

Illinois Legislature To Review Wrongful Conviction Compensation

By James F. Love

One day after Michael Evans' federal civil rights lawsuit seeking \$60 million dollars for 27 years wrongful imprisonment was rejected by a jury, Illinois legislators began discussing increasing the \$160,000 compensation cap set by a state law passed in the mid-1990's.

Illinois House Majority Leader Barbara Flynn Currie stated her belief the \$160,000 the state awarded Evans was inadequate compensation. She stated she hoped the Illinois Legislature would re-address the issue. State Rep. Mary Flowers (D-Chicago), said she would reintroduce a bill, which has twice before been rejected, to increase the compensation paid to a person found to have been wrongfully convicted.

Karen Daniel, a senior staff attorney at the Northwestern University School of Law's Center on Wrongful Convictions, said, "It doesn't matter whether police acted wrongly or a prosecutor acted wrongly, it's the same damage for the innocent person who went to prison. You're harmed regardless of how you got there. You're still losing that part of your life."

DNA exonerations nationwide have contributed to state legislatures addressing or revisiting compensation for the wrongfully convicted. In the past seven years at least eight states have enacted compensation laws, or raised the amount of compensation. California allows \$100 a day; New York has no limit; Ohio recently doubled its amount of compensation to over \$43,000 per year; Tennessee has a \$1 million cap on an award. Twenty-one states and the federal government have some law providing for compensation.

Source: "More pay sought in wrongful jailings." by Michael Higgins, *Chicago Tribune*, August 10, 2006.

Wrongful Conviction Compensation

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While the question of what monetary compensation is adequate is extremely complicated, a flat "daily" or "yearly" rate of compensation does not take into account the progressive harms caused by lengthy imprisonment. Compensation should be determined based on a geometric progression, as opposed to a linear flat-line increase. What is the first day of wrongful imprisonment worth compared with the last day of a 20-year wrongful imprisonment – due to the harm that has accumulated between the first and last day?

The longer the period of wrongful imprisonment, the greater the harm personally and psychologically. Friends and family die. Acquaintances who may have initially supported the wrongfully convicted person's battle for freedom, fade away as time passes. The wrongfully convicted person still unexonerated after years of effort, finds him or herself more or less alone in the battle for justice, and faced with greater and greater skepticism, not only from fellow prisoners, but also from society in general. Most of society firmly believes that if a person is truly innocent, the courts would have already corrected the error that led to the wrongful conviction before 10, 15 or 20 years have passed. Even though DNA exonerations of people after their imprisonment for years shows this common belief to be untrue, it is still a reaction people have to a prisoner's claim of innocence.

What price should be placed on a wrongfully convicted person's loss of hope, as the years pass, that vindication will ever happen? What price should be placed on a person prevented from attending a parent's funeral? What price can be placed on a person being wrongly branded as a criminal and forcibly separated from a child whose mind is poisoned by a bitter ex-spouse, or family or friends, or a new step-parent? What price can be placed on a person's personal and professional losses, the loss of years in which to live and in the quality of life left in those years?

A flat per diem or annual rate of compensation doesn't account for the cumulative effect of losses a wrongly convicted person experiences. The amount paid should increase for each year of imprisonment, and the annual increase should not be flat-lined. The multiple harms caused by long-term wrongful imprisonment increase geometrically as the years pass, and should be compensated accordingly.

Evans cont. from p. 12

criminal suspects. Court appointed special prosecutors have found evidence that dozens of suspects might have been beaten, dunked in water, and hooded with a typewriter cover to simulate suffocation, in the interrogation room of Area 2 headquarters. Although the special prosecutors found there was sufficient proof of criminal conduct by the officers to support their prosecution, the cases were "too old" for charges to be filed.

The degree of wrongdoing by the Chicago PD is indicated by the fact that eight of the ten officers named as defendants in Evans' civil suit invoked their Fifth Amendment right to remain silent and not incriminate themselves during the court ordered depositions.

Even though Evans did not claim the defendant officers personally subjected him

to torture, the practice is now documented as having been widespread in Area 2. Such practices become well known throughout the communities where they are practiced. So it is little wonder Evans testified he was in great fear of his interrogators when questioned as a 17-year-old in 1976.

Evans' attorney, Jon Loevy, told reporters that evidence of the practice of torture on suspects by the Area 2 detectives had been ordered by the judge to be withheld from Evans' civil jury. Loevy said Evans will appeal that the judge's evidentiary rulings prejudiced Evans and unfairly affected the outcome. Loevy added that he believes that "at the end of the day when all the evidence is heard, we will prevail."

Paul Terry, Evans' co-defendant, has a federal civil rights lawsuit pending that has not yet come to trial.

Previous JD article about Evans and Terry, "DNA tests may prove yet another quarter century injustice in Illinois," *Snapshots, Justice:Denied*, Vol. 2, Issue 9.

Sources:

27-year inmate in tears at wrongful conviction trial, by Frank Main, *Chicago Sun-Times*, July 12, 2006.

DNA results precluded retrial, prosecutor says. Says police misconduct had no influence. *Associated Press*, July 30, 2006.

1 of Ford Heights 4 helps former inmate, by Jeff Coen, *Chicago Tribune*, August 2, 2006.

Ex-inmate's \$60 million suit against city denied, by Rudolph Bush and Jeff Coen, *Chicago Tribune*, August 8, 2006.

"Wrongly convicted, but he gets zilch," by Natasha Korecki, *Chicago Sun-Times*, August 9, 2006.

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