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Imprisoning Innocence in America[i]
by Rushworth M. Kidder

> "Convicting the innocent solves nothing. 'Every time an innocent person is convicted,' says Barry Scheck, 'it means there are more guilty people out there who are still committing crimes.'"

Want an unlikely strategy for theatrical success? Write a play about horrific death-penalty cases and wrongful convictions. Have the actors sit on stools reading their scripts without action, costumes, or sets. Title it *The Exonerated,* a heavy-duty word with no comedic overtones. And then take it to a southern beachside community in March, where sun-seeking vacationers might be looking at most for an evening of farce -- if they're looking for live theater at all.

But there it was: a packed house at the Philharmonic in Naples, Florida. Yes, the size of the crowd had something to do with the two stars, Lynn Redgrave and Robert Vaughn, who gave sharp and convincing performances. And yes, it had to do with the word-of-mouth buzz about the play -- a study of individuals found guilty of crimes they didn't commit -- which said it was authentic and riveting.

But I suspect there's more to it. Even in the most well-heeled and conservative parts of America, I sense a growing willingness to recalibrate our preconceptions. Sobered by 9/11, uneasy about deaths in Iraq, concerned about alleged terrorists detained despite due process, the nation may be ready for deeper thinking about the moral consequences of our way of doing things.

That kind of thinking is what the authors of the play, Eric Jensen and Jessica Blank, are hoping to inspire. In the best theatrical traditions of the *piéce á thése* -- the "thesis play" or "problem play" with an explicit social message -- their play grew out of a conference on the death penalty at Columbia University. One workshop at the conference featured the "Death Row Ten," a group of prisoners whose convictions rested on confessions tortured from them by a particular police officer in Chicago. Though the officer was later fired, those he helped convict remained trapped in the system. Shortly after the conference, Jensen and Blank hit the road to do live interviews with some of those inmates who had been exonerated. Their play, they say, is made up entirely of the words they heard spoken in these interviews, woven into eight interlaced stories about innocence, conviction, bitterness, philosophical insight, and (in these particular cases) final and sometimes almost miraculous release.

Are cases of wrongful conviction rare, one-off occurrences in this country? A new study from the University of Michigan suggests not. Conducted by law professor Samuel R. Gross, it examines 328 criminal cases since 1989 in which the convicted person was exonerated. Most involved rape or murder, the high-profile crimes that attract attention both during the trial and when the convict is serving a life sentence or awaiting execution. The Michigan report suggests that there may be as many as 28,500 people who, in the last

15 years, could have been exonerated in non-death-row cases -- except that nobody was paying attention.

That's an alarming number on several fronts. It's shocking to contemplate innocent people suffering in this way under the U.S. judicial system. It's discomforting to realize that the failures that put them there were systemic. And it's depressing to recognize that the system has no self-correcting mechanism. Most of those who were eventually exonerated were freed by activists outside the criminal justice system working on their behalf.

But perhaps the most disturbing point -- as both *The Exonerated* and the authors of the new study suggest -- is that convicting the innocent solves nothing. Speaking to the *New York Times* this week, Barry Scheck, founder of the Innocence Project, put it well. "Every time an innocent person is convicted," he said, "it means there are more guilty people out there who are still committing crimes."

Forgive a moment of optimism. But might it be that the reception this play is getting and the interest this topic is arousing is part of a new U.S. realism? This is, after all, a nation built on exceptionalism, convinced that its destiny is different, higher, grander than that of other nations. In part, the fight against terrorism consists of creating the conditions for democratic judicial and political institutions around the world. Those institutions will be modeled in large part on the ones we have at home. But what if ours don't work so well? What if there are systemic flaws? What if too many innocents get convicted and too many guilty roam the streets? What if our system is not so exceptional after all and isn't quite ready for export to Iraq and Afghanistan?

That the nation is willing to contemplate such things -- and even to interrupt vacations to do so -- says a lot. Needed next is a willingness to go even deeper. Are we putting undue pressure on our law enforcers to find the perpetrators immediately? Do we care more that the crime gets "solved" than that the guilty get caught? Do we want rightness or simply closure, accuracy or just convenience? Do we want problems to go away so that we don't have to think about them? Or do we want to think through problems until we overcome them?

The people in the theater that night seemed willing to think. Judging by the conversation in the foyer, they went away moved. Tellingly, the program earlier in the week featured comedy by three "Saturday Night Live" stars. It was good. But it wasn't as well attended.

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[i] Article written before the revelations of abuse at Abu Ghraib Prison in Iraq.