

The Needs of the Wrongfully Convicted: A Report on a Panel Discussion

**A Report to the Governor's Commission on Capital Punishment
by the Illinois Criminal Justice Information Authority's
Research & Analysis Unit**

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REPORT TO THE GOVERNOR'S COMMISSION ON CAPITAL PUNISHMENT

THE NEEDS OF THE WRONGFULLY CONVICTED

Introduction

This report has been prepared for Governor Ryan's Commission on Capital Punishment to provide additional information on those who have been wrongfully convicted of murder and subsequently incarcerated. It is hoped that this information is useful in the Commission's consideration of possible improvements in the way criminal justice agencies and allied entities meet the needs of those who have been wrongfully convicted.

The Illinois Death Penalty Education Project and the Center on Wrongful Convictions at the Northwestern University School of Law sponsored the panel discussion. It was held on the campus of Northwestern Law School on March 13, 2002 and was open to the public. Staff with the Illinois Criminal Justice Information Authority attended the panel discussion and used the opportunity to report on the needs of the wrongfully convicted.

The panel discussion was intended to give individuals who have been wrongfully convicted of murder an opportunity to comment on their experiences and what they needed to recover from their wrongful convictions. Representatives from the Center on Wrongful Convictions selected the participants. The seven individuals selected for the panel discussion included both those who are still having some difficulty transitioning back into their communities, as well as those who have had a somewhat easier time transitioning into their communities.¹ That is not to say that those who have had an easier time reintegrating into their communities are no longer impacted by their wrongful conviction and incarceration—in fact, feelings of anger and a distrust of the criminal justice system were expressed by all panelists.

Robert Warden of the Center on Wrongful Convictions facilitated the group discussion. He asked participants to discuss what they think they need(ed) to make a successful transition back into the community, and for those who have had an easier time transitioning back into their communities, what factors aided in their success.

It is important to note that the panelists represented a small non-random sample of those who have been wrongfully convicted of murder. Panel discussions gather impressions, feelings, attitudes, and perceptions of the panelists. Although informative, these perceptions may not necessarily represent the experiences of all individuals who have been wrongfully convicted. Staff with the Center on Wrongful Convictions report that there are other men and women who have been wrongfully convicted of lesser crimes, but their experiences, although potentially similar, were not represented during the panel discussion. In addition, it was reported by staff with the Center on Wrongful Convictions that those who have been affected the greatest by a wrongful conviction are generally incapable of participating in discussions of this type—

¹ Panelists included Kenneth Adams, David Dowaliby, Gary Gauger, Ronald Jones, Steven Linscott, Delbert Tibbs, and Darby Tillis. Panelists' biographies and case summaries as provided by the Center on Wrongful Convictions are attached to this report.

specifically due to the extreme trauma caused by their wrongful convictions and incarceration. In essence, those perspectives put forth by these panelists represent the perspectives of those who have made relatively successful transitions back into free society.

According to data from the Center on Wrongful Convictions, since 1950, 45 individuals have been wrongfully convicted, incarcerated, and subsequently released from prison. Of the 45 individuals wrongfully convicted, 30 have been released from prison since 1990. One of the significant issues for the criminal justice system when dealing with the wrongfully convicted is what the system can and should do to remedy the harm that the investigation, the trial, and prison has caused these individuals.

This report summarizes the panel discussion, relying heavily on the words of participants. It is the intent of this report to let their voices be heard and to offer readers an opportunity to learn more about the needs of the wrongfully convicted.

The Needs of the Wrongfully Convicted

One issue that was addressed during the panel discussion focused on the impact of being wrongfully convicted and what the criminal justice system and our communities can do to help the wrongfully convicted return to a free society and recover from the harm they suffered. In this report, the impact of being wrongfully convicted is discussed and three strategies that were raised as potentially easing the transition to free society for those who have been wrongfully convicted are presented, access to counseling, immediate emergency financial assistance, and programs that teach meaningful skills. As mentioned above, some of the panelists have had an easier time returning to free society. Factors that have contributed to their more or less successful transition back into the community will also be addressed in this report. We complete this report with some general conclusions that can be drawn from the panel discussion.

The need for immediate assistance upon release from prison

Many of the panelists discussed how once they were freed from prison the criminal justice system sent them on their way without any assistance. Two of the panelists' comments speak directly to the lack of assistance for the wrongfully convicted:

“It just didn't seem fair that after you take 18 years of a person's life and you think now you can send them out into the world and everything's going to be all right because now they have their freedom? Yeah, freedom is very important but you also have to have a lot of different things set up for people... You have to have programs for people who are wrongfully convicted because there are a number of people wrongfully convicted – here is a panel of people wrongfully convicted – so why isn't there anything in place right now in the state of Illinois to help the wrongfully convicted after they are exonerated and freed?”

“It just didn't seem fair that after you take 18 years of a person's life and you think now you can send them out into the world and everything's going to be all right because now they have their freedom?”

Later in the panel discussion the same individual spoke again about the lack of assistance the criminal justice system has provided:

“Nothing was available when I walked out of prison. Absolutely nothing – we received no assistance at all. That was why I was in such a hurry, so anxious to find a job. I wanted to re-establish that I could support myself. To see that the state showed no interest at all in our plight, I had no choice but to try to...we started to promote ourselves, using different avenues to promote ourselves to get assistance from whatever organization would be willing to assist us. The state of Illinois gave us no assistance at all, until we had to go to court, go through legal procedures. It just didn’t seem like it was the just thing to do in a civilized society.”

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Still another panelist had this to say about the lack of assistance for the wrongfully convicted:

“I was out there in the world doing mischievous things, but never did I ever dream that I would be tried and convicted and sentenced to death for a crime I didn’t commit. But, I still overcome that, and I’m still trying to overcome that. Because what the suffering is, is that I’ve been out since 2000 and I haven’t still, today, been able to adjust to the world. I mean it’s like I was in another world, I was on another planet. It’s like I’m back on the planet now, where I was, but now they’ve got cell phones and computers and all these other things that I – you know the closest thing I knew about a cell phone was a telephone on the corner where you could drop a dime in the phone. You can’t even drop a dime in the phone no more.”

Anger and distrust of the criminal justice system

Every one of the panelists voiced their anger and distrust of the criminal justice system. These feelings are a direct reflection of their wrongful conviction and incarceration. The following quotes capture the anger and distrust that the panelists have for the criminal justice system:

“I had to suffer not only the abuses (of) the system but death of my parents at the same time. One of the hardest things for me – like you said, I was only in prison for three and a half years – Kenny here was in prison for 17 years, that 5 times what I had to go through – a day in prison you can’t imagine how horrible it is. One of the hardest things for me was the hypocrisy of the system that put me here. Three policemen perjured themselves, they said I confessed to a crime I didn’t commit. It was the death of innocence too...In a way, by me losing the innocence of what’s going on in the system, it’s just made it worse for me. It’s hard. I find that the best I can do is speak out against the injustice of the system.”

“Through all the poisons that was pumped into me during the nine years, one month, and 17 days on death row, and being tried 5 times, I’m a sick man. I’m sick...Mike Wallace asked me on 60 Minutes ‘am I angry?’ Hell yes I’m

angry. When I still see they're continuing to do the things they're doing to men that they did to me some 23 years ago... Yes, it makes me angry."

"I had friends and associates that were executed while I was on death row. They walked past (my) cell on the way to the death chamber. It could have been me...but I refused to die. And I came out and if anybody asked me, are you angry? Yes I'm angry. I just don't use profanity, but I could say a lot of words to describe how angry I am... Yeah, well I could say that I'm free, but I'm not free now. I could walk out here today, right after we leave here today and they could give me another crime. And if I can't prove that I didn't do it then I'm going to (the) penitentiary. And it goes on and on. And it's not just me. And it's not just black people. It's poor folk. Them the ones who suffer... The only thing that I am trying to express here is that if it happened to me, it could happen to you, it could happen to your kids, it could happen to your mother, it could happen to your father, it could happen to anybody."

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Finally, one panelist spoke about his distrust of any state agency that would provide counseling for the wrongfully convicted:

"I think you are missing something here Rob... any one associated or aligned with the state could not counsel me, could not talk to me, because you have a state mentality about people like me. You are already fixated in your mind about people like me, that I'm different from people in society because I was placed in that environment. In other words, you lay down with fleas, you get up with fleas, just like if you're with them you are fleas. So that the way you look at us. No state counselor could talk to me."

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The need for counseling

During the panel discussion, participants all spoke to the need for immediate assistance upon their release from prison. The type of assistance centered on counseling that addresses the stress, depression, and anger caused by wrongful incarceration, and emergency financial assistance to help them meet their basic needs (e.g., housing, employment, and the re-establishment of their identities in a free society):

"Financially I was broke. No family. Occupationally I was 44 years old. Nobody was going to hire me. So I had to get out my defense mechanism, be creative and productive and build a life. Trying to live life according to the social norm of society, going along with the rules and regulations. I'm married – worst thing I could have done – bring a beautiful woman into the horrors of death row. Next, I produced a child – a son. Every day the living hell of the job to protect him from the horror of death row that comes through me."

"I think the State should have provided us with immediate counseling to help us deal with the emotional ups and downs that you go through. When you lose

your freedom, you lose something – it’s a feeling that you have – everyone in this audience that has not been incarcerated you have a certain feeling about yourself, about life itself. Everyone up here that has been incarcerated no longer has that feeling. You really can’t describe it. As Ronald said, you have to be there to understand what your losing. Cause you feel it – everyday a little bit more of your life, of your soul, is drained out of you during those years and years of incarceration...As they say, déjà vu – you still feel those feelings every now and then, even still today. Even today I still feel that. I still have that feeling that sometimes – it desensitizes you to a point where you don’t really care about a whole lot that’s going on in the world. I hated feeling like that, but prison made me feel like that. Prison put me in that state of mind. I had so much anger, that at some point in time I didn’t care if the whole world would end, I wanted everybody to suffer the way I was suffering at the time... You lose a certain feeling when you lose your freedom – you lose something that I still haven’t recaptured. My life is not as difficult as some of the gentlemen up here, but still, no amount of compensation can give you back what was taken. I can’t get back those 18 years that I would have had in society. Prison took 18 years of my life and it gave me 18 years of prison memories of hell. And I can’t just eliminate that when you get out of prison. That’s not the baggage that stays behind, that’s the baggage that comes along... There was no counseling offered to me, I would have had to pay for my own counseling to get it. It should have been something that was put right into place. How can you just assume that a man can do 18 years in prison then get out of prison after 18 years and just, everything’s alright, everything’s just fine. I’m just doing great. He survived it so he’s all right. The person I had to become to survive 18 years of incarceration is not the person I wanted to be, and it’s not the person that I am. It became a part of me because I had to survive in prison. It was hard. It was hard – every day, every night, every moment.”

“(Since my release) I’ve been trained as a psychologist in the interim, with a master’s degree, and I know that prison creates a kind of depression. It creates a biochemical depression. And it may not show up on depression tests necessarily, although I think it would, but it certainly affects a person’s thinking, their ability to cope, to work after they get out, their ability to relate to other people, ability to have a normal family life. All that is affected as a person goes through this kind of experience.”

The need for emergency funding to help them “get back on their feet”

The issue of emergency funding to help the wrongfully convicted “get back on their feet” includes financial compensation that helps them meet their basic needs, but also that helps them pay for counseling that can quickly help the wrongfully convicted get on the road to psychological recovery. Again, when asked what the state can do one panelist responded:

“I think the State should have provided us with immediate counseling to help us deal with the emotional ups and downs that you go through. When you lose your freedom, you lose something – it’s a feeling that you have – everyone in this audience that has not been incarcerated you have a certain feeling about yourself, about life itself. Everyone up here that has been incarcerated no longer has that feeling.”

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“Take care of me, take care of my financial needs. Let me seek the proper help that I do need from people that have a neutral mind and that will look at me as a human being, not of a product of prison.”

In addition, the issue of financial compensation was addressed and the steps that the wrongfully convicted must take in pursuing compensation were briefly discussed. The following quotes illustrate the frustration that many felt as they pursued financial compensation for their wrongful conviction. In response to the question, “how long did it take to receive compensation?” one of the panelists responded:

“How long did it take? I don’t remember the exact length of the delay but it took long. You know, we had to get the pardon, we had to wait to get the pardon. I had a little resentment towards that to begin with. It just didn’t seem right that we had to request a pardon to receive any type of compensation, but that’s the way it is set up.”

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For two other panelists that spent less than four years in prison, these were their experiences with the pursuit of compensation:

“Back in 1992 when the case was finally dismissed because of DNA evidence, I think it was about \$3,000 per year was all you could get. My attorneys looked into it. We’d have had to go to court, make a case, prove the case, spend more time in court...It just didn’t seem like it was worth \$9,000 to try and do that and try and pay an attorney with that.”

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When asked why another panelist did not pursue compensation he responded:

“...like Steve, we had talked to our attorneys and they told us it wasn’t worth the time that it would cost for their services. I think it was \$3,500 a year, it would have been well under \$5,000, it wasn’t worth the lawyers time.”

Other needs

In addition to the needs addressed above, other needs or services were mentioned by individual panelists that would aid in their recovery from being wrongfully incarcerated. Many of the panelists spoke about their disappointment that no one in the criminal justice system has ever come forward and apologized for their wrongful convictions or have paid a price for their role in a wrongful conviction. One of the panelists put it this way:

“...you’d think there would have to be an admission from the State that they made a mistake and I don’t ever recall seeing it on TV...for example, saying I’m sorry, I’m sorry I made a mistake...If there is no admission to error in the system, then where do you begin?”

Even though these men have had their convictions overturned, the stigma that is associated with being in prison still follows them. This subject was introduced by the facilitator when he stated that a prominent criminologist once said to him that “there is a worse stigma attached to prison than there is to crime.” The panelists were then asked if they thought that was true. The following panelists responded:

“I certainly do. I think there’s quite a stigma attached to having spent anytime in prison. Like you say, you might be able to joke about some kind of criminal activity that you might have been a part of as a younger person, there’s forgiveness there. But there is a bias against people who have been in prison for whatever reason. There is a doubt that is automatically attached to their character or their name.”

“Well, when I fresh got out – well first of all I was socially, I was labeled, I was branded, still is... When I was at the Press Club in Washington D.C., after sitting down after I got through speaking, the second person to get up on the open mike said, ‘now when you let these convicts out’ I said see, I’m labeled for the rest of my life. Like Merle Haggard said, you’re branded for the rest of your life.”

Finally, the following quote from a panelist that spent 18 years in prison vividly illustrates the difficulty in reestablishing one’s identity in a free society after a lengthy incarceration:

“I can recall when I got out and tried to re-establish the identity of Mr. Kenneth Adams, how difficult it was to get a driver’s license, how difficult it was to open a bank account, how difficult it was to re-establish that I didn’t die in prison. Even though I spent almost a generation in prison, Kenneth Adams was still alive and well and wanted to re-establish himself in a civilized world.”

“I can recall when I got out and tried to re-establish the identity of Mr. Kenneth Adams, how difficult it was to get a driver’s license, how difficult it was to open a bank account, how difficult it was to re-establish that I didn’t die in prison.”

Factors that help the wrongfully convicted reintegrate into their communities

Panelists identified many factors that have led to their more successful transitions into free society. Many of the panelists spoke of the role that their families and their communities played in helping them survive prison as well as reintegrate into society:

“I also had my family, my children. I had a tremendous amount of support from the community, I had a tremendous outpouring...I had a tremendous support from my family and my friends and that kind of thing, so that helped a great deal.”

“I was lucky. My sister, who even though my parents were killed, my twin sister was one of my strongest supporters.”

Still others spoke of the role that not only family and the community plays in successfully reintegrating into the community, but meaningful employment as well:

“...during that time I had my family, my friends, and a lot of supporters were still there waiting for me, my employer was waiting for me to come back to work. When I got out, right away I had a place to stay I had my family and my wife and my children. Everything was there in place for me to help me move right back into society.”

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Finally, two other factors identified by representatives of the Center on Wrongful Convictions that contribute to more successful transitions into the community were discussed. These include spending relatively short periods of time in prison and being a mature adult when their fate befell them. One panelist spoke about the relatively short time he spent in prison:

“First of all I was in prison for 18 months. I think the biggest difference (in my recovery) is the 18 months. God bless anyone who spends any more time than that, because 18 months is like 5 years. I can’t imagine what 10 years would seem like.”

The types of assistance discussed, and in some cases addressed above, include meaningful programs that would provide them with the social, educational, and employment skills necessary to successfully transition into free society. The following quote describes the educational experiences of one of the panelists while in prison:

“I took the last two college courses offered at a maximum security prison...education has proven to be the number one thing that keeps these guys from going back. The only thing, the best skill I learned in prison, was I learned how to shoot cockroaches with rubber bands. I can hit them nine out of ten times.”

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Emergency financial compensation that would help them meet their basic needs (i.e., food, clothing, housing) and access to counseling, preferably from a community-based agency as opposed to a state agency, for both themselves and their loved ones, were some of the ideas that panelists had that would have aided in their reintegration into their communities. In addition, many of the panelists made the point that their families suffered from their wrongful conviction as well and could also benefit from these services.

Conclusion

The consensus of the panelists is that the criminal justice system has done nothing to right the wrong perpetrated against the wrongfully convicted. As illustrated by many of the quotes included in this report, not only do the panelists feel that the criminal justice system has not helped them recover from their wrongful incarceration, but there is a great deal of skepticism on the part of panelists that any organization affiliated with the criminal justice system would want to help the wrongfully convicted. These men feel victimized by the criminal justice system and that the system has made no attempts to remedy the harm that was done. This quote illustrates a fundamental principle of restorative justice that applies to the plight of the wrongfully convicted:

“...I certainly think that it’s fairly reasonable to any fair-minded person to say that when there was damage done, there should be at least a good effort to make repairs. That’s a reasonable standard in most situations, so why not in this situation.”

Still other strategies that are also consistent with restorative justice principles were raised by panelists, namely holding those accountable who perpetrated the wrongful convictions:

“Just like in our case, the evidence pointed to obvious police misconduct, criminal behavior on the law enforcement side, and yet no criminal charges are ever filed and the recent case in the news where the sheriff’s (deputies) were found not guilty, yet the inmate is dead...If they find criminal behavior in law enforcement there should be prosecution.”

“If there is wrongdoing, and there’s behavior which is unethical, there has to be a cost to it. I mean some of it is criminal. Some of it is illegal and criminal and vicious against some of these men, some of the things that were said about them, some of the things that were fabricated just to get a conviction. But there has to be a penalty. There has to be some way to hold these people accountable even if it is some sort of retraining, or loss of job. I’d love to see our prosecutors driving a cab instead of practicing law – I think something like that would be just.”

“If there is wrongdoing, and there’s behavior which is unethical there has to be a cost to it. I mean some of it is criminal.”

“If (a) state’s attorney, after knowing and willingly, still sent an innocent man to jail, they could go to jail and be fined. There would be some relief in the judicial system for sending innocent men to jail...So, these men should have to suffer, or I will lighten the burden a little bit, say they need to pay a penalty for what they are doing to other men. If somebody do something to you, and then something is done to them you have a little closure in your life. And I think this is the biggest thing. We’ve suffered and nothing can be done about it. That’s what bothers me.”

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In the same way that the criminal justice system attempts to provide assistance to crime victims, the panelists believe that the criminal justice system should provide assistance to those that the system has victimized. As the final quotes indicate, it may be a response that is based on restorative justice principles that could help the wrongfully convicted recover from their victimization. But as evidenced by their statements, the panelists clearly believe that more is needed, including access to programs that teach meaningful skills, access to counseling from agencies of the individuals’ choosing, and emergency financial assistance that is made available to those wrongfully convicted upon release from prison. Although it is impossible to make up for the loss of time and experiences of those who have been wrongfully convicted, the panelists felt that it was the criminal justice system’s responsibility to right the wrongs that the system has perpetrated against the wrongfully convicted.

