: Back To Court

On November 04, 2002, I was expecting a visit from my trial attorney. I had again directed him to release and make available all of my files to my loved ones, and was expecting

another heated argument. He had insisted on 'driving the bus,' and I was tired of his control issues; if someone else might find the key to open the door then I was all for it.

When I walked into the room to meet with my trial attorney, I found him seated with the prosecutor, one of the State Police detectives and other law enforcement representatives. I immediately became guarded, wondering what I was about to be accused of. Instead, I was eventually told that the one responsible for Vicky's murder had come forward and confessed. I was told I would be habeased into court within a few hours and released.

Even then, the detectives wanted me to admit to going to Vicky's apartment the night of her murder, seeing her bludgeoned and lifeless body and of doing nothing. They wanted me to justify for them their actions in wrongfully imprisoning me. I told them that if it meant I would not go home that night, the night after or the night after that, I would not admit to something that did not happen.

I returned to the module and got on the phone, calling Tina and my Mom to tell them I was coming home. 'Oh sweet Jesus,' my Mom said over and over as silent tears began to roll down my face. Tina was ecstatic and screamed loudly and joyfully. Other inmates, always eavesdropping on conversations, began to catch wind of what was unfolding. After I hung up the phone, I told the guards in the control center what was going on, and asked if I could give my belongings to other inmates. I was allowed to pass out everything but my television and radio. Coffee and stamps are currency in prison; I gave them and other items to those who I had somewhat befriended. I even gave my socks, underwear, soap and a couple towels to one of the cellmates I was double bunked with, in hopes that he would start taking regular showers.

Another prison mantra adopted to maintain some portion of my sanity became 'Believe it when you see it.' I knew that Tina and my Mom were making calls to others; I hoped I would be

spending the night out from the watchful and suspicious stares of guards and inmates alike, and with my family.

G. Cautious But Hopeful: Pending Release

Was this my last strip search? Would this be my last ride in the back of the sheriff's van? My Boston-based Innocence Project attorneys had traveled down Route 95, likely faster than the 65 MPH speed limit to arrive for the proceeding. They and my trial attorney were prepared for my unexpected release; it was approved by Attorney General Sheldon Whitehouse. In spite of Attorneys Feldman and Metts going over the post conviction motion wording, which they had used in exonerations in Massachusetts, trial Judge Robert D. Krause wasn't satisfied with the procedure and decided to send me back to prison so he could stew it over. Perhaps he knew that this signaled an end to any higher aspirations. My Mom and Tina were left hanging in the courtroom as my lawyers scrambled after Whitehouse to join him in telling me that I wouldn't be going home that afternoon fearful I'd take the news poorly. Whitehouse mumbled an apology, to which he received a wordless stare. How much more would this system force down my throat? Both the guards and inmates were vocally upset when I returned; even the ones I didn't get along with knew it was bullshit. The next day was Election Day, so my day in court wouldn't come for 48 hours.

On Wednesday I was transported back to court. Loved ones from out of state had a chance to join Tina and my Mom. The proceedings had to be moved from Krause's tiny courtroom into a larger one once presided over by the late Justice Sheehan. Sheehan was one of the judges I respected, and I was glad to shuffle shackled into the filled room.

When I had been taken from my family, my oldest son, Joshua, was seven years old. I had often imagined being released, bending down on bended knee, and having him jump into my

arms as he had often done. When I looked back into the rear of the courtroom, I caught a glimpse of him. Just shy of his 14th birthday, Joshua stood 5'11" and weighed about 245 pounds. I had dropped 30 pounds in prison; it was easy for him to pick me up.

The RI State Police and Attorneys General Office began their spin control and smear campaign to justify their actions by immediately accusing me of continually lying to investigators during the investigation, bringing the ordeal down upon myself.

H. Free But Untouchable: Life After Exoneration

My brother and trial attorney had told me not to be surprised to see Warwick's mayor and police chief at the courthouse to welcome me back onto the force. They were absent; my brother and lawyer were wrong again in their assumptions just as they had been so often over the course of the past ten years. During the weeks and months after my release they both attempted to control my words and actions, often becoming heated when I insisted on making my own decisions. After ten years of being told what to do and when to do it, I kind of liked making my own choices. It got to a point where my brother disowned me again as a brother, and my trial attorney screamed at me for making a comment to the media that I was disappointed in the mayor's decision to fight me for my reinstatement.

Rob Feldman was proud and eager to represent me, and on January 06, 2004, Superior Court Chief Justice Rodgers ordered me reinstated to the force at the rank of detective. He declined our argument for considerations of lost promotions, overtime and interest, but I was satisfied; the mayor wasn't, and is appealing to the RI Supreme Court. The RISC ordered the hearing expedited, yet has rescheduled the March 2005 hearing to May, then to September, and now, maybe, to sometime in December. Their and my interpretation of 'expedited' must be different.

While in prison, I saw other officers on the television news who were being accused of various misdeeds. It heartened me to see their fellow officers and FOP unions behind them; mine had been invisible. Soon after my release, Warwick FOP President Peter Johnston, sought me out and said that the union would fully support me in my fight for reinstatement, then he disappeared into the background of Warwick's political machine. I wonder if making his position a paid one affected the willingness of FOP 'leaders' to vocally support the rank and file. I haven't been the only one left feeling abandoned.

I've been through three counselors. All agreed that my post traumatic stress was normal and to be expected: paranoia (apprehension when I hear a car door shut outside, the doorbell ring or the phone ring), mild claustrophobia (I prefer windows opened, even in winter), headaches, uncontrollable itching, flashbacks, nightmares and night sweats (Tina often places a pillow between us to shield her from my kicking and punching), irritability and other issues I'm working through.

On January 06, 2003, the criminal charge was dismissed, the sentence was vacated with prejudice, and record expunged. Exonerees in other states aren't all guaranteed this right, and many carry the stigma of a false conviction on a record. I know how difficult it has been for me to find employment with an expunged record. I can only imagine how difficult it is for them. Without my loved ones' support, I can easily see myself being forced to commit crimes to survive.

Since my release, with little and usually no compensation, I've appeared on 'TODAY' with Katie Couric; have been profiled on A&E's 'American Justice' with Bill Kurtis, Boston's 'Chronicle', Seattle's live talk show 'Northwest Afternoon', Dateline; spoken with law, journalism and other students from diverse concentrations of study at universities and high schools, at

Rotary Clubs, conferences, 'talk backs' after the play 'The Exonerated' and the documentary 'DEADLINE' and at other special events, advocate for judicial and prison reform; participated in the Innocence Project's annual conferences; I've been a case reviewer for the New England Innocence Project; testified twice before the RI Senate for judicial reform bills; monitored the RI Prison Reform Study Commission (a paper tiger), and testified before the Vera Institute's Commission on Abuse and Safety in America's Prisons; participated with three documentaries involving those wrongfully imprisoned and exonerees' continued struggles, including 'AFTER INNOCENCE' (www.afterinnocence.com); correspond with inmates maintaining their innocence; assist individuals fighting to prove their innocence, and with others on behalf of loved ones in prison; continue to reconnect with my sons; I've been helping my ailing Mom; send out dozens upon dozens of employment and guest lecturing packages, still looking; received my substitute teaching certificate; and I occasionally consider a return to the WPD. I am two thirds through Boston University's Master's of Criminal Justice online program; served on jury duty (I wasn't chosen); and married Tina on September 4, 2003. Our first child was born on September 28, 2005; her name is Abigale Jaedyn. My Mom wonders what I do all day.

The state police detectives and prosecutor were all promoted upon my conviction; the detectives retired with their pensions soon after I was released. No one has complied with my requests to investigate their conduct. A 1983 Federal civil suit was filed against the City of Warwick, the State of Rhode Island and certain members of their officers on October 21, 2005. We'll see if we get past summary judgment. I'll also be working with attorneys on a wrongful imprisonment compensation bill for this next legislative session.

I sometimes wonder why I was released; knowing that other wrongfully imprisoned men and women will never see this side of the fence again. I am determined to make a difference and

change our system. There is a spiritual aspect to my story which I will not delve into here; I'll only say that I feel I am continuing on a path I was meant to walk. As difficult and frustrating as it sometimes is, I have joined the ranks of America's newest subculture, and I continue to put one foot in front of the other.

Reflections

The horrific travesty perpetrated on Jeffrey Scott Hornoff by the police, the prosecutors, and the trial and appellate court judges involved in his case - for their blundering incompetence and callousness - is obvious.¹ Like so many exonerees, life after exoneration has been a challenge for Scott. He struggles with trying to find a job, rebuilding relationships with his family and his teenage sons, nurturing a new family life that includes his new wife and baby, and trying to establish his place in society. The challenges that Scott confronts on a daily basis are typical for most people who have suffered the tragedy of wrongful conviction. When released from prison, they are typically broke, jobless, and homeless. Their many needs - including dental care, medical care, psychological counseling and job training - are not even given a second thought. After all, the system and its official actors (i.e., judges and lawyers) feel proud of the fact that they have righted the wrong even if years later, so why would the system owe the exonerated individual or their family members any compensation for being wrongfully convicted and imprisoned?

When an innocent is convicted they and their families become victims of crime. Meanwhile the guilty person, who has now developed an attitude of being above the law, is free to commit more crimes. Although millions of dollars in funding are awarded to victims' rights organizations each year across the country, there is one class of victim that has been overlooked. Those who are innocent in prison are victims of an egregious crime: failure of due process of

law. This crime robs them of their life and liberty just as surely as if they were kidnapped, raped or held at gunpoint. Of these victims, there are two categories: (1) victims on death row and (2) victims not on death row. Funding is plentiful for the first category and non-existent for the second category.

One of the significant issues for the criminal justice system when dealing with the wrongfully convicted is what the criminal justice system and our communities can and should do to remedy the harm that the investigation, the trial, and prison has caused these individuals. While not exhaustive, some possible areas in need of immediate attention include access to counseling, immediate emergency financial assistance, and programs that teach meaningful skills.

Rights and Realities of Post-Conviction

Thirty-one states do not have compensation statutes; hence, the exonerated are not entitled to anything at all for the time spent in prison: no money for the time lost, no social services to help re-enter society after years on the inside (Life After Exoneration 2003-2005). The exonerated will not even have access to the job training and counseling offered to parolees (since they are not a parolee). Instead, exonerees are pushed out the prison door, in most cases, without so much as an apology from the state. Such was the case in Rhode Island where Scott's journey into the black hole of the criminal justice system took place.

In the remaining jurisdictions, one might not fare much better. Every compensation law requires the exoneree to prove they were actually innocent of the crime for which they were wrongly convicted. This might be hard to do, but assuming that the person can show actual innocence, the question then becomes "how much were your 6 ½ years in prison worth?" In New Hampshire, you can get no more than \$20,000 (no matter how long one sits in prison). In

California, an exoneree could get up to \$36,500 per year. But the person only has six months from the time of release in which to apply — and the state does not tell the person about the statute or the deadline. In Maryland, there is no cap on monetary compensation, but in order to qualify for it, one must obtain a pardon from the governor. Only one state compensation law provides access to social services, health care and education.

Fair compensation statutes are especially important because exonerated people have few alternatives to getting relief. The exonerated can go to their state legislature — or Congress — and try to get a bill passed that would grant compensation. But unless one is well-connected, or someone decides to take up your cause, the odds are against you. Exonerated individuals can try to sue the government. But chances are the conviction, like most wrongful convictions, was not the result of prosecutorial misconduct or malicious prosecution. Even then, lawsuits take years, and, not surprisingly, money is needed to pay a lawyer to pursue this legal path. Fair compensation statutes are needed because these other options are not only inefficient and ineffective, they place the burden on the exonerated individual to fight for compensation just as they are emerging from the trauma of wrongful imprisonment and trying to get their lives back together.

For whatever political reason, on October 30, 2004, President George W. Bush signed into law the Innocence Protection Act (IPA) as part of the larger Justice for All Act. This comprehensive legislation that garnered broad bipartisan support in the U.S. Senate and House and enjoyed the support of dozens of leaders in the victims' rights community will move forward to Congress for approval to appropriate funds to implement the provisions outlined in the law. A heated debate on its funding is expected to arise over the coming months despite strong Congressional support for the legislation. While the President recently acknowledged the need

for expanded DNA testing and better legal representation to help prevent wrongful convictions, the White House and the Department of Justice have developed a proposal that is different from what the law prescribes and is unlikely to address this problem.

The law authorizes much-needed funds to test a nationwide backlog of more than 300,000 rape kits and other crime scene evidence, funding for victims' services through grants to prosecutor and defender offices, access to post-conviction DNA testing for those serving time in prison or on death row for crimes they did not commit, and it authorizes grants to states to improve the quality of death penalty trials as well as assist families of murder victims. While impressive, the programmatic and legal needs of the exonerated remain largely overlooked.

"Innocent people do some of the hardest time. They never reconcile themselves to why they're in prison. They feel their lives have been taken away," says Justin Brooks, executive director of the Innocence Project chapter at California Western School of Law in San Diego. "We expect them to just start functioning in the workforce. But there's a stigma to having been incarcerated" (Armour 2004). In most jurisdictions when exonerated individuals get out of prison, they get less in terms of support and programs than people who were guilty and convicted and get out. No matter how intelligent and strong these people are, most if not all have post-traumatic stress disorder (e.g., a variety of nervous conditions, sleep disorders, etc.) after living in the prison environment where the constant threat of violence, rape, degradation, and hopelessness are the norm. Many of these individuals come back into free society after ten to twenty years of being out of society, their children are grown (if they had children) or their spouses, other loved ones, or friends, in many instances, have left or died. Everything is different. They are caught in a time warp when they reenter which only adds to their hardship. This needs to change immediately or society will have failed the exonerated twice - first, by

incarcerating them unjustly, and again by failing to support their reentry into society.

As noted by Peter Neufeld, a co-founder of the Innocent Project at Cardozo Law School, which provides legal assistance to prisoners seeking to prove their innocence through DNA testing "We were getting all these people out of prison, but we found most of them were having tremendous difficulty with life on the street." As a result, the Innocence Project and the DNA Identification Technology and Human Rights Center of Berkeley, California, established their jointly run, private, nonprofit group, Life After Exoneration Program (LAEP), which is the only national organization dedicated to helping survivors of wrongful conviction re-enter society by offering job training and other help to a network of exonerees nationwide. LAEP is helping to build a community of the exonerated and is supporting policy reform on behalf of the exonerated. The program needs funding to bring this model to all 50 states - something that could happen soon if only the federal and state governments, foundations and the public come to recognize society's moral obligation to assist the exonerated. Progress is slow but certain.

Conclusion

When a plane crashes, the Federal Aviation Administration investigates; when a patient dies during surgery, the hospital probes; if a patient adversely reacts to a vaccine, the physician is required to report the occurrence to the Centers for Disease Control and Prevention. The criminal justice system does not operate this way. Many agencies exist to investigate crimes and prosecute criminals, but no entity exists to investigate the injustice of wrongful conviction. The state of North Carolina has followed Canada and Europe's lead in establishing an Actual Innocence Commission. There is a movement in Florida to create one as well. Authorities in the criminal justice system make no effort to collect, organize and review their mistakes. The typical wrongfully convicted innocent is quietly released, with no ceremony, or apology, or

assurance that a similar mistake may be prevented in the future.

Everyone will agree that the system is not perfect, but the real question is this: To what extent do its imperfections prevail? The body of justice that has evolved over the centuries has many members. But not one part that functions within this whole has been created or is properly equipped specifically to secure the freedom of the incarcerated innocent. The cherished code, "you are innocent until proven guilty," no longer holds in America. You are guilty when charged. There is an obvious immediacy of concern about prisoners who are released from death row due to proof of innocence. But, their numbers are merely a warning sign of the numbers of non-death row innocent prisoners in this nation.

According to Berman (2006:1) "...there are roughly a million non-capital convictions from felony charges each year that are the result of plea deals. Imagine if only .01% of all defendants who plead guilty when facing felony charges are actually innocent and plead guilty due to a (reasonable) fear of getting a much harsher sentence after possibly losing at trial. Even if 99.99% of all defendants who plead guilty are in fact guilty, we would still have roughly 1000 innocent people convicted of non-capital felonies each and every year...even before we start looking at trial error in non-capital cases." While this level of accuracy might inspire confidence, by some, in our system of justice, a small error rate in a large system can result in thousands of miscarriages of justice. Thus, the question remains: what percentage of the 2.2 million men and women locked up in state and federal prisons and local jails are actually innocent of the charged crimes?

The frightening reality of the American criminal justice system is that no one will ever know how many innocent people are imprisoned at any one time. Some wrongfully convicted inmates, without funds for legal counsel or investigators, and without knowledge of the work of

innocence projects, will never have their claims explored. Others will be released due to issues raised on appeal that have nothing to do with innocence. Some will die in prison.

Cases where State authorities quietly grant a parole or pardon to prisoners presenting proof of innocence seldom receive more than one paragraph on page 10 of some local newspaper, if that. Cases where new trials are granted, and the results of those trials, are seldom reported as an actual case of an exoneration of a wrongfully convicted citizen. Needless to say, local prosecutors and judges do not go out of their way to call a press conference to announce they made a mistake and sent an innocent citizen to prison.

The time has come to address the problem of wrongfully convicted innocent citizens as a national problem as opposed to a local problem. There are numerous local Innocence Projects located in each State in this nation, either of an independent nature, or at local law schools. And, while these entities should continue with the wonderful work they do, there is a need to establish a national clearinghouse and reporting center for all the individual Innocence Projects and law schools in the United States. Such a national effort would result in the gathering of statistics and information from Innocence Projects and trial attorneys nationwide to identify and report upon the actual scope of the problem of wrongful convictions in the United States, and to provide those statistics to Congress, State Legislatures, the news media and the public. The time for doing justice is now!

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