

Harold David Buntin's quarter-century saga is one of the most unusual wrongful conviction cases in American legal history ... and it isn't over yet.

Buntin was 15 in 1984 when he was identified as the lone person who raped and robbed a 22-year-old dry cleaning clerk in Indianapolis, Indiana. The victim, who has impaired vision and hearing, first identified a different suspect before settling on Buntin as her assailant. Buntin protested his innocence, claiming that on the day of the assault he was in Texas, more than 800 miles from Indianapolis. After being charged with the rape Buntin was released on bail.

During Buntin's 1986 trial prosecutors introduced evidence that he had the same blood type as the rapist. Fearful of being convicted, the 17-year-old Buntin fled. The jury convicted him *in absentia* of robbery and rape and he was sentenced to 50 years in prison.

Eight years later Buntin was arrested in Florida on an unrelated charge. The police discovered he was a fugitive, and the 25-year-old was extradited to Indiana to serve his 50-year prison sentence. Buntin's conviction was affirmed two years later, in 1996.

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examination of the record and our own firsthand reporting, we firmly believe that this case represents a miscarriage of justice and appeal to you to set this man free."

As of mid-July 2008 the clemency petition is pending. You can write to Lathieral Boyd at: Lathieral Boyd B-10106  
Pontiac Correctional Center  
P.O. Box 99  
Pontiac, IL 61764

Boyd's outside contact is:  
Nicholas A. Kurk  
Jenner & Block LLP  
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About the author. John Albert has followed Lathieral Boyd's case for more than six years. He publishes cases of injustice on his website, <http://crimeandpunishment.org>

### Endnote:

1 The shortest route is 19.41 miles between Angela Boyd's apartment at 4820 West Ford City Drive in Chicago, and the shooting scene at 3500 North Clark Street in Chicago, and it can be expected to take 43 minutes to travel between them driving the speed limit according to Yahoo.com Maps.

# Convicted In Absentia, Cleared By DNA Testing, Harold Buntin Spent Two Extra Years In Prison Because of "Lazy Judge"

By Douglas Scott Arey

## Buntin files post-conviction petition

In 1998 Buntin filed a Petition for Post-Conviction Relief based on the prospective testing of evidence by DNA techniques unavailable at the time of his trial. While Buntin's petition was pending the lawyer hired by his mother and two sisters was successful in obtaining a court order for DNA testing of a towel that was believed to have the rapist semen on it. Unfortunately for him, the September 1999 test was only able to identify a female's DNA on the towel.

In December 1999 Buntin fired his lawyer and hired Indianapolis attorney Carolyn Rader. Buntin's PCR Petition remained on the back-burner for years until the rape kit – the contents of which had never been tested – was found in the police evidence room. Rader filed a motion for DNA testing of a vaginal swab and a swab of the rapist's skin cells recovered from the victim. The motion was granted, and Buntin's mother and sisters paid for the tests that cost more than \$4,000. On June 30, 2004 the testing of both swabs resulted in identification of the rapist's DNA profile – and Buntin was excluded as being that man.

## Buntin seeks hearing after DNA clears him

Based on the exclusionary test results Buntin was able to get a hearing scheduled to consider his PCR Petition that had been filed in 1998. The hearing was rescheduled nine times before finally being held on March 16, 2005. Although Buntin's case was assigned to Marion County Superior Court Judge Grant W. Hawkins, Court Commissioner Nancy L. Broyles presided over the hearing. A month after the hearing she took his case under advisement.

Buntin then waited, and waited, and waited for a decision. He repeatedly wrote the court about a decision without receiving a response. At his wits end, in January 2007 Buntin filed a "lazy judge" complaint with the Indiana Commission on Judicial Qualifications (Commission), "alleging that his post-conviction case had been pending for nearly twenty-two months." He also com-

plained that "Rader had not communicated with him since 2005."

As surreal as Buntin's two-decade long ordeal had been to that point, it then entered *The Twilight Zone*.

## Indiana's Judicial Commission investigates Buntin's case

The Commission opened an investigation into Buntin's complaint. In February 2007 an investigator contacted Judge Hawkins. After conducting a search of court files, Hawkins reported to the Commission that Buntin's case file could not be located.

Then about March 7, 2007 Buntin's file appeared, allegedly after being found by an unidentified court employee. The next day Commissioner Broyles issued an Order that was backdated to May 20, 2005, granting Buntin's petition for post-conviction relief.

Since the delay in issuing a ruling was under investigation by the Commission, on March 8 Judge Hawkins and Commissioner Broyles also filed a "Notice Explaining Delayed Ruling." They wrote that on May 20, 2005 Broyles granted Buntin's petition, but that a staff member or clerk's employee failed to process the Order as a post-it note on it instructed, and instead closed the file and placed it in storage (archives). So the Order was not entered into the record and copies were not provided to the prosecution and Buntin's lawyer. They also wrote the file was retrieved from storage because of the inquiry by the Commission, and that was when the error was discovered.

Even after issuing the Order on March 8, and knowing they were under investigation for delays in Buntin's case, neither Hawkins nor Broyles made an effort to promptly have the Order entered into the Court's docket, or to schedule a hearing to consider Buntin's release from prison on bail pending his retrial. So even though according to Hawkins and Broyles his petition to overturn his convictions had been granted almost two years previously, Buntin continued to languish in prison. Hawkins and Broyles did nothing in spite of being regularly reminded of Buntin's case by phone calls from his family.

## Judicial Commission prods Judge Hawkins into releasing Buntin

On April 12, 2007 the Commission contacted Hawkins and Broyles inquiring why there had been no progress in Buntin's case, and urged that they take immediate action. That same day Hawkins scheduled a release hear-

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ing for April 20. During that hearing the prosecution dropped the charges and Hawkins ordered Buntin's immediate release.

Unlike most exonerations, Buntin was quietly released after 13 years of wrongful imprisonment without any news media present. Several days later, when word leaked out about his release, he told reporters "I'm going to move on and take care of my business. But I feel like somebody has to answer for that. I never should have been in jail – and I spent two more years there after they knew I was innocent." He also said, "It's going to take awhile to re-adjust and reconnect with my family. ... [R]ight now I'm just trying to take life a day at a time and enjoy every moment." His sister, Kim Buntin of Indianapolis, said, "I'm happy he's finally home, but I'm mad he had to go through all of this to prove his innocence."

### Buntin sues attorney and Superior Court

Buntin thought one person needing to answer for what happened to him was his former attorney Rader. In August 2007 he filed a legal malpractice suit against her for the way she handled his case, particularly after Broyles took it under advisement in April 2005.

Then in January 2008 Buntin filed a wrongful detention lawsuit in Marion County Superior Court that named Marion County Superior Court Five as a defendant. The suit also named the court clerk, Marion County, and the State of Indiana as defendants. To avoid a conflict of interest, on February 26, 2008 Indiana Supreme Court Chief Justice Randall Shepard appointed Daniel Pflęging as a special judge to preside over the lawsuit. Indianapolis attorney Michael Sutherland represents Buntin in both lawsuits.

### Judicial Commission files charges against Hawkins and Broyles

Buntin's saga took another twist on April 9, 2008, when the Commission filed a Statement of Charges in the Indiana Supreme Court alleging violations of Indiana's Code of Judicial Conduct by Judge Hawkins and Commissioner Broyles. The 11-count complaint against Hawkins, and the 10-count complaint against Broyles are based on the alleged "delay and dereliction of their duties as the judicial officers responsible for Harold D. Buntin's post-conviction case."

The Commission's complaints detail that the handling of Buntin's case was even more bizarre than was known at the time of his release. The Commission discovered during

its investigation that Buntin's case file was not retrieved from storage, it had never been "archived" to storage, and no court employee could be identified as the person who found the file – or where. It was also learned that the court's file tracking system contains no entries for Buntin's case prior to March 2007 – so its whereabouts before the Commission began its investigation is untraceable. Buntin's letters to Broyles are also missing from the case file, although it is known from other court records that at least five letters were received.

The Commission's investigation also discovered there was no May 20, 2005 order in the file, there were no computer diskette with the order on it in the file as Hawkins claimed, and an examination of Broyles work computer discovered that although it had files on it predating May 2005, there was no evidence that she had prepared Buntin's Order on May 20, 2005, or any day prior to March 8, 2007 – the day it was issued.

When confronted with these facts, Hawkins and Broyles represented to the Commission that they found the diskette with the May 2005 Order in the file, but they realized they had to make corrections to the Order. They claimed to have incorporated those corrections into the Order issued on March 8, 2007, but which they backdated to May 20, 2005. When pressed by the Commission for the computer diskette, they said they didn't know what happened to it after they printed the backdated Order, and they couldn't describe the corrections they made to the "original" Order.

The Commission also discovered that Broyles' post-it note with instructions for processing the order did not indicate the year the note was written – only the day and month are legible. When confronted with the Commission's finding Broyles admitted she might have been off by a year: she could have granted Buntin's petition in May 2006 and not 2005.

Hawkins and Broyles misrepresentations to the Commission resulted in the Statement of Charges also alleging that their lack of truthfulness constituted "conduct prejudicial to the administrations of justice."

Although other cases handled by Hawkins and Broyles may not have all the drama of Buntin's case, they routinely put off ruling on a PCR petition. The Commission's complaints against them allege that they engaged in a pattern of delaying the rulings in many PCR petitions, citing seven other cases between 2004 and 2006 in which six to twenty-eight months elapsed from the time Broyles took the case under advisement to when an order was issued.

### Commissioner Broyles issuance of orders could have far-reaching consequences

One of the charges against Hawkins (Count II) and Broyles (Count III) has potentially far reaching consequences. The Commission alleges it is a violation of Indiana law for Commissioner Broyles – a non-judge – to have engaged in "issuing purportedly final Orders in post-conviction cases without obtaining the approval and signature of the presiding judge." The Commission's charge suggests that any Indiana defendant whose post-conviction Order was not approved and signed by the presiding judge could have a legal basis to challenge the legality of not just the Order, but the process underlying issuance of the Order.

### Current Situation

So a quarter-century after he was falsely accused of raping the clerk, Buntin awaits the disposition of his two lawsuits, and the outcome of the Commission's charges against the two people whose inattention kept him prison for two extra years. Buntin is at least the fifth person convicted in Indiana among over 200 nationwide, who have been exonerated by DNA testing since 1989.

#### Sources:

"I never should have been in jail," *Indianapolis Star*, April 24, 2007.

Cleared of rape, Indy man sues over delay in prison release, *Indianapolis Star*, January 16, 2008.

*Harold David Buntin v. Marion County Superior 5, Crim. Div., et al*, Case 49500-0801-SJ-49, Indiana Supreme Court, February 26, 2008.

*In The Matter of The Honorable Grant W. Hawkins Judge Of The Marion Superior Court*, No. 49S00-0804-JD-157, In the Supreme Court of Indiana, April 9, 2008.

*In The Matter of The Honorable Nancy L. Broyles Commissioner Of The Marion Superior Court*, No. 49S00-0804-JD-156, In the Supreme Court of Indiana, April 9, 2008.

### Thomas Arthur's Execution Stayed By "Killer's" Confession

Three days before Thomas Arthur's scheduled July 31, 2008 execution for a 1982 Alabama murder, Bobby Ray Gilbert confessed in an affidavit that he committed the crime as a minor. Imprisoned for life for another murder, Gilbert only began telling people he committed the murder after the U.S. Supreme Court ruled that a person couldn't be executed for a crime committed as a minor. Based on the new evidence of Arthur's actual innocence his lawyers filed motions to stay his execution and for an order to DNA test the evidence to prove Gilbert's presence at the crime scene. The Alabama Supreme Court voted 5 to 4 to grant an indefinite stay, but it did not immediately rule on the motion for DNA testing.

See previous *JD* article: Alabama Has Opposed Testing Evidence In Thomas Arthur's Case For 16 Years, *Justice:Denied*, Issue 37, Summer 2007.