

## KEN MARSH WAS WRONGLY CONVICTED!

On August 4, 2004, San Diego District Attorney Bonnie Dumanis announced that she agreed Ken Marsh's habeas corpus petition for a new trial should be granted. Dumanis made the decision based on an independent evaluation of the medical evidence by a Florida forensic pathologist who was "unable to conclude beyond a reasonable doubt or to a reasonable degree of medical certainty that [Phillip Buell] was a victim of child abuse." After 21 years of imprisonment, Ken Marsh's conviction was reversed on August 10<sup>th</sup>, and he was released on his own recognizance. He is required to be retried within 60 days, so on August 17<sup>th</sup> a new trial date of Sept. 30, 2004 was set. However since the DA's own expert concedes there is no reasonable basis to conclude that Ken Marsh was involved in the death of Phillip, it seems more likely that the charges will be dropped than that a new trial will occur.

This issue of *Justice:Denied* that included the following story about Ken Marsh's case was days from being sent to the printer when his lawyer, Tracy Emblem, notified us of this dramatic turn of events. The habeas petition had been filed in October 2002, and until the announcement by DA Dumanis, the prosecution had opposed Ken Marsh's pursuit of a new trial. We are running Ken Marsh's story unchanged for two reasons. First, it illustrates that the stories appearing in *Justice:Denied* cannot casually be dismissed as contrived. Second, the prosecution's reliance on 'junk science' and false testimony by its expert(s) to deceive the jury into convicting Ken Marsh in 1983, continues to happen to innocent people all across this country. All you have to do is substitute the names of the people involved, the city, and the specific facts of the case. Ken Marsh is symbolic of the tortuous suffering those people go through for no reason other than, like him, being in the wrong place at the wrong time.

## Toddler's Accidental Death Ends With Babysitter's Murder Conviction - The Ken Marsh Story

By Brenda Buell Warter

Edited by Clara A.T. Boggs, JD Editor-in-Chief

My two-year-old son, Phillip Buell, died in 1983. The day of his death, he fell from the top of a four to five foot high sofa and hit his head on a speaker with an ashtray on top of it. He then struck the back of his head on a fireplace hearth. As a result of Phillip's accidental fall and death, my boyfriend, Ken Marsh, who was babysitting Phillip at the time, was charged with murder. In 1983, Ken was convicted of Phillip's murder. Ken has always maintained his innocence. I have kept up my fight to clear his name because I know that, had I had been home with Phillip by myself that day, it would have been me who would have been charged with murder.

Homicide Detective Armijo of the San Diego Police Department believed Phillip's death to be an accident, but the case was prosecuted as a murder and child abuse crime at the urging of Children's Hospital doctors. Detective Armijo has since come forward with a signed declaration to help free Ken, saying that he believes that in his thirty years with the S.D.P.D., this is the one case that bothers him because he feels that an innocent man went to prison.

The medical staff that treated Phillip at Children's Hospital on the day of his death ruled his death a homicide. In fact, when I arrived at Children's Hospital before he died, the doctors immediately told me, prior to an autopsy, that Phillip had been murdered. Ken was arrested before a medical examiner's report on the cause of death and a death certificate were issued. The Children's Hospital doctors testified at Ken's trial that Phillip could not have suffered traumatic brain swelling and bleeding as a result of the fall, and that he could not have died from a short fall. (There are now helmet laws designed to protect children from a variety of short falls.)

Dr. Ruth Stern, Phillip's pediatrician, had previously diagnosed him with a bleeding disorder. On the day of the accident, Dr. Stern called the emergency room crew to tell them Phillip had a blood dyscrasia and infectious mononucleosis. But Dr. David Chadwick of Children's Hospital summarized Phillip's death and omitted all evidence of the coagulopathy. All the other doctors relied on Chadwick's summary for their diagnosis and did not review other, contradictory, medical records. In a meeting with the doctors at Children's Hospital, I begged them to consider Phillip's illness. They told me to

separate myself from him and to let go of the illness because it had nothing to do with Phillip's death. Furthermore, Ken's attorney presented NO expert medical testimony in his behalf and did not get a second autopsy.

Ken was convicted of Second Degree Murder in November of 1983. He has spent the last 21 in prison because the jury did not hear any evidence of Phillip's pre-existing medical condition. The autopsy was performed by Dr. Roger Williams, a Children's Hospital doctor who had been a treating physician during Phillip's emergency care, when the autopsy should have been done by an independent doctor. I have since discovered that Williams was not qualified to render an opinion where causation of death is questionable because he was not, and is still not, a board-certified forensic pathologist. Everywhere they touched Phillip he bruised. At trial, they had my baby's autopsy photos blown up on a wall; these larger-than-life photos of this bruising were presented to the jury. That is not how I wanted my baby remembered.

No testing was ever completed for a bleeding abnormality even though Phillip's prior medical history indicated he had been bleeding internally two months prior to this accident. A review of the records would have shown them that he was being seen frequently for vomiting, bruising, distended stomach, and clotting symptoms.

From the moment of Phillip's birth he had medical problems. The amniotic sack broke eighteen hours prior to delivery; he remained in the birth canal for a long period of time. The doctors had to use forceps to deliver him and his head and face were mangled from them at birth. He had broken blood vessels in each eye, jaundice, chlamydia pneumonia and a huge fontanel (commonly known as a "soft spot") that never totally grew together.

In January 1983, a few days after I had taken him to Kaiser Hospital for vomiting, constipation and a hyper-extended stomach, Phillip started losing a lot of blood. After several visits to Kaiser, I had to take Phillip to Kaiser's emergency room because he was in shock. I was screaming malpractice

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Phillip Buell

## Framed to Take the Fall for the Police Protected Murderer? - The Charles Troupe Story

By Charles Troupe

Edited by Natalie Smith Parra, JD Editor

On October 18, 1994, Tina Kirkpatrick was found murdered. Prior to this Tina and I had dated for a while. The relationship ended but we remained friends. After our relationship ended Tina became involved intimately with Gill Bybee and he started her using crack cocaine and forced her into prostitution to support both of their habits. He also physically abused her. Tina also knew William Allen and he got her involved in various paper hanging scams that eventually got both of them arrested. Allen was the leader of these scams and the police got Tina to make a statement agreeing to testify against him. The trial was scheduled to start a few months after her death. Without Tina's testimony the case was dismissed and Allen was released.

Tina and Bybee lived in a house with Allen for a time before her murder. On October 16th, Tina called me from Bybee's house in Cleveland and asked me to pick her up because she had just had a fight with Bybee. I picked her up at Bybee's house and dropped her off on E. 131<sup>st</sup> around 7:00 p.m. I called Bybee about a half an hour after dropping Tina off and told him that I had given her \$100.00 and dropped her off at E. 131<sup>st</sup>. The following morning at 2:00 a.m. Bybee called me and asked about Tina. Then he said, "She's probably somewhere dead." That remark sounded odd. Later, Tina's body was found dead on a lot on Allen's street. The official report says that Tina died on October 18, 1994 at 12:36 p.m. According to the coroner, Mr. Summers, Tina's body had been in that field for close to 30 hours.

The original coroner's report said that Tina died of blunt trauma and that before her death she had recently had sex. The DNA tests said that she had had sex with two people. I submitted to a DNA test and it came back negative. Bybee had to be court ordered to take the DNA test and his came back positive. None of the fibers taken from the victim's body matched anything in my home, car or clothing. There was no reason to believe that I committed this crime. The victim's mother even thought that Bybee had killed her daughter because he was always beating her. The autopsy also listed acute intoxication by heroin as a cause of death. They tested and found heroin in the stomach but they did not test the mucous membranes of the nose. Why wasn't this done?

***The ... Coroner's report said that Tina died of blunt trauma and that before her death she had recently had sex. ... I submitted to a DNA test and it came back negative.***

During this time, Phil Evans was arrested for dealing drugs. In an attempt to release pressure from himself, Evans told FBI Agent James Harnett that I had 4 kilograms of cocaine that belonged to him. Agent Harnett contacted me and demanded that I return the drugs. When I denied having any knowledge of the drugs Agent Harnett became hostile and began to threaten me. Agent Harnett told me that he didn't care where he got the four kilos, that he didn't care what it took, that he was going to get me, and that he would call back in 48 hours and I better have the drugs. This scared me because I did not have and never had the drugs. I waited for the agent to call back. When Agent Harnett called back I was ready with a recorder because of the threats and accusations

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because I believed that Kaiser's Dr. Cashmore had misdiagnosed Phillip a few days earlier. After this episode, Cashmore filed a suspected child abuse report about Phillip. At the time Cashmore threw up a child abuse flag, Phillip's pediatrician was part of the child abuse committee at Kaiser and her husband was a physician at Children's Hospital. From that point on, unknown to me, no matter what I took Phillip in for, the staff wrote only accusations of child abuse in his chart. The staff's notes included: "New bruises -- mother has no explanation." and "Mother bringing him in for bruising, vomiting, etc." Of course I had no explanations for the new bruises -- that was why I was taking him in regularly!

After putting our family through hell, the child abuse charge was dropped in March 1983 -- about three weeks before Phillip fell off the couch.

Dr. Stern, a Kaiser Hospital physician and member of the child abuse committee at Children's, had taken the case to the child protection committee at Children's Hospital; by the day Phillip died, the Children's Hospital doctors were well aware of his case. They did nothing to help answer his internal bleeding issue. At trial, Stern herself testified, "I wish they could have told us where the bleeding had gone." At this point, Phillip was a two-and-a-half-year-old boy with five inches of medical records who had been under medical supervision for at least a year prior to his death. For at least a year, he was seeing the same physician at Kaiser Hospital on a regular basis for abnormal bruising, vomiting, constipation, hair loss, petechiae and purpura (discolored spots on his body).

All my cries for help for my son went unheard by those I was supposed to trust.

### What Went Wrong In Ken Marsh's Case

Phillip fell at 11 a.m. Ken immediately called 911. The records indicate that Phillip was going through a post-traumatic seizure -- he had a pulse but he had low blood pressure and he had stopped breathing. The forensic evidence immediately gathered by the police establishes that there was very little blood from Phillip's cuts to the back of his head. He was sent by ambulance to Alvarado Hospital -- a local hospital that offers no neurology care. When Phillip left Alvarado Hospital he was stable. In the ambulance a pronounced period of bradycardia (an abnormally slow heart rate) is documented even after an injection of Mannitol and prior to a blood transfusion. During the transport from Alvarado to Children's, the Children's resident physician gave Phillip eight grams of Mannitol. Soon after, health care workers reported seeing bruising and swelling appear before their eyes. Around 1:30 p.m., Phillip was taken to Sharp Hospital next to Children's Hospital where he was given a CAT scan. Phillip didn't arrive at Children's Hospital until at least two-and-a-half hours after he had suffered a "closed" head injury. During this time period, exaggerated by transport and without any medical intervention whatsoever, the swelling in Phillip's brain increased. Even after the Mannitol therapy, he was not seen by a neurologist for two hours.

Around 1:40 p.m., Dr. Kenneth Ott from Children's hospital inserted an ICP monitor to relieve the pressure in Phillip's head. The medical records appear to establish that the entire emergency room staff witnessed this procedure. Everyone was concerned about the swelling that was appearing right before their eyes. Earlier, physicians at Kaiser had diagnosed Phillip with a ruptured spleen; a ruptured spleen was ruled out at autopsy. I believe that several of the doctors on the "child abuse" panel run by Chadwick and Williams were treating Phillip the day he died and later testified that Phillip's head injuries could not have occurred from a short fall.

Dr. Stern, Phillip's Kaiser pediatrician, was a member of Dr. Chadwick's child abuse council. She told the Alvarado Hospi-

tal emergency room physician that Phillip had previously had mononucleosis and a bleeding disorder. Dr. Michael Innis, a hematologist, has reviewed the medical records and has provided a declaration that Phillip was extremely ill when he fell and had an existing clotting weakness induced by disease.

From 1981 until 1986, the district attorney and coroner's office implemented a policy to allow Children's Hospital pathologists perform autopsies in child cases they considered questionable.

I vehemently objected to Dr. Williams performing the autopsy as I felt there would be a conflict of interest in determining the cause of Phillip's death. Williams had treated Phillip when he was first admitted to Children's. I felt he would not be objective given the fact that on the day Phillip fell, Dr. Chadwick and the Children's Hospital doctors proclaimed he was murdered by Ken Marsh. From that point on, Chadwick had committee meetings discussing Phillip's death. On May 17, 1983, Chadwick erroneously summarized Phillip's existing medical records omitting almost all mention of Phillip's disease and coagulopathy symptoms. There was no mention of Phillip's reaction to the Mannitol given to him by the Children's resident physician.

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***No testing was ever completed for a bleeding abnormality even though Phillip's prior medical history indicated he had been bleeding internally two months prior to this accident.***

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On May 18, 1983, Dr. Chadwick held a meeting that Drs. Williams and Stern, and District Attorney Jay Coulter attended. At this meeting, Chadwick presented his false summary of Phillip's medical records. The day following the meeting, Chadwick, Williams, Stern and Lohner met to discuss Phillip's case. That same day Williams issued his autopsy report.

After Phillip's death, the police investigation determined his death was accidental. Detective Armijo has provided a declaration that he believes that Ken Marsh is innocent. Yet on June 30, 1983, Ken Marsh was charged with Phillip's murder. Two weeks later, on July 15, 1983, the coroner's report was issued that ruled Phillip's death a homicide. On July 21, 1983, Phillip's final death certificate was issued.

Furthermore, on Phillip's pending death certificate, 9608, an International Death Classification Code is handwritten on it. This code is "poisoning by other specified antibiotics" (toxic reaction categories). Dr. Thomas Schweller, a neurologist and pediatrician, has reviewed Phillip's medical records as well as the Children's transport record. He has provided a declaration that Phillip was improperly given Mannitol that exacerbated his cerebral bleed and brain swelling.

DA Coulter prosecuted Ken Marsh under the theory that the "medical" findings in the wake of Phillip's death outweighed the police investigation. However in arriving at his opinion on causation, Dr. Williams did not look at the pre-existing illness and symptoms that Phillip suffered and that were well-documented in the Kaiser medical records. The autopsy report does not mention *any* pre-existing conditions. Williams had taken blood and tissue samples during the autopsy related to what became a murder case, but they were destroyed before being tested. Williams' conduct was consistent with him not being a board-certified forensic pathologist, and at Ken's trial he falsely testified about his forensic qualifications.

The reason for DA Coulter's disregard of the many irregularities related to the Children's Hospital's handling of Phillip's case was explained in a subsequent newspaper article, *Children's Hospital Links to Coroner's Office Questioned* (Weintraub, *Los Angeles Times*, Aug. 19, 1985), Coulter was quoted as saying he had "... nothing but complete trust in the honesty and integrity" of the Children's Hospital pathologists. He further said, "I'd rather be in a community where doctors are going to pound on my door

and say 'Damnit, get up and prosecute this sucker,' rather than what might exist in other communities where a case turns up and the prosecutor goes from doctor to doctor and they all say, "'The facts in this case aren't clear.'"

Yet that attitude ignores that in 1985, Carol Phinney was prosecuted in the same irregular manner as Ken with false evidence. She was acquitted. John and Michelle Ferraro and Linda and Harvey Thomas were also found to be wrongly accused by Dr. Chadwick of child abuse deaths.

Some national authorities have estimated that erroneous diagnoses of child abuse occurs in five to ten percent of cases. (See, *Critics Say Crusader Sees Abuse Where There Isn't Any*, Dalton, *San Diego Union-Tribune*, Dec. 11, 1991.)

In 1985, the San Diego County Board of Supervisors acknowledged the problems with the coroner's office and asked for a review by the National Association of Medical Examiners (N.A.M.E.). Dr. Boyd Stephens, the San Francisco Medical Examiner, conducted the review. His report documents that there were four lawsuits under litigation -- three directly related to autopsy issues, and three claims that had not yet reached the courts that allege failure to properly perform autopsies, and/or failure to properly determine cause of death.

The DA's office is in a unique position to guard against flawed and wrongful prosecutions because it possesses information unknown to most defense counsel and the general public. Yet to prosecute Ken DA Coulter ignored the police investigation and relied on what it knew was a flawed autopsy report by an unqualified doctor who misstated his qualifications during Ken's trial.

Ken was also severely handicapped by being represented by a court appointed attorney who did not adequately investigate Phillip's cause of death. Also, it was his first child abuse/murder case and he was unfamiliar with the area of law involved in defending Ken. I have collected several newspaper articles where the medical examiner's office backed down when other doctors conducted an outside independent review of the case. If Ken's lawyer had pursued an independent medical review of the issues surrounding Phillip's death, I don't think Ken would even have been prosecuted.

The Marsh and Buell families were victims of the very system that is supposed to provide justice. Government agencies could have reviewed the Marsh case in 1985 when they knew there were others wrongfully prosecuted. However by opting to remain silent, they left Ken Marsh sitting in prison. This silence is immoral and unforgivable.

Over the years I have written hundreds of letters to medical and legal professionals urging them to review this case. I have located a phenomenal appellate attorney, Tracy Emblem, who has dedicated thousands of pro bono hours working on Ken's case.

We have received assistance from the California Western School of Law and several medical experts who reviewed Phillip's medical records. One of those experts is Dr. Gregory Reiber, Director of Autopsy at the University of California's Davis Medical School. He has reviewed the medical records and Phillip's autopsy photos and report. He has personally performed approximately 5000 autopsies in this state. He has testified over 300 times, predominantly as a prosecution witness. He is an expert in child death cases who appears frequently at the California Attorney General's symposiums and training; he has also served on trauma death committees. He says Phillip's death was accidental: Phillip suffered a rotational fall with a whiplash injury when he fell from a couch onto a raised brick hearth breaking an ashtray and cutting himself during the fall.

Finally, I have the answers - and proof - I have needed to

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understand why Phillip died as he did and just what was wrong with him before he died. I am joined by friends, family, and legal and medical professionals all over the country who believe that Ken has been wrongfully convicted.

### A few words from attorney Tracy Emblem

Ken Marsh was convicted of child-abuse murder -- a crime he did not commit. Phillip was neither abused nor murdered. The investigating police officers believed Phillip's death was the product of an accidental fall. Phillip's family knew little Phillip was not murdered by Ken Marsh and, to this day, have continuously protested his conviction. Ken has maintained his absolute innocence while remaining in prison buried alive and forgotten for the past 21 years.

No one ever saw Ken Marsh do anything to Phillip. Ken had no motive to harm Phillip. No one ever heard Ken say that he had done anything to Phillip. In fact, according to everyone, Ken had a loving and gentle history with Phillip. He just happened to be the person at home when Phillip fell off a sofa and hit his head on the fireplace.

So, who said Ken Marsh killed little Phillip? It was the doctors at Children's Hospital and they did it the very day he was admitted.

Prior to his death, Phillip was a sickly child with a documented medical record of disease highly relevant to the cause of his death. His infectious mononucleosis and bleeding disorder inhibited his body's ability to coagulate blood. A short fall to a hard surface would provoke an intracranial bleeding. Then, in an act that proved fatal, the doctors attending Phillip gave him a large intravenous injection of Mannitol that immediately brought on a massive intracranial bleed leading to his tragic death. Mannitol provokes bleeding -- the exact opposite of what Phillip needed. The doctors who pronounced Phillip's demise to be murder, to the exclusion

of all other possible causes, never mentioned a word of the above. They gave the diagnosis popular at the time -- if an infant is injured, the parents or parent surrogates are to blame. Science and medicine were not consulted that day.

Now, qualified doctors have reviewed this sorry record. These doctors are working for no compensation in the cause of innocence, as are the lawyers, to rectify the wrongs of their own profession. In October 2002, in conjunction with the California Innocence Project at the California Western School of Law in San Diego, I filed a 185 page Petition For Writ of Habeas Corpus with the California Court of Appeal. The Petition includes the declarations of seven experts covering various aspects of Ken's case - but all of which support his innocence. The petition documents why no competent physician could rationally find (then or now) that Phillip's death was caused by Kenneth Marsh. Phillip hit his head on a fireplace causing an intracranial bleed. His existing disease inhibited his body's natural coagulation defense to stop the bleeding. Phillip's limited natural defense was totally compromised by the doctors' administration of Mannitol. Unmentioned at any previous proceeding in this case is a numeric code entry scratched in the margin of Phillip's death certificate. This cryptic entry shows that one of the causes of Phillip's death was toxic poisoning -- the administration of Mannitol by Children's Hospital. This is but the tip of an iceberg of cruel malfeasance in this case perpetrated on the petitioner and on Phillip's family by those in a position of trust, causing an immeasurable injustice.

### Some words from Ken Marsh

I was convicted of a crime that didn't happen, and sentenced to life in prison. I was only twenty-eight years old at the time. How can this happen? And, how did it happen to me? The more I hear, and the more I read, I see it happens more often than you might think.

I loved Phillip dearly. Before his death, we would take Phillip to the doctor for treatment of his frequent illnesses.

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It indicates the Army has decided to lowball this."<sup>7</sup>

Muslims and Chinese-American's across the country rallied in support of Yee. His treatment as an Army officer imprisoned in a solitary confinement was compared with the mistreatment of Wen Ho Lee after his false arrest for allegedly passing US nuclear secrets to China. Samia El-Moslimany of the Seattle chapter of Council on American-Islamic Relations said at a November 2003 rally in support of Yee, "Captain Yee has already been tried and convicted in the media before there were even charges brought against him. He was basically branded as a spy and traitor to his country. We think this is happening because he's a Muslim and Chinese-American."<sup>8</sup> Yee's wife, Huda Suboh spoke through a translator, "the only news in the paper about my husband is coming from the government. James wants me to tell you all that he is innocent. He is going to fight the charges with all his energy."<sup>9</sup> A spokesman for Justice for New Americans said, "there is no evidence that Yee ever gave anything to a foreign government."<sup>10</sup>

On March 20, 2004, the case against Yee that had begun with allegations he had committed capital offenses, including "spying, mutiny, sedition and aiding the enemy," completely collapsed: the Army dropped all six charges against him.<sup>11</sup> Yee's lawyer, Eugene Fidell said, "Captain Yee has won."<sup>12</sup>

Yee was assigned to Fort Lewis, and on April 5th he returned to his home in Olympia (near Fort Lewis) and was reunited with his wife and four year-old daughter. The 36 year-old Yee told people gathered at Seattle-Tacoma International Airport, "It's a great day to be back in Washington state, and to be back with my family."<sup>13</sup> Somewhat ironically, he said of his ordeals impact on his daughter, "Every time she sees me on TV or in the news, she says, 'Everybody loves my daddy.'"<sup>14</sup>

However in a classic example of the 'sore losers syndrome,' after dropping the criminal charges, the Army decided to publicly smear Yee by administratively charging and finding him guilty of adultery and having adult images stored in his computer. Yee appealed the finding, and in mid-April, General James T. Hill, commander of the U.S. Southern Command ruled in Yee's favor. Yee's lawyer Eugene Fidell, said Yee's clearing of all criminal and administrative charges was a "bittersweet victory. It wouldn't have killed them to admit a mistake. The Army has to be big enough to admit a mistake. In that regard, today was disappointing."<sup>15</sup>

After Yee's exoneration, two members of the Senate Armed Services Committee, Senators Carl Levin (D-MI) and Edward Kennedy (D-MA), request in an April 23rd letter to Secretary of Defense Donald Rumsfeld that he initiate an official investigation of Captain Yee's treatment. The two senators wrote, "The manner in which Chaplain Yee was detained and prosecuted raises serious questions about the fair and effective administration of military justice. We urge you to give this issue your immediate attention."<sup>16</sup> In a June 4th letter to Secretary Rumsfeld, four members of Congress joined in calling for an official investigation into Yee's treatment.<sup>17</sup>

At a June 25th event to raise money to help pay his legal fees, James Yee said, I'm not here tonight to talk about my case, but to thank those who stand in support of civil liberties."<sup>18</sup> At the same event, Wayne Lum observed that "James Yee would not have been targeted if it were not for this heightened hysteria against Muslims. This case was calculated. It was a coldly calculated targeting of an innocent person."<sup>19</sup>

On August 2nd James Yee released a letter of resignation from the Army effective in January 2005. He wrote, "In 2003, I was unfairly accused of grave offenses under the

Whenever he became ill we were afraid that the hospital was too far away. With that in mind, Brenda and I moved closer to the hospital that cared for him. We arranged to work different schedules so someone we trusted was always with him. We chose to do this and neither of us resented it. Little did we know that whomever might have been babysitting Phillip on the day of his death would have been accused and convicted of killing him when he fell.

Phillip's family knew I hadn't hurt him. She begged the coroner to find out why Phillip was so sick prior to his death. The police also knew it wasn't true, but the doctors who so carelessly cared for Phillip insisted I was responsible for his death.

What happened on that fatal day was an accident that turned my life into a living nightmare. It was a tragedy that may have been avoided had the doctors paid attention before and after his fall. Had they had done that, Phillip might still be alive.

I am hoping that out of our suffering others may be saved. We always say that there must be a reason behind all of this, so we just pray that in the end it will have been for a better system of Justice for All. I am innocent.

Information about my case is on the Free Ken Marsh website: <http://freekenmarsh.com/traverse.html>



### Note by Justice: Denied:

On August 10, 2004 Ken Marsh's conviction was reversed after his habeas petition for a new trial was granted. He was immediately released from prison on his own recognizance pending the District Attorney's decision of whether to pursue a retrial.

After Ken Marsh's habeas petition was filed in Oct. 2002, two important studies were published, one in 2003 and the other in 2004, that document for the first time that many injuries to children that for years have been *automatically assumed* by doctors as originating from child mistreatment, can actually be caused by a naturally occurring fall. The citations for those two studies are, *Perimacular Retinal Folds From Childhood Head Trauma: Case report with critical appraisal of current literature*, Patrick Lantz, S. Stanton, and C. Weaver, BMJ, 2004;328:754-756; and, *Evidence Based Medicine and Shaken Baby Syndrome. Part 1: literature review, 1966-1998*, Mark Donohoe, Am. J. Forensic Med. Pathol. 2003;24:239-42. In its editorial of March 27, 2004, The prestigious British Medical Journal took the bold position that doubts about the scientific basis of SBS -- "We need to reconsider the diagnostic criteria, if not the existence of shaken baby syndrome" - extend to the diagnosis of child abuse in general, "...lack of case definitions or proper controls can be leveled at the whole literature on child abuse." [See, *The Evidence Base For Shaken Baby Syndrome: We need to question the diagnostic criteria*, editorial staff, British Medical Journal, Vol. 328, March 27, 2004, 719-720.]

Uniform Code of Military Justice and unjustifiably placed in solitary confinement for 76 days. Those unfounded allegations -- which were leaked to the media -- irreparably injured my personal and professional reputation and destroyed my prospects for a career in the United States Army."<sup>20</sup>

The irony of the Army's systematic destruction of James Yee's career is that two days before his arrest, his commander at Guantanamo Bay gave him the highest possible performance rating.<sup>21</sup> It is also ironic that seven months after Yee's arrest that was precipitated by his whistleblowing about prisoner mistreatment at Guantanamo Bay, news reports informed the entire world of the U.S. military's mistreatment of prisoners there and in Iraq. As this is written in August 2004, new revelations of prisoner mistreatment at the Guantanamo Bay prison continue to be reported.

### Endnotes:

- 1 Chaplain clashed with officials over Guantanamo detainees, John Mintz (The Washington Post), The Seattle Times, October 24, 2003.
- 2 Muslim Army Chaplain Detained in Terror War, Paisley Dodds (AP), The Seattle Times, September 21, 2003.
- 3 Arrest for Suspicion of Espionage a Shock to Those Who Knew Chaplain at Fort Lewis, Ray Rivera and Cheryl Phillips (staff), Seattle Times, September 23, 2003
- 4 Chaplain clashed with officials over Guantanamo detainees, supra.
- 5 Muslim Army Chaplain at Guantanamo Charged with Disobeying Orders, Matt Kelley (AP), The Seattle Times, October 10, 2003.
- 6 Army Adds Charges Against Guantanamo Chaplain, CNN.com, November 25, 2003.
- 7 Muslim Chaplain Charged With Disobeying His Orders, Seattle Times news services, The Seattle Times, October 11, 2003.
- 8 Muslim Chaplain's Backers Press For His Release, Janet I. Tu (staff), The Seattle Times, November 21, 2003.
- 9 Id.
- 10 Id.
- 11 Military Drops All Charges Against Chaplain, Ray Rivera and Ralph Thomas (staff), The Seattle Times, March 20, 2004.
- 12 Id.
- 13 Back Home, Army Chaplain thanks Supporters, Ray Rivera (staff), The Seattle Times, April 6, 2004.
- 14 Id.
- 15 Army Reverses Reprimand, Clearing Chaplain's Record, Ray Rivera (staff), The Seattle Times, April 15, 2004.
- 16 Pentagon Urged to Investigate Treatment of Muslim Chaplain, Ray Rivera (staff), The Seattle Times, April 28, 2004.
- 17 Army's Treatment of Chaplain in Question, AP, The Seattle Times, June 11, 2004.
- 18 Fund-raiser held for Fort Lewis Army Chaplain, Madison J. Gray (AP), Seattle Times, June 27, 2004.
- 19 Id.
- 20 Muslim Chaplain James Yee to Leave Army, Ray Rivera, Seattle Times, Aug 3, 2004.
- 21 Id.

