

By Daniel Pollack and Layah Shagalow



Mission: Improbable

Getting Exonerated From a Child Sexual Abuse Conviction

Extensive citation of social science research is unnecessary for us to know that child sexual abuse is one of the most underreported crimes. Likewise, most people would be hard pressed to think of a crime as despicable as child sexual abuse, and we have few qualms about strict sentences for such offenders. So when an Orange County, California, Superior Court judge recently sentenced a child rapist to 10 years instead of the mandatory minimum sentence of 25 years, the community was outraged. Tens of thousands of people called for the judge to resign.¹

It happens—albeit rarely—that people are wrongfully convicted of child sexual abuse and are later exonerated. The National Registry of Exonerations (NRE),² a project of the University of Michigan Law School “provides detailed information about every known exoneration in the United States since 1989—cases in which a person was wrongfully convicted of a crime and later cleared of all the charges based on new evidence of innocence.”³

Definition of Exoneration

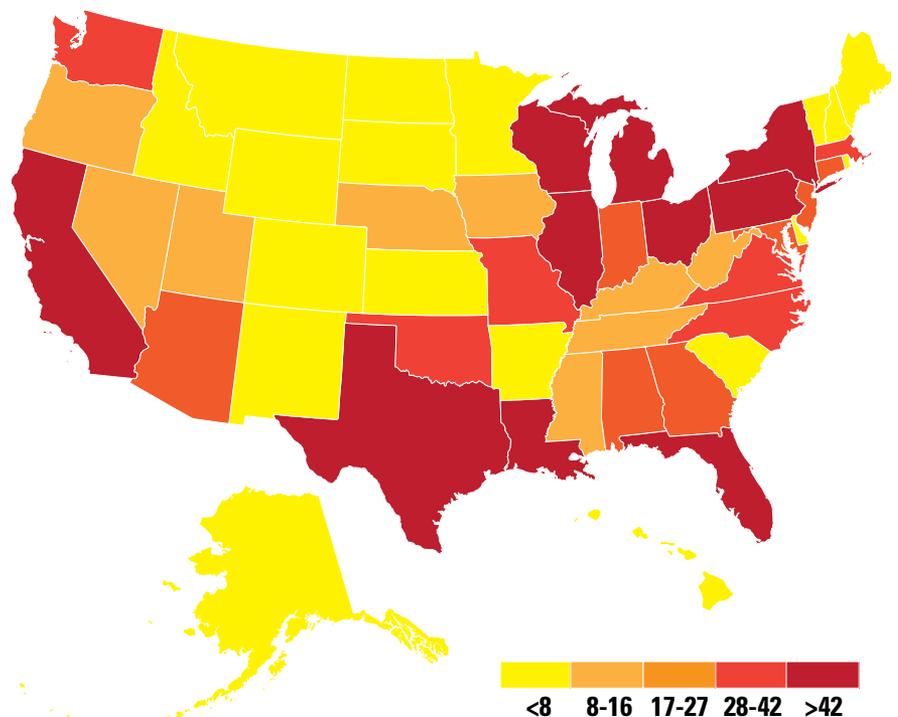
The word “exonerate” comes from the Latin *exoneratus*, and means to remove a burden, discharge, or unload. The NRE uses the following definition:

“In general, an exoneration occurs when a person who has been convicted of a crime is officially cleared based on new evidence of innocence.

Exoneration—A person has been exonerated if he or she was convicted of a crime and later was either: (1) declared to be factually innocent by a government official or agency with the

Mapping the Exonerated

The National Registry of Exonerations has tracked 1,700 exonerations nationwide since 1989.*



*As of November 2015

Source: National Registry of Exonerations

authority to make that declaration; or (2) relieved of all the consequences of the criminal conviction by a government official or body with the authority to take that action. The official action may be: (i) a complete pardon by a governor or other competent authority, whether or not the pardon is designated as based on innocence; (ii) an acquittal of all charges factually related to the crime for which the person was originally convicted; or (iii) a dismissal of all charges related to the crime for which the person was originally convicted, by a court or by a

prosecutor with the authority to enter that dismissal. The pardon, acquittal, or dismissal must have been the result, at least in part, of evidence of innocence that either (i) was not presented at the trial at which the person was convicted; or (ii) if the person pled guilty, was not known to the defendant, the defense attorney and the court at the time the plea was entered. The evidence of innocence need not be an explicit basis for the official action that exonerated the person.

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Exoneree—A person who was convicted of a crime and later officially declared innocent of that crime, or relieved of all legal consequences of the conviction because evidence of innocence that was not presented at trial required reconsideration of the case.”⁴

Child Sex Abuse Exonerees

This article looks at the 181 cases of people listed in the NRE registry as exonerated for “child sex abuse” from 2010 through August 2015. Here are the essential statistics:

- There were 155 male exonerees and 26 female exonerees, ranging in age from 16 to 67.
- The average age of the exonerees at the time of conviction was 31.
- In terms of race, 112 were Caucasian, 46 were Black, 19 were Hispanic, 2 were Asian, 1 was Native American, and 1 was listed as Other.
- Exonerees came from Alabama, Arizona, Arkansas, California, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Montana, North Carolina, New Jersey, New York, Nevada, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin.

Discussion

Convictions are overturned for a variety of reasons. Among them are ineffective assistance of counsel, mistaken identity, false or retracted testimony, prosecutorial or police misconduct, information obtained from a jailhouse snitch, or a confession from the real perpetrator. From the NRE databank, here is an example of each.

Inadequate Legal Defense

The NRE defines inadequate legal defense as follows: “The exoneree’s lawyer at trial provided obviously and grossly inadequate representation.”⁵ In the case of Owen Cesar,⁶ a 26 year-old black male, accused of

sexually assaulting his girlfriend’s two nieces, ages 8 and 9, and his own 5 year-old daughter, was found to have an inadequate legal defense that led to his wrongful conviction in two trials. A judge found him guilty of sexually assaulting his two nieces in a trial without a jury. A second jury convicted him of sexually assaulting his daughter. Cesar filed a post-conviction petition for a new trial on the grounds that his lawyer had failed to provide an adequate legal defense and evidence of his innocence. Evidence and witnesses of previous alibi claims were brought by new counsel proving Cesar’s innocence. The new evidence included insurance records, work schedules, and personal testimony of an eyewitness. Both cases were reheard and Cesar was exonerated of all charges and he had his sex offender status expunged.

Mistaken Witness Identification

Dean Cage⁷ was the recipient of a wrongful conviction on the grounds of mistaken witness identification. Defined as “At least one witness mistakenly identified the exoneree as a person the witness saw commit the crime...” Cage was mistakenly identified as the rapist of a 15 year-old girl based on a computer-generated composite sketch of the girl’s attacker. Despite having an alibi for the night of the attack, having no criminal history, and only vaguely resembling the sketch, Cage was identified in a live lineup by the victim and subsequently convicted. DNA testing later proved that Cage was not a match to the findings of the rape kit, which led to his exoneration.

False Confession

According to NRE’s definition, “The exoneree falsely confessed if (1) he or she made a false statement to authorities which was treated as a confession, (2) the authorities claimed that the exoneree made such a statement but the exoneree denied it, or (3) the exoneree made a statement that was not an admission of guilt, but was misinterpreted as such by the

authorities.” In the case of Davonn Robinson,⁸ a low functioning young adult, a false confession led to a conviction of rape charges brought against him by his 8 year-old twin cousins. The authorities claimed that Robinson admitted to the crimes, but he denied any wrongdoing. The alleged confession was not recorded. Four years later, one of the children who had allegedly been raped stepped forward saying the claims had been falsified. She and her brother acknowledged that they had been forced to make the accusation after their mother had beaten and threatened them. The court vacated Robinson’s conviction.

Perjury or False Accusation

An unfortunately large number of child sex abuse cases are convicted due to perjury or false accusation which is defined as, “A person other than the exoneree falsely accused the exoneree of committing the crime for which the exoneree was later exonerated, either in sworn testimony or otherwise.” Stacey Hoehmann, the 16 year-old daughter of Joseph Hoehmann, wrongfully accused her father of raping her on three separate occasions. Hoehmann⁹ was convicted by a judge who heard the case without a jury. Three years later, Stacey recanted her accusations saying she fabricated them out of anger toward her father for his strict rules. Hoehmann’s conviction was vacated and the prosecution dropped the charges.

False or Misleading Forensic Evidence/Police Misconduct

Jimmy Ray Bromgard,¹⁰ 18 years old, was convicted of raping an 8-year-old girl after prosecutors presented misleading forensic evidence connecting him to the crime. False and misleading forensic evidence is defined by the NRE as: “The exoneree’s conviction was based at least in part on forensic information that was (1) caused by errors in forensic testing, (2) based on unreliable or unproven methods, (3) expressed with exaggerated and misleading confidence, or (4) fraudulent.” Bromgard

was placed at the scene of the crime by the exaggerated claims of a forensic specialist who cited a statistically inaccurate DNA matching standard for hair found at the crime scene. Due to an inadequate legal defense the claims were not refuted. Despite a lack of evidence outside of the “expert’s” expertise, Bromgard was convicted and served 14 years and six months before being exonerated on the basis of further DNA analysis.

Official Misconduct/Overeager Prosecutor

Official misconduct is defined as “Police, prosecutors, or other government officials significantly abused their authority or the judicial process in a manner that contributed to the exoneree’s conviction.” Such behavior led to the wrongful conviction of Henry Cunningham¹¹ in a complicated series of sex abuse accusations in 1994. In March of that year, police officer Robert Perez took over as head of the Sex Crimes Unit in Wenatchee, WA. Despite lacking appropriate training in child sex abuse examination and interrogation, Perez went on to implicate scores of community members in a fabricated “sex abuse ring.” Perez based his case on the accusations of his two foster daughters who reported multiple counts of sexual abuse and being forced to participate in “child orgies.” One of the girls later produced a videotaped recantation and confessed to having fabricated the accusations due to pressure from Perez. He was reprimanded for abusing his position and continuing to foster the two girls while they were the chief accusers in an investigation he was leading. Although the video recantation only directly affected one of the many cases Perez brought to trial, it served as the foundation for reviewing other related cases and led to the exoneration of others implicated by Perez.

No Crime

In “no crime” cases, “The exoneree was convicted of a crime that did not occur, either because an accident or a

suicide was mistaken for a crime, or because the exoneree was accused of a fabricated crime that never happened.” Melinda Bronson’s¹² 11 year-old son falsely accused her of molesting him as a child. Despite a psychiatric history of pathological lying and extreme destructive behaviors, her son’s testimony was upheld and Melinda was placed on probation and forced to register as a sex offender. Her son later recanted his accusation saying he felt pressured by his abusive, alcoholic father and stepmother to disclose negative information about his mother. His sincere recantation led to the dismissal of the case.

Jailhouse Informant

Only one child sex abuse case on the NRE is listed as including a jailhouse informant. The case is a part of larger child sex abuse hysteria scandal in which officials implicated multiple individuals of child sex abuse crimes based on coerced or fabricated accusations by minors. Teresa Lynne Cox’s¹³ conviction was aided by a jailhouse informant, i.e., “A witness who was incarcerated with the exoneree and testified or reported that the exoneree confessed to him or her.” Despite a lack of evidence and a later recantation of the accusations, Cox was convicted. After the original trial judge was found to be unlicensed by the California Bar, and after withheld evidence proving coercion came to light, Cox filed a petition for writ of habeas corpus that was granted and all charges were dismissed.

Conclusion

In a *Scientific American* article entitled, “Many prisoners on death row are wrongfully convicted,”¹⁴ it was reported that researchers estimated, using the NRE database, that more than 340 U.S. inmates who could have been exonerated were sentenced to death since 1973. This came to a 4.1 percent rate of false conviction. Is the likelihood of those falsely convicted of child sexual abuse likely to be higher or lower than the falsely convicted 4.1 percent of criminal

defendants who were sentenced to death? Whatever the answer, freedom from false incarceration is always a long shot. Being exonerated? That’s the ultimate improbability. 📌

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