

In February 2001 the official word from The State of Alabama was, "In the Michael Pardue case, the system worked."

If the official who made that statement had just emerged from nearly 28 years of wrongful imprisonment, perhaps he would not have been so generous with his assessment of the system's efficiency. But, it was not he who was innocent and imprisoned in 1973 at age 17 in the harshest prison in the Deep South for something he had not done. It was not he, but a small-framed blonde boy named Michael Pardue.

Since you are reading this, chances are that you too have been touched by the criminal injustice system in America. And unless you have tremendous help, endless resources, or both, you or your loved probably remains imprisoned. But, if you are among those who have accomplished the impossible by being liberated from the iron fists of injustice, several questions remain. What do you do next? Do you walk away, simply thrilled with your success and bask in the sunlight of your newly found freedom? Do you swallow the ludicrous boasting of state officials who loudly proclaim your release is proof the system works? In our case we did not have to give it much thought. Freedom is sweet, but we could not let the responsible people and organizations get away scot-free with what they had done to Michael, and me. We fought together for 18 years to free him – and I was his wife for the last 13 years of that fight.

Now, we are fighting for compensation for all those lost years. We are also working to have the people prosecuted and imprisoned who violated the law in order to convict and imprison Michael. This time, instead of his name, the prosecutors' names are on the "DEFENDANT" line. Kind of gives you a rush, doesn't it? It did us too, but the rush was very short lived.

### Background Information

A little background information about Michael's case will help to understand our compensation efforts. Much of the next seven paragraphs is excerpted from Donald Connery's Introduction to our book *Freeing the Innocent - How We Did It*.

At age 17, Michael Pardue was a lost soul. He was a homeless, high school dropout living on scraps. His family had been destroyed when his father killed his mother the year before and was sent to prison. Though he had a gentle nature to go with his slight physique, the boy's occasional delinquent behavior had brought him to the attention of the police. Thus, he became a convenient suspect in the separate shotgun slayings of two filling station attendants in the Mobile, Alabama area on May 22, 1973.

In their rush to solve the highly publicized crimes that had rocked the community, the police ignored strong leads to the two actual killers. Though not a speck of valid corroborating evidence or reliable eyewitness testimony connected the teenager to the crimes; he was subjected to a four-day round the clock interrogation. Locked in a police station, deprived of any outside contact including legal counsel, food, water or access to a bathroom, he finally succumbed to the marathon of physical and psychological intimidation. Beaten, dehydrated, hungry and having soiled himself repeatedly, he finally confessed to the killings - never mind that his admissions were contrary to the forensic facts. When the cops found a decomposed body in the nearby woods, possibly but not certainly a homicide victim, he was forced into a third confession to help them close that case as well.

Mike's quick farce of a trial lasted less than three hours. He had an attorney, only recently a prosecutor, "whose representation was worse than no representation at all" according to a court ruling decades later. Sped off to prison as a confessed and convicted triple murderer, he seemed doomed to die behind bars, perhaps sooner than later. Alabama's lockups in

## Michael Pardue's Quest For Compensation After 28 Years of Wrongful Imprisonment

By Becky Pardue

the 1970s were notoriously violent and he was the youngest inmate in the worst penitentiary of all.

He survived. To ward off predators, he pretended to be the crazed and dangerous triple murderer of the headlines. In his early years as a convict he twice briefly and nonviolently escaped. Then, as if taking the advice he now gives other inmates, Michael Pardue settled down to become a model prisoner. He worked and studied. He kept to himself. He avoided trouble. As the years rolled by, he read a mountain of books. He was a quiet man in a caged world of nose and menace. Like the innocent hero of *The Shawshank Redemption*, he used his wits to keep himself sane and whole as he clung to a faint hope that somehow, some day; the truth would set him free.

Then, Becky entered his life on 1983. She liked his sketches he mailed for her t-shirt business in Mobile. They corresponded, met and fell in love. They had a small window of opportunity for parole. When a cruel bureaucratic decree slammed that window shut in 1987, Mike's frustration led him to "the biggest mistake of my life" he escaped for a third time, again nonviolently by driving away from the prison ranch. That rash act earned him a draconian life-without-the-possibility-of-parole sentence under Alabama's "three strikes" habitual offender act.

Mike and Becky were trapped in a nightmare. Short of execution, his penalty for fleeing the prisons where he did not belong was as severe as it could be. Proving his actual innocence of the original crimes would demonstrate the unfairness of it all, but that seemed a hopeless task. What they could try to do, despite their scant knowledge and meager resources, was to use the legal system to challenge the shady and illegal means employed by the state to win its prosecutions back in 1973. If they could find a path through the maze of Alabama's lower and higher courts and finally overturn all three murder convictions, the way would be clear to challenge the die-in-prison punishment for the escapes.

Remarkably, they managed in just six years to erase all the murder convictions, one by one. But then the authorities in 1995 chose to validate the mistakes of their predecessors by going back to trial on one of the old homicides. Relying again on the bogus confession, this time misleading the jury with a long-hidden partial tape of the interrogations, the prosecutors won a new guilty verdict. He appealed. The Alabama Court of Criminal Appeals unanimously reversed his murder conviction as unconstitutional having been based entirely on a coerced confession. The state could have mustered their case and proceeded to trial again, without the false confession, but they refused. They had nothing to take to trial, they never did. In typical fashion, rather than giving Michael a new trial where a jury would find him not guilty, thus allowing him some measure of vindication, the state dropped the murder charges. In 1997, the final murder conviction was erased when the state Supreme Court agreed that the confession was coerced. Armed with nothing else, unable to build a case, the state conceded.

We promptly went about attacking the three escapees charges. In an odd twist of fate, the State of Alabama is not only judicially corrupt, it is inept as well. Michael was able to find ample constitutional flaws in the escape convictions to force reversals. It took another 4 years.

On February 15, 2001 Michael Pardue was released from prison after 27 years and 9 months of wrongful incarceration.

The following is how our efforts to obtain compensation for Michael's ordeal is progressing.

In Alabama there were two avenues for obtaining compensation: a Section 1983 federal civil rights lawsuit and Alabama's newly legislative act creating compensation for the wrongfully incarcerated. We acted on both.

### Compensation Claim Filed

In 2001, Alabama enacted a bill to compensate (at \$50,000 per year with no cap) the wrongfully incarcerated. We were taken aback by this progressive move in the Deep South. Within months of Michael's release we began to compile our application for compensation citing this new law. We did not simply fill out papers explaining the legalities leading to the reversal of the murders. Knowing that Attorney General Bill Pryor - who vehemently fought against Michael's release - was a member of the compensation committee, it was obvious to us that a simple application would not do. The documentation we sent was nothing less than an excruciatingly detailed case study. It included everything, every single piece of evidence existing about the murder cases, including the names of the actual perpetrators. We cataloged and cross-referenced every document with testimony, forensic work and expert analysis. We actually had the profound fortune to get Dr. Herbert McDonnell, Dr. Henry Lee's associate to study crime scene photographs, perform blood spatter analysis and produce a comparative report between this evidence and Michael's confession. The confession was clearly a fraud by a world renowned specialist's analysis. We took about three months out of our life to make the most comprehensive report possible. When all was said and done our beautifully prepared case study weighed in at 25 pounds, 12 ounces according to the postal scale. It was mailed — certified and insured — on February 23, 2003.

The state had previously admitted they could not bring Michael's case back to trial for lack of evidence. They made no secret that a new trial for Pardue without the "confession" would most certainly end with an acquittal. We erroneously took that as a concession, after all, if the prosecution does not have enough evidence to convict, isn't that tantamount to the defendant being not guilty? Innocent until proven guilty is the most basic principle of American law. Right? So we were confident of a positive response when we submitted our compensation application.

Yet almost two and a half years later we are still awaiting a response of any kind. We have stopped calling for a progress report. There is no progress to report. Why? *The compensation committee has never convened to consider our application*. It is sitting collecting dust in the corner of an office in Montgomery - Alabama's state capitol. The official word on our application is this: The Division of Risk Management must certify our application. They are unable to do so because they do not know the definition of wrongfully incarcerated. They have sent a request for a definition to Alabama's attorney general. The attorney general fought Michael's release and is currently defending the city, county and state officials who conspired and successfully convicted and imprisoned him. So much for Alabama's progressive compensation legislation that looks good on paper but so far has been meaningless in practice.

### Federal Civil Rights Lawsuit Filed

In 1999 we filed our Section 1983 federal civil rights lawsuit in Mobile against the conspirators directly responsible for Michael's 28 years of unconstitutional imprisonment for crimes he did not commit. Keep in mind that it is not simply those lost years, experiences and opportunities that Michael seeks compensation. It is also what replaced those 28 years of free-world experiences: being wrongly thrown into the bowels of Alabama's hellish prison system for that period of time.

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The defendants we named in our suit from Michael's 1973 prosecution include Chandler Stanard, recent district attorney turned defense lawyer and Michael's court-appointed defense counsel from 1973, Baldwin County Chief Detective Robert Stewart, Baldwin County Sheriff Cotton Long, Baldwin County DA James Hendrix, Mobile County Chief Detective Bill Travis, Mobile County DA Charles Graddick and DA Willis Holloway, Saraland Police Chief Frank Pridegin, Saraland Police Lt. Frank Mann, and Mobile forensic specialist Marion Sennet. The defendants from Michael's 1995 prosecution include Baldwin County Asst. DA Judy Newcomb, Mobile County DA John Tyson, Jr., Mobile County Asst. DA Tom Harrison and Asst. DA Mike Davis, and Mobile County investigator Ed Lemler.

We cited obstruction of justice, conspiracy to obstruct justice, perjury, libel and slander, false prosecution, coercing a false confession, and suppression of exculpatory evidence. Under the U.S. Supreme Court's decision in *Heck v. Humphrey*, 512 US 477 (1994), a defendant has two years from the day a case is terminated in which to file a civil rights lawsuit. The Alabama State Supreme Court ordered the reversal of Michael's convictions in 1997 and the *nolle prosequi* motions were promptly filed by the district attorneys involved. So in accordance with *Heck*, we filed our claim in 1999 - which was two years before Michael's release.

Alabama Attorney General Bill Pryor chose to defend the defendant's named in our suit. Again, the unlimited resources of the state were pitted against us.

Our case was originally assigned to Federal District Court Judge Richard Vollmer. In the initial hearing, he ruled that he would not hear any arguments from the defendant's concerning the timeliness of our lawsuit, since under *Heck's* guidelines we had filed timely.

We waited. Months passed with no action, then Judge Vollmer issued a 104-page ruling that gutted a large part of our case. Without an immunity hearing of any sort, he granted 11th Amendment Immunity to Mobile County DA John Tyson, Jr., Chief Asst. DA Tom Harrison and Asst. DA Michael Davis, the prosecutors in Michael's 1995 retrial. We attempted to appeal this immunity issue to the federal 11th Circuit Court of Appeals. They refused to hear the appeal, stating that since Judge Vollmer's Order was not final; we had to wait until it was "final" before they would review our claims. Judge Vollmer Order also removed the state law claims (the libel and slander claims against Tyson and Graddick) from our lawsuit. We then filed them in state court.

During discovery for our civil suit we found proof in the Mobile DA's files that prosecution witnesses Willis Holloway, "Cotton" Long, and Frank Mann (all involved in Michael's 1973 prosecution) perjured themselves during Michael's 1995 retrial, and that the prosecutors had to have known it at the time they testified. We also learned that prior to Michael's 1995 trial that his prosecutors had a tape of an alibi witness (who had been unknown to us) who stated that Michael Pardue was with him at the time of the 1973 murders. Yet the tape had neither been disclosed to Michael during discovery prior to his 1995 retrial, nor during the federal court ordered discovery during Michael's 1994 federal habeas corpus proceeding that preceded his 1995 retrial. Furthermore, a series of photographs conclusively proving that Michael's 1973 confession was false in numerous critical aspects was provided by the DA's office during the civil suit's discovery process. Those photos were concealed from Michael during the discovery process prior to his 1973 and 1995 trials, and his federal habeas corpus proceedings in 1994 and 1995. The State has yet to explain the concealment of those exculpatory photos from Michael and his attorneys.

While deposing DA Tyson in 2002, we confronted him with DA Harrison's and DA Davis' use of perjury to win Michael's conviction in 1995. Yet as of June 2005, DA Tyson has done nothing to investigate or prosecute the perjurers.

We moved the federal court to order the release of the 1995 grand jury witness list and transcript to prove our conspiracy and obstruction of justice claims in the 1995 trial. DA Tyson's office responded that to release that information would be a violation of state law. We responded that was false. To date, there has been no further action on this motion. We know that if Lanier (the prosecution's alleged "eyewitness" to the 1973 murders, and who we believe was used to obtain Michael's 1995 grand jury indictment, but who did not testify at his 1995 retrial), Holloway, Long, or Mann testified before the 1995 grand jury that they all gave false testimony. Since the state had more than sufficient information to know they were lying at the time of their testimony, the witness list and transcript would prove our obstruction and conspiracy claims. Thus far the state has effectively kept these proofs out of our reach.

In the pending civil case, the defendant's attorneys were initially Alabama Assistant AG Scott Rouse and Alabama Asst. AG Andrew Christman, both under Alabama's AG Bill Pryor. In the second year of the case, the state advised us that they had turned our cases over to an independent attorney. Shortly after that we were advised that the independent attorney handling our cases was Andrew Christman - who had left the AG's office for private practice. He took our case files from the AG's office with him. Asst. AG Scott Rouse continues to attend every critical deposition and hearing.

After deposing key state witness Holloway and the others, we wrote Christman a letter citing the federal and ABA Model Code of Legal Ethics and Responsibilities advising him that it was his legal duty to remove himself from the case as he is permitting his clients to false swear to the federal court. We gave him undeniable proof of the perjury and we quoted the code advising him that he had a legal duty to step down. Christman's response was in the form of a threatening letter advising us that our case "billing" to date totaled over \$250,000.00 and he would countersue us for this amount, but he would absorb it if we immediately dropped the cases against his clients. His arrogance is laughable. We didn't drop the case and he didn't countersue us.

Then, Judge Vollmer died in March 2003.

Mobile's Chief U.S. District Court Judge Callie Granade then took over our case. Judge Granade went directly from the Mobile federal prosecutors office to being a federal district court judge. She came into power from the Alabama Republican lineage of U.S. Senators Richard Shelby and Jeff Sessions, and Alabama A.G. Bill Pryor, who resigned to accept a judgeship on the Federal 11th Circuit Court of Appeals. In June 2005 the U.S. Senate formally confirmed Pryor as a federal appeals court judge. This conservative contingency also includes Randy Butler, the current Senior US Federal District Judge for the Southern District of Alabama. Butler was the Mobile County DA in 1973 when Michael was wrongfully prosecuted by Asst. DA's Holloway Graddick. It is noteworthy that Graddick is the author of the revised Alabama Penal Code and a vocal proponent of the death penalty in Alabama. Graddick was known as "electric chair Charlie" when he was Attorney General. As unbelievable as it sounds, Graddick's most notable quote was, "Fry 'em 'til their eyeballs pop out." Graddick is now a Mobile County Circuit Judge. We are in state court suing Graddick and DA Tyson for libel and slander. Graddick was publicly quoted at the time of Michael's release, "Mike Pardue killed for pleasure and got sexual gratification from the murders....."

Our lawsuit was in its fifth year and we were set for a pre-trial hearing with a trial date, when Judge Granade dismissed our entire suit. She ruled that we were not in compliance with *Heck's* filing guidelines. Recall that Judge Vollmer had previously ruled that we met the *Heck* standard.

We prepared a lengthy brief point by point showing Judge Granade that her ruling was erroneous. Fighting us by any method, she ruled that our brief was too long; we must rewrite it using considerably fewer pages. We did so. That was nearly a year ago. To date she has not ruled on our motion to reconsider her ruling on *Heck*.

We can anticipate that when she does rule, she will refuse to reverse her previous ruling. We will then appeal her ruling to the 11th Circuit, where our arch-enemy former Alabama AG Bill Pryor now sits as a federal judge. We will file a motion for Pryor's recusal on the grounds that he is fatally prejudiced against Michael because he fought tooth and nail against Michael's release. In fact, during our battle to free Michael, then Attorney General Pryor made a speech to The Southern Christian Coalition in which he said it was his "Christian duty to keep Michael Pardue in prison..." We can also anticipate that under those circumstances Pryor will be recused, and that the 11th Circuit will then rule in our favor that we filed our suit timely under the *Heck* standard. Our case will then be sent back to Judge Granade for action. We can anticipate this because - as we have seen so many times before - local court refuse to accept liability for doing what is right when it crosses one of their own. So it is left for a higher court to order them to do what they knew they should have done initially. This predictable pattern gives lower level judges the denial of responsibility for calling their cohorts on their illegal actions. What we don't know is how long our motion for reconsideration will sit on Judge Granade's desk before she acts.

### We're Pitted Against A System That Is Self-Protecting

As you can see, the people responsible for wrongly imprisoning Michael in 1973, and keeping him imprisoned for four years after his last murder charge was dropped in 1997, continue to infiltrate every level of the state and federal judiciary from which we are compelled to seek justice - all the way up to the Federal 11th Circuit Court of Appeals, only one step below the U.S. Supreme Court. Our case seems effectively and hopelessly thwarted by the defendants and their cronies who are now in positions to cover and protect their own, which they are doing very effectively.

That is the ultimate Catch 22 - the legal system that erroneously pronounced Michael guilty of crimes he didn't commit is the same system he must rely on to award him compensation for the personal destruction he experienced because of that system's errors. If you have a bad feeling in the pit of your stomach about this situation it is completely justified. It is a long and rough road. But it must be traveled. Those who manipulate and corrupt the system for their personal gain must be called to task. Their names must appear on the defendant's line. Put them on the witness stand to try to defend what they've done. Put their names on the front pages across this country. It must be done and it is up to you and me.

Today, like over 20 years ago when we set out to free Michael from three murder convictions, we know that although the politicians and judges who control and manipulate the law for their personal gain are corrupt, those laws contain a depth of integrity that we must believe will prevail in the end.

Although our drawn out bid for compensation has thus far gone on for six years, we remain positive that sooner or later we will win ... again ... just as we did when Michael was released from prison on February 15, 2001.

