

Post-Gazette: Exonerated prisoners in Pennsylvania get nothing in compensation

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By Michael A. Fuoco Pittsburgh Post-Gazette

Feb. 14--Lewis Jim Fogle was twice cursed.

Had he been exonerated in Texas, he would stand to receive wrongful conviction compensation of \$2.72 million and an annuity of equal value.

Had he been exonerated in Alabama, his compensation would be at least \$1.7 million.

But he was exonerated in Pennsylvania.

His compensation here: Zero.

So, Jim, as he is known, not only had the nightmarish misfortune of being wrongfully convicted in Indiana County in 1982 in the murder of a 15-year-old girl, but he also was exonerated in one of 20 states that provide no compensation for those wrongfully convicted.

Never mind that the 34 years of imprisonment the Indiana, Pa., man wrongfully served-- more than half his 64 years -- is the longest among the 54 people who have been exonerated in Pennsylvania. Or that his incarceration is the fourth longest among the 337 people nationally who have been exonerated by DNA evidence since 1989.

Here, the legislature has not enacted an exoneree compensation statute. Moreover, those wrongfully convicted in Pennsylvania can only collect damages if they prevail in a lawsuit claiming civil rights violations or malicious prosecution, both extremely difficult to prove.

About two-thirds of the 1,740 people who have been exonerated nationally since 1989 have received some compensation for the injustice they suffered, according to the Innocence Project in New York. Thirty states, the District of Columbia and the federal government provide that support.

Even so, compensation for exonerees in those jurisdictions range from robust to much less so.

All of that is of no consequence to Jim, who understandably is depressed and embittered that his "golden years" promise only poverty unless something changes.

"It's [the state's] responsibility to make it right with me for what they cost me," he said. "They took my family away from me, they took my whole life away from me.

"Until I can get some compensation, I can't even think of trying to put my life back to together because there's no way to do so. I'm just existing, one day at a time."

The value of liberty

Unlike so many public policy issues, providing compensation for wrongfully convicted people is not a partisan issue.

The third in an occasional series.

But what is the cost of freedom?

In the United States, even the jurisdictions that have enacted statutes to compensate exonerees for their loss of liberty mostly disagree on an amount that is fair.

Texas leads all states with 237 exonerations since 1989, according to the most recent figures from the National Registry of Exonerations at the University of Michigan Law School. But it also is the leader with the amount exonerees can claim -- \$80,000 per year of incarceration, an annuity equal to that amount and up to \$10,000 in reintegration financial assistance, among other benefits.

Compare Texas with Wisconsin and New Hampshire, which provide a maximum of \$25,000 and \$20,000, respectively, regardless of the number of years wrongfully served.

Then there is Pennsylvania and 19 other states that provide nothing.

For Rebecca Brown, policy director for the Innocence Project in New York, that stance -- and the "horribly insufficient" compensation in Wisconsin, New Hampshire and some other states -- flies in the face of justice and decency.

"Regardless of fault, the government has a responsibility to do all they can to make a wrongfully convicted person whole, or as whole as they can be in light of the Kafkaesque nightmare of being convicted and incarcerated.

"No amount of money can make up for the time spent behind bars wrongfully. However, there are things the government can do to enable someone to have a successful life.

"Many would argue, the government cannot be forgiven for doing nothing."

The Innocence Project is working nationally to have states enact statutes that would provide compensation of at least \$63,000 per year of incarceration. The figure is based on the maximum yearly compensation provided under federal statute.

Additionally, because it takes about two years on average for an eligible exoneree to receive compensation, states should immediately upon release provide exonerees with re-entry services such as housing, health care, job counseling, education and mental health counseling, Ms. Brown said.

"Government understands the need for re-entry services -- it provides them to people coming out of prison who did commit crimes, but for the innocent there is nothing," she noted.

Without just compensation and re-entry services, she said, wrongfully convicted people "are released from one prison and placed in a different type of prison where they really are prevented from moving forward in life."

There's little help

An eagle majestically soars above mountains and evergreen trees in a painting on an easel in Jim's efficiency apartment. He can only wish he were as free as his recent painting.

An award-winning artist, Jim has sold a few paintings since his release from prison in August and would love to sell more to make a little money. But he's been disappointed that people who read of his predicament in the Pittsburgh Post-Gazette and offered to display his work in art galleries or to set up a Web site featuring his paintings haven't followed through on their promises.

He's sought work as a carpenter, plumber and handyman "but people told me I was too old."

His rent is being paid for a year by the Innocence Project, whose attorneys found the DNA evidence that exonerated him. The nonprofit is also paying for his weekly therapy and has helped steer him to government benefits such as food stamps and Supplemental Security Income.

Since December, he has received SSI benefits of \$733 a month for being disabled by the post-traumatic stress of his wrongful incarceration. Some kind people who read of his plight sent him a few bucks. But that's it.

It is not lost on Jim that the state helps the guilty upon release from prison but does nothing for exonerees like him.

"It's weird as heck. They have halfway houses for people who committed a crime but don't have a dang thing for people who didn't commit a crime. They just threw me out here and expected me to survive.

"The Innocence Project did me right. If it wasn't for them, I wouldn't be able to survive. But the state should be doing it."

Just as Jim fought for exoneration so, too, is he advocating for exoneree compensation. Three days after his exoneration in September, he walked to the office of state Sen. Don White, R-Indiana, and asked for a meeting. Sen. White met with him at the end of October and Jim made his case for a Pennsylvania statute for compensating exonerees.

"Until I get compensation, I can't rebuild my life," Jim told him.

"I can't imagine what you're going through," Sen. White responded. "If I was put away for a majority of my adult years under false pretenses, I would want somebody to pay."

He promised to pass on the case file Jim provided him to the Senate Judiciary Committee.

But nothing on that front can move forward until the state legislature finally passes a budget.

Educating public officials

When a state spending plan is approved, Marissa B. Bluestine will be ready.

As legal director of the Pennsylvania Innocence Project in Philadelphia, which joined with the Innocence Project in New York in securing Jim's exoneration, Ms. Bluestine knows that education is key to passage of an exoneree compensation statute.

To that end, she plans to have a bill introduced this legislative term calling for compensation and re-entry

awards for exonerees. To illustrate the desperate need, she plans to have Jim and other exonerees testify at legislative hearings across the state.

"We need to make sure this person, having been wronged, has the ability to re-enter society, contribute to society and have the security to move forward.

"No one is getting rich here. It's just about justice so they can get on with their lives."

There has been some support in the Pennsylvania General Assembly over the years but not enough to have a bill passed.

An Advisory Committee on Wrongful Convictions issued a voluminous report on the various issues in September 2011. The first sentence of its executive summary, quoting a state Superior Court ruling, cut to the chase. "The most fundamental principle in American jurisprudence is that an innocent man not be punished for the crimes of another," wrote committee Chairman John T. Rago, who teaches at Duquesne University School of Law.

The report called for compensation and transitional services for those exonerated by DNA evidence, best practices for investigations to prevent future injustice and establishment of a commission to review each future wrongful conviction to learn what went awry.

But the report's recommendations gained no traction among legislators.

"We realized there needed to be more conversation, more education," Mr. Rago said in a recent interview.

He believes, and Ms. Bluestine agrees, that there now is a better understanding of the issues than when the report was issued.

"This is not about being anti-police or anti-prosecutors or anti-anything," he said. "It's about making the system work as well as it can because the public expects us to do that."

"This is about error. People make mistakes," Ms. Bluestine said. "There's nothing special about the Pennsylvania system that protects us from those errors."

Treasure hunting

While incarcerated, Jim devoured books about buried treasure, fantasizing about looking for hidden loot. A dreamer at heart, he excitedly will regale a visitor with tales of treasure hidden by outlaws in Arizona or shipwrecks laden with gold sinking off the California coast. He has an elaborate plan for mining gold in the Bering Sea.

"I don't know if I'll find anything or not but I'll have fun doing it," he said, his eyes sparkling at the thought and his long, gray beard giving him the look of a old-time prospector.

But, for the present, all he's searching for is post-exoneration justice.

He's not alone. He was among 149 people nationally who were exonerated in 2015, which broke a record for exonerations set the preceding year, the National Registry of Exonerations reported earlier this month.

That's an average of nearly three exonerations a week. Since 2011, the annual number of exonerations has more than doubled, the registry said in its report. In addition to Jim, two other people were exonerated in Pennsylvania last year.

The record number of exonerations, Ms. Brown said, "promises to elevate the national conversation about the scourge of wrongful convictions.

"These figures should compel lawmakers -- now more than ever -- to implement reforms that prevent wrongful conviction ... and to ensure they have proper frameworks in place to assure compensation to the wrongfully convicted and re-entry services they need to begin living their lives again without fighting to survive upon release."

Mr. Rago said Jim's experience vividly illustrates not only that exonerees should receive compensation but that proactive steps must be taken to prevent future injustices.

"We're in a race against time," he said. "There will be another Jim Fogle. There will be more. At a certain point, how many times does the bell ring before we answer the call?"

Michael A. Fuoco: mfuoco@post-gazette.com or 412-263-1968.

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