

# Lucinda S. Hites-Clabaugh Released After Sexual Abuse Conviction Overturned

First-degree sexual abuse charges have been dismissed against Lucinda S. Hites-Clabaugh after the Oregon Court of Appeals overturned her conviction in June 2012. She was wrongly imprisoned for more than two years. Her conviction was based on the allegation she improperly touched an elementary school student when she was a substitute teacher.

Hites-Clabaugh was a substitute teacher for a third-grade class in Woodburn, Oregon on May 13 and 14, 2008. (Woodburn is about 30 miles south of Portland.) The day the regular teacher returned a female student told her that while she had been gone a teacher “[had touched](#) her inappropriately between the legs.” The teacher informed the principal who contacted the State Department of Human Services and the Woodburn Police.

Woodburn Police Officer Potter interviewed the teacher, the principal, the student, and Hites-Clabaugh. Those interviews were the extent of Potter’s investigation. Based on Potter’s report the Marion County District Attorney charged Hites-Clabaugh with first-degree sexual abuse.

Prior to Hites-Clabaugh’s trial her lawyer filed a motion to allow the expert testimony of psychologist Dr. [Kevin McGovern](#). Dr. McGovern’s proposed testimony was that in its entirety the incident described by the student didn’t fit a pedophiles common pattern of behavior. The judge ruled McGovern’s expert evidence would be admissible if necessary to rebut the testimony of a prosecution witness.

During Hites-Clabaugh’s 2009 trial in the Marion County Circuit Court, the prosecution’s case consisted of testimony by the principal, the teacher, officer Potter, and the student. She testified a teacher touched her crotch over her clothing for about a minute. When asked, she said she didn’t see the person in the courtroom who touched her. So the student didn’t identify Hites-Clabaugh as the alleged perpetrator either by name or in person.

During cross-examination officer [Potter testified](#) “he had no specialized training concerning Marion County’s child abuse investigation protocols and little experience involving child sexual abuse cases. He ac-



Lucinda S. Hites-Clabaugh  
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knowledged that there were protocols in place for such investigations in Marion County, but indicated that ... he was not trained in those protocols.”

Based on Potter’s testimony about his lack of training and experience in child sexual abuse cases, Hites-Clabaugh’s [lawyer requested](#) that she be allowed to call Dr. McGovern “as an expert on the necessity to use protocols that have been promulgated by the State of Oregon in sex abuse cases.” The prosecution objected, and Hites-Clabaugh’s lawyer argued that Potter’s testimony about his lack of knowledge and inexperience had opened the door for Dr. McGovern’s expert testimony about the importance of following investigation protocols in a case of alleged child abuse. The judge sustained the prosecution’s objection and Dr. McGovern wasn’t allowed to testify.

Hites-Clabaugh testified that she did not inappropriately touch the student and that the incident didn’t occur. Numerous character witnesses testified on her behalf.

No eyewitness or physical evidence was introduced Hites-Clabaugh’s trial that she had touched the student, or if the incident had even happened.

Hites-Clabaugh was convicted of first-degree sexual abuse by the majority 10-2 jury vote allowed by Oregon’s Constitution. She was subsequently sentenced to the mandatory minimum of 75 months imprisonment. Hites-Clabaugh was denied bail pending the outcome of her appeal, and she began serving her sentence after her sentencing hearing in August 2010.

Hites-Clabaugh’s appeal raised a number of issues. The Court of Appeals ruling in [Oregon v. Lucinda Hites-Clabaugh](#), No. A-146356 (OR Ct of Appeals, 7-18-2012), focused on the exclusion of Dr. McGovern’s expert testimony about child sex abuse investigation protocols. The appeals court noted there was no eyewitness and no physical evidence, so the case was a “swearing match.” The student testified the abuse occurred -- without identifying Hites-Clabaugh as the perpetrator -- and Hites-Clabaugh testified she did not commit any abuse. Consequently, the appeals court reasoned any evidence concerning the credibility of the student’s allegations that could have been discovered by a properly conducted investigation, and the training of the

officer who conducted [that investigation](#), “was highly relevant to the ultimate issue that the jury was required to decide.” The Court then ruled:

Here, the defense theory of the case was that the event described by the victim simply did not occur, that the investigating officer was not trained in investigating allegations of child sexual abuse, and that as a result, his investigation was markedly deficient. The excluded evidence went to the heart of defendant’s theory of defense. In those circumstances, the exclusion of the evidence was prejudicial.

The Court reversed Hites-Clabaugh’s conviction and remanded her case back to the Marion County Circuit Court. The 55-year-old Hites-Clabaugh was released on \$5,000 bail on August 30, 2012 after more than two years imprisonment.

New evidence discovered during Hites-Clabaugh’s post-verdict investigation included Affidavits by a number of students, that didn’t just cast doubt on the complaining student’s allegations, but supported it was physically impossible the incident occurred.

On September 24 Hites-Clabaugh’s felony indictment [was dismissed](#) with the agreement of the Marion County District Attorney. The DA agreed to dismiss the felony charge in exchange for her no contest plea to Class B misdemeanor harassment for an unrelated incident. She was formally discharged from custody after the hearing. After the hearing [her lawyer](#) Mark Geiger told *The Oregonian* newspaper, “This is a huge victory to go from sex abuse to harassment. We would have preferred a complete dismissal, but you do the best you can.”

*Justice Denied* interviewed attorney Geiger, and when asked about the circumstances of the misdemeanor harassment conviction, he said it was the result of Hites-Clabaugh’s use of [Chakra](#) to calm an unruly student -- in a classroom full of students -- by using the healing touch on her forehead and above her breastbone. Geiger said that student was the same one who later told authorities she was sexually touched. Geiger suggested the girl told her parents about the Chakra healing touch, and they may have misconstrued and blown it all out of proportion into the alleged sexual incident that resulted in Hites-Clabaugh’s prosecution.

Oregon doesn’t have a wrongful conviction compensation statute. However, Geiger told *Justice Denied* Hites-Clabaugh’s misdemeanor plea agreement doesn’t include a

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## Thomas Edward Kennedy Released After 10 Years Imprisonment For Rape When Daughter Recants

Thomas Edward Kennedy has been released from prison almost 10 years after he was convicted of raping his 11-year-old daughter in Kalama, Washington. Kalama is a small Cowlitz County town in southwest Washington.

In 2001 Cassandra Ann Kennedy told a school counselor that accused her father of raping her on at least three occasions. A medical examination revealed her hymen was perforated, "consistent with genital contact with penetration." Kennedy was charged with three counts of first-degree child rape.

A Cowlitz County jury convicted Kennedy in July 2002 of all three counts based on his daughter's testimony and expert testimony about her physical trauma. He was sentenced to 15 years in prison.

Cassandra dropped out of Kalama High School in her junior year and began using alcohol and methamphetamine, and she was convicted of felony burglary and theft charges. In late 2011 she entered a Christian addiction treatment center.

On January 23, 2012, the 23-year-old Cassandra went to the Longview police and informed them that she had made up the accusation against her father. [She told](#) the police, "I did a horrible thing. It's not OK to

sit and be locked in this horrible place for something you didn't do. It's just not right." She explained that her time at the treatment center made her realize that to clear her conscience she had to try and fix what she did wrong.

She told the police that her father didn't seem to want to spend time with her after he and her mother divorced when she was two. She only spent one weekend a month with her father. She said that in falsely accusing him she acted out of anger and "vengeance" against him. She also said she got the idea from a friend whose stepfather went to prison for sexually molesting a child, and when she accused her father she used some of the details her friend told her. She explained that she had been sexually active with kids her own age since the second grade, but her father had never sexually touched her. She also [told the police](#) that the day after she testified in 2002 she told her mother that she had made up the story.

The police began an investigation and determined that her recantation was credible, and that the physical trauma identified by the medical examination in 2001 could have occurred prior to when Cassandra had alleged her father raped her.

On February 15, 2012 Cowlitz County Prosecuting Attorney Susan Baur [wrote a letter](#) to Cowlitz County Superior Court Judge Stephen Warning that stated in part: "I need to inform you that I have been made



Downtown Kalama, Washington (Kalama Chamber of Commerce)

aware of new, credible material evidence that potentially creates a reasonable likelihood that Mr. Kennedy is innocent of those crimes." She also wrote that her staff was "continuing to work with investigators to uncover the truth."

A hearing to consider a motion to set aside Kennedy's convictions was held on March 26, 2012. Judge Warning ruled that Cassandra's recantation was credible, and vacated Kennedy's convictions and ordered a new trial. After the judge was informed Kennedy wouldn't be retried, he dismissed the charges. Kennedy, 43, [was released](#) after 9 years and 8 months of wrongful imprisonment.

A hot topic in the local media was that Cassandra should be charged with perjury. Baur issued a [public statement](#) that the statute of limitations had expired so Cassandra could not be charged with any crime related to falsely accusing her father of rape. However, Baur suggested that even if the statute of limitations hadn't expired she wouldn't have prosecuted Cassandra because to do so could dissuade women from coming forward with sexual assault complaints.

Baur also publicly defended the original investigation and Kennedy's convictions. She told reporters that at the time there was enough evidence for the charges to be filed, for 12 jurors to convict him, and for his conviction to be upheld on appeal. [She said](#), "There should be no indictment of the system." She described Kennedy's case as simply one in which an alleged victim recanted her testimony, but she did add, "Unfortunately, a man spent 10 years in prison before that happened."

Washington doesn't have a wrongful conviction compensation statute, and there is no evidence that Kennedy's conviction was due to a violation of his constitutional rights by a public official that would support a federal civil rights lawsuit. So it is unlikely that Kennedy will ever be awarded any compensation for his years of wrongful imprisonment.

Sources: [Local girl lied about 2001 rape](#), father set free, *The Daily News* (Longview, WA), April 1, 2012  
[Prosecutor clarifies remarks](#) about overturned rape conviction, *The Daily News* (Longview, WA), April 4, 2012  
[Prosecutor reacted properly](#) in wake of recanted rape testimony, Editorial, *The Daily News*, April 8, 2012  
[Cassandra Kennedy Recants Rape Charge](#) Against Her Father, Freed After 9 Years, *The Daily Beast*, April 10, 2012

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stipulation she cannot seek money damages related to her felony conviction for wrongdoing by any responsible government agency or employee.

Hites-Clabaugh's ordeal of being prosecuted was exacerbated by her misfortune of living in Oregon, since it is one of only two states -- the other being Louisiana -- that allows conviction of non-capital felonies by less than a unanimous jury vote. Since her jury voted 10-2 for conviction, if she had lived in one of the 48 states that requires a unanimous verdict, her trial would have ended in a mistrial and not with her being sent to prison for 75 months.

The Oregon Court of Appeals decision can be read [by clicking here](#).

Detailed information about Lucinda's case

is on the [Justice For Lucinda](#) website

The website of Dr. Kevin McGovern & Associates is, [www.forensicpsychs.com/psychologists.html](http://www.forensicpsychs.com/psychologists.html)

Sources: [Oregon v. Lucinda Hites-Clabaugh](#), No. A-146356 (Ore Ct of Appeals, 7-18-2012)

[Substitute teacher's sex-abuse conviction](#) reversed by Oregon Court of Appeals, *The Oregonian* (Portland, OR), July 18, 2012

[Forest Grove husband awaits wife's release](#) after sex abuse conviction overturned, *The Oregonian*, July 24, 2012

[Substitute teacher's sex abuse charges dropped](#) in plea bargain, *The Oregonian*, September 27, 2012

[Justice For Lucinda](#) website

[McGovern & Associates](#) website