
Rail Roaded

Steve Weinberg

On the day Ellen Reasonover walked out of Chillicothe Correctional Center in northwest Missouri last August, Cheryl Pilate and Charles Rogers were there to meet her. Squeezing into Rogers's convertible, the trio set out for a victory party in Kansas City. The next day the lawyers would lead a caravan across Missouri to the St. Louis home that Reasonover had not seen in 16 years.

Pilate had never been prouder of winning Reasonover's case than at that moment at the prison gates. She was also immensely relieved for not having failed her client. Pilate had come to believe fervently in Reasonover's innocence. In fact, she wouldn't otherwise have jumped into the ease at an early stage in her legal career, and at great expense to her small firm and her family, for what turned out to be four-plus years of grinding litigation. Not only was she convinced that Reasonover had been wrongfully convicted, but she had proven it to a federal judge who might have been expected to side with the state. To get the case all the way to that point, Pilate and her colleagues had faced down two impossibly demanding deadlines—one time with less than a day to spare before Reasonover's last-chance appeal might have been permanently blocked.

What with all of this pride and relief, Pilate had to wonder why she didn't feel better about it. She had won, and done right by her client. Wasn't that enough? It wasn't enough for Pilate, nor should it be for anyone who studies this case.

The chance of innocent people being convicted has, of course, received enormous attention—particularly in just the past few months, as death row horror stories sow doubts and change public perceptions about guilt and punishment.

But what Pilate found in her introduction to the wrongful-conviction world is perhaps the best kind of teacher. By the time she led Reasonover away from the prison gates, Pilate never again would be able to swallow the usual platitudes about how the system works, albeit tardily, undoing the unfortunate but merely careless mistakes made by police and prosecutors.

Now Pilate knew better. Inheriting the case long after it went through several rounds of fruitless appeals, she and several other lawyers and investigators—backed

by a huge (but still inadequate) budget—had performed a miracle. That is how unlikely Reasonover's eventual release was, as Pilate thought back on the years of fighting and maneuvering and lucky breaks that exposed the truth. Pilate knew that wasn't going to happen in enough other cases to change a basic fact: Wrongful convictions—especially when prosecutorial misconduct is involved—are far too easy for the state to win, and unimaginably difficult for defense counsel to reverse.

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When Pilate took her first look at the case file—in late 1994, almost 12 years into Reasonover's sentence—the signs of a wrongful conviction seemed unmistakable. But she wasn't going to jump into Reasonover's second run at a habeas writ without asking tough questions first.

If not for her caution, Pilate would make the perfect true believer in a case like this. She is a former newspaper reporter and social worker whose idealism wasn't dampened yet by decades of experience, having gotten her law degree only four years earlier at age 35. There's knee-jerk idealism, and then there's a deeper sort.

"Lawyers want to make up their own minds," Pilate says. "I had to know for myself that Ellen was innocent."

In fact, an actual-innocence claim was Reasonover's only hope. Persuading a judge to reconsider on those grounds is a strategy that rarely succeeds, and this case offered hints, but little solid proof yet. Pilate saw slim reason for optimism, even though Centurion Ministries—the group that seeks to free innocent inmates and was paying her firm to take the case—had investigated it and found it more promising than most of the nearly 1,000 cases that pour in from prisoners and their relatives each year.

If Reasonover truly was innocent, there is a rich irony in how she had stumbled into the case. On January 3, 1983, police in Dellwood, in metropolitan St. Louis, received a phone call from a woman identifying herself as Sheila Hill. She had information about the murder of a service station attendant that had occurred one day before. "Hill" kept her promise to meet with a police captain the next day at the station, where she revealed her real identity—Ellen Reasonover, a 24-year-

old single mother from the neighborhood—and told detectives that she had seen a report of the murder on TV and was answering their plea for information.

Despite the fake name and a family history at society's margins—two half-brothers had committed violent crimes, and the father of Reasonover's child had been murdered—Reasonover at first appeared to be nothing more than a Good Samaritan. She had no criminal record, seemed uninterested in the \$3,000 reward, and said she had come forward at her mother's urging.

Reasonover told detectives that on the night of the murder, she needed change to do her laundry and stopped after midnight at the Vickers service station where the 19-year-old attendant, James Buckley, later was found shot to death. Reasonover knocked on the cashier's window to get the attention of a man she assumed was the attendant. He didn't respond. She described for the detectives some other men and a car she saw in the parking lot. Reasonover said she left, got her change at a nearby convenience store, and returned to the laundromat, unaware of any trouble.

At first, detectives took her story at face value. They showed her mug shots. They asked her to identify any men who had similar features to the men she had seen at the Vickers station in the dark, and she obliged. But two men she pointed out were in custody already on unrelated charges when Buckley was killed. Police wondered: Could Reasonover be deflecting suspicion from herself? They gave Reasonover a stress test—a modified lie detector—and she passed. But gradually the detectives were changing how they viewed Reasonover. Maybe what was turning her into a suspect was the number of circumstances that a detective might see as suspicious: the fake name, the troubled family, the failure to pick out a mug shot of a plausible suspect. Or maybe there was pressure on police to solve a highly publicized murder quickly. Whatever it was, Reasonover had somehow crossed a line.

The noose tightened further when police learned that a few days before the murder, Reasonover had filed a police report against a boyfriend, Stanley White, for breaking her car windows. White's car matched the description of one that Reasonover said she saw at the Vickers station. Loose threads were coming together in the detectives' minds. Was Reasonover setting up White for a murder rap? Were they both in on it?

Then police learned that Reasonover had worked at a different Vickers station in 1978, and had been accused by its manager of robbery. She was never charged, but police and prosecutors interpreted this as damning. They gave Reasonover a second stress test. This time, police said, she failed.

Thus far, the "evidence" against Reasonover wasn't

enough for an indictment, much less a conviction. But, barely five days after Buckley's body was found, Reasonover was under arrest and the state's machinery was in motion, searching for enough proof to make a case stick.

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As Pilate leafed through the case file in late 1994 in her comfortable thirteenth-floor office in Kansas City, she observed Reasonover's descent into prison as it played out in police reports, trial transcripts, and pleadings like one of those nightmares where everything goes wrong and keeps getting worse. Whatever Reasonover said or did, no matter how innocent, was turned against her. As doubts about her hardened into suspicion, and suspicion into accusation, as the case moved through indictment and trial to appeals, nothing seemed to knock the prosecution off course.

The mug shots that helped put Reasonover on the slippery downward slope? Reasonover had only done as she was told—point out facial characteristics that resembled those of the people she'd seen—and yet she was held accountable when those faces belonged to people with alibis. Two other witnesses had pointed to the same or similar faces, but Pilate couldn't help noticing that they were not in the same predicament. What about the strong hints that the victim, Buckley, had been in disputes with some tough players? And what about the similar robberies in the area? There was no sign that the police seriously considered alternative theories or suspects. Police and prosecutors' minds had closed quickly, Pilate thought: Another open case "solved."

Then there was the most troubling of all the signs that Reasonover might have been railroaded: the extensive reliance on jailhouse informants, who materialized as soon as Reasonover was jailed on suspicion of murdering Buckley. Two cellmates, each of whom bargained for leniency (and later misrepresented the deals they cut), claimed that Reasonover had confessed to them in separate conversations, one month apart [see "Bring On The Snitches," next page]. Now prosecutors had supposedly direct evidence—the only direct evidence—of her guilt.

Informants' testimony about jailhouse "confessions," especially when acquired with a favorable plea bargain, is notoriously unreliable. But what made this affair even more fishy to Pilate were indications that the prosecution had also been selective, to say the least, about turning over exculpatory evidence to the defense. Recordings were secretly made of Reasonover protesting her innocence to other inmates, but in every case the tape was later "lost" or the conversation was never revealed in the first place. When Reasonover supposedly unburdened her guilty conscience to informants,

however, that somehow always occurred when the tape recorders were turned off. The informants' word was all the cops had. What was going on here? Pilate wondered.

Evidently none of this had been enough to pique the curiosity of the many judges who had already looked at the case after Reasonover was convicted and her appeals were exhausted. Pilate, and the rest of Reasonover's team, had their work cut out for them.

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Back in 1983, the first jailhouse "confession" was not enough, by itself, so Reasonover was released without charges after a day. A month later she was back in jail, but for a separate robbery, a case that looked just as shaky, as far as Pilate was concerned. How convenient, Pilate thought as she reviewed the file years later. By drawing Reasonover back into the system, the prosecution could take another run at her for the more serious murder case.

The prosecutor in both cases was Steven Goldman, a St. Louis native and career public servant who had gone on to a state court judgeship five years after packing Reasonover off to prison. But donning the black robes had not prevented Goldman from attacking doubts about Reasonover's guilt when the conviction was challenged in the press or the courts. Goldman felt certain that Reasonover was guilty, and that he and the police had done their duty, nothing more.

According to the file, the two cases that Goldman was compiling against Reasonover during 1983 had one thing in common: a new jailhouse informant, acquired during Reasonover's second incarceration. This one claimed that Reasonover had blurted out a confession to both crimes, the murder of James Buckley and the subsequent gas station robbery. First Goldman made the robbery charge stick, getting Reasonover sentenced to seven years in prison. Then he took the capital murder case to trial in November 1983, with a case that rested almost entirely on the testimony of the two informants.

Reasonover's private-practice lawyers put on little evidence at the murder trial. They failed to call other cellmates of Reasonover's to contradict the informants' stories. They also did little to probe whether the informants' criminal histories and the deals they cut for their testimony had been fully disclosed. Much of the evidence that would later turn up in Pilate's investigation was simply overlooked or undisclosed in time to help at the trial.

It was not completely for lack of trying. After Reasonover's indictment in 1983, Madeline Franklin—an associate of chief defense lawyer Forriss Elliott—made the obligatory request to Goldman's team for all the statements, surveillance records, and exculpatory evidence in the state's possession. They didn't get

everything—critical evidence was withheld—but they didn't know that then.

In his closing argument, Goldman turned his own paucity of material on its head. "[It] isn't often you get this much evidence in a crime," he told the jury. After winning a guilty verdict, he told the same jury in the sentencing phase, "You know what she deserves.... Somewhere in Ellen Reasonover's life she decided that killing a person is like taking a drink of water.... That's what it means for her." He demanded a death sentence.

The jurors came within one vote of granting the prosecutor's wish. Because of the 11-to-1 split, the judge sentenced Reasonover to life in prison. Eleven months after Reasonover voluntarily stepped into the Buckley murder case with a phone call to the police, she was facing at least 50 years before the possibility of parole.

Another 16 years would pass before she joined Cheryl Pilate at the gates of the state prison at Chillicothe. During that time, the Missouri appellate courts affirmed her conviction and a postconviction petition in the state courts was aborted after a pro bono lawyer missed a deadline. In November 1989 a federal district court judge denied Reasonover's habeas petition. Then, for another six years, Reasonover sat in prison while seemingly nothing significant was being attempted on her behalf.

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While she languished in prison, however, Centurion Ministries was preparing for a showdown. Because of its backlog, that was taking a very long time.

In 1987 Reasonover had read a magazine article about Centurion, the New Jersey nonprofit that sits at the heart of the wrongful conviction community. She sent a letter. The organization's founder, former minister James McCloskey, did some preliminary research and pegged her case as a priority. "It was the only case I have ever seen," he says, "where the conviction is rooted solely in jailhouse confessions."

But it wasn't until 1993 that he and an investigator, former Pulitzer Prize-winning journalist Paul Henderson, would kick into high gear. They went to Missouri and met with Reasonover to assure themselves that she was worth fighting for. McCloskey and Henderson kept digging for new evidence, and by the following year they believed they had the case far enough long to see it tested in court. Now they needed Missouri lawyers.

They had money to spend. McCloskey wants a lawyer's full attention, and in the wars of attrition that actual-innocence claims can become, a pro bono lawyer can't always be counted on. So McCloskey, armed with tax-exempt donations, has the ability to be choosy. Not finding what he wanted in St. Louis, he used the

recommendation of a California lawyer to contact someone on the opposite side of Missouri: prominent Kansas City criminal defense lawyer James Wyrsh, of the 13-lawyer firm now called Wyrsh, Hobbs, Mirakian & Lee.

Wyrsh had decades of experience with postconviction remedies, but had never handled an actual-innocence plea. He found McCloskey's pitch intriguing, but would it be responsible to take a case that seemed so hopeless? Then there was the financial risk to the firm that was inherent in the deal Centurion was offering: a \$25,000 retainer plus as much beyond that as Centurion could afford, all at discounted hourly rates.

Finally Wyrsh relented. He would turn much of the work over to his associate, Pilate. Later, Charles Rogers joined her. Rogers had recently come to the firm with 18 years of public defender and death penalty defense experience. They would be able to tap Henderson and other Centurion investigative resources, as well as hire their own experts.

From late 1994 into 1995, they dug into the files to get to know the case. In the process, Wyrsh, Pilate, and Rogers grew convinced of Reasonover's innocence. And they liked her. Twelve years of prison had depressed Reasonover, but had not hardened her. Easygoing, with a childlike naivete, and not prone to jailhouse lawyering, she was easy to warm to.

It was not until early 1996 that the team got its first big break with new evidence. While interviewing a prosecution witness, Henderson, the Centurion investigator, learned more about a tape of a secretly recorded conversation between Reasonover and White, her ex-boyfriend, shortly after they were jailed on suspicion of murder. (White never was charged.) The witness had heard the tape at the police station before the trial. But the defense had not. It might contain proof that the prosecution had not disclosed exculpatory evidence.

First they'd have to get it, if it still existed. They asked the Missouri attorney general's office to look for it. But the AG, which was handling all the appeals, said it couldn't find the recording. Besides, the contents were unimportant, one state lawyer told Pilate. Goldman had said so.

The next place to go was to Goldman's successors in the St. Louis prosecutor's office. Pilate made the request during a trip to St. Louis, and while she was there, decided to have lunch near the courthouse with Judge Goldman. He was pleasant enough, she thought. Maybe he had not been the prosecutor from hell after all.

Still, there was an undercurrent that bothered Pilate. Goldman was exerting lots of mental energy trying to persuade her that Reasonover was guilty. He

wasn't giving up.

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Pilate couldn't believe it when she first heard the news: A St. Louis County prosecutor, John Evans, had found the tape in boxed storage, and had turned it over to Reasonover's lawyers. Pilate had grown so distrustful after working on the case so long, she almost found it surprising that Evans had been diligent and truthful.

Two paralegals in the Wyrsh firm started transcribing. There was a lot of street slang and rough language. Reasonover did her best from afar to help decipher words and explain their context. A forensic tape specialist enhanced the sound. Sentence by sentence, the transcript was pieced together, and Pilate felt a thrill as she saw each line appear on the screen: Everything Reasonover the prisoner had said, without knowing she was being monitored, was consistent with what Reasonover the Good Samaritan had told the police.

How could the state oppose Reasonover's release now? But it did. The AG's office wouldn't even discuss the case. That left only one possibility: persuading a judge to grant a habeas petition, even though Reasonover had already hit that dead end in 1989, and it was now early 1996.

After years of stagnation, the case not only had to get to federal court—it had to do so in a mad dash. For months Pilate had used contacts in the National Association of Criminal Defense Lawyers to monitor legislation that would restrict habeas petitions. But it was still a shock when she got word that the legislation was on the verge of being signed by President Clinton. If it took effect before Reasonover filed a petition, Goldman's victory would likely be final.

Working frantically, Pilate and Rogers slammed out a skeletal petition in a day. Polishing and expanding it would have to wait. They raced to the Kansas City federal court night depository, reaching it about five minutes before closing. It turned out they had one day to spare; 36 hours after the petition was filed, the president signed the bill into law.

The rush to file was merely an illusion of rapid progress. The case would continue for the next three years to inch toward a resolution. The bare-bones habeas petition was fleshed out incrementally, as both sides in the litigation buried each other in paper. A transfer to St. Louis landed the case in a new judge's court. It meant Pilate and Rogers could add several cross-state trips to their schedules. But, they thought, at least the case wasn't assigned to the judge who had rejected Reasonover's first habeas petition in 1989.

The slowness of the process did produce one benefit for Reasonover. In December 1998, with the habeas action in its third year, Pilate's team had another

breakthrough. A private investigator saw a news article about Reasonover on Christmas Day in the St. Louis Post-Dispatch, which prompted him to call Pilate's St. Louis cocounsel, Richard Sindel of three-lawyer Sindel & Sindel. The investigator had worked on an earlier appeal and offered his files.

Inside was a smoking-gun memo. It was from the public defender representing Rose Carol Jolliff—one of the jailhouse informants who testified against Reasonover—and made it plain that Jolliff and Goldman had been posturing when they denied the existence of a leniency deal. How else to explain the public defender's memo to a colleague before Reasonover was tried, where she wrote that her client "is going to be a witness in a capital murder case that Steve Goldman is trying.... After she testifies, she is going to plead guilty to this case and be given probation. The details of the plea can be worked [out] after she testifies. The state does not want to allow ... defense attorney to bring up any kind of deal that might have been made in Rose's case. I have been assured by Steve Goldman that the state isn't going to burn her, that she will receive probation."

Pilate's pleadings made it clear that she and her colleagues believed that Goldman allowed false testimony at trial, misled the jury in his closing argument, and made misrepresentations to the court in a posttrial hearing. Reasonover's lawyers sought permission to depose Goldman, the lead police detective on the case, and the informant and her lawyer. The federal judge in the habeas case, Jean Hamilton, went one better: There would be a full evidentiary hearing, where Reasonover's lawyers could call witnesses. The precedents made such a hearing a long shot, and no one on Pilate's team was confident that Hamilton, a Bush appointee who had served as a state court judge and a federal prosecutor, was predisposed to rule in favor of an innocence claim in a case already litigated extensively. But there it was in an order: a real hearing.

First, though, there would be another mad dash. After years and years of delay, Reasonover's case once again would hinge on an unnatural rush to make a deadline. The judge had a full calendar and insisted that the hearing start on June 28, 1999—12 days away. Pilate, Rogers, Sindel and their paralegals, investigators, and assistants worked every day and most of every night, preparing for witnesses, drawing up subpoenas, filling gaps in what they knew, and trying to anticipate what would convince Judge Hamilton. They almost ran out of money; a financial "angel" responded with a \$60,000 infusion to Centurion Ministries, just in time to keep the case on track.

By June 28, Pilate still felt unprepared in key areas.

But, with essential help from Sindel and Rogers, she was ready enough.

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For years, investigators, lawyers, and reporters had picked at the loose threads of the state's remarkably thin case against Ellen Reasonover. At the four-day hearing, it unraveled completely.

One informant, Jolliff, took the Fifth, refusing to answer questions about whether Reasonover had really confessed to her and about why she had denied that she had cut a leniency deal for her testimony. The other informant, Mary Ellen Lyner, had committed suicide several years earlier, but her original testimony took a direct hit from a police witness who showed that she had lied about her record—proving again that witnesses had been cagey or outright deceptive.

Sixteen years later, the prosecution's core witnesses had been thoroughly discredited. Then it was Goldman's turn. An assistant attorney general testified that Goldman had made inconsistent statements about whether he had heard the tape that had been made of the jailhouse conversation between Reasonover and her ex-boyfriend shortly after their arrests. Even Captain Dan Chapman, the lead police witness, wouldn't share the blame with Goldman for the suppressed evidence.

When yet another piece of exculpatory evidence came to light at the hearing—this time a grand jury

The Smoking Gun

Before St. Louis public defender Stormy White went on maternity leave in 1983, she wrote an undated memo about the case against her client Rose Jolliff. Fifteen years later, when it was unearthed by a private investigator, the memo helped prove that Ellen Reasonover's jury didn't hear the whole story about why Jolliff had testified for the state. This is the memo's text, verbatim.

ROSE JOLLIFF

Rose Jolliff is going to be a witness in a Capital Murder case that Steve Goldman is trying. Rose is apparently in Indiana. I have not talked to her in months. The state deposed her in Indiana and is going to pay for her expenses to testify in the trial, She will be coming in the week of the 24th. After she testifies she is going to plead guilty to this case and ve given probation. The details of the plea can be worked after she testifies. The state does not want to allow [Ellen Reasonover's] Defense Attorney to bring up any kind of deal that might have been made in Rose's case. I have been assured by Steve Goldman that the state isn't going to burn her, that she will receive probation.

transcript—Judge Hamilton let her irritation show. “Are there any other documents you haven’t disclosed?” she asked an assistant AG. “This is a little startling.”

Goldman’s testimony was crucial. Sindel, who regularly appears in Goldman’s court, knew the former prosecutor better than Pilate did. It would have been tempting for the St. Louis lawyer to practice self-preservation by steering clear of Goldman, but he took on the task himself. On the stand, Goldman admitted that back in 1983, he wasn’t exactly an expert on the fine points of *Brady v. Maryland*, with its constitutional requirement to turn over certain evidence to the other side. He conceded that he should have disclosed the Reasonover-White tape and that he had never asked if it truly had been destroyed, as he had claimed.

Goldman’s past defiance—the passionate defense of his honor, the zealous recitation of the evidence and denunciation of doubters—was replaced by an uneasiness. After 11 years as a judge, Goldman was in the witness chair looking up at another judge, and hardly anyone was openly siding with him. A reporter for a St. Louis weekly newspaper later recounted one trial observer’s whispered quip from the back of the spectator seats: “It’s STA time—`save thy ass’ time.”

One month later, Hamilton ruled. Peppering her opinion with references to previous wrongful conviction cases involving prosecutorial misconduct, Hamilton focused on the withheld evidence, the informants’ plea bargains, and the role of police and prosecutors in coaching witnesses and willfully ignoring false testimony. Calling the tapes “devastating” to the prosecution’s case and the cumulative effect of the *Brady* violations “fundamentally unfair,” Hamilton recounted the story of the undisclosed tapes and witness deals. Hamilton stopped short of declaring Reasonover innocent—that wasn’t the issue in this habeas action—but she left little doubt that the state had absolutely no case left. The judge ordered Reasonover released and the conviction vacated. The state did not appeal.

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Since her release one year ago, Reasonover has struggled to readjust to life on the outside. The 2-year-old toddler she left behind is now 19 years old. Reasonover is 42. But she displays remarkably little bitterness. “Dan Chapman and Steve Goldman,” she says, “they’re going to have to answer to God for what they did to me.” And possibly to a more earthbound authority; Reasonover might file a civil rights suit, with Pilate as her lead counsel, or seek compensation for the lost years of her life from the Missouri General Assembly.

No one has ever formally apologized to Reasonover or conceded that the actual murderer might not have been caught. And no one was ever disciplined for their

handling of the investigation and prosecution. Neither Goldman nor Chapman will comment for the record on Hamilton’s decision, but all indications are that both men still believe Reasonover is guilty and see nothing worthy of apology or opprobrium.

Wyrsh estimates that his firm wrote off at least \$150,000 in billable time for the discounts that the firm gave to Centurion during the nearly five years that Pilate, Rogers, and the rest of the staff spent on Reasonover’s case. The brutal hours and trips across Missouri, after the case was transferred to Hamilton’s court in St. Louis, were a severe drain on the 13-lawyer firm. All told, Centurion spent about \$400,000 on the case, much of that going to Wyrsh, Hobbs. The rest was paid to Sindel’s firm and to investigators and experts.

After taking Reasonover from prison to her family in St. Louis, Pilate returned to Kansas City and to a caseload that now has several other wrongful conviction claims. In her ninth year of practice, Pilate has become a committed soldier in the wrongful conviction movement.

Bring On The Snitches

If an undue reliance on “snitches” raises a red flag about possible wrongful conviction, then the prosecution of Ellen Reasonover was covered in red.

When prosecuting Reasonover for a January 1983 gas station robbery and the murder of attendant James Buckley, police and prosecutors lacked eyewitnesses or physical evidence, so they depended on a combination of tenuous circumstantial evidence and Reasonover’s supposed confessions to jailhouse informants. Add to this the other classic signs of prosecutorial misconduct—failing to disclose exculpatory statements and leniency deals that the state cut with its snitches—and Reasonover’s case becomes a veritable cookbook for wrongful conviction.

Here, from Reasonover’s first several weeks in the criminal justice system, is the chronology of a handful of witness statements—the uncorroborated ones that supposedly incriminated Reasonover, and the exculpatory ones captured on tape that prosecutors managed to suppress for more than a decade.

January 7 Five days after the murder, Reasonover and ex-boyfriend Stanley White, having inexplicably emerged as suspects, are placed in adjacent jail cells. The police roll the hidden tape, hoping Reasonover and White will talk about the case. They do, but it’s not what detectives want to hear. Both prisoners express puzzlement and anger about why they are in custody. Their 56-minute conversation betrays such ignorance about the details of the crime that an unbiased listener would have to conclude that neither one had anything to do with it. Prosecutors never tell the defense about it.

January 7 Within a few hours, police shift Reasonover to another jail, placing her in a cell with prisoners Rose

Carol Jolliff and Marquita Butler. Jolliff later tells police and prosecutors that Reasonover promptly implicated herself, along with White and a third suspect. In important respects, the story contradicts the evidence and common sense. Police do not record the conversation. Reasonover later denies confessing to Jolliff, and Butler supports Reasonover's story, despite enticements to rat on her. But the police embrace Jolliff's story, deciding that Reasonover and Butler are lying. Jolliff later denies under oath that her testimony would earn her a lenient sentence, after her lawyer receives a prosecutor's assurance of just that.

January 12 With Reasonover out of jail, police and prosecutors convince the still-incarcerated Jolliff to go back for more, in a telephone call to Reasonover. This conversation is secretly recorded, and Reasonover speaks eight times of her innocence—to the same woman who supposedly had heard an unambiguous, detailed confession five days earlier. Neither police nor prosecutors mention this tape to the defense.

February 9 Reasonover is back in jail on charges of robbing a second gas station, a new case brought by the same prosecutor. Reasonover has two cellmates later say under oath that she never implicated herself in the murder or the second robbery. But one inmate, convicted felon and heroin addict Mary Ellen Lyner, supposedly hears Reasonover confess almost immediately after walking into the cell. Lyner later admits on the witness stand that she got favorable treatment in her own cases for testifying against Reasonover, but then lies about her history of testifying for leniency.

February 25 An undercover female police officer is placed in jail with Reasonover, with a tape recorder at the ready. To stimulate conversation, police remove Reasonover to serve her with a capital murder indictment, and then return the shaken defendant to the cell. Reasonover starts talking to the officer, but nothing she says is incriminating.

After a trial in July 1983 featuring Lyner's testimony, Reasonover is convicted and sentenced to seven years in prison for the second robbery. Four months later, with Lyner and Jolliff testifying against her, Reasonover is tried and convicted in the murder case. The jury votes 11-to-1 for the death penalty; the sole holdout guarantees her a life sentence.

In August 1999—16 years later, with the exculpatory tapes finally discovered and transcribed, and the leniency deals revealed—Reasonover is released from prison. Police and prosecutors never charged anyone else in the murder of James Buckley. —S.W.

Defining The Problem

In her ruling freeing Ellen Reasonover from prison, U.S. district court judge Jean Hamilton found plenty of precedent. But neither Hamilton nor anybody else can say definitively how often wrongful convictions occur. The only certainty, as her ruling suggests, is they are far more prevalent than generally acknowledged.

So what constitutes a wrongful conviction? There

is no single commonly accepted definition among the academics, lawyers, and journalists who have attempted to catalog the problem, but most have focused on three main types:

The Wrong Person A prisoner has been released because the actual perpetrator has been identified beyond a doubt. This is the most restrictive definition.

Prosecutorial Misconduct There was reasonable doubt of guilt, but circumstances coalesced to convict the defendant anyway—frequently because the defense, the jury, or the judge never knew the whole story due to prosecutors failing to turn over exculpatory evidence. This is the most common category, and it certainly describes the Reasonover case.

Reversible Error A prisoner's trial was so unfair that the truth is not known. The flaws cover a wide range: biased jury selection, refusal of a judge to sequester a jury or grant a change of venue, questionable instructions to the jury, rejection of state of mind defenses (insanity, entrapment), and the like.

For decades, researchers have found that wrongful convictions result primarily from erroneous inferences based on circumstantial evidence; mistaken identification, whether honestly made or driven by vengeance; and perjury.

Sadly, some of the worst offenders are prosecutors themselves. Regardless of how high a barrier there is to formally punishing a prosecutor—and usually the immunity hurdle is quite high—most judges are loath to probe or criticize blatant wrongdoing by these officers of the courts.

Reasonover's case was no exception, at least until its final stages. Despite strong indications that the prosecution had not disclosed exculpatory evidence, a Missouri appellate court in 1986 brushed aside questions of what the evidence might prove. That court seemed trapped in its own circular logic: We don't know what the evidence might show, the court said, so we can't say if it would have made a difference.

Thirteen years later, and only with enormous effort by Reasonover's defenders, Judge Hamilton found the answer and freed Reasonover. —S.W.