



## Gary Gauger

Convicted and sentenced to death for the 1993 double murder of his parents in McHenry County, Illinois, Gary Gauger was released in 1996 after charges were dismissed, and later pardoned by Governor George H. Ryan in 2002 based on actual innocence.

Morris and Ruth Gauger – dairy farmers who owned a motorcycle shop and sold imported rugs – were murdered on April 8, 1993, at their McHenry County farm. The following day Gary Gauger discovered the body of his 74-year-old father and called 911 to summon paramedics, who notified the sheriff's office. Shortly after deputies arrived, they found the body of 70-year-old Ruth in a trailer from which the rugs were sold.

Lacking any evidence or signs of forced entry, police took Gauger to the police station for questioning. During an 18-hour interrogation, detectives lied to Gauger and misled him. They claimed that they had found blood-soaked clothes in Gauger's bedroom; and they told him that he had failed a polygraph test which was, in fact, inconclusive. Gauger was persuaded by the interrogators to discuss a hypothetical situation, describing how he would have killed his parents during a possible alcohol-induced blackout. The interrogation was not tape-recorded and Gauger did not sign a confession. His hypothetical statements were later used in court in support of a claim that Gauger confessed to the crime.

Gauger was indicted in early May and tried for the double murder. The prosecution relied on the alleged confession and the testimony of a jailhouse snitch, Raymond Wagner. The jury found Gauger guilty, and Judge Henry L. Cowlin sentenced him to death on January 11, 1994. After Lawrence C. Marshall from Northwestern University agreed to take the case on appeal, Judge Cowlin reduced the sentence to life in prison.

In March 1996, the Illinois Appellate Court delivered a unanimous ruling that Gauger's alleged confession should not have been admitted in evidence because it was the product of an illegal arrest without probable cause. The case was remanded for a new trial. Although the State's Attorney, Gary W. Pack, continued to maintain that Gauger committed the murders, he was forced to dismiss the charges and Gauger was released from prison on October 4, 1996.

In June 1997, a federal grand jury indicted James Schneider and Randall E. Miller, members of the Outlaws motorcycle gang, on 34 counts of racketeering, including the murders of Morris and Ruth Gauger. Schneider pleaded guilty to acts relating to the murders in 1998, and was sentenced to 45 years. Miller was convicted in June 2000. At Miller's trial, prosecutors played a recording of a conversation in which Miller said that the authorities could not link him to the Gauger murders because he had been careful not to leave physical evidence. The recording had been made by an Outlaw who turned government informant. Miller was sentenced to two life sentences.

Gauger received a pardon based on innocence from Governor George H. Ryan in December 2002. In 2004 he received \$60,150 from the Illinois

<b>State:</b>	Illinois
<b>County:</b>	McHenry
<b>Most Serious Crime:</b>	Murder
<b>Additional Convictions:</b>	
<b>Reported Crime Date:</b>	1993
<b>Convicted:</b>	1993
<b>Exonerated:</b>	1996
<b>Sentence:</b>	Death
<b>Race:</b>	Caucasian
<b>Sex:</b>	Male
<b>Age:</b>	41
<b>Contributing Factors:</b>	False Confession, Perjury or False Accusation, Official Misconduct
<b>Did DNA evidence contribute to the exoneration?</b>	No
<b>:</b>	

Court of Claims, but a federal law suit against county officials was dismissed on technical grounds.

— *Center on Wrongful Convictions*

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# Gary Gauger

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*(March 2011)*

**Gary Gauger** is a formerly imprisoned convict, who was falsely accused and convicted of the [murders](#) of his parents, Morris and Ruth Gauger, and later [exonerated](#). Following the murder on April 8, 1993, Gauger ultimately spent nearly two years in prison and 9 months on [Death Row](#) before being released in March 1996.

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## [\[edit\]](#) Murder and Trial

On April 9, 1993, Gary Gauger called the U.S. emergency number [9-1-1](#) after finding his 74-year-old father's body. Paramedics were summoned, as well as the [McHenry County Sheriff's Department](#), who soon found the body of 70-year-old Ruth Gauger in a trailer on the property.<sup>[1]</sup> Gauger told officers he was asleep when his parents were murdered. Despite this, Gauger was interrogated for 21 hours by the police. Officers lied to Gauger and told him that they had found evidence against him. "They told me that they had found bloody clothes in my bedroom; they found a bloody knife in my pocket," he said. After showing Gauger gruesome photographs of his parents, Gauger broke down and confessed. Though Gauger had no memory of the crime, he believed what police had told him. "I thought I must have done it in a blackout," he said. Though he had given a confession, there was no physical evidence held against him in court. Gauger was found guilty of the double murder, and was sentenced to death.<sup>[2]</sup>

## [\[edit\]](#) Exoneration

On March 8, 1996, the Second District Illinois Appellate Court unanimously reversed and remanded the case for a new trial on the ground that Cowlin erred in failing to grant a motion to suppress Gary's allegedly inculpatory statements. In an unpublished opinion written by Judge S. Louis Rathje, with Judges Robert D. McLaren and Fred A. Geiger concurring, the court held that the statements were the fruit of an arrest made without probable cause and therefore should not have been admitted at the trial.

Without the confession, McHenry County State's Attorney Gary W. Pack had no choice but to drop the charges, and set Gary free. Pack continued to suggest publicly that Gary had in fact committed the crime and was freed only because the prosecution could not meet its burden of proof without the confession.<sup>[3]</sup> He was pardoned in 2002 after two motorcycle gang members were ultimately convicted of the crime. Despite this, Pack continues to profess that Gary had committed the crime. Gauger was denied the right to receive compensation for his imprisonment, citing immunity to the police, detectives, and prosecutors.

## **[[edit](#)] Life Since**

Gauger gained national attention following his exoneration, and was featured on *The Oprah Winfrey Show*, *60 Minutes*, *20/20*, *Connie Chung Tonight*, *A&E Investigative Reports*, and *Court TV*. Gauger has since published a memoir of the ordeal entitled "In Spite of the System" with Julie Von Bergen.<sup>[4]</sup>

## **[[edit](#)] References**

1. <sup>^</sup> "Gary Gauger | The Justice Project." Increasing Fairness and Accuracy in the Criminal Justice System - The Justice Project. Web. 09 Nov. 2010. <<http://www.thejusticeproject.org/profiles/gary-gauger/print/>>.
2. <sup>^</sup> "Why Innocent People Confess to Murder - ABC News." ABCNews.com - ABCNews.com: Breaking News, Vote 2010 Elections, Politics, World News, Good Morning America, Exclusive Interviews - ABC News. Web. 09 Nov. 2010. <<http://abcnews.go.com/2020/story?id=123938&page=1>>.
3. <sup>^</sup> "Gary Gauger | The Justice Project." Increasing Fairness and Accuracy in the Criminal Justice System - The Justice Project. Web. 09 Nov. 2010. <<http://www.thejusticeproject.org/profiles/gary-gauger/print/>>.
4. <sup>^</sup> Gauger, Gary, and Von Bergen. Gary Gauger. Web. 09 Nov. 2010. <<http://www.garygauger.com/>>..

<http://www.garygauger.com/>

Wrongly arrested for the brutal murders of his parents.  
Interrogated for 18 hours.  
Convicted and sentenced to die.

Years later, exonerated.

Some people say Gary Gauger got out because the system worked.

He says it happened  
In Spite of the System  
Available now from Fourcatfarm Press:

In Spite of the System: A Personal Story of Wrongful  
Conviction and Exoneration  
By Gary Gauger and Julie Von Bergen

Gary has been interviewed on The Oprah Winfrey Show, 60 Minutes, 20/20, CNN  
Tonight with Connie  
Chung, A&E Investigative Reports, and Court TV. He has been the subject of numerous  
print  
interviews in the U.S. and overseas, and is one of six former death row inmates profiled  
in the  
acclaimed play, The Exonerated.

Gary tells his complete, first-person story in In Spite of the System.  
For most of his life, organic farmer Gary Gauger figured the police caught the bad guys,  
the  
prosecution gathered all the evidence, and the courts made sure only guilty people went  
to prison.

That all changed on April 8, 1993, the day his parents were brutally murdered on their  
Illinois farm.  
Arrested the next day for the crimes, Gary was sentenced to death and spent the next six  
years  
trying to clear his name.

Click here to read about his case  
For more information on wrongful convictions and the  
death penalty, visit these websites:

Illinois Coalition to Abolish the Death Penalty  
Northwestern University School of Law Center on  
Wrongful Convictions

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Pressroom

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## GARY GAUGER

Gary Gauger was sentenced to death based mostly on statements he allegedly made during an interrogation that authorities claimed amounted to a confession



Gary Gauger (Photo: Jennifer Linzer)

**Morris and Ruth Gauger** were murdered on April 8, 1993, at their McHenry County farm, where they operated a motorcycle shop and sold imported rugs in addition to farming. Their son, Gary Gauger, who lived with them, discovered his 74-year-old father's body the next day and called 911 to summon paramedics, who notified sheriff's police. Shortly after deputies arrived, they found the body of 70-year-old Ruth in a trailer from which the rugs were sold.

Gary, 41, was taken into custody and, after an all-night interrogation, made statements that police and prosecutors claimed constituted a confession. He denied that he had confessed, claiming he had made the statements only hypothetically after his interrogators persuaded him it was possible he had committed the double murder during an alcoholic blackout. The statements were not electronically recorded, and deputies made no contemporaneous record of them.

Despite an exhaustive search of the farm, no physical evidence was found linking Gary to the crime.

Nonetheless, he was indicted on May 5, 1993, on two counts of murder.

At a hearing on a pretrial motion to suppress the alleged confession, Gary testified that deputies had induced him to speculate about how he might have committed the crime. He said they accomplished this by telling him that he had failed a polygraph examination and that clothes drenched in his parents' blood had been found in his room. In fact, the polygraph had been inconclusive and there were no blood-drenched clothes.

At trial, the jury heard the official version of Gary's allegedly inculpatory statements. According to deputies, Gary told them he committed the crimes by coming upon his parents from behind, pulling their heads back by their hair, and cutting their throats. The only evidence introduced to corroborate the alleged statements was the testimony of a pathologist who performed autopsies on the bodies and a state forensic scientist who examined loose hairs found near Ruth's body.

The pathologist, Dr. Lawrence Blum, testified that the wounds on the victims' bodies were consistent with the possibility that the killer had come upon them from behind and cut their throats, although Blum acknowledged it was equally possible that the Gaugers had been bludgeoned before their throats were cut. The forensic scientist, Lurie Lee, testified that the hairs found near Ruth's body and presumed to be hers had been broken and stretched in a manner that would be consistent with the alleged confession, although Lee acknowledged that the hairs also could have been broken during combing or brushing.

The prosecution also sponsored the testimony of a jailhouse snitch, Raymond Wagner, a twice-convicted felon who was incarcerated with Gary in the McHenry County Jail. Wagner claimed that Gary repeatedly admitted killing his parents.

After the jury found Gary guilty on both counts, he waived a jury for sentencing and was sentenced to death by Judge Henry L. Cowlin on January 11, 1994. Nine months later, after Northwestern University Law Professor Lawrence C. Marshall agreed to take the case on appeal, Cowlin reduced the sentence to life in prison.

On March 8, 1996, the Second District Illinois Appellate Court unanimously reversed and remanded the case for a new trial on the ground that Cowlin erred in failing to grant a motion to suppress Gary's allegedly inculpatory statements. In an unpublished opinion written by Judge S. Louis Rathje, with Judges Robert D. McLaren and Fred A. Geiger concurring, the court held that the statements were the fruit of an arrest made without probable cause and therefore should not have been admitted at the trial. Without the confession, McHenry County State's Attorney Gary W. Pack had no choice but to drop the charges, and set Gary free. Pack continued to suggest publicly that Gary had in fact committed the crime and was freed only because the prosecution could not meet its burden of proof without the confession. Pack's position was severely undermined in June of 1997, however, when a federal grand jury in Milwaukee indicted two members of a Wisconsin motorcycle gang known as the Outlaws for 34 acts of racketeering, including the murder of the Gaugers. One of the Outlaws, James Schneider, pleaded guilty to acts relating to the murders in 1998. The other, Randall E. Miller, was convicted of the charges in U.S. District Court in Milwaukee in June of 2000. At Miller's trial, prosecutors played tape recordings in which Miller was heard to say that the authorities had nothing to link him to the Gauger murders because he had been careful not to leave any physical evidence. The recordings had been made by an Outlaw who turned government informant. After his release, Gauger returned to farming in McHenry County. "Until this happened," he said. "I really believed in the criminal justice system."

In December 2002, Gauger received a pardon based on innocence from Illinois Governor George H. Ryan.

[Buy Gary's Book](#)



[http://www.gie.org/New%20Folder/police\\_and\\_prosecutors1.htm](http://www.gie.org/New%20Folder/police_and_prosecutors1.htm)

## POLICE AND PROSECUTORS WIN WRONGFUL CONVICTION CASE

In the last decade, scores of persons convicted of murder have been released from prisons after their convictions were overturned. The release of these individuals sometimes is based on technicalities, but in other instances the release was based on newly discovered evidence (i.e., DNA). In such cases, the released individuals frequently turn the tables on government officials by filing civil rights lawsuits against the police and prosecutors. However, these cases can be successfully defended, as a recent case being handled by Hervas, Sotos, Condon & Bersani amply demonstrates.

### Gauger v. McHenry County

Around noon on April 9, 1983, Gary Gauger phoned 911 to report that he had discovered his father, Morry, dead on the family's 214-acre farm in Richmond, Illinois. Investigating officers descended upon the scene and learned that his mother was missing as well.

Several hours later, McHenry County detectives broke a lock on a trailer near the farmhouse and discovered Gary's mother, Ruth, also dead. Both Morry and Ruth Gauger had their necks savagely slashed with a knife and had been hit forcefully on the head, probably with the butt of a gun.

Sheriff's detectives did not find any signs of ransacking or forced entry. Shortly after the discovery of Ruth's body, police took Gary Gauger to the McHenry County Sheriff's Department for questioning. Gauger made a number of incriminating statements regarding how he had killed his parents. However, he would later claim that he did not confess but had only given a "hypothetical" account to detectives as to how he could have committed the murders.

Gauger was convicted of the murders by a McHenry County jury and sentenced to death in 1994. His sentence was subsequently vacated and reduced to life imprisonment due to the absence of any prior serious criminal history.

Gauger appealed his conviction. While Gauger's appeal was pending, federal ATF agents developed information in connection with an unrelated investigation which indicated that two members of the notorious Outlaw Motorcycle Gang might have carried out the murders of Morry and Ruth Gauger. This information was provided in late 1995 to the McHenry County Sheriff's Office and ultimately the State's Attorney's Office.

On March 8, 1996, the Illinois Appellate Court reversed Gauger's conviction, concluding that he was detained and interrogated without probable cause. As a result, the Appellate Court concluded that Gauger's incriminating statements should have been suppressed as "fruits of an illegal arrest." Based on additional information received from federal authorities concerning the Outlaw investigation and the Appellate Court's reversal of Gauger's conviction, McHenry County prosecutors agreed in July 1996 to release Gauger on home monitoring. In October 1996, prosecutors dismissed the case against Gauger. In June 1997, Outlaw member James Schneider confessed that he and fellow Outlaw Randall Miller killed Morry and Ruth Gauger. Schneider and Miller were subsequently convicted in federal court.

In 1999, Gauger sued McHenry County detectives and prosecutors for wrongful conviction. Gauger alleged that his civil rights were violated, and he sought millions of dollars in damages.

On September 24, 2002, Federal District Court Judge Philip Reinhard granted summary judgment in favor of the defendants and dismissed Gauger's lawsuit.

In his civil lawsuit, Gauger had alleged that the detectives had repeatedly threatened that they had a "stack of evidence" against him, such as bloody fingerprints, a bloody knife, bloody sheets, and bloody clothing that they found in Gary's bedroom when, in fact, they had no such evidence at all. The detectives also allegedly told him he had failed a polygraph exam when, in fact, the results were inconclusive. However, Judge Reinhard held that detectives were legally free to mislead, deceive and lie to a suspect in their attempts to get him to confess and, therefore, did not violate Gauger's constitutional rights during the interrogation.

Gauger had also argued that, even if the detectives could legally engage in such deceptive tactics, they were obligated to advise prosecutors in their reports of these tactics. However, Judge Reinhard rejected this argument, holding that the alleged non-disclosure by detectives could not possibly have denied Gauger a fair trial because Gauger was obviously at his own interrogation and therefore knew about the detectives' allegedly manipulative tactics. Indeed, Judge Reinhard held that since Gauger himself testified at trial about what happened during his interrogation, it made no sense to say that he was denied a fair trial. In conclusion, Judge Reinhard held that detectives had wide latitude in terms of the tactics they could use to extract a confession, and they were not legally obligated to tell prosecutors about their use of those tactics.

Judge Reinhard also ruled in favor of the prosecutors. Gauger had sued the prosecutors for failing to promptly disclose the post-conviction information gained from the ATF Outlaw investigation. The prosecutors argued that immediate disclosure, however, was not warranted because the information from the ATF was sketchy and, in any event, confidential. The prosecutors were concerned that premature disclosure of the information to Gauger or his attorneys could have jeopardized the federal investigation and led to the death of an ATF confidential informant.

Judge Reinhard concluded that the evidence given to prosecutors by the ATF was, in fact, exculpatory and therefore should have been disclosed to Gauger after his conviction. However, Judge Reinhard held that the prosecutors were entitled to qualified immunity, because there was no case law clearly establishing that the prosecutors had a legal obligation to disclose exculpatory evidence within a set period of time after an individual has been convicted.

Judge Reinhard's rejection of Gauger's lawsuit helps dispel the notion that acquitted criminal defendants are automatically entitled to recoup millions of taxpayer dollars, even when they cannot prove official misconduct. This case is being appealed. The police and prosecutors are being represented by HSC&B attorneys Jim Sotos, Jason Rose and Kim Fahrbach.

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[http://articles.chicagotribune.com/2002-10-13/news/0210130286\\_1\\_polygraph-real-spies-false-positives](http://articles.chicagotribune.com/2002-10-13/news/0210130286_1_polygraph-real-spies-false-positives)

# The truth is that polygraphs lie

October 13, 2002|By Steve Chapman. Steve Chapman is a member of the Tribune's editorial board.

In May 1978, four men were arrested by Cook County Sheriff's deputies for murdering a suburban man and raping and murdering his fiancée (this sentence as published has been corrected in this text). All of the suspects claimed they were innocent, but there was no real doubt about their guilt: Three of them, after all, had failed a polygraph exam.

Eventually, the Ford Heights Four, as they became known, were convicted for these brutal slayings, and two of the defendants were sentenced to death. But in 1996, DNA evidence exonerated all four. They had spent 18 years behind bars, partly because the lie detector lied.

FOR THE RECORD - This story contains corrected material, published Oct. 15, 2002.

A report issued last week by the National Academy of Sciences recommended that the federal government stop using polygraphs to screen for security risks. Why? Because, in the words of the study, these devices are "intrinsically susceptible to producing erroneous results." That's academese for "I wouldn't trust one as far as I could throw it."

The Department of Energy adopted polygraph screening of employees in response to the case of Wen Ho Lee, a scientist who was accused of spying for China but was convicted of only a minor security violation. DOE now tests about 2,000 people a year. But George Mason University systems engineering professor Kathryn Laskey, a member of the NAS committee, noted, "No spy has ever been caught using the polygraph."

There are particular dangers in subjecting lots of people to polygraphs in the effort to find a few wrongdoers, because false positives will greatly outnumber "true" positives. Some employees who have done nothing wrong will nonetheless have physiological reactions that look suspicious. Some accomplished liars will be able to fool the machine.

To nab 8 out of every 10 real spies, the NAS report found, the device would probably have to erroneously implicate nearly 1,600 people. If it were set to

minimize false positives, 80 percent of the real spies would slip past. But even then, 20 innocent people would be flagged for every guilty one.

The same fallibility that renders these machines unusable for employee monitoring makes them dangerous for criminal investigations as well. Police and prosecutors regard polygraph results as the closest thing to a dead-bang certainty. But that faith lacks any foundation. "Almost a century of research in scientific psychology and physiology provides little basis for the expectation that a polygraph test could have extremely high accuracy," concluded the panel.

And there is no reason to think better technology will help. People simply don't respond in a clear and predictable way to questions about what they may have done wrong. The "inherent ambiguity of the physiological measures used in the polygraph suggest that further investments in improving polygraph technique and interpretation will bring only modest improvements in accuracy," said the report. Polygraphs are a crude instrument that can't be refined.

The consequences of a misleading polygraph exam are bad enough in the employment arena, where someone can lose a job or not be hired. But they're much worse for criminal suspects, who can be locked away or even put to death because their pulse rate rose too much in a stressful situation.

A polygraph result generally can't be used as evidence in court. But some states allow the information if both the prosecution and the defense concur. So prosecutors may offer suspects the opportunity to clear themselves. Innocent suspects sometimes feel they have nothing to lose and much to gain from going along--only to fail the test.

A couple of weeks ago, one Jimmy Williams was officially cleared by an Ohio court after spending 10 years in prison for the alleged rape of a 12-year-old girl. In fact, the rape never happened, but the Akron man nonetheless managed to fail a polygraph exam. Because his lawyer had agreed in advance to admit the results, the jury was told that the lie detector had implicated him.

Other defendants have been victimized not only by the polygraph itself but by its aura of infallibility. **Gary Gauger** was sentenced to death for the murder of his parents on their McHenry County farm but was eventually exonerated. He took a polygraph during his interrogation, and the results were inconclusive. But the police told him he had failed it.

He was so rattled by the news that the cops were able to get him to speculate aloud how he might have killed his parents. Those statements were then used to convict him of a crime he never committed.

Our medieval forebears had their own lie detector test: Suspected witches were dunked in water, on the theory that the innocent would sink and the guilty would float (this sentence as published has been corrected in this text). Polygraphs aren't quite so preposterous, but they're bad enough.