

# JUSTICE DENIED

The Magazine for the  
Wrongly Convicted

**Lucinda Hites-Clabaugh**



Released after sexual abuse conviction overturned and charges dismissed in Oregon.  
See page 8



**Robert Wilson**

Settled lawsuit for \$3.6 million for 10 years wrongful imprisonment for assault in Illinois.  
See page 10

**Tamara McAnally**



Sues San Diego County and sex hunting prosecutor after fraud conviction overturned in California.  
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**Juan Rivera**



Released after 19 years of wrongful imprisonment for murder and rape in Illinois.  
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**Joseph Dean Webber awarded \$392k for 19 months wrongful imprisonment!**

**Kenneth Budik's conviction for not providing information to police overturned!**

**"Crime After Crime" is documentary about Deborah Peagler's murder conviction!**

**Man convicted of rape released after his "victim" marries him!**

**Issue 53  
Winter 2013**

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**Message From The Publisher**

Teacher Lucinda S. Hites-Clabaugh’s conviction of non-existent sexual abuse of a third-grade student in Woodburn, Oregon school is an example of how an innocent person can be victimized by an inadequate police investigation. See p. 8.

That prosecutors can be emboldened to engage in unethical behavior by their lack of accountability is highlighted by Tamara McAnally’s case. After her fraud conviction in San Diego was overturned, she filed a lawsuit alleging that her prosecutor pursued romantic relationships with at least half-a-dozen women he prosecuted, promising that in exchange for sex he would reduce or modify their sentences. See p. 15.

Juan Rivera was kept in prison by his prosecutor’s blindness to the evidence of his innocence until the Illinois Court of Appeals issued a ruling overturning his conviction in which it stated: “Mr. Rivera, too, has suffered the nightmare of wrongful incarceration.” See p. 5.

The difficulty an exonerated person has to obtain compensation for their ordeal is underscored by the five years from the time Robert Wilson filed his federal civil rights lawsuit against the City of Chicago for his almost 10 years of wrongful imprisonment for assault, to settlement of his suit for \$3.6 million. See p. 10.

Thomas Edward Kennedy’s exoneration of sexually assaulting his 11-year-old daughter exposes the danger of basing a prosecution solely on the testimony of the alleged victim with no corroborating evidence a crime occurred. See p. 9.

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*Justice: Denied’s* logo represents the snake of evil and injustice climbing up on the scales of justice.



Tyrone Noling was sentenced to death in 1996 for the murders of Bearnhardt and Cora Hartig at their home in rural Portage County, Ohio in 1990. Noling has been on death row for over 16 years on death row in spite of overwhelming evidence he is innocent of the two murders. That exculpatory evidence includes:

- (1) There is absolutely no physical evidence tying Tyrone to the murders;
- (2) All of the principal witnesses against Tyrone have recanted their testimony; and
- (3) Recently discovered forensic and witness evidence withheld at Tyrone's trial points to other viable suspects.

More evidence supporting Mr. Noling's innocence is still being sought. Mr. Noling is not the only party seeking renewed investigation into his wrongful conviction. In July 2010, then Governor of Ohio, Ted Strickland, and Attorney General Richard Cordray requested that the Portage County Prosecutor's Office perform DNA testing on a cigarette butt recovered at the scene of the crime that does not belong to Mr. Noling or his co-defendants. The Governor's request was flatly rejected by the Portage County Prosecutor's Office. Renewed focus on Mr. Noling's case is critical to proving his innocence and avoiding the ultimate injustice.

### "Justice" At Any Cost

On April 7, 1990, Portage County Sheriff's Deputies were called to the rural Atwater, Ohio home of Cora and Bearnhardt Hartig. The Hartigs, who had no immediate family or close friends, had not been seen by neighbors for days. Upon arrival, the police discovered that both Hartigs had been shot and killed at their kitchen table with a .25 caliber handgun; the perpetrator was seated across from the Hartigs when the fatal shots were fired. In the coming days, the authorities would focus almost exclusively on 18-year old Tyrone Noling and his three friends: Joey Dalesandro, Gary St. Clair, and 14-year old Butch Wolcott.

That the boys even became suspects was puzzling. The police had no physical evidence from the crime scene pointing them to any suspects, nor did they have any evidence that Mr. Noling or the other boys knew the Hartigs or had ever even been to Atwater. No eyewitness placed the boys at the scene. No property recovered from the boys' Alliance, Ohio hangout linked them to the Hartigs. The murder weapon was never recovered. DNA testing did not connect Mr. Noling or his friends to the crime.

## Tyrone Noling Is On Ohio's Death Row For Murders Committed By A Serial Killer

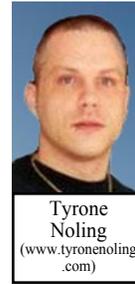
By Kelly Culshaw\*

The only thing that the police did have was the fact that in early April 1990, Mr. Noling and his friends were involved in a handful of late-night thefts from automobiles and two bumbling home robberies. In one of those robberies, Mr. Noling accidentally discharged a .25 caliber firearm into the floor. Mr. Noling immediately checked on the well-being of the occupant, who described Mr. Noling as a "scared rabbit."

That .25 caliber gun did not match the Hartig murder weapon. Not only did these crimes take place in another town, but they were strikingly different from the cold-blooded murders of the Hartigs. In large part, the crime scene led former Portage County Sheriff Kenneth Howe to discard Mr. Noling and the other youths as viable suspects, stating: "It just didn't fit."

Perhaps as a result of lack of evidence and any clear link between Mr. Noling and the murders, the Prosecutor's Office brought in investigator Ron Craig who did, in fact, "clear the case." He did so without developing a single shred of new physical evidence indicating that Mr. Noling was guilty. Evidence developed since trial and included in Mr. Noling's subsequent pleadings suggests that Mr. Craig simply relied on coercing, threatening, and manipulating witnesses to build a case against Mr. Noling.<sup>1</sup> Mr. Craig went so far as to send one key witness to a psychiatrist so that the witness could "recall" the memories of the murder that he had "repressed." That witness, and the other alleged co-defendants, went on to incriminate Mr. Noling in the Hartigs' murders. Mr. Noling was indicted for the killings in 1992, only to have the prosecution drop the case after he passed a polygraph examination and his co-defendant, Gary St. Clair, recanted a statement inculpatory to Mr. Noling in the Hartigs' murders.

It took Portage County five years to create the case that ultimately led to Tyrone Noling's wrongful conviction. Mr. Noling's conviction and death sentence rested largely on the false confessions of his co-defendants. Those false confessions, however, never fit the Hartig murders. At trial, Mr. Noling's co-defendants described a forceful home invasion robbery and a struggle be-



tween Mr. Noling and Mr. Hartig. This testimony was simply inconsistent with the actual crime scene. There was no sign of struggle in the Hartig home, the claim that Mr. Noling held a smoking gun after the killings was revealed through scientific testing to be a physical impossibility, and the purported location of the "missing" murder weapon was searched by the police who found nothing.

These false confessions also highlight the need for full DNA testing in Mr. Noling's case. Twenty-five percent of DNA exoneration cases in the United States involve innocent defendants who made incriminating statements, who delivered outright confessions, or who pled guilty to crimes they did not commit.

In the more than fifteen years that Tyrone Noling has sat on Ohio's death row, the prosecution's tenuous case against him has crumbled. Today, the evidence—including potentially exculpatory DNA evidence—strongly suggests that the wrong man has been sitting on Ohio's death row for 15 years.

### 1) No Physical Evidence Has Ever Linked Tyrone Noling to the Hartig Murders

- Neither Mr. Noling's fingerprints, nor those of his alleged accomplices, were found in the Hartig home, despite uncontroverted evidence that the perpetrator touched many items and ransacked the home.
- A cigarette butt found outside the Hartig home was chemically tested against saliva samples taken from Mr. Noling and his alleged accomplices, and none was a match. Full DNA testing was not conducted to identify the DNA profile of the person whose saliva was recovered from the cigarette butt.
- Tool marks on the bullets used to kill the Hartigs were not a ballistic match to the only .25 caliber handgun linked to Mr. Noling.
- None of the stolen property was found in the possession of Noling or his alleged accomplices or linked to them.

### 2) Each Accomplice That Testified Against Mr. Noling has Recanted

- Gary St. Clair recanted his inculpatory statements before Mr. Noling's 1995 trial and recanted again on the witness

**Noling cont. on p. 4**

## Noling cont. from p. 3

stand. Similarly, Joseph Dalesandro and Butch Wolcott took plea deals (Wolcott walked free) but then recanted their statements in post-conviction affidavits.

- All three co-defendants describe being threatened, coerced, and manipulated by the State and an investigator. Their assertions are supported by the opinions of Dr. Richard Ofshe, a nationally-recognized expert in identifying false confessions.

### 3) The Haphazard Alliance Robberies that Mr. Noling Did Commit Bear Little Resemblance to the Calculated Murders of the Hartigs

- Unlike the close-range gunshot murders of the Hartigs, there was no physical injury associated with the two Alliance robberies. During the first robbery, Mr. Noling carried an unloaded pistol. During the second robbery, Mr. Noling accidentally discharged a loaded weapon into the floor and immediately checked on the well-being of the robbery victim, who described Mr. Noling as a “scared rabbit.”
- The types of items stolen during the Alliance robberies (e.g., watches, jewelry, etc.) were left untouched at the Hartig home. Mr. Hartig’s wallet was still in his pocket. Mrs. Hartig still wore her rings. Cash was found in the home. And no electronics were identified as missing from the home.
- Mr. Noling did not know the Hartigs and the crime scene points to an assailant who was familiar to them. The police reports indicate that Cora and Bearnhardt Hartig were sitting at their kitchen table with a third person when they were shot, and that there were no signs of a struggle or forced entry.

### 4) Compelling Evidence, Including Evidence Withheld from Counsel, Suggests that Someone Else Murdered Cora and Bearnhardt Hartig.

#### Daniel Wilson—Convicted Murderer, Executed June 3, 2009

- i. Wilson was very familiar with Atwater, Ohio, and in particular, the area around the Hartig home. In the years leading up to the murders, Wilson lived in a foster home just one mile from the Hartig’s home. He was a frequent visitor at the foster home up until the time of the murders, after which he stopped coming

around. Noling had none of this familiarity with Atwater, Ohio and the area around the Hartig’s home.

- ii. At the age of 14, Wilson broke into an elderly neighbor’s home in Ohio and struck the man causing him to fall and break his hip. Wilson then ripped the phone cord out of the wall and left. The neighbor was not found for two days and died as a result of his injuries and the lack of medical attention. *See Wilson v. Mitchell*, 498 F.3d 491, 496 (6th Cir. 2007).
- iii. Wilson’s foster brother Nathan Chesley states in a post-conviction affidavit that Wilson was a heavy drinker and a violent person who frequently made threats and once tried to stab his foster mother.
- iv. Wilson murdered college student Carol Lutz in 1991. He was executed in June 2009 for that murder.
- v. Police notes from 1990 indicates that Nathan Chesley stated that “his brother” committed the Hartig murders. The Prosecution withheld this report from Mr. Noling’s attorneys. Because this key piece of evidence was withheld, Mr. Noling’s defense counsel never presented evidence of Mr. Wilson as a possible alternative suspect.
- vi. More recently, in March 2011, Mr. Chesley further confirmed the substance of his 1990 police report statements, stating that “Dan told me he did it...It’s that simple. I know it’s not to the court, but they’re going to execute an innocent man.” Indeed, Mr. Chesley went on to say, “I never met Tyrone – I don’t know nothing about him[.] But I do know that Dan killed the Hartigs – there is no question.”
- vii. Furthermore, Chesley’s affidavit states that Wilson was committing thefts and breaking into homes at the time of the Hartig murders, that he may have had guns, and that he drove a blue Dodge Omni.
- viii. Another of Mr. Wilson’s foster brothers, Kenneth Amick, provided an affidavit that Wilson drove a blue car. After the Hartig murders, witness Jim Geib told authorities that on the day of the Hartig murders he saw a dark blue, midsize car leaving “that general location [of the Hartig home]” at around 4:30 p.m.
- ix. Chemical analysis of a cigarette butt recovered at the crime scene points to Daniel Wilson as a possible DNA match. In an attempt to identify the true perpetrator, Mr. Noling’s attorneys have petitioned the Court and the Prosecutor’s Office to conduct more advanced DNA testing on the cigarette butts since the original chemical analysis – a simple secretor/non-secretor test – was rudi-

mentary at best. To date, the Portage County Prosecutors Office has successfully blocked all attempts to do a full DNA analysis on the cigarette butt.

#### The Hartigs’ Insurance Agent Who Owed Them \$10,000

- i. Just days before his murder, Bearnhardt Hartig told his family doctor that his “insurance agent” defaulted on a personal loan the Hartigs had given to him. Mr. Hartig stated that he planned on calling the agent to set up a meeting to confront him and demand immediate payment.
- ii. One of the Hartigs insurance agents owned a .25 caliber Titan handgun, one of only four models that the police identified as a possible murder weapon.
- iii. That insurance agent refused to take a polygraph exam requested by authorities.
- iv. Evidence in the record suggests that the Hartigs conducted business with their insurance agents at the kitchen table – the same place where the Hartigs appear to have been sitting when they were murdered.

Despite the troublesome aspects of Mr. Noling’s case, he sits on Ohio’s death row watching as the courts ignore the State’s shaky case and the legal avenues available to obtain relief slowly disappear. Noling has yet to receive a hearing on the merits of his innocence claims, which are mired in procedural hurdles that thus far have proved insurmountable.

On January 8, 2013 the Ohio Supreme Court held oral arguments concerning Noling’s appeal of the denial of post-conviction DNA testing by the Portage County Court of Common Pleas on March 28, 2011. That appeal is still pending. The Ohio Supreme Court’s Docket Page for Noling’s case no. 95CR220 with links to all documents filed in the appeal can be accessed [by clicking here](#).

Many of the facts set forth in this article are detailed in [Appellant Tyrone Noling’s Memorandum](#) in Support of Jurisdiction, filed on May 9, 2011.

\*Kelly Culshaw co-authored this article written for [www.tyronenoling.com](#) that primarily was edited by Justice Denied to add several paragraphs of content. Ms. Culshaw represented Mr. Noling when she was with the Office of the Ohio Public Defender. She is currently working with the Office of the

## Noling cont. on p. 5

# Juan Rivera Released From 19 Year “Nightmare Of Wrongful Incarceration”



Juan Rivera after he is released from Stateville State Prison on January 6, 2012 (Terrence Antonio James, Chicago Tribune)

Juan Rivera has been re-leased after 19 years and 3 months of wrongful imprisonment for the 1992 rape and murder of an 11-year-old girl he didn't commit.

In August 1992 11-year-old Holly Staker was raped and murdered in Waukegan, Illinois. Two months later police were given an anonymous tip that Rivera, then 19, might have information about the crime. Rivera cooperated with the police. He provided hair and blood samples that didn't match crime scene evidence, and he took a polygraph test that was inconclusive.

Rivera was interrogated a number of times over 28 days. He gave inconsistent accounts that didn't match the crime, but then after a marathon interrogation session he signed a statement prepared by his interrogators that he had sex with Ms. Staker and afterwards she was killed when she came at him with a knife. Rivera's interrogation continued and hours later detectives prepared a second statement that he signed. Rivera was then charged with Ms. Staker's murder.

## Noling from p. 4

Arizona Federal Public Defender in Phoenix, Arizona. She can be contacted by emailing, [Kelly\\_Culshaw@fd.org](mailto:Kelly_Culshaw@fd.org).

For more information about the Tyrone Noling case, including legal documents and supporting materials, please go to <http://www.tyronenoling.com>.

### Endnote:

1 According to Dr. Richard Ofshe, a renowned false confession expert, Craig used psychologically coercive interrogation tactics to create a statement implicating Randy Resh and Bob Gondor, two Portage County men who were wrongly convicted of rape and murder. Resh and Gondor were exonerated after serving twelve years in prison for their wrongful conviction.



Rivera recanted his statements that he claimed were false and coerced by the police during his marathon interrogations.

Rivera's statements were the only evidence linking him to the crime, because there was no eyewitness and the physical and forensic evidence excluded him, including fingerprints and the semen recovered from Ms. Staker that didn't match his DNA. That DNA testing was performed after Rivera was charged.

During his 1993 trial Rivera's defenses were he didn't commit the crime and his coerced statements were false and inaccurate. The jury convicted him of murder and he was sentenced to life in prison. In 1996 the Illinois Supreme Court overturned his conviction and ordered a retrial.

Rivera was convicted of murder after a near carbon copy retrial and he was again sentenced to life in prison.

In 2004 Rivera's post-conviction petition for DNA testing of the evidence by techniques not available at the time of his 1993 trial was granted. Based on the test results that excluded him from all the tested evidence, his conviction was vacated in 2006.

The State tried Rivera for a third time. Again the key evidence against Rivera was his contested statement, but Rivera had the additional exculpatory DNA evidence. In May 2009 a jury convicted Rivera and he was sentenced to life in prison.

Rivera appealed, and in December 2011 the Illinois Court of Appeals overturned his conviction on the basis the prosecution introduced insufficient evidence of his guilt. In *People v Rivera*, 2011 IL App (2d) 091060 (12-9-11) the Court ruled:

“The State acknowledges that there was no eyewitness testimony or forensic evidence positively connecting defendant with the crime. ...” ¶28

“First, we discuss the physical evidence linking defendant to the offense. There was none. ...” ¶29

“With respect to the DNA evidence linking defendant to the offense, there was none. ...” ¶30

“Defendant was positively excluded as the source of the sperm found in the



Juan Rivera with his mother Carmen Rivera after his release from Stateville State Prison on January 6, 2012 (Bev Horne)

victim. ... In other words, the DNA evidence provides no support to the State's theory that defendant was the individual who committed the offense beyond a reasonable doubt; rather, the DNA evidence embedded reasonable doubt deep into the State's theory.” ¶31

To counter the DNA evidence, the State presented two alternative theories: (1) the vaginal swab stick had been contaminated, or (2) the victim had previously en-

gaged in sexual activity with another male. ... ¶32

In light of all the evidence, the State's theories are highly improbable. ... The State's attempt seems to have been to separate the DNA evidence in a dimension of time from the sexual assault and murder, so that the evidence tending to exonerate defendant would not be relevant. ¶33

In the abstract, the State's theories might not be physically impossible, but on the present record, a reasonable fact finder could not credit them beyond a reasonable doubt. ... The State's theories distort to an absurd degree the real and undisputed testimony that the sperm was deposited shortly before the victim died. Simply put, the State's rationalizations of how the DNA from “Unidentified Male #1” came to be found in the victim's body (“as unlikely as it seems, this young girl apparently had sex with someone else”) and why none of defendant's DNA appeared in or around the victim or anywhere at the crime scene cannot save a conviction obtained on a theory of a violent sexual assault and murder. The State did not present any evidence that the victim was in a relationship with anyone. The undisputed evidence from the trial reflects that there was only one male whose bodily fluids were found on the victim; this male was not defendant but rather “Unidentified Male #1.” The most reasonable explanation of the DNA evidence is not defendant but rather “Unidentified Male #1.” The most reasonable explanation of who sexually penetrated the victim, based on the DNA evidence, is not defendant but rather “Unidentified Male #1.” The most reasonable explanation, therefore, of who murdered the victim is not defendant but rather someone who, unfortunately, has not yet been identified.” ¶34

Rivera cont. on p. 6

## Justice Denied's Website Visited By Cities Around The World

Justice Denied reports on wrongful conviction cases and issues in countries on all the world's continents because there is worldwide interest in wrongful convictions. That widespread interest is reflected in the visitors to Justice Denied's website. In 2012 the fifteen cities where the most visitors to Justice Denied came from are:

1. New York City
2. Toronto, Canada
3. Chicago
4. Los Angeles
5. London, England
6. Sydney, Australia
7. Melbourne, Australia
8. Houston
9. Perth, Australia
10. Dallas
11. San Francisco
12. Las Vegas
13. Seattle
14. Brisbane, Australia
15. Ottawa, Canada

Seven of those cities are outside the U.S. The diversity of visitors to Justice Denied's website is also shown by the fact that English is the primary language in only six of the top fifteen countries where the most visitors originated from in 2012:

1. United States
2. Canada
3. United Kingdom
4. Australia
5. Germany
6. France
7. New Zealand
8. Ireland
9. Netherlands
10. India
11. Japan
12. Philippines
13. Brazil
14. Sweden
15. Norway

Reflecting that wrongful convictions are a world-wide problem, *Justice Denied* Issues in 2012 (Issues 49-52) included articles concerning the U.S. and 14 other countries: Canada, Australia, India, New Zealand, the United Kingdom (England), the Bahamas, Germany, Italy, Greece, Sweden, Japan, the Czech Republic, Taiwan, and Zimbabwe.

Some of the innocence related organizations outside the U.S. are:

Canada — Association in Defence of the Wrongly Convicted, <http://www.aidwyc.org>

United Kingdom — Innocence Network UK, <http://www.innocencenetwork.org.uk>

MOJUK — Miscarriages of Justice UK, <http://www.mojuk.org.uk>

Australia — Innocence Project Western Australia, <http://www.innocenceprojectwa.org.au>

Griffith University Innocence Project, <http://www.griffith.edu.au/criminology-law/innocence-project>

Japan — Japan Innocence and Death Penalty Information Center, <http://www.jiadep.org>

Norway — Norwegian Criminal Case Review Commission, <http://www.gjenopptakelse.no/index.php?id=30>

(Note. While Justice Denied is able to obtain information where visitors to its website originate from, information about individual visitors is not available.)



### Rivera cont. from p. 5

...

We are left with defendant's confession to the police. When an individual has been charged with a crime and confesses to that crime, the "corroboration rule requires that the corpus delicti be proved by some evidence aliunde admission of a defendant." *People v. Dalton*, 91 Ill. 2d 22, 29 (1982). That is, the State must introduce evidence, outside of the confession, that tends to prove that the offense occurred. The basis for this requirement stems from a long-standing mistrust of extrajudicial confessions. The Dalton court cited two reasons for this mistrust: "confessions are unreliable if coerced; and, for various psychological reasons persons 'confess' to crimes that either have never occurred or for which they are not legally responsible." *Dalton*, 91 Ill. 2d at 29. Innocent people do confess to crimes they did not commit. Some people confess from fatigue, stress, and being worn down through relentless questioning and sleep deprivation; some people confess out of fear; some people confess with the expectation of future exoneration; some people confess due to coercive or sug-

gestive methods of interrogation. ¶40

...

Because defendant's confession was the only remaining evidence connecting him to the victim's sexual assault and murder, the State was required to present evidence aliunde the confession to prove the offense. The State failed to provide sufficient independent evidence to corroborate defendant's confession, especially in light of the DNA evidence. ... The only evidence of defendant's commission of the offense came from the statements that the police prepared for defendant to sign. Because the State failed to establish the offense aliunde the confession, defendant's conviction was unjustified and cannot stand. ¶45

After viewing the evidence in the light most favorable to the prosecution, we hold that no rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Because the State's evidence was insufficient to establish guilt beyond a reasonable doubt, we must reverse the conviction of Juan A. Rivera, Jr. ¶46

...Throughout the years, the Stakers have invariably suffered unspeakable

anguish and frustration resulting from Holly's tragic murder and the legal proceedings that followed. Mr. Rivera, too, has suffered the nightmare of wrongful incarceration. ¶47

A month after the Court's ruling the State announced its decision not to retry Rivera and he [was released](#) after 19 years and 3 months of wrongful imprisonment.

[Click here to read](#) the appeals courts ruling in *People v Rivera*, 2011 IL App (2d) 091060 (12-9-11).

You can read Rivera's interview with the Chicago Tribune a week after his release by [clicking here](#).

Juan Rivera's wife, Melissa Sanders-Rivera, was a Justice Denied volunteer for a number of years.

Sources:

[People v Rivera](#), 2011 IL App (2d) 091060 (12-9-11)  
[Juan Rivera](#): 'A new beginning for me', *Daily Herald* (Waukegan, IL), January 7, 2012

"[Freed after 20 years](#), Juan Rivera adjusts to life outside prison," *Chicago Tribune*, January 13, 2012  
[Leader of Waukegan murder investigation](#) defends police work, *Daily Herald*, January 8, 2012



## Malenne Joseph Files Lawsuit For Mistaken Identity Wrongful Conviction

Malenne Joseph has a pending lawsuit against the City of Orlando, Florida, Orlando Police Department Officer Jose Varela, and Orange/Osceola County Public Defender Robert Wesley related to her wrongful conviction in June 2010 of felony criminal mischief.

A jury convicted Joseph in June 2010 of being the woman who caused \$10,000 in damage to a house in Orlando after the contractor didn't pay the woman for her work painting the house.

At the time of the incident in December 2007 the contractor told Varela he thought the woman's name was "Marlene" and he provided her telephone number. Varela called the number and the woman who answered admitted causing the damage. However, Varela didn't make any effort to either identify the woman he talked with or the person who owned the telephone number. Unbeknownst to Varela the woman he talked with was Merline Keller and he had called her telephone number.

However, during a search of Florida's driver's-license database Malenne Joseph, a mother of three, came up as a woman living in Orlando, so Varela assumed she was the culprit he only knew as Marlene. Varela provided an Affidavit of Probable Cause for an Arrest Warrant that identified Joseph as the person who allegedly committed the felony criminal mischief. Joseph was arrested by Varela in January 2008 and she was released on bond. In February 2008 the State's Attorney filed a "No Information Notice" that it would not proceed with the case.

More than a year later, in April 2009 Varela again arrested Joseph on the same charge, and she was assigned a public defender to represent her.

During her June 2010 trial Joseph testified she was not working as a painter in December 2007 and she was not the "Marlene" who damaged the house.

The contractor who built the house testified, and even though he had not seen the culprit for 2-1/2 years, he identified Joseph. Based primarily on his identification the jury convicted her of felony criminal mischief.

While awaiting sentencing Joseph insisted to her new lawyers that she was innocent. Her



Malenne Joseph holding one of her children after her release on September 15, 2010. (Joshua C. Cruey, Orlando Sentinel)

lawyers decided to interview the contractor and when told that Joseph was 5'-2" tall, he said she couldn't have committed the crime because the woman who damaged the house was taller than him and he is 5'-6". Ms. Joseph's lawyers also found new evidence that during the week of the crime she was working two jobs -- one at Burger King and the other at a nursing-home facility -- but not as a painter.

Her lawyer's filed a motion for a new trial based on the new evidence, and the *Orlando Sentinel* published a story about her case on September 1, 2010. After reviewing the motion and investigating its claims, the Orange-Osceola State Attorney's Office agreed to release Ms. Joseph on bail on September 15, 2010, after she had been jailed for 3 months. The State's Attorney's Office filed a motion on September 28, 2010, to set aside her conviction that was subsequently granted.

Ms Joseph would have been acquitted if her public defender had simply had her stand up when the contractor testified at trial, because he would have known then that she was the wrong person.

Joseph subsequently filed a lawsuit in Orange County Superior Court that alleges the City of Orlando via its police department falsely arrested, imprisoned and detained her when she was first arrested in January 2008 and again in April 2009. Joseph makes the same allegations against Varela with the additional claims that he maliciously prosecuted her and that he intentionally inflicted emotional distress on her. Joseph alleges that public defender Wesley was negligent in his representation of her, that he intentionally and negligently inflicted emotional distress on her. The lawsuit also made claims of federal civil rights violations under 42 USC §1983. Click here to read [Malenne Joseph v. Orange County, et al](#), (Orange County Superior Court, 12-20-2011)

Because Joseph's lawsuit made federal civil rights claims, on January 27, 2012 her lawsuit was moved to federal court in Orlando and her state lawsuit was dismissed. Her case number in federal court is: [Joseph v. City of Orlando et al](#), No. 6:12-cv-00131-JA-DAB (USDC MDF, 1-27-2012).

On March 29, 2012 Joseph's lawyer filed a

motion to amend her complaint removing the allegations her federal civil rights were violated and requesting remand of her case back to state court. That motion was granted on April 10, 2012.

Joseph's case was resumed in the Ninth Judicial Circuit, Orange County, Florida under [Case No. 2011-CA-017201-O](#). As of early 2013 a trial date hasn't been ordered.

Joseph is represented by [Orlando attorney](#) Jason J. Recksiedler.

After the lawsuit was filed Public Defender Wesley [told the Orlando Sentinel](#) that "there was a great mistake made in this case to the detriment of this lady," but he said that while the judge and prosecutor in the case are immune from being sued, it is "a big loophole in Florida law" that Joseph can sue the public defender's office. He also complained that the lawsuit comes at a bad time because his office that has had to cut staff because of "budgetary problems," will have to hire a lawyer to defend against the lawsuit.

Wesley has been the Orange-Osceola County Public Defender since 2000. He is quoted on the Orange-Osceola County [Public Defender's website](#):

"The public defender office exists to guarantee that the poor, or indigent, have the right to a fair trial.

The lawyers and staff of your Orange/Osceola Public Defender's Office represent indigent people in criminal cases, involuntary mental health and addictions commitments and juvenile delinquency cases in our community.

I am pleased to report that the average cost per case is \$196. We are proud to professionally and competently represent citizens for less than an hourly consultation in a local law firm."

Joseph got exactly the kind of defense that can be expected from a public defender's office that brags it spends an average of \$196 per case.

[Click here to read Justice Denied's](#) October 2010 article about Malenne Joseph's case, "Orlando Woman Too Short To Be Criminal Exonerated."

### Sources:

[Joseph v. City of Orlando et al](#), No. 6:12-cv-00131-JA-DAB (USDC MDF, 1-27-2012)

[Malenne Joseph v. Orange County, et al](#), Orange County Superior Court, Case No. 2011-CA-017201-O [Woman wrongly convicted files suit](#), *Orlando Sentinel*, December 19, 2011

[Wrongfully convicted woman's suit moves to federal court](#), *Orlando Sentinel*, February 10, 2012



# 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  
([justiceforlucinda.org](http://justiceforlucinda.org))

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 was 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

**Hites-Clabaugh cont. on p. 9**

## 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



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

### Hites-Clabaugh cont. from p. 8

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](#)

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

## Robert Wilson Settles Lawsuit For \$3.6 Million For Almost 10 Years Of Wrongful Imprisonment

Robert Wilson has settled his lawsuit against the City of Chicago for 9 years and 9 months of wrongful imprisonment for \$3.6 million.

Twenty-four year old June Siler's face and neck were slashed by a man wielding a box cutter while she was waiting at a bus stop in Chicago on February 28, 1997. Siler, a white woman, described her attacker as a black male in his early twenties with a mustache and a medium complexion who stood about five feet seven inches and wore black Velcro shoes.

The next day 41-year-old Robert Wilson was arrested by the Chicago PD while waiting for a bus at the same stop where Siler was attacked. He fit the general description of Siler's assailant, except he was almost twice as old. No Velcro shoes or box cutter was found during a search of Wilson's home.

After almost 30 hours of intermittent interrogation Wilson confessed to the attack, although he recanted it as coerced, and after hesitation, Siler identified Wilson from a photo lineup.

Within two weeks after Wilson's arrest five more white victims were slashed by a black man matching Siler's assailant, and all the attacks took place within roughly a one-mile radius of where she was slashed. The attacker was captured fleeing the scene of the last assault. He was Jerry Wagner, a 21-year-old black man, 5'-7" tall and wearing black Velcro shoes. Wagner was only questioned about the five assaults that occurred after Wilson's arrest. He confessed that he committed them because God ordered him to attack white people.

During his trial in 1999 Wilson testified he was coerced into falsely confessing after being interrogated for many hours during which he was threatened with beatings and police refused to give him medication for high blood pressure. Siler made an in-court identification of Wilson as her assailant. The trial judge sustained the prosecution's objection to the admitting of any testimony that Wagner confessed to committing the five attacks after Wilson's arrest, and that he perfectly matched Siler's description of her assailant.



Robert Wilson (Center on Wrongful Convictions)

Wilson was convicted by a jury based on his repudiated confession and Siler's testimony. He was sentenced to 30 years in prison.

Wilson's conviction was affirmed on direct appeal, and the Illinois court's denied his pro se post-conviction petition. Wilson then filed a habeas corpus petition in federal court with pro bono representation by the Center on Wrongful Convictions. Wilson's key claim related to the trial judge's refusal to admit the third-party culprit evidence that Wagner was the person who likely attacked Siler. Wilson's lawyers argued that if the jury had that evidence it is probable the outcome of his trial would have been different. Although the State of Illinois vigorously defended Wilson's conviction, U.S. District Judge Ruben Castillo [granted Wilson's](#) petition on October 20, 2006. Judge Castillo ordered Wilson's release within ninety days unless the State initiated his retrial.

Three weeks after Wilson was granted a new trial, the *Chicago Tribune* published a [front page story](#) that quoted Siler as saying, "I have not a doubt in my mind that it was not Robert Wilson. I have to make this right." She also said that before Wilson's trial she learned another man -- Wagner -- had been arrested for five similar attacks, but the police and prosecutors refused to show a picture of him, telling her Wilson confessed.

After Siler publicly stated she was convinced of Wilson's innocence and thus wouldn't be a compliant witness for the prosecution if he was retried, the prosecution agreed to dismiss the charges against him. On December 4, 2006 Wilson's conviction was vacated and he was released that day after 9 years and 9 months of wrongful imprisonment from the time of his arrest. Wilson, 51, [told reporters](#), "I feel blessed; it's one of the happiest days of my life. I'm free from the penitentiary. I can't ask for anything better."

In July 2007 [Wilson filed](#) a federal civil rights lawsuit that named the City of Chicago, Cook County, and several police officers as defendants. Wilson alleged the police falsified evidence, manipulated Siler into falsely identifying him by using a suggestive photo lineup, and coerced Wilson into falsely confessing.

On October 30, 2008 Illinois Governor Rod Blagojevich pardoned Robert Wilson on the basis of his actual innocence.

The settlement of Wilson's lawsuit for \$3.6 million [was approved](#) by a committee of the Chicago City Council on March 12, 2012. Wilson, now 56, has to pay his attorney fees and costs out of the settlement amount. So he can expect to receive more than \$2 million.

After the settlement was announced, Wilson's lawyer, Locke Bowman, [told reporters](#) the Chicago PD has "steadfastly kept its head in the sand" and hasn't conducted an "investigation" of what went wrong to cause Wilson's conviction.

The three key Chicago PD officers involved in Wilson's prosecution have never been disciplined and are still employed by the Chicago Police Department.

Sources:

[City of Chicago to pay](#) man \$3.6 million for wrongful conviction, *Chicago Sun-Times*, March 12, 2012

["I have to make this right,"](#) *Chicago Tribune*, November 15, 2006

[Man files suit for conviction mistake,](#) *Chicago Tribune*, July 18, 2007

[Wilson et al v. O'Brien et al,](#) No. 1:2007cv03994, Illinois Northern District Court, July 17, 2007



This is the story of Karlyn Eklof, a young woman delivered into the hands of a psychotic killer. She witnessed him commit a murder and she is currently serving two life sentences in Oregon for that crime. *Improper Submission* by Erma Armstrong documents:

- The way the killer's psychotic bragging was used by the prosecution against Karlyn.
- The way exculpatory and witness impeachment evidence was hidden from the defense.
- The way erroneous assertions by the prosecution were used by the media, judges reviewing the case, and even by her own lawyers to avoid looking at the record that reveals her innocence.

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# “Crime After Crime” Is Documentary About Deborah Peagler’s Murder Conviction And The Campaign To Free Her

Deborah “Debbie” Denise Peagler was 23 when sentenced to 25 years to life in prison in California after she pled guilty in 1983 to first-degree murder in the death of Oliver Wilson, who was killed by two gang members.

Because there was no trial it wasn’t publicly disclosed that Wilson terrorized Peagler into prostituting herself by physically beating her and psychological abuse that included threatening to kill her and forcing her to play Russian Roulette. When she tried to escape Wilson would track her down and after beating her and even using a whip on her, she would be forced to resume prostituting herself. When Peagler found out that Wilson abused her 6-year-old daughter she fled again and sought the help of two gang members to make Wilson leave her and her daughter alone. Wilson was killed during a violent encounter with the two gang members in a public park. Peagler wasn’t present when Wilson was killed, but she was charged with conspiracy and first-degree murder. Peagler’s public defender convinced her to plead guilty because the LA County DA threatened to seek the death penalty if she went to trial and lost.

In 2002 California enacted a law that retroactively allowed a battered woman to challenge her conviction if evidence related to her abuse hadn’t been considered when she was convicted. After the California Habeas Project interviewed Peagler and determined she might be eligible for relief under the law, Nadia Costa and Joshua Safran, real estate lawyers with no criminal law experience, agreed to take Peagler’s case pro bono. There were then able to convince a private investigator to work on her case pro bono. Costa and Safran worked on Peagler’s case for seven years before she was released in 2009 after 27 years of incarceration from the time of her arrest.

She should have been released four years earlier, but in 2005 Los Angeles County District Attorney Steve Cooley reneged on his written agreement supporting the vacating of Peagler’s first-degree murder conviction

based on the evidence she was abused by Wilson, and for it to be substituted with her guilty plea to voluntary manslaughter and a sentence of time served. DA Cooley [even wrote that](#) the agreement “serves the interests of justice.” After Cooley reneged Peagler’s lawyers sued for enforcement of the agreement, but they lost.

In 2007 the investigator working on Peagler’s case obtained a copy of a memo written on October 26, 1983 by an assistant district attorney that had been kept secret for 24 years by the DAs Office. The memo details that the DAs Office knew the informant who was the key witness against Peagler and the two males accused of murdering Wilson committed perjury during Peagler’s preliminary hearing -- and that it not only undermined his credibility, but his perjured testimony was the only evidence that supported seeking the death penalty against her. Also undermining the informant’s credibility was the [memo’s statement that](#) “He was also suspected of dealing in narcotics and stolen goods.” Although the memo included information that could possibly result in Peagler’s acquittal by a jury, the DAs Office concealed it as it continued to put pressure on her lawyer that she could get the death penalty if he didn’t convince her to plead guilty to first-degree murder. One of the people involved in concealing the memo from Peagler was Frederick P. Horn, a prosecutor involved in her case and who is now an Orange County Superior Court judge.

Peagler was diagnosed with terminal lung cancer in February 2009, and on July 10, 2009 the California Board of Parole Hearings found she was suitable for a compassionate release. DA Cooley sent a letter to Governor Arnold Schwarzenegger that suggested Peagler shouldn’t be released.

On August 19, 2009 Peagler’s family members and other supporters protested outside Schwarzenegger’s Los Angeles office, demanding her release. The next day Schwarzenegger declined to review the parole board’s finding, which allowed their decision to stand. Peagler was released two days later on August 22.

Debbie Peagler died on June 8, 2010. She was 50.



Debbie Peagler with her lawyers Joshua Safran and Nadia Costa before her release from prison. (Life Sentence Films)

Beginning in 2005 filmmaker Yoav Potash began chronicling the efforts of Costa and Safran to free Peagler. The result is the documentary *Crime After Crime* which premiered in January 2011 at the Sundance Film Festival. *Crime*

*After Crime* has gotten rave reviews from Los Angeles to New York. On [rottentomatoes.com](#) 89% of the professional reviews are positive, and it was liked by 100% of the people who saw it and registered their opinion. *The New York Daily News*’ gave the *Crime After Crime* 4 stars and its review [states in part](#):

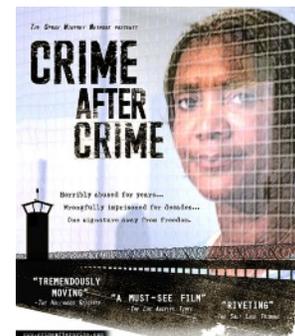
If you’re looking for a movie to shake you to your core, skip “Transformers” and seek out Yoav Potash’s gut-wrenching documentary, instead. He gives us extraordinary heroes and unbelievable villains, mind-bending twists and heart-breaking turns.

His subject is Deborah Peagler who’s serving a life sentence for killing a pimp who forced her into prostitution and sexually abused their toddler. Her devoted, pro bono attorneys work for years to expose the ineptitude and corruption that has seemingly led to an illegal imprisonment; Potash chronicles it all with compassion.

This story doesn’t go well with popcorn, and you won’t be able to shake it off like so many blockbusters. That said, it’s likely to be the most unforgettable film you see all summer.



Free Debbie Peagler protesters outside Governor Schwarzenegger’s Los Angeles office on August 19, 2009. (Life Sentence Films)



“Crime After Crime” poster

[Click here for Crime After Crime’s website.](#) The DVD of *Crime After Crime* can be ordered from the website for \$19.95.

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## Two Judges Who Are Former Prosecutors Lose Effort To Dismiss Alan Beaman's Lawsuit

Alan Beaman's conviction was overturned by the Illinois Supreme Court and he was released in 2008 after more than 14 years of wrongful incarceration for a former girlfriend's murder. A U.S. District Court judge has refused to dismiss Beaman's federal civil rights lawsuit that includes claims against his two prosecutors who are now judges.

Beaman was living in Normal, Illinois in July 1993 when he split-up with his girlfriend Jennifer Lockmiller. He then moved 140 miles away to Rockford, Illinois and began living at his mother's house.

About a month later, Lockmiller was murdered in her apartment in Normal at about 12 p.m. (noon) on August 25.

Beaman became the focus of the police investigation, and in May 1994 he was arrested and charged with first-degree murder. He was 21.

During Beaman's 1995 trial the prosecution's case was circumstantial because he didn't confess to Lockmiller's murder, and there was no physical, forensic or eyewitness evidence directly tying him to the crime.

Beaman's alibi defense was that on the day of Lockmiller's murder he got off work from his job at 9 a.m.; went home; then went and made a deposit at his bank in Rockford (a bank security video showed him leaving at 10:11 a.m.); returned home with phone records showing calls made Beaman's home to his church at 10:37 a.m. and to the home of the church's director of music at 10:39 a.m. (Beaman played music at the church and a rehearsal was scheduled for that night); and that he and his car were home when his mother returned by 2:16 p.m. His mother testified that she left her house at about 7 a.m. on August 25 to take her mother to the doctor and shopping, and she had receipts from Wal-Mart and other stores up to 2:03 p.m., when she testified she bought perishable items at a grocery store and drove straight to her home that was 9 to 13 minutes travel time from the store.

Beaman's lawyer argued to the jury that given the times of his known whereabouts



Alan Beaman after his release in June 2008. (Rockford Register-Star)

in Rockford it was "practically impossible" that he could have murdered Lockmiller at noon in Normal 140 miles away. The prosecution argued to the jury -- without presenting any evidence -- that Beaman left for Normal directly from the bank at 10:11 a.m., arrived around noon, killed Lockmiller, and then drove back to Rockford and arrived home minutes before his mother returned at 2:16 p.m. The prosecution also argued, based on testimony by the lead police investigator Timothy Freesmeyer, that it took longer than 26 minutes to drive from Beaman's bank to his home, so he couldn't have made the phone calls at 10:37 and 10:39 a.m.

The jury convicted Beaman of first-degree murder, he was sentenced to 50 years in prison, and his conviction was affirmed on direct appeal.

It was discovered after Beaman's appeal that the prosecution failed to disclose two key pieces of evidence to his trial lawyer. First, there was another prime suspect: an ex-boyfriend of Lockmiller's identified as John Doe that she owed money to for drugs, who lived 1-1/2 miles from her, who had no alibi for the time of her murder, who failed to complete a polygraph examination, and whose behavior was erratic at the time of her murder because of steroids he was taking. Second, the police conducted a timed run from Beaman's bank to his house that proved he easily could have made it home to make the calls at 10:37 and 10:39 a.m. after leaving the bank at 10:11 a.m.

Beaman filed a post-conviction habeas corpus petition and the Illinois Supreme Court overturned his conviction in May 2008, based on the prosecution's *Brady* violations of failing to disclose the evidence about the suspect John Doe and the time it took to drive from his bank to his home. The Court ruled that had the jury known that evidence there is a reasonable probability their verdict would have been different. (See, *People v. Beaman*, 890 NE 2d 500, 229 Ill. 2d 56, 321 Ill. Dec. 778 (Ill Supreme Court, 2008)) Beaman was released on \$250,000 bail a month later, and the charges [were dismissed](#) in January 2009.

Beaman's prosecutors were James Souk and Charles G. Reynard. In 1997 Souk was appointed as an associate McLean County

(11th Judicial Circuit) Circuit Court judge, and he was elected as a Circuit Court judge in 2002. Reynard was also elected as a Circuit Court judge in 2002.

In 2010 Beaman filed a federal civil rights lawsuit that named as defendants: Souk, Reynard, Freesmeyer, four former Normal police officers, McLean County Illinois and Town of Normal, Illinois. Among its claims the lawsuit alleged the defendants violated Beaman's federal constitutional right to due process by: withholding exculpatory evidence with respect to John Doe and the time it took to travel from the bank to Beaman's house; engaging in a conspiracy to deprive Beaman of the exculpatory evidence; failing to intervene to prevent violations of his constitutional rights; that they maliciously prosecuted Beaman in violation of state law; that they engaged in a civil conspiracy in violation of state law; and that they intentionally inflicted emotional distress.



Jennifer Lockmiller, Illinois State University student murdered on August 25, 1993. (Lockmiller family photo)

The defendants filed a motion to dismiss, and on March 26, 2012 U.S. District Court Judge Joe Billy McDade granted the motion as to several of the claims related to Souk and Reynard's absolute immunity for actions they took during Beaman's prosecution. However, under U.S. Supreme Court precedent a prosecutor is not immune from being sued for actions they take during the investigation of a case. Consequently, Judge McDade did not dismiss Beaman's key claims that Souk and Reynard were civilly liable for their active involvement in the investigation that preceded Beaman's trial, [because](#) "Souk and Reynard began committing the investigative misconduct in issue here eight months before Plaintiff's arrest and a full 18 months before Plaintiff went to trial on the wrongful charges."

As a result of Judge McDade's ruling Beaman's most important claims against Freesmeyer, Souk, Reynard, McLean County and the Town of Normal remain, but resolution of the lawsuit could still be several years away.

You can read Judge McDade's ruling by [clicking here](#).

[Souk retired](#) in December 2012 after 15 years as a Circuit Court judge.

**Beaman cont. on p. 13**

## Kenneth Budik's Conviction For Not Providing Information To Police Overturned

Kenneth Budik's conviction of rendering criminal assistance for not providing information about a shooting to the police has been [overturned](#) by the Washington State Supreme Court.

At 2 a.m. on September 14, 2007 the 20-year-old Budik was sitting in the passenger side of a pick-up truck parked outside a house in Spokane, Washington where a party was going on. Three gunshots were fired into the truck. Two bullets hit Budik, one shattered a bone in his shoulder and the other went into his left leg. The third bullet killed the driver, Adama Walton.

Budik told several police officers at the scene he didn't know who fired the shots. At the hospital while doctors and nurses were working on his bullet wounds he declined to answer any questions by the police. When questioned at the hospital the day after the shooting Budik told police it was dark and he didn't see anything, and he then asked the officers to leave.

Several days after the shooting he told the mother of the victim that "Rascal [Juwuan Nave] did it."

Two other men were charged in the murder. "Rascal" was identified as a suspect, but he wasn't charged because no one with first-hand knowledge identified him to the police as involved in the shooting. Police suspect-

### Beamon cont. from p. 12

Beaman has a [pending petition](#) for a pardon by Illinois' governor based on his innocence. The pardon would qualify Beaman for state compensation of about \$170,000. Beaman also has a pending petition for a certificate of innocence.

#### Sources:

[People v. Beaman](#), 890 NE 2d 500, 229 Ill. 2d 56, 321 Ill. Dec. 778 (Ill Supreme Court, 2008)

[Prosecutors dismiss murder charges](#) against Alan Beaman, *Pantagraph*, January 30, 2009

[Beaman v Souk et al](#), No. 10-cv-1019 (USDC CD IL) (Lawsuit filed January 26, 2010)

[Beaman v Souk et al](#), No. 10-cv-1019 (USDC CD IL, 3-26-2012) (Order denying defendant's motion to dismiss)

[Beaman petitions for pardon](#), certificate of innocence, *Rockford Register Star*, February 6, 2010

[McLean County circuit judge announces retirement](#), November 14, 2011

ed no one would identify "Rascal" because they were afraid of possible retaliation if they did so.

Based on Budik's refusal to talk to the police after he had denied knowing who the shooter was, he was charged with "first degree rendering criminal assistance" (RCW 9A.76.050(4)). During his jury trial the victim's mother provided the only testimony that he knew who shot him. The lead [detective testified](#) he did not think Budik's comment to the mother was credible and he thought Budik was simply repeating a rumor that was circulating that made "Rascal" the "fall guy" for the shooting.

Budik was convicted and sentenced to 13 months in prison.

Budik appealed and one of his grounds was that the prosecution introduced insufficient evidence to prove that his initial denials of knowledge and subsequent refusal to talk to the police constituted "rendering criminal assistance" to whoever shot him and killed his friend.

In 2010 the Washington Court of Appeal affirmed his conviction.

Budik appealed to the Washington Supreme Court, which en banc overturned his conviction on February 17, 2012 by a 7 to 1 vote, on the basis there was insufficient evidence to support his conviction. In [State v. Kenneth Richard Budik](#), No 84714-2 (WA Sup Ct, 2-17-2012) the Court stated in part:

This statutory scheme evidences legislative intent to require an affirmative act or statement in order to constitute "deception" within the context of RCW 9A.76.050(4). First, the legislature expressly criminalized making false or misleading material statements to the police in RCW 9A.76.175. (p. 10)

...  
The deception contemplated by RCW 9A.76.050(4) requires an affirmative act or statement; it does not encompass mere false disavowals of knowledge. (p. 12)

...  
A mere false disavowal of knowledge is insufficient. (p. 13)

...  
[T]he State had to prove that Budik's deception -- assuming his false disavowal of knowledge was indeed a "deception" -- actually prevented or



Adama R. Walton, shot and killed September 14, 2007 (The Spokesman-Review)

obstructed the performance of some act that might have aided in discovery or apprehension of one of the shooters. The State produced no such evidence. (p. 14)

...  
There is simply no evidence in the record that but for Budik's false disavowal of knowledge of the identity of the shooters (i.e., had he said nothing) anyone would have "perform[ed] an act that might aid in the discovery or apprehension" of one of the shooters. RCW 9A.76.050(4). As such, there is no evidence that Budik's deception -- assuming his false disavowal of knowledge amounted to deception -- caused the prevention or obstruction of any act. (p. 16)

Even if Budik's false disavowal of knowledge of the shooter's identity amounted to deception under RCW 9A.76.050(4), there would be insufficient evidence to sustain his conviction. (p. 16)

We hold that in order to prove that a defendant has rendered criminal assistance "by use of . . . deception," RCW 9A.76.050(4), the State must show that the defendant has made some affirmative act or statement; mere false disavowal of knowledge is insufficient to sustain a conviction for rendering criminal assistance. There is no evidence that Budik did more than falsely deny knowledge of the identities of the assailants who had shot him and shot and killed his companion. Accordingly, insufficient evidence supported Budik's conviction. We reverse the Court of Appeals and vacate Budik's conviction. (p. 17)

[Click here](#) to read the Court's ruling in *State v. Kenneth Richard Budik*, No 84714-2 (WA Sup Ct, 2-17-2012)

#### Sources:

[State v. Kenneth Richard Budik](#), No 84714-2 (WA Sup Ct, 2-17-2012) (en banc)

[Fatal shooting case conviction overturned](#), *The Spokesman-Review* (Spokane), February 17, 2012

[State v. Budik](#), 156 Wn. App. 123, 230 P. 3d 1094 (WA Ct of Appeals, 3rd Div. 2010)

### Visit the Innocents Database

Includes details about more than 3,200 wrongly convicted people from the U.S. and other countries.

[http://forejustice.org/search\\_idb.htm](http://forejustice.org/search_idb.htm)

### Visit the Wrongly Convicted Bibliography

Database of hundreds of books, law review articles, movies and documentaries related to wrongful convictions.

<http://forejustice.org/biblio/bibliography.htm>

## Joseph Dean Webber Awarded \$392,500 For 19 Months Of Wrongful Imprisonment

Joseph Dean Webber has been awarded \$392,500\* as compensation for more than 19 months of wrongful imprisonment in Ontario, Canada.

In November 2006 two armed masked men invaded an occupied home in Bayham, which is near Lake Erie in southwestern Ontario, Canada. After [finding more than](#) \$2,500 that was in the house, one of the masked men forced the husband, Duane Hicks, to drive to a bank where he withdrew \$4,500 in cash and they then went to an ATM where Hicks withdrew \$600. After they returned to the house Hicks, his wife, son and his son's friend were tied up before the robbers left with almost \$8,000. Webber, 26, lived in Bayham with his wife and 6-year-old son. Hicks told police that he looked into the eyes of one of the robbers and they were the eyes of Webber, who he knew through a mutual friend and in 2004 Webber had helped pour concrete at his house. Webber was arrested and charged with armed robbery, forcible confinement and extortion. The second robber wasn't identified.

Webber was jailed until his four-day trial began in late October 2007. There was no physical or forensic evidence tying him to the crime, and the State's key evidence was Hicks' in-court identification of him. Hicks testified he was positive Hicks was one of the robbers. Webber's defense was he had been misidentified. He waived a jury trial and after considering the evidence the judge convicted him on [December 7 by stating](#): "I'm satisfied that Joseph Dean Webber was one of the two armed men. I find him guilty on all charges." Webber was sentenced on February 8, 2008 to 7-1/2 years in prison with credit for the 15 months he had been in custody.

Four months after Webber's sentencing Justin Parry [confessed to](#) authorities in June 2008 that he had committed the robbery Webber had been convicted of. Parry had an extensive criminal record that included bank robbery, drug thefts and convictions for 25 home invasions throughout southwestern Ontario. Parry's confession was credible not just because of his criminal history but because it contained specific details about the Bayham home invasion that had not been released to the public. Parry was only a year younger than Webber

and they were similar in size and build. Apparently their eyes were also similar.

Based on the new evidence Webber filed for a new trial. After a hearing during which Parry repeated his confession in court, Webber was released on bail on June 28, 2008 pending the outcome of his appeal.

After Webber's release Parry's accomplice, Mansa Adisa Fraser, admitted he was the second robber. While Webber's appeal was pending Parry and Fraser [pled guilty](#) to the robbery Webber was convicted of committing.

The Ontario Court of Appeals held a hearing on January 6, 2010 concerning Webber's appeal. The next day the appeals court issued a two sentence ruling in [R. v. Webber](#), 2010 ONCA 4, that simply stated:

"The Crown acknowledges that the fresh evidence overwhelmingly shows the appellant did not commit these crimes. The fresh evidence is admitted, the convictions are set aside and acquittals are entered."

Webber then filed a claim for compensation with Ontario's government for his 594 days of wrongful incarceration. On December 21 it was announced that Webber's [claim was settled](#) for \$392,500\* -- which amounted to \$660 for every day he was incarcerated, plus his legal expenses. Ontario's Attorney General John Gerretsen said in [a written statement](#):

"The Court of Appeal extended its apologies to Mr. Webber and today, on behalf of the Government of Ontario, I'd like to offer my sincere apologies to Mr. Webber for the miscarriage of justice that occurred. It is my hope that Mr. Webber and his family will now be able to move forward and put these events behind them. We wish Mr. Webber well in his future endeavours."

\* On December 21, 2011 the exchange rate was CAN\$1.0286 to the US\$, so Webber's award of CAN\$392,500 was the equivalent of US\$381,586.62.

Sources:

[R. v. Webber](#), 2010 ONCA 4

[A poster boy for justice gone awry](#), *The Globe and Mail* (Toronto, CAN), Feb 17, 2010

[Webber free after being wrongfully accused](#), *St Thomas Times-Journal*, January 8, 2011

[McGuinty Government Compensates](#) Joseph Dean Webber, Press Release, Government of Ontario, December 21, 2011

[Wrongly convicted man awarded \\$392,000](#) 'blessing' by Ontario in armed robbery sentence, *The Star* (Toronto, CAN), December 21, 2011

[Joe Webber Acquittal Case Update](#), *Aylmer News*, February 3, 2010

## Innocents Database Now Lists 3,640 Cases

The [Innocents Database](#) linked to from Justice Denied's website is the world largest database of wrongly convicted people. It now lists 3,640 cases. All the cases are supported by sources for research. Those sources include court decisions, newspaper and magazine articles, and books. [The Innocents Database](#) includes:

- 573 innocent people were sentenced to death.
- 726 innocent people were sentenced to life in prison.
- 1,483 innocent people convicted of murder were imprisoned an average of 9-1/3 years before their exoneration.
- 524 innocent people convicted of rape or sexual assault were imprisoned an average of 10 years before their exoneration.
- 504 innocent people were exonerated after a false confession by him or herself or a co-defendant (246 of these people were convicted in the U.S. and 247 in other countries.)
- 200 innocent people were convicted of a crime that never occurred.
- 161 innocent people were posthumously exonerated by a court or a pardon.
- 59 innocent people were convicted of a crime when they were in another city, state or country from where the crime occurred.
- 1,027 innocent people had 1 or more co-defendants. The most innocent co-defendants in any one case was 28, and nine cases had 12 or more co-defendants.
- 12% of wrongly convicted persons are women.
- The average for all exonerated persons is 7-1/2 years imprisonment before their exoneration.
- 31 is the average age of a wrongly convicted person.
- Innocent people convicted in 102 countries are in the database.

[Click here to go to the Innocents Database.](#)

Zieva Konvisser deserves special recognition and thanks for going through all the cases of women convicted in the U.S. to make them as accurate and up-to-date as possible. Zieva has a special interest in imprisoned innocent women, and her article, "Psychological Consequences of Wrongful Conviction in Women and the Possibility of Positive Change," was published in the *DePaul Journal for Social Justice*, (Spring 2012), 5(2), 221-94. Zieva can be emailed at, [zkonvisser@comcast.net](mailto:zkonvisser@comcast.net).



## Tamara McAnally Seeks Compensation From Sex Hunting Prosecutor After Fraud Conviction Is Overturned

Tamara McAnally's 2004 fraud conviction was overturned in 2011 based in part on a lack of impartiality by San Diego County deputy district attorney Ernest (Ernie) Marugg for pursuing a sexual relationship with her.

McAnally's husband Jon was a construction contractor in San Diego County, and in 2003 they were both indicted for workers' compensation insurance fraud. They were charged with classifying workers on the payroll to lower their insurance premiums with the State Compensation Insurance Fund.

The McAnally's insisted they didn't do anything illegal, but their lawyer told them that if they didn't take a plea bargain the prosecution would recommend a prison sentence if they went to trial and were convicted. So on the advice of counsel she and her husband pled guilty in 2004 to one count of conspiracy and the judge sentenced them to probation and to pay the \$412,096 the state claimed was owed. Their prosecutor was deputy DA Marugg.

McAnally wanted to get a job as a mortgage broker but she couldn't get licensed because of her felony conviction. In 2005 she contacted Marugg to find out if the DA's Office would oppose a motion to have her conviction reduced to a misdemeanor. He said he wouldn't, and the court granted her motion to reduce her conviction to a misdemeanor.

In 2006 Marugg began contacting McAnally that he wanted to have a sexual relationship with her. Although McAnally refused all his overtures, Marugg pursued her for years. In a 2009 email he wrote: "I am sorry you are having so much trouble. It makes me feel guilty for filing charges against you. I wish I had a time machine and could straighten all this out."

In November 2009, McAnally received a phone call from Kim Alvarez, another woman Marugg had prosecuted for fraud. Alvarez told McAnally that after her conviction Marugg approached her for a romantic relationship. Alvarez and Marugg began living together in 2009, and in 2010 they married.

McAnally hired a lawyer and she filed a



Tamara McAnally in Nov 2011. (Charlie Neuman, SD *Union-Tribune*)

ly's complaint.

McAnally then filed a motion for a new trial based on her factual innocence. She alleged that Marugg lacked impartiality in prosecuting her, that the evidence was flawed that Marugg presented to the grand jury that indicted her, and that her lawyer had provided ineffective assistance of counsel. Her motion was granted in 2011 by San Diego County Superior Court Judge David Danielsen who concluded, there were "substantial irregularities" in the case and that Marugg "obtained her conviction as the result of his failure to discharge ethical obligations."

On November 2, 2011 McAnally and her husband Jon filed a claim for money damages that named San Diego County, the District Attorney's Office, Marugg and his supervisors as defendants. The claim alleged that Marugg pursued romantic relationships with at least half-a-dozen women he prosecuted, and that in exchange for sex he offered to reduce or modify their sentences.

McAnally's claim was denied several weeks later, and on November 22, 2011 she filed a federal civil rights lawsuit in San Diego that named as defendants: Kathey Bradley, Dominic Dugo, San Diego County DA Bonnie M. Dumanis, David Lattuca, Alexander Lutzi, Ernest Marugg, San Diego County, and the State Compensation Insurance Fund.

McAnally's lawyer, Donnie Cox, told the San Diego *Union-Tribune* that Marugg quickly retired after the complaint was filed in August 2010 before a formal hearing could be held, and Cox accused the DA's Office of covering-up Marugg's conduct of using his position as a prosecutor to try and pressure numerous women into a sexual relationship. Cox said of the DA's Office, "They swept this under the rug." Cox also said Marugg's supervisors knew what he was doing but did nothing to stop it because it could have jeopardized the money the DA's Office receives from insurance companies and the State Compensation Insurance Fund to pursue fraud cases.

Alvarez filed for divorce from Marugg in 2011, and in her declaration she stated that

complaint with the D.A.'s Office against Marugg for his conduct of pursuing romantic relationships with women he prosecuted.

Marugg retired a month later in September 2010. The DA's Office has not released information about how it resolved McAnally's complaint.

Marugg told her he had long-term affairs with several defendants he prosecuted.

On February 25, 2013 the U.S. District Court judge granted the application for a settlement between the McAnallys', and Kathey Lowe (formerly Bradley) and the State Compensation Insurance Fund. According to the settlement documents filed with the court no compensation was paid to McAnally and the parties agreed to pay their own legal expenses. The lawsuit is still pending against the other defendants.

Sources:

[Prosecutor accused of affairs](#) with defendants, San Diego *Union-Tribune*, 2-13-2011.

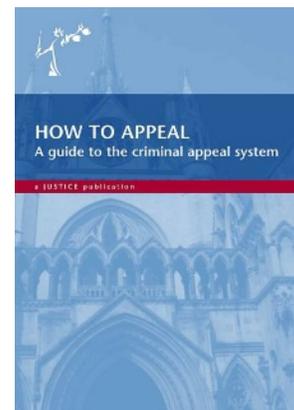
Tamara McAnally and Jon McAnally v. Kathey Bradley et al., U.S. Dist. Ct., Southern Dist. of Calif., No. 11-CV-2741W (KSC), 11-22-2011.

"Order Granting Application For Determination Of Good Faith Settlement," U.S. Dist. Ct., Southern Dist. of Calif., No. 11-CV-2741W (KSC), 2-25-2013

## How To Appeal In England and Wales Booklet Available From JUSTICE

JUSTICE is a non-profit human rights organization based in London, England that was founded in 1957. JUSTICE was one of the principal advocates for people in the United Kingdom with a post-conviction miscarriage of justice claim before the [Criminal Case Review Commission](#) began operating in 1997.

Justice has published a booklet that is invaluable to defendants convicted in England and Wales -- *How To Appeal: A guide to the criminal appeal system*. [Click here](#) to download the 56-page booklet at no charge. People in the UK can order one or more hard copies of the book by [clicking here](#).



England and Wales have a single tier "federal" Crown Prosecution system, so the appeals process is less complicated than in the U.S. where the appeal of a conviction in every state and in federal court

is governed by different rules.

There is information about JUSTICE on their website, [www.justice.org.uk](http://www.justice.org.uk). [Click here](#) to go to The Criminal Case Review Commission's website.

## Kevin Gunn's Case Featured In "Obvious Answers"

"Obvious Answers" is an annual publication produced by Julie Rea about issues related to the legal system and wrongful convictions.

Ms. Rea has first-hand experience in what it is like to be wrongly convicted. She was convicted in March 2002 of murdering her 10-year-old son Joel in 1997 by stabbing him to death in their Lawrenceville, Illinois home. Represented by a single public defender who conducted minimal investigation of her case, the jury rejected her defense that a masked intruder stabbed her son, and she was sentenced to 65 years in prison.

Weeks after Rea's sentencing ABC's 20/20 aired her story. That program was seen by Diane Fanning who was writing a book about serial killer Tommy Lynn Sells who was on Texas' death row. Fanning noticed that Joel's murder had similarities to a murder committed by Sells in Springfield, Missouri. She wrote a letter to Sells that vaguely asked if he was involved in another murder about the same time as the Springfield murder. In June 2002 Sells wrote Fanning admitting to Joel's murder and he provided details that had not been released to the public. [Fanning's book](#), "Through the Window: The Terrifying True Story of Cross-Country Killer Tommy Lynn Sells," was published in May 2003, and it contained Sells' confession to Joel's murder. The information Fanning's book led to the Downstate Illinois Innocence Project (DIIP) at the University of Illinois Springfield becoming involved in Rea's case. Sells matched the description of the person she said killed her son, and an [investigation by the DIIP](#) discovered an eyewitness who saw Sells in Lawrenceville the weekend of Joel's murder.

The new evidence of Rea's innocence was incorporated into her direct appeal, and in June 2004 the Illinois Court of Appeal did overturn her conviction --- but they did it on the legal basis that the trial judge shouldn't have allowed a special prosecutor to try the case over defense objections, because he had not been sworn in as an assistant state's attorney before calling a grand jury or trying the case. The [appeals court ruled](#) that:

"Because the defendant specifically challenged the legitimacy of the prosecutor, the trial court erred in allowing an

attorney from the appellate prosecutor's office to prosecute the case. The defendant had a right to be prosecuted by someone with proper prosecutorial authority, a personal privilege she did not waive."

The Lawrence County DA elected to retry Rea. After more than two years of imprisonment she was released on bail pending her retrial. Unlike her inadequate representation during her first trial, during her retrial she was represented by six pro bono lawyers, including two lawyers from Northwestern University's Center on Wrongful Convictions. On July 26, 2006 [she was acquitted](#) by a jury that heard the evidence of Sells' confession to her son's murder and other significant exculpatory evidence.

"Obvious Answers" recently included an article about the case of Kevin Gunn by *Justice Denied's* Editor and Publisher Hans Sherrer that is one of the most outrageous cases of misidentification in American legal history.

Gunn is a giant: he is a light skinned black man 6'-9" tall and he weighs over 300 pounds. He was convicted in 1999 of committing two daylight robberies of elderly people on public sidewalks in San Diego that were witnessed by more than a dozen people. Every witness, including the victims, described the assailant as 5'-10" to 6'-3" tall, and weighing 180 to 220 pounds with very dark shiny skin. Not only is Gunn dramatically larger than the robber who had a much different skin tone, but Gunn had airtight alibis for being inside of stores during two of the robberies. In addition the police were provided with the license plate number and a description of the robber's getaway car, and it didn't match the car Gunn drove. Yet, Gunn was convicted by a jury. Then the day after his convictions the jury foreman wrote the San Diego County District Attorney and told him the jurors were only able to convict Gunn because they were "proactive" in filling in all the prosecution's missing evidence against Gunn! The evidence positively excluding Gunn as the robber and the admitted jury misconduct of convicting him based on evidence they made up didn't make any difference when the judge sentenced Gunn to 17 years in prison.



Julie Rea outside the courthouse after her acquittal on July 26, 2006.

Gunn's conviction was affirmed by the California state courts, his pro se state habeas corpus petition was denied, and after his habeas corpus petition was denied by the federal district court in San Diego he appealed to the federal Ninth Circuit Court of Appeals, where his appeal was also denied. You can read "An Accumulation of Errors" [by clicking here](#).

Sources:

[Obvious Answers](#) webpage,

<http://obviousanswers.presspublisher.us>

[An Accumulation of Errors](#), By Hans Sherrer, Obvious Answers, September 22, 2011

[The Julie Rea Harper Case](#), Downstate Illinois Innocence Project, University of Illinois Springfield [Rea-Harper conviction overturned](#), The Wolf Law Firm, June 28, 2004

"[Through the Window](#): The Terrifying True Story of Cross-Country Killer Tommy Lynn Sells," Diane Fanning, St. Martin's True Crime, May 2003



## Man Convicted of Rape Released After His "Vic- tim" Marries Him And Has His Child

Sharvan Kumar was sentenced to life in prison after he was convicted in 2007 of raping Kamini Nayak in Jodhpur, India, which is about 600 miles north of Mumbai.

After his conviction Nayak married Kumar and when they were able to have marital relations she became pregnant.

Kumar filed a petition to quash his conviction that relied on new evidence he did not rape Nayak. Based on Kumar's new evidence and that his alleged victim married him and had his child, the Rajasthan High Court in Jodhpur [quashed the judgment](#) of the trial court. Four years after his conviction Kumar was released in July 2011 from the Jodhpur Central Jail, where some of India's most notorious criminals are imprisoned.



Jodhpur Central Jail (The Hindu)

Sources:

[Conviction suspended in rape case](#), *The Times of India*, July 27, 2011



## Amanda Knox Owes Her Release To Italy's Legal System

Amanda Knox and her co-defendant and former boyfriend Raffaele Sollecito were freed from prison 90 minutes after an appellate court acquitted them on October 3, 2011 of murdering and sexually assaulting Meredith Kercher in Perugia, Italy in November 2007. After the two were convicted by a jury in December 2009 Knox was sentenced to 26 years in prison and Sollecito to 25 years. They were also ordered to pay 5 million euros (\$7.4 million) to Kercher's family.

For a detailed account of the Knox case [click here to read Justice Denied's](#) October 4, 2011 article, "Amanda Knox And Raffaele Sollecito Acquitted Of Murder And Sexual Assault By Appeals Court."

During Knox's trial a key piece of prosecution "evidence" was her statement in which she admitted to being present when the murder occurred. Key evidence was also expert testimony that her DNA was found on a kitchen knife that also had a speck of Kercher's DNA on it. Kercher was murdered in the apartment she shared with Knox, while the knife -- that had no blood on it -- was found in Sollecito's apartment. Key evidence against Sollecito was his DNA was found on Kercher's bra clasp that was found 47 days after her murder lying near where her body was found. Many defendants in the U.S. are prosecuted based on less evidence so Italy's legal system can't be faulted for Knox's prosecution.

Knox testified during her trial that her statement was false. She said it was coerced after she was interrogated without a lawyer for 50 hours over four days, and that she was threatened and abused by the police. The police denied abusing the 20-year-old Knox. It is not uncommon for defendants in the U.S. to be interrogated for long periods of time without a lawyer and to be threatened and abused by various psychological and physical tactics designed to elicit an incriminating admission, so Knox's treatment in Italy wasn't out of line with what could have happened to her in the U.S.

Knox's conviction was not a surprise considering the prosecution had her incriminating statement and expert testimony that her DNA was on the knife along with Kercher's DNA. Innumerable defendants in the United States are convicted on much less evidence, so Italy's legal system can't be faulted for

her conviction.

Knox was sentenced to 26 years in prison. Again the Italian legal system can't be faulted. If she had been convicted of murder and sexual assault in the U.S. she could have expected a sentence of up to life in prison, and if charged with aggravated murder (murder committed during the commission of a rape) in a death penalty state such as Texas or Florida she could have been sentenced to death.

Knox and Sollecito appealed, which in Italy involves a retrial by a jury of two judges and six lay people that can consider new evidence not presented at trial. In contrast, the direct appeal of a conviction in the U.S. involves an appeals court considering errors related to evidence that was presented for admission into evidence. So regarding evidence on appeal Italy's legal system is much more defendant "friendly."

Knox and Sollecito's appeal began in Perugia on November 24, 2010. Their lawyers requested that the DNA evidence be reviewed by independent examiners appointed by the appeals court. Their request was granted. The appeal had a number of adjournments, and on June 29, 2011 the independent forensic report was submitted to the court and entered through testimony. The report found the crime scene was compromised and much of the DNA evidence was exposed to contamination. Among other things the report detailed that Kercher's DNA wasn't on the knife blade: the speck that the "expert" at trial testified had Kercher's DNA was likely a crumb of rye bread. The report also detailed the bra clasp with Sollecito's DNA on it was too contaminated to have any reliable evidentiary value. The bra clasp was repeatedly moved around the room where Kercher was murdered before it was collected as "evidence" 47 days after Kercher's murder.

There was also testimony discrediting the reliability of Knox's statement she was present at the time of the murder.

After 11 hours of deliberations the appeals court in Perugia announced at about 9:30 p.m. on October 3, 2011 it had arrived at its verdict. The chief judge announced that Knox and Sollecito were acquitted of murder and sexual assault and they were ordered immediately released. In announcing its verdict the appeals court ruled there was no credible evidence Knox and Sollecito were involved in the murder. The appeals court believed the new evidence discredit-



Amanda Knox during her trial in 2009

ing the reliability of the trial testimony about the DNA evidence and Knox's statement.

Amanda Knox and Sollecito both owe their freedom after their successful appeal to having been prosecuted and convicted in Italy.

If convicted in the U.S. their direct appeal would have been decided on the same evidence

that convicted them, and by a panel of career judges who routinely rule in favor of the prosecution and not by a jury weighted with lay people as in Italy. That is why the percentage of successful direct appeals in the U.S. is in the low single digits.

If Knox and Sollecito had been convicted in the U.S. they could have sought to obtain post-conviction DNA testing of the knife and bra clasp, etc. after they had lost their direct appeal. However, that would have been an iffy proposition. If Knox had been successful in obtaining an order for DNA testing the knife and Sollecito the bra clasp, and the results had been exculpatory, the value of those tests in undermining their convictions would have been determined by a single judge evaluating their post-conviction petition or motion for a new trial. In all likelihood that would have been the same judge who presided over their trial and conviction. Thus the odds for their success wouldn't have been good. They could have appealed, but far more often than not an appeals court in the U.S. affirms the rulings of a lower court.

Consequently, it is reasonable to believe Knox and Sollecito's convictions would not have been overturned in the U.S., just as the overwhelming majority of defendants in the U.S. don't succeed in overturning their conviction even when they have new evidence they didn't commit their convicted crimes.

So every night before she goes to bed Amanda Knox should give thanks that she was prosecuted and convicted in Italy and not the United States -- otherwise the bed she crawls into would be in a prison cell and not in her home in Seattle.

Sources:

[Injustice In Perugia](#) website  
[Friends Of Amanda](#) website  
[Amanda Knox is a "she-devil."](#) Italian court told, *Reuters*, September 26, 2011  
[Amanda Knox Final Plea](#): Full Text Transcript, *International Business Times*, October 3, 2011  
[Amanda Knox Exclusive](#): Convicted Prosecutor Giuliano Mignini May Return for "Appealing" Courtroom Drama, Citing Loophole, CBS News, April 22, 2010



## Eight Police Officers Prosecuted For Perverting Justice In The Frame-Up Of Five Innocent Men For Lynette White's 1988 Murder

Twenty-year-old Lynette White was brutally murdered on Valentine's Day 1988 in Cardiff, Wales. Her body was found in her apartment where she had been stabbed more than 50 times.

White's 22-year-old boyfriend Stephen Miller was arrested in December 1988 after a friend of White's signed a statement that she saw Miller standing next to White's body. During the next four days Miller was interrogated almost around the clock, and during his 19th interrogation he confessed to White's murder after 13 continuous hours of questioning. Miller implicated two other men in the murder, Yusef Abdullahi and Tony Paris. Immediately afterwards Miller recanted his confession claiming he knew nothing about White's murder and that he confessed to stop the shouting and threats by the police during the long hours of his interrogation.

Two other men John Actie and his cousin Ronnie Actie were identified as involved in the murder by eyewitnesses.

The five men were charged in December 1988 with White's murder and jailed without bail. There was no physical or forensic evidence tying any of the men to the crime. Blood that didn't match White's was found at the crime scene, but DNA testing excluded any of the five defendants as its source. Their 117-day trial that concluded in November 1990 was at the time the longest criminal trial in British history. John and Ronnie Actie were acquitted. Miller, Paris and Abdullahi were convicted primarily based on Miller's confession. Abdullahi was convicted even though he had the seeming ironclad alibi that at the time of the murder he was on a ship eight miles from the crime scene.

The three defendants were sentenced to life in prison and they became known in the media as the Cardiff Three.

Doubts about their guilt were so substantial that one of England's largest newspapers, *The Guardian*, launched an investigation of their case. In a [series of articles](#) published in March 1991 it was reported the police had

failed to disclose a number of exculpatory alibi statements to the defendants, there were reasons to doubt the truthfulness of White's friend whose statement led to Miller's arrest as well as doubts about the truthfulness of testimony by other prosecution witnesses, and that three weeks after their convictions a young woman was murdered in Cardiff in almost the same manner as White. With the new evidence uncovered by *The Guardian* Abdullahi's alibi was supported by 13 witnesses.

Tapes of Miller's interrogation during which his appeal lawyer described that the police were "beating him over the head verbally" were played during the hearing of their appeal by the Court of Appeal. On December 10, 1992 the Court of Appeals [quashed their convictions](#) as "unsafe and unsatisfactory" and they were released after four years in custody. In the Court's ruling Lord Taylor said he was "horrified" by the interrogation tapes and that the oppressive and bullying techniques used by the police were "almost passing belief." He also said, "The officers ... were not questioning him so much as shouting at him what they wanted to say. Short of physical violence, it is hard to conceive of a more hostile and intimidating approach by officers to a suspect." Miller's lawyer was present during the interrogation and Lord Taylor was critical of him because he did nothing to protect his client because he "sat in on the interview and seems to have done little else."

Twelve days after the men's release the police announced that no disciplinary action would be taken against the officers who conducted Miller's interrogations.

Six years after their release journalist Satish Sekar, who worked on the investigation by *The Guardian* in 1991, published a book about the case, *Fitted In: The Cardiff Three and the Lynette White Inquiry*. As a result of the information in the book Ms. White's murder case was re-opened in June 1999.

The investigation to find White's killer focused on trying to find a match with crime scene DNA that didn't match White, particularly the foreign DNA recovered from blood on a piece of cigarette wrapping



Lynette White (White family)

found near her body. In March 2003 a partial match was made to a 14-year-old boy who hadn't been born at the time of the murder. Police investigated and obtained DNA from his relatives. They found the crime scene blood matched his uncle, 38-year-old Jeffrey Gafoor. He had remained undetected because he had no criminal record so his DNA wasn't in the national DNA database. When arrested at his home [he told police](#), "I did kill Lynette White. I've been waiting for this for 15 years. Whatever happens to me I deserve."

Gafoor pled guilty on July 4, 2003 and was sentenced to life in prison.

After Gafoor's conviction a new investigation was begun by the South Wales Police that was overseen by the Independent Police Complaints Commission. The investigation into the botched investigation of White's murder resulted in the arrest of 34 people that included trial witnesses and former and present police officers.

In December 2008 three witnesses who gave false evidence at the trial of the Cardiff Three were jailed for 18 months after pleading guilty to perjury. They all said they were pressured by police to lie. [One of those](#) witnesses was Leanne Vilday -- whose false police statement led to the arrest of Miller and eventually to the Cardiff Three's convictions.

In March 2009, 2 more witnesses were charged with perjury, and 13 present and past police officers, [were charged with](#) conspiracy to pervert the course of justice during the 1988 investigation of White's death by fabricating evidence and pressuring witnesses to lie.

In July 2011 the trial began of the 2 witnesses charged with perjury and 8 of the 13 officers. Their trial was expected to last up to 7 months. The other defendants were scheduled to go on trial in 2012.

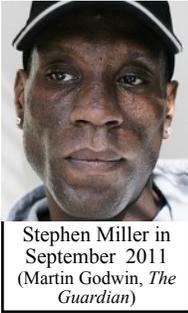
During opening statements [the prosecutor said](#) that the wrong men were charged in 1988 with White's murder based on the accused police officer's invention of a fictional scenario that was "almost entirely a fabrication and was largely the product of the imagination."

On July 12, 2011 Gafoor, 46, [testified as a](#) prosecution witness that the men known as

**Cardiff Three cont. on p. 19**

## Cardiff Three cont. from p. 18

the Cardiff Three were “completely innocent,” and that he was alone with White when he murdered her. He said, “I met Lynette White for her services as a prostitute but I changed my mind and asked for my money back. She declined to give my money back. We argued and I grasped for a knife to threaten her to get my money back. We both had the knife. In the course of an argument I stabbed her and she was killed.” He also said that he cut his hand “when we were scrabbling over the knife.” That cut resulted in his blood at the crime scene that 15 years later led to his arrest and conviction.



Vilday testified on August 10, 2011 that [she did not know](#) anything about White’s murder and that she only made a statement and testified in 1990 identifying his “killers” because she was pressured by the police. She said that once she made her statement and the men were arrested she

had to “live the lie.”

Stephen Miller, 45, testified in early September that he disapproved of what White was doing to make money, but he loved her and had hoped to marry her. During his testimony on September 27 it was disclosed that [he was paid](#) £571,000 (U.S.\$889,000).



Yusef Abdullahi died in January 2011 at the age of 49 from a burst ulcer so he was unable to testify.

On December 1, 2011 the trial of eight officers ended when the trial judge determined they couldn’t receive a fair trial because the prosecution admitted it had failed to disclose documents related to the case that were believed to have been shredded. The judge acquitted the eight defendants.

In January 2012 [it was announced](#) the missing documents had been found and had not been destroyed, and that the Crown Prosecution Service was conducting an investigation into the handling of the officer’s trial.

It is estimated the officer’s five month trial cost up to £30 million (about US\$40 million)

Although it is positively known that Miller falsely confessed to his girlfriend’s murder and that the five men tried for the crime were framed by the police officer’s involved in the investigation, none of the police officers involved in the conspiracy has been held criminally liable for their actions.

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The book details how Kirstin Lobato has twice been convicted of a July 8, 2001 Las Vegas homicide when the prosecution doesn’t deny it has no physical, forensic, eyewitness, confession, informant, surveillance video or documentary evidence she was in Las Vegas at any time on the day of the crime. The prosecution also concedes she was at her home 165 miles from Las Vegas at the time new scientific evidence conclusively proves the man died between 8 p.m. and 10 p.m. The book also details

that in 2001 the 18-year-old Ms. Lobato was prosecuted even though the Las Vegas Metropolitan Police Department and the Clark County District Attorney’s Office obtained evidence [three days after her arrest](#) she is innocent.

The 169-page book written by *Justice Denied’s* editor and publisher Hans Sherrer is supported by 416 source endnotes. In documents filed in the Nevada Supreme Court the Clark County District Attorney’s Office and the State of Nevada don’t assert there is a single factual error in the book.

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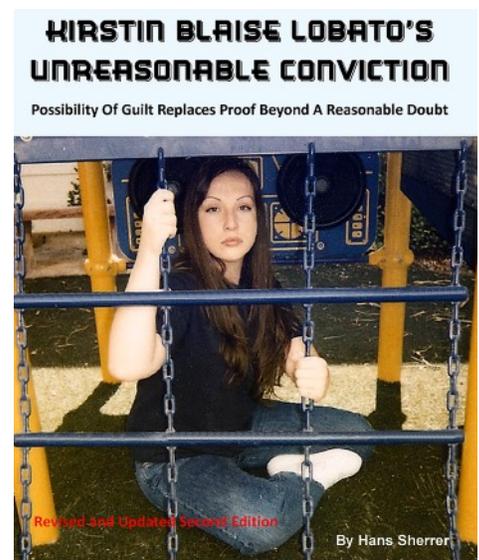
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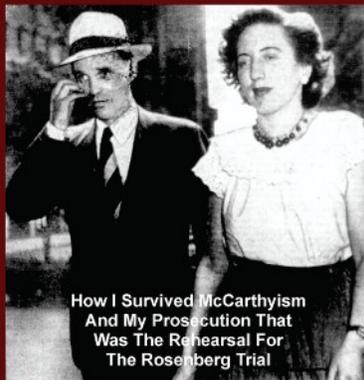
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**P**hantom Spies, Phantom Justice by Miriam Moskowitz was published in July 2012 by Justice Denied/The Justice Institute. The book is Ms. Moskowitz' autobiography that explains how it came to be that in 1950 she was falsely accused, indicted and convicted of obstruction of justice in a grand jury that was investigating Soviet espionage. The books subtitle is *How I Survived McCarthyism And My Prosecution That Was the Rehearsal For The Rosenberg Trial*. The Afterword written by Justice Denied's editor and publisher Hans Sherrer states in part:

Miriam Moskowitz is an innocent person who was caught up in the whirlwind of anti-communist hysteria that prevailed in this country at the time of her trial in 1950. We know that because of FBI documents she obtained through the Freedom of Information Act decades after her conviction for conspiring to obstruct justice during a grand jury investigation.

The prosecution's case depended on the trial testimony of FBI informant Harry Gold. He testified that in 1947 *she observed* a conversation during which he and her business partner, Abraham Brothman, alleg-

## Phantom Spies, Phantom Justice



**MIRIAM MOSKOWITZ**

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edly discussed providing false testimony to a grand jury investigating possible Soviet espionage. She did not testify before that grand jury.

The FBI documents Ms. Moskowitz obtained are proof that prior to her trial Mr. Gold told the FBI *she was not present* during that alleged conversation. Furthermore, Mr. Gold told the FBI he didn't speak candidly

in front of Ms. Moskowitz because of her possible negative reaction if he said something incriminating in her presence, and he didn't like her.

Although Ms. Moskowitz's case had nothing directly to do with the Rosenberg trial that took place four months after her trial, they were tied together because Mr. Gold was a key witness against the Rosenbergs and the same prosecutors and judge were involved in both trials.

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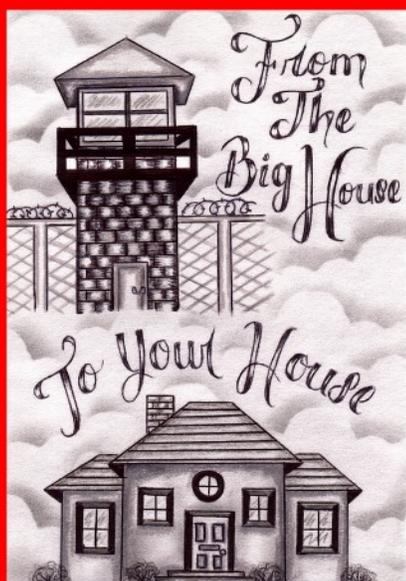
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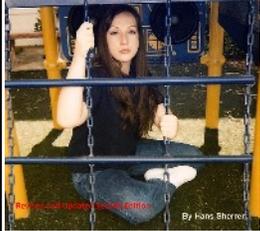
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