

James Salmu was reported missing after a pizza party at his Springfield, Oregon residence on March 21, 1993. He had taken in an indigent woman, Karlyn Eklof, and her three children, sharing expenses, since she had become homeless several months before. The party was to celebrate her new relationship with Jeffrey "Jethro" Tiner, a man she had met on a trip to her hometown, San Diego, a few weeks before. Salmu was invited, as were 20 or 30 other friends, one of whom, Al Hope, had sold Tiner a small handgun a few days before. The pizzas were made by John Distabile, who stayed around to help clean up. When Distabile and Tiner tried to bribe Salmu to leave his own house for the night, hostilities began building. At Eklof's request, Distabile took her children to his house for the night.

On Monday Salmu did not show up at his work. After a friend went to his house to check on him, he reported Salmu missing. The police questioned Eklof. Salmu's car was found parked at the local tavern where he had a woman friend. That's where Eklof reported he had gone.

#### Eklof goes to San Diego

Since Tiner was obliged to return to San Diego or face a parole violation, Eklof hoped to wait it out until he was gone before reporting what had happened. However, the police came with Salmu's landlord and Eklof was evicted. She felt she had no choice but to go with Tiner to San Diego, since she and her kids were homeless and he had her car.

Tiner stopped in Fresno where he regaled his brother Dave with his shooting of Salmu and other details of the crime. He also bragged to his brother about his "tough" new girlfriend, who he said had assisted him by using a plastic knife to stab Salmu 30 to 50 times.

After arriving in San Diego, Eklof slipped away to regularly telephone the police in

Karlyn Eklof's complete story is told in *Improper Submission: Records of a Wrongful Conviction* by Erma Armstrong. (Quality paperback, 381 pages, Tanglewood Hill Press, 2005). It can be ordered by sending \$10 postage paid (check, money order or stamps OK) to: Justice Denied, PO Box 68911, Seattle, WA 98168.

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## Anatomy Of A Murder Frame-up — The Karlyn Eklof Story

By Erma Armstrong

Springfield about her whereabouts, eventually asking for their help when she was severely beaten and robbed by Tiner of \$714 her grandparents had given her for an apartment. By the time Springfield detectives Steve Walker and Rick Lewis arrived two weeks later, she had been released from the hospital, bruised, battered, and with a shattered leg from a ritual abuse scene Tiner had sold her into. The detectives did nothing to help her, even though she had pleaded with Springfield Police Captain Jerry D. Smith in a phone call, "Just get me into a safe place, and I'll tell you what happened."

Eklof was afraid for the safety of family members to tell them the extent of her terror of Tiner and the extent of his abuse of her. She was also ashamed because she had introduced him to them as the "man of her dreams" when she first met him a couple of months before.

#### Eklof takes bus to Salt Lake City

Finally, leaving her older son in her mother's care, she escaped from Tiner by making her way back to Eugene with her two youngest children, ages five and three. She went to Distabile, thinking he would also want Tiner arrested. Instead he put her and her children on a bus to Denver, saying that he and Patrick Walsh, who had accompanied her on her trip to San Diego and introduced her to Tiner, "didn't want any attention drawn to this case."

Having no other friends or resources she went as far as Salt Lake City, where she could go no further because of pain in her back and neck. There, in the care of Catholic charities, she sought to gain assurance from Springfield police that she would not lose her children if she came forward with what she knew.

Detectives Walker and Lewis visited Eklof in Salt Lake City in January 1994. They promised her protection, even a trip to Hawaii, if she would come to Eugene to testify against Tiner, who was by then in prison in California for other crimes. They also asked her to write down in notebooks exactly what happened to Salmu. On April 27, 1994 Eklof and her two children were met by the detectives at Portland, Oregon's airport. Eklof gave her notebooks to Walker and Lewis upon her arrival, but they then "disappeared."

#### Eklof's interrogation

Eklof was taken to Springfield, and under the direction of Captain Smith, she was interrogated steadily for nine days, 8-10 hours each day. She was provided with food, baby-sitting, and a closely watched motel room. During the good times they assured her she was not a suspect and needed no attorney. During the bad times, Smith, whose scheme this interrogation was, tried dreams and hypnosis, to get a confession from her that matched Tiner's bragging to his brother. On the last day Smith had her lie back, and when she abruptly awoke, his body activity alarmed her. He shouted at her and yelled she was not to "embarrass this department" and he had her "apologize" to Lewis and Walker, who were somewhat baffled. <sup>1</sup>

Shortly afterward, they began to tape a fourth video, after failing on three previous videos to get her to confess on camera that she had stabbed Salmu using the small plastic knife that she repeatedly told them she had picked up to try to keep Tiner from murdering her friend Salmu. Smith instructed her to repeat his fabrication of a possible scenario that had her stabbing Salmu — which she quickly retracted as Smith's story, not hers.

#### Eklof indicted for Salmu's murder

When Eklof was indicted of aggravated murder based on her recitation of Smith's stabbing scenario as an alleged "confession," Lane County District Attorney Fred Hugi laughed at her, "You're the small fish." Hugi knew he could not touch the "big" fish, Tiner, until he had finished serving a prison term in California. After stealing and wrecking a car in which his then girlfriend was paralyzed for life, Tiner fled the crash scene on foot. Tiner's imprisonment was just another episode in his history of violent conduct. He bragged that during a stretch in California's Folsom Prison he killed an alleged child molester with a screwdriver.

Twenty months after Salmu's disappearance, and after Eklof's indictment, mushroom pickers found his body draped over stones near the McKenzie River, east of Springfield. He was in a sleeping bag, with three severed fingers, a symbolic thing by Tiner, because he was obsessed with avenging child abuse, and he believed Salmu was a child molester.

#### Eklof's trial

Eklof's trial was in September 1995. Her co-defense counsel Jeffery T. Murdock referred positively to Eklof's character in his opening statement. Murdock thereby enabled the prosecution to bring in "bad act"

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evidence to counter his claims. Witnesses were found to describe incidents of her feisty temper. Those included “bouncing” a customer from a bar where she was employed as a cashier, threatening acquaintances that had taken her food stamps and stolen her car, and accidentally elbowing a girl’s eye in Fresno. The incidents were intended to influence the jury to believe that Eklof was someone capable of stabbing a friend who had offered her and her children a place to stay when she was destitute after leaving her boyfriend.

Although it opened the door for the prosecution to paint Eklof in a negative light to the jury, Murdock’s positive reference to Eklof’s character was considered “harmless error” in her appeals. Although it is not known if Murdock was mentally impaired by drugs or alcohol when making Eklof’s opening statement, his disciplining after her trial by the Oregon State Bar for drug use, alcohol abuse and embezzlement was confirmed by the Oregon Supreme Court when it ordered his suspension from practicing law on March 1, 1997. Less than two years later the Oregon Supreme Court ordered Murdock’s disbarment on January 5, 1999. Murdock’s status (as of May 1, 2007) is he is “Disbarred” from practicing law in Oregon. [JD Note: On May 1, 2007 *Justice:Denied* verified the Oregon State Bar’s disciplinary history of Jeffrey T. Murdock #871394, <http://www.osbar.org/members/display.asp?b=871394>]

The jury was plainly misled by much of the prosecution’s testimony about Eklof’s alleged stabbing of Salmu and the alleged blood evidence. When Smith told the jury “she said” she stabbed Salmu 30 to 50 times, who were they to believe? Smith, a police captain, or Eklof, an accused murderer? Although Salmu’s autopsy revealed no evidence he was stabbed, under Hugi’s questioning the medical examiner did not rule out stabbing as Salmu’s cause-of-death. The jury was also told a black and white photograph showed blood on a dryer, when it was actually water spots. Also, there was testimony that it was “conclusive” there was blood spatter at the scene, when years later this was discovered to be untrue – it was actually “inconclusive.” Then there were Hugi’s references to Eklof’s “lying” about Salmu’s murder, without stating how he knew that she wasn’t telling the truth.

When Hugi called Eklof a “biker bitch,” John Kolego, her lead defense counsel, objected. “It’s in the evidence,” ruled Judge Merten. Kolego also objected to testimony about Eklof’s alleged “confession,” arguing it was coerced. Merten told Kolego not to keep “popping up” about testimony con-

cerning her alleged “confession.” (Although preserved as an appealable issue, the alleged “confession” wasn’t raised by Eklof’s lawyers in her subsequent appeals.)

The prosecution’s final two witnesses were their “stars.” They were intended to provide the testimony to convince the jury that Eklof had both helped plan and participated in Salmu’s murder. Al Hope testified that Eklof arranged to procure a gun from him before her trip to San Diego, which was when she first met Tiner. Although the gun used to murder Salmu wasn’t recovered, the prosecution asserted it was the one Hope said he gave to Eklof, and which Tiner used to shoot Salmu. The other witness intended to convince the jury of Eklof’s involvement was Distabile. He testified that Eklof told him she stabbed Salmu to put him out of his misery.

The jury bought the prosecution’s case and convicted Eklof of aggravated murder, aggravated felony murder, and abuse of a corpse. She was sentenced on December 12, 1995 to two life sentences plus 202 months.

Tiner was tried and convicted of Salmu’s capital murder in 2000. Sentenced to death, as of the spring of 2007 he is on Oregon’s death row.

On the surface it appeared the murder of James Salmu was solved. Case Closed! But the reality of a criminal case is sometimes deliberately submerged by dishonest and unethical, if not downright criminal acts by police, witnesses and prosecutors. It was subsequently discovered that Eklof’s case was infected with that sort of smarmy conduct — and without it there was no evidence she had any role in Salmu’s murder.

### Two women befriend Eklof

It is difficult for strangers to get lawyers to recognize evidence they had not bothered to discover for themselves. Family members might have some clout, but not a person who followed the case because of some interest.

Eklof became friends with two women who took an intense interest in her case. The first was Nancy Gottfried, a student in a Criminal Justice class taught by Captain Smith at Lane Community College in Eugene. Gottfried noticed that the case she had elected to study did not conform to what Smith was teaching them about how the justice system worked. That case was Eklof’s. Gottfried followed Eklof’s trial, and after becoming friends with her she obtained all of Eklof’s journals and records. Erma Armstrong lived near Salem, Oregon, and she met Eklof when a friend teaching a journal writing class at the woman’s prison in Salem asked

her to type a story written by Eklof. When Gottfried left the area she convinced Armstrong to follow Eklof’s case and try to help her. She also turned over to Armstrong two full boxes of information about Eklof’s case.

### Prosecution’s frame-up of Eklof exposed by concealed evidence

During Tiner’s prosecution for Salmu’s murder, Armstrong read a Motion to Dismiss in his defense file outlining the extent of the treachery that had gone into Eklof’s coerced alleged “confession.” Armstrong furnished this to Beverly Long Penz, Eklof’s post-conviction (PC) counsel. Getting the brush-off from Penz, Armstrong paid Steve Gorham, a Salem lawyer, \$1,000 to look into Eklof’s chances for PC relief. She also called Tiner’s attorneys to inquire about Tiner’s Motion to Dismiss.

Armstrong was soon called by the office of Tiner’s attorneys, who wanted to get in touch with Eklof’s PC attorney. Instead Armstrong put them in touch with Gorham. After talking with them, Gorham was suddenly excited about Eklof’s chances. After contact with Penz, he asked Armstrong to send copies of the videotapes of Eklof’s interrogation to Penz.

When the PC relief was denied, Armstrong asked Gorham if he could represent Eklof in her PC appeal. He would only do so with a substantial retainer. Lacking the money to pay Gorham, Armstrong picked up from his office the boxes of documents she had provided him with.

Later she discovered a packet of legal papers in one of the boxes that she didn’t recognize. These were the documents that Tiner’s lawyers had forwarded to Gorham, hoping he would get them to Penz. For reasons unknown, Gorham didn’t forward the documents to Penz. However, given her career problems, it is uncertain if it would have done any good.

After a suspension in 2000 and a reprimand in 2002 for ethical violations, Penz resigned from the Oregon State Bar on January 25, 2005, when faced with another more serious disciplinary proceeding. As of May 1, 2007 Penz is “Resigned” from practicing law in Oregon. Penz’s 2000 suspension was for egregious misconduct she committed during the time she was Eklof’s PC attorney, although it didn’t directly involve Eklof’s case. [JD Note: On May 1, 2007 *Justice:Denied* verified the Oregon State Bar’s disciplinary history of Beverly Long Penz #843202, <http://www.osbar.org/members/display.asp?b=843202&s=1>]

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Thus Eklof's PC attorney and one of her trial lawyers have been drummed out of the legal profession for serious ethical misconduct committed while they represented her.

In the packet of legal papers that Armstrong discovered was a 42-page "Notes for Counsel." It described the *Brady* violations by Lane County DA Hugi that enabled him to orchestrate the framing of Eklof for Salmu's murder. Among the evidence concealed from Eklof's trial lawyers was:

- Salmu's cause of death was bullet wounds, and there was no evidence he had been stabbed.
- The forensic test of crime scene evidence was "inconclusive" that Salmu had been stabbed, contrary to the testimony at her trial.
- Al Hope and John Distabile exchanged their prosecution favorable testimony for extraordinary favors from DA Hugi.

Accompanying the "Notes for Counsel" was the supporting documentation for the concealed exculpatory and impeachment evidence. Of particular interest were the details of the prosecution's procurement of Hope and Distabile's testimony.

The information indicates Al Hope had been arrested for child pornography involving his daughter. Eklof's prosecutors were involved in a deal that he would provide the testimony they wanted from him – that she obtained a gun from him before Salmu's murder – in exchange for his indictment being "postponed" (for almost two years). DA Hugi also secreted Hope's arrest warrant to another county, to conceal from Eklof's lawyers and the jurors that Hope was accused of involving his daughter in kiddie porn. Knowledge of that would have so completely destroyed Hope's credibility as a witness, that it is debatable if the prosecution would have dared have him testify.

Neither was it disclosed to Eklof that before her trial Hope was identified as a suspect in Salmu's murder in a letter to Oregon State Police Detective Dan Wolverton from a criminologist in the OSP Crime Laboratory.<sup>2</sup> Then a month after Eklof's sentencing, in a teletype that referenced Hope's arrest warrant related to his daughter's sex abuse, Wolverton wrote: "Hope ... was recently involved in a homicide in Springfield, for which he was not charged, but acted as a participant."<sup>3</sup> In another report Wolverton commented in regards to Hope's sex charges involving to his daughter, "The warrant was not entered into computer files."<sup>4</sup> Hope was eventually given a sweetheart plea deal by Hugi that protected him from a conviction of sexually abusing his daughter.

In regards to Distabile, who was also considered a suspect in Salmu's murder, there was a letter from his attorney requesting what amounted to immunity from prosecution for his possible criminal activity with Tiner. Consequently, when Armstrong contacted Lane County for their records about Distabile, she was told they had a mug shot of him, but there was no record of his arrest. DA Hugi testified in 2000 during a pre-trial hearing in Tiner's case that he made an immunity deal with Distabile for his testimony against Eklof. That deal wasn't disclosed to Eklof's trial lawyers.

Eklof's PC appeals attorney, John Manning, sat for a year and a half on the "Notes for Counsel" that Armstrong sent him by certified mail along with a notarized authorization from Eklof for Armstrong to act in her behalf. Finally, Manning called Armstrong to learn where she had obtained the document. She directed him to Gorham, who told him that he knew nothing about it. Manning considered the new information in the "Notes for Counsel" so important that he attempted to remand Eklof's PC petition to incorporate the newly discovered evidence. His effort was denied, but in his appeal of her PC he cited some of the new evidence. Oregon Attorney General Hardy Myers opposed consideration of the claims based on the "new" evidence, asserting Eklof was procedurally barred from seeking relief based on those claims because they weren't incorporated into her PC.

### Eklof files federal habeas after state appeals denied

After her state appeals were exhausted, in 2004 Eklof filed a habeas petition in Portland's federal court. Her claims were considered meritorious enough that she was appointed representation by Federal Public Defender Anthony Bornstein.

Bornstein filed a second amended habeas petition on July 28, 2006 that stated five claims for relief. Among them are claims that Eklof's right to due process was violated by the prosecution's failure to comply with its *Brady* obligation to disclose the multiple levels of evidence that impeached the credibility of Hope and Distabile's testimony; her trial lawyer's failure to object to DA Hugi's improprieties during his closing argument denied her effective assistance of counsel; and she was denied due process by being convicted of "offenses for which she is "actually innocent."<sup>5</sup> The petition also challenges her "consecutive life sentences for the same homicide in a case involving a single victim."<sup>5</sup>

Bornstein explained in his Memorandums of Law that Eklof's had not procedurally defaulted on her key claims concerning the

non-disclosed *Brady* evidence related to Hope and Distabile. He argued she couldn't have raised the claims in her state appeals because she didn't learn about the evidence concealed by the prosecution until after the Oregon Supreme Court affirmed her direct appeal and her PC had been denied. Consequently, applying the procedural default doctrine to Eklof's new evidence would reward the prosecution for concealing the impeachment and exculpatory evidence from her.

Bornstein also contended that since the prosecution's multiple *Brady* violations were deliberate, they "may be regarded as an admission that performance would injure the government's case; an admission, so to speak, of prejudice which might, particularly in close cases, tip the scales."<sup>6</sup> Thus DA Hugi's deliberate concealment of the *Brady* evidence from Eklof amounted to him cheating by putting his feet on the scales of justice to make up for his lack of evidence that she was involved in Salmu's murder.

The State's response to Eklof's habeas petition is due in the late spring of 2007.

Members of the prosecution team that framed Eklof cost the city of Springfield \$2 million in 1998 for concealing exculpatory evidence in the case of Christopher Boots and Eric Proctor. The men were released in 1994 after serving eight years in prison for allegedly murdering a convenience store clerk.

An old Chinese saying is, "The laws sometimes sleep, but never die." One hopes the truth, and justice, will awaken and prevail for Karlyn Eklof. She can be written at:

Karlyn Eklof 11054880  
CCCCF  
PO Box 9000  
Wilsonville, OR 97070

Eklof's outside contact is Erma Armstrong. Anyone wanting to contact Erma can email JusticeDenied and it will be forwarded to her. Put Erma Armstrong in the email Subject Line and send to, [contact@justicedenied.org](mailto:contact@justicedenied.org)

#### Endnotes:

1 Eklof filed a Memorandum to Suppress due to Sexual Harassment on February 23, 1995, based on Captain Smith's sexual activity. Springfield Police Chief DeForrest and Smith filed a response on February 25, 1995. Eklof believes the charges against her were motivated at least in part to destroy her credibility as a witness against Smith for the incident. Smith has since been promoted to Springfield's Chief of Police.  
2 *Eklof v. Hoefel*, Civ. No. 04-1141-HA (DC OR), Supplemental Memorandum in Support Of Second Amended Petition For Writ Of Habeas Corpus, 2-3, also, p. 17, fn. 6.

3 *Eklof v. Hoefel*, Civ. No. 04-1141-HA (DC OR), Supplemental Memorandum in Support Of Second Amended Petition For Writ Of Habeas Corpus, 3.

4 *Id.* at 3.

5 *Eklof v. Hoefel*, Civ. No. 04-1141-HA (DC OR), Second Amended Petition For Writ Of Habeas Corpus, 2-3.

6 Supplemental Memorandum in Support Of Second Amended Petition For Writ Of Habeas Corpus, *Supra* at 15-16.