

*The National Registry*  
*of*  
**EXONERATIONS**

## **Milestone: Exonerated Defendants Spent 20,000 Years in Prison**

**Governments paid more than \$2.2 billion in compensation, but  
more than half of those exonerated received nothing**

In August 2018, the National Registry of Exonerations passed a milestone: The number of “years lost” that exonerated defendants spent in prison for crimes they did not commit exceeded 20,000. The total now stands at 20,080 years, on average more than 8 years 10 months in prison for each of the 2,265 exoneerees in the Registry. Innocent black defendants served a majority of the 20,080 years unjustly lost to prison.

It’s impossible to fully grasp the magnitude of the injustice and suffering these numbers represent: careers and opportunities that were lost forever; children who grew up and parents who died while the innocent defendants were in prison; marriages that fell apart—or never happened. How can one understand, let alone quantify, the loneliness, pain, indignity, danger, and hopelessness of life in prison as an innocent person?

Here's one case:

In March 1971, [Richard Phillips](#) and Fred Mitchell were arrested in Detroit for an armed robbery that Mitchell committed, but an eyewitness mistakenly identified Phillips, who was convicted.

In March 1972, Mitchell became the lead suspect in the murder of his brother-in-law, Gregory Harris, because a gun that was seized from him was linked to the bullets that killed Harris. Mitchell told the police that he helped Phillips and Richard Palombo commit the murder. In October 1972, based solely on Mitchell’s testimony, Phillips and Palombo were sentenced to life in prison with no possibility of parole. At trial, Mitchell falsely swore he had no deal with the prosecution, and the prosecutors let that lie stand.

Phillips was released in 2017 after Palombo finally admitted that he had killed Harris with Mitchell. Palombo testified that he never met Phillips until after they were both arrested for the Harris murder.

Richard Phillips was 26 when he was falsely convicted of the murder of Gregory Harris, and nearly 72 when he was released. He had spent 45 years and two months

in prison. His children were 47 and 49; they had been two and four when he was last free. Phillips said he had expected to be “going to the [prison] graveyard ... but that’s not going to happen now.”

The National Registry of Exonerations reports every known exoneration in the United States since 1989, a total of 2,265 as of August 29, 2018. Richard Phillips served more time in prison for a crime he did not commit than any other defendant in the Registry, but several others are close behind. [Ledura Watkins](#), who was also exonerated in 2017 of a false murder conviction in Detroit, spent 41 years 3 months in prison, and 34 other exonerees [served 30 to 39 years](#).

For Richard Phillips, Ledura Watkins, and hundreds of others who spent decades behind bars, the devastation is plain. But even exonerees who served little or no time did not get off easy.

On January 29, 1970, 19-year-old [Malcolm Emory](#), a Native American physics student on a full scholarship at Northeastern University in Boston, was beaten up by police and arrested near an anti-Vietnam war demonstration. He was convicted when an officer (who later pled guilty to accepting bribes) testified that Emory hit him with a brick.

Emory was sentenced to probation, but he lost his scholarship—which came from the U.S. Navy—and his security clearance. He was also forced to resign his job at the United States Naval Underwater Sound Laboratory, and had to drop out of school. Instead of a career as a physicist, he held a series of jobs as an apple-picker, welder, and ironworker.

Emory was exonerated in 1990 because he managed to locate an unpublished newspaper photograph that shows him at age 19, on the ground, being beaten by police, clutching—as he had testified—not a brick, but a stack of library books.

Unfortunately, the 2,265 exonerations we know about only begin to tell the story of wrongful convictions and the terrible toll they take. There are many exonerations from past years that we don’t know about—we keep finding them when we have time to look—and the vast majority of false convictions are never recognized at all.

*Years Lost by Crime and by Race*

In general, the length of time exonerated defendants spent in prison reflects the severity of the crimes for which they were wrongly convicted. The average time lost ranges from 1.3 years for drug crime exonerations to 13.2 years for murder exonerations.<sup>1</sup>

<sup>1</sup> See Table A:

**Table A: Average Number of Years Lost per Exoneration, by Race and Crime**

	Black	White	Hispanic	Other	ALL RACES
ALL CRIMES	10.7	7.4	7.2	6.9	8.9
Murder	14.7	11.6	11.6	15.3	13.2
Sexual Assault	13.6	9.6	9.8	11.3	12.0
Child Sex Abuse	12.0	6.8	6.9	5.1	8.1
Drug Crimes	1.4	0.8	1.6	0.1	1.3
Robbery	6.5	5.6	4.5	8.1	6.1
Other	4.6	2.7	3.2	2.7	3.4

Black exonerees spent an average of 10.7 years in prison, about 45% more than white exonerees, who averaged 7.4 years. This pattern holds for each major category of crime for which the exonerees were convicted.<sup>2</sup> African Americans are greatly over-represented among innocent defendants who have been exonerated, and even more so for time spent in prison for crimes they did not commit. They account for 12% of the population, 46% of exonerees, and 56% of all lost years served by exonerated defendants.<sup>3</sup>

### Compensation

One imperfect but highly important measure of the cost of these false convictions that end in exoneration is the compensation that exonerees receive for their ordeals. Professor Jeffrey Gutman of the George Washington University Law School has just completed the second part of a comprehensive study of the compensation received by exonerees in the Registry.<sup>4</sup> He focuses in part on compensation for years lost to wrongful imprisonment.

Professor Gutman and his colleague Lingxiao Sun studied the 1,900 exonerations in state courts that were posted in the Registry as of March 1, 2017. These 1,900 exonerations totaled 17,193 lost years, about 86% of the total in the Registry as of August 29, 2018.<sup>5</sup>

The set of compensation awards Gutman studied is, inevitably, incomplete. In some cases, claims for compensation were still pending when data collection closed; in others, no claims had yet been filed but the time to do so had not run out. As time passes, additional compensation will be awarded to some exonerees in these groups. Nonetheless, Professor Gutman’s work provides an extraordinarily valuable view of the field.

<sup>2</sup> See Table A, supra, note 1. We found a similar pattern of differences between black and Hispanic exonerees, but we are not confident of the accuracy of the classification of exonerees as “Hispanic” in a substantial number of cases.

<sup>3</sup> See Table B:

**Table B: Percentage of Exonerations and of Years Lost, by Race**

		Black	White	Hispanic	Other	ALL RACES
<b>NUMBER OF EXONERATIONS</b>		<b>46% (1,051)</b>	<b>39% (885)</b>	<b>12% (277)</b>	<b>2% (52)</b>	<b>100% (2,265)</b>
<b>NUMBER OF YEARS LOST</b>	<b>ALL CRIMES</b>	<b>56% (11,207)</b>	<b>32% (6,519)</b>	<b>10% (1,996)</b>	<b>2% (358)</b>	<b>100% (20,080)</b>
	Murder	56% (6,593)	31% (3,603)	11% (1,271)	2% (214)	100% (11,681)
	Sexual Assault	67% (2,539)	27% (1,038)	5% (206)	1% (34)	100% (3,817)
	Child Sex Abuse	37% (768)	53% (1,113)	9% (187)	1% (20)	100% (2,089)
	Drug Crimes	63% (202)	15% (48)	22% (71)	0% (0.4)	100% (321)
	Robbery	66% (468)	20% (140)	11% (77)	3% (24)	100% (709)
	Other	44% (637)	39% (577)	13% (184)	4% (65)	100% (1,463)

<sup>4</sup> Jeffrey S. Gutman and Lingxiao Sun, “Why is Mississippi the Best State in Which to be Exonerated? An Empirical Evaluation of State Statutory and Civil Compensation for the Wrongly Convicted,” forthcoming in the *Northeastern University Law Review*, Vol. XY (2019).

<sup>5</sup> In addition to the cases studied by Gutman and Sun, the current total for all cases in the Registry includes 109 exonerees who were convicted in federal court and 256 state-court exonerees whose cases were posted after March 1, 2017.

Gutman examined two forms of compensation: (i) no-fault *statutory compensation for wrongful imprisonment*, now available in thirty-three states which among them account for 88% of state-court exonerations; and (ii) verdicts and settlements in *civil law suits for damages* for deprivation of federal civil rights or other misconduct by government officials that led to the wrongful convictions.

Combining these two modes of compensation, Gutman found that:

- State and municipal governments have paid more than \$2.2 billion in compensation—\$537 million in statutory awards for wrongful imprisonment and \$1.7 billion in judgments and settlements in civil lawsuits.
- Only about 44% of exonerees received any compensation for the damage to their lives; 56% have received nothing, at least so far.<sup>6</sup>
- The compensation paid covers slightly more than 60% of all the years lost by exonerees, at an average rate of almost \$220,000 per year in prison.<sup>7</sup>

Awards under state compensation statutes are largely determined by formulas based on the length of the wrongful imprisonment, but judgments and settlements in civil suits are less predictable. Among those who successfully sued for civil damages, black exonerees received on average about \$290,000 per year of incarceration, compared to \$332,000 per year for white exonerees.

Two billion, two hundred million dollars is a lot of money in any setting—and especially in the context of the chronically underfunded criminal justice system—but it’s nothing close to adequate compensation for the suffering these exonerees endured. Would anybody voluntarily agree to spend 10 years in prison in return for a million dollars, or even two or three million? Even so, that sum provides nothing to 56% of exonerated defendants—and nothing to the many thousands of innocent defendants who spend years or decades in prison but are never exonerated.

### *Conclusion*

It’s probably impossible to stop all convictions of innocent defendants, but we can certainly do better than what we see here. Some of the causes of false convictions are well known—eyewitness misidentifications, false confessions, perjury by witnesses who stand to benefit from their testimony, false or misleading forensic evidence—and there are well known reforms that might greatly reduce the harm these factors cause.<sup>8</sup> They seem like distinct issues, but there is a common thread: it costs money to do a good job of investigating and judging criminal guilt. Police,

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<sup>6</sup> About 39% of exonerees in states with compensation statutes received statutory compensation. About 24% of all exonerees received compensation from civil lawsuits.

<sup>7</sup> Almost half of the years lost by exonerees in states with wrongful imprisonment statutes were compensated under those schemes, at an average rate almost \$70,000 per year lost. Only about 32% of the years lost by all exonerees were compensated in civil law suits at a rate of about \$307,000 for each lost year.

<sup>8</sup> See, for example, the discussion of these issues by the [Innocence Project](#) and by the [Center on Wrongful Convictions](#).

prosecutors, defense attorneys, and courts across the country operate with inadequate funds, insufficient staff, lax supervision, and poor training.

Richard Phillips' case is a good example. He was ultimately released because the head of the newly created Conviction Integrity Unit at the Detroit prosecutor's office confirmed that the trial testimony of Fred Mitchell, the main prosecution witness, was a tissue of lies. Mitchell testified to several meetings with Richard Palombo, Phillips' codefendant, that could not have happened because Palombo was in prison on the dates they supposedly met.

Phillips would never have gone to trial if someone in the prosecutor's office had checked out Mitchell's story in 1972 instead of 2018. He might never have been *arrested* if the police had done so. And he would never have been convicted if his defense attorney had done a routine review of prison records before cross-examining Mitchell. Instead, Richard Phillips was shuffled off to prison for life after a quick, cheap investigation and a sad excuse for a trial.

In justice, as in other realms, you get what you pay for. Are we willing to pay for accuracy and fairness? Or have we concluded that sending thousands of innocent defendants to prison for tens of thousands of years is a tolerable error rate? That billions of dollars in compensation, and untold misery that can never be undone, are acceptable costs?

## Longest Serving Exonerees

While the average time lost per exoneree is 8.9 years for each of the 2,265 men and women in the National Registry of Exonerations, 35 men each spent more than 30 years in prison before they were exonerated of crimes they did not commit. The list of these men and their time served from conviction until release is on the Registry website at:

<https://www.law.umich.edu/special/exoneration/Pages/longestincarceration.aspx>

Below are thumbnail sketches of six of these men who were freed in the past two years after spending an extraordinary amount of time in prison. They have agreed to be interviewed about their time inside. The interviews must be coordinated with their contact person—typically their lawyer. That contact information is included below.

### 1. [Richard Phillips](#)



Richard Phillips spent 45 years and two months in prison after he was convicted of murder in 1972 in Detroit, Michigan. By the time he was released after being exonerated in 2017, he had spent more years in prison than any other wrongly convicted defendant in U.S. history. When he was released just a few weeks before turning 72, he had not seen his children in 45 years. They were ages 2 and 4 when he was convicted. On the day he was released, Phillips (who refused to take a plea deal for release) said, “I expected to probably to just, you know, just say, sayonara to a lot of you all going to the graveyard in Cherry Hill, but that’s not going to happen now.” Cherry Hill

Cemetery, on Michigan Department of Corrections property in Jackson, often is the burial place for indigent prisoners who die in custody.

## 2. Malcolm Alexander



In 1980, Malcolm Alexander was wrongly convicted of sexual assaulting the owner of an antique store in Gretna, Louisiana. He was exonerated by DNA testing and released in January 2018 after serving **37 years and three months in prison**. A day later, the dog he raised at Angola Penitentiary and named “Inn” (after the Innocence Project) was released as well. He was one of the lucky ones—his 82-year-old mother was still alive to greet him.

Malcolm Alexander (left) and his son, Malcolm Stewart with Vanessa Potkin(left), Innocence Project, and Emily Maw, Innocence Project New Orleans

## 3. Mark Jones, Dominic Lucci, Kenneth Gardiner



Mark Jones



Dominic Lucci



Kenneth Gardiner

On January 31, 1992, the night before he was to be married in the chapel at Fort Stewart, Georgia, 20-year-old Mark Jones and two of his friends, Dominic Lucci and Kenneth Gardiner, were arrested in Savannah, Georgia for a murder they did not commit. They were released on bond in December 2017 and **exonerated in July 2018 after serving 25 years in prison—losing some of the most productive years of their lives.**

#### 4. Marshall Hale



In 1984, 24-year-old Marshall Hale was convicted of rape in Philadelphia, Pennsylvania even though the prosecution had biological evidence excluding him as the rapist. By the time he was exonerated in July 2017, he had spent 32 years and nine months in prison. The prosecution discovered the evidence excluding him in 2010, but spent the next seven years fighting his exoneration.

#### 5. Frederick Clay



In August 2017, nearly 38 years after Frederick Clay was arrested at age 16 in Boston, Massachusetts for a murder he did not commit, Clay was exonerated and released. He emerged into a world vastly different from the environment he knew when he was only half way through his teenage years—a world he virtually only knows from watching television.



## 6. Craig Coley



Craig Coley and retired police officer Mike Bender

Craig Coley was 31 years old when he was charged with murdering his girlfriend and her four-year-old son in Simi Valley, California. He was exonerated in November 2017—at age 70, having spent nearly 38 years in prison after his conviction in 1980. His exoneration was largely the work of a police officer, Mike Bender, who came to conclude that Coley was innocent. When Coley left prison, he had no savings, no photo ID, no driver’s license, no credit rating and no possessions. He did have a college degree earned behind bars.

**Table 1: Exonerations, Years Lost in Prison and Compensation, by Jurisdiction**

Jurisdiction	YEARS SPENT IN PRISON BY EXONERATED DEFENDANTS National Registry of Exonerations 2265 Exonerations as of August 28, 2018		COMPENSATION Gutman Study, 1,900 state-court exonerations as of March 1, 2017		
	Number of Exonerations	Total Number of Years Lost	% of Exonerated Defendants Compensated	% of Years Lost For Which Compensation Was Paid	Total Amount Paid
Alabama	26	183	19%	23%	\$ 2,320,141
Alaska	8	70	0%	0%	\$ -
Arizona	19	138	11%	14%	\$ 4,550,000
Arkansas	8	44	17%	22%	\$ 200,000
California	191	1652	41%	58%	\$ 158,264,667
Colorado	8	83	29%	33%	\$ 11,200,000
Connecticut	23	265	55%	68%	\$ 48,080,000
Delaware	2	6	0%	0%	\$ -
District of Columbia	16	279	44%	63%	\$ 56,754,027
Florida	64	588	25%	40%	\$ 21,851,901
Georgia	35	350	21%	43%	\$ 5,050,000
Guam	1	1	0%	0%	\$ -
Hawaii	3	28	33%	66%	\$ 7,500
Idaho	3	37	50%	52%	\$ 900,000
Illinois	221	2,493	73%	79%	\$ 478,819,063
Indiana	35	317	33%	29%	\$ 14,090,000
Iowa	14	79	21%	68%	\$ 18,397,812
Kansas	10	88	57%	33%	\$ 7,900,000
Kentucky	14	137	27%	29%	\$ 20,600,000
Louisiana	52	796	66%	66%	\$ 17,921,520
Maine	3	3	0%	0%	\$ -
Maryland	27	304	25%	36%	\$ 26,809,900
Massachusetts	62	676	67%	83%	\$ 151,789,000
Michigan	87	754	32%	37%	\$ 35,431,151
Minnesota	14	28	27%	44%	\$ 1,740,437
Mississippi	18	210	81%	90%	\$ 21,657,333
Missouri	46	501	38%	46%	\$ 53,838,900
Montana	14	153	22%	35%	\$ 3,530,000
Nebraska	9	101	78%	85%	\$ 30,710,000
Nevada	13	175	44%	29%	\$ 6,800,000
New Hampshire	1	4	0%	0%	\$ -
New Jersey	37	374	48%	48%	\$ 16,692,868

New Mexico	6	36	0%	0%	\$ -
New York	250	2,542	60%	74%	\$ 647,192,947
North Carolina	60	740	51%	63%	\$ 61,931,275
North Dakota	4	11	0%	0%	\$ -
Ohio	65	808	59%	68%	\$ 57,787,573
Oklahoma	35	340	44%	71%	\$ 49,820,000
Oregon	17	71	13%	24%	\$ 2,000,000
Pennsylvania	64	710	18%	26%	\$ 26,071,894
Puerto Rico	6	83	33%	11%	unknown
Rhode Island	6	27	20%	27%	\$ 600,000
South Carolina	7	70	0%	0%	\$ -
South Dakota	4	15	0%	0%	\$ -
Tennessee	21	216	22%	28%	\$ 1,708,036
Texas	344	1,937	30%	69%	\$ 126,211,632
Utah	16	85	43%	73%	\$ 1,345,933
Vermont	2	17	100%	100%	\$ 1,550,000
Virginia	51	436	63%	83%	\$ 18,434,681
Washington	48	236	48%	58%	\$ 23,166,699
West Virginia	10	102	80%	69%	\$ 12,100,000
Wisconsin	52	388	31%	44%	\$ 10,040,417
Wyoming	4	30	33%	7%	\$ 1,250,000
<i>Federal</i>	109	261	-	-	-
<b>ALL CASES</b>	<b>2265 Exonerations</b>	<b>20,080 Years</b>	<b>44%</b>	<b>60%</b>	<b>\$ 2,257,117,306</b>