



E24 Innocent People Convicted of Child Sexual Abuse and Imprisoned as a National Problem

Kimberly A. Hart*, *National Child Abuse Defense & Resource Center, P.O. Box 638, Holland, OH*; and Bruce Lyons, JD*, *National Association of Criminal Defense Lawyers, 600 NE 3rd Avenue, Fort Lauderdale, FL*

The goal of this presentation is to show there is a problem of innocent people being convicted of sexual abuse and society not acknowledging it.

The problem of innocent people convicted of child sexual abuse and languishing in prison is a national disgrace that has not been publicly acknowledged by the politicians, bureaucrats, so-called child advocates, and the general public. While DNA testing has focused attention on and provided exoneration for a significant number of innocent people on death-row, most cases involving child sexual abuse incarcerations do not contain any DNA evidence. Over 100 exonerations of death row inmates have occurred based on DNA testing amidst the multitude of cases in which DNA was not available or preserved. Considering a known error rate of 37% of primary suspects being excluded in cases where DNA is available for testing, (1) the corresponding percentage of innocent persons convicted of child sexual abuse could be even higher when one looks at how those convictions came about.

Most criminal convictions of child sexual abuse are based upon verbal testimony of the alleged victim without independent corroboration. Generally, there are no conclusive medical findings specific to sexual assault. Often, physical findings are deemed "normal, but consistent with abuse *based upon the history given.*" (*emphasis added*) The "history given" is generally statements made by the alleged victim if older or, more often, by a third-party person who has suspicions of abuse being perpetrated on the alleged victim. Alleged victims initiated reports in only 0.9% of all cases of alleged abuse.(2) Persons taking a medical history are trained to assume that the information being relayed to them is true. They do not challenge the statements nor do they investigate any possible motivations or mistake by the person reporting the abuse.

A child's statements of alleged abuse can be subject to significant influences during the course of a prosecution. Those influences can distort the truth and result in the creation of incidents that never happened. The interviewing process is crucial in determining whether the child's statements are reliable or not. Yet, most government agencies do not follow the recommendations of leading researchers and experts. (3) Many children are led into making statements that confirms what the interviewer already believes happened.(4) Many leading researchers have shown that children can be led to believe that something happened to them when it did not. (5)

Numerous criminal cases over the past few years has illustrated the problem of innocent people being imprisoned primarily through the testimony of children who sounded credible, yet whose stories were unreliable and tainted during the investigative process. While a few innocent people have had their convictions for sexual abuse overturned because the truth and the techniques used were exposed (6), thousands of others convicted under similar circumstances are still in prison.

To overturn a conviction is extremely difficult. Appellate Courts are to determine whether the convicted person got a "fair trial." Courts have stated that their job is not to determine guilt or innocence. "Actual innocence" is not grounds for further appeal. DNA test results are an exception because DNA technology was not available at the time those cases were heard. The system is not conducive to uncovering an unjust verdict made by a well-meaning jury. The more errors in verdicts that are exposed add to the undermining of faith that the public has in the judicial/legal system. That is not a desired public policy.

Critics frequently spout three arguments to the issue of innocent people being falsely convicted for child sexual abuse.

First, critics say, "If a few innocent people are convicted, this is the price that we, as a society, have to pay in order to get the guilty people off the streets. All stops must be pulled in order to protect children." Evidently, those who say this have not been falsely convicted or incarcerated. Nor has a family member or close friend. No system is perfect. The more vital question is at what number or percentage does the problem become intolerable? Is a 1% error rate tolerable? What about a 10% error rate? There are approximately 3 million people incarcerated in U.S. prisons. One percent equals 30,000 innocent people. Ten percent equals 300,000 innocent people. A more practical approach would be, "What can be done to help release innocent people and, at the same time, prevent more innocent people from being put in prison?" However, the problem has to be acknowledged as being significant before it can be corrected.

The second argument critics like to make is that the examples of people who were vindicated prove that the system "works." Yes, it worked for a few affected people. The problem lies with the untold number of innocent people who are still incarcerated, many never to see freedom again. If a ship wrecked at sea, should satisfaction be had with the knowledge that 500 out of 30,000 are rescued while the remaining are ignored? Should the rescuers be congratulated that the rescue system "works?" Do people refuse to acknowledge that a significant problem exists when the vast number of people perished? Do people turn a blind eye to finding a better solution?

The third argument critics make is that in many of the child sexual abuse convictions, some type of



Jurisprudence Section – 2003

expert testified for the Prosecution. The reality is that most expert testimony for the Prosecution is for the purposes of bolstering the credibility of the alleged victim. Medical doctors rarely testify to specific physical findings of abuse. Psychologists, social workers, and therapists will repeat the alleged statements of the alleged victim. They will sometimes testify to “behavioral indicators” which have no scientific reliability or validity. (7) The underlying message sent to the jury is that these “experts” believe the child was abused. “Experts” do not possess a special ability to determine the truthfulness of what someone tells them. They are not sooth-sayers or crystal ball readers, even though many of them try to be.

There are numerous “Innocence Projects,” using DNA testing, that has helped bring attention to the plight of a limited number of innocent people who are incarcerated. The problem is not solved for the vast majority of innocent people who were convicted of child sexual abuse in which there wasn’t specific physical findings, corroboration, or DNA evidence. “Innocence Projects” are limited in what they can achieve and the number of people it can help. They are reactive, rather than proactive. The time has come for a public acknowledgement of the problem of innocent people in prison and the search for a proactive solution.

1. A June, 1996 U.S. Department of Justice Report, showed that over 25% of the DNA tests conducted by the FBI of primary suspects in sexual assault cases from 1989-1995 resulted in the suspect being excluded. When the inconclusive results were factored in on a corresponding percentage, the rate was 37% as being innocent (excluded).
2. Child Maltreatment 1999, U.S. Department of Health & Human Services, p2, figure 1-1, “Reports by Source.”
3. See: Investigative Interviews of Children, written by Dr. Michael Lamb, National Institute of Health, and Dr. Debra Poole, Central Michigan University. Published by the American Psychological Association.
4. Confirmatory Bias (see articles)
5. Dr. Elizabeth Loftus, Dr. Stephen Ceci, Dr. Maggie Bruck, et. al.
6. *State v. Michaels*, *State v. Snowden*, *State v. Kelly*, *State v. Wilcox*, *State v. Aldridge*.
7. See articles.

Sexual Abuse, DNA Testing, Criminal Convictions