Wrongful convictions create massive civil injustices and human rights abuses in Massachusetts. Often a simple forensic test, if granted by a judge or district attorney, can establish innocence or confirm guilt. This past legislative session, two representatives re-filed a previously proposed, much-needed DNA access law for the state.

Defendant Access to DNA Evidence

■ The Bill

■ Elevator Speech
Hello Representative/Senator [Name]! Can you imagine spending 20 years of your life in prison for a crime you did not commit? We all care about a fair justice system, but wrongful convictions create civil injustices and human rights abuses right here in our communities. Massachusetts has already exonerated 33 innocent individuals, but scholars estimate that between 0.5 and 4% of all convictions are incorrect.

The tragedy of incarcerating the wrong person goes beyond the suffering of the individual who loses his or her liberty. The victim and victim’s survivors suffer as well because they gain only a false and temporary sense of closure. Furthermore, wrongful convictions jeopardize public safety because the real perpetrator remains at large. In 43% of the first 251 DNA exoneration cases nationwide, the real perpetrator of the crime was identified after an innocent person served time for it. Those real perpetrators committed at least 72 more violent crimes before being caught.

The currently proposed Act to Provide Access to Scientific and Forensic Analysis will help remedy the problem of wrongful convictions by guaranteeing convicted individuals who claim innocence the right to a DNA test of crime scene evidence. Massachusetts is one of only two states that does have such a DNA access law, even though it would uphold the values of our justice system and prevent the state from wasting almost $46,000 a year keeping an innocent person in jail. Please help us to end wrongful convictions by making sure Bill H02165 receives a hearing and your vote.
Imagine having your future, all the potential that you possess, torn away from you.

One day you're surrounded by family and friends then suddenly, you're accused of a heinous crime, rushed through trial, and thrown in jail. You spend years claiming innocence and waiting for somebody to realize their horrible mistake.

Dennis Maher was 23 years old when he was incarcerated for assault and two brutal rapes. He, like the attacker in two of the cases, was wearing a red sweatshirt. Dennis told the judge he didn't do it.

Seven years later, the Innocence Project, which challenges wrongful convictions with forensic testing, took up Maher's case, but it took nearly another decade for a law student to find what authorities claimed did not exist. DNA evidence.

The story doesn't end there. Once Dennis filed for DNA testing, a judge used his discretionary powers to deny the request without a hearing. Dennis had no choice but to wait another six years for the judge to retire to appeal. Then, after 19 years behind bars, a forensic analysis showed that the semen found on both rape victims was not Maher's. Dennis was freed.

**Ongoing injustice**

So why wasn't the crime scene evidence brought up by the prosecution initially, or available to the defense earlier? And how could a judge simple deny Dennis' request for testing?

Currently, evidence is preserved by police departments, and access to DNA testing granted by judges and sometimes district attorneys. Neither of these actions or procedures are formally required by law, preventing compliance standards and limiting the ability of citizens to contest legal decisions.

It was the Supreme Judicial Court Standing Advisory Committee that gave judges this discretionary authority. According to William Leahy, a former member of this committee, this option seemed adequate at the time because nobody saw wrongful convictions as a problem in Massachusetts.

The statistics suggested otherwise. Throughout its history, Massachusetts has exonerated 33 individuals, 9 through DNA testing. Yet Massachusetts was, and still is, one of only two states without a DNA access law that affirms the right of incarcerated individuals claiming innocence the right to DNA testing.

**So what?**

Today, people still seem unaware of the problem, and that it affects them.

The tragedy of incarcerating the wrong person goes beyond the suffering of the individual who loses his or her liberty. The victim and victim's survivors suffer as well because they gain only a false and temporary sense of closure. Just ask Patricia Gale, who thought that she had long moved on from that night in 1983 when she fought off her attacker.

Furthermore, wrongful convictions jeopardize public safety. In 43% of the first 251 DNA exoneration cases nationwide, the real perpetrator was identified after the wrong person served. Those real perpetrators committed at least 72 more violent crimes before being caught.

As if that's not enough, the financial costs of keeping the wrong person incarcerated are also high. Massachusetts spent an annual half a million dollars on the nine individuals who were later exonerated by DNA testing, not including legal fees from multiple trials and appeals. DNA testing for these men would have cost the state a one-time fee of under $13,000.

**A solution?**

Leahy realized that the Committee was wrong. Around 2004, it became increasingly clear, largely based on emerging stories such as Dennis', that wrongful convictions occur in this state just as they do everywhere else.

Leahy went on to work with a Boston Bar Association task force to research the problem, which, after 18 months, released a report with recommendations for judicial reform. Subsequently, the BBA, along with a coalition that includes the New England Innocence Project, American Civil Liberties Union, and the Committee for Public Counsel Services, became a driving force for a DNA access law in Massachusetts, called An Act to Provide Access to Scientific and Forensic Analysis.

The proposed bill acknowledges the significant number of DNA exonerations in recent years, and that modern techniques can be used to overturn previous wrongful convictions. It applies to any person convicted of a criminal offense who asserts that he or she is innocent, and allows him or her to file a motion for forensic or scientific analysis, if the evidence or biological material exists.

The bill additionally requires that the state preserve biological evidence from crime scenes for as long as the defendant is in custody or on parole, even if the evidence was not introduced at trial.

Finally, a call to action. Now to convince policymakers what it took lawyers decades to realize. Massachusetts needs a DNA access law. **Call your representative or senator and ask him help end wrongful convictions by supporting Bill H02165.**
Excerpts from Campaign Journals

Anna

From a meeting with Joanne Muti, aide to Representative Daniel Winslow (R-Norfolk)

Representative Winslow followed up to our initial e-mail himself, and the meeting with his staffer was the best by far. Joanne took detailed notes as we spoke (which was so intimidating!), and asked many follow-up questions. It was nice to have a dialogue rather than spew out an elevator speech. We referenced Representative Winslow’s public service history, tenure as a judge, and policy suggestion papers as much as possible, and Joanne suggested that although he has no position, Representative Winslow will probably support the bill. Joanne also asked for our contact information, as well as about our post-college plans. Before Stephanie and I left, Joanne and I bonded about the Peace Corps. She reminded me of my (Republican) grandmother, which made me question the bipartisan stereotypes I sometimes hold. I think that this may be a start in finding unlikely allies for a campaign that requires as much support as possible. From Joanne, I learned to try to relate to policymakers on a more personal level, not just over common social values, because it seemed to help the advocacy cause.

From general reflections and conclusion

All of these meetings helped me to develop my communication skills, as well as my confidence when talking to policymakers. Although the course and advocacy process was challenging, it reminded me that writing research papers, beyond college, is useless unless you can also present in person, and help people to understand and support your position.

The biggest lesson I learned this semester was that I can apply what I learn in Legal Studies classes to the real world. I used to think of social justice in a larger sense, but advocating for policy change reminded me that it starts right here on campus and in my immediate community.

Stephanie

From introduction

Working on An Act to Provide Scientific and Forensic Analysis was one of the highlights of my semester. After hearing about the injustice that wrongful convictions posed, we knew that this was the bill we wanted to focus on. I became an expert on this bill, and I used that expertise to advocate for its passage. While I had a great experience working on this bill, it was also extremely challenging. Anna and I began this journey on our own. We did not have a coalition to join to help us move forward. We did not have the same guidance and support that the other groups had. However, we had a strong desire to tackle a pressing issue that was being ignored. We dived head first in to an issue that was kept behind closed doors and barely discussed, and tried our hardest to bring it to light. We did not have a coalition to give us a push forward, but during our journey, we met with legislative aides who gave us a strong insight in to how the State House works. From our extensive research and advocacy, we came to the realization that this bill died in the past not because of active opposition, but because of the lack of advocacy. This time around, we wanted to change that and we focused on bringing awareness in the State House about An Act to Provide Scientific and Forensic Analysis.

From a meeting with Representative Christopher Markey’s aide

We had about an hour wait until our next scheduled meeting, so we decided to visit the other legislators on the Joint Committee on the Judiciary. We stopped at Representative Christopher Markey’s office first because from our research, we learned that he was very big on public safety and was a former prosecutor. Because of his history, we wanted to speak with him to get his opinion and position on the bill. We knocked on the door, and one of his aides let us in. We gave our background information and a quick explanation of the bill. The legislative aide was about in his 30s, and even though he had just arrived, he allowed us to meet with him. The greetings and meeting happened so quickly that we forgot his name. We gave him the same speech that we gave to Sarah Walkovich, but it went extremely well. Anna and I did a great job, and we conveyed our message eloquently. The staffer took notes the entire time! He was extremely engaged and hooked by our speech. At the end, he inquired about the federal bill, Justice for All, and said that it was embarrassing that Massachusetts is only one of two states that does not have such a law. He was impressed with our storybook, and he took our contact information. He told us that he would get this information to Representative Markey as soon as possible.
Update (July 2011)
The bill was discussed at a public hearing before the Judiciary Committee on June 8. It was reported favorably by the committee and referred to the House Committee on Ways and Means.