California Wrongful Convictions Project

A joint project of The Chief Justice Earl Warren Institute on Law and Social Policy at University of California, Berkeley, School of Law and Hollway Advisory Services, a criminal justice research firm.

Methodology

The California Wrongful Convictions Project is collecting data on state and federal criminal convictions in California that are dismissed or overturned and result in acquittal, as well as cases where official misconduct resulted in civil damages. The Project has defined wrongful convictions to include those where all counts are dismissed by the court or by the prosecutor after conviction, as well as those where the conviction was reversed and the individual was completely acquitted on retrial.

Initial data was collected through public sources such as court records, California state agencies, legal databases (e.g., Lexis/Nexis, WestLaw), newspapers, and web sites. Cases were included in the preliminary dataset only if they were confirmed through state or federal records or attorneys of record. The preliminary dataset contains 214 individuals who were exonerated or whose convictions were overturned or dismissed after January 1989, the year in which DNA was first used for exoneration. The number of cases in the dataset is expected to increase substantially following outreach and investigation throughout 2013.

Cases

The preliminary dataset includes:

- 120 individuals also listed in the National Registry of Exonerations, a joint project of the University of Michigan Law School and the Center on Wrongful Convictions at Northwestern University School of Law. The Registry requires a post-conviction showing of new evidence;
- 53 individuals whose convictions were overturned as a result of the Rampart scandal in Los Angeles in the late 1990s
  - The Rampart scandal involved police corruption and misconduct by a relatively small number of Los Angeles Police Officers over several years in the late 1990s. While public reports indicate that well over 100 individuals had their convictions overturned as the police misconduct was investigated, only those cases that could be independently confirmed through court or other official records have been included to date;
The Oakland Riders police scandal, also dating from the late 1990s, is not yet included in this dataset; Riders and other alleged group exonerations will be evaluated in the final report; and

- 41 individuals identified through the public sources listed above.

**Costs**

Cost figures to date include direct costs of incarceration in state or federal prison and publicly disclosed costs of civil settlement and compensation. Incarceration costs were calculated conservatively. If the date of release was unknown, the date on which the court overturned the conviction was used despite the fact that most individuals spend additional time in custody following the court order, but prior to release. Cost figures do not yet include either costs of representation or the costs incurred to hold these individuals in county jail in addition to state prison; these additional costs are expected to be substantial. Also not included are indirect costs such as lost wages, impact to family members, and loss of faith in the criminal justice system.

Cost figures were calculated using average annual cost per inmate as published by the California Department of Corrections and Rehabilitation (CDCR) or the federal Department of Justice (DOJ) for the year in which each individual was in custody. Compensation and settlement figures were calculated from public records.

**Preliminary Findings**

Preliminary findings are based on data collected from June – Sept. 2012.

- Data generated by the California Wrongful Convictions Project in collaboration with the National Registry of Exonerations shows that California leads the nation in exonerations. California has 120 individuals in the National Registry of Exonerations, surpassing Illinois (110), Texas (100), and New York (100). The National Registry requires a post-conviction showing of new evidence for inclusion;

- Since 1989, 3 Californians have received a sentence of death then had their convictions overturned and charges dismissed.
  - Two additional California Death Row inmates were exonerated in 1981;

---

1 Ernest “Shujaa” Graham and Eugene Allen spent 10 years on death row for crimes they did not commit.
• Direct prison costs, settlement costs, and compensation costs total $129 million; total costs rise to $144 million when prison costs are adjusted for inflation.\textsuperscript{2} Costs of wrongful convictions occurring in the future would likely be significantly higher due to annual increases in prison costs (Figure 1);

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{annual_cost_per_prisoner.png}
\caption{Annual cost per prisoner, California Department of Corrections and Rehabilitation}
\end{figure}

• While costs of representation have not been calculated, a 2008 ACLU report cited a study estimating the cost of a non-death penalty trial at $627,000.\textsuperscript{3} If that estimate is correct, a conservative accounting of the trial costs for the individuals in the dataset who went to trial would exceed $80 million.

• 40% of individuals in the dataset received initial sentences of 20 years or more in prison, including many who were originally sentenced to life, life without parole, or death, demonstrating errors in even the most serious cases (Figure 2);

\textsuperscript{2} Settlement and compensation figures could not be adjusted for inflation because the Project does not yet have sufficient information regarding the date or method of payment made to the wrongfully convicted individuals.

Figure 2: Sentences Imposed In Cases That Were Fully Overturned or Dismissed After Conviction (N = 214)

- Fewer than 6% of the wrongful convictions were reversed due to DNA;
- Individuals exonerated as part of the Rampart scandal, a “mass wrongful conviction” situation, account for only 10% of the total prison time and 10% of the incarceration cost;
- All of the Rampart cases (53 confirmed to date) were caused by police misconduct;
- Excluding the Rampart cases, contributing factors were as follows:
  - Official misconduct (police or prosecutor) was a factor in 39% of the cases;
  - Perjury or false accusations were a factor in 42% of the cases;
  - Mistaken witness ID was a factor in 26% of the cases, and
  - Inadequate or ineffective defense counsel was a factor in 19% of the cases.

(Note: Totals add to more than 100% because more than one factor could be at issue in a particular case. Factors were considered to contribute even if they were not the legal grounds relied upon for reversal or dismissal.)
Wrongfully convicted individuals (excluding the Rampart cases) were most often convicted of murder or manslaughter (42%) (Figure 3):

Wrongfully Convicted Crimes, by Type of Crime

- Child Sex Abuse: 17%
- Other: 20%
- Drug Possession/Sale: 5%
- Fraud: 7%
- Robbery: 9%
- Murder or Manslaughter (incl. attempted): 42%
- Other: 20%

N = 161 (all cases, excluding Rampart defendants)

Project Directors: Rebecca Silbert, Chief Justice Earl Warren Institute on Law and Social Policy at the University of California, Berkeley, School of Law, rsilbert@law.berkeley.edu or (510) 643-7321 or John Hollway, Hollway Advisory Services, john@hollwayservices.com or (484) 580-6098.

Note to news editors: Contact project directors for jpg graphics.

Rebecca Silbert is the senior legal policy associate at Berkeley Law’s Chief Justice Earl Warren Institute on Law and Social Policy. She was an assistant federal public defender for eight years and is the author of “Thinking Critically About Realignment” (Warren Institute 2012), and the associate editor of “Inside This Place, Not Of It: Narratives From Women’s Prisons” (Voice of Witness 2011). She is a 1996 magna cum laude graduate of Harvard Law School.

John Hollway is a writer and researcher and the founder of Hollway Advisory Services. He is co-author of “Killing Time: An 18-Year Odyssey from Death Row to Freedom” (2010). The book was a Next Generation Indie Books Award Winner for Non-Fiction in 2011 and a “Favorite Book of 2010” by the Chicago Sun-Times. Hollway has worked in a federal prosecutor’s office and is a member of the Advisory Board of the Northern California Innocence Project. He graduated with Honors from the George Washington University Law School in 1995.

Andrea Russi is the managing director and director of criminal justice for the Chief Justice Earl Warren Institute on Law and Social Policy. She served as an Assistant United States Attorney for nearly eight years. She is a lecturer in residence at Berkeley Law and was previously an adjunct professor at the University of Southern California. Russi is a 1996 graduate of UCLA Law School, where she was Editor in Chief of the Law Review.