Facing the Resistance

2020 Annual Report
In a year fraught with enormous change, systemic failures, protests, and resistance, one question frequently comes to mind: How do we keep going? In innocence work, specifically, but in resistance to an unjust world in general.

**How do we keep going?**

We think about wrongful incarceration, or racism, or any of these other huge, systemic failings as just that: huge. Overwhelming. Immovable.

An innocent person doesn’t just end up in prison because one thing went wrong. Entire systems failed around them. Racism doesn’t just happen. Entire systems are structured to support it. And a pandemic ravaging through prison populations doesn’t just happen: entire systems are breaking down right in front of our eyes.

It’s no wonder that resisting these systems can feel so exhausting—even defeating at times. How do we keep going, especially when we’re faced with so much resistance, too? We face resistance in the courts, in the legislature, in the sheer number of innocent people in prison.

We see the progress we’ve made, but then we hear that whisper of “How could it be enough? Look at what we’re up against.”

But these systems—these societal failures—are made up of people.

And people can resist. Humans create the systems in which we operate. And we can—we must—do the work to tear them down and start anew.

So then the question becomes: **How could we *not* keep going?**

The criminal legal system that reaches out its tentacles and ensnares thousands of innocent people—it’s a machine that we as human beings can break.
Every single person who says, “We have to fix this,” is a cog. Every person who changes the way they think about imprisonment is a cog. And every little screw we throw into the legal machine, the more we grind the gears. Slowly, things stop working in the way they always have.

Resistance can feel like an enormous undertaking.

But resistance can also happen in quiet, everyday ways. It can make a difference even if we don’t see the full effect immediately. A phone call to a legislator. A $20 donation. A conversation with a friend. A red marker on a poster. A small protest. A bigger protest.

**We are the cogs. We have the power to resist these systems that ensnare so many of us, because we as humans are the ones who built them.**

Resistance can be incremental, and we can build a better machine: a criminal legal system that prioritizes justice, stops systemically preying upon people of color and those with disabilities, and moves past arbitrary rules and regulations that keep innocent people imprisoned even when we know they’re not guilty.

There’s impact in everyday resistance: start in the room you’re in with the resources you have. There’s power in taking one more step, even when it feels like we can’t keep going.

So we ask you to keep fighting with us. Keep resisting against an unjust legal system. Keep resisting in the big ways, but in the small ways, too.

**Resistance can be incremental. But it must be unwavering.**

**Will you join our revolution?**

Tricia Rojo Bushnell, Executive Director
Like most of the rest of the world, our work has dramatically changed since the beginning of the Covid-19 pandemic.

Our office staff shifted to remote work. Our summer internship program switched to a 100% virtual format, with interns working from all over the country. Our events—including our annual Faces of Innocence gala—were moved online. We’ve been unable to visit incarcerated clients.

During a time when in-person interactions are more limited than ever, we’ve had to think differently about how we can still pursue justice in our current world.

“We were working on a case where we really wanted to go door to door to talk to witnesses, but we just weren’t in a position where it felt safe doing that,” said Katy Westhoff, a 2020 intern who is still helping with our DNA casework. “We had to do a lot of our investigative work online. On the other hand, I think we actually got some opportunities we wouldn’t have had in person. There was a motion for a new trial being argued in court that we got to sit in on, even though it was in another state.”

In April, when we argued on behalf of Lamar Johnson to the Missouri Supreme Court, it was the first time in the court’s history it had heard a case virtually.

Still, no matter how much flexibility we’ve enacted, no matter how much we pivot, there are still grave implications of how this pandemic will affect justice long-term.

“Clients could die,” said MIP executive director Tricia Rojo-Bushnell. “Stories will be lost. And justice might be harder to reach. Think about if you’re waiting for a trial, and the trial keeps getting delayed. What if your alibi is your grandparents, and they are at risk because of Covid-19? There are real questions of how much is going to be lost, because we as a country didn’t respond to this pandemic effectively.”
COVID-19 has not just necessitated flexibility in our work—it’s also forced us to call for change where it’s needed in the face of the pandemic.

Coronavirus has decimated prisons. An airborne, highly contagious virus, combined with prison conditions (lack of social distance, lack of adequate healthcare, poor nutrition, and a population more likely to have preexisting conditions) has been the perfect, horrific storm.

The first person to die of COVID-19 in prison—Rudolph Sutton—had actual innocence claims.

At MIP, we’ve called for the compassionate release of pre-trial individuals and others, to help slow the spread of COVID-19 among tightly-packed populations with little access to healthcare.

Prisons and jails are full of human beings. Hundreds of thousands of incarcerated people in America have not even been convicted of a crime: they’re simply waiting for trial. Entire populations in this country are being destroyed by a virus when they don’t have to be.

Join us in calling and writing to your legislators, sheriffs, governors, prosecutors, and other elected officials, to ask for decarceration. Ask for funding of adequate healthcare for those who are incarcerated.

Join us in saying: people matter.

Head to themip-act.org for resources and sample letters to contact your elected officials.
Nearly three-quarters of exonerations due to DNA testing can be at least partially traced back to an eyewitness misidentification.

Leaning heavily on the memories of those who have witnessed a crime—which science has repeatedly shown can be unreliable and affected by a number of factors—is sending innocent people to prison.

We have to mitigate these mistakes on the front end, with meaningful reform, like the legislation we pushed forward in Nebraska this year, which will allow eyewitness identification experts to testify in front of a jury, and explain the factors that might make an identification less accurate.

This year we also brought on a new supervising attorney, Emily Danker-Feldman, who has led the charge of tapping into our waitlist to find those cases in Missouri with eyewitness misidentification issues.

From there, thanks to a two-year federal Bloodsworth Post-Conviction DNA Testing Assistance Grant received in partnership with the University of Missouri, we now have the funds we'll need to pursue DNA testing in these cases and potentially free more innocent people. Danker-Feldman is teaching the wrongful conviction class at the University of Missouri’s law school, where students help to sort, classify, investigate, and litigate these eyewitness misidentification cases.

“We have to narrow it down to cases where there is still physical evidence that exists that could be tested and potentially exonerate the defendant,” Danker-Feldman said. “As part of this process, we’re also using it as a chance to develop a database related to factors that influence potential misidentification.”

Thanks to this grant, together with the clinic at the University of Missouri Law School, we’ve been able to review 230 cases from our waiting list.

It’s an example of how critical funding is to our mission: thanks to generous grants—and donors like you—we’ve been able to review thousands of pages of case documents, and we’ll eventually be able to pay for DNA testing and litigation. With the eyewitness identification factors we’re tracking, we can help educate future advocacy and legislative priorities.

But this work is far from over. Hundreds still wait for their cases to be reviewed. Will you join the resistance against wrongful convictions, and support us in this critical work?
Did you know that nearly all DNA-based exonerations in Missouri have involved an eyewitness misidentification?

From problems with lighting at the time of the crime, to the use of a weapon which takes away a witness’s ability to focus on facial features, to cross-racial identification and misleading lineups—there’s a lot that can go wrong with an eyewitness identification.

How does your state stack up when it comes to policies protecting against eyewitness misidentification?

Head to themip-act.org to learn more, then contact your local police or sheriff department to voice support for reforms like use of lineup instructions, a double-blind eyewitness procedure, and confidence statements from the eyewitness.

Eyewitness misidentification is a human mistake—meaning we all have the power to resist against wrongful convictions caused by them.
One thing we know about resisting against a criminal legal system that wrongfully incarcerates people, is that we cannot fight this fight alone. And we must be open to empowering and following those who are the most affected.

This year we started working in coalition with HEARD (Helping Educate to Advance the Rights of Deaf Communities), to expand our own accessibility, and to fill in the gaps of our own knowledge.

If you’ve joined any of our virtual events this year, you’ve probably noticed that those events are now translated live by an American Sign Language interpreter so that those who are deaf can experience our events.

This is a small adjustment to make. But access to language is an enormous problem in the criminal legal system, and it is just one issue HEARD works to solve.

“The goal is to work ourselves out of a job, and to do that we need to build power and access to justice,” said MIP executive director Tricia Rojo Bushnell. “Here’s an entire community of people who are more likely to be targeted and abused, and they aren’t even provided the language to access their own justice.”

American Sign Language, for example, doesn’t have signs for words like “prosecutor” or “exoneree.” HEARD works directly with deaf clients to expand their access, and they also have developed a video series, where they sign for phrases like “mass incarceration.”

But the issue runs even deeper—and it’s a reality that we hope to expand awareness of within the legal field.

“Various forms of privilege including classism, linguicism, audism, and ableism mean that expectations of people understanding the legal system are unrealistic for most people, not just disabled people,” according to HEARD co-founder TL Lewis and volunteer advocate Kaj Kraus. “Language and communication are fluid, so what may work for one person may not work for others. This is another thing we hope that the legal profession will come to understand.”

We know these gaping holes in the system are not overnight fixes. We know resistance against a system this layered, this deeply discriminatory against those who are disabled or deaf, is a long fight.

But we’re committed to increasing access to our services and content to all, including those who are deaf and disabled, and expanding education efforts within the legal field. Wrongful incarceration can happen to anyone, yes—but we operate within a system that targets certain communities. As our work continues to evolve, it’s critical we listen to those communities, and work in coalition to support them. And we thank HEARD for leading the way for us.

For more about HEARD, their work, and our partnership, head to www.facebook.com/HEARDDC.

*Watch HEARD’s video series here: bit.ly/heardvideo*
According to the Bureau of Justice Statistics, those in state or federal prison are three times as likely to report having a disability than a nonincarcerated population and are more likely to be wrongfully convicted.

Those who are deaf and disabled are discriminated against every step of the way in our legal system. Deaf prisoners frequently go without American Sign Language interpreters through court proceedings and during incarceration. They are stripped of any ability to communicate with the outside world, thanks to the lack of video phone technology in jails and prisons. Those with physical disabilities often go without adequate healthcare, necessary medical devices, or accessibility.

Our legal system operates by only thinking of the able-bodied, the literate, and those who can hear and see. It isolates, discriminates against, and punishes those who aren’t.

Contact your state and local legislators to push for video phones in jails and prisons. Ask for more funding to go towards translation services, during court proceedings and within jails and prisons. Voice your support for adequate health care (both physical and mental) and equal accessibility for the incarcerated. Visit www.facebook.com/HEARDDC for more info on how the legal system perpetuates a cycle of imprisoning the deaf and disabled, and what we can do to resist that cycle.

Visit themip-act.org to watch MIP’s conversation with HEARD.

Follow HEARD on Twitter & Instagram: @behearddc
A DECLARATION OF FREEDOM

A fter nearly two full years of uncertainty, on top of 28 years he wrongfully served in prison, John Brown is finally free.

Those who remember John’s triumphant 2018 release from prison might be confused: wasn’t he free then? But there are levels to a person’s access to freedom after wrongful conviction. Despite John walking out of prison in summer 2018 for a crime he didn’t commit, he still had to wait on a decision that could have sent him back.

In John’s case, the State appealed the decision that overturned his conviction. And after John won that appeal, the local prosecutor had to decide whether to re-file charges. “How are you going to send someone back to prison after being out for over two years?” said Erin Cassinelli, Brown’s local counsel in Arkansas. “Waiting that long to hear if you’re going to have to return to incarceration is just nuts. I don’t think many of us thought the State would retry him because there was a confession (from the true perpetrator), but we all know how many cases are prosecuted when they shouldn’t be, so we were still worried.”

In April, the 8th Circuit Court of Appeals upheld the reversal of John’s and co-defendant Tina Jimerson’s convictions. It also noted the convictions were not just a result of negligence: the state had destroyed evidence in bad faith.

Finally, in September, the State dismissed all charges against John: all possible appeals were over. John gets to keep his freedom—and is now officially exonerated in the eyes of the law.

The resistance John faced is unfortunately common. Even when we win someone’s initial release, immediate freedom isn’t always followed by exoneration, or a record expungement.

But as with John, we’ll keep fighting for justice, even if it has to be more than once. We’ll keep resisting against a system that attempts to put an asterisk on someone’s freedom.

We cannot continue accepting a system in which those who have sworn to uphold justice are the ones taking it away.

Does your county have a Conviction Integrity Unit? If not, contact your prosecutor and voice your support for critical guardrails against wrongful convictions.

If your county does have a CIU, what kind of work have they done? Do they release their findings? Who’s in charge, and what’s the process like for someone incarcerated to have their case reviewed? Push for answers to these questions from your elected officials.

Visit themip-act.org to search for your local officials, and use the enclosed postcard to advocate for CIUs.
After a wrongful conviction plagued by official misconduct and over 12 years of wrongful incarceration, Olin “Pete” Coones is finally home.

Pete was originally convicted for a 2009 double murder—but we now know it was a murder-suicide for which Pete was framed.

In November, Judge Bill Klapper found that Pete’s trial was unconstitutionally marred by prosecutorial misconduct and overturned the conviction. The Wyandotte County (Kansas) District Attorney’s Office immediately dismissed all charges.

And so on November 5, after a nightmare that lasted longer than a decade, Pete walked out of prison and into the arms of his wife of more than 40 years, Deirdre “Dee” Coones.

Pete’s case is a window into some of the most common factors in wrongful conviction cases: Prosecutorial misconduct and jailhouse informant testimony.

Although Pete had an alibi for the time of the crime—he was at home with his family, his car boxed into his driveway—the State used the testimony of a jailhouse informant to convict him. But the State did not disclose that the informant was unreliable, may have had mental health issues, wanted a deal to testify, or that it had threatened the informant with additional jail time if he did not testify. The prosecution also did not reveal exculpatory evidence revealing the motive for the murder-suicide—including that one of the decedents had forged checks from Pete’s father’s bank account and was facing other criminal charges for embezzlement from her workplace.

According to the National Registry of Exonerations, this kind of concealment of exculpatory evidence is a factor in 44% of exonerations in the U.S.

That misconduct led to Pete serving 12 years in prison for a crime he did not commit, ripping him away from his family and loved ones.

And that misconduct was thankfully uncovered by an investigation by the local Conviction Integrity Unit—proving that when communities dedicate time and resources to CIUs, injustices can be corrected. Innocent people get to come home.

Those who have been wrongfully incarcerated can never get back the years they lost—but by continuing to push for critical CIUs in our communities, we can give innocent people like Pete their futures back.
Resistance is effective on an individual basis—but even more so in partnership. We’re so proud to join forces with the MacArthur Justice Center this year, to expand our work throughout the Midwest, especially in Missouri. Megan Crane, out of MacArthur Justice’s Missouri office, will lead this new alliance, called the Wrongful Conviction Project.

“There is still a unique need in Missouri as opposed to other places,” Crane said. “MacArthur is headquartered in Illinois, and Chicago has an obscene number of wrongful convictions, but there’s also a ton of people doing the work there. Here, we are extremely lucky to have MIP—they’re very successful—but they also have the largest geographic area to cover of any innocence organization.”

The MIP is headquartered in Kansas City, and works on wrongful conviction cases in Missouri, Kansas, Iowa, Nebraska, and Arkansas. But the partnership with MacArthur Justice helps us put more boots on the ground, in St. Louis in particular.

“The timing is great,” Crane said. “Both the city and county prosecutors in St. Louis have formed Conviction Integrity Units, so it seems like this is a really unique moment of opportunity. Time will tell if the cooperation and collaboration we hope for is there.”

Crane’s background is in post-conviction litigation, and after being at MacArthur for several years—doing crucial work with criminal justice reform and civil cases—she knew she wanted to get back to working wrongful convictions. She’s especially passionate about cases involving those who were wrongfully incarcerated as youth.

MacArthur and MIP have already partnered together on one such case: client Michael Politte, who was wrongfully charged for the murder of his mother at only 14 years old. Michael is now 36, and still waiting for justice in prison.

We know there are many more Michaels out there—and we’re hopeful for the kind of justice we can achieve when we team up and resist together.

A PROCLAMATION OF PARTNERSHIP

Together stronger
When the greatest failures of our society are systemic, it’s easy to feel like change will never come.

But together, we are all the cogs in the machine. We all have the potential to break apart what’s not working, and to build something better.

We must never give up on fighting for justice—one of the central tenets of our country, and of a functioning society.

Resistance against injustice can be one step at a time. But we must keep moving forward.

Join us in our resistance by donating today, to fund critical legal hours, DNA testing, investigative work, and advocacy for those still waiting for justice.

themip.org/donate
290 questionnaires sent

584 applicants on screening waitlist

One hundred & two applicants in screening

64 applicants on investigation waitlist

Eleven cases in active investigation

Nineteen litigation cases

Two exonerations

Open Missouri applications: 389 across 63 counties

Open Kansas applications: 111 across 29 counties

Open Arkansas applications: 176 across 42 counties

Open Iowa applications: 60 across 26 counties

Open Nebraska applications: 44 across 16 counties

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themip.org

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themip-act.org