Polygraph

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Book Review of Bonpasse, Morrison (2015)
80 Proposals to Stop Wrongful Convictions

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Review

The book begins with a short glossary of legal terms I found helpful, followed by an introduction that wanders a bit from the author's personal history with the Innocence Movement to the United States goal of putting a man on the moon. After struggling a bit through the introduction I arrived at Chapter 1 where Bonpasse does a yeoman's job in tackling the slippery issue of estimating the wrongful (false) conviction rate in the U.S. Bonpasse takes the reader through an estimate for an annual felony conviction count, a reasonable (and probably conservative) estimate of the false conviction rate, and the total number of U.S. prisoners. Using this approach, Bonpasse shocks the reader with the thought that at any given moment about 40,000 actually innocent people in the U.S. are in prison or jail. Bonpasse also shows that with five percent of world population, the U.S. has 25% of the world's prison population. The author extends the wrongful conviction rate to the number of innocent people under correctional supervisor at any given time, a staggering 80,000. Finally, Bonpasse introduces the concepts of internalized and externalized costs, borrowing from economics, which are considerable in human suffering and from a financial perspective.

Chapter 2 introduces the author's concepts and taxonomy of his 80 proposals to reduce wrongful convictions. Chapter 3 lists proposals for setting a national goal to reduce wrongful convictions and creating a registry. Some of the important suggestions are: extending the national DNA and fingerprint database to include all U.S. citizens and residents; creating "conviction integrity units" in each prosecutor's office; all states having an Innocence Commission and a commission that reviews claims of wrongful conviction; and requiring law schools and police academies to include the subject of wrongful conviction in their training curricula. Chapter 4 provides suggestions to reduce crime and incarceration time. It recommends adjusting prison sentences to be more commensurate with those in European countries, reducing or eliminating mandatory minimum sentences, establishing a parole or early release system in all states and federally, adjusting the bail/bond process to one that assesses flight risk versus the current money-based model that is predominant, and creating policy so that claims of innocence during parole hearings do not draw a negative inference of avoiding responsibility.

Chapter 5 addresses investigative considerations and is most germane to readers of *Polygraph*. Bonpasse reiterates probably the most important reform aspect- mandatory recording of police-subject interactions. He suggests that no confession be admissible without documentation by audio or video recording. He suggests that all of the prosecution case be open to the defense for review, except that information that poses a safety risk to individuals in the case. A true open-file rule would help alleviate prosecutorial concerns over Brady Rule violations, and allow defense to properly address case anomalies. Bonpasse points out that often the Medical Examiner's Office becomes aligned with law enforcement, introducing a potential bias. He suggests these departments be separated from law

enforcement entities and placed under the state's public health department. Bonpasse reiterates several eye-witness related propositions relating to lines-ups, show-ups and photo identifications. Proposal 34 is to entitle each defendant to a private or publicly funded polygraph examination and quality control review. Bonpasse has published on this subject in this journal (see Bonpasse, M. (2013). Polygraphs and 215 Wrongful Conviction Exonerations. Polygraph. 42(2), 112-127). Finally Bonpasse suggests the defense be provided an equal amount of funds as the prosecution spent, for expert witnesses.

Chapter 6 is a short piece recommending prospective defendants be allowed to testify at Grand Jury proceedings. Chapter 7 offers suggestions that relate to pleas and plea bargains including a prosecutor must sign a notarized statement that they believe beyond a reasonable doubt; a. the defendant committed the crime and b. she/he can persuade a jury of the same. Bonpasse makes, what is in my opinion, a great suggestion that a judge participate in all plea bargaining procedures to ensure fairness in sentencing and protect claims of innocence. He argues that Alford ("best interests") pleas be abolished. Chapter 8 is about trial related reforms and includes a suggestion for standardized-mandatory jury training. This training would be video-based and address issues like the legal meanings and the phenomenon of false confessions and wrongful convictions. Bonpasse makes several suggestions regarding defendants' testimony and trial procedure. He suggests that jurors be allowed to ask questions before deliberation (during trial) and to have witnesses recalled during deliberations. If a jury in unable to reach a verdict after a set number of votes, Bonpasse suggests any dissenting juror be allowed to request they cease voting and a mistrial declared. Bonpasse also suggests forbidding a retrial following a mistrial due to juror inability to reach consensus. All jury deliberations should be audio/video recorded and open to review by either party to ensure no irregularities occurred. One of the most

important recommendations of chapter 8 is to preclude inmate informants testifying about something a defendant said or they overheard the defendant say.

Chapter 9 addresses post-trial relief issues and includes; allowing judicial review at any time, without time limitations. He makes several suggestions about appellate level decisions and how they should be interpreted and acted upon. He recommends all evidence (including any potential DNA source) be retained for the life of the defendant or the end of their incarceration, unless it is determined to be unreasonable by a judge. Bonpasse suggests post-conviction recantations be verified using polygraph examinations and suggests leniency for perjury considerations for those who recant. Chapter 10 makes system recommendation considerations for Governors and other executives. Chapter 11 addresses immediate post-exoneration relief including, monetary compensation and criminal records destruction/expungement. Finally, Bonpasse suggests that absolute prosecutorial immunity be and replaced with qualified immunity.

Bonpasse then takes on each proposition in depth in an individual chapter. He provides a great deal of reference material - probably the most comprehensive collection on this topic to date. He lists websites, books, and articles of interest; all of this material is well-organized. I find this book to be a great resource for anyone involved in the criminal justice system. On the surface it may seem to have a limited nexus to polygraph but that is simply not true. In October of 2014, a federal jury awarded what is believed to be the largest award ever ($40 million) in a wrongful conviction case against a polygraph examiner and his former employer (see http://www.newyorklawjournal.com/id=1202674441333/Deskovic-Wins-Wrongful-Conviction-Verdict?slreturn=20150016123458).

This books is available from Amazon.com (http://www.amazon.com/80-Proposals-STOP-Wrongful-Convictions/dp/0990652629/ref=sr_1_2?s=books&ie=UTF8&qid=1420748780&sr=1-2&keywords=bonpasse) in a print version for $18 or in Kindle format for $2. I purchased the Kindle format and was able to navigate the content satisfactorily, albeit without a table of contents.