

First Annual Report:

Preventable Error – Prosecutorial Misconduct in California 2010

by
Maurice Possley
and
Jessica Seargeant

Northern California Innocence Project,
Santa Clara University School of Law

A VERITAS Initiative Report

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Maurice Possley
Visiting Research Fellow, Northern California Innocence Project
Pulitzer Prize-winning Criminal Justice Journalist

and

Jessica Seargeant
Research Attorney, Northern California Innocence Project

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A **VERITAS** Initiative Report

SANTA CLARA LAW
LAWYERS WHO LEAD

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Innocence Project

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Northern California Innocence Project
at Santa Clara University School of Law

900 Lafayette Street, Suite 105, Santa Clara, CA 95050-4966

408-554-4790 (tel)

408-554-5440 (fax)

veritas@scu.edu (email)

www.veritasinitiative.org

www.ncip.scu.edu

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ABOUT VERITAS INITIATIVE

The Veritas Initiative is the research and policy arm of the Northern California Innocence Project at Santa Clara University School of Law. It is devoted to advancing the integrity of the justice system through research and data-driven reform. By shining a light on the justice system, The Veritas Initiative intends to serve as a catalyst for change.

ABOUT THE NORTHERN CALIFORNIA INNOCENCE PROJECT

The Northern California Innocence Project (NCIP) at Santa Clara University School of Law operates as a pro bono legal clinical program, where law students, clinical fellows, attorneys, pro bono counsel, and volunteers work to identify and provide legal representation to wrongfully convicted prisoners.

NCIP educates future attorneys, exonerates the innocent, and is dedicated to raising public awareness about the prevalence and causes of wrongful conviction. With its Veritas Initiative, NCIP promotes substantive legislative and policy reform through data-driven research that can inform policy recommendations aimed at ensuring the integrity of our justice system.

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Introduction

In October 2010, the Veritas Initiative published a ground-breaking report on prosecutorial misconduct: *Preventable Error: A Report on Prosecutorial Misconduct in California 1997–2009*¹ (hereinafter *Preventable Error: 1997–2009*).

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

This follow-up report details court findings of prosecutorial misconduct in 2010 and updates statistical data statewide dating back to 1997.

These findings ranged from egregious misconduct, such as concealing evidence favorable to a defendant, to reckless or unintentional misconduct that in some was ameliorated at trial by judicial admonition or a special jury instruction.

Overview of Findings

The 2010 study examined California state and federal court rulings alleging prosecutorial misconduct, as well as a limited number of trial court decisions. This is a summary of the findings:

- In 102 cases, courts found that prosecutors committed misconduct. Courts found 130 instances of misconduct in those 102 cases.
- In 26 of the cases, the finding resulted in the setting aside of the conviction or sentence, mistrial, or barring of evidence.
- In 76 of the cases, the courts nevertheless upheld the convictions, ruling that the misconduct did not alter the fundamental fairness of the trial.
- In 31 other cases, the courts refrained from making rulings on the allegations of prosecutorial misconduct, instead holding that any error would not have undermined the fairness of the trial or that the issue was waived.

This is a summary of the total findings from 1997–2010:

- In more than 800 cases, courts found that prosecutors committed misconduct.
- In 202 cases, the finding resulted in setting aside of conviction or sentence, mistrial or barring of evidence.
- In 614 cases, the courts found that the misconduct did not affect the fairness of the trial.
- In 282 other cases, the courts did not make a finding of misconduct, instead holding any error would not have changed the outcome or the issue was waived.
- In the more than 800 cases of misconduct, 107 prosecutors were found to have committed misconduct more than once, two were cited for misconduct four times, two were cited five times and one prosecutor was cited for misconduct six times. Prosecutors who committed misconduct in multiple cases accounted for nearly one-third of all cases of misconduct.

Analysis

A. Harmful Error

“Although the trial court’s exasperation was understandable in light of its observations that [Los Angeles deputy district attorney Robert] Hight had repeatedly and purposely made false statements to jurors during both defendant’s trial and other trials,” the trial court’s failure permitted “the prosecutor to violate defendant’s constitutional rights without a guaranty that the constitutional violations would be corrected on appeal. Even crediting the trial court’s confidence in appellate reversal, defendant’s liberty interests were potentially harmed, in that, had the court dealt with Hight’s misconduct before the jury, defendant may have been acquitted and would have been released from custody rather than remaining incarcerated.”

– *People v. Hester*, Second District Court of Appeal²

In November 2010, more than a quarter century after Bobby Joe Maxwell, also known as the “Skid Row Stabber,” was convicted and sentenced to life in prison, the Ninth Circuit U.S. Court of Appeals ordered prosecutors to release him or give him a new trial because of prosecutorial misconduct.³

In a decision written by Appeals Judge Richard Paez, the court found that the prosecution had failed to turn over impeachment evidence to Maxwell’s lawyers and failed to correct false testimony from its star witness, infamous jailhouse informant Sidney Storch.

“The prosecution’s failure to disclose this impeachment evidence undermines confidence in the outcome of Maxwell’s trial...” Judge Paez wrote.⁴

“The prosecution’s failure to correct Storch’s false testimony... was prejudicial,” the judge said.⁵

The prosecutor on the case was then-Los Angeles deputy district attorney Sterling Norris. The appeals court said that Norris failed to disclose evidence of benefits given to Storch and when

Storch lied about them, Norris failed to correct the false testimony. The finding was the second case in which Norris has been cited for misconduct.

The decision ordering a new trial for Maxwell or his release (which is being appealed by the prosecution) is among 26 court rulings in 2010 identified by the Veritas Initiative where prosecutorial misconduct was deemed harmful—that is, the conduct undermined the credibility of the convictions, caused mistrials to be declared or evidence to be barred.

Misconduct in these cases included failure to turn over evidence favorable to the defense, presenting false evidence, engaging in improper examination, making false and prejudicial arguments, violating defendants' Fifth Amendment right to silence, and discriminating against minorities in jury selection. In all, there were 34 findings of misconduct in the 26 cases, including six findings that prosecutors failed to turn over favorable evidence to the defense.

In some cases, the rulings came in the midst of trials and in others, the rulings came years after conviction.

The ruling in the Maxwell case said that the prosecution's failures were a violation of the provisions of *Brady v. Maryland*,⁶ a 1963 court decision that requires prosecutors to turn over evidence that is favorable to a defendant, as well as evidence that can be used to impeach prosecution witnesses.

Maxwell was arrested in 1979 and charged with the murders of 10 men in downtown Los Angeles. After a nine-month trial, Maxwell was convicted of two counts of murder and one count of robbery, largely on the testimony of Storch, who said Maxwell had confessed to him in prison after his arrest, and a palm print found on a public bench near the body of one of the victims.

“Here, the prosecution itself admitted that the evidence against Maxwell was weak, that Maxwell had consistently maintained his innocence, and that the police testimony about the date of the palm print was speculative,” Judge Paez wrote.⁷

“The prosecution failed, however, to disclose multiple pieces of impeachment information that could have been used to undermine the credibility of Storch,” the judge said.⁸

Among other harmful error rulings in 2010:

- An estimated 700 to 1,000 drug prosecutions were dismissed or dropped because prosecutors in the San Francisco District Attorney’s Office failed to disclose damaging information about a police drug lab technician.⁹ In May, Superior Court Judge Anne-Christine Massullo found that prosecutors violated the constitutional rights of a vast number of defendants by failing to tell defense attorneys about problems relating to the lab technician who was engaged in cocaine-skimming. The judge found that a memo written by deputy district attorney Sharon Woo, expressing concerns about the lab technician being a less than reliable witness, showed that prosecutors “at the highest levels of the District Attorney’s Office”¹⁰ knew about the problems, but the information was never disclosed to attorneys for defendants whose cases involved the technician’s work. The failure “to produce information *actually in its possession* regarding [the technician] and the crime lab is a violation of the defendants’ constitutional rights,” the judge declared.¹¹ The judge was highly critical of the District Attorney’s Office for failing to have in place procedures designed to obtain and produce information for defense attorneys. The San Francisco District Attorney’s Office has since instituted policies regarding evidence disclosure.
- The Second District Court of Appeal reversed Eric Hester’s convictions for forcible rape and forcible sodomy after Los Angeles County deputy district attorney Robert Hight committed multiple acts of misconduct during his closing argument.¹² “The prosecutor committed prejudicial misconduct by arguing matters not in evidence, mischaracterizing the evidence, appealing to the jury’s passion and prejudice, and suggesting that the jury convict [the] defendant to prevent him from committing future crimes,” the court said.¹³ The appeals court noted that Hight’s comments were “factually unsupported, completely improper arguments [that] went directly to the core of the case and ‘tip[ped] the scales of justice’ in favor of the prosecution.”¹⁴ The appeals court also chastised the trial court for allowing Hight’s misconduct saying, “the [trial] court had essentially given up on attempts to correct Hight”¹⁵ and “the public’s interest in fair trials and the conservation of...

resources is poorly served by a policy of refusing to take corrective action in response to known prosecutorial misconduct.”¹⁶

- In Santa Clara County, Felix Valdovinos was granted a new trial by the Ninth Circuit U.S. Court of Appeals, which held that deputy district attorney Javier Alcala had failed to disclose evidence.¹⁷ Valdovinos was convicted in 1998 of murder and sentenced to 25 years to life in prison. The appeals court cited the prosecution’s “repeated failure” to disclose evidence, some of which cast doubt on eyewitness identifications of Valdovinos.¹⁸
- The fall-out continued in the federal prosecutions brought against executives of Broadcom Corporation. In 2009, U.S. District Judge Cormac Carney dismissed the charges against Broadcom former chief financial officer William Ruehle and company co-founder Henry T. Nicholas III¹⁹ on the grounds that the prosecutor, Andrew Stolper, intimidated witnesses. In 2010, Carney dismissed additional charges against Nicholas,²⁰ as well as a coerced guilty plea entered by Nancy Tullos, former Broadcom human resources director.²¹ Carney also vacated the guilty plea of Broadcom co-founder Henry Samueli.²²

The 26 cases, including a description of each, the jurisdiction where the case was filed and the names of the prosecutors whose conduct was the cause of the rulings, can be found at www.veritasinitiative.org.

B. Harmless Error

“The prosecutor’s conduct was inexcusable. The prosecutor denied ‘bad faith on my part,’ but even inexperienced trial attorneys understand the obligation to advise counsel and the court before introducing evidence the trial court specifically had excluded after a hearing on its admissibility.”

– *People v. Mullenix, Fourth District Appellate Court*²³

Courts found misconduct in 76 other cases, but declined to set aside the verdicts, finding the misconduct did not deprive the defendants of a fair trial. The courts deemed the misconduct “harmless.”

The harmless error doctrine, originally intended for the narrow purpose of preventing retrials for small technical mistakes, has been broadly expanded to uphold even constitutional violations. In the landmark case of *Chapman v. California*, the United States Supreme Court held that “there may be some constitutional errors which in the setting of a particular case are so unimportant and insignificant that they may, consistent with the Federal Constitution, be deemed harmless, not requiring the automatic reversal of the conviction.”²⁴

In California, the harmless error rule is rooted in the California Constitution, which provides that judgments shall not be set aside or new trials granted on specified grounds “unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.”²⁵ The California Supreme Court has ruled that a “miscarriage of justice” requires a finding “that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.”²⁶

As the Veritas Initiative pointed out in *Preventable Error: 1997–2009*, in some of the cases the misconduct deemed harmless error was virtually the same, or in some cases worse, than misconduct that resulted in reversals.²⁷ In other words, where courts find strong evidence pointing to the defendant’s guilt, a prosecutor’s misconduct, no matter how egregious, will not lead to reversal of the case. In California, unless a case is reversed, there is no requirement that the misconduct be reported to the State Bar. This trend continued in 2010.

In *Preventable Error: 1997–2009*, about 78 percent of the findings of misconduct were deemed harmless.²⁸

In 2010, that ratio continued with 76 of the 102 cases—or 75 percent—falling into the harmless error category. These violations included violating defendants’ rights to silence, improperly questioning witnesses and defendants, presenting false evidence, and making improper arguments to juries. In all, there were 96 findings of misconduct in the 76 cases. One-half of the findings—48 in total—were for improper argument that included arguing facts not in evidence, misstating the law, appealing to the passion and prejudice of jurors and improperly vouching for prosecution witnesses.

Among the 2010 harmless rulings:

- In Santa Clara County, two prosecutors were cited for misconduct in the same case—one for giving improper testimony, the other for wrongly commenting on the defendant’s decision not to testify.²⁹ Defendant Leobardo Blancarte was tried for a second time on murder and other charges after the first case was set aside due to judicial error. Blancarte elected not to testify. Deputy district attorney Mark Duffy, who prosecuted the first trial, was called as a witness in the second trial by trial prosecutor deputy district attorney David Pandori. Duffy expressed his opinion that Blancarte was lying when he claimed during the first trial that the gun discharged accidentally. The California Appellate Court said, “In this case, Mr. Duffy was an officer of the court even though he sat in the witness chair. Moreover, as an experienced prosecutor he knew, or certainly should have known, that his comment was an improper and gratuitous opinion.”³⁰ In closing argument, Pandori on two occasions—once after being reprimanded by the trial judge—commented on Blancarte’s decision not to testify in violation of established law barring comment on a defendant’s invocation of their Fifth Amendment right against self-incrimination. The Court said it was “inconceivable” that Pandori did not know that he was violating the prohibition.³¹ The Appellate Court ruled that all of the misconduct was “cured” by an instruction from the trial judge and therefore the misconduct of both prosecutors was harmless.
- The Ninth Circuit U.S. Court of Appeals found that Los Angeles deputy district attorney Garrett Worchell made an improper argument in the burglary trial of Eun Suk Joo.³² The court found that the prosecutor “was not only essentially testifying as an unsworn witness, he was also testifying falsely.”³³ The conviction was affirmed because the misconduct was ruled harmless error.
- In Orange County, the California Appellate Court upheld the murder conviction of Rachel Mullenix, even though deputy district attorney Sonia Balleste engaged in multiple instances of improper conduct.³⁴ The court noted that the trial judge “did indeed express exasperation with the prosecutor several times, and on one occasion observed outside the presence of the jury, ‘it just seems to me the (prosecutor) is willing to go to any length, whether it’s permissible or impermissible to try to convict this defendant... There is no reason to continually, intentionally violate the rules.’”³⁵

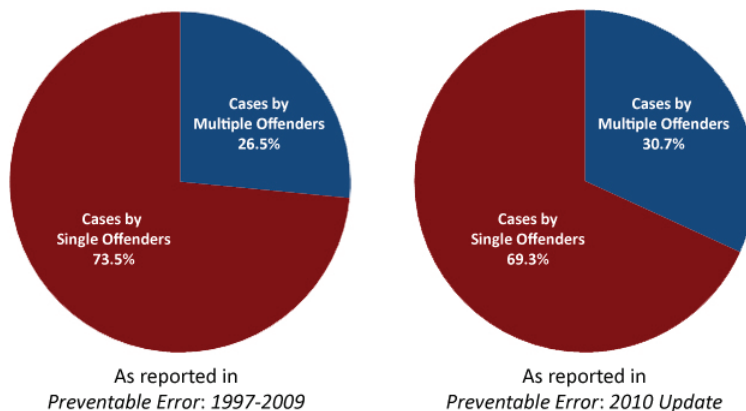
Multiple Offenders

Determining the names of prosecutors cited for misconduct continues to require hunting through court records and transcripts. At the time *Preventable Error: 1997–2009* was published in October 2010, a review of appellate opinions where courts found misconduct revealed that prosecutors were identified in only 80 cases and in 49 of those cases, the prosecutors were referred to only by last name.³⁶

A review of cases in 2010 shows that in 98 cases where courts issued written rulings, prosecutors were named in just 13 cases and only by last name in eight of those cases.

The failure to fully identify prosecutors found to have engaged in misconduct has specific adverse consequences. Deterrence is undermined because prosecutors engaging in misconduct are rarely held up to public scrutiny. Further, determining what, if any, consequences there were to prosecutors in specific cases of misconduct becomes extremely difficult.

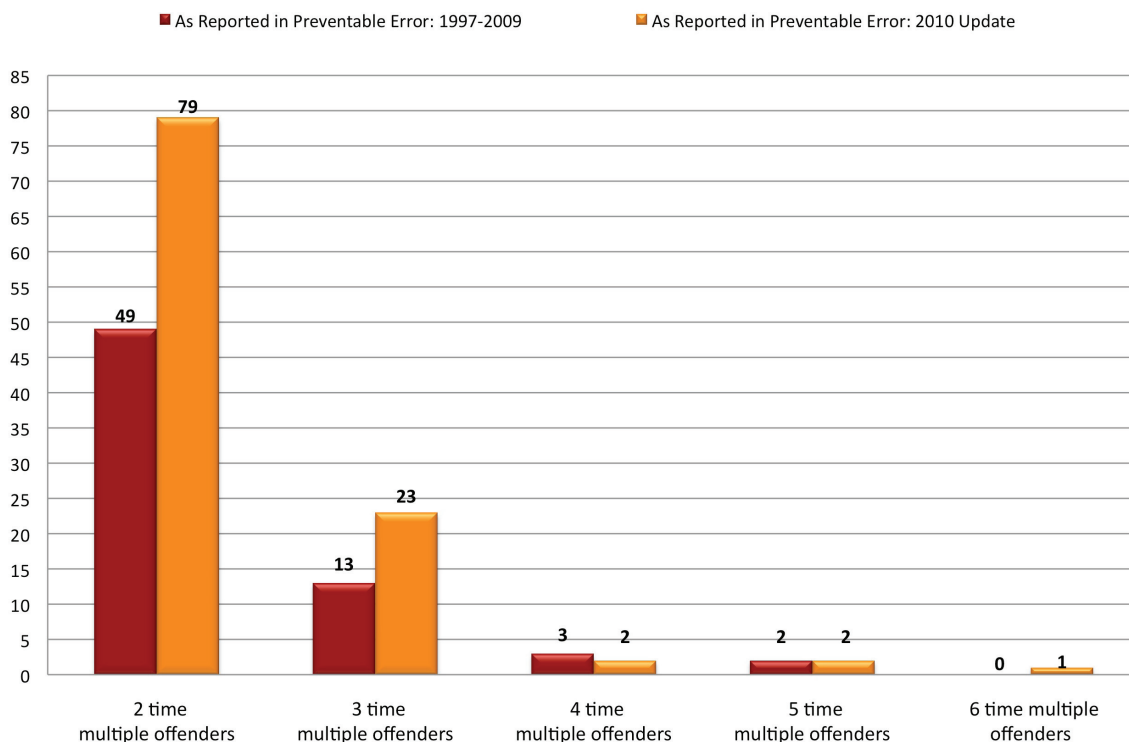
At the time of publication of *Preventable Error: 1997–2009*, Veritas Initiative researchers had identified prosecutors in 600 of the more than 700 cases where misconduct had been found by courts. That analysis showed 67 prosecutors had more than one finding of misconduct.³⁷



Percentage of Cases Handled by Multiple Offenders: This chart details how the percentage of prosecutorial misconduct cases handled by multiple offenders increased after the Veritas Initiative identified more prosecutor names. Researchers have now identified over 99% of the prosecutors in the cases where a court found prosecutorial misconduct.

With about 99 percent of the prosecutors now identified, the Veritas Initiative has identified the names of 677 prosecutors. Research shows that 107 were found to have committed misconduct more than once. The 107 prosecutors were cited in 251 cases. This means that a relatively small number of prosecutors were responsible for about one-third of all of the cases of misconduct.

Two prosecutors have been cited four times and two prosecutors—Contra Costa County deputy district attorney David Brown (including three harmful error cases) and Orange County deputy district attorney Jerry Schaffer — have been cited five times (all harmless error). Orange County deputy district attorney Michael Flory has been found to have committed misconduct six times—once for harmful error and five times for harmless error.



Multiple Offenders Comparison: This chart compares the number of multiple offenders reported in *Preventable Error: 1997–2009* and the number reported in *Preventable Error: 2010 Update*. The Veritas Initiative previously identified prosecutors in 600 cases or approximately 84%. Since the October publication of *Preventable Error*, the Veritas Initiative has identified the prosecutors in 824 cases which is over 99%.

Some prosecutors with previous multiple findings of misconduct added to their totals in 2010, while other prosecutors became multiple offenders with findings of misconduct in 2010. They include:

- San Mateo deputy district attorney Alfred Giannini was cited for misconduct that led to the setting aside of a conviction—the third case where his conduct has led to a reversal or a mistrial since 1999. In San Francisco County in December, a judge ordered a new trial for Caramad Conley, convicted in 1994 of murder and sentenced to life in prison.³⁸ Superior Court Judge Marla Miller found that the prosecution had failed to disclose to the defense evidence of payments to a police informant. Giannini, the prosecutor in the case and then a San Francisco deputy district attorney, has denied he knew about the payments. Former police chief Earl Sanders has contended he informed Giannini. In 1999, the California Appellate Court reversed the murder conviction of Leonard Ricardo because Giannini engaged in discriminatory jury selection.³⁹ In 2004, San Mateo County Superior Court Judge Stephen Hall granted a mistrial in a quadruple murder case after finding that Giannini had failed to disclose evidence to defense attorneys.⁴⁰
- The finding of misconduct by Sterling Norris in the “Skid Row Stabber” case is the second such ruling for Norris.⁴¹ In 2004, the Ninth Circuit U.S. Court of Appeals set aside the murder conviction and life prison sentence of Timothy Gantt also due to Norris’ failure to turn over evidence to the defense.⁴²
- In Los Angeles County, Superior Court Judge Arthur Lew ordered a new trial for defendants Demoria Jackson and Devin Murphy after ruling that deputy district attorney Grace Rai committed misconduct by referring in closing argument to evidence that had been barred by court order.⁴³ The finding is the third case in which Rai has been cited for misconduct since 1997. In 2006, the California Appellate Court said Rai engaged in improper examination, disobeyed a court order and elicited inadmissible evidence, but said the misconduct was harmless error.⁴⁴ In October 2008, the Second District Appellate Court reversed the murder conviction of Mark Alan Broughton, finding that Rai committed serial misconduct that included asking improper questions, eliciting inadmissible evidence and hearsay, disobeying court orders, and making improper arguments.⁴⁵

Courts and California State Bar

Under state law, courts are required to report to the California State Bar any case where prosecutorial misconduct results in the modification—such as a reversal—of a judgment in a case.⁴⁶ Attorneys are required to report to the bar if their misconduct causes a reversal.⁴⁷

Courts and prosecutors are under no obligation to report the misconduct findings if convictions are affirmed and as a result, misconduct in these cases is rarely addressed by attorney disciplinary authorities.

California Business and Professions Code Section 6086.7(a) mandates specific circumstances in which a court must report instances of misconduct to the State Bar:

“A court shall notify the State Bar... (2) Whenever a modification or reversal of a judgment in a judicial proceeding is based in whole or in part on the misconduct, incompetent representation, or willful misrepresentation of an attorney.”⁴⁸

Business and Professions Code Section 6068 mandates circumstances in which an attorney must report instances of misconduct to the State Bar:

“It is the duty of an attorney:... (o) To report to the agency charged with attorney discipline, in writing, within 30 days of the time the attorney has knowledge of... (7) Reversal of judgment in a proceeding based in whole or in part upon misconduct, grossly incompetent representation, or willful misrepresentation by an attorney.”⁴⁹

Despite these mandates, there remains little evidence that courts are meeting even this limited reporting obligation. The reporting statute for courts does not afford a court the discretion to choose not to report misconduct it deems not egregious: it specifically requires reporting “[w]henever a modification or reversal of a judgment in a judicial proceeding is based in whole or in part on the misconduct, incompetent representation, or willful misrepresentation of an attorney.”⁵⁰ The statute evidences recognition that *any* conduct on which a modification

or reversal is based, even in part, is serious enough to require notification of the State Bar concerning potential disciplinary investigation.

From 1997 through 2010, the Veritas Initiative has found evidence that courts noted in public rulings their intent to report misconduct on only eight occasions, two of those in 2010.

The State Bar has declined to release records of any reports by the courts and attorneys pursuant to the state's reporting laws, citing bar privacy provisions. The State Bar also has declined to reveal if courts and attorneys failed to comply with the reporting laws.⁵¹

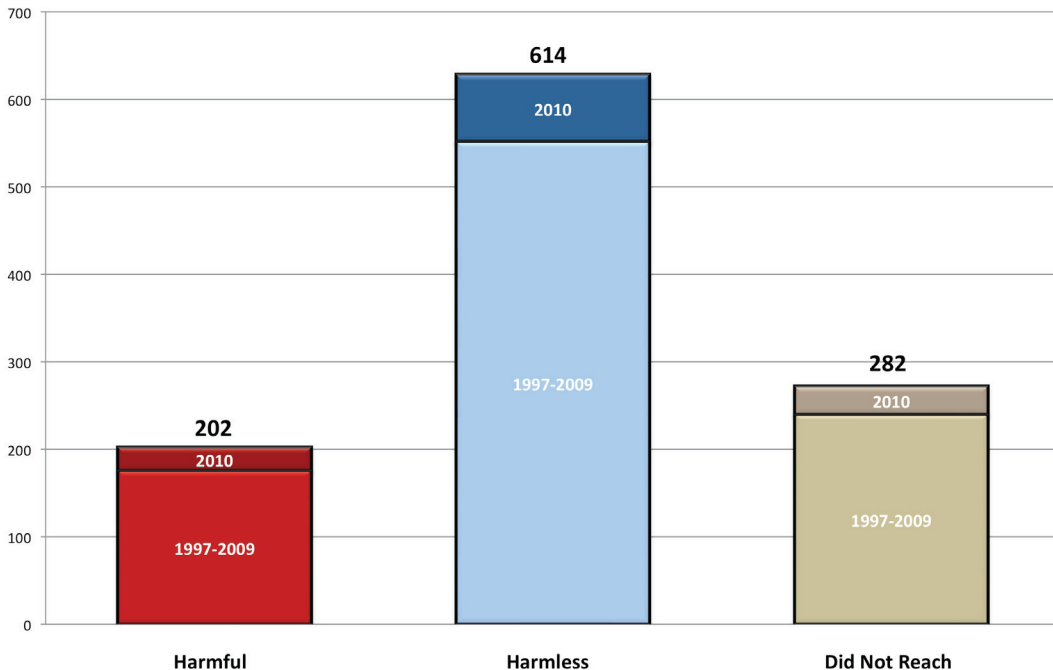
From 1997 to date, seven prosecutors have been disciplined publicly in California for misconduct in handling of criminal cases.⁵² No prosecutors were disciplined publicly by the State Bar in 2010. Private reprimands are not considered public discipline.

Conclusion

The Veritas Initiative believes that the number of misconduct cases identified between 1997 and 2010 is an undercount. Trial level findings of misconduct that are not reflected in appellate court rulings cannot be reviewed without searching every case file in every courthouse in the state.

This is highlighted by the subsequent identification of additional findings of misconduct between 1997 through 2009 that were not part of the *Preventable Error: 1997–2009* report. These cases, 18 of which were findings of misconduct that was harmful error, were identified through information provided by attorneys, citizens, and the media.

As a result, to date, the Veritas Initiative has identified 202 cases between 1997 and 2010 where convictions were reversed, mistrials declared or evidence barred.



Prosecutorial Misconduct Research: This chart adds on the cases decided in 2010 (and any older cases uncovered since *Preventable Error: 1997–2009* was published) to those decided between 1997–2009 giving the total number of prosecutorial misconduct cases found by Veritas Initiative researchers as of the end of 2010.

Not all of these cases were subject to the reporting provisions of the Business and Professions Code. For instance, if a mistrial is declared or evidence barred due to misconduct, these cases would not be reportable under the reporting statute because there were no judgments modified. Accordingly, under California law, only 151 of the more than 800 cases of misconduct required review by the California State Bar.⁵³ The Veritas Initiative believes the reporting statute should be expanded so that any misconduct that results in a mistrial or other sanction such as barring of evidence would be reportable.

The Veritas Initiative believes the system of accountability should be improved. Reporting by the courts and prosecutors should be transparent so that the public can determine if the reporting laws are being obeyed. The reporting of misconduct by courts should be made in public documents. Anything short of public filings leaves the State Bar in the dark about misconduct and stymies attempts to ensure the law is not being flouted.

Further, the State Bar should examine all cases of misconduct—harmful and harmless error. The Bar has said it does not scrutinize harmless error cases, even though the Veritas Initiative research shows that some misconduct in harmless error cases is virtually the same as misconduct in harmful error cases.

For a complete list of our recommendations, please visit www.veritasinitiative.org.

Most prosecutors are ethical and follow the rules. But prosecutorial misconduct remains a critical issue for the integrity of the criminal justice system. Judges and the California State Bar should act to report and discipline, where necessary, misconduct by prosecutors. To do otherwise fosters improper conduct, undercuts the public trust and unfairly casts a cloud over those prosecutors who do their jobs properly.

The Veritas Initiative has now identified over 800 cases of prosecutorial misconduct in California between 1997 and 2010, and will continue to investigate this crucial issue.

Endnotes

1. Kathleen M. Ridolfi and Maurice Possley, *Preventable Error: A Report on Prosecutorial Misconduct in California 1997-2009*, A Veritas Initiative Report, October 2010.
2. *People v. Hester*, 2010 WL 3720392 at 11 (Cal. Ct.App 2010).
3. *Maxwell v. Roe*, 628 F.3d 486 (9th Cir. 2010).
4. *Id.* at 512.
5. *Id.* at 511.
6. 373 U.S. 83 (1963).
7. *Maxwell*, 628 F.3d at 512.
8. *Id.*
9. Interview with Christopher F. Gauger, Managing Attorney, Research Unit, San Francisco County Public Defender (Feb. 2011).
10. Order and Statement of Decision Re Motion to Dismiss or to Compel Disclosure of Documents and for a Protective Order, *People v. Bilbao, et al*, No. 2443262, (Cal. Sup. Ct. S.F. County 2010)
11. *Id.* at 17 (emphasis in original).
12. *Hester*, 2010 WL 3720392 (Cal. Ct.App 2010).
13. *Id.* at 1.
14. *Id.* at 10.
15. *Id.* at 11.
16. *Id.*
17. *Valdovinos v. McGrath*, 598 F.3d 568 (9th Cir. 2010).
18. *Id.* at 580.
19. Transcript of Record at 5195-5201, *United States v. William J. Ruehle*, SACR 08-00139-CJC (C.D. Cal. 2009).
20. Stuart Pfeifer, *Broadcom drug case unravels; Prosecutors ask judge to dismiss trafficking charges against Henry Nicholas III, the chip maker's co-founder*, L.A. Times, Jan. 8, 2010.
21. Defendant's Motion to Set Aside Guilty Plea and Dismiss the Information, *United States v. Nancy Tullos*, SACR 07-00274-CJC (C.D. Cal. 2010).
22. Findings and Order to Dismiss the Information with Prejudice, *United States v. Dr. Henry Samueli*, SACR 08-00156-CJC (C.D. Cal. 2010).
23. *People v. Mullenix*, 2010 WL 1891719 at 10 (Cal. Ct.App. 2010).
24. 386 U.S. 18, 22 (1967).

25. Cal. Const. art. VI, §13.
26. *People v. Watson*, 46 Cal.2d 818 (Cal. 1956).
27. *Ridolfi and Possley*, *supra* note 1 at 22-23.
28. *Id.* at 19.
29. *People v. Blancarte*, 2010 WL 682267 (Cal. Ct.App. 2010).
30. *Id.* at 4.
31. *Id.* at 7.
32. *Joo v. Cate*, 382 Fed.Appx. 622 (9th Cir. 2010).
33. *Id.* at 626.
34. *Mullenix*, 2010 WL 1891719 (Cal. Ct.App. 2010).
35. *Id.* at 1.
36. *Ridolfi and Possley*, *supra* note 1 at 50.
37. *Id.* at 57.
38. Order Granting Petition for Writ of Habeas Corpus and New Trial, *Caramad Conley v. Mike Knowles*, No. 2447917, (Cal. Sup. Ct. S.F. County 2010).
39. *Ricardo v. Rardin*, 189 F.3d 474 (9th Cir. 1999).
40. Tim Hay, *Judge declares mistrial in quadruple murder case; court's decision leaves legal community stunned; choice made because of 'sloppy' prosecution*, San Mateo County Times, Jun. 9, 2004.
41. *Maxwell*, 628 F.3d 486 (9th Cir. 2010).
42. *Gantt v. Roe*, 389 F.3d 908 (9th Cir. 2004).
43. Transcript of Record July 16, 2010, *People v. Jackson*, TA087375, (Cal Sup. Ct. L.A. County 2010).
44. *People v. Benn*, 2006 WL 2382918 (Cal. Ct.App. 2006).
45. *People v. Broughton*, 2008 WL 4648984 (Cal. Ct.App. 2008).
46. Cal. Bus. & Prof. Code §6086.7(a)(2) (2009).
 - a. A court shall notify the State Bar of any of the following:
 1. A final order of contempt imposed against an attorney that may involve grounds warranting discipline under this chapter. The court entering the final order shall transmit to the State Bar a copy of the relevant minutes, final order, and transcript, if one exists.
 2. Whenever modification or reversal of a judgment in a judicial proceeding is based in whole or in part on the misconduct, incompetent representation, or willful misrepresentation of an attorney.
 3. The imposition of any judicial sanctions against an attorney, except sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000).

4. The imposition of any civil penalty upon an attorney pursuant to Section 8620 of the Family Code.
- b. In the event of a notification made under subdivision (a) the court shall also notify the attorney involved that the matter has been referred to the State Bar.
- c. The State Bar shall investigate any matter reported under this section as to the appropriateness of initiating disciplinary action against the attorney.
47. Cal. Bus. & Prof. Code §6068(o)(7) (2009).
48. Cal. Bus. & Prof. Code §6086.7(a)(2) (2009).
49. Cal. Bus. & Prof. Code §6068(o)(7) (2009).
50. Cal. Bus. & Prof. Code §6086.7(a)(2) (2009) (emphasis added).
51. Despite several attempts to obtain information on the reporting requirements, the California State Bar has refused to release any information citing privacy procedures. Efforts to obtain proof of compliance with the Business and Professions Code are ongoing.
52. Vita Mandalla, State Bar Court No. 98-O-01482 (2000); Leo Barone, State Bar Court No. 04-O-14030 (2005); James Fitzpatrick, State Bar Court No. 95-O-18080 (2005), Brooke Halsey, State Bar Court No. 02-O-10195 (2007); Michael Freeman, State Bar Court No. 06-O-15162 (2009); Peter Waite, State Bar Court No. 06-O-11208 (2009); Benjamin Field, State Bar Court No. 05-O-00815 (2009, appeal upheld 2010).
53. Not all cases categorized as harmful by the Veritas Initiative fall under the reporting statute. Only cases in which judgments were reversed or modified must be reported to the State Bar. This does not include cases where a mistrial was declared or a new trial granted before sentencing. It also does not include cases where evidence was stricken.

Appendix A: 2010 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

Alameda

Vance, 188 Cal.App.4th 1182 (2010)

Imperial

Love, CV 06-00640 (2010)

Kern

Bell, BF123070 (2010)

Los Angeles

Armendariz, B214389 (2010)
 Belin, 2010 WL 1633947 (2010)
 Blumberg, 687 F.Supp.2d 1074 (2010)
 Hester, 2010 WL 3720392 (2010)
 Hurd, 619 F.3d 1080 (2010)
 Jackson D, TA087375 (2010)
 Maxwell, 06-56093 (2010)
 McGee, 2010 WL 2572542 (2010)
 Silva, 2010 WL 334473 (2010)

Orange

Ramirez, 2010 WL 2960948 (2010)

Riverside

Heath, 2010 WL 2952536 (2010)

Sacramento

Savidge, 2010 WL 2822783 (2010)
 Treadway, 106 Cal.Rptr.3d 99 (2010)

San Bernardino

Burton, 2010 WL 928194 (2010)
 Castleberry, 2010 WL 3655656 (2010)

San Diego

Bowles, SCN266632 (2010)

San Francisco

Conley, Trial Case #2447917 (2010)

Santa Clara

Long, 189 Cal.App.4th 826 (2010)
 Valdovinos, 598 F.3d 568 (2010)

Tulare

Reynoso, 2010 WL 3516410 (2010)

All reasonable measures have been taken to ensure the quality, reliability, and accuracy of the information in this report. If you believe there is an error, we encourage you to contact us via email at veritas@scu.edu.

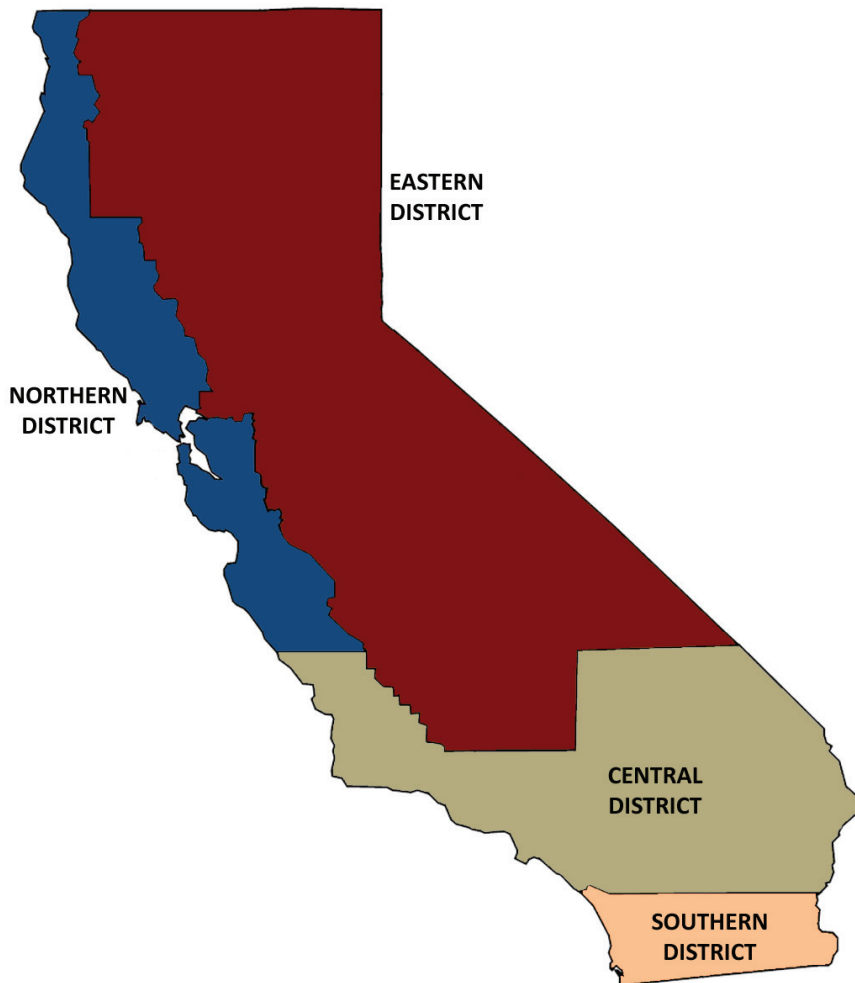
Federal Cases

United States Central District

Nicholas, LA Times 1/8/10 (2010)

Samueli, 08-cr-00156 (2010)

Tullos, 07-cr-00274 (2010)



United States District Court Jurisdiction Map: United States federal cases tried in California are divided between four districts: Central, Eastern, Northern, and Southern. The jurisdiction of the districts is based on the above geographical breakdown.

Appendix B: 2010 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

Landa, 2010 WL 3410895 (2010)
Tate, 49 Cal.4th 635 (2010)

Contra Costa

Hollinquest, 2010 WL 5143889 (2010)
Salazar, 2010 WL 3420122 (2010)

Fresno

Reyes, 2010 WL 1213397 (2010)

Glenn

Venegas, 2010 WL 739843 (2010)

Humboldt

Miller, 2010 WL 2913613 (2010)

Kern

Galvan, 2010 WL 1270281 (2010)
Hernandez G, 2010 WL 1767250 (2010)
Padilla, 2010 WL 4299091 (2010)

Los Angeles

Aguayo, 2010 WL 2312293 (2010)
Banks, 2010 WL 1463192 (2010)
Blueford, 2010 WL 3932799 (2010)

Brown J, 2010 WL 5072559 (2010)
Brown M, 2010 WL 5175483 (2010)
Burgess, 2010 WL 779784 (2010)
Chaidez, 2010 WL 2028500 (2010)
Cruz, 2010 WL 2723542 (2010)
Garcia A, 2010 WL 1463157 (2010)
Garcia H, 2010 WL 2991590 (2010)
Gibson, 2010 WL 1269678 (2010)
Hein, 601 F.3d 897 (2010)
Hinton, 2010 WL 1276920 (2010)
J.M., 2010 WL 2199147 (2010)
Joo, 2010 WL 2294662 (2010)
Joseph, 2010 WL 1208399 (2010)
Montes, 2010 WL 3898264 (2010)
Nguyen, 2010 WL 2818731 (2010)
Pacheco, 2010 WL 3836106 (2010)
Reed, 2010 WL 1493148 (2010)
Williams, 49 Cal.4th 405 (2010)
Young, 2010 WL 2910725 (2010)

Orange

Lewis, 2010 WL 4816087 (2010)
Lopez, 2010 WL 2282050 (2010)
Martinez, 2010 WL 4380115 (2010)
Mullenix, 2010 WL 1891719 (2010)
Roa, 2010 WL 3704994 (2010)
Rodriguez C, 2010 WL 570097 (2010)

Riverside

Felix, 2010 WL 3333414 (2010)
Griffin, 2010 WL 317894 (2010)
Harmon, 2010 WL 3158624 (2010)
Hernandez S, 2010 WL 2804867 (2010)

McCray, 2010 WL 219334 (2010)
 Muhammed, 2010 WL 3490030 (2010)
 Nelson, D057195 (2010)
 Ramirez, 2010 WL 5115972 (2010)
 Roman, 2010 WL 3026211 (2010)
 Sarza, 2010 WL 60911 (2010)
 Trejo, 2010 WL 1732280 (2010)

Sacramento

Rodriguez M, 2010 WL 2602045 (2010)
 Sumrall, 2010 WL 4493119 (2010)
 Taylor, 2010 WL 4117066 (2010)
 Wallace, 2010 WL 2889725 (2010)
 Yeng, 2010 WL 2376895 (2010)

San Benito

Stoffer, 2010 WL 54302 (2010)

San Diego

Bustamante, 2010 WL 2132747 (2010)
 Sebro, 2010 WL 4485925 (2010)
 Springfield, 2010 WL 4132589 (2010)

San Mateo

Hunter, 2010 WL 5300904 (2010)

Santa Barbara

Barnes, 2010 WL 3246116 (2010)
 Frimpong, 2010 WL 926065 (2010)

Santa Clara

Alcaraz, 2010 WL 127596 (2010)
 Avalos, 2010 WL 1647772 (2010)
 Blancarte, 2010 WL 682267 (2010)
 Brown S, 2010 WL 2770035 (2010)
 Brown T, 2010 WL 2505626 (2010)

Santa Cruz

Rios, 2010 WL 3442079 (2010)

Solano

Briscoe, 2010 WL 1525695 (2010)
 Thomas, 2010 WL 4970867 (2010)

Sonoma

True, 2010 WL 1553770 (2010)
 Webb, 2010 WL 1820448 (2010)

Stanislaus

Albarico, 2010 WL 1783533 (2010)
 Nichols, 2010 WL 2584077 (2010)

Tuolumne

Burgin, 2010 WL 23566 (2010)

Federal Cases

United States Central District

Munoz, 2010 WL 4877829 (2010)

United States Northern District

Lui, 2010 WL 4323443 (2010)

Appendix C: Cases Uncovered in 2010 but Decided in Previous Years

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

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

Harmful State Cases

Kern

Johnson, 142 Cal.App.4th 776 (2006)

Los Angeles

Horton, 408 F.3d 570 (2005)

Jackson, 95-CV-3286 (2004)

Miranda, 43 Cal.4th 541 (2008)

Orange

Gomez, 2001 WL 1003295 (2001)

San Diego

Jacques, 2002 WL 31862703 (2002)

Santa Cruz

Avila, F16224 (2008)

Stanislaus

Hernandez, 30 Cal.4th 835 (2003)

Yolo

Miranda, C033372 (2000)

Harmful Federal Cases

United States Central District

Hector, 04-CR-00860 (2008)

Jackson, R 03-50484 (2004)

Torres-Ramos, 06-CR-00656 (2009)

United States Southern District

Alfonso, 08-CR-2970 (2009)

Cerullo, 05-CR-1190 (2007)

Franco-Lopez, 312 F.3d 984 (2002)

Service Deli, 151 F.3d 938 (1998)

Solorio-Soto, 2008 WL 4845234 (2008)

Vega, 188 F.3d 1150 (1999)

Harmless State Cases

Los Angeles

Andrus 2008 WL 726121 (2008)

Orange

Sandoval, 2005 WL 1400163 (2005)

Sacramento

Dugger, 2007 WL 1378352 (2007)

Graves, 2004 WL 2538486 (2004)

Kelsaw, 2007 WL 746105 (2007)

Lee, 2007 WL 2358709 (2007)

Harmless Federal Cases

United States Central District

Whitehead, 200 F.3d 634 (2000)

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