



*“It can’t happen here.”*

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## Challenges to the Myth of New Hampshire Exceptionalism & the Death Penalty

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No criminal justice system, even New Hampshire’s, is immune from errors. Our system is run by human beings, and however technically or morally qualified, we can make mistakes. Police can be overly zealous in extracting confessions. Prosecutors often build their reputations on capital case convictions, leaving the fate of defendants to political considerations. DNA evidence that could clear someone wrongfully accused only factors into a small percentage of murder cases.

The death penalty is too final a solution to leave in government hands. Here are just some facts that show that mistakes can happen in our state.

### **Falsified Evidence**

“As a public defender in Concord, I experienced an incident of a falsified confession by a law enforcement officer. My client, charged with child sexual abuse, had maintained his innocence and been cooperative during two taped police interviews. After the third interview, which was not taped or recorded in any manner, the law enforcement officer claimed the defendant confessed. Though there was no written or recorded confession, and no collateral evidence of my client’s guilt – and in the face of my client’s obvious shock over and adamant denial of the purported confession – he was found guilty at trial and sentenced to State Prison.”

--Steve Mirkin, NH Public Defender

### **Forced Confession**

In the murder case of 6-year-old Elizabeth Knapp in 1997, police badgered a murder victim’s mother to point the finger at her boyfriend, even though it was untrue. The boyfriend had been drunk the night of the crime, and could not account for his whereabouts. Semen found in the victim’s vagina later cleared the boyfriend. “I



**“I’ve never believed that a sentence should be administered that does not have an eraser... Clearly murders must be punished and removed from society. Life in prison without parole does both.”**

**–John Broderick**  
Former NH Supreme  
Court Chief Justice

believed that my client was guilty,” said Barbara Keshen, former lawyer with the NH Public Defender’s Office. “I believe that a jury would have convicted him. Why not? They had ‘eye witness’ testimony and a sort-of confession.”



**“There have been more than 1,000 murders in New Hampshire since 1940. The next execution will be the first in more than 75 years. History will not judge the execution of one murderer in a thousand as similar, just or fair.”**

**-- Philip T. McLaughlin,**  
Former NH Attorney  
General

### **Problems with Evidence**

15% of fingerprint or hand print identifications made in NH Forensic Labs were rated at Fair to Poor, according to a NH State Police Forensics Audit (9/2011, p. B-4). When someone’s life is on the line, that margin of error is simply too high.

Studies on eyewitness identification – the most common type of evidence in criminal cases -- consistently show that witnesses are likely to identify the wrong person.

DNA evidence has led to hundreds of exonerations, but it is only available in about 10-15% of cases. Despite our best intentions, human beings simply can’t be right 100% of the time. And when a life is on the line, one mistake is one too many.

Over 160 people have been exonerated from death row in the US since 1973, despite prosecutors, judges and juries being absolutely certain of guilt at the time. These exonerations have revealed cases that are riddled with problems including mistaken eyewitness identifications, incompetent lawyers, shoddy forensics, self-serving jailhouse snitches, and coerced confessions. New Hampshire is not immune to these problems in the criminal justice system.

### **Jury Tampering, Perjury, and more**

During his tenure as Bartlett NH Police Chief, Timothy Connifey conspired to tamper with witnesses, and committed false swearing, perjury and official oppression.<sup>1</sup>

### **Death-qualified Juries are not Impartial**

Capital trials require “death-qualified” juries. Such innately biased jury selection automatically prevents about half of the population from serving, for example jurors who are pro-life. Multiple studies<sup>2</sup> show that death-qualified juries are more likely to find defendants guilty and to recommend the death penalty. How can we claim that such trials are just and impartial?

### **NH’s Infrequent Use of the Death Penalty makes it “Unusual Punishment”**

The sad truth is, both here in NH and around the country, that the defendant’s race and income level are the most common factors in death penalty cases. The fact that both “premeditated” and “more heinous” murders in New Hampshire have not seen the imposition of the death penalty, demonstrates that it is neither fairly nor consistently applied.

<sup>1</sup> <http://www.seacoastonline.com/news/20160226/former-bartlett-chief-indicted-on-perjury-witness-tampering>

<sup>2</sup> <https://capitalpunishmentincontext.org/resources/deathqualification>