



Gregory Bright outside his niece's home in McComb, Miss., where he now lives. He spent 27 years behind bars for a crime he did not commit but gave up anger and hatred in prison because they were "too heavy to tote."

Opposite **Boxes of legal files pertaining to Bright's case.**



Criminal Justice



The Wrong Arm of the Law

Innocence Project New Orleans is trying to fix a criminal justice system that, it says, is keeping hundreds of innocent people behind bars.

BY RON FEEMSTER

PHOTOGRAPHS BY CARLTON MICKLE

New Orleans—For more than 27 years, Gregory Bright had a single objective in life: to prove that he was innocent of murder. Bright was 20 years old when he was convicted of fatally shooting a man in New Orleans in 1975, along with a 17-year-old codefendant, Earl Truvia. He was sentenced to life without parole at the Louisiana State Penitentiary in Angola, a sprawling former plantation on the Mississippi River. He knew that if he could not prove his innocence, he would die behind bars. Gang violence took the lives of many inmates at the prison, especially in the 1970's, when men slept with phone books strapped to their chests for fear of being stabbed. Most survivors died at Angola of illness or old age.

Bright quickly understood that his only chance to leave prison alive was to educate himself in the law. Louisiana provides legal representation for prisoners only during the direct appeal stage, when they can contest their convictions on purely procedural grounds. But it does not provide lawyers during the next stage of the appeals process—when inmates can introduce new evidence that might prove their innocence. Instead, the state offers limited paralegal training for a few inmates, who then serve as “inmate counsel substitutes” for prisoners preparing appeals. Bright credits his fellow prisoners with pointing him in the right direction, but he knew he was on his own.

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"I always worked at it," says Bright. "I always tried to find some avenue that would lead back to the court." He based his first appeal on "ineffective assistance of counsel," because the lawyer for him and Truvia had failed to pursue an alibi defense.

That appeal was denied in 1983. Bright continued to file papers on his own behalf, working in the evening, after he finished shifts at the laundry, butcher shop, stables or kitchens of the 18,000-acre prison. In 1994 one of Bright's many requests for documents turned up a New Orleans police report indicating that detectives had pursued other suspects before an informant, who was ultimately the only witness to testify at the trial, fingered Bright and Truvia in exchange for a reward.

That case inched forward, and might still be pending, had Bright and Truvia not sought help from Innocence Project New Orleans, a fledgling nonprofit organization. IPNO was founded in 2001 by Emily Bolton, a former Amnesty International staffer in London who came to Louisiana to intern at a nonprofit law firm that provided counsel to indigent defendants charged with capital crimes. That work alerted Bolton to the legal disadvantages faced by prisoners serving life without parole, by far the most common sentence at Angola. "Lifers," unlike those facing execution, are not guaranteed legal representation for their post-conviction appeals. Bolton enrolled in Tulane Law School and, shortly after graduation, started IPNO to serve inmates like Bright and Truvia—those with credible claims of innocence, who are unlikely to leave jail alive without help. "We are interested in actual innocence," says Bolton, who serves as IPNO's legal director, "not cases that should be overturned on the basis of a procedural error or a legal technicality. Our typical client is 'the man who wasn't there.'" IPNO recently began to expand the program into Mississippi.

No one knows just how many potential clients IPNO has. Louisiana has the highest incarceration rate in the United States, according to IPNO's figures. More than 80 percent of criminal defendants are indigent minorities. The state's fragile indigent defense system, glaring racial disparities and a history of improper behavior by prosecutors and law enforcement contribute to a fertile breeding ground for wrongful convictions. There are about 36,000 prisoners locked up in Louisiana's state prisons, including nearly 4,000 serving life sentences without parole. If the system is wrong just 1 percent of the time—the most conservative estimate of false conviction rates—about 40 innocent men are serving life at the prison, a number that could turn out to be several times higher. IPNO receives about 70 letters a month from prisoners in Louisiana and Mississippi—and regularly gets a flood of new inquiries whenever press accounts of their work appear.

Most cases go nowhere. Using an elaborate screening process that begins with a one-page application and proceeds to a 20-page questionnaire, the staff combs through hundreds of cases for every one it accepts. Those with credible claims of innocence are selected for investigation and, if enough evidence can

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be mustered, for litigation. Currently, IPNO has 30 cases in various stages of investigation and another 12 in litigation.

When a case is accepted, the first order of business is to walk back through the facts of the crime from beginning to end. A prisoner frequently knows very little about the case the government built to convict him.

"The most important thing that we are able to do for prisoners is investigate," says Bolton, who shares her office with Mel, a golden retriever. Bolton meets regularly with inmate counsel substitutes in Louisiana prisons, and sees their most important limitation not in lack of training, but in lack of freedom to interview sources and search for documents. "About 70 percent of the work in a case is investigation. And investigation is the one thing inmates are least able to do for themselves."

Bolton's team, made up of recent law school graduates and student interns, could see from the trial transcript that lawyers for Bright and Truvia had not put up a vigorous defense. So the young attorneys set out to learn what the original lawyers should have discovered a quarter century earlier. IPNO investigators visited the crime scene, tracked down original witnesses and searched the courthouse for documents. They needed only a few months to turn up facts that would probably have eluded Bright and Truvia for the rest of their lives.

When he reached the State Penitentiary at Angola in 1976,



Emily Bolton, founder of the Innocence Project New Orleans, is interested in cases of actual innocence, not ones with procedural flaws.

Opposite Robert Hoelscher, IPNO executive director (center), and his staff of recent law school graduates and interns.

Hundreds, even thousands of similar cases are under investigation across the United States. Since 1989, 328 people have been exonerated based on evidence developed through post-conviction investigations, according to Samuel R. Gross, a law professor at the University of Michigan who has studied the subject. About half of all exonerations since 1999 have been based on DNA evidence.

“DNA has guided us to the hallmarks of wrongful convictions,” says Emily Maw, another British graduate of Tulane Law School, who heads IPNO’s Mississippi project. Among the most important telltale

Bright knew nothing about the witness who testified against him except what he heard her say on the stand. The IPNO lawyers soon learned that the witness, who testified under the name Sheila Robertson, was actually Sheila Caston, a prostitute and heroin addict who shared a “tip” with the New Orleans police in exchange for reward money. Caston, who testified under a false name to hide her criminal record, was hospitalized and suffering from psychiatric problems in June 1976, when the trial was scheduled to begin. The witness, who would testify that she heard gunshots, was in treatment for auditory hallucinations, so the state postponed the trial for a month.

The smoking gun turned up in the district attorney’s file. The subpoena calling “Robertson” to testify clearly noted that she was in Sara Mayo Hospital the day before the trial was to begin. That subpoena was the only one not turned over to the defense.

Bright and Truvia’s lawyer also failed to use the coroner’s report to refute “Robertson’s” testimony that placed the time of death at 1 a.m. “When I interviewed the coroner 25 years later,” says Bolton, “he looked at the notes and said that, had he been called to testify, he would have put time of death between 5 a.m. and 8 a.m.”

“It was obvious to us that defense counsel never visited the crime scene,” says Bolton. In undisguised contempt for the efforts of the original counsel, Bolton points out that the crime scene is just five minutes from the courthouse where Bright and Truvia were tried. In the middle of a busy morning spent visiting a client in the parish jail and collecting records at the courthouse, she stops to guide a visitor through the scene. “This is where the body was found,” she says, pointing to a spot by the corner of a building. “We showed that the witness could never have seen the crime from her window. If defense counsel had ever been here, the jury would have acquitted the first time.”

On June 24, 2003, less than two years after Innocence Project New Orleans got involved, Greg Bright and Earl Truvia were freed in the same New Orleans court room where they were convicted 27 years earlier.

characteristics of wrongful convictions are single-witness or cross-racial identifications, coerced confessions, prosecutorial misconduct and cases based on information gleaned from jailhouse informants. But the biggest reason for wrongful convictions in Mississippi and Louisiana remains ineffective assistance of counsel due to poorly funded indigent defense, according to Bolton.

Robert Hoelscher, executive director of IPNO, left his job as a business manager for a public radio program and volunteered to help Emily Bolton build the project after reading *Actual Innocence*, a book published in 2000 by Barry Scheck and Peter Neufeld, codirectors of the Innocence Project at Cardozo School of Law in New York, and co-authored by Jim Dwyer, a reporter for The New York Times.

“That was the book that got the whole movement going,” says Hoelscher. “At the time the book appeared, there were only a couple of these projects in the country.” Today there are more than 30.

As quickly as the U.S. innocence movement is growing, it lags far behind the British system in scope, stature and funding. In England, Wales and Northern Ireland, the Criminal Case Review Commission, a board of 14 legal and law enforcement experts appointed by the home secretary with the approval of the Crown, bears ultimate responsibility for reviewing possible miscarriages of justice. (Scotland has its own commission.) Unlike the U.S. system, which is built on the idea that the right procedure assures the right outcome, and where innocence appeals can take years to be heard, the judicial system in the United Kingdom acknowledges its fallibility and offers quick, straightforward remedies. The C.C.R.C. simply orders that a particular case be reviewed immediately by a court of appeals.

Established in 1997 to oversee a criminal justice system that currently has more than 74,000 convicted prisoners behind bars, the C.C.R.C. has reviewed 6,875 applications and referred 235 cases to appellate courts for review; 128 convictions had been overturned as of June 30. With an annual budget of more than

\$10 million, the program is much better funded than U.S. innocence projects.

“In the United Kingdom, the budget per case decision, counting those that are not referred to the court, is about \$7,000, down from about \$20,000 in the beginning,” says Hoelscher. “Roughly 1.5 percent of the British prison population applies for a case review, which comes to between 750 and 1,000 cases per year. In the United States, roughly 1.3 million people are incarcerated in state prisons. If the same percentage applied for review you would get almost 20,000 applications per year. At \$7,000 per case, you would need \$140 million to handle the workload.” Hoelscher estimates that the total budget for all U.S. innocence projects is less than \$7 million.

Robert Glass, a New Orleans defense lawyer who defended and lost the 1981 rape case of Clyde Charles in Houma, La., also lost when he submitted a pre-DNA application for post-conviction relief a few years later. “DNA is not a panacea,” Glass told a gathering of lawyers and law students at Tulane University Law School last November, noting that his earlier efforts to free Charles hamstrung the case he filed later, this one based on DNA evidence. “DNA comes up against all of these procedural bars that kill you.” Glass discovered that the case might never be heard because his first application had been denied years earlier.

Ultimately, the prosecutor’s legal maneuverings proved less compelling than the intuitive questions posed by the defense: “If he’s innocent do you really want him in jail? And if the DNA is his, then what’s the difference?” (Ironically, the DNA test that cleared Charles convicted his brother of the same crime.)

For inmates who spend years behind bars, getting out of jail can be as traumatic as it is joyful. Dwight Labran, IPNO’s first client, was exonerated of murder in December 2001 after IPNO lawyers proved that the sole eyewitness not only testified falsely, but also gave police a false name to avoid arrest on outstanding drug and firearms warrants. Less than two years later, Labran

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was being held in Orleans Parish jail, pending trial on federal drug charges.

“We’ve discovered that we have to address reentry issues,” says Hoelscher. Until recently the best a returning exonoree could hope for was family support. When Earl Truvia and

Gregory Bright were released from jail in June 2003, the state of Louisiana gave them \$10 each and sent them on their way. As free men declared innocent they did not even receive the job-hunting and other support services the state offers to parolees. Fortunately, Truvia was met by his mother. Bright moved in with his niece in McComb, Miss. He found a \$6 per hour job at a restaurant in a shopping mall and commuted several miles a day on a bicycle, rain or shine. For weeks after he came home, he and his niece stayed up late laughing and reminiscing. Even after they went to bed, they would call to each other across the hallway of the double-wide trailer, giggling like teenagers.

The misfortunes of Labran and others convinced Hoelscher and his colleagues to create Inside Out, a program that brings together exonerees and family members from all over Louisiana for meetings in New Orleans once every six weeks. With the help of a social worker, they identify needs—from psychological counseling to nascent legal issues to better transportation—and seek solutions. An IPNO intern, for example, convinced a Mississippi car salesman to donate a used Nissan to Bright, so that he could expand his job horizons. The former inmates also speak publicly about their experiences and participate in education projects. With IPNO staffers, they hold mock trials in school classes and lead discussions of false convictions and exoneration appeals for attorneys and judges.

Emily Maw and David Park have spearheaded IPNO’s efforts to gain compensation for exonerees for the years they spent in prison. A proposed law, passed by the Louisiana House but not voted on in the Senate this year, would pay released inmates at least \$12,000 per year of incarceration, with a maximum of \$500,000. Currently, a small number of states, including New York, Texas and California, pay damages to wrongly incarcerated prisoners.

“Most of these men were just in the wrong place at the wrong time, without the means to prove their ultimate innocence,” says Cedrick Glover, the Louisiana legislator who authored the bill. “The state has a moral obligation to do more than apologize.”

“No money in the world can replace what I’ve been through,” says Truvia, now 46, who is living with his mother. “Money was made off my body and labor. That’s not considered now. I was innocent.”

Bright says he gave up on anger and hatred in prison. They were “too heavy to tote,” he says. He has a girlfriend, and they are living together. He quit his restaurant job and is doing landscaping work because he likes to be outdoors. He dreams about one day having his own truck and landscaping business. But that’s when the dark clouds appear.

“I am disappointed that I haven’t been compensated,” Bright says, wondering whether he will ever be able to retire. “I’m too old to work 20 years on a job. But I worked 27 years in prison, and what have I got?” ■

Defending the Innocent

Innocence Project New Orleans is funded by the Ford Foundation’s Peace and Social Justice program. It is part of a worldwide effort by the foundation to promote access to justice and the protection of civil and political rights for the most vulnerable individuals and groups in society. The project focuses on Louisiana, Mississippi and Alabama, where over 80 percent of criminal defendants are indigent minorities, and where most victims of wrongful convictions are also indigent minorities. In addition to the inherent value of a project that works to exonerate innocent prisoners, IPNO’s compelling and successful advocacy is a model for much needed reform in the criminal justice systems of these three states. Along with its partners—at area law schools and among legal practitioners, prisoner family groups and others—the project is working to identify and advocate systemic reforms, such as the need for a DNA testing policy in Mississippi and a statewide public defender program in Alabama.