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Private Prison Company to Demand 90% Occupancy
Noel Brinkerhoff and David Wallechinsky, AllGov, RSN, Feb. 19, 2012
Intro: "The nation's largest private prison company is offering cash-strapped state governments to buy up their penitentiaries and manage convicted criminals at a cost-savings. But there's a catch ..."

How Many Innocent People Have We Sent To Prison?
Liz Webster

When Beverly Monroe met her new neighbors in the free world after spending seven years in a Virginia prison for a crime she didn’t commit, she spoke candidly about her past. “I said I’d been through a crisis,” she says. “People immediately think a divorce or you lost your husband or something like that, which is all terrible enough.”
About the Author

Liz Webster

Liz Webster is the publications manager for the Innocence Project. The opinions expressed here are the author’s...

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Monroe did lose her longtime boyfriend, Roger de la Burde, who was found shot to death with his own handgun in 1992. An overzealous state police agent suspected foul play, even though officials initially believed that de la Burde had shot himself. Monroe’s statements to police, which were deemed to be self-incriminating, coupled with an informant who received a deal from the prosecution in exchange for her testimony, formed the basis for the case against her.

At 54, the mother of three was charged and convicted of murdering de la Burde and sentenced to twenty-two years at the Pocahontas Correctional Center. Monroe might have served the whole sentence had her attorneys not discovered a collection of concealed exculpatory documents, including a crucial medical examiner’s report from 1999 that strongly suggested that de la Burde had indeed committed suicide. In 2002 a US District Court judge vacated the conviction.

Now in her 70s, Monroe works as an administrative assistant. The lost income and lack of savings from her years behind bars have made retirement a distant dream. “I’ll have to work until I’m 105,” she says. Virginia has not compensated her for the years lost to prison or for her legal expenses. (Her trial cost nearly $200,000.)

“Being innocent in prison is real torture,” Monroe says. “It’s a lasting kind of trauma…. You’re released, and you realize that it didn’t just happen to you—it’s happened to other people who have had it so much worse.”

How many other people? No one knows. The Bureau of Justice Statistics doesn’t track
exonerations, so for years that task has fallen to lawyers, academics and activists relying on news reports and legal filings. While the Innocence Project and the Death Penalty Information Center track exonerations, neither group’s database is complete. No single resource has amassed all of the known exoneration cases.

Until now. On May 21, the University of Michigan Law School, in conjunction with the Center on Wrongful Convictions at the Northwestern University School of Law, released the first-ever National Registry of Exonerations. The searchable online database is the most credible and comprehensive resource on wrongful convictions in the United States. Peter Neufeld, the co-founder and co-director of the Innocence Project, has called it the “Wikipedia of Innocence.”

The registry, which can be viewed at exonerationregistry.org, currently counts 891 cases since 1989, the year of the first exoneration achieved using DNA.

The scope is significant: reliable data on false convictions had been limited to DNA exonerations and death row exonerations. Beverly Monroe doesn’t fit either category, and neither would the vast majority of exonerated prisoners: less than 1 percent of the nation’s prison population is on death row, and DNA evidence applies only to a small fraction of all criminal cases—those with biological evidence like semen, blood, hair and saliva.

In addition to examining “a much broader group of exonerations,” according to University of Virginia law professor Brandon Garrett, the registry shows “that there are a lot of exonerations that don’t get a lot of press attention.” It also alters the conventional wisdom about how innocent people get convicted. For his 2011 book, Convicting the Innocent, Garrett scoured the first 250 DNA exonerations and identified eyewitness misidentification as the leading cause of those wrongful convictions (as have others). But the larger pool of cases reflected in the registry reveals other trends. According to University of Michigan law professor Samuel
Gross, “perjury or false accusation” is the leading cause of wrongful conviction.

Although the majority of the registry’s cases involve violent crimes such as murder, rape and sexual assault, exonerations for nonviolent crimes are better represented than ever before. The exonerated spent an average of eleven years in prison; ten people were exonerated posthumously or died in prison. Roughly 50 percent of the cases involved African-American defendants.

Gross believes that the cases in the database are just the tip of the iceberg. Indeed, his total tally of exoneration cases actually exceeds 2,000, out of which more than 1,100 were “mass exonerations,” omitted from the registry for fear of skewing the statistics. Mass exonerations are often the result of police misconduct. Gross estimates a wrongful conviction rate among violent felonies of up to 4 percent. “Would I venture a guess about other types of crimes—drug crimes or white-collar crimes? Not at all,” he says. “Misdemeanors? Who knows?”

Recent evidence suggests that the error rate could be even higher. After a series of exonerations in Virginia, then-Governor Mark Warner ordered a review of thousands of cases over a fifteen-year span before DNA testing was available. The massive endeavor was recently completed, revealing an error rate that hovered at 6 percent, which Gross considers “horrifying.” Extrapolating to the whole US prison population, this could mean that more than 136,000 people are unjustly incarcerated.

Many wrongful convictions cannot even justly be called “errors.” Beverly Monroe’s post-conviction attorneys discovered that prosecutors had concealed their promise of a reward to the informant, Zelma Smith—she received a sentence reduction in exchange for her testimony—as well as information about Smith’s pattern of offering information in other,
unrelated cases with the expectation of a reward.

“When someone testifies falsely under oath, that’s not a mistake,” Monroe says. Her case entry in the National Registry lists the following contributing factors: “false confessions, false or misleading forensic evidence, perjury or false accusation, and official misconduct”—an unpalatable sampling of the many flavors of wrongful conviction.

The running tally of exonerations in the registry is important, but of greater significance is the analysis and categorization of cases, which will make new research possible and help curb misconduct. For exonerees who received little media attention or recognition from the state, the registry may assist in their efforts to clear their name and receive compensation. If nothing else, the public acknowledgment of their wrongful conviction lends legitimacy to their struggle.

Liz Webster  
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“‘The Wrongful Conviction as Way of Life’

By JEFFREY ROSEN  Published: May 26, 2011

Judge Learned Hand called “the ghost of the innocent man convicted” an “unreal dream.” But in “Convicting the Innocent,” Brandon L. Garrett shows that it can be a “nightmarish reality.” Since the late 1980s, DNA testing has exonerated more than 250 wrongly convicted people, who spent an average of 13 years in prison for crimes they didn’t commit. (There is every reason to think that more people have been wrongly convicted since then, but only these 250 have been definitively exonerated by postconviction DNA tests.) Seventeen of the 250 were sentenced to die, and 80 to spend the rest of their lives in prison. By poring over trial transcripts and interviewing lawyers, prosecutors and court reporters, Garrett, a law professor at the University of Virginia School of Law, seeks to explore who these 250 innocent people are, and why they were wrongly convicted. His alarming conclusion: the wrongful convictions were not idiosyncratic but resulted from a series of flawed practices that the courts rely on every day, namely, false and coerced confessions, questionable eyewitness procedures, invalid forensic testimony and corrupt statements by jailhouse informers. Garrett’s book is a gripping
Almost 90 percent of the 250 innocent people later exonerated were falsely convicted of rape, or rape and murder, and 40 of them actually confessed to crimes they didn’t commit, most adding specific details that only the real culprit could have known. How did this happen?

Garrett describes how the police, intentionally or not, fed details of the crime to the suspects — and then recorded only portions of the interrogations so that it was difficult for defense lawyers and jurors to reconstruct the truth. Even the selectively recorded interrogations make for painful reading, as the suspects offer facts that are inconsistent with what happened, and the police browbeat them into false confessions. (Detective: “You hung her!” Vasquez: “O.K., so I hung her.”) Unfortunately, the Supreme Court has refused to focus on whether confessions are reliable, asking instead whether they were coerced, or offered without Miranda warnings. Garrett says the best protection against false confessions would be to require that police record interrogations from beginning to end; at the moment, 11 states and the District of Columbia are required or encouraged to record at least some interrogations.

In addition to false confessions, eyewitnesses wrongly identified the accused in 76 percent of the 250 cases. The unreliability of witness identifications is now widely known, but Garrett was surprised to discover how flagrantly unreliable the procedures were in the cases he examined. In 78 percent of the trials, he found evidence that the police contaminated the eyewitness identifications with suggestive methods, like indicating which suspect in a lineup should be selected, or conducting lineups where one suspect obviously stood out from the others. (Many of the convicted looked nothing like the initial description given by the victims.) Garrett learned that while the witnesses were confident by the time of the trial that they had identified the right suspect, in more than half the cases they had not been confident at the time of the initial identification.

Of those exonerated by DNA, 70 percent were from minorities, and in nearly half of the rape cases involving blacks or Hispanics, the victims were white. (Garrett points out that “most sexual offenses, almost 90 percent, are committed by offenders of the same race as the victim.”) Garrett
criticizes the Supreme Court for allowing lineups that were unfairly conducted, and says the best way to avoid erroneous identifications is to use a double-blind procedure where police officers can’t influence the witness because they don’t know which person in the lineup is the suspect.

Garrett found invalid forensic testimony in 61 percent of the trials where an analyst testified for the prosecution, including overly confident claims of matching bite marks, shoe prints and hair samples. (One leading geneticist noted in 1989 that clinical and forensic labs have to meet higher standards to diagnose strep throat than to put a defendant on death row.) And Garrett discovered unreliable testimony by jailhouse informers in 21 percent of the trials — informers who, in exchange for lenient treatment from prosecutors, lied about hearing specific details of the crime from their cell mates. Garrett suggests this testimony could be avoided if prosecutors were prohibited from promising informers secret deals that weren’t disclosed to the defense.

Garrett’s statistical analysis is invaluable, but the most dramatic parts of his book are those that provide narrative details of trials that failed to prevent the innocent from being wrongly convicted. It turns out to be surprisingly hard to prove your innocence: most people don’t remember where they were on a particular day months ago, and can present only weak alibis. Especially memorable are the dignity and self-control with which those convicted asserted their innocence and recanted their false confessions.

Even when facing the death penalty at their sentencing hearings, these innocent people often maintained a remarkable degree of poise. After the verdicts were read, some of them understandably lashed out in anger and then sought to compose themselves. In the Central Park jogger case, one of the convicted was taken out of the courtroom after he exclaimed: “No. No. No. Can’t take this. O, Lord. Jesus. No. . . . It’s wrong. It’s wrong. No. No.”

Where were the courts in all of these 250 miscarriages of justice? In 10 percent of the cases, appellate courts called the evidence of the innocent people’s guilt “overwhelming,” while the Supreme Court summarily dismissed requests to review 37 of the cases without giving reasons. I teach criminal procedure, and after reading Garrett’s book, I am looking forward to future discussions with students of the many Supreme Court cases that narrowly concentrate on procedural regularity, rather than encourage appellate courts to review the accuracy of evidence. Garrett makes a powerful argument for enhanced access to DNA testing: in addition to clearing the innocent, DNA tests in 45 percent of the cases he studied identified the actual rapists or murderers, many of whom had been free for more than a decade to commit other crimes. And he insists that by placing too much reliance on decisions made early in the investigative process, we place the innocent at an unnecessarily high risk of being convicted of crimes they didn’t commit.

Garrett ends by reviewing the most promising bipartisan reforms that seek to increase the accuracy and reliability of criminal convictions, like North Carolina’s Actual Innocence
Commission, which has required the recording of homicide interrogations, expanded the procedures for preserving evidence and increased defendants’ access to DNA testing. But it’s the stories in his book that stick in the memory. One can only hope that they will mobilize a broad range of citizens, liberal and conservative, to demand legislative and judicial reforms ensuring that the innocent go free whether or not the constable has blundered. “What makes the trials of exonerees so frightening is that they show how the case against an innocent person may not seem weak,” Garrett writes. “The case may seem uncannily strong.”

Jeffrey Rosen is a law professor at George Washington University and the legal affairs editor of The New Republic.

A version of this review appeared in print on May 29, 2011, on page BR16 of the Sunday Book Review with the headline: Criminal Injustice.

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