

## Henry Myron Roberts – Eulogy For An Innocent Man

By Douglas Scott Arey

Sixty-three year old Henry (Hank) Myron Roberts proclamations of his innocence fell on deaf ears when he was tried and convicted of second-degree murder in 1993. He was sentenced by the Baltimore City Circuit Court to 50 years in prison. He died in December 1996 while imprisoned.

More than five years later, in April 2002, Robert Tomczewski pled guilty to committing the murder that Hank Roberts had been wrongly convicted of committing.

It was Hank's old cell buddy Art who put it together for me; connected the dots.

"Did you hear about Hank?" "No," I said.

"You know, the guy who's been on all the news. He was innocent! It was Henry Roberts!"

## Peter Rose Settles Lawsuit For \$1 Million

For three weeks after being raped in a Lodi, California alley in 1994, the 13-year-old victim told police she did not see her attacker's face. Her aunt knew 24-year-old Peter Rose and suggested to the police that he might be a suspect. The police assumed he was the perpetrator, and after being intensely pressured by police interrogators, the girl eventually named Rose as her attacker. Rose was convicted in 1995 based on the girl's testimony and sentenced to 27 years in prison.

In 2005 Rose was exonerated after ten years imprisonment, when the girl recanted her identification of him, and he was excluded by a DNA test of the rapist's semen on the girl's underwear.

Rose filed a claim under California's wrongful conviction compensation statute providing \$100 per day of imprisonment, and in 2006 he was paid \$328,000. (See, CA Awards Peter Rose \$328,000 For Ten Years Wrongful Imprisonment, *Justice:Denied*, Issue 30 Fall 2005, p. 8)

Rose also filed an \$8 million federal civil rights lawsuit in November 2005 that named multiple defendants. In January 2007 the claims against the suit's primary defendants were settled for \$1 million.

The city of Lodi, whose officers investigated

Henry Roberts? Hank? And then it all clicked in my mind. The Hankster?! Unbelievable!

I called him the Hankster because it rhymed with prankster, as he was always cutting up in spite of his dire circumstances. It also segued into hamster, and that's what I'd thought over the years as I watched him endlessly circling his wheel, always nipping at the heels of the criminal justice system in a desperate effort to get anyone to listen about the injustices of his case.

And then I smiled, though I couldn't believe he'd finally been vindicated more than five years too late.

When Governor Glendening changed correctional policies and removed lifers from work release, I was put in a dormitory, or "annex," at the Maryland Correctional Institution (MCI) in Hagerstown. It was in the annex that I lived with Hank and his friend Herbert (Herb) Webster, "Buckeroo" for short, the last few years of Hank's life as he sought a sympathetic ear about the travails that befell him.

the case, will pay \$625,000. San Joaquin County, which prosecuted Rose, will pay \$100,000. And the state of California, whose crime lab analyzed the evidence, will pay \$275,000.

Rose's lawyers will get 1/3 of the \$1 million. Rose will get 2/3 of the remaining \$666,666, and his three children will share 1/3. The money to Rose and his children will be paid out over a period of years.

Lodi's deputy city attorney, Janice Magdich, was very pleased with the settlement, commenting that Rose would have favorably impressed jurors, and he could have been awarded as much as \$18 million if he had taken his case to trial. So the city saved a possibly huge jury award, and attorney and witness fees that would have exceeded \$500,000.

After the settlement was announced, Rose's attorney Mark Merin said of Rose's conviction, "It was a conjunction of events. It's the little bit of evidence that gets spun to someone else and becomes more than what it is. ... you put all that together and it's a travesty." He also commented, "The thing that bothers me the most about this case is that he exhausted his appeals ... by happenstance there was a little bit of evidence left that could establish ... DNA that did not match him. But for that, he would not have been exonerated."

### Sources:

Lodi to pay \$625,000 to man wrongly convicted of rape, By Layla Bohm, *Lodi News-Sentinel*, January 9, 2007. Ex-Lodi man settles suit over 10-year rape term, *Stockton Record*, January 6, 2007.

Prior to his incarceration Hank lived in Armistead Gardens in Baltimore, next door to George and Rosa Webster, Herb's mom and step-dad. Herb lived with his parents for several years prior to Herb's arrest and incarceration.

So it was a great surprise to Herb when Hank got his own charge and was sent to prison. Probably the only comfort Hank had in his last years was the strange twist of fate that he ended up in MCI's annex with his friend Herb.

I loved it, as the Hankster was the life of the annex. He kept things going with his prickly personality; neither age nor size kept the bantamweight steelworker from biting his tongue for anyone, and if they tried anything it was guaranteed that he'd stir the pot in response. I love great American characters, and Hank filled the bill. He was lively and spry when he

Roberts cont. on page 5

## Timothy Howard Dies After \$2.5 Million Award

In April 2003 Timothy Howard and Gary James were released from 26 years of wrongful imprisonment for a murder committed during a 1976 Columbus, Ohio bank robbery. The men's death sentences were commuted to life in prison when Ohio's death penalty law was declared unconstitutional in 1978.



Timothy Howard

After his release Howard sued for compensation under Ohio's wrongful conviction compensation statute that requires a civil finding that a claimant is "actually innocent." In March 2006 a jury found Howard was "actually innocent." Four months later, in July, the State of Ohio agreed to pay him \$2.5 million — \$1.4 million immediately with one-third going to his lawyers, and the remaining \$1.1 million was to be paid to Howard in monthly installments over thirty years.

Howard died on March 19, 2007, several days after suffering a heart attack.

In May 2007 Ohio agreed to settle Gary James' compensation suit for \$1.5 million — with \$700,000 paid immediately and \$500,000 paid over 15 years. James' lawyers were to be paid the remaining \$300,000. James was awarded less than Howard because his legal fees were less and his lost wages were deemed to be less.

Sources: Man Wrongly Imprisoned for 26 years dies, AP story, *Coshocton Tribune* (Coshocton, OH), March 20, 2007. Former prisoner gets \$1.5 million, AP story, *The Plain Dealer* (Cleveland, OH), May 19, 2007.

## Roberts cont. from page 4

was up, and when he got depressed about his case he'd usually sleep it off. As Herb noted, "Hank never lost hope, he always believed that someone would eventually listen to him."

It was that ability to find hope in a hopeless place and situation that made me admire Hank, and be thankful for his presence as a blessing, a reminder of normal people from the street. As Herb said, "Hank was a character. Everyone liked him in spite of his gruff exterior, and he liked everyone he met unless they crossed him. He cursed like a sailor, but just the way he did it made it seem funny."

And that was one of the joys of life in the annex when lifers lost work release; at least I was put in a place where Hank and Herb were cut-ups, along with Sergeant "Judy" Verdier and Officer "Bernie" Decker, as they too were cut-ups. The four were masters at analyzing the latest absurdities of the criminal justice and corrections systems, and all bureaucracies in general; when they got rolling they could easily keep half the annex in stitches for an hour at a time.

"Hank was a loving person, I thought," said Sergeant Verdier. "He would always help someone. He had an adorable personality, but you couldn't print everything he'd say. And his bunk was right near the officer's desk, so when I'd bring an off-color joke he'd laugh and say, 'Ah, you're crazy, get out of here!'"

Herb remembered that "Hank had a small Steelworkers union pension, and everyone he met in here he tried to help out as best he could. If a guy didn't have anything Hank would try to get him something he needed and didn't have, and never asked for anything in return."

That's how he was – a little "banty rooster" with a huge heart in spite of everything.

And when visiting hours came, Herb and Hank would be called out together, since Herb's mom Rosa and step-dad George, and Hank's best friend Gary Garland, would travel from Baltimore together, and come in the visiting room together to assure they could all sit together. Every one of them believed Hank was innocent, and they did all they could to keep his spirits up and assure him that no stone would be unturned in an effort to get him justice.

When I told Herb I was writing about Hank, he said I must write: "How many times have you heard guys say, 'I was framed. I'm innocent. It was a set-up, blah, blah, blah!' But here's a real case!"

"Hank always used to say the police were

wrong; there was no way that gun washed down that creek! And Gary did everything in his power, he went out of his way, to try to prove Hank's innocence. Gary hired a photographer to take pictures of little Herring Run Creek behind Hank's house when it was raining, and then when it was nice out, to show the difference in the water level, and that the current wasn't strong enough to wash the gun a half-mile down the stream."

"He also had Gary get all the weather reports for every day that month. Hell, little Herring Run is only about six inches deep after a rainstorm, and only two or three inches before a rainstorm! The 'Herring Run trickle' would be more like it."

"Look, I have a picture of Hank's back yard. On the other side of this manhole in the picture, about a foot away, is the creek where Hank allegedly threw the gun after his nephew and him got shot. You can see there is nothing there to throw a gun into – it's more a little bunch of trees than a creek and on the other side is a nothing but a little bunch of houses." A gun thrown into Herring Run Creek wouldn't wash two inches downstream – much less half-a-mile.

Herb also said, "Channel 13 or 11 – I can't remember which one, but one of the local TV stations, did a piece on that creek when some fuel oil washed down stream. There is no kind of aquatic life that lives down there, it wouldn't stand a chance, and I guess that's why Hank wrote the Baltimore *Sun* about the boys who said they were 'hunting for frogs' when they found the gun."

"Gary also devoted a lot of hours to research, contacting everyone who could possibly help Hank prove his case. Gary really tried to help him. Gary was a devoted friend who went out of his way to help Hank in his quest for justice. But everyone turned a deaf ear."

"And when I left him in the annex and moved to the north dorm, I would not see him for weeks and weeks and then the first thing he would talk about would be his case when I did see him, not even a 'Hi, how are you doing?' The case really upset him."

Herb continued, "I am just so glad that Hank has been exonerated of all the charges, and so sad that he didn't live long enough to hear those words for himself. It's just a damn shame that he died all alone, knowing he was innocent, and had to spend the last years of his life miserable in prison." "I know he doesn't have a tombstone, but just a little grave marker which is covered over — they had it on TV — and I think the State should get him a real headstone."

"That's the least they could do," Herb lamented. "He lost everything over this, he had to sell his car and his house; his Social Security was stopped; he lost everything he worked all his life to get, and he spent all the proceeds trying to prove his innocence."

Sergeant Verdier said, "To see Hank struggle – what a struggle trying to defend himself – I don't know how to put it in words. Here's a man who wasn't guilty so you can just imagine the hurt — all the terrible things that had to go through his mind. And what this shows is the pain of an innocent person when victimized by the system."

"He'd say, 'Dammit, I'm not guilty.' And he wanted the truth to come out but it didn't – what a shame – bless his soul. It's just a real sad case."

Yet the saddest part of Hank's case is the media coverage accompanying the news of his innocence. When Hank's not around to say anything about what occurred, the Baltimore City State's Attorney said: "We feel relieved that the case has been brought to justice and that justice was served. This shows that the system can come back and do what needs to be done."

Excuse me? Did the system bring Hank Roberts back to life and restore his lost years, and lost home and car and Social Security?

Excuse me? Hank had no prior record, and for truthfully protesting his innocence he got his sentence increased to 50 years in prison for a murder he didn't commit! As Baltimore *Sun* columnist Roderick said: "The way I measure things, a 50 year sentence for a 63-year-old-man amounts to capital punishment . . ."

Excuse me? Robert Tomczewski, the 29-year-old murderer, had a lengthy prior record of violence for crimes that included armed robbery and assault. Yet he was sentenced to only 10 years in prison after admitting he committed the crime, when the innocent 63-year-old Hank who had no criminal record was sentenced to 50 years for protesting his innocence!

Excuse me? Tomczewski was not charged for many other crimes such as his burglary of Hank's home a year before the murder when he stole Hank's money, gold watch and gun. That was the same gun Tomczewski later used to seriously wound Hank and kill Hank's nephew, and that was found in the creek where Tomczewski dumped it a half-a-mile downstream from Hank's home.

Excuse me? Justice served? Ha! I'd suggest this is just another case where the legal

**Roberts cont. on page 33**

## Roberts cont. from page 5

system punishes the honest and innocent and rewards those who are guilty and manipulate the process!

Excuse me? The State's Attorney said ... our prosecutors went to prison to get him out." As Herb observed, "I couldn't believe that! The prosecutor said they came looking to find Hank and release him only to learn he had passed away! I'm sure they came to find and release Hank the same way they came to find and release Michael Austin when they suddenly discovered he was innocent!"

Excuse me? Hank died in prison, but the State doesn't even know what year it was, much less how he passed? Baltimore *Sun* stories echoed that fuzziness on when Hank died. On April 9, 2002, the *Sun* headlined their article, "Inmate who died in 1995 was innocent." On April 10 the *Sun* reported, "... in May 1997, Roberts died at age 68 ..." And on April 11 the *Sun* reported Hank "... collapsed outside his cell ... and died a day later, on December 22, 1996"! Thus on three consecutive days the *Sun* reported that Hank died in 1995, then 1997, and finally got it right that he died in 1996.

The most unsettling aspect of Hank's case is that if he had been a little less ornery he may have lived to see his vindication.

"You know Hank believed everything people told him," said Herb. "They told him Jessup had a better program for seniors, that they weren't locked up all the time. When he first got into processing at Jessup he was locked down almost all day. They went in one morning to check on him and found him deceased. And it happened only about two weeks after he left here, and then he laid in the morgue longer than he was in Jessup, because they had a hard time locating his sister."

Hank had heart problems after Tomczewski shot him in the chest, but Hank was in an annex with just a score of prisoners. We looked out for him, and Sergeant Verdier and Officer Decker also looked out for him. There was something special about Hank; his guardian angels seemed to tell us we'd better keep helping him, and Hank knew it.

And while Hank listened to others, once he had made up his mind about something he was more stubborn than an old mule. He knew about the POPS program – Project for Older Prisoners – from *Washington Post* and *Wall Street Journal* articles outlining Professor Turley's program at George Washington University School of Law. POPS enabled

students to conduct exhaustive and detailed investigations into an older prisoner's background, criminal history and parole plans to evaluate whether they warranted consideration as a low risk for violence or recidivism, and thus might merit release. Ever hopeful, Hank thought the POPS program just might be able to do something for him.

Hank heard POPS was operating from the "Old Man's Dorm" at the House of Correction in Jessup, where about 100 prisoners 60 years of age or older have their own space. He wanted some freedom. We fussed with Hank and pointed out that as the only old-timer in the annex we could get him prompt medical attention every time he was feeling ill. Also, several times Warden Waters had gone out of his way to see to it that Hank got his prescriptions renewed when the medical contractors tried to skimp on costs.

We begged Hank not to transfer, pointing out that as just one of a hundred old-timers in Jessup's "Old Man's Dorm" his voice for care and attention would be overwhelmed by others, and the officers would probably be too burdened to look out for him. They'd have their own concerns and ignore Hank.

But Hank had faith, said it was what he needed to do, and impatiently waited for months until classification got him transferred to Jessup. At Jessup he would also be closer to Gary Garland, so Gary wouldn't have to travel so far to see him.

Hank never even made it into the vaunted "Old Man's Dorm" much less into the POPS program. It didn't seem like ten days after his transfer when we got word by telephone, letters and messages from friends and family members, as well as prisoners at Jessup, that Hank had trouble getting his medication renewed, and he had died.

Adding insult to injury, Maryland's criminal justice system has never acknowledged its last "oversight" in the case of Henry Myron Roberts. I looked in every paper for his obituary, but never saw it. I guess run-of-the-mill criminals who die in prison don't deserve one.

But now we know the Hankster wasn't run-of-the-mill, now we know he was innocent. Perhaps by printing this eulogy and tribute to his spirit, and an anatomy of the body of his case, we can finally say, "Rest in Peace, Hank."

Reprinted with permission of the author. Originally published in *MCIH Weekly Inside Report*, No. 2-27 Maryland Correctional Institution, Hagerstown, Md.

## Fugitive Endnotes cont. from p. 26

though the government of Afghanistan did not commit any act of war against the United States.

6 See e.g., *The New Individualists: The Generation After the Organization Man*, Paul Leinberger and Bruce Tucker (HarperCollins 1991), at pp. 16-18. Also see, *Managing Globalization in the Age of Interdependence*, George C. Lodge (Jossey-Bass 1995). See also Mr. Lodge's previous book, *The New American Ideology*, George C. Lodge (Alfred A. Knopf 1975). Written less than a decade after *The Fugitive's* last episode, it was apparent to Lodge that the men, women and children who accept the sovereign authority of an organization – such as the government – are considered to be one of its appendages.

7 Yale psychology professor Stanley Milgram's obedience experiments first conducted in 1961 demonstrated that a significant segment of society at that time in the United States was unduly obedient to authority. However, his experiment also revealed a solid one-third of the participants drew a clear line in the sand and refused to obey an instruction when they thought their action would cause harm to an innocent person. See, *Obedience To Authority*, Stanley Milgram, 1975, New York, Harper & Row. It is people of the ilk of those conscientious people that either overtly would have helped, or at the very least would have done nothing to harm Kimble.

## Peirce Endnotes cont. from p. 22

4 "When Sir Ian heard who the lawyer was, it is likely he let out a long, hard sigh," By Andrew Alderson and Nina Goswami Nina, *Telegraph* (UK), August 21, 2005.

5 In the Name of the Father, By Hans Sherrer, 2 *Justice:Denied* 4, [http://forejustice.org/wc/in\\_the\\_name\\_of\\_the\\_father\\_JD\\_v2\\_n4.htm](http://forejustice.org/wc/in_the_name_of_the_father_JD_v2_n4.htm).

6 Guildford Four, *Wikipedia*, [http://en.wikipedia.org/wiki/Guildford\\_Four](http://en.wikipedia.org/wiki/Guildford_Four)  
7 British P. M. Tony Blair Apologizes To Guildford Four and Maguire Seven, *Justice:Denied*, Issue 31, Winter 2006, p. 45.

8 Gareth Peirce, *Wikipedia*, [http://en.wikipedia.org/wiki/Gareth\\_Peirce](http://en.wikipedia.org/wiki/Gareth_Peirce)

9 "When Sir Ian heard who the lawyer was," *supra*.

10 The CCRC can refer a case to the Court of Appeal when it finds there is a possibility to overturn a conviction based on:

- An argument not raised in the court proceedings.

- Evidence was not presented to the court; or,

- Other exceptional circumstances were present.

As of February 28, 2007, the conviction was quashed in 218 of 310 cases referred by the CCRC to the CoFA. (70%). *CCRC website*, [http://www.ccr.gov.uk/cases/case\\_44.htm](http://www.ccr.gov.uk/cases/case_44.htm). The U.K. has about 20% of the U.S.' population, so the 218 exonerations due to the CCRC would be the equivalent of about 1,100 in the U.S.

11 Profile: Gareth Peirce, By Andrew Walker, *BBC News*, March 10, 2004.

12 "When Sir Ian heard who the lawyer was," *supra*.

13 *Id.*

14 Profile: Gareth Peirce, *Supra*.

## Hirschberg Endnotes cont. from p. 28

5 *Id.*, at 195-99. (See also, "Pathology of Criminal Justice," *supra* at 546-8.)

6 *Id.*, at 199.

7 *Id.*, at 203.

8 *Id.*, at 200. The articles were written from 1927 to 1935.

9 *Id.* at 262. Hans Frank was one of the Nazi Party's earliest members, having joined in 1919, and he knew Hitler intimately. He was captured after WW II ended, and he was one of the defendants in the Trial of the Major War Criminals Before the International Military Tribunal in Nuremberg. During his defense he testified, "A thousand years will pass and the guilt of Germany will still not have been erased." Frank was found guilty of war crimes and crimes against humanity, and sentenced to death. He was executed by hanging on October 16, 1946.

10 *Id.* at 256-263 (Events related to the trial); Hitler's quote at 262.

11 *Id.* at 264.

12 The Justice Institute is attempting to have Hirschberg's book translated into English.

13 Lawyer's courtroom battles with Nazi party, *Greenwich Time* (Greenwich, CT), June 18, 2006.

### Visit the Innocents Database

[www.forejustice.org/search\\_idb.htm](http://www.forejustice.org/search_idb.htm)

Information about more than 2,100 wrongly convicted people in 52 countries

### Justice:Denied's Bookshop

[www.justicedenied.org/books.html](http://www.justicedenied.org/books.html)

More than 60 books available related to different aspects of wrongful convictions.