

2013


Witness Recantation Study: Preliminary Findings

Samuel R. Gross

University of Michigan Law School, srgross@umich.edu

Alexandra E. Gross

Follow this and additional works at: <http://repository.law.umich.edu/other>

 Part of the [Criminal Law Commons](#), [Law Enforcement and Corrections Commons](#), and the [Legal Writing and Research Commons](#)

Recommended Citation

Gross, Samuel R. "Witness Recantation Study: Preliminary Findings." A. Gross, co-author. The National Registry of Exonerations, (2013).

This Report is brought to you for free and open access by the Faculty Scholarship at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Other Publications by an authorized administrator of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

The National Registry
of
EXONERATIONS

WITNESS RECANTATION STUDY: PRELIMINARY FINDINGS, MAY 2013

Alexandra E. Gross, Writer/Researcher
National Registry of Exonerations
alexandra.gross@gmail.com

Samuel R. Gross, Editor
National Registry of Exonerations
srgross@umich.edu

Witness Recantation Study: Preliminary Findings, May 2013

INTRODUCTION

In September 2012, the National Registry of Exonerations began a research study of all the cases in our database that involve post-conviction recantations by witnesses or victims. This is the first systematic study of recantations ever conducted. Its purpose is to identify patterns and trends among these cases, with a particular focus on the circumstances that first elicit the false testimony, and on the official reactions to the recantations by judges and other authorities.

Our data set includes all the cases in the Registry as of February 28, 2013 – a total of 1,068 cases, 250 of which involve recantations. We developed a coding system to track various features of these cases, from the crime (or alleged crime) and initial investigation through the conviction, post-conviction proceedings, re-investigation, and exoneration of the defendant. In early April, we finished coding the cases, and we presented initial findings at the Innocence Network Conference on April 20th. This memo provides background on the project and a brief summary of our findings thus far.

DEFINITION OF RECANTATION

For the purposes of this study, a recantation is defined by the following criteria:

1. A victim or witness made a statement that was treated by authorities as evidence of the defendant's guilt.
2. At some point after the conviction, the same accuser made a statement saying that he or she lied when accusing the defendant – or, in a small minority of cases (25/250), that he or she made a mistake when accusing the defendant. (Expert testimony that was later recanted makes up about half of all recanted mistakes.)

The recanted statement does not have to be trial testimony, or made under oath; statements to police, prosecutors or investigators are also included. Indeed, in some cases there was no trial testimony because the innocent defendant pled guilty, and no other accusatory statements were made under oath.

Our study does not include recantations prior to trial or during trial. Nor do we include recantations of false confessions by defendants themselves; while almost all such confessions *are* recanted, they are a fundamentally different type of evidence.

CODING

This project involved a review of every case in the Registry in order to determine whether it involved a recantation. Although our general coding scheme already included a code for recantation cases, we reviewed all the cases in the database again to catch any that had not been correctly coded the first time around.

We wrote a brief summary of each recantation case, focusing on the nature and role of the recanted testimony, and we coded each of these cases in order to track and measure various aspects of the recantation and its overall role in the case. Among other items, we tracked the subject of the recanted statements, the number and type of recanters (witnesses, victims, snitches, children, adults, etc.), each recanter's motivation for lying, the importance of recanted statements in convicting the defendant, the number of witnesses who implicated the defendant but did not recant, the reasons for the recantations, whether new evidence of innocence had emerged prior to the recantation, and the time lag from conviction to recantation and from recantation to release. For each case, we also wrote a brief summary of the official response to the recantation(s): whether or not they were deemed credible by the courts and how important, if at all, they were to the exoneration.

PRELIMINARY FINDINGS

We have barely begun to analyze our data on recantations. A full report is perhaps 12 months away. Data analysis generally takes longer than data collection – a hard lesson to learn and to remember. That is especially true for this project since – as we will see – it may be essential to collect additional data on recantations in cases that *do not* result in exonerations.

What follows is a brief report on the major patterns we can see so far.

Variation by Crime

As we see in Table 1, the largest number of recantations occurred in murder exonerations (139/250), followed by child sex abuse cases (67/250.) Together, these two crime categories account for 82% of all recantation cases (206/250). The number of recantations in adult sexual assault cases is quite low – only 12 out of 250 or less than 5% of all recantations – and the remaining 32 recantation cases (13% of the total) were spread over a variety of other types of crimes.

Table 1: Recantation Exonerations by Crime

Murder (n = 486)	139
Child Sex Abuse (n = 129)	67
Hysteria Cases	33
Individual Cases	34
Sexual Assault (n = 222)	12
Other (n = 231)	32
Manslaughter	6
Attempted Murder	6
Accessory to Murder	1
Assault	4
Robbery	7
Burglary	1
Drug Possession	4
Tax Evasion/Fraud	2
Destruction of Property	1
TOTAL (n = 1068)	250

Table 2 displays the proportion of exonerations that include recantations by type of crime. Child sex abuse exonerations are far more likely than other cases to involve recantations – 52% of all child sex abuse cases include at least one recantation, including 67% of the child sex abuse hysteria exonerations that followed the satanic ritual and day care hysteria prosecutions of the 1980s and early 1990s. Twenty-three percent of murder exonerations involve at least one recantation – the same as the percentage of recantation cases for all exonerations – while the percentage of adult sexual assault cases that involve a recantation is quite low, just 5%.

Table 2: Percentage of Exonerations with Recantations, by Crime

Murder (n = 486)	23%
Child Sex Abuse (n = 129)	52%
Hysteria Cases	67%
Individual Cases	43%
Sexual Assault (n = 222)	5%
Other (n = 231)	14%
TOTAL (n = 1068)	23%

A Comparison: Child Sex Abuse and Murder

Murder and child sex abuse cases make up the large majority of all exonerations involving recantations. The differences between these two types of cases are striking. It appears that these two sets of cases reflect very different types of initial investigations with different factors leading to the false convictions, and equally different types of reinvestigation after conviction. In Table 3 we summarize the most prominent differences.

Table 3: Recantation Exonerations, General Patterns: Murder Cases vs. Child Sex Abuse Cases

MURDER	CHILD SEX ABUSE
Recantations by eyewitnesses	Recantations by accusers
Widespread pressure and misconduct from officials to elicit recanted testimony	Official pressure and misconduct in Child Sex Abuse Hysteria cases, but not in individual sex abuse cases
Variation in the importance of recanted testimony to conviction	Recanted testimony essential to conviction
Longer time from recantation to exoneration	Shorter time from recantation to exoneration

- Murder cases most often involve recantations by supposed eyewitnesses, including co-defendants and the actual criminals; they also include a significant number of recantations by jailhouse snitches or other informants or witnesses who claim that the defendant confessed to them. Child sex abuse cases almost always involve recantations by the supposed victims who first claimed to have been abused but later said that no abuse took place.
- In murder cases, there is widespread misconduct on the part of police and prosecutors who elicit the false testimony that is later recanted. Witnesses are pressured, threatened, subjected to violence, offered secret deals such as reduced charges in the case at hand or for other crimes, or otherwise coerced or persuaded to falsely accuse the defendant.

In child sex abuse cases, we see a sharp difference between individual cases and child sex abuse hysteria (CSH) cases in the processes and the motivations that lead the witnesses to lie in the first place. The CSH cases, like the murder exonerations, involve a high degree of pressure and misconduct on the part of authorities in eliciting false accusations, though the worst pressure often comes from social workers rather than prosecutors or police. In the individual sex abuse cases, however, the accusers don't generally lie because of pressure from officials; they are encouraged to make accusations against one parent by the other parent or another family member, often during a divorce or custody battle, or they fabricate accusations on their own because they are angry or dislike the person they accuse.

- In child sex abuse cases, the accusation that is later recanted is almost always crucial to the conviction. It is generally the sole or primary evidence that any crime occurred at all. In murder cases, there is more variation in the importance of the recanted testimony to the conviction. Sometimes it is the primary evidence of guilt; other times there is other significant evidence against the defendant, such as misleading forensic evidence or false testimony that is never recanted.
- In child sex abuse exonerations, once the false statements have been recanted the exoneration happens, on average, considerably more quickly than in murder exonerations that include recantations.

In general, many child sex abuse exonerations with recantations follow a common pattern: The defendant is convicted based solely on the testimony of a child (or children) who claims to have been abused; years later the child (or children) recants, usually due to a guilty conscience, and admits that no abuse ever occurred. The recantation is taken seriously by authorities and the

conviction is overturned fairly quickly, even when there is no other evidence to corroborate the recantation. Child sex abuse hysteria cases differ in that the false testimony was often elicited by pressure from interviewers, and the recantations are then corroborated by evidence of improper and suggestive questioning techniques and other misconduct; in other ways the basic pattern is similar.

It is important to remember that so far we have only looked at cases that end in exoneration. In many child sex abuse cases the only significant evidence of guilt or innocence is the testimony of the complaining witness on the one hand and of the defendant on the other. It is possible that a recantation in such a case could lead to either of two very different outcomes. If the recantation is taken seriously the defendant is exonerated comparatively quickly. These are the cases we have examined. However, if the recantation by the accuser is discounted the defendant may have no other means of proving his innocence and may never be exonerated.

Overall, there seems to be much more variation among murder exonerations with recantations than among child sex abuse exonerations. That probably reflects, at least in part, the greater factual complexity of many murder cases, and the larger range of evidence of innocence that the defendants may be able to muster. We discuss some preliminary findings about trends and patterns in murder cases in a separate section below.

Adult Sexual Assault Exonerations

As we mentioned, the Registry includes only a few adult sexual assault exonerations that involve witness recantations – 12 out of 222 total sexual assaults, or 5%. These cases fall into two groups: mistaken identity cases in which the victim later admits to uncertainty about her identification of the defendant, and no-crime cases in which the supposed victim admits that she fabricated the sexual assault to protect herself from social sanctions or to punish the defendant for some reason.

Of 222 rape exonerations, 176 (79%) involved a mistaken witness identification – but in only 4 of these cases (2%) was the mistaken identification later recanted. The frequency of deliberate false accusations of rape is much lower – 55 out of 222 or 25% of all rape exonerations – but the rate of recantation in these cases is higher than for mistaken identification: 9 out of 55 false accusations were recanted, or 16%. This pattern is consistent with our overall finding that the overwhelming majority of recantations involve lies rather than mistakes.

In adult sexual assault exonerations, as in child sex abuse exonerations, recantations by the alleged victim are taken seriously. These are, however, a small minority of rape exonerations.

The overwhelming majority of adult rape exonerations are based on DNA evidence (80%) or other persuasive evidence of the defendant’s innocence. Eighty-two percent of non-recantation rape cases include DNA evidence (173/210), compared to 33% of rape cases in which a witness recants (4/12); in most of the non-DNA recantation cases, no rape actually occurred. And of course, we only know about cases that *did* end in exoneration. There are no doubt cases in which alleged rape victims recanted but were not believed, and in which – in the absence of DNA or other physical evidence of innocence – the defendants’ convictions remain intact. We have no idea how often that happens.

Murder Cases in More Detail

Murder exonerations are a majority of the recantation cases in the Registry. They include a greater variety of causal factors and investigative histories than the child sex abuse or adult sexual assault cases.

General Trends

In Table 4 we compare the frequency of five factors in murder exonerations with and without recantations: four causal factors that contribute to false convictions, and the use of DNA evidence to prove the defendant’s innocence.

Table 4: Contributing Factors and DNA Evidence in Murder Cases: Cases with Recantations vs. Cases with no Recantations

	RECANTATION (N = 139)	NO RECANTATION (N = 347)
Official Misconduct	<u>73%</u>	51%
Perjury/False Accusation	<u>91%</u>	55%
False Confession	12%	<u>26%</u>
Mistaken Witness ID	24%	30%
DNA	14%	<u>32%</u>

It is not surprising to see that official misconduct is more common in recantation exonerations (73%) than in non-recantation exonerations (51%). As we have noted, much of the false, recanted testimony in these cases is elicited by pressure, threats, secret deals or other misconduct on the part of police or prosecutors. It is even less surprising that a very high a percentage of recantation exonerations involve perjury or false accusations – 91%, compared to 55% for murder exonerations without recantations. Almost all of the recanting witnesses we have identified lied in their accusations rather than making honest mistakes.

False confessions are more than twice as frequent in the non-recantation cases than in the recantation cases, 26% compared to 12%. This might be because when a defendant has confessed to a crime, even if he or she quickly recants, police and prosecutors consider the confession to be such strong evidence of guilt that they are less likely to seek out corroborating testimony from other witnesses, or to engage in the forms of misconduct that would elicit false accusations that are later recanted.

Exonerating DNA evidence is significantly more common in non-recantation murder exonerations than in recantation cases, 32% vs. 14%. This imbalance may be due to the nature of the post-conviction investigations. In cases where defense investigators manage to obtain DNA evidence that exonerates their client, it is much less important to track down witnesses who might be willing to recant their testimony.

In Table 5, we examine the frequency two different factors in murder exonerations with recantations: whether new evidence of innocence emerged prior to the witness recantation, and how long it took for the defendant to be released after the recantation occurred.

Table 5: Time from Recantation to Release with and Without New Evidence Prior to the Recantation*

Time from Recantation to Release	New Evidence Prior to Recantation (n = 70)	No New Evidence Prior to Recantation (n = 36)
Fast (0 – 2 yrs)	<u>57%</u>	8%
Medium (3 – 7 yrs)	21%	23%
Slow (8+ yrs)	14%	<u>50%</u>

* In 33 cases we don't know whether there was new evidence of innocence prior to the recantation.

In about half of all murder cases (70/139), we know that investigators uncovered new evidence of innocence prior to the recantation, and in 57% of these cases, the defendant was released within 2 years of the recantation. In about a quarter of the cases (36/139) we know that there was *not* new evidence of innocence prior to the recantation. In those cases – where the recantation was the first new evidence of innocence – only 8% of defendants were exonerated within two years of the recantation, and 50% spent eight or more years in prison, despite the recantation, before being released.

This pattern seems to confirm a widespread belief about how recantations are treated by the courts. Unless there is significant corroborating evidence, murder witnesses who recant are generally not believed, or the recantation is deemed insignificant or irrelevant to the overall case. Recantations that are not taken seriously by the courts may still play a crucial role in some murder exonerations. They may motivate attorneys, investigators or journalists to pursue a case; they may spark a reinvestigation by the authorities. On their own, however, recantations are rarely sufficient to exonerate a defendant who has been wrongly convicted of murder.

SUMMARY

Our preliminary analysis of known exonerations shows that most recantations occur in murder and child sex abuse exonerations, rather than in exonerations for adult rapes or other crimes. Exonerations in child sex abuse cases often follow a common pattern: the false testimony of an alleged victim or victims is the sole or primary evidence of the defendant's guilt, and those accusers' recantations are deemed credible by a court, leading to the defendant's exoneration.

It is harder to generalize about the murder cases, because they are more variable and often more complex. Our data indicate that unlike child sex abuse cases, courts rarely overturn a murder conviction based solely on recantations; significant corroborating evidence is usually required in order to secure an exoneration. We also found that murder exonerations involving recantations are more likely than non-recantation murder cases to include official misconduct, and less likely to involve false confessions or exculpatory DNA evidence.

It is important to remember that so far we have only examined recantation cases in which the defendants *were* ultimately exonerated. We don't know how these exonerations compare to cases in which witnesses recant testimony but the defendants are *not* exonerated. We hope to gather information about non-exoneration recantation cases as we move on to the next stage of our research.