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THE PRICE OF A LIFE

What's the right way to compensate someone for decades of lost freedom?

BY ARIEL LEVY

In 1985, police on Long Island arrested John Restivo in connection with a rape and murder. He remembers a detective telling him, "This is un-America: you have no rights here."

PHOTOGRAPH BY CHRISTAAN FELBER

As teen-agers on Long Island, John Restivo and Marge Neidecker spent hours in her blue Road Runner, cruising around the towns where Queens gives way to Nassau County. "We did a lot of drag racing," Neidecker remembered. "I owned a souped-up car—so did everybody back in the seventies." She had long, straight blond hair parted down the middle, like Joni Mitchell's. Restivo was a tall, gangly guy; his nickname in the neighborhood was Wimpy. Sometimes they cut class at Lynbrook High School and rode around together, smoking cigarettes and listening to Bob Dylan. They loved his song "Hurricane," and sang along as they drove: "Here comes the story of the Hurricane / the man the authorities came to blame / for something that he never done." It seemed like a metaphor for all the injustices of adolescence.



After high school, they went their separate ways. In Neidecker's yearbook, Restivo wrote, "Best of luck with the future." She married at nineteen. He went to work for his father, a retired police officer, at the family's moving-and-storage company. The Restivos were a close family: every Sunday they had dinner together, with as many as twenty relatives at the table.

When Restivo was twenty-four, his father died, of a heart attack. A year later, his girlfriend gave birth to their son. Suddenly, Restivo was the father of an infant and the oldest of three brothers in a business that had relied heavily on the family patriarch. He was overwhelmed, always tense. One day in March, 1985, he was driving in Oceanside, about to make a left onto Rockaway Avenue, to check on some of the company's trucks. Three unmarked cars drove up next to him. The men inside said that they were cops, and told Restivo to pull over to the curb.

He was taken to the county-police headquarters, in Mineola, where Joseph Volpe, a beefy detective with bushy eyebrows, told him that they were investigating a homicide. Restivo's first thought was that his girlfriend and their new baby had been murdered. But that wasn't it. The body of a sixteen-year-old named Theresa Fusco had been found in the woods near the Hot Skates roller rink, where she'd worked at the snack bar; she had been raped, and strangled with a rope. Though Restivo had never met the victim and had no criminal record, it became clear that he was a suspect. One of the detectives grabbed him by the throat, he recalled recently. "He starts screaming, right in my face, 'Is this how you killed her?' And I'm, like, This is *insane*." They kept him at the station for twenty hours, during which he was not allowed to rest or eat or call his girlfriend and let her know where he was. Restivo remembers that when he said he had a right to a lawyer, Volpe told him, "This is un-America: you have no rights here." Then Volpe's partner, Robert Dempsey, hit him in the face.

Restivo had grown up thinking of the police as good guys—his father had spent twenty years on the Nassau County force—and he was stunned by his treatment. As soon as he was released, he went to see a lawyer, who took photographs of his bruises and filed a complaint against the detectives. (Dempsey denied hitting Restivo.) But the police did not relinquish the case. "It's quite possible that the fact that he called a lawyer right away made them think that he was guilty," Anna Benvenuti Hoffmann, one of Restivo's current lawyers, said. "Anything is a sign that you're guilty, once they get a feeling that they don't like something about somebody."

Restivo's phones were tapped. His home was bugged. "Everywhere I went, they started following me around," he said. "I'm trying to continue running a business, and if I go to somebody's house to do an estimate or a moving job, I'm afraid the cops are going to show up. Anybody I associated with, they're starting to snatch off the street—and they're not just bringing them in for a half-hour chat." On the night of the crime, Restivo had been in Wantagh, sanding floors at his new house with a friend; the police brought the friend in and questioned him for ten hours. "They told me, 'We're going to turn your life into an effing nightmare,'" Restivo said. " 'And we're going to turn your brother's life into an effing nightmare. We'll turn your mother's life into a nightmare. We'll turn your son's life into a nightmare.' And they did."

There was a mounting sense of menace in Lynbrook and Oceanside at the time: Theresa Fusco was not the only teen-age girl to disappear from the area. Her friend Kelly Morrissey, a fifteen-year-old with winged hair and a giddy grin, had vanished the previous June; she was last seen on her way to the Captain Video arcade. The police had listed Morrissey as a runaway, though before she went missing she had laid out an outfit for the next day on her bed. They likewise assumed that Fusco had fled in protest after she was fired from Hot Skates, but her mother, Connie Napoli, insisted that her daughter had been abducted. "Police should trust a mother's feelings," Napoli said at the time. "It is so frustrating knowing your child is somewhere needing help, and

you don't know where to go." When some children found Fusco's naked body covered with leaves in the woods by the railroad tracks, people in the neighborhood began to panic. Then, a few months later, a nineteen-year-old named Jacqueline Martarella disappeared in Oceanside on her way to Burger King. Her body was found on a golf course; like Fusco, she had apparently been raped and strangled. There was enormous pressure on the police to find a culprit.

Volpe was an experienced member of the Nassau County force, but this was his first case as the lead detective on a homicide. There was no DNA testing available at that time, so even though the police took vaginal swabs from Fusco to ascertain that she'd been raped, they were unable to identify her assailant based on the semen they recovered. In January of 1985, after several months of investigation, Volpe heard that a local man—a veteran who suffered from P.T.S.D. and had been hospitalized for psychiatric illness—had been bragging that he knew who did it. He named John Restivo.

After the police brought Restivo in for questioning, Volpe began to build his case. During his interrogation, Restivo had mentioned an employee, a twenty-one-year-old named John Kogut. The police picked up Kogut after he had just finished a day of intense physical labor and then drunk a few beers and smoked a joint. Despite his insobriety, Kogut passed a polygraph test in which he insisted that he knew nothing about the crime. But the police told him that he had failed, and interrogated him for eighteen hours—by the end of which he had given six distinct, contradictory confessions. The last one was handwritten by one of the detectives. Kogut signed it, and then, sitting before a video camera, confessed to the crime, hewing to the police's version of events: He had gone out with Restivo and his friend Dennis Halstead, a thirty-year-old father of five, who sometimes worked with them at the moving company. In Restivo's van, the three men had picked Fusco up from the street and taken her to a cemetery. There, among the headstones, Halstead and Restivo had raped her and then persuaded Kogut to strangle her with a rope.

Kogut recanted his confession almost immediately. Restivo's van had been up on blocks at his mother's house on the night of the crime, and, anyway, the three men had never ridden in it together—Kogut and Halstead couldn't stand each other. But it didn't matter. The police impounded Restivo's van, and on June 20, 1985, he and Halstead were arrested.



Dennis Halstead's son Jason said that, before his father was taken in, "I wanted to be with him all the time. He was my hero." When the police came to arrest Halstead, he and Jason were fishing off the Woodmere docks; Jason, who was twelve, had gone to check the lines. "When I turned back to yell at my dad we caught something, I saw him talking to two men in suits with police surrounding him," Jason said. "All I heard him say was 'I can't believe you guys have the balls to do this.'" Dennis Halstead described the moment when Volpe approached him. "Jason looked at me," he said. "I told him that everything would be O.K. And I told them, 'Please don't cuff me in front of my son.'"

Restivo was less self-possessed. When he was taken to jail, he said, "I was frightened of being sexually assaulted; I was frightened of being assaulted physically"—which he was, half a dozen times. "I was scared to death." Bail was set at seven hundred and fifty thousand dollars, and he didn't have the money, so he remained in jail for more than a year awaiting trial. "I can still remember that cell door clanging shut behind me," he said. His lawyer warned him not to interact with anyone, because anything he said might be used against him. "Dudes would come tell me they'd be taken from the bullpen and brought up to the D.A.'s office, and they were told, 'Listen, you've got this guy Restivo on your gallery. You tell us that he confessed to you, you're out of there.'" He felt increasingly doomed. But some part of him believed this couldn't continue much longer, that any day he would have his old life back.

During that time, Restivo's girlfriend wrote him letters in the voice of their infant son: "I really miss you, Daddy. But you got to hang in there. We will clear up this whole mess. When you feel depressed, just think of coming home and playing with me." By the time Restivo went to trial, in October, 1986, he had lost thirty pounds.

The prosecution's case rested heavily on Volpe's report to the district attorney, which noted a significant piece of evidence recovered from Restivo's van: two strands of hair found on the floor which appeared to have come from Fusco's head. Restivo's lawyer argued that the police had submitted tainted evidence, but the prosecution was unfazed. (Fred Klein, the assistant district attorney assigned to the case, described Volpe to me as "a wonderful detective—one of the most tenacious, professional people I have ever worked with.") Several jailhouse informants claimed to have heard Restivo bragging about raping the girl, and a friend recalled hearing him say, "She probably deserved it." On the stand, Restivo disavowed the comment, saying, "It was a very insensitive remark, but I didn't mean anything by it." Klein held up a photograph of Fusco's body and yelled in Restivo's face, "What did she deserve?"

The men were found guilty. Restivo remembers hearing his mother, Frida, screaming in the back of the courtroom as the judge announced the verdict. He was sentenced to thirty-three years to life. Before he was led away in handcuffs, he read aloud an eighteen-page letter. "Each defendant in this case was offered a deal by the D.A. I myself was

offered three to nine to ‘coöperate.’ But I have no knowledge of this crime and would not lie to try to protect myself,” he said. “If I must spend the rest of my life in prison for something I didn’t do, at least I’ll be able to sleep at night.”

“I haven’t slept through the night in thirty years,” Restivo said one afternoon, sitting on his back deck, near the Indian River Lagoon, in central Florida. It was a few days before New Year’s, and there were still Christmas bulbs shining in the palm fronds throughout the neighborhood. Restivo has lived there, in a little blue house, since he was released from prison, in 2003. He and Dennis Halstead were exonerated, with the help of DNA evidence, after serving eighteen years.

Restivo was wearing a T-shirt that said “What a Long Strange Trip It’s Been.” He is starting to go bald, and he has a silver mustache and dark purple circles under his eyes. In prison, he was often awakened by the sounds of other inmates fighting, or of rats skittering across the floor of his cell. Now he has terrible nightmares, and gets about three hours of sleep a night. Prison was “like a war zone,” he said. “Any day could be your day. With the prison gangs, to become a member in good standing you’ve got to go up to someone and”—he mimed slicing his cheek—“hit ’em with a razor. You feel—or, at least, I did—safest locked in your own cell.” He went back and forth between Green Haven prison and Clinton, not registering much difference. “It doesn’t matter where you are,” Restivo said. “If you’re going to be victimized, you’re going to be victimized.” Restivo survived because he’s big, and because he kept to himself.

Even before he was convicted, he started writing letters, “to anybody, any name I could come up with,” pleading his innocence, asking for help. In prison, he got a job in the law library, so that he could research his case. “I had a typewriter in my cell that had a seven-thousand-character memory,” he said. “When I understood what the enemy had access to—I mean, I didn’t know there was Lexis and all these things! They had spell check. I was using a dictionary.”

In 1985, when he went in, Restivo was a frightened twenty-six-year-old. When he was released, he was forty-four: middle-aged, with no real résumé, severe P.T.S.D., and a sense of bafflement about “why everybody was walking around holding their heads like they had an earache.” (Restivo was incarcerated before the advent of the cell phone.) Soon after his release, he went to Florida to help his old friend Marge Neidecker rebuild her house, after the collapse of her marriage. He never left.

“29 Across is classified, too, sir. They’re all classified.”

Restivo and Neidecker live modestly, on the salary from her job at the local post office. In 2010, he received a \$2.2-million settlement from the State of New York, but much of that went to lawyers and to his mother, who for two decades had spent everything she

could spare on his case, at one point putting up her house as bond. Restivo tries to live as if that settlement were the last money he will ever have. “When they handed me that check, I’m not thinking, Ah, I’m rich!” he said. “I’m not eligible for Medicaid. I’m not eligible for Social Security. I never put money in a 401(k). That money has to last me forever.”



But in April, 2014, a jury in Islip awarded Restivo eighteen million dollars in damages—effectively, a million for each year of his imprisonment. Nassau County is appealing the ruling, so the money will likely take years to materialize, if it comes at all. “I’ve been through too much in this world to think anything’s a given,” Restivo said. “I can’t start living off that money. Then I put myself in a hole and I’m screwed for the rest of my life.” His expenses are minimal: “I could live on the beach.” But he was concerned about his mother. He had just returned from spending several months repairing her house in Lynbrook, and she was in poor health. “These are my wishes—to know that she’s taken care of,” he said.

Restivo often worries about other people, even people he barely knows. He doesn’t say goodbye before he hangs up the phone; he says, “Stay out of trouble.” When I went to see him, he was concerned that I’d get lost in the orange groves on the way to his house. In prison, he trained to become a registered H.I.V. counsellor and volunteered in the psychiatric unit. “All of these guys had different issues, and they couldn’t function in the general population,” Restivo said. “I would go up there three or four days a week and teach them basic math, basic reading skills. Sometimes basic life skills.” He worries about Dennis Halstead’s children, who Jason Halstead said have come to think of him as “a second father.”

Restivo also worries about his own son, whom he has not seen since 1986. His girlfriend brought the baby to visit him in jail, and told Restivo that she had a new boyfriend and was moving out of state. “That was the last time I seen the kid,” Restivo said. In 1988, she asked him to sign away his paternal rights, so that her husband could adopt the baby. Restivo considered the options. The boy could grow up with a man who he thought was his father, or he could grow up believing that his real father was in prison for no reason—or, worse, that he was a murderer. He sent a letter assenting to the adoption, and added a request: “You can do me one thing, send me a photo of him.”

At the trial for damages last year, Marge Neidecker testified that she hears Restivo cry whenever he takes a shower, and that he showers three or four times a day.

One of the earliest arguments for financial compensation for the wrongly incarcerated came in 1932, from the Yale law professor Edwin Borchard. In an influential book called “Convicting the Innocent: Sixty-five Actual Errors of Criminal Justice,” Borchard wrote, “When it is discovered after conviction that the wrong man was condemned, the least the State can do to right this essentially irreparable injury is to reimburse the innocent victim, by an appropriate indemnity for the loss and damage suffered.” He noted, “European countries have long recognized that such indemnity is a public obligation.” But it would be many years before the United States began puzzling through what constituted an “appropriate indemnity.” It wasn’t until the first DNA exoneration, in 1989, that most states began to seriously consider compensation.

There is still no consensus about the value of lost time. Missouri gives exonerees fifty dollars a day for time served, California twice that much. Massachusetts caps total compensation at half a million dollars. In Maine, the limit is three hundred thousand; in Florida, it’s two million. The variation is largely arbitrary. “If there’s a logic to it, I haven’t seen it,” Robert J. Norris, a researcher at SUNY Albany who has studied compensation statutes, told me. In Wisconsin, no matter how long an exoneree has served, the state will pay no more than twenty-five thousand dollars—the same figure that its legislators established in 1979. “They just never changed it,” Norris said. “They even amended their statute in 1987, but they didn’t change the amount.” Most states levy taxes on payment. Twenty states have no compensation statutes at all.

Fifteen hundred and seventy-five people have been exonerated in the U.S. The best off are those whom Brandon Garrett, a professor at the University of Virginia School of Law who has written extensively on post-conviction litigation, describes as “the ones that win the tort lottery.” These are exonerees who seek compensation through the courts, arguing that their fundamental civil rights were violated by the police or by prosecutors. (The same legal principle is at issue in federal suits brought by people who have been shot by the police.) In such cases, the potential damages are unlimited. But the standard of proof is high. “Police officers have qualified immunity,” Garrett told me. “They can violate your constitutional rights—reasonably but not egregiously.”

One of the major obstacles to filing these suits is that plaintiffs don’t have access to law-enforcement records—which typically contain the best evidence of misconduct. A federal civil-rights suit, Garrett said, provides “the Mercedes-Benz of discovery: seven-hour depositions with the key witnesses, all the police files, all the prosecutor’s files.” But that material can be obtained only after a suit has been launched. “It’s a Catch-22,” Garrett continued. “You can’t file a lawsuit without evidence to support your claim, and you can’t necessarily get at that evidence without the kind of discovery available to you only from a federal civil-rights case. One of the hardest things I had to do in practice is explain to an exoneree why we can’t file.”

In 1988, a year into his sentence, Restivo read in the law library about a case in which a felon was convicted on the basis of DNA evidence. “I figured, if they’re doing this to convict somebody, they’re going to have to do this to let me out,” he said. At his urging, his lawyer filed a motion requesting DNA testing on the vaginal swabs from the original investigation. That motion was denied, and Restivo’s lawyer had to petition for another five years before it was granted. “We had DNA tests done in ’93, ’94, and ’95, by three different labs,” Restivo said. “The first test was inconclusive; the second and third tests excluded all three of us.” But it wasn’t enough. “They argued in court that these tests weren’t reliable,” he told me, his voice rising. “Wait a minute—it would be a billion-to-one shot that *both* of these tests were wrong!” Nassau County argued that the swabs had been partially consumed by previous serological tests and that the incriminating DNA could have been removed.

“People think I’m bossy, too.”

As DNA testing began to draw attention to the incidence of wrongful conviction in the United States—which has been estimated at as high as five per cent—an “innocence movement” coalesced, devoted to uncovering its causes and freeing its victims. In 1992, the attorneys Barry Scheck and Peter Neufeld founded the Innocence Project, the most prominent legal organization devoted to DNA exoneration. The tests revealed deep flaws in a variety of law-enforcement practices and assumptions—mistaken eyewitness identification, for instance, has been shown to contribute to seventy per cent of wrongful convictions. (At the time, Scheck told me that the way police lineups were conducted would one day be considered as reliable as witch trials.) In about half of the three hundred and twenty-nine DNA-exoneration cases since then, improper forensics have played a role; twenty-seven per cent have involved false confessions, and fifteen per cent have involved unreliable informants. All these factors were at play in the convictions of Restivo, Halstead, and Kogut.



In 2002, the Innocence Project assigned a young lawyer named Nina Morrison to Restivo’s case, and, after a year of work, she made the decisive breakthrough. It happened by accident, one afternoon when Morrison was visiting the police department in Mineola. “I had gone with a couple lawyers to look at crime-scene photographs,” she said. “And then, as we’re going through the boxes, the prosecutor and I pulled out an envelope, and it’s marked ‘vaginal swabs.’ And you’re, like, *Ob—look at that.*” In the envelope was an intact swab, the final piece of evidence that they needed to have the original convictions vacated. On June 11, 2003, the three men were released from prison.

Klein, the prosecutor in the initial trial, told me, “The first feeling is, there must be something wrong with the test—it can’t be. These people were properly convicted. At that point, it becomes: What did we miss? What other evidence is there?” Kogut was forced to go back to trial, largely because he had confessed, and in court Nassau County’s case began to look suspicious. DNA testing confirmed that the strands of hair Detective Volpe claimed to have discovered in Restivo’s van belonged to Theresa Fusco. But they displayed a marker of decomposition called “postmortem root banding,” which occurs only many hours after death, and forensic evidence showed that Fusco’s body had been left in the woods soon after she was murdered. What’s more, the hairs were pristine, free of the debris and the damage from trampling that marked other stray hairs found in Restivo’s van. The judge concluded that they must have come from elsewhere, perhaps from the autopsy; apparently the police had commingled them—accidentally or deliberately—with hairs from the van. On December 21, 2005, Kogut was acquitted.

Kogut’s trial had stretched on for two years, while Restivo worried constantly that he, too, would be retried. “If a police officer drove down the street for any reason, he called me in a panic that they were canvassing his neighborhood and somebody was going to fabricate a statement and say that he admitted to murder,” Morrison said. “It’s not atypical for clients to have irrational fears that people are following them, tapping their phones, after their release. In John’s case, I couldn’t tell him that it wasn’t true, because they had done it the first time.” After Kogut was acquitted, the prosecution declined to retry Halstead and Restivo. “Once the case was really over, he was a lot more free—legally and mentally,” Morrison said.

But the case remained the focus of Restivo’s life. “If I wasn’t reading documents, if I was just laying back keeping my fingers crossed, it’d be different,” he said. “But my mind is always going.” In 2007, he sued the State of New York, and settled out of court for \$2.2 million. Along with Kogut and Halstead, he also filed a federal civil-rights suit against Nassau County. Given access to the police files, Restivo learned how Volpe had built the case against him. In order to open a wiretap on Restivo’s phone, Volpe had reported that the hairs belonged to Fusco before a lab had time to analyze them, and had claimed that there was “possible human blood” in the van, even though a serologist told him that there was none. Restivo also learned that Volpe had abandoned a promising lead in order to focus on him. The night that Fusco was last seen, wearing a pair of striped jeans, a tan Oldsmobile went missing, less than a mile away. A week later, the car was found, with the windshield smashed and the license plates changed. After Fusco’s body was discovered, the car’s owner heard about the case on the news. He went to the police and told them that he had noticed a pair of unfamiliar striped jeans wadded under the passenger seat, and that a length of rope was missing from the vehicle. Volpe searched the car and took statements from witnesses. But he did not mention the car or the striped jeans or the rope in his report to the district attorney’s office.

Fred Klein, who was an assistant district attorney for twenty-seven years and is now a professor at Hofstra Law School, said that the idea that the police had manipulated the evidence “intentionally would just be beyond my comprehension.” The jury was similarly skeptical. In 2012, Restivo and the other men lost their case, and found themselves vilified again. “Our police department has been vindicated,” Nassau County’s attorney* (#editorsnote), John Ciampoli, announced at a press conference afterward. Even though the three had been exonerated, Ciampoli insisted that they were “criminals,” who were somehow “responsible for what happened to Theresa Fusco.” He concluded that they had “been denied a chance to turn what, in my opinion, is a heinous crime into a payday that would cripple Nassau County.”

Compensation is intended in part as a deterrent: a municipality that has to pay heavily for police or prosecutorial misconduct ought to be less likely to allow it to happen again. But it is taxpayers, not police or prosecutors, who bear the costs of litigation and compensation. Prosecutors enjoy almost total immunity in cases of misconduct, even if they deliberately withhold exculpatory evidence from a jury. A 2011 Supreme Court ruling also made it virtually impossible to sue a prosecutor’s office for such violations. And, unless there is a civil-rights trial, there is no examination of the police practices that contributed to a wrongful conviction: it is seen simply as collateral damage in the fight against crime. (North Carolina is the only state with an alternative; in 2006, it set up the Innocence Inquiry Commission to review claims of innocence outside the appellate-court process.) Klein pointed out that prosecutors in many states are already bound by ethics statutes. But, he added, “practically speaking, most prosecutors don’t spend too much time worrying about that. They assume that the police did their job.”

The other reason for awarding money is, of course, to compensate for a harm committed by the state. Some of that harm is purely financial: a person who has spent decades in prison, rather than developing a career, can emerge at forty-five and find herself eligible for the same jobs that she was eligible for at twenty-two. “I fill out applications for the dollar store, for CVS,” an exoneree named Cathy Watkins told me recently. Watkins spent eighteen years in prison for the shooting of a cabdriver in the Bronx, which was later found to have been committed by members of a narcotics-trafficking gang called Sex Money Murder. She has been out for two and a half years, without any compensation, and she finds the process of seeking employment in a digital world confounding. “‘Upload your résumé online’—well, how do you *do* that?” she said. Had she been free to pursue a career, Watkins was sure she’d have built up a pension or savings. Instead, she is dependent on the generosity of others, a position that she finds compromising and unjust. “I worked for eighteen years!” she said. “Slave labor. It was prison—you *have* to do these things.”

“If you could only eat one food for the rest of your life, what would it be?”

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People who spend many years in institutions tend to develop an overwhelming sense of helplessness. (This holds whether they are guilty or innocent—and, indeed, whether the institution is a prison or a mental hospital.) Watkins, like many other exonerees, told me, “I feel like a newborn baby.” She wished that she had some help navigating the world; the guilty, at least, had parole officers. “I want someone to take me by the hand and say, ‘O.K., Cathy, I’m going to show you how to do this. This was our mistake. Let us help you.’”



But many exonerated people are excluded from the system that supports other former convicts. “There are lots of programs designed for ex-offenders, to help them get past substance abuse, anger issues, to help them reintegrate and avoid recidivism,” Karen Daniel, the director of the Center on Wrongful Convictions, at Northwestern University’s School of Law, said. “There is nothing really like that in place for exonerees.” There are rarely enough of them in a given place to justify a program—and they may be loath to spend more time in settings that equate them with criminals. “But their needs are enormous,” Daniel continued. “They often have P.T.S.D. and need psychological services. They need to be shown how to use public transportation. There’s adjustment to family; there’s accepting that not everybody believes that you were wrongly convicted.”

Only five states provide exonerees with mental-health services or medical treatment—and, after years of substandard care, many former inmates have health problems. Only four offer job-placement assistance. Texas has what many regard as the most thoughtful statute. (Not coincidentally, it is also the state with the most DNA exonerations.) A person who is exonerated in Texas has access to health insurance, free tuition at any state university, and a year of free counselling. He is eligible for a monthly annuity, as well as a payout of eighty thousand dollars for each year of incarceration, without having to file suit. So there is a relatively short period when he has no job, no home, no vehicle, no professional connections, and no money—and is thus dependent on his family for everything, as though he were a child.

“When you get out, it’s like you are new—you don’t know anything,” Richard Miles, who was incarcerated for fifteen years in Texas because of false eyewitness testimony, said. When he went in, he was nineteen years old and very naïve. “All I did growing up was go to church and school,” he told me. “Getting locked up in prison was a scary situation: they’re taking you someplace where you only read about it or see it on TV. You don’t really know how to respond to a place like that.” But when he came out, at thirty-four, he didn’t know how to respond to anything else. “You’ve been isolated, so a lot of the social skills that people rely on every day, you didn’t have those.”

Miles had received \$1.2 million in compensation, and I asked him if it had been sufficient. “Me, personally, it didn’t matter how much the amount was,” he said. “It didn’t give me back anything that I lost.”

One morning this fall, twenty exonerees wearing T-shirts that said “I didn’t do it” filled the headquarters of Centurion Ministries, in a drab office park in Princeton, New Jersey. Centurion is a tiny organization, with only ten people on staff, which seeks to free the wrongly incarcerated. One of its chief investigators, a rumpled eighty-two-year-old retired math teacher named Richard Hepburn, recently finished a case that required him to go to Montana fifty-five times and knock on doors. “How lucky am I—at my age!—to have this kind of excitement?” he said.

Centurion’s investigators spend an average of two decades on a case. They have succeeded fifty-three times. On a wall in the office, they keep a black felt board with the names of people whose cases they’re pursuing, and that morning they were ceremonially removing Mark Schand’s and Milton Scarborough’s. The two men had served a combined sixty-three years in prison, and, later that afternoon, Centurion was throwing a “freedom party” for them, in the ballroom of the local Marriott hotel.

Schand, a fifty-year-old African-American, was convicted of a murder in Massachusetts, even though six witnesses—including his pregnant wife, Mia—placed him at her beauty salon, in Hartford, Connecticut, at the time. The assistant district attorney who prosecuted the case, Francis Bloom, has since been publicly censured for fabricating a confession and forging signatures in another case; he is now working as a personal-injury lawyer. “If these D.A.s were led away from their families like we’re led away from ours, wrongful convictions would come to a screaming halt,” Schand said.

Every Tuesday for twenty-seven years, Mia Schand drove five hours to see her husband in prison. At the ceremony that morning, she was alternately smiling and crying, standing with Schand’s three sons, whom she had raised in his absence. During his decades away from the family, Schand said, “I just wanted to get back to my babies.” After he took his name off the board, his children—little boys when Schand left, now tall, handsome young men—lifted him up on their shoulders, and everyone hollered and clapped.

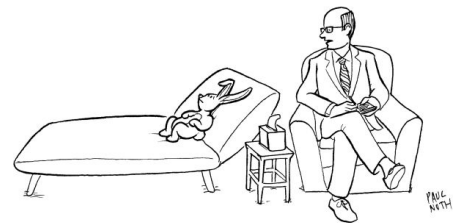
Scarborough, a seventy-five-year-old white man, sat stoop-shouldered and smiling in a wheelchair. When he was thirty-seven, he went on trial, along with two other men, for murdering a family in central Pennsylvania. He was convicted based on the testimony of three drug addicts, all of whom later said that investigators gave them leniency in exchange for false testimony. (“I remember telling the police, ‘Tell me what you want me to say and I will say it,’” one admitted in an affidavit.) Scarborough, walking with a cane, approached the felt board with the help of his niece, who took him in after his release, in 2013. Together, they removed his name, letter by letter. “The prison system, I don’t have

much to say about it,” Scarborough said to the group as their applause died down. “Except they don’t feed you too good.” Everyone laughed, and many of the men nodded. The state never formally acknowledged Scarborough’s innocence; instead, it offered a deal, in which he agreed to drop his appeals in exchange for having his sentence commuted. As a result, he will never receive any compensation. He would be homeless if not for his niece.

Centurion worked on Restivo’s case for nearly a decade before the Innocence Project got involved, and he is a fixture at their events now. Late that night, after the freedom party died down, people gathered at a bar. Restivo, who had changed into a burgundy T-shirt with a picture of a fish skeleton above the words “Fillet and Release,” sat at a tall cocktail table, drinking vodka and talking about relationships with a fellow-exoneree named Frank O’Connell, who had served twenty-seven years for murder. “I missed out on companionship; I missed out on all that crap,” O’Connell, a tall, blue-eyed man who was once a high-school football star, said. “I just meet you. Do I tell you I’m an exoneree? That I was in prison? Or do I want you to like me for *me*—as a father, as a hard worker? So I’m not going to tell you I was locked up. But I don’t know about real estate. You bought homes and stuff. You had a new car with financing—I can’t tell you about that.” He gestured at Restivo. “That’s the kind of thing only we would feel. There’s that gap in life of what we lost.”

*“I’m more interested in hearing about the eggs you’re
hiding from yourself.”*

APRIL 13, 2009



Restivo described another problem that the men shared: “I go in, I’m in my twenties. I come out, I’m forty-four, but I’m still looking at girls who are twenty-six!” I suggested that he had that in common with most forty-four-year-old men, whether or not they’d been imprisoned. The exonerees all insisted that it was different. O’Connell, who is fifty-seven, complained that “most of the women my age, they’ve had their fun,” and were only looking for a husband. But he didn’t love the alternative: “When I’m single and I’m alone, I feel isolated—I feel like I’m in the hole! I got a TV, I got a phone, but I’m in the hole!”

Since being released, in 2012, O’Connell has been preparing a civil-rights suit against Los Angeles County. “I made it clear: we’re not playing the two-, three-million-dollar game,” he said. “I will accept twelve million with a public apology, or fourteen million with a private apology to me and my family, or eighteen million with no apology whatsoever. Otherwise, we’re going to trial.” For Los Angeles County to acknowledge that O’Connell was framed for murder would be worth six million dollars, then. “It’s not

about the money. It's the *spanking*," he said. "I want them to take responsibility. I have to take responsibility if I speed in my car. What's the difference? If they would say, 'I was wrong, and I'm sorry,' I would say, 'I forgive you.'"

Even as O'Connell specified what he wanted in the way of recompense, his tone was laid-back, Californian. (He'd had a breakthrough while he was in prison, he said, after reading the work of the self-help author Eckhart Tolle.) "We learn when we're in there that all that anger does no good," O'Connell said. "You can't change what happened to you. You understand, hey, they're dirty. It's not just the cops. The judges are; the D.A.s are. It's a game."

After the failed federal suit, in 2012, Restivo and Halstead went to court again, this time without Kogut and the burden of his false confession. It was a two-part trial. First, they had to establish that Nassau County was liable, which required proving that the police had knowingly deprived them of the right to a fair trial. "You have to re-litigate your innocence," as the law professor Brandon Garrett put it. Restivo sat through all the old allegations again. "The deposition they put me through was over two days, for fourteen hours," he said. "These people attacked me and attacked me and attacked me." Nassau County was the defendant, but that's not the way it felt.

The trial lasted four weeks, and when it was over Restivo felt—fleeting—vindicated. "When that jury came back with that verdict sheet and said Volpe planted and withheld evidence? That was accountability," Restivo said. "And that's the only accountability I'm ever going to get." Volpe received a commendation for his work in the Fusco trial, and retired in 2002 to become a car salesman. By then, the state had settled another case, in which he was accused of soliciting a false confession. He died in 2011. Marge Neidecker told me that it was the happiest day of Restivo's life.

The second phase of the trial was for damages: the jury was charged with determining the monetary value of the losses that Halstead and Restivo had suffered, which meant that their present pain had to be examined. There was excruciating testimony from Halstead's children, who talked about being separated from their father. His daughter Melissa—who had talked to him on the phone twice a week for eighteen years—sobbed in the courtroom as he read aloud a letter that she'd written to him when she was eleven years old: "You are not just the best father, you are my best friend." After his release, Halstead lived with his son Jason and his family. But, ultimately, Jason asked him to leave: Halstead's drinking was making life difficult. He is living in Tallahassee, and has been in and out of rehab.

Nassau County's lawyer argued that Halstead would have been damaged anyway: his brother died when he was three, he was sexually assaulted when he was seven, and he was removed from the care of his negligent mother when he was twelve. As the attorney put

it, “All of his problems have seeds in the past.” When he questioned Restivo, he emphasized Restivo’s already strained relationship with his girlfriend, implying that he might have lost his son even if he hadn’t gone to prison.

The jurors rejected those arguments. It took them less than two hours to come back with a damage award: thirty-six million dollars. “When they said that number, it was, like, wow,” Restivo said. “Because the jury really *got* it. It put a real big smile on my mother’s face, because she has been fighting these people for all these years. So it wasn’t about the money. Although it is about the money. I don’t want to say that it isn’t about the money.”

Nina Morrison, of the Innocence Project, told me, “I think for a lot of the clients there’s a sense that this is going to be the thing that helps them move on. But then the jury goes home; we all go home. And then, at the end of the day, they are still left with the enormity of what they’ve lost.”

At the Centurion party, I overheard Michael Austin, a tall black man with a shaved head and a mellow demeanor, tell a recent exoneree, “You are still in prison.” Austin told me later that he had been through the same process; he spent twenty-seven years in a Maryland prison, and then “it took me ten years to feel like I was really, really home again.” He vividly remembers the day he was released. “One of the C.O.s”—corrections officers—“handed me a box with my property, and I started walking away as if I had on shackles. The C.O. said, ‘Mike, why you walking like that?’ I looked down at my ankles and said, ‘Oh, man—you’re right.’”

Austin had received \$1.4 million in compensation. He knew other exonerees who had received much more money, but he didn’t envy them; he’d seen things end badly. “I know a woman who got fourteen million. She bought her mother a house, her sister a house, herself two houses.” Before long, she had run out of money. It happened frequently, he said. “If you have a family that has been taking care of you while you were incarcerated, your primary objective is to take care of them now.” It was a way of feeling like a person again—an adult, with agency.

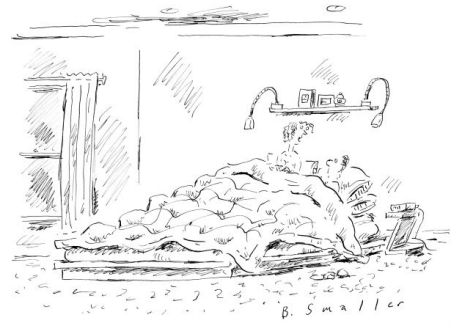
Karen Daniel, of Northwestern, told me that money dispersed over time was often more effective than lump sums, for precisely this reason. “I have seen too many clients go through all their money, and then there’s never going to be any more,” she said. “It doesn’t always happen in the expected ways. Some people might make poor choices and buy a fancy car. But, a lot of times, as soon as somebody is seen by relatives and friends as being exonerated, the relatives come out of the woodwork, the hands come out.”

“Yes, it was good for me—not as good as it was the last time, but probably better than it’s going to be the time after this.”

JULY 3, 2006

But the families of exonerees have suffered, too.

Jason Halstead got a job when he was in high school to pay the phone bills he accumulated calling his father in prison. (Halstead received a \$2.2-million settlement from New York State, and gave a third of it to his children.) Richard Miles told me, “I see my sister going through things, my brother going through things. How can I have something they don’t?” To Miles, sharing his compensation seemed like a matter of justice. “They were coming to visit me—all those years, it was like they were locked up, too.”



Money feels, at least initially, like vindication: a jury or a government would not award millions of dollars if it didn’t acknowledge the gravity of the wrong. “If somebody says, Let me give you 1.4 million—or eight million!—you think, Now everybody knows that I was really, really innocent,” Austin said. “And at the moment you have that feeling of complete freedom. But how long does that last?” Ultimately, he felt, it was much more important to have a sense of purpose. When he came home to Baltimore, he got a job counselling troubled kids. “So I’m cool—I got a career,” he said. “When the money came in, I just basically invested it.” After three decades of being trapped, he also decided to have some adventures. “I went to South Africa, Jamaica. I went to Canada.” He’d always wanted to be a singer; he loved the music scene in Durban, and sat in with some bands there.

After Richard Miles was released from prison, he started an organization, Miles of Freedom, to provide services for communities affected by incarceration: a “Freedom Shuttle,” for relatives to visit loved ones in prison; a lawn-care service to employ former inmates. “If you don’t find anything to channel any type of negative thoughts into, you’re going to just be thinking about it all day, every day,” he told me. “You’re just going to be stuck in this victimized state. I was already in a victimized state for fifteen years.” Miles had married since his release, and his wife was pregnant with their first child, a daughter. “I oftentimes say, We’ve all been in prison,” he said. “We imprison ourselves in relationships, in financial bankruptcy—we lock our own selves up. The only difference between my prison and yours is somebody else had the key to my release.”

The years that Austin and Miles spent in prison seemed to have rendered them not bitter or weakened but uncommonly beneficent—a quality that struck me again and again when I met exonerees. “I haven’t known one of them who hasn’t had this moment of transcendence,” Barry Scheck, of the Innocence Project, told me. He had a theory: the wrongly convicted who don’t attain a kind of enlightened surrender are simply unable to survive. “We have lost a lot of clients who could not get past it—just can’t cope, have been literally driven crazy, gotten into fatal fights, committed suicide.” The choice for the wrongly convicted was stark: transcend or die.

Marge Neidecker and John Restivo married in 2009. “I figured I needed him, and he needed me,” Neidecker said one afternoon, when we were eating lunch at a tiki bar on the riverbank near their house. A lean, muscular woman with blond bangs, Neidecker was wearing tight jeans, a black tank top, and glasses that went darker in bright light. When Restivo got out of prison, she, too, was going through a difficult time, and he was “a lifesaver,” she said. “I came home every night and he would have fixed something, or made a great dinner—he knows I work hard.” It was very different from her last relationship. “I’d had enough of marriage,” Neidecker said, grimacing. I asked her why she’d gone back to it, and she replied, emphatically, “Because I *loved* his ass.” After Restivo renovated her house, they decorated the living room with several pictures of Bob Dylan.

Lately, Restivo has been growing pineapples in the back yard. “They’re not like the pineapples you buy in the store, all hard,” he said. “I let them stay on the plant until they get soft and gold. To say they smell good would be an understatement.” Sometimes he volunteers to go into the woods near the lagoon—“where other people wouldn’t dare go,” Neidecker said—to distribute food to homeless people who sleep there.

A few times a week, when the weather is good, Restivo goes to the beach and casts for snook and bluefish and tarpon. Mostly he catches them and then lets them go. In his living room, he’d hung a placard that reads, “The charm of fishing is that it is the pursuit of what is elusive but attainable, and a perpetual series of occasions for hope.” “Sitting there in the prison cell and filing motion after motion after motion, and you’re hopeful—it’s kind of the same thing,” he told me.

Restivo said that he wasn’t impatient to receive his money—“I’m used to waiting”—and that he didn’t fantasize about what he would do with eighteen million dollars. He thought about it for a moment. “I mean, listen, I would, like, you know, bless myself with a nice boat.” He already had a name for it: Best Revenge.

Whether or not the money comes through, Neidecker and Restivo are looking forward to doing some travelling. “John wants to go to Alaska and go ice fishing,” she said. “We both want to go to Northern California. But roughing it? No.” She meant no camping out: she wanted to travel in a Winnebago. Neidecker’s retirement from the post office was not far off; soon she would get her pension, and they could go whenever they wanted. She shrugged and said, “I’ve done my time.” ♦

* (#correctionasterisk) An earlier version of this article misstated John Ciampoli’s position.



Ariel Levy joined *The New Yorker* as a staff writer in 2008. She won a 2014 National Magazine Award for essays and criticism, and guest-edited “The Best American Essays 2015,” which came out in October.
