***Justice:Denied*** **Introduction**: A wrongly convicted person is usually thought of as someone who in the course of their daily life became ensnared in the nightmare of a prosecution, and convicted of a crime that he or she did not commit. However, after someone is convicted and imprisoned for a crime the person may or may not have committed, that person becomes vulnerable to being wrongly accused of a crime that occurred within the prison. The following story of Kenneth Krause illustrates that the same factors can be involved in the prosecution of a person who may be innocent of committing a crime in a prison, as someone accused of committing a crime on the street. Those factors involved in Mr. Krause's case include: using suspect informant testimony; concealment of exculpatory evidence; fabrication of prosecution favorable evidence; piling on of unjustified charges to try and coerce a guilty plea; non-existent independent expert evaluation of crime scene evidence; and inadequate pre-trial, trial, and post-trial legal representation.

# Exculpatory Surveillance Video Not Analyzed Prior to Trial - The Kenneth Krause Story

By Kenneth Krause

On May 8, 1999, I was in the special housing unit (SHU) at the United States Penitentiary in Lompoc, California. I was serving a 12-1/2 year sentence for a 1993 bank robbery conviction. I was in a two-man cell that I shared with Jeff Milton. At approximately 10 a.m. on the 8th, I commented to Officer Alexander White as he passed me my food tray that he should give my rotten apple to Officer Anita Pahnke and tell her to stick it where the sun don't shine. About an hour later when Pahnke was passing out coffee she stopped at our cell (D-15), and told me to "Grow up and get some balls."

Apparently my cellmate Milton was personally affronted by Pahnke's comment, because he immediately jumped up from the lower bunk. As he approached the closed cell door he told Pahnke, "That's tough talk behind a cell door." Rising to Milton's challenge, Pahnke ordered Officer Cintora, who was manning the control panel, to open our cell door. Against (SHU) regulations, Cintora responded by opening the cell door. As the cell door opened Milton punched Pahnke in the mouth so hard it spun her around 180 degrees before she fell down between our cell (D-15) and the one next to it (D-14). Jumping down from the top bunk – I peeked out of the cell door at her in disbelief. I then took approximately two steps out of the cell onto the tier, but I never touched Pahnke.

Within seconds officers began to arrive in response to the alarm Cintora had activated and both Milton and myself stepped back into the cell. Minutes later both of us were dragged out of the cell and severely beaten before being stripped and chained hand and foot to a concrete slab for a solid week. We were not only forced to lie naked in our urine and fecal matter for the week we were chained to the slab, but we were repeatedly brutalized by several guards who punched and kicked us.

At the end of that first week, I was given two incident reports. They falsely claimed that I had not only been recorded by video surveillance camera as personally punching and kicking officer Pahnke, but that a razor blade used by Milton to cut Pahnke had been discovered in our cell's toilet. Although the videotape was too blurry to discern very much, the prison staff relied on it during an institutional disciplinary hearing in order to find me guilty of the charge of assaulting Pahnke. That resulted in my security reclassification and my subsequent transfer to the highest security federal prison in the United States – the federal supermax prison in Florence, Colorado.

### Pre-Trail Events

In March of 2000, I was indicted by a federal grand jury in Los Angeles for: Conspiracy to Assault, Assault on a Federal Officer, and Aiding and Abetting. I soon discovered that to protect Pahnke from any wrongdoing regarding the opening of the (SHU) cell door against policy, an "official story" had been concocted that inmate Milton and myself had conspired to assault officer Pahnke by pretending to be in a fight when she came to our cell. Then when she ordered the opening of the cell door, ostensibly to break up the fight, we supposedly both turned on her. This staged cell fight story was the basis of the conspiracy charge that alleged seven overt acts.

I repeatedly assured my court appointed lawyer, Judith Rochlin, that I was innocent and that if she could have the surveillance tape expertly analyzed it would prove beyond any shadow of a doubt that at no time did I touch Pahnke. Regrettably, before any progress could be made in that regard, differences of opinion and a clash of personalities forced us to go our separate ways. But before she withdrew as my lawyer, she filed an *ex parte* motion for funds to have the original surveillance videotape analyzed. I immediately notified the court appointed lawyer who replaced Rochlin about the pending videotape motion. He repeatedly assured me he would follow-up on having a defense expert analyze the video. However, he failed to do so, and I was thereby denied the only realistic means of conclusively proving my innocence.

After a severance, Milton went to trial first since he admitting striking Pahnke, although he claimed doing so in self-defense. During Milton's trial several important aspects of the government's case were debunked:

- Cintora testified there had not been a fight in the cell at the time Pahnke ordered him to open the cell door. His testimony proved the story of a staged cell fight was a concocted lie to cover up Pahnke's breach of (SHU) security. That lie formed the basis of the conspiracy charge. Corroborating Cintora's testimony is an internal report I obtained under the Freedom of Information Act, after the trial, that there was no cell fight.
- Testimony established that a correctional officer had actually planted the razor blade in the cell toilet.

Milton was found not guilty of the conspiracy charge and found guilty of the lesser included offense of 'intentionally striking an officer.' He was sentenced to serve an additional 3 years. Soon after Milton's verdict, the government superceded my indictment twice to include the allegation that I had directly kicked Pahnke and that my foot was a dangerous weapon. Not until Milton's favorable verdict had the prosecution ever accused me of personally assaulting Officer Pahnke.

### The Trial

During my trial the government produced two inmate witnesses.

The first was Lamont Nelson who had been in cell D-16 on the day of the incident. He testified that by protruding a one-inch mirror on a stick through his cell door crack, he witnessed me rush out as soon as the door opened and begin kicking Pahnke in the buttocks both

**Krause cont. on page 15**

## Miller continued from page 13

In 2005 a Boston man, Larry Taylor, pled guilty to three rapes, including the 1989 rape Miller had been convicted of committing. Prior to his conviction, Taylor had been arrested several times for various crimes after Miller's 1989 conviction.

Source:
City of Boston Reaches $3.2 million settlement with wrongly convicted man, Brandie Jefferson, *Boston Globe*, March 9, 2006.

## Krause cont. from page 14

*before* and *while* she was falling to the floor. My attorney was unable to convincingly impeach Nelson's testimony because he failed to pursue expert enhancement of the surveillance tape to clearly establish that I did not emerge from the cell until *after* Pahnke was already on the floor. Which made it impossible for me to have been kicking her before and during her fall as the prosecution claimed.

Vincent Harrell was the second inmate witness. Harrell was an FBI/DEA informant who had already testified in several other criminal cases on behalf of the government in exchange for sentence reductions. Unaware that Harrell was a practiced snitch, I had shown him the error filled incident reports issued against me concerning Pahnke's assault. Harrell then used the false account of the events depicted in the reports to concoct a story of how I had allegedly confessed my involvement in the assault to him.

The self-serving testimony of Harrell and Nelson was contradicted by two BOP staff members: Cintora and the first officer on the scene both testified they did not see me touch Pahnke at any time. Inmate Milton and several other inmate defense witnesses also testified I did not touch Pahnke.

The prosecution's entire case rested on the testimony of the two inmate snitches. Of course, during my trial they both denied being promised anything by the U.S. Attorney's Office in exchange for their testimony. [*JD* note: Harrell was released by the BOP on December 13, 2002, and Nelson is scheduled for release by the BOP on April 29, 2006.] That is patently absurd because in the circumstances of my prosecution, an inmate snitch would only "volunteer" to testify for the government as a friendly witness in exchange for "compensation" of one sort or another.

Harrell and Nelson's disclaimers of horse trading for their testimony also rings hollow because it was indispensable for the prosecution to "prove" its case. Especially since the alleged victim, Officer Pahnke, did not testify that I touched her. She claimed amnesia after being struck by Milton.

If my lawyer had followed-up on having the surveillance video's image enhanced by an expert, it could have proven the two officers and defense witnesses told the truth about my innocence, while the prosecution's two inmate "snitch" witnesses lied.

While the jury was deliberating they requested to view the blurry videotape three times. In the end I was found not guilty of the conspiracy, but guilty of an assault with a dangerous weapon (my foot). I was sentenced to an additional 10 years. It was the first time I've ever heard that the testimony of convicted "snitch" criminals was considered more credible by jurors than the testimony of law enforcement officers.

**Post Trial**

In February of 2005, I filed a 28 USC §2255 petition claiming ineffective assistance of counsel, based on my lawyer's failure to investigate and examine exculpatory evidence – that being the original master surveillance tape. I also filed a discovery motion requesting access to the master surveillance tape for the purpose of subjecting it to Video Image Stabilization on Reconstruction (VISOR) analysis. My petition was denied by the U.S. District Court judge in October 2005, and a Certificate of Appealability on all the petition's claims is pending in the federal Ninth Circuit.

Because of my imprisonment I lack financial resources and I am receiving no outside help. My hope is that someone will read of my plight and assist me in having the master tape expertly analyzed, so I can prove my innocence of assaulting Officer Pahnke. Although it is part of my appeal, to date I have been unable to obtain court authorized payment for the tape's analysis or appointment of counsel.

I pled guilty to bank robbery in 1993 because I am not innocent of that crime. However, I am innocent of the trumped-up charges related to the assault on Pahnke. If you are able to help, please contact me at:
Kenneth Krause 39956-004
USP Florence – ADMAX
PO Box 8500
Florence, CO 81226

Thank you for your time and consideration concerning my predicament.

*Justice:Denied* comment. *Justice:Denied* contacted a nationally recognized forensic tape analyst who declined to analyze Mr. Krause's tape on a pro bono basis. He did, however, quote the discounted price of $2,250 to enhance two minutes of videotape in "real-time." According to Mr. Krause, the events recorded during the first thirty seconds of the incident would be sufficient to establish his innocence.

### Visit the Innocents Database

**http://forejustice.org/search_idb.htm**

Information about more than 1,700 wrongly convicted people in 30 countries is available.

## Norfolk Four Update

Petitions requesting executive clemency and pardons were filed with Virginia Governor Mark Warner by lawyers for Derek Tice, Joseph Dick and Danial Williams on November 10, 2005. The three men had been convicted of the rape and murder of Michelle Moore-Bosko in July 1997. They were sentenced to life in prison. The petitions argued for clemency on the basis of new evidence supporting the men's actual innocence. A fourth defendant, Eric Wilson was also convicted of rape, but not murder. Wilson completed his prison sentence in September 2005, and he also filed a pardon petition. (See, The 'Norfolk Four' Convicted of Brutal Rape And Murder Committed By Lone Assailant, *Justice:Denied*, Issue 30, p. 6)

After the clemency petitions were filed, a number of the trial jurors were contacted. Eleven of them said that if they had been aware of the new information at the time they were a juror, it would have influenced them to have voted not guilty. Affidavits and letters from those jurors were submitted on January 4, 2006, in support of the clemency petitions. (See, Jurors Back Clemency for 'Norfolk 4': Convictions Renounced In Rape-Murder Case, Tom Jackman, Washington Post, January 6, 2006, p. B1.)

Governor Warner ordered the state parole board to enlist a detective to investigate the clemency petitions. However, the investigation wasn't completed prior to the end of Warner's term on January 14th. So it is now up to his successor, Governor Tim Kaine, to make a decision about the clemency applications by the Norfolk Four.

## Tony Ford Update

Tony Ford's scheduled December 7, 2005 execution in Texas was first delayed until March 14, 2006, and then in February 2006 it was delayed indefinitely so that DNA testing of blood evidence can be conducted that may be able to conclusively prove Ford's innocence of a 1991 murder. There is significant evidence that Ford's identity was mistaken for that of the actual murderer. (See, A Mistaken Identification Leads To A Wrongful Conviction and Death Sentence — The Tony Ford Story, *Justice:Denied*, Issue 30, p. 4)