

Freeing Bernard Baran: A Retrospective

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Bernard Baran never committed any crime, but in 1985 he was convicted of multiple sex offenses against various children at the Early Childhood Development Center in Pittsfield, MA, where he had worked. The biggest irony of his case is perhaps the fact that no one committed the crimes for which he was convicted. This was not a case of misidentification. This was not a case of someone guilty of a lesser offense. No sexual abuse crime was ever committed at the Center. Instead, the children were coerced into believing they were molested. They were not molested at the Center, but social workers, police officers, district attorneys, and scared parents all told them they were. And we know today that it is possible to make young children believe things to be true, even though those things are categorically false.

Bernard Baran was one of the first persons prosecuted in the 1980's in what became known as the era of the "daycare scandals." Daycare providers all over the United States, from California to New Jersey to Massachusetts, were accused of horrific acts of brutality and depravity against young children. In case after case, overzealous prosecutors and misguided psychologists created an atmosphere of hysteria and suggestibility that helped convict many persons of "fictionalized" crimes.

Baran's case, while unique in some aspects, was wholly typical of the time. Young children, some who may have been abused by other persons, some who were never abused at all, accused Baran of molesting them. The accusations all came after the children were subjected to long, repeated interviews with the interviewer instructing them that Baran had molested them. The children were offered rewards like food and toys; they were told how and when Baran supposedly molested them; they were chastised when they failed to parrot the accusations back and commended when they finally did; and their parents were tempted by the possibility of lucrative civil suits against the daycare center following a conviction—a proposition that many parents took up, some even before the criminal prosecution commenced.

On the other hand, Mr. Baran's case was unique because his own personal history made him particularly vulnerable to the hysteria of the time. Baran was a young, openly gay male living in a less-than-accepting society. The parents of the first boy to make an accusation were openly homophobic and uncomfortable with Baran caring for their children. At trial, his homosexuality was used against him. The prosecution asserted that homosexuals were more likely to carry venereal diseases. Baran was even characterized as a "kid in a candy store";

In 2006, over twenty years after his convictions, Baran was granted a new trial. On May 15, 2009 the Massachusetts Appeals Court affirmed the judge's order *Comm. v. Baran*, 74 Mass. App. Ct 256; 2009. By June 9th, the District Attorney for Berkshire County had decided not to pursue Mr. Baran any longer.

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Baran was granted a new trial based primarily on one theory—that his trial attorney was ineffective. The motion for a new trial was heard by Judge Francis Fecteau, who found that his trial attorney had failed to hire or even consult with an expert on suggestibility; such an expert could have provided the jury with an explanation of how children could actually make up something that never happened. Fecteau also found that the attorney had failed to investigate and present evidence that at least two of the children may have actually been molested by a relative long before coming in contact with Baran. If true, it would have also explained how those children were able to describe abuse that they very well may have experienced, just not at the hands of Bernard Baran.

Judge Fecteau sidestepped one issue, that of prosecutorial misconduct. The Appeals Court did not. In a lengthy opinion, the Appeals Court chastised the prosecutor -Daniel Ford, who is now a judge - for all the evidence he failed to turn over, including the unedited videotapes of interviews with the children in which they actually deny Baran did anything and, in some instances, accuse other persons of abuse. An "edited" version was available at the time of Baran's trial in a very short, ten minute clip, as played for the grand jury. The edited tape contained only choice segments of the interviews in which the children were coerced into accusing Baran of abuse. They failed to capture the coercion before the accusations or the various denials of abuse which were uniformly met with disbelief by the interviewers.

The prosecutorial misconduct in the Baran case also sets it apart from other daycare cases of the 80's. In some cases, the misconduct, the coercion and suggestive interviews were not hidden; instead, they were triumphed as cutting-edge techniques that brought to light all of the wrong doing. It was this transparency that ultimately helped free many of these wrongfully convicted persons once it became clear that these techniques were producing false confessions. In Mr. Baran's case, because much of this evidence was buried, his vindication took much longer.

Today, suggestive questioning has been replaced today by more legitimate methods of obtaining accurate information in cases of suspected abuse. However, the wrongs that led to Baran's convictions still exist: manipulating witnesses, hiding evidence, less than competent counsel, and prejudice. The Baran case stands as an enduring lesson that hysteria surrounding an offense can often trump truth and justice.