

Preventable Error: 2011 Annual Report on Prosecutorial Misconduct in California

Northern California Innocence Project,
Santa Clara University School of Law

A **VERITAS** Initiative Report

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Innocence Project

Introduction

In October 2010, the Northern California Innocence Project's (NCIP) Veritas Initiative published the ground-breaking report: *Preventable Error: A Report on Prosecutorial Misconduct in California 1997–2009*¹ (hereinafter *Preventable Error: 1997–2009*), the most extensive statewide study of prosecutorial misconduct ever conducted.

This comprehensive study of judicial court findings detailed more than 700 cases of prosecutorial misconduct in California over a span of 13 years. The report included an analysis of how the California justice system identifies and addresses prosecutorial misconduct in this state and its cost and consequences, including the wrongful conviction of innocent people in those years. The study revealed that those best positioned to address the problem—the state and federal courts, prosecutors and the California State Bar—have repeatedly failed to do so.

Since the initial publication of *Preventable Error: 1997-2009*, NCIP's Veritas Initiative has continued to document prosecutorial misconduct in California, first through the 2010 annual report and now through this 2011 annual report.

It is the intention of NCIP's Veritas Initiative to continue to document and report annually on incidents of prosecutorial misconduct and the accountability of prosecutors as part of its mission to advance the integrity of our justice system through continuing research and data-driven reform.

For more information and to read the reports, please visit www.VeritasInitiative.org.

Acknowledgements

The Northern California Innocence Project would like to thank Jessica Seargeant for serving as the lead drafter of this report.

Overview of Findings

2011 Findings

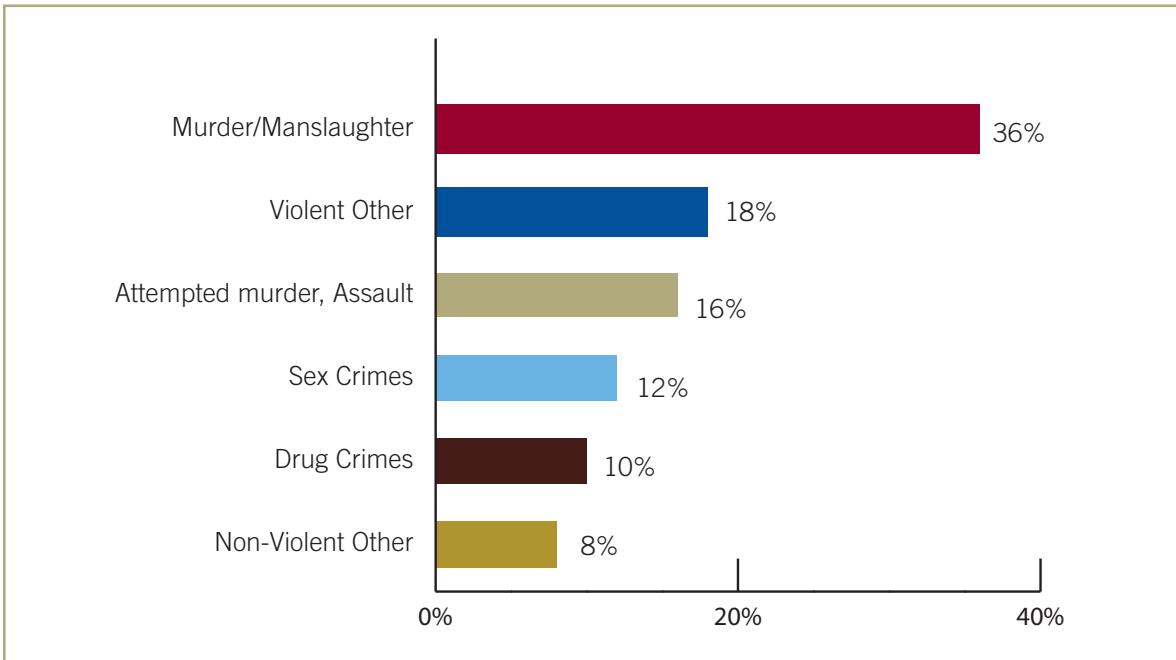
The 2011 study examined California state and federal court rulings alleging prosecutorial misconduct, as well as a small number of trial court decisions. Here is a summary of the findings:

- In 92 cases, courts found prosecutors to have committed misconduct.
 - In 10 cases, courts set aside convictions and sentences, declared mistrials and barred evidence.
 - In 82 cases, courts deemed the error harmless and upheld the convictions, finding that the misconduct did not alter the fundamental fairness of the trial.
- In 76 other cases, the courts refrained from making rulings on the allegations of prosecutorial misconduct since the court said that under the circumstances of the individual case, the misconduct would not have changed the outcome or because the court deemed the issue waived.

Cumulative Findings 1997–2011

- In the 15 years studied, courts have found prosecutors committed misconduct in more than 900 cases.
- In 210 cases, courts set aside the convictions and sentences, declared mistrials and barred evidence. In 691 cases, courts found the misconduct to be harmless error, concluding that the prosecutor's misconduct did not affect the outcome of the trial.

- In 355 other cases, the courts refrained from making rulings on the allegations of prosecutorial misconduct since the court said that under the circumstances of the individual case, the misconduct would not have changed the outcome or because the court deemed the issue waived.
- In the 901 cases where courts found misconduct, 327 involved murder or manslaughter charges, 146 were attempted murder or assault, 106 involved a sex crime such as rape or child molestation, 86 were drug crime cases, 165 included other violent crimes and 71 involved other non-violent crimes. The significant majority of prosecutorial misconduct occurred in murder or manslaughter cases.



Cases of Misconduct by Crime: This chart details the types of crimes in the cases finding misconduct. Examples of “Violent Other” include robbery, kidnapping and criminal threats. Examples of “Non-violent Other” include securities fraud, mail fraud and evading arrest.

Examples of Harmful and Harmless Cases from 2011

Harmful error cases include those where courts set aside convictions and sentences, declared mistrials and barred evidence. Harmless error cases are those where a court found misconduct, but determined that it did not affect the outcome of the trial.

Harmful: In October 2001, Dolatao Soldana Zambrano and a co-defendant were convicted of selling cocaine to undercover police officers. Zambrano denied the allegations and claimed he did not know his co-defendant. On cross-examination, the prosecutor, Lynn Poncin, repeatedly asked Zambrano whether the police officers lied during their testimony until Zambrano answered “yes.” The appellate court found that Poncin committed misconduct saying, “This case illustrates how ‘were they lying’ questions can serve no evidentiary purpose and can be abused. Here, the prosecutor did not ask one or two ‘were they lying’ questions to clarify[Zambrano’s] testimony. She used the questions to berate [Zambrano] before the jury and to force him to call the officers liars in an attempt to inflame the passions of the jury.” However, the appellate court failed to reverse the case, finding the misconduct harmless. The federal court disagreed and in 2011 granted Zambrano’s writ of habeas corpus due to prejudicial prosecutorial misconduct.

Harmful: In 2004, Mohammed Ashraf and three other men were prosecuted for the assault of an Afghani man. After learning during trial that thousands of pages of witness statements from a parallel investigation by the Department of Homeland Security, evidence relevant in the case, had been withheld from the defense, the trial court dismissed the case. The prosecution appealed and the appellate court overturned the trial court ruling. When the case was resumed, the prosecutor added attempted murder charges to the indictment. In 2011, the trial court found that the prosecutor, Carl Timothy Wallace, who had been assigned to the case in 2006, intentionally misrepresented his knowledge about the Homeland Security investigation. As a sanction, the judge dismissed the attempted murder charges that had been added following the first appeal.

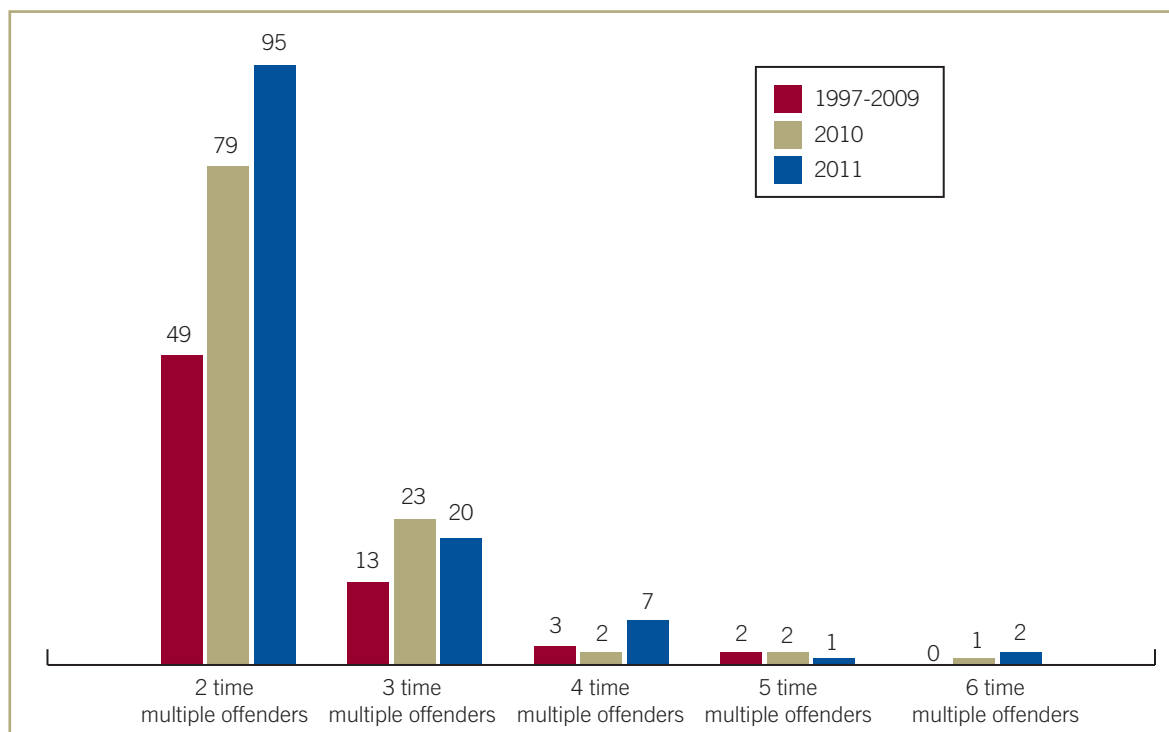
Harmless: In March 2010, Carl Wayne Ellison was convicted of unlawfully carrying a concealed weapon. During closing argument, the defense raised five separate objections to prosecutor Laura Jane Watts’ characterization of the reasonable doubt standard. The appellate court agreed finding that “the prosecutor improperly attempted to lessen the People’s burden of proof by arguing to the jury that the beyond-reasonable-doubt standard required the jury to determine whether defendant’s innocence was reasonable. This argument, which persisted after multiple objections and curative instructions from the court reminding the jury to follow its instructions on the burden of proof, was improper.” Despite the prosecutor’s conduct, the court upheld Ellison’s conviction.

Summaries of all the harmful cases can be found at www.VeritasInitiative.org.

Multiple Offenders

After identifying the prosecutors in the 92 misconduct cases for 2011, Veritas Initiative researchers discovered:

- 19 prosecutors who committed misconduct in 2011, had also committed misconduct one other time in a previous year.
- 8 additional prosecutors who committed misconduct in 2011, had committed misconduct two or more times in previous years.
- 125 prosecutors committed misconduct in 294 cases between 1997 and 2011. Thus, one-third of all prosecutorial misconduct cases in California were committed by repeat-offender prosecutors.



Multiple Offenders Comparison: This chart compares the number of multiple offenders reported in the first report, Preventable Error: 1997-2009, the first annual report, Preventable Error: 2010 Update, and this second annual report Preventable Error: 2011 Update.

Recommendations

NCIP's Veritas Initiative continues to advocate for reforms to ensure accountability in the criminal justice system. For a discussion of recommended reforms, please read *Preventable Error: Prosecutorial Misconduct in California 1997–2009* available on our website: www.VeritasInitiative.org.

APPENDIX A: 2011 Harmful Cases by Jurisdiction

Format of Appendix: Defendant's Last Name, Source of Misconduct Finding* (Year of Finding).

*Sources include: Legal Database Citations, Media Reports, Court Case Numbers

State Cases

Contra Costa

Andazola, 2011 WL 1225979 (2011)

Fresno

Barnes, 2011 WL 1126527 (2011)

Humboldt

Crowl, A127221 (2011)

Los Angeles

Anthony, BA097736 (2011)

San Bernardino

Zambrano, 2011 WL 1532403 (2011)

San Diego

Higgins, D055649 (2011)

Yolo

Ashraf, Case No. 08-3589

Federal Cases

United States Southern District

Sanchez, 2011 WL 5149141 (2011)

Sandoval-Gonzalez, 2011 WL 1533516 (2011)

United States Central District

Aguilar, 2011 WL 6097144 (2011)

APPENDIX A: 2011 Harmless Cases by Jurisdiction

Format of Appendix: Defendant's Last Name, Source of Misconduct Finding* (Year of Finding).

*Sources include: Legal Database Citations, Media Reports, Court Case Numbers

State Cases

Alameda

Blacksher, 2011 WL 3715536 (2011)
 Gray, 2011 WL 1045334 (2011)
 Hopkins, 2001 WL 3930319 (2011)
 Smith, A124895 (2011)
 Tatmon, 2011 WL 2445854 (2011)
 White, 2011 WL 1196053 (2011)

Butte

Egbert, C060808 (2011)

Colusa

Watts, 2011 WL 2306047 (2011)

Contra Costa

Queen, 2011 WL 1936855 (2011)
 Weaver, 2011 WL 4000863 (2011)

Fresno

Hinson, 2011 WL 3435829 (2011)

Humboldt

Lunsford, 2011 WL 2669425 (2011)

Imperial

Hernandez, 2011 WL 96435 (2011)

Kern

Cartwright, 2011 WL 5118968 (2011)

Los Angeles

Blue, 2011 WL 5079559 (2011)
 Brown, 2011 WL 365285 (2011)
 Clark, 2011 WL 3923850 (2011)
 Collins, 2011 WL 6062026 (2011)
 Conejo, 2011 WL 546384 (2011)
 Evans, 2011 WL 6276105 (2011)
 Gomez, 2011 WL 4582823 (2011)
 Mahler, 2011 WL 3906706 (2011)
 Maldonado, B218955 (2011)
 Manai, 2011 WL 1142999 (2011)
 Mckinney, 2011 WL 3278690 (2011)
 Mellon, 2011 WL 168941 (2011)
 Miramon, 2011 WL 3506171 (2011)
 Newman, 2011 WL 2681906 (2011)
 Sadowski, 2011 WL 2125039 (2011)
 Sotelo, 2011 WL 199000 (2011)
 Theus, 2011 WL 1879414 (2011)
 Villasenor, 2011 WL 4470360 (2011)

Orange

Andrade, 2011 WI 1991441 (2011)
Cortez, 2011 WI 6210378 (2011)
Deck, 2011 WI 2001825 (2011)
Jacobs, 2011 WI 744673 (2011)
Perez, 2011 WL 4458842 (2011)
Portillo, 2011 WI 4905764 (2011)
Prieto, 2011 WI 579208 (2011)
Tochihuitl, 2011 WI 62831 (2011)

Riverside

Allen, 2011 WI 3524295 (2011)
Bhargava, 2011 WI 2413524 (2011)
Bomhard, 2011 WI 2565299 (2011)
Cordova, 2011 WI 4067455 (2011)
Diaz, 2011 WI 1366488 (2011)
Ellison, 2011 WI 2541316 (2011)
Heggins, 2011 WI 2715359 (2011)
Ingram, 2011 WI 835788 (2011)
Lopez, 2011 WL 2650696 (2011)
Martinez, 2011 WI 1207324 (2011)
Morris, 2011 WI 3861650 (2011)
Shaibi, 2011 WI 5831740 (2011)

Sacramento

Armstrong, 2011 WI 3806154 (2011)
Jones, 2011 WI 2306012 (2011)
Puckett, 2011 WI 5868420 (2011)
Vang, 2011 WI 4840950 (2011)

San Bernardino

Hauseur, 2011 WI 3809925 (2011)
Wooley, 2011 WI 5117770 (2011)

San Diego

Gonzales, S072316 (2011)

San Francisco

Corpuz, 2011 WI 2412379 (2011)
Hi Quoc Truong, 2011 WI 6778784 (2011)
Tolds, 2011 WI 1134463 (2011)

San Joaquin

Roots, 2011 WI 4599838 (2011)

San Mateo

Rivas, 2011 WI 3667469 (2011)

Santa Clara

Brentlinger, 2011 WI 2516632 (2011)
Carrasco, 2011 WI 6181447 (2011)
Menjivar, 2011 WI 917857 (2011)
Samaniego, 2011 WI 2453475 (2011)

Shasta

Arnett, 2011 WI 6396492 (2011)
Ryan, 2011 WI 536444 (2011)

Solano

Butler, 2011 WI 4348314 (2011)
Cardenas, 2011 WI 856849 (2011)
Ray, 2011 WI 3930322 (2011)

Sonoma

Thomas, 2011 WL 321789 (2011)

Sutter

Shendi, 2011 WL 521173 (2011)

Tulare

Beltran, 2011 WL 6415433 (2011)

Ventura

Carranza, 2011 WL 5557382 (2011)

Mendez, 2011 WL 1549359 (2011)

Federal Cases

United States Central District

Stinson, 2011 WL 3374231

United States Eastern District

Ross, 2011 WL 1253870 (2011)

United States Northern District

Daniels, 2011 WL 3954366

United States Southern District

Ibarra-Pino, 2011 WL 4361671