

## VI. Group Exonerations

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The 2003 Report discussed three group exonerations “of innocent defendants who were falsely convicted as a result of large scale patterns of police perjury and corruption.”<sup>115</sup>

1. *Los Angeles, California, 1999-2000.* The “Rampart Scandal” began to unravel in 1999 when authorities learned that officers in the Rampart division of the Los Angeles Police Department had routinely lied on arrest reports and in testimony, framed innocent defendants by planting guns or drugs on them, and on several occasions shot and killed or wounded unarmed suspects and innocent bystanders and planted guns on suspects after shooting them. In the aftermath of this scandal, between 100 and 150 criminal defendants had their convictions vacated and dismissed by Los Angeles County judges in late 1999 and 2000. The great majority were young Hispanic men who were believed to be gang members, and who had pled guilty to false felony gun or drug charges.
2. *Dallas, Texas, 2002.* The Dallas “Sheetrock Scandal” came to light in January of 2002. At least 80 defendants in Dallas, Texas, were falsely charged with possession of quantities of “cocaine” that turned out, when finally analyzed, to consist of powdered gypsum, the primary constituent of the building product Sheetrock. Most of the Sheetrock cases were dismissed before trial, but some innocent defendants had pled guilty and were in prison or had been deported to Mexico.
3. *Tulia, Texas, 2003.* In 1999 and 2000, 39 defendants were convicted of selling cocaine in Tulia, Texas, on the uncorroborated word of a single dishonest undercover narcotics agent. In 2003, 35 of them – all who were technically eligible – were pardoned when it was shown that the undercover officer had systematically lied about these cases, booked in evidence quantities of highly diluted cocaine from a personal stash, and charged the defendants with drug sales that had never occurred. Two additional defendants were granted writs of habeas corpus vacating their convictions, which were later dismissed.<sup>116</sup>

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<sup>115</sup> 2003 Report, *supra* note 1 at 533. The 2003 Report describes these cases as “mass exonerations,” but the term may be misleading since some of the groups involve 5 to 20 exonerations, and there may be others in that range that we have not yet identified.

<sup>116</sup> Russell D. Covey, *Mass Exoneration Data and the Causes of Wrongful Convictions* working paper (Working Paper 2011), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1881767](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1881767).

In the process of assembling the data that we report here, we have run into at least 9 additional group exonerations:

1. *Oaklyn, New Jersey, 1989-1991*. In August, 1991, Oaklyn police officer Robert Kane pleaded guilty and was sentenced to prison for falsifying the results of breathalyzer tests on drivers he stopped for drunk driving, and stealing money from their purses and wallets when he booked them. A total of 155 convictions for driving under the influence were dismissed.<sup>117</sup>
2. *Philadelphia, Pennsylvania, 1995-1998*. On February 28, 1995, five narcotics officers of the 39<sup>th</sup> District of the Philadelphia Police Department were indicted by a federal grand jury for a variety of felonies stemming from a long-standing pattern of theft, perjury, deception and violence. Among other crimes, they planted drugs and manufactured evidence in numerous cases. Over the next three years charges were dismissed against 138 felony defendants in cases from the 39<sup>th</sup> District, all of whom had been convicted. Subsequently, the investigation of the 39<sup>th</sup> spread to other districts and ultimately resulted in the dismissal of more than 200 additional convictions.<sup>118</sup>
3. *Oakland, California, 2000*. In November, 2000, four Oakland police officers known as “The Riders” were charged with assault, making false arrests, filing false reports and other charges. One officer remains a fugitive. The other three were tried twice, but the charges were dismissed after mistrials were declared in both trials when the juries deadlocked. Oakland settled lawsuits for more than \$11 million brought on behalf of more than 120 people who alleged they were victimized by the officers. A total of 76 convictions were set aside and another 25 probation or parole revocations were also dismissed.<sup>119</sup>
4. *Washington, D.C. 2000*. In 2000, U.S. Attorney Jay Stephens obtained dismissals of 32 drug convictions following an investigation of narcotics cases handled by

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<sup>117</sup> John Way Jennings & Larry Lewis, *Judge Overturns Convictions Of 155*, PHILA. INQUIRER, July 20, 1995, at S01.

<sup>118</sup> Joseph A. Slobodzian, *Jailed Officer Set To Go Home*, PHILA. INQUIRER, Nov. 21, 2000, at B01; *see also* Interview with Bradley S. Bridge, Attorney, Philadelphia Defender Association (Mar. 2012).

<sup>119</sup> Guy Ashley, *'Riders' Suits Settled; \$11 million*, CONTRA COSTA TIMES (California), Feb. 21, 2003, at A6; *see also* Interview with James Chanin, Plaintiffs' Attorney in Lawsuit, Berkeley, CA (Mar. 2012).

D.C. Metropolitan police officer Lugenia Dorothy King. King's cases came under scrutiny after she tested positive for cocaine use in 1989.<sup>120</sup>

5. *Louisville, Kentucky, 2003. Louisville:* In 2003, two detectives assigned to a narcotics unit staffed by Louisville and Jefferson County law enforcement were convicted of obtaining warrants with false affidavits and pocketing money meant for informants. Jefferson County prosecutors report they dismissed about 20 convictions.<sup>121</sup>
6. *Mansfield, Ohio, 2008.* In May 2007, Jerrel Bray, a long-time drug dealer and police informant from Mansfield, Ohio, was in jail in nearby Cleveland for shooting a man in a drug deal. A public defender came to talk to him about a different drug case in which Bray had provided evidence against the lawyer's client, and Bray – who was worried that his work as a snitch might get him killed in jail – began to talk about how he and his police handlers had faked evidence in dozens of drug cases, among other crimes. Ultimately, a Richland County sheriff's detective pleaded guilty to perjury during a drug trial and a federal Drug Enforcement Administration agent was indicted and acquitted of charges of perjury and false arrests. By 2012, 20 convicted drug defendants had been exonerated and released.<sup>122</sup>
7. *Benton Harbor, Michigan, 2009-2012.* In 2009 and 2010, two Benton Harbor police officers were indicted on federal corruption charges related to dozens of drug arrests in that city from 2006 to 2008. Among other crimes, they were charged with embezzling money from the police department, stealing from suspects, fabricating drug buys, and planting drugs on suspects or in their homes. They were eventually sentenced to 37 months and 30 months in prison. By March, 2012, at least 69 defendants who were convicted of drug crimes based on testimony by those officers had their convictions vacated and charges dismissed.<sup>123</sup>

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<sup>120</sup> Barton Gellman, 'Interests Of Justice' Often Slow; Few Freed Despite Tainted Drug Cases, WASH. POST, Feb. 3, 1990, at B4; *see also* Interview with Jay Stephens, Former U.S. Attorney (Mar. 2012).

<sup>121</sup> Gregory A. Hall, *Police-Corruption Trial Opens Tomorrow*, COURIER-JOURNAL (Louisville, KY), Jan. 13, 2003, at 1A; *see also* Interview with Harry Rothgerber, First Assistant, Commonwealth's Attorney's Office, Jefferson County, Kentucky (Mar. 2012).

<sup>122</sup> Mark Caudill, *Deputy Gets Probation, Weekend Jail*, MANSFIELD NEWS JOURNAL (Ohio), Feb. 17, 2010; *see also* E-mail from Jon Loevy, Attorney for Exonerated Defendants in Federal Civil Rights Lawsuit (Mar. 2012).

<sup>123</sup> Eartha Jane Melzer, *Drug Cases Dismissed Following Pleas by Corrupt Narcotics Cops*, MICH. MESSENGER, Sept. 28, 2009; *see also* Interview Arthur Cotter, Berrien County District Attorney (Mar. 2012).

8. *Tulsa, Oklahoma, 2009-2012.* In 2010, six Tulsa police officers and one federal agent were indicted in a federal investigation of corruption in law enforcement in Tulsa, including charges of planting drugs and faking drug buys. By March 2012, at least 28 convicted defendants were released from prison after drug and related charges were dismissed.<sup>124</sup>
9. *Camden, New Jersey, 2010-2012.* In the summer of 2008, the new Camden police chief initiated an investigation into corruption in his own department, which he later turned over to the FBI. By March, 2012, three former Camden police officers had pleaded guilty to federal conspiracy charges, another officer was convicted at trial and a fifth officer was acquitted. As a result, 193 drug convictions were dismissed.<sup>125</sup>

Table 18 summarizes our information on the exonerations in these 12 police scandals:

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<sup>124</sup> Harper, *Inmate Linked to Police Probe Released*, TULSA WORLD, Feb. 2, 2012, at A1; see also Interview and E-mail with James D. Dunn, Assistant District Attorney, Tulsa County District Attorney's Office (Mar. 2012).

<sup>125</sup> George Anastasia, *Former Camden Officer's Appeals Rejected in Corruption Case*, PHILA. INQUIRER, Mar. 8, 2012, at B04; E-mail from Jason Laughlin, Spokesman for Camden County Prosecutor's Office (Mar. 2012).

**Table 18: Group Exonerations, 1995 - 2011**

<b>PLACE AND DATE</b>	<b>NUMBER OF EXONERATED DEFENDANTS</b>	<b>CRIMES CHARGED</b>
<b>Oaklyn, NJ, 1991</b>	<b>155</b>	<b>Drunk driving</b>
<b>Philadelphia PA, 1995-1998</b>	<b>At least 339</b>	<b>Mostly drugs</b>
<b>Los Angeles CA, 1999-2000</b>	<b>100 to 150</b>	<b>Mostly drugs &amp; gun possession</b>
<b>Oakland, CA, 2000</b>	<b>101</b>	<b>Mostly drugs</b>
<b>Washington, DC, 2000</b>	<b>32</b>	<b>Drugs</b>
<b>Dallas TX, 2002</b>	<b>6 to 15</b>	<b>Drugs</b>
<b>Tulia TX, 2003</b>	<b>37</b>	<b>Drugs</b>
<b>Louisville, KY, 2003</b>	<b>20</b>	<b>Mostly drugs</b>
<b>Mansfield OH, 2008</b>	<b>20</b>	<b>Drugs</b>
<b>Benton Harbor MI, 2002-12</b>	<b>69</b>	<b>Mostly drugs</b>
<b>Tulsa OK, 2009-10</b>	<b>28</b>	<b>Mostly drugs</b>
<b>Camden NJ, 2010-12</b>	<b>193</b>	<b>Mostly drugs</b>
<b>ALL CASES</b>	<b>At least 1,100</b>	<b>Primarily drug charges</b>

The list in Table 18 is just a start. We have not conducted a systematic, in-depth search for group exonerations. We have learned that they are not easy to study from a distance. Most do not get national attention; some barely make regional news beyond the articles about the corrupt officers; and the local news coverage we can find for those we do know about is often sketchy.

Even when there is widespread attention to investigations of police corruption, identifying convictions that were dismissed as a result is often difficult. For example, numerous police scandals have rocked the New York police department in the past decade, and there are reports of hundreds upon hundreds of cases being dismissed,<sup>126</sup> but few indicate whether the dismissals occurred prior to or after conviction.

Some of the investigations we have listed – the one in Tulsa, for example – are still on-going, as far as we know, and may produce more exonerations. Others that we have not listed are at earlier

<sup>126</sup> Jim Dwyer, *The Drugs? They Came From the Police*, N.Y. TIMES, Oct. 14, 2011, at A23.

stages of development. For example, in April of 2009, a Philadelphia public defender – acting on information from a police informant who confessed to a long career of theft, perjury and deception in cooperation with his police handlers – challenged 53 drug convictions that appear to have been based on fabricated evidence. As of this writing, those challenges are on hold, pending the outcome of a joint FBI and local investigation of corruption among Philadelphia narcotics officers.<sup>127</sup>

In some instances, police scandals did not generate large scale reviews of cases brought by the corrupt officers or, if reviews were done, prosecutors notified defense attorneys of potentially suspect cases and left it up to them or the defendants to pursue vacating the convictions. As a result, there is no really effective way to determine the true number convictions set aside.

For example, beginning in the 1990s and extending into the late 2000s, a series of Chicago police corruption scandals resulted in convictions of more than a dozen police officers on charges relating to the falsification of drug cases, theft of narcotics from drug dealers and users and filing false reports.<sup>128</sup> The Cook County State's Attorney's office says it has no idea how many convictions were later dismissed, although a review of federal lawsuits reveals that several defendants sued the City of Chicago after their convictions were vacated.<sup>129</sup>

There is no way to tell whether prosecutorial reviews are cursory on the one hand or painstakingly extensive on the other. In St. Louis, for example, state and federal prosecutors launched a review of hundreds of convictions that were based on evidence from several St. Louis police officers, including two who pled guilty in 2009 to federal charges that include stealing money and drugs, falsifying reports, and planting drugs on suspects. As of March 2012, one convicted defendant had been released and prosecutors said they had not found any other

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<sup>127</sup> Matt Stroud, *A Matter of Conviction: If Philly Cops Were Fabricating Evidence, What Happens to the People They Sent to Jail?*, PHIL. CITY PAPER, Feb. 23, 2011.

<sup>128</sup> Maurice Possley, *When Cops Go Bad, Everybody Pays*, CHI. TRIBUNE, Oct. 22, 2006, available at [http://articles.chicagotribune.com/2006-10-22/news/0610210288\\_1\\_officers-charges-drug-dealers](http://articles.chicagotribune.com/2006-10-22/news/0610210288_1_officers-charges-drug-dealers); Frank Main *Cops' Arrests Get 10 Felony Cases Tossed Out*, CHI. SUN-TIMES, May 9, 2005, at 21; Maurice Possley & Gary Marx, *Austin 7 Arrests Fall Apart In Court*, CHI. TRIBUNE, Jan. 25, 1997, at N1; Mark Warnick, *City Cop Scandals Dash Drug Trials*, CHI. TRIBUNE, Dec. 25, 1997, at C1; David Heinzmann & Annie Sweeney, *Federal Probe Nets 4 SOS Cops, No Brass*, CHI. TRIBUNE, Apr. 8, 2011, at C9.

<sup>129</sup> Email from Andrew Conklin, Media Spokesperson, Cook County State's Attorney's Office (Mar. 2012).

convictions that they believed they should dismiss.<sup>130</sup> We are in no position to judge the accuracy of that conclusion.

In Manatee County, Florida, four members of a county street level drug fighting unit were charged with a large array of federal crimes, including stealing money from suspects, planting evidence, filing false reports and covering up crimes committed by fellow officers. The federal charges outlined four particular cases where the officers framed defendants—including the planting drugs in a souped-up Mustang and arresting its owner so that the officers could seize the car for their own use. Beyond the four frame-ups—in which the convictions were later vacated—authorities did not dismiss any other convictions.<sup>131</sup>

In some instances, investigations were never pursued at all.

In 2002, for example, the Dallas, Texas, District Attorney's Office dismissed pending charges against 20 defendants who were apparently framed by two former Dallas police officers who were themselves convicted of stealing money from suspects and falsifying reports. Three convicted defendants who were still imprisoned also had their convictions reversed, but prosecutors made no attempt to identify other defendants who had been falsely convicted in this conspiracy on the ground that it was “up to the individual defendant.”<sup>132</sup>

Wholesale police frame-ups of innocent defendants are at one end of a continuum. At the opposite end we find isolated acts of perjury in particular cases; many individual exonerations that include police perjury probably fit this mold. In between, there are serial perjurers: officers who frame innocent defendants repeatedly over the course their career, but not as part of a concerted plan or large scale conspiracy. In all likelihood, the great majority of such cases are never discovered, from one end of the spectrum to the other.

The group exonerations we have found are overwhelmingly cases in which police officers

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<sup>130</sup> Christine Byers, *Man Grasps Second Chance for Life*, ST. LOUIS POST-DISPATCH, Dec. 5, 2010, at A1.

<sup>131</sup> Timothy O'Hara, *Judge to Hand Down Final Sentence*, SARASOTA HERALD-TRIBUNE, Oct. 2, 2000, at BM1; Interview with Jeff Del Fuoco, Former Federal Prosecutor (Mar. 2012).

<sup>132</sup> Todd Bensman, *False Drug Convictions May Linger*, DALLAS MORNING NEWS, Sept. 8, 2002.

planted drugs and guns on suspects. It takes a lot to overcome the practical presumption that police tell the truth in court, especially when the competing story comes from an accused drug dealer or a gang member. The cases that come to light are those in which the evidence of corruption becomes unanswerable, which is most likely in scandals with many innocent victims. When that point is reached, the dam breaks and there is a flood of dozens or hundreds of convictions that are recognized as unreliable or baseless.

The innocent defendants who were released as a result of these scandals were exonerated as we define the term. These cases are highly important and their numbers may rival or exceed individual exonerations. Nonetheless, we do not include group exonerations in our database because they are fundamentally different from exonerations based on individual investigations and cannot usefully be studied together.

The unit of observation for an individual exoneration is the defendant and his case. The investigations that lead to these exonerations produce a great deal of information about each case, and much of that information is publicly reported.

Group exonerations are viewed through the prism of the corrupt officer or the police conspiracy. Once that basic picture comes into focus, exonerations may be handled summarily and receive little or no attention. As a result, we may know little or nothing about the individual cases that are dismissed in the aftermath: not the dates of arrest, conviction and exoneration; not the facts of the alleged crime; not the mode of conviction or the sentence; not even the names of the exonerated defendants. For some of the group exonerations listed, we don't even know the number of exonerated defendants,<sup>133</sup> and in some it is clear that many innocent defendants who were framed and convicted have never been identified or exonerated. In both Dallas and Los Angeles, for example, many innocent defendants were deported to Mexico or Central America after conviction, and never returned to obtain dismissals. In short, we have too little information on the defendants in group exonerations to include them in our database; and in any event, the two categories should be studied separately rather than mixed together.

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<sup>133</sup> The exception is Tulia, for which we have detailed information. *See* NATE BLAKESLEE, *TULIA: RACE, COCAINE, AND CORRUPTION IN A SMALL TEXAS TOWN* (2005).

In some group exonerations, it is likely that quite a few of the convicted defendants who were cleared were in fact guilty. For example, Professor Russell Covey has examined reasonably detailed information on 87 of the Rampart exonerations in Los Angeles.<sup>134</sup> He concluded that 38 cases qualified as exonerations by the criteria we employ, and the defendants are highly likely to be innocent; 27 cases included “evidence of criminal culpability” by the defendant; and 22 cases were too unclear to call. This suggests that half or more of the Rampart exonerees were innocent, but many others were not. On the other hand, Covey concludes that virtually all the exonerated Tulia defendants were innocent. Based on the evidence we have reviewed, we agree.

Given all these qualifications, we can make a few general observations about these shameful affairs:

- There is nothing new about such abuses of power. For example, in the 1920’s, New York City police officers framed innocent women on charges of prostitution and then collected kickbacks from bail bondsmen and defense attorneys, and occasionally bribes from the innocent defendants directly. After this practice came to light in 1930, half a dozen defendants were pardoned and at least one police officer was convicted of perjury.<sup>135</sup>
- All but two of these scandals center on drug crimes. Some earlier group exonerations fit that pattern as well. In 1977, for example, the Governor of Vermont pardoned 71 defendants who were convicted of drug crimes based on testimony from a state trooper who was caught systematically lying and framing innocent defendants.<sup>136</sup> Corruption, of course, is endemic among police officers who try to enforce laws that criminalize popular lines of business: gambling, drug trafficking, bootlegging, prostitution. Many of the criminals have the money and the skill to buy off the police, and many officers are tempted to steal and sell the products they are supposed to suppress. Since the crimes involved have no direct victims, they are easy to fake: plant the drugs or falsely swear to

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<sup>134</sup> Covey, *supra* note 116, at 10-12.

<sup>135</sup> Borchard, *supra* note 94.

<sup>136</sup> Joyce Jensen, *Full Unconditional Pardons*, N.Y. TIMES, Jan. 9, 1977, at 4, 22.

a sale, and it's done. It's an easy way to build an award-winning record: arrest criminals (or those that other police officers will think are criminals), steal their money or their drugs or both, and eliminate competitors of the criminals who pay for police protection.

- The innocent drug defendants in these group exonerations were overwhelmingly black (Philadelphia, Tulia, Benton Harbor, and Camden, among others) or Hispanic (Los Angeles, Dallas). Many were also particularly vulnerable because of their background, criminal history or legal status: some were gang members (especially in Los Angeles); some no doubt really were drug dealers, or at least drug users; and many were deportable aliens.
- With the exception of the Tulia cases, these group exonerations depended substantially or entirely on investigations by police agencies or prosecutors or both. Most involved federal investigations (Philadelphia, Mansfield, Benton Harbor, Tulsa, and Camden).

We have identified 12 group exonerations over a 17-year period. Between them, they led to at least 1,100 separate exonerations and probably quite a few more. There have been others. We have scratched the surface of this issue, but just. We hope to learn more and report about these scandals again in 12 to 18 months.

There's no question that police corruption on this scale is a highly important problem, even though we don't yet have a clear idea of its scope. What we already know about these cases also illustrates a major difficulty in any attempt to catalogue exonerations: It's easy to miss whole categories of cases that don't fit our preconceptions of what false convictions and exonerations look like.

The group exonerations we have found also offer a window into a world of individual false convictions we don't otherwise see: cases of innocent defendants who plead guilty and receive comparatively light punishment. For example, 27 of the 37 Tulia exonerees pled guilty; most of them received probation and fines or were sentenced to incarceration for periods from few

months to one or two years.<sup>137</sup> If innocent defendants in the Tulia scandal and other group exonerations accepted such plea bargains there must be many others who also did so in individual cases. There may be thousands, possibly tens of thousands of similar false convictions every year, but we never learn about them. It would be prohibitively expensive to conduct investigations to establish the innocence of the defendants in such cases. It never happens – except in the context of group exonerations.

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<sup>137</sup> Samuel Gross *Convicting the Innocent*, 4 ANN. REV. L. & SOCIAL SCI. 173, 181 (2008)