



## 70 Million S2 E5 Transcript:

### An Open and Shut Case, Reopened

At 17, Mark Denny was wrongfully convicted of a rape and robbery in Brooklyn. It took nearly 30 years for that conviction to be overturned—and it might never have happened without help from the same office that prosecuted him. Reporter Sabine Jansen tells the story of the Brooklyn Conviction Review Unit, the DAs who re-investigate their colleagues' work, and the collaboration that finally set an innocent man free.

*Dive deeper into reform efforts in New York and beyond in our [episode toolkit](#).*

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Mitzi Miller: 70 million American adults have a criminal record.

This is season two of [70 Million](#), an open source podcast about how people, neighborhoods, counties, and cities are breaking cycles of incarceration—starting with the local jail.

This season, we're spending time in communities trying bold solutions. We'll look at what's going well, where there's still work to do, and what we can learn from all of it.

I'm your host, Mitzi Miller.

"So I got to experience the uncomfortability of just being stuffed in a cage and all of that. It was really scary."

"We're keeping people down there with rats, roaches, they've got black mold. And we spend \$16 million on it every year."

"We eliminated cash bail bonds in the city of Atlanta."

"There's no one who has been incarcerated, including myself, who has been helped by incarceration."

*Music break*

When Ken Thompson ran for District Attorney of Brooklyn in 2013, [the office was notorious for prosecutorial misconduct, cronyism, wrongful convictions and corruption](#). Thompson said he'd change all that.

He ran a progressive campaign, promising to stop prosecuting most low-level marijuana arrests and to limit the use of stop-and-frisk policies. He also did something unusual: he vowed to prioritize wrongful conviction claims, and to [create a special unit with a million-dollar budget dedicated to investigating his own office's work](#).

Ken Thompson: [Because no one in this room should want an innocent man to spend a day in prison for a crime they didn't commit.](#)

*Music break*

Miller: Thompson took office in 2014, facing down more than a hundred wrongful conviction claims. He kept his campaign promise. Today, the [Brooklyn Conviction Review Unit](#)—known as the CRU—is one of the largest and most active in the country.

Reporter Sabine Jansen brings us the story of one of those cases and the collaboration that set innocent man free.

*Barbershop sounds*

Sabine Jansen: On a Wednesday afternoon, four people are crammed into a small and cozy barbershop in Midtown Manhattan. A barber is cutting a man's hair and chatting about how he got the job.

Mark Denny: *So, they got real barbers, professional master barbers. They come in and run the prison barbering program.*

Customer: *Where was the prison?*

Denny: *Uhhh, [Green Haven Correctional...](#)*

Jansen: He trained and became a certified barber while in prison. He's been free for just over a year and a half.

Denny: Hi, my name is Mark Denny, at the age of 17, I got arrested and charged and convicted for rape and robbery—offenses that I had absolutely nothing to do with.

Jansen: When Mark and I get a chance to really talk, he's sitting in front of me in his studio in Manhattan. On the wall there's a picture of him with a lawyer from the [Innocence Project](#). They're a nonprofit that works to free wrongfully convicted people. It's the only sign of his nearly three decades in prison, and the only sign of what it took to get him out. As we start talking, I learn so much about him, starting with him growing up in Brooklyn as an immigrant kid. His family came from Guyana when he was seven years old.

Denny: You know, I was trying to fit into my new environment 'cause when I came to this country I had an accent and you know I looked totally different, everything was just different about me. So, being accepted by other kids, you know, was kinda like a challenge. So, you know, I had to go to a lot of changes, even as a kid in adjusting and finding my place.

Jansen: Mark did find a place for himself. Did well in school, made close friends.

Denny: To this day, I still have couple of my best friends that I grew up with. We did things kids do, we would go out, we would have fun, play games, we would do a lot of a sport events with like bikes, boxing, you know, swimming. We was just an adventurous crew.

Jansen: Mark was 16 when that changed. On December 20, 1987, three men walked into a Brooklyn [Burger King](#) where two employees, a man and a woman, were just closing up for the night. [The men robbed the restaurant and brutally gang-raped the woman.](#)

Mark was at his mother's house, asleep along with four siblings. He woke up the next morning and went about his day like any teenager. He doesn't remember even hearing about the crime.

About a month later, Mark, his cousin and a friend are driving when they get pulled over. His cousin has a gun in the car, and all three get arrested. Mark spends half the night in jail, until his family bails him out.

Denny: So I got to experience the uncomfortability of just being stuffed in a cage, and all that was real scary.

Jansen: In the meantime, the police have continued investigating the rape and robbery. Mark doesn't know it yet, but they think his cousin was one of the perpetrators, the same one who was in the car with him when they were pulled over.

Denny: I guess the cops assumed that because I was with them on one time there's a possibility that I was with them all the time. I actually became guilty by association.

Jansen: Two months later, the police knock on Mark's door.

Denny: Well, they told me they came to ask me some questions they had my cousin arrested in the precinct, and they wanted to ask me some questions and they will bring me right back. My grandmother wanted to volunteer to come with me, but they told her it wasn't necessary for her to come. So I didn't get the gist of it, until I got to the precinct.

Jansen: When he gets to the police station, they arrest him. When he finds out they're charging him with rape and robbery, he's shocked. Mark has no prior convictions or a history of violence, and from the beginning he says he's innocent.

Denny: I was kind of like, I was like, to me it didn't make no sense in my head in my mind they had me confused with somebody else.

Everything was a error. I knew it was a error, but I was just, I don't know. I was like, I was just overwhelmed by the fact that no one else, didn't seem to realize they was wrong. Everyone was like, to me, everyone was like hypnotized into doing what they was doing.

*Music break*

Jansen: Trial finally comes up; can you describe it? What happened?

Denny: Oh gosh, trial was interesting because I got a chance to actually become fully exposed to why I was going through what I was going through, why I was arrested, you know, who was accusing me, what was really going on. And you know, throughout the whole trial I was just quiet and I was just listening and I was just becoming aware of a lot for the very first time.

Jansen: Mark has a joint case, which means his cousin's on trial with him. He realizes early on that his cousin is probably guilty—there's a lot of physical evidence against him. But the prosecution doesn't have any of that for Mark. What they do have is a witness. The female victim had identified him.

Denny: And I was kind of heartbroken when I seen the victim up there. And crying and carrying on, but I was really crushed more when it came to a point that the victim had to make an identification in the courtroom. And they asked

and she pointed at me and identify me that part was like real – it was like the twilight zone for a minute because at the moment, you know, I was shocked that she picked me out. I was confused. I was disturbed. I wanted to yell out, you know, but I just sat there and just felt, you know, I was more sorry for her than I was actually for the fact that she was making an error. That part seemed to overwhelm me a lot.

*Music break*

Jansen: During the trial Mark finds out that at first, the victim actually hadn't identified him. After the crime, a detective showed her a group of photos and said the perpetrator was in one of them. She identified Mark's cousin. Mark's photo was in there too, but she didn't pick him out.

But two days later, the police arrested Mark anyway. They put him in a lineup. By this time, the victim had already seen his photo. And she did pick him out.

Denny: In my mind I was like, yes, okay, they see now that the only reason why she identify me is because they showed her a picture. So I was hoping on, you know, getting acquittal. I couldn't wait to get out of prison and go home and tell my little story.

Jansen: This will end up being a big part of Mark's case. When Mark was arrested in 1988, people were already concerned about eyewitness misidentification based on what's known as "[multiple exposures](#)." That is showing someone the same face several times. Today it's well known that such procedures increase the risk of an unreliable and incorrect identification. But at the time there wasn't a lot of research, and the practice was common.

Still, once Mark understood what had happened, he actually felt hopeful.

Denny: And that's another thing that kinda kept me afloat on [Riker's Island](#) was the excitement of just finally getting out and making it and to be able to tell the story to my little friends and stuff, you know? But that moment never came.

Jansen: When the jury comes back in, the judge asks if they've reached a verdict:

Denny: And when they stood up and they said what the verdict was. Wow. And even back then, even though I was a kid, I was still like religiously rooted. So I kind of had it like a spiritual hope behind it all. You

know, they had the big sign in the courtroom “In God we trust” and all that.

So, you know, that was like a real whirlpool for me, when that moment came, you know, I just, I just blanked out. Everything just went dark and doubtful, and my mind was just blank and I was just crying. I just started crying.

Jansen: On February 2, 1989 a jury convicts Mark of rape in the first degree, sodomy in the first degree, coercion in the first degree, and robbery in the second degree. His sentence: 19 to 57 years in prison.

Denny: When I got those numbers I broke down again. I couldn't believe those numbers. Then I was trying to plead to the judge: “You’re wrong. I'm innocent. I wasn't there,” you know, “I wasn't there,” you know? It was just, those words was just all the words that I could have said. And it didn't hold no muster. You know?

*Music break*

Jansen: Mark’s convicted at a time when New York City is consumed by both crime and crime panic. It’s an election year, and a man named [Charles Joe Hynes](#) runs for Brooklyn DA on a promise to reduce crime within two years.

Hynes wins the election. Arrests soar, and [so do convictions](#). But there aren’t any conviction review units anywhere in the country. So someone like Mark doesn’t have a lot of options.<sup>1</sup>

Denny: I know I was very sad for a long period of time. You know, my uh whole personality dropped. It became very difficult for me to sleep. I became very agitated and irritable at everything, I just, you know, I was just, I just couldn't imagine how could you be innocent and found... my mind couldn't grab that yet.

Jansen: Mark wants out. He starts studying at the law library. And after his first appeal is denied, he doesn’t stop. He can’t afford a lawyer, so he writes to any organization that might help him. In 2009, when he’s already been in prison for twenty years, one of those organizations responds.

Nina Morrison: So when I took Mark’s case, I had never met him.

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<sup>1</sup> The country’s first conviction review unit opened in Santa Clara County, California in 2002.

My name is Nina Morrison and I'm senior litigation counsel at The Innocence Project.

Jansen: The [Innocence Project](#) specializes in overturning wrongful convictions, and Nina sees the flaws in Mark's case right away, especially the eyewitness identification process.

Morrison: So that was something of a red flag to say the least, that this might have been a miss identification and there was really no other evidence against him.

Jansen: But that doesn't make the case straightforward. There's no DNA evidence. And even if there was, because one of the rapists was Mark's cousin, there might be too much overlap to exonerate Mark.

Morrison: We needed to do more than just show Mark's DNA wasn't there: we need to show that he wasn't there. So we took the case knowing that there were some real challenges up front, but his innocence claim just seemed so strong.

Jansen: Mark and Nina don't know it yet, but it won't be long before they get a break.

Brooklyn DA Charles Joe Hynes has now been in office nearly as long as Mark's been in prison. [He keeps getting re-elected thanks to his tough on crime reputation](#). But the culture is changing, and the number of wrongful conviction claims against his office has skyrocketed. So in 2011 he starts the Conviction Integrity Unit. But it doesn't get a lot of resources, and can't get much done.

In 2013, Hynes runs for his seventh term in office and loses by a landslide. The winner is a progressive reformer named Ken Thompson [who promises fairness, equality and justice, starting with wrongful conviction claims](#). One of the first things he does is rename the Conviction Integrity Unit.

Thompson: My predecessor called it the Conviction Integrity Unit. But I thought the process in place did not have integrity, and so I changed the name to the Conviction Review Unit. But when I took office in January, there were about a hundred cases of wrongful conviction claims. But yet there were only two prosecutors who were responsible for reviewing these cases. Those two prosecutors didn't even sit next to each other, they were on different floors. They weren't even given the real resources to investigate these claims. [So I thought that was crazy](#).

*Music break*

Jansen: While DA Thompson is busy getting the CRU off the ground, Mark's lawyer Nina Morrison and her team are scrambling to find new evidence in his case. But it's slow going. After five years of looking, they can't find the DNA evidence. And they haven't found much else.

Morrison: And at that point we faced a really hard decision. We didn't know that we would ever have enough to get him out of prison.

Denny: In my mind it was like, "Ah man, I'm definitely not getting out now because all I really had was the truth, and that wasn't doing nothing for me for years." So that's, I actually started to lose somewhat hope, being it, it was taking so long.

Jansen: Around that same time, the Conviction Review Unit starts to take off. They bring on ten prosecutors, three outside lawyers in an independent review panel, and a high caliber defense attorney.

Eric Gonzalez: This was not just for politics, this wasn't just for show.

Jansen: This is Eric Gonzalez, the current Brooklyn DA. Back when the CRU started, he was Ken Thompson's chief assistant. DA Gonzalez and Mark Denny actually have a lot in common.

Gonzalez: So I'm a native New Yorker. I grew up in Brooklyn. And uh, I wanted to become a prosecutor from the time I was in high school. I grew up in a particularly tough neighborhood, both in Williamsburg at the time and east New York where there's a lot of crime, a lot of drugs, gang violence. But also as a Puerto Rican young man, I also felt alienated from the police department.

And when I learned that prosecutors were meant to sort of serve as a liaison between community and law enforcement and help communities get safer, I thought this would be a position that I'd be interested in. But I didn't realize at the time did I had to go to law school or any of those things, that that was a surprise to me.

Jansen: Gonzalez understood what the CRU might be able to accomplish.

Gonzalez: A common thread to wrongful convictions have been sort of inadequately

investigated by the police and the district attorney's office, often defense attorneys didn't have the resources to do their own investigations.

Jansen: But the CRU does have resources—a budget of over a million dollars a year. And they get to work fast, exonerating ten people in their first year. A lot of those exonerations are in what they call “Category 1,” cases where it’s obvious that something had been done really wrong.

Some cases involved a notoriously corrupt detective. In others, there was only one eyewitness and no other corroborating evidence. Those were convictions like Mark’s.

By now, Mark has been incarcerated for 26 years. Over time, he’s found ways to adjust.

Denny: So, I started cutting hair in prison and eventually came to a point where I started going to school. I started going to college, but that was over the course at a time though, as I became more situated with the idea that I might never come out of jail. So I started to do different things to keep myself afloat.

Jansen: While he cuts their hair, he talks to the prisoners, often about his case. And, it doesn’t always go well.

Denny: Once they hear the word “rape,” it's like everything else shut down. All they seen is that, okay, you did something tied to a little girl or an older woman or whatever the case may be. So I had to deal with that.

Almost lost my life in prison. I got stabbed in the neck. And, all of that was a result of, you know, people just being in a rage of the fact that I was in jail for a rape. It just made them find me repulsive, so it brought out the worst in everybody.

Jansen: Mark is losing hope. But his lawyer, Nina Morrison, is actually feeling optimistic. She’s been watching the CRU work and is impressed.

Morrison: We were able to see in the early years of the Thompson administration that they were putting substantial resources into these re-investigations. It became an independent and well-funded unit and they were exonerating people at a pace that we had not seen in many offices.

Jansen: And it gives Nina an idea.

Morrison: We wrote up a memo that was more than 20 pages, single spaced. It was very long and very detailed about the history of the case. Everything that had led to Mark's arrest and conviction and the interviews that we had done so far, uh, and what we thought were the most promising angles that the CRU could use to take it from there.

Jansen: Nina submits the memo to the CRU, and in July 2015 they agree to open an investigation into Mark's case.

Lisa Perlman: I'm Lisa Perlman and I'm an assistant district attorney at the Brooklyn DA's office. I work in the conviction review unit and I was the ADA that investigated the Mark Denny case.

Jansen: The first thing that stood out to her about Mark's case, was the same thing that stood out to Nina: the eye witness identification.

Perlman: So is this important to preface what I'm about to say with the victim in this case, was the victim of a horrific crime and the process that occurred through her experience navigating what happened after the crime in terms of the criminal investigation, there were so many factors that contaminated that process. So when I speak about inconsistencies, this is not in any way placing blame on the victim.

The first thing that we, that we noticed was that based on the actual nature of this very violent gang rape, there was a very obvious issue with what was the victim's ability physically to perceive what was happening at all times and all around the room. And we found that that was very compromised. There were ten accounts given by the victim in this case that were inconsistent with one another. Again, no blame whatsoever on the victim in this case.

Jansen: But, when the CRU takes a case, they don't just rely on the original evidence; they re-investigate the crime from start to finish. They read all the trial transcripts, police reports, re-interview witnesses and re-examine the physical evidence.

Lisa says there were two really big "Aha!" moments in Mark's case. The most important one was when she located one of the co-defendants who was never prosecuted. See, in the beginning, there were four defendants. One pled guilty right away. Then there were Mark and his cousin, who went to trial together and were both convicted. The fourth co-defendant was never prosecuted. His case was supposed to be tried after Mark and his cousin's, but the victim declined to go through another trial. And so this

co-defendant's case was dismissed.

But Lisa found him.

Perlman: We came to him and said that we were investigating a claim of innocence from one of the three other defendants. He did not know which one. We did not tell him which one. And he went on and he broke down extremely emotionally, admitted his participation in the rape and the robbery. And he expressed his remorse for it. But he also stated that Denny wasn't there and he was very clear about that.

Jansen: Mark's lawyer Nina was relieved to hear that the fourth co-defendant admitted that Mark wasn't there. And she was glad the CRU lawyers were the ones who found him.

Morrison: You face a very, very heavy burden when you go back into court 25 years after a crime of saying to a judge that they should undo a verdict that the jury rendered. And that's where conviction integrity units and conviction review units become so important. Uh, because if the DA's office is able to reinvestigate a case and they come into court and say, we believe that the evidence does not support the jury's verdict, we believe that he is innocent, everything changes.

Jansen: I asked DA Gonzalez about office politics in these cases.

Gonzalez: I've seen a few instances of bad blood but what I've actually seen is also a few instances of like, you know, when I tried that case, I really did not know about that witness, I did not know about that piece of evidence, I did not know this, so we've learned so much. Um, and that's why we can't rely on the standards of 25 years ago. They say, well, that was legally sufficient 25 years ago. We should now not examine it today. We know so much more now. That's why we have an obligation to take a look at those cases.

So, to really answer the question, the overwhelming number of ADA's that we've overturned their case, what they've actually expressed to us is sadness that they were involved in the wrongful conviction.

Jansen: I reached out to a number of prosecutors who've had their cases reviewed. None of them wanted to talk about it. But ADA Lisa Perlman did share her perspective:

Perlman: It's horrible. It's the worst thing that can happen in this field. That's the, the worst possible scenario, right? I mean, outside of what happens to

victims in terms of our prosecutions of defendants, that's, you know, that's the nightmare scenario, right?

*Music break*

Jansen: Over the course of two years, from 2015 to 2017, the CRU does their own investigation of Mark's case. The detectives also visit Mark in prison.

Denny: I mean I was kind of a skeptic because they was cops, you know, and cops is the one that, you know, ruined my life. And so when these guys came on board, I was kind of reluctant that, you know, the cops was gonna to help me get out of jail. And I really had a real, you know, pessimistic point of view about all cops.

And then they just told me that, you know, they read about my case and they believe where I'm coming from and they really going to do everything to go out there and do the foot works and make sure the facts add up and to just, you know, have confidence, be patient, they're going to do everything.

So, at the end of the conversation, I kind of felt a little bit more hopeful about them and I kinda got a feel for them and I got a sense that you know,  
they really, really going to do the right thing.

Jansen: The detectives interview him twice.

Denny: Then, before I know it, you know, I was in court, you know, the district attorney Eric Gonzalez, was apologizing to me. My lawyer was there, my family, you know, all the things that I designed, and longed for, was just, all of a sudden it was just there. It was like magic. Oh, a whole bunch was going through my mind. I can't even really say exactly what it was, but it was just that. It was, it was a shock, you know, it was a total shock. It was a total wake up. It was like, it was a total relief. Finally. [Sigh]

Jansen: On December 20, 2017—exactly 30 years to the day after the attacks—Mark is finally released from prison. In total, he served 29 years, 9 months, and 1 day. He still thinks about DA Gonzalez's apology to him.

Denny: So him being down to earth and open and us being the same age and coming from the same borough. It just felt, you know, I was, I felt, I felt honored. I felt like you know something was finally being done. That's all I really wanted to hear people say was that they was

wrong, cause they was wrong. You know what I mean? They was wrong. That's really good. What I wanted to hit him say it was wrong.

Jansen: Mark's lawyer, Nina, remembers the moment as well.

Morrison: And it was district attorney Gonzalez's first exoneration since he got elected DA, uh so there was something almost mystical about that moment. You know, these things that you can't quite make up if you tried and, you know, a sense of wow, there but for the grace of God go, I, you know, either one of them could have been sitting in either chair, you know, had they been different.

Denny: The first thing we did when we got out is all of us, me and my lawyer, my family, we went over to BBQs and we just ate a lot of food. It was a lot of food.

Yeah, I just, you know, God, I just became a totally different person at that moment. It's like all the worries and stresses and anxieties that I had for that moment. It was like gone. It was almost like I couldn't even really remember anything about prison for like a brief little moment of that dread just dissipated. It was just about the moment, the festivity and everyone being happy and me finally being out of prison. I mean it took a long time, but when it did happen it seemed like it just [snaps finger] happened like presto.

Jansen: When Mark was convicted in 1989, there wasn't a single review unit in the country. Today, there are 44. Together these units have exonerated 366 people. [The top two reasons are false accusations and official misconduct. The third is mistaken witness identification.](#)

Jansen: What is the result of this unit? Do you think it can be implemented in other DA's offices too?

Gonzalez: Well, we've seen it happen. Some of the DA's offices are actively doing this work, I should say that it's resource intensive. We spend a lot of money on the unit in excess of \$1 million to pay the salaries of all the employees. It's a resource intensive operation, so not every small district attorney's office in the country would maybe be able to have something the size of this unit, but it is spreading.

*Music break*

Jansen: It took multiple lawyers and students at the Innocence Project, two

progressive district attorneys, and one assistant district attorney with two detectives re-investigating Mark's case for two years, to finally exonerate him. Currently, the unit has about a hundred cases under review.

Gonzalez: [And what's spreading I think that's the most important factor is the obligation of prosecutors to go back and be open to the fact that mistakes happen and not just rely on the finality and to be able to apologize when we get it wrong.](#)

Denny: You know, so I'm just pretty much just, you know, overwhelmed by all the good things that's happening and I'm just trying to make everything work, trying to, you know, make everything come out in a way that's best for me and you know, for all of those that I actually have in my circle. But it's a constant progress. I have my own little studio. And I have so much plans for the future, but it's going to take money to really get those things going. So money's like a big, big, big, big, big issue right now.

I think I'm adjusting real great. I've been getting a lot of good help, a lot of good people has been reaching out to me. So you know, what was once, you know, broken is now being fixed and I'm just all for it, and all with it, and all encouraged by it.

*Music break*

Miller: Sabine Jansen is a reporter based in Brooklyn.

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