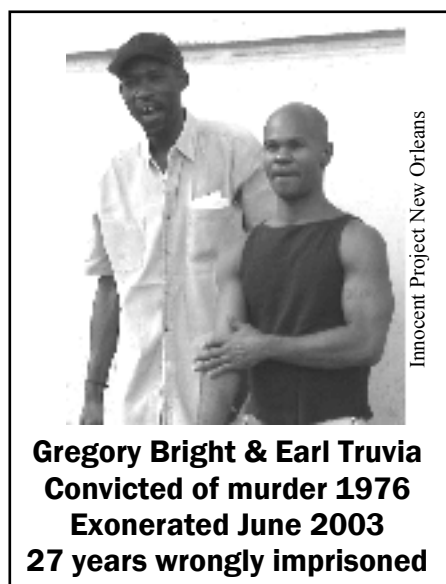


# JUSTICE DENIED



The Magazine for the  
Wrongly Convicted



Innocent Project New Orleans

**Gregory Bright & Earl Truvia**  
Convicted of murder 1976  
Exonerated June 2003  
27 years wrongly imprisoned



Jeffrey Phelps

**Steve Avery**  
Convicted of rape 1985  
Exonerated September 2003  
18 years wrongly imprisoned



Megan Morr/  
Winston-Salem Journal

**Darryl Hunt**  
Convicted of murder 1985  
Exonerated December 2003  
18 years wrongly imprisoned



Associated Press

**Dennis Maher**  
Convicted of rape 1983  
Exonerated April 2003  
20 years wrongly imprisoned

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**Travesty In Tulia, Texas - 38 Innocent People Framed!**

**Is Timothy Rice an Innocent Man on Death Row?**

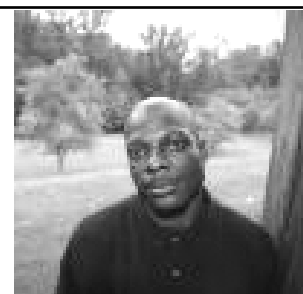
**Siddique Abdullah Hasan - Spiritual Leader Gets Life in Prison**

**The Yurko Project - Was Alan Yurko Jr. Killed By His Doctors?**

**Jeffrey Scott Ross - Wrongly Convicted of Rape and Child Abuse?**

**Killer's Confession Frees Innocent Man Convicted of His Crime!**

**AND MUCH MORE!**



Associated Press

**Anthony Bragdon**  
Convicted of rape 1992  
Exonerated March 2003  
10 years wrongly imprisoned

**Issue 23**  
**Winter 2004**

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### Message From The Editor

Dear folks: We are admittedly late with this issue. I, Clara, had devoted most of my time to raising money so that we would not be classified as a private foundation, for that would be a very bad outcome for us. The good news is that we did succeed in passing the test for public support.

However, I have learned that we must pass this test each and every year, so please do not stop supporting us, for we will need your ongoing support so that we may continue to publish year after year. We do have someone who is trying to get some grants for us, but those are always iffy. Our best bet is to continue getting your support. You will note that we now have "memberships," and these are for your magazine. We also now have what is called Sponsors, and we will discuss this individually with those who write to us.

This has been a year of ups and downs. One of my favorite people, Kay Ryder, is no longer able to continue her work with us because she has been quite ill.

There is still much work to be done to finish the year financially.

Beginning with this new issue, we will now be published by The World Newspaper in Coos Bay. It will seem different to you, but we will be able to be more on time with our issues once we have a pattern established with them, and I think you will be pleased with the result.

It's a new year, new things to try and new vistas. Happy New Year, everyone!

Clara A. Thomas Boggs  
Editor in Chief and Publisher  
Justice Denied -- The Magazine for the Wrongly Convicted  
<http://justicedenied.org>

### Information About Justice: Denied

A six issue membership to *Justice: Denied* magazine cost \$18 for prisoners and \$30 for all other people and organizations. (See note below) Prisoners can pay with stamps and pre-stamped envelope. A sample issue costs \$3. An information packet will be sent with requests that include a 37¢ stamp or a pre-stamped envelope (Please write INFO on the envelope). Write: Justice Denied, PO Box 881, Coquille, OR 97423

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**If you have a story of wrongful conviction that you want to share, please read and follow the Submission Guidelines on page 24.** Cases of wrongful conviction submitted in accordance with *Justice: Denied's* guidelines will be considered for publication. Be sure and submit a case story to the person listed on page 24 for the state where the person is imprisoned or living. **CAUTION!** Story submissions sent to *Justice: Denied's* Coquille, OR address **will be** returned to you! If page 24 is missing, send a 37¢ stamp with a request for an information packet to the address listed in the first paragraph. *Justice: Denied* does not promise that it will publish any given story, because each story must pass a review process involving a number of staff members.

*Justice: Denied* is published by the Justice Institute, a 501(c)(3) non-profit organization. If you want to financially support the important work of publicizing wrongful convictions, tax deductible contributions can be made to:

The Justice Institute  
PO Box 881  
Coquille, OR 97423

Note: A membership does not confer any rights or responsibilities on any person or organization. It only entitles a donor to the receipt of a given number of *Justice: Denied* issues.

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# Travesty in Tulia, Texas: Frame-up of 38 Innocent People Orchestrated by a County Sheriff, Prosecutor and Judge

By Hans Sherrer

On July 23, 1999, the small town of Tulia, Texas was rocked by the arrest of 43 people on drug charges. Thirty-eight of those men and women were convicted and given sentences of up to 434 years in prison. Stymied in efforts to get the Texas Court of Criminal Appeals to take a serious look at irregularities in the cases, a defense attorney enlisted the aid of the media to publicize the lack of evidence *any* of the defendants were guilty. On April 1, 2003, a judge appointed to preside over a special evidentiary hearing announced he would recommend that the appeals court vacate the convictions. While that court was considering the cases, on July 30th the Texas Board of Pardons and Parole recommended that Governor Rick Perry pardon the 35 defendants eligible for executive clemency. On August 22, 2003 Governor Perry pardoned those 35 defendants.

## Tulia's legally sanctioned mob lynchings in broad daylight

Tulia is a sleepy town of 5,000 in the Texas panhandle. The county seat of Swisher County, the town is so impoverished that it has neither a fast-food restaurant nor a nightclub. 1

With limited law enforcement experience and a two-week DEA crash course in undercover work under his belt, Tom Coleman was hired in January 1998 by the Swisher County Sheriff's Department to conduct an undercover investigation into local drug dealing. 2 Eighteen months later that investigation culminated with the very public arrest of 43 people in Tulia in the early morning hours of July 23, 1999. Roused from their beds, some of the people were not permitted to dress before being filmed by television crews as they were led from their homes to waiting police cars — one man was only clad in his underpants. 3 All but one of the people was accused of selling Tom Coleman less than \$200 worth of powder cocaine (less than 3.5 grams) — which is a second-degree felony punishable under Texas law by up to 20 years in prison. 4 However, many of the people were accused of selling Coleman the drugs within 1,000 feet of a school or public park, which enhances the offense to a first-degree felony punishable by life in prison. 5

Protesting their innocence, the defendants at first fought the charges by going to trial. Joe Moore, a hog farmer in his 60s was the first defendant. He was convicted and given the draconian prison sentence of 99 years in prison. The second conviction resulted in an ungodly sentence of 434 years for William Love. 6 The next six defendants who went to trial were given prison sentences of 12, 20, 20, 25, 40, 45 and 60 years. 7 Not wanting to spend their most productive years, if not the remainder of their life in prison, only three more defendants went to trial. The rest entered plea bargains for sentences ranging from probation to 18 years in prison. 8 A total of 38 people were convicted: 11 after a trial and 27 by a plea bargain. Twenty-two defendants were sentenced to prison and 16 were given probation.

Tom Coleman was a hero to many Tulia residents. The mayor, Boyd Vaughn, spoke for many people when he said of the nearly four-dozen indicted men and women: "These are people that aren't real energetic, don't have jobs, don't work real hard. You see them hanging around all the time." 9 A woman employed by the school system, who later was a juror in one case said of the prosecutions, "Well, good: it's about time." 10 A local businessman echoed those sentiments when he said: "Drugs were getting bad. Our town as a whole sort of told the sheriff, 'We

need to clean up these drugs.' And he's been doing a fine job of it, I think." 11 The Tulia Sentinel editorialized that the arrested people were "scum bags." 12

The fruits of Tom Coleman's investigation were also recognized by his law enforcement peers. He was selected as the Texas Department of Public Safety's 1999 Outstanding Lawman of the Year. The award was presented to Coleman by the state attorney general. 13

The Tulia prosecutions, however, didn't fade away to be forgotten for a number of compelling reasons:

- They affected too many people in a small town too harshly to go unnoticed.
- Questions about the soundness of Coleman's investigation were raised by the circumstances underlying the dropping of charges against several of the indicted people.
  - Twenty-two year old Chandra White was able to prove her innocence by producing a time card showing she was at work the day Coleman swore she sold him cocaine at her home. 14 Ms. White said after charges were dropped, "I had never, ever, seen this man [Tom Coleman] until I was getting bailed out of jail. My mom was getting me out and she saw him standing there, and she said, 'There's the one you sold drugs to.' And I said, 'Him?' This man was standing right in front of my face and I didn't even know who he was." 15
  - After Yul Bryant had spent seven months in jail, charges were dropped because the physical description of him in Coleman's report was so inaccurate that authorities resorted to explaining it away as a case of "mistaken identity." 16
  - Tonya White had charges dropped when a bank receipt proved she was in her hometown of Oklahoma City, over 200 miles from Tulia, at the same time that Tom Coleman swore she was selling him cocaine in Tulia within 1,000 feet of a playground. 17
  - Another man, bald and 5'-6" in height, had his case dismissed when it was learned Tom Coleman had sworn he was tall with bushy hair. 18
  - Charges were dropped against Billy Wafer when he proved with a time card that he was at work when Coleman alleged he was dealing him cocaine in a barn outside of town. Wafer's presence at work was corroborated by the testimony of his boss. 19 Wafer sued Swisher County over the false charges and settled for \$30,000. 20

In spite of the outrageous circumstances surrounding the dismissed cases, the other thirty-eight defendants weren't able to produce irrefutable evidence that Coleman erred.

- Charges of racism were raised because 40 of Tulia's 246 blacks, 17% of the town's black population, was arrested on July 23, 1999. 21 Furthermore, Coleman and his superiors are white, the prosecutor and county judges are white, and all but one of the jurors that convicted the defendants that went to trial were white. Sammy Barrow, a black resident of Tulia who had four relatives arrested in Coleman's sweep said: "They declared war on this community. You either were going to get a long term in the penitentiary or you were going to get enough of a deterrent to get out of here." 22 The prosecutions were described as a way for Tulia's white population to use the legal system as a tool to "ethnically cleanse" the town of blacks. 23 That program extended to black sympathizers. The longest Tulia sentence was given to William Love, a white man married to a black woman, and considered by the black community to be one of their own. 24
- The absence of an unusual drug problem in Tulia is evidenced by "city statistics showing relatively modest numbers of drug arrests before the sting in 1999." 25 A study actually indicated Tulia had some of the "lowest rates of drug use in the region." 26 A defendant bluntly pointed out the obvious lack of serious drug activity in Tulia: "Where the drug addicts at? Where the big houses? Where all the gold teeth?" 27 The answer to his questions is deafening silence, because most of the defendant's were so poor that they lived in "public housing or trailer homes." 28
- Prior to and during Coleman's investigation powder cocaine was scarce as hens' teeth amongst Tulia's black population. Yet that was the drug Coleman claimed he was routinely buying from them. 29
- When the forty-three defendants were arrested, the police didn't find *any* guns *or* drugs, *or* unusual amounts of cash that are the staples of dope dealers. 30
- All thirty-eight convictions were based on Tom Coleman's word that each defendant sold him drugs. There was no surveillance photo or video of *any* drug buy. There was no audio tape recording of *any* drug buy. Coleman didn't wear a wire during *any* of his alleged drug buys. There was no corroborating law enforcement witness to *any* of the alleged drug transactions. There was no physical evidence of *any* kind that *any* drug buy alleged by Coleman took place, other than the small amounts of weak powder cocaine Coleman alleged he bought from the 38 convicted defendants. 31

- Coleman claimed his *only* record keeping system consisted of occasionally writing notes on *his leg*. 32 Those records were apparently lost when he showered.
- Coleman's credibility was undermined when it was discovered by defense lawyers that he had been arrested while working undercover in Tulia, related to his indictment in 1997 for theft while he was working as a sheriff deputy for Cochran County, Texas. When Swisher County Sheriff Larry Stewart learned about the indictment in 1999, he was forced to arrest Coleman and suspend his undercover investigation. 33 The Cochran County Sheriff who accused Coleman of the 1996 theft, wrote in a letter to the state agency that accredits police officers, "It is my opinion that an officer should uphold the law. Mr. Coleman should not be in law enforcement." 34 Yet in spite of Coleman's shady past, of which the indictment was only one episode, Swisher County Sheriff Stewart hired him for the sensitive job of running a virtually unsupervised undercover operation with no previous experience, and only a two-week DEA training course under his belt. The Cochran County Sheriff's charges against Coleman were dropped after he paid \$6,700 in restitution to several Cochran County merchants. 35 However instead of firing Coleman, Sheriff Stewart inexplicably had Coleman resume his undercover operation. This twist on Coleman's Tulia investigations was first reported publicly in June 2000. 36
- Not all of Tulia's white population are virulent racists, and those people knew something wasn't right about the prosecutions. Gary Gardner is one of Swisher County's most respected residents, although he is an outsider from the local political establishment. After attending the first Tulia trial, Gardner bluntly assessed it as a legal "lynching." 37 He described Coleman's testimony by saying, "He said a thing or two that stood my hair up on end." 38 The way that first trial was conducted and the 99-year sentence given defendant Joe Moore, set the tone for the over three-dozen convictions that followed.

### Publicity About The Tulia Convictions Leads To An Evidentiary Hearing

Public exposure of the flimsy foundation underlying the Tulia convictions began on June 23, 2000, when The Texas Observer published an 8,000 word investigative article, Color of Justice. 39 In October, four months later, the national media picked up the story after the William Kuntler Foundation began providing funding and guidance to Tulia area residents seeking to free the convicted people. 40 In that same month an Abilene attorney filed a lawsuit on behalf of Yul Bryant, against whom charges were dropped because Coleman falsely identified him in a report. The lawsuit accused "the local sheriff [Larry Stewart] and the district attorney [Terry McEachern] of conspiring with undercover agent Tom Coleman to "deliberately and selectively target and prosecute" on the basis of race." 41 Also in October 2000, the ACLU filed a civil rights complaint with the United States Department of Justice related to the blatant race component evident in the Tulia prosecutions. 42

Intense media exposure, such as a front page story in The New York Times and an article in Time magazine, didn't seem at first to help the many Tulia defendants who continued languishing in prison serving their decades long sentences with no end in sight. However the torrent of publicity eroded the stonewalling of the legal system and led to the legal break those people needed: In early 2003 the Texas Court of Appeals ordered an evidentiary hearing to clarify whether the defendants in four cases were convicted solely

on the evidence of Tom Coleman's word. Judge Self was forced to recuse himself from the hearing because he publicly supported Prosecutor McEachern after the Tulia convictions came under scrutiny. 43 Retired Judge Ron Chapman was appointed to preside over the evidentiary hearing held in March 2003. On March 20th the Appeals Court's question was answered affirmatively for the Appeals Court when Coleman responded "Yes," when one of the defense lawyers asked him, "But for your word, there is really no evidence that any of these alleged buys took place?" 44

Coleman effectively undermined confidence in any of the convictions when he couldn't state with certainty that any of the defendants were guilty. When asked about his confidence in their guilt he responded, "I'm pretty sure." 45

Coleman further eroded confidence in the convictions when he acknowledged some of his sworn testimony that Prosecutor McEachern used to procure them was "questionable." 46

The credibility of Coleman's accusations against 17% of Tulia's black population was also damaged when his former wife disclosed in a sworn statement that he was a card carrying member of the Ku Klux Klan, and he was "openly prejudiced" against blacks and Hispanics. 47 Coleman corroborated the substance of his wife's statement when he admitted during the hearing he referred to blacks as "niggers." 48 Furthermore, it is known his superiors in Tulia did not reprimand him for derogatorily speaking about blacks in their presence during his 18-month "investigation." 49

The hearings provided the first official public airing of what the Swisher County sheriff, prosecutor and judges have known for years: Tom Coleman is somewhat less than a stand-up guy who isn't sure people sent to prison on his word are guilty, who was indicted for theft, and who was described by previous employers as a thief, "dishonest, unreliable [and] a racist." 50 Former law enforcement co-workers echoed those assessments by describing Coleman as "unstable and untrustworthy" and, "He was the type of person who would tell you anything." 51

### Prosecutors Agree To Throw Out All The Tulia Convictions

Within days after the hearing an agreement was announced between the state's special prosecutor and the lawyers representing 35 of the defendants. In exchange for the prosecution's agreement to a stipulation that Tom Coleman "is simply not a credible witness under oath" and its support for reversal of the convictions, the defendants agreed to a lump sum payment of \$250,000, and "not to sue Swisher County, its sheriff or prosecutor for civil rights damages." 52 The settlement payouts are \$12,000 for 12 people still imprisoned as of April 2003, \$6,000 for those who served between 6 months and 3 years in prison, and \$2,000 for those who received probation (although many sat in jail for months prior to their sentencing). 53

During a hearing on April 1, 2003, Judge Chapman asked the State's special prosecutor "if the convictions represented a travesty of justice?" 54 The prosecutor replied "yes." 55 Judge Chapman then announced his acceptance of the brokered resolution of the cases. It was anticipated he would submit his findings to the Texas Court of Criminal Appeals in the summer of 2003, along with his recommendation that the convictions be vacated. The special prosecutor went on record that if the convictions were vacated, the Tulia defendants would not be re-prosecuted. 56

Three weeks after the tentative agreement was announced, the Tulia case took an unexpected twist: On April 25, 2003 a grand jury indicted Tom Coleman on three counts of aggravated perjury related to his testimony during the hearing on March 20th. 57 Yet Texas' statute of limitations has saved Tom Coleman from being prosecuted for his rampant perjury used by the Swisher County prosecutor to secure the 38 Tulia convictions. The grievousness of Coleman's perjury is that without it none of those people could have been prosecuted, since his statements were the basis of their indictments and convictions.

Coleman also appears to have been handed a free pass for the multitude of crimes he may have committed in raising the \$6,700 in restitution he paid to make the Cochran County theft indictment go away. It has been reported that Coleman's only reasonable source of the money other than secretly robbing a bank, could have been if cut quality powder cocaine that he bought in a Abilene or Lubbock, submitted the diluted drugs as fabricated evidence to frame the innocent people he was "building" cases against, and then pocketed the difference between what Swisher County gave him for drug buys and what he paid for the uncut drugs. 58 That scenario explains why all the cocaine Coleman claimed he bought from the Tulia defendants is so much weaker than the cocaine sold on the streets of the closest cities where it can readily be bought. 59

### Coleman Was The Front Man For The Power Brokers Behind The Scenes

Although Tom Coleman is an unsavory character with a checkered past who may wind up spending time in prison for his testimony on March 20, 2003, what is now publicly known about the Tulia drug busts was known in July 1999 by both the Swisher County sheriff and prosecutor. The Swisher County sheriff whose authority Coleman was acting under, knew there was no substantive evidence against any of the 43 people arrested on July 23, 1999 apart from Coleman's claims. Likewise, the Swisher County prosecutor knew there was an absence of any actual evidence against the 38 people he was able to convict after a jury trial or by a guilty plea.

Swisher County District Judge Edward Self is also neck deep in the sordid Tulia travesty. Judge Self presided over the trials, plea hearings and sentencing of dozens of Tulia defendants. In case after case he saw that the evidence of their guilt was based on the word of one person – Tom Coleman. Yet prior to the start of the second Tulia trial, a defense lawyer filed evidence for Judge Self's consideration that documented Coleman's 1997 indictment for theft, and his arrest for that charge while conducting the Tulia undercover operation. 60 Judge Self's response was to immediately seal the motion and block all "efforts to introduce the evidence, along with other information about Coleman's past" that could impeach his testimony. 61 Although Judge Self knew there was irrefutable proof Tom Coleman was an unreliable blackheart, he used his power as a judge to conceal that information and continued presiding over the conviction of Tulia defendants based on nothing more than Coleman's word they had committed a crime, and then sentenced many of them to long prison terms. 62 Totally contrary to the truth known to Judge Self, a visitor to his courtroom would have thought Coleman was a boy scout who helped little old ladies cross the street. So instead of using his courtroom as a venue for pursuit of the truth, Judge Self used his position as a trusted public official to block efforts to

expose the jurors and the rest of the world to the truth that he knew - Tom Coleman's word isn't worth a plug nickel.

Given what is now known, the 38 convicted Tulia defendants are the innocent victims of a frame-up orchestrated by the Swisher County sheriff and prosecutor that was duly rubber-stamped by the local judiciary. Tom Coleman was impotent to hurt anyone without the strings pulled by those powerful people.

As the front man for the Tulia frame-ups, Tom Coleman has almost too conveniently taken the full brunt of the heat for the schemes exposure. The focus on Coleman has successfully deflected scrutiny away from the central role played in the tragic drama by the three crucial prongs in the frame-up scheme - the Swisher County sheriff, prosecutor and judge. Coleman has all the earmarks of being the designated fall guy - particularly since he has not yet been publicly castigated or spilled the beans on those people to save his own skin.

The deal between the state's special prosecutor and lawyers for the defendants is also curious by its deflection of attention away from the Swisher County sheriff and prosecutor. It has a provision specifically protecting them from a civil rights lawsuit by any of the defendants covered by the deal.

### Tulia Defendants Released On Bond

With 15 Tulia defendants continuing to languish in Texas prisons after the evidence to convict them had been publicly discredited, Texas State Senator John Whitmire introduced legislation in May that would allow Judge Chapman to release most of them pending the appeals court's decision. <sup>63</sup> The bill was quickly passed and signed into law by Texas Governor Rick Perry. So on June 16, 2003, the 12 defendant's under Chapman's jurisdiction were released from prison on personal recognizance bonds. <sup>64</sup> Three defendants were not released: William Love who was on direct appeal and not covered by the brokered agreement, and two other men who for technical reasons were not under Judge Chapman's jurisdiction.

The man most responsible for the dramatic turnaround in the fortunes of the Tulia defendant's, Amarillo attorney Jeff Blackburn, said of the releases, "There were plenty of times when I thought this day was never going to come. We fought a losing battle for two years. The only say we had was in the press." <sup>65</sup> If there is a hero in the Tulia travesty it is Mr. Blackburn. In the dark days before the press picked up the story and national organizations became involved, he labored to ferret out the truth. Like a Don Quixote tilting at the windmill of the Texas criminal system, he paid for court transcripts and hired a private investigator out of his own pocket. He also acted as an evangelist for justice by contacting the press and recruiting organizations like the ACLU of Texas, the NAACP Legal Defense Fund and the William Kuntzler Foundation to aid in rectifying the defendant's wrongful convictions. <sup>66</sup> He recognized significant press coverage was the key to prodding the legal system to do something on behalf of the innocent Tulia defendants: "We were never able to effect anything meaningful. We had to go outside [the legal system], to the press. I'm glad that we had the allies that we did. [Otherwise] it would have been swept under the rug." <sup>67</sup>

Tulia defendants sit in the jury box on June 16, 2003 awaiting an order by Judge Chapman releasing 12 of them on bail after almost four years wrongly imprisoned.

Mr. Blackburn's Herculean efforts were recently recognized when the Texas Criminal Defense Lawyers Association named him Lawyer of the Year. <sup>68</sup> The award to Mr. Blackburn marks that the Tulia travesty has come full circle since 1999. That is when Tom Coleman's peers recognized his exemplary law enforcement work in Tulia, and the attorney general of Texas presented him with the Outstanding Lawman of the Year Award. It is unknown at this time if Tom Coleman will be requested to return that award.



### 35 Tulia Defendants Pardoned

Parallel to the review of the Tulia cases by the Court of Criminal Appeals was one by the Texas Board of Pardons and Paroles. On July 30, 2003 the Board recommended that Governor Rick Perry pardon the 35 defendants eligible for executive clemency. <sup>69</sup>

On August 22, 2003 - four years and one month after their arrests on trumped up criminal charges - Governor Perry pardoned those 35 defendants. The governor made his decision public in a short announcement:

"Questions surrounding testimony from the key witness in these cases, coupled with recommendations from the Board of Pardons and Paroles, weighed heavily on my final decision. Texans demand a justice system that is tough but fair. I believe my decision to grant pardons in these cases is both appropriate and just." <sup>70</sup>

A suit was filed in Amarillo's federal court to free two of the three defendants not covered by the pardon. The suit alleged the men's imprisonment is based on violations of their constitutional rights by Coleman and other Texas law enforcement authorities. <sup>71</sup> The third man, William Love, was still on direct appeal seeking to be judicially exonerated, which would enable him to sue and possibly collect millions for his ordeal at the hands of Texas' law enforcement system.

Tulia resident Alan Bean, one of the local heroes who helped found the community support group Friends of Justice, said after the pardons:

"We're just very, very relieved. It has been a very long fight. It's been very hard on defendants and their families, and on the entire city of Tulia. I think everybody in Tulia is sort of heaving a sigh of relief today." <sup>72</sup>

NAACP attorney Vanita Gupta, a key figure in the legal fight on behalf of the Tulia defendants summed up the larger meaning of the Tulia Travesty after the pardons:

"Tulia has become a model for what's wrong with the criminal justice system. It's been so compelling nationally because of the story it tells. What is now needed is for local, state and federal authorities to examine what happened there and put into effect reforms that will keep it from happening again." <sup>73</sup>

Governor Perry is to be commended for granting the pardons with lightning speed - especially considering the U.S. Dept. of Justice has been dragging its feet investigating the cases

for three years. <sup>74</sup> Since a pardon has the effect of wiping out the effects of a criminal conviction, it makes it incontestable for the Court of Criminal Appeals to further consider the Tulia cases (other than William Love's appeal). Given Texas case law that innocence trumps a conviction secured by either a trial or a guilty plea, and Prosecutor McEachern's concealment of impeaching evidence about Coleman could be considered a denial of due process, the appeals court was relieved of the unwanted and embarrassing prospect of reversing all of those convictions in one fell swoop. <sup>75</sup> It is reasonable to speculate the appeals court drug its feet on making a decision since it knew the pardons were a fait accompli after the Board of Pardon's gave the green light in July for Governor Perry to grant them. However the legal implications of pardoning the Tulia defendant's is significantly less than if their convictions had been reversed, since the pardons didn't create a decision citable by future wrongly convicted men and women.

### Postscript

At the time of Governor Perry's pardons, the 38 Tulia defendants had cumulatively spent over 70 years wrongly imprisoned in Texas jails and prisons. The injustice of what was done to those innocent men and women is compounded by the fact that other than Tom Coleman, no one else involved in the their wrongful convictions is likely to ever see the inside of a jail cell. Swisher County Prosecutor Terry McEachern, Judge Edward Self and Sheriff Larry Stewart seem to be home free, in spite of deserving to be investigated and possibly stand trial related to using their positions of trust and power to prey on nearly four dozen innocent men and women, and causing untold anguish to those people's many hundreds of family members and friends. It is a telling commentary on deep rooted defects in this country's judicial process that the legal lynching of the pardoned Tulia defendants will never be officially condemned by a court in this country. Yet the three ringleaders that orchestrated their wrongful convictions walk the streets as if they were respectable folks.

### ENDNOTES:

- <sup>1</sup> Color of Justice, Nate Blakeslee (staff), The Texas Observer, June 23, 2000.
- <sup>2</sup> Color of Justice, *supra*. A federally funded regional drug task force reimbursed Swisher County for Coleman's salary.
- <sup>3</sup> Fighting for Justice Overseas While Ignoring Injustice at Home, Alberta Phillips (columnist), Austin American-Statesman, March 30, 2003.
- <sup>4</sup> Massive Drug Sweep Divides Texas Town, Paul Duggan (Staff), Washington Post, January 22, 2001.
- <sup>5</sup> Color of Justice, *supra*.
- <sup>6</sup> *Id.*
- <sup>7</sup> Massive Drug Sweep Divides Texas Town, Paul Duggan (Staff), Washington Post, January 22, 2001.
- <sup>8</sup> *Id.*
- <sup>9</sup> *Id.*
- <sup>10</sup> *Id.*
- <sup>11</sup> *Id.*
- <sup>12</sup> Color of Justice, *supra*. The Tulia Sentinel is the local newspaper.
- <sup>13</sup> Texas to Toss Drug Convictions Against 38 People: Prosecutor Concedes 'Travesty of Justice', Lee Hockstader (staff), Washington Post, April 2, 2003, p. A3.
- <sup>14</sup> Massive Drug Sweep Divides Texas Town, *supra*.
- <sup>15</sup> *Id.*
- <sup>16</sup> Color of Justice, *supra*.
- <sup>17</sup> Some Justice in Tulia, Lauri Apple (staff), The Austin Chronicle, April 19, 2002, at: [http://www.austinchronicle.com/issues/dispatch/2002-04-19/pols\\_feature6.html](http://www.austinchronicle.com/issues/dispatch/2002-04-19/pols_feature6.html).
- <sup>18</sup> Kafka in Tulia: A Big Justice in a Small Texas Town, Bob Herbert (columnist), NY Times, July 29, 2002, p. A23.

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- <sup>19</sup> Color of Justice, *supra*.
- <sup>20</sup> 12 Tulia Drug Defendants Released From Jail, Jim Henderson, Houston Chronicle, June 16, 2003.
- <sup>21</sup> Arrests of Blacks in Texas Town is Likened to 'Ethnic Cleansing,' Seattle Post-Intelligencer (AP), October 14, 2000.

# Timothy Rice's Story

By Reginald S. Lewis

A young man is framed for a murder and sentenced to death. A defense attorney does not question the prosecutor or police as to the disappearing evidence that could set a man free and doesn't challenge the description given of the shooter in court when his client clearly doesn't fit that description.

You don't have to be a resident of Philadelphia, Pennsylvania to have seen national news coverage of the six corrupt police officers from the 39th District who were convicted and sent to prison for the beatings and robberies and the frame-ups of hundreds of innocent black citizens — even Sister Betty Patterson, a fiercely religious elderly Grandmother, who never had as much as a traffic ticket was a victim.

Countless lawsuits were filed against the city and its Police Department for violating the Civil Rights of its citizens and millions of dollars were awarded in out-of-court settlements. Cases for wrongful convictions were reopened and hundreds of innocent defendants were released from prison. In this climate of injustice it is not difficult to understand how a young, illiterate, poor, twenty four year old African American man ended up on Pennsylvania's Death Row.

In 1995, young Timothy Rice was awarded \$85,000 in an out-of-court settlement from the city and the Philadelphia Police Department after a cop pumped five bullets into him on the streets of Philadelphia. Then they lodged countless

bogus charges against him-- (for which he was acquitted.) Three months later on September 1, 1996, Mr. Rice was arrested for the shooting deaths of two men in a bar in Philly. He was arrested two hours after the murders. The police seized his clothes and checked his hands for gunpowder residue—they found none. On the night of this crime and when the memories of the eyewitnesses were most fresh they gave statements to the police identifying the shooter as a “bald man.” At trial they repeated this statement under oath that the culprit was “baldheaded.”

Police Officer Jesse Staten, Detective Feters and Detective Pitt all testified that Timothy Rice had hair on his head on the night of arrest. “I wore a box style haircut,” Rice told this writer. Can a totally bald man grow a full head of hair in two hours? There was no testimony about a motive given for this senseless double murder nor did the prosecutor attempt to establish one. More egregious, Police Officer Charles Jackson, the brother of the victim Bernard Jackson, seized the clothes of his brother and another victim, Randall Rogers, and took it home for two days.

There was no authorization or official reason given for the brother of the victim, a police officer, to disappear for two days with a bullet, forensic evidence and bloody clothes essential to a murder investigation.

This evidence should have moved up the “chain of custody,” but every police procedure and official protocol was violated in this case. What did Officer Jackson do with this evidence that was in his possession? This evidence is tainted, compromised and therefore untrustworthy. The witnesses testified that Rice turned, moved in and shot one of the victims at close range with a .357 Magnum, but in the autopsy report issued by Carolyn H. Revercomb, MD,

she wrote, “No evidence of close range firing.”

A .357 Magnum produces a powerful explosion and gun residue, but there's not a single trace found anywhere on Mr. Rice. The bullet extracted from the body of victim Randall Rogers is conclusive proof that Tim Rice could not have committed this murder, but the bullet was withheld by the prosecution for well over a year.

Despite a flurry of defense motions the prosecutor refused to turn over exculpatory evidence. “I'm not going to turn over this bullet,” Mr. Fisher, the Assistant District Attorney told Rice's attorney, “It will help your case.” Why did Tim Rice's lawyer persuade him to forfeit his sixth amendment right to a trial by a jury of his peers and argue his case before a lone sitting judge? A Judge who sentenced him to death? “I told the lawyer I didn't do it,” Rice said, a pained expression etched into his young brown face. “The police set me up. I'm innocent.” So why did his lawyer put forth a tale about self defense? A fair-minded jury could have found a mountain of reasonable doubt to acquit him of this double murder. But young Timothy Rice never got that chance. Timothy would love to hear from anyone who reads his story. He appreciates letters. He would also like to write to ballistic experts who can assist him. Address correspondence to:

Timothy Rice DV2363  
SCI Greene  
175 Progress Drive  
Waynesburg, Pa 15370



## The Denver Mitchell Story

Defending against a sexual attack results in a man's murder conviction

By Denver Mitchell

Edited by Barbara Jean McAtlin, JD Staff

On Thursday, August 16, 1990, I was 21 and living in Amarillo, Texas. I was working for *Ideal General Contracting* when I received a letter from my father asking me to come home to West Frankfort, Illinois. My employer wrote a check to settle our account, and Vira, my employer's wife, took me to cash my check. After cashing my check, Vira dropped me off on I-40 so I could begin hitchhiking home to my father.

Since it was late in the afternoon when I left Amarillo, I only made it as far as a truck stop outside of town before dark. I spent the night at the truck stop and spent my time trying to get a ride east with one of the truckers. Luck wasn't with me.

At dawn on Friday, August 17, I was walking down the entrance ramp to I-40 East, a truck pulled over and a man named Willard gave me a ride. Willard said he was going to Arkansas and he would give me a ride that far. That day we traveled to Paragould, Arkansas, arriving after dark. Willard suggested that we go have a few drinks and he said I could spend that night in his truck and he would take me to Highway 55 the following morning.

Willard and I stopped at *Dan's Duck Inn* where we were refused service by Dan Langston, the owner. He told us to

go to another bar that would be more apt to serve us. We went to the other bar and drank alcohol and purchased some beer to go. Willard then drove us to an area where we could camp out that night.

After we had been drinking for a while I noticed Willard had begun to masturbate. He then tried to approach me in a sexual manner. I refused his offer and pushed him into the bed of the truck. Angry at being pushed, Willard grabbed a tire iron and took a swing at me with it. I blocked the blow with my arm and defended myself by striking Willard. I hit him with my fist and hands and when he started to fall he grabbed at my legs and I kicked out at him.

Willard appeared to be unconscious and he had a bloody nose, but I could tell that he was breathing. Being drunk, I made a foolish and impulsive mistake and jumped into his truck and left. I drove to West Frankfort, Illinois, arriving there in the early morning hours of Saturday, August 18, 1990.

I stopped at my cousin's house and told him what had happened and he helped me hide the truck. After we hid the truck, I went to my father's house where my brother's birthday party was being held. Throughout the day and into that night, I was seen by family, friends and neighbors at my father's house.

About a week later, the police found the truck and I learned that Willard was in a coma. Now, I was scared! I chose not

to come forward and tell the police what had happened. I thought Willard's coma was a result of our conflict and I felt bad about leaving him there alone, but I was sure I had just knocked him out. What I did not know was that 15-year old James Edward Rogers (a 23-year Paragould Police Department veteran's son) had come across Willard the next morning (Saturday, August 18, 1990). Rogers had attacked, severely beat and robbed Willard. He left Willard close to where I had fought with him in a coma and near death. I also didn't know the Paragould Police Department had an eyewitness to Roger's vicious assault and robbery of Willard.

At about 9:00 p.m. on the day after I left Willard, two local Paragould teenagers, one 13-years old and one 15-years old, went to the police with a bizarre story. They said that at about sunset they had seen a biker dragging a dead woman's body across some train tracks near North Sixth Street. The police, although highly suspicious of the boys' bizarre story went to the area near North Sixth Street but found no evidence of a biker, or a dead woman. The next morning a dog was brought into the area and they discovered not a dead woman nor a biker, but a severely beaten and unconscious elderly man lying amid the tall weeds.

The man was so severely beaten that he went into convulsions when he was moved. He had no identification on him and his pants were unzipped. In a coma, the man was listed as “John Doe” and sent to St. Bernard's



Regional Medical Center in Jonesboro, Arkansas.

Lt. John Addison of the Paragould Police Department decided that the two boys' story of the alleged biker and dead woman was in the exact area where "John Doe" was found. He found the story so bizarre that the boys needed further questioning. As he noted in his reports, "Their story appeared so preposterous, that I felt they needed to be interviewed more extensively."

On Monday, the day after "John Doe" was found, Lt. Addison and Investigator Charles Beall of the Arkansas State Police, with the boys' parents' permission, re-interviewed the boys. They first interviewed 13-year old, Delmer Lee Ward. Ward started out by sticking to the tale of the biker with the dead body. "However," Addison wrote in his notes, "he subsequently said that this was not the case, that there never was a body being dragged across the trestles..." Ward said that he and 15-year old James Edward Rogers were walking along the train trestle and that Rogers had gone down below the trestle to use the bathroom. Ward claimed that Rogers was confronted by a man who, as he put it, wanted Rogers to "suck his dick."

Ward said he saw Rogers hit the elderly man at least twice, but later on in his statement, he said he saw Rogers beat the heck out of the old man. Ward said that he and Rogers had made up the earlier story about the biker and the dead body to cover up their involvement in what really happened. Additionally, Ward said that he had seen Rogers stand on top of the old man with a rock in his hands,

Lt. Addison and Beall then interviewed Rogers and, as Addison wrote, "However, he more or less spontaneously made the remark, after having started to cry, that 'I didn't mean to hurt him. I only hit him twice with a rock...'" In Rogers' statement he said he had gone to the bottom of the trestle to urinate when an old man came walking up to him with his fly unzipped and, to quote his official confession, "had his pecker in his hands and wanted him to suck his dick." He said the old man had tried to chase him and that, using a rock, he had hit the old man several times in the head.

Although the police had a confession and an eyewitness to the assault, neither boy was arrested at that time. Several days later, the elderly man labeled "John Doe," died from traumatic internal head injuries. Both boys were then given an official police polygraph to ensure that their allegations regarding the circumstances of their encounter with the elderly man were truthful. Both boys passed with flying colors. This meant their confessions were true!

Fifteen-year old James Edward Rogers was then charged with capital murder for his role in the death of the elderly man who was still labeled "John Doe." Rogers' father, Jack Rogers, who had retired from the local police after 23-years of loyal service, was then allowed to bond the younger Rogers out of jail on a signature bond (requiring no money). This was not only highly unusual, but is actually against the law in Arkansas where capital murder is not a bailable offense.

During his initial arrest, the police took several items from James Edward Rogers. One of them was a wallet containing identification belonging to a Mr. Willard Williamson. Days after his death, Willard's daughter, Lynda Woolery, was contacted by the Paragould Police Department. She was asked if she would come to the police station to identify a wallet they believed belonged to her father. She and her husband identified the wallet by description and contents. They were told it would be used

as evidence to convict James Edward Rogers.

Several days after Willard Williamson's death, another retired Paragould Police Officer, bar owner Dan Langston (21-years on the force), called the police department to tell them he believed the guy they found had been in his bar the previous Friday, August 17, 1990.

A copy of Williamson's driver's license was made and, along with a copy of a picture taken from his wallet, was faxed to the Illinois Police station where Willard's truck had been found.

On September 6, 1990, Don Ward, the father of Delmer Lee Ward, took him back to the police station to "spill his guts" about what happened. Don Ward said his son had told him what really happened in further detail. This new confession was given to Paragould Police Detective J.D. Stephenson in the presence of Ward's father. The boy went into great detail. He described Rogers choking and beating Williamson about the head and shoulders with a rock and a tire tool. This correlated with the coroner's cause of death report. Further, it detailed another new event. Ward said that Rogers had robbed the unconscious man of a lot of money. He also described Willard Williamson's stolen wallet -- the same wallet that had been confiscated from Rogers.

Ward said he saw Rogers hit Williamson in the head and arm at least three times with a tire tool. He also said Rogers had hit the man in the jaw with his fist, and he described hearing a "loud popping sound right along with the guy screaming." Ward said he felt like throwing up.

"What did you say to Rogers or what did he say to you?" Detective Stephenson asked Ward.

Ward answered, "Rogers said, 'Did you see what I just done?' And I just sat there and I said, 'Yeah.' Rogers goes, 'If you say anything about this, I will shoot you or stab you, either way it goes in the heart.' So that's when I got frightened."

Ward's father confirmed in the interview that his son had told him about the threat. Asked if there was anything he wanted to add, he answered, "Only that I've never seen him more scared in my life than that particular day." In the *Arkansas Times*, it is further revealed that Ward had good reason to fear 15-year old Rogers's threat. Four years earlier Rogers had shot his own 8-year old cousin, one of Ward's classmates, in the back with a .22 rifle. Eight-year old Nathan Scudder lost his kidney and half of one leg as a result of Rogers' assault on him.

The above quotes are taken directly from the police reports and the boys' confessions. They are in the public records. I can provide copies upon request.

In July 1990, my cousin was in jail in Illinois awaiting drug and shooting charges when he decided to tell a lie in an attempt to get a lighter charge. He told the police in Illinois that I had told him I had killed the guy. Afterward, he gave another statement saying I told him I had only beaten the guy up. However, at this time, neither I, nor my cousin, knew anything about Rogers' and Wards' confessions and Rogers' indictment for capital murder. I still didn't know about them or the circumstances surrounding the discovery of Willard's body until after I was brought back to Arkansas to stand trial for the capital murder of Willard. I was in the courtroom for my first appearance under the assumption that I must be responsible for Willard's death since he was knocked out when I left him that Friday night and stole his

truck (August 17, 1990).

When a lady sitting behind me asked me if I was the Denver Mitchell charged with killing Willard Williamson, I felt deep shame, sorrow and guilt. I knew that the man I thought I had killed must have been her father. I was emotionally numb and unprepared for her shocking revelations. She said she knew I had not killed her father. She told me the whole story about the 23-year local police veteran's sons' encounter with her father and that he had previously been charged with capital murder. She told me that I was being used as a scapegoat to save the skin of a policeman's son. Later, I was able to confirm every detail of her story through local newspaper reports about Williamson's death and Rogers' involvement.

I was an uneducated 22-year old who had no previous criminal record. I naively assumed that since I was not guilty, the police had confessions and had actually charged Rogers with Willard's death (for two years he was under indictment but never brought to trial), and that since even the dead man's family knew who was responsible for his murder, that there was no way I could be convicted. Justice would prevail. After all, only guilty people get sent to prison -- at least that's what I was always taught.

The prosecutor argued at my trial that I beat Willard into a coma, resulting in his death, so I could steal his truck. My local public defender, John A. Williams, did nothing to bring forth the previously mentioned evidence to the jury's attention. He failed to call any of the witnesses who could have testified to my whereabouts on Saturday, August 18, 1990. I was in Illinois with family and friends and I had even attended my brother's birthday party. My public defender failed to show that another key witness, bar owner Dan Langston, perjured himself to the jury at my trial. This can be documented with earlier police reports that prove he changed his statement at my trial. After the police talked to the cousin who had implicated me in July 1991, Dan Langston changed his statement about what day he had seen me in his bar with the deceased. Dan Langston had served on the same local police department as 15-year old Rogers' father had for over 20 years. They now had a scapegoat.

My public defender put Rogers and Ward on the stand just long enough for both boys to retract their earlier confessions (without mentioning the contents) and to say they had been coerced by the police into confessing. What my public defender did not tell the jury was that both boys parents were present when they gave the police their confessions. This voids the coercion claim as Rogers' father was a retired police officer. Nor did my public defender tell the jury that Ward had failed to change his confession and eyewitness account against Rogers for the full two years that Rogers was under indictment for capital murder. Only when they could connect a third party to the stolen truck, someone who had no family ties in Arkansas, did the boy's confessions change along with the accounts of several prominent local officials. Only after they had me was the capital murder charge against Rogers dropped.

To make matters even worse, the judge refused to allow Lynda and Bill Woolery (Willard Williamson's children) to testify in front of the jury about identifying their father's wallet -- the very same wallet that had been confiscated from Rogers when he was originally charged with their father's death. My attorney also failed to notify the prosecutor that my father wanted to testify that I was at home on Saturday, August 18, 1990, with many witnesses, so the judge also refused to allow my father's

testimony at my trial.

I'm no attorney and I knew even less about the law then than I do now, but my public defender did nothing to establish my innocence in this case. He seemed to actually make errors that seemed purposeful; errors that actually kept exculpatory evidence out of my trial (like my alibi witnesses and the Woolery's testimony).

My public defender filed the mandatory direct appeal but he raised none of the above issues concerning my innocence. The appeal was denied. I am serving a life sentence in Arkansas where "life" means "life." The only way I will leave prison is if I get a new trial or the Governor grants me a pardon. I've been in prison since January 3, 1992. If nobody checks the facts and documents I've mentioned here, I could easily be Arkansas's Department of Corrections #100409 for another 40 or 50 years -- if I live that long.

After my conviction, Rhonda Beasley (another daughter of the deceased) went to the police department with Michele Mowbray and discovered the documents that prove Dan and Phyllis Langston's testimony at my trial was perjured and directly conflicted with their previous statements to the police and prove that the police confiscated Willard Williamson's wallet from Rogers. They gave these documents, police reports, and confessions to me.

I have no money, no family in Arkansas, and no attorney. As a result I was forced to file my own post conviction appeal (Rule 37), raising these issues in the same Paragould court I was convicted in. My Rule 37 for post conviction relief was dismissed without a hearing. I wasn't notified of the dismissal until some 30 days beyond the last day I could have filed an appeal to their dismissal. I then had to petition the Arkansas Supreme Court for permission to file a belated appeal. During this time I was granted a motion to file a belated appeal.

A fellow prisoner and good friend, Robert Williford #91357, become interested in my case after realizing I was innocent and began mailing copies of the above mentioned police reports, confessions, witness statement and police logs to various attorneys and politicians throughout Arkansas and several surrounding states. The only response he received was from an attorney named Di Di Sailings, who could offer no help other than to forward the information to her friend and Arkansas Times Editor, Mara Leveritt.

Mara Leveritt wrote an investigative story using the facts surrounding my case. She uncovered many facts that had been unknown to me and that had not been brought out at my trial. She did a much better job of investigating the matter than I could have and her article about my injustice became the front-page cover story of the *Arkansas Times* on July 21, 1995.

In December 1995, the Arkansas Supreme Court dismissed my belated appeal because of a technical error that I, an unschooled layman, had made in the abstract brief. The court did not look at any of the evidence, nor did they give me any type of hearing based on the evidence that establishes my innocence. No ruling whatsoever!

If it weren't for my belief in God and my 11-year old daughter, I would have given up several years ago. The frustration and despair and hopelessness of knowing I'm innocent of murder and no one cares enough to even look at these documents or talk with the deceased man's family is at times overwhelming.

In January 1996, with the help of Rhonda Beasley, the victim's daughter, I went before the Executive Clemency Board of the Arkansas Prison System and presented my case of innocence. A board member assured Rhonda and me that he was going to get a full board recommendation asking Governor Tucker to release me by granting executive clemency.

In March 1996, I received notification from the board telling me they were asking the Governor to deny my application. They said I had no basis to even ask for clemency. Confused, I filed an appeal to Governor Tucker, who was being tried on felony charges he was later convicted of. In June 1996, Governor Tucker was convicted of a felony and just days after his conviction, he denied my clemency application.

On my own again, I filed another petition to the courts -- a Habeas Corpus raising my claim of innocence. I presented my constitutional violations the best I knew how and submitted the newly discovered evidence. Although a magistrate said I have factual allegations, because I didn't properly raise my violations in the state court, I was procedurally barred from raising them.

Throughout this time I have not had the help of an attorney. I have been forced to try to learn in a few days with a pittance of resources, the rules and regulations of the law that attorneys take years upon years to learn. In answer to my prayers, however, I now have an attorney who has come to my aid and is trying to help me get my case seen before Governor Huckabee in an effort to obtain my release through executive clemency powers the Governor possesses.

No court in this land has heard the evidence I've come across since my conviction that proves I'm innocent of murder. I've come to the conclusion that what happened to me could happen to anyone caught up in a small town filled with "good 'ol boys." I've been stripped of my life and liberty but I still believe that this is a great nation and I am praying that God will continue to help me interest people in my case to right what has happened to me and to the victim's family. They have yet to receive justice for the murder of their beloved father.

If you were in my shoes -- if you were innocent of murder yet serving a life sentence in Arkansas -- wouldn't you want someone, anyone, to verify these facts?

For confirmation of the facts of this story, I ask that you please contact one of the people listed below.

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#### VICTIM'S DAUGHTER:

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Denver Wayne Mitchell, JR. #100409  
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## The Siddique Abdullah Hasan Story

Spiritual leader helps save lives, despite  
his efforts he is given life in prison

By Richard M. Kerger, Esq.

Edited by Terri Smith, JD Staff

On Easter Sunday, April 11, 1993, a riot broke out at the infamous Southern Ohio Correctional Facility at Lucasville. Lucasville had the reputation of being one of the most violent and predatory prisons in the country.

The atmosphere at the prison had become extraordinarily tense since the arrival of Warden Arthur Tate Jr. in 1990. Shortly after Tate's arrival he began dissolving almost all the programs in the prison. He stripped the college program down to the bare bones. He did away with the music and literary programs and a host of other positive avenues the men were using to do their time. Prisoners were required to march to chow, chapel, commissary, infirmary, recreation, school and work. In addition, prisoners who had been celling in a particular block for years were forced to move to other blocks. Further, prisoners classified as Max- 4s were locked in their cells after 6:00 p.m. and prevented from further participation in the vocational programs unless they had fallen under the grandfather clause. Rules were made up on a daily or weekly basis and not put into writing or issued to prisoners. To make matters worse guards implementing these rules and regulations often abused their power and authority causing more conflict. The prison was a tinderbox ready to be ignited. Simply put, overly rigorous constraints combined with ill-advised housing regulations which selectively and forcefully integrated White Extremists in the same cells as Black Revolutionists had tension at an all-time high. Overcrowding was a contributing factor to the tension. Prison conditions had become so adverse and debilitating they unnecessarily deprived prisoners of their rights and opportunities to rehabilitate themselves or even maintain the skills they already possessed. Tate declared that all of the aforementioned implementations were to make Lucasville "safer" for those confined there. But the record showed the reality that the rapes and assaults, plundering and beatings, stabbings and murders continued. Then Tate mandated tuberculin skin testing through a process that would require the Muslims to violate their religious tenets.

The Muslims had been clear in their objection to the proposed procedure and equally clear that they would be willing to submit to chest x-ray, urinalysis, sputum specimens or any of a number of other tests that would not require the injection of phenol (an alcoholic substance) or any other unlawful substance or its derivatives into their system. Instead of honoring the Muslims' request to submit to an alternate method of testing that would not infringe upon their religious beliefs Tate refused to even entertain the possibility. Because he had absolutely no respect for the prisoners under his control and care Tate adopted a hard-line approach. He made it known that he was boss and the testing was going to be conducted his way.

In the week before Easter the administration telegraphed its intention to lock the prison down that Monday to accomplish the forceful testing of all prisoners who had not previously submitted to the TB test. By doing so they





seemed determined to provoke a confrontation. On Easter Sunday they got a confrontation that resulted in a major riot that rocked the entire Ohio prison system.

Rising as one with racial differences ignored the prisoners took control of the facility. Several guards were taken hostage in the process. For eleven days a standoff existed. During that time nine inmates and one guard were killed.

The riot ended without further loss of life and came to a non-violent conclusion due to the efforts of four inmate leaders: George W. Skatzes, Jason Robb, Anthony J. Lavelle and Siddique Abdullah Hasan (aka Carlos A. Sanders). The first two men were leaders in the Aryan Brotherhood. Lavelle was the head of the Black Gangster Disciples. Hasan was the spiritual leader of those Sunni Muslims who took their teachings from the Mujiisul Ulema of South Africa (Council of Theologians) whose base is in Port Elizabeth, South Africa. The Sunni Muslims' difference in dress, conduct and social etiquette had caused them to be the target of derision and hostility before the riot. When the riot occurred attention was focused on the Sunni Muslims and in particular Hasan. He became the target of the prosecution.

At the time of the riot Hasan was one year from parole, working on his apprenticeship in vocational school and in an honor block. Of all the prisoners he had the most to lose. Yet it was perceived that he was the leader and the one responsible for directing the activities of the prisoners once the riot had begun.

Over six years have passed since the disturbance he stands convicted of one count of capital murder and several felony charges. It was the contention of the State that while he had not participated directly in the killings of a guard and a prisoner he had ordered them that his conviction was obtained was understandable. The investigation was conducted with an eye not towards establishing who did what, but with an eye toward establishing the guilt of the leaders of the prisoners, particularly Hasan. Millions of dollars and hundreds of thousands of man-hours were expended in the investigation conducted by the State. Special prosecutors were hired. They had thousands of exhibits and thousands of witness statements all computerized for rapid correlation and retrieval. They had full access to all the investigative resources of the State Highway Patrol and the FBI. Prisoners were promised significant reductions in their potential sentences in exchange for their cooperation, particularly cooperation directed at Hasan. There exists reliable evidence that shows the state played upon its witnesses biases, fears and motives to secure and shape their witnesses cooperation and testimony. In fact, some of these witnesses have described the systematic campaign of witness intimidation engaged in by the prosecution, including the lying, threats, promises, coercion, badgering, deception, brainwashing, prompting, indoctrination, suggestion, coaching and retribution used by the prosecution in an attempt to obtain their cooperation and testimony against Hasan and others. Because of this unfair prosecution Hasan was ultimately convicted and sentenced to die in Ohio's electric chair. To make certain that he would be convicted, the State stacked the deck. For example: lawyers for the State were being paid \$60 to \$100 per hour for their services. These payments were made monthly and in addition to the sums they were making in their home counties as Assistant.

County Prosecutors. These lawyers had no office expense. On the opposite side of the table, Hasan's lawyers were paid \$30 an hour for their out of court time and \$40 an hour

for the time they appeared in court. His lawyers were told there would not be any interim billing they would have to wait until the conclusion of the case to submit their vouchers before being paid. In early 1994 he was initially given \$700 for an investigator. Ultimately he was given \$25,000 to hire an investigator but that money was not authorized by the trial judge until October 25, 1995, only ten weeks before his trial -- notwithstanding that he asked for it as early as January or February of 1994.

With a single investigator confronted with having to go throughout the state to interview potential witnesses -- it was the legal equivalent of giving a man who had been in the desert a drink from a fire hose. It could not be accommodated and was of no practical benefit. The short of it, Hasan was deprived any semblance of due process because of the totally inadequate funding of his defense, and the procedures used by the state to assure his conviction.

Not satisfied with this there was also interference with his right to counsel. After having appointed two lawyers one was removed when he became financially unable to proceed and the other was removed from the case when he said he could not be ready to go to trial with new co-counsel on two capital murder cases and six unrelated felony charges in five weeks. Indeed, five weeks was an unrealistic time schedule for anyone to handle such a case. The truth of the matter was the second lawyer was removed because he had been too aggressive in his attempt to defend his client. This became evident when following his removal the trial date was pushed back for some 15 months. Mind you, this was done after the judge told the media that the case would not be continued under any circumstance.

Venue was also shifted to help assure the state's goal of a conviction. Originally the case was brought in Scioto County, the location of the prison. After objection by the defendant concerning the inability to secure a fair trial in light of the number of people who worked at the prison the case was moved to Franklin County. This was a relatively neutral site and the defense lawyers accepted it. Then the judge assigned to try the case removed himself and was replaced by a judge from Hamilton County.

This new judge told the Chief Justice before his appointment that if he were given the case he would move it from Franklin to Hamilton County.

Therefore, for the new judge to have later erroneously claimed that he made the decision to move the case to Hamilton County upon a motion having been made by the State "for the convenience of the parties" is absurd. What is also significant is that the special prosecutors assigned to the case came from Hamilton County.

The new Judge assigned to try the case had been a member of the same prosecutor's office before coming to the bench. Finally, Hamilton County has the highest percentage of people accused of capital murder being convicted of those charges. By changing venue the State and Judge were able to manipulate the system to quintuple the odds that defendant, if convicted, would receive the death sentence. Then the new lead lawyer assigned to the case resigned four months before trial due to financial stress. After a month and a half of looking the Judge assigned a new lawyer to serve as lead counsel. This lawyer came into the case less than two months before the matter was set for trial, yet it was felt that he could be ready to try this truly complicated matter. When the realization hit home that this case could not be adequately prepared in such a short time he filed a motion seeking a continuance or, in the alternative,

permission to withdraw in the event a continuance was denied. Not the least surprised the motion was denied. On the day of the trial and throughout the trial lead counsel repeatedly said he was not adequately prepared for trial. To make matters worse a conflict developed between the two lawyers representing Hasan and there was active dissension between them. Public arguments occurred in and out of court. Perhaps the most bizarre set of circumstances in this very unusual aspect of this case came when efforts were made by one of the lawyers to finesse the other one out of the case. This occurred on the weekend before jury selection was to commence and was initiated without Hasan's knowledge or consent.

All this had a dramatic impact on the entire trial especially the mitigation portion. For example, it was not until after the defendant had been convicted in the guilt phase of the trial that counsel began preparing a case for mitigation. This occurred despite the fact that all competent capital counsel know 1 Of 143 individuals sentenced on Death Row in Ohio by January 1996, 34 of them, roughly 25, came from Hamilton County. Franklin County had only seven individuals sentenced to die despite the fact that it has a larger population than Hamilton.

That mitigation is perhaps the most important part of the defense in a capital case and should commence at the same time as the defense on the merits begins. In spite of this counsel was too busy with the problems in their relationship to properly prepare a case for mitigation.

This may have been because lead counsel was not adequately qualified under Rule 65 to handle capital cases and could not appreciate the need for the proper development of a case in mitigation. On yet another point the jury pool was stacked against Hasan by the jury coordinator. When defense counsel noticed that three-fourths of the minority jurors were in the second half of the panel, a statistically unlikely event, a hearing was held. The jury coordinator explained that he, a white male, passed out written questionnaires to the jurors who would be selected to appear in court. The order in which they were to be called was the order in which they returned their questionnaires. That is to say, the ones who completed their questionnaires first went to the top of the list. He also said that he would review the questionnaires and if in his opinion, there were any errors or incompleteness, the questionnaires were returned for proper completion. This method effectively vested discretion in the jury coordinator to select Hasan's jury. During the trial there were a number of rulings made that were crucially prejudicial to the defense. The defense was barred from presenting evidence concerning the conditions at the prison and the circumstances that led to the riot. The defendant was denied an expert to further analyze the extent to which there had been hypnotically refreshed testimony given by two witnesses for the state. This denial was given notwithstanding affidavits submitted by experts suggesting that hypnotic therapy had been performed. The judge also refused to appoint an expert to evaluate a crucial tape recording that had been successfully used to refresh various witnesses' recollections and served as substantive evidence in a number of other capital cases to establish the guilt of the alleged leaders of the riot. Careful analysis by the defendant made it appear likely that this tape and potentially three others had been substantially altered. These alterations include deleting portions of some tapes and recording over other tapes to make events appear to follow in a particular sequence when they in fact did not. Put more clearly, conversations that took place on days following events were recorded with other conversations so it appeared that talks took place before the event. Believing

Hasan's analysis to be accurate a sample of the tape was submitted to an expert in tape analysis who made a preliminary determination that there was discontinuity during ongoing speech in the tape, abrupt ends during ongoing conversations and changes in background signature, indicating that the tape may have been electronically edited. Despite defendant's demonstration that the analysis of the tape was necessary to present an adequate defense and that the failure to do so could result in an unfair trial the judge denied funding to allow the defense to try to develop that the tape had been doctored and that key witnesses' testimony were based on a doctored tape.

This case is now on appeal and making its way through post-conviction proceedings. One of the new lawyers appointed to represent Hasan has failed to communicate with him in any meaningful way and has missed crucial deadlines, failed to raise significant issues and generally performed in a manner wholly unsatisfactory to the defendant's wishes and appropriate legal strategy, failed to work with co-counsel for the interest of his client and has neglected several legal matters entrusted to him. Significantly, this lawyer is now before the Disciplinary Board in Ohio on charges of neglecting legal matters of other clients. Due to irreconcilable differences and these ongoing poor performances Hasan has made repeated efforts to have him removed from handling his direct appeal and post-conviction petition, all of which have been rebuffed by the Trial Judge, the Court of Appeals and the Ohio Supreme Court.

It may be possible to remedy the wrong sustained by Hasan when his case enters federal post-conviction proceedings, but that is a matter that in no small measure will be determined by the funding he has available to him. First and foremost, competent counsel is needed. Proper evaluation of the tape recording is essential. A more complete investigation through witness interviews is essential. The retention of an expert witness to testify concerning the adequacy of trial and appellate counsel's performance is crucial as well as an expert to thoroughly examine the possibility of hypnotically refreshed testimony. To put it very simply, Hasan needs financial and legal help. The lawyer who has been appointed by the State to represent him is performing in a totally incompetent manner and Hasan personally believes that is one of the reasons he was appointed. Hasan has no funds and has been so demonized that the average Ohioan would have preferred to have him executed before he was ultimately tried. He is endeavoring to fight back and any help that can be provided, particularly financial assistance, is deeply appreciated. He is threatened with the possibility of paying the ultimate price for his religious convictions.

The tale of Hasan's trial is not only sad for him, but for any system of justice. However reprehensible the conduct ascribed to the defendant he is nonetheless entitled to be treated fairly and have a chance to defend himself consistent with the Constitutions of Ohio and the United States. He should have been presumed innocent not guilty. That did not happen in this case. Hasan is a unique individual and in spite of all odds he remains hopeful that one day he will be able to expose the conspiracy surrounding his convictions. Anyone wishing to offer Hasan legal assistance should contact this writer at:

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## The Yurko Project: Triumph Over Tragedy

By Francine Yurko

Edited by Hans Sherrer

Alan and Francine Yurko's baby boy, Alan, was born on September 16, 1997. Francine's pregnancy was severely compromised with refractory and recurrent E. coli infection, gestational diabetes, group b Streptococcal infection, and an overall weight gain of only two pounds. Labor was induced at 35 weeks because of life-threatening oligohydramnios (loss of amniotic fluid). Baby Alan was born grayish blue with respiratory distress and hypoglycemia. He spent the first week of his life in the Neonatal Intensive Care Unit and Special Nurseries, where his parents spent their days with him until his release. A breathing monitor was sought because Baby Alan was rasping and grunting; however, insurance would not cover it, and the doctors assured that it wasn't necessary.

Over the next six weeks, the family went to weekly pediatrician visits. Baby Alan was seriously jaundiced during his entire neonatal period, and was still rasping and grunting with short periods of apnea. In addition, on November 2, 1997, Alan and Francine rushed the baby to the hospital late in the night because they noticed blood on a burp rag. He was examined by several doctors and nurses, and it was decided that he must have scratched the inside of his nose with his fingernails. Francine pointed out that his fingernails were very trimmed and that, as a preemie, her baby didn't have such muscle control to have scratched himself. However, the doctors disregarded the concerns, and remarks were made about being "overprotective parents."

On November 11, 1997, at his weekly pediatrician visit, baby Alan was still not well: He was congested, rasping and grunting, and he had abnormal bowel movements. Despite this and other concerns, such as prematurity, he was injected with six vaccines. Within 24 hours he became lethargic, feverish, fussy. His feeding and sleeping patterns were markedly reduced and changed. The doctor warned that he could be this way for a week or so, but not to worry because it's "normal" for some babies after their vaccinations. This desensitized the parents to those reactions.

Over the next ten days, baby Alan's condition did not improve, and he then developed a high-pitched cry. Francine and Alan became concerned, but the doctor said this was normal, and they'd already been chastised for being "overprotective." On November 23, 1997, they decided that if baby Alan did not improve, they would take him to the pediatrician the next day after Francine returned from work. They never got the chance.

On November 24, 1997, in the late morning hours, Francine Yurko kissed her family good-bye and went to work, leaving Alan, the baby, and their four-year-old daughter at

home. Alan was a loving and patient dad. He loved to give baths, changed most diapers, and had a special knack for "baby talk." That morning, after feeding baby Alan, it was time to change the



Baby Alan in September 1997

diaper. Alan and the baby's sister began the routine. Alan and Francine always involved their daughter in the care of her brother to minimize any sibling rivalry and establish a bond. Unfortunately, that diaper didn't get changed.

Baby Alan spit up and stopped breathing. Alan attempted mouth-to-mouth and tried to clear any blockage potentially causing his son to stop breathing. He rushed him to the hospital ER at Princeton Hospital in Orlando, where, after great struggle and mishaps, his son was resuscitated. Francine arrived, and they tearfully embraced one another as they waited to be informed on their son's condition.

Baby Alan was then transported to Florida Hospital, which was better equipped to handle the situation and where a ventilator was helping him to breathe. After 12 hours of waiting, the doctor told Alan and Francine that their baby had brain bleeding and rib calluses, which were probably from old fractures. The shock was too much for Francine, and she was sedated. Alan disbelieved the doctor's diagnosis, and asked him to double check to see if he had the right baby. After all, baby Alan had spent a lot of time with many doctors and nurses in his short life, and how could they not have noticed broken ribs?

At approximately 2 a.m. on November 25, 1997, detectives Hinkey and Carson of Orlando Homicide asked to question Alan. The police suggested all sorts of explanations when inquiring about what caused the baby's condition, to which Alan listened and responded, but never gave an explanation. Alan and Francine had no clue as to what caused their son's condition. Alan maintained that he had no idea how his son's injuries happened. Over and over, he stated that neither he nor anyone had ever shaken or dropped the baby. He was in a state of shock and disbelief as to what was happening.

Alan was arrested less than 48 hours later after police mistook him for a fugitive named Michael Yurkiew. Federal agents eventually established that it was a mistake. However, this false arrest created an initial bias against Alan that contributed to the upcoming denial of justice.

**Continued on next page**

### Siddique Abdullah Hasan Continued

Although Hasan is confined in the new Super Max prison in Youngstown under extremely depressing conditions and has very limited means to write and post letters he does try to answer all incoming mail. To be sure of a prompt reply please enclose a "pre-embossed envelope" when writing to him. He is allowed to receive 15 of said type envelopes per letter. The reason for the limited means to write is due primarily because he is only allowed to purchase 15 pre-embossed envelopes

from the commissary every two weeks. Hasan's mailing address is:

Siddique Abdullah Hasan #R130-559  
Ohio State Penitentiary  
878 Coitsville-Hubbard Road  
Youngstown, OH 44505-4635

You may learn more about Hasan's case on the Internet at <http://www.cadp.org>.



Placed in a maximum security area and denied bail while other inmates taunted him as a "baby killer" and assaulted him with feces, urine, sour milk and spit, Alan was no threat to anyone. Yet, child protection Detectives warned Francine that if she did not "cooperate with them" they would call the juvenile judge and "make sure she never saw her daughter again." They tried to scare her also by saying she could be charged with "accessory after the fact" and could get 20 years in prison. Francine adamantly refused to succumb to this coercion. She was then charged as promised, and her daughter was placed in "extended custody." Her case was thrown out of court due to the false arrest, but not before the daughter was sexually battered and molested in state "protective" custody. Her daughter was returned to her immediately afterwards.

Alan was charged with aggravated child abuse and first degree (felony) murder. He refused several plea bargains, including one that probably would have made him a free man by now. His trial lasted 3 days in February 1999.

The prosecution relied on the testimony of five local doctors who stated that baby Alan was killed by shaken baby syndrome (SBS). Yet, those doctors could not agree on when baby Alan's brain injuries happened, nor could they even agree on what specific injuries were observed in his brain, or in the eye for that matter. Disagreement also existed in the interpretation of X rays showing rib malformations. Interestingly, each State expert made the "window" of injury large enough to include numerous suspects, yet Alan was arbitrarily chosen as the target. No State expert attempted to perform any differential diagnoses. Furthermore, none of the State's experts even looked at baby Alan's medical history before rendering an opinion of abuse. Not only that, the prenatal and birth records, which bear heavily on the case, were not introduced into evidence by the prosecution (or Alan's lawyers).

Alan had public defenders who procured only one expert to investigate and testify. Douglas Shanklin, MD holds dual professorships at a state medical college, and is considered by the courts and his peers to be one of the top pathologists in the country. Dr. Shanklin testified that whatever caused baby Alan's bleeding used as proof of SBS must have happened in the hospital - since it occurred less than 24 hours before he died and he spent the last 75 hours of his life in Florida Hospital.

In spite of the numerous inconsistencies in the prosecution's case, the jury accepted the prosecution's theory that Alan must be guilty because he was the last adult alone with his son before he came under the care of paramedics and hospital personnel. Alan was convicted and given life in prison without parole, plus ten years. Direct appeal was denied because Alan's lawyers did not note or make claim to numerous errors in court proceedings, so they were not entered in the court transcripts.

Francine and Alan vowed to gain justice. They began educating themselves in the law, forensics, pathology, criminal care medicine, neonatology and many other fields. They began writing to experts and authors in the relevant fields. After about 1,000 letters written by Alan from prison, interest in the case began to build. Francine worked grueling hours and swing shifts, burning her candle at both ends and in the middle to fund their quest for justice. Their persistence has paid off.

Since 1999, and over 75,000 e-mails and 50,000 letters later, Francine and Alan have over 300 doctors, scientists, experts and medical professionals who stand behind Alan's

innocence and upcoming appeal. Over 115 organizations on four continents openly support what has become known as The Yurko Project. Thousands of parents and families have come to their aid, and the case has gained national and international attention. Over 200 articles have appeared in various publications, which include five peer reviewed medical journals.

Francine has been a guest on nearly 20 radio interview programs as well as several TV news shows. There is also interest from various film producers. Fund raising seminars have been held in New York and Great Britain. Francine has spoken at numerous medical conferences, and is the International Chiropractors Association's (ICA) "Hero Of The Year" for three years running. Both Alan and Francine, as well as their network of contacts, have helped over 70 families build defenses and strategies to prevent injustice. They have many success stories. Yet, parents and caretakers continue to be unjustly accused and convicted.

Due to unrelenting research and study as well as tutelage by an army of experts including over a dozen medical professors, and due to Francine's efforts to obtain "missing" records, the puzzle of vindicating evidence for Alan has been assembled. For example, it was discovered that baby Alan was given a bad vaccine. All six vaccines given to baby Alan are "hot-lots" on the government's database for tracking such lots (vaers.org), but one lot in particular, DTaP 7H81507, is associated with 70 adverse reactions, 25 of which were life threatening and 12 of which resulted in hospitalizations. Five other babies died in association with this vaccine. Moreover, the average reaction-onset interval is 11.45 days--the same as baby Alan's.

Vaccines were only one part of the puzzle, however. Shockingly, hospital records show that baby Alan was given an absolutely contraindicated anticoagulant called heparin, which promotes and causes bleeding in the brain. Even more shocking, the heparin was given at nearly 9 times the recommended dose. Baby Alan was overdosed continuously at this rate for the last 70 hours of his life by attending physician, Dr. Ben Guedes (who also overdosed him on sodium bicarbonate). This suggests that Dr. Guedes had an ulterior agenda: Baby Alan was an organ donor, and heparin is also the drug of choice for preserving visceral organs for harvesting.

Guedes began the heparin line 48 hours before brain death was established. He had ordered a CT scan at Princeton Hospital, but it wasn't run until 10 hours after admission at Florida Hospital. The scan revealed that the brain bleeding did not occur until 5 hours after the initial dose of heparin. Guedes knew this. He continued the heparin. He never tried to save baby Alan's life, only his organs.

To compound matters, evidence suggests that the Medical Examiner, Shashi Gore, MD, confused Alan's autopsy with another. Gore's autopsy report presented absurd and conflicting data to include more than 25 discrepancies. Some of those autopsy discrepancies are as followed:

- Baby Alan's age was noted to be 2 months old whereas he was 10 weeks.
- Cranial measurement was noted to be 22cm whereas at birth his head circumference was 31.5 and later hospital records note 37.5cm.
- Gore testified that "he" removed the heart and other organs, which he did not. A transplant team did that before autopsy.

- Gore described in great detail a tissue specimen of inner heart muscle (myocardium) in his report. Yet, the heart and valves were successfully transplanted, and tissue samples (especially of the myocardium) were never taken.

- Gore testified that he observed Diffuse Axonal Injury (DAI) in the decedent; however, the autopsy report makes no mention of DAI.

- Gore testified that he did not test the cerebrospinal fluid (CSF) because it was mixed with blood, whereas his autopsy report notes that the CSF was clear.

- Gore testified decedent did not have meningitis; however, his autopsy report indicates that there was meningitis.

- Gore listed baby Alan as a "black" baby. Alan and Francine are clearly Caucasian, as was baby Alan.

- Gore also notes that Francine Yurko identified baby Alan's body, whereas the last time Francine saw her child was in his hospital room, the day prior to organ harvesting. Baby Alan went from organ harvesting, to the medical examiner and then on to the funeral home for cremation. At no time did Francine see, let alone identify her child once she left his hospital room.

Florida Department of Health investigations were begun after the Yurko's filed complaints against Guedes, Gore and Dr. Matthew Seibel (evaluating physician from the Child Protection System, who perjured himself). The evidence in these complaints is fully supported by the medical records and backed by experts.

Alan's appeal is underway in post-conviction (FL Rule, 3.850) proceedings. Alan is pseudo co-counsel to his appellate attorney Loren Rhoton, Esq. of Tampa, FL. Amicus briefs are being submitted to the court by dozens of experts, and the Yurko's are attempting to institute tort proceedings.

The Yurko Project website ([www.freeyurko.bizland.com](http://www.freeyurko.bizland.com)) gets tens of thousands of hits per month. It has become a huge compendium to help lawyers, doctors, and families gain justice. It also contains full documentation for all claims made, including the appellate brief and arguments; ongoing updates; reports by numerous experts; and a continually growing list of supporters.

The majority of experts actively supporting the case have waived their fees in the interest of justice, and several have agreed to pay their own expenses. The Project asks all concerned professionals to review the case and, if they see fit, to come forward, get involved, and help prevent the Yurko's tragic series of events from being experienced by other children and their parents.

#### UPDATE

As this issue goes to press, a Case Management Hearing is scheduled before Judge Alan Lawson in Orlando, FL on March 26, 2004. At that time Judge Lawson will determine how much time to allot for an Evidentiary Hearing to determine the merit of Alan Yurko's post-conviction claims, and when it will be scheduled. *Justice: Denied* will report updates to the Yurko case in future issues.

Links to various documentation supporting the claims of The Yurko Project at: <http://www.freeyurko.bizland.com>.

**The Yurko Project continued on next page**

# The Jeffrey Scott Ross Story: A Family Tragedy

Written by: Karen Ross

Edited by Mary Graham, JD Staff

I am Karen Ross mother of Sarah, Donna and Monica and stepmother to Matt and Christie. I married Jeff after knowing him for a good man and realizing that he did not shun the responsibility of children as he already had court custody of his son Matt, age 8 and was soon to have custody of his 9-year-old daughter, Christie. He had been fortunate to be raised in a loving, extended family of aunts, uncles, grandparents and his parents. Jeff knew that rules of behavior come with the territory of raising children.

My husband, Jeffery Scott Ross, was wrongfully convicted of several counts of rape, sodomy and child sex abuse of my daughter, his son and his daughter and sentenced to 85 years in prison with no chance of parole. The only proof was their word.

I met Jeff in February 1994 through my 15-yr. old daughter, Sarah. He met her through a mutual friend at an all night restaurant they all frequented. He was rough mannered and usually dirty. I soon learned that under the rough exterior was a warm, generous and compassionate heart. When Jeff realized that Sarah was a runaway and not a throwaway he visited me regularly with reports on her and made repeated attempts to get her back home. Matt resided with his grandmother in Corvallis while Jeff worked at a sawmill in Springfield.

In August 1994, I offered to shelter Matt when his grandmother said she couldn't continue to care for him.

## The Yurko Project contact information:

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Note by Hans Sherrer who reviewed this for submission to Justice Denied magazine: In spite of the generosity of the dozens of professionals who are donating their time to The Yurko Project, there are many expenses that need to be paid. Previously a full-time managerial professional, Francine Yurko has been working nearly full-time on her husband's case for the past 6 years. Anyone who wishes to donate to The Yurko Family Fund can do so either on the Yurko Project's website at: [www.freeyurko.bizland.com](http://www.freeyurko.bizland.com), or by mail:

The Yurko Family Fund  
PO Box 585965  
Orlando, FL. 32858-5965

My son was moving out and I had a spare room. It caused a lot of hard feelings. The turmoil increased when Christie entered the household in January 1995. It became apparent that Christie was sexually aware and oriented. We intercepted a sex note to a neighborhood boy. We learned that she'd been molested when she was six.

Jeff and I married in April 1995. Our efforts to meld the two families together weren't having much success. Jeff's ideas and family values inherited from his grandparents were not well received by these 80's children. We started Ross' Unlimited, cutting and delivering firewood and expected the children to participate. When they realized how much work firewood entailed they balked creating more hard feelings. Christie ran away in May 1997, and accused Jeff of molestation. The charges were labeled unfounded, but she remained in state custody when the investigators determined that she had mental problems. After a month or so, Matt ran too, making accusations of sex abuse. Again, the police said it was unfounded. We suspected Christie ran because she was used to being the center of attention and that didn't happen in a large family. We think Matt ran because he missed his sister and wanted to join her

Donna was accepting Matt and Jeff. Although she chaffed at his dating rules she respected them. She listened to Jeff's stories and talked with him. She even asked his opinion on dresses--as a man and as a father. Inevitably, she chose the fathers opinion. She picked up his interests in wolves as well as some other values. Monica became even more argumentative and disobedient. I set the rules but Jeff got the blame. She'd turn the radio off saying we had no right to our jazz, classical or country music if she couldn't listen to her rap and heavy metal. She'd enter our bedroom without knocking to use the full-length mirror even if Jeff was sleeping or nude.

In August 2001, Monica went to the authorities with accusations of sexual molestation from Jeff. When Detective Altishin told her she was going to foster care I saw a startled look cross her face. It was obviously unexpected. I wanted to tell her she'd messed up and was no longer in control. Altishin interrupted me saying I was tampering with the witness and faced arrest if I didn't stop. That sentence was used in the trial and twisted to make me look vile. Jeff was arrested and indicted on multiple charges of child sex abuse, sodomy and rape. He was held in Benton County Jail until his trial in June 2001. Donna, Sarah, her children and I visited him there. Donna went in after the prom to show him her attire and hair and share the experience. Jeff had a nervous breakdown and made a couple of suicide attempts. His mother died in February 2001. He was taken to her when she lay in a coma, but was not permitted to attend the funeral.

During the ten months of investigation, Monica told authorities that both Donna and Sarah were probably having sex with Jeff. Despite pressure from the detectives both girls denied all charges. A detective read a complaint against Jeff that Sarah supposedly filed. Sarah said it was a false report containing errors. Sarah said she had such confidence in Jeff that she would trust him with her

children. Matt too denied everything. We see all children denying that any molestation or sexual contact had ever occurred except for Monica. Steven Black was assigned as Jeff's public defender. In the months prior to the trial there was very little contact between Jeff and Mr. Black. Mr. Black did not respond to phone calls or questions. His few visits were very brief--less than 5 minutes and uninformative. Frustrated, Jeff tried to fire him twice before the trial. Judge Gardner denied the request on the prosecutor's recommendation. Jeff tried again, but didn't get a hearing until just before the trial. Judge Gardner told him that the public defenders were all very good, it was too close to the trial date to change and a new attorney wouldn't have time to prepare. He could appoint a new attorney under those conditions or he could ask another public defender to look at the file and make an assessment. We chose the assessment expecting to be able to talk with someone.

We were wrong. Karen Zorn was assigned the task. She made a judgment without ever interviewing Jeff, Donna, Sarah or me. Jeff's sister asked another attorney to look at things. Mr. Halpren checked records, interviewed Jeff and met with Mr. Black in his office. His conclusion was that the entire investigation and trial was "very sloppy" and that Mr. Black was unprofessional, unorganized and that the entire trial was wrong. During the sentencing phase of the trial, Mr. Halpren was permitted to take the case as co-council. Mr. Black was uncooperative. He sat in the back of the courtroom and laughed

On the first day of the trial Mr. Black told Jeff he was ready to fight and would win. In her opening arguments Ms. Carle said that three different children would tell identical stories. Both were false statements. During the trial Monica's testimony lasted several hours and the interview tape played several times. She testified she went with Jeff to get firewood near Sisters. While there Jeff was hit in the groin when the chain came off the running saw. She said he made her apply hand pressure to the injury and that it was hard. Then he laid her on the seat of Blackie and raped her while he stood on the ground. She said there was some pain, but it didn't last long. She said it was only that one time and she never saw Jeff with anyone else. She also indicated that she called 911 on a child abuse complaint telling them that Jeff threatened to kill the dog and that she thought Donna was having sex with Jeff.

Christie testified that Jeff would lock the door, close the curtains and then play spin the bottle with the kids. He would make them take turns having sexual contact with each other while he watched. Then he would take them in Blackie to a popular fishing area for more sex games in an open field. She said he would stand outside her room and reach through the window to fondle her breast. At times he would place her on her dresser so he could do oral sex on her. She said he had sex with her and Monica on four different occasions alternating between the two and climaxing each time. Finally, she said he took her and Matt to Sisters in Blackie. First she said the trip was in the summer. Then she said he pulled her and Matt out of school and there was snow on the ground. At that time he had sex with her in the truck while Matt watched. Afterwards he took her into the woods for more sex while Matt slept in the truck.

Ms. Carle called an officer to introduce a report that Sarah allegedly filed expressing her concerns for the safety of her sisters. The officer said she remembered taking the report from Sarah even though it had been a couple years previous. The report was unsigned because it was taken



over the phone. How many reports did the officer take over the intervening time? How can she accurately recall details of a specific report? How can she be sure it was Sarah that called in the report when she never saw Sarah? Sarah denies the report and said it contained errors. She waited three days to testify yet Black didn't call her.

An expert witness testified on Matt's emotional status and possible denial of abuse. For several years Matt had been on an IEP and had a history of behavioral issues at school. The witness admitted he had never met Matt nor interviewed him. He based his conclusion on school records and the IEP. Matt denied all charges when he was on the stand. Ms. Carle simply brushed his testimony aside as denial. She used the girl's statements to support the charge that Jeff "caused" Matt to rape his sister. How can someone "cause" another person to rape? How can a 9-year-old boy rape?

When Ms. Carle was questioning a caseworker from the child protective services, Officer Laurie Godfrey was caught prompting the witness with hand signals. There was a conference at the judge's stand, but no action was taken other than a frown and order to stop. The jury never knew and the testimony was allowed to stand. How many other witnesses had been prompted before she got caught? Godfrey was the investigator for Jeff's case. At the time of the trial she was under investigation herself by internal affairs for mishandling investigations and evidence. Mr. Black did attempt to question her, but it was not allowed. Jeff had been told that evidence collected from our home (photos of house, family photos, measurements) couldn't be found. Apparently Godfrey took them home, misplaced them, found them again and turned them in. Godfrey is no longer with the department.

At one point Ms. Carle attempted an improper line of questioning. The judge stopped her, but she ignored the rebuke. She persisted several more times until threatened with contempt. Another time she swore out loud and then apologized. When the verdict came in she gave out a jubilant yes." Mr. Black put on a brief defense. Most of the questions were along the line of "what's your relationship with this man?" and "How long have you known him?" Major Garren knew my children when they were very small. We had been neighbors. If my kids weren't at her house hers were at mine. She had a degree in psychology with a focus in child abuse. Her testimony of Monica's personality and her experiences with the girls was suppressed as "bad acts." How can a toddler and preschooler be guilty of bad acts? How can you explain a very small child's character and personality without looking at their words and actions? Major Garren had been a witness in several trials as part of her work with the DEA. This was the first time she'd seen witnesses who were not briefed, not told what to expect and not told what their role was.

Myron and Margaret Ross, Jeff's uncle and aunt, had ample opportunity to observe Jeff as boy, teen and adult. Myron was a logger and could testify to the force and damage a chain can do when it comes off a running saw. Margaret provided childcare services in her home. Neither one ever observed any unnatural or deviant tendencies in Jeff. In fact they seemed to consider him one of the best of the clan. Mr. Black did not ask anything regarding Jeff's background, family relationships or character.

Perdita Humphrey, 78 years old, drove approximately 478 miles from her home in Idaho to testify on Jeff's behalf. Jeff spent much time with her and helped out with chores when he lived in Idaho. She cared for Matt when Jeff was

working. They lived with her for about a month one winter when the pipes froze at his home. She was horrified to learn of his arrest and considered these charges totally out of character. She had with her an affidavit from the sheriff who also knew him well. The affidavits were not presented.

Steve and Laura Kochise, Jeff's sister and brother-in-law, were prepared to testify on Jeff's relationship with their children and his character. They were not allowed to testify on that. Steve did make some remarks to the judge, but he was cut off.

Steve and Laura witnessed a very interesting, revealing conversation. They were sitting near Mr. Black, who at this point had not yet met them. Mr. Black was laughing and joking with Ms. Carle. Contrary to what he told Jeff earlier, he was telling Carle that the case was open and shut, a waste of his time, and that he knew Jeff was guilty. When Steve objected and identified himself, Black was clearly uncomfortable and awkward. He and Carle went out to the hall to continue their conversation. What did they discuss? What happened to "innocent until proven guilty?" Could Mr. Black's apparent lack of integrity and prejudicial attitude lead to a de facto lack of defense?

The case went to the jury on a Friday before a holiday. Jeff remembers the judge telling the jury after the verdict to "have a happy holiday." I am certain jurors were under pressure to get it done and get out to avoid sequestering during the sentencing, Gardner, frustrated by Jeff's refusal to admit guilt or show remorse said, "he would make sure Jeff would spend the rest of his life in prison and never get parole." All the children had the opportunity to speak out. Matt said his father did not belong in prison and should come home. At a post sentencing hearing, Judge Gardner heard some arguments for a mistrial. He turned to Ms. Carle and told her she should have settled out of court, that Jeff would win on appeal.

### Rebuttals

Monica said she was raped in Blackie with Jeff standing on the ground shortly after Jeff was hit in groin. This happened at Sisters. Blackie was a 1958 GMC 9-ton dual axle flatbed truck. The seat was chest high on Jeff. How can any man have an erection and rape immediately after a hard blow to the groin that caused profuse bleeding? Sisters is in Deschutes County, not Benton County, where Monica said she made the 911 call. In fact, she was having a fit, threatened Jeff with a ball bat, kicked me in the chest and was screaming "child abuse." Jeff called her bluff by dialing 911 and handing her the phone. Monica was charged with menacing. She said Jeff threatened to kill the dog. Shadow was a large dog that had twice bitten neighborhood kids. Jeff was trying to prepare kids for the possibility that Shadow might be dangerous and uncontrollable. On the tape she said Donna was having sex with Jeff. Donna was prepared to testify in Jeff's defense, but never got the chance. Does going to the jail to share her prom experience with Jeff sound like something an abused girl would do? The judge told the jury to disregard references to Sisters, but how is that humanly possibly after hearing references a dozen times or more and the alleged rape took place there? Can there really be minimal pain and no bleeding or injury during penetration of a small girl by a well-built adult male? Why weren't the 911 tapes and related records revealed? Mr. Black only spoke briefly of the chain-saw accident, but failed to bring any of facts of the children's denials, the 911 call and the trust the courts had placed on Jeff by granting him custody of his children in cross-examination

or in his final remarks.

Christie testified to several sexual contacts with Monica and Matt present. This is contrary to both Monica's and Matt's testimony. She said Jeff pulled them out of school. Why weren't attendance records checked? Notice the contradictions; pulled out of school, summer trip, winter trip? Christie went once in August before school. Matt never went to Sisters. Jeff never took a winter trip because Hwy. 20 is too steep and twisty (The state played down all denials of the children). Surprised jurors could not see what was happening)? Jeff was held responsible for Christies excessive sexual awareness and activity even though she came to us that way. Christie's testimony and the tape of her interview for this investigation did not match the May 1977 interview when she ran away. Mr. Black did not call for that tape even when Jeff pointed out the discrepancy.

Ms. Carle called an expert witness to testify on Matt's emotional status and possible denial of abuse. For several years Matt had been on an IEP and had a history of behavioral issues at school. The witness admitted he had never met Matt nor interviewed him. He based his conclusion on school records.

### Situation at present

If the judge knew that something was wrong why didn't he declare a mistrial then? An appeal has been filed however, sufficient funds couldn't be raised and Mr. Halpren dropped the case. Jeff is now represented by a state appointed attorney. The process takes year. Even though he is only 39 when convicted Jeff does not have many years left. Since his conviction in 2000 he has aged rapidly. He experiences severe anxiety and panic attacks. He has back problems and has had several falls when his legs failed to function. He's had a heart attack and uses nitro for frequent chest pains. His blood pressure has gone from very low to extremely high. He was given blood pressure medicine that sometimes is taken away. He has migraines and intermittent periods of blindness. He has been diagnosed with hemochromatosis. He is having seizures. On 3/17 he had one that nearly claimed his life. The doctor said his heart may be slowing down and depriving his brain of oxygen. Depressed and without hope Jeff sees no reason to prolong his life and refuses treatment except for pain. His liver works overtime trying to process increasing levels of iron. At some point his liver or some other major organ will fail and he will die. If freed he would accept the phlebotomy and diet needed to control the disease but he is running out of time.

The family has been harmed by his conviction. The financial burden is draining. Sarah's children are missing their beloved grandpa. I grieve for our lost daughters. I worry about the others. The future appears bleak as I miss my husband, grieve for all we've lost and face his impending death.

You can write Jeffrey S. Ross at:  
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**Visit *Justice: Denied's* Website:**  
**<http://justicedenied.org>**



# The Mario Sims Story

By Sunny Sims

Edited by Barbara Jean McAtlin, JD Staff

This is a story of Mario's wife of 14 years seeking sole custody during a divorce and angered by her husband's alleged affairs with two other women. She used her husband's willing political enemies to assist her in gaining sole custody and revenge by falsely claiming her husband raped her, resulting in Mario receiving a 27-year sentence.

Mario L. Sims Sr., was charged with Burglary, a Class B felony; Rape, a class A felony; Criminal Deviate conduct, a class A felony; Rape a class A felony; and criminal Deviate conduct, a class A felony in a trial by jury and the Court having entered judgment on the Jury's verdict.

Mario L. Sims, Sr., an African-American born and raised in Chicago came to live in South Bend to get away from the fast life he had in Chicago and to live in a quiet community close to his elderly mother. Soon after he bought a house and became involved in the community Mario Sims became widely known and soon had a very high profile.

He established his own business working out of his home, Sims & Associates. He became the Interim Director for the St. Joseph County Urban League, he was the founder of the Northwest Side Neighborhood Association, wrote a [bi[-]weekly] [[biweekly]] column in the Communicator, a local newspaper, was on the Holy Cross Board where his son attended school, was member of the Parish finance committee, Chairman of the Father Malloy St. Joseph County Drug taskforce neighborhood committee, a member of the Board of Directors of the St. Joseph County NAACP, coach at the Y.M.C.A. where he was also a member of the Board of Directors where he chaired the Program committee, had a daily A.M. radio program on WIWO that was heard in 13 states from Trenton, New Jersey to Boulder, Colorado that regularly featured Mario's commentary on what he perceived as Barnes' failure to prosecute drug cases and Kernan's inability to manage South Bend's government, a member of various community organizations and frequently appeared as spokesperson for those organizations.

Mr. Sims had served his community by speaking out on issues of community concern including crime. By doing so he was told by members of the community that he was stepping on some mighty big toes. He was not aware of what those big toes would one day do to him.

Joseph Kernan was mayor of South Bend at the time of Mario Sims' conviction and Michael Barnes was the Prosecutor. Mario and the two men repeatedly clashed in the media. Prior to Mario's arrest on January 22, 1994 he had been an outspoken opponent of the St. Joseph elected Prosecutor, Michael P. Barnes, and the South Bend Mayor, Joseph Kernan.

Then one day Mario Sims' world came to a halt when he retrieved a telephone message from his answering machine at 1025 N. Johnson Street, South Bend Indiana. Mario had moved into one of his rental properties from his marital residence of 1050 N. Johnson Street after Linda (his then wife) had filed for a divorce in October of 1993. The marriage produced one child, a boy born June 7th, 1984 named Mario Lee Sims that Mario and Linda called "Junior."

Mario immediately contacted his divorce attorney, David Albert. On January 22, 1994 after taking Mario's call divorce Attorney David Albert called the police and had been told by the South Bend Police that Linda had alleged that on Friday, January 21, 1994 Mario had broken a glass panel on the front door of the marital residence at 1050 N. Johnson Street to gain entry then waited for Linda to arrive home from work and then while a hand gun was nearby and under threat of being injected with a syringe filled with heroine forced her to write a reconciliation note and committed the sex acts.

Mario went to the South Bend Police Department with Attorney David Albert and then fiancée L.C. to give a statement. (L.C. later became a state's witness). Prior to going to the Police Dept. Mario, who had Junior as part of his four days of visitation and joint custody, left Junior at 1025 N. Johnson in the care of neighbor Candace Tompkins until Mario's expected return that day.

While at the police station with Mario and Attorney David Albert Ms. Christianson told the South Bend Police that she was an insulin dependent type I diabetic and that she kept a package containing 10 syringes in Mario's house at 1025 N. Johnson for use in an emergency and that she had used one from the package.

On January 23, 1994, a day after Mario's arrest and a day after the Police searched Mario's house at 1025 N. Johnson, L.C. went to clean Mario's house. The private line rang and L.C. thinking she was the only one who knew the number answered it and entered into conversation with Lori Gizewski, Mario's neighbor who lived 2 blocks down from Mario's house. Lori lived across from Mario's mother, Mrs. Claudette Winston. Lori then came over to speak with L.C. and they both realized they had been having a consensual sex relationship with Mario without knowing of each other and both became angry. Lori told L.C. that Mario must've used her (Lori's) gun, then L.C. said Mario must've used her syringe. L.C. then called the South Bend Police and told them she had found the handgun Lori claimed to have "loaned" Mario for his use on January 21, 1994. L.C. also called Linda to describe the handgun and the syringe.

On January 24, 1994 after the South Bend Police spoke to Lori and L.C. Mario was charged with two counts of rape as class A felonies and two counts of criminal deviate conduct as class A felonies in addition to the burglary charge as a class B felony with all charges stemming from the alleged assault on January 21, 1994 against Linda.

Two days later Lori called the police and claimed to have found Mario's watch on her back porch. During the time Mario was held on the charges in the St. Joseph County jail awaiting trial he was moved without requesting a move from the five man cell he was moved in to a large open unit that held over 30 inmates.

Soon thereafter, three inmates in the unit, Paul Whitmer, Dennis Jones and Lionel Williams claimed Mario had confessed to them and Whitmer's five-page statement was attached to the state's response to discovery Motion filed on March 25, 1994. Shortly before trial Whitmer recanted to Mario. Mario gave Whitmer's recantation to his Private Investigator; Denis Burns to give to Mario's Lawyer Kevin Milner and Burns did so.

Prior to trial Mario's then Lawyer Raymond Balough received a telephone call from State's witness (Mario's former fiancée) L.C. and Balough had Sims' private

investigator Denis Burns tape it and in the tape L.C. said that she wanted some form of payment not to testify against Mario. She also said that the elected Prosecutor had promised to help her get Mario's Mercedes in exchange for her testimony. They also showed her Lori and Linda's statements.

It was not hard to prove Linda was not credible since she had made prior demonstrably false allegations of Mario having raped her on January 4, 1994. During the course of the divorce proceedings between Mario and Linda she had called the South Bend Police several times alleging that Mario had not returned their nine year old son, Mario Lee Sims ("Junior") to her in a timely manner after visitations with his father or that Mario had rung her doorbell at 1050 N. Johnson too many times when returning Junior, or that on December 15, 1993 when Linda had invited Mario over to have consensual sex then alleged Mario had not left the house at 1050 N. Johnson quickly enough after having had consensual sex with Linda thereby making her late for work.

Linda knew that if Mario were in prison custody would no longer be an issue. Mario had no history of felony arrests. Mario and Linda had agreed after Linda filed for divorce that Mario would live down the street from Linda at 1025 N. Johnson so that Mario could have temporary joint custody and visitation with Junior four days then Linda would have four days.

Mario Sims has learned that because he chose to take seriously his first amendment right of freedom of speech to lawfully express opposition to those elected officials who are supposed to be servants of the people, but have in fact become masters of the people, his crime is being Mario Sims. This is not downplaying or ignoring the serious nature of charges. But his ex- wife Linda has said that she did not bring these charges. She only wanted a divorce. But the reality was that the powers that be wanted Mario removed from society to serve their purposes. The Court takes note of Mr. Sims' statements both to the probation officer and in open court that this is, "a political case."

In Mario's taped statement he said he had consensual sex with Linda that night after having fixed a window on a door that Linda had broken. Linda had sent a note with a door key enclosed for 1050 N. Johnson Street that was given by her to Junior to give to Mario that morning of January 21, 1994 so Mario could fix the door. Mario denied breaking into the house, denied having a syringe, denied having a handgun and denied forcing Linda to have sex. Mario also told police that he had been at the Heritage Cable Television Studio taping his television show from 2:00 p.m. until a little after 4:00 p.m. the day of the alleged crime on January 21, 1994.

Balough resigned on March 28, 1994 because Mario could not pay him. On April 4, 1994 Attorney Kevin Milner entered his appearance. Mario met with Kevin Milner one time before trial and Milner took notes at that meeting. Milner did not visit the alleged crime scene. Throughout the pre-trial and trial proceedings every time Mario would enter the Courtroom Judge Jourdan's demeanor would become visibly hostile, glaring at Mario.

A 12-member jury was impaneled on June 1, 1994. On June 2, 1994 the State began its case in chief. The theory of the State's case was that sometime before 3:30 p.m. on January 21, 1994 that Mario armed with a handgun given to him by Lori Gizewski and with a syringe he took out of a package belonging to L.C. broke into 1050 N. Johnson

through a glass panel on the front door and then waited until Linda arrived a little after 5:00 p.m. and over a period of six hours sexually assaulted Linda.

On June 2, 1994 the State's Case in Chief began when the State called as its first witness Dr. Brent Crofoot, who had conducted the medical examination of Linda. Dr. Crofoot testified that Linda's blood pressure and pulse were normal after the alleged rape; there were no signs of any evidence of trauma anywhere on Linda's body. There were no injuries to Linda's vagina or rectum and there was no indication of forced sex of any kind.

Twice, one of the Jurors, Mr. Kelly, sent a note to Judge Jourdan saying he could not continue as a juror because the English language was not precise enough to allow him to understand what they (the Judge and Lawyers) meant specifically. He said the State gave evidence that didn't explicitly refer to the defendant nor narrowed a focus on and of deviate sexual behavior charges, only burglary. The Court sent a response to Mr. Kelly's note and said that he had to serve as juror

On June 3, 1994 Mario was convicted on all counts. On June 8th, 1994 six days after L.C. testified against Mario, she was awarded his Mercedes. On June 9, 1994 Judge Means and St. Joseph County prosecutor Michael P. Barnes, had previously agreed to the sentence modification of felony Lionel Williams and granted Williams an early release from prison six days after Williams testified against Mario. On June 24th, 1994 Mario sent a letter to Judge Jourdan saying that his political opponents had railroaded him. He fired Milner and asked to represent himself pro se.

On July 1, 1994 Mario was sentenced to 27 years in prison. Judge Jourdan appointed a public defender from the Indiana State Public Defenders Office to perfect Mario's direct appeal. Mario told the State Public Defender, David Freund, that he had witnesses who would provide him with affidavits saying he was innocent and that his trial judge was biased and prejudiced against him. Freund informed Mario that because the trial judge paid his fees he would not raise this issue. Mario then filed his Davis Motion in the Court of Appeals, advising this court of Freund's conflict of interest and attached the affidavits he had told Freund about.

On April 25, 1995 this court granted Mario's Davis Motion for the purposes of filing a Belated Motion to Correct Errors. On May 8, 1995 Mario filed his verified motion for change of judge. Mario's change of judge was denied on May 18, 1995. Mario filed his Belated Motion to Correct Errors with the affidavits of Tom "T-Brooks" Brademus, Denis Burns, Attorney Charles Asher and Candace Tompkins on May 25, 1995 in the St. Joseph Superior Court. On June 8, 1995 Mario filed additional affidavits from Attorney David Albert and Charles Hoskins.

On June 16, 1995 Mario took depositions of Linda, L.C. and Lori and subpoenaed Lionel Williams, Dennis Jones and Kevin Milner. Milner and Williams never appeared at the deposition. At the conclusion of the Belated Motion to Correct Errors Hearing Judge Jourdan, glaring angrily at Mario and then directing her comments to Mario while his elderly Mother was sitting in the courtroom, said that Mario's mother had angered Judge Jourdan for making comments during voir dire in an unrelated case where Mario's elderly mother was in the jury pool and had said that Judge Jourdan had not been fair to her son and Judge Jourdan was outraged.

On June 30, 1995 Mario's Belated Motion to Correct

Errors was denied. Mario sought to obtain the record of trial from the Clerk and from John Marnocha, but was unsuccessful. Having exhausted every avenue to obtain the record to prepare the brief to appeal issues from trial and from the Belated Motion to Correct Errors proceeding Mario filed a pro se petition in the Court of Appeals seeking permission to raise the issues from trial and from the Belated Motion to Correct Errors proceedings in a petition for post-conviction relief. On December 12, 1995 the Indiana Court of Appeals, citing; Logan v. Cruse/Davis v. State granted Mario permission to raise the issues from trial and from the Belated Motion to Correct Errors in his petition for post conviction relief and dismissed his appeal.

On January 5, 1996 Judge Jourdan granted Mario's motion for change of judge and named a panel of three judges. On January 17, 1996 Mario strikes Judge Albright. On January 19, 1996 Judge Jourdan vacated her recusal and reassumed jurisdiction. On January 29, 1996 Mario objected to Judge Jourdan reassuming jurisdiction by filing his Motion for Contempt for Refusal to comply with Order of the Court of Appeals and filed a complaint with the Indiana Commission on Judicial Qualifications. On February 20, 1996 on her own motion Judge Jourdan recuses herself.

After a while of filing motions back and forth St. Joseph County gets tired and decided to play hot potato with Mario's criminal case. On April 25, 1996 St. Joseph County sends it to Elkhart County, a neighboring city. It is then given an Elkhart County Case # 20D01-9605-CF-0045. On August 2, 1996 the Elkhart Court denied Mario's Post Conviction petition for reasons previously known to him during both of the appeals and were not included in either appeals and are thus waived or previously ruled on in the Belated Motion to Correct Errors or were raised in the initial appeal of the conviction. On September 3, 1996 Mario filed his praecipe. The Clerk of the Court of Appeals refused to accept matters filed under the Elkhart County Case number and in the confusion over which case # to use Mario's appeal was dismissed.

In 1997, a Chicago newspaper covering Mario's case determined that Mario's trial judge's daughter had been sexually assaulted by a black man before Mario's trial and that she had instructed her daughter not to date black men.

In 1999, Mario's wife of two years, San Juana Sims and their Pastor Rev. Samuel Chase, met with newly elected St. Joseph Prosecutor Chris Toth and were told that outgoing St. Joseph Prosecutor Michael P. Barnes and his Chief Deputy Prosecutor John Marnocha had destroyed drums of legal files/evidence of the fabrication of Mario's criminal case. A member of the community named George also met with Chris Toth, Pastor Chase and San Juana Sims and all were told of Barnes animosity to Mario and of the destruction of exculpatory evidence. On May 22, 2001 Mario filed his Motion to take Depositions at Public Expense seeking to take the depositions of 24 people including St. Joseph County Prosecutor Chris Toth, former elected St. Joseph County Prosecutor Michael P. Barnes and former Deputy Prosecutor John Marnocha regarding the newly discovered issue of the bad faith destruction of the materially exculpatory evidence of the fabrication of the case against him and Judge Jourdan regarding the issue of her bias and prejudice against Mario.

On May 24, 2001, Mario filed a Request for Issuance of Subpoenas and an affidavit seeking to subpoena 33 people at a post-conviction relief evidentiary hearing, including Michael P. Barnes, John Marnocha, and Judge Jeanne Jourdan.

On June 19, 2001 Mario filed his Motion to Compel South Bend Police Sgt. George Haywood to answer the request for admissions concerning the fabrication of the trial testimony of felony witness Lionel Williams, Petitioner's Ex parte Motion for Order Authorizing Experts at Public Expense seeking to retain the services of Law Professor Alan M. Dershowitz, of Law Professors Keith A. Findley or John A. Pray from the University of Wisconsin Madison Innocent Project.

On September 10, 2001 the post-conviction court set a hearing on pending motions for September 25, 2001. On September 20, 2001 the court entered an order vacating the September 25th hearing and that hearing was continued until December 17, 2001 because Mario Sims had filed a Verified Petition for Appointment of Special Prosecutor where in Mario Sims alleged that the elected St. Joseph County Prosecutor, Chris Toth, became a witness for Mario Sims on the issue of the bad faith destruction of the materially exculpatory evidence and the State filed a response to that request indicating it had no objection to the appointment of a special prosecutor. The Court granted Mario's petition for a Special Prosecutor and on October 4, 2001 appointed Jennifer Evans.

On December 27, 2001 the Court heard oral argument on the pending motions and on January 25, 2002 the Court entered an order denying all discovery motions and again denying the issuance of subpoenas. On January 28, 2002 the post conviction Court issued its Procedural Order setting forth its determinations that pursuant to Rule 1, Section 9(b) of the Post-Conviction Relief Rules the matter be submitted by affidavit and granting Mario permission to have this matter heard as a writ of habeas corpus and a post-conviction petition and they set a hearing for April 17, 2002 further ordering that no testimony be allowed, but that the parties submit affidavits and argue the law at the hearing.

On April 17, 2002 oral arguments on the writ and post-conviction petition were heard. During the hearing the State stipulated that the issue of the bad faith destruction of the materially exculpatory evidence was newly discovered. Yet Mario did not invite error of not supporting the issue of bad faith destruction of exculpatory evidence with the affidavit of Chris Toth. Ordinarily counsel is not subject to being called as a witness. There are exceptions however, such as when Counsel is believed to have material information that cannot be disclosed otherwise. Toth, Barnes and Marnocha were the only sources that could have provided the information on the bad faith destruction of the exculpatory evidence and Toth had already agreed to recuse himself thereby becoming a witness for Mario.

On July 11, 2002 Mario's writ and post-conviction petition was denied. On July 25, 2002 Mario filed his Notice of Appeal on August 19, 2002. On August 23, 2002 Mario notified the Court that further developments in the form of a factual determination made by the Elkhart Circuit Court showed that the State had knowingly used false testimony at trial to gain Mario's conviction.

Now after all that what else is left to do? Mario has exhausted all Court avenues and continues to fight for his freedom. Recently in September 2002 a brief was filed hoping to overturn his conviction.

**Continued on lower left of next page**

# The Vinci Paul Soddu Story: Naked Truth Equals Dubious Justice

Submitted by Vinci P. Soddu

Edited by Pamela Eller, JD Staff

March 3, 1931, was a happy day in the lives of Antonio and Andrina Soddu, two immigrant Italians from Sardinia, Italy. They were blessed with their second child and their first son. They named him Vinci after Leonardo Da-Vinci and at his baptism they chose the middle name Paul, after St. Paul.

Vinci Paul Soddu left his birthplace of Brooklyn, New York when he was ten years old to go to Hopewell, Virginia where a childhood friend of his father's had moved to years before and had acquired several pieces of real estate. We moved into a large apartment behind a large empty store. Next door was a ten-car garage, and all the aforementioned property was in dire need of my father's talent of carpentry and general handyman services. We opened a confectionery in the store and a carpentry and cabinet shop in the ten-car garage. Elementary school was only a half a block away. The school also afforded the entire neighborhood with an excellent baseball and football field and a gathering place for all the local children. Life was fun but after a few years it became boring after life in the big city. At sixteen I quit high school and I decided I wanted some excitement in my life, so Miami Beach, Florida here I come!

My first job was behind a lunch counter in a drug store on Collins Avenue. I was happy with the excitement of the beach and the people who were on vacation, but I yearned for a better paying job with a little more prestige so I applied for a job as assistant manager at the busiest drive-in restaurant on the 79th Street causeway that links Miami Beach to Miami.

After two years at Colonel Jim's Drive-in as the assistant manager I met my future wife, Marion Lee, who was from a small town in South Carolina. We eloped and went back to Hopewell where I worked at the trade my father had taught me, carpentry and general construction. We had begun a family; we had our first child, Angela, followed by Mario Vinci, my first and only son. Uncle Sam chose this inopportune time to send me my greetings.

The year was 1955 and we were at war in Korea. I spent the next two years in Colorado Springs as a ski trooper in mountain-cold weather troops. I enjoyed everything about the Army except being away from my wife and children.

## Mario Sims continued

Not even the appearance of justice was shown here. The Star Chamber has served to deny Mario Sims justice. The Court should reverse the conviction in this case and remand the case with instructions to enter an order acquitting, Mario L. Sims, Sr.

At present Mario L. Sims, Sr. sits in the Westville Correctional in the State of Indiana awaiting a response from the courts on his brief. Mario Sims' address is:

Mario Sims #843738  
Westville Correctional Facility  
P.O. BOX 473 EC-B1  
Westville, IN 46628



After my discharge on January 16, 1957 we moved to Baltimore, Maryland and I went to work for General Motors, Chevrolet Division, working on an assembly line. The Army taught me the value of an education and with the aid of the GI Bill I enrolled at the University of Baltimore. I worked full time for GM and I attended college full time for three and a half years. I never missed a day of work or school.

As a result of my education I was promoted to foreman with a considerable raise in pay. The GI Bill would only pay for three and a half years of school so in early 1961 I left school and GM and my family and I returned to Florida. We now had five children and we bought a house in a fashionable new area called Copper City on the outskirts of Ft. Lauderdale. I then opened my own cabinet shop and construction company where I specialized in remodeling and home repair.

After eleven years of moderate success I was called to do a room addition in North Miami. It was there that I met Theresa Allen, wife of the victim in my case, Mark Allen. They had three children, Paul the oldest, Amy, and the youngest, Gail. Theresa and I became romantically involved and we began an affair that lasted over five years.

Mark and Theresa Allen were involved in the sale of marijuana and Quaaludes and they supplemented their income on a small scale by selling them. The curse that developed was Mark's addiction that had got so bad it made him into a monster. He was abusive to his wife and children. He was a gun nut and kept dozens of loaded guns in his home. He insisted Theresa carry a gun wherever she went. After I completed the room addition I continued to see Theresa for the next five years.

In May 1977 Mark Allen was shot and killed as he returned home from work at the Florida Power and Light Company at about eleven o'clock at night. Theresa admitted to the police that she had an affair with me for five years and I was called. I went to the Hollywood Police Department and answered every question truthfully that was asked of me. I was released and never heard from them again until fifteen and a half years later. I was in Hopewell, Virginia spending time with my dying mother. I had planned to stay with her until she passed away. I was arrested and taken back to Hollywood, Florida to stand trial.

Several months before Mark's death I had broke off my relationship with Theresa and divorced my wife of twenty years. I married another girl named Donna Gallo who had recently divorced her husband, Gino. Gino owned a cabinet shop four stores away from my business and while we were not close friends we were not enemies.

The year was 1992 and I had closed my business and taken all my equipment with me to Hopewell. Prior to my trial we asked to be allowed to post bond since the state's case was very flimsy at best. Judge Leroy Moe told us on Thursday to be in his chambers on Monday to post a bond for fifty thousand dollars and we agreed.

The next day, Friday, I was called to the Magistrate's Court

and charged with Capital Sexual Battery on the daughter of Theresa. Her youngest was claiming I had sexually abused her before she turned twelve years old.

The state insisted on trying the murder case first and at a pretrial hearing we learned that Benjamin Sosa, an inmate in my pod, had said that I had confessed both crimes to him. I also learned that I had been arrested because of a statement made to the prosecutor by an ex-employee named Juan Rodriguez, who claimed I had confessed both crimes to him while he was in my employ.

In a statement in my trial transcripts Prosecutor Tom Kearn referred to Juan as "not too bright." I concur wholeheartedly. His entire testimony was a fabrication, as was the testimony by Benjamin Sosa. Sosa testified in five high-profile murder cases in five different courtrooms using five different aliases. Two books were published bearing Sosa "confessions," "Until Proven Innocent" by Arthur J. Harris and "The Wrong Man." One of the books is about two brothers, Rodney and Dana Williamson; the other is about a friend of mine named Paul Hamwi.

I have proof of every appearance that Sosa made in court and I can prove that there existed in the Broward County Jail on the eight floor in 8-C4 a ground of professional paid informers. They were placed in close proximity to inmates in high profile cases and they "elicited" information that helped the state obtain tainted convictions. I have thirty-four exhibits to prove every allegation I have made beyond any and all doubt.

The state of Florida violated my 6th and 14th Amendment Rights and convicted me of first-degree murder based entirely on the testimony of two paid informants. I have statements taken by four informants, but only two were available at the time of my trial.

All I have ever asked of the state is an evidentiary hearing to give me the opportunity to prove every allegation I have made. The law states very clearly that if the state denies post conviction relief it must produce portions of the records that refute whatever I claim. The state has never done this nor have they ever given any opinions as to why they decided against me.

The A. A. G. for the state, Lynda L. Melear, has come very close to telling outright lies to answer her show cause orders from the federal courts. Magistrate Charlene Sorrentino from the Southern District in Miami has seen fit to believe her and recommend denial of my habeas corpus petition. The 11th Circuit Court in Atlanta upon my appeal to them, claims I never proved a violation of my constitutional rights and denied my appeal.

I have now placed my life in the hands of the only democratic and fair court in our great country. Dear God, let our lady of justice prevail for me in the Supreme Court of the United States.

Address Correspondence to:  
Vinci P. Soddu 661088  
Dade Correctional Institution G-1220L  
19000 SW 377th Street  
Florida City, FL 33034

Outside Contact:  
Etna Traylor  
(540) 733-7509



# The Garnet Tolen Story

Submitted by Garnet Tolen

Edited by Barbara Jean McAtlin, JD Staff

On the night of April 2, 1998, as I was leaving work and walking to my car, I saw three girls threatening to beat up a girl I worked with named Melissa Hughes. I walked over to try to stop the assault. When I got there the girls were pushing Melissa so I told her to get in my car. After she got in my car, Melissa and I drove over to a liquor store. When I went into the store, the girls who had been trying to beat Melissa up showed up outside. When I came out of the store I tried to talk to the girls but all they wanted was to get at Melissa Hughes.

When I finally got back into my car, I drove across the street to the parking lot where Melissa's car was parked. We looked down the alley and saw the girls parked in their car in the shadows. At this point, I told Melissa that I was going to go to the gas station and get some gas and gum. On the way over to the gas station, Melissa started to rub my right leg and said, "Thank you for saving my life." Then she asked me if I wanted her to give me oral sex. I said, "No," and I went to pay for the gas. When I came out from paying for the gas we drove around for a few minutes hoping the girls would get bored and leave the parking lot where Melissa's car was parked.

After a while, we ended up back in the parking lot. While we sat there I was looking out the car window thinking about seeing my girlfriend that night when I got home. Next thing I know, Melissa is giving me a hand job. After I ejaculated I got out of the car and went inside to the job site. There was a supervisor and another employee there. I spoke with them and then used the phone to call my girlfriend to tell her I was on the way home. When I got back to the car, Melissa was gone.

The next day, Friday, April 3, 1998, along with my dog, I went to work. Melissa was also at work. She played with the dog and told me "thank you" again for helping her the night before. I then left work and when I came back to work later, she and her girlfriend were in a car in the parking lot. When they saw me pull up, Melissa got out of the car and came over and started playing with my dog again. A couple of other employees saw all of us together.

The next day, Saturday, April 4, 1998, my friend, Shaun, and I were at the park. Melissa and her friend, John McDowell, were out driving and when she saw me she drove over to where I was. When she stopped her car, I went over to her and asked her what she doing and where was she coming from. She was drunk and she said that she and John had just came from a party. She offered me some of what she was drinking and I told her, "No, go home and chill out." When I went back to my car Shaun asked me who she was and I told him.

On Sunday, April 12, 1998, a police officer came to my house and asked me if I knew Melissa. I said, "Yes." The way the officer spoke, I thought something had happened to her. He asked me what had happened on April 2, 1998. I told him that some girls wanted to beat Melissa up. He then told me that Melissa said that I raped her. Again he asked me what happened that night and I told him. Then he asked if he could see my car. I told him, "Yeah." When we got out to my car, he looked around and told me that he

agreed that it couldn't have happened in the car. He then told me to not worry about it and that he believed me and he told me again not to worry. That's when I started to worry.

After the officer's visit, I went to my parole officer and told her what was going on. (I was on parole for kidnapping. I was in the Army and stationed at Fort Riley, Kansas in 1979 and I was told that I was supposed to have raped this girl. When I went to court I was given a plea agreement. I found out two days later that the girl had never been raped. The hospital reports were negative for rape and the police report substantiated the hospital reports. She lied because she was supposed to be home at a certain time and wasn't. This is when all my problems began.)

A week later, the same police officer came to my house to arrest me.

Why did Melissa wait *eight days* to decide to say I had raped her?

After I had been in jail for a while, the district attorney spoke with my parole officer. She asked my parole officer if, if she dropped the charges against me with prejudice, could she leave me in jail because she didn't have any evidence. My parole officer told her, "No."

I went to my pretrial hearing and the judge bound me over for trial. My attorneys were Mark Dinkle and Pamela Sullivan. I asked them if I could take a polygraph. I was granted one. The results said that I was telling the truth. When I asked my attorneys to have Melissa take one, they said the district attorney had said, "No."

Then Melissa said she was pregnant. I asked my lawyer to file a motion for DNA testing. The state said, "No." This went on for months. Then the state said, "Yes." The results said that I was the father even though the dates and times the child was conceived did not correspond with the time in which the alleged rape was supposed to have happened. Although Melissa told the judge that she wasn't going to keep the baby and that she wanted to have an abortion, she later changed her mind. At my trial, she told the judge she wasn't due to give birth until late January or early February. She delivered a full term baby in November. (The rape was to have happened in April. When Melissa went to the doctor the first time, the doctor told her she wasn't pregnant. When she went back to the doctor a second time, he said she was.)

My first trial ended in a hung jury. Melissa was caught telling many, many lies. My attorney told me not to take the stand because the jury would not believe my version. During the first trial, Melissa admitted that it was her intention to "get with me" that night. My plans had been to go to the liquor store (as I did every Thursday) and go home. The state was unable to come up with a motive. Their "evidence" was a bottle of gin that I was supposed to have thrown out of my car window, but when fingerprinting was done on the bottle, they found no prints -- none. The state's witness was caught in lies; even the police were caught in lies.

The rape was supposed to have taken place in my car, a Chevy Cavalier. Melissa said that I was to have picked her up by her waist and put her on top of me. The police officer who had looked at my car had said that wasn't possible. When Melissa was asked what article of clothing came off first, her pants or underpants, she said she didn't know. She also said that while she was sitting in the passenger seat with her feet on the floor in front of her, I was to have put

my tongue in her vagina for five minutes. I supposedly did this from the driver's seat. The only so called evidence that the state used was the fact that she was pregnant and her test said it was my baby.

After carefully reviewing the medical record, a report from a women's clinic said that the medical evaluation Melissa was given by the emergency room doctor was "excellent and thorough." His findings were completely negative for rape. There was absolutely no sign of any trauma. There was no evidence of any kind of forced intercourse or any sign of rape. In fact, according to the medical record, the only proof that intercourse occurred was that she was pregnant. The clinic also wondered how underwear and pants can be removed in a small vehicle without any sign of abrasions, contusions or any other problems that would definitely still be noticeable as much as two weeks after a rape had occurred.

The investigator said that, had the rape happened in my car, there should have been some evidence left behind. There was none. The Kansas Bureau of Investigation took my car and did all kinds of tests; they came up with nothing. They even took the seat covers off and found nothing, not one single human hair. All they found was dog hair. They couldn't even find any of my pubic hairs on Melissa or in her panties.

My second trial was held using the same evidence (none). I was found guilty. One of the jurors said they wanted to hear my side. The judge instructed the jury not to take into account that I didn't testify and use that against me, but they did.

It has been proven that Melissa has been suicidal, that she has been a liar, and that all she was doing was trying to get attention by crying rape. When she told her mother that she had been raped, why did her mother wait eight days to report it? To top it all off, they didn't even actually report it; they went to the hospital to see if Melissa was pregnant, not to report a rape. The doctor said they couldn't find any evidence that a rape had happened. The doctor also said that even though Melissa took *eight days* to report being raped, there should have been some evidence of a rape.

Melissa's mother said she had been keeping track of her 18 year-old whose daughter's ovulation cycle and that when this "rape" happened she was ovulating. I asked my attorneys if, when Melissa masturbated me, could she have put my sperm between her legs and impregnated herself? They said they didn't know if this could work, so I contacted a doctor. He said, "Yes, especially during the ovulation."

Becky Buck has known Melissa since they were in the eighth grade. They were best friends for a long time, but their relationship has diminished over the past several months. In an affidavit, Becky Buck said Melissa is from a family with seven children (some of the children are foster children) and Melissa's family is generally in turmoil. Ms. Buck says Melissa needs attention and will do "things" for attention. She wants to be the center of attention. Ms. Buck also said that for a while Melissa was drinking and she believes Melissa made sure her parents knew she was drinking so she could get attention. She also believes that Melissa was taking drugs because of her behavior and her eyes were glassy.

Ms. Buck also said that Melissa claimed to have had oral sex with five or six guys. Melissa went out with a man named Jamal Jackson a few times and they had sex. Ms. Buck believes Jamal is the father of Melissa's baby.

## Garnet Tolan continued

During her testimony, Melissa said she had been raped, but she went to work the next morning where she saw me. When she was asked how she acted, she said, "I acted normal. I didn't want him to know anything was going on. I was scared of what he would do, what he would say, and how he would act if he knew or thought I would report it or something."

When she was asked if she had thanked him for helping her the night before she said, "Yeah."

When she was asked if she did anything else she said, "I gave him a hug."

I think that, had I been raped, I would not have even gone to work the next day if I had known I would be seeing my "rapist." I certainly would not approach him, thank him, AND give him a hug.

When Ms. Buck was asked if Melissa was an honest person, she said, "No, she can lie about anything. She can make herself cry when she wants to. She's a pathological liar."

My case is still in the first stage of the appeals process. My court appointed appellate attorney, Mr. Durham, gave my oral argument on April 10, 2001. So far I have not heard from him.

I am praying desperately that someone out there will be able to help me. I have copies of any and all information that you may need.

Thank you for taking the time to read my story. Write:

Garnet Tolen #38424  
Lansing Correctional Facility  
PO Box 2  
Lansing, KS 66043

Outside contact:  
Mark Dinkle  
c/o Salina Regional Public Defender  
234 N. 7th Suite A  
Salina, KS  
(785) 827-9961

### UPDATE

Any help that you could give to me would be greatly appreciated. The only person that may be able to tell you anything about what happened is my Public Defender, Mark Dinkle. Other than him, there is no one else because it was her word against mine. As for my case, it is still in the first stage of the appeal. My appointed Appellate attorney, Mr. Durham did my oral argument on April 10, 2001. So far I have not heard from him.

Mr. Dinkle's address is  
234 N. 7th Ste A  
Salina, KS  
c/o Salina Regional Public Defender  
(785) 827-9961

Selected Highlights of the Statement of Becky Buck (dated May 27, 1998)

Becky is a high school student and works evenings at Idelman's Telemarketing. She knows all the people

involved in this case. She has known Tolen since he began working at ITI. They have socialized; she has attended his "counseling sessions," and has watched his baseball games. She claims to know of his background. She said she has ridden alone in a car with Tolen before and he has never acted inappropriately toward her and she trusts him.

Becky has known Melissa since they were in the 8th grade, through school, church and work. They were best friends for a long time, but that relationship has diminished over the past several months. Becky said Melissa is from a family with seven children (part of them foster children) and the family is generally always in a turmoil. Melissa needs attention and will do things for attention. Melissa wants to be the center of attention. Becky said for a while Melissa was drinking and Becky believes Melissa made sure her parents knew she was drinking so she could get attention. She also believes that Melissa was taking drugs because of her behavior and her eyes were glassy.

Bedky said Melissa has had "many" boyfriends and when the relationships end Melissa can't deal with that. Melissa attempted suicide on Super Bowl Sunday in Jan. 1997 because "Joe Riner" broke up with her after a couple of weeks. She began spreading rumors about Riner to get even with him. Becky could not recall exactly what all Melissa was saying, but the rumors about Riner were all untrue. Becky said as a result of these acts, a lot of Melissa's friends stopped associating with her because of what she had said about Riner. This prompted Melissa to attempt suicide.

Becky said in the summer of 1997 Melissa was again suicidal over a guy named Adam Whalen. Becky said Melissa told her they had messed around but denied having sex. Becky said that Adam and Melissa broke up and to get back at him for breaking up with her she began to spread the rumor that Adam had herpes. He did not have herpes, but the rumors caused a lot of embarrassment for Adam at school and among his friends. Melissa told her grandmother and she took her to be examined and tested.

Becky said Melissa just can't deal with breaking up with boys, it throws her whole life into turmoil. When asked how many boys Melissa dated Becky said it was "too many to count." She said Melissa and she were together and Melissa tried to recall and count all the boys she had gone out with and could not recall all of them.

Becky said that Melissa claimed to have had oral sex with 5 or 6 guys. Melissa went out with Jamal Jackson a few times and they had sex. Becky believes Jamal is the father of Melissa's baby

When asked if Melissa was an honest person, Becky said, "No, she can lie about anything. She can make herself cry when she wants to. She is a pathological liar."

Becky said the police asked her to come to the police station. When she arrived they put her into a room and gave her a statement form. She said during their initial discussion Investigator Tackett told her to "stop lying to me." She was upset that they thought she was lying. She said she did not realize it at the time, until she finished and tried to leave the room that they had locked her inside the room. She said she was locked inside the room for about two hours. She was very upset about being locked inside the room and not being allowed to leave the room. Plus, because she was locked up she was late getting to church and was late to her birthday party. Becky said her mother was very upset that the police had locked her in a room and

would not allow her to leave. Becky said as she was departing the police station, Tackett told her that there was no complaint file and that Garnet was in no trouble.

According to the KS bureau of investigation laboratory report they tested the seat covers from the car that the rape supposedly occurred. There was no seminal fluid detected.

According to the report of the women's clinic; obstetrics and gynecology after carefully reviewing the medical record it showed an excellent and thorough evaluation by the emergency room doctor. His findings were completely negative. There was absolutely no sign of any trauma. There was no evidence of any kind of forced intercourse or any sign of rape. In fact, according to the medical record the only proof that intercourse occurred is that she is pregnant. The clinic also wonder how underwear and pants can be removed in a small vehicle without any signs of abrasions, contusions or any other problems there that would definitely still be around as much as two weeks after the rape occurred.

During testimony Melissa says she was raped, but she went to work the next morning. She saw Garnet and when asked how she acted she said, "I acted normal." "I didn't want him to know anything would go on. I was scared of what he would do, what he would say, and how he would act if he knew or thought I would report it or something."

When asked if she thanked him for helping her the night before she said, "Yeah."

When asked if she did anything else she said, "I gave him a hug."



## In the Next Issue of *Justice: Denied*

● Part one of *The Complicity of Judges In The Generation of Wrongful Convictions* by Hans Sherrer. Published in the fall of 2003 by the Northern Kentucky Law Review, this 26,000 word article will be serialized in six *J:D* issues. This is the first article published in this country critically analyzing the role played by trial judges in contributing to wrongful convictions, and the reluctance of appellate judges to correct them.

● Review of *The Exonerated* - the off-Broadway play about six exonerated death row prisoners that has toured the country.

● Edwin Wilson's 1983 conviction was reversed by a federal judge who acknowledged his frame-up by the CIA and federal prosecutors! Wilson's frame-up was first reported by *J:D* almost 4 years ago!

● PLUS much more!!



## The Thin Blue Lie



### Review by Hans Sherrer

Starring Rob Morrow, Randy Quaid and Paul Sorvino  
Directed by Roger Young  
Distributed by Paramount Showtime cable television  
movie originally shown on August 13, 2000 Released on  
DVD/VHS in February 2003. Rated R (violence and lan-  
guage) 96 minutes

Jonathan Neumann was hired in 1976 as a reporter by the Philadelphia Inquirer. In his first week the twenty-something Neumann showed why he had won ten reporting awards in five years with the New Hampshire paper he was hired away from: He out-scooped every reporter in America when he broke the story that the deaths of 38 people at the American Legion convention in Philadelphia were caused by what came to be known as Legionnaires' Disease.

When assigned to cover the court house beat, his first day on the job Neumann saw everyone in a courtroom, including the judge, make light of a defendant with huge welts on his face testify about being beaten by the police. In response to Neumann's questions, the reporter he was replacing dismissed the welts by saying prisoners routinely beat each other so they could blame it on the police in an effort to get off. He called the beatings "Jailhouse Lawyering." After seeing the same thing in case after case, Neumann smelled a story that was being overlooked by the other courthouse reporters. Like the reporter he replaced, they were satisfied to file a couple nondescript stories everyday and keep their courthouse and police sources happy by not making waves.

The reporter Neumann replaced was transferred to cover Mayor Frank Rizzo's office. Jonathan eventually convinced him that something insidious was going on in the Philadelphia Police Department, and the two joined forces.

As their investigation delved into ever more dangerous territory, the dirt they uncovered was nothing short of astonishing. They were even tipped off that a *Philadelphia Inquirer* reporter who several years before had mysteriously vanished without clearing out his desk or work locker, or picking up his paycheck, had been dumped in a river to stop his investigation of Philadelphia police corruption.

They also found that Mayor Frank Rizzo was still firmly in control of the Philadelphia Police Department he was chief of before becoming mayor -- and he made sure it operated like an Americanized version of the Gestapo. Among Neumann's discoveries was that detectives were required to solve all homicides. The only way to accomplish that was to extract a confession from a convenient patsy or coerce someone to act as a prosecution witness. A confessor's guilt or innocence, or the truthfulness of a witnesses testimony was irrelevant as long as a case file

## The Peter C. Jenkins Story

### Storybook marriage ends in prison sentence

By Peter C. Jenkins

Edited by Pamela Eller, JD Staff

They say ignorance of the law is no excuse. While it may not be written, such ignorance is apparently a punishable offense in and of itself. Pete has spent the last eight years behind bars with the promise of many more to come for legal inexperience. All he seeks is a reasonable opportunity to prove his innocence.

I have followed through with my share of ill-conceived notions, however, the crime for which I am currently incarcerated does not fall into that category.

In April 1990, I was convicted of theft and robbery and consequently sentenced to serve a four-year term. After having served the mandatory time I was granted parole in July 1991.

Later that same year I met Linda Walker. She was an outwardly charming woman who had a daughter from a previous marriage. I hoped to spend the rest of my life with her. Linda and I were soon married.

On July 30, 1992, I was accused of, and arrested for, assaulting my wife. The allegation was false and the charge subsequently dismissed, but the incident was sufficient to give rise to doubts about the union into which I had so hastily entered. Nevertheless, at Linda's urging,

### The Thin Blue Lie continued

was closed. Neumann was eventually able to make contacts within the Philadelphia PD that enabled the lid to be blown off the department's framing of innocent people, the routine torture of suspects, and the murder of potentially troublesome witnesses. When the story was published Mayor Rizzo abandoned future political aspirations, there was a departmental shake-up, and *The Philadelphia Inquirer* won the Pulitzer Prize for investigative reporting in 1977. Neumann's investigation also led to the exoneration and release of an innocent man sentenced to death after being framed by the Philadelphia PD for a murder he had nothing to do with.

Most well known for his years on TV's Northern Exposure, Rob Morrow is perfectly cast as the earnest and somewhat abrasive Jonathan Neumann whose dedication has paid off with his being involved in five Pulitzer Prizes as either a reporter or editor. Randy Quaid is likewise excellent as the sincere reporter convinced by Neumann to help break the story wide open. Paul Sorvino is also perfect as Mayor Frank Rizzo, who was finally undone by his arrogance at thinking he could pull enough strings and wield enough billy clubs to conceal his Philadelphia fiefdom from prying eyes.

Made as a Showtime cable movie *The Thin Blue Lie* is now available on DVD and VHS. It is rated R for violence and language, but I don't know why, because the cable version I saw is no more offensive than programs on nighttime network TV. If you are in the mood for an engrossing, well-paced human interest movie -- you might want to check it out.

within three months we had reconciled our marriage. I did, after all, love my wife and held hope that the incident was an isolated, inexplicable anomaly.

That illusion was broken in March 1993 when I discovered that Linda had previously, and was currently, involved in extra-marital relations. I decided at that point it was best for all parties to part on a permanent basis. I had known little of Linda's history or character beyond surface implications before we married, but after our final separation, friends and mutual acquaintances warned me I should be wary of her -- she had a tendency to be vindictive. Unable to conceive of any rational causes for holding grudges, I assumed such points of view to be merely the associative discontent common to failed marriages. The events that were to follow would prove that assumption incorrect beyond anything I could have imagined.

In September 1993 I was arrested for a technical violation of parole. I had changed my residence and job and failed to report the same to my parole officer within the time allotted. While I was in jail awaiting a parole disposition hearing, I was summoned to court and arraigned on charges of sexual battery. I had not even been made aware of any accusations! I can't begin to express my shock. The allegation referred to a young lady whom Linda had hired to baby-sit her daughter and was supposed to have occurred in January 1993. I entered a plea of not-guilty, but the case was automatically bound over for grand jury review.

It was known that my parole would expire and release effected on December 26, 1993, provided that I remained incarcerated until such time. At a scheduled parole disposition hearing in October 1993, over two years of street time was revoked in conjunction with the allegation of sexual battery.

Soon after, on November 5, 1993, I was visited by a detective of the Nashville Police Department. He informed me that Linda Walker Jenkins had filed affidavits alleging that I had raped and sexually battered Ashley Brewer (Linda's daughter) on a number of non-specifically defined occasions and that I had been indicted on twelve counts of the same. I simply could not believe what I was hearing. Indicted? Rape? Upon what could such accusations be based? If I was shocked before, I was now utterly bewildered.

Having no income or other means of retaining counsel, the court appointed Ms. Jerrilyn Manning of the public defender's office to represent me in this matter. A motion for discovery was filed on December 16, 1993. The evidence intended for use against me was as follows:

An interview was conducted on April 21, 1992, at 959 Bresslyn Avenue by Detective Jeff West of the Nashville Police Department. This is the home of Edie Thompson. According to the transcripts, one of the people present at the interview was Kim Moore of the Department of Human Services. The subject of the interview was Ashley Brewer, age eight. Through visual and verbal prompting, the general content of the transcript describes various



forms of alleged sexual contact.

An interview of Ashley Brewer at Metropolitan Nashville General Hospital conducted on April 30, 1993, by Sue Ross, RNP, was followed by a medical examination performed by M. O'Leary, M.D. The concluded result of the examination was negative, however, an erythema (a redness of the skin according to the dictionary) was found on the hymen. DNA testing was not applicable. Witnesses to be brought forth by the state were Linda Walker Jenkins, Detective Jeff West, Sue Ross, Larry Thompson, Edie Thompson and Ashley Brewer.

Despite continuous assertions that I had not committed these crimes -- supported by facts contrary to the pending allegations -- Ms. Manning failed to investigate the claims made by the state. Likewise, she did not contact and interview given witnesses for the defense. By all appearances she gave no consideration to preparing a defense -- regardless of my insistence the matter be tried by jury.

The fact remains however, that all accusations were, and are, false. Facts supporting a claim of innocence include, but are not limited to, the following:

The times the offenses were alleged to occur are inconsistent with actual events. The claims assert that the offenses occurred while the victim and I were alone before the daily routines of school and work began. Ashley Brewer and I were never alone at these times. This fact can be supported by witness testimony and verified by school and employment records. In our Monday through Friday routine, Linda would wake Ashley and tell her to get dressed for school while Linda and I showered and got dressed. We would all leave at approximately 6:30 a.m. to 6:45 a.m. We would take Ashley to a woman's house on Glen Rose Avenue and arrive at 7:00 a.m. Linda and I would drop Ashley off at this woman's house, watch her go into the house, then we would leave. I drove. I don't remember the woman's name, but know where she lived. She charged Linda \$25.00-\$35.00 a week and the woman would take Ashley to Wittsit Elementary School each morning and pick her up from school each afternoon. She would keep Ashley until Linda and I would arrive between 5:00 p.m. to 5:30 p.m. to pick her up. After we dropped off Ashley, I would take Linda to work. Linda's work hours were 8:00 a.m. to 4:30 p.m. It took approximately 25-35 minutes to get from the babysitter's house to Linda's place of work. I would then continue on to my work; that would take approximately 20-25 minutes to get there from Linda's workplace. As long as I was there by 8:45 my boss, Mr. Billy Golden, was okay with that. I would always try to leave at 4:00 p.m. to go pick up Linda. This continued to be the routine until we all moved out of the apartment that we were sharing with my friend, Shawn. We moved out and into a trailer in a trailer park and Linda changed Ashley's school to Brookmeade Elementary School on Davidson Road. Linda said it would be easier since this school was across the street from where Linda worked. Linda also said it would save her money, so I agreed to the move. The times changed to our getting up at 6:15 a.m. We would have Ashley to school by 7:50 a.m. so she could eat the school breakfast. The routine was the same from there. Ashley would walk across the street to her mother's work and go to the boss' office. Sometimes I would get there in time to pick up Ashley and we would both walk across the street and Ashley would go into the boss' office and see Linda and play out in front while I sat in the car in front of the building. If Ashley became sick, or school wasn't in session, or there were teacher's meetings, Linda would have the woman on Glenrose Avenue keep her for the day. During the summer break the woman also kept Ashley for

the day.

Sometimes Linda's brother would take Ashley for a few weeks during the summer and we would go pick her up. Linda's niece, Kathy, came to stay with us on one such occasion. She came back to Nashville with us to look for work. This was the last of June or first of July 1992. She would take care of Ashley on the days that she didn't go job hunting. I changed jobs around this time and my hours changed to 7:00 a.m. to 3:30 p.m. If I had to work over, I would work until 5:00 p.m. Linda made arrangements with a co-worker to pick Ashley up in the morning and take her home in the evenings. On July 30, 1992, I came home around 4:15 p.m. Linda and the girls hadn't arrived home by 5:30 p.m., so at 5:45 p.m. I went looking for them. I drove all the way to Linda's work and there was no sign of them. I drove back the only way they could have taken; still no sight of them or Kathy's yellow Dodge truck. I drove up and down Nolenville Road looking for the yellow truck. While I was going one way, I saw them going the other way. I made a U-turn and followed. When they reached the house and parked I pulled in behind the truck. Linda got out and then Kathy. Within seconds I saw Mike and some other man pulling up in front of Kathy's truck. Kathy walked to my car and told me that the truck had broken down as Linda was getting into the passenger side of the car. Both men were drunk. I noticed that Linda had a tallboy beer and I said nothing to her, but I told Kathy and Mike to move out of the way and I squealed off. Yes, I was angry. When Linda and I got to the trailer, Linda's niece and Ashley still hadn't gotten there. They arrived within a few minutes and I was trying to leave as Linda was throwing things at me and hitting me in the back. Linda made marks on herself and told me, "I'm going to get you." I thought that I had better call my mother and tell her because I knew that I was going to go to jail. I was on parole. Who would they believe? I was on the phone with my mother when the police arrived and arrested me. Linda pressed assault and aggravated assault charges on my mother and my mother had nothing to do with it! Linda and I separated. We separated from July 30, 1992 until October 17, 1992. At that time, a good friend of Linda's, Prissy Turnbo, told me I had better get and stay away from Linda because she was nothing but trouble and would lie about anything just to see someone get hurt or get in trouble. I didn't listen. In October 1992, I went looking for Linda. My sole purpose was to try to talk her out of going forward with the false charges of assault. Prissy finally told me Linda's telephone number and I called and talked with her. Later that evening I took her to dinner then we ended up at the duplex she was renting on Robertson Avenue and we made love. Later that same night, Surrane and Ashley came in. Linda and I were sitting in the living room. When Ashley saw me she jumped, hollered and hooted with so much happiness. She ran to me and grabbed me around my neck and hugged me for dear life. She screamed, "Daddy, daddy, you're back! I love you daddy!" Later that same night, I left. I never lived at the address on Robertson Avenue with Linda or Ashley. On October 22, 1992, the day of court, Linda did not show and the charges were dismissed.

In December 1992, Linda, Ashley and I rented an apartment on Thunderbird Drive. Everything in regards to Ashley was just the same. Linda and I would take her to school. Linda's niece went back to Pulaski, Tennessee to her home.

One morning in the middle of January 1993, as I drove Linda and Ashley to school and work, we saw an older man whose car was stalled on the road. I stopped to ask if he needed help. He said his car just all of a sudden quit as if it was out of gas. I told him I'd be right back; I had to take Linda and Ashley to

school and work. He introduced himself as Ely. I repaired his car and he offered to pay me. I told him, "Naw, don't worry, it was just a stopped up gas line and filter." He insisted on buying me a cup of coffee at the Waffle House. I followed him there. We had a cup and talked and that's when he told me about a friend of his he knew needed car repair work done. We left the Waffle House in his car and he drove about 30-50 yards to the Hallmark #5 Motel. He introduced me to the guy, Larry Thompson, who was the assistant manager of the motel. This is when Linda and I met his mother, Edie Thompson, in January of 1993. In the first part of February 1993, Linda, Ashley and I moved from Thunderbird Avenue to a house at 504 Eastboro Road. In the same month, a very cold winter storm came and the water pipes froze at the house. Larry and his mother, Edie, insisted that we stay with them until the water pipes were fixed. 959 Bresslyn Avenue is approximately a mile from Hallmark #5 motel. We all stayed with them until the end of March 1993.

According to the transcript, the interview of April 21, 1992, was conducted at 959 Bresslyn Avenue, at 4:15 p.m. Neither Linda nor I were acquainted with Edie Thompson until January 1993. This can be supported by witness testimony. Having definitively ruled out the possibility of typographical or other errors, the interview of April 21, 1992, could not have taken place at 959 Bresslyn Avenue. There is also the witness testimony for the defense. In March 1993, I left Linda for good.

Further inconsistencies in the state's claims that I have yet to be able to substantiate beyond rumor and inference:

According to the state's claim, offenses committed prior to April 21, 1992, initiated the report and interview of that date. If so, after my arrest of July 30, 1992, and the ensuing separation, why did Linda insist on reconciliation, thereby placing the child in an allegedly known abusive environment?

- Why did Kim Moore of DHS who was present at the interview of April 21, 1992, allow the child to remain in an allegedly known abusive environment?
- Why was Kim Moore excluded from the state's intended witness list?
- Why was no warrant issued and no arrest affected?
- Although the result of the April 30, 1993, medical examination was specified as negative, an erythema was found on the hymen. Why was a medical examination not performed until April 30, 1993?
- Why was Dr. M. O'Leary, as the examining professional, excluded from the state's intended witness list?
- It is unconfirmed information that Ashley was removed from Linda's custody by DHS for a period prior to their relocation to the Nashville area because Ashley had suffered physical and sexual abuse at the hands of one of Linda's former husbands.
- Why were potentially exculpatory portions of Ashley Brewer's medical record and DHS file sealed in accordance with the district attorney's request?

Various additional inconsistencies exist. Unfortunately, space limitations preclude their inclusion here. Notwithstanding, Ms. Manning's interest in my defense was strictly limited to plea-bargaining. At the time I did

know that I could request new counsel to be appointed. At Ms. Manning's continued insistence that "any attempted defense is an exercise in futility" and "if we go to trial you will be found guilty and sentenced to 120 years to life," I entered a nolo contendere plea agreement on March 31, 1994. The conditions of the agreement were described as two fifteen-year terms to be served concurrently. At the sentencing hearing I tried to express my position that I entered the agreement not as a consequence of guilty, but under advisement of counsel. However, beyond direct affirmative and negative responses the court and counsel effectively cut me off. The plea was accepted although the sentence had somehow become two fifteen-year terms.

I later learned the extent of how unjust the proceedings were as well as the fact that potentially exculpatory evidence was not disclosed by the state during discovery. On May 12, 1995, I filed a petition for post-conviction relief to the trial court on grounds of ineffective assistance of counsel, involuntary plea and malicious prosecution. The court appointed William A. Lane to represent me at the hearing. Mr. Lane and I never conferred before the hearing date. On August 2, 1995, Ms. Manning testified before the trial court that she saw no need to investigate or contact witnesses for the defense. The court verbally acknowledged its respect for her opinion and denied relief.

It was my understanding that Mr. Lane, based on our conversation, was going to appeal the trial court's decision to the court of criminal appeals. He did not. He abandoned my case without advising me of his intentions. After discovering that Mr. Lane had failed to pursue the matter, I requested he forward all records and materials regarding my case to me so I could pursue on my own behalf. Following numerous attempts, Mr. Lane responded and informed me he had given those documents to a woman he did not know nor from whom did he require signature of receipt. He gave the papers to her on the woman's word alone that I had authorized her to assume possession. I had done no such thing.

Having made many requests of the criminal court clerk as well as motions to the court for transcripts, etc., I have received only a small portion. In the meantime, not knowing what else to do, I filed a petition of habeas corpus 2254 in federal court. It was dismissed on procedural grounds (time barred by statute of limitations), but was granted a certificate of probable cause based on the merits of the claim. From there I have simply stumbled from one court to another in the hope someone would hear me. Unfortunately, all efforts have thus far produced only similar results -- denied and dismissed on procedural grounds. I suppose the truth is a secondary issue. A wrongful conviction is a lawful conviction so long as it can be loosely thought of as procedurally correct.

They say ignorance of the law is no excuse. While it may not be written, such ignorance is apparently a punishable offense in and of itself. I have spent the last eight years behind bars with the promise of many more to come for legal inexperience. All I seek is a reasonable opportunity to prove my innocence.

If anyone reading this can provide assistance or advice, please contact me or Judy Graves. I would be very grateful. If I had the assistance of counsel it would not be difficult to prove that I did not do this crime. I declare under penalty of perjury that this story is true and correct. You may contact my mother and fiancée at any time. They are waiting to help.

I filed a writ of mandamus for the records I needed to help me in my case and the Supreme Court of Tennessee denied

it. In their own words, "After due consideration the court finds that the petition and motion should be denied." I am now 100% convinced they (the state) do not want me to get hold of the records, documents and the sealed envelope that is the proof of my innocence. They do not want this case back in court. Why else do the courts keep denying me access to the records, as well as denying every attempt I've made with the courts for the just relief I am due. I have made clear and convincing evidence and claims that prove the Constitutional violations that I suffered from. I filed another writ for habeas corpus in August 2001 with the U.S. District Court in Western District of Tennessee. The Memphis U.S. District Court transferred it to Nashville, then Nashville claimed it was a second or successive petition so they transferred it to the U.S. Court of Appeals, Sixth Circuit. The Sixth Circuit Court clerk sent me an application to fill out for authorization to file a second application for writ of habeas corpus. I filled that out and mailed it on September 20, 2001. It was filed. The state had ten days to respond and file reason why the application for authorization to file a second application should not be granted. The Sixth Circuit extended their response time an additional twenty days which made it due in October 22, 2001. The state filed their response on October 17, 2001. Here is what they said in their motion of why my application for second Habeas Corpus should not be granted: "Jenkins was convicted of two counts of aggravated rape in 1994. He was sentenced to fifteen years of imprisonment for each count to run consecutively. His direct appeal concluded in 1983 and his post-conviction denial became final in 1996. On April 10, 2002, he filed a petition for habeas corpus in the United States District Court, Western District of Tennessee. Jenkins alleged the grounds for relief: 1. Malicious prosecution based upon an alleged defective indictment and the prosecutors withholding of exculpatory evidence; 2. Ineffective assistance of trial counsel; 3. His nolo contendere pleas were not voluntary, knowing and intelligent; and 4. Ineffective assistance of counsel during post-conviction proceedings. The District Court denied relief as being time-barred and that decision was upheld by this court [Jenkins v. Dukes, 248 F.3d 1149 (6th Cir. 1989) (table) on September 19, 2001 Jenkins filed a second petition in the district court.]"

Now here's what's wrong: I was convicted in 1994. My direct appeal concluded in 1983 is wrong. How could I have a direct appeal and concluded in 1983 especially when I was not convicted until 1994. In 1983 I was only 15 or 16 years old. I didn't have a direct appeal in the case. They say I filed on April 10, 2001; I filed a petition for habeas corpus in the U.S. District Court, Western District of Tennessee and that is wrong. I filed in the Middle District of Tennessee. Also, how could my case be in a law book in 1989? My first habeas corpus was filed in April 2000. I've ruled out the possibility of typos. As of this time, the state has not responded to my requests. The court of appeals is supposed to grant or deny the authorization to file a second or successive application not later than thirty days after the filing of the motion. I wrote to the court clerk asking about it and I received a response dated December 18, 2001, advising me that, as of this date, the court has not made its ruling. I don't want to rush them or aggravate them by constantly questioning what's going on just in case the judges are really looking into it carefully. So what do I do? If they could only understand each day that passes is another day of my innocence and freedom lost by still being imprisoned for something I did not do or did not happen. It is truly hell trying to get out of prison.

I had filed an appeal with the Sixth Circuit Court of Appeals. After six months they denied the motion. So, I turned right around and drafted up another writ of habeas

corpus and filed it in the District Court and the District Court issued an order for me to go through the Court of Appeals for the Sixth Circuit to get authorization again. I filed that motion on June 5, 2002. As of October 7, 2002, I still haven't heard from them. I think their 30-day limit is up. Under 28 USC 2244 (3) (D) the Court of Appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion. I sent another motion to the US Supreme Court asking them to help me. I told them the Court of Appeals Sixth Circuit wasn't complying with their own rules. I requested they issue an order directing the court of appeals to either grant or deny my motion.

I just don't know what to do anymore. The courts aren't going to listen to me. I guess that old saying is true: "It's better to be guilty and rich than it is to be innocent and poor." They also say, "The truth shall set you free," but I keep on telling the truth and it's not setting me free yet.

You can write me at:

Peter C. Jenkins #134185  
WTSP Site-2  
P.O. BOX 1050  
Henning, TN 38041-1050

### **A letter from Dempsey Jenkins, Pete's mother**

I didn't have the money for a good lawyer when my son, Pete, was charged with these awful offenses he's serving time for. If I had, I'm sure he wouldn't be where he is now. He never raped or sexually abused that child. How do I know? I spent a lot of time with the three of them while Pete was with Ashley and her mother, Linda. When they would watch TV at my house, Ashley would want to lie on the couch with the two of them. A child who is being sexually abused wouldn't want to do that. Ashley loved Pete and it showed. I'm his mother and if anything had been going on I would have noticed something. It just did not happen.

The mother, Linda, had a temper that was completely out of control. I've seen her slap the child out of a chair telling her she was lying and I've seen her whip the child so bad and make her sit in my bathroom until she fell asleep on the bathroom floor. She was so scared of her mother she would never refuse to do what her mother wanted. Linda wanted Pete out of her life. They fought constantly and the sure way of getting this done was to make the child accuse him of this. It's as simple as that. It's not that simple to prove he didn't do this and Linda knew that.

In the interview with Detective West that was done at a private dwelling with others present, the child answers questions in a way that an eight-year old with her IQ would not say, like, "My dad sexually abused me," and "I wasn't going to tell anybody, but I had to get it off of my chest," etc. Linda even had me arrested. The only time in my 67 years I've ever been arrested. She had Pete arrested earlier that evening and I'd gone down and bailed him out. Some time before that I loaned her my VCR. I said to Pete, "We'd better go get it, she's mad and she'll tear it up." When we got there they started fighting and I practically dragged Pete out of there. As we ran for the car she threw a claw hammer at us. About 1:00 a.m. the police were knocking on my door. Both of us were charged with aggravated assault. I know she accused me too because she thought if I was picked up Pete would have nobody to get him out. The charges were eventually dismissed.

## Peter C. Jenkins continued

Pete went back to live with the woman after this. I never had anything else to do with her. I knew then without a doubt she was nothing but trouble. Pete was angry with me because I wouldn't accept her back in the family. I worried about him during this time. She is a large-structured woman and she loved to fight like a man. So, I would drive over close to where she worked and watch for Pete to pick her up just to see if he was okay. He'd pick her up and drive across the street and up the hill toward the school. This was in 1992. At this time Ashley was going to school across the street from Linda's work. I assume they were going to pick her up.

All this is just to let you know the kind of woman who's responsible for these allegations. I suppose there are some good public defenders, but Pete got the worst of the worst. At the court hearing when he pleaded Nolo Contendre, Ms. Manning had him so scared he didn't know what to do. I tried to talk to her about some things that really would have helped him. She told me it was his case and not mine. William A. Lane was supposed to handle his post-conviction hearing, but did nothing more than spend his required time in the courtroom. When Pete found out he hadn't filed the appeal he thought this lawyer was going to, he asked for all his records and was told Mr. Lane had given all them to some lady that came to his office. He said he didn't get her name.

Pete's fiancée, Judy, got a notarized power of attorney and went to the courthouse to get all the records they'd give her. On her second trip there she discovered a sealed envelope. Nobody can find out what it is. Judy also took Ashley's body gram to her doctor. He told her it was nothing, but said he couldn't comment further because it was marked confidential.

Why is it we can't get the records from his post-conviction hearing, but the record marked "confidential not to be released to any other party" from Ashley's exam and hospital interview is available at the courthouse for anybody to see? The interview and exam was October 1993, but his charges are from undetermined dates between December 1991 and February 1993. Oh, how I wish you could see all the contradictions and rehearsed answers in the interview with Detective West and the Metro General Hospital interview. In the transcript from the court hearing, Judge Randall Wyatt said, "If you're pleading Nolo Contendre, I want you to leave. I don't want that kind of plea. I'd rather have a best interest plea of guilty." A judge isn't supposed to advise in this manner is he? He did accept it because he had such great respect for Ms. Manning. I didn't know anything back then about what they were or were not supposed to do. I'd never had any reason to study the laws before that. We didn't even know we could ask for another lawyer because that one wasn't doing anything to defend him. If somebody in a position to help Pete would just read all the records I've got I know something could be done to give him the justice he needs. He's filed every appeal to every place he knows about and he just keeps getting a run around or dismissed. It even took one place six months to let him know he's filed the wrong paper. If there's anything I can do to assist in this please let me know what it is.

Dempsey Jenkins (Pete's mother) address is:  
90 Scobey Dr.  
Nashville, TN 37210  
(615) 255-6042

Judy Graves (Pete's fiancée) address is:  
265 Timmons St.  
Nashville, TN 37211  
(615) 333-2583 (home) or (615) 578-5195



## Jeffrey Scott Hornoff's Murder Conviction Is Exposed As A Sham When The Real Killer Confesses

By Hans Sherrer with the assistance of Jeffrey Scott Hornoff

Jeffrey Scott Hornoff's 1996 conviction of murdering a woman acquaintance was based solely on specious circumstantial evidence that made him appear guilty. Namely, he initially lied to police that he and the woman had never been sexually involved. After serving 6-1/2 years of a life sentence, he was freed five days after the real killer confessed on November 1, 2002.

In the summer of 1989 Jeffrey Scott Hornoff was a married 27-year-old Warwick, Rhode Island police officer with an infant child. As a member of the Warwick Police Scuba and Underwater Assault Team, Hornoff met 29-year-old Victoria Cushman, an employee of Warwick's Alpine Ski and Dive Shop. That friendship resulted in two sexual encounters between Hornoff and Cushman during a two week period that summer. Although it was not a serious relationship, she perhaps wished it was when she told several people at the sporting goods store where she worked that she thought he was going to leave his wife for her. On August 11, 1989, two days after telling co-workers that Hornoff wanted to resume only being friends with her, Victoria Cushman didn't show up for work. Several of them went to her apartment and found her lying in a pool of blood. She had been bludgeoned to death with a 17-pound fire extinguisher that was found near her.

Initial suspicion that Hornoff might be her killer was fueled when an unmailed sealed letter to him was found in her apartment. In that letter she wrote "she understood they could have no future, but they could continue to "have a present"; she wanted to continue the affair." <sup>1</sup> A co-worker of Cushman's corroborated the essence of the letter by telling police she had expressed surprise and disappointment that Hornoff only wanted a platonic friendship with her. <sup>2</sup> Hornoff was young, he had been building a good career and he was handsome, so it is easy to see why Cushman would be interested in him.

Hornoff aided the appearance of his possible guilt when he was questioned by police interrogators who knew the contents of the letter. Although he readily acknowledged he knew Victoria Cushman, to shield his two intimacies with her from his wife, he denied they had been anything other than friends. However, within an hour he acknowledged the two encounters he had with Cushman. <sup>3</sup>

Yet, any circumstantial appearance of Hornoff's guilt was counteracted by his seemingly rock solid alibi of being at a party with his wife and friends on the night of Victoria Cushman's murder. Although inadmissible as evidence in court, his continuous presence at that party was supported by the results of a polygraph test he requested. The results of that test, administered by a Warwick P.D. detective, were reviewed by three other experts who all concurred that Hornoff was being truthful about his whereabouts at the time the murder occurred. The offer of Hornoff's wife and brother to take polygraph tests to corroborate the one taken by Hornoff was ignored by authorities. <sup>4</sup> A grand jury that considered the evidence against Hornoff was dismissed without indicting him. <sup>5</sup>

Since there was no physical evidence of any kind or any witnesses linking him to the murder, and the Rhode Island State Patrol took over the murder investigation because of inter-office bickering over handling of the case between

the Warwick P.D.'s Major Crime Unit and their police supervisors, Jeffrey Scott Hornoff wasn't charged with Victoria Cushman's murder until a second grand jury indicted him more than five years after her death. <sup>6</sup> However, he had been painted with a black brush for so long, that as Warwick City Councilman Carlo Pisturo said recently, "By then it was almost common knowledge that Scott had killed the girl. All indications were that he was guilty and that the cops had covered for him." <sup>7</sup>

Hornoff's ace in the hole at his trial was his alibi of being at a party with many other people when Victoria Cushman was murdered. The prosecution, however, casually brushed that aside. It claimed he slipped away, murdered her, and returned to the party without *anyone* noticing either his absence, or *anything* about the condition of his clothing that one would expect to be visible if he had just committed a brutal and messy murder with a fire extinguisher. The prosecutors made that claim even though they knew what they jury wasn't told: Hornoff's statement he was at the party at the time Cushman was murdered was unanimously supported by the four experts that evaluated the police administered polygraph test. The unmailed letter was presented as circumstantial evidence of his motive although there was no evidence he knew of the letter prior to being told by police it existed, and his initial claim of having only been friends with her was presented as circumstantial evidence he tried to cover up murdering her.

After the jury bought the prosecutor's argument and convicted Jeffrey Scott Hornoff of murder without any proof he was guilty, he professed his innocence at his sentencing. He told the packed courtroom, "Am I guilty of something? Yes I am. I broke my sacred wedding vows, and for that I will never forgive myself." <sup>8</sup>

Sentenced to life in prison, the Rhode Island Supreme Court unanimously dismissed Hornoff's arguments when it upheld his conviction in 1999. However the affirmation of his conviction and sentence was somewhat hollow, because his appellate lawyer had failed to cover substantial points of law and possible reversible errors brought to her attention by Hornoff's trial lawyer. <sup>9</sup> At that point all indications were that he would be spending the rest of his life in prison branded as a heinous and vicious murderer.

However, fate intervened on his behalf when on Friday, November 1, 2002, 45 year old carpenter Todd Barry walked into the office of the Rhode Island Attorney General and confessed to murdering Victoria Cushman. Barry indicated he was consumed with guilt over an innocent man spending his life in prison for something Barry had done. After the A.G.'s office spent the weekend comparing Barry's confession with the known evidence and facts of the case, he was charged on Monday, November 4<sup>th</sup> with her murder. The degree to which Victoria Cushman's murder was inadequately investigated is indicated by the facts that although Barry lived near her, he had dated her



off and on for more than a year, and his name and telephone number was near the front of her Rolodex seized by police from her home, he was never considered a suspect and was never questioned about her murder. <sup>10</sup> Almost fourteen years after the fact, and only after Barry had confessed, a prosecutor publicly acknowledged, “The two had met in the summer of 1988 and developed ... “an on-again, off-again relationship” that was “primarily sexual.”” <sup>11</sup> Yet in spite of the trail a mile wide leading straight to him, Todd Barry was home free once law enforcement officials mistakenly locked onto Hornoff as her killer. At that point they became tunnel blind to clues leading to anyone else and all meaningful investigation into her murder ended. Although they had a friendship with Victoria Cushman in common, there is no evidence that Barry or Hornoff had ever met or knew of each other.



Jeffrey Scott Hornoff leaves the Providence County Courthouse a free man on November 6, 2002 after spending 6-1/2 years in prison for a murder he didn't commit.

Jeffrey Scott Hornoff walked out of the Providence County Courthouse a free man on November 6<sup>th</sup>, five days after Todd Barry confessed to Victory Cushman's murder. His release on bail pending further proceedings was ordered by the same judge that had presided over his trial and assuming his guilt, had sentenced him to spend the rest of his life in prison for a crime he didn't commit. <sup>12</sup> Hornoff's claim of innocence had fallen on the deaf ears and to the blind eyes of everyone, including the judge, who chose to substitute the appearance of his guilt for *any* proof that he actually was.

Although Barry's confession is what led to Hornoff's release, concerned people had been publicizing his nearly self-evident innocence for some time. The group truthinjustice.org, for example, explained on its website that the case against him was based on “innuendoes and speculation. There were no fingerprints, no blood evidence, no DNA matches, no witnesses, and no evidence.” <sup>13</sup>

Given Hornoff's conviction in spite of an absence of evidence he was guilty, the comment of the Rhode Island State Police's commander of the detective division to a Providence Journal reporter about his case is indicative of why it is reliably estimated that at least 15% of everyone imprisoned in this country is innocent: “I can assure you from a state police standpoint, we did nothing different in this homicide investigation than we would in any other.” <sup>14</sup>

Rhode Island Attorney General Sheldon Whitehouse tried to deflect attention away from the failure of the police to adequately investigate Victoria Cushman's murder and the failure of the prosecutors to demand evidence Jeffrey Scott Hornoff was guilty before prosecuting him. Whitehouse

used the same sort of hollow sophistry and disregard for the truth that led to Hornoff's false conviction when he denied investigators and prosecutors “did anything improper or wrong.” Although Hornoff was the victim of a horrible wrong by law enforcement officials and judges that obliterated his life, Whitehouse blamed *him* for his wrongful prosecution, conviction and imprisonment by saying he shouldn't have made the sort of “misstatements” to police typical of someone “who is trying to hide something.” <sup>15</sup> Yet it was soon made plain to police after they first questioned Hornoff in 1989 that he was trying to hide something: his two intimate encounters with Victoria Cushman from his wife. For initially lying to police about that indiscretion he paid the heavy price of being tormented and punished for over thirteen years: the seven years he spent as a suspect and accused from her 1989 murder to his 1996 conviction, and the six and a half years he spent in Rhode Island's maximum-security prison falsely branded as her killer.

The horrific travesty perpetrated on Jeffrey Scott Hornoff by the police, the prosecutors, and the trial and appellate court judges involved in his case is not lessened by the sophomoric effort of Rhode Island officials to cover up for their blundering incompetence and callousness. All he can now do is rebuild his life from the ashes of the atomic bomb dropped on it from his purely coincidental choice of having two sexual encounters with Victoria Cushman close to the time she was murdered by Todd Barry. In a particularly cruel twist of fate, the wife he had tried to protect from knowing about his intimacies with Victoria Cushman by lying to the police, divorced him while he was in prison. It was that lie told to try to preserve his marriage that prosecutors used to destroy his credibility and falsely paint him as a heinous murderer. So telling that lie intended to protect what A.G. Whitehouse called the “small secret” of his indiscretion is what he spent over six years in prison for, not her murder.

When released from custody on November 6<sup>th</sup> Jeffrey Scott Hornoff literally had nothing but the clothes on his back. His home, his wife, his career, his possessions - it was all gone. Five weeks later, on December 11, 2002, about 150 people turned out for a fundraising dinner in Warwick, Rhode Island to help him get back on his feet financially. Over \$5,300 was raised and his three sons, 13, 11 and 6, who now have their father back, attended. <sup>16</sup>

On January 7, 2003, Todd Barry's plea to second-degree murder that was arranged between his lawyers and the prosecutors was accepted by Superior Court Judge Nettie Vogel. The judge then imposed the agreed to sentence of 30 years in prison with 15 years suspended, which means Barry will be eligible for parole in 10 years. <sup>17</sup> It is an embarrassment to the Rhode Island judiciary and law enforcement officials, and an affront to Victoria Cushman's family, that the sentence given to her murderer was significantly less than the one given to an innocent Jeffrey Scott Hornoff after his wrongful conviction. That disparity is magnified by Barry's claim that his responsibility for her murder is mitigated by its occurrence during an argument. <sup>18</sup> That assertion is farcical on its face: She was found dead with a plastic night guard in her mouth, which a person only inserts when going to sleep to prevent teeth grinding. <sup>19</sup> In other words, Barry beat her to death with a 17 pound fire extinguisher while she slept or immediately after she had awoken. Yet the judge and prosecutors let him off the hook by allowing him to plead guilty to a charge from which he will be released from prison in his early to mid-50s. He will still young enough to enjoy life, unlike Victoria Cushman whose life he viciously snuffed out.

Later that same day, Jeffrey Scott Hornoff was officially exonerated of Victoria Cushman's murder. In his own way, Judge Robert D. Krause, the same judge that had presided over Hornoff's false conviction and sentenced him to life in prison for a crime he didn't commit, embarrassed himself during that proceeding as much as Judge Vogel did during Todd Barry's sentencing. Although Judge Krause knew all the facts of the case and was one of the principle people responsible for the terrible injustice that had been perpetrated on Jeffrey Scott Hornoff, he only dismissed Hornoff's charges *after* the prosecutor told him during the hearing that it was in the interests of justice for him to do so. <sup>20</sup> The judge was also disrespectful of Hornoff and the ordeal he had been a party to putting him through, by failing to look at him during the hearing.

Appearing on the Today Show, Jeffrey Scott Hornoff said of his experience: “There were a lot of moments of bitterness while I was in prison. But I'm doing my best to leave the anger and the resentment at the door and not let it consume me. There's a lot of emotions going on. On one hand, I was happy for me and for my family, you know, finally having this weight off our shoulders and this shadow taken away. I felt a great deal of sadness for ... Vicki's family.” <sup>21</sup>



#### Endnotes

- <sup>1</sup> Barry pleads guilty; Hornoff finally free: The man who confessed to the 1989 murder of Victoria Cushman pleads guilty as the police detective wrongly imprisoned for the crime looks on, Gerald M. Carbone and Tom Mooney (staff writers), Providence Journal, January 7, 2003, at: [http://www.projo.com/news/content/projo\\_20030107\\_barry7.20b85.htm](http://www.projo.com/news/content/projo_20030107_barry7.20b85.htm)
- <sup>2</sup> Convicted Killer Freed As Another Man Confesses, Brian Carovillano (AP), Seattle Post-Intelligencer, November 23, 2002, at: [http://seattlepi.nwsource.com/national/97001\\_convict23.shtml](http://seattlepi.nwsource.com/national/97001_convict23.shtml). The co-worker testified to this at Hornoff's trial.
- <sup>3</sup> Letter to Hans Sherrer from Jeffrey Scott Hornoff on January 16, 2003.
- <sup>4</sup> All information related to the polygraph tests was provided to Hans Sherrer by Jeffrey Scott Hornoff on March 3, 2003.
- <sup>5</sup> Letter to Hans Sherrer, *supra*.
- <sup>6</sup> *Id.*
- <sup>7</sup> Convicted Killer Freed As Another Man Confesses, *supra*.
- <sup>8</sup> *Id.*
- <sup>9</sup> Letter to Hans Sherrer, *supra*.
- <sup>10</sup> See e.g., Barry pleads guilty; Hornoff finally free, *supra*. See also, Letter to Hans Sherrer, *supra*.
- <sup>11</sup> *Id.*
- <sup>12</sup> Two days earlier, on November 4<sup>th</sup>, Hornoff was brought into court on a writ of habeas corpus, but the judge refused to release him because he was not satisfied with the wording of the bail motion.
- <sup>13</sup> [www.truthinjustice.org](http://www.truthinjustice.org)
- <sup>14</sup> Quote by R.I. S.P. Captain Michael P. Iarossi was in Jeffrey Scott Hornoff Statement to the Press on January 8, 2003. Contained in a Letter to Hans Sherrer, *supra*. The statement is available at: <http://www.truthinjustice.org/hornoff2.htm>.
- <sup>15</sup> Man To Be Freed On Murder Rap, Douglas Hadden, Pawtucket Times, November 5, 2002.
- <sup>16</sup> Friends Hold Fundraiser for Hornoff, Cathleen F. Crowley, The Providence Journal, December 13, 2002.
- <sup>17</sup> Barry pleads guilty; Hornoff finally free, *supra*.
- <sup>18</sup> Barry pleads guilty; Hornoff finally free, *supra*.
- <sup>19</sup> Barry pleads guilty; Hornoff finally free, *supra*. Anyone who has worn a night guard device knows the first thing you would do after awakening is to take it out, because it is not only uncomfortable to try and talk with it in your mouth, but all you can do is mumble until it is removed. Barry's recitation of an elaborate conversation with Victoria Cushman on the night he killed her, during which he claimed she even climbed through a window onto her roof is so far fetched that it is amazing the audience, the judge and the prosecutor didn't break out laughing. Yet the farcical tale was allowed into the record as the “truth,” and it was the basis for Barry to avoid a first degree murder charge and to be given a life sentence without parole. In other words, the judge and prosecutor demeaned themselves by allowing Todd Barry to transform his premeditated murder of Victoria Cushman into an unplanned killing that was an inappropriate expression of his emotions.
- <sup>20</sup> Barry pleads guilty; Hornoff finally free, *supra*. Judge Krause asked the prosecutor, “Are you firmly convinced beyond all doubt that the position you take here today is in the interest of justice?” to which the prosecutor replied “Yes, your honor.” The judge went through this formality in spite of knowing the misjustice inflicted on Mr. Hornoff.
- <sup>21</sup> Barry pleads guilty; Hornoff finally free, *supra*.



## Article Submission Guidelines

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**3. Justice: Denied is ONLY concerned with publishing accounts of the wrongly convicted. PERIOD.** As a volunteer organization with limited resources, mail unrelated to wrongful convictions *can not be answered*.

**4. Anyone may submit a case account of a wrongful conviction for consideration by Justice: Denied.** Your account should be written legibly so it fits in a **MAXIMUM** of 7 pages of 8 ½ x 11 paper with at least ½” margins. Short accounts are more likely to attract people to your story. If *Justice: Denied* needs more information, it will be requested. A typed account is nice, but it is *not* necessary. It will help to read an issue of the magazine for examples of how a case account should be written. Keep in mind that accounts inconsistent with *Justice: Denied's* guidelines may not be considered.

Take your reader into your story step by step in the order it happened. Give dates, names, times, places of events. Be clear. Write your story with a beginning, middle and end. Tell exactly what facts point to your innocence, and include crucial mistakes the defense lawyers made. Do not soft-pedal the truth: Explain if needed, but don't leave it out or it may come back to haunt you. However, don't treat your story as a “true confession” and **only include information either in the public record or**

that the prosecutor already has. Do not repeat yourself. Cover the “motive” angle: why didn't you have a motive? If the prosecutor said you had one, disclose what that was. Spare nothing. Do not complain about the system or the injustice to you: let the facts speak for you. (Raging about the system is OUR job!) At the end tell what the present status of the case is, and provide the prisoner's **complete** mailing address. Also provide *Justice: Denied* with any independent sources necessary to verify the account. *Justice: Denied* reserves the right to edit all material submitted.

Please provide the name and email address and/or phone number of an outside person *Justice: Denied* can contact to clarify any questions. This can speed acceptance of your case. All accounts submitted to *Justice: Denied* must pass a review process. **If *Justice: Denied's* case reviewers are not convinced beyond a reasonable doubt of your innocence your case will not be published.** Accounts are published on a first-come, first-served basis. If your account is accepted, all *Justice: Denied* will do is publish it, and hope it attracts the attention of the media, activists and/or legal aid that can help you win exoneration.

There is a waiting list for accounts to be published. Your chances of getting a story published are greatly improved if you follow our guidelines and provide as many **essential** details as possible when you first contact *Justice: Denied*.

**5. Mail or email your account to the Prisoner Mail Team Member for your state listed in the following list. TO ENSURE YOUR STORY IS CONSIDERED, PLEASE DO NOT SEND IT TO ANYONE ELSE LISTED unless specifically requested to do so by a Justice Denied staff member.**

*Justice: Denied* is committed to ending injustices and the entire *Justice: Denied* staff stands with you if you are innocent, or if you are the Champion of an innocent person.

## Prisoner Mail Team

If you have Internet access, please check JD's website to see if the Mail Team person has changed for your state: <http://justicedenied.org>

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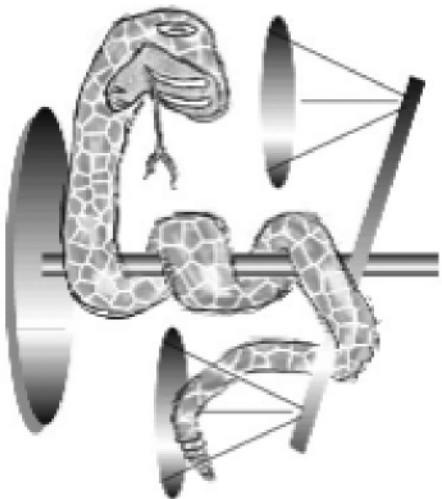
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# JUSTICE DENIED

The Magazine for the  
Wrongly Convicted



The scales of justice are tipped against innocent people all across the country - from Maine to Hawaii and from Alaska to Florida.

Justice: Denied provides a public voice for innocent people victimized by that tragic reality.

## Justice: Denied Is the Toto of Wrongful Convictions

Like Toto in the Wizard of Oz, *Justice: Denied* pulls the curtain aside and reveals that the pomp and ceremony of the legal process perpetrates the hoax. It can reliably distinguish the innocent from the guilty. The one in seven felons estimated to be innocent of the crime s/he was convicted of reveals that idea is as dead wrong as the innocent people known to have been executed.

As a whistleblower of injustice, *Justice: Denied* exposes the tragic human consequences of judges, prosecutors, police investigators, lab technicians and experts acting on the idea that what they do is Good enough for government work. Their shoddy work is routinely exposed during an investigation initiated by a wrongly convicted person's family member or friend, by journalism or law school students, or by a newspaper reporter or compassionate stranger. Those are the sorts of outsiders most wrongly convicted people owe for their exoneration, not insiders privy to the details of the innocent person's frame-up.



Dennis Mahner was released on April 3, 2003 after 20 years of false imprisonment for rapes. DNA proved he didn't commit. No one listened in 1983 when he told the judge his conviction was a travesty.

Every issue of *Justice Denied* features several ongoing cases of wrongly convicted people, case updates, summaries of important news stories related to wrongful convictions, snapshots of recently exonerated people, and other articles concerning false convictions. More than any other publication in the world *Justice: Denied* is a manual of how people are wrongly convicted - and how they are then exonerated.

*Justice: Denied* - The Magazine for the Wrongly Convicted, provides a magnificent profiling of the stories of the wrongly convicted. It masterfully brings the wrongs done in this country in the name of justice to stark awareness." Professor Elizabeth Loftus, author of many books, including *Witness for the Defense* and *Eyewitness Testimony*.

To aid victims of a wrongful conviction, *Justice: Denied* has an *Innocence Resource Guide* listing the address of innocence projects and other contacts related to wrongful convictions. This is also available on the Internet at: [www.justicedenied.org/resource.htm](http://www.justicedenied.org/resource.htm)

*Justice: Denied* also has an *Article Submission Guide* for people interested in submitting a story of wrongful conviction. It includes the address of the magazine staff person assigned to receive articles for each state. This is also available on the Internet at: [www.justicedenied.org/submission.htm](http://www.justicedenied.org/submission.htm)

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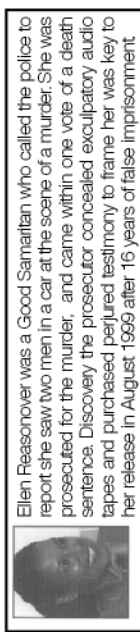
**Justice: Denied** relentlessly sheds light on the darkest injustice imaginable - the prosecution, conviction and punishment of the innocent

As an independent publication that is not beholden to editorially pleasing any private group or public agency, *Justice: Denied* fearlessly prints stories of wrongful conviction in every issue. No one is spared exposure for their role in causing an injustice: Prosecutors, detectives, lab technicians, judges, witnesses, politicians, jurors and defense lawyers are all fair game.

Since its founding in 1998, *Justice: Denied* has provided a public voice for the nearly one and a third million innocent people that are estimated to be buried in the depths of this country's federal and state law enforcement systems. \*

As the only magazine published in this country devoted to wrongful convictions, *Justice: Denied* sends out invaluable SOS messages to the free world about the plight of people as innocent of the crime they were convicted of committing as the person reading this. Everyday hundreds of people learn 'it can't happen to me' was wishful thinking. A person's innocence is irrelevant if the illusion is created they are guilty - and prosecutors are masters at doing just that.

Overturning a wrongful conviction is a monumental task. An innocent person's conviction after a several day trial can, and often times does take years of effort by dedicated people to overturn. To do so requires convincing skeptical people that a person has been wronged by the legal system. The difficulty in doing that is why *Justice: Denied's* case reviewers must be convinced of a person's innocence before their case is accepted for publication. *Justice: Denied* only shines its light on people who it is convinced beyond a reasonable doubt got the ultimate raw deal - being convicted of a crime they didn't commit.



Ellen Reasonover was a Good Samaritan who called the police to report she saw two men in a car at the scene of a murder. She was prosecuted for the murder, and came within one vote of a death sentence. Discovery the prosecutor concealed exculpatory audio tapes and purchased perjured testimony to frame her was key to her release in August, 1999 after 16 years of false imprisonment.



Ray Krone walked out of an Arizona prison on April 8, 2002 after ten years of false imprisonment. Four of those years were spent on death row. Erroneous expert testimony led to Mr. Krone being wrongfully convicted twice for a murder he didn't commit.

## How Are People Wrongly Convicted?

A number of factors contribute to the remarkable ease that vast numbers of men, women and increasingly children are victimized by a wrongful conviction. One or more of the following factors are typically present in a case of wrongful conviction:

- ✓ Overzealous prosecutors solely concerned with winning
- ✓ Shoddy police investigation
- ✓ Fabrication of evidence by the prosecutor or police
- ✓ Erroneous identification by the victim or other eyewitnesses
- ✓ False confession physically or psychologically coerced
- ✓ Inexperienced or incompetent defense lawyer
- ✓ Police perjury
- ✓ Inaccurate analysis of evidence by crime lab technicians
- ✓ Uncritical jurors that blithely accept the prosecutor's case
- ✓ Presumption of guilt hanging over a defendant's head
- ✓ Slanting of a judge's rulings to favor the prosecutor
- ✓ Lack of resources prevents a defendant from finding exonerating evidence or hiring expert witnesses
- ✓ Doctored reports by police investigators
- ✓ Pressuring of witnesses to give pro-prosecution testimony
- ✓ Smeared of a defendant by the media
- ✓ Critical evidence disappears or is destroyed before the defense can independently corroborate prosecution tests
- ✓ Prejudice against a defendant's ethnicity, religion, political or personal ideas, by the prosecutor, judge and/or jurors
- ✓ Coercion of an innocent defendant to accept a plea bargain by the prosecutor's piling on of charges that will result in a much longer sentence if s/he goes to trial and loses.
- ✓ Purchase of perjurious testimony by the prosecutor
- ✓ Manufactured evidence and/or false testimony by crime lab technicians
- ✓ Wording of an indictment to paint an innocent person in the worst light possible in the eyes of the judge and jury

The playing field is heavily tilted in favor of the prosecution when a defendant



Anthony Bragdon spent 10 years imprisoned for a rape he didn't commit. In March 2003 his conviction based on falsification of evidence by the FBI crime lab was thrown out.

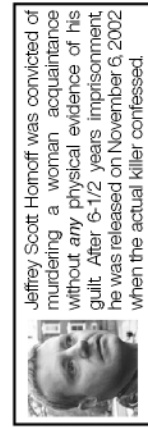
isn't wealthy enough to hire the highest quality lawyers, investigators and expert witnesses to counter the prosecution's virtually unlimited resources. So the likelihood of a wrongful conviction becomes a near certainty when an innocent person who doesn't have hundreds of thousands of dollars to spend on a defense, encounters a deck stacked by such things as police perjury, falsification or destruction of evidence by the police, crime lab technicians or prosecutors; perjured testimony purchased by an unscrupulous prosecutor; a pro-prosecution judge; or prejudiced jurors. Under those conditions the wonder isn't that the innocent are convicted, but that they are ever acquitted.

JD's website is at: [www.justicedenied.org](http://www.justicedenied.org)

## The Wrongly Convicted Are Becoming Visible

*Justice: Denied*, and its website that gets about a million hits a year, has been a leader in increasing public awareness about the prevalence of wrongful convictions. When *Justice: Denied* was founded it was one of a very few voices crying in the wilderness about the nationwide scandal of innocent people being falsely branded as criminals. That concern is now openly shared by the professors, students, lawyers and journalists involved in more than three dozen innocence projects across the country. There are also now several websites that expose different aspects of wrongful convictions, and newspapers regularly report on exonerated people.

Governor George Ryan's pardoning on January 10, 2003 of four innocent men on Illinois'



Jeffrey Scott Hornoff was convicted of murdering a woman acquaintance without any physical evidence of his guilt. After 6-1/2 years imprisonment, he was released on November 6, 2002 when the actual killer confessed.

death row who had been tortured into falsely confessing would have been unthinkable just a few years ago. There was extensive news coverage of those pardons and of the Governor's commutations the next day of everyone on Illinois' death row, because of the possibility there were undetected innocent people among them. Afterwards an Illinois prosecutor admitted what also would have been unthinkable a few years ago: innocent people confess to crimes they didn't commit and some of them end up on death row.

"In November of 2000, *Justice Denied* Magazine published an article I had written about my son Derek's case and a publisher from MedStar Television read that article which led to the production of an hour long episode of *Medical Detectives* which airs on The Learning Channel. That program has been seen around the world, we have received numerous messages of concern and offers of support. An article was written and published in the February issue of *Playboy* and a book is currently in the process of being written. All of the recognition and support would not have happened were it not for *Justice Denied* Magazine. The dedication of the staff is to be highly commended!" Larry A. Tice, father of Derek Tice, one of the 'Navy's Forgotten Four'

*Justice: Denied's* mission can be summed up as a crusade to make 'Innocent Until Proven Guilty' more than a hollow phrase used by judges, prosecutors and the police to cover-up that in reality the reverse is usually true: an accused person is considered to be 'Guilty Until Proven Innocent'

**Public exposure is a powerful antidote to injustice. Keep up-to-date and help right the injustice of wrongful convictions by subscribing to *Justice: Denied* today!**



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- 22 Was Texas Town's War on Drugs Really a War on Blacks?, Jim Yardley (staff), The New York Times, October 7, 2000.
- 23 Arrests of Blacks in Texas Town is Likened to "Ethnic Cleansing," *supra*.
- 24 Color of Justice, *supra*. William Love's treatment underscores that racist whites have a more virulent hatred for whites that associate with blacks than they do for blacks themselves, and to get rid of one you have to get rid of the other.
- 25 Was Texas Town's War on Drugs Really a War on Blacks?, *supra*.
- 26 Color of Justice, *supra*.
- 27 *Id.*
- 28 *Id.*
- 29 *Id.*
- 30 The Tulia Story Isn't Over, Bob Herbert, NY Times, April 28, 2003.
- 31 Texas to Toss Drug Convictions Against 38 People, *supra*. "In a hearing in Tulia two weeks ago, Coleman took the stand and acknowledged there was no evidence beyond his testimony to support the convictions."
- 32 Color of Justice, *supra*.
- 33 *Id.*
- 34 *Id.*
- 35 Coleman Testifies That His Word is Only Evidence of Drug Buys, Linda Kane (staff), Lubbock Avalanche-Journal, March 21, 2003.
- 36 The first newspaper to report on Coleman's past was The Texas Observer on June 23, 2000, in Color of Justice by Nate Blakeslee (staff).
- 37 Color of Justice, *supra*.
- 38 *Id.*
- 39 *Id.*
- 40 Round Two in Tulia, Nate Blakeslee (staff), The Texas Observer, October 20, 2000.
- 41 *Id.*
- 42 Was Texas Town's War on Drugs Really a War on Blacks?, *supra*.
- 43 12 Tulia Drug Defendants Released From Jail, *supra*.
- 44 Fighting for Justice Overseas While Ignoring Injustice at Home, Alberta Phillips (columnist), Austin American-Statesman, March 30, 2003. See also, Coleman Testifies That His Word is Only Evidence of Drug Buys, *supra*.
- 45 Fighting for Justice Overseas While Ignoring Injustice at Home, *supra*.
- 46 Coleman Testifies That His Word is Only Evidence of Drug Buys, *supra*.
- 47 Officer's Credibility Attacked in Tulia Cases, Linda Kane (staff), Lubbock Avalanche-Journal, March 23, 2003.
- 48 The Tulia Story Isn't Over, *supra*.
- 49 Kafka in Tulia, *supra*.
- 50 Texas to Toss Drug Convictions Against 38 People, *supra*.
- 51 Color of Justice, *supra*.
- 52 Texas to Toss Drug Convictions Against 38 People, *supra*.
- 53 Tulia drug defendants, county reach deal: Settlement may avert lawsuits in 38 disputed convictions, David Sedeno (staff), The Dallas Morning News, April 3, 2003, p. 4A.
- 54 Texas to Toss Drug Convictions Against 38 People, *supra*.
- 55 *Id.*
- 56 *Id.*
- 57 Undercover Agent Accused of Perjury, staff, Amarillo Globe-News, April 25, 2003.
- 58 Color of Justice, *supra*.
- 59 *Id.*
- 60 Although the prosecution is required to turn over all potentially incriminating evidence about a prosecution witness, Swisher County Prosecutor McEachern failed to provide the Tulia defendant's with evidence of Coleman's shady past, and the goings on related to his indictment that occurred while he was conducting the Tulia investigations. The evidence related to Coleman's character and activities was put together by the Tulia defendant's lawyers.
- 61 Color of Justice, *supra*.
- 62 The defendant in the second Tulia trial was William Love. He was a white man married to a black woman, and he was given 434 years in prison – the longest sentence of any Tulia defendant.
- 63 12 Tulia Drug Defendants Released From Jail, *supra*.
- 64 *Id.*
- 65 *Id.*
- 66 *Id.*
- 67 *Id.* (emphasis added).
- 68 *Id.*
- 69 Pardons recommended in Texas drug cases, Betsy Blaney (AP Writer), Seattle Post-Intelligencer, July 30, 2003.
- 70 Perry Pardons 35 in Tulia Case, Greg Cunningham, The Amarillo Globe-News, August 23, 2003. This was the largest number of men and women pardoned at one time in United States history related to misjustices stemming from a single criminal investigation.
- 71 *Id.*
- 72 *Id.*
- 73 *Id.*
- 74 *Id.*
- 75 *Ex parte Tuley*, No. 74,364 (Tex.Crim.App. 12/18/2002). See also, Possible Appeal in Unrelated Case Could Impact Tulia Convictions, AP, Lubbock Avalanche-Journal, April 11, 2003. Although an appeals court can find a reason to uphold any conviction, failure to reverse the Tulia convictions would have brought a crescendo of public scorn on the already discredited Texas legal system. See e.g., Tulia 35 Escape High Court Horror, Rick Casey, Houston Chronicle, August 27, 2003, Sec. A, Page 23, in which Attorney Jeff Blackburn threw caution to the wind when he was brutally hon-

est in commenting on the Texas Court of Criminal Appeals' lack of integrity: "They're so far gone they're barely even a court anymore."

**NOTE:** Hans Sherrer can be contacted at: Hans Sherrer, PO Box 66291, Seattle, WA 98166, or emailed at: hsherrer@forejustice.org.

*Prison Legal News* is a 40 page monthly magazine reporting on prisoner rights and prison conditions of confinement issues. Send \$2 for a sample issue or a 37¢ for an information packet. Write: Prison Legal News, 2400 NW 80th St. #148, Seattle, WA 98117

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## Submit Your Wrongful Conviction Story To Justice: Denied!

See Page 24 for Submission Guidelines

The following can happen when an innocent person's story is published in *J: D*:

"In November of 2000, *Justice:Denied* Magazine published an article I had written about [my son Derek's] case and a publisher from Medstar Television read that article which led to the production of an hour long episode of Medical Detectives which airs on The Learning Channel. That program has been seen around the world, we have received numerous messages of concern and offers of support. An article was written and published in the February issue of Playboy and a book is currently in the process of being written.

All the recognition and support would not have happened were it not for *Justice:Denied* magazine. The dedication of the staff is to be highly commended."

"*Justice Denied* magazine is essential reading for anyone interested in the how and why the state (the police, prosecutors and courts) can and does wrongfully convict the innocent in America. *Justice Denied* magazine provides powerful analyses and gripping case histories of injustice run amok in the American criminal justice system. ...the miscarriages of justice routinely documented by *Justice Denied* should not be happening in America and need to be stopped."

Richard A. Leo, Ph.D., J.D.  
Associate Professor, U. C. Irvine

## 4th Annual Innocence Network Conference In Austin, Texas!

Scheduled for the Hilton Convention Center Hotel in Austin, Texas the weekend of April 23-25, 2004

Email Jackie McMurtie of the Innocence Project Northwest for details: [jackiem@u.washington.edu](mailto:jackiem@u.washington.edu)

Visit *Justice: Denied's* Website:  
<http://justicedenied.org>

Back issues of *Justice: Denied* can be read, along with other information related to wrongful convictions.

Visit the Innocents Database:  
[http://forejustice.org/search\\_idb.htm](http://forejustice.org/search_idb.htm)  
Information about more than 1,400 wrongly convicted people in 20 countries is available.

Visit the Innocents Bibliography  
<http://forejustice.org/biblio/bibliography.htm>  
Information about almost 200 books, movies and articles related to wrongful convictions is available.

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*Justice: Denied* is an all volunteer not-for-profit organization. If you are interested in volunteering, contact JD to find out what areas need help.

Email: [info@justicedenied.org](mailto:info@justicedenied.org)  
Or: Justice Denied - volunteer  
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# JUSTICE DENIED

## The Magazine for the Wrongly Convicted

The scales of justice are tipped against innocent people all across the country - from Maine to Hawaii and from Alaska to Florida.

Justice: Denied provides a public voice for innocent people victimized by that tragic reality.

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