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REBUILDING A LIFE: THE WRONGFULLY CONVICTED AND EXONERATED

HEATHER WEIGAND*

INTRODUCTION

The number of innocent individuals currently locked up in prisons and jails is unknown. We do know that despite daunting challenges, hundreds of individuals have incontrovertibly proven their innocence and gained their freedom.¹ Innocent ex-prisoners are released from the penal system without any provision of social services or support in which to rebuild their life. The majority of exonerees do not receive state compensation and even fewer receive civil compensation.² The burden of proof and uphill legal battle is a weary road for the majority of the exonerated. Rarely do they receive an apology from the system that wrongfully stole years of their life. It is against this backdrop which an innocent person begins the struggle to rebuild his or her life. Because little research exists on the devastating and collateral consequences affecting wrongfully convicted individuals, demystifying the assumption, “*Surely someone is going to help them*” or “*surely the state will compensate them,*” is even harder; the truth, however, is that our justice system has not made right its wrongs. I will attempt in this Article to give an overview of the data that has informed us thus far - and the struggles the exonerated face upon reentry. Providing a thumbnail sketch of “a day in the life” of service to this relatively new population of victims is important, and hopefully it will connect the reader directly to the issue at hand. From a social service lens, I will share my experience of witnessing victims of the criminal justice system grow organically into amazing

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¹ <http://innocenceproject.org/Content/351.php> (so far there have been 234 post-conviction DNA exonerations)

² Frontline: Burden of Innocence: 2003 PBS documentary, available at <http://www.pbs.org/wgbh/pages/frontline/shows/burden/etc/faqsreal.html>

new leaders and advocates for criminal justice reform. I will mention the media's role and touch on responsible journalism, which plays a large role in an exonerated person's life. I will conclude with suggestions for minimizing wrongful convictions, and maximizing culturally competent services for the exonerated.

I. THE DATA

A survey of sixty exonerees conducted by The Life After Exoneration Program, a California based social service agency founded in 2003 to address the physical, spiritual, psychological, social and economic well being of the exonerated, demonstrates the need for services and other help for exonerees.³ The re-entry experience for the exonerated across most domains mirrors the struggle and debilitating challenges faced by parolees.⁴ Exonerees are alienated from traditional sources of help.⁵ Like many other survivors of severe forms of trauma, exonerees have a tendency to isolate themselves and avoid any experiences that might remind them of the pain they have had to endure.⁶ At least 28% of exonerees suffer from Post-Traumatic Stress Disorder, complicated by significant levels of anxiety (38%) and depression (40%).⁷ From the human rights perspective, exonerees are members of two groups seen as risk factors for health problems: they are de facto members of a socio-economically disadvantaged group, and a large number of them are members of the African American race.⁸ The majority, 57%, never achieves the income level, in actual dollars (unadjusted for inflation), that they earned before entering prison.⁹ As a result, at least one-third are financially dependent on others and at least 44% must live in someone else's house or apartment indefinitely.¹⁰

The results of the 2003 survey discussed above are reinforced by the findings of a series of articles in *The New York Times*, based on information gathered on 137 of the 206 imprisoned individuals who had been found innocent by DNA testing from 1989 through 2007.¹¹ The reporters researched the compensation

³ See Lolla Vollen & David Eggers, *SURVIVING JUSTICE: AMERICA'S WRONGFULLY CONVICTED AND EXONERATED* app. C at 433-34 (2005) [hereinafter *SURVIVING JUSTICE*]. These findings are also discussed at Exonerated.org, available at http://www.exonerated.org/j/index.php?option=com_content&task=blogcategory&id=16&Itemid=56 (last visited April 4, 2009).

⁴ HANEY, CRAIG, *THE PSYCHOLOGICAL IMPACT OF INCARCERATION FOR POST-PRISON ADJUSTMENT IN: FROM PRISON TO HOME* (2001)

⁵ See *SURVIVING JUSTICE*, *supra* note 3, at 432-433

⁶ See *id.* at 427-428

⁷ See *id.* at 427-428, 433

⁸ See *id.* at 413

⁹ See *id.* at 432-433

¹⁰ See *id.* at 433

¹¹ Janet Roberts & Elizabeth Stanton, *A Long Road Back After Exoneration, and Justice is Slow to Make Amends*, N.Y. TIMES, Nov. 25, 2007, at A38; Fernanda Santos & Janet

claims of all 206 and found that most exonerees face serious problems receiving compensation for being wrongfully convicted and imprisoned.¹² The *Times* articles found that “at least seventy-nine of these persons (nearly 40%) received no compensation at all and more than half of those who did receive compensation waited two years or longer after exoneration for the first payment. Few received any government services after their release.”¹³ It is a patchwork quilt of laws where an exoneree might fare better in one state than another.¹⁴ Similar to the 2003 Life After Exoneration Program’s survey, both analysis found that exonerees, “typically left prison with less help—prerelease counseling, job training, substance-abuse treatment, housing assistance and other services—than some states offer to paroled prisoners.”¹⁵ Compounding the problem, many have not had their conviction expunged from their record.¹⁶ A variety of challenges provoke this. Even those who were well educated and fully employed at the time of their wrongful conviction had difficulty finding work after their release.¹⁷ In counseling the wrongfully convicted, I found that even those exonerees who present well carry a “burden of innocence” – most are willing to talk about it, but *not* to just anyone.

The burden of waiting years for reentry services often compounds problems for the exoneree.¹⁸ The wrongfully convicted who win their freedom only to find that they are penniless, unemployable, and dependent on others, experience family friction, poverty, and depression. This combination is a recipe for disaster, resulting in homelessness, self-medicating with drugs and alcohol, and societal alienation.¹⁹ Many suffer from mental health symptoms that resemble those suffered by veterans of war and torture survivors; these symptoms stem directly from wrongful conviction and incarceration.²⁰ Research demonstrates

Roberts, *Putting a Price on a Wrongful Conviction*, N.Y. TIMES, Dec. 2, 2007, Week in Review, at 4.

¹² Roberts & Stanton, *supra* note 11.

¹³ *Id.*

¹⁴ Adele Bernhard, *When Justice Fails: Indemnification for Unjust Conviction*, 6 U. CHI. L. SCH. ROUNDTABLE 73 (1999); See also Louise Radnofsky, *Compensating the Wrongly Convicted*, in THE AMERICAN PROSPECT (2007) (quoting author) available at: http://www.prospect.org/cs/articles?article=compensating_the_wrongly_convicted

¹⁵ *Id.*

¹⁶ See, e.g.: http://www.exonerated.org/j/index.php?option=com_content&task=view&id=21&Itemid=34; <http://www.pbs.org/wnet/religionandethicss/week0148/cover.html>; <http://www.accessatlanta.com/movies/content/shared/movies/reviews/A/afterinnocence.ajc.html>

¹⁷ Roberts & Stanton, *supra* note 11

¹⁸ See generally SURVIVING JUSTICE; *supra* note 11, at 427-34.

¹⁹ See Radnofsky, *supra* note 14

²⁰ See, e.g. Timberly Ross, “Exonerated inmates often don’t have state help,” in THE ASSOCIATED PRESS (2008) (quoting author), available at: http://www.foxnews.com/prINTER_friendly_wires/2008Nov18/0,4675,ExoneratedInmates,00.html & http://www.usatoday.com/news/nation/2008-11-18-3805729034_x.html

that once an individual is isolated, interrogated, wrongfully convicted and imprisoned, the threshold for torture is met.²¹ If we were to ask ourselves whether an exonerated person's experience fits directly within the *United Nation Treaty's definition of torture*²², we might find that the majority of law journal readers agree that it is indeed a sound fit. I will not argue that the exonerated are torture victims, but their symptoms upon reentry are those of torture survivors and, therefore, my approach to servicing the exonerated is largely based on torture survivor models of treatment.²³ Subsequent years of incarceration compound the problem and an exonerated person's tireless search for opportunities to rebuild his or her skill set has been met with a slow political response, apathy, confusion and sometimes skepticism. The stigma of prison seems to hover over an innocent person almost as much as the guilty. The unfortunate conventional process of thought is that if someone is in prison, surely they belong there. Thus, upon release, the exonerated are sometimes paralyzed with fear, especially when they find that the legal system is not bending over backwards to right it's wrong. Our "inability to assist" culture re-victimizes the exonerated by not supporting compensation reform, funding of services, or recognition that a mistake had been made. The exonerated are not parolees, nor ex-convicts; they are victims of the criminal justice system.

II. A DAY IN THE LIFE OF SERVICE

Four years ago, I accepted a consulting job to provide reentry services to innocent ex-prisoners. While my expertise resided in providing services to the formerly incarcerated, I never expected that my work would take me into a realm of complex laws, immunities, injustice, tragedy and response. I worked

²¹ See Jennifer J. Curtiss, *Reentry Challenges Faced by the Wrongfully Convicted* (Sept. 2007) (unpublished Master's thesis, Northern Arizona University) (on file with author); see also, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, available at <http://www2.ohchr.org/english/law/cat.htm>. The Convention defines torture as:

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Id. art. 1 § 1. While I am not arguing that exonerated people have necessarily been tortured, they often suffer the same symptoms as people who have been tortured.

²² See *supra* note 21, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

²³ See Heather Weigand & Tuere Anderson, *Life After Exoneration Program Case Services Provision Model of Treatment* (2007), Presented at the Innocence Network Conference at Harvard University. Available at http://www.innocencenetwork.org/docs/CaseServicesProviso_21EEF2.pdf

from my home based in Northern California, and the first day on the job I began to contact exonerees in the Western Region (a demographic encompassing all exonerees west of the Mississippi River). I found that a social service provider had never contacted the majority of the exonerees. My first phone-call and encounter with an exoneree resulted in an immediate introduction to his “agent”. I asked the exoneree if he had a therapist or a good sounding board for support—he suggested that I talk with his agent. I quickly realized that treating the exonerated would not prove to be “business as usual.”

But, on the third day at the job, The Montel Williams show called, and then through out the years the list grew: People Magazine, Oprah, the Dr. Phil Show, CNN and several other agencies who wanted a sensational story. I was the new link between the media and the exonerated. I had to remind myself that I was a social worker, and my job was to treat the exonerated. Thus, my initial question was—where did this “third party media” component fit into this paradigm of treatment? Something about it made me uneasy. So my co-worker on the East Coast and I insisted on crafting a policy and provision manual to address “best practices” for such a situation. I spent the next two years treating and observing newly released exonerees “from the gate,” and those that have struggled for a foothold in society since the early 1980’s, when DNA was first used to exonerate them. I found that the reentry status and condition of the exonerated was as crazy a patchwork quilt as the laws established to serve them. Some were faring well, but many were not – and a few where in terrible shape, even after they had been compensated by large sums of money through civil suits.²⁴ I concluded that my best approach would be to treat the exonerated by the common denominator of their experience, and not rely or assume that because some exonerees where compensated, that they were better off.

Overcoming the tragedy of wrongful conviction cannot be treated with money. While appropriate compensation is an entitlement the exonerated have yet to fully experience in many states, and money is an important part of the puzzle in comprehensive treatment and restoring the exonerated to “wholeness,” the damage can never be undone. I have often tried to wrap my mind around the experience of the exonerated; reintegrating and mainstreaming a small population of innocent ex-prisoners who have had the very core tenant of an American life, their liberty and pursuit of happiness stripped from them. How does one feel about reintegrating back into a society that has not protected them, and in fact, violated them by stealing years of their life? How do you walk with trust and a feeling of protection within a society that has made such an egregious mistake? The very system that is established to protect us violated them. How are they to trust again? And if they don’t, how will reentry services and treatment for the exonerated approach this unique issue? I suppose these questions

²⁴ Maeda, Wendy, *A future reclaimed, a windfall, a life lost, the story of compensated exoneree Stephan Cowans*, BOSTON GLOBE (2008), available at http://www.boston.com/news/local/massachusetts/articles/2008/03/03/a_future_reclaimed_a_windfall_a_life_lost/

are more philosophical, but indeed important in informing evidence-based treatment for the exonerated. Whatever the circumstance, immediate, comprehensive psycho-social services to the wrongfully convicted leads to a productive re-engagement with life.²⁵ An exoneree faces the stigma of being an ex-prisoner and re-entering society as an ex-offender, but does not qualify for services offered to ex-offenders.²⁶

Charitable foundations are unwilling to fund services to such a small and demographically diffused population. Sustaining services to the exonerated has been a huge challenge for agencies serving the exonerated. To address the non-existent funding pool for the exonerated, in 2007, I helped craft HR2095, "*The Restitution for the Exonerated Act of 2009*" with Congressman Donald Payne (D-NJ), and his legislative staff. The first time around, the legislation fell on deaf ears.²⁷ Congressman Payne re-introduced the bill on April 23, 2009. The bill provides for funding in the amount of 2 million dollars per year until 2012 in order to provide direct services to the exonerated, through state requests for funding to non-profits that are culturally competent to provide reentry services to exonerated persons in their region.²⁸

In my discussions with the exonerated, most importantly, they want their standing as innocent people recognized and the trauma of their conviction acknowledged.²⁹ Services to the exonerated should not require the wrongfully convicted to participate in programming that is designed to address consequences, behavior change, and remorse like ex-offender programs. At the heart of any program appropriately servicing the wrongfully convicted is the acknowledgement of the trauma of serving time for someone else's crime.

III. LEADERSHIP & ADVOCACY

Once, while attending a faith-based advocacy event with an exoneree who spent 15 years wrongfully convicted of a rape, a member of the public approached the exoneree after he heard his devastating story. The gentleman, a young man in his thirties with wire-rim glasses, reached his hand out to the exoneree and followed with the statement, "*As a member of the public, I want to personally apologize to you.*" It was a heartfelt moment for me, for I person-

²⁵ One year case management private assessment of 70 exonerees who received services from Life After Exoneration Program between 2006-2007. Author provided direct case services, case management analysis on one year follow-up.

²⁶ See Heather Weigand's testimony to the California Commission on the Fair Administration of Justice – Remedies for Wrongful Conviction, available at www.ccfaj.org/documents/reports/incompetence/expert/WeigandTestimony.pdf

²⁷ Letter and support submitted to then U.S. Attorney General Gonzales in the Bush administration

²⁸ To track HR2095 "*The Restitution for the Exonerated Act of 2009*" see <http://www.govtrack.us/congress/bill.xpd?bill=h111-2095>

²⁹ See SURVIVING JUSTICE, *supra* note 11 at 430.

ally felt vindicated in some way. After this incident, I often wondered how many apologies it would take to put all the shattered pieces of these fragmented lives back together. I asked the exoneree how he felt about the statement and he responded, "It was nice, it was very nice. . . it means a lot to me."

Speaking engagements for the exonerated can be healing and they can be triggers. For example, another advocacy engagement I attended with an exoneree entailed speaking to a group of prosecutors and judges in Sacramento California; a different audience than the general public. It was a panel of lawyers, a death row exoneree and me. The lawyers proceeded in legalese to discuss several tragic cases of wrongful conviction. The longer they talked, the more triggered the death-row exoneree became. I realized he was being triggered by all the legal discussion – as if he was back on trial – and I attempted to de-escalate him. He spoke to the audience in a sweat stained shirt, fidgety and determined to finish his story. On our way home, he shared with me just how scary that experience was. He emphasized with how important it was for him to share his story in front of that particular audience, not for himself, but for others who might encounter wrongful conviction, especially in cases with a sentence of death.

There are several exonerated persons attempting to heal their communities while healing their own lives. Darryl Hunt,³⁰ Ken Weinemko,³¹ Ronald Cotton,³² Herman Atkins³³ and many others (too many to list) are involved on a grass-root level to empower and educate communities, advocate for policy change and provide fellowship to each other. I am always in "awe" of human resiliency as it relates to the exonerated. One will almost always find a tragedy followed by forgiveness, and a desire to rebuild in the face of such obstacles. Yet the exonerees do remain angry. One will not find the depth of an exonerated person's inner struggle in the media. I know this from our process groups and my experience with the exonerated. In the media, you will find the story, the case, the news bites, and an individual that deserves public approval and validation. You will never hear how angry they are and how it affects them.

IV. RESPONSE & THE MEDIA

One particular area that needs attention is the role of the media, both before and after exoneration. Although there is extensive sympathetic media coverage

³⁰ For more information on The Darryl Hunt Project for Freedom and Justice, *see* <http://www.darrylhuntproject.org/>

³¹ *See* Ken Weinemko share his story and advocacy work: http://www.youtube.com/watch?v=B_sQAIiYiM

³² TORENO, ERIN, THOMPSON-CANNINO, JENNIFER, COTTON, RONALD, PICKING COTTON (2009). *Available at:* <http://us.macmillan.com/author/ronaldcotton>

³³ Herman's story on founding The LIFE foundation "Life Intervention for Exonerees", *available at:* http://innocencenetwork.org/docs/Conference_Program.pdf

of the exonerated,³⁴ the media, the movie industry, and print journalism have not been as helpful as one may think. The mass attention exonerees often receive raises hopes that society will help them in some way. When the cameras go away and the limelight dims, however, exonerees are left with broken promises of assistance, including job offers that are rarely, if ever, fulfilled. Recently, a Texas exoneree and I were talking about a full glossy article of him and other Texas exonerees that was recently published. He was very animated when speaking of the article. I asked him directly if he received any phone calls of assistance from the article. He stated "No." As a matter of fact, this exoneree has had mass media attention and yet for nearly ten years continues to struggle without a foothold or foundation. The problem with great articles that provide exposure to the plight of the exonerated is that such articles do not provide a way for the public, or the exoneree's community, to offer their support or assistance as a follow-up to such a tragic story. While the media sells the story the public is left frustrated – wanting to help, but not knowing how. If we could find a way for journalism to be more pro-active with their story beyond print, then perhaps this would facilitate better outcomes for the exonerated and their personal exposure to the community. This approach would build human and social capital for the exoneree and his or her community.

Sometimes a network or local news program will ask an exoneree to share his story, but then subsequently cancel the interview. While this may be a routine event in the life of a television producer, or even a regular subject of media attention, it leaves the exoneree saddened and seeking an outlet. While this may be disappointing for most people, for the exonerated, it can be devastating. If we are to create a healing environment and safe place for exonerees to share their stories, we also must ensure that the exoneree does not feel overly exposed, thereby triggering Post Traumatic Stress Disorder symptoms. Social workers should prepare exonerees in advance and debrief them after media exposure. This is another area in which exonerees need culturally appropriate services to help exonerees keep media exposure in perspective.

The problem with media attention can also begin earlier, when the exoneree is the suspect or the accused perpetrator. At the time of accusation, the local media may run photos of peoples' faces in the newspaper or on the evening news, night after night, even though there is a risk that the accused is innocent. Yet what happens when authorities find the real killer? What happens to the individuals who did not commit the crime after journalists have already sensationalized accusations against the wrong person, ruining their personal lives? I can speak from personal experience on this issue. My experience includes counseling two young people whose lives were ruined by media coverage. After the national media falsely portrayed them as violent criminals, they could no longer walk in their community without risking physical violence. They were

³⁴ *Walker's path to prison, exoneration and compensation*, SAN JOSE MERCURY NEWS, September 29, 2007 available at http://www.mercurynews.com/taintedtrials/ci_7036658

both seventeen years old. One of the young men falsely confessed to the crime. Their parents, meanwhile, sought the real killer. Even though the authorities found the real killer, the media had ruined both of these young men's lives.

The television media has simultaneously been friend and foe in this field. Although it is important for the public to hear the cases and stories of the exonerated, the general media must be aware and sensitive to the needs of the exonerated.

Overall, fictional movies can desensitize us to the reality of what is happening in our criminal justice system. Movies sometimes portray errant police officers, but we rarely see the true human costs of police misconduct. Sometimes rogue police officers are even portrayed as heroes for putting a bad guy away, even if the bad guy was actually innocent in the particular case, like DeNiro and Pacino's new movie "Righteous Kill." This may lead people to believe that even if the system errs, it usually gets the right defendant, perhaps only for the wrong crime. True-life stories, like *The Trials of Darryl Hunt*, show the horrifically unfair role that race plays in our criminal justice system. When the public views such films, people may shake their heads in shame, and try to not think about what they just saw. Movies like *After Innocence*, a documentary on life after exoneration, and *The Trials of Darryl Hunt*, promote a sense of urgency and a need for swift action to repair our criminal justice system and help exonerees regain their rightful place in society. I wish that *After Innocence* had captured the audience numbers that *Righteous Kill* did. From an advocacy perspective, this needs to be our aim.

V. LOOKING FORWARD

The collateral damage of wrongful conviction is far reaching, and the exonerated are faced with making sense of something that often times does not make sense. Currently, the exonerated do not have a nationally dedicated social service program. The number of exonerees is growing: monthly exonerees (many based on DNA), and the hundreds left in the aftermath from 1985 (our first DNA exoneration that gained public attention) to the present, are in need of longer-term treatment and assistance.³⁵ It is in the public's best interests to acknowledge the shameful ratio of error in our justice system (which is approximated, conservatively, at 3.3% of murder/rape cases³⁶), and begin the creation of a responsive system for providing supportive reentry services to America's wrongfully convicted and exonerated.

Based on my experience in advocacy and providing services to exonerees, I recommend the following remedies:

³⁵ LEE, HENRY C. & TIRNADY, FRANK, BLOOD EVIDENCE: HOW DNA IS REVOLUTIONIZING THE WAY WE SOLVE CRIMES 98 (2003)

³⁶ Michael D. Risinger, *Innocents Convicted: An Empirically Justified Factual Wrongful Conviction Rate*, 97 J. CRIM. L. & CRIMINOLOGY 761, 778 (2007).

Increase interaction and cooperation between health professionals and legal experts, so that the process of exoneration is a humane one for the exoneree and society learns as much as possible from these events;

Provide state and federal funding for ongoing, intensive case management and mentoring services to all exonerees, including referrals to critically needed services through linking and mainstreaming this population;

Continue public education in order for communities to provide exonerees the support they need, including political support for federal and state legislation designed to provide funding for swift and accessible services;

Because members of the public are all potential jury members, it is imperative that the public is educated on the causes of wrongful conviction;

We must preserve the integrity of the innocence movement by limiting sensationalism from becoming the overwhelming form of communication regarding the wrongfully convicted. Those working with exonerees should limit media's ability to create detailed, sensitive and sensational stories that do not benefit but potentially harm the exonerated;

Agencies that serve the exonerated in any capacity should be sensitive to the line between the need to make their work known and exploitation of the exonerated;

For law makers and those who serve the exonerated: work for continued public exposure of the causes of wrongful conviction and push for policy reforms that will minimize them, including elimination of suggestive or otherwise flawed line-ups and show-ups, acknowledgement of often fatal flaws with cross-racial misidentification, implementation of video taping of felony confessions to eliminate false confessions (which are surprisingly common),³⁷ institution of policies demanding clear corroboration of eyewitness testimony, and other criminal justice reforms that entail accountability—including reforms to immunities that allow for prosecutorial, police and judicial misconduct to go unaddressed and unpunished.³⁸

Establish Regional Federal (Objective) Innocence Commissions to investigate each state exoneration to ensure the fairness, accuracy and integrity of our justice system by informing and impacting criminal justice policy by its findings and holding accountable any police, judicial, or prosecutorial misconduct.

The public should demand these reforms in the name of the health and welfare of all people who enter the justice system. Proper treatment of exonerees

³⁷ Samuel R. Gross, Kristen Jacoby, Daniel J. Matheson, Nicholas Montgomery & Sujata Patil, *Exonerations in the United States 1989 through 2002*, 95 J. CRIM. L. & CRIMINOLOGY 523, 544 (2005) (“Twenty percent of murder exoneration involve false confessions. . . some of these interrogations stretch over days and involve relays of police interrogators.”).

³⁸ For a discussion of the causes of wrongful conviction, see SURVIVING JUSTICE, *supra* note 11 at 401-18.

should be seen in a communal context. It is not only the health of the individual exoneree that is at stake; the exonerated are but an indicator of the risk factor to our overall health as a nation, and it is wrongful conviction and abandonment or (re-victimizing the innocent) that must be overcome.

