



## Clarence Elkins

Early on the morning of June 7, 1998, Judith Johnson, a 58-year-old grandmother in Barberton, Ohio, was beaten, raped and killed, and Brook Sutton, her 6-year-old granddaughter who was staying at her house, was beaten, raped and left for dead.

Several hours later Brook Sutton regained consciousness, called a neighbor and left a message on the answering machine that "someone killed my grandmother." She then made it over to another neighbor's house, and was eventually driven home. When the police came and interrogated her, she said that the killer "looked like Uncle Clarence" – Mrs. Johnson's 35-year-old son-in-law, Clarence Elkins.

No physical evidence connected Elkins to the crime. Limited DNA testing showed that hairs found on Johnson's body did not come from Elkins.

Nonetheless, in 1999, Clarence Elkins was convicted of rape and murder and sentenced to life in prison on the basis of his niece's identification, which she repeated in court.

Clarence's wife, Melinda Elkins, never doubted his innocence. She was determined to free him and find her mother's real killer. With money borrowed from her family, she hired a private investigator and began to reinvestigate the crime herself, looking for other suspects.

Three years after the murder, Melinda Elkins reconciled with her sister – Brook Sutton's mother – who had been convinced that Clarence Elkins was guilty.

Brook herself now changed her story. She remembered that the killer had brown eyes, while her uncle Clarence had blue eyes, and she was convinced that she had been wrong when she identified him at trial. Based on that recantation, Elkins' lawyers asked for a new trial.

The prosecution continued to express complete confidence in Elkins' guilt. They ridiculed Brook Sutton's change of heart, asserted that she had been coached by her family, and pointed out that Elkins' attorneys had the girl hypnotized, a procedure known to distort memory, especially in children.

In 2002 the judge who presided over Elkins' conviction denied a new trial.

In 2004, with the help of the Ohio Innocence Project, Melinda Elkins obtained DNA tests on traces of biological material that had been recovered from Mrs. Johnson's vagina, from under her fingernails, and from her granddaughter's underwear. They found the same male DNA profile in all three locations; in other words, one man – the rapist and murderer – was the source of all three samples.

It was not Clarence Elkins.

The prosecutors, however, continued to insist that Elkins was guilty. In July,

**State:** Ohio

**County:** Summit

**Most Serious Crime:** Murder

**Additional Convictions:** Attempted Murder, Rape, Assault

**Reported Crime Date:** 1998

**Convicted:** 1999

**Exonerated:** 2005

**Sentence:** 55 to Life

**Race:** Caucasian

**Sex:** Male

**Age:** 35

**Contributing Factors:** Mistaken Witness ID

**Did DNA evidence contribute to the exoneration?** Yes  
:

2005, a judge again denied a motion for a new trial. He ruled that because the original verdict was based on Brook Sutton's identification rather than on DNA evidence, this new evidence, had it been presented to the jury, would not have changed the outcome.

Melinda Elkins next turned her attention to a neighbor who had driven Brook Sutton home after she had been raped and beaten, leaving the dazed and blood-covered six-year-old girl on her porch for 30 minutes instead of calling the police immediately.

She discovered that the neighbor's common law husband was Earl Mann, a violent criminal who had recently been released from prison at the time of the attack, and who had since been convicted and imprisoned for raping three girls under the age of 10.

As luck would have it, Earl Mann was transferred to the same prison and then to the same cell block as Clarence Elkins. Melinda Elkins instructed her husband to surreptitiously collect a DNA sample. Several weeks later, Elkins retrieved a cigarette butt that Mann discarded and mailed it to his attorneys. DNA in the saliva on the butt was a perfect match to the crime scene evidence.

Despite the DNA evidence identifying Earl Mann as the killer, the district attorney whose office prosecuted Elkins refused to agree to his release.

Ohio Attorney General Jim Petro, who had no direct authority over the case, held a press conference to pressure the local prosecutor to dismiss the charges. Finally, after another round of DNA testing again confirmed Mann's guilt, Clarence Elkins was released on December 15, 2005.

On June 29, 2007, Earl Mann was indicted for the rape of Brook Sutton, and for the rape and murder of Judith Johnson. In August, 2008, he pled guilty to aggravated murder, attempted murder, aggravated burglary and rape and was sentenced to life in prison without parole.

In November 2010, the city of Barberton agreed to settle a lawsuit brought against four police officers involved in the investigation and prosecution of Elkins for \$5.25 million.

*–Maurice Possley*

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## How Sherri Bevan Walsh worked to correct a wrong

Published: Sunday, August 24, 2008, 1:10 AM Updated: Monday, August 25, 2008, 3:40 PM



By [Regina Brett, The Plain Dealer](#)



REGINA BRETT

*January 2003*

The argument heated up.

The attorneys couldn't believe what their boss wanted to do. Especially the prosecutors who tried -- and won -- the murder case.

They were tired of hearing Clarence Elkins' family proclaim his innocence. The family wanted the prosecutor to hand over evidence so they could have their own DNA testing done.

### **Follow the case**

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- [Mann pleads guilty](#)
- [Elkins exonerated](#)
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Everyone in the Summit County prosecutor's office knew Elkins was guilty. The little girl he raped and beat told doctors, police and 12 jurors her uncle did it. He raped, strangled and beat to death the girl's grandmother, Judith Johnson, in her Barberton home back in 1998.

An appeals court had denied him a new trial in 2001. Why release evidence that could reopen the case? A judge had already ruled they didn't have to.

The prosecutor surprised them all when she decided: Give it to them. Prove them wrong. Shut them up.

What could be the harm?

Sherri Bevan Walsh would wrestle with that decision for five years. Her life's work was to protect victims. She knew firsthand what it was like to be one. And in 2003, she feared Clarence Elkins would prey on more victims if she let him out of prison.

I followed this case for 10 years. I attended court hearings and interviewed the Elkins family and their attorneys. I read hundreds of pages of court records, transcripts and police reports. The story has been told countless times through the eyes of Elkins' former wife but never through the eyes of the prosecutor. This is her story.

### **Firsthand experience with violent crime**

Sherri Bevan Walsh never set out to be a prosecutor. She looks as if she could play one on TV. Five feet 8, blond hair, blue eyes, a Colgate smile under a noble Statue of Liberty nose.

She grew up in safe Solon, far from the underworld prosecutors see. After studying political science at Miami University, she graduated with a law degree from Capital University in Columbus.

Akron hired her as an assistant city prosecutor. The job shocked her. One week she read police reports about a serial rapist who attacked college girls in the daylight. He confronted them with a knife, duct-taped their eyes shut, placed sunglasses on them, led them to his car, then raped them. Ten women had been attacked.

Sherri nearly became victim No. 11.

She was 25 that Feb. 21, 1986. She had parked her car on North Portage Path by Highland Square in Akron. It was 8 a.m., snowing like crazy. An eerie feeling came over her when a man walked past, his face buried under a hood. She cleaned off her car, got in and closed the door. He jumped in the driver's side with a knife.

"Shut up or I'm going to kill you," he said.

She struggled. She screamed. He grabbed her throat and choked her with one hand. She swiveled around and kicked him. A car drove by and he fled. Sherri ran into the street screaming.

The man was caught, after he stabbed two women. Sherri planned to speak at his sentencing. She didn't get the chance. He hanged himself in jail.

It took a long time to feel safe again. In time, the attack made her bolder. She joined her dad's law firm for 10 years, focusing on helping crime victims.

One day the chair of the Summit County Democratic Party called and asked her to run for county prosecutor. She laughed. She'd never run for office before.

She told her husband she didn't want to give up working with crime victims. "Couldn't you help way more victims as county prosecutor?" he asked.

No one expected her to win against the incumbent. She ran as a long shot that fall of 2000, a soccer mom from Hudson. One TV reporter said she had zero chance.

On election night, Sherri was three months pregnant but told no one. At the party someone told her the vote was 49 percent to 51 percent.

"I'm that close?" she asked.

"No," the person said. "You're ahead."

She won by 1,600 votes.

#### **Evidence was to prove Elkins' family was wrong**



Clarence Elkins

Sherri inherited the Clarence Elkins case two years later, when his attorney wanted a new trial based on new evidence.

The niece, who at age 6 testified that Uncle Clarence had killed her grandma, recanted. The Elkinses pointed at a Barberton man, Ryal Rush.

Sherri watched the video recantation. The scared girl looked as if she had been coached. She had been hypnotized to recover lost memories. The judge called the video unreliable.

But still, in early 2003, Sherri gave the family the evidence to test, over the objections of her staff. The Elkinses couldn't get the evidence any other way.

There was no semen, blood or saliva to test. But Sherri wanted to clear Rush, the man the Elkinses had named.

A year passed as the Elkinses looked for a new attorney. When the DNA came back, it blew up in Sherri's face. Male DNA had been left on the little girl's panties.

It didn't belong to Rush.

It didn't belong to Elkins.

It belonged to a mystery man.

But it was DNA from skin cells, not the stronger nuclear DNA found in bodily fluids. Sherri had assumed the evidence would be tested for nuclear DNA.

No one in her office said "I told you so," but some were thinking it. Skin cells? Anyone could have left skin cells. Police. Attorneys. Jurors.

All along, Sherri tried to do the right thing. "I can't believe I let all this happen," she kept telling herself.

The Elkinses filed for a new trial to use the skin-cell DNA. If the judge ruled for a trial, Elkins could walk free. Sherri had nothing for a new trial. Her star witness, the niece, was now useless.

When the judge denied Elkins a new trial, Sherri sighed in relief. But the Elkinses hired a private investigator and found another suspect in September 2005. They held a news conference to announce an amazing story.

After the murder, Elkins' niece woke up covered in blood. She went next door for help. The neighbor didn't invite her in or call police or an ambulance. Instead, she drove the girl home.

Elkins' wife, Melinda, discovered that woman was the common-law wife of Earl Mann, who was in prison for raping his three little girls.

In a twist of fate, Mann ended up in the same cellblock as Elkins. One day Mann flicked his cigarette in the prison yard. Elkins grabbed the butt, then mailed it to his attorney. The DNA lifted from it matched the skin-cell DNA found on the niece's underpants.

Mann was the killer, the Elkins family proclaimed. Free Clarence, they begged.

Sherri wouldn't. Skin cell DNA is easily transferred. She hadn't even tested Mann's DNA. Plus, how could she trust the Elkinses?

Ohio Attorney General Jim Petro, who was running for governor, supported Elkins. But the burden of proof fell on Sherri, not him. What if she let a guilty man out and he killed again?

Sherri did the most politically unpopular thing: She took her time. The press beat her up.

Then she read Mann's prior convictions. She froze when she saw the police reports. The words felt like a punch to the gut. For the first time it hit her.

*Maybe we were wrong.*

### **Polygraph tests lead to the truth**

What she read made her feel sick.

Rape.

Rape.

Rape.

All in the same twisted way Johnson and the niece were raped.

The Johnson murder was so brutal, it could have only been done by either a psychotic or by someone with a deep, long-standing hate for Judy, which the prosecutors believed Elkins had.

Police never considered Mann a suspect. Elkins had a motive and no credible alibi. But now Mann looked worse to Sherri. Elkins lived over an hour away from the murder scene; Mann lived two doors down. Clarence had no prior felonies; Mann had a long list.

He beat an older man to a pulp in a robbery. He hit a man from behind with a pool cue and stole his bag of food. He punched a man, dragged him down his driveway and dropped the unconscious body in the road.

But the worst treatment he saved for his and Tonia Brasiel's three daughters.

Mann lived with Brasiel when he wasn't in jail. He was in prison for those rapes, so Sherri had time to build a case. She had one shot to convict him. A judge might not allow his priors as admissible. Sherri couldn't rely on just weak skin-cell DNA.

Meanwhile, pressure built to let Elkins out of prison. Sherri needed to be 100 percent sure that he was innocent.

She devised a plan: Ask both men to take a polygraph. She figured Mann would pass and Elkins would refuse. Later in the fall of 2005, investigators gave Mann 10 hours of polygraph tests over three days.

The investigators told him they knew Elkins was guilty and needed to confirm it.

Mann said he hadn't been to Brasiel's home in three months before the murder. The needle jumped.

Tell the truth, investigators said, we need to clear you.

Mann moved a sliver closer to the truth. He said he was at Johnson's the night of the murder but only briefly. The needle went wild. So did the hearts of the investigators.

Finally, Mann said he had had sex with Judy.

How did his DNA end up on the little girl?

Mann dropped his head.

The investigator called Sherri.

"What do you mean he flunked?" she asked.

"He flunked pretty miserably," he told her. "Five times."

When Sherri watched the video, she felt sick to her stomach. All along, they had had the wrong person.

Clarence Elkins was innocent. The next day, Dec. 15, 2005, he walked out of prison after 7½ years.

Mann was the killer. How would Sherri prove it to a jury after the Elkins case had been so badly botched?

Before she could tackle that problem, she faced a more immediate one. The phone rang. Her secretary broke the news: "Clarence is here."

Oh my God, Sherri thought. How do I face him? She was tempted to say she was too busy. She couldn't. She owed him an apology and so much more.

Sherri opened the door and faced him and wife. For three hours.

Elkins didn't glare, didn't yell. His silence unnerved her. Sherri apologized, then explained why she thought he was guilty, that she couldn't let him out until she was sure. He nodded. Prison had taught him much about mercy and forgiveness.

Then Sherri laid out the plan to convict Mann. Elkins and his wife thanked her and left.

No apology was enough. Sherri had to do more to clear Elkins' name. She needed to convict Earl Mann.

But how?

### **Team of investigators work to build a case**

First, Sherri removed the prosecutors and police who had helped convict Elkins from the case. She didn't want anyone resisting new information to protect their old work and their reputations.

Her case against Mann was weak. The old Elkins case would be Mann's greatest defense. Her own prosecutor had waved the girl's panties in court and said, "This DNA evidence cannot be connected to this crime."

A death penalty verdict looked impossible. A guilty verdict didn't look likely. The polygraphs were not admissible in court. Mann's prior offenses might not be admissible. The skin-cell DNA wasn't strong enough to convict.

Sherri put five investigators on the case. She ordered a wiretap on a key witness's phone, but after a month, heard nothing. Brasiel wouldn't testify against Mann.

Prosecutors tested 30 pieces of evidence for DNA, but Sherri knew everything they tested would be used against her if it didn't point to Mann. After eight months, in May 2007, a DNA expert came through. Mann left his DNA -- bodily fluid DNA -- on the side of Elkins' niece's panties when he tore them off. The match was 1 in 96,990,000.

In one last act of desperation, Mann, decided to be his own attorney. Sherri felt horrified to think he could cross-examine the child he raped.

Mann sat in prison and pored over all the case files. Months later, he decided he wanted an attorney. The attorney called Sherri two weeks ago.

Mann wanted to plead guilty.

His attorney suggested 25 to life. No way. Mann is only 37 years old. Sherri didn't want him out of prison -- ever. She met with the Elkins family. They agreed to accept 55 years.

Mann took it. It blew Sherri away. "He's willing to plead to forever?" she asked herself.

To Sherri, the plea was better than a trial. It erased all doubt, better than a jury could.

In court last week, Sherri stood as silent as a statue as Mann answered the question "Did you kill Judy Johnson?" with a single, soft word: "Yes."

Sherri felt elated. Mann wouldn't be out until after he's 90. The case was closed.

Not quite.

Clarence Arnold Elkins, once Inmate No. A375856, rose to confront Earl Eugene Mann, Inmate No. A369329, the man whose place he took for 7½ years.

Something inside Sherri broke. It struck her in a way it never had before. She saw the sadness in Clarence's eyes, heard the pain in his voice. My god, she thought, how horribly the justice system failed him.

She doesn't believe there are huge numbers of innocent people in prison. She believes the system works. But she knows it failed Clarence Elkins and that she failed him, too.

The wrongful conviction wasn't hers, yet if she had been the prosecutor, she might have done the same. Some very guilty people are very adamant about being innocent.

She knew Clarence would still be in prison if she hadn't turned over DNA for his family to test. Had she let Clarence out too early, Mann never would have taken the polygraph and wouldn't be behind bars for life.

But she became a prosecutor to help victims, not create them.

After the sentencing, she invited the Elkins family back to her office. She knew the girl who once identified Uncle Clarence as the murderer had taken a look at Earl Mann in court and wondered how she could have been so wrong.

Sherri gave the girl, now 16, a gift of sorts. Sherri held up giant mug shots of the two men from 1998. From the side, the two men looked alike. The girl's eyes grew wide, then she smiled.

Then Sherri asked Clarence to step out of the room to talk privately. She had gotten Mann to plead guilty and forever erased any doubt anyone would ever have. From this day forth, no one could ever say, "I still think Clarence did it."

One last time, she wanted to apologize.

She freed Clarence. She needed to free herself.

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## [Akron Beacon-Journal](#)

December 17, 2005

### Elkins Free, Focus Turns to Mann

#### Another's innocence leaves Toledo inmate to face investigation in 1998 slaying, rapes



By Phil Trexler  
Beacon Journal staff writer

His victims have ranged in age from 7 to 70. From raping three girls to robbing an old man, Earl Gene Mann has done it all.

But it's his latest alleged victims that have put him in the spotlight of one of Summit County's most notorious murder cases.

Prosecutors say Mann is responsible for the crimes that Clarence Elkins had served in prison for nearly eight years.

Thanks to his family, Elkins was freed from prison Thursday.

The courage Clarence Elkins showed by picking up a cigarette butt dropped by his fellow inmate has put Mann on the threshold of a murder indictment that could take him to Ohio's Death Row.

For now, Barberton police and county investigators are working the Mann investigation.

Prosecutor Sherri Bevan Walsh, after announcing that Elkins is innocent, said Mann will soon be charged in the 1998 murder of Judith Johnson and the rape and beating of her granddaughter.

Unlike the Elkins case, in which he was charged within hours of the homicide, authorities are being methodical in their investigation of Mann.

They have time on their side. Mann, 32, still has three years remaining on a prison sentence he received in 2002 for raping three girls.

It was through that case that Mann first made news. He was an ex-convict who had been in and out of prison through most of the 1990s, and the sentence he received was considered soft.

At 5 feet 11 inches, 160 pounds, he was wiry and quick-tempered, as witnessed by his arrest in 1999 for a bar fight in which he assaulted three men and threatened police.

Among his many tattoos are the words "Ozzy" across his left hand knuckles and a skull and flames adorning his abdomen. He was born in Melbourne, Fla., but lived in Akron where he dropped out of Buchtel High School after the 10th grade.

Before going to prison, he liked to work on cars, smoke Marlboros, fish and hunt, and according to prosecutors, drink and fight.

He was named after his father, who died in 1995. And most of his family, including a mother and sister, live in Coshocton in southern Ohio. They could not be reached Friday.

Mann fathered three girls with Tonia Brasiel. And at times, he lived with the children

and Brasiel on West Summit Street in Barberton. A couple of doors away lived Judith Johnson, a feisty, no-nonsensical 58-year-old grandmother, unafraid to put people in their place.

On June 7, 1998, Johnson's granddaughter spent the night. She frequently played with Mann's daughters. At some point, someone entered the home, brutalizing both. There was no sign of forced entry.

On the morning after the murder, the girl awoke and went knocking on Brasiel's door seeking help. Hours later, Elkins, based on his niece's statement, was in custody.

Meanwhile, Mann, who had escaped from an Akron halfway house days earlier, was on his way to Coshocton.

He returned to Northeast Ohio a short time later, when he was rearrested. And while serving time in prison for assaulting a man because he was black and for robbing a 74-year-old man of his wallet, Mann was brought back to court in 2002 to face charges of raping three girls, all under the age of 10.

At the time, prosecutors were criticized for the soft sentence he received after pleading guilty to rape. What could have been a lifelong sentence was reduced to less than seven years because prosecutors miswrote the indictment.

Still, Mann insists that he was a "scapegoat."

His lawyer in the rape case, Tom Adgate, would not comment Friday.

In a letter to the Beacon Journal in September when Mann emerged a suspect in the Johnson murder, the inmate said that if "Summit County was up to its old tricks again, they need not (hire me a public defender). I will be representing myself to ward off whatever this 'situation' may be."

The situation Mann was referring to was the Johnson murder. He had not yet been questioned by police.

"What kind of situation could this possibly be? Well if it's that 'big' I guess I'll find out soon," Mann wrote.

At the time, Mann was housed in the same prison block as Elkins. In a phone interview in September, Mann said he barely talked to Elkins.

Mann didn't know that months earlier, Elkins secretly picked up one of Mann's cigarette butts and mailed it to his lawyer for DNA testing.

Mann has been linked to three key pieces of evidence: Johnson's vaginal swab and the niece's underwear and nightgown, prosecutors said.

Mann is now housed at the Toledo Correctional Institution, where he was moved last summer after attaching a padlock to a belt and attacking a fellow inmate in Mansfield, attorneys said.

Prosecutors also say that after many denials, Mann has admitted visiting Johnson at her home on the day she was murdered. The admission, and others prosecutors say they won't discuss, came after one of the five polygraph tests Mann flunked regarding the murder.

He has, however, continued to deny he killed Johnson.

"So if they have some DNA evidence that might implicate you, you wouldn't know

how it got there?" a reporter asked Mann in a prison telephone interview in September.

``Definitely," he replied.

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<http://wrongfulconvictionsblog.org/2012/02/23/the-polygraph-and-false-confessions/#more-728>

1. *Mark Godsey* | [February 23, 2012 at 3:47 pm](#) | [Reply](#)

You raise a good point, Marty. Three of our clients, including Clarence Elkins and Robert McClendon, were told they failed polygraphs after the crime occurred. DNA testing later proved them innocent. The risks are high, and the ability to manipulate the result is too high as well. When I was a prosecutor, if the suspect took a handwriting test and the “handwriting expert” could not match the sample to the handwriting found in the documentary evidence, the expert could sometimes testify that that the suspect appeared to be manipulating his handwriting, and was writing in an unnatural way, in order to make a match unlikely. There was no science to that, and it was entirely subjective, yet it could have a big impact with the jury. Not on point with polygraphs, but it just goes to demonstrate the lack of science and the ability to manipulate results with some of this stuff.

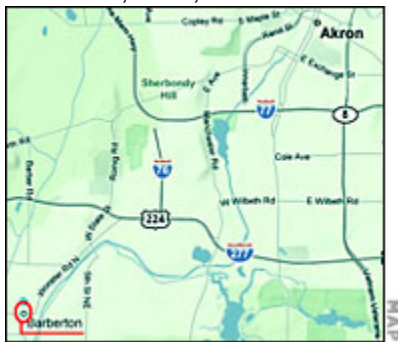
[http://www.trutv.com/library/crime/criminal\\_mind/forensics/ff313\\_clarence\\_elkins/1\\_index.html](http://www.trutv.com/library/crime/criminal_mind/forensics/ff313_clarence_elkins/1_index.html)

# Shadow of a Doubt: The Clarence Elkins Story

BY Katherine Ramsland

## Attack in the Night

Six-year-old Brooke Elkins woke to terrible noises in the middle of the night of June 7, 1998. She had just been to a birthday party for a cousin and was spending the night at her grandmother's house in Barberton, Ohio, near Akron.



Barberton, OH

She got out of bed wearing her grandmother's pink nightgown, opened the bedroom door, and went out to the living room, where she knew "Mamaw," who was 58 and legally blind, would be asleep on the couch. But she wasn't there. The terrible noise proved to be coming from the kitchen, where Brooke saw a man standing over her grandmother with a shiny implement in his hand. The child ran back to the bedroom and closed the door, but she'd drawn the intruder's attention. He entered, and she felt the impact when he struck her but then lost consciousness. The intruder strangled and assaulted her with an object, apparently leaving her for dead, but she woke up hours later, bruised and hurting. She slowly arose and went out to find Mamaw. She needed help.

But Mamaw—Judith Johnson—could not comfort Brooke or get her to a doctor, because she'd been murdered. Her body lay near the couch, covered in blood. Brooke cried out; and, when her grandmother failed to move, she shook her and yelled at her. "But she wouldn't wake up," she later said. She called a friend, who didn't answer, and a neighbor, who also did not pick up. Brooke realized she was in trouble and needed help, so she set out to find someone.

With a bloodstained nightgown and swollen face, she arrived at a neighbor's home, two houses away, as the neighbor, Tonia B., was making breakfast. She did not allow Brooke to come in. Instead, Tonia told her to wait on the front porch. (In an interview with *48 Hours*, Brooke recalled that she stood outside around half an hour.) Finally, Tonia gave her a ride home. When Brooke related what had happened, by Tonia's account, she said the man who'd attacked them was her Uncle Clarence.

In shock, Brooke's parents took her to a hospital for a thorough examination and there she expressed some doubt about whom she had seen. Then she revised her account again and said it was Uncle

Clarence — Clarence Elkins — who had killed her grandmother and hurt her. The police took her statement, and she affirmed it all again to the doctors and her relatives.

Judith was found beaten with a blunt object, raped and sodomized with a blunt object, and strangled.

Apparently, she'd opened her front door to get some cool air, allowing her killer easy access. She'd broken a fingernail scratching him, and a bloody fingerprint had been left behind on the doorframe.

Clarence was swiftly arrested outside his home, 40 miles from Judith's house, despite his wife Melinda's claim that he'd been in bed. However, she admitted she had not been in the same bed with him so she could not say for sure, but she believed that if he'd left the dogs would have barked. The police seemed to treat her as if they believed she was covering for him. Thus, in quick succession, Melinda learned about her mother's brutal murder, her niece's assault, and her husband's arrest. But she remained firm that Clarence was innocent.

Only a year later, when Brooke talked with prosecutor Michael E. Carroll did she express uncertainty again. She said she wasn't certain about seeing her uncle, but the team coached and reassured her, and so she agreed to testify against him. She was, of course, the key prosecution witness. She had been there, she had seen what happened, and there was no one to contradict her.

While there was evidence that suggested the possibility of another perpetrator, with an eyewitness the police did not see the need to waste more resources on the case. Nevertheless, as many forensic psychologists know, cases with child witnesses can be tricky.

## The Child Witness

Most research on the testimony of child eyewitnesses indicates that when they lack the language or experience to describe what has happened to them, they often fall short on accuracy, consistency, and completeness. They may also fear retaliation, and they tend to want to please whoever questions them. During the 1980s, the credibility of child witnesses slipped when a significant number of supposed victims of child abuse made false allegations, mostly due to coaching. In 1985, wrote Mary Pride in *The Child Abuse Industry*, as many as one million people were thus falsely accused. Teachers who had made physical contact with minors were questioned, sometimes fired, and even imprisoned. Conferences devoted to child abuse received many papers on the "reality" of satanic ritual abuse, to the point that professionals were claiming that a significant percentage of cases of child abuse were the result of satanic conspiracies. Debate ensued over the accuracy of child eyewitnesses, since children's recollections can be imaginative, pliable, and easily manipulated. Many of the accusations proved to be uncorroborated by any physical evidence.

Dr. Steven Ceci, a child development expert at Cornell University, told reporters for ABC News that children imprint a memory differently from adults. It forms around their knowledge and past experience, so the younger they are, the less accurate. Children 2 or 3 years old are generally the worst, while accuracy on the level of adults begins around age 6. "The main ingredient that drives the memory difference," Ceci stated, "is how much they know about the event before they experience it." At times, research showed, they can even be more accurate than adults, but the trick was to obtain eyewitness information carefully, as leading questions or props can prompt fabrications and false memories. In unskilled hands, a child's memory can be easily altered. "Children often provide what they think you want them to say."

Compared to adults, children prove to be nearly as accurate when shown a perpetrator in a line-up, but only when the perpetrator is actually present and no one has pressured the witness. Comments from police officers will influence them, as they are more suggestible than adults, and they do have trouble talking easily in the presence of someone they believe has harmed them.

At trial, jurors tend to believe child witnesses, especially the younger ones, because they're perceived as guileless and too unsophisticated to fabricate such things as sexual abuse, unless the claims they make are overly fanciful. However, a study of 248 jurors indicated that adult hearsay witnesses who reported what a child told them were viewed as more credible than the children themselves. In addition, in court a child might be more nervous, which is often viewed as a sign of deception, and a child traumatized by violence may also have difficulty with recall.

Brooke faced all of these factors when she became the star witness in Clarence Elkins' trial in May 1999.

## What She Saw

At the time of his trial, Clarence Elkins was 36. A former press operator, he was charged with raping and killing Judith Johnson, his mother-in-law, and raping and strangling his niece. The potential penalty for this aggravated offense, if convicted, was death. Relevant was the rumor that Clarence and Judith did not get along, and that Clarence and Melinda were having marital problems, although both denied it.



Clarence Elkins

The prosecution's theory about motive was that Judith had been meddling into the Elkins' struggling marriage, and out of frustration he killed her. Why he would then rape her or assault the child seemed poorly addressed by this theory, but there was no other apparent reason for the attack. A friend of Judith's testified that Judith had expressed fear of Elkins and had called him names. Since there was no sign of forced entry and no fingerprints from a stranger (the only one found having been destroyed in processing), this lent credence to the possibility that the attacker was someone who'd been in the home before. However, there was nothing from Elkins, either, that linked him directly to the scene. He claimed he'd been bar-hopping that night and had gone home around 3:00 a.m. Several people had seen him out that night, including friends with a flat tire that he'd helped to fix, but there still remained unaccounted time for him to have left home again to commit the attacks. His alibi was not totally airtight.

Brooke was on the witness stand for about 45 minutes. She could recall little about what had happened to her, apparently having blacked out after she was hit, but Assistant Summit County Prosecutor Becky Dougherty led her carefully through her testimony. She asked Brooke if she was certain about her identification, and she responded, "Yes, because of his face." She scrunched hers up to portray how mean it had looked. Tonia B. testified that Brooke had told her the perpetrator was her uncle.

Defense attorney Larry Whitney wanted the jury to watch and listen carefully to Brooke's testimony. When she'd first described the attack in police statements, she had not identified her uncle. Apparently, she had not known the person, referring to the killer she had seen as "somebody." Had it really been her uncle, she would not have hesitated to say so. Her identification came later, and could have been coached.

Family friend Beverly Kaisak, who had spoken to Brooke the day of the attack affirmed that the child had been uncertain, saying only that the voice had sounded like Uncle Clarence.

Melinda Elkins was present in court, standing by her husband, despite the anger this incurred from her close relatives. Although the victim was her own mother, she knew Clarence was innocent. Nevertheless, he was convicted and given a life sentence, with the possibility of parole in 55 years. Despite the absence of direct evidence, an appeals court upheld the verdict.

## Enhanced Memories

By this time, Clarence's family had taken Brooke to a hypnotist to try to help her recall more specific detail. Given the foibles of human memory, hypnosis has been used by many to try to fill in gaps and add detail and accuracy in eye witness testimony. The most popular techniques involve past-memory regression and memory enhancement. A hypnotist exploits the subject's suggestibility in order to induce a relaxed mental state. The subject becomes attentive, focused, and less prone to critical judgment that can block memory. Going into such a trance purportedly allows the heightening of recollection, with the hope that some detail, such as a license plate number or facial features, might be recalled that would otherwise remain inaccessible.

Now age 7, Brooke submitted to the procedure and said she remembered what her attacker's eyes looked like. They'd been brown. Since Clarence's were blue, this raised his defenders' hopes that he could get a new trial. But there was a problem: Few courts accepted the use of hypnosis.

A landmark appellate case in 1968, *Harding v. State*, involved a request to allow the admission of testimony that had been "refreshed" —enhanced - through hypnosis. Prior to that, hypnosis had been considered too unreliable for lawful admissibility. In the *Harding* judgment, such testimony was admitted, but jurors were instructed to evaluate its credibility. More such cases followed, and soon courts devised guidelines. However, many opted for the decision in *State v. Mack*, in which the Minnesota Supreme Court had ruled that hypnosis had not been generally accepted by the scientific community and therefore any memory recall that was the product of hypnosis would be inadmissible. Even today, courts remain divided on this issue.

Problems with hypnosis-aided recall include the possibility that a recovered memory is incomplete, inaccurate, or based on some leading suggestion. There also might be hypermnesia or confabulation—filling in the gaps with false material that supports the subject's self interest. In addition, hypnotized subjects may experience hypnotic recall, in which a posthypnotic suggestion of something that did not happen gets retroactively integrated into the subject's memory as if it did. Also, personal beliefs and prejudices may influence how an event was initially registered, how it is interpreted during recall or both. More problematic is "memory hardening," which occurs when a false memory evoked through hypnosis seems so real that the subject develops false confidence in it. All of these problems have been documented in experiments, along with the realization that a false memory, once articulated, can be difficult to distinguish from genuine memories.

In a videotaped deposition, Brooke changed her story and now said she did not believe her uncle would do such things to her or her grandmother. However, prosecutors thought family members trying to exonerate Elkins had coached her. "This court should definitely not take this deposition as establishing any reason to question the evidence at that defendant's trial about the identifications of him," wrote assistant prosecutor Richard S. Casey. He firmly resisted any request for a new trial. Judge John Adams agreed, saying it was clear that Brooke had been exposed to too many people with a biased interest in the outcome. There would not be another trial.



Melinda was devastated. "After today," she vowed to a *Plain Dealer* reporter, "the fight is back on. And this time I'm going to be very much more aggressive to try to bring this situation to justice."

## More Sleuthing



Melinda Elkins

By this time, Melinda was fully immersed in her own detective work. She had learned about the legal system, sorted through records, watched television shows like *Forensic Files*, and thought about everyone who might be able to offer information that had not yet been uncovered. She also looked into other possible suspects. She did not hold anything against her niece, but knew that for some reason the girl had given erroneous testimony.

At a cost to her own family relationships, Melinda urged Clarence's siblings to assist, and they pooled their savings to accumulate more than \$100,000. Her sister, Brooke's aunt, also joined the fight. With this money, they looked for a private investigator and a new defense attorney. They believed they knew who had entered Judith Johnson's home that night, but they lacked evidence. They set up a Website and generated publicity, which caught the interest of producers of *American Justice*.

Elizabeth Kelley, an attorney, came aboard to keep the case alive and Martin Yant, a private investigator who had authored *Presumed Guilty: When Innocent People are Wrongly Convicted*, agreed to investigate. His specialty lay in helping to overturn convictions based on poor evidence handling or faulty legal procedures. When he examined the case, he thought it was not only wholly circumstantial, but that the totality of circumstances hardly made an airtight case. No direct physical evidence tied Elkins to the scene, and the child had initially expressed some doubt over her identification. In addition, pubic hairs recovered from Judith's body, skins cells from beneath her fingernails, and cells from her genital area had not been sent for testing. Yant believed that the police had made a common error: they had developed a case around Elkins and had thus failed to look into other possible suspects.

The untested evidence was sent to an independent lab, and the pubic hairs were found to be inconsistent with Clarence Elkins' hair, and the DNA evidence excluded him as its source. However, the court denied another trial because DNA had not been part of the original case. In addition, Brooke's later testimony was not admissible, because it had been hypnotically refreshed. In essence, Clarence was stuck. Neither physical evidence nor eyewitness testimony could gain him a new hearing and thus free him.

Yant decided to ask around to see if there was anyone who had known Judith who might resemble Elkins. He found such a person, and the facts supported the likelihood that he could have been involved. This suspect had sustained a severe head injury as a child — often implicated in impulsive violence — and he

often carried a sawed-off pool stick wrapped in duct tape, allegedly for self-defense. Although he was much younger than Judith, he'd had a romantic interest in her, which she had spurned. In fact, she'd done so only a week before. Around the time of the incident, neighbors had seen scratches on his face and arms, he had brown eyes, and a nurse said that he'd entered Brooke's hospital room after the attack to look at her. Brooke identified him as the man, but when his DNA was sent for testing it did not match. (This was a good example of how easy it is to falsely accuse someone because the circumstances, with logical deduction, seemed to make a solid case.)

In 2002, one of Clarence's five brothers told a reporter, "This has been a miscarriage of justice for my brother and Judy Johnson. No one deserves to have this kind of thing happen to them. One day is too long. Four years is way too long."

Eventually, the Ohio Innocence Project got involved.

## The Innocence Project

When properly used and understood by the court, DNA appears to be an important safeguard against erroneous convictions, and yet for a long time many states resisted post-conviction testing. Attorneys don't like being second-guessed, but since 1992 over 212 convicted men have been exonerated by exculpatory DNA evidence developed by the New York-based Innocence Project.

Founded by defense attorneys Barry Scheck and Peter Neufeld, the Innocence Project operates out of the Benjamin N. Cardozo School of Law at Yeshiva University. Scheck and Neufeld were on the DNA Task Force for the defense attorneys' association and had worked hard to bring accountability into evidence handling. Thus, they set up a pro-bono advocacy group, relying on graduate students to assist. They evaluate requests from prisoners or families of prisoners, read through court transcripts and other reports, and determine whether biological evidence from the case has been preserved well enough for a DNA extraction. If the case fits their criteria and they see problems with the investigation or prosecution, they take it on. Thanks to their work, other lawyers have followed a similar pattern and many more such projects have been set up around the country. Almost every state has one, and some have more than one.

Scheck has stated that many of the cases for which he advocated were "wars," because throughout the 1990s many courts resisted getting DNA testing done. To assert that an innocent person has been convicted is considered by many to be tantamount to an attack on the justice system. "In 33 states in this country," he said, "there are statutes of limitations of six months or less on newly discovered evidence of innocence motions. We have to fight that." In other words, the schedule of legal procedure does not necessarily coincide with that of justice. One thing that the DNA revolution in the legal system has proven, Scheck says, is that there are far more innocent people in prison—sometimes awaiting execution—than we might otherwise believe.

Janet Reno took note of the issues and in 1996 called together a Commission on the Future of DNA Evidence. Everyone who attended agreed that such tests ought to be available, yet in reality, many court personnel continued to defend the existing system against the proposition that mistakes are made. Few lay people understand the ramifications, but in essence, those who are fighting for better statutes for post-conviction testing are working on behalf of people whose innocence can be demonstrated by forensic science—a far more reliable standard than eyewitness testimony. Nevertheless, it can still be an uphill battle.

Ohio is one of the states with an Innocence Project, based at the University of Cincinnati. Mark Godsey, its head, enlisted twenty law students to help go through records for the case of Clarence Elkins.

# The Passion for Justice

The most famous tale involving students is the case of the Ford Heights Four, which even inspired a short-lived television series. David Protess is a professor at the Northwestern University Medill School of Journalism in Chicago. He'd led the way in examining cases of potentially innocent men serving time on death row. Over and over, he and his students had shown how prosecutorial error or poor investigating had led to an erroneous conviction. In the Ford Heights incident, four men had been convicted for a double homicide and two were sent to death row. The students did their own sleuthing and helped to prove them all innocent.

More dramatically, Anthony Porter, with an IQ of 51, was two days from execution when he was finally exonerated. He'd been on death row for sixteen years for a double homicide. For four months, the students had gone over the trial records and had even gone to the crime scene to do a re-enactment. This helped them realize that the eyewitness could not have seen what he said he did. In addition, Porter was left-handed, but the perpetrator had been described holding the gun with his right hand. Under questioning from the students, the eyewitness admitted he'd fabricated his testimony under pressure from police. The students also located the real perpetrator, who confessed.

When Illinois Governor George Ryan learned about this case and twelve other death row exonerations, he placed a moratorium on the death penalty in his state. He was shocked that innocent men might have been executed, and everyone wondered if any might already have been. When he left office, he commuted all death sentences to life.

Thirty-seven states currently allow the death penalty, and it's no secret that court proceedings are not always about justice. Even when investigators and prosecutors do try to be careful, many convictions rely on eyewitness testimony, which has often proven to be corruptible and unreliable. Lack of funding and bad lawyers also top the list of reasons why someone might be falsely convicted. Whatever the reason, DNA testing can provide a way out—but too often only after a struggle. That was the case for Clarence Elkins.

Over the course of two years, the students researched ways to get him a new trial. During this time, they helped to free another prisoner who had wrongfully served 25 years, so they knew they could positively influence the justice system. An attorney noted that students generally immerse themselves in these cases far more than attorneys, who were usually too busy to invest themselves in this much uncompensated work. "They [the students] have no bias, no baggage, no paying clients," an assistant attorney general commented. "They can look at things from a different angle." They were also fighting for justice, for something that mattered.

The Ohio Innocence Project had assisted with the DNA testing and legal processes, but when the motion for a new trial was denied, they knew if they were going to free Clarence Elkins they'd need something stronger.

## Pressing Onward

Melinda was not ready to give up. Her hopes had been raised, then dashed, then raised again and again. Since it was unlikely that Judith and Brooke had been attacked by some wandering stranger, she thought about every possible person where Judith lived who might have had some issue with her. She had always questioned the strange behavior of Tonia B., the woman from whom Brooke had sought help. Instead of calling an ambulance, taking her to the hospital, or at least taking her home, Tonia made the girl wait on the porch in her bruised condition and bloodstained clothing until after she had served her children breakfast. Brooke had told her what happened, yet this shocking information had failed to hurry her.

Apparently, everyone just thought it was simple rudeness and left it alone, but to Melinda it looked suspicious.



Earl Mann

Then further investigation turned up an interesting fact: this woman had been living with a man named Earl Mann and was the mother of his three daughters. In 2002, he'd been arrested for raping them. Under questioning, Tonia admitted that he'd come home in the early morning hours after the murder with deep scratches on his back. He'd claimed he'd been with a "wild woman." When Brooke came to the door of this very home, he'd grown angry and insisted she not be allowed inside. He'd also ordered Tonia to keep the police away. Apparently, she'd meekly obeyed him.

Melinda brought this attention to Clarence's attorney, but she was unable to get a judge to order a DNA test for this new suspect. Knowing that DNA could be tested from a licked envelope, Melinda sent letters to Mann under a fictitious name in the hope that he would respond. But he never did.

By a strange coincidence, Mann was serving his sentence in the same prison as Charles Elkins, and on the same block, which put Clarence in position to get a biological sample. He watched for an opportunity, aware that no one had investigated Mann, and that he might even be innocent, so Elkins did not wish to do anything that might bring unwanted attention to a possibly innocent person. Then one day, after five months, he saw Mann drop a cigarette butt on the ground and walk away. This was it, the opportunity to at least find out if this person could be tied to the murder. Eliminating him would dash Elkins' last hope, but linking him could dramatically turn the case, even free him. He picked up the butt, placed it inside a tissue and pressed it between the pages of his Bible. When he managed to obtain a new Ziploc bag, he sent the butt by mail to his attorney. He knew that someone might catch it and stop it, but surprisingly it went through.

The butt went for DNA testing and the saliva offered enough DNA to indicate that Mann could not be excluded as the source of the biological evidence from the crime scene and both victims. Under questioning, he admitted he'd been in the house several times, including that night, but claimed everything had been fine when he had left.

This turned attention back to Mann's girlfriend, Tonia, the first adult to spend time with Brooke after the incident. It seemed possible that she had suspected Mann and had protected him by coaching the girl. She had even testified that Brooke had named her uncle as the perpetrator.

The Office of the Ohio Attorney General reviewed the DNA analyses. They had already joined the Innocence Project in requesting that Elkins receive a new trial, and they used this new evidence to alert the Summit County Prosecutor's Office. When there was no response, AG Jim Petro called an unprecedented press conference to tell the citizens of Ohio about this egregious injustice. He wanted the

county prosecution team to realize they could not stonewall him so easily. "I didn't understand the short-sightedness of the county prosecutor," he said to a *UC Magazine* reporter, "so I decided to go public."

## Freedom

Finally, on December 15, 2006, more than seven years after his conviction, Clarence Elkins was free to leave the Mansfield Correctional Institution and go home to his family. Melinda and Mark Godsey met him at the door, and Brooke was there as well, with the Elkins' two sons. For the first time in eight years, Clarence would join his family for Christmas. He told Brooke he loved her and expressed deep gratitude to his wife for standing by him and working relentlessly, against all odds, to free him. He also thanked all the students who had worked on the project.



Clarence and Melinda

Yet Melinda was not finished. She had made a promise to her dead mother. While she'd wanted to free Clarence, she also intended to get the real perpetrator behind bars. She wanted to see Earl Mann convicted.

In July 2007, Mann appeared in court to face the charges that Clarence Elkins had faced nine years earlier. In fact, Clarence attended the hearing with Melinda, although they had separated as man and wife. Mann pleaded not guilty and was taken back to prison, but the DNA analysis, which now included a better test on the pubic hair, was solid evidence against him. In addition, in interviews with detectives he'd admitted being inside Judith Johnson's home and had failed multiple polygraphs. According to the *Columbus Dispatch*, Mann was indicted and is scheduled for trial in August 2008.

Elkins says he's working on forgiving and moving on; he might write a memoir, and there's talk of a movie about his ordeal.

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## Killer instinct

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Ten years ago, Melinda Elkins would happily have described herself as a stay at home mom, a housewife, and proud of it. But on June 7th, 1998, everything changed for her.

What happened is the story of how a terrible tragedy would transform an ordinary woman into a would-be C.S.I. investigator. She would embark upon a dangerous mission in which she took on police and prosecutors - a mission that would tear her family apart and leave her broke during her relentless quest for justice.

On that night, ten years ago, she hadn't slept well. She was caring for a sick child and waiting for her husband, Clarence, to come home. He'd been out drinking. A few hours after he got home, early the next morning, she was awakened again by a commotion outside.

It was the police - more than a dozen of them - swarming all over the property. One deputy started questioning Melinda.

Melinda Elkins: He kept asking me questions of who I was, what my mother's name was, and you know, I'm screaming at him to tell me what is going on. And I said, is she okay? And he said, "No ma'am, she's been murdered."

SaraJames: This is your mom?

Melinda Elkins: Yeah. (crying)

Melinda learned her mother, 58-year old Judy Johnson, had been savagely strangled and beaten so badly her nose, jaw, collarbone and skull were all broken. Then she'd been raped. What's more, that night Melinda's mother had been baby-sitting Melinda's little niece, Brooke. The six-year old was asleep in bed when she awoke to the sound of murder.

Two years ago, at age 15, Melinda's niece recalled that awful night.

Brooke: I like got out of bed and I went to the kitchen and I looked and I seen that there was a guy in the kitchen, but it scared me, so I ran back to the bedroom. I just remember like when I went back to the room - like he came in there and then I just remember like I blacked out and then - that's it.

Brooke was horribly beaten, raped and left for dead. Miraculously, she regained consciousness the next morning, and was able to find the phone and call a neighbor for help.

Answering machine call:

Brooke: "I'm sorry to tell you this, but my grandma died and I need somebody to get my mom for me. I'm all alone. Somebody killed my grandma. Now please, would you get a hold of me as soon as you can. Bye."

When the six-year old couldn't reach anyone on the phone, she ran to a neighbor's house. The neighbor, Tonia Braisel, asked Brooke to wait on the front porch while she dressed her three children so she could take Brooke home.

When Brooke arrived home about 45 minutes later, her mom -- Melinda's only sister, April Sutton -- could hardly recognize her.

April Sutton: She was covered from head to toe in blood and she was trying to tell me that something was wrong with my mother.

Sara James: When you saw her, you must have been terrified.

April Sutton: She had told me that they had been attacked and that my mother was stabbed laying in front of the couch dead.

Brooke's father ran to the house, found Brooke's grandmother, and called police.

9-1-1 call:

Brooke's father: My mother-in-law has been stabbed. My little girl spent the night here and the neighbor just brought her home and said that my mother-in-law was laying on the floor dead. And I come up here and she's laying here on the floor. Oh my god.

911operator: What's that?

Brooke's father: She's dead.

Who could have done it?

As it turned out, Brooke told her mother she could identify the killer ... And he was no stranger.

Brooke: I told her that it looked like my uncle Clarence.

Her uncle Clarence - Melinda's husband.

Within the course of a few dizzying minutes, Melinda would learn that her mother had been murdered... and would watch helplessly as her husband, Clarence, was arrested and charged with the crime.

Sara James: Your niece, who knew your husband well, was saying that he was the person who attacked her?

Melinda Elkins: Yes. Those were her first words, that it looked like Uncle Clarence.

Melinda Elkins was grappling with the incomprehensible: She'd learned her mother had been brutally killed, her niece raped and left for dead.



Now detectives at the Barberton, Ohio police department had just charged her husband Clarence with the crimes.

Melinda Elkins: The whole feel of it was just kind of surreal, I mean, I remember thinking, this can't be happening.

What made the situation even more surreal: Her husband's accuser was their niece, Brooke, who was attacked that same night.

And yet -- Melinda believed wholeheartedly in her husband's innocence.

Sara James: You were convinced he hadn't done it?

Melinda Elkins: Convinced is not the word. I absolutely knew 100 percent that he did not do that.

And it wasn't just that she'd been married to Clarence for 18 years and knew his character. Ironically, Melinda's confidence in her husband's innocence stemmed from an incident which infuriated her. On the night her mother was murdered, Clarence had been out late -- drinking heavily -- at a local bar.

Clarence Elkins: I went out and had a couple beers with my friends and came home about 2:40 a.m. Sunday morning.

Police said Melinda's mother - Judy Johnson - had been murdered between 2:30 and 5:30 in the morning -- and she lived an hour away.

Sara James: Were you in any shape to make that drive?

Clarence Elkins: No, no.

What's more, Melinda says she'd seen Clarence when he returned home since she'd been up half the night, caring for a sick child.

But police were equally absolute in their conviction that Clarence was guilty. The rudimentary DNA tests available back in 1998 didn't provide any evidence to link Clarence to the crime but authorities relied on other evidence to build their case.

First and foremost, there was Brooke's eyewitness identification, and friends of Melinda's mother told police that her relationship with Clarence was rocky -- more than enough proof for police and Melinda's side of the family.

Melinda Elkins: They were mad at me, they were upset that I would lie, and, you know, stick up for him.

The family split - and Melinda and her sister - both grieving the loss of their mother - stopped speaking to each other. At the funeral, Melinda was shunned by her relatives.

Standing in the cemetery that day, all alone, without her mother, without her husband, Melinda made a promise to her mom.

Melinda Elkins: That I would find out who did this to her and Brooke.

But as Clarence languished in jail, mounting legal bills forced her to the brink of bankruptcy. She'd lost her job, then her home -- and one year after the murder, her husband went on trial for his life, and their niece was the star witness for the prosecution.

Brooke: I remember when they asked me to point him out, and I just remember all these people staring at me.

After thirteen hours of deliberations, the jury reached a verdict.

Sara James: And the verdict was?

Melinda Elkins: Guilty...Guilty on murder. Guilty on aggravated assault, guilty on three counts of rape.

Clarence Elkins: I couldn't believe the words. I didn't believe the words. I didn't. I heard 'em but it was like - say what you want to say. I know i'm not guilty. I'm innocent.

Melinda watched in shock as her husband was led away.

Melinda Elkins: I said I love you. And he turned and said I love you.

Sara James: Did you tell him anything else?

Melinda Elkins: this isn't over.

But it was -- as far as everyone else was concerned -- when a judge sentenced Clarence Elkins to life in prison. He wouldn't be eligible for parole until the year 2054. It was case closed for everyone except for one person.

SaraJames: All you knew was your husband didn't do it. That didn't mean you knew who did.

Melinda Elkins: That's right.

Sara James: And you were going to have to figure it out.

Melinda Elkins: Exactly.

And she would have to figure it out with no money, no clues, and no investigative experience.

Soon, she'd find herself doing her own detective work, going undercover, putting herself in dangerous situations, driven by her unwavering belief in her husband's innocence.

Melinda Elkins had made a vow - a graveside promise to her murdered mother to track down the true killer. And she had another reason to live up to that vow. She hoped she could find the evidence to free her husband now serving time for that murder. But with her high school diploma and no investigative training, Melinda didn't know where to start.

So she contacted a private investigator -- Martin Yant. Yant has worked on 12 cases that led to exonerations of wrongfully convicted defendants. Yant told Melinda he didn't believe police had done a thorough investigation.

Sara James: how would you grade it, A to F?

MartinYant: F.

Yant agreed to take the case, and along the way, teach her some tricks of the trade to become a detective herself.

Sara James: How did you transform yourself from wife to mom to CSI investigator?

MelindaElkins: Determination, I guess. A really strong drive to find out who did this.

Melinda launched her investigation by scrutinizing her mother's life -- making a list of men Judy Johnson knew who could be potential suspects.

MelindaElkins: It was a little notebook that I had. It became filled with names, and just about daily I would go through it.

And she went one step further. Her plan was to angle for opportunities to collect DNA from potential suspects and then test it.

She hit the run-down streets of her mother's neighborhood in Barberton, Ohio - frequented bars where the men she suspected were known to hang out , collecting their DNA without them knowing it - from a beer glass, a strand of hair, a cigarette butt.

MelindaElkins: If you can imagine sitting across from someone and having a conversation with them while you're thinking, "Is this the person that killed my mother and raped my niece?"

Melinda's months of dangerous field work paid off as she surreptitiously collected DNA samples from various suspects. But then her investigation slammed into a roadblock. It would cost thousands of dollars to test just one sample. And Melinda was broke. She'd lost everything she had paying for Clarence's defense.

And there wasn't only the question of money to pay for DNA testing. How would they overcome the cornerstone of the prosecution's case? That damning eyewitness testimony by Melinda's little niece, Brooke, who'd said Clarence was the killer?

Melinda hadn't seen her niece or her sister in three years. Unsure what to expect, Melinda

made an unannounced visit to her sister's home to see if she could talk to her niece Brooke.

Melinda Elkins: She hesitated for just a short few seconds. And then she hugged me like she hadn't seen me in 3 1/2 years.

And when they finally had a chance to talk, Melinda was in for a stunning revelation.

Brooke - by then nine years old - said she was no longer sure. Recently, she'd had a look at a photo of her uncle. After studying it closely, she was overwhelmed by doubt.

Brooke: It just like stunned me.

SaraJames: You just stared at it.

Brooke: Yeah. I was just standing there looking at him. I missed him and I can't believe I put him in jail.

Soon after, Clarence's attorney questioned Brooke in this videotaped deposition.

Lawyer: Why did you say it was Uncle Clarence?

Brooke: Because it looked like him.

Lawyer: it looked like him. Um...but do you think it was Uncle Clarence?

Brooke: At first, yeah.

Lawyer: At first, yeah. But do you think so today?

Brooke: no.

But after watching the deposition, prosecutor Sherri Bevan-Walsh was not convinced. She thought the girl had been coached to change her story.

SherriBevan-Walsh: When this occurred with the little girl recanting-- we did think it was just yet one more way to try to get a new trial that, in fact, was not true.

Clarence's lawyers did ask for a new trial.

Melinda was stunned when a judge denied their request agreeing with the prosecutor's assessment that Brooke had been pressured into changing her story by that recent family reunion.

Now 38-years-old, Clarence would remain behind bars . Melinda was undaunted. She spearheaded rallies, kept her story alive in the media, and organized an Internet-fundraising drive which drew international interest and raised close to \$40,000.

SaraJames: You felt confident that if you could get the DNA evidence from the crime scene and match that against your husband's, it would prove he didn't do it?

Melinda Elkins: Right.

Melinda realized she desperately needed more legal manpower. She had heard about a new legal clinic at the University of Cincinnati Law School - it was called the Ohio innocence project. The pro-bono program was dedicated to freeing wrongfully convicted prisoners.

Former prosecutor Mark Godsey runs the program.

SaraJames: Did you find yourself believing that she might have a significant case here? Might have a real case?

MarkGodsey: Yeah, absolutely. I could tell that this had a lot of DNA that wasn't tested yet. And so, that's the crucial thing we're looking for.

While Melinda's defense team pushed to get samples of DNA from the crime scene, the original prosecutors were dead set against it.

But Sherri Bevan Walsh - who inherited this case when she took office in 2000 - later agreed to turn it over, setting in motion a chain of events that would turn this case upside-down.

SaraJames: My understanding is that wasn't a very popular decision among your own staff.

Sherri Bevan Walsh: There were differences of opinion, certainly, at the office.

SaraJames: That's a risky move. Suddenly, it's out there--

SherriBevanWalsh: If I had worries about it, I certainly didn't have to turn it over. We believed that by testing the evidence-- it would show that the other person they were accusing did not do it.

When the murder took place back in 1998, DNA screening hadn't been sophisticated enough to get conclusive results in this case. But testing procedures had improved dramatically and now experts could even test for DNA left in skin cells, not just bodily fluids.

When the defense tested a sample from Melinda's mother's body, this time the DNA results were conclusive. The first crime scene sample tested had been collected from Melinda's mother's body. And this time, using the latest techniques, the lab said -- DNA was present.

Sara James: When they tested it, what did they find out?

Melinda Elkins: They found male DNA.

Sara James: And that DNA, did it match Clarence?

Melinda Elkins: no, it did not.

They also tested skin cells discovered on a pair of Brooke's underwear found under the couch at the crime scene.

Melinda Elkins: There was male DNA on those panties.

Sara James: And did it match Clarence?

Melinda Elkins: no, it did not.

And while the DNA didn't match Melinda's suspect either, suddenly what the conviction prosecutor Walsh had been told was rock solid showed signs of significant cracks.

SaraJames: Was that, in essence, opening a Pandora's box when she gave you that DNA?

Melinda Elkins: For them, it was.

SaraJames: And for you?

Melinda Elkins: For me, it was the light at the end of the tunnel.

It seemed clear to Melinda that Clarence would be exonerated, but not to Prosecutor Walsh.

She said because it was skin cell DNA, and not DNA from bodily fluid, it was not convincing enough proof that Clarence was innocent.

SherriBevanWalsh: It would make my job as a prosecutor easier if it were very simple to say, "There's a mystery man. That's the real killer. And this person's excluded, and we're done."

SaraJames: Not that fast?

SherriBevanWalsh: It's just not that fast. Because of skin cells transferring so easily on a pair of underwear, for example, it-- it could be so many people.

The court ruled that because prosecutors had convicted Clarence based on that compelling eyewitness testimony from Brooke, a jury would have reached the same conclusion even if it had known his DNA didn't match that found at the crime scene. Clarence would stay in prison.

Melinda Elkins: I just couldn't believe it. My thought was, what is it gonna take. They want me to hand this murderer on a silver platter to them? Well, by damn, that's what I'm gonna do.

MelindaElkins was convinced that she'd proven her husband's innocence. DNA samples collected at the crime scene didn't match her husband. He couldn't be her mother's killer. And yet the court refused to grant Clarence a new trial. He was about to spend his seventh

year in prison. But MelindaElkins refused to give up.

Melinda Elkins: They are not gonna get away with this. What the hell are they going? What are they thinking?

But her only chance to win her husband's freedom, MelindaElkins realized, was to track down the nameless, faceless person who had gotten away with murder. And as MelindaElkins went back over all the old leads she had come up with, a newspaper article caught her eye. It focused her attention on one woman who had played a key role the morning after the murder, her mother's neighbor, Tonia Brasiel.

Remember, Brasiel said she was making her kids breakfast when a battered and blood-stained little Brooke showed up on her doorstep to say her grandma had been murdered.

MelindaElkins had always wondered why Brasiel left the child on her porch for 45 minutes, before driving her home. Why didn't she just call 911 right away?

As MelindaElkins read that newspaper article about Tonia Brasiel, she began to suspect why.

Melinda Elkins: What jumped out at me was Tonia Brasiel's name in the article. And what it had said was her common law husband had been charged with three counts of rape of children under the age of ten.

It turned out Tonia Brasiel's common law husband, Earl Eugene Mann, was a violent career criminal and convicted sexual predator. What's more, he'd just been released from prison in June of 1998, two days before the murder.

Sara James: Did he quickly go to number one suspect?

Melinda Elkins: Absolutely.

Sara James: Top of the list?

Melinda Elkins: Top of the list.

By now a seasoned investigator, Melinda Elkins knew exactly what she needed. She had to find some way to collect Earl Mann's DNA to see if it matched those crime scene samples. But there was a big problem because Earl Mann was behind bars sentenced to seven years.

Sara James: How were you gonna get DNA of a guy who's in prison?

Melinda Elkins: Send him letters of wanting to be a pen pal.

That was Melinda Elkins's plan. In writing to Mann, she pretended to be someone else.

If he responded -- and licked the envelope -- a lab could test for his DNA.

Sara James: What did it feel like to write those letters to this man who you thought killed your mother and raped your niece?

Melinda Elkins: Made me sick.

Melinda Elkins wrote eighteen letters in all...and all in vain. Then, she found out that Earl Mann had been transferred to a new facility, Mansfield Correctional. In an unbelievable stroke of luck, it was the very prison where Clarence was serving his sentence.

Melinda Elkins: It was an absolute miracle.

Even more extraordinary -- Mann was transferred to Clarences's very cell block.

Melinda Elkins had a thought. Maybe there would be some way for her husband to collect Mann's DNA.

Clarence Elkins: I come in one hot summer day and seeing out of the corner of my eye that Earl Mann was putting out a cigarette butt. I just knew at that point I need to do something.

Clarence picked the butt out of the ashtray.

Clarence Elkins: And took it in my cell. And stuck it in one of my Bibles.

And just in the nick of time. Earl Mann was transferred to another prison a few days after he got the DNA, so if that opportunity hadn't come up, it would have been lost forever.

Two weeks later, Clarence smuggled the cigarette butt out in a letter to his attorney who immediately sent it to a lab for testing.

Sara James: And when you tested it, what did it show?

Melinda Elkins: A match to the crime scene evidence.

That's right. Earl Mann's DNA matched DNA from the crime scene --

Melinda Elkins: Now tell me "no." I dare you to tell me no.

Then, lawyers learned of another, even more specific DNA test which could be conducted on a pubic hair found on little Brooke's panties.

Sara James: And what did you find?

Mark Godsey: That came back as a perfect match to Earl Mann.

A perfect match to defense attorney Godsey; not totally convincing to Prosecutor Walsh. But still impressive enough for her to take note.



Sherri Bevan Walsh: It was too weak to immediately charge Earl Mann with aggravated murder, but it was very concerning.

Walsh then wanted to know everything she could about Earl Mann.

Sara James: Did you go and get-- the file on Earl Mann and pull that out?

Sherri Bevan Walsh: I got several files on Earl Mann. And we read the facts. I don't really know how to describe it-- my jaw just dropped. And I recall saying, this man seems very capable of being the real killer. And I thought, "Clarence Elkins might really be innocent."

Prosecutor Sherri Bevan Walsh had seen the DNA results of that cigarette butt from Clarence Elkins' team. She had also read the file on the new prime suspect: Earl Eugene Mann. Her conclusion: Perhaps Clarence wasn't the killer after all. But there was a difference between what she believed and what she could prove. So she immediately sent her investigators to see Earl Mann in prison with a plan to get him to talk.

Sherri Bevan Walsh: They used good investigative techniques-- basically, they told him, "we're here to clear you. we are here to clear you. Clarence is in prison. we're not lettin' him out."

Just take a lie detector test, investigators suggested to Mann, and that will prove you are innocent. And to keep up the pretext that investigators were really trying to nail Clarence and not Earl Mann, Clarence would be kept in prison even longer while investigators tried to get Mann to talk.

Clarence Elkins would be a pawn in this game, and what he, and Melinda Elkins didn't know was that prosecutors were trying to clear him.

Melinda Elkins: I really didn't think they were going to look into it as seriously as they did-- simply because they wanted to hold onto their conviction.

In fact, Clarence Elkins - he thought he was being punished for smuggling that cigarette butt out of prison - was put in solitary confinement. In fact, it was for his own safety to make sure Mann's pals didn't try to kill him.

Clarence Elkins: I went to solitary confinement or-- you know, to the hole, they call it, for three months. And it was one of the hardest times while I was incarcerated, the most difficult times.

Melinda Elkins feared that solitary would break Clarence. Meanwhile, unbeknownst to her, police were trying to break Earl Mann.

Polygraphexaminer: Any questions before we get going?

Eugene Earl Mann: Am I doing okay or what (laughs)?

Polygraphexaminer: Like I said before, when I'm doing the test, I'm watching you.

In this exclusive video obtained by dateline, Mann takes the first of five polygraph tests.

Polygraphexaminer: Were you inside Judith Johnson's home when she was killed?

Eugene Earl Mann: No.

Polygraphexaminer: Did you kill Judith Johnson?

Eugene Earl Mann: No.

Over the course of weeks, then months, Mann flunked every polygraph test while investigators started finding cracks in his story. At first, he said he didn't know Judith Johnson, Melinda Elkins's mother.

Polygraphexaminer: There may be nuclear DNA going back to the lab that's being analyzed as we speak that belongs to Earl Mann, right? What-- what I-- what I need--

Eugene Earl Mann: The thing is, man, I did not hurt that woman. I did not kill her, okay? I can't do that, okay? I can't just brutally beat a woman like that. Whoever did that was angry with that woman, man.

Then he said he did know her...and had an admission. On the night of the murder, he claimed he had had consensual sex with Johnson, but that she was still alive when he left her house.

Investigator: Isn't it also possible that there is an innocent man in prison?

Eugene Earl Mann: I doubt it. I believe Elkins killed this broad.

But Walsh felt she still needed more: better science, stronger and more conclusive DNA results.

Melinda Elkins believed, however, that she'd delivered her mother's killer to Prosecutor Walsh and that she was doing nothing about it.

Melinda Elkins: Well, I think it's time they admit that.

Melinda Elkins prayed her husband would be home in time to open presents with his family for the first time in nearly eight years.

Melinda Elkins: I think this would be the best Christmas present that any of us could ever ask for.

Armed with her latest DNA evidence, MelindaElkins and her legal team prepared for a press conference that day to call for Clarence's immediate release.

Then, just minutes before the press conference began, Melinda Elkins got the news she'd been waiting for. After seven and a half years, the prosecutor was dropping all charges against Melinda Elkins's husband....her investigation had moved far enough along that she could let him out of prison.

Melinda Elkins now had a call to make - one she'd been hoping of making for more than seven years.

Melinda Elkins: You ready to come home? Then get your stuff packed, honey, you're coming home today.

On a snowy December day in 2005, Clarence Elkins, now 42-years-old, walked out of prison -- free at last.

Clarence Elkins: It's a beautiful day the Lord has made. I am very proud of everyone who has stepped forward on my behalf for justice.

A reunion filled with tears and happiness.

Clarence Elkins: I got what I wanted for Christmas. My life back with my family.

His two sons – and a wife to whom he owed his very liberty.

Clarence Elkins: Melinda Elkins is a very courageous and a strong person and she never gave up.

But the celebration was bittersweet. There was outrage that it had taken so long for a catastrophic mistake to be corrected.

Clarence Elkins: I am angry at everyone that had a part in arresting me and prosecuting me. I put the anger behind me in the back of my head for all those years, but it comes out at times. And it's not easy to deal with.

Sara James: Do you ever look back on that time, that period of a couple of months, and say, "Clarence Elkins spent several months, at the very least, above and beyond what he needed to spend."

Sherri Bevan Walsh: We needed to thoroughly investigate this case. And we did it as fast as we possibly could. Do I feel horrible about what happened? I-- I do.

When Prosecutor Sherri Bevan-Walsh dropped the charges against Clarence, she publically announced she had made a mistake and for the first time identified Earl Mann as the new prime suspect.

Sherri Bevan Walsh: We are expecting that by the completion of this investigation, that charges will be forthcoming against Earl Mann.

Strangely enough, years later when the story finally did come out about the cat and mouse game Walsh played with Earl Mann at the expense of Clarence Elkins, the prosecutor gained an unlikely supporter of that decision: her most vocal opponent, Melinda Elkins.

Melinda Elkins: Well, in Clarence's case, I truly would say that that was the only option-- but in the long run, to make the wrong right, there had to be a sacrifice. And unfortunately, that was laid on-- on Clarence.

Now the question was, would the sacrifice be worth it?

Sherri Bevan Walsh: I know he's guilty, but can I prove that? Can we prove that to a jury?

While Earl Mann remained in prison, prosecutor Sherri Bevan Walsh continued to test for more DNA matches to strengthen her case.

Sherri Bevan Walsh: I know he's guilty, but can I prove that? Can we prove that to a jury is the next issue--

Sara James: And not only--

Sherri Bevan Walsh: --that we had to deal with.

Sara James: --prove it, but overcome the fact that you've already convicted somebody else and messed up.

Sherri Bevan Walsh: That-- and that's exactly right.

For seven and a half years, prosecutors had told the world they had the killer and his name was Clarence Elkins...

Sherri Bevan Walsh: I think it hurts our credibility. So we need to have an even stronger case against Earl Mann to-- to try to overcome the negatives.

Clarence was finally released in December 2005, but more than a year later, prosecutors still hadn't filed charges against Earl Mann.

Melinda Elkins: It was very nerve-wracking. I felt that I was going into fight mode again. And was gonna have to fight to get him actually indicted.

Finally, after getting even more DNA linking Mann to the crime - this time, sweat from his hands on Brooke's panties - in June 2007, Earl Mann was indicted.

Clarence and Melinda Elkins went to his arraignment and watched him plead not guilty via closed circuit camera. Melinda Elkins thought her quest for justice might soon be over.

But Earl Mann was about to do something that would torture his victims all over again. With a trial looming just months away, Mann made a shocking announcement in court that sent

shivers down Melinda Elkins's spine.

Mann told a judge that he had fired his lawyers and that he would represent himself at trial.

Mann in court: I pretty much feel I got myself into this mess by talking to investigators in this case. And what the state alleges a partial confession is in fact false, they know it and I feel I should get myself out of it. If not, I'm the one who will have to suffer the consequences.

Sara James: You learned that Earl Mann was saying he was gonna represent himself which would mean that he would have the ability to cross-examine everybody including Brooke.

Melinda Elkins: It scared me. I did not want to have to put Brooke through that. I didn't-- no one wanted to-- her to go through that.

She never had to. After seven and a half years, and all of Melinda Elkins's investigating, Earl Mann would finally admit in court that he killed her mother and attacked her niece. The court announced that Mann had negotiated a plea agreement. Before his sentencing, Melinda Elkins and Clarence would finally confront in court the demon who'd demolished their lives.

Melinda Elkins: All the pain and anguish that he caused my mother and my niece and my family and myself just exploded. All the things that I have felt for so many years, I-- I finally was able to-- let it go.

Mann was sentenced to 55 years in prison, and won't be eligible for parole until he's 92. Now, at long last, Clarence Elkins was not only free, he was free from suspicion and doubt. Why didn't this day come sooner?

Melinda Elkins thinks it's partly because prosecutors felt she was just another criminal's wife trying to get her husband out of jail. However, in her case, she says, there was one important difference that made her more credible.

Melinda Elkins: I think that-- prosecutors are geared-- that most women-- do protect their men, do lie for their men. But it-- if you put in the factor that it was my mother who was brutally murdered and raped, I think they should have at least said, "let's look at someone else."

For many years, the fate of Clarence Elkins seemed to boil down to a battle of wills between two strong women, Melinda Elkins and prosecutor Sherri Bevan-Walsh. But in the end, there was common ground.

Sherri Bevan-Walsh: For whatever anyone wants to say about Melinda Elkins and her aggressiveness and how vocal she was-- if it weren't for Melinda Elkins, this wouldn't of happened.

Melinda Elkins: I did what I had to do. I'm not super woman, I'm your average person and I could not let my mother's death be a-- statistic. I just wasn't going to do that. I had to know

who did it.

But unfortunately, there would be no story book ending for Melinda Elkins and Clarence Elkins. After his release, their marriage was impossible to rekindle. Clarence had been gone for so long and so much had changed. Shortly after his release, he and Melinda Elkins separated and later divorced.

Melinda Elkins: During the 7.5 years when I fought for this case, I pushed emotions back so far that that feeling of being his wife was gone.

Clarence Elkins: I don't know where to pick up really. I have a tendency to go back before I was arrested. Ad just want to be with my sons everyday like nothing ever happened.

But recently one thing has helped salve the wounds of their breakup, a little girl named Madison, Melinda Elkins and Clarence's first grandchild.

Melinda Elkins: She has brought joy and happiness-- real joy and happiness that you feel every time you look at her.

Sara James: That always brings hope and optimism, doesn't it?

Melinda Elkins: Yes. I think that we were given an overdose of hope through this whole thing; that's what we clung to. But now it's-- it's more of a happier hope. Things are-- things will get better.

For so many years hope was all there was. Now after seeing hope translated into reality, on the day Earl Mann pleaded guilty, Melinda Elkins went to the place where she made that promise to her mother ten years before.

Melinda Elkins: We went to the cemetery and we put flowers on the grave and we released balloons and that-- that day was for her, that day was-- she finally got justice.