

California Wrongful Incarceration Compensation Law: A History That is Still Being Written

KELLY SHEA DELVAC *

I. INTRODUCTION

From current popular media and social commentary, one might imagine that the issue of wrongful incarceration and compensating the victims of it is only a 21st Century issue. Quite the contrary is true; the issue is as old as the criminal justice system itself—and in California, the history of wrongful conviction parallels the state’s history.

Judge Learned Hand remarked that our system of justice “has been always haunted by the ghost of the innocent man convicted. It is an unreal dream.”¹ California alone has had over 200 wrongfully convicted people exonerated since 1989.² Of these exonerees, less than 40% have received

* 2021 J.D. graduate of Pepperdine Law. This article is dedicated to my exonerated friends David, Derrick, Alex and the Los Angeles District Attorney Conviction Review team, who encourage me to do better every day. Special thanks to my husband, Bill, for his comments and edits to this article and Ben Fraser for his research assistance. I would also like to thank the members of the Manitoba Law Journal, especially Brooke Mowatt and Mikal Sokolowski for their careful editing and feedback. All errors are my own.

¹ *United States v Garsson* (1923), 291 F 646 at 649, [1923] US Dist LEXIS 1442 (SDNY US).

² “Exonerations by State/Year” (last visited 18 December 2020), online: *The National Registry of Exonerations* <www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx> [perma.cc/K7DY-LNVL] [The National Registry of Exonerations, “Exonerations by State/Year”]. “The National Registry of Exonerations provides detailed information about every known exoneration in the United States since 1989 – [exonerations are defined as] cases in which a person was wrongly convicted of a crime and later cleared of all the charges based on new evidence of innocence. The Registry also maintains a more limited database of known exonerations prior to 1989.”

any type of compensation for the time they spent wrongfully imprisoned.³ That is because “exoneration guarantees only one thing—release from prison.”⁴ While the laws in California have been steadily changing to support the people the state has wrongly convicted monetarily, the law still leaves far too many exonerees with nothing.

This article will mark through the history of wrongful convictions in California, explain California’s compensation laws and how they have been amended over time, and discuss possible remedies to strengthen the current iteration of the law. Part II of this article will give the history of wrongful convictions in California and the impact those wrongful convictions have on exonerees and society. Part III will look at California’s compensation statute and how it has been applied throughout the State’s history. Part IV will conclude with recommendations for the future.

II. HISTORY OF CALIFORNIA WRONGFUL CONVICTIONS

Wrongful convictions are not new to society. The history of wrongful convictions in California is as old as statehood itself. The first recorded wrongful conviction in California occurred in 1851.⁵ Sheriff Charles Moore was murdered in Yuba County, and an arrest was made of a man known as “English Jim.”⁶ A few days after his arrest, however, English Jim escaped from jail.⁷ Two months later, another man was attacked, but this man survived and described his attacker as looking like English Jim.⁸ Within a day the police arrested Thomas Berdue, who bore an uncanny

³ Anthony Accurso, “California Exonerees Not Quite Innocent Under the Law” (1 April 2020), online: *Prison Legal News* <www.prisonlegalnews.org/news/2020/apr/1/california-exonerees-not-quite-innocent-under-law/> [perma.cc/VE9H-F6D3].

⁴ “Making Up for Lost Time: What the Wrongfully Convicted Endure and How to Provide Fair Compensation” (2016) at 9-10, online (pdf): *Innocence Project* <www.innocenceproject.org/wpcontent/uploads/2016/06/innocence_project_compensation_report-6.pdf> [perma.cc/PYP2-DRNQ] [Innocence Project, “Making Up for Lost Time”].

⁵ Anne Pachciarek, “Thomas Berdue” (last visited 18 December 2020), online: *The National Registry of Exonerations* <www.law.umich.edu/special/exoneration/Pages/case_detailpre1989.aspx?caseid=15> [perma.cc/ASU6-UKGY].

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

resemblance to English Jim.⁹

Berdue was subsequently put on trial for the second assault and the murder of Sheriff Moore.¹⁰ He was convicted of both crimes and sentenced to death by hanging.¹¹ A few days after Berdue's conviction, English Jim was caught committing a robbery.¹² English Jim was tried by a mob that named themselves the "Vigilance Committee," and before the Committee, he confessed to the murder of the Sheriff and the second assault.¹³ The Committee put English Jim to death by hanging and informed the authorities of Berdue's innocence.¹⁴ Berdue had become destitute trying to prove his innocence, and in response, the Committee proposed a fund to compensate him for his hardship.¹⁵ However, the California Senate refused to give the fund to Berdue for his expenses because they feared it would "establish a precedent which, if carried out in all cases of the kind, would more than exhaust the entire revenue of the State."¹⁶ They opined, "[i]n society it too often happens that the innocent are wrongfully accused of a crime. This is their misfortune, and the Government has no power to relieve them."¹⁷

Between 1852, when Berdue was exonerated, and 1989, there was no official counting of exonerations. Today, the National Registry of Exonerations keeps a current record of every modern exoneration.¹⁸ As of this writing, there have been more than 2,600 exonerations nationally since 1989.¹⁹ Information about exonerations before 1989 is sparse. However, the Registry keeps an anecdotal list of pre-1989 exonerations.²⁰ There are

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ "Our Mission" (last visited 18 December 2020), online: *The National Registry of Exonerations* <www.law.umich.edu/special/exoneration/Pages/mission.aspx#> [perma.cc/RA2P-PCUK].

¹⁹ The National Registry of Exonerations, "Exonerations by State / Year", *supra* note 2. 1989 was the first year the registry started an accurate compilation of exonerations.

²⁰ "Exonerations Before 1989" (last visited 10 June 2021), online: *The National Registry of Exonerations* <www.law.umich.edu> [perma.cc/2N3J-S9M8] [The National Registry of Exonerations, "Exonerations Before 1989"]. The data underlying stats referred to

431 exonerations on that list, 43 of which happened in California. Of the California cases, all the exonerees were male but one.²¹ They were of all different ages and races.²² All of the crimes were either murder (or attempted murder), bribery, or robbery.²³ Their sentences ranged from one year to death.²⁴ Twenty-five were given life sentences; four received the death penalty.²⁵ While most served less than five years, three served over ten.²⁶

There is not another recorded exoneration after Berdue's in California until 1924.²⁷ There were seven exonerations that decade, six for robbery and one for attempted murder.²⁸ The 1930s picked up with 11 exonerations.²⁹ The subsequent decades only have anecdotes of exonerations as follows: two in the 1940s, five in the 1950s, four in the 1960s, six in the 1970s, and seven in the 1980s.³⁰

With the advent of official reporting, the number of exonerations went up exponentially in the subsequent decades. In the 1990s, California had 44 exonerations, followed by 98 from 2000 to 2009, and 81 from 2010 to 2019.³¹ "It's impossible to fully grasp the magnitude of the injustice and suffering these [exoneration] numbers represent: careers and opportunities that were lost forever; children who grew up³² and parents who died while the innocent defendants were in prison; marriages that fell apart—or never happened."³³

throughout this section come from the Registry, however, the statistical extrapolations are the author's own work based on the raw data provided on these pages.

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ The National Registry of Exonerations, "Exonerations by State / Year", *supra* note 2.

³² See Sion Jenkins, "Secondary Victims and the Trauma of Wrongful Convictions: Families and Children's Perspectives on Imprisonment, Release and Adjustment" (2013) 46:1 *Austl & NZ J Crim* 119 at 123-27 (reporting the effects of parental incarceration on the children of exonerees).

³³ "Milestone: Exonerated Defendants Spent 20,000 Years in Prison" (2018) at 1, online (pdf): *The National Registry of Exonerations* <www.law.umich.edu/special/exoneration/D

A. Impact on the Exoneree

Every exoneree is impacted by financial consequences caused by lost wages and legal bills, building up from accusation through appeal.³⁴ The financial blow is heightened because many exonerees were wrongfully convicted and imprisoned when they were young.³⁵ While their peers were finishing their education and building careers, the exoneree's imprisonment created an education and work history deficit that most exonerees can never surmount.³⁶

Compounding the financial injury, services available to parolees – people who committed crimes, served their sentences, and are released – such as job placement, temporary housing, and medical care are generally not afforded to exonerees.³⁷ These services provide a safety net for released prisoners to get back on their feet and reintegrate into society.³⁸ The lack of these services to the exoneree is particularly problematic because exonerees are especially vulnerable since they face all the same struggles of reacclimating to life outside of prison that parolees do,³⁹ but with the added

ocuments/NRE.20000.Years.Report.pdf> [perma.cc/PT3D-A8A7].

³⁴ Innocence Project, “Making Up for Lost Time”, *supra* note 4 at 9–10. “After serving nearly 10 years in prison for a crime he didn’t commit, David Shephard’s wages were garnished for failing to pay child support because his girlfriend and their son had been on welfare for a year while he was away. Larry Peterson was expected to retroactively pay for his own public defender. The New Jersey Public Defender’s Office put a lien ... on Peterson to pay for the cost of representing him. Peterson had to undergo litigation to have the lien removed.”

³⁵ *Ibid.*

³⁶ *Ibid* at 9.

³⁷ *Ibid* at 10.

³⁸ *Ibid* at 9–10. David Shepherd was exonerated after spending ten years in prison for a crime he did not commit, and then was turned away from four different agencies that provide services for ex-offenders. The agencies told him that “he could not receive services since he had not committed a crime.”

³⁹ See Adrian Grounds, “Psychological Consequences of Wrongful Conviction and Imprisonment” (2004) 46:2 Can J Corr 165 at 171. The study found the exonerees “had marked and embarrassing difficulties in coping with ordinary practical tasks in the initial days and weeks - for example, crossing busy roads and going into shops. Some had more persistent difficulties (not knowing, for example, how to work central heating, TV remote controls, videos, credit cards, or cashpoints at banks) and experienced shame that prevented them from asking for help. One said, ‘It’s like when someone has a stroke; you have to be taught how to do things again.’ He felt humiliated by his lack of ability and the fact that his wife had to teach him elementary skills. The men also typically had little sense of the value of money, had difficulty budgeting, spent recklessly, and got into debt.”

psychological trauma of being wrongfully imprisoned.⁴⁰

An exoneree also must deal with detrimental effects from prison life, which often provokes and normalizes criminal behaviour.⁴¹ This exposure and acclimatization to prison life increases the risk that an exoneree will commit a crime after being released.⁴²

B. Impact on Society

Blackstone said, “it is better that ten guilty persons escape, than that one innocent suffer.”⁴³ All of society suffers when someone is wrongly

⁴⁰ *Ibid* at 168–70, finding evidence of long-term personality changes, PTSD, and other psychiatric disorders in exonerees specifically not found in parolees; the prison sentences for this study group ranged from nine months to nineteen years; all of the subjects had no psychological issues before incarceration. The long-term psychological effects found in this study were similar to the psychological effects found in war veterans. *Ibid* at 175, these psychological consequences were found to be specific to long-term imprisonment coupled with the miscarriage of justice. *Ibid* at 176, “[t]he miscarriage of justice typically entailed acute psychological trauma at the time of initial arrest and custody, involving experiences of overwhelming threat. In addition, there was chronic psychological trauma: years of notoriety, fear, and isolation in their claims of innocence. Most spent years preoccupied in pursuing their case, despite knowing or believing that they would never be released on parole as long as they refused to admit their guilt. Additional features specific to the wrongfully convicted were the absence of preparation for release and of post-release statutory support. The long-term imprisonment entailed psychological adaptation to prison, as well as losses - separations from loved ones, missed life opportunities, the loss of a generation of family life, for some, and of years of their expected personal life history.”

⁴¹ See generally Francis T Cullen, Cheryl Lero Jonson & Daniel S Nagin, “Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science” (2011) 91 *Prison J* 48S; Paul Nieuwbeerta, Daniel S Nagin & Arjan A J Blokland, “Assessing the Impact of First Time Imprisonment on Offenders’ Subsequent Criminal Career Development: A Matched Samples Comparison” (2009) 25 *J Quantitative Crim* 227; G. Matthew Snodgrass et al., “Does the Time Cause the Crime? An Examination of the Relationship Between Time Served and Reoffending in the Netherlands” (2011) 49:4 *Crim* 1149.

⁴² See generally Evan J Mandery et al, “Compensation Statutes and Post-exoneration Offending” (2013) 103:2 *J Crim L & Criminology* 553.

⁴³ William Blackstone, *Commentaries on the Laws of England*, vol 2, Book III and Book IV (Oxford: Clarendon Press 1765) at 358. This has come to be known as the Blackstone ratio. See “Blackstone Ratio” (last visited 14 June 2021), online: *Oxford Reference* <www.oxfordreference.com/view/10.1093/oi/authority.20110803095510389> [perma.cc/PXZ8-AWCA]. “The ratio of 10:1 expressed in the maxim ‘Better that ten guilty persons escape than that one innocent suffer.’”

convicted.⁴⁴ The societal harms include a more dangerous society, re-victimization of victims, and financial costs to the justice system.⁴⁵

Society is less safe because of wrongful convictions since they leave the real perpetrators free to commit more crimes.⁴⁶ Second, since the criminal justice system is set up to deter crime, a wrongful conviction sends a message to the criminal and society that criminals can get away with their crimes, thereby diminishing the deterrent effect of the entire system.⁴⁷ As a result, this decreases public confidence in the criminal justice system.⁴⁸ Lastly, recidivism in the exoneree population is high, and this shows that imprisonment of an innocent person possibly creates criminal conduct in someone otherwise not predisposed to that behaviour.⁴⁹

⁴⁴ See Danial Bier, “Quote Files: John Adams on Innocence, Guilt, and Punishment” (11 August 2014), online (blog): *The Skeptical Libertarian* <blog.skepticallibertarian.com/2014/08/11/quote-files-john-adams-on-innocence-guilt-and-punishment/> [perma.cc/9CQY-HZD4]. This blog quotes John Adams’s opening statement for the Defense in the 1770 murder trial of eight British soldiers after the Boston Massacre, “We are to look upon it as more beneficial, that many guilty persons should escape unpunished, than one innocent person should suffer. The reason is, because it’s of more importance to community, that innocence should be protected, than it is, that guilt should be punished; for guilt and crimes are so frequent in the world, that all of them cannot be punished; and many times they happen in such a manner, that it is not of much consequence to the public, whether they are punished or not. But when innocence itself, is brought to the bar and condemned, especially to die, the subject will exclaim, it is immaterial to me, whether I behave well or ill; for virtue itself, is no security. And if such a sentiment as this, should take place in the mind of the subject, there would be an end to all security what so ever.”

⁴⁵ See generally Jennifer Thompson-Cannino, Ronald Cotton & Erin Torneo, *Picking Cotton: Our Memoir of Injustice and Redemption* (New York: St. Martin’s Press, 2010) (explaining that when Ronald Cotton was imprisoned for a rape that Bobby Poole perpetrated, Poole was free to subsequently commit twenty more crimes including robberies, burglaries, and rape before he was finally caught and convicted of one of those subsequent crimes). See also Frank R Baumgartner et al, “The Mayhem of Wrongful Liberty Documenting the Crimes and True Perpetrators in Cases of Wrongful Incarceration” (2018) 81:4 *Alta L Rev* 1263 (documenting cases where subsequent crimes were committed by perpetrators who were free because others were falsely convicted of their previous crimes).

⁴⁶ *Ibid.*

⁴⁷ See generally Nuno Garoupa & Matteo Rizzoli, “Wrongful Convictions Do Lower Deterrence” (2012) 168:2 *J Institutional & Theoretical Economics* 224.

⁴⁸ See generally Marvin Zalman, Matthew J Larson & Brad Smith, “Citizens’ Attitudes Toward Wrongful Convictions” (2012) 37:1 *Crim Justice Rev* 51.

⁴⁹ Recidivism is “[a] tendency to relapse into a habit of criminal activity or behavior.” Bryan Garner, *Black’s Law Dictionary* (Eagan: West Publishing, 2004) *sub verbo*

Society also pays a financial cost for wrongful convictions.⁵⁰ These include costs associated with trial and appeals, prison housing, compensation for wrongful convictions, and civil litigation costs from wrongful imprisonments.⁵¹ Even the most aggressive, tough-on-crime advocates admit that the statistics prove wrongful convictions put an undue strain on state budgets.⁵² California has paid out almost 26 million dollars over the last 23 years to indemnify exonerees.⁵³ That does not factor in the

“Recidivism”. This term is problematic for exonerees, however, because they are not committing a crime again, but are merely committing a crime after imprisonment. See generally Evan J Mandery et al, *supra* note 42. That being said, for efficiency, the term will be used here to refer to an exoneree committing a crime after exoneration. This cycle illustrates the quintessential “but for” causation first-year law students are taught to seek out. See “But-For Test” (last visited 14 June 2021), online: *Legal Information Institute* <www.law.cornell.edu/wex/but-for_test> [perma.cc/2QW8-SDRX]. “But for” the wrongful conviction and imprisonment of this innocent person, this person would have never committed a crime now. For theories on why recidivism in the exoneree population happen, see “Post-exoneration Offending”, Evan J Mandery et al, *supra* note 25 (showing lack of resources leads to recidivism); Bier, *supra* note 44 (stating when innocent men know they will be punished whether or not they commit a crime; they are more apt to commit a crime); Cullen, Jonson & Nagin, *supra* note 41 (analyzing how prisons normalize and create more criminal behavior).

⁵⁰ See generally Erik Kain, “The High Cost of Wrongful Convictions” (29 June 2011), online: *Forbes*, <www.forbes.com/sites/erikkain/2011/06/29/the-high-cost-of-wrongful-convictions/#1876ee3c72ec> [perma.cc/LVL5-DDNA] (reporting on a study that found from 1989 to 2010 Illinois had 85 exonerations that cost Illinois \$214 million); Rebecca Silbert, John Hollway & Darya Larizadch, “Criminal Injustice: A Cost Analysis of Wrongful Convictions, and Failed Prosecutions in California’s Criminal Justice System” (2015), online (pdf): *Chief Just. Earl Warren Inst. L. & Pub. Pol’y* <ssrn.com/abstract=2741863> [perma.cc/W8EJ-2AY8] (finding that over 24 years, California spent \$282 million on wrongful convictions and \$120 million for incarceration alone).

⁵¹ See Jaclyn Gioiosa, “The Cost of Wrongful Convictions” (8 November 2016), online (blog): *Santa Clara University* <law.scu.edu/experiential/northern-california-innocence-project/the-cost-of-wrongful-conviction/> [perma.cc/Q8CG-GHA2].

⁵² See “The Cost of Wrongful Convictions” (9 December 2019), online: *Prison Legal News* <www.prisonlegalnews.org/news/2019/dec/9/cost-wrongful-convictions/> [perma.cc/DH9A-L3VZ].

⁵³ “Claims for Erroneously Convicted Persons (PC4900)” (last visited 19 June 2020), online: *California Victims Compensation Board* <web.archive.org/web/20200627225053/victims.ca.gov/board/pc4900.aspx> [California Victims Compensation Board, “Claims for Erroneously Convicted Persons (PC4900)”].

cost of civil suits against counties throughout California.⁵⁴ However, despite the cost to the state of compensating a person wrongfully convicted, it pales in comparison to the cost that the wrongfully convicted person has borne for the state because of their misplaced “justice.”

III. EXONERATION COMPENSATION LAWS IN CALIFORNIA

Compensation statutes allow the state to indemnify exonerees for their time served in prison. These statutes, in theory, facilitate a streamlined process for an individual who has been wrongly incarcerated to pursue a claim against the state.⁵⁵ Today, 36 states, Washington, DC, and the federal government have compensation statutes.⁵⁶ State statutes are regarded as the

⁵⁴ See Melissa Etehad, “L.A. County to Pay \$15 Million to Man Wrongly Convicted of Murder” (21 November 2017), online: *L.A. Times* <www.latimes.com/local/california/la-me-ln-frank-oconnell-settlement-20171121-story.html> [perma.cc/6AN5-3E95].

⁵⁵ Lauren C Boucher, “Advancing the Argument in Favor of State Compensation for the Erroneously Convicted and Wrongfully Incarcerated” (2007) 56:3 *Catholic U L Rev* 1069 at 1084. See also US, AB 316, *An Act to Amend Section 340.6 of the Code of Civil Procedure, and to Amend Sections 851.8, 4901, 4903, and 4904 of, and to add Section 851.86 to, the Penal Code, Relating to Wrongful Convictions*, Reg Sess, Cal, 2009, s 1 (explaining that the intent of the statute is to “remedy some of the harm caused to all factually innocent people ... and ... ease their transition back into society”).

⁵⁶ “Compensating the Wrongly Convicted” (last visited 20 December 2020) online: *Innocence Project* <www.innocenceproject.org/compensating-wrongly-convicted/> [perma.cc/HG2E-XYN6]. Of these 14, one state has pending legislation: US, HB 7086, *Enables Innocent Persons Who Have Been Wrongfully Convicted of a Crime to Petition the Presiding Justice of the Superior Court for an Award of Compensation and Damages*, Reg Sess, RI 2020. Of the remaining 13 states, seven have had bills in their legislatures that have failed, US, HB 118, *An Act Relating to Compensation for Wrongful Conviction and Imprisonment*, Reg Sess, Alaska 2017; US, SB 1359, *Amending Title 31, Arizona Revised Statutes, by Adding Chapter 6: Relating to Criminal Convictions*, Reg Sess, Ariz 2019; US, HB 196, *An Act to Amend Title 10 of the Delaware Code Relating to the Delaware Wrongful Imprisonment Compensation Act*, Reg Sess, Del 2019; US, HB 172, *Compensation of Persons Wrongfully Convicted and Imprisoned*, Reg Sess, Ga 2019; US, HB 267, *Relates to Wrongful Incarceration for Certain Wrongful Imprisonment*, Reg Sess, N Mex 1997; US, HB 1885, *Provides for the Payment of Damages to Innocent Persons who were wrongly Convicted*, Reg Sess, Pa 2013; US, HB 3303, *To Amend the Code of Laws Of South Carolina, 1976, by Adding Article 22 to Chapter 13, Title 24 so as to Provide that Certain Persons who Have Been Wrongfully Convicted of and Imprisoned for a Crime May Recover the Monetary Value of the Loss Sustained Through the Wrongful Conviction and Imprisonment*, Reg Sess, SC 2019. This leaves the last six states — Arkansas, Kentucky, North Dakota, Oregon, South Dakota, and Wyoming — showing no legislative movement on the topic.

most equitable avenue for compensation in comparison to lawsuits and private bills.⁵⁷ However, a state has the authority to write a statute in whatever way it wants, often excluding most people they purportedly sought to help.⁵⁸ This has been the case in California.

The first exoneration law in California was passed and enacted in 1913.⁵⁹ This legislation was proof that over the years, minds had changed from the time of Berdue's conviction on who should bear the burden of society's mistake in wrongfully convicting someone. The 1913 statute, later to become *Penal Code Section 4900*, provided that a person could make a claim for compensation as long as the person: (1) was wrongfully convicted of a felony; (2) was incarcerated in prison; (3) could show the conviction was overturned by a finding that the crime was not committed, or not committed by the one convicted, or by a pardon from the governor; and (4) could show a pecuniary injury.⁶⁰ The exoneree was required to submit a statement of facts to the California Victims Compensation Board (CalVCB) within six months of the judgement "and at least four months prior to the next meeting of the legislature of the state."⁶¹ At that point, CalVCB would set a hearing date⁶² where it would hear the exoneree's claim, as well as any opposition from the Attorney General.⁶³ This would essentially become a re-litigation of the underlying case. Except in this new compensation proceeding, CalVCB was not bound to the exonerating court's decision.⁶⁴ If CalVCB was satisfied that the crime was not done by the claimant and the claimant "did not by act or omission, intentionally or negligently, contribute to bringing about the conviction," then CalVCB could recommend that the legislature approve compensation for up to the

⁵⁷ See "Compensation for Exonerees" (11 September 2017) at 3, online (pdf): *The National Registry of Exonerations* <www.law.umich.edu/special/exoneration/Documents/Compensation%20for%20Exonerees%20Primer.pdf> [perma.cc/XV8S-JAFD] [The National Registry of Exonerations, "Compensation for Exonerees"].

⁵⁸ See e.g. Boucher, *supra* note 55.

⁵⁹ *An Act to Provide Indemnity to Persons Erroneously Convicted of Felonies in the State of California*, Cal Stat. ch. 165 (1913).

⁶⁰ *Ibid* at § 1.

⁶¹ *Ibid* at § 2.

⁶² *Ibid* at § 3.

⁶³ *Ibid* at § 4.

⁶⁴ *Ibid* at § 5.

sum of \$5,000.⁶⁵ Exoneration alone is a massive feat of litigation, and, in turn, this process for compensation should have been easy. In reality, however, that was not the case.

The first known compensation claim was filed for a crime committed in 1928.⁶⁶ Mike Garvey, Harvey Leshner, and Phil Rohan were convicted of murder and sentenced to life in prison.⁶⁷ They were convicted on the evidence of three witnesses.⁶⁸ One witness, who was not at the crime scene, claimed Leshner had confessed to him.⁶⁹ Leshner was the only reason his acquaintances Garvey and Rohan were linked to the crime.⁷⁰ After the conviction, that witness recanted, explaining he was too drunk to remember the night the confession was made, and that police had threatened to charge him with the murder if he did not testify.⁷¹ The other witnesses were found to be uncredible by the exonerating court.⁷² Alibis came forward for the convicted men for the night of the crime, and the fingerprints at the crime scene did not match any of the convicted.⁷³ The convictions of all three men were overturned in 1930 after they spent two years and eight months in prison.⁷⁴ All three men applied for compensation under the 1913 statute; they were the first – on record – to ever apply.⁷⁵ CalVCB denied their claims ruling on the basis that the evidence presented at the original trial was not “erroneous.”⁷⁶ Unsatisfied with the ruling, the men applied for a rehearing.⁷⁷ At the rehearing, Leshner and Garvey’s claims were denied.⁷⁸ CalVCB explained that Leshner and Garvey were “men of such

⁶⁵ *Ibid.* \$5,000 in 1913 is equivalent to \$135,957.07 in 2021. “Value of \$5,000 from 1913 to 2021” (last visited 14 June 2021), online: *CPI Inflation Calculator*, <www.in2013dollars.com/us/inflation/1913?amount=5000> [perma.cc/T2SL-VYRZ].

⁶⁶ Damon McLean, “Mike Garvey” (last visited 14 June 2020), online: *The National Registry of Exonerations* <www.law.umich.edu/special/exoneration/Pages/casedetailpre1989.aspx?caseid=11> [perma.cc/J6JA-T8JP].

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

unsavory character” and that CalVCB was not satisfied that the men did not contribute in some way to their conviction by past acts – yet CalVCB gave no other evidence for this finding.⁷⁹ Rohan, however, was awarded \$1,692⁸⁰ – same crime, same evidence, same conviction, same time served, but totally different compensation rulings.⁸¹

California’s compensation statute was amended in 1931.⁸² The amendment to s. 1 simply provided that a pardon by the governor would be considered for indemnification only when a crime was not committed or not committed by the one convicted.⁸³ The amendment to s. 5 clarified that the board of control was to give recommendations and conclusions to the legislature, as well as a monetary amount under \$5,000⁸⁴ if approved.⁸⁵

Walter Evans and Miles Ledbetter were successful under this amended statute.⁸⁶ In 1928, Evans and Ledbetter were detectives with the Los Angeles Police Department (LAPD).⁸⁷ They were convicted of taking bribes from bootleggers and sentenced to one to 14 years in prison.⁸⁸ After the conviction, the LAPD continued to investigate and found new evidence to exonerate Evans and Ledbetter.⁸⁹ In light of the new evidence, the Governor gave them full and unconditional pardons.⁹⁰ They applied for

⁷⁹ *Ibid.*

⁸⁰ *Ibid.* \$1692 in 1930 is equivalent to \$26,365.72 in 2021. “Value of \$1,692 from 1930 to 2021” (last visited 14 June 2021), online: *CPI Inflation Calculator* <www.in2013dollars.com/us/inflation/1930?amount=1692> [perma.cc/37J6-SNX9].

⁸¹ McLean, *supra* note 66.

⁸² *An act to amend sections 1 and 5 of an act entitled ‘[a]n act to provide indemnity to persons erroneously convicted of felonies in the State of California.’ [A]pproved May 24, 1913, relating to the indemnification of persons erroneously convicted*, Cal Stat. ch. 775 (1931) [1931 Bill].

⁸³ *Ibid.* at § 1.

⁸⁴ In 1931, \$5,000 was equivalent to \$85,601.64 in 2021. “Value of \$5,000 from 1931 to 2021” (last visited 14 June 2021), online: *CPI Inflation Calculator* <www.in2013dollars.com/us/inflation/1931?amount=5000> [perma.cc/TG7K-R64G].

⁸⁵ 1931 Bill, *supra* note 82 at § 5. Reading the plain language of the amendment it is unclear what actually was changed other than the language of the statute now provided that CalVCB would give “recommendations and conclusions” to the Legislature.

⁸⁶ Meghan Barrett Cousino, “Miles H. Ledbetter” (last visited 19 June 2020), online: *The National Registry of Exonerations* <www.law.umich.edu/special/exoneration/Pages/case_detailpre1989.aspx?caseid=189> [perma.cc/N4S9-7ZSB].

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

compensation under the California Statute, and each of them received “several thousand dollars.”⁹¹

The next known claims were not until the 1950s.⁹² In 1953, Frank Hamlin was identified by a store clerk in San Francisco as a jewelry thief.⁹³ Hamlin insisted he was not in San Francisco the day of the robbery.⁹⁴ Based on the positive identifications by the store clerk and his assistant, Hamlin was convicted of the crime.⁹⁵ He was sentenced to five years to life in prison.⁹⁶ A year later, another man was arrested for a string of burglaries in northern California.⁹⁷ During his interrogation, the man confessed to the 1953 robbery in San Francisco.⁹⁸ In response to this new evidence, the Governor gave Hamlin a full and unconditional pardon.⁹⁹ Hamlin filed for compensation with the state and received \$5,000.¹⁰⁰

The last person to receive compensation under the amended 1931 statute was John Fry in 1959.¹⁰¹ Fry’s common-law wife, Elvira Hay, was found dead in a bathtub at the Venice Hotel.¹⁰² Fry, who had been seen fighting with her the night before, was blamed for the crime.¹⁰³ Stating he was too drunk to remember what happened that night, he confessed to manslaughter out of fear of being charged with a more serious charge.¹⁰⁴ Fry was sentenced to one to ten years in prison.¹⁰⁵ The next year, a janitor at the Venice Hotel turned himself in after killing another person in the

⁹¹ *Ibid.*

⁹² The National Registry of Exonerations, “Exonerations Before 1989”, *supra* note 20.

⁹³ Meghan Barrett Cousino, “Franklin Hamlin” (last visited 19 June 2020), online: *The National Registry of Exonerations* <www.law.umich.edu/special/exoneration/Pages/casedetailpre1989.aspx?caseid=13> [perma.cc/G7P2-EYT5].

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.* In 1953, \$5,000 was equivalent to \$50,411.05 in 2021. “Value of \$5,000 from 1953 to 2021” (last visited 14 June 2021), online: *CPI Inflation Calculator* <www.in2013dollars.com/us/inflation/1953?amount=5000> [perma.cc/387C-UAHB].

¹⁰¹ The National Registry of Exonerations, “Exonerations Before 1989”, *supra* note 20.

¹⁰² *Ibid.*

¹⁰³ Meghan Barrett Cousino, “John Fry” (last visited 21 June 2020), online: *The National Registry of Exonerations* <www.law.umich.edu/special/exoneration/Pages/casedetailpre1989.aspx?caseid=108> [perma.cc/49RV-3DW3].

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

exact same way as Hay.¹⁰⁶ He then confessed to killing Hay a year earlier.¹⁰⁷ In light of this new evidence, Fry was pardoned by the governor and released from prison.¹⁰⁸ He was able to receive compensation from the state in the amount of \$3,000.¹⁰⁹

The next amendment was effectuated in 1969.¹¹⁰ This increased the amount an exoneree could collect from the 1913 maximum of \$5,000 to \$10,000.¹¹¹ There is no recording of a claim under this new statute on the Registry or the CalVCB website until 1997.¹¹² Although there were not many exonerees making claims for compensation under the statute, civil lawsuits in tort and for civil rights violations were pursued in more cases during this time period.¹¹³ The exonerees sued municipalities, prosecutors, and defence attorneys.¹¹⁴ They sued under false imprisonment, prosecutorial misconduct, and malpractice.¹¹⁵ During this time, the California case of *Imbler v Patchmen* went all the way to the U.S. Supreme Court, cementing prosecutorial immunity into the foundation of the modern Court's immunity doctrines.¹¹⁶ From 1969 to 1986, the amounts for which exonerees sued were anywhere from \$17,000 to \$1.4 million.¹¹⁷

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.* In 1959, \$3,000 was equivalent to \$30,246.05 in 2021. "Value of \$3,000 from 1959 to 2021" (last visited 14 June 2021), online: *CPI Inflation Calculator* <www.in2013dollars.com/us/inflation/1959?amount=3000> [perma.cc/8HW2-HL4L].

¹¹⁰ *An Act to Amend Section 4904 of the Penal Code, relating to Damages for Wrongful Imprisonment*, Cal Stat. ch. 704 (1969) (re wrongful imprisonment: damages. Increases from \$5,000 to \$10,000 the amount which may be recommended to Legislature by the Board of Control, to indemnify individual who was erroneously convicted of and imprisoned for a crime he did not commit.)

¹¹¹ *Ibid.* In 1969, \$10,000 was equivalent to \$ 73,350.14 in 2021. "Value of \$10,000 from 1969 to 2021" (last visited 14 June 2021), online: *CPI Inflation Calculator* <www.in2013dollars.com/us/inflation/1969?amount=10000> [perma.cc/88WJ-TB8E].

¹¹² California Victims Compensation Board, "Claims for Erroneously Convicted Persons (PC4900)", *supra* note 53.

¹¹³ The National Registry of Exonerations, "Exonerations Before 1989", *supra* note 20.

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ 424 US 409 (1976).

¹¹⁷ The National Registry of Exonerations, "Exonerations Before 1989", *supra* note 20 (showing little is known of the actual amounts collected because many were confidential settlements and even those that were not confidential nothing is known about what was collected from the settlement).

The first and only person documented to claim the \$10,000 offered by statute was Kevin Lee Green in 1997.¹¹⁸ In 1979, Dianna Green, Kevin’s pregnant wife, was struck in the head, losing the ability to communicate.¹¹⁹ When she got to the hospital, the baby’s fetal heart tones appeared to be fine, but later that day, they could not be detected.¹²⁰ The baby was declared stillborn.¹²¹ A medical exam found spermatozoa in Dianna.¹²² Kevin testified that when the attack occurred, he was at a hamburger stand to get food.¹²³ Dianna was the only witness to the crime and suffered amnesia.¹²⁴ Kevin was convicted on Diana’s testimony and the testimony of mutual friends who said Kevin and Dianna had a volatile relationship.¹²⁵ He was sentenced in 1980 to 15 years to life in prison.¹²⁶ Sixteen years later, the spermatozoa found on Dianna was run through a DNA database and matched to a felon known as the “Bedroom Basher.”¹²⁷ The police were able to secure a confession, and Kevin was exonerated and released.¹²⁸ In 1997, Kevin filed a claim with CalVCB and collected the maximum \$10,000 allowed by statute.¹²⁹ The Governor awarded Green an additional \$620,000 in 1999 for the time he spent wrongly incarcerated.¹³⁰

The 2000 Legislative session saw another amendment to the

¹¹⁸ “Kevin Green” (last visited 30 June 2020), online (pdf): *California Victim Compensation Board* < web.archive.org/web/20200630055126/https://victims.ca.gov/docs/pc4900/PC4900-Approved-Green.pdf?2019-06-27> (displaying documents of claims for compensation for Kevin Green) [California Victim Compensation Board “Kevin Green”].

¹¹⁹ “Kevin Green” (last visited 19 June 2020), online: *Innocence Project* <www.innocenceproject.org/cases/kevin-green/> [perma.cc/TKT6-ZHA7] [Innocence Project, “Kevin Green”].

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ California Victim Compensation Board “Kevin Green”, *supra* note 118. In 1997, \$10,000 was equivalent to \$16,772.27 in 2021. See “Value of \$10,000 from 1997 to 2021” (last visited 14 June 2021), online: *CPI Inflation Calculator* <www.in2013dollars.com/us/inflation/1997?amount=10000> [perma.cc/E2H8-SRR9].

¹³⁰ Innocence project, “Kevin Green”, *supra* note 119.

compensation statute, *Penal Code Sections 4900*.¹³¹ This amendment raised the amount an exoneree could be granted from a maximum of \$10,000 to a time-based approach, granting \$100 per day for every day of wrongful incarceration.¹³²

The first person to be granted a claim under this new amendment was Frederick Renee Daye.¹³³ In 1984, a woman was grabbed by two men while walking to her car.¹³⁴ She was pushed into the car, beaten, and raped.¹³⁵ She was then pushed out of the vehicle as the assailants drove off.¹³⁶ Daye was identified by the victim in a photo line-up and subsequently identified in an in-person lineup.¹³⁷ At trial, Daye was again identified, and a forensic analyst said the forensic evidence collected was “likely” Daye’s.¹³⁸ Daye was convicted and sentenced to life in prison.¹³⁹ In 1990, his co-defendant made a statement that Daye was not involved.¹⁴⁰ Daye was able to secure DNA testing in 1994.¹⁴¹ That testing affirmatively excluded Daye from the crime.¹⁴² His conviction was thus overturned.¹⁴³ Daye’s claim for

¹³¹ US, AB 1799, *An act to amend Section 4904 of the Penal Code, and to add Section 17157 to the Revenue and Taxation Code, relating to indemnification*, Reg Sess, Cal, 2000 (amending PC 4904 to remove the \$10,000 limit and change the collection to \$100 per day which will be classified as gross income to the exoneree) [2000 amend.].

¹³² *Ibid.* In 2000, \$100 was equivalent to \$156.33 in 2021. See “Value of \$100 from 2000 to 2021” (last visited 14 June 2021), online: *CPI Inflation Calculator* <www.in2013dollars.com/us/inflation/2000?amount=100> [perma.cc/C4C3-PHN5].

¹³³ “Frederick R. Daye” (last visited 30 June 2020), online (pdf): *California Victim Compensation Board* <web.archive.org/web/20200630054943/https://victims.ca.gov/docs/pc4900/PC-4900-Approved-Daye.pdf?2019-06-27> (displaying documents of claims for compensation for Frederick Daye) [California Victim Compensation Board, “Frederick R. Daye”].

¹³⁴ “Frederick Daye” (last visited 19 June 2020), online: *Innocence Project* <www.innocenceproject.org/cases/frederick-daye/> [perma.cc/6QVJ-HF8X].

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

compensation was approved in 2002 for \$386,000.¹⁴⁴ \$100 for each of the 3,860 days (over ten years) that he was incarcerated.¹⁴⁵

The \$100 per day amendment was not changed again until 2016 when it was changed to \$140 per day of wrongful incarceration.¹⁴⁶ Between 2000 and 2015, 59 exonerees made a claim for compensation to CalVCB.¹⁴⁷ Of those claims, 38 were denied while 21 were recommended by CalVCB to the Legislature to pay.¹⁴⁸ The approved and recommended claims over this period of time totalled \$8,673,800. This represents 86,738 days or 237 years of wrongful incarceration.¹⁴⁹

Claims can be denied for a variety of reasons, but denials before 2015 generally fell into four categories laid out by the statutory language.¹⁵⁰ The statute dictated that an exoneree had to prove by a preponderance of the evidence that the claimant was innocent of the crime.¹⁵¹ The exoneree had to also prove that the exoneree's own behaviour did not contribute to the conviction.¹⁵² The claimant had a statute of limitations of six months from when the conviction was overturned to file a claim, and the claimant had to show a pecuniary loss to collect.¹⁵³

The California Statute requires CalVCB to make a separate ruling on

¹⁴⁴ California Victim Compensation Board, "Frederick R. Daye", *supra* note 133. In 2002, \$386,000 was equivalent to \$582,083.69 in 2021. See "Value of \$386,000 from 2002 to 2021" (last visited 15 June 2021), online: *CPI Inflation Calculator* <www.in2013dollars.com/us/inflation/2002?amount=389000> [perma.cc/EN2D-UHZH].

¹⁴⁵ "Frederick R. Daye" (last visited 19 June 2020), online: *The National Registry of Exonerations* <www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3163> [perma.cc/66UF-FHZX].

¹⁴⁶ US, SB 836 *Section 4904 of the Penal Code Amended*, Reg Sess, Cal, 2016.

¹⁴⁷ See CalVCB, *supra* note 53. There were more the fifty-two claims during this time period however the claims that were not claims from an exoneration I did not include in this reporting. Those claims were generally improperly filed because they were either not a felony, did not result in imprisonment, or the conviction was not overturned.

¹⁴⁸ CalVCB, *supra* note 53. While all the raw data was supplied by the CalVCB website all the statistical analysis is the authors own work.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

¹⁵¹ US, AB 316 *Section 4903 of the Penal Code Amended*, Reg Sess, Cal, 2009.*Ibid.*

¹⁵² *Ibid.*

¹⁵³ US, SB 1852 *Section 4900 of the Penal Code Amended*, Reg Sess, Cal, 2006.; see also *Tennison v. Victim Compensation and Government Claims Board*, 152 Cal. App. (4th) 1164 (2006).

the facts of the case to decide if an exoneree qualifies for compensation.¹⁵⁴ The separate ruling puts the burden of proof on the exoneree to show that they are innocent of the crime by a preponderance of the evidence.¹⁵⁵ This showing is made before CalVCB – usually a panel of three – and requires new briefing and argument on the case with more relaxed evidentiary rules.¹⁵⁶ Thus, where evidence considered improper or prejudicial towards the defendant at trial is excluded, it is now allowed to be entered into evidence at these hearings.¹⁵⁷

This separate agency ruling is problematic because it calls into question the extent of deference that the agency gives to the exonerating court's decision in the compensation ruling.¹⁵⁸ The deference question is an important one and one that has been troubling for California exonerees during this iteration of the statute. The original exonerating court pored through the record, often with an inmate who has been convicted of a heinous crime standing before it.¹⁵⁹ In the face of that prejudicial conviction, the exonerating court finds the evidence does not support the conviction, and with that new ruling, an inmate is released – an inmate who was once thought of as a dangerous risk to society.¹⁶⁰ Without deference, a new set of eyes can make a wholly inconsistent ruling on the same facts for the sole purpose of not compensating the exoneree for the conviction that the court has already ruled was wrong.¹⁶¹ In the case of the 59 exonerees who made claims between 2000 and 2015, CalVCB's rulings

¹⁵⁴ Justin Brooks & Alexander Simpson, "Find the Cost of Freedom: The State of Wrongful Conviction Compensation Statutes Across the Country and the Strange Legal Odyssey of Timothy Atkins" (2012) 49:3 San Diego L Rev 627 at 640.

¹⁵⁵ *Ibid.* "Preponderance of the evidence" means there is a greater than 50% chance the claim is true. "Preponderance of the Evidence" (last visited 5 February 2020), online: *Legal Information Institute* <www.law.cornell.edu/wex/preponderance_of_the_evidence> [perma.cc/3GUZ-JHMA].

¹⁵⁶ California Victims Compensation Board, "Claims for Erroneously Convicted Persons (PC4900)", *supra* note 53.

¹⁵⁷ *Ibid.*

¹⁵⁸ Brooks & Simpson, *supra* note 154 at 645.

¹⁵⁹ *Ibid* at 644.

¹⁶⁰ *Ibid.* "Even though the original superior court judge made findings that Tim [Atkins] was innocent and that his habeas filings and evidence presented at the habeas hearing completely undermined the prosecution's case and pointed unerringly to innocence, the compensation board found that Tim had not met his burden of proof."

¹⁶¹ *Ibid.*

were inconsistent with the exonerating court 64% of the time.¹⁶²

A further problem is the three-person panel's makeup and the trends that emerge during a single panels tenure.¹⁶³ From 2000 through 2006, 21 claims were filed.¹⁶⁴ Of those 21 claims, eight were approved and 13 were denied.¹⁶⁵ Among those denied were Antoine Goff and John J. Tennison, who, while the exonerating court made a ruling that the men were factually innocent, CalVCB ruled "findings of 'factual innocence,' . . . are not binding and [are] inapplicable to the instant proceeding."¹⁶⁶ CalVCB then ruled that they did not find the men had proven their innocence by a preponderance of the evidence and denied their claims.¹⁶⁷ In 2009, the Legislature fixed this particular inconsistency, amending *Penal Code Section 4900* to expressly say that a finding of "factual innocence" by the exonerating court is binding on CalVCB.¹⁶⁸

Looking at the time period from 2007 through 2012, 23 claims were filed, and only two were recommended for compensation while the other 21 were denied.¹⁶⁹ One of the two exonerees to get a recommendation for compensation during this six-year period was David Allen Jones.¹⁷⁰ In 1992, Jones was charged with four murders.¹⁷¹ He had an IQ of 62, was classified as an intellectually disabled person, and confessed to the murders after

¹⁶² California Victims Compensation Board, "Claims for Erroneously Convicted Persons (PC4900)", *supra* note 53. Those 64% are based on the cases where the compensation board made factual rulings on the merits of the case different from the factual rulings of the exonerating court. The other 36% primarily were exonerated on legal grounds without the exonerating court ruling on the merits.

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*

¹⁶⁶ "Antoine Goff" (last visited June 20, 2020), online (pdf): *California Victim Compensation Board* <web.archive.org/web/20200630080740/https://victims.ca.gov/docs/pc4900/PC-4900-Denied-Tennison-and-Goff.pdf?2019-06-27> (displaying documents of claims for compensation for Antoine Goff and John J. Tennison).

¹⁶⁷ *Ibid.*

¹⁶⁸ US, AB 316 *Section 4903 of the Penal Code Amended*, Reg Sess, Cal, 2009.

¹⁶⁹ "David Jones" (last visited 19 June 2020), online (pdf): *California Victim Compensation Board* <web.archive.org/web/20200630055212/https://victims.ca.gov/docs/pc4900/PC-4900-Approved-Jones.pdf?2019-06-27> (displaying documents of claims for compensation for David Jones) [California Victim Compensation Board, "David Jones"].

¹⁷⁰ See California Victims Compensation Board, "Claims for Erroneously Convicted Persons (PC4900)", *supra* note 53.

¹⁷¹ *Ibid.*

detectives took him to the four crime scenes.¹⁷² There were no witnesses to the crimes.¹⁷³ The perpetrator's blood, however, was found at the scene.¹⁷⁴ A serologist testified that the perpetrator had type A blood.¹⁷⁵ Jones had type O blood.¹⁷⁶ This was a discrepancy pointed out to the jury by the defence.¹⁷⁷ Regardless, Jones was convicted of three of the murders but acquitted of the fourth.¹⁷⁸ He was sentenced to 36 years to life in prison.¹⁷⁹ In 2004, the Post-Conviction Assistance Center was appointed to help Jones pursue post-conviction DNA testing.¹⁸⁰ There was enough genetic material from two of the crime scenes for testing, but evidence from the other two had been destroyed.¹⁸¹ The testing excluded Jones and hit on a serial killer who had been charged with ten other murders.¹⁸² Because of the signature nature of the murders, all of Jones' convictions were overturned, and he was released from prison.¹⁸³ Jones was successful in his claim for compensation and received \$74,600 - CalVCB reduced his statutory grant because he prevailed in a civil lawsuit against the police.¹⁸⁴ This reduction in the compensation was solely a decision of CalVCB; there was no statutory reasoning or precedent to decrease the compensation based on a successful civil suit.¹⁸⁵

Of the 15 claims filed from 2013 through 2015, four were denied and 11 were approved.¹⁸⁶ Richard Hendrix was one of the exonerees denied compensation.¹⁸⁷ In 2009, Hendrix had an altercation with a security guard

¹⁷² *Ibid.*

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*

¹⁸³ California Victim Compensation Board, "David Jones", *supra* note 169.

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.* While some states have written into their compensation statute that if a claimant prevails in a civil suit based on the wrongful conviction their claim will be reduced, California has no such provision.

¹⁸⁶ See California Victims Compensation Board, "Claims for Erroneously Convicted Persons (PC4900)", *supra* note 53.

¹⁸⁷ *Ibid.*

at his apartment complex.¹⁸⁸ The security guard used pepper spray on Hendrix and shot at him before calling the police.¹⁸⁹ When the police got there, they found Hendrix.¹⁹⁰ It was dark, and Hendrix was uncooperative.¹⁹¹ He was eventually subdued and charged with “attempting by means of threats and violence to deter an officer from performing his duties.”¹⁹² The first jury deadlocked, and a mistrial was called.¹⁹³ At the second trial, the judge allowed evidence of two prior occasions where Hendrix resisted arrest.¹⁹⁴ After the second trial, Hendrix was convicted and sentenced to six years in prison.¹⁹⁵ Hendrix appealed.¹⁹⁶ The appellate court found an abuse of discretion by allowing evidence of the prior conduct into the trial and overturned the conviction.¹⁹⁷ The District Attorney’s office decided to drop the case, and Hendrix was released.¹⁹⁸ Hendrix applied for compensation for his 1,136 days of wrongful incarceration equaling \$113,600.¹⁹⁹ CalVCB ruled that Hendrix had not proven by a preponderance of the evidence that he did not unlawfully use force to resist Officer Mosely and denied the claim.²⁰⁰ Essentially, in this case, CalVCB put themselves in the place of the jury and relied on the evidence the overturning court ruled prejudicial to come to their conclusion.²⁰¹ There is a fundamental problem with a ruling such as this in that it is not made to keep society safer, as is the purpose of our normal criminal justice process. This ruling is solely to keep the state from having to pay for what it already acknowledged as a miscarriage of justice. That is, in essence, the picture of injustice.

¹⁸⁸ “Richard Hendrix” (last visited 20 June 2020), online (pdf): *California Victim Compensation Board* <web.archive.org/web/20200630080828/https://victims.ca.gov/docs/pc4900/PC-4900-Denied-Hendrix.pdf?2019-06-27> (displaying documents of claims for compensation for David Jones).

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

¹⁹¹ *Ibid.*

¹⁹² *Ibid.*

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*

Another statutory bar to compensation involves the statute of limitations for filing claims, access to the compensation system, and other timing issues.²⁰² A statute of limitations balances the competing interest of giving enough time to the exoneree to file a claim and giving the state protection from an onslaught of delayed claims that undermine its ability to plan for budgetary liabilities.²⁰³

These time limits, which start to run at the moment the conviction is overturned, can become a problem to access relief.²⁰⁴ An exoneree struggling with re-entry into life after incarceration may be unable to navigate the legal system for the claim in an efficient and timely manner.²⁰⁵ This difficulty is exacerbated by the fact that the legal team that has been involved up to this point in the criminal appellate work of exoneration generally does not specialize in the legal area of civil and administrative actions under which compensation claims fall.²⁰⁶

To add further complication, because CalVCB is outside the normal civil courts, the process is not governed by the California Rules of Civil Procedure.²⁰⁷ Under the 2010 and earlier versions of *Penal Code Section 4900*, this meant that while the claim had to be filed within the statute of limitations (six months in California), the government was not under any such time constraint to file an answer.²⁰⁸ This issue was particularly apparent in the case of Timothy Atkins.²⁰⁹ Charged with murder in 1985, Atkins was exonerated in 2007 and filed a timely claim for compensation.²¹⁰

²⁰² See Daniel S Kahn, “Presumed Guilty until Proven Innocent: The Burden of Proof in Wrongful Conviction Claims Under State Compensation Statutes” (2010) 44:1 U Michigan J L Reform 123 at 144.

²⁰³ *Ibid.*

²⁰⁴ See Jessica R Lonergan, “Protecting the Innocent: A Model for Comprehensive, Individualized Compensation of the Exonerated” (2008) 11:2 New York University J Legislation and Public Policy 405 at 419-20.

²⁰⁵ See generally Elina Tetelbaum, “Remedying a Lose-Lose Situation: How ‘No Win, No Fee’ Can Incentivize Post-Conviction Relief for the Wrongly Convicted” (2010) 9:2 Connecticut Public Interest L J 301.

²⁰⁶ *Ibid.*

²⁰⁷ See Brooks & Simpson, *supra* note 154 at 634.

²⁰⁸ *Ibid.*

²⁰⁹ Maurice Possley, “Timothy Atkins” (last visited 20 June 2020), online: *The National Registry of Exonerations* <www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3001> [perma.cc/VR7X-HW3B] [Possley, “Timothy Atkins”].

²¹⁰ *Ibid.*

The Attorney General did not submit a written reply brief until two years later.²¹¹ This lack of timely process undermined the whole aim for judicial efficiency and budgetary foresight while leaving the exoneree languishing in judicial limbo.²¹²

In 2016, the Legislature amended *Penal Code Section 4900* once again.²¹³ One of the amendments was changing the six-month statute of limitations to two years.²¹⁴ The amendment also included that the Attorney General had 60 days from the time the claim was submitted to respond or apply for an extension for good cause.²¹⁵ This change provided a more compassionate timeframe for an exoneree re-entering society. Another change was that the compensation amount was raised to \$140 per day for each day of wrongful incarceration.²¹⁶

With all the positive changes in the 2016 amendments, *Penal Code Section 4900* still maintained some problematic disqualifiers. One such disqualifier is the statute precludes compensation for a claimant whose behaviour is deemed to have contributed to the wrongful conviction.²¹⁷ This contributing behaviour can happen before the crime, during the arrest, or prior to conviction.²¹⁸ These behaviours can include prior criminal acts,²¹⁹ false confessions,²²⁰ fleeing from police,²²¹ or entering a

²¹¹ See Brooks & Simpson, *supra* note 154 at 634.

²¹² *Ibid.*

²¹³ US, SB 836 *Penal Code Amended*, Reg Sess, Cal, 2016, § 251-53.

²¹⁴ *Ibid* at § 251.

²¹⁵ *Ibid* at § 252.

²¹⁶ *Ibid* at § 253.

²¹⁷ See Robert J Norris, “Assessing Compensation Statutes for the Wrongly Convicted” (2012) 23:3 *Crim Justice Policy Rev* 352 at 359. See also Brooks & Simpson, *supra* note 138 at 649.

²¹⁸ *Ibid.*

²¹⁹ See “Kelly Carrington” (last visited 30 June 2020), online (pdf): *California Victim Compensation Board* <web.archive.org/web/20200630075930/https://victims.ca.gov/docs/pc4900/PC4900-Denied-Carrington.pdf?2019-06-27> (displaying documents of claims for compensation for Kelly Carrington).

²²⁰ “Facts and Figures” (last visited 20 January 2020), online: *Falseconfessions.org* <falseconfessions.org/fact-sheet/> [perma.cc/S44U-PNNG] (“[a]ccording to the Innocence Project, 25% of wrongful convictions overturned by DNA evidence involve a false confession and many of those false confessions actually contained details that match the crime-details that were not made to the public”).

²²¹ See Brooks & Simpson, *supra* note 154 at 650.

guilty plea.²²²

Kelly Carrington was convicted of possession of a controlled substance.²²³ He pled guilty and was sentenced to 16 months in prison.²²⁴ Carrington's conviction was overturned on an unopposed writ of *habeas corpus* alleging police misconduct and the planting of evidence.²²⁵ He filed a timely claim for compensation.²²⁶ CalVCB ruled that a granted writ of *habeas corpus* is not a ruling on innocence and that "Mr. Carrington has a number of prior convictions involving moral turpitude."²²⁷ These convictions cast doubt on Mr. Carrington's credibility."²²⁸

Back to the case of Timothy Atkins, CalVCB found he "contributed" to his conviction because he ran when the police first approached him.²²⁹ CalVCB found this even though Atkins's testimony was ruled credible, and Atkins testified that he ran because he was a teenager on probation and was worried about interaction with the police.²³⁰ This flight was not brought up at trial and had no bearing on his actual conviction, yet CalVCB felt it was enough of a contributing factor to deny Atkins compensation.²³¹

In 2009, Connie R., who had a prior sex crime conviction in another state and was arrested for not registering as a sex offender in California, pled guilty to the offence.²³² She was sentenced to three years in prison.²³³ A year later, the appellate court overturned the conviction because Connie was not required to register in California.²³⁴ CalVCB denied her claim

²²² See "Innocents Who Plead Guilty" (24 November 2015), online (pdf): *The National Registry of Exonerations* <www.law.umich.edu/special/exoneration/Documents/NRE.Guilty.Plea.Article1.pdf> [perma.cc/S7BH-PLV2] (explaining that 15% of known exonerees pled guilty).

²²³ California Victim Compensation Board, "Kelly Carrington", *supra* note 219.

²²⁴ *Ibid.*

²²⁵ *Ibid.*

²²⁶ *Ibid.*

²²⁷ *Ibid.*

²²⁸ *Ibid* at 5.

²²⁹ See Brooks & Simpson, *supra* note 154 at 650.

²³⁰ *Ibid.*

²³¹ *Ibid.*

²³² "Connie R." (last visited 30 June 2020), online (pdf): *California Victim Compensation Board* <web.archive.org/web/20200630083638/https://victims.ca.gov/docs/pc4900/PC4900-Denied-Connie-R.pdf?2019-06-27> (displaying documents of claims for compensation for Connie R.).

²³³ *Ibid.*

²³⁴ *Ibid.*

because she had pled guilty and, therefore, had contributed to her conviction.²³⁵ It seems rather illogical to hold Connie responsible for not understanding she was pleading guilty to a crime that did not apply to her when the prosecutor, defence attorney, and judge were not able to ascertain this fact either.

A final bar to compensation is the lack of pecuniary evidence of damages.²³⁶ This is particularly egregious in the age where most able-bodied prisoners hold prison jobs.²³⁷ This means that the state can profit from the wrongly convicted inmate's labour and then rule that had the person been free, they would not have been gainfully employed and, therefore, will not be compensated.

Charles Holmes III was denied compensation.²³⁸ Holmes had a lengthy criminal history that required him to register as a sex offender.²³⁹ In 2005, after being released from prison on a burglary charge, he registered as an offender at the police department.²⁴⁰ A few days later, he moved, and a few days after that, he was stopped by the police and charged with not registering at the new address, as well as being under the influence of drugs and providing false information to the police.²⁴¹ He pled guilty to the charges and was sentenced to nine years in prison.²⁴² He served almost seven years of that sentence before being paroled.²⁴³ Shortly after his release, he was charged and convicted for drug possession.²⁴⁴ While in jail, Holmes discovered that as of 2005, he was no longer required to register as a sex

²³⁵ *Ibid.*

²³⁶ US, SB 836 *Section 4900 of the Penal Code Amended*, Reg Sess, Cal, 2016, s 250.

²³⁷ See US, General Accounting Office, *Prisoner Labor: Perspectives on Paying the Federal Minimum Wage* (GAO/GGD-93-98) (May 1993) at 19.

²³⁸ See e.g. "Charles Holmes III" (last visited 30 June 2020), online (pdf): *California Victim Compensation Board* < web.archive.org/web/20200630080845/https://victims.ca.gov/docs/pc4900/PC4900-Denied-Holmes.pdf?2019-06-27 > (displaying documents of claims for compensation for Charles Holmes III) [California Victim Compensation Board "Charles Holmes III"],.

²³⁹ Maurice Possley, "Charles Holmes III" (last visited 20 June 2020), online: *The National Registry of Exonerations* <www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4747> [perma.cc/4JFN-ZNJZ] [Possley, "Charles Holmes III"].

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*

²⁴² *Ibid.*

²⁴³ *Ibid.*

²⁴⁴ *Ibid.*

offender.²⁴⁵ He was thus able to get his prior conviction vacated.²⁴⁶ He applied for compensation in the amount of \$215,200 for the 2,152 days he had been imprisoned on that conviction.²⁴⁷ CalVCB put out a tentative recommendation based on his application granting him compensation.²⁴⁸ After the tentative came out, the Attorney General responded in opposition.²⁴⁹ A hearing was held, and at the conclusion, CalVCB denied Holmes' compensation.²⁵⁰ The reasoning they gave for the denial was "that given Holmes' extensive criminal history and unemployment status at the time of his arrest and currently, he has not demonstrated that he suffered any pecuniary loss as a result of his incarceration."²⁵¹ The ruling was appealed to the California Superior Court and then to the California Court of Appeal where the judgement was upheld and affirmed.²⁵²

The 2016 amendment did not clear up all the problems with *Penal Code Section 4900*, but the amendments did allow more exonerees to access justice. From 2016 to 2019, 27 exonerees filed claims for compensation. Of those 27 claims, nine were denied and 18 were granted.²⁵³

Notably, among the exonerees granted compensation during this period was the aforementioned Timothy Atkins.²⁵⁴ Mr. Atkins had a long road to justice.²⁵⁵ Many of *Penal Code Section 4900's* problematic disqualifiers were the reason his compensation took so long to be granted. In 1985, Vicente Gonzalez and his wife were carjacked by two men on New Year's Eve.²⁵⁶ Vincente was murdered.²⁵⁷ A witness came forward alleging she heard a man bragging about the crime.²⁵⁸ With Atkins as the accomplice

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.*

²⁴⁷ *Ibid.*

²⁴⁸ California Victim Compensation Board, "Charles Holmes III", *supra* note 238.

²⁴⁹ *Ibid.*

²⁵⁰ *Ibid.*

²⁵¹ *Ibid.*

²⁵² Possley, "Charles Holmes III", *supra* note 239.

²⁵³ See California Victims Compensation Board, "Claims for Erroneously Convicted Persons (PC4900)", *supra* note 53.

²⁵⁴ *Ibid.*

²⁵⁵ Possley, "Timothy Atkins", *supra* note 209.

²⁵⁶ *Ibid.*

²⁵⁷ *Ibid.*

²⁵⁸ *Ibid.*

and another man, Evans, alleged to be the gunman, they were arrested.²⁵⁹ Both men were allegedly assaulted in their jail cells because gang members believed they would blame someone else for the crime.²⁶⁰ Evans was beaten to death.²⁶¹ Atkins went to trial in 1987, was convicted, and sentenced to 32 years to life.²⁶² In 2007, Atkins' writ of *habeas corpus* was granted after the star witness recanted and admitted that the police had threatened her with a narcotics charge if she did not testify.²⁶³ Atkins was released, and he filed a claim with CalVCB.²⁶⁴

When Atkins filed his claim in 2007, the attorney general, who was required to file a reply, did not respond until 2009.²⁶⁵ Shortly after the answer was filed, a hearing was held.²⁶⁶ That claim was denied.²⁶⁷ CalVCB ruled that Atkins had "not met the statutory requirements to receive compensation."²⁶⁸ CalVCB held that he did not show by a preponderance of the evidence that he was innocent and that his flight from the police was a contributing factor to his conviction.²⁶⁹

Undeterred, Atkins went back into court on a writ of *habeas corpus* to be granted a finding of "factual innocence."²⁷⁰ In 2014, he was granted the ruling of factual innocence, and he once again applied for compensation from CalVCB.²⁷¹ Astonishingly, CalVCB denied Atkins claim once again. It stated that since his exoneration occurred in 2007, before the 2010 amendment to *Penal Code Section 4900* making a factual innocence ruling binding on CalVCB, they were not bound to the factual innocence ruling

²⁵⁹ *Ibid.*

²⁶⁰ *Ibid.*

²⁶¹ *Ibid.*

²⁶² *Ibid.*

²⁶³ *Ibid.*

²⁶⁴ *Ibid.*

²⁶⁵ See Brooks & Simpson, *supra* note 154 at 634.

²⁶⁶ "Timothy Atkins-denied petition" (last visited 30 June 2020), online (pdf): *California Victim Compensation Board* <web.archive.org/web/20200630065756/https://victims.ca.gov/docs/pc4900/PC-4900-Denied-Atkins.pdf?2019-06-27> (displaying documents of claims Denied for compensation for Timothy Atkins) [California Victim Compensation Board, "Timothy Atkins-denied petition"].

²⁶⁷ Possley, "Timothy Atkins", *supra* note 209.

²⁶⁸ California Victim Compensation Board, "Timothy Atkins-denied petition", *supra* note 266 at 1.

²⁶⁹ See Brooks & Simpson, *supra* note 154 at 650.

²⁷⁰ Possley, "Timothy Atkins", *supra* note 209.

²⁷¹ *Ibid.*

as it applied to his 2007 case.²⁷²

Atkins appealed the decision in superior court and won in 2017.²⁷³ The State appealed.²⁷⁴ In October 2018, the judgement in favour of Atkins was upheld.²⁷⁵ However, the courts did not specify whether the pre-2016 rate of \$100 per day – which would have applied at the time of both previous compensation hearings and would equal \$713,700 – or the current rate of \$140 per day – equaling \$1,129,660 – would be applied to Atkins' appeal.²⁷⁶ In 2019, 34 years after the murder, 32 years after his wrongful conviction, 12 years after being released from prison, and five years after being given a ruling of factual innocence, Timothy Atkins was finally given his compensation of \$1,129,660 at the \$140 per day amount for the 8,069 days he spent wrongfully imprisoned.²⁷⁷

The most current amendment to *Penal Code Section 4900* went into effect on January 1, 2020.²⁷⁸ This amendment changed the statute of limitations to ten years from the time the conviction is overturned.²⁷⁹ It further provides that “the factual findings and credibility determinations establishing the court’s basis for granting a writ of habeas corpus, a motion for new trial... or... a certificate of factual innocence... shall be binding on the Attorney General, the factfinder, and the board.”²⁸⁰ Lastly, it adds a section stating that if an exoneree knowingly pleads “guilty with the specific intent to protect another from the underlying conviction” they will be denied compensation.²⁸¹ In the first quarter of 2020, five people – all with

²⁷² California Victim Compensation Board, “Timothy Atkins-denied petition”, *supra* note 266 at 19.

²⁷³ Possley, “Timothy Atkins”, *supra* note 209.

²⁷⁴ *Ibid.*

²⁷⁵ *Ibid.*

²⁷⁶ “Timothy Atkins-granted petition” (last visited 20 June 2020), online (pdf): *California Victim Compensation Board* <web.archive.org/web/20200630054417/https://victims.ca.gov/docs/pc4900/PC-4900-Approved-Atkins.pdf> (displaying documents of claims granted for compensation for Timothy Atkins). There was a discrepancy about which days of incarceration would count that was also part of the claim. As that argument was not statutorily driven it will not be expounded upon here.

²⁷⁷ Possley, “Timothy Atkins”, *supra* note 209.

²⁷⁸ US, SB 269 *An act to amend Sections 1485.55, 4901, and 4903 of the Penal Code, relating to criminal procedure.*, Reg Sess, Cal, 2020, § 2–3 [2020 Amendments].

²⁷⁹ *Ibid* at § 2.

²⁸⁰ *Ibid* at § 3(b).

²⁸¹ *Ibid* at § 3(c).

rulings of factual innocence –made claims for compensation, and all five claims were granted.²⁸²

IV. CONCLUSION

Wrongful convictions and what to do about them are legal issues that have been with us throughout all of statehood. The law has evolved, albeit slowly, in favour of exonerees but with some bumps along the way. It was over 60 years from the first wrongful conviction in California until the first statute allowed exonerees compensation. There is sparse reporting on exonerations until 1989. With the advent of reporting, the number of exonerations has increased dramatically. Yet, exonerees have had widely differing results with compensation, in part due to antiquated versions of the compensation statute and what appears to be result-oriented compensation grants by CalVCB to minimize costs to the State.

All told, between 1997 and the first quarter of 2020, 93 exonerees have applied for compensation, 46 claims have been granted, and 47 claims have been denied.²⁸³ Those 46 compensated exonerees were granted a combined total of \$26,156,379 for their 208,410 days – or 571 years – they spent wrongfully incarcerated. That is only a small drop in the bucket for the more than 200 California exonerees since 1989, but it is a good start.²⁸⁴

California has come a long way from the 1851 Legislature declaring, “the innocent are wrongfully accused of a crime. This is their misfortune.”²⁸⁵ California has frequently led the way in compassionate compensation laws for the wrongly convicted, and each amendment has been an even greater improvement. However, there is still room for refinement.

One proposal for improvement would be that in cases where a crime cannot be proved to have occurred – often referred to as a no-crime case – a claimant should not have to prove “if the crime occurred then” by a preponderance of the evidence that they are innocent of the crime. Perhaps

²⁸² California Victims Compensation Board, “Claims for Erroneously Convicted Persons (PC4900)”, *supra* note 53.

²⁸³ *Ibid.* There are another 27 claims marked as denied on the CalVCB website. Those claims were not filed by exonerees. CalVCB’s earliest claim reported on the website is from 1997, and no information is currently available on claims before that time.

²⁸⁴ *Ibid.*

²⁸⁵ Anne Pachciarek, “Thomas Berdue”, *supra* note 5.

CalVCB will be bound to the lower court's factual finding as an outcome of the most recent amendment,²⁸⁶ but only time will tell.

A second proposal would be to strike the showing of pecuniary injury. It does not make sense to have a compensation scheme based on a static amount per day if CalVCB gives the same amount to a millionaire that they would give to a minimum wage employee but would then deny compensation to a homeless person because they cannot show pecuniary loss. It is even more troubling if that person, denied compensation for lack of pecuniary loss, was employed in a prison job while they were incarcerated because that would show an appropriation of the exoneree's labour that CalVCB then rules would have had no value if the person had not been incarcerated.²⁸⁷

"Compensation with money can never fully make up for these losses [exonerees endure] ... But if you don't have any money ... you can't afford medical care ... and you can't get a car, ... a job, ... [or an] education... [a]nd that's what happens to so many of these people."²⁸⁸ Never was the maxim "the delay of justice, is great injustice" more poignant than in the case of those wrongly convicted.²⁸⁹ California has done a great job of trying to right those wrongs, but the job is not done yet.

One can be sure that there will be wrongful convictions so long as there is a criminal justice system. Further, society's view of the need for justice and compensation will likely evolve, and with it, the law to compensate exonerees will follow. This is a topic whose history is not yet fully written.

²⁸⁶ 2020 Amendments, *supra* note 278.

²⁸⁷ See "Section III: The Prison Economy" (last visited 25 January 2020), online: *Prison Policy Initiative* <www.prisonpolicy.org/prisonindex/prisonlabor.html> [perma.cc/42D B-Y26P] (citing US, United States General Accounting Office, *Prisoner Labor: Perspectives on Paying the Federal Minimum Wage* (GAO/GGD-93-98) (May 1993) at 19). These jobs pay on average less than \$2/hour. See Wendy Sawyer, "How Much do Incarcerated People Earn in Each State" (10 April 2017), online: *Prison Policy Initiative* <www.prisonpolicy.org> [perma.cc/HS7L-MS2U] (reporting the average low wage as \$0.14/hour, with the average high being \$1.41/hour).

²⁸⁸ See The National Registry of Exonerations, "Compensation for Exonerees", *supra* note 57 at 1 (quoting Barry Scheck, Co-Director, The Innocence Project in *Burden on Innocence*, *Frontline*, PBS (2003)).

²⁸⁹ John Musgrave, *Another Word to the Wise, Shewing that the Delay of Justice, is great Injustice* (London: publisher not identified, 1646) at 1.