

COMPENSATION UNDER THE MICROSCOPE: CONNECTICUT

The Three Lives of the Connecticut Wrongful Conviction Compensation Statute

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Introduction

With the exception of the District of Columbia, Connecticut has paid exonerees the highest annual amount of compensation for wrongful convictions in the country, almost four times the national average. Perhaps in part because of this, Connecticut is one of a few states that has attempted to limit the scope and generosity of its statute. It, however, later backpedaled on some of those limits. Then, in a burst of activity in early January 2025, the Connecticut Claims Commissioner cleared a backlog of pending cases, awarding more than \$36 million in compensation. The Connecticut statute has thus had three lives, having been passed in 2008 and amended twice eight years apart, in 2016 and 2024.

Connecticut presents a particularly interesting example of the evolution of a progressive state compensation statute. In Connecticut, claims are decided by a single person – the Claims Commissioner – who has the authority to decide all claims against the state. As we shall see, the Commissioner resolved a substantial majority of claims during life number 1, the most generous one and the one in which the statute was most effective.

This article summarizes the Commissioner's decisions made during that period when the statute had no compensatory floors or caps. Instead, it listed factors the Commissioner should consider in exercising his or her uncabined

discretion to arrive at an award adequately compensating the wrongly convicted. Those decisions, almost all of which were written by one Claims Commissioner, reviewed the relevant factors for decision, applied the facts presented, used language that was very empathetic and, ultimately, arrived at compensation amounts associated with each factor with virtually no published reasoning or analysis.

It is difficult to find fault with the Commissioners, who were faced with profoundly difficult decisions. How does one value the loss of years of liberty, broken relationships, and pain and suffering? Claims Commissioners, though, tasked with adjudicating tort and other cases against the state, would seem to be just the sort of persons to make that kind of judgment. They, more than almost anyone, have the training, experience, and knowledge of precedent that would equip them for such a task. Those qualities may have informed the Claims Commissioners' decisions, but they did not articulate how those personal characteristics, or other considerations, guided those decisions.

They are not alone. Unless bound by prescribed caps or other limitations by the legislature, decision-makers in these cases appear to find it virtually impossible to explain what is perhaps unexplainable – how to value the intangible – the damage and harm suffered by exonerees while wrongfully incarcerated and after. The awards are seemingly based on a person's sense of justice and fairness, which could be influenced by where they live. The few uncapped jurisdictions, New York, (previously) Connecticut and (partly) the District of Columbia, have the highest average annual awards and, perhaps not coincidentally, high incomes and costs of living. But, should the value of a lost year depend on the fortuity of where the exoneree was wrongfully convicted?

Not long after one Connecticut Claims Commissioner decided a particularly controversial wrongful conviction compensation case, he resigned and the legislature amended the statute. The case involved four alleged gang members, Carlos Ashe, Darcus Henry, Johnnie Johnson, and Sean Adams, whose murder convictions were overturned on grounds that seemed unrelated to innocence. And their awards were substantial. The legislature, we will see, made and later remade modest changes to the eligibility requirements, but imposed substantial changes on compensation. It substantially narrowed the Commissioner's discretion to select award amounts and carved out a role for the legislature to oversee the exercise of that discretion.

Connecticut's struggle with improving its comparatively good statute reflects the broader long-running efforts by states to balance discretion and limits, generosity and fiscal discipline, speed in decision-making with prospects for delay and the desire for certainty of innocence with difficulties of proving it. In fact, Connecticut has fairly effectively balanced these competing considerations, but it has been a bumpy ride.

The Evolution of the Connecticut Statute – Life 1

The Connecticut wrongful conviction compensation statute, Conn. Gen. Stat. § 54-102uu (2008), was enacted in 2008. Consistent with other state statutes, a claimant was required to show two things to receive compensation: 1) that they were convicted, sentenced and imprisoned for one or more crimes (including misdemeanors) of which they were innocent and 2) that the conviction was vacated or reversed, and the criminal complaint was dismissed on grounds of innocence or on grounds consistent with innocence. § 54-102uu(a) (2008). The notion of innocence appears twice. Claimants had to show innocence and show that the reversal and dismissal were based on innocence or on grounds consistent with it.

Under the 2008 statute, claimants filed a claim with the Connecticut Claims Commissioner. § 54-102uu(b) (2008). At a hearing before the Claims Commissioner, the claimant had to show, by a preponderance of the evidence, that they satisfied the eligibility requirements above. § 54-102uu(c) (2008). In addition, they could present evidence of their damages, including “claims for loss of liberty and enjoyment of life, loss of earnings, loss of earning capacity, loss of familial relationships, loss of reputation, physical pain and suffering, mental pain and suffering and attorney’s fees and other expenses arising from or related to such person’s arrest, prosecution, conviction and incarceration.” *Id.*

If the claimant demonstrated their entitlement to compensation, the Claims Commissioner had discretion to decide on the amount. In doing so, the Commissioner could consider not only the evidence of damages, but also “whether any negligence or misconduct by any officer, agent, employee, or official of the state or any political subdivision of the state contributed to such person’s arrest, prosecution, conviction, or incarceration.” § 54-102uu(d) (2008). That provision was unique among state compensation statutes. The 2008 Connecticut statute had no damages cap or floor.

In addition, the Commissioner was authorized to award payment for employment training and counseling, educational benefits, and any other services needed to facilitate the claimant’s reintegration in the community. § 54-102uu(e) (2008). Those exonerated prior to passage of the statute were required to file a claim by October 1, 2010. The statute further explicitly stated that no claimant (or recipient of compensation) was precluded from filing any other actions against the state, state subdivision or public employee arising from their wrongful conviction. § 53-102uu(g) (2008).

Claims Filed Under the 2008 Statute

The statute was substantially amended in 2016. Before we get there, though, let's see first how those exonerated prior to the amendment fared under the original 2008 statute. The National Registry of Exonerations lists 21 people who were wrongfully convicted in a state court in Connecticut between 1989 and 2016. Two of them, Michael Nowacki and John Palladino, did not serve time in prison, leaving 19 potentially eligible for compensation.

Only three did not seek compensation. In 1973, Benjamin Miller pled guilty by reason of insanity to three murders committed between 1967 and 1971. He was committed to a term of 25 years in a psychiatric institution. Following the dismissal of the charges in 1989, Miller remained housed in psychiatric facilities as he was not able to live independently. He died in 2010. David Saraceno was convicted in 1998 of crimes related to the burning of several school buses. After others implicated themselves in those crimes, his conviction was vacated in 1999 in exchange for his pleading guilty to obstruction of justice for making a false confession. He spent less than a year in prison. Alfredo Vargas was convicted of sexual assault of a child in 2002. After his conviction was overturned, he was retried and acquitted in 2006. He was then deported. It makes sense that none of these men sought compensation under the 2008 statute.

Of the remaining 16 exonerees, 13 received substantial awards of compensation. Claims by Murray Colton and Mark Reid were denied on grounds of a failure to demonstrate innocence and statute of limitations, respectively. One claim was not decided and remained pending.¹ Of the 13 compensated, in one instance, the Connecticut legislature made an award through a private bill,

¹ The one pending claim, Claim 24537, was brought by Richard Lapointe in 2016, and not resolved until January 2, 2025. Mr. Lapointe's claim was not decided before his death in 2020. His death apparently led to confusion about how the claim could proceed. As explained below, that was resolved as a result of the 2024 statutory amendments. Claims Commissioner Shea approved an agreement reached between the parties to pay his estate \$5,875,000.00,

awarding \$5 million to James Tillman. Tillman, who was wrongly incarcerated for 18.4 years for rape, was exonerated in 2006 and paid in 2007, before the statute was passed.

Because the Claims Commissioner prior to 2016 had unfettered discretion to decide on the amount of damages, the analysis of these twelve remaining cases is telling. It offers insight into how a professional claims administrator valued these claims. Nine of these claims were decided within a period of just over one year by the same Commissioner, J. Paul Vance Jr. None of these cases were settled by mutual agreement, and in none of them did it appear that the State argued for a lower award. Even so, the legislative history of the 2016 amendment suggests quite strongly that the substantial number of high awards over a short period of time led to a rethinking of the statute.

What follows are brief summaries of the decisions in these twelve cases. Because most were written by Vance, the decisions are similar in approach, analysis, and tone. They are relatively brief and begin by describing the facts of the criminal case and facts about the claimant's background and the impact of wrongful conviction. The opinions briefly apply those facts to the statutory factors set forth above and then, without explanation, assign a monetary damage amount to each factor. The numbers assigned to each factor are added together to arrive at a total.

It appeared that counsel for the claimants presented cases for compensation, although it was not often clear from the decision whether counsel sought particular amounts for particular types of damages. If there was such advocacy, it was not clear whether the Commissioners agreed or disagreed with the argument. With the exception of a few cases in which the Commissioner explicitly disagreed with lost wage calculations offered by expert economists, the Commissioners did not

explain their reasoning. Unless where summarized below, the opinions do not suggest that the state made any counter-arguments or offered any objections to any contentions offered by the claimant's counsel.

The resulting situation is somewhat odd. These are cases involving large sums of money and a decisionmaker with unfettered discretion to award it, guided only by a non-exclusive set of factors. Yet, at least in most of the cases, the state appears absent. In such an environment, particularly where there is one decisionmaker – the Commissioner – the first cases are going to be extremely important. The awards in those early cases will set benchmarks to which Commissioners will, consciously or unconsciously, return. Oddly, Commissioner Vance, in his later cases, did not cite any reasoning from or awards made in previous cases he decided. Each case is, in a real sense, an *ex parte* presentation and *sui generis*.²

Kenneth Ireland January 29, 2015 Claim Number 22457 DNA case³

Mr. Ireland was wrongly convicted of a rape and murder and exonerated in 2009 based on DNA evidence. He was incarcerated for 21 years. Commissioner Vance's five-page opinion, Claim Number 22457, applied the factors set forth in the statute. § 54-102uu(c) (2008). He placed substantial weight on the fact that Ireland was wrongfully convicted of a rape and murder at age 18, after he had been accepted into the U.S. National Guard, and that he had lost the most formative years of life.

Because of the crimes for which he was convicted, he was regarded as a high security risk and imprisoned in unusually harsh conditions. Having been convicted

² This changed when Commissioner Christy Scott replaced Commissioner Vance. Her opinions do refer to prior awards made.

³ "DNA case" means that the exoneration followed DNA analysis that excluded the defendant as the perpetrator.

of sexual assault, Mr. Ireland was targeted by other inmates and suffered physical injuries as a result. An economist provided a lost wage report and the Commissioner's opinion noted a diagnosis of post-traumatic stress disorder (PTSD), suggesting future psychological injury. The opinion did not mention any governmental misconduct or negligence and did not award any non-monetary relief.

Without explaining how he arrived at these figures,⁴ Commissioner Vance awarded Mr. Ireland the following:

Loss of Liberty and Enjoyment of Life:	\$2,500,000
Loss of Earnings and Earning Capacity:	\$1,500,000
Loss of Reputation:	\$ 300,000
Physical and Mental Injuries:	\$1,500,000
Costs and Expenses:	<u>\$ 200,000</u>
	\$6,000,000 \$285,714 / year

Hubert Thompson May 12, 2015 Claim Number 23034 DNA case

Mr. Thompson was wrongfully convicted of sexual assault, kidnapping and carjacking and was exonerated in 2012 by DNA evidence. He served 4.3 years in prison.

As in the Ireland case, Commissioner Vance noted Mr. Thompson's loss of time with family and friends and stated that Mr. Thompson had submitted an economist's report calculating lost earnings and earning capacity. He noted Mr. Thompson's jobs paid between \$7 and \$8 per hour. Like in the Ireland case,

⁴ Commissioner Vance noted the legislature's pre-statutory award of \$5 million to James Tillman.

Commissioner Vance emphasized the loss of reputation for having been convicted for sexual assault.

The opinion stated Mr. Thompson presented evidence of physical injury and offered a medical report diagnosing him with depression and PTSD.

Commissioner Vance attributed Mr. Thompson's inability to articulate clearly his "emotional state" at a hearing on his compensation claim to this psychological harm. Commissioner Vance awarded Mr. Thompson attorney's fees associated with the underlying criminal case and with preparation of the state compensation claim. Although noting the statute did not specifically authorize it, Commissioner Vance determined that the award should not be subject to Connecticut income tax.⁵

Without explaining the specific basis for his calculations,⁶ Commissioner Vance awarded Mr. Thompson:

Loss of Liberty and Enjoyment of Life:	\$480,000
Loss of Earnings and Future Earning Capacity:	\$155,000
Loss of Reputation:	\$ 30,000
Physical and Mental Injuries	\$ 75,000
Costs, Legal Fees and Expenses	<u>\$160,000</u>
TOTAL	\$900,000 \$209,302/year

Lawrence Miller Jr. September 2, 2015 Claim Number 22390

Mr. Miller was wrongly convicted of assault of two teenagers. He served 12.5 years in prison and was exonerated in 1997 after a man convicted of a subsequent murder admitted to the crime.

⁵ He did so in several subsequent opinions.

⁶ Commissioner Vance again cited the Tillman award, but not his opinion in the Ireland case.

Mr. Miller waived an evidentiary hearing and, instead, presented a memorandum and 30 exhibits. This approach, interestingly, resulted in a comparatively very high average annual award. Mr. Miller had been a correctional officer with a wife and two children. He had served in the Army and as a police officer, and the Commissioner described his reputation as “without reproach.”

Reviewing the factors set forth in the statute, Commissioner Vance observed that Mr. Miller’s law enforcement background put him at particular risk while incarcerated in maximum security prisons. He noted the loss of Mr. Miller’s time with his family and missing the birth of his grandchildren. The opinion also stated his family struggled without his presence.

Mr. Miller submitted a lost wage analysis that calculated his economic damages to be about \$3 million during prime wage-earning years. Commissioner Vance credited that report, but found the interest rate used for the time value of money to be excessive. The opinion stated that Mr. Miller was attacked while in prison when his law enforcement background became known and that he suffered from unspecified medical issues. Mr. Miller’s attorney requested, and the Commissioner agreed, that his award be offset by \$1,050,000 received in a civil rights case settlement arising from his wrongful conviction

Without explaining the specific basis for his calculations,⁷ Commissioner Vance awarded Mr. Miller:

Loss of Liberty and Enjoyment of Life:	\$2,400,000
Loss of Earnings and Future Earning Capacity:	\$2,000,000
Loss of Reputation:	\$ 400,000
Physical and Mental Injuries	\$ 100,000

⁷ Commissioner Vance again cited the Tillman award, but not his prior opinions.

Costs, Legal Fees and Expenses	<u>\$ 200,000</u>
TOTAL	\$5,100,000 \$408,000/year

Michael Seri December 21, 2015 Claim Number 22400

Mr. Seri was wrongfully convicted of one count of public indecency and one count of impairing the morals of a child and was imprisoned for six months. He was exonerated in 2003 after a fingerprint on a library book was traced to another man who was a convicted sex offender previously arrested for public indecency at libraries. Mr. Seri was a veteran, a student in New York, a poet, and artist. The opinion stated Mr. Seri also had a history of drug addiction and a psychological disability, but had been sober for seven years and had been improving prior to his arrest.

The nature of the crime, masturbation in front of young girl, was published in newspapers and damaged his reputation. Incarceration required Mr. Seri to drop out of school and interrupt his artistic endeavors. Incarceration, further, worsened his post-military service PTSD and depression.

Again, without explaining the specific basis for his calculations,⁸
Commissioner Vance awarded Mr. Seri:

Loss of Liberty and Enjoyment of Life:	\$. 45,000
Loss of Earnings and Future Earning Capacity:	\$. 40,000
Loss of Reputation:	\$. 40,000
Physical and Mental Injuries	\$. 45,000
Costs, Legal Fees and Expenses	<u>\$200,000</u>
TOTAL	\$370,000 \$740,000 /year

⁸ Commissioner Vance again cited the Tillman award, but not his opinion in other cases.

The award was reduced by \$200,000, the amount apparently received in a civil rights case arising from the wrongful conviction.

Carlos Ashe, Darcus Henry, Sean Adams and Johnny Johnson January 15, 2016 Claim Numbers 23728, 23758, 23759 and 23760

Each of the claimants was wrongfully convicted of a murder that occurred in New Haven in 1996. Exonerated in 2013, each had been imprisoned for about 16.5 years. Their claims were decided in a joint opinion.

Unlike the prior claims, the Commissioner discussed eligibility in this case. He determined whether the charges were dismissed “on grounds of innocence or on a ground consistent with innocence.” § 54-102uu(a)(2) (2008). According to the opinion, the four claimants were members of a street gang and allegedly shot three men, one of whom was killed. The surviving victims, members of a rival gang, testified against the claimants. At trial, one of the survivors lied about a plea deal he was promised, and the prosecutor did not correct his testimony.

The Connecticut Supreme Court ultimately held Mr. Adams was entitled to a new trial. As a result of that ruling, the other three were granted new trials, and the State decided not to retry any of them. The uncorrected false testimony had the apparent effect of exaggerating the credibility of the prosecution witness. It was not suggestive of the innocence of the defendants. Yet, the opinion stated that innocence was undisputed. The statute required that the charges were dismissed on “grounds consistent with innocence.” Emphasizing the “egregious violations of due process” by the prosecution, the Commissioner concluded the statutory standard was met.

With respect to damages, Commissioner Vance noted the defendants were between 18 and 21 when arrested or convicted. Each had career aspirations, and

one was expecting a child. Each were incarcerated for more than 16 years and the Commissioner described their hopes and dreams being deferred by “false accusations and a conspiracy.” Two were not able to attend funerals of loved ones, and each had expected to remain in prison for the remainder of their lives.

Commissioner Vance largely credited an expert report calculating economic damages of \$1,500,000 for Mr. Adams and Mr. Johnson and \$1,900,000 for Mr. Ashe and Mr. Henry. He noted their loss of reputation, physical and medical harms experienced in prison, and the prospect of life-long psychological damage. Ultimately, Commissioner Vance awarded each of them the same amount:

Loss of Liberty and Enjoyment of Life:	\$2,400,000
Loss of Earnings and Future Earning Capacity:	\$1,100,000
Loss of Reputation:	\$ 200,000
Physical and Mental Injuries	\$ 100,000
Costs, Legal Fees and Expenses	\$ 200,000
Misconduct	<u>\$ 200,000</u>
TOTAL	\$4,200,000 \$254,545/yr

This was the first case in which the conduct of a state actor – the prosecutor – was considered as part of the damage remedy.

Miguel Roman February 8, 2016 Claim Number 22443 DNA case

Mr. Roman was wrongfully convicted of a murder and sexual assault and ultimately exonerated in 2009 based on DNA testing. He served 20.5 years in prison. While incarcerated, his life was threatened, and he spent most of his sentence in segregation. His lack of English language ability further isolated him. Mr. Roman was in a long-term relationship and had three children. Mr. Roman submitted an expert’s economic report based on possible employment as a

dishwasher or house painter. The opinion noted the reputational damage he suffered as someone convicted of killing a pregnant woman. There was also evidence presented of psychological damage and treatment for PTSD.

Again, without explaining the specific basis for his calculations,⁹ Commissioner Vance awarded Mr. Roman:

Loss of Liberty and Enjoyment of Life:	\$2,600,000
Loss of Earnings and Future Earning Capacity:	\$. 940,000
Loss of Relationships ¹⁰	\$ 500,000
Loss of Reputation:	\$. 300,000
Physical and Mental Injuries	\$1,600,000
Costs, Legal Fees and Expenses	<u>\$ 60,000</u>
TOTAL	\$6,000,000 \$292,683/year

The State asked the Commissioner to account for a pending civil rights case to avoid a double recovery. Commissioner Vance declined to do so because that case had not been resolved.

Bobby Johnson August 30, 2018 Claim Number 24568

Although Mr. Johnson filed his claim on May 20, 2016, after the 2008 statute had been amended, Claims Commissioner Christy Scott, who succeeded Commissioner Vance, determined that the 2008 statute applied. Mr. Johnson was wrongfully convicted of murder and was exonerated in 2015. He had been incarcerated for 8.2 years. An evidentiary hearing was held in November 2017.

Commissioner Scott's opinion emphasized that Mr. Johnson was convicted at age 16. She regarded the psychological impact of wrongful conviction to be

⁹ Commissioner Vance again cited the Tillman award, but not his opinion in any subsequent case.

¹⁰ Although mentioned as a factor for consideration in the statute, this is the first case in which Commissioner Vance included loss of relationships expressly as a specific factor.

worse on a teenager than an adult and explained that Mr. Johnson suffered from significant mental health issues, leading to depression and isolation. Moreover, his conviction severed family connections important to the development of a teenager into adult, ended his education, prevented him from engaging in work and significantly delayed his efforts to regain independence.

Mr. Johnson requested \$150,000 per year of lost liberty, an amount less than that awarded in some prior cases. That was granted. He asked for \$370,000 in lost wages, offering expert testimony. The Commissioner granted that as well. Mr. Johnson asked for \$125,000 in lost reputation, which the Commissioner regarded as consistent with prior cases. Further, Mr. Johnson asked for \$70,000 per year for physical and mental pain and suffering. This was the first case in which a Commissioner referred to an earlier case. Pointing to the case of Miguel Roman, the Commissioner increased the award to \$675,000 to account for Mr. Johnson's young age. She also awarded him \$232,000 for implementation of a life restoration plan.

In sum:

Loss of Liberty, Enjoyment of Life and familial relationships:	\$1,350,000
Loss of Earnings and Future Earning Capacity:	\$ 370,000
Loss of Reputation:	\$ 125,000
Physical and Mental Injuries	\$ 675,000
Costs, Legal Fees and Expenses	<u>\$ 200,000</u>
	\$2,720,000 \$302,222/yr

Luis Figueroa December 24, 2020 Claim Number 24563 DNA case

On December 24, 2020, Commissioner Scott decided the April 29, 2016, claim of Luis Figueroa which also had been filed before the amendment to the

statute. Commissioner Scott determined that the terms of the unamended 2008 statute applied to his case. She conducted an evidentiary hearing in December 2019. Mr. Figueroa had been wrongfully convicted of a sexual assault, served 12 years in prison and was exonerated in 2014 based on DNA analysis.

Mr. Figueroa was imprisoned at age 20 and Commissioner Scott noted his conviction of a sexual offense was particularly stigmatizing. He was targeted for violence by other inmates, assaulted, and witnessed rapes of other inmates. Mr. Figueroa was isolated in prison and refused to allow his family to visit him. Mr. Figueroa was released before he was exonerated. He remained isolated as a convicted sex offender. This led to alcohol abuse and charges of domestic violence. Ultimately, he began therapy and was diagnosed with anxiety, PTSD, and obsessive-compulsive disorder, resulting from his wrongful conviction. He was particularly upset that his father died before he was exonerated.

In this case, unlike the others, the State argued certain facts warranted a reduced award. The State pointed to misleading statements Mr. Figueroa made to the police and to his *Alford* plea. The Commissioner rejected both arguments. As to the latter, Commissioner Scott stated the victim was a Yale undergraduate determined to be a sympathetic and believable reporter of events. A plea, according to expert testimony, avoided a substantial risk of a far longer prison sentence.

The State also argued that Mr. Figueroa's periods of incarceration on domestic violence charges not be considered because they were not the result of wrongful conviction. Based on testimony from prosecutors, however, the Commissioner concluded the sexual assault conviction precluded opportunities to participate in diversionary programs. The wrongful conviction made incarceration of such charges, also involving violence against women, more likely.

In calculating Mr. Figueroa's damages, Commissioner Scott noted he sought damages not only for his incarceration, but also for eight years spent on probation. She evidently compared the amount sought with prior awards and found it reasonable. Commissioner Scott credited an expert lost wage and earning capacity report. She specifically addressed the loss of familial relationships and found them profound. He was imprisoned at age 20 and reestablishing those relationships had proven difficult given his PTSD and other mental health diagnoses.

Commissioner Scott also addressed the State's misconduct and negligence. She noted the state had failed to notify Mr. Figueroa of an exculpatory DNA report for five years, during which he was serving probation. During this period, Mr. Figueroa was considered a sex offender, and his ability to find housing and employment were limited.

Commissioner Scott awarded Mr. Figueroa:

Loss of liberty and enjoyment of life	\$2,600,000
Lost earnings/earning capacity	\$1,424,362
Loss of familial relationships	\$ 500,000
Damage to reputation	\$ 500,000
Physical/mental pain and suffering	\$1,700,000
Legal fees/expenses	<u>\$ 250,000</u>
	\$6,974,362 \$586,616/yr

Commissioner Scott also awarded Mr. Figueroa \$65,033.66 in reintegration expenses to be administered by the Connecticut State Bar. Despite the state's arguments, Mr. Figueroa's annualized award of \$586,616 was substantially higher than all other claimants.

Scott Lewis July 28, 2023 Claim Number 24509

Mr. Lewis was convicted of two murders, and his convictions were vacated in 2015 as a result of *Brady* violations, the failure of the prosecutor to turn over exculpatory evidence to the defense. He had been incarcerated for over 24 years. He filed a claim in early 2016, before the 2016 amendment was enacted. The new Commissioner, Robert F. Shea, Jr., decided the 2008 version of the statute applied and granted the claim more than seven years after it was filed. In the meantime, Lewis settled a civil rights case against the city of New Haven for \$9,500,000.

In a very brief decision, Commissioner Shea awarded Lewis \$5 million in damages (and \$500,000 in attorney's fees). Without explaining how, he wrote that he took into account the civil rights settlement. He did not break down the damages award by factor as prior decisions had. The annualized award was \$226,337.

Table 1 below summarizes the data concerning the cases decided under the first version of the Connecticut statute:

# eligible exonerees	# filed	outcomes	total compensation	years lost
19	16	13 paid	\$55,429,396	188.8
		2 denied		
		1 pending		

Table 1

The average annualized payout during this period was \$293,587.

Putting aside Mr. Seri's case, the Commissioners assigned higher awards to compensate for loss of liberty and enjoyment of life than for other statutory factors. One might expect that such awards would be reasonably consistent per year among exonerees while compensation associated with other factors – loss of earnings,

familial relationships, and reputation – and physical and mental pain and suffering would be variable. The weight of those latter factors depended on individualized conditions, such as work history and education, extent of family relationships, and health conditions caused by or worsened in prison.

Yet, as each case was decided, the annualized award for loss of liberty generally increased. Striking was the award to Mr. Figueroa, although some of that award might be associated with his extended post-incarceration probation period. Similarly noteworthy was the similar award to Mr. Miller. In his case, his background in law enforcement made his incarceration more difficult.

The statutory damage factors created by the legislature are sensible and clearly guided the Commissioners' approaches to making an award. How they assigned values to each factor was not explained and can only be inferred. What is clear is that the Commissioners took into account individual considerations, an assessment of which would surely benefit from creative advocacy by the claimant's legal counsel. That required submission of expert reports from labor economists, psychiatrists, and medical experts.

Making these individualized assessments seems appropriate, but it also comes at a cost. Time is required for evidentiary hearings and opinion writing. Historically, the comparatively detailed and generous orders issued by the Claims Commissioners have taken a very long time. Most other states, in contrast, award inflexible daily or yearly awards, some also capped at a maximum payout. Theoretically, these awards take far less time once a decision on eligibility has been made, but at a loss of the individualized evaluation that has marked the Connecticut approach.

The Evolution of the Connecticut Statute – Life 2

Shortly after deciding Mr. Roman's case, Commissioner Vance resigned. Press reports linked the resignation to controversy over his decision in the cases of Mr. Ashe, Mr. Henry, Mr. Adams, and Mr. Johnson.¹¹ The legislative history of the 2016 amendments suggests concern with the wide discretion of the Claims Commissioner to make compensatory awards and that recent awards seemed out of line with those in neighboring states.

In 2016, the Connecticut legislature amended the statute in three significant ways. First, recall that the 2008 statute required the claimant to demonstrate they were convicted of crimes for which they were innocent *and* that the complaint or information was dismissed on grounds of innocence or on grounds consistent with innocence. The state did not appear to challenge the claimants' innocence. The Commissioner held there was "no dispute" that Messrs. Ashe, Henry, Adams, and Johnson were innocent of the crimes for which they were convicted. As the Commissioner framed with the issue in these cases, the question for decision was the basis upon which the criminal complaint was dismissed.

In these four cases, the convictions were *vacated* as a result of prosecutorial error – leaving uncorrected a witness's testimony that he was not testifying for the prosecution as a part of a plea deal to resolve a separate criminal case. The charges were *dismissed* because the prosecutor chose not to retry them. One reason given was that the witness was dead. The Commissioner held that this alone would not be sufficient to satisfy the statute. However, when accounting for the prosecutorial misconduct, he held it was.

¹¹ Mark Pazniokas, *Claims Commissioner Resigns Amid Controversy*, CT MIRROR (Feb. 19, 2016), <https://ctmirror.org/2016/02/19/claims-commissioner-resigns-amid-controversy/>; Christine Stuart, *Claims Commissioner Resigns Following Controversial Award*, CT NEWS JUNKIE (Feb. 20, 2016), https://ctnewsjunkie.com/2016/02/20/claims_commissioner_resigns_following_controversial_award/; *CT Claims Commissioner Resigns Amidst Criticism For Wrongful Conviction Compensation*, FOX61 (Feb. 19, 2016), <https://www.fox61.com/article/news/local/outreach/awareness-months/ct-claims-commissioner-criticized-for-16m-given-to-ex-cons-resigns/520-fe99380e-f8c4-448a-9e03-0824408ac9fd>.

From a policy perspective, it should not matter why the criminal complaint was vacated or dismissed; all that should matter is that it was. Instead, what is important is whether a decisionmaker – a judge or commissioner or agency – found the claimant factually innocent or that the government did not demonstrate otherwise. However that is done, the essential issue is substantive – innocence.

That was not at issue in the cases of these four men. That they were factually innocent was seemingly undisputed. The fight, instead, was over procedure. On that point, the Commissioner’s reasoning was questionable. The question was why the complaint was dismissed. Here, it was because the prosecution decided not to retry them, not because it concluded that they were innocent, but because it did not have the evidence any longer to prove guilt beyond a reasonable doubt.

Is that rationale “consistent with innocence?” In cases that end with a prosecutor’s decision not to re-try the defendant or defendants, it is often difficult to know why that decision is actually made. A press statement may offer a reason, but it is entirely possible that is not the real reason, or the whole reason, for the decision. The reason given here, the loss of evidence over time, is typical and understandable. But it hardly seems to be consistent with innocence, if “consistent” means a basis that is suggestive, but not demonstrative, of innocence. It seems more “not inconsistent” with innocence. Given that, adding an award based the prosecutor’s trial misconduct, as the Commissioner did, does not seem to matter. That misconduct is the reason why the convictions were vacated, not why the charges were dismissed.

These four cases seemed to have gotten wrong the question of procedure. The 2016 amendment, however, did not solve that problem. Surprisingly, it broadened the eligibility threshold by eliminating the substantive requirement to show innocence. Instead, the claimant need only show (1) they were convicted of a

crime for which they were sentenced and served some jail time and (2) “Such person’s conviction was vacated or reversed and (A) the complaint or information [was] dismissed on grounds of innocence, *or* (B) the complaint or information [was] dismissed on a ground citing an act or omission that constitutes malfeasance or other serious misconduct by any officer, agent, employee or official of the state that contributed to such person’s arrest, prosecution, conviction or incarceration.” 2016 Conn. Acts 127 (Reg. Sess.). The concept of government misconduct had migrated from a compensatory factor to an eligibility standard.

This amendment should not have pleased those uncomfortable with the substantive outcome in cases of Mr. Ashe and his co-defendants. So long as the prosecutor’s misconduct satisfied (B), which the Commissioner concluded it did, a similar post-amendment case would be easy. The defendants would be clearly eligible without having to show factual innocence. The 2016 Amendment thus broadened eligibility for state compensation. So long as the criminal complaint was dismissed because of government misconduct, innocence had no bearing on eligibility.

Second, the amendment modified the factors the Commissioner should examine to determine the compensatory amount. The 2016 amendments required the claimant to “present evidence as to (1) the claimant’s age, income, vocational training and level of education at the time of conviction, (2) loss of familial relationships, (3) damage to reputation, (4) the severity of the crime for which such claimant was convicted and whether such claimant was under a sentence of death . . . (5) whether such claimant was required to register [as a sex offender] and for what length of time . . . (6) any other damages such claimant may have suffered arising from or related to such claimant’s arrest, prosecution, conviction and

incarceration.” 2016 Conn. Acts 127 (Reg. Sess.). Misconduct was eliminated as a compensatory factor.

The amendment effectively codified certain factors the Commissioner, until then, determined to be significant in his decision, repeated certain previously existing factors, and added others, such as registration as a sex offender. The previous version’s specific references to physical and mental pain and suffering and loss of liberty and enjoyment of life were now subsumed under the catch-all in section (6).

Third, and most clearly emphasized in the legislative history, the 2016 amendment placed caps on compensation and limited the Commissioner’s discretion to make compensatory awards. The previously uncapped statute was amended to require the Commissioner to award “an amount that is at a minimum, but may be up to” 200 percent of the median family income, as determined by the U.S. Department of Housing and Urban Development, adjusted for inflation. 2016 Conn. Acts 127 (Reg. Sess.). Somewhat awkwardly worded, a fair reading is that the Commissioner could award between one and two times the income amount.

The Commissioner was empowered to use the factors discussed above, or any others,¹² to increase or decrease the award by twenty-five percent. 2016 Conn. Acts 127 (Reg. Sess.). Moreover, if the amount awarded exceeded \$20,000, or if the claimant requested it, the Connecticut General Assembly reviewed the claim award within forty-five days of receipt. 2016 Conn. Acts 127 (Reg. Sess.). The General Assembly could confirm the award, remand it to the Commissioner, or do nothing.

¹² The 2016 amendments eliminated explicit consideration of any negligence or misconduct of a state officer or employee in making a compensatory award. However, they did not prohibit consideration of that factor given its open-ended direction that the Commissioner consider the six statutory factors and any other relevant factors.

This was a substantial modification to the statute. In 2024, the HUD-determined median family income in Connecticut was \$122,300.¹³ Doubling that, plus a possible additional 25 percent, would still be the most generous cap in the country, but it did narrow the Commissioner's discretion. If applied to the 2008 statute awards described above, this amendment would result in the reduction of many of them. In addition, that discretion was subject to legislative review. Quite significantly, the 2016 amendment also eliminated the provision that expressly permitted claimants to pursue claims, typically federal civil rights claims, against the state, state subdivisions or public officers or employees. In its place, the amendment required claimants compensated under the state statute to release all such claims. 2016 Conn. Acts 127 (Reg. Sess.).

In sum, the 2016 amendments widened the door for eligibility and closed it somewhat on compensation.

Claims Filed Under the 2016 Amendments

The National Registry of Exoneration lists 19 people exonerated between mid-2016 and June 4, 2024. One was not incarcerated and thus not eligible. Two, Martina Jackson and Speciale Morris, pled guilty to charges related to an arson, but were not sentenced. Although they were incarcerated after pleading guilty, they were not eligible for compensation because the statute required them to have been sentenced.

This left 16 potential claimants. Prior to June 4, 2024, when the amendments described below took effect, five had not filed claims; five had filed claims which remained pending as of June 4, 2024; one, Michael Skakel, did not file; and two,

¹³ *FY 2024 State Income Limits*, FY 2024 Income Limits Documentation System, DEP'T OF HOUSING AND URBAN DEVELOPMENT, https://www.huduser.gov/portal/datasets/il/il2024/2024summary.odn?inputname=STTLT*099999999%2BConnecticut&selection_type=county&stname=Connecticut&statefp=09.0&year=2024.

Ralph Birch and Shawn Henning, withdrew their claims after settling parallel civil rights cases. Only three filed and were compensated under the 2016 amendments.

The 2016 amendments were part of a broader bill to reform the Office of the Claims Commissioner. Those reforms were intended, among other things, to reduce delays in deciding claims. The Claims Commissioner is required to determine whether a claimant meets eligibility requirements within 90 days after the hearing. 2016 Conn. Acts 127 (Reg. Sess.).

Of the three resolved claims, one, filed on behalf of Leroy Harris, settled for \$7,500,000 in January, 2024. Mr. Harris, who had been exonerated in 2022, was incarcerated for over 28 years. The claim filed by Charles Staples III, who had been exonerated in 2020 after serving 10.7 years was effectively settled for \$1,550,000 in February 2024. Albert Swinton’s claim is the only case decided while the 2016 amendment was in effect to result in a reasonably detailed discussion of damages.

Mr. Swinton was convicted of a murder at the age of 50 and exonerated more than 18 years later in 2018 through DNA testing. In her December 2020 decision, Commissioner Scott emphasized that Mr. Swinton was diabetic, and his medical condition worsened while incarcerated. After his release, he required extensive medical treatment. She noted his large, close-knit family and his “community success.” He had experienced anxiety and depression in prison.

Commissioner Scott stated an expert witness had testified that 100 percent of the median family income over the period of Swinton’s incarceration was \$1,427,083. She observed the resulting annual award – \$77,000 – was far less than that awarded in the cases of Mr. Johnson, Mr. Roman, Mr. Miller, and Mr. Ireland. She further held “[w]hen the legislature amended the statute in 2016, there was no

indication either in the text or the legislative history that the intent was to significantly reduce the amounts that claimants would be awarded for wrongful incarceration.”

As a result, she doubled the award. Further, considering Swinton’s age, familial relationships, damages to reputation, severity of the crime, medical deterioration, and mental distress, she increased the award an additional 25 percent to \$3,567,708. In short, Commissioner Scott awarded Mr. Swinton the most the statute allowed. The award came to \$191,812 per year lost, an amount less than all of the claims awarded under the original 2008 act.

Table 2 summarizes the data reflecting claims filed during the second life of the Connecticut statute:

# eligible exonerees	# claims	outcomes	compensation paid	years lost
16	10	3 paid	\$12,617,708	57.9
		5 pending		
		2 withdrawn		
		5 premature		
		1 not filed		

Table 2

The average annual payout was \$217,922. That amount is less than the average annual payment during life 1 of the statute, as one might expect given the new cap. Given the small number of resolved claims and large number of pending ones, there is not enough data to make a judgment about the effectiveness of the 2016 amendments.

The Evolution of the Connecticut Statute – Life 3

In 2024, the Connecticut statute was amended again. One can trace a causal relationship between the claims decisions made in 2015 and the subsequent amendments. The same is not true with the 2024 amendments. Neither claims activity nor the legislative history explain the reason why the legislature took up the task of amending the statute. There are, however, some other hints.

In March 2024, the *Connecticut Law Tribune* published an editorial arguing that the 2016 amendment's bar on civil rights claims by those having received state compensation was unconstitutional.¹⁴ It argued the provision also delayed the filing and resolution of state compensation claims because claimants tried to recover compensation through civil rights case first, before seeking state compensation. The statute did not bar filing for state compensation after receiving a civil rights recovery. The editorial advocated that the bar extend only to civil rights claims against the state itself. Further, as noted, the claim filed by Richard LaPointe had stalled in 2020 after he died because there was no express permission in the statute for estates to substitute for plaintiffs in such cases.

Whether or not these factors explain it, the Connecticut legislature amended the statute again, effective June 4, 2024. It applied those changes to claims pending before Claims Commissioner and those filed after June 4, 2024. First, it broadened the eligibility requirements further by permitting the claimant to show that their criminal complaint or information was dismissed on grounds of innocence or, and this is the new part, “on grounds consistent with innocence.” 2024 Conn. Acts 106 (reg. Sess.).¹⁵ The statute states that “grounds consistent with innocence” “includes,

¹⁴ Editorial Board, *Eliminate the Unconstitutional Waiver Provision in CT's Wrongful Incarceration Statute*, CONNECTICUT LAW TRIBUNE (March 14, 2024), <https://www.law.com/ctlawtribune/2024/03/14/eliminate-the-unconstitutional-waiver-provision-in-cts-wrongful-incarceration-statute/>.

but is not limited to, a situation in which a conviction was vacated or reversed and there is substantial evidence of innocence, whether such evidence was available at the time of investigation or trial or is newly discovered.” 2024 Conn. Acts 106 (reg. Sess.).

Second, instead of providing the Commissioner a range between one and two times median family income, the 2024 version of the statute required the Commissioner to award 200 percent of that income figure. 2024 Conn. Acts 106 (reg. Sess.). Third, it included an offset provision that required the state compensation award to be reduced by any other recovery the claimant received for wrongful conviction. Fourth, it narrowed the bar on post-compensation civil rights cases to preclude only claims against the state (the amendment recommended by the editorial) and not against other Connecticut governmental units or personnel.

Fifth, it increased from \$20,000 to \$35,000 the threshold compensation award that must be reviewed by the General Assembly. 2024 Conn. Acts 106 (reg. Sess.). Further, it eliminated the legislature’s ability to modify the award. 2024 Conn. Acts 106 (reg. Sess.). Instead, it may confirm or deny the award, or remand it to the Claims Commissioner. Last, it expressly permitted a claimant’s estate to receive compensation. That latter amendment allowed the heirs of Richard LaPointe to be compensated.

The 2024 amendments eased the eligibility standard yet further even though the statute had not (and still does not) require the claimant to demonstrate their factual innocence. That is a national outlier. It further narrowed the discretion of the Commissioner to make an award in a manner that, in part, codified the decision

¹⁵ Alternatively, the statute retains the option for the claimant to demonstrate that the complaint or indictment was dismissed because of the government’s malfeasance or misconduct.

in the Albert Swinton case. Perhaps because of that, the 2024 amendment narrowed the scope of review permitted by the General Assembly.

Claims Determined During After Passage of the 2024 Amendment¹⁶

The 2024 amendments applied to claims pending at the time of the June 4 enactment. In early January 2025, Commissioner Shea resolved six claims filed by claimants listed on the National Registry. One of those was filed in 2016 by Mr. LaPointe. The 2024 amendments permitted his heirs to receive compensation, and his claim settled for \$5,875,000. Mr. LaPointe, exonerated in 2015, had been wrongfully incarcerated for 25.8 years.

Two other cases settled as well. Adam Carmon, whose case was pending as of June 4, 2024, settled his case for \$7,900,000. Exonerated in 2023, Mr. Carmon had been incarcerated for 29 years. George Gould, who was exonerated after June 4, 2024, settled his claim for \$6,700,000. He had been incarcerated for 26 years. The amounts were close to the maximum that the Commissioner was empowered to award.

Claims Commissioner Shea decided three additional claims that were pending prior to June 4, 2024. Vernon Horn's claim was complicated because he served two separate periods of incarceration. The Commissioner awarded Mr. Horn, who was incarcerated for about 18 years in total, the base 200 percent amount plus 10-15 percent (of the 25 percent maximum) based on his testimony about the separation from his family, reputational damage, and his goal to be a paralegal. The total awarded was \$4,654,324, plus \$163,630 for employment training and tuition.

¹⁶ As of the date of this writing, two people wrongly convicted in Connecticut were exonerated after June 4, 2025. Charles Coleman, Jr. and Ronald Taylor have filed claims which remain pending.

Commissioner Shea took the same approach in deciding the case of Marquis Jackson, exonerated in 2018, awarding him an additional 10 percent. The total awarded was \$5,147,291 for 19.1 years of incarceration, plus \$165,630 for training and tuition. Commissioner Shea awarded Stefon Morant, exonerated in 2021, an additional 12.5 percent, citing expert testimony on lost wages and Mr. Morant’s solid post-incarceration work history, the deaths of close family members, and extensive testimony about his community service both in and out of prison. The total awarded for 21.1 years of wrongful incarceration was \$5,814,237 plus \$29,748 for employment training and tuition. Our research found that the Connecticut legislature has not denied or remanded any of these awards.

Table 3 summarizes the status of claims subject to the 2024 amendments. It overlaps to some degree with Tables 1 and 2.

# exonerees	# claims	outcomes	compensation paid	years lost
13	12	6 paid	\$36,090,852	138.2
		6 pending		
		1 premature		

Average annual payout was \$261,149.

The total compensation activity to date in Connecticut is shown in Table 4:

# exonerees	# claims	outcomes	compensation paid	years lost
42	32	22 paid	\$102,622,972.0	384.8

			0	
5 of 42 not eligible		6 pending		
4 of 42 did not file		4 denied		
	1 premature			

The average annual payout was nearly \$267,000.

Conclusion

Connecticut’s wrongful conviction compensation statute is unique. And, its history reflects a widening eligibility standard with narrowed discretion on compensation vested in the Claims Commissioner. The compensation metric, while capped and subject to legislative review, is comparatively very generous, tied to average income in a state with a very high one. We see Connecticut as a blue state experimenting with the essential components of a state compensation statute while choosing not to abandon its progressive orientation.

What is interesting about this historical progression is how the legislature reacted to the apparent backlash against the cases of Mr. Ashe and his co-defendants. Despite some concern that they were freed on procedural grounds, and thus arguably “undeserving” gang members, the legislature moved in 2016 and 2024 toward increasingly open eligibility standards and, in some cases, did not even require a showing of innocence.

The issue in those cases was not the amount awarded to the four men; the amount was about average among granted claims. Yet, in the wake of the decisions, the legislature increasingly cabined the discretion of the Claims Commissioner, limiting it to making an adjustment of up to 25 percent. Seemingly, that move and long-standing concerns about how long it took the Commissioner to decide these claims, led to a burst of compensation orders in January, 2025.

With liberal eligibility standards and narrowed compensation discretion, it is likely that most Connecticut claims will settle in the future prior to a decision by the Commissioner. With more settlements, there will be less need for Commissioners to evaluate the compensatory factors and to make the difficult decisions made during “life one” of the Connecticut experience. Those decisions have been interesting because they reveal how the Commissioners, unconstrained by monetary caps, valued the harms experienced by exonerees. And they did so far more generously than nearly all states do without substantial explanation as to why they did.

Ultimately, these judgments were, in a sense, democratized as the state legislature, crafting caps, chose one roughly on par with many the early judgments of the Claims Commissioners. The three lives of the Connecticut statute reflect the same sort of interest balancing that other states have grappled with. But, the outcomes, at least so far, which land Connecticut on the extreme progressive end of the state statute spectrum, may well be unique to Connecticut. It is very hard to imagine other states replicating Connecticut’s approach.