

# Hats off to CADC Superhero Fay Arfa!



Congratulations to CADC member Fay Arfa on her huge victory in *People v. Daniel Clark, In re Daniel Clark, L.A. No. MAO35466*, Court of Appeal Nos. B203220, B228831.

After ten years, five months and fifteen days, two trials and two reversals on appeal, the prosecution and defense reached an agreement releasing Daniel Clarke from state prison. Attorney Fay Arfa fought for Clarke's freedom for years, never giving up hope. Clarke had been serving a sentence of 32 years to life in prison for six felonies, including the rape of pregnant T.G., the mother of his son. Forensic evidence proved Clarke's accuser had lied and self-inflicted her wounds to keep Clarke from gaining custody of their son.

The saga began when Clarke filed for custody of the couple's son because T.G. refused to let Clarke see him. On April 14, 2005, Clarke filed a petition seeking legal and physical custody of his son. Two days before the custody hearing, T.G. invited Clarke to her house where they engaged in sex. After Clarke fell asleep, T.G. called the police. When the police arrived, T.G. grabbed her pajama shirt and ran out of the house naked, claiming that Clarke broke into her house, held a knife to her throat, cut her chest, thighs and genitalia with a knife and forced her to have sex. The police arrested Clarke, who was convicted of rape, burglary, and numerous other charges.

Clarke hired Arfa to file a motion for new trial. Arfa spoke to Clarke and his family, saw the evidence, and hypothesized that T.G. had self-inflicted her wounds. Defense experts appointed by the trial court agreed that the wounds, consisting of parallel, superficial lines, were self-inflicted. Despite the compelling exculpatory forensic evidence, the trial court denied Arfa's motion for new trial and sentenced Clarke to 32 years to life. Arfa appealed and concurrently filed a habeas petition on Clarke's behalf.



The Court of Appeal ordered an evidentiary hearing. At the evidentiary hearing, the defense medical experts testified that T.G.'s wounds were self-inflicted. Nevertheless, the trial court denied the petition. Arfa then filed a new habeas petition in the Court of Appeal based on ineffective assistance of counsel, which was granted, and the judgment was reversed.

Before the second trial, the prosecutor got a court order appointing the Los Angeles County Coroner to analyze T.G.'s wounds. Unbeknownst to the defense, Deputy Coroner Lisa Scheinin, M.D., concluded the wounds were self-inflicted, but the prosecution buried the report. Once again, the jury convicted Clarke, and once again, he was sentenced to 32 years to life. The jury apparently found it hard to believe a woman would deliberately inflict such wounds on herself.

Undeterred, Arfa contacted the Coroner's Office and learned about the exculpatory report. Arfa filed a motion for new trial based on newly discovered evidence. The trial court denied the motion, finding the report to be "cumulative." But the Court of Appeal reversed again for the *Brady* violation, and the case went back for yet another trial. (See *Brady v. Maryland* (1963) 373 U.S. 83.)

Before the third trial started, Arfa filed a motion to dismiss based on prosecutorial misconduct and a motion to exclude T.G.'s false testimony. On the day of the hearing, the prosecution offered a sweet deal: a plea to a lesser, non-strike, non-registerable offense (Pen. Code, § 273.5), for time served with no parole, a \$320 fine and a stay away order as to T.G. Clarke accepted the deal, because it would have taken a year for the third trial to start, Dr. Scheinin had retired, and jury trials can be risky — he had already been convicted twice on false evidence. Finally, in November 2015, the trial court ordered Clarke released from custody.

Arfa reports: "It's the best feeling in the world to be able to tell a client that he or she is going home. We always believed in his innocence; it's a shame he spent ten years of his life in prison; but we are thrilled with his release and we wish him all the best in the world."

*Fay Arfa is certified by the State Bar as a Criminal and Appellate Law Specialist. She is also certified by the National Board of Trial Advocacy. She has been named as one of the Top 100 Lawyers by the National Trial Lawyers and by the American Society of Legal Advocates. And she has been selected as a California Super Lawyer. She is a long time member of CADC and appreciates all the support she has received from other CADC members.*