

The Voice Behind a 378-Year Sentence By Ajay Dev

March 2019



In 1999, my wife Peggy and I adopted my distant cousin's daughter from Nepal. She was 16 at the time. In February 2004, two months after she moved out from our house, and the day after her boyfriend broke up with her, she went to the Davis Police alleging I had sexually assaulted her several times a week from early 1999 to late 2003. This incredible allegation was the start of the nightmare I live in today. Months later she withdrew the allegations, and then months after that she renewed them. In April 2006, six weeks prior to the Yolo County District Attorney's Election, the District Attorney charged me with about 90 counts of improper sexual conduct with my adopted daughter (herein [AV]). I pled Not Guilty to all charges. I refused to take any plea deal and headed straight to trial. I did not testify at my trial. The jury found me guilty on 76 out of 92 counts and I was sentenced to 378 years in State prison in August 2009.

From day one, I have maintained my innocence to every charge. I stand before God and do solemnly swear on the oath of my natural born life that I am an innocent man falsely accused, tried and convicted of crimes I did not commit. What you are seeing is a person whose freedom has been taken away for crimes he did not, would not and could not commit. I am still in prison after almost a decade. And yes, I still assert my innocence of all charges. Time will not change that.

This article is divided into four sections:

- I. Current Status of My Case
- II. My Life in Prison
- III. A Word of Gratitude
- IV. Background of My Case

I. Current Status of My Case

As you may know, in January 2017, my conviction was affirmed by the Appellate Court. Although I had been told that getting a reversal in the Direct Appeal is nearly impossible regardless of how strong my case is, the news was still very disappointing for me. I have always felt if my case is weighed on merits, I will get my relief. Essentially all the exculpatory facts presented in the Opening Brief and Reply Brief we had submitted to the Appellate Court were omitted from their Opinion and should have been summarized in the Opinion giving both a fair and accurate account of the trial evidence and to properly conduct state and federal harmless error analysis. The Direct Appeal can only cover evidence that was presented in the trial.

Though a legal appeal is a very slow and tiring process, we have come a long way in bringing us inches closer to my hopeful freedom soon. Unlike the Direct Appeal, we were able to put on newly discovery evidence in the petition for the Writ of Habeas Corpus which was recently filed. The petition for Writ of Habeas Corpus in my case was filed in Yolo Superior Court in July 2018 by my attorney, Mr. Gardner. "Habeas Corpus" is Latin for "you have the body" which commonly attacks a jury verdict and is determined by judges. State judges are extremely reluctant to grant relief on Habeas Corpus because that requires second-guessing not only the judge and jury who have already found the defendant guilty; but also, the state's appeal courts, which have just recently affirmed the conviction and sentence on Direct Appeal. However, mistakes in the criminal justice system are sometimes made. And when they are, Habeas Corpus is available to correct them. In the petition to the court filed in July 2018, my attorney Mr. Gardner wrote in parts:

Post-conviction investigation has shown in determining whether [AV] should be believed, the jury did not have the full story or anything even close. It turns out that prior to trial, **[AV] admitted to at least six different people that the sexual allegations were not true** (*emphasis added*). These six different people statements under the penalty of perjury that [AV] lied about the sexual allegations

do not stand alone. In addition to evidence from these several corroborating witnesses, post-conviction investigation has revealed forensic and documentary evidence which directly undercuts [AV's] credibility and confirms both the motive [AV] had for making up the allegations and the defense theory presented at trial.

The Order to Show Cause was recently issued, and we are expecting evidentiary hearing to be granted soon. This petition is pending before the Yolo Superior Court. In theory, the Superior Court now has three options. First, it can deny the petition with a written opinion. Second, it can grant the petition, also by written opinion. Third, it can hold an evidentiary hearing if it believes there are material facts and dispute which require resolutions. Given the circumstances of my case, I believe the third option is most likely, though (of course) I do not know what the judge will do in my case. If all goes well, I hope to get my relief finally after 10 years of being imprisoned for a crime I never committed.

II. Life in Prison

As of January 24, 2019, I have spent 3,500 nights in prison. Ten years of my life have been unnecessarily wasted. I miss my family, the life I had. I should be home with my sons and family, not in prison laboring over legal documents and revisiting the wrong done to me over and over again. Much has been taken from me. Fatherhood to two young sons denied. Family hearts broken, separated, and financially strained in legal fees. Dreams and future stolen. Friendships broken. Freedom lost. I have committed no crime; crime has been committed against me. I'm serving time in a house of justice, yet there is no justice for me.

I have had 41 different cellmates in four different prisons since my incarceration. I spent 55 days in Yolo County Jail, 104 days in DVI Tracy Prison, 517 days at Sierra Conservation Center in Jamestown and have been at Mule Creek State Prison in lone since May 2, 2011. I have always lived in a two-man cell in prison until October 5, 2017, where I was moved to Level II yard to live in a six-man dorm.

June 25, 2009, the day of my verdict was the darkest day of my life. There are no words to express my utter disbelief at the shocking and disturbing verdict. I was advised by my counsel not to show any emotions throughout the trial. I kept my poker face as advised even though it was extremely difficult to hear terrible lies about me. But, on the day of my verdict after a two-

month trial, as they read the verdict, I broke down crying in public like I have never done before. After the verdict, the guards handcuffed me and swiftly escorted me out of the courtroom. I looked at my one-month pregnant wife and whispered "I love you" as I was rushed out the door of the courtroom. The guard escorted me in the holding cell and one of the guard could see I was in total shock and distress. He asked me if I was going to hurt myself or others. I remember telling him that I will never hurt others, but not sure if I will hurt myself. Once they took me to the Yolo County Jail, the guard processed me through their system, had me stripped down completely and then strapped me with a dirty thick jacket (suicide-prevention jacket). Then, they locked me in a tiny cold holding cell by myself. I had nowhere to sit down, just a dirty floor with a stinky toilet next to me. Every hour until five o'clock the next morning, a guard would knock on the cell door and look at me through the glass to make sure I was still moving and was not dead. The first month at the Yolo County Jail was very difficult; I went through two suicide-watch in that first month.

On August 7, 2009, the judge sentenced me to 378 years in State prison. I was then escorted to the prison van handcuffed and shackled. I heard two guards giving each other high-five and uttered the words, "378 Years Baby". Hopelessness permeated my entire body. The kind that can lead to suicide. It was intensified by the knowledge that even though one is innocent, nobody cares in there about the unfairness of the punishment. I was so disgusted and was glad to get out of Yolo County Jail to DVI Tracy Prison on August 18, 2009. While I was in the reception center at DVI Tracy, I was locked down 23 out of 24 hours a day inside a two-man cell. The highlight of the day was when I received mail from family and friends. These letters became my life line. I spent most of my time reading, writing and journaling in the cell. Fortunately, I had a quiet cellmate who was an avid reader. I had no music or television for the first six months. On December 1, 2009, I was transferred to Sierra Conservation Center (SCC) in Jamestown. Finally, on December 19, 2009, I was allowed to hold Peggy's hand and give her a hug. The last time I held her was 177 days before this contact visit, the longest period without physical contact in the past 17 years together. While I was in SCC, I received the best gift on my birthday. My younger son, Jahnu, was born on February 16, 2010. Prison life pretty much has a routine schedule. Every day is the same. You either get involved in a program and keep yourself occupied or feel sorry for yourself and do nothing, give up and just waste time. Prison in my experience does not help in rehabilitation. You must learn to rehabilitate yourself. You cannot allow time to dictate you; you must dictate time. While working on my legal appeal, I had a job at SCC working as an Education Clerk and tutored inmates with mathematics to help them get their GED.

On May 2, 2011, I was transferred to Mule Creek State Prison and I have been here since. It took me about six months before I found a job as an Education Clerk. After one year in the job, I was promoted to work for the Principal as a lead Education Clerk. In addition to clerking, I was given the privilege to have my own classroom and teach math with a staff sponsor present to about 30 students. I created and facilitated a math class called "FastTrack Math" program to aid individuals who aspired to pass the GED or college entrance exam. For exercise, I played intramural soccer and basketball until a surgery in October 2014 left me with chronic pain. What should have been a simple hernia surgery became a nightmare when the prison hospital inserted a defected hernia-mesh. Since then, I am unable to do any sports; now all I can do for exercise is walking and push-ups and sit-ups. The medical treatment in prison is as bad as it can be. This is one area that really needs improvement just to get adequate treatment.

On February 26, 2017, after experiencing 7½ long heartbroken years without being allowed to hug my own children, I was finally granted contact visits with my two sons. Due to the nature of the charge I was convicted of, only non-contact visits with minors are allowed. It was my very first time to hold my younger son in my arms. He was already 7 years old. My elder son, Kishan, was only 15 months old when my freedom was stolen. Since February 2017, I see my children every two weeks on either Saturdays or Sundays for about 3 to 4 hours. Because I have lost so much time with them every hour I am with them is very precious to me. The loss of fatherhood has been the most difficult for me. The love of my children is priceless. They are the love of my life.



Jahnu, Ajay and Kishan

On October 5, 2017, I was transferred to Mule Creek State Prison – Level II Yard – a six-man dorm living. Prior to this transfer, I was in Level III Yard living in a two-men cell. Level II yard has more freedom to move around. I can be out in the yard until 9 pm where I can finally see the night sky with its moon and stars. I no longer work in the Education Office but continue to volunteer my time tutoring math to inmates on the side while working on my legal appeals. I keep myself busy. You have to – it's the only way to keep your mind pre-occupied, otherwise prison will drive you crazy. Prison makes you feel very insecure and loneliness is your constant friend. I have moments when things become almost unbearable, so I start to meditate, chant or listen to music to temporarily escape from this place and get lost elsewhere. The prison life is a hard life for most anybody. For me it is much harder to adjust because I had a full and complete life before here (family, job, community). The hardship is compounded because I was unjustly put in here for a crime I never committed.

If mom's home cooking gets a five-star rating, then prison food would be a one-star. I usually cook my own meal that are ordered from the canteen or quarterly package provided by approved vendors contracted through prison. The inmates are very creative, and I have been surprised how good some of them can cook with limited ingredients. Exercise is a must to keep you physically and mentally sharp in prison. Depression and anxiety are frequent companions making getting through the days very challenging. Hygiene is another aspect that needs twice as much attention and caring for than outside. Taking multiple showers in a day, brushing your teeth twice a day, and washing your hands regularly are important because I cannot afford to get sick in prison especially knowing medical care is as poor as it can get on here.

We are not allowed to have computers, cell phones or internet in prison. I have a typewriter with no memory. The last time I used a manual typewriter was when I was in 8th grade. It's hard to organize documents without a computer. You have to do everything the old-fashioned way in a very limited space. I keep journals and logs of incoming/outgoing mails and visiting schedules. We cannot get emails, text messages or twitter messages. The old-fashioned snail-mail is the best way to stay in touch with me. My log book shows I have received approximately 3,400 letters from family, friends, supporters and well wishers, and I have written about half the received amount since my incarceration. Eighty-seven different people have visited me in prison at least once. As mentioned, your letters have been my life line and I sincerely appreciate every sacrificed moment you spend to write to me. I never realized how receiving mail can mean so much.

Although I have noticed in the past few years, the letters have been getting fewer and fewer. Please know that I'm conscious of how busy and demanding life can be. And with gratitude I send you and your families my warmest and sincere wishes for peace, good health, and success. Writing me letters is one of the best ways you can help to keep me sane in here and give me strength to persevere. Your letters tell me I am not forgotten, which sends a huge encouraging message to my heart and mind. Never feel that you need to cheer me up in your letters or that you cannot share with me your happy news. If you like, you can send me up to 10 photos (4" by 6"). But, do not feel obligated to do so. Just a simple post-card or a note to say you are thinking of me will do plenty. My mailing address is:

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III. Gratitude

My heart is humbled and grateful toward all those I call my Team. You have been the heartbeat that has kept my case alive. Thank you for believing in me; for your courage to take on the fight against injustice; and for your voice. Above all, I want to extend my deep gratitude to the following people who I am forever indebted to: My sister-in-law Patty Pursell who manages the public relations for my case and who is my go-between person with my attorneys. Thank you for selflessly remaining by my side. How can I ever repay your loyalty and determination? David Greenwald, founder, editor, and executive director of Davis Vanguard who has shown strength and courage to expose the injustices from those who abuse their power. You have been the voice in the wilderness crying out for justice on my behalf. You have my respect and admiration. I had not even met you until January of 2017, but what you have already done has made a genuinely positive and beneficial difference for me and a lot of otherwise defenseless people, of this I am certain. Peggy Dev, who was my bride and the mother of our sons. Never would I have imagined our lives, as best friends and husband and wife, would end up as it did. It has been a difficult journey, but I remember and hold on to many great memories of our time together. Thank you for everything you gave to me, especial our two beautiful sons. I am more than grateful that you understand the role they play in my surviving this ordeal and the importance you place in making sure I receive regular visits from them. I am thankful for you, Peggy and your family for your continued support on fighting for my freedom because you all know I am innocent and understand

the injustice I am enduring. My incredible brother Sanjay, who handles everything to make my living condition as comfortable as possible. Brother, you have been over-the-top generous. Accomplishing what I can't from here. Beautiful are your hands and feet. Much love and respect to you. And, my Mother who covers me with her patience and unconditional love and who allows me to vent when days are most difficult. I see you Mother through eyes of enduring love, compassion, and gratitude. What would I do without you? Do-gooders - that is what these few are. Do-gooders I have had the good fortune to have in my life during this ordeal. You are far from ordinary. You consciously balance your lives and families with the needs of others, attempting to relieve their pain and undue hardships without hesitation. Your courageous support and tireless work on my case and public relations has given me strength to continue. And of course, my precious two sons who are the reason that I fight, who gives me purpose to live, and the strength and courage to never, ever give up. Because to give up, is to give up on you. You have my heart my beloved Kishan and Jahnu. To my Father, who lifts me up in constant prayer, thank you for your strength and guidance. From the deepest core of my heart, I extend my utmost respect and enduring love. To all my extended family members, friends, supporters and well-wishers – I thank you from the bottom of my heart for all your support, prayers, letters, visits and believing in me. To those who wrote letters of support to Governor Brown for my commutation request -- a big thank you to you also. You all are living evidence that there is still good in this world. You are witnesses to causes still worth sacrificing and fighting for - like injustice. You are people who care and cry out for the living. So to you who use your voice to change the status quo and fight against injustice by using your intelligence, wisdom, and understanding; to you who don't resort to violence, you have my respect.

Exoneration and freedom is my greatest wish, but I also need healing of my mind and heart. Please pray for me. That forgiveness will pave the way toward a new life. Not when I am free, but right now. Though it's difficult to leave the past behind while I'm still here fighting for my freedom, I must learn to move forward by living a life of unilateral forgiveness – one-sided forgiveness. To forgive those who wronged me even though they are not asking to be forgiven. While I am still hurt, I don't have to be held back by the past. Please pray that I will be able to move forward into a life of true freedom.

IV. Background of My Case

I may never understand what was in the minds of the jurors during their deliberation when they decided to find me Guilty. I later learned a few things from the post-conviction jury investigation and from jurors who commented on the public news blogs. I learned that most of the jury found me Not Guilty when they deliberated for the first two days. Then, the jury went on break for the next 9 days straight. When they returned after their break and resumed deliberation for the next three more days, they returned with a unanimous Guilty verdict on most of the charges. Through several jurors, news blogs, and post-conviction investigations, I learned that the jury said the following things about my trial:

- When she [AV] was on the stand, I didn't believe her because she would say things that were absurd.
- There were people who totally didn't believe her whatsoever. Her credibility was nowhere with them.
- Yes, her testimony was difficult to swallow. If for her testimony alone, he would be a free man.
- Some of the jurors indicated they knew some of the detectives, law enforcements, and district attorneys of Yolo County because they either worked with them or were related to them.

According to the jury investigation reports:

- Some of the jurors were adamant about my guilt after they returned from their break to redeliberate without examining evidence carefully.
- Some said they never really focused on [AV's] lies and inconsistencies.
- Some said the prosecution was given a lot of latitude, but the judge had less patience with the defense.
- Some thought I should have taken the stand.
- Several of the jurors indicated they were either in some type of abusive relationships or knew someone close who were either physically or sexually abused.

When asked what they considered to be a pivotal point in the case, they almost exclusively said of the pretext phone call:

- Well, to me, and for most of the jurors, the pretext phone call was the thing.
- Many of us believe if it wasn't for the pretext call, we could not have gotten beyond a reasonable doubt.
- If the pretext had not been there, there wouldn't have been a case in my opinion.
- The bottom line was the pretext phone call. That was the only thing we had to go on.
- Without the pretext phone call, there was no evidence.
- Pretext was the only evidence we convicted him on.
- If Ajay had not admitted to doing it on the taped phone call, he would be a free man right now.
- In the pretext call, Ajay admitted to having sex with the victim after she was 18. The entire defense was that no sexual relationship occurred and that it was a story made up by the victim. With his admission, that defense was completely disregarded.
- Like I said before, the entire defense was that no sexual relationship EVER happened. With that one statement, the entire defense strategy was shot.
- Our verdict was based almost completely on that phone call.

The fact is there was NO admission in the pretext phone call by me throughout the call. I directly denied [AV's] allegations at least 25 times. These denials are throughout the pretext call both in English and Nepali. Even [AV] acknowledged that I had not admitted to anything. It is incomprehensible that any admission of sex by me in the pretext call could be true when, according to [AV's] own words spoken in English in that very phone call she claimed I refused to admit to anything with respect to her allegations of rape or sexual abuse. During the post-conviction interview with the jury, one of the jurors said, "the prosecution and the jury focused on Ajay's statements and not on [AV's] statements" in the pretext call.

Further, the key evidence that supposedly corroborated [AV's] testimony was a pretext call. The Court allowed [AV] to translate one Nepali sentence spoken by me. The key statement that the jury relied upon was "But you had sex with me when you were 18." The defense translator said this part of the tape was Inaudible, but he could rule out [AV's] insertion of "sex with" because he could hear the first syllable of the word in dispute which could not be any word meaning sex. The

prosecutor relied on [AV's] translation of this alleged admission in the pretext phone call to urge jurors to convict.

New technology has allowed my defense to enhance the audio from that recorded pretext phone call. A Nepali translator listened to the new enhanced recording and has determined that I did not state what [AV] claimed. Instead I said, "If that (is) so, why did you come with me since 18 years?" This new evidence was filed with the petition for Writ of Habeas Corpus in my case in Yolo Superior Court in July 2018 by my attorney, Cliff Gardner. Mr. Gardner argues:

The prosecutor's argument that this portion of the pretext phone call constituted an admission that petitioner had sex with [AV] is simply wrong. In assessing the pretext call, and counsel's arguments, it is critical for the jurors to have an accurate translation of the pivotal portions of the call.

Some of the jurors made a comment that "people don't lie about that kind of thing." Another juror commented on the news blog, "I have made a comment before that if the judge feels that we made the wrong decision, he has the power to begin the process of reversing it. He has more information and evidence than we were given." This is very troubling. This juror had no idea that things cannot be overturned so easily. It takes many, many years and hundreds of thousands of dollars to the taxpayers. Although most of the charges I was convicted of were nebulous charges with no dates or places, and the jury did not find me guilty whenever there were specific dates or any details of the alleged charges, the prosecutor and his team continue to this day to bring these charges up to the court and the public to make it sound as if I was found guilty of these charges in order to turn them against me. They stigmatize my case by using words such as abortion instead of pregnancy or child pornography instead of pornography. When someone accuse you of raping 500 to 750 times in a period of five years (rape almost every other day), you cannot just give her a pass on perjury and say she must have exaggerated, maybe she was raped a few times. If you are telling the truth, then there is no reason to lie or exaggerate, and if you are telling a lie, then your story becomes very inconsistent; like [AV] in my case. There was NO physical evidence. How am I supposed to prove a negative? They put me in prison without any physical evidence, yet they expect me to provide physical evidence to prove my innocence! The law acknowledges that this is virtually impossible for a person, anybody, to prove a negative, that they didn't do something.

Remember that the pretext phone call is a scripted ploy from [AV] and the detective. They were looking to elicit certain responses. Initiated for the sole purpose of eliciting an admission from me. Therefore, it is hard to imagine an expert in a more biased position – not only because [AV] was the alleged victim in the case which, alone, would be more than enough to disqualify her as an expert interpreter, but because she was asked to translate an Inaudible portion of the pretext call affording her the opportunity to fabricate an admission unchallenged.

The nature of false rape accusations is different from false reports of other crimes in ways that distinctively facilitate faults rape claims. Accusing someone of rape claims require virtually no physical evidence. For this reason rape lies can be flung about all sorts of reasons. Any honest veteran sex assault investigation will tell you that rape is one of the most falsely reported crimes that there is. While rape is the most under reported crimes, it has the highest rate of falsely reported of any crimes¹.

A proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charges are true. Even the prosecutor in my trial is quoted as saying, “[AV’s] clueless as to what she’s saying.” He said, “Well, take a look at [AV]. She’s not the brightest cookie in the cookie jar. That’s why she struggled somewhat in both high school and in college...her memory is awful.” Moreover, the presiding judge told [AV] not to guess her answer when she was testifying. When someone accuses you of sexual assault and there is no physical evidence to prove your innocence, then you better have every document and timeline to show in every possible way through circumstantial evidence that the accuser’s story has no merits.

Let’s consider some core facts from my trial that the jury completely decided to ignore:

- Based on their own words, “...the entire defense was that no sexual relationship EVER happened. With that one statement, the entire defense strategy was shot.” That one statement of incriminating admission was opportunistically inserted by [AV] and the judge allowed it to go forward.
- I was convicted despite the testimony of [AV’s] primary physician and all the medical records which showed no signs of abuse or trauma.
- I was convicted despite of her adoption social worker who performed a full psychoanalysis report on her which showed no signs of abuse or trauma.

- Her teachers and school counselors saw no signs of abuse or trauma. Her family and friends saw no signs of abuse or trauma. A person who claimed to be raped every other day for 5 years straight would surely show some signs of abuse or trauma. Her doctor, adoption social worker, teachers, and counselors are all mandated reporters and never reported any kind of alleged abuse or trauma.
- There was NO physical evidence that she was ever raped or that a crime had even been committed. Despite [AV] being allowed to fabricate the translation from a foreign language (Nepali) to an incriminating admission in a recorded phone call over the objection of an accredited certified translator, I was still convicted.
- Despite her criminal conviction of perjury and passport fraud at age 22, I was still convicted.
- Despite her questionable credibility where the majority of the jury did not believe her, I was still convicted.
- Adding to this injustice is the unparalleled sentence I received of 378 years, even though: I volunteered to take a lie detector test and passed right after [AV] filed her complaint; there was no physical evidence; and I had no prior convictions or arrests of any kind – I had a clean record. However, [AV] was convicted of passport fraud and perjury at the age of 22 and had a motive to lie to gain U.S. immigration benefits through Violence Against Women Act.

The jury convicted me of almost all the nebulous charges. The jury did not find me guilty where there were specific dates or locations, i.e. porn charges, pregnancy charges, alleged rape at a Motel or assaults on the day of my Peggy's surgery. [AV] testified that I never used contraceptives and that I raped her for five years straight about 2 to 3 times a week, yet all her pregnancies happened at age 19 and 20 in a very narrow timeframe and coincided perfectly with the time she had sexual relations with her boyfriends. It was discovered she forged my signature on her pregnancy clinic visit. At the preliminary hearing she denied forging my signature, however, at trial, only after the handwriting expert concluded that it was her who forged my signature, she admitted her forgery. [AV] did not display symptoms of someone who was serially abused. Just two months after she move out of our house, she reported to the police that she had been raped by me 2 to 3 times a week for the previous five years straight. However, in that two months,

phone records showed she called me 51 out of 58 times (88% of the time). Within those two months after she had been moved out, she sent me personal text messages which read, “Dad, please call me, i miss u very much! love u” and a few days later another text message that read, “Hi dad i am sorry but I really miss u, i love you – your daughter.” There were no signs of any avoidance on her part even after she move out. Just 3 weeks prior to reporting to Davis Police about the alleged abuse, [AV] personally sent me an e-mail which read in parts: “The support that you have provided to me and the unconditional love that you have given to me. You prove that to me by being there for me before and after I moved out.” For the Direct Appeal, my attorney, Ms. Eskenazi wrote in her briefs filed to the Court of Appeal:

“Absent [AV’s] allegations, the evidence at trial clearly shows that [AV] was very happy living with the Devs and that within six months to a year developed a sincere love for them as host parents. Photographs, home videos, letters, e-mails, texts and phone logs all show this undeniable and heart-felt connection. Even the prosecution conceded in its closing that [AV] loved Ajay and Peggy Dev as parents.

While a loving father/daughter bond would naturally develop where a father/daughter relationship starts at birth or early childhood (even if rape or molestation later developed), it seems almost impossible to develop where, as here, the father and daughter relationship did not start until the daughter was 16 years old and, two weeks into the relationship, the father allegedly started molesting and raping his daughter two to three times a week for five years straight. That’s a rape almost every other day. In these circumstances, it seems highly unlikely that such a deep and loving bond could occur. Therefore, since the evidence indisputably shows how much [AV] sincerely loved Ajay and Peggy, it seems less likely that her allegations could be true.

Unlike rape cases concerning an isolated rape where a physical exam may be inconclusive with regard to proving or disproving the occurrence of a sexual assault, the same uncertainty cannot apply where the alleged rapes average approximately every other day for a period of years. In these circumstances, such abuse could not go undetected.

Not only would evidence of rape and sexual assault have been exposed by the medical records introduced at trial, given the serial nature of the allegations, it would have also been evident psychologically through sleep disturbances and/or other post-traumatic stress disorder symptoms which were also never exhibited by [AV].”

[AV] had a pattern of quickly, escalating to vengeance. A few examples:

- When she got fired from her job in November 2003, the next day she went to the police to report she was being harassed at work which turned out to be not true.
- When I e-mailed her biological father about her poor college performances and some misbehaviors in December 2003, the next day, she e-mailed him accusing both me and Peggy of physical abuse to justify why she move out from our house. She later apologized to us about this false allegation.
- When her boyfriend broke up with her in February 2004 and she blamed me, the next day, she went to the police to report these false allegations against me.

If [AV's] allegations were true, every single person who had seen her, every single photograph that was taken would have been on the same day, the day before, or the day after she was raped. In the five years [AV] lived with us, we had family and friends stopped by announced and unannounced; we had an open-door policy at our house. One of her close friends spent the night at our house a few times a week for an entire year in 1999 with [AV] in her bedroom. I invited my mother-in-law to live with us; we had family and friends spend the night at our house on many occasions; we hosted [AV's] 16th, 17th, and 18th birthday party with many of her friends. [AV] was a social teenager and made friends easily. We knew her to be charming and well-liked by many of her friends. We were active in her school and PTA. We hired a private tutor to help her with school. Peggy and I travelled with her to many places around the U.S. She travelled to Connecticut in 2001 by herself for a week to spend time with her cousins. We took her to Maui, Hawaii in the summer of 2002 with another of her close friends. She even went to Nepal to visit her biological family in the summer of 2003. She had access to the family car, cell phone, internet, e-mail, her bank account and a phone card to talk to her biological family in Nepal. We hosted many small gatherings to a few big parties with 100

people and many people saw [AV] laughing, enjoying herself, and dancing. We had people with first-hand knowledge who knew [AV] and us. You can literally go back into the past and see what happened in “real time” because we had people constantly around who are witnesses, home videos, photographs, e-mails and a large number of documents from her adoption social workers and medical doctors. You can see what [AV] was saying. You can see what I was saying. You can see what Peggy was saying. In real time. Not the things that [AV] manufactured at trial, but what we all in fact experienced. The prosecutor portrayed me as this mastermind manipulator with a double personality. On the contrary, those who are close and have known me for decades have described me in many different ways, but never a manipulator. The character letters that were submitted to the court(s) and commutation support letters to Governor Brown described my family as well respected, spiritual and ethical. A good family with strong values and warm hearts. They say that I don't have a nature of exploiting others but is a man of good character and high morals. Who never hesitate to help anyone in need, and have always served families, friends, and communities with best intentions and without any vested interest. Those who wrote about me said I have a nature of goodwill and forgiveness, a hard-working and devoted family man, someone who has high respect for woman. They used words like good, sincere, caring, loving, respectful, compassionate, responsible, generous, ethical and honest. These are not my words but of those who have observed how I lived and conducted my life in public and in private. My character was tarnished by the prosecutor in that two-month trial as he repeatedly used inflammatory words like rape, child molester, sexual assault, jilted lover, abortions and child porn to assassinate my character. The prosecutor did everything to influence the jury to turn against me and to achieve their conviction. I will not want to live branded as a violent criminal, as this conviction goes against every fiber in my being, my beliefs and what I have dedicated my life to. The prosecutor and sadly sometimes even the judge can pull all kinds of tricks to turn jurors against the defendant. For example:

- The prosecutor told the court that there are unfriendly people in the hallway (referring to my in-laws and family) and asked if the court could get a guard to escort [AV]. My in-laws and family are respectful members of society and we are very peaceful people.
- After Peggy testified, the judge made comments in front of the jury by speculating that Peggy was relieved to hear she wasn't being called to the stand anymore. This is not the tone that Peggy wanted to continue in, but the judge was limiting the time for the defense witnesses.

- In the middle of the trial, the judge gave certificates of special recognition to all the jurors for jury appreciation week.
- The defense had twice as many witnesses as the prosecutor, but the judge allowed half the time of what prosecutor witnesses was allowed to testify. For example, we had to rush through 8 different witnesses in one day whereas the maximum number of prosecutor witnesses for a one day was 3.

If every court in America had a video camera like mandatory body-cam for all the law enforcements, it will protect both sides. Today, we see more and more reports of misconduct due to video cameras, but most of the general public knows that injustices have been going on for hundreds of years. The prosecutor wanted the jury to believe that all of the defense witnesses are lying, and the only person that's telling the truth was [AV]. If true, then it would mean [AV's] primary physician and adoption social worker were lying. When you analyze the facts and you apply the law to the facts, it is the absolute opposite. Based on her allegations, when could I and [AV] even have a father/daughter relationship?

Preconceived notion is very damaging for the innocent. There is a terrible tendency to accept all that is said, all that is read, and to accept it without question. Countless, unimaginable numbers of innocent people still sit in prison and will never see freedom. This must stop. Almost every month we read of another man freed from prison because of the false accusations that caused their incarceration were later proven false or a woman recanted. Even if there is no conviction, a false allegation emotionally, socially and economically destroys a person and their immediate and often extended families. False accusations of rape are psychological rape. False accusations are hard to measure and there is not much available research. However, what little scientific research there is shows the problem is much more common than we are told². People are quick to judge in a rape case without even knowing whether the person is guilty or not. Crimes against women have become a subject of fierce debate in recent years. Fighting crime against women is the right thing to do, but ignoring due process is not the right way to go about it.

Our focus on getting justice for women who are sexually assaulted is necessary and right. We are still far from the day when every woman who makes a rape accusation gets a proper police investigation and a fair hearing. But seeking justice for female victims should make us more sensitive, not less, to justice for unfairly accused men. In practical terms, that means finding ways

to show support for victims of sexual violence without equating accusation and guilt assuming that only a conviction is a fair outcome for an alleged sex crime. It means, finally, rejecting laws and policies rooted in the assumption that wrongful accusations are so vanishingly rare they needn't be a cause for concern. To put it simply, we need to stop presuming guilt. Unfortunately, the topic of rape is so sensitive that many are unwilling to do anything about a false claim. Some prosecutors side with a false-accuser even after the evidence clearly reveals that the claim is false, believing it could be an honest mistake, a difference of opinion regarding consent, or a cry for help from someone suffering in other ways at the hands of the one they wrongfully accused. Also, prosecutors and law enforcement do not want actual rape victims to fear possible criminal sanctions for reporting legitimate rapes if it later becomes impossible to prove the case. False rape accusations are a lightning rod for a variety of reasons. Rape is a repugnant crime – and one for which the evidence often relies on one person's word against another's³.

People in general wouldn't grasp the significance of the concept "innocent until proven guilty." They believe that when you sit at the defense table, you're guilty. That's the naivete of some jurors. "He wouldn't be sitting there if he wasn't guilty. They must have something against him". We are not used to bearing witness to victims of systematic injustice at home; the lens is always pointed outwards. Our criminal justice system is supposed to error on the side of the innocence, sifting the clearly guilty from those less-obviously culpable. As long as there are political incentives to win convictions at all costs, and so few checks and balances, there will be errors. The job of the prosecutors as representatives of the "people" ought to be dispensing justice rather than winning cases. When the principal duty of the DA is to generate funding, justice is bound to take a back-seat. Why is it that a DA's success and value is based on their high conviction rate? Seeking truth and justice to represent the "People" should take precedence over seeking conviction. I fully recognize that there is no such thing as a perfect justice system. I truly believe we have the best justice system in the world if it is not abused.

A legitimate and just investigator seeks to ascertain whether a crime has been committed. In this case, the investigator assumed a crime had been committed and set out to prove that I did it. This investigation is flawed, biased, and prejudiced. On the other hand, an investigative journalist, David Greenwald, who is also a founder, editor and executive director of Davis Vanguard, has done extensive work researching and analyzing the many pieces of evidence, documents and briefs associates with my case. He has done more analysis and spoken with more people

involved than the main detective assigned to the case. The main detective never talked to any family members, friends, teachers, counselors, doctors, adoption social workers or anyone that knew me and [AV]. He just accepted her words even when she contradicted herself. Jurors even commented in a news blogs after the trial that [AV's] testimony "was difficult to swallow." Sometimes I think the injustice that resulted from lies built upon lies is impossible to untangle for anyone, especially those far removed from the reality of the situation. We hear on the news how a defendant showed no emotions. How would they know? Do they know that the defendants are told by their counsel not to show any emotions during the trial? I was accused of these horrible charges back in 2004. My trial was five years later. The raw emotions are pushed to become numb after years and years of digging into documents and preparing a timeline. A juror in my trial commented how Peggy was not to be believed because she knew all the dates. This juror did not realize that for five years we have been reading documents and working with our attorneys preparing timelines and all the dates and times are stamped in our heart and minds whether we want to deal with it or not.

When false accusations are made the defense cannot simply say, she lied, and she was just making the story up. It is a human natural response to believe rape allegations unless she comes out clean and recants her allegations, otherwise you must demonstrate a clear motive as to why she would lie about such horrendous accusations. [AV's] motive was very clear. She was convicted of passport fraud and perjury which could have resulted in her deportation and imprisonment in her native country of Nepal. So, the Violence Against Women Act was her refuge. If I can be convicted based on her false claims, she's home free. She gets a free ride. She gets her U.S. citizenship. My attorney Ms. Eskenazi explained [AV's] motivation in her Direct Appeal briefs to the Court of Appeal:

[AV's] motivations for lodging these slanderous allegations against Ajay were two fold. First, in [AV's] mind, Ajay was to blame for the loss of her relationship with her boyfriend Will. She was emotional and grief-stricken, and wanted to hurt Ajay for his part in her breakup. Second, having jostled with the Devs for many months over her insubordination, [AV] had a long time to contemplate the implications of cutting ties with the Devs. Her path to American citizenship was entirely dependent upon her status as their daughter, and she lived with the knowledge that the foundation of her adoption was faulty. [AV] no doubt feared

that, in light of her choice to sever ties with them, the Devs would seek to reverse her adoption and would find a means to do so given her falsified birth records. In [AV's] mind, Ajay was to blame for her break up with Will and for what she believed to be her pending deportation back to Nepal. To [AV], Ajay took away her freedom and independence and now she sought revenge by falsely accusing of rape.

These were the heart of her motivations to lie about the rape. But, there was a problem. The judge would not allow [AV's] criminal conviction of passport fraud and perjury evidence and all the supporting documents in the trial. My trial attorney, Mr. Rothschild, filed multiple motions to admit this exculpatory evidence, but it was clear to me that the court and the prosecutor were seeking conviction by any necessary means. Had this exculpatory evidence been allowed, it would have demonstrated and highlighted [AV's] motive to lie and her need to cut a deal with the prosecution to save her citizenship dream. The defense could have highlighted that [AV's] motive to testify against me had nothing to do with the truth, and everything to do with saving herself by avoiding return to Nepal. Much like an informant witness who falsely testifies to avoid prosecution, [AV] falsely testified to avoid removal. Here, had the prosecution disclosed the exculpatory and impeaching evidence, the probability that the result of the proceeding would have been different is far greater than a reasonable one – it is virtually certain. By not disclosing the available impeachment evidence, confidence in the outcome of the trial is severely undermined. With this evidence, the defense could have (1) demonstrated [AV's] pattern of lying; (2) demonstrated [AV's] motivation to falsely accuse me; and (3) challenged [AV's] veracity, credibility and reasons for getting on the stand and creating a completely fictitious version of events. We were denied evidence from which we could have made an argument that [AV] fabricated her story because it served her own interest.

If the proceedings in the Nepal's court conviction of [AV] for passport fraud and perjury "truly had no bases" as was claimed by the prosecution, then why did the prosecution put so much effort towards getting these materials exculpatory evidence suppressed? Despite the invalidity of her adoption due to falsified birth records; despite her 1998 fraud against United States immigration authorities; despite her 2005 Nepali conviction for passport fraud and perjury; and despite of her blatant lies on her readmission United States Immigration paperwork in 2005 under the penalty of

perjury, [AV] overcame all odds and not only remained in the United States, but eventually obtained U.S. citizenship.

I have realized that it is not a quick process to right a wrong in our criminal justice system. Prison tends to freeze a person in time while the outside world moves on. The prosecutor doesn't want to hear I am innocent of all the charges, just as I don't want to hear the prosecutor was not overzealous and did not have an incentive to achieve a conviction at any cost. They ambushed me. They did not prosecute me, they persecuted me. The prosecutor and the main detective in my trial have used scare tactics to put fear in the public eyes and even to the trial jurors by saying how my family and in-laws are crazy. My in-laws and family are respectful and honorable people. While I respectfully disagree with the jury verdict, I do respect them for volunteering their time for public service. I hold nothing against them. I am fighting for my life and I will fight to the full extent within the confines of the law. Davis Vanguard has invited the jurors from my trial to come forward and discuss my case if they choose to whether publicly or privately. Filing a petition for Writ of Habeas Corpus is tricky. There are rules and regulations you must meet to put the petition together. For example, juror's opinions are not allowed to be brought up on the writ. You can only bring it up if there are any errors on jury instructions or jury misconduct. Jurors are entitled to their opinion and even if they come out today and say they got it wrong and felt they may have made a mistake, it will have no merit in the writ. The court, prosecutor, detectives, and jurors very rarely ever come out and say they may have got it wrong even if their heart changes. Most likely they will never admit they got it wrong and continue to insist on saying they got it right. The only thing I can hold true on saying is that justice is supposed to be fair, in this case I was never given justice. In some point in time, I hope someone will listen and correct this great injustice.

The general public is always concern and curious about crime and therefore read crime stories in the newspapers. But most articles are sensationalized, embellished to keep the reader interested. Whether we like it or not, crime stories sell. I have learned that most of this type of news are controlled by the prosecutor. Often the news articles are printed verbatim of what the prosecutor's office gives out without the news agency doing any cross investigation to check for quality control and assurance. Imagine if the "follow the money" motto was not the priority. Then, the conviction rate would not be a factor. It would be about seeking truth and justice. Every court in American must have video cameras running 24/7. We hear more and more about misconduct in the news nowadays due to police-cam, cell phone cameras, and video surveillance. Injustice has been

around for generations but was not until the use of videos and cell phone cameras that allowed the public to easily and openly broadcast misconducts and other forms of injustice via the news or social media.

It has been several years since I have written a public letter. As you can see I have much to say behind this 378-year sentence that is wrongly placed upon my life. Thank you for taking the time to read it. If you would like to learn more about my story or if you would like to receive updates about my case, please visit and/or send your email to Patty Pursell. Contact information are below.

Website: www.AdvocatesForAjay.com
www.SeekingJusticeForTheInnocent.com
Facebook: [advocatesforajay](https://www.facebook.com/advocatesforajay)
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