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Mr. Kinney,

Thank you for taking the time to speak with Morrison Bonpasse regarding my wrongful conviction in the death of Kassidy Bortner.

Morrison informs me that you are skeptical of my wrongful conviction. That's ok. I would be too. In fact, prior to coming to prison I thought everyone locked up must be a "dirtbag" that deserved to be there. Everything I ever read told me that our system was the best in the world. I guess I took this information to the next step and equated it with "perfect" and "mistake proof". Imagine my surprise when I found myself in prison, bunked near disgraced doctors, disbarred lawyers, and many other men from other professions that made mistakes. Sprinkled in with that mix were one or two men that I wholeheartedly believed to be innocent.

Being skeptical is ok as long as someone is able to keep an open mind. It has been my experience that the most skeptical are among the most passionate and ultimately helpful to the innocent. Anyone willing to scratch the surface in my case will find many of the same problems that are found in nearly every wrongful conviction case of record. A recent collaborative study conducted by University of Michigan Law School and the Center on Wrongful Convictions at Northwestern University School of Law found that there have been over 2000 documented wrongful conviction cases across the country in the past 23 years. In many of these cases, a theory is quickly formulated, evidence is sought to support that theory, and evidence to the contrary is ignored.

There are many reasons that the wrong theory is pursued. Sometimes it is a matter of statistics: father's are 80% more likely to abuse children and that number increases if they have abused their partner in any way. Other times, it's a matter of a well intentioned person providing a false or misleading statement. A suspect may do something that, though not against the law, is looked at questionably by the authorities and casts suspicion. The police are human beings and I suspect it is impossible to remove the human element where we bring morals into the equation either through snap judgments or questioning. I imagine every officer at one time or another has thought to themselves, "*I wouldn't have handled the situation with the child like this guy sitting in front of me*" or "*If I was accused of something like this and didn't do it, I would be acting this way...*"

I mention the above examples because they are all prevalent in my case. The trouble is, once the "train" starts to pick up steam, it is very hard to slow down. Once a theory is established the interviews and investigation becomes focused on results rather than following the evidence wherever it may lead. I can provide names throughout the country where men have spent 15, 17, 22, 26, 32 years etc., locked in a cage before they were exonerated. In the majority of these cases, a trial ensued and a jury of 12 men and women unanimously voted, "*guilty beyond a reasonable doubt*". These verdicts stood for years while men languished, many of them fighting the conviction from the very first day. But they were stuck as I am stuck; our screams of innocence seemingly falling on deaf ears. Fortunately, for many of these

men, DNA evidence came along and proved what they had been shouting for years. All of those well intentioned police, prosecutors, and jurors got it wrong. **SCIENCE PROVED THESE MEN WERE NOT RESPONSIBLE** as once had been thought by so many.

Unfortunately, my case does not involve the type of DNA evidence that will automatically open the doors. I wouldn't be writing to you today if it was that cut and dry. Instead, I would be home nurturing my now 14-year-old son as he tackles the challenging teen years. Though there isn't DNA, there is a myriad of other evidence (as well as lack of evidence) that casts serious doubt on my conviction. Emily Hughes, Associate Professor of Law at Washington University in St. Louis School of Law authored, Innocence Unmodified for the North Carolina Law Review. Professor Hughes states in part, *"Another kind of actual innocence includes people who did not commit the crime and whose innocence cannot be proven through DNA testing. Such people might have been wrongly convicted because of an eyewitness mistakenly identified them, because the true culprit framed them, or because the prosecution withheld exculpatory evidence. To prove innocence in these non-DNA cases, defendants may show that witnesses have recanted their previous testimony or that additional evidence has surfaced."* (Pg. 1087) I believe we meet both "prongs" of Ms. Hughes test. Amanda has consistently recanted and much new evidence has been discovered.

We have compiled a list of 47 items that were either missed altogether during the initial investigation, were not known about, or didn't receive the attention they should have. In addition to those items, I would like to highlight several others that are worth considering.

- Advances in science. Much more is known today than was 12 years ago regarding head injuries. We needn't look any further than the attention the National Football League is now paying to traumatic brain injuries and the studies that have recently been done. We know that Cassidy had a **SIGNIFICANT** fall while in the care of her babysitter just days prior to her death. In hindsight, we can clearly see through use of a timeline that her condition significantly deteriorated after that accident. In 2009 the actress Natasha Richardson had what at the time seemed a minor fall on snow. She was checked out at the hospital and started to feel better only to die days later. Dr. Patrick Barnes, a Pediatric Radiologist at Stanford University believes there has been a revolution in the understanding of head injuries in the past decade, in part due to advances in MRI brain scanning technology. He states, *"We started realizing there were a number of medical conditions that can affect a baby's brain and look like the findings that we used to attribute to Shaken Baby Syndrome or child abuse."* This is a courageous about-face for Dr. Barnes whose testimony was instrumental in helping to convict Louise Woodward in a trial watched throughout the country. Barnes admits that if Woodward were on trial today vs. 1998, his testimony would be different.
- In addition to the study of brain injuries, much has been learned in the past three years about children's deaths. It has long been assumed that their bodies function the same as adults only in a "mini" version. Science is disproving this theory. During a recent Frontline Pro Publica special, a prominent Florida forensic pathologist, Dr. Jon Thogmartin stated something close to, *"Children's bodies are a mystery that we are just beginning to unravel."* Dr. Thogmartin said the charged emotions inevitably triggered by a child's death add another layer of complexity. Forensic Pathologists, in his view, can get caught up in the anger, the emotion, the despair. Their mindset can become prosecutorial until every child death is a *"homicide until proven otherwise."*

Based on symptoms observed and comparisons to known causes of adult deaths, doctors can no longer assume the causes are the same. New studies are turning this theory on its head. What shows up in a deceased adult may be far different than how it appears for a child. We now know that many tests that should have been done at the time of Cassidy's death were not completed. My guess is once homicide was suspected, these tests seemed irrelevant to the medical examiner. The true cause of Cassidy's death remains a mystery.

- Sheer lack of evidence. Nearly every fact I provided to the police during my interrogation was either verified or could have been verified. The police spent over a combined 300 hours combing my house and property for physical evidence of abuse and found NONE. In fact, the only biological evidence found was at the home of the babysitter where Cassidy spent the last 4 + hours of her life. (blood under Cassidy's fingernails, on a sheet, and brown stains down the front of her brand new coat that Amanda and I purchased 4 days earlier.)
- During my 2001 trial, neither of the opposing forensic pathologists could definitively state what caused Cassidy's death. Time ranges of injuries were proposed and all of them coincided when a number of people had contact with Cassidy with the exception of one injury. Both doctors agreed that Cassidy had a fresh injury in her lip area that was less than two hours old. In 2007 we asked world renowned Forensic Pathologist, Cyril Wecht, to review the autopsy results to see if anything was missed or advances in science had been made to help prove my innocence. Dr. Wecht opined that the case was too close to call. He unequivocally stated that had the police decided to focus their attention on the babysitter, rather than me, then the babysitter would likely find himself in the same position I am in today. It's pretty scary to think that I will potentially spend the rest of my life in prison because among other things, the police quickly "chose" me as the person responsible. I realize this is an oversimplified statement. However, it is not an exaggeration that within three hours of Cassidy's death the police started telling people during interviews that I was responsible.
- It is well documented that when being questioned by the police witnesses try to be accommodating. Things can go downhill quickly once a witness consciously or subconsciously realizes what the police are after. My trial attorney, Alan Cronheim, once stated during a pre trial meeting in his office, *"In my 20+ years of practicing law I have NEVER seen the police narrow their focus so quickly to one suspect with such blatant disregard for all else."*
- I have sought and passed two different types of lie detection test (Voice Stress Analysis and Polygraph) with No Deception Indicated. There isn't a test available that I wouldn't take to help prove I am telling the truth: I've NEVER hit or even spanked Cassidy. As far as I'm aware, I'm the only person in the country who claims innocence and has passed two different types of lie detection test. I've been willing to take a lie detection test since the first hours of learning about Cassidy's death. There are a number of people that can verify this fact including KASSIDY'S MOTHER, Amanda Bortner, and my former attorney, Alan Cronheim. Interestingly, the only person the police directly asked to take a lie detection test, the babysitter, Jeff Marshall, hesitantly agreed, and later rescinded his agreement on the day the test was scheduled.
- Cassidy's mother, Amanda Bortner, is the **only** state's witness to have alleged directly observing me mistreat Cassidy. Throughout the years Amanda has tried to correct

these misstatements. Today, Amanda is over 30 years of age, has moved on and started a family, yet still maintains that she felt, *"coerced and pressured by the police to say things that weren't true about Chad abusing Cassidy."* What motivation could Amanda have to say these things, now, 12 years later, other than the desire of justice for her daughter? What Amanda gave the police is analogous to a false confession. Brandon Garret, Associate Professor at the University of Virginia- School of Law authored The Subject of False Confessions for Stanford Law Review. Professor Garret wrote in part, *"There is new awareness that innocent people falsely confess, often due to psychological pressure placed upon them during police interrogations. Not only can innocent people falsely confess, but all except two of the exonerees studied were induced to deliver false confessions with surprisingly rich, detailed and accurate information. We now know that those details could not have likely originated with these innocent people, but rather must have been disclosed to them, most likely during the interrogation process"* (pg. 1051) If you review the witness interviews you can see the police, especially with Amanda, "spoon feeding" details. The article goes on to describe how those interrogated can also falsely inculcate others. Likely this is to alleviate the pressure they are feeling and to get out of the situation. (Amanda was later criminally charged as a co-conspirator of sorts for her role in observing this non-existent abuse of Cassidy.)

Prison has been very difficult over the last 12 years. The tragedy of Cassidy's death has created many victims. She was loved and is missed daily by those whose life she touched. The grief is exacerbated for some with my wrongful conviction. My son is growing up without a dad to teach him how to drive, take him fishing, show him how to maintain his motorized toys and share in so many other things. My siblings are missing an important cog to the family wheel; the brother they could rely on to help with so many problems. My parents, who have been so close and a great impact on my life and the man I would ultimately become, are left with the feeling of helplessness. Some of their only joy is driving two hours a week to spend 2 ½ hours with their once promising son who is now locked in a cage, for a crime they know in their hearts he did not commit.

I have lost many of my dearest friends along the way. Some, no doubt, because they have come to see me as the "monster" that was described. Once you are charged with something terrible and it isn't quickly fixed, people's memories change. Every mistake you've made or character flaw is magnified. Friends do this I believe, because they have to somehow make sense of things. *"Well, maybe it's true; I've seen Chad act really obnoxious when drinking..."* I can't blame them; I once shared this unbounded faith in our perfect system. Others have disappeared because they can't bear to sit across me in the visiting room, knowing what we once shared may never again be. Sadly, I believe the majority have been lost because people naturally grow apart when they lose the ability to create new memories. Incarceration changes relationships in ways that are difficult to imagine and even tougher to describe.

On its best day prison is monotonous. Time drags by as you try to find things to occupy your mind. Many hours each week are spent haunted by the mistakes you've made, regret, things you wish you could go back and do differently and general feelings of failure. You want to scream out, *"Please someone have mercy on me, I didn't mean for things to turn out this way."* In prison you are deprived of human contact, basic amenities, the family and friends you hold nearest to your heart. The simple things you took for granted such as the taste of a

mouth watering hamburger are now only dreamt about. Worst of all, you lose your identity. You are now, and in the future defined only by your conviction; your life's body of work is wiped away as simply as crumbs from a kitchen counter. The key holders and the world at large, view you as deficient of integrity. Everything you do is warily viewed as if you are trying to "get over". All of this is how it is for the guilty. Magnify these feelings times 100 if you are innocent!

I have spent everyday of this sentence in torment. Most of my anguish is centered on the things I didn't do for Kassidy and can't do for my son. For the first several years I routinely denied myself the simplest of human pleasures. *"I'm not going to watch the Patriots because Kassidy can no longer watch cartoons."* Even today, when we are served donuts for breakfast once a month I routinely leave a bite uneaten for both Kassidy and Kyle. I do the same with ice cream and other favorite snacks they enjoyed.

I am constantly replaying the weeks prior to Kassidy's death and chastising myself for not doing more to help her. I'm haunted by questions such as: *"Why couldn't I see? Why didn't I know? What could I have done differently? How did this happen?"* I loved Kassidy and certainly didn't kill her but how can I feel anything but that I failed her? It's not something that I can make sense of and logically I know this is because there is no sense to make yet daily these questions persist.

I've also spent everyday of this conviction trying to get the truth out. Some days are better than others. Mostly I've been met with indifference. It is heart wrenching but I understand people's skepticism. All I can hope is each day one or more new people will "peel back the layers" look below the surface of this conviction, and see that there is so much more than the story that was told. Every now and then this persistence is rewarded with someone that becomes intrigued by all that doesn't make sense. Fortunately, in nearly every instance these people have become my strongest supporters. This is just enough motivation to keep fighting. There are certainly moments when I feel overwhelmed and want to just throw in the towel. Just doing the "time" is the easy part. Many here get into routines and excel at it. It is everything else that Judge Nadeau didn't warn me about that is difficult. Those moments of "quit" are fleeting as I gather strength for the next big push because truth demands it. Kassidy, my son, my family, Amanda, and myself, deserve justice.

I know this letter is long. I hope I have given you an adequate glimpse into my wrongful conviction and my current life. I would be happy to answer any questions for you or you can visit if you are interested. If you are skeptical or unsure of what you would find in prison, I encourage you to reach out to Ray Duckler, a longtime reporter for The Concord Monitor. Mr. Duckler attended a parenting group I am involved with last year and was moved by what he witnessed. At the end he commented, *"I didn't know what to expect when coming in here today but it wasn't this. I guess I've watched too much television. You men have blown away the stereotypes that existed in my mind."*

Sincerely,