

I Write About the Law. But Could I Really Help Free a Prisoner?

For years as a journalist, I've covered attempts to exonerate incarcerated people. But a letter from Yutico Briley led to a different kind of story.



By Emily Bazelon

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It all started with an email I received from a retired librarian in Oregon. “Dear Ms. Bazelon,” Karen Oehler wrote in July 2019. “I correspond with an inmate, Yutico Briley, at Dixon,” a prison in Jackson, La. For a couple of years, Oehler and Briley had been writing to each other through a support program for incarcerated people. She wanted to let me know that Briley was trying to reach me. “In his last letter to me, he said he’d written to you at The Times but wasn’t sure if you received the letter,” Oehler explained.

Like many journalists who write about criminal justice, I get a lot of mail from people in prison. The letters usually go on for pages, carefully handwritten on lined note paper, sometimes with sentences in smaller print crawling up the margins. The pages are dense with facts, about a conviction or an appeal. They often brim with desperation. It’s impossible for me to read all of them, and though I don’t feel good about it, many go unanswered.

Oehler’s email came while I was idly scrolling on my phone, waiting in the airport for a flight. When I returned from my trip, I found Briley’s letter buried in a stack of unopened office mail. He wrote to me two months earlier after hearing me on the radio talking about my 2019 book, “Charged,” about how prosecutors have historically used their power to increase incarceration — and about how a growing number of district attorneys around the country have begun to change that approach after winning elections on progressive platforms.

In the radio interview, I talked about an effort in the D.A.’s office in Brooklyn to give second chances to young people who are prosecuted for carrying guns illegally. “At 19 I was one of those people you described,” Briley wrote. “I felt like I had to carry a gun for protection in the city of New Orleans.” In the months before he was arrested in November 2012, in the Mid-City neighborhood, two of his friends were shot and killed there. In the following years, two people he was walking with the night he was arrested would be shot and killed, too.

Briley ended up facing two kinds of serious charges, he explained. The police stopped him on his way to a store and arrested him for carrying a gun. Then they also booked him for an armed robbery that occurred nearly a day earlier. “I pled guilty to the gun because I had a gun,” he wrote. “I went to trial on the armed robbery because not only was I innocent, I have never robbed nobody in my life.”

Briley told me one more thing. He was sentenced to prison for 60 years without the possibility of parole.

I didn’t know whether Briley was telling the truth about his innocence. But either way, an effective life sentence, for a teenager convicted of robbery, seemed excessive. I looked up the case online. Though it’s terrifying to be held up at gunpoint, the victim of the robbery, a man in his 20s, was physically unharmed. He was also the only eyewitness. The police treated Briley as a suspect because he matched aspects of the description the victim gave when he called 911: He was young and Black and wearing a gray hoodie.

Briley had tried hard to reach me and included information for contacting him through JPay, a privately run service for incarcerated people. I could spare five minutes and 30 cents, the cost of a short message, to do him the courtesy of writing back. I also asked one question about the eyewitness ID: Was Briley of a different race than the victim?

“Yes,” Briley wrote back. “I am Black, and he is white.”

I knew that research has long suggested that it’s especially hard for an eyewitness to correctly identify a person of a different race, and that cross-racial IDs make up more than 40 percent of misidentifications. Now I had one more reason to wonder about the soundness of Briley’s conviction.

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In the days that followed, Briley sent a stream of messages. “I have a tablet so I can type all day,” he wrote. I responded when I could, and we fell into a rhythm. I was growing more curious about Briley’s life as well as his case, and in bursts, he told me about lockdown, or his family, or working in the fields at Dixon, picking vegetables by hand in the heat. He asked questions in return — how did I keep track of how many books I sold? Was I working on another one?

I felt like a fish eyeing a baited hook: I could swim away at any time. Briley had to be aware of that, but he wrote in a loose way that made me feel as if he just wanted to express his thoughts. And I was frankly interested, and sometimes surprised, by the details. Briley mentioned that one of his favorite books was “Exodus,” the 1950s novel by Leon Uris about the founding of the state of Israel, which he borrowed from the prison library cart. I remembered the paperback copy I checked out from the library when I was growing up. “One of my favorite things to read about is history,” he wrote. “The book I read is old, and the pages crack when you flip them.”

Because of his long sentence, Briley told me he wasn’t prioritized for educational programs at Dixon beyond a G.E.D. In high school, he was in gifted-and-talented classes. “In 12th grade, I was taking a pre-calculus/advanced math course for college credits.” Briley urged me to call a high school classmate, Kurt Zellner, who got in touch with Briley when he learned he was in prison. “I had math with him freshman year,” Zellner, an investment analyst in Chicago, told me later. “Everyone wanted to sit near Yutico. In P.E., you wanted to be on his team, not because he was so good, but because he was fun and he passed the ball.”



Briley with his great-aunt Maxine Thornton at her home in New Orleans. Ruddy Royce for
The New York Times

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At the beginning of high school, Briley lived in Atlanta with his mother, four younger half-siblings, his grandmother and her partner. A beloved uncle, who was partly paralyzed from a drug-related shooting, died when Briley was 13. “He was the only person I listened to, so now I’m staying out all night, and I’m not listening to nothing,” Briley told me. He hung out with older teenagers who showed him how to sell drugs. At the end of ninth grade, his grandmother’s partner, who was the only person in the house who was working, died. The family faced eviction, which they had experienced before.

But Briley didn’t dwell on hardship. In his messages, he tried to entertain me, to nurture any connection. Describing a Taylor Swift song, he wrote: “She ate that one. (That’s my terminology for saying she had nice lyrics.)” He mentioned sports teams, and we nursed a grudge against the New England Patriots and their quarterback, Tom Brady. “I think we might be in luck with our Anti-Patriots campaign. Patrick Mahomes and the Kansas City Chiefs should have Brady on the couch this year ... lol.”

Briley was pulling me in, one 30-cent JPay message at a time. Was I writing back in pursuit of a story? I didn’t know. His conviction and sentence seemed typical of the inequality and waste of mass incarceration. There are so many people currently in prison who could share a similar experience. But from my perspective as a journalist, that wasn’t necessarily enough. It sounds cold, I realize, but Briley was stuck, and what kind of story was that?

In his first letter to me, Briley asked, “Can you please help me get out of prison or refer me to somebody who can?” He had already written to 50 or 60 defense lawyers, innocence projects, law-school clinics and private investigators. Some didn’t write back. Others turned him down outright.

I went to law school and passed the bar, but I’ve never practiced law. I decided, though I had never intervened like this before, to call a few innocence lawyers on Briley’s behalf. I wasn’t sure why — he was one prisoner among millions. Was it because I wasn’t really planning on writing about him? Because Briley saw himself in the young men in my book? Because he mentioned the novel “Exodus”? I didn’t know. But then that’s often true of relationships and of stories. One spark catches. Maybe others follow.

The first few lawyers I called, however, declined to represent Briley. Louisiana allowed appeals for only two years following a conviction unless a defendant could present new evidence he or she couldn’t have reasonably known about before. The rules were similarly strict in federal court. New evidence is hard to come by years after the fact, the lawyers pointed out gently.

I had one more person to try, my sister Lara — though I knew that if I got her involved, I’d be putting both of us in the middle of Briley’s story in a way that could affect what happened next. Lara is a professor at the University of San Francisco School of Law, where she runs a criminal-justice clinic. And in 2013, she won the exoneration of a man by proving that two witnesses wrongly identified him at trial. He had been convicted of murder in California and spent 34 years in prison.

Lara agreed to review Briley’s case with her students. He sent her a box of documents, and she requested his case file from the district attorney’s office in New Orleans. Reading the record, Lara could see casual indifference, as she put it, on the part of the police, the prosecutors, the judge and even Briley’s own lawyers. The case passed from hand to hand with little regard for the stakes for Briley, it seemed.

At about 2 in the morning on Nov. 27, 2012, Benjamin Joseph, a white musician and recording engineer in his mid-20s, called 911 in New Orleans to say that he’d been robbed at gunpoint outside his house in Mid-City. Joseph reported that the robbery took about two minutes. He was roughly 30 feet from a streetlight, but he said he had a clear view of the gunman.

That evening around 8 p.m., Briley went for a walk to a store in Mid-City with three friends. A police car approached. The officers inside said Briley acted suspiciously, “constantly looking over his shoulder” and “clutching his right hip,” according to the police report. When they rolled up and asked Briley to stop, he ran. The police caught Briley a block away in a vacant lot. His gun fell from the leg of his pants.

Carrying a gun meant he was violating his parole; he had a single conviction on his record, for selling drugs when he was 17. But Briley told me he would have run away no matter what. It’s what he grew up learning to do. The New Orleans Police Department “has long been a troubled agency” engaging in patterns of misconduct and discriminatory policing, the Department of Justice found in 2011 after initiating an investigation. The police shot at people 27 times in the city in 2009 and part of 2010. In each case, the target was a Black person.

When he was booked at the station, Briley’s race, clothing and age matched Joseph’s description of the man who robbed him. But other physical details did not. Joseph said his assailant had a slim build. Briley was heavier, at 5 feet 8 inches and 185 pounds. Briley had a beard and a mustache. Joseph never mentioned facial hair.

The arresting officer decided that Briley fit the description of the gunman, and a detective called Joseph and asked him to come to the station to look at a possible suspect. In the parking garage of the police station, Joseph sat in an unmarked white Impala, shrinking into his seat out of fear of “the guy who pretty much threatened my life,” he said in court.

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Two officers walked Briley to the garage. He stood handcuffed, 15 or 20 feet from Joseph, with a light from the car shining on him as an officer pulled the hood of his gray sweatshirt on and off his head.

When eyewitnesses view lineups, research shows, they tend to assume that someone in the group is the culprit. With a show-up, in which the police present only a single suspect, that assumption isn't spread across multiple people. There's only one person to point to, making show-ups inherently suggestive, experts say.

"It was a really uncomfortable situation," Joseph testified about the show-up. "It seemed really unprofessional." Still, from his seat inside the Impala, Joseph identified Briley as the man who pointed a gun at him nearly a day earlier. Briley learned he was being charged with armed robbery the following morning when he was given a color-coded ID bracelet. It was red, indicating a violent crime. He used the jail pay phone to call his girlfriend. "Man, I was over there in Mid-City, and the police they rode up on me, and they say I fit the description of a suspect that robbed somebody," he said. "But I didn't rob them."

"I'm scared," Briley said. "I'm scared."



Briley in a house where he briefly stayed after his release. Ruddy Roye for The New York Times

During law school, I took a class on capital punishment and learned that many wrongful convictions had something in common: a mistaken eyewitness ID. I read the work of Elizabeth Loftus, the psychologist whose research helped establish the limitations of human memory. The basic problem is that people often aren't good at remembering the specific features of faces they've seen only once; they're more likely to recall a general trait, like eye color or a mustache, that many people share. But if eyewitness testimony is fallible, Loftus explained, it is also potent. "There is almost nothing more convincing than a live human being who takes the stand, points a finger at the defendant and says, 'That's the one!'" she wrote in her 1979 book, "Eyewitness Testimony."

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Since 1989, mistaken IDs have factored into nearly 30 percent of about 2,800 convictions of innocent people tracked by the National Registry of Exonerations. And yet the legal system depends on them because the testimony of an eyewitness may be the only piece of direct evidence. Though no comprehensive data exists, one old but often-cited survey from 1989 suggests that eyewitness testimony is most likely used to solve at least 80,000 crimes each year.

The upshot is that eyewitness identification "presents the legal system with a challenge unlike any other," Judge Jed S. Rakoff of the federal District Court in Manhattan writes in his recent book, "Why the Innocent Plead Guilty and the Guilty Go Free." "Modern science suggests that much of such testimony is inherently suspect — but not in ways that jurors can readily evaluate from their own experience."

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As I became absorbed by Briley’s case, I wanted to understand more about the science of memory. What did the research suggest about the reliability of the identification Joseph made? Eyewitnesses like him often have the best intentions. Nonetheless, I learned, their error rate increases when more time lapses between the initial viewing of a person and the retrieving of that memory to make an identification. Cross-racial IDs become even weaker with the passage of time. The circumstances of a street crime itself can also affect accuracy. Victims and witnesses may have only a brief chance to view the perpetrator, and making an identification becomes harder with dim lighting, stress, fear and the distracting presence of a weapon. One study showed a “catastrophic decline” in accuracy — dropping as low as 18 percent — depending on a witness’s level of anxiety.

As an investigation proceeds, an eyewitness’s memory of the crime tends to merge with his or her later viewing of a suspect during an identification. Paradoxically, over time, the level of confidence a witness has in his or her identification frequently grows. Eyewitnesses who initially tell investigators that they are somewhat certain of the ID they are making often later testify at trial that they are absolutely sure, many studies have shown.



Briley with his grandfather’s wife, Sandra Shepard, and Zoey, her granddaughter. Ruddy Roye for The New York Times

The Supreme Court began grappling with the problem more than half a century ago. “The annals of criminal law are rife with instances of mistaken identification,” the justices wrote in 1967. The court also focused on show-ups that year, characterizing them as “widely condemned” in the case *Stovall v. Denno*. But the justices ultimately permitted the show-up in *Stovall* because of the urgent circumstances surrounding the case — a woman who had been stabbed lay gravely injured in her hospital bed, and the police presented her with one suspect because they thought she might die before they could arrange a lineup.

Now Briley was in prison primarily based on evidence that was “widely condemned” more than a half-century ago. One reason Lara and I found ourselves drawn into this particular case was a family tie to the legal history. Our grandfather, Judge David L. Bazelon, served on the U.S. Court of Appeals for the District of Columbia Circuit for three decades, and in 1969, he sat on a panel of three judges for an appeal of a rape conviction. Ideally, a show-up takes place at the scene of the crime, when the witness’s memory is as fresh as possible. The show-up in the rape case our grandfather heard took place nearly four hours after the crime, when the police presented a Black suspect sitting in the back of a police car to the white victim. The appellate judges threw out the conviction, ordering a new trial. In his majority opinion, our grandfather wrote that the time and place of the show-up were “too attenuated” from the crime “to outweigh the admitted dangers of presenting suspects singly to witnesses.”

Three years later, in a case in which a witness identified a Black man as the suspect in a robbery (after spotting him near the scene of the crime), our grandfather wrote a concurrence in which he called for jurors to be instructed about the “danger that interracial identifications may be more unreliable.” Talking about the case with Lara, I thought that our grandfather, who died in 1993, would have said it was *besht* — Yiddish for “meant to be” — that she was representing Briley.

The Supreme Court, however, did not take a precautionary approach to show-ups and cross-racial IDs. In the 1977 case *Manson v. Brathwaite*, seven justices said that even if an identification procedure was unnecessarily suggestive, in a show-up or otherwise, an eyewitness ID could be admitted as evidence as long as a trial judge deemed it reliable based on “the totality of the circumstances.”

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The standard has proved easy to meet, and identification procedures vary widely. About two dozen states mandate what's now viewed as the best practice for conducting a witness identification — a double-blind lineup or photo array, in which the investigator and the witness don't know which person in the lineup is the suspect. (Louisiana began requiring double-blind ID procedures in 2018.) Every state continues to allow show-ups. The national median for them is one hour after a crime, yet about 40 percent of police agencies set no time limit, according to a 2013 survey by the Police Executive Research Forum. And the police don't necessarily follow their own rules. At the time of Briley's arrest, the New Orleans police provided for show-ups only "within a short period of time after the crime" — yet they showed Briley to Benjamin Joseph 20 hours after the robbery.

And though national data is lacking, it's clear that show-ups contribute to wrongful convictions. In 2003, a man in Detroit was sentenced to life without parole after a witness, who was shown only his photograph, implicated him in a fatal shooting; he was exonerated 15 years later in an investigation by the Wayne County prosecutor's office. After the burglary of an apartment in Brookshire, Texas, in 2017, the police brought three men in handcuffs to the home of a witness. He testified against one of them, who was convicted at trial and sentenced to 20 years. The other two pleaded guilty. On appeal, the police dashboard-camera footage showed that the witness was wrong, and in the last two years, the three men were freed.

In a major ruling in 2011, the New Jersey Supreme Court tried to address the problem of eyewitness identification by requiring judges to hold hearings, before trial, in which the defense could challenge the reliability of the ID. (That same year, the U.S. Supreme Court declined to require such pretrial screenings.) If an eyewitness ID passes the screening test and is admitted at trial, New Jersey judges must instruct the jury about factors that affect reliability.

A few other states (including California, Massachusetts and Utah) have since adopted similar jury instructions. But the results have been mixed. Jury instructions "may be a form of overkill," Rakoff and Loftus wrote in 2018 in the journal *Daedalus*, "making jurors who receive such an instruction more skeptical of all eyewitness identifications, no matter what their quality." Calling experts to testify about memory may produce better results, but the defense generally has to find and pay them.

Judge Rakoff concludes in his new book that in the end, most trial judges don't feel comfortable withholding information and simply admit eyewitness IDs, letting the jury decide what to believe. "Here's a witness who says: 'Yes, that's the culprit. I know I saw what I saw,'" Rakoff told me on a video call this spring. "If you're the judge, in the back of your mind you might think, How's it going to look to exclude that? So you leave it for the jury."

Writing about legal issues for 25 years, I've been frustrated by a stubborn truth: When science exposes a weakness in how criminal cases are conducted or how a jury determines the truth, it takes a long time for the practice in police precincts and courtrooms to catch up with the expert consensus. Research points the way, for example, on how to conduct interrogations with less risk of eliciting false confessions. New findings upend previous certainty about the medical diagnosis of shaken baby syndrome. Similar doubts emerge about the reliability of forensic analysis of a variety of physical evidence, including hair, fiber, bite marks, burn patterns and blood spatters. But many investigations and prosecutions grind on, impervious to the latest studies.

When science makes it harder to prove guilt, police officers, prosecutors and judges may see it as an impediment. They keep doing their jobs much as they always have.



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As I read Briley's case file alongside the research on eyewitness IDs, I thought I might have a story after all. It would be different from any I had written before, because of my own involvement, but I was starting to see Briley's case as emblematic of something larger — of how flaws in the criminal-justice system can cascade, one after the next. The very ordinariness of his case was the story. Everyone can deflect responsibility, and someone like Briley can spend the rest of his life in prison.

Searching through call logs and audio files that Briley made from jail after he was arrested in November 2012, Lara and I found the first call he made to his lawyer, James Williams, the day after his arrest. Williams, a private defense lawyer, represented Briley on a previous parole violation. Lara and I instantly recognized his name from a Supreme Court case that's infamous among criminal-justice reformers.

Williams is a former prosecutor, and when he worked in the district attorney's office in New Orleans in the 1980s, he was known for keeping a miniature replica of an electric chair on his desk, battery-powered so it jolted at a touch. Fixed to the chair were photos of five men, all Black, whom Williams prosecuted and who were sentenced to death. Two were later exonerated, and one of those exonerees, John Thompson, won a \$14 million jury award because of prosecutorial misconduct. In 2011, the Supreme Court took away Thompson's jury award in a bitterly contested 5-4 decision. Williams denied any wrongdoing.

Now here was Williams holding Briley's fate in his hands. "Look, this is what I'm telling you, Mr. Williams, all right?" Briley said urgently on the phone from jail. "During the time the armed robbery occurred, it was like 2 in the morning, all right. And at this time I was on camera." He said he'd been at two motels.

Williams said he would look into the case, but only after Briley paid him a \$2,500 retainer and the money he owed from the earlier case. "You need to get your people to come," Williams said.

"If they bring you the money, do you think you can get the footage from those hotels before they get rid of it?" Briley asked.

"Well, that would be the first thing I do," Williams answered.

"All right, sir," Briley said. "Because the footage will clear me. So I just need somebody to hurry up and get that footage."

Over the next few weeks, Briley's friends brought Williams some of the money he asked for, and Briley called his lawyer's office more than a dozen times. He repeated the facts about the video footage, specifying that tape from one of the motels, the Evergreen, would cover the time of the robbery, between midnight and 3 a.m. Briley said he'd been in a room rented by a friend, Erin Hayden, and provided a phone number for her. And he suggested obtaining the location data from his cellphone records. The Evergreen was eight miles from Mid-City, in Metairie, a suburb of New Orleans.

But Williams and his staff did not establish Briley's alibi. On another call from jail one morning, Briley reached his lawyer's office from the medical unit. He said he'd gotten staples for a three-inch gash on the back of his skull after being stabbed by other detainees. He asked once more about the evidence from the motel. A legal assistant scolded him. "I already did all of that, Yutico," he said. "What do you think, we're a second-class law firm?"

Court records show it took Williams's office three weeks to file for a subpoena to get the video from the motel. Before the footage came back, Williams stopped representing Briley when he couldn't afford to keep paying. "I took this on to try to help the man," Williams said when I called him in June. "But I'm not going to do it for free."

At his next court date in January, Briley was assigned a public defender, Lauren Boudreaux. Together they learned that Williams's office had asked the motel for the video for the wrong hours — 12 p.m. to 3 p.m. instead of 12 a.m. to 3 a.m. ("It's a tragic mistake," Williams said.)

Briley couldn't believe it. "I thought, how can this be happening? How can so many things go wrong?"

Boudreaux filed for a second subpoena to ask for the correct hours, but it was too late. The motel had taped over the footage. The evidence was gone. Briley had lost his best chance of getting out.

Boudreaux tried to save Briley's alibi. She subpoenaed his cellphone records for the night of Nov. 27 and looked for Erin Hayden to establish whether Briley was with her at the hotel. Boudreaux also asked the judge, Franz Zibilich, not to admit Joseph's identification of Briley at the trial because the show-up was unnecessarily suggestive. Judge Zibilich said no: The jury would hear Joseph's testimony.

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Despite Boudreaux's efforts, Briley's family wanted a private lawyer to represent him. (Clients often assume that a paid lawyer is better than a free one.) His mother told me she used some of her disability money to pay a pair of attorneys — Michael Kennedy and Miles Swanson — whom a relative recommended.

In early April, Judge Zibilich scheduled the trial for the rapidly approaching date of April 24. Kennedy and Swanson didn't use the brief time they had to look for Hayden or follow up with the cellphone carrier about Briley's records. On the morning of the trial, they asked Judge Zibilich for a postponement. Zibilich said no. Kennedy and Swanson could have asked a higher court to order a delay. They didn't.



Briley with his grandfather William Shepard Jr. Ruddy Roye for The New York Times

When I was reporting my book "Charged," I kept a list of the most punitive big-city prosecutors in the country, based on research and word of mouth. The New Orleans district attorney, Leon Cannizzaro, whose office prosecuted Briley, stood out for, among other things, asking for very long sentences. Prosecutors in Louisiana are permitted to charge a defendant as a "habitual offender." Once a prosecutor does this, even if a defendant has only a single felony conviction on his or her record — including a nonviolent drug offense — the habitual-offender charge almost always triggers a decades-long sentence. It's a "two strikes and you're out" law.

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In Louisiana, most D.A.s brought habitual-offender charges sparingly. Cannizzaro was an exception. Between 2009 and 2017, his office charged people as habitual offenders more than 2,600 times, compared with 66 times during the same period in East Baton Rouge, a parish that has a larger population, according to a report by Eve Abrams and Laura Starecheski for the podcast “Reveal.” In New Orleans, where the city is about 60 percent African American, nine in 10 of the habitual-offender sentences went to Black people.

Because of Briley’s drug conviction when he was 17, Cannizzaro’s office would charge him as a habitual offender — unless he pleaded guilty. “We’re talking about two violent crimes in two years,” Cannizzaro told me in June. Briley’s drug conviction (possession with the intent to distribute) was a nonviolent crime, but Cannizzaro said people who sell drugs are engaged in “very violent criminal activity.”

If Briley pleaded guilty to the robbery, the prosecutor would ask the judge for a 12-year sentence, his lawyers said. Before trial, Briley’s father, Yutico Briley Sr., urged his son to take the deal. “Even though Yutico was adamant that he didn’t do it,” his father said, “going to trial was too risky to risk your life on.” Briley says he went to court on the morning of his trial planning to plead guilty, but his lawyers talked him out of it. (Kennedy and Swanson say they did not do so. “I would not talk someone into going to trial if they made the decision to plead,” Swanson said.)

The trial began after lunch, in a small, low-ceilinged room in the Orleans Parish courthouse. The detective who conducted the show-up, Kelly Morel, testified first. Swanson asked Morel two questions about the show-up. “Why wasn’t a normal lineup done? Wouldn’t that have been more reliable?”

“Not to me, no,” she answered. “I feel more confident looking at an actual live human being rather than a paper photograph of somebody’s face.” Morel was talking about the difference between a live presentation and a photo array, not a show-up versus a lineup. But Swanson didn’t press her.

Benjamin Joseph was the prosecution’s next witness. He described getting out of his car, outside his own house, and “the next thing I know one guy has got a gun in my face.” Dustin Poché, the prosecutor, showed Joseph the gun Briley had when he was arrested. It was a pistol with no distinctive markings, but Joseph said he was sure it was the gun he’d seen the robber holding.

Poché showed Joseph the hoodie Briley was wearing when he was arrested. It had a zipper. Joseph said in his 911 call that the gunman’s hoodie was a pullover. Now he identified Briley’s hoodie as the clothing the gunman wore.

At the defense table, Briley seethed with frustration. “Man, you are bad, man,” he called out.

“Hey, hey, hey!” Judge Zibilich said. “Look, that is the first and only warning. Don’t make me gag you.”

Lara and I wondered about the effect of Briley’s outburst. She asked Swanson about it on a visit to New Orleans. He remembered seeing tears in Briley’s eyes. “That’s when I knew he really didn’t do it,” he told her. “And that this case was [expletive].”

When the room quieted, Poché asked Joseph if he saw the man who robbed him in the courtroom. Joseph pointed to Briley. His father, who was there watching along with Briley’s grandfather, thought Joseph seemed nervous and that his son still had a chance. He waited for Kennedy to grill Joseph.

Kennedy asked Joseph about the scant lighting at the crime scene and the distance between him and the gunman. But he didn’t ask Joseph about the discrepancies between his description of the robber and Briley, with his heavy build and facial hair.

The prosecution rested its case. The defense called no witnesses. Briley remembers thinking, “I know I’m dead now.”

The trial ended three hours after it began, and at the end of the afternoon, the jury found Briley guilty. At Briley’s sentencing hearing a couple of months later, Judge Zibilich gave him a lecture. “I can’t imagine somebody who appeared more scared than this victim did,” the judge said. “The reason why he was so frightened, sir, was because of you. This court is convinced beyond all doubt that you committed this offense. I just don’t simply understand what goes on in this town.”

Briley shook his head. “You can shake your head no,” Zibilich said before handing down the 60-year sentence. “It doesn’t matter to me.”

Undoing a conviction is often far harder than preventing it. To win at a trial, the state has the high burden of proving guilt beyond a reasonable doubt. On appeal, the burden shifts to the defendant, who has to show that something in the process went wrong — very wrong — to justify the trouble and expense of starting all over again.

The passage of time also presents its own challenge. Lara’s hope was to find new exonerating evidence. But when her students looked for Erin Hayden, Briley’s missing alibi witness, they learned that she died in 2016. Lara enlisted the help of a private attorney, Robert J. Nelson, who agreed to work with her pro bono. They got Briley’s cellphone from the evidence room in the New Orleans

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courthouse and sent it to an expert, but after months of effort, he told them that it was too late. The service provider kept the data for only five years.

Lara and I had endless conversations about what Benjamin Joseph, the victim of the robbery, might say if we could tell him what we'd learned about how Briley's alibi vanished. But Joseph, who lived in London, did not respond to our messages. When I emailed his wife, she replied that she was "neither willing nor able to engage with" the story and asked me not to contact her again.

Lara tried another legal avenue. At the time of Briley's trial, Louisiana was one of two states that allowed convictions by a nonunanimous vote of 10-2 or 11-1. The law allowing split verdicts dated from the late 19th century, during Jim Crow, and was enacted to diminish the influence of Black jurors. Citing this history, the Supreme Court found nonunanimous verdicts unconstitutional in 2020. If Briley's jury wasn't unanimous, he might be able to appeal on that basis.

Because Briley's trial transcript did not include the jury count, Lara started tracking down members of the jury and found Mark Yakich, who described the deliberations in his diary at the time. "We argue over the case," Yakich, a poet who teaches creative writing at Loyola University in New Orleans, wrote. "What's necessary to find the defendant guilty boils down to one man's word against another." At first, Yakich remembers, multiple jurors voiced doubts about Briley's guilt. But fear of crime and violence was "in the air," Yakich, who is white, told us. The fact that Briley was carrying a gun "played into the idea of, you know, 'This is just someone who belongs in jail.'"

Yakich wrote in his diary that he abstained instead of finding Briley guilty. But other jurors we found didn't remember a nonunanimous vote. Terence Blanchard II, a young Black musician, said he voted to convict because Joseph's testimony matched Briley's clothing and gun at the time of his arrest. Ashley Henry, a Black juror who is now a real estate agent, said she didn't think the show-up was fair. But she cast a guilty vote because she didn't think she could make a difference. "I knew he didn't stand a chance, with those people in that room," she told me. "It really haunted me for quite a while. I had nightmares about it."

Yakich's unconfirmed account wasn't a strong basis for Briley's release. But Lara and her team had one last idea, though it was a long shot. They could argue that Briley deserved a new trial because he had "ineffective assistance of counsel"; he would not have been convicted if not for his lawyers' errors. Such claims are common in innocence appeals, studies show, but rarely succeed. And to bring this claim before a judge, Lara and Nelson would first have to persuade the D.A.'s office — Cannizzaro's office — to waive the state's two-year time bar.

The chances that Cannizzaro would do so seemed vanishingly small. Prosecutors who waive procedural barriers tend to be reformers who are willing to admit, and investigate, miscarriages of justice from the past. In 2014, Cannizzaro signed on to a partnership with the Innocence Project New Orleans to review possible wrongful convictions. But it collapsed after only one exoneration, and Cannizzaro had since blocked others. (In an interview, Cannizzaro defended his office's conduct. But in one case, prosecutors withheld exonerating evidence. And in 2016, prosecutors charged two eyewitnesses with perjury when they recanted their false identification of a man who spent 20 years in prison for murder. The eyewitnesses were found not guilty.)

In May 2020, Lara and Nelson talked on the phone with two of Cannizzaro's deputies about the basis of Briley's petition for relief. The prosecutors said they'd looked at the case carefully. "From their perspective, no further review was warranted," Nelson remembers. "The process had been entirely just." When I talked to Cannizzaro in June, he defended his office's decision. "Do you understand the petition is simply allegations?" he asked. "It's supposed to be an adversarial system. You don't just walk in and surrender because they put up some allegations."

It was like a page out of my book "Charged": The prosecutors were in control. Briley would remain in prison as long as Cannizzaro was in office.

I didn't want to say it, but it seemed as if Briley's case had no future. Lara couldn't find exonerating evidence. The D.A. wouldn't budge without it. Briley's only hope seemed to lie in fundamental change for the New Orleans justice system — a kind of upheaval that I didn't see coming.

In November 2020, however, Cannizzaro would be up for re-election. One of his biggest critics, a defense lawyer and City Council member named Jason Williams, was running to replace him. Announcing his candidacy in 2018, Williams pledged to end "a bygone and racist era that only wanted to target poor Blacks," saying, "We have to be honest about our past." For decades, campaigning for district attorney almost always meant promising to lock up criminals without mercy. The Black Lives Matter protests that began in 2013 created an opening for a different kind of candidate. Beginning in 2016, challengers won D.A. races by campaigning for more police accountability and fairness — and less jail and prison — in a few dozen places, including Chicago, Dallas, Brooklyn, Philadelphia, Boston, St. Louis and San Francisco.

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Jason Williams, the newly elected district attorney in New Orleans. Ruddy Roye for The New York Times

Williams said that if he was elected, he would not use the death penalty. He would not charge marijuana possession. Significantly for Briley, he pledged to reconsider “excessive” sentences from the Cannizzaro era. But in June 2020, Williams was indicted on a charge of federal tax fraud. He pleaded not guilty, saying he’d filed his tax returns based on the advice of his accountant. (The case remains pending.) As Williams tried to contain the damage, a judge and former prosecutor, Keva Landrum, and another judge, Arthur Hunter, declared their candidacies. Cannizzaro announced that he would not run for a third term.

Lara and I watched the campaign closely — along with another race. Knowing that Williams would be able to do only so much on his own if he was elected, a slate of seven candidates announced a campaign in July to “Flip the Bench” in New Orleans. They said they were running to unseat judges who “come out of the old tough-on-crime, throw-them-away prosecutor’s office” and “meted out unequal justice to Black people.”

No New Orleans judge in criminal court had lost a re-election bid since the early 1970s. But Zibilich, Briley’s trial judge, was an incumbent who was facing an opponent promising change — Angel Harris, a 36-year-old former public defender and civil rights lawyer. “I believe it is time for us to reimagine a system rooted in rehabilitation, not mass incarceration,” Harris said of her candidacy. In November, Harris won with more than 60 percent of the vote.

A month later, Williams won with a substantial majority, too. He announced a civil rights division, which would look at wrongful convictions, convictions obtained with nonunanimous juries, habitual-offender sentences and other excessive punishments. It would be the heart of Williams’s effort to right past wrongs. The chief of the new division would be Emily Maw, a previous director of the Innocence Project New Orleans. I interviewed her for an article I wrote last year about nonunanimous juries. I couldn’t quite believe that the former head of an innocence project was about to help remake the district attorney’s office.

“We’ve dreamed about a system with someone fair in charge,” Williams told me. “I don’t think either one of us thought it would be us.”

In December 2020, a month before Williams’s term began, Lara asked to meet with Williams and Maw to discuss Briley’s case. I asked to be there as a journalist, though I was aware that my presence meant that Briley could be getting attention from the D.A.’s office that other defendants in his position wouldn’t necessarily receive. And I knew too that Williams might be interested in the press.

I thought about how Briley pulled me in, through force of will, and how much it was taking to right this one wrong. Then I listened to my sister represent her client.

Lara laid out the facts of the case and the hurdles that stood in the way of getting back into court. “I don’t know what the best way forward is,” she said. There was no path without the D.A. and no point in pretending otherwise.

Williams wondered about Benjamin Joseph. Crime victims have power when an exoneration hangs in the balance. They can help or hurt an elected official. “You know,” Williams said of Joseph, “he’s a victim in this. They put him in the worst scenario to make an identification.”

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Williams also placed Briley’s case in the context of his own reformist agenda. “It has all the things,” he said — racial injustice, a claim of innocence, excessive punishment.

“All the things,” Lara repeated as we left lunch. Williams’s response suggested real hope for Briley for the first time.

A few months later, in early March, Emily Maw called Lara. She had listened to the calls Briley made from jail in 2012 and heard the rising panic in his voice as he begged his lawyer, in call after call, to establish his alibi. When she read the transcript and police records, she could see the missed chances mount. She talked to people involved in the case and corroborated the facts that Lara had presented.

In an email, Maw asked Judge Harris, who replaced Zibilich on the bench two months earlier, to put a hearing for Briley on her docket. “We believe his case demonstrates multiple failures of the criminal legal system that have been far too common in the typically brief trials of young Black men in Orleans Parish,” Maw wrote. Judge Harris scheduled a hearing for March 17.



Judge Angel Harris, newly elected to Criminal District Court in New Orleans. Ruddy Roye for The New York Times

Lara quickly filed a petition for relief, making the case for ineffective assistance of counsel. It included a statement from Michael Kennedy admitting to making errors at Briley’s trial. (“I don’t personally think I’ve ever been ineffective,” Kennedy told me later. “But if calling me ineffective nine years down the road gets someone out of jail, then call me ineffective.” Swanson agreed.)

Before Lara could tell Briley the news, she received a late-night call from a childhood friend of Briley’s. The last few months had been destabilizing for Briley. He’d contracted Covid, spent weeks isolated on lockdown and had been transferred to another prison, where he was clashing with staff members and other prisoners. Now the friend told Lara that Briley had been stabbed in the back

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and on the hand during a fight with two people on his cell block. He was on suicide watch, which meant 23-hour-a-day lockdown in a bare cell.

Briley knew he might be close to being released but found the uncertainty torturous. He couldn't sleep. His blood pressure was high. "When they open the gate and say you can go, that's when I'll believe it," he said when he talked to Lara and her students.

The following week, Briley's doubts were realized. Maw said that Jason Williams did not want to go forward with the hearing, which was only two days away. The issue wasn't Briley. It was a balancing act of reform and respect for victims, which Williams was struggling to achieve.

'There are so many other Yuticos sitting in jail.'

A few weeks earlier, in another courtroom, the D.A.'s office had asked for new trials for 22 people who were in prison because they'd been convicted by nonunanimous juries. Williams called his initiative "undoing Jim Crow" because of the law's racist history. But when he took the political risk of helping to set free prisoners who had been convicted of murder and rape, some crime victims and their families expressed outrage, saying they were given little notice.

Now the D.A. was asking Judge Harris to delay Briley's hearing indefinitely so he could have whatever time it took to contact Benjamin Joseph. Lara opposed the delay. She asked the judge to think about Briley, waiting on lockdown.

In the end, Judge Harris postponed the hearing by only one day, saying that as judge, she took responsibility for any consequences. "It's not something that's falling on Mr. Williams," she said. "It is the court making that decision."

Three days later, Briley attended his hearing by Zoom. The stab wound on his hand throbbed, but on the computer screen he could see his grandparents and mother and siblings watching from home. Karen Oehler, his pen pal in Oregon, waved to him, and Briley typed "hi" to her in the chat box. Briley's father and one of his half sisters were in the courtroom, sitting with three of Lara's students and a local lawyer who had joined the team, Nishi Kumar of the Promise of Justice Initiative.

Maw told Judge Harris that the D.A.'s office had succeeded in contacting Joseph. He had no statement to make. Maw asked Harris to order Briley not to contact him. The judge did so.

When it was Lara's turn to speak, she described every fallen domino. The police stop that interrupted his walk to the store with his friends. The assumption that he fit the description because of his race and youth and hoodie. The show-up. The cross-racial identification. The calls from jail asking his lawyer to hurry up and prove his alibi. The lost video footage. The lost cellphone data. The choice the prosecutors offered between pleading guilty and risking a life sentence. The lack of preparation by his trial lawyers and the questions they failed to ask in court. The judge's stated indifference. The jury's inclination to see Briley as dangerous. The habitual-offender law that allowed a crime with no physical injury to the victim, and a nonviolent precursor, to result in a 60-year sentence.

And there were the debilitating consequences for Briley: the fractured relationships. The eight and a half years locked up. The heart-pounding fear that he would never be free. "In December, Mr. Briley told me, 'These people left me to die up in here,'" Lara said. "'No one came to grab me.'"

When it was Maw's turn to represent the state, she apologized to Briley. "I think it is important to signal how differently we hope prosecutions can proceed in New Orleans," she said.

Judge Harris accepted the D.A.'s recommendation to exonerate Briley. "It's like I was a ruler getting broken, about to snap," he said of that moment. "And once I heard that, I'm not getting bent no more."

The judge spoke to him through the camera. "I know that this will be an uphill battle for you," she said. "And I just want you to stay strong and stay encouraged, and to not allow this to provide you with a bitterness for a system that has in fact failed you." She didn't pretend she could erase the past. She asked him to move beyond it anyway. "We are all acknowledging that that has happened to you. And I just hope that you are able to press on and work through this and have a productive future."

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Briley hugging his mother just after being released from prison. Ruddy Roye for The New York Times

The next day, while I waited for Briley outside the Elayn Hunt Correctional Center in rural Louisiana, I thought about all the people I couldn't see who were inside those walls. Some would write more letters to journalists. But how many would have pen pals dedicated enough to make sure those letters were read, or Briley's ability to build relationships with people who might be able to help? And how many journalists had the time to explore an unlikely story or a sister who was exactly the right lawyer to call? What if the D.A. or the judge had little interest in breathing new life into an old case? Briley got his chance because I opened a letter I almost ignored. I was stung by the capriciousness of all of it. "There are so many other Yuticos sitting in jail," Jason Williams said in his office that day.

At 12:30 p.m., under a gray sky with a hint of sun, Briley walked through the prison gates in orange paper slippers and no socks, looking dazed and relieved and on the verge of joy. His 21-year-old half brother and his closest childhood friend drove through the night to be there to hug him. So did his mother. Lara and I were there, with the students, and we all embraced him, too.

He wanted a shower and a haircut and a toothbrush. He wanted to eat grapes and Sour Patch candy and drink fruit juice and vodka. He wanted to play Scrabble.

A couple of days after his release, though, he woke from a nightmare of being threatened in prison with a gun. For many people getting out, the burden of what comes next proves too heavy. Briley signed up for services at an organization in New Orleans called First 72+, which helps people with re-entry. Five of their clients have died within the last year.

As the immediacy of his release passed, Briley had to decide where to live, whom to trust, how to make money. Some friends beckoned him back to the dangerous but lucrative life he had at 19, but he knew he had to figure out how not to sell drugs, how to move in the world without a gun.

On one of his first days out, he ran into two guys he knew, coming out of a store in Mid-City. They weren't carrying weapons, he pointed out to me. Maybe they had become old enough to distance themselves from danger. Maybe he could, too. He had friends and relatives who'd gotten out of prison and stayed out. They had regular jobs, in occupations like truck driving and car repair. He knew it had taken incredible luck and persistence and work and an election to get out of prison. He wanted to be worthy of all of it.

Within a few weeks, Briley had his driver's license renewed and bought a car (with money raised through GoFundMe). He posted videos of himself cooking and doing push-ups on Instagram. He ate pizza with friends who were released before him and took care of the son of a friend who was still locked up. He completed a short course in basic computer skills. He crashed the car. He had a birthday party. He gathered himself. "I'm not going to let what I've been through dictate how my life's going to go," he said. "As long as there's 1 percent of hope, I'm going to try to grow on that."

Emily Bazelon is a staff writer for the magazine and the Truman Capote fellow for creative writing and law at Yale Law School. Her 2019 book, "Charged," won the Los Angeles Times Book Prize in the current-interest category. **Ruddy Roye** is a Brooklyn-based documentary photographer from Jamaica specializing in editorial and environmental portraits.

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