EXONERATIONS IN THE UNITED STATES

1989 THROUGH 2003

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EXONERATIONS IN THE UNITED STATES, 1989 THROUGH 2003

On August 14, 1989, the Cook County Circuit Court in Chicago, Illinois, vacated Gary Dotson’s 1979 rape conviction and dismissed the charges. Mr. Dotson – who had spent 10 years in and out of prison and on parole for this conviction – was not the first innocent prisoner to be exonerated and released in America. But his case was a breakthrough nonetheless: he was the first who was cleared by DNA identification technology. It was the beginning of a revolution in the American criminal justice system. Until then, exonerations of falsely convicted defendants were seen as aberrational. Since 1989, these once-rare events have become disturbingly commonplace.

This is a report on a study of exonerations in the United States from 1989 through 2003. We discuss all exonerations that we have been able to locate that occurred in that fifteen-year period, and that resulted from investigations into the particular cases of the exonerated individuals. Overall, we found 328 exonerations, 316 men and 12 women; 145 of them were cleared by DNA evidence, 183 by other means. With a handful of exceptions, they had been in prison for years. More than half had served terms of 10 years or more; 80% had been imprisoned for at least 5 years. As a group, they had spent more than 3400 years in prison for crimes for which they should never have been convicted – an average of more than ten years each.

As we use the term, “exoneration” is an official act declaring a defendant not guilty of a crime for which he or she had previously been convicted. The exonerations we have studied occurred in four ways: (1) In 42 cases governors (or other appropriate executive officers) issued pardons based on evidence of the defendants’ innocence. (2) In 254 cases criminal charges were dismissed by courts after new evidence of innocence emerged, such as DNA. (3) In 28 cases the defendants were acquitted at a retrial on the basis of evidence that they had no role in the crimes for which they were originally convicted. (4) In 4 cases, states posthumously acknowledged the innocence of defendants.


2. Because men make up over 95% of the total, we generally refer to exonerated defendants using male pronouns.

3. This is a conservative estimate of the direct consequences of these wrongful convictions. We have not counted time spent in custody before conviction. Nor have we included time spent on probation or parole, or time on bail or other forms of supervised release pending trial, retrial, or dismissal, even though all of these statuses involve restrictions on liberty, some mild some onerous.

4. We have excluded any case in which a dismissal or an acquittal appears to have been based on a decision that while the defendant was not guilty of the charges in the original conviction, he did play a role in the crime and may be guilty of some lesser crime that is based on the same conduct. For our purposes, a
who had already died in prison: Frank Lee Smith, exonerated in Florida in 2000; Louis Greco and Henry Tameleo, exonerated in Massachusetts in 2002; and John Jeffers, exonerated in Indiana in 2002. 5

This is the most comprehensive compilation of exonerations available, but it is not exhaustive. The criminal justice system in the United States is notoriously fragmented – it is administered by fifty separate states (plus the federal government and the District of Columbia) and by more than 3000 separate counties, with thousands of administratively separate trial courts and prosecuting authorities. There is no national registry of exonerations, or any simple way to tell from official records which dismissals, pardons, etc., are based on innocence. As a result, we learned about many of the cases in our database from media reports. But the media inevitably miss some cases – and we, no doubt, have missed some cases that were reported. We are continuing to gather information, and plan to update the data that are reported here.

In the great majority of these cases there was, at the end of the day, no dispute about the innocence of the exonerated defendants. This is not surprising. Our legal system places great weight on the finality of criminal convictions. Courts and prosecutors are exceedingly reluctant to reverse judgments or reconsider closed cases; when they do – and it’s rare – it’s usually because of a compelling showing of error. Even so, some state officials continue to express doubts about the innocence of exonerated defendants, sometimes in the face of extraordinary evidence. Two brief examples:

• When Charles Fain was exonerated by DNA in Idaho in 2001, after 18 years on death row for a rape murder, the original prosecutor in the case said “It doesn’t really change my opinion that

defendant who is acquitted of murder on retrial, but convicted of involuntary manslaughter, has not been exonerated. We have also excluded any case in which a dismissal was entered in the absence of strong evidence of factual innocence, or in which – despite such evidence – there was unexplained physical evidence of the defendant’s guilt.


6. Most of the exonerations we include in this database are listed on one or more the web cites that are maintained by three organizations: The Death Penalty Information Center, http://www.deathpenaltyinfo.org; the Innocence Project at Cardozo Law School, http://www.innocenceproject.org; and the Center on Wrongful Convictions at Northwestern University Law School, http://www.law.northwestern.edu/depts/clinic/wrongful. We have gathered additional information on most of the cases from these three lists, reviewed them carefully, and excluded some cases that do not meet our own criteria for an exonation.
much that Fain’s guilty.”

- On December 8, 1995, at the request of the prosecution, the DuPage County, Illinois, Circuit Court dismissed all charges against Alejandro Hernandez, who had spent 11 ½ years in prison for an abduction, rape and murder in which he had no role. By that time DNA tests and a confession had established that the real criminal was an imprisoned serial rapist and murderer by the name of Brian Dugan; a police officer who provided crucial evidence had admitted to perjury; and Hernandez’s co-defendant, Rolando Cruz, was acquitted by a judge who was harshly critical of the investigation and prosecution of the case. Nonetheless, when Hernandez was released, the prosecutor said: “The action I have taken today is neither a vindication nor an acquittal of the defendant.”

Needless to say, we are in no position to reach an independent judgment on the factual innocence of each defendant in our data. That is not our purpose in this report. Instead, we look at overall patterns in the exonerations that have accumulated in the past fifteen years and hope to learn something about the causes of false convictions, and about the operation of our criminal justice system in general. It is possible that a few of the hundreds of exonerated defendants we have studied were involved in the crimes for which they were convicted, despite our efforts to exclude such cases. On the other hand, it is certain – this is the clearest implication of our study – that many defendants who are not on this list, no doubt thousands, have been falsely convicted of serious crimes but have not been exonerated.

7. Raymond Bonner, *Death Row Inmate Is Freed after DNA Test Clears Him*, New York Times, Aug. 24, 2001, at A11. This is hardly the only example of prosecutors and police officers refusing, against all logic, to believe that a defendant they once charged and prosecuted could possibly be innocent. In 1993, in Baltimore County, Maryland, Kirk Bloodsworth became the first defendant in the United States who had been sentenced to death to be exonerated by DNA evidence. Nine years later the chief prosecutor of the county said that the police “still believe [Bloodsworth] did it” and that she herself was “not sure.” Lori Montgomery, *Eliminating Questions of Life or Death: Prosecutor’s Policy Raises Questions in Md.*, The Washington Post, 5/20/02, p. B1. Over a year later – more than a decade after Bloodsworth was released – the police finally, after inexplicable delays, used the DNA evidence at their disposal to identify the real killer – a Maryland prisoner serving a 45-year sentence for burglary, attempted rape and assault with intent to murder. Susan Levine, *Ex-Death Row Inmate Hears Hoped-for Words: We Found Killer*, The Washington Post, 9/6/03, p. A1. In 2000, Virginia Governor Jim Gilmore pardoned Earl Washington after DNA tests cleared him of a rape murder for which he had been sentenced to death, and implicated a convicted serial rapist, Kenneth Tinsley. The Governor ordered a new investigation; four years later, nothing has happened in that investigation and the law enforcement officers involved continued to consider Washington a suspect. Recently, new DNA tests, commissioned by Washington’s attorneys over the state’s objections, conclusively confirmed Tinsley’s guilt and reinforced Washington’s innocence. Maria Glod, *Lawyers Say DNA Clears Ex-Va. Death Row Inmate; State Defends Testing by Forensic Lab*, The Washington Post, 4/6/04, p. B1.; Frank Green, *Justice Undone in 1982 killing; Victim’s Husband Blasts Lack of Progress After Washington’s Pardon*, The Richmond Times-Dispatch, 3/31/04.

I. Exonerations Over Time

The rate of exonerations has increased sharply over the fifteen-year period of this study, from an average of 12 a year from 1989 through 1994, to an average of 43 a year since 2000. The highest yearly total to date was 44, in 2003. See Figure 1.9

There has been a steady increase in the number of DNA exonerations, from one or two a year in 1989 to 1991, to an average of 6 a year from 1992 through 1995, to an average of 21 a year since 2001. Non-DNA exonerations were less rare initially, and remained relatively stable through the 1990s, averaging 9 a year. Their numbers have increased rapidly in the last several years. There were 18 non-DNA exonerations in 2000, and they’ve averaged 22 a year since 2001, about the same rate as DNA exonerations in that period.

9. The numbers of exonerations by year, and by basis, are:

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</tr>
</thead>
<tbody>
<tr>
<td>DNA</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>6</td>
<td>4</td>
<td>7</td>
<td>7</td>
<td>13</td>
<td>9</td>
<td>4</td>
<td>10</td>
<td>17</td>
<td>23</td>
<td>21</td>
<td>19</td>
<td>145</td>
</tr>
<tr>
<td>Other</td>
<td>9</td>
<td>8</td>
<td>13</td>
<td>7</td>
<td>8</td>
<td>5</td>
<td>12</td>
<td>9</td>
<td>8</td>
<td>9</td>
<td>11</td>
<td>18</td>
<td>20</td>
<td>21</td>
<td>25</td>
<td>183</td>
</tr>
<tr>
<td>TOTAL</td>
<td>11</td>
<td>9</td>
<td>15</td>
<td>13</td>
<td>12</td>
<td>12</td>
<td>19</td>
<td>22</td>
<td>17</td>
<td>13</td>
<td>21</td>
<td>35</td>
<td>43</td>
<td>42</td>
<td>44</td>
<td>328</td>
</tr>
</tbody>
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This rapid increase in reported exonerations probably reflects the combined effects of three interrelated trends. First, the growing availability and sophistication of DNA identification technology has, of course, produced an increase in DNA exonerations over time. Second, the singular importance of the DNA revolution has made exonerations increasingly newsworthy; as a result, we are probably aware of a higher proportion of the exonerations that occurred in 2003 than in 1989. And third, this increase in attention has in turn led to a substantial increase in the number of false convictions that in fact do come to light and end in exonerations, by DNA or other means. More resources are devoted to the problem – there are now, for example, 41 Innocence Projects in 31 states\(^\text{10}\) – and judges, prosecutors, defense lawyers, and police officers have all become more aware of the danger of false convictions.

\(^{10}\) Calculated from list available at http://www.innocenceproject.org/links/index/php.
II. The Crimes for which Exonerated Defendants were Convicted

Ninety-seven percent of the known exonerations of individual defendants since 1989 were either for murder – 61% (199/328)\textsuperscript{11} – or for rape or sexual assault – 37% (120/328). Most of the remaining 9 cases were crimes of violence – 3 robberies, 2 attempted murders and a kidnapping – plus a larceny and two drug cases.\textsuperscript{12} See Table 1.

Table 1: Exonerations by Crime and Basis

<table>
<thead>
<tr>
<th>CRIME</th>
<th>NUMBER OF EXONERATIONS</th>
<th>BASIS</th>
</tr>
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<tbody>
<tr>
<td></td>
<td></td>
<td>DNA</td>
</tr>
<tr>
<td>Murder</td>
<td>199 (61%)</td>
<td>40</td>
</tr>
<tr>
<td>Death Sentences</td>
<td>73 (22%)</td>
<td>13</td>
</tr>
<tr>
<td>Other Murder Cases</td>
<td>126 (38%)</td>
<td>27</td>
</tr>
<tr>
<td>Rape</td>
<td>120 (37%)</td>
<td>105</td>
</tr>
<tr>
<td>Other Crimes of Violence</td>
<td>6 (2%)</td>
<td>0</td>
</tr>
<tr>
<td>Drug &amp; Property Crimes</td>
<td>3 (1%)</td>
<td>0</td>
</tr>
<tr>
<td>TOTAL*</td>
<td>328 (101%)</td>
<td>145</td>
</tr>
</tbody>
</table>

\* The total adds up to 101\% because of rounding

This highly skewed distribution tells us a great deal about the relationship between exonerations – those erroneous convictions that are discovered and remedied, at least in part – and the larger group of all false convictions, the vast majority of which are never discovered. We consider that relationship by examining the two major categories of crimes for which exonerations are comparatively common.

\textsuperscript{11} Including three defendants who were convicted of manslaughter.

\textsuperscript{12} We coded cases with multiple charges by the most serious crime for which the defendant was convicted, on the following descending scale: murder, rape, other violent crimes, non-violent crimes. For example, if the exonerated defendant was convicted of murder and rape, we classified the exoneration as a murder; if he was convicted of robbery and rape, we classified it as a rape.
III. The Relationship Between Known Exonerations and all False Convictions

1. Why Do So Many Exonerations Involve Rape?

At the end of 2001, about 118,000 prisoners in state prisons were serving sentences for rape and sexual assault, less than 10% of the total prison population. There were also over 155,000 prisoners who had been convicted of robbery, nearly 119,000 who were in prison for assault, more than 27,000 for other violent felonies, and over 600,000 for property, drug and public order offenses. Why are 93% of the exonerations for non-homicidal crimes concentrated among the rape cases?

The comparison between rape and robbery is particularly telling. Robbery and rape are both crimes of violence in which the perpetrator is often a stranger to the victim. As a result, robberies and rapes alike are susceptible to the well-known dangers of eyewitness misidentification. In fact, there is every reason to believe that misidentifications in robberies outnumber those in rapes, by a lot:

(1) Robberies are more numerous than rapes. In 2002, for example, the FBI estimates that 95,136 forcible rapes and 420,637 robberies were reported to police departments in the United States, leading to 20,126 arrests for rape and 77,342 arrests for robbery.

(2) Eyewitness misidentification is almost entirely restricted to crimes committed by strangers, which includes about three quarters of robberies, but only a third of rapes.

(3) The nature of the crime of rape is such that the victim usually spends a considerable amount of time in close physical proximity to the criminal; robberies are frequently quick, and may involve less immediate physical contact.

In 1987, a detailed study analyzed all known cases of eyewitness misidentification in the United States from 1900 through 1983, 136 in all. That study found that misidentifications in robberies outnumbered those in rapes by more than 2 to 1; in fact, robberies accounted for more than half of all known cases of proven misidentifications. The pattern in our study could hardly be more different. We have 120 exonerations in rape cases; in 88% of them (106/120) the defendant was the


14. Federal Bureau of Investigation, Crime in the United States 2002, Uniform Crime Reports, Tables 1, 38. The arrest figures are limited to the agencies participating in the FBI's Uniform Crime Reporting Program.


victim of eyewitness misidentification. But we have only 3 robbery exonations, all of which include eyewitness misidentifications. What changed?

The answer is obvious: DNA. In 1987, the first DNA exoneration in the country was two years in the future. Since 1989, however, 88% of exonerated rape defendants were cleared by DNA evidence. Only 20% of murder exonations included DNA evidence (and none of the other non-rape exonations), and all but a couple of those murders also included rape as well.

The implication is clear. If we had a technique for detecting false convictions in robberies that was comparable to DNA identification for rapes, robbery exonations would greatly outnumber rape exonations, and the total number of falsely convicted defendants who were exonerated would be several times what we report. And even among rape cases, DNA is only useful if testable samples of biological evidence were preserved and can be found, which is not always true.

In short, the clearest and most important lesson from the recent spike in rape exonations is that the false convictions that come to light are the tip of an iceberg. Beneath the surface there are other undetected miscarriages of justice in rape cases without testable DNA, and a much larger group of undetected false convictions in robberies and other serious crimes of violence for which DNA identification is useless.

2. Why Are Exonerations Heavily Concentrated among Murder Cases, and Especially among Capital Murders?

What about exonations that are not based on DNA? In 2001, about 13% of state prisoners were serving sentences for murder or non-negligent manslaughter, but 87% of non-DNA exonations (159/183) are found among this group. For prisoners under sentence of death the contrast is even more stark. The death-row population in America peaked in 2001, at about a quarter of 1% of the American prison population – and yet 73 exonations in the past 15 years, 22% of the total, were drawn from this tiny sliver of the prison population. What accounts for this enormous over-representation of murder defendants, and especially death-row inmates, among those who are exonerated?

There are only two possible explanations:

- One possibility is that false convictions are not more likely to occur in murder and death penalty cases, but only more likely to be discovered because of the comparatively high level of attention that is devoted to reviewing those cases after conviction. This is no doubt true, at least in part.

17. Calculated from Bureau of Justice Statistics, Prisoners in 2002, Table 15.

18. There were 3,577 prisoners on American death rows at the end of 2001 (Bureau of Justice Statistics, Capital Punishment, 2002, Table 4), and approximately 1,404,032 prisoners in federal and state adult correctional facilities. Bureau of Justice Statistics, Prisoners in 2002, Table 3.
Because of the seriousness of their consequences, murder convictions – and especially death sentences – are reviewed more carefully than other criminal convictions. In 1999, for example, Dennis Fritz was exonerated by DNA evidence and released from a life sentence for a rape murder he did not commit. But he was exonerated as a by-product of an intensive investigation that led to the exonerations of his co-defendant, Ron Williamson, who had been sentenced to death. If Williamson had not been sentenced to death, Fritz would probably be in prison to this day.19

But could this be the entire explanation? Could it be that false convictions in capital cases really are no more common than in other cases? If that were the whole story it would mean that if we reviewed prison sentences with the same level of care that we devote to death sentences, there would have been over 28,500 non-death row exonerations in the past fifteen years rather than the 255 that have in fact occurred – including more than 3,700 exonerations in non-capital murder cases alone.20 This is a shocking prospect.

• On the other hand, if this first explanation is not the whole story, that inescapably means that false convictions are more likely to occur in murder cases, and much more likely in death penalty cases, than in other criminal prosecutions. There are several reasons (apart from the evidence presented here) to believe that this too is almost certainly true: the extraordinary pressure to secure convictions for heinous crimes; the difficulty of investigating many homicides because, by definition, the victims are unavailable; extreme incentives for the real killers to frame innocent fall guys when they are facing the possibility of execution.21 Whatever the causes, this is a terrible prospect: that we are most likely to convict innocent defendants in those cases in which their very lives are at stake.

Considering the huge discrepancies between the exoneration rates for death sentences, for other murder convictions, and for criminal convictions generally, the truth is probably a combination of these two appalling possibilities: We are both much more likely to convict innocent defendants of


20. There were 3,577 prisoners on American death rows at the end of 2001 (see above, note 18). The 73 death-row exonerations since 1989 amount to 2.04% of that population. There were a total of 1,404,032 inmates in American prisons at the end of 2001 (see above, note 18); if exonerations from that population had occurred at the same rate as on death row, there would have been 28,642 non-death row exonerations since 1989. (If we restrict our focus to prisoners who were convicted of murder, the expected number of exonerations would be 13% of that total or about 3,723.) This is a conservative estimate, since death-sentenced defendants spend more time in prison than the average inmate, and therefore are an even smaller proportion of the total population of defendants who are convicted of felonies and pass through prisons in any given time period.

murder – and especially capital murder – than of other crimes, and a large number of false convictions in non-capital cases are never discovered because nobody ever seriously investigates the possibility of error.

3. What Are We Missing Entirely?

We have only counted individual defendants who were exonerated – those whose convictions were nullified by official acts by governors, courts or prosecutors because of compelling evidence that they were not guilty of crimes for which they had been convicted. Several categories of falsely convicted defendants are entirely missing from this count.

(a) Mass exonerations.

Our data include only defendants who were exonerated because of evidence of innocence that focused on their individual cases. We also know of two incidents of mass exonerations of innocent defendants who were falsely convicted as a result of large scale patterns of police perjury and corruption:

• In September 1999, Officer Rafael Perez, who was awaiting re-trial on charges of stealing six pounds of impounded cocaine, made a deal with his prosecutors: a five year sentence in return for information on the criminal activities of officers in the CRASH (“Community Resources Against Street Hoodlums”) unit of the Rampart division of the Los Angeles Police Department. Over the next nine months Perez revealed that he and other Rampart CRASH officers had routinely lied in arrest reports, shot and killed or wounded unarmed suspects and innocent bystanders, planted guns on suspects after shooting them, fabricated evidence, and framed innocent defendants. In the aftermath of this scandal, at least 100 criminal defendants who had been framed by Rampart CRASH officers – and possibly as many as 150 – had their convictions vacated and dismissed by Los Angeles County judges in late 1999 and 2000. The great majority were young Hispanic men who had pled guilty to false felony gun or drug charges.22

• In 1999 and 2000, 39 defendants were convicted of drug offenses in Tulia, Texas, on the uncorroborated word of a single dishonest undercover narcotics agent. In 2003, 35 of them were pardoned when it was shown that the undercover officer had systematically lied about these cases, and charged the defendants with drug sales that had never occurred. (The remaining 4 Tulia defendants were not eligible for pardons because their convictions had been dismissed, or because they were also imprisoned on unrelated charges.)

The Rampart and Tulia cases are exonerations in every sense of the word. We do not include them here because the processes that produced the false convictions and the mass exonerations in these singular episodes are fundamentally different from those in the individual cases on which we focus, and mixing them in – 135 cases or more – would distort the patterns we can observe. However, by the same token, these extraordinary exonerations provide a glimpse into a more general category of false convictions that is missing from our data – as we will see.

(b) Comparatively light sentences.

With a handful of exceptions, everyone on our list of exonerees was sentenced to death or to a long term of imprisonment. Ninety-five percent were sentenced to ten years in prison or more; 80% were sentenced to at least 25 years; more than half were sentenced to life imprisonment or to death. This is a highly atypical group. Most criminal defendants are convicted (if at all) of misdemeanors; and of those who are convicted of felonies, most are sentenced to probation or to months in jail rather than to years in prison.

Exonerations are the end products of a lot of work, usually over a long period. The average time from conviction to exoneration is more than eleven years. A falsely convicted defendant who has served his time for burglary and been released has little incentive to invest years of his life keeping the case alive in the hope of clearing his name – and if he wanted to, he’d probably have a hard time finding anybody to help. Our data reflect this: nobody, it seems, seriously pursues exonerations for defendants who are falsely convicted of shoplifting, misdemeanor assault, drug possession, or routine felonies – auto thefts or run-of-the-mill burglaries – and sentenced to probation, a $2000 fine,
or even six months in the county jail or 18 months in state prison.\footnote{26}{The case of Robert Farnsworth, Jr., who was exonerated in Michigan in 2000, is an exception that illustrates this rule. Farnsworth was arrested for grand larceny and confessed under police pressure after a cash deposit bag belonging to his employer went missing. He immediately recanted his confession and claimed that he had placed the bag in a night deposit box at the company’s bank, but a jury convicted him and he was sentenced to a six-months suspended sentence and 3 years probation. Ordinary, that would have been the end of the story. By a fluke, another cash bag deposited in the same night drop box was lost almost a year after the first, and the owner of the business in question knew the bank president and asked him to have the drop box opened and inspected – and both cash bags were found stuck in the mechanism (plus a third that hadn’t been missed). See AP, Bank Finds Lost Cash Stuck in Vault, Ex-Wendy’s Manager Convicted of Stealing is Vindicated, Detroit Free Press, 3/13/2000.}

But obviously such errors occur. It is well known, for example, that many defendants who can’t afford bail plead guilty in return for short sentences, often probation and credit for time served, rather than stay in jail for months and then go to trial and risk much more severe punishment if convicted.\footnote{27}{See, e.g., Barbara Taylor, Trapped on Rikers Island, The New York Times, 9/7/1996, p. 21.} This is one facet of a system in which about 90% of defendants who are convicted plead guilty rather than go to trial.\footnote{28}{In 1998, for example, 90% of those convicted of violent felonies in large urban counties pled guilty. For all felonies, 96% of those convicted pled guilty. Recalculated from Bureau of Justice Statistics, Felony Defendants in Large Urban Counties, 1998, Table 23.} Some defendants who accept these deals are innocent, possibly in numbers that dwarf false convictions in the less common but more serious violent felonies, but they are almost never exonerated – at least not in individual cases.

Only nineteen of the exonerees in our database pled guilty, less than 6% of the total: 15 innocent murder defendants and 4 innocent rape defendants who took deals that included long prison terms in order to avoid the risk of life imprisonment or the death penalty. By contrast, 31 of the 39 Tulia defendants pled guilty to drug offenses they did not commit, as did the majority of the 100 or more exonerated defendants in the Rampart scandal in Los Angeles. Most of the Rampart and Tulia defendants had been released by the time they were exonerated, 2 to 4 years after conviction.\footnote{29}{Only nineteen of the exonerees in our database pled guilty, less than 6% of the total: 15 innocent murder defendants and 4 innocent rape defendants who took deals that included long prison terms in order to avoid the risk of life imprisonment or the death penalty. By contrast, 31 of the 39 Tulia defendants pled guilty to drug offenses they did not commit, as did the majority of the 100 or more exonerated defendants in the Rampart scandal in Los Angeles. Most of the Rampart and Tulia defendants had been released by the time they were exonerated, 2 to 4 years after conviction. They were exonerated because the false convictions in their cases were produced by systematic programs of police perjury that were uncovered as part of large scale investigations. If these same defendants had been falsely convicted of the same crimes by mistake – or even because of unsystematic acts of deliberate dishonesty – we would never have known.}

(c) \textbf{Innocent defendants who have not been exonerated.}

(i) \textit{Pending cases.} Some falsely convicted defendants have not been exonerated – at least not yet – because government officials are dragging their feet. On March 12, 2003, for example, Josiah Sutton
was released from prison in Texas after DNA tests cleared him of a rape conviction for which he had served 4½ years of a 25 year sentence. Over a year later, Sutton remains free on bail, with his case theoretically pending, because the Houston District Attorney, who agrees that Sutton should be pardoned, won’t say that the pardon should be “based on innocence” – apparently because that classification would subject the state to liability for Sutton’s wrongful imprisonment. Although there is no doubt that Sutton was falsely convicted, he has not been exonerated and is not included in this study.

(ii) Pleas of guilty or no contest. Sometimes a defendant who has protested his innocence for years, and who had obtained a reversal of his conviction, accepts an offer from the state to plead guilty to a lesser crime and go free immediately, rather than stay in jail and risk a re-trial that could result in another false conviction. For example, in 1978 Curtis McGhee was convicted of murder in Council Bluffs, Iowa, on the basis of a confession from a supposed accomplice. In February, 2003, the Iowa Supreme Court reversed the convictions because the police had concealed the fact that they had questioned another suspect who was seen near the scene of the crime, and who failed a polygraph test. By then the confessor, and all other key prosecution witnesses, had recanted their testimony. McGhee was offered a deal: plead guilty to second degree murder and go free; he decided to play it safe, took the deal, and was released. We have not included McGhee in our data, nor any other defendant who pled guilty in order to be released, regardless of the evidence of the defendant’s innocence. We are examining exonerations, and the final official act in such a case is not an exoneration but a conviction, however nominal or misleading. (We have included McGhee’s co-


32. For these purposes, a plea of “no contest” (or “nolo contendre”) is equivalent to a guilt plea. McGhee himself entered an “Alford” plea, which means that he was allowed to deny participation in the crime and state that he was pleading guilty, despite that denial, to avoid the risk of trial. All the same, that plea – like any other plea of guilty or no contest – was the basis of a judgment of conviction, which is not an official exoneration.

We have included three cases in which the exonerated defendant did plead guilty or no contest, but to a charge that is factually distinct from the crime for which he was originally convicted. Medell Banks, for example, was charged with capital murder and pled guilty to manslaughter in Alabama. He was released in 2003, after homicide charges were dropped because of incontrovertible evidence that the supposed victim – a newborn infant who had never been seen, alive or dead, by any trustworthy witness – could not have existed: the ostensible mother, Mr. Banks’ wife Victoria, had a tubal ligation that made pregnancy impossible. See below, text at note 33. In the process, Mr. Banks agreed to plead guilty to a misdemeanor, tampering with evidence. Carla Crowder, Accused in Killing of Newborn Who Likely Never Existed, Choctaw County Man Makes Plea Deal, Birmingham News, Jan. 11, 2003, at 1A. Since that charge (whether true or false) involved conduct totally distinct from the original homicide charge, we count his case as an exoneration.
defendant, Terry Harrington, who refused to take a similar deal, and got a dismissal after the state’s star witness at the original trial recanted once more.)

(iii) *Inexplicable failures to exonerate.* In some cases there is no rational explanation for the fact that an innocent defendant has not been exonerated. There is no doubt, for example, that Victoria Banks was falsely convicted of manslaughter in 2001. She is a mentally retarded woman who confessed to killing her newborn baby; but there is no physical evidence that the baby ever existed, and medical tests confirm that she had a tubal ligation that was intact throughout the relevant period, making pregnancy impossible. But Ms. Banks – who confessed to her imaginary crime and pled guilty to manslaughter after being charged with capital murder – does not dispute her guilt, and the state of Alabama, to its shame, continues to imprison this mentally deficient and delusional woman for manslaughter as well as unrelated charges. One of her two co-defendants – who is also mentally retarded – was exonerated and released in 2003 after three and half years in prison; a second retarded co-defendant had her sentence reduced and was released in 2002.33

(iv) *The childcare sex abuse and satanic ritual cases.* Finally, in one major set of false conviction cases the patterns of injustice are so complex and murky that we can hardly ever say that specific defendants were “exonerated,” even though there is no doubt that most were falsely convicted. We’re referring here to the epidemic of child sex abuse prosecutions that swept across the country in the late 1980s and early 1990s, focusing especially on childcare centers, and frequently including allegations of bizarre satanic rituals.34

In almost all of the exoneration cases that we consider in this report there is no question that the murder, rape or other crime did occur. The problem is that someone other than the defendant did it. In these mass child molestation prosecutions the identity of the perpetrators is not an issue. The question, rather, is: Did the crimes really happen at all?

In many of these child-molestation cases, the accusations were bizarre if not impossible on their face. Some children at the Little Rascals Day Care Center in Edenton, North Carolina, for example said that they had seen babies killed at the daycare center, children taken out on boats and thrown overboard to feed sharks, and children taken to outer space in a hot air balloon.35 In Kern County, California, children described mass orgies with as many as 14 adults who forced groups of children to inhale 18-inch lines of cocaine or heroin, gave them injections with syringes that left large bruises,


34. For a comprehensive analysis of several of the major childcare and satanic ritual abuse cases and the phenomenon of allegations of ritual abuse generally, see Debbie Nathan and Michael Snedeker, *Satan’s Silence: Ritual Abuse and the Making of a Modern American Witch Hunt* (1995).

and hung the children from hooks as the adults repeatedly sodomized them.\textsuperscript{36} Needless to say, no physical evidence ever corroborated any of these unlikely claims. In other cases, the accusations were merely implausible, and appear to be have been generated by over-eager prosecutors and therapists who demanded that the young children they examined tell them that they had been molested, and would not take No for an answer.

Overall, more than 150 defendants were initially charged in at least ten major child sex abuse and satanic ritual prosecutions across the country, from 1984 to 1995, and at least 72 were convicted. It is clear that the great majority were totally innocent; almost all were eventually released by one means or another before they completed their terms.\textsuperscript{37} It is possible, however, that some of these defendants did commit some acts of sexual molestation, incidents that later grew into implausible and impossible allegations as the children were interviewed repeatedly by prosecutors and therapists. We have included only one of these cases in our database, a case in which we know that all of the supposed victims now say that they were never molested in the first place – that the crime never occurred. Otherwise, none of the wrongfully convicted victims of this terrible episode in American

\hspace{1cm}


\textsuperscript{37} In the largest set of ritual sex abuse cases, the Kern County sex abuse rings prosecutions, at least 18 of the 26 convicted defendants have had their convictions reversed and the charges dismissed – in at least seven cases, for gross prosecutorial misconduct. Prosecutors declined to retry the cases in which convictions were reversed. The Kern County defendants, who had been sentenced to as many as 100 years in prison, served between 3 and 15 years. John Stoll is one of the very last defendants to remain in prison, and by all accounts, the person who has served the longest time of all those convicted in ritual sex abuse cases across the country; he received a hearing in February of this year to determine whether he should receive a new trial. Four of the six children, now adults, who testified against him, now say the abuse never happened. A fifth has no memory either way. See, John Johnson, \textit{New Hearing Is Granted in Child Abuse Conviction}, L.A. Times, December 21, 2003, at B6; \textit{Kern County Justice; a Tragic Chapter in Our Justice System Closes with the Release of Four People from Prison 14 Years after Being Convicted of Child Molestation}, Fresno Bee, August 16, 1996, at B4; Tom Kertscher, \textit{Molestation hysteria left sad legacy; Painful lessons learned in overzealous Kern County prosecutions}, Fresno Bee, September 10, 1995.

In fact, nearly all of those initially convicted in the childcare and ritual sex abuse cases have since been reversed, and prosecutors have declined to retry defendants in almost every case. See, \textit{Frontline: Innocence Lost}, (PBS television broadcast, May 27, 1997), http://www.pbs.org/wgbh/pages/frontline/shows/innocence/etc/chronology.html (all charges against Bob Kelly, the last remaining defendant in the Little Rascals case, were dropped in 1999); \textit{Id.}, http://www.pbs.org/wgbh/pages/frontline/shows/innocence/etc/other.html#3 (conviction of Kelly Michaels, a 23 year old day care worker, charged with 115 counts of child sexual abuse overturned in 1993); \textit{Update on the Wenatchee, Washington, Child Abuse Case}, (National Public Radio broadcast, August 2, 2001) (of the 18 individuals convicted, all have had their convictions overturned); \textit{When Children Accuse, Who to Believe?} (ABC News Broadcast on January 28, 1999) (across the country, at least 140 people – about three-quarters of the accused in wave of ritual sex abuse cases – have been acquitted, had their convictions overturned or charges against them dropped).
legal history are included on this list because they have not been officially exonerated.
IV. Exonerations by State

The exonerations we found occurred in 38 states and the District of Columbia, but the top four states – Illinois, New York, Texas and California – account for more than 40% of the total (139 of 328), and the top 10 (those four plus Florida, Massachusetts, Louisiana, Pennsylvania, Oklahoma and Missouri) include about two thirds (217/328). See Table 2.

Table 2: Exonerations by State

<table>
<thead>
<tr>
<th>Rank</th>
<th>State</th>
<th>Number of Exonerations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Illinois</td>
<td>54</td>
</tr>
<tr>
<td>2</td>
<td>New York</td>
<td>35</td>
</tr>
<tr>
<td>3</td>
<td>Texas</td>
<td>28</td>
</tr>
<tr>
<td>4</td>
<td>California</td>
<td>22</td>
</tr>
<tr>
<td>5 (tie)</td>
<td>Florida</td>
<td>15</td>
</tr>
<tr>
<td>5 (tie)</td>
<td>Massachusetts</td>
<td>15</td>
</tr>
<tr>
<td>7 (tie)</td>
<td>Louisiana</td>
<td>14</td>
</tr>
<tr>
<td>7 (tie)</td>
<td>Pennsylvania</td>
<td>14</td>
</tr>
<tr>
<td>9</td>
<td>Oklahoma</td>
<td>11</td>
</tr>
<tr>
<td>10</td>
<td>Missouri</td>
<td>9</td>
</tr>
</tbody>
</table>

This ranking corresponds in part to the sizes of state populations. The five most populous states – California, Texas, New York, Florida and Illinois, in that order – include five of the six with the largest numbers of recent exonerations. These numbers may also be influenced by the use of the death penalty; all but two of the top ten states have – or, in the case of Illinois, recently had – large death row populations. It is also probably no coincidence that the two leading exoneration states, Illinois and New York, are home to the two largest and best established organizations in the United States that work to identify false convictions and obtain exonerations – The Center on Wrongful Convictions at Northwestern University Law School in Chicago, and The Innocence Project at Cardozo Law School in New York City; that these two states were the first to authorize post-conviction DNA testing for inmates; and that both include major metropolitan media markets in which the issue of wrongful conviction has received extensive coverage.

V. Some of the Causes of the False Convictions

One way to think of false convictions is as a species of accidents. Like many accidents, they are caused by a mix of carelessness, misconduct, and bad luck. We don’t claim to be able to describe with any precision the causal mechanisms that produce these tragic errors, but even with the limited information at our disposal, some basic patterns are apparent.

1. Rapes and Murders: Mistakes versus Lies

The most common cause of wrongful convictions is eyewitness misidentification. This is not news. It was first shown in 1932 by Professor Edwin Borchard in his classic book *Convicting the Innocent*, and it is apparent again in our data: In 64% of these exonerations (209/328) at least one eyewitness misidentified the defendant. The pattern, however, is heavily lopsided. Almost 90% of the rape cases (106/120), but only about half of the homicides (97/199), included at least one eyewitness misidentification.

The gap in the frequency of misidentification reflects a fundamental difference between police investigations of rapes and of homicides. In a non-homicidal rape there is always a surviving witness – the victim – and she is usually able to attempt to identify the criminal. As a result, almost all the false rape convictions that led to exonerations involved mistakes that occurred in that identification process. A murder, on the other hand, frequently leaves no surviving eyewitness, which forces the police to search for other types of evidence – evidence that is usually more difficult to obtain than eyewitness identifications.

Because the stakes in murder cases are so high, the police invest far more resources in investigating them than they devote to other crimes of violence. This is as it should be. The main effect is that the clearance rate for murders is higher than for other crimes – killers are more likely than rapists to be caught and brought to justice. These same high stakes, however, can also produce false evidence. The real perpetrator is at far greater risk, and far more motivated to frame an innocent person to deflect attention, for a murder than for a rape – particularly if he might be sentenced to death. Co-defendants, accomplices, jail house snitches and other police informants, can all hope for substantial rewards if they provide critical evidence in a murder case – even false evidence – especially if the police are desperate for leads. The police themselves may be tempted to cut corners and falsify evidence to convict a person they believe committed a terrible murder.


40. For example, the FBI estimates that in 2002 the clearance rate for reported murders in the United States was 64%, for reported rapes 45%, for reported burglaries 13%, and for reported auto thefts 14%. Federal Bureau of Investigation, *Crime in the United States 2002, Uniform Crime Reports*, Figure 3.1.

In 72% of the rape exonerations the victims and all other eyewitnesses who testified were strangers to the falsely convicted defendant. By contrast, 86% of exonerated murder defendants knew the victim, or at least one supposed eyewitness, before the crime. The central problem in most rape investigations that go wrong is the mistaken identification of a defendant who is otherwise unknown to those involved. The common problem in the investigations of the murder cases we studied is deliberately false evidence implicating an innocent defendant with a known relationship to the victim or the lying witness.

An eyewitness misidentification by a stranger is easy to spot, once you know that the person identified is innocent. Detecting a deliberate lie is harder; there may be no simple way to tell if a statement was false, and if so whether the falsehood was intentional. As a result, our information on perjury understates the extent of the problem. Even so, known perjury is a surprisingly common feature of the trials that led to the convictions of these exonerated defendants.

In at least 58 of the 328 exonerations the defendant was falsely accused at trial by someone who claimed to have witnessed the crime: a supposed victim, participant, or eyewitness. About a quarter of these false accusations (13/58) occurred in rape cases; in each, the false accuser was a complaining witness who lied about the occurrence of the crime. In 43 cases the exonerated defendant was falsely accused of murder; in two cases the false accusers were surviving victims; most of the rest were (or claimed to be) participants in the crimes. In other words, in nearly half the murder exonerations in which the defendant was misidentified by one or more eyewitnesses, we also have information that the defendant was deliberately misidentified by at least one witness (43/97).

In 5 of the exonerations that we have studied there are reports of perjury by police officers. In an additional 24 we have similar information on perjury by forensic scientists testifying for the government. In at least 17 exoneration cases the real criminal lied under oath to get the defendant convicted; in at least 94 cases a civilian witness who did not claim to be directly involved in the crime committed perjury – usually a jailhouse snitch or another witness who stood to gain from the false testimony.

Overall, in 44% of all exonerations (145/328) at least one sort of perjury is reported – including 57% of murder exonerations (114/199), and 24% of rape exonerations (29/120). See Table 3.
42. In over half the false confessions (28/51) coercion is apparent from the record we have; in about 10% (5/51) it appears that the false confession was volunteered; and in about a third (18/51) we have too little information to say.

to 13% of older exonerees. Among the youngest of these juvenile exonerees – those aged 12 to 15 – 75% (8/12) confessed to homicides (and 1 rape) that they did not commit.

False confessions are even more prevalent among exonerees with mental disabilities. Our data indicate that 16 of the 328 exonerees were mentally retarded; 69% of them – over two thirds – falsely confessed. Another 10 exonerees appear to have been suffering from mental illnesses; 7 of them falsely confessed. Among all other exonerees (some of who may also have suffered from mental disabilities of which we are unaware) the false confession rate was 11% (33/302). Overall, 55% of all the false confessions we found were from defendants who were under eighteen, or mentally disabled, or both. Among adult exonerees without known mental disabilities, the false confession rate was 8%. See Table 4.

**Table 4: False Confessions by Age and Mental Disability**

<table>
<thead>
<tr>
<th>Age and Mental Status of the Exonerated Defendants</th>
<th>Proportion who Falsely Confessed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Juveniles - under 18 at time of crime (32)</td>
<td>44%</td>
</tr>
<tr>
<td>12 - 15 Year Olds (12)</td>
<td>75%</td>
</tr>
<tr>
<td>16 - 17 Year Olds (20)</td>
<td>25%</td>
</tr>
<tr>
<td>Mentally Ill or Mentally Retarded (26)</td>
<td>69%</td>
</tr>
<tr>
<td>Adults Without Known Mental Disabilities (275)</td>
<td>8%</td>
</tr>
</tbody>
</table>

False confessions have more impact on false convictions than their numbers suggest, since quite often they implicate other innocent people in addition to the confessor. Terry Harrington, a 17-year old African American charged with killing a white retired police captain, did not confess to murder in Iowa in 1978 – but his 16-year-old friend Kevin Hughes did, and that confession, which was later repeatedly retracted, led to false murder convictions for Harrington and his co-defendant Curtis McGhee. Hughes was never prosecuted. Similarly, in 1978 Paula Gray, a 17-year-old borderline retarded girl, falsely confessed to participating in a double murder and rape in Chicago, and implicated four innocent men. After she recanted, she was prosecuted for rape, murder and perjury, and sentenced to 50 years in prison. The four men she named were also all convicted, and two were sentenced to death. All five were exonerated after DNA testing cleared the men of the rape; the real

44. See id.

45. See above, note 31.
killers have since been identified, linked to the rape by DNA, and confessed.\(^{46}\) Similarly, in 1988 in Austin, Texas, Christopher Ochoa falsely confessed to rape and murder in order to avoid the threat of the death penalty – and along the way falsely implicated his friend, Richard Danzinger; both were sentenced to life in prison, and both were exonerated by DNA in 2001, three years after the real criminal sent a letter to Governor Bush confessing to their crimes.\(^{47}\)

\(^{46}\) Laura Sullivan, *Three Students Track Down Killers*, The Baltimore Sun, June 27, 1999, at 1C.

\(^{47}\) UPI, *Judge Frees Wrongly Convicted Man*, 1/16/01; Henry Weinstein, *DNA Testing Clears Texas Murderer and “Accomplice,”* L.A. Times 10/14/00 p. A1; John Cloud, *Guarding Death’s Door*, Time, 7/8/03. (In 2003, Ochoa was awarded a scholarship to the University of Wisconsin Law School. See Louie Gilot, *Law School Offers Grant to Grant Falsely Imprisoned*, El Paso Times, 5/30/03 p. 1B. Danzinger, tragically, received permanent disabling brain injuries as a result of an attack by another inmate in prison.)
VI. Race

1. Race and Rape

Over two-thirds of the exonerated defendants we studied were minorities, 55% African Americans and 13% Hispanics. Sadly, this is not altogether surprising; blacks and Hispanics comprise about 62% of all American prisoners. But only part of this pattern can be explained by the pervasive over representation of minorities in general, and African Americans in particular, among those arrested and imprisoned for serious crimes.

At the end of 2002, 35% of state prisoners serving sentences for murder were white, 48% were black and 17% were Hispanic. The proportions of exonerations in murder cases are very similar: 34% whites, 50% Blacks and 15% Hispanics.

For rape, however, the story is different. A majority of rape prisoners in 2002 were white, 58%; only 29% were black; and 13% were Hispanic. But for rape exonerations the proportions are reversed: almost two thirds of the defendants are black, 65%; only 27% are white; and 8% are Hispanic. See Table 5.

Table 5: Race of Exonerated Defendants, by Crime

<table>
<thead>
<tr>
<th></th>
<th>Murder (188)</th>
<th>Rape (106)</th>
<th>All Cases (301)</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>34%</td>
<td>27%</td>
<td>31%</td>
</tr>
<tr>
<td>Black</td>
<td>50%</td>
<td>65%</td>
<td>55%</td>
</tr>
<tr>
<td>Hispanic</td>
<td>15%</td>
<td>8%</td>
<td>13%</td>
</tr>
<tr>
<td>Other</td>
<td>1%</td>
<td>0%</td>
<td>1%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Why are blacks so greatly over-represented among those defendants who were falsely convicted of rape and then exonerated, mostly by DNA? The key is probably the race of the victims. We know the race of the victim for 75% of the 69 rape exonerations with black defendants, and in 75% of those cases the victim was white. (We see a similar pattern, on a smaller scale for Hispanic exonerees: we know the race of the victim for 7 of the 8 who were falsely convicted of rape, and in


49. Id. The proportion of whites is slightly higher among those arrested for rape – 63% in 2001. Recalculated from Sourcebook of Criminal Justice Statistics, Table 4.10.
4 of those cases the victim was white.) Most women who are raped are victimized by members of their own racial or ethnic groups. Inter-racial rape is uncommon, and rapes of white women by black men in particular account for well under 10% of all rapes. But among rape exonerations for which we know the race of both parties, almost exactly half (39/79) involve a black man who was falsely convicted of raping a white woman.

There are many possible explanations for this disturbing pattern. Of all the problems that plague the American system of criminal justice, few are as incendiary as the relationship between race and rape. Nobody would be surprised to find that bias and discrimination continue to play a role in rape prosecutions. Still, the most obvious explanation for this racial disparity is probably also the most powerful: the perils of cross-racial identification. Virtually all of the inter-racial rape convictions in our data were based, at least in part, on eyewitness misidentifications, and one of the strongest findings of systematic studies of eyewitness evidence is that white Americans are much more likely to mistake one black person for another than to do the same for members of their own race.

2. Race and Age

The juveniles on our list of exonerated defendants are overwhelmingly members of minority

50. According to the Bureau of Justice Statistics’ Criminal Victimization in the United States, 1996-2002, Table 42 (available at http://www.ojp.usdoj.gov/bjs/abstract/cvusst.htm.) – based on the National Criminal Victimization Survey – black offenders accounted for an average of approximately 10% of all rapes and sexual assaults of white victims between 1996 and 2002. (The statistic fluctuates from year to year because for each year it is extrapolated from a sample of 10 or fewer survey responses.) Another Bureau of Justice Statistics study – based on the National Incident-Based Reporting System, reports that in 88% of rapes the victim and the offender are of the same race, and that the victims of rape are approximately evenly divided between whites and blacks. Bureau of Justice Statistics, Sex Offenses and Offenders, p. 11 (February 1997), available at http://www.rainn.org/Linked%20files/soo.pdf. It follows that the proportion of all rapes that have white victims and black offenders is about 5 to 6%.

51. Consider the case of Ronald Cotton, a black man, who was convicted of raping Jennifer Thompson, a white woman in 1985, in Burlington, North Carolina. Thompson was the only eyewitness at the trial, and by all accounts she was very effective. She was absolutely confident of her identification, in part because she spent a considerable amount of time with the rapist and was determined to observe him closely so that she would be able to identify him later on. She was equally confident when Cotton was retried 1987, convicted again, and sentenced, a second time to life in prison. Even so, she was wrong. Cotton was pardoned in 1995 after DNA tests proved that he was innocent, and that the real rapist was a different black man, who was in prison on other charges. What makes the case most remarkable is what happened after the exoneration. Ms. Thompson went to great lengths to make amends to Mr. Cotton, and to speak out and publicize the case and the terrible mistake she had made, so others could learn from it – which is why she is identified here by name. See Helen O’Neill, AP, The Perfect Witness, Washington Post, 3/4/01 p. F1; National Institute of Justice, Convicted by Juries, Exonerated by Science, Case Studies in the Use of DNA Evidence to Establish Innocence After Trial, (1996).

groups. Ninety percent of exonerated defendants who were under 18 at the time of arrest were black or Hispanic. There are virtually no non-Hispanic white juveniles among the exonerated defendants we have studied – 3 out of 328, less than 1% of the total. See Table 6.

<table>
<thead>
<tr>
<th></th>
<th>Juvenile Murder Exonerations (22)</th>
<th>Juvenile Rape Exonerations (7)</th>
<th>All Juvenile Exonerations (31)</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>14%</td>
<td>0%</td>
<td>10%</td>
</tr>
<tr>
<td>Black</td>
<td>77%</td>
<td>86%</td>
<td>77%</td>
</tr>
<tr>
<td>Hispanic</td>
<td>9%</td>
<td>14%</td>
<td>13%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

As we have seen, minorities, and African Americans in particular, are over-represented among all exonerations, especially the rape cases. Even so, white defendants account for 34% of all murder exonerations and 27% of all rape exonerations – but only 14% of juvenile murder exonerations, and not a single juvenile rape exoneration. A majority of the teenagers arrested for these two crimes are white – 62% of juvenile rape arrests in 2002, and 46% of juvenile murder arrests\(^\text{53}\) – and yet white juveniles are all but entirely absent from our list of exonerees. Why?

In part, this disparity reflects general racial patterns in juvenile justice in America. Many juveniles who are arrested are not prosecuted at all but returned to the custody of their parents or guardians for less formal discipline; among those who are prosecuted, only a small fraction are treated as adults and punished accordingly. The juvenile exonerees in our data are all drawn from the small group of juvenile suspects who are prosecuted as adults and sentenced to long terms in prison – or, in 3 cases, to death. Race plays a major role at each stage of the sorting process that produces this rarified group.

For example, although only 27% of all juveniles arrested in the United States in 1990, 1992 and 1994 were black,\(^\text{54}\) a Department of Justice study found that 41% of defendants in juvenile courts


\(^{54}\) This statistic reflects the average of the numbers reported by the FBI in its annual *Crime in the United States, Uniform Crime Reports* for 1990, 1992 and 1994 (see Table 42 in 1992 and 1994; Table 38 in 1990). These three years were used to be consistent with the sample in a 1998 Bureau of Justice Statistics report on juvenile defendants in criminal courts. See below, note 55.
in those three years were black, and 67% of juveniles prosecuted as adults were black.\textsuperscript{55} In other words, white teenagers who are arrested by the police are less likely than blacks to be prosecuted in juvenile court, and much less likely to be prosecuted in felony court as adults.

All but one of the juvenile exonerees in our database were convicted, as adults, of rape or murder. For these two extremely serious crimes, the racial winnowing of juvenile offenders is severe. In 1990-94, 59% of murder defendants \textit{in juvenile court} were white and 36% were black; but among juvenile murder defendants who were \textit{tried as adults} the proportions were more than reversed: 69% were black and only 25% were white.\textsuperscript{56} For rape, the proportion of blacks went from 44% of juveniles arrested,\textsuperscript{57} to 53% of those prosecuted for rape in juvenile court, to 72% of juvenile rape defendants prosecuted as adults.\textsuperscript{58} There are, no doubt, false convictions among the cases that remain in juvenile court, and a substantial proportion of them may involve white defendants. Like other false convictions with comparatively light sentences, these are errors that are unlikely to ever be corrected by formal exoneration. None appear in this database

Even so, 25% of juvenile murder defendants prosecuted in adult courts in the early 1990s were white, as were 28% of juvenile rape defendants\textsuperscript{59} – but only 10% of juvenile exonerees. The disparity could be due to chance; the number of cases is not large. It could also be due to systematic racial differences in the process of investigation. Black juvenile rape defendants, like all black rape defendants, face a special danger of cross-racial misidentification. In many of the juvenile murder exonations (and in some of the rapes) the primary evidence against the defendant was a false confession. Eight-five percent of the juvenile exonerees who falsely confessed were African American (12/14). It may be that police officers are more likely to use coercive interrogation tactics on black juveniles than on white juveniles – that would explain the high proportion of blacks among the innocent juveniles who falsely confessed – but there is no way to tell directly from these data.

The broad picture, however, is no mystery. We have a dual system of juvenile justice in this country, one track for white adolescents, a separate and unequal one for black adolescents. The sharp racial differences in exonations of falsely convicted juvenile defendants are just one manifestation of that racial divide.


\textsuperscript{56} See id.

\textsuperscript{57} See above, note 54.

\textsuperscript{58} See above, note 55.

\textsuperscript{59} See id.
VII. Conclusion

We can’t come close to estimating the number of false convictions that occur in the United States, but the accumulating mass of exonerations gives us a glimpse of what we’re missing. We have located 328 exonerations since 1989, not counting at least 135 defendants in the Tulia and Rampart mass exonerations, or more than 70 convicted childcare sex abuse defendants. Almost all the individual exonerations that we know about are clustered in two crimes, rape and murder. They are surrounded by widening circles of categories of cases with false convictions that have not been detected: rape convictions that have not been reexamined with DNA evidence; robberies, for which DNA identification is useless; murder cases that are ignored because the defendants were not sentenced to death; assault and drug convictions that are forgotten entirely. Any plausible guess at the total number of miscarriages of justice in America in the last fifteen years must be in the thousands, perhaps tens of thousands.

We can see some clear patterns in those false convictions that have come to light: who was convicted, and why. For rape the dominant problem is eyewitness misidentification – and cross-racial misidentification in particular, which accounts for the extraordinary number of false rape convictions with black defendants and white victims. For murder, the leading cause of the false convictions we know about is perjury – including perjury by supposed participants or eyewitnesses to the crime who knew the innocent defendants in advance. False confessions also played a large role in the murder convictions that led to exonerations, primarily among two particularly vulnerable groups of innocent defendants: juveniles, and those who are mentally retarded or mentally ill. Almost all the juvenile exonerees who falsely confessed are African American. In fact, one of our most startling findings is that 90% of all exonerated juvenile defendants are black or Hispanic, an extreme disparity that, sadly, is of a piece with racial disparities in our juvenile justice system in general.
## APPENDIX

### EXONERATIONS, 1989 - 2003, BY STATE AND YEAR OF EXONERATION

(Exonerations based on DNA Evidence marked by *)

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<th>State</th>
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JOSEPH BURROWS, 1994
TERRY NELSON, 1994
ROLANDO CRUZ, 1995*
ALEJANDRO HERNANDEZ, 1995*
LIONEL LANE, 1995
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KENNETH ADAMS, 1996*
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GARY GAUGER, 1996
VERNEAL JIMERSON, 1996*
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CARL LAWSON, 1996
WILLIE RAINGE, 1996*
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DANA HOLLAND, 2003*
STANLEY HOWARD, 2003
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PAUL TERRY, 2003*
FRANKLIN THOMPSON, 2003

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