



# THE WEST WING

Santa Clara County District Attorney's Office

70 West Hedding St., West Wing, San Jose, CA 95110



*Service · Hard Work · Transparency · Integrity*

Vol. 1, 2017



## Maricela and the Statute of Limitations

*By Chief Assistant District Attorney Jay Boyarsky*

The first time I met Maricela there was nothing to celebrate.

In a sterile 6th floor witness room in the DA's Office, I assessed her credibility as the victim in a molestation case. It was excellent. She was earnest, bright, brave. Her story was deeply detailed – and horrific.

On the stand, Maricela explained how she would grab a plastic garbage bag from under the sink, put her blood-stained underwear in a bag, hide the bag deep in the back of her bedroom closet behind her stuffed animals. On garbage night, she would sneak out of the house to put the bag in the garbage cans once they were out on the curb. She was being regularly raped by her mother's boyfriend. She had to protect her mother at all costs. The Gilroy girl, with big brown eyes that welled up at injustices, was 7.



Now – 8 years later - she was a sophomore and a survivor. It was my job to make sure that she got justice. And it didn't happen.

An unusual defense motion led the trial judge to dismiss the case. Moments after the jurors filed out of the courtroom, the judge told me that I should appeal his decision because the law is confusing. I knew that the rule of double jeopardy made his decision final. There would be no appeal.

I was able to talk to the jurors who had waited in the hallway at the Hall of Justice. They wanted to know why the case had been dismissed after a week of trial; seven days of disturbing and graphic testimony that most of them would never be able to scrub from their memories. I did my best to explain.

A juror, a retired engineer named Dean Chowning, lingered in the hallway listening to me after all the other jurors had walked away, shaking their heads. He said, "I made about \$35 in jury service pay. Here's \$35. I want you to give it to Maricela and tell her that we believed her." Along with the money, he told me I should change the law.

I've blocked out the memory of telling Maricela that there wouldn't

*(continued on page 2)*

be justice. I recall her not really seeming to understand what I was saying. I hadn't really accepted what had happened either.

Over the next year or so, Maricela, Dean, and I spent hours together, driving up to Sacramento in a bureau car in support of a bill I had written with the help of **Deputy District Attorneys Chris Arriola and Kathy Storton**. Assemblywoman Elaine Alquist championed the bill, fighting along with us against the repeated efforts to kill it ("Why are you putting Maricela up to this?" "You DAs are all the same, you lose a case and then you want to change the law to make it easier to convict innocent people").

Governor Gray Davis signed "Maricela's Law" on September 4, 2001.

Maricela was in school when it was signed. The phone rang in her classroom and her teacher asked her to go to the office. The principal told her the news. She walked back to her class in a daze.

"I can't really put into words what it felt like that day, sitting in that chair getting the news," she said. "It was the sweetest



relief - knowing that my pain, hurt, rejection was not in vain."

I stayed in touch with Maricela off and on over the next 15 years, but we mostly lost touch. She had moved to Hawaii, then moved to Las Vegas, working as an executive assistant for a movie producer.

She married a good man named David. They had three daughters: Leila, Linnea, and Kalia.

Maricela's Law brought some measure of clarity to the complicated issues behind statutes of limitations in sexual assault cases. But what was really needed was to eliminate the statute of limitations entirely for the crime of raping a child. Social science and an evolved enlightenment have led people to realize that these crimes are too serious and unique to have a deadline. They involve recidivistic, repeat offenders who don't "age out" of their predatory behavior. Some of them are committed with such threats and intimidation that it is no wonder that most victims of child rape never report. Those that do often wait years, and sometimes decades, while their rapists/molesters go on to rape and molest more and more children. National efforts to banish the statute of limitations from these types of cases have become more common. I worked with many state

*(continued on page 4)*



Despite the defense's best efforts to distract the jury, the jurors held the defendant accountable for the horrible injuries he caused. He was sentenced to 9 months of ankle-home monitoring.

-----

Having seven elements, criminal threat cases are a bear to prove. It becomes an even bigger challenge to convince a jury when the victim has a criminal history.

**Deputy District Attorney Quinn Nichols** knew the entire trial hung on his victim's word and credibility. On the stand, the victim described the day his life was threatened at a local dollar store. He owned up to his own convictions. When asked by DDA Nichols, "Are you still afraid of the defendant?" Fighting back tears, he replied, "Absolutely."

After four hours of deliberation, the jury convicted the defendant. He was sentenced to 16 months in prison.

-----

"...I'm not Captain Save a Ho."  
"Sex sells."

"Why am I disgusting ..., 'cause I know how to make money?"

After diligently listening to over 12 hours of the defendant's jail calls, **Deputy District Attorney Daniel Kassabian** was able to find the corroborating evidence needed to tack on pimping charges to his narcotics case. The defendant was calling prostitutes and pimping them from jail, then calling his family in New York and talking about it.

However, DDA Kassabian's hard work was in jeopardy when his main witness, the woman found with the defendant, went missing before trial. The case was dismissed as a result. Eventually, she was found and the case was refiled. Immunity was offered for her testimony during the preliminary hearing, but the witness didn't want to cooperate. Ultimately under oath, she told the truth: I prostitute; He's my pimp; This is what goes on.

On the day of trial for the refiled case, the defendant pleaded no contest. He was sentenced to 11 years in prison.

The elderly defendant had driven home drunk from a dinner party and collided into a motorcycle that had the right of way. The driver of the motorcycle sustained serious injuries including memory loss, a ruptured diaphragm, a collapsed lung, and other internal injuries.

**Prosecutor Daisy Nishigaya** combed through 102 exhibits, including a 2,000-page medical record. She also called eight witnesses and six expert witnesses, including **DA Criminalist Mark Burry**, to the stand. The defendant came well prepared with a DUI specialist attorney. They called eight witnesses, three of whom were experts with well-padded resumes.

# Q & A

...with Deputy District Attorney Steve Dick

**Diehard Chicago Cubs fan and Deputy District Attorney Steve Dick watched the final game of the World Series pacing his living room in an old Mark Prior jersey. When the Cubs finally won in the 10th inning of the seventh game, they had broken a streak that had lasted 108 years. For the prosecutor it was a moment of joy during a year that he badly needed one.**

**Q. Is there is a defining characteristic of a Cubs fan?**

**A.** Dealing with losing and heartache. Every Cubs fan believed on opening day that the Cubs were going to make the playoffs and go to the World Series. It had to be this year because the failures couldn't go on forever. By July, everyone would realize how bad the Cubs really were and would talk about "Waiting for Next Year." The Cubs were so bad for so long that the Cubs were nicknamed The Loveable Losers. What a horrible nickname. We accepted it and just waited for next year.

**Q. What was it like following the team last season?**

**A.** It was a wonderful escape for me. Unfortunately, I was battling cancer this summer and had to take time off of work. Because I was home, I watched more baseball than I have in any other time of my life. The fact that the Cubs were doing well just made the summer go by quicker and a little easier. While watching a game I was able to forget about dealing with chemo and my illness and just cheer for our beloved Cubbies.

**Q. What was watching the World Series like?**

**A.** There was happiness. There was depression. There was screaming. One day, my son and I were driving home from his soccer practice, and Addison Russell hit a home run. We went crazy in the car and the car next to us on an onramp started waving and gave us a thumbs up because he was listening to the game, too. It was great to spend time and talk with friends and family members. It was just exciting and fun up until the 8th inning of Game 7 when the Cubs blew a big lead and the Indians tied the game with a home run.

**Q. Describe how you felt as the ball left the park.**

**A.** I sat down on the couch. The Cubs were doing it again. Getting our hopes up and then destroying them. And then the rains came after the 9th inning causing a rain delay. I'm convinced that if there hadn't been a rain delay, the Cubs would have lost. The worst part about the delay was that I sent my kids to bed because my wife and I thought the delay could take hours. My kids had school the next day. The game started up again and the Cubs got a hit to start the inning. Our kids came running into our living room. I asked them why they were still awake and they said that I woke them up because I was screaming so loud. They stayed



up to watch the rest of the game. The Cubs scored two runs in the 10th to take the lead and we could not sit down during the bottom of the 10th.

**Q. Describe the last few outs.**

**A.** The Cubs were winning by 2 runs. A young pitcher started the inning before giving up one run and getting removed. Mike Montgomery came into pitch and with two outs he got the hitter to ground out to the third basemen, who was smiling while throwing the ball to first for the last out... and it was just ...complete ...pure happiness. I've seen the Bears win the Super Bowl, the Bulls win 6 championships, the Blackhawks win the Stanley Cup, and Northwestern University go to the Rose Bowl, but all of those combined do not come close to the Cubs winning the World Series. Sports is an escape. To escape with whatever is going on in your life. This was just indescribably perfect.

**Q. Was this last year the worst year of your life or the best year of your life?**

**A.** Struggling with cancer was the worst thing I have ever gone through. It's extraordinarily difficult, both physically and emotionally. As a sports fan, it was the best year of my life. It was just fantastic and an exhilarating time. As Harry Carey used to say, "Cubs win! Cubs win!"

**Postscript: Not long after pitchers and catchers reported to Mesa for Spring Training, Steve had a checkup with his oncologist. He was, she determined, cancer-free.**

# WHAT'S GOING ON?

# WEST WING GALLERY

(CLICK each photo to read a story in electronic version or visit [www.santaclara-da.org](http://www.santaclara-da.org))



**Patrick Vanier, Supervising Deputy District Attorney, Crystal Seiler, Deputy District Attorney, and HaNhi Tran, Deputy District Attorney,** received San Jose Police Department's George

Kennedy Excellence in Prosecution Award on February 16, 2017.



**Nahal Irvani-Sani, Deputy District Attorney,** received Santa Clara County Bar Association's 2016 Diversity Award on November 9, 2016.



**Mike Galli, Deputy District Attorney,** received the California Narcotics Officers' Association's Award for Region 1 on December 8, 2016.



**Christine Ojeda, Senior Paralegal,** received the District Attorney's Employee Excellence Award for the month of February 2017.



Award Winining Angela



Lost and Found



Good Deeds



DA's Office Loses Power, Not Cases

## ... the Statute of Limitations

(Cont. from page 2)

legislators to get rid of the statute of limitations for child sex crimes. Some years the bills died in committee, other years the bills made it farther in the process. None became law. Other states, pushed by the revelations from the Catholic Church pedophilia scandal, or the all too common cases of pedophiles masquerading as swim coaches or gymnastic teachers, sucessfully changed the law.

Last year, State Senator Connie Leyva of San Bernardino introduced a bill to remove the statute of limitations in sexual assault cases. She was motivated by the traumas inflicted by Bill Cosby on so many women over such a long period of time and yet the statute of limitations worked to keep the courthouse doors closed in these victims' faces.

On September 28, 2016, I emailed Maricela: "Hey, Maricela...any of these still your email addresses? I wanted to share some news with you." I sent her the DA's Office News Release about California's new law: "Governor Brown today wisely gave notice to sexual assault survivors who would have been silenced out of shame or fear that they would not be believed. Starting January 1, 2017, rapists and child molesters can never again rely on running out the legal clock. The trauma from being sexually assaulted has no deadline, no expiration date - and neither should justice." She responded: "Yes, it's still me. That is fantastic news!!!! So amazing! Woo-hoo Governor Brown."

A few weeks later, I met Maricela in Las Vegas at the Bacchanal Buffet in Caesar's Palace. When you meet someone and go through fire with them, in your memory they are always the same age as when the bond was

formed. She was grown now but – to my mind, she looked the same to me as she had 16 years before – big brown eyes, infectious smile. She was earnest, bright, and brave.

We raised glasses of champagne. We toasted the "overnight success" of the new law. Then, we sat and had a long talk about our kids, sharing laughs and cell phone photos.

