

# **TO LIVE AND DIE ON DEATH ROW**

**C. MICHAEL LAMBRIX**

**Editor- Karen Mutton**

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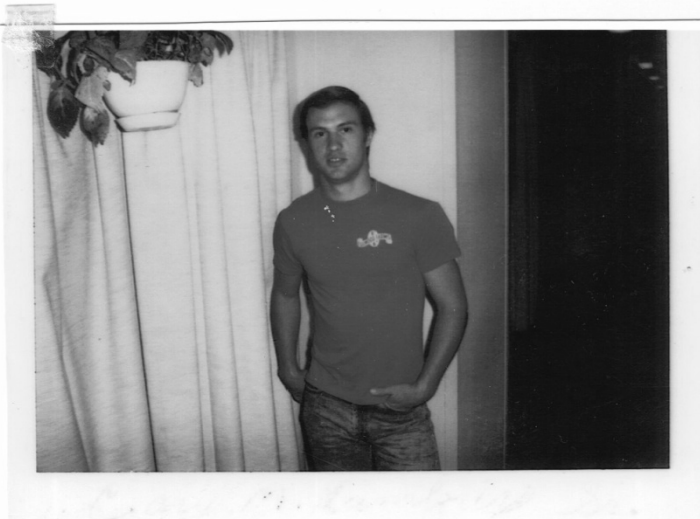
**Cover design- Cassandra Mutton**

## DEDICATION

**“With immeasurable gratitude to those who stood by my side and supported me even when my own strength failed, not the least of which are my forever friends Karen M, Jan, Geesje (‘Gigi’), Kimy, Mike H and Moss- and many others who have shared the journey with me as only a true friend could.**

*In addition to the loyal friendship and generous support the above have provided, I wish to extend a special thanks to those who have given so freely of their time to assist me in having a voice through the websites and blogs they maintain for me. Without the generous support of Kimy, Geesje and Karen, my voice and my cause, would never be heard. So thank you to each of them.”*

### **C. Michael Lambrix- March 2010**



Michael Lambrix in early 1983- possibly the last photo taken of him as a free man.

## **EDITOR'S PREFACE**

In June 2010 Michael Lambrix will commemorate the dubious milestone of 10,000 days on death row for a crime he did not commit.

The case Lambrix v. Florida highlights the appalling injustice which has stalked Michael Lambrix for almost three decades. Not only was he convicted of a double murder he did not commit, but his trials and subsequent appeals have been plagued by overworked or incompetent lawyers who fail to file appeals on time, biased judges, lying witnesses and a corrupt judicial system which fails to censure its attorneys and prosecutors when they engage in dirty tactics and misconduct.

I have known Michael Lambrix since 2000 when we first corresponded as pen-pals. Over the years I have visited him twice and studied all the transcripts of his trial and appeals. Although I have no experience in legal matters, it is glaringly obvious to me that his case is a classical example of a wrongful conviction.

Through his many letters over the years, I have come to appreciate Michael's intelligence, kindness and compassion. His wonderful letters and essays have provided an insight into the terrible world of death row in Florida and the inconceivable injustice he faces on a daily basis. These injustices include the threat of execution, an uncompassionate society and a complex legal system which would baffle the greatest legal minds. For years I have watched him cope with the rejection of appeal after appeal, and yet he still retains hope and a wonderful sense of humour.

Michael Lambrix is a talented writer who has written his own story, from childhood to his life on death row. In the interests of uniformity, some of his articles have been altered from the 3<sup>rd</sup> person to the 1<sup>st</sup> person, but others are left the way he wrote them. He has also written at length about his appeals and the legal system, including lawyers, prosecutors, investigators and

judges involved in his case. The opinions expressed are his own and do not necessarily reflect the outlook of myself, his friends, family or his lawyers. This book also contains a few newspaper and other articles written by journalists about his case and a section on wrongful convictions in Florida.

With his latest appeal recently rejected by the Florida Supreme Court in April 2010, it becomes even more imperative that Michael's story should be told and his unique insights shared with others. Hopefully some people will be touched enough to offer support, including lawyers and investigators willing to provide pro bono legal assistance. He can be reached at this address:

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Devoted friends also host websites for his writings such as:

[www.southerninjustice.com](http://www.southerninjustice.com) which has all trial transcripts, appeals etc/

[www.doinglifeondeathrow.com](http://www.doinglifeondeathrow.com)

[www.deathrowjournals.blogspot.com](http://www.deathrowjournals.blogspot.com)

Karen Mutton, May 2010

## **FOREWORD BY DR JAN ARRIENS, FOUNDER OF LIFELINES**

I first began corresponding with Mike Lambrix in 1991. I was in the process of putting together a book entitled *Welcome to Hell* consisting largely of excerpts from letters of prisoners on death row to people in the UK. I also wanted to include a number of essays I had come across, including one by Mike. I wrote to him for his permission and, introducing myself as the founder of the LifeLines correspondence organisation set up in 1988, asked if he would like a penpal.

He politely said he would not. We have been corresponding ever since.

At that stage, Mike had been on death row just eight years. Now, it is 25 years: a quarter of a century under sentence of death for a crime which he has resolutely maintained he did not commit. Over the years, I have read many trial transcripts and appeal briefs and, like his lawyers, can only conclude that he is not guilty as charged. Many elements of the trial and the evidence, as well as subsequent events, provide the gravest grounds for concern that his is a miscarriage of justice. Mike now enters a further round of appeals with the Florida Supreme Court, with every option open: exoneration, a retrial or, God forbid, execution.

I first began writing to a prisoner on death row in Mississippi, Sam Johnson, in 1987. In 1992 – the year after I began corresponding with Mike – I attended a resentencing trial for Sam in Vicksburg. This meant that his guilt stood, but that the jury was asked to reconsider whether the death penalty had been appropriate.

The most overwhelming impression I came away with from that trial was an unexpected one. The first three days were spent in jury selection. I was close to the defence team, and watched this

process with mounting amazement. In the end, after much manoeuvring, the 12 persons good and true were selected.

What I had not bargained for was the impact that seeing them file into the court room for the first time would have on me. By this time I had got to know Sam well and to respect him. In our letters we had established an extraordinary rapport. As with Mike, I was convinced – and the resentencing trial provided the final proof – that Sam was not the guilty party in the affray that had left a policeman dead. Here, though, were 12 ordinary men and women who were now being asked to weigh the life of my friend in the balance. I felt overwhelmed. In an instant, I knew that it was deeply and fundamentally unfair for society to ask fellow citizens to take such a momentous decision.

Inevitably, only some of the facts came to light, and often these were interpreted differently by the prosecution and defense teams and their witnesses. All the while, my soul was crying out unheard, “But Sam’s life is at stake!”

Now, I find myself going through the same thing with Mike. The moment of decision is approaching. On the basis of a necessarily narrow view of the full picture, a small number of human beings – in this case, a State Supreme Court bench – will decide my friend’s fate.

What they won’t know is the Mike Lambrix who has sent me often lengthy, meticulously crafted letters every three to four weeks for the last 17 years – perhaps some 250 letters in all, totalling the best part of a thousand closely written pages. Astute and caring, open, humorous, wise and perceptive, the letters form a major opus touching on a thousand and one subjects: his parents and family, his early upbringing, the circumstances of the crime, his legal proceedings, religion, politics, prison conditions, the cockroaches in his cell, the State of contemporary US society and quantum physics.

Here is a highly intelligent, well-read man. When I met him for the first time, he asked for my views on string theory. I professed

ignorance. In mock dismay, he said, “I’m really disappointed, Jan. I thought you would be up-to-date on that kind of thing.”

Where he got his information from, I’m not quite sure but I made my business to find out more about string theory and began reading widely in popular science. For that I shall always be grateful to him! Another subject we have discussed at length, both in our letters and on the three occasions on which we have met, has been religion. In 1989, Mike came perilously close to being executed when an appeal was not properly lodged. On the morning of the scheduled execution, Mike had a vision of light that changed his life. It was the first thing he wanted to talk about when we met for the first time. Here was a subject on which I was rather more conversant, as my path to Quakerism had involved extensive reading in mysticism, especially the medieval Christian mystics. It was instantly clear to me that this experience had all the hallmarks of a classical mystical experience: one of which is that it changes the life of the percipient forever. And so it has with Mike. He has touched a depth of experience vouchsafed to very few of us, and the deep inner knowing beyond words has sustained him through a hellish existence few human beings could survive with their sanity intact.

If, as I hope and believe, Mike will eventually be exonerated and released, he will have served longer under sentence of death as an innocent man than anyone in US history and, in all probability, all human history. It is a staggering prospect.

During his long years of incarceration, I have seen Mike display real courage. There was a time when, peeping underneath his cell door, he was able to see an inmate being severely beaten up in the corridor. He spoke out. He himself was beaten up. He sued the prison, and won. There are not many people who would have put principle above keeping their heads down.

One of the most abiding memories I have of Mike concerns the time I went to visit him together with his mother, stepfather and 22-year-old daughter Jennifer. Mike and his former wife had

become estranged and he had not seen Jennifer in over 20 years. They had met again for the first time just two weeks before my visit.

Jennifer suffered from problems at birth that left her with learning and social difficulties. She combines a delightful disposition with an inability to concentrate and follow a conversation. I wondered beforehand how Mike would cope with this situation. Here he was, locked away in virtual solitary confinement with virtually no opportunity to practise any form of social skills. Now, unexpectedly, someone very important and dear to him had come back into his life, but establishing contact with her was not straightforward. I did my best to keep the conversation going as we were waiting to go in, but found it very difficult. How would Mike fare?

The visiting conditions in Florida are good. There are open, metal picnic tables at which small groups can sit and people are able to move about to go to the vending machines. We sat at one of these tables and I marvelled at Mike's poise. Effortlessly, he took charge of the situation and began laughing and joking with Jennifer. He drew everyone into the conversation, never neglecting her. All this from one of society's discards meant to be lacking all humanity.

And then at one point Mike got to his feet and took Jennifer by the arm. "I am," he said, "going to introduce my beautiful daughter to all the men." There would have been around 20 other prisoners with their visitors in the room, and Mike promenaded Jennifer up and down in between the steel tables. With great dignity, each of the men got to his feet and shook Jennifer by the hand. Of course, this kind of fraternisation was not allowed but, to their undying credit, the male and female guard sitting at the front suddenly had something that required their earnest attention and looked the other way.

I can think of few other moments in my life when I have seen humanity more at its best.



This is the man the state would kill.

Karen Mutton has been a staunch friend to Mike over the years. I am glad she is making it possible for his story to be heard.

Dr J. Arriens, 'Lifelines' December 2008 (UK)

## PROLOGUE

On February 5, 1983 four people, Aleisha Bryant, her date Lawrence Lamberson, (a.k.a Clarence Moore) Cary Michael Lambrix (Mike) and his girlfriend Frances Smith met by chance at a local bar in La Belle, Florida, and decided to party into the early hours of the morning at the trailer rented by Lambrix. Within a few hours a horrible scenario had unfolded. Bryant and Lamberson were both dead outside the trailer and Lambrix appeared with blood stained clothes. With Smith, he left the trailer in Lamberson's car. About a week later he was arrested and tried for capital murder, but a hung jury determined the necessity of a new trial. In March 1984 Michael Lambrix was convicted and sentenced to death for the murders of Lawrence Lamberson and Aleisha Bryant.

For the past 27 years Mike Lambrix, who is sequestered on Florida's infamous Death Row, has argued his innocence.

This is his story.

## **MIKE'S STORY**

Many moons ago in a life now far, far away I was born at San Francisco General Hospital in California on March 29th, 1960. I was the fourth of seven children brought into the world by my mother; by the time she was only 24. By right and reason I should not have been born as after the first three (my oldest sister Debra and my two older brothers Donald, Jr. and Jeff) my mother contracted polio and was bedridden and not to have any more children.

In those early years my father and grandfather owned a steel fabrication plant in San Rafael and we lived a comfortable middle class life in Marin County. I was too young to remember the first home I lived in, in Mill Valley and as the family grew and evolved we would move often.

My first memories were of a house on Oak Spring Drive in San Anselmo and those memories were and still are unpleasant. Although faded and broken by years that have passed at times I can still remember the violent arguments that led to my parents' divorce. Or rather remember hiding from them. Then mom was gone and I remained alone with the father I feared, especially when he was drunk – and it seemed he was always drunk.

About the time I began school I met my stepmother. She barely spoke English and was hired originally as a housekeeper. I was too young to recognize the seemingly sincere Mary Poppins persona she first projected that all too quickly evolved into the incarnation of evil within her that manifested itself immediately after she and my father married. By that time we were living in a large house high on a hill in Woodacre, overlooking the Lagunitas Valley below.

Not long after they wed we moved to a subdivision in San Rafael, on Court Street close to where the canal opened into San Francisco bay. Soon the family began to grow even larger as my stepmother Consuelo became pregnant with her first. We moved

again to a house outside of Novato but still within walking distance to Olive Elementary School.

I met my first best friend there as his family had a small ranch nearby. Over the hill behind us, a short walk away was the valley George Lucas now owns and parts of “*Star Wars*” was filmed. There were good times, but there were bad times. My best friend Russell was killed in a freak accident and my oldest sister – often my only protector – ran away. By the time I was ten she was barely a teen but I understand now why she had to leave, why living on the streets off the generosity of so-called “hippies” and hanging with bikers was better than staying at “home.”

With a half brother and two half sisters the family grew to a total of ten children. From outside looking in I suppose we appeared to be an average family – at least it was the only family I knew so I thought it was average. On weekends, especially during the summers we would all pack up and drive out to my uncle’s coastal ranch (“Diamond T”) on nearby Ft Reyes, now part of the Ft. Reyes national Seashore. On long weekends and holidays we would go camping at Clear Lake, or Lake Mendocino and as evening set we’d all gather around a campfire singing songs as dad played the guitar.

But then came the early seventies and the family business was abruptly forced into bankruptcy. We moved from Novato to the sleepy hollow community of San Anselmo. My two older brothers and I joined the Boy Scouts and served as altar boys at the Catholic Church. My eldest sister, then barely 16 was committed to the Napa State Hospital, and pregnant with her first child.

By the time I began middle school we moved again to a small farm with an old Victorian house outside of Sebastopol in Sonoma County. By then I discovered the means to escape reality first with alcohol, then drugs. My grandparents suffered a car accident and both died a few weeks later and my dad all but gave up even trying as he found his own escape in heavy drinking.

There were no more holidays with the grandparents, outings to the ranch, or camping trips. As my stepmother took control life at “home” went from bad to worse.

It wasn't long before we again moved – this time in a caravan of travel trailers like a band of gypsies. But it was the best time of my life, as for the entire summer of 1974 we camped out at Yosemite National Park. Now barely 14, I couldn't imagine how it could get any better. Any pretense of parental supervision was now gone and I was free to explore the park all day, every day as if it was my private playground. As a bonus, I quickly discovered a seemingly infinite supply of free beer; as campers upstream would place their beer in the icy Merced River only to be washed downstream by the rushing current... entire six packs were there for the taking and in surprising abundance. What I couldn't drink was easily sold or traded for pot (marijuana) and the best summer of life became a long party. It was the best of times.

As the summer drew to an end we packed the trailers up and began a two week exodus across America, finally reaching Florida. For several months we lived in the two trailers and a large tent at a campground outside of Tampa. At that time I began going to a local Baptist Church for the very best of reasons – a girl I met in school belonged to the youth group and I really wanted her to belong to me. As I got more involved “Brother Jeff,” the charismatic youth director “saved” my soul and I found a new high in Jesus. After years of attending the Catholic Church, this seemed so alive and fulfilling.

A few months later Dad bought a small house in the farming area southwest of Plant City known as Turkey Creek. My stepmother claimed her domain and made it clear that only her children would be allowed to live in the house. But we didn't complain. My oldest brother Donald Jr. joined the Army and became “career military” until that career abruptly ended when he was hit with an aerial grenade during the first Gulf War.

That left my older brother and I, my arch nemesis, Jeff, to share the one small travel trailer while my even younger sisters Mary

and Janet shared the other. With the family reduced to living on welfare, we were all forced to skip school and work on local farms or orange groves and the income was used to feed us. If any of us dared to protest, or God forbid not work at all, the physical repercussions were immediate. But once that day's job was complete, that pretense of parental supervision again quickly disappeared and we did as we pleased.

Not long after moving to Turkey Creek my older brother, Jeff and I and even my younger sister Mary began hanging with a "neighborhood" crowd. We never aspired to be a "gang" and never roamed the area preying upon anyone. Our thing was simply to meet almost nightly in a group, pool our money, and party. Looking back, I know realize that all of us were from similar backgrounds and in our own way became family.

On the days I was allowed to go to school I would often join a crowd of others who regularly skipped school. On good days we would hang out and party in the woods behind Plant City High School or go swimming at nearby Mudd Lake. On bad days we would walk to the mall in Plant City and hang out. Although caught more than a few times, it didn't really matter, as I knew nobody at home would care. When the school would impose suspensions it only meant that I didn't have to pretend to go to school in the first place, which was even better.

I never failed a grade. Somehow I attended just enough classes to absorb what was necessary to pass the tests and I made a point of always taking the important tests. Never – not even once – did a single teacher attempt to talk to me about my chronic truancy or anything. I was a lost child and *they* accepted that.

As the months passed my stepmother demanded more of us and we became, for all practical purposes, virtual slave labor. My protests increased and the physical beatings became more severe. A few months before my 16th birthday the fair came to Plant City for the annual Strawberry Festival and I found a job working at a game concession... and I found a new e. By my 16th Birthday I

was out on the road on my own, working carnivals around Chicago.

Say what you want about “carnies” but this band of misfits were family and they made a point of looking out for each other. Most nights I would sleep in the carnival tents and spend my money on food and partying. Although it would seem to have been the last place a teenage kid should be on his own, even though I didn’t appreciate it, those on the lot knew I was a kid and seldom did I go anywhere without a watchful eye keeping me out of trouble. We worked long, hard hours and when the lights on the Midway went off we’d gather in groups – often pooling our money to rent a motel room – and party to excess. In all the years I worked on the road, not even once did I get in any kind of legal trouble. Contrary to popular myth, habitual criminals were not welcome as the show would not tolerate anyone bringing heat down on the show.

From early spring into the summer we would work local carnivals in Chicago area, then with summer came the county and state fairs, which meant even longer hours, even days straight during “Midnight Madness.” From Michigan and Illinois State Fairs, we would work our way south through Arkansas and Oklahoma, then into Texas, and across to Louisiana and finally back to Florida for “winter quarters.”

Returning to Florida in late 1977, I met a girl I knew in high school when I briefly joined the high school ROTC program. Almost immediately Kathy Marie and I became inseparable. A few months later when it was time to head back up to Chicago for the new season she tagged along. By late summer she was pregnant and we made plans to return home and settle down.

On October 27th, 1978 – both of us barely 18 – we were married at the Polk County Courthouse in Bartow, Florida. The next day I was on a bus and on my way to Ft. Sill, Oklahoma to report for active duty in the Army. Without a high school education and any job skills other than working carnivals, the military meant I had the opportunity to take care of my new family. But what may

very well have become a “career” as it was for my brother, abruptly ended with an accident while on duty and a discharge for failure to perform my required duties.

After my discharge we lost our health coverage and when our daughter was born in March 1979 at Tampa General Hospital we almost lost her when the doctor failed to do a c-section in time and our little “Niki” (Jennifer Nicole) came to life still in the womb and drowned in her own fluids. For a month she remained in a coma at the neo-natal unit of Tampa General kept alive by respirators, and tubes, and wires, but then she finally came home. The prolonged deprivation of oxygen and physical trauma of her birth caused permanent brain damage and epilepsy. But she was our little girl and she was home and that’s all that mattered.

Both of us still too young and irresponsible to be parents ourselves, and still “partying” beyond excess, bad judgment was a way of life. Within months we returned to the road, living in our car and countless motel rooms. Working carnivals and fairs was the only life we knew. As the season drew to an end Kathy Marie announced she was pregnant again and we made plans to “settle down.”

Returning to Florida just after Christmas in early 1980 I quickly blew the money we had saved to get our own place on a motorcycle – then wrecked it racing another bike on the highway. That was the last straw... Kathy Marie’s family descended upon her, insisting she leave the loser. Her mother gladly hired a divorce lawyer and formal divorce proceedings were initiated; however, before any hearing could be held, we reconciled, rented a mobile home, and I actually got a real job.

Accomplishing all that I didn’t see any need to stop partying, too. Soon I was supplementing my income by any means necessary as my use of alcohol and drugs substantially increased. No longer surrounded by the protective “family” of carnies, I began hanging out with a more destructive crowd.



In July 1980 our son Daniel Brian was born at Tampa General Hospital. With my irresponsibility reaching new heights, Kathy Marie began paying expenses by forging her mother's signature on her family's trust account. On our second anniversary, she was arrested on 24 counts of forgery, and I was arrested on outstanding traffic tickets. Her family took temporary custody of our kids. After a month I was released but she remained in jail until February, three months later. Her family refused to let me have custody until Kathy Marie was out.

Again my "partying" escalated and I began getting into trouble. With nothing to hold me back, I lived in bars and lounges selling drugs and consuming the profits. Having proven my inability to be a mature and responsible husband and father, nobody was surprised when I started cohabitating with another woman.

When Kathy Marie was released from jail in February 1981 she quickly renewed the divorce proceedings and by April the divorce was final. Now accompanied by "Kitty" I returned to Chicago to work the new carnival season. Kitty was not a carnie, nor would she ever be. In June we returned to Florida, as she was not pregnant. Shortly after we returned I ran across Kathy Marie. With our divorce (which I never challenged) final less than two months, she had already remarried a family friend. But by that night she left Walter – and I left Kitty – and we reconciled.

In August of 1981, while extremely impaired, an argument evolved into an act of inexcusable road rage resulting in an accident when the other vehicle hit a telephone pole. Intoxicated and in possession of illegal drugs, I fled the scene only to be arrested a few days later for aggravated battery. For months I remained incarcerated until the charges were finally dropped. During that time Kathy Marie's probation on her forgery charges was violated and she was ordered into a state "halfway" house in the Ybor City area of Tampa.

In late November 1981, Kathy Marie was walking to a nearby store from that halfway house when she was abducted, then taken to a nearby lot where she was raped repeatedly by two men, then

beaten and left for dead. Again she created a wall around her that I could not penetrate.

The next month, I left Florida for Utah where I intended to meet my mother for the first time since I was a child. I knew I had to get out of Florida and away from the destructive lifestyle I was living. Once in Salt Lake City I stayed with my mother and found work. But I didn't escape my need to party and it wasn't long before I was hanging with a new crowd but doing the same thing. A few months later came an arrest for drunk driving – even though I wasn't driving at the time! (It was Utah – everybody knows those Mormons are nuts!)

In early March 1982 I received a telephone call from my former girlfriend Kitty telling me our son Cary Michael Jr. (born prematurely in Michigan in late December) was in the hospital with pneumonia in Plant City, Florida and might not make it. That next day I left Utah driving nonstop to Florida in less than 48 hours.

Not long after arriving back in Florida I was arrested in Plant City on an outstanding warrant for violation of probation. After a few months in the Hillsborough County Jail my probation was formally revoked and I was sentenced to state prison for two years on the original felony conviction – a single “bad check” charge, my *only* prior felony conviction. (It should be noted that when many members of the Congress committed the same crime – deliberately writing a check on their accounts without sufficient funds -- *no* action was taken against them.)

With almost nine months of time already served in the county jail, that two year prison sentence was actually less than a year. After about six months in state prison I was transferred to a state work release center, where I would work a regular “free-world” job then report back and stay at the work release center. Once again my drinking got the best of me. Within a few days of arriving at the work release I was caught smoking a joint and “busted.” A disciplinary action was filed and I was placed on administrative probation. A few weeks later I skipped work and

went out drinking with my younger brother Chuck – and again got caught. This time it was another disciplinary action and assigned extra duty in the kitchen, and instructed I had to find a new job working days, not nights.

A few days before Christmas 1982 the company I found work with held a Christmas party, which included a smorgasbord of hard liquor. By the time I was due back at the work release center I was wasted. I knew if I went back in would be my third violation and I would be returned to state prison as well as lose all my accrued “gain time” which would mean almost a year in prison. That seemed like a lot and I didn’t want to face it, so I simply did not return, which in Florida is technically considered an “escape” from state prison. A fact I conveniently failed to appreciate when I made my intoxicated decision not to return.

That decision led me to relocate to LaBelle, Florida and set the stage for the case that led me to death row. And here I remain.

# **THE CASE**

**FEBRUARY 5, 1983**

**FRANCES SMITH'S ARREST**

**THE FIRST TRIAL**

**THE SECOND TRIAL**

**WHAT REALLY HAPPENED**

**MOTIVE TO WRONGFULLY CONVICT**

**20<sup>TH</sup> CIRCUIT- AMERICA'S CAPITAL OF  
WRONGFUL CONVICTIONS**

## FEBRUARY 5, 1983

The story begins in early 1983 when Mike Lambrix, then a recently divorced 22-year old unemployed mechanic, moved to a rural farming community in Southwest Florida to find work. He was accompanied by Frances Smith, a 31 year old married woman who had recently abandoned her husband and three young children in search of a new life. Together they took up residence in a trailer on a remote ranch north of LaBelle, in Glades County, Florida. They lived under the name “Townsend” as Lambrix had recently walked away from a minimum security work release center where he was serving a sentence for passing a worthless check – his only prior conviction. Mike found work as a farm equipment mechanic and their new life together was uneventful.

On the night of Saturday February 5, 1983 Mike and Frances decided to go into LaBelle and have a few drinks at a local bar, the “Town Tavern”. By chance they then met “Chip,” later identified as Clarence Edward Moore, a.k.a. Lawrence Lamberson. Unaware that Moore was a 35-year old career criminal, involved in drug smuggling, and that he had a history of violence against women, Mike and Frances accepted his invitation to join him. A little while later Aleisha Bryant, a local 19-year old waitress joined Moore and the four then traveled together to “Squeaky’s” where they drank and danced until the bar closed. Then they agreed to go back to Lambrix’s place for a late night dinner, as Moore had to return to Miami that afternoon and Aleisha was scheduled to work in just a few hours.

Once at their place, Frances began cooking a spaghetti dinner while Mike, Chip, and Aleisha sat in the living room “laughing and playing around.” Then Lambrix and Moore went outside to get some music tapes from Moore’s car. Mike returned about 20 minutes later “looking normal” and told both Frances and Aleisha that they had something to show them outside. But Frances was still cooking, so only Aleisha went out. Another forty-five minutes passed before Mike again returned alone, this time “covered in blood,” telling Smith “they’re dead.” Records show

that Lambrix then told Smith that Moore “went nuts” on Bryant and when he attempted to stop Moore from fatally assaulting Bryant, Moore turned on Lambrix, forcing Lambrix to hit Moore in self defense – autopsy reports revealed that the blows crushed Moore’s skull, presumably killing him instantly.

According to Smith, she followed Lambrix into the bathroom and as he washed up she asked what happened but he refused to talk about it. Confronted with this unexpected tragedy, they debated what to do. Mike had an outstanding warrant related to several bounced checks and Frances was concerned about possible charges for abandoning her three young children a few months earlier. It was mutually decided that going to the police was not an option.

They went to a store to purchase a flashlight and on the way back to the trailer stopped at the house of “Tex” Chizam, a recent acquaintance, to borrow a shovel under the pretense that some relative’s vehicle was stuck in the mud and they had to dig it out. The two then returned to the trailer and superficially concealed both bodies at the back of the pasture along the low-lying swampy area and then without even gathering their personal clothes from the trailer, they left the area, taking Chip’s Cadillac up to east Tampa area where both Mike and Frances had family.

## **FRANCES SMITH’S ARREST**

The mutual plan was to drive Chip’s car up to the Tampa area so that the car could be abandoned at an interstate intersection, then they would borrow a truck from Mike’s brother and return to the trailer for their personal belongings. But they couldn’t get the truck and became stranded in the Tampa area for several days of seasonal torrential rain. Finally, on Wednesday February 9 arrangements were completed and it was agreed that Frances would take Chip’s car to the nearby intersection and leave it there, then meet Mike at the house of a mutual friend.

But the previous evening Mike and Frances had made the mistake of staying at Harlin Ottinger’s house, Frances Smith’s younger

brother, and he knew that the police were looking for Michael Lambrix in regard to him walking away from the community halfway house without serving the completion of his sentence for writing bad checks. And so that morning before Mike and Frances left the house, Harlin Ottinger called the Sheriff's department to report Michael Lambrix, hoping to be provided with a reward. A Sheriff's deputy immediately staked out the road leading to Harlin's house and about an hour later saw the older black Cadillac coming down the road. Assuming Mike was driving, Deputy Steve Laungkitis pulled the vehicle over only to find that Frances was driving and she was all alone.

When Deputy Laungkitis asked Frances where Michael Lambrix was, she responded by claiming she didn't know anyone by that name and that the car belonged to her boyfriend, someone by the name of Blackmun. Deputy Laungkitis advised her that they received information that she was in the company of Michael Lambrix and that if she didn't cooperate she would be arrested for aiding and abetting a fugitive. When joined by Deputy Thomas and placed in the back seat of the squad car, Frances changed her story to claim that she did know Michael Lambrix but hadn't seen him in a couple of weeks until that morning when he picked her up in the Cadillac and asked her to drop him off at Plant City Greyhound bus station, where Mike caught a bus to Chicago. Then she was to take the Cadillac and abandon it at an interstate intersection so it could be picked up by someone else.

The deputies attempted to confirm this by telephoning the Plant City bus station, only to find out that no buses had left that morning. Once again the confronted Frances with their knowledge that she lied and again she changed her story to now claim that Mike was just up the road at Harlin's waiting for her return. But this was quickly proven to be untrue and at this point Deputy Laungkitis placed Smith under felony arrest and brought her to the Hillsborough County Jail in Tampa, where she was formally charged with "aiding and abetting" a fugitive, Cary Michael Lambrix.

The vehicle was impounded as it could not be abandoned by the side of the road. The Hillsborough County Sheriff's department was required to attempt to identify the owner of the vehicle, which proved to be very easy as beneath the driver's seat they found a Florida driver's license under the name Lawrence Lamberson and the actual title of the car, and the license tags had not been altered.

The matter was turned over to Detective Mizell of the Hillsborough County Auto Theft Division and he contacted Elaine Banner in Key Largo, Florida, who claimed to be the mother of Lawrence Lamberson, only she said his name was Clarence Moore and advised Detective Mizell that he should contact Detective Tommy Vaughn of the Hendry County Sheriff's Department in LaBelle, as he had called her also looking for both her son and the Cadillac.

Detective Mizell phoned Detective Vaughn in LaBelle only to find out that they were looking for Lawrence Lamberson in connection with a recent "missing person" report filed by the parents of Aleisha Bryant. So far all they had been able to find out was that Lamberson had come to LaBelle in late January, apparently running from drug associates he had allegedly ripped off in Miami, and had rented a local motel room, and was known to be pawning off everything he had of any value until the morning of Saturday Feb 5, when he ran out of anything to pawn and had checked out of the LaBelle Motel. Aleisha's roommate reported that Chip had met Aleisha a few times and was seen with him on Saturday evening and nobody had seen her since.

Now Detective Mizell had a bigger mystery, how was it that Michael Lambrix and Frances Smith ended up with Chip's car almost 120 miles north of LaBelle? On Friday Feb 11 he decided to pay a visit to Frances who remained at the Hillsborough County Jail and enquired about the car. Frances appeared to be cooperative and agreed to speak to him, only to again tell her story about her she had met Mike originally weeks ago and hadn't seen him since until the morning of February 9, when he came to her house and asked her to drive him to the Plant City



bus station. She claimed she did and then she was to abandon the car at the intersection near where she was arrested, she didn't know how Michael got the car and didn't know if he was in LaBelle on the weekend of February 5-6.

Shortly after Detective Mizell's visit, Frances bonded out of Hillsborough County Jail and was not heard from again until the morning of Monday February 14, 1983, when she voluntarily walked into the State Attorney's office in Tampa, accompanied by a private lawyer retained by her family, and advised the State Attorney that she had information relating to the deaths of two people in LaBelle.

But Frances Smith knew that simply reporting an act of self defense and admitting she helped to conceal two bodies, especially since she alone was caught driving the victim's car, would not help her – she had to give them something bigger. With over a week to think it over with the assistance of legal counsel, Smith instead told a story of how Lambrix told her he killed the two with deliberate intent – to steal their car. She also said that Mike had taken a gold necklace from Chip and had gone through their pockets. (However, the latter was shown to be untrue, as no such necklace ever existed and when the bodies were recovered, both had personal effects, like money and jewelry in their pockets.) Suddenly, she became an invaluable star witness in a capital case, of course contingent upon her receiving full immunity from prosecution.

Smith was given a polygraph test, which showed “significant signs of deception,” yet based exclusively on her account a warrant charging Lambrix with capital premeditated murder was issued and a statewide manhunt ensued.

It was decided that the Tampa State Attorney's office did not have jurisdiction, so State Police Special Agent Connie Smith assumed responsibility for the investigation and the case was referred to the State Attorney's office in For Myers, where assistant State Attorney Randall McGruther was assigned, and together with agent Smith, made arrangements to bring Frances

down to LaBelle to assist in the location and recovery of the two bodies.

Because the property was just north of the Hendry County line and both the Glades and Hendry County Sheriff's office were conducting the investigations, it was decided that both would assist in the recovery of the bodies. Additionally, Dr Schultz of the County Medical Examiner's Office was brought in, along with his assistant and investigator. When this collective entourage finally arrived at the trailer on February 15, they discovered that the past week of torrential rainfall had flooded the low lying area where the bodies were, making recovery difficult.

Upon recovery of the bodies, Dr Schultz conducted an autopsy on both. It was established that the cause of death of Chip Lamberson was blunt trauma evidenced by distinct blows to the front temporal area of the head, four blows on each side, administered in a consistent "swinging motion". The official cause of death of Aleisha Bryant proved to be more difficult, as no specific trauma could be found to indicate a cause of death. Finally, Dr Schultz decided that since there was no gunshot or knife wounds, and no physical trauma, the body was found concealed adjacent to the body of an obvious homicide victim, the "probable" cause of death was manual strangulation.

Immediately the case became the biggest story in the local small town newspaper, grabbing headlines with "Escaped Convict Murders Local Couple:" the local sheriff's department erroneously characterizing Michael Lambrix as a prison escapee rather than simply stating the truth, that he had walked away from a community halfway house while serving the last few months of a sentence for writing bad checks.

On March 2, 1983 Michael Lambrix was arrested without resistance at the Orange County Fair in Orlando, Florida and almost immediately transported to the Glade County Jail in Moore Haven.

## THE FIRST TRIAL

The local State Attorney Randall McGruther attempted to illegally have him questioned, but Mike refused to talk to anyone. A local inexperienced public defender, Kenneth Thompson was assigned to represent Lambrix, but because the jail did not have rooms for legal interviews, Mr. Thompson was placed in the cellblock. Mike provided him with preliminary information, but when Thompson took a break and stepped outside the cell, Mike could hear him discussing with an unknown person the information just provided. Concerned that Thompson was inadvertently revealing confidential information by discussing it where the employees of the Sheriff's department could hear him, Lambrix called to his lawyer to have whomever it was he was discussing the obviously confidential information with to do so in the cellblock so it could not be heard by others. To Mike's surprise, it couldn't be done as the person was Mr. Greens, one of the State Attorneys assigned to prosecute the case.

At this blatant and deliberate betrayal of trust, Mike insisted that Kenneth Thompson be removed but this was not done until the Glade County Grand Jury convened on March 29, 1983, Mike's 23<sup>rd</sup> birthday, returned an indictment of two counts of capital, premeditated first degree murder. For those who are not familiar with how Grand Jury proceedings work, basically it is a panel of ordinary citizens brought together to determine whether sufficient evidence exists to hold a person on formal charges.

In America, a capital murder charge can only be brought by a Grand Jury indictment. But the process itself almost always results in a formal indictment as Grand Jury proceedings simply determine whether there is sufficient evidence to justify a formal charge and hold the person over for a jury trial.

A Grand Jury indictment is not a determination of guilt, but only that probable cause exists. A criminal defendant who is formally indicted by a Grand Jury is legally still entitled to a "presumption

of innocence” and the actual determination of guilt “Beyond a reasonable doubt” is for an actual “jury trial” to decide.

The defendant’s evidence is typically not presented before the Grand Jury, nor is the State required to present any evidence that they have that may cast doubt upon the issue of whether the charged defendant committed a crime. For this reason, just because someone is formally indicted by a Grand Jury does not in any way provide a basis to believe the indicted defendant may actually be guilty.

Michael Lambrix’s case was scheduled for a formal jury trial in early December, 1983. By that time the state was legally obligated to provide the defense with any evidence they possessed that would question whether Mike committed the crime (“exculpatory” evidence) and any evidence that would question the credibility of the material witnesses (“impeachment” evidence). Legally, if the state possessed any material

exculpatory and/or impeachment evidence and did not disclose it to the defense, then if a conviction was obtained, the convictions could be thrown out.

Because of these rules, by the time Lambrix went to trial, his lawyers were provided copies of numerous statements by the State’s key witness (Frances Smith a.k.a Frances Smith-Ottinger) gave to law enforcement officers that directly conflicted with, and discredited (“impeached”) her actual testimony. Also, information was provided that Smith-Ottinger had been given a polygraph (lie detector) test and failed that before she testified.

Shortly after Mike was formally indicted on two counts of capital premeditated murder, a local Public Defender by the name of Kirby Evanglson was appointed to replace Kenneth Thompson. Mr. Evanglson was fresh out of law school and had never before represented a client in a major felony of any kind, much less a capital felony in which the State was seeking the death penalty. The months slowly passed for Mike as he remained in the Glade

County Jail awaiting trial, with very few visits from his appointed lawyer.

A trial date was scheduled for late November 1983, and as the date approached Mr. Evanglson brought in Robert Jacobs, another public defender from the Fort Myers office. Technically, a capital defendant had to be represented at trial by two Attorneys, and Mr. Jacobs actually had prior experience representing a capital case; he had previously represented Myron Flemming, charged with capital felony in an armored car robbery in Fort Myers in which the guard was shot and killed. Mr. Jacobs convinced Myron to plead guilty and throw himself on the mercy of the court, and the court sentenced him to death.

From the day Mr. Jacobs was assigned to the case, it was decided that Michael Lambrix was a difficult client due to his continued distrust and refusal to confide in them as to what actually happened. It was decided that a defense of “reasonable doubt” would be developed as such a defense could be developed without Michael’s cooperation. Basically, they would focus on the State’s legal burden to prove every element of the charge beyond a reasonable doubt, hoping to convince the jury that the extremely limited and wholly circumstantial evidence simply was not sufficient to prove that Michael Lambrix deliberately, by premeditated design, killed these two people.

By December 1983 the case was brought to trial at the small courthouse in Moore Haven with Judge Adams presiding. Defense motions to have the trial moved out and away from the small farming community where the local media had sensationalized the case week after week with tabloid like prejudicial misinformation were denied. Jury selection began and every prospective juror conceded to having been exposed to the saturation of attention to the case.

But then came the unexpected surprise after a morning of jury selection, immediately following the lunch recess. Michael was brought into Judge Adams’ chambers, accompanied by Robert Jacobs who requested that if Mike continued to insist on taking

the stand and testifying on his own behalf, then the court must instruct Mr. Lambrix that both Attorneys would be allowed to withdraw, leaving him without any legal representation altogether.

It must be emphasized that Mr. Jacobs did not suggest that Mike might commit perjury or some other act of criminal nature. Rather, Mr. Jacobs had prepared a specific defense of establishing “reasonable doubt” that was dependant on the presentation of NO evidence on behalf of the defense and since Mike would not confide in them as to exactly what the content of his testimony might be, ANY such testimony would be in conflict with their prepared defense. Thus, at Mr. Jacobs’ encouragement, Judge Adams instructed Mike that he would not be allowed to testify unless he first relinquished his right to legal representation. Having no knowledge of the legal process, Michael was in no position to forego legal representation, and by this explicit judicial order, was effectively silenced.

The right of the accused to testify on his own behalf has long been recognized as one of the very few “fundamental” constitution rights any criminal defendant has. Indeed, it would be difficult to conceive a fair judicial process that prohibited the accused from speaking in his own defense and telling his own side of the story, as the US Supreme Court recognized in *Faretta vs California* in 1976.

The December 1983 jury trial lasted about 5 days. The State presented their case, with Smith-Ottinger’s testimony being the foundation of the case. In opening arguments the State prosecutor Randall McGruther conceded that there were no eyewitnesses, no physical or forensic evidence, and no confessions to support his theory of alleged premeditated murder. The entire case was founded upon Francis Smith’s testimony that after meeting Chip and Aleisha, Lambrix invited them back to the trailer, then took Chip out first – returning alone – then took Bryant out again subsequently returning alone, only this time covered in blood. Smith testified that Lambrix told her he hit the man in the head

and choked Bryant, and then placed her face down in a pond to ensure she died. The alleged motive was to steal the car.

This otherwise unsupported theory of alleged premeditated murder was corroborated by State witness Deborah Hanzel, (the girlfriend of Smith's own cousin) who testified that Lambrix also told her that he committed the murders to steal the car, and by Robert Daniels, a local State Attorney's investigator who was responsible for developing the circumstantial evidence used to support Smith's story.

Mike's appointed public defenders, Jacobs and Evanglson focused on convincing the jury that the State's wholly circumstantial case simply was not credible. No defense was presented and Lambrix's own lawyer compelled the trial judge to prohibit him from personally testifying even though he insisted that he wanted to testify. The trial judge instructed Lambrix that unless he was willing to forego any further legal representation, he could not personally testify. By prohibiting Lambrix from testifying, Smith's testimony effectively went unchallenged – and the jury never heard what actually happened outside. (See **Lambrix v Singletary, 72 F3d 1500 (11<sup>th</sup> Circuit, 1996)**)

Instead, Lambrix's Attorney argued that substantial reasonable doubt existed as the State's theory of alleged premeditated murder directly conflicted with the evidence. Smith admitted that she never witnessed anything that might have occurred outside. The State's own medical examiner confirmed that there was no actual evidence that Bryant died of strangulation or drowning – in fact there was no pond on the property.

Further, Chip was the only one who suffered any physical injuries that would have resulted in the loss of blood. Thus Chip had to still be alive when Bryant went outside, so whatever actually transpired outside had to happen spontaneously, without premeditated intent. Additionally, all of Chip's wounds were to his front forehead so Chip had to be facing his combatant and the absence of any defense wounds strongly suggest Chip had to have been the aggressor.

Both Chip and Bryant each substantially outweighed Lambrix, so how could he have simultaneously killed both in two completely different ways? Would a healthy 19-year old woman passively allow herself to be strangled without struggling? Smith admitted Lambrix had no scratches or bruises on him – yet the autopsy on Chip revealed numerous scratches on his abdomen. Fingernail scrapings that might have conclusively identified Bryant’s true assailant conveniently disappeared.

Last, Smith told numerous conflicting accounts before coming up with the one that propitiously exonerated her of all culpability. Collectively, counsel argued substantial reasonable doubt existed precluding a finding of guilt.

The jury was prohibited from hearing Mike’s side of what transpired and resulted in the two deaths, and was not even allowed to hear of how Chip Lamberson had a criminal history of assaulting women in a remarkably similar fashion. In fact, in one previous instance a Miami police officer happened to come upon Chip assaulting a woman in an alley and when the officer attempted to stop him, Chip turned on the officer in the exact same manner as he turned on Mike when Mike had attempted to stop him assaulting Aleisha.

Following a “charge conference” between the court and counsel for both sides, the jury was instructed on the law applicable to the case, and then retired to the “jury room” to begin their deliberations in the early afternoon. Many hours passed and the long afternoon went into the night and then into the early morning hours without any verdict. The court recognized that it simply did not have the facilities to sequester the jury as the closest motel was about 30 miles away in the next county. After being repeatedly encouraged until they could reach a unanimous verdict, the jury finally announced that they could not agree on any verdict at all, and over Lambrix’s objection Judge Adam’s declared a “hung jury” and dismissed them. (See, *Lambrix v. Singletary*, 72 F. 3d 1500: 11th Cir. 1996, challenging deprivation of right to testify and improper discharge of original jury under double jeopardy grounds.)



The court then ordered that a new jury be empanelled and the entire case retried. By law, the State could retry the case within 180 days as technically a hung jury was the same as a mistrial of necessity.

Especially after the mistrial, the local media again focused on this case and shortly thereafter one of the local deputies, Ralph Alan Green, entered into the cell housing Mike and physically assaulted him in an attempt to obtain a verbal confession. The injuries inflicted required that Mike be brought to a hospital in Clewiston 30 miles away. The matter was then referred to the FBI Justice Department, which opened a formal criminal civil rights investigation to look into this physical assault.

## **THE SECOND TRIAL**

After the State announced its intentions to retry the case, Lambrix's counsel renewed the motions to have the case moved to another county which was denied. In February 1984 the retrial began after Mike refused a second-degree murder plea, which would have resulted in a maximum sentence of 22 to 27 years.

The original judge was abruptly and inexplicitly replaced by Judge Richard Stanley, a former local prosecutor with a reputation for bias against capital defendants. Prior to becoming a circuit court judge in adjacent Charlotte County, Judge Stanley was a career prosecutor in the area — describing himself as the “meanest son of a bitch” and a zealous advocate of the death penalty.

Judge Stanley only ran for circuit court judge after his colleague and long time friend in the local State's Attorney's office was murdered, gunned down by an unknown assailant – the case was never solved. Vowing to avenge his colleague, Judge Stanley promised to send the killers to death row. His personal campaign against capital defendants became known years later when the Florida Supreme Court vacated another death sentence imposed by Judge Stanley, recognizing that his obvious bias deprived the

capital defendant of a fair trial before an impartial tribunal. (*Porter v. State*, 723 So. 2d 191) (Fla. 1998).

Prior to jury selection the State attempted to convince Mike to plead guilty to second degree murder in exchange for a sentence consistent with applicable statutory sentencing guidelines, which meant a sentence of 17-22 years. Even with minimal “gain time” Michael would have been out of prison in no more than 12-14 years, not later than 1997. But Mike refused to plead guilty to any charge of murder, believing that no jury could convict him of a crime of murder fabricated by an over-zealous prosecutor.

Almost immediately Judge Stanley’s prejudice became apparent when Lambrix’s lawyer attempted to have several potential jurors related to the female deceased removed. Ultimately, the jury empanelled to retry the case included the jury foreman, (Snyder) who admitted he already believed Lambrix was guilty, as well as four other jurors directly related to the local sheriff’s department, including the stepfather (Wilburn) of a local sheriff deputy who at the time of trial was under an FBI investigation for physically assaulting Lambrix in the county jail several months earlier.

As the State presented its same case for the second time, Judge Stanley prohibited Lambrix’s Attorneys from cross-examining the key witness Francis Smith about the numerous conflicting stories she had told or the polygraph examination. Judge Stanley felt this might “confuse” the jury. Mike was again prohibited from testifying.

Nor was the jury allowed to hear that “Chip” Moore/Lamberson was a career criminal associated with drug smuggling and had a history of physically assaulting women. Although evidence was available to show that Moore was the one who attacked and killed Bryant – just as Lambrix said – that evidence was not presented. Fingernail scrapings removed from Bryant that would have conclusively identified her true assailant conveniently disappeared prior to trial. Once again Deborah Hanzel and investigator Robert Daniels corroborated Smith’s testimony.

Lambrix's Attorney presented no defense beyond arguing reasonable doubt that the evidence simply did not support Smith's claims – the State's theory that Lambrix "lured" the two out with the intent to kill them conflicted with the known evidence. Arguing that substantial reasonable doubt legally precluded the jury from finding Lambrix guilty, his public defender emphasized that Smith testified that first Lambrix went outside with only Moore and returned alone about twenty minutes later "looking normal" – Smith was absolutely certain that at the time Lambrix did not have any blood on him. Then Lambrix went outside again accompanied by Bryant.

The State's Medical Examiner, Dr. Robert Shultz, testified that the cause of death for Moore was blunt force trauma – numerous blows to the frontal side forehead, inflicted in a consistent "swinging" pattern, that undoubtedly would have resulted in substantial blood loss and "splattering." Dr. Shultz was equally certain that Bryant suffered no injuries that would have resulted in any significant blood loss. In fact, her cause of death was listed as "probable manual strangulation" even though there were no actual physical signs of strangulation.

This time the jury deliberated barely an hour before returning with a verdict of guilty on each count of capital murder. Rumor had it that the only reason the jury took 45 minutes to find Michael Lambrix guilty was that they couldn't get the coffee pot to work right away and had to fix it first. Following a brief sentencing phase, the jury then recommended by a majority (but not unanimous) vote "death" be imposed on both counts.

On March 22, 1984 Michael Lambrix was formally sentenced to death. Judge Stanley refused to recognize any mitigating circumstances even though the undisputed evidence established that Lambrix was honorably discharged for the Army following a disabling duty related accident, was a former Boy Scout and Catholic altar boy, as well as a father of three young children, with no significant prior criminal history.

Years later when Lambrix's case was heard by the U.S. Supreme Court, the full court recognized that Lambrix was unconstitutionally sentenced to death – but by a marginal vote of 5 to 4, the conservative majority ruled that because Lambrix's appointed legal counsel failed to timely challenge this illegal sentence, Lambrix could not be granted relief. See, *Lambrix v. Singletary*, 520 U.S. 518 (1997).

### WHAT REALLY HAPPENED?

Mike readily admits to meeting Chip and Aleisha that night and inviting them back to his home. After arriving at the trailer they continued to drink. Both unquestionably intoxicated, Chip and Mike went outside to Moore's car to get some music tapes. Both were excessively intoxicated – Frances herself said they were “laughing, teasing, and playing around” just before going outside.

Once outside, arguably inspired by their intoxicated state, Mike and Chip decided to play a practical joke on the women. As Moore hid at a nearby cattle feed trough, Mike returned to the trailer to persuade Smith and Bryant to come out, with the intent of leading them to the feed trough where Moore would suddenly jump out and scare them. In their drunken state, it seemed like a good plan. But Smith was still cooking dinner and had a morbid fear of cows, so only Bryant went outside.

When Moore did jump out with the intent to scare Aleisha, her response was not what they anticipated – she spontaneously reacted in anger, confronting and cussing Moore out. As the two began to argue, Mike left the two alone to work it out, unaware of Chip's history of violence against women. He began to walk the long way around the trailer perimeter fence, taking his young dog “Roach” with him. It took the better part of five minutes before Mike was about to go back to the front of the trailer. He wasn't in any hurry.

Just as Mike reached the trailer he heard a scream, and knowing the closest neighbor was some distance away he knew it had to be them. Not more than a thousand feet behind the trailer was the

“Bee Branch” creek- which was actually a low lying swamp area infested with snakes, a few alligators and wild animals of all sorts. It was not at all uncommon to find these snakes and animals in the pasture area. Immediately assuming that Chip and Aleisha had come across something, Mike began his way around the trailer and into the pasture to see what was wrong. Then came another scream; Lambrix began going back around the trailer towards the pasture. As he passed the cars he had worked on earlier that day, Mike pulled the jackhandle/tire iron from the jack on one of the cars as he didn’t know what to expect.

Upon reaching the trough, Mike realized that Chip and Aleisha were not at the feed trough where he had left them minutes earlier and it was too dark to see further back in the pasture- the only direction they could have gone when they didn’t return to the trailer. Roach sensed something further back so they began walking towards the rear fence, cautiously, unsure of what to expect. At first he heard nothing else, but as Mike approached the rear fence he began hearing a dull thumping sound not unlike that a bale of hay would make when thrown down upon wet ground. Mike continued walking towards the sound.

Suddenly he could make out their vague silhouettes, nothing more than dark shapes low to the ground no more than 10 to 15 feet ahead. Mike realized that Chip Lamberson had Aleisha Bryant pinned down to the ground, straddling over her on his knees, with his hands around her upper body area, picking her up and slamming her on the ground, causing the thumping sound. It was clear that Chip was enraged and out of control. Lambrix ordered Chip to let her go only to be pugnaciously told to mind his own business. Mike forcibly pushed Chip off her but as he fell to the far side Chip immediately lunged back toward him and as he did Lambrix instinctively swung the tire iron repeatedly until realizing that Chip was down.

Assuming Aleisha was only unconscious, Mike attempted to carry her back to the trailer, but she significantly outweighed him, forcing him to lay her down. At that time Mike attempted to resuscitate her – to no avail. Realizing then that she was dead

Mike returned to Chip but he was beyond help too, as his head was crushed from the blows.

Mike returned to the trailer covered in blood and told Smith they were dead, then went to the bathroom and vomited before washing up. It was only at that time that key witness Smith said that Lambrix was “covered in blood,” which is consistent with the blood loss Moore would have experienced. Smith readily conceded that she did not actually see or hear anything that took place outside. Lambrix’s claims of what actually happened are entirely consistent with the evidence. In fact, when Lambrix did finally have the opportunity to testify the record reflects that the state did not and could not provide any evidence to dispute his claims of what actually took place.

Both Lambrix and Smith then went to a store to obtain a flashlight and shovel and en route Mike reluctantly told her that Chip had “gone nuts” on Bryant and as he tried to stop him, Chip turned on him. Knowing that Lambrix had an arrest warrant for leaving the work release they both agreed they couldn’t go to the sheriff and that they would superficially conceal the two bodies then abandon Chip’s car near Tampa – which Smith was supposedly doing when she was arrested.

## **MOTIVE TO WRONGFULLY CONVICT**

Our criminal justice system is designed to incorporate a series of safeguards to protect against prosecuting and convicting the innocent. The first wall of protection is the separation of the investigating and prosecuting agencies. Almost without exception, a criminal case is investigated and evidence developed by a local law enforcement agency such as the police or sheriff’s department. Only then is that evidence turned over to the State (or district) Attorney for prosecution. This separation of investigatory and prosecution agencies serves the purpose of promoting objectivity.

A State Attorney is ethically responsible for protecting the rights of all citizens, including the accused. The prosecutor does not

represent the victim, but rather represents the State in the pursuit of justice. A State Attorney is required to independently examine the evidence to objectively determine whether the evidence and witnesses are credible and a prosecution can be pursued “in good faith.” It’s not a prosecutor’s job to manipulate or suppress evidence to win a conviction by any means necessary.

One of the significant factors that made the Lambrix case unique is that these traditional safeguards of separation between investigative and prosecution teams did not exist. Rather, from the very onset of this case the local State Attorney, Randall McGruther, took control of the case and the entire investigation and development of the wholly circumstantial evidence was personally controlled by his own lead investigator, Miles Robert (Bob) Daniels. Why is it that McGruther and Daniels took control of this capital case rather than allow the local sheriff’s office to conduct the investigation?

The records show that State Attorney Investigator Robert Daniels was primarily assigned to the rural farming communities of Hendry and Glades County at the time this case first originated. Investigator Daniels became involved shortly after Frances Smith first came forward and was actually the very person who swore out the affidavit that resulted formal charges against Lambrix, and his arrest. Subsequently, Investigator Daniels personally supervised the investigation and development of the wholly circumstantial evidence used to corroborate key witness Smith’s testimony. And it was investigator Daniels who the State witness Hanzel claimed worked with Smith to coerce her to provide that false testimony she later recanted. Please read, “Witness recants testimony in murder case.” (Ft. Myers News-Press, February 10, 2004).

Prior to the autopsies of Moore and Bryant, Investigator Daniels was aware that Moore had an extensive criminal history that included violence against women. Assuming key witness Smith’s testimony that Bryant was “choked” to death had any merit, this was a presumably healthy 19-year old woman significantly larger than Lambrix – at the time Lambrix weighed no more than 150

pounds, while Bryant weighed 185 pounds, and Moore was even bigger.

A healthy 19-year old woman is not going to passively be strangled to death or even physically assaulted in a manner that might result in death, without fighting back. For that reason, it can be assumed that whoever did attack Bryant would have received injuries or evidence of Bryant's struggle. It was determined **prior to autopsy** that Lambrix had no scratches or bruises consistent with what would have been expected from a struggle with Bryant... but Moore did. At the autopsy, supervised by Investigator Daniels, it was determined that Moore's body showed numerous scratches and contusions – but then a funny thing happened. Standard protocol requires that fingernail scrapings be taken from homicide victims. The evidence shows that fingernail scrapings were taken from Aleisha Bryant – but then conveniently disappeared.

Arguably, these fingernail scrapings would have conclusively identified Bryant's true assailant as is often the case in similar homicides. Although DNA testing was not available in early 1983, had this crucial finger scrapings evidence been preserved then DNA could now be done to identify Bryant's true assailant. Investigator Daniels was the only person present at the autopsy who was aware that Moore had an extensive criminal history, including assaults upon women and that key witness Smith already said Lambrix did not have any scratches or bruises on him. Confronted with the autopsy showing Moore did have scratches and contusions consistent with a physical struggle with Bryant, and Investigator Daniels's personal interest in corroborating Smith's claim that Lambrix attacked Bryant; is it merely a coincidence that this crucial evidence (fingernail scrapings) conveniently disappeared?



Additionally, the records show that the State's medical examiner Robert Shultz concluded that Aleisha Bryant died of "probable manual strangulation," a conclusion Dr. Shultz conceded was reached based upon information received from Investigator Daniels, who personally was present at the autopsies. It should be noted that this cause of death was reached even though there was virtually no physical evidence to support strangulation as the cause – no petechial hemorrhage or damage to the soft tissue of the neck, no damage to the larynx (the hyoid bone was intact and not damaged), and no discoloration of the eyes – **none** of the physical signs of strangulation were found and there is no evidence to suggest strangulation was the actual cause of death – except Frances Smith's own claim that Lambrix "choked the girl," which Investigator Daniels then influenced Dr Shultz to adopt as the probable cause of death, conveniently corroborating key witness Smith's testimony.

Investigator Daniels never revealed his interest in manipulating the autopsy reports to corroborate Smith's otherwise unsupported testimony. His personal interest becomes even more troubling when the autopsy of the deceased male Edward Moore, a.k.a. Lawrence Lamberson, is considered. There is no question that Moore died of blunt force trauma resulting from numerous blows to his head; and that these blows were administered in a consistent "swinging" fashion in a manner consistent with Moore facing Lambrix. There were no defense wounds on Moore – defense wounds would be typical if Moore was the victim. The absence of any of these defense type wounds strongly suggests that Moore was the aggressor – just as Lambrix claimed.

As stated earlier, this particular alleged capital crime took place in one of the smallest counties of the traditional "Deep South." At the time the prosecutor (McGruther) was young and ambitious – and anxious to make a name for himself. Even before Lambrix was arrested, McGruther was already personally feeding the local weekly newspaper his own dramatically sensationalized theory of cold-blooded murder, unethically manipulating the small community into a lynch mob frenzy.

But the whole story as to *the real motivation* for deliberately fabricating this sensationalized theory of cold-blooded murder was not exposed until many years later, when it was finally revealed why McGruther and Daniels collaborated together to wrongfully convict and condemn Lambrix... and why they deliberately concealed this information for so long.

As the court records reflect, in 1998 former State witness Deborah Hanzel came forward and admitted that she provided false testimony against Lambrix at trial – that Lambrix never did tell her he killed anyone. (See, *Actual Innocence Appeal*,” claim II). Subsequently, Hanzel provided an affidavit and sworn testimony detailing how before Lambrix was even indicted, the star witness (Frances Smith) and the State’s investigator “Bob” Daniels coerced her to provide that crucial false testimony that corroborated Frances Smith’s testimony – that Lambrix admitted intentionally killing both Moore and Bryant.

Hanzel also testified under oath that they knew that Lambrix actually only said he acted in involuntarily self-defense when “the guy (Moore) went nuts,” but that they deliberately kept this from the jury. (See, Affidavit of Deborah Hanzel). At a court hearing in February, 2004 Hanzel’s claims were substantiated by telephone records revealing that Frances Smith had been in contact with her at that crucial time.

In an apparent attempt to dispute Hanzel’s claim of an actual collaboration and conspiracy to wrongfully convict Lambrix, the State brought Frances Smith in to again testify. But just before this court hearing Lambrix’s counsel received additional information from Smith’s recently divorced ex-husband Douglas who claimed that Smith had often bragged about how she was having a sexual affair with the State Attorney’s investigator “Bob” Daniels, at the time Lambrix was prosecuted.

Why is this information so important? Because suddenly the motivation and means of wrongfully convicting Lambrix became clear. Investigator “Bob” Daniels was instrumental in bringing the case against Lambrix — Daniels personally swore out the

affidavit that led to formal charges of capital murder being brought against Lambrix, then subsequently personally supervised the entire investigation and development of the wholly circumstantial evidence used to convict and condemn Lambrix.

With this new evidence, Lambrix's Attorneys retained experts to re-examine the case. One of the top homicide detectives in the country, William T. Gaut, thoroughly re-examined the case and concluded that Investigator Daniels "manipulated evidence against Lambrix," with the intent to corroborate key witness Smith's story.

In April 2004 Frances Smith once again took the witness stand and was placed under sworn oath, completely unaware that her own ex-husband had informed Lambrix's counsel of her secret illicit affair with Investigator Daniels. Confronted with this information, at first Smith perjurally denied the allegation – but then over the State Attorney's relentless objections, Smith hung her head and in barely a whisper, she reluctantly admitted it was true. (See, "*Actual Innocence Appeal*," claim IV) (See also, Ft. Myers News-Press, April 6th, 2004 "Witness admits to affair with investigator.")

Additional evidence was developed that substantiated an actual conspiracy and collaboration between Frances Smith-Ottinger and the State Attorney's office to, by deliberate intent and design, wrongfully convict and condemn Michael Lambrix. Collectively the wealth of this evidence leaves no doubt that star witness Frances Smith and State Attorney Investigator "Bob" Daniels worked together to manipulate and fabricate evidence, and coerce witnesses to provide false testimony – and that State Attorney Randall McGruther knew that Smith and Daniels were working together to manipulate and fabricate crucial evidence.

It must also be recognized that State Attorney Randall McGruther is a career prosecutor with a history of alleged misconduct that includes attempting to coerce false testimony from witnesses, as well as sending at least one other innocent man to death row in

another wholly circumstantial capital case. (Please read, “The Anatomy of a Corrupt Prosecutor.”)

Would the jury that convicted and condemned Michael Lambrix reach the same verdict if they had known about the illicit relationship between Investigator Daniels and Frances Smith? Equally so, what if the jury had also known (as the State now concedes) that the star witness (Smith) had actually told numerous conflicting stories and even failed a polygraph test? Or that the only witness who actually corroborated Smith’s testimony now admits that she was coerced to provide false testimony and, in fact, Lambrix never told her he killed anyone? And that the male deceased (Moore/Lamberson) actually was a career criminal with a history of violently assaulting woman, and that the State deliberately suppressed evidence that Lambrix acted in involuntary self-defense?

These now undisputed facts were never known to the jury that convicted and condemned Lambrix.



They say a picture is worth a thousand words. This photograph was taken of Frances Smith when she was booked into the Hillsborough County Jail shortly after being arrested driving Moore’s car. The jury never saw these photos – does this appear to be a woman who is in fear of her life? Certainly not!

## THE 20<sup>TH</sup> CIRCUIT: AMERICA'S CAPITAL OF WRONGFUL CONVICTIONS.

The 20<sup>th</sup> Judicial Circuit of Florida is comprised of mostly rural farming communities in and around the Everglades in Southwest Florida. Although relatively small, this one circuit has the highest rate of wrongful convictions in capital (death-sentenced) cases in the entire country. Why would such a relatively small State Attorney's office have such a high number of wrongful convictions?

An examination of public records revealed what can only be described as a "good ole boy" system at work in the judicial circuit. When Lambrix was originally prosecuted the elected State Attorney was Joseph P. D'Alessandro. As the top prosecutor, he hired two of his Stetson University Law School alumni to work with him. Randall McGruther personally prosecuted the Lambrix case in rural Glades County, while Steve Russell became D'Alessandro's protégé. This Stetson University alumni inner circle has long controlled that State Attorney's office – and the local courts.

When D'Alessandro retired his protégé, Steve Russell, became the elected State Attorney at a time when Randall McGruther was facing allegations of coercing a witness to sign a false affidavit. These charges were brought before Judge R. Thomas Corbin, the same local judge that has presided over the Lambrix case since this new evidence was developed.

Suddenly, elected State Attorney Russell appointed McGruther as the circuit's "Chief Deputy State Attorney" (directly under Russell) and Judge Corbin mysteriously dropped the charges against McGruther – public records also show that during this time McGruther conveniently donated about **four thousand dollars** to Steve Russell's election campaign.

Further review of public records reveals that the Chief Administrative Judge Hugh Cary, himself was personally

recruited out of law school by State Attorney Joseph D'Alessandro and was working as a prosecutor with Steve Russell and Randall McGruther before becoming a local judge. Judge Cary maintains control of the files that were illegally removed from public access. Judge Cary's senior staff Attorney, Stephen Hooper, works with Judge Corbin and for years now has personally managed the Lambrix case, even though Gloria Hooper works at a local real estate company owned by the D'Alessandro family.

In July 2006 Lambrix's Attorneys compelled the sworn testimony of Chief Deputy State Attorney Randall McGruther before Judge Corbin. Transcripts of that hearing indisputably reflect that when Lambrix's Attorneys attempted to question McGruther about his history of alleged misconduct, Judge Corbin inexplicitly became hostile and improperly terminated all questioning; even abruptly dismissing McGruther from the stand thus eliminating any chance of exposing McGruther's alleged misconduct.

# THE APPEALS

## FLORIDA APPELLATE CAPITAL LAW

### DIRECT APPEAL

### POST CONVICTION APPEALS

The appeal process of a capital case illustrates just how dysfunctional our judicial system can be – and just how the judicial system itself *systematically obstructs* review of legitimate claims of innocence, and just why it is inevitable that innocent men and women will be executed.

The average person unfamiliar with the complex appellate system applicable to capital cases erroneously assumes that after a person is sentenced to death the courts will examine the entire case and that any legitimate claims of possible innocence are raised promptly and fully reviewed. But this simply is not how the system works.

The truth is that attempting to challenge an alleged wrongful conviction in our courts is extremely complicated and very rarely successful. The appellate process itself is designed so that only certain types of legal claims can be raised at each stage of the appeal process. For this reason, with rare exception, a person who has been wrongfully convicted and condemned to death is effectively *prohibited* from even arguing his innocence until many years after the conviction. In fact, the average “innocent” person spends at least 12 to 16 years on death row before being exonerated and released. (See, “*Death Penalty Information Center*,” at [www.dpic.org](http://www.dpic.org)).

# THE APPEALS

## THE DIRECT APPEAL

By law all capital (death sentence) cases are “automatically” appealed to the Florida Supreme Court which examines every case to ensure that the evidence is sufficient to sustain the conviction.

To accomplish this automatic “direct appeal” review the condemned is appointed a lawyer who is responsible for preparing an appeal brief that raises the specific claims of error that the lawyer believes deprived the condemned of a fair trial. However, only claims that have been specifically raised (by a ‘contemporaneous objection’) during the trial itself can be presented on direct appeal. Thus, this appeal is very limited in just what can and cannot be argued, and very rarely is innocence of a crime raised on direct appeal.

A new lawyer, Ray LeGrande, of Fort Myers, was appointed to represent me on this ‘**direct appeal**’. I did not know him and to this day I have never met him. At the time I had no way of knowing that he had never represented anyone previously in a capital appeal.

For procedural reasons, only certain types of legal claims can be raised on the initial “direct appeal”. As a general rule only legal claims that were argued on the record before the lower court and “preserved” for appeal such as issues relating to admissibility of evidence and objections made during trial can be raised in this appeal. Additionally, the State Supreme Court is required to “independently” review whether the evidence is legally sufficient to support the convictions, and whether the death penalty was properly applied.

LeGrande raised a total of five legal claims on this direct appeal, of which three were procedural issues that had already been ruled on unfavorably by the US Supreme Court. Only two of the claims



raised addressed any evidence relevant to my conviction. Both involved allegations that the trial court improperly restricted the cross-examination of witnesses. The first claim argued that the trial court improperly refused to allow my trial lawyers from cross-examining the key witness, Frances Smith, questioned on these prior inconsistent stories as to do so which “open the door” to allowing the jury to know that at the time Smith gave these prior inconsistent stories she was in custody for aiding and abetting my alleged “escape” from when I had walked away from a minimum security work related center where I was staying following a conviction for writing a bad check.)

Although my trial counsel strenuously argued that the court must allow the jury to hear that the key witness was in fact a habitual liar who had told numerous other stories, and even failed a polygraph test, the trial judge ruled in favor of the State and prohibited the jury from knowing of these prior inconsistent stories. On appeal the Florida Supreme Court ruled that the trial judge was correct, as to allow the jury to hear that the key witness was a habitual liar would only ‘confuse’ the jury.

Obviously, had the jury known that Smith-Ottinger had told numerous false stories to the police before coming up with the story that conveniently served her purpose, then her credibility would have been questioned and “reasonable doubt” found that would have precluded the jury from finding me guilty.

Additionally, the Florida Supreme Court decided that the trial judge also properly restricted the cross-examination of investigative agent Connie Smith. At trial my lawyer attempted to question her about the male victim’s known criminal background, which included known association with drug smugglers and a propensity for violence against women. But the court ruled that the jury should not know that the male victim was actually a career criminal recently released from prison with known ties to drug smuggling and a history of violently assaulting women.

This ‘direct appeal’ was denied by the Florida Supreme Court in September 1986 and is reported at **Lambrix v State 494 So. 2d**

**1143 (Fla 1986)** It should be noted that in August 1991 at a Federal Court hearing on my original ‘habeas’ appeal, both former Florida Supreme Court Chief Justice Alan Sundberg and renowned criminal defense Attorney Roy Black voluntarily testified on my behalf regarding the quality of legal representation I received at both trial and on direct appeal, and characterized Ray LeGrande’s performance as utterly incompetent and among the most inadequate representation they’ve seen in any capital case.

### **POST CONVICTION APPEALS**

Once a capital case is affirmed on direct appeal, then for legal reasons the conviction is considered “final” and what is known as “post conviction” appeals begin. In these “post conviction” proceedings the defendant will raise claims that cannot be raised on the earlier “direct appeal” or that legal counsel improperly failed to raise on the direct appeal. It is during this phase of appellate review that claims of innocence are generally raised, but each must be raised specifically in the context of the alleged deprivation of an established right, as innocence itself IS NOT a cognizable issue (see *Herrera v Collins*, 506 US 390 (1993.)) (This recognized that the courts are empowered only to review specific claims of error resulting in an unfair trial- not review claims of innocence as the constitution **does not** protect the innocent from being convicted, it only guarantees that a “fair trial” will be provided.)

Because of the complexity of the capital post conviction process, the State of Florida has created a statutory right to the appointment of legal counsel in post conviction capital cases. However, when my case entered the post conviction review phase, Florida had only one state funded agency then known as “Capital Collateral Representation” (known as “CCR counsel”) to provide representation to all Florida death sentenced prisoners seeking collateral review.

The office was completely underfunded and understaffed, with about 3 lawyers responsible for representing at least 150 death

sentenced prisoners, many of whom were facing scheduled executions and other inflexible procedural deadlines. Because of this, the CCR counsel had to adopt a “priority” system in which the lawyers would focus on cases that were under deadlines or facing scheduled execution. Since I was neither under imminent deadline or scheduled execution, my case would have to wait for counsel.

However, applicable Florida law at the time also required me to file any state post conviction appeals, including any claim of innocence based upon error of law, within 2 years of the date my “direct appeal” was denied (September 1986). If this appeal was not adequately filed within that time, then by law it would be “procedurally barred” and could not be filed.

Conscious of this statutory deadline for initiating my all important post conviction appeal, I wrote to Larry Spalding, the director of CCR and requested that a lawyer be assigned to my case. But Mr. Spalding replied that because the CCR office was underfunded and already overwhelmed by other capital cases, they could not appoint a lawyer to my case and I would have to wait.

I then waited over a year during which time I repeatedly reminded Mr. Spalding that I was under a statutory deadline to file my post conviction appeal. But they were simply not able to provide counsel. I then wrote a motion requesting that the trial court order CCR counsel off my case and allow me personally (‘pro se’) prepare and file my own post conviction appeal and I sent the motion to the original trial court.

In December 1987 I was transferred to the Charlotte County Jail for a hearing on that motion, with Judge Elmer Friday now presiding over the case. To my surprise the original prosecutor Randall McGruther appeared on behalf of the State as did Judy Daughtery, a CCR lawyer. Judge Friday allowed me to state my position- that although Florida law allowed for the appointment of legal counsel to represent me on my original post conviction appeal, the poorly funded and understaffed agency (CCR) simply

could not do so, thus the only way I could timely file my post conviction appeal was to have CCR counsel discharged and be allowed to represent myself.

I argued that both the State and Federal constitution explicitly provided the right of self representation and his request to represent himself must be granted. But both Randall McGruther and Judy Daughtery determined I was prohibited from representing myself as Fla. Statues Ch 27.702 “mandated” appointment of CCR counsel, and it was the legislative intent of these statutory provisions to allow capital appeals to be filed only by appointed counsel so I could not be allowed to waive counsel and represent myself.

I then strenuously argued that the creation of a statutory “right” to counsel in post conviction proceedings could not overcome my constitutional right to represent myself if I so wished as recognized in *Faretta v. California* 422 US 806 (1975). But the Judge sided with the State and ruled that under Florida law a death-sentenced prisoner had no right to represent himself and that I had to be represented by the State funded office of CCR, and the court would only be allowed to accept my own appeal if it was filed by CCR Counsel.

I was convinced that this ruling violated long established constitutional law, and after being transported back to death row, I immediately filed a ‘Petition for Writ of Prohibition’ directly to the Florida Supreme Court, arguing that Judge Friday improperly prohibited me from discharging CCR Counsel, and that I had a clearly established constitutional right to represent myself if I so wished- and CCR Counsel could not be virtually forced upon me, especially when CCR Counsel clearly could not provide adequate representation at the time.

But the Florida Supreme Court summarily denied my petition as ‘moot’ without giving any explanation as to how the issue was rendered moot. **Lambrix v Judge Friday 525, So.2d 879 (Fla 1988)** Whether I liked it or not, I was now completely dependent

upon CCR Counsel and I could do nothing to protect my own interests.

Under Florida law, any State post conviction appeal (known as a **'rule 3.850' motion to vacate convictions**) must be filed within two years of the conviction becoming "final" upon direct appeal. In my case, that meant that any State post conviction appeal had to be filed no later than October 1988- if it was not, then the entire appeal would be considered "untimely" and procedurally barred from review.

By June 1988 I still did not have any lawyer assigned to his case and the deadline was quickly approaching. Unable to file the post conviction appeal himself because of the lower court's earlier ruling, I had few options left. In an act of desperation, I filed a civil action against Florida's Governor, asking the Florida Supreme Court to order the Governor to sign a "death warrant" as that would be the only way that I would have a lawyer assigned to his case and any chance of having the post conviction appeal filed in time. A few days later the Florida Supreme Court summarily denied the civil action I had filed against the Governor as being "moot".

In September 1988 Governor Robert Martinez did sign a death warrant scheduling my execution for Wednesday November 30, 1988. The same day Robert Tefeteller was also moved to death watch and as we remained in cells side by side for the next two months, we became close friends. **Lambrix v Governor Martinez So.2d**

Now moved to "death watch" and placed in a cell only feet from the room where the electric chair was, I finally had a CCR lawyer (Billy Nolas) assigned to my case. But at the time due to an aggressive policy of signing multiple death warrants in a politically motivated attempt to overwhelm the few lawyers representing condemned prisoners, there were 9 men on death watch awaiting imminent execution, the majority of which were scheduled at a date before my own.

In this appeal ('Rule 3.850' motion to vacate convictions) any and all claims that were not raised on the initial direct appeal must be pled. Basically, all claims preserved on the record at trial are raised on direct appeal, but any "collateral" post conviction claims that are not already on the record typically require an "**evidentiary hearing**" to establish. (An evidentiary hearing is a proceeding in which claims raised that cannot be resolved by looking to the record are heard by the lower State court. If the lower court judge determines the issue raised is legally sufficient, then the court must allow an "evidentiary hearing" as an opportunity for the capital defendant to present the evidence necessary to substantiate the claim raised.)

By law I had until October 26, 1988 to file my original post conviction appeal, or it would be procedurally barred as "untimely". Nolas made it very clear that he was not happy about me 'pushing' the system and the contact between us was at best strained. It was not my intention to make his job more difficult, but only to try to protect my right to pursue my post conviction appeal. On October 26, 1988 Billy Nolas finally filed my Rule 3.850 motion (post conviction appeal) which was quite literally the last day of the two year deadline. But rather than file the complete appeal, due to their inability to fully investigate and prepare my specific claims- including actual innocence- Mr. Nolas filed a "shell" motion stating that due to an overwhelming caseload and inadequate time to my scheduled execution, the court must grant them additional time by granting a 'stay' of execution and allowing them to fully investigate, develop, and present all my post conviction claims.

Judge Elmer Friday deliberately sat on this appeal for almost a month until only a few days away from my scheduled execution-then summarily denied CCR Counsel's request for more time, stating only that it would not be in the "interest of justice" to delay the execution and no further time would be allowed. Judge Friday made no attempt to address the fact that I had previously appeared before his court specifically arguing that CCR Counsel could not provide adequate and timely representation.

CCR lawyer Billy Nolas immediately appealed this order to the Florida Supreme Court, asked them to order a stay of execution and remand the case back down to the lower court with instructions that CCR counsel be allowed to have the time necessary to fully investigate, develop and present my post conviction appeal, including actual innocence.

But the Florida Supreme Court had grown increasingly intolerant of last minute appeals made on behalf of condemned prisoners facing execution. Unable to provide an immediate ruling, with only hours until I was to be executed, the Florida Supreme Court ordered a temporary 48 hour stay of execution, automatically rescheduling my execution for the early morning of December 2, 1988. Then in a split 4 to 3 ruling, the Florida Supreme Court denied my appeal- refusing CCR Counsel more time to prepare and present my post conviction claims.

### **Lambrix v State 534 So.2d 1151 (Fla. 1988)**

CCR counsel Billy Nolas expeditiously prepared a Federal ‘**habeas corpus**’ appeal and filed it in the Federal District Court in Fort Lauderdale, seeking a stay of execution. If he had got a flat tire, or otherwise delayed on his trip to Broward County, he wouldn’t have made it, and I would have been executed. As I sat only feet away from the electric chair, I could feel the hum of electricity as the guards tested the chair to make sure it was working properly. The warden, Tom Barton, came down to my death watch cell to ‘talk’ me through it. The prison chaplain Mr. Jolly came to save my soul and the kitchen supervisor came to prepare my last meal. But it was all fog.

Every minute of every hour ticked, each that much louder than the last. Somehow I felt my heartbeat itself became synchronized to the clock on the wall- when that ticking came to a stop, so would my heart. I had no way of knowing whether Mr. Nolas would make it to the Federal Court, or whether the court would even call off my now imminent execution. Anxiously, I awaited that phone, almost willing it to ring. And repeatedly it did- but it

wasn't my lawyer. Each time I leaped from my bunk to the front of the cell, straining to listen to the Sgt as he answered the phone.

Finally, on the evening of December 1, 1988, with about 10 hours left before my date with death, the phone call came in. . . . Federal District Court Judge William Zloch granted a full stay of execution so that my federal 'habeas corpus' appeal could be heard, and after over two months on death watch, I was moved back to a regular death row cell, no longer facing imminent execution.

## **FEDERAL HABEAS CORPUS APPEAL**

A federal '**Habeas corpus**' appeal allows a state prisoner to seek relief from an allegedly illegal conviction in the federal courts, but is limited to **only** review claims that were first properly presented and exhausted in the State courts, but because it challenges a State conviction, the State must have an opportunity to correct its own mistakes before the federal courts can be allowed to intervene.

After the Federal District Court granted the full stay of execution to all my Federal "Petition for Writ of Habeas Corpus" to be fully heard, it took awhile before anything further was done,. Although at that time I was still unfamiliar with much of the law applicable to the appellate process, I was fortunate enough to be around other inmates who had already been through their own Federal appeals. I began to borrow copies of their appeals and read all I could on how the Federal courts review these appeals.

I was especially fortunate to be housed near Ted Bundy. For a few months prior to me having my death warrant signed I had shared "rec" yard with him a couple of times a week, and I had gotten to know him. It helped that his Mom had lived outside Salt Lake City in the Granger area where I had lived for a few months, and I connected with him about the area, and how it had changed after he moved out to the State of Washington.



Ted helped me to learn a lot about the law, patiently teaching me the basic fundamentals that very few 'jailhouse lawyers' ever learn. He was the first person to explain to me how the law is like a game of chess- it's not enough to plan your own move, you must also anticipate your opponent's move and think it all through at least a few steps ahead. In all fairness, I was a quick learner and I think Ted enjoyed the challenge.

During this time Ted introduced me to his close friend Diana, who was a lawyer in Sarasota, Florida. She regularly came up to the prison to visit him and before long she was calling me out, too. Through her generosity I was able to get numerous law books that explained Federal law, and I would read and study each, often late into the night by the light of my small black and white TV.

By the following year Governor Martinez began pushing hard for Ted's execution and in 1989 they executed Ted. I had lost my law tutor and soon again found myself on my own. Diana had become Ted's executor of his estate, and after he was cremated, she personally took his ashes and scattered them above the Cascade Mountains, a place he loved. Ted finally went home and I never saw Diana again.

Looking back, I believe I am still alive today because of the help Ted Bundy so generously gave. I never knew him as the monster that society made him out to be. I only knew him as the man he was when he lived among the condemned and I was not the only one he so often reached out to help. I wish people outside could have seen and known that side of him- the sense of humanity, compassion and generosity he possessed.

Not long after Ted was dead I finally succeeded in having the State funded CCR office removed from my case. Then Federal District Court Judge William Zloch appointed the federally funded agency "Volunteer Lawyers Resource Center" located in Tallahassee to represent me. The agency would recruit private lawyers, mostly those working in large law firms, to provide 'pro

bono' representation and then they would provide assistance with necessary investigations and support legal counsel.

Robert Wesley was my primary 'VLRC' counsel, although he went on to become the elected public defender for the Seventh Circuit, which is the central Florida/Orlando area. Through his assistance, Robert Josefberg agreed to provide representation. At first I was excited about having someone of his caliber handling my case, as prior to going back into private practice as a senior partner in one of Miami's largest law firms, Josefberg was General Counsel to Governor Robert Graham. But as time passed, I came to learn that Josefsberg only would lend his name and had no desire to personally involve himself in my case.

The actual work on my case was done first by Bob Wesley, and when he abruptly left VLRC, the new director Matthew Lawry took over. In 1990 Jennifer Greenberg joined my 'defense team' and she became the first person I ever felt was actually committed to fighting my case. Although at the time she was technically only an "investigator", she had already earned her law degree, studying under well known FSU law professors and anti death penalty advocates, Steven Goldstein and Mark Olive, and had personally worked for the CCR for several years.

I could easily write an entire book of praises for the work and commitment both Jennifer Greenberg and Matthew Lawry showed. But because of my prior counsel's failure to fully present specific "claims" of violations of my protected rights to the State courts, they were severely limited in what could be argued before the federal court.

The staff lawyers at VLRC specialized in capital post conviction litigation and provided competent representation. But the State Attorneys, including Peggy Quince, who is now the Chief Justice of the Florida Supreme Court, argued that the Federal court was legally prohibited from addressing any of the claims, including my actual innocence, that were not properly raised and 'exhausted' in the State court.

This “exhaustion” rule is one of the politically created procedural rules that serve to disingenuously obstruct condemned prisoners from fully arguing specific claims of how they were denied a fair trial. Basically it works like this...before any specific claim of how the convicted prisoner was denied a fair trial can be presented to the Federal Courts, it must first be fully presented and argued in the State courts under the pretense that the State courts should have the first opportunity to correct any alleged violation of a federal right before it can be argued in Federal Court.

Because my original State appointed CCR counsel did not have the time to investigate, develop and present many of my alleged claims in the State court while I was under active death warrant and facing imminent execution, including the substantial wealth of evidence supporting my claim of actual innocence, Judge Zloch had no choice but to rule that all those claims- including innocence- could be presented to the Federal Court.

This meant that the only claims I would be allowed to proceed with in Federal Court were the few claims presented in my State “direct appeal” and the post conviction appeal that the CCR counsel did actually argue. Judge Zloch granted an evidentiary hearing on the primary claim that I was too intoxicated at the time of the alleged crime to have had the capacity to form actual intent. Basically, this claim argues that the law has long recognized that if a person is extremely intoxicated they are incapable of forming the level of intent necessary to commit premeditated murder.

The problem with this type of legal argument is that although the law recognizes that voluntary intoxication can rise to the level of negating formed intent, it only applies to circumstances in which the defendant admits he committed the crime. If the defendant does not admit guilt, then no amount of intoxication is relevant. After a lengthy hearing in August 1991 Judge Zloch subsequently denied the claim as I did not admit guilt.

The August 1991 evidentiary hearing was impressive. Under the supervision of both Jennifer Greenberg and Matthew Lawry a defense team was formed fairly comparable to the ‘Dream Team’ representing O.J. Simpson in his infamous murder trial. In addition to Matthew Lawry, FSU professor Steve Goldstein (who died of a heart attack a few years later), Robert Josefberg and Joel Lumer all gathered around the table to argue my case. They then called upon numerous witnesses, including the former Florida Supreme Court Justice Alan Sundberg and renowned criminal defense lawyer Roy Black, and a professor of Psychiatry at Yale University, Robert Phillips. Alan Sundberg characterized the representation I received on ‘direct appeal’ by Ray LeGrande (who was a former law professor) as “the worst” he had ever seen.

Several of my family members were brought in from as far away as California and Utah and for days my lawyers presented witnesses and evidence in an attempt to convince the court that my convictions and sentences must be thrown out.

In the end no amount of evidence could convince Judge Zloch to grant any relief in and June 1992 he issued a comprehensive “order” denying relief. The case would now have to be appealed to the Eleventh Circuit Court of Appeals in Atlanta, Georgia. Under applicable law a ‘Notice of Appeal’ had to be filed within 15 days.

But several weeks later I learned that the all important Notice of Appeal was not filed. The panel of lawyers working to represent me had agreed that co-counsel Joel Lumer would write it up and file it. Only later did we learn that although Mr. Lumer did write the necessary notice up, he then left it on his desk with instructions for his secretary to deliver it to court, but she never received the message.

To make matters worse, only a few months earlier the US Supreme Court had decided the capital case of *Coleman v. Thompson* Sol US 722 (1991) in which a man on Virginia’s death row was facing imminent execution and his lawyer was

only one day late in filing his appeal, including a claim of actual innocence. Coleman argued that because he was innocent, the court had to accept his appeal even if it was a day late. But by a narrow 5 to 4 vote, the Supreme Court said that the rules are the rules and it didn't matter if the appeal was even one minute late, if it was not filed on time it could not be heard- not even if it alleges innocence. Coleman was then executed.

A hearing was held before Judge Zloch and the circumstances as to why Joel Lumer didn't file the Notice of Appeal on time were explained. To my surprise the Attorney General's office agreed to allow the Notice to be filed without arguing a procedural default. Judge Zloch then accepted the Notice as 'timely filed' so that I would be allowed to proceed with the appeal. Immediately after the matter was resolved, I insisted that Joel Lumer be removed from my case but Robert Josefsberg disagreed. Only after I threatened to fire Josefsberg, too, did they agree to have Joel Lumer removed. I would not tolerate incompetence, especially when his error could have easily cost me my life.

My case was then transferred to the Eleventh Circuit Court of Appeals in Atlanta. For those unfamiliar with how the Federal Court system works, any legal proceeding is originally initiated in the lower Federal District Court that has geographical jurisdiction to hear the case. After the District Court enters a final order denying relief, it is appealed to the next level of the Federal judiciary, which for Florida cases is the Eleventh Circuit Court of Appeals in Atlanta. Again, this is based upon geographical jurisdiction as the entire country is divided in eleven different Circuit Courts of Appeals.

However, about that time the US Supreme Court issued a ruling in **Espinosa v Florida (1992)** that found that the jury instructions provided to the Florida jurors on whether a crime was especially "heinous, atrocious or cruel" (H.A.C) were improperly vague and misleading. These same jury instructions were used to convince the jury in my case that I should be sentenced to death.

This particular jury instruction was used in my case resulting in the jury recommending that I be sentenced to death. But to now argue that in light of this new case I was entitled to relief from my sentence of death, I would first have to ask that my Federal appeal be put on hold and my case sent back to the Florida Supreme Court so they could address this issue. I didn't want my case unnecessarily delayed especially since I had no interest in only having my sentence reduced to life. But my lawyers felt it was necessary and possibly would allow me to raise other legal claims in the State court, so I conceded to allowing them to file the necessary motion to have my case sent back to the Florida Supreme Court.

Matthew Lawry handled the new appeal which raised only the question of whether I was unconstitutionally sentenced to death by the use of vague and misleading jury instructions that unfairly gave the State an advantage. In June 1994 the Florida Supreme Court unanimously ruled that although the improper jury instruction was used to help condemn me to death, because my direct appeal lawyer LeGrande did not raise it in an earlier appeal, it was "procedurally barred" as untimely.

### **Lambrix v Singletary, 641 So. 2d 847 (Fla 1994)**

A total waste of almost two years! My appeal was sent back to the Federal appeals court, and the claims presented to the lower court were fully argued. But in January 1996 the Eleventh Circuit denied all relief.

### **Lambrix v Singletary, 72 F3d 1500 (11thCir 1996)**

In this opinion, the Eleventh Circuit ruled that:

1. Although recognizing that I clearly did advise both my trial counsel and the trial court that I wanted to personally testify on my own behalf at trial, and the court's refusal to allow me to testify at trial was unconstitutional, the Eleventh Circuit concluded that I could not be granted a new trial because although the record shows I asserted my

right to testify at my first trial (which ended in a hung jury), the record of my second trial **did not** show any assertion.

2. That my claim that double jeopardy prohibited the State from subjecting me to a second trial after the first jury could not reach a verdict was without merit because although the record is clear that the Court improperly coerced the original jury to concede to a rushed ‘hung jury’ by denying basic necessities of food and medicine, and the original jury was dismissed even though the defense objected, the discharge was necessary as the trial court did have reason to believe further deliberations would be a waste of time.
3. That the Florida Supreme Court’s decision that my claim of being unconstitutionally sentenced to death by the use of vague and misleading jury instructions required the Federal Court to find relief procedurally barred.

After a request for rehearing was denied my lawyers then petitioned the US Supreme Court to review the case, specifically arguing two issues- that my right to testify at trial was and is a ‘fundamental right’ thus the court could not assume a waiver of this right from a silent record and I must be granted a new trial, and that the Florida Supreme Court’s decision procedurally barring my claim of entitlement from relief from unconstitutionally imposed sentences of death is improper.

In late 1996 the US Supreme Court granted review of my case, but only on the issue of whether I was entitled to relief from unconstitutionally imposed sentences of death based upon prior counsel’s failure to specifically raise the claim on earlier appeals.

In 1997 the Supreme Court ruled by a marginal 5 to 4 vote, with all members of the court agreeing that in the light of *Espinosa v. Florida* 1992 I was unconstitutionally sentenced to death, that because my original direct appeal lawyer did not specifically raise this claim of vague and misleading jury instructions on my direct appeal, the claim was now procedurally barred and I could not be granted relief.

As my Federal appeal continued to be reviewed by the Federal appeals court, my lawyers also filed a new state “Rule 3.850” post conviction appeal. In Florida, as with most other death penalty states, the rules governing appellate review do not allow secondary appeals after specific time limits. These rules were adopted with the specific intent to speed up a “finality” in capital cases.

But my lawyer argued that a belated new State post conviction appeal must be allowed as my original post conviction appeal was effectively obstructed by the State forcing incompetent and “ineffective” counsel upon me. However, although there was no dispute that my original post conviction lawyers failed to properly develop and present my numerous substantial claims of error, including unconstitutionally denying me the right to testify on my own behalf at trial, denying the right to adequately cross examine the State’s key witness, and denying the right to be tried before a fair and impartial jury, the State court refused to review the claims raised, summarily denying relief by finding that the entire appeal was “procedurally barred” as untimely.

The briefs and hearing transcripts can be read in their entirety at:

**<http://www.southerninjustice.com/hearings-briefs/>**

My lawyers appealed that lower State court ruling to the Florida Supreme Court, arguing that constitutional “due process” required the State court to set aside any statutorily created procedural rules and review the claims- including actual innocence- on the pled merits because of the failure to appoint competent legal counsel in the earlier appeal.

But the Florida Supreme Court rejected this argument upon finding that there is no constitutional right to legal counsel in State post conviction appeals thus even if such counsel did fail to provide adequate representation during my original State post conviction proceedings, that could not be used as grounds for entitlement to a new appeal.



### **Lambrix v State 698 So.2d 247 (Fla 1996)**

By mid 1996, with both State appeal and the federal appeal now denied, my lawyers filed a petition requesting that the US Supreme Court accept review of the case. However, the US Supreme Court does not accept review of an entire case, but rather only specific questions of constitutional law. In my case the Supreme Court agreed to consider the question of whether the lower court's finding that my death sentences imposed by applying the improperly vague and misleading jury instructions could still be upheld because his lawyers failed to "timely" raise that legal claim prior to the ruling in *Espinosa v Florida*. (1992)

The following summer the Supreme Court affirmed the lower court's ruling that found the claim to be procedurally barred. Although the Supreme Court recognized that I was clearly and improperly sentenced to death, it decided that I was not entitled to relief from that illegal sentence of death because the lawyers did not properly present the claim earlier.

### **Lambrix v Singletary 520 US 518 (1997)**

In July 1996 Congress abruptly eliminated all federal funding for "Volunteer Lawyers Resource Center" (VLRC) effectively leaving me without legal representation. After attempting to unsuccessfully obtain pro bono legal representation, I was compelled to file a "Petition for Writ of Mandamus" with the court requesting that counsel be appointed. By administrative order, this court assigned 'CCRC-South' to his case, then dismissed as 'moot' the Mandamus petition, **Lambrix v Reese 705 So2d 902 (Fla. 1998)**.

With both the State and Federal appeals now fully exhausted the Governor requested that legal counsel be appointed to represent me on a petition for clemency, which is the standard procedure undertaken when the Governor is considering signing a death warrant and setting an execution date. By requesting that a clemency petition be filed, I knew that Governor Lawton Chiles was preparing to schedule my execution.

Once “first round” State and Federal appeals are fully completed it becomes very difficult to pursue any further appeals as the rules governing appellate review allow for very few exceptions to the strictly enforced time limitations imposed on capital post conviction proceedings.

Basically this means that a new appeal cannot be filed until “newly discovered evidence” of sufficient value to question the validity of the conviction is found. In Florida, appellate rules allow such newly discovered evidence to be raised within one year of its discovery, so I could do a new appeal, if new evidence existed.

That necessary “new evidence” was unexpectedly developed while my clemency petition was pending, when the Florida Supreme Court threw out the death sentence imposed upon Raleigh Porter. (Porter v State, 723.S02s 191 Fla., 1998) Upon finding that the Judge who sentenced Porter to death (Judge Richard Stanley) didn’t disqualify himself, Porter was denied a sentencing before a “fair” judge.

This is the same Judge that I had for my entire trial. (In Porter’s case, this judge only presided over his sentencing) and so my lawyers immediately filed a new appeal arguing that based upon the court’s findings in Porter’s case, I was also entitled to relief from the convictions and sentences.

During the development of this new issue, my lawyers reviewed the full record and found other apparent errors. In an attempt to clarify an ambiguous misprint in the original trial transcript my lawyers contacted former State witness Deborah Hanzel to ask her about her testimony.

To the lawyer’s complete surprise, Hanzel said that she thought I had been executed long before or else she would have contacted them as she wanted them to know that contrary to her trial testimony, I actually never told her that I had killed anyone- her testimony was false.

Subsequently, Hanzel provided an affidavit and sworn testimony detailing how before I was even indicted, the star witness (Frances Smith) and the State's investigator "Bob" Daniels coerced her to provide that crucial false testimony that corroborated Frances Smith's testimony – that I admitted intentionally killing both Moore and Bryant.

Hanzel also testified under oath that they knew that I actually only said he acted in involuntarily self-defense when "the guy (Moore) went nuts," but that they deliberately kept this from the jury. (See, Affidavit of Deborah Hanzel).

Almost five years later I was finally granted an evidentiary hearing on this newly discovered evidence. At that time Hanzel provided more information – that she was deliberately coerced into providing that false testimony by the key witness Francis Smith and an investigator with the State Attorney's Office. They had known all along that I had acted in involuntary self-defense!

Several months later another hearing was held and for the first time I was allowed to testify about what really happened that night. The State did not and could not discredit my claim of "involuntary self-defense."

The State then called their key witness Francis Smith (now Francis Ottinger) to deny that she coerced Hanzel to provide false testimony. However, Smith was not aware that only days earlier her recently divorced husband has provided my lawyers with startling new information – that while I was being prosecuted on these capital charges, Smith was having a secret relationship "of a sexual nature" with the State Attorney's own investigator, Robert Daniels – the very person who had sworn out the affidavit initiating these charges against me, then was responsible for developing the circumstantial evidence used to corroborate Smith's story. As Smith took the stand she predictably denied coercing Hanzel to provide false testimony – then my lawyers asked Smith if it was true that she was having a sexual relationship with investigator Daniels while I was being

prosecuted. At first, perjuring herself she denied any relationship, but then reluctantly admitted it.

The entire transcript of the May 5, 2004 hearings can be read at

<http://www.southerninjustice.com/hearings-briefs/>

My claims of actual innocence were pending before Judge R. Thomas Corbin of the Lee County Circuit Court in Ft. Myers, Florida for almost nine years, despite my numerous attempts to compel Judge Corbin to provide timely review. With deliberate intent, both Judge Corbin and the State methodically obstructed my ability to present all the evidence at one time. By forcing my lawyers to only address a small part of the evidence at each hearing they effectively prevented the evidence from being considered in its entirety.

But with each of these evidentiary hearings the weight of evidence grew stronger and anyone following the case could see that virtually every element of the State's original wholly circumstantial theory of premeditated murder was discredited. My lawyers even retained numerous expert witnesses, including crime scene reconstruction and forensic pathologists, to present expert testimony to establish that the State's theory of events simply was not consistent with the evidence.

Not surprisingly, the State adamantly opposed presentation of this expert testimony, disingenuously arguing that to allow these expert witnesses to testify would be tantamount to providing a new trial. Judge Corbin only too eagerly adopted this absurd argument and ruled that none of the evidence would be heard.

With the substantial wealth of evidence now supporting my long pled claim of innocence, the State Attorney's office attempted to compel me to accept a 'plea agreement'- if I would agree to drop all my appeals and admit guilt, the State would reduce my death sentence to 'life.' Under Florida law applicable to my case (the laws were changed in cases after 1996) this meant conceivably I could almost immediately be eligible for parole. All I had to do

was plead guilty and drop any further claims of innocence and I would be taken off death row and be eligible for parole. (see article Ft Myers News- Press July 17, 2006)

But I would not do this. Without hesitation, I categorically refused to accept this offer- I simply would not plead guilty to a crime that I know I **did not** commit; that I know was deliberately fabricated by an ethically corrupt prosecutor and the State. Some of my friends have questioned my decision not to take this ‘deal’, but I know that even as bad as it is to be condemned to death, and even face execution for a crime I did not commit, it would be even harder to live with the knowledge that I pled guilty to something I did not do.

What I did not know at the time and would not know until much later was that just as the local State Attorney’s office (Joseph D’Alessandro, Steve Russell and Randall McGruther) had deliberately stacked the deck against me when I originally stood trial they were also manipulating the process during my post conviction review of the substantial wealth of evidence now supporting my innocence.

As summarized above, in both 2004 and 2006 the lower State court was compelled to allow numerous evidentiary hearings on my claims of prosecutorial misconduct relating to the failure to disclose the intimate relationship between the State Attorney’s lead investigator Bob Daniels and the key witness, Frances Smith, as well as the secret deal they had made with Smith, giving her immunity in exchange for her testimony against me. Also on the claims by Deborah Hanzel that witness Smith and Investigator Daniels deliberately coerced her to provide the false testimony to support Frances Smith’s own testimony- and that they knew all along that I actually did act in involuntary self defense and did not commit any act of deliberate murder.

In Judge Corbin’s final order denying my appeal rendered on November 7, 2007, he rejected virtually all of the evidence and testimony my lawyers presented to the court upon finding that it was “not credible.” Even though the State’s key witness Smith

testified that she did have a sexual relationship with investigator Daniels, Judge Corbin found her testimony “not credible”- apparently when Frances Smith’s testimony was provided to convict and condemn me despite the fact she told numerous different stories and even failed a polygraph test, it was credible. But when her admissions of having an intimate relationship with the State’s lead investigator would support an entitlement to relief from these wrongful convictions, suddenly Frances Smith was “not credible.”

Judge Corbin categorically found that the testimony of the original prosecutor, Randall McGruther, was the only credible testimony- supported of course by lead investigator Robert ‘Bob’ Daniels. Both denied (gee, what a surprise!) the allegations that they had coerced Deborah Hanzel to provide false testimony, and engaged in a conspiracy and collaboration to wrongfully convict me. No matter how much evidence contradicted their own unsupported, self-serving denials of misconduct, Judge Corbin rejected virtually everything else and denied relief upon finding they were the only witnesses who were credible.

It wasn’t until August 2009- after my case was already transferred to the Florida Supreme Court for appellate review of Judge Corbin’s order denying relief, that we discovered that during these 2006 hearings Judge Corbin was actually up for re-election (in Florida county/circuit judges are elected locally every six years) and that unknown to anyone but a few of the top ranking members of the local State Attorney’s Office had formed a political alliance with a “convicted felon” by the name of Richard Spence.

According to numerous newspaper articles first published in August 2006 Richard Spence was convicted of federal money laundering and kidnapping charges after pleading guilty to illegally ‘laundering’ at least \$100 million for the Columbian drug ‘Cali Cartel’- at the time the largest importer of cocaine into the US. After serving less than four years in federal prison, Richard Spence moved to southwest Florida and methodically began forming an unholy political alliance with local elected

sheriffs, elected State Attorneys and numerous locally elected circuit court judges.

Additionally- again according to numerous published newspaper articles- in 2006 Spence personally began organizing and conducting ‘political fundraisers’ with the local State Attorney Steve Russell and Randall McGruther, as well as Lee County Sheriff Mike Scott. During this time Florida’s Attorney General Charlie Crist was running for Florida governor and through this ‘political cabal’ they allegedly raised approximately half a million dollars for Crist who, not surprisingly, won the election and became Florida’s Governor.

At no time during the 2006 evidentiary hearings in my case did Judge Corbin disclose his own personal and political relationship to Steve Russell and Randall McGruther- not even when McGruther testified before him. Upon investigating this previously undisclosed personal and political relationship between Judge Corbin and members of the local State Attorney’s office, it was discovered that virtually every time prior formal complaints of prosecutorial misconduct were brought against Randall McGruther, the complaints were heard by Judge Corbin and each time Judge Corbin summarily rejected any evidence against McGruther and found he did not commit any wrong acts.

In November 2006- with the help of this political cabal (Spence, Russell, McGruther etc) Judge Corbin successfully ran ‘unopposed’ and was re-elected to the local Circuit Court. He will again go up for re-election in November 2012.

Incredibly, even though one of the most basic and fundamental foundations in our judicial system is the constitutional right to be heard before a fair and impartial judge, if as in this case the judge successfully conceals his relationship with the State Attorney’s office and it is not discovered until after he has issued a final order, then there is very little which can be done. After the information regarding Judge Corbin’s unethical relationship with the State Attorney’s office was finally disclosed in August 2009 Judge Corbin was removed from my case. But no disciplinary

action has been taken against Judge Corbin and he remains a Circuit Court judge in Fort Myers, Florida.

### **Appeal to the Florida Supreme Court**

Following Judge Corbin's final order denying relief based upon the substantial wealth of new evidence supporting my long pled claim of actual innocence, consistent with applicable law my case was transferred to the Florida Supreme Court for review. As of this writing my appeal is docketed as Lambrix v State of Florida Case #SC08-0064. By April 2009 all the appeal briefs fully arguing the claims of new evidence supporting my actual innocence were filed and are now available at [www.southerninjustice.com/hearings-briefs](http://www.southerninjustice.com/hearings-briefs).

As fully detailed in these comprehensive written arguments, virtually every element of the State's wholly circumstantial theory of alleged premeditated murder has now been completely discredited- even Judge Corbin was compelled to explicitly recognize that key witness Frances Smith (now known as Frances Ottinger, residing in Hillsborough County Florida) was "not credible,"- and a virtual wealth of unrefuted evidence substantiates my long and consistently pled claim that I acted in spontaneous and involuntary self defense and did not commit any act of murder.

But as luck would have it, by the time my case once again came up before the Florida Supreme Court, none other than Peggy A. Quince was (and currently is) the presiding Chief Justice of the Florida Supreme Court. Prior to being politically appointed to the Florida Supreme, Court Peggy Quince spent most of her legal career as an Ass. Attorney General specifically specializing in prosecuting capital (death row) appeals and was assigned to my own case during my original post conviction proceedings and was part of the prosecution team that zealously pursued my actual execution (and almost succeeded!) in 1988.

Although Chief Justice Quince did immediately disqualify herself, she still maintained considerable influence over the court



and has a personal vested influence in not allowing relief from these wrongful convictions to be granted as considering her own participation in the prosecution of my original post conviction proceedings and her *personally* seeking to have my actual execution carried out in 1988, as well as evidence now indicating that she was personally complicit in working with the local State Attorney's office to deliberately conceal exculpatory evidence, I remain convinced that she will take action to influence the rest of the court- her colleagues- to rule against me no matter what the evidence shows.

After all the appeal briefs were filed with the FSC scheduled 'Oral arguments' for my case on November 4, 2009 which can be viewed online in the Florida State University archives at [www.wfsu.org/gavel2gavel](http://www.wfsu.org/gavel2gavel) (Lambrix v State, Case No. SC08-0064).

The following provides a summary of the claims specifically raised within this appeal to the Florida Supreme Court arguing entitlement to relief from the wrongful convictions.

- I) That the State improperly failed to disclose that key witness Frances Smith was having an intimate relationship with the State Attorney's own lead investigator, Miles 'Bob' Daniels during the time that this capital case was being prosecuted.**

It has now been long established that the State must disclose any exculpatory (favorable) evidence they become aware of which includes any information considered relevant to the impeachment of a witness's credibility. The failure to disclose such evidence or information is commonly known as a 'Brady' violation. To establish entitlement of relief from a conviction under a Brady violation, the defendant must prove 3 elements- First that the State or any person acting on behalf of the State had knowledge of the evidence or information; Second, that the State did not disclose this evidence or information prior to trial and three, that had this evidence or information been disclosed there is a

reasonable probability that the defendant would have been acquitted of the charges. Under applicable law, a ‘reasonable probability’ is defined as a probability sufficient to undermine confidence in the verdict.

In the context of the claim specifically raised in my appeal, our argument is that had the jury known that the State’s key witness Frances Smith and the State’s lead investigator were romantically involved, then the jury could have questioned both of their testimony and had the jury had any reason to question Smith’s testimony then the jury would have rejected the State’s entire wholly circumstantial theory of premeditated murder and harbored sufficient “reasonable doubt” to return a verdict of “not guilty.”

Frances Smith herself admitted in 2004 that she had a relationship “of a sexual nature” with the State Attorney’s lead investigator Bob Daniels. Although Daniels denied Smith’s claims, the evidence supports Smith’s admissions that this relationship did take place. There is no question that Investigator Daniels was the primary investigator; as the case indisputably shows, he was the very person who swore out the original affidavit initiating these capital charges, then subsequently personally supervised the development of the wholly circumstantial evidence used to support Frances Smith’s otherwise unsupported testimony.

If the Florida Supreme Court concludes that Smith’s claim of a sexual relationship with Daniels did take place, then the court must decide whether this information is ‘material’ to the case...whether had the jury been aware of this relationship they would have had reason to question the credibility of both Smith and Daniels- and reject the State’s theory of alleged premeditated murder. If the court does decide it was material, then the court will be compelled to vacate (throw out) the convictions and order a new trial.

**II) That the State deliberately concealed the fact that the State provided key witness Frances Smith with immunity from prosecution in exchange for her testimony.**

Again, this is a Brady type of claim as the law has long recognized that if the State makes a deal with a witness in exchange for that witness's cooperation, then the deal must be disclosed to the criminal defendant. The reason is obvious- if a witness has something to personally gain by testifying against another then the jury might question that witness's motivations and credibility.

In this case the State itself has conceded that the entire case was built upon the testimony of Frances Smith. Already the jury was not allowed to hear irrefutable evidence that Smith had actually told numerous conflicting stories to various law enforcement officers prior to coming up with the version of events that conveniently exonerated her. What the jury also did not know was that Smith had also failed a polygraph test administered by the State Attorney's office prior to her testifying.

At trial Frances Smith explicitly denied receiving any deals or promises for immunity from prosecution when asked. Clearly, Smith had reason to be concerned about being prosecuted as, as the very least, an accessory after the fact for not reporting the crime, and Grand Theft Auto as she was alone in the victim's vehicle and had exclusive possession of that vehicle when arrested.

In 2006 numerous members of the State Attorney's office testified that given the circumstances of Smith's involvement and subsequent testimony, Smith was provided a formal deal of immunity from prosecution in exchange for her testimony. Additional evidence was presented to show that not only was Smith never charged or prosecuted for any crime connected to this case but shortly after I was convicted and condemned to

death the State Attorney's office abruptly dropped all other criminal charges against her.

If the court finds that the State failed to disclose making a deal or promise of immunity to Frances Smith, and that had this deal been disclosed it would have reasonably caused the jury to question Smith's testimony, then the court would be compelled to vacate the capital convictions and order a new trial.

**III) That newly discovered evidence shows that former State's witness Deborah Hanzel recanted her trial testimony, requiring a new trial.**

As the record shows, at trial Deborah Hanzel testified as a State witness, claiming that I had told her that I had killed the victims to take their car- the vehicle that Frances Smith actually had *exclusive* possession of. This was actually the only evidence supporting Smith's own testimony and provided crucial credibility to Smith's own claims.

But in 1998 Hanzel admitted for the first time that her trial testimony was not true. In both an affidavit and subsequent sworn testimony presented to the lower court Hanzel was even more explicit, specifically claiming that both Frances Smith and an agent of the State Attorney's office had deliberately coerced her to provide that crucial false testimony and that they knew all along that I had acted in involuntary self defense.

If the Florida Supreme Court finds that Hanzel's recantation is credible, then that itself would warrant granting a new trial. What must be emphasized is that Hanzel is not simply claiming that she was coerced to provide the false testimony at issue, but that Smith and an agent of the State deliberately coerced her as part of a conspiracy and collaboration to wrongfully convict and condemn me to death. If Hanzel's claims are deemed to be 'credible', then there's no question that had the jury heard this testimony they would have been legally obligated to reject the

testimony of Frances Smith and would have been required to enter a verdict of “not guilty.”

**IV) That newly discovered evidence shows that witness Frances Smith and the State conspired and collaborated together by coercing false testimony and fabricating material evidence with the intent and purpose of wrongfully convicting and condemning me.**

Through this claim we are arguing that in the light of Deborah Hanzel’s specific allegation that Smith and the State had coerced her to provide false testimony and that they knew that the theory of premeditated murder was not true, an actual conspiracy to wrongfully convict existed that in itself establishes a fundamental constitutional violation that requires a new trial.

To support this claim of an actual conspiracy to wrongfully convict did exist, my lawyers retained numerous expert witnesses that thoroughly reviewed the State’s case, and found that the State’s allegations are not consistent with the evidence. Two pathologists were prepared to testify that the State’s theory as to cause and circumstances of death is not consistent with the evidence. Several other expert witnesses were prepared to testify that key witness Smith’s claim that I had laid Aleisha Bryant “face down in a pond” to make sure she died could not possibly be true as no pond existed in the area where Bryant died, and the owner of the ranch property also provided an affidavit stating unequivocally that no pond ever existed.

However presiding Judge Thomas Corbin *refused* to allow any of this evidence to be presented. However, my lawyers were not able to ‘proffer’ the expert witnesses’ reports into evidence, and this argument now before the Florida Supreme Court is that Judge Corbin improperly refused to allow this evidence to be heard and considered.

Applicable law requires that a defendant be allowed to present relevant evidence in support of an alleged constitutional deprivation unless the record itself shows that there's no reasonable cause to support the claims. Judge Corbin's summary denial of this specifically raised claim stands in clear violation of this applicable law.

Because the lower court did not allow this evidence to be heard, the argument before the FSC is that the Court should now independently review the expert witnesses' testimony and find that the State did improperly engage in a deliberate conspiracy to, by intent and design, wrongfully convict me, or at a minimum, that I must be allowed to now present all this evidence and expert testimony collectively showing that the State's wholly circumstantial theory of premeditated murder was deliberately fabricated and the entire case must be remanded back to the lower court with instructions that the court allow the full presentation of this evidence.

**V) That newly discovered evidence shows that the trial judge, Richard Stanley, harbored substantial undisclosed bias against capital defendants that effectively deprived me of my fundamental constitutional right to a fair trial before an impartial judge.**

Richard Stanley was the judge that presided over my trial that resulted in my convictions and sentences. At trial, there was no question that he had earned his reputation as a pro prosecution 'hardass.' But that itself was not enough to necessarily disqualify him from presiding over capital cases- if it was, then at least half the judges sitting on the lower State courts would be subject to automatic disqualification.

In 1995 another death row inmate Raleigh Porter was facing execution, when at the proverbial 'eleventh hour' the Clerk of Court of Glades County (Jerry Beck) stepped forward with information that questioned Judge Richard Stanley's objectivity

in Porter's case, which Judge Stanley had presided over in 1981 after the FSC ordered a re-sentencing. According to Clerk of Court Beck, before Judge Stanley even heard any evidence in Porter's case, he already indicated his intent to sentence Porter to death. This revelation constituted newly discovered evidence of judicial bias that if true would require another new penalty phase resentencing and Porter was granted a stay of execution. See *Porter v Singletary*, 49 F.3d1483 (11<sup>th</sup> Cir. 1995)

The federal court then remanded Porter's case back to the State courts and an evidentiary hearing was held on this evidence. At that time Judge Richard Stanley was compelled to testify under oath and was specifically questioned about his bias towards Porter and other capital defendants. Judge Stanley's own statements proved incredible.

Under oath, Judge Stanley admitted that prior to becoming an elected judge in southwest Florida he was a local prosecutor working drug trafficking cases when his colleague was gunned down, presumably by drug traffickers. The murder of his close friend and colleague was never solved and Judge Stanley vowed to become a judge and avenge his colleague's death.

Judge Stanley went on to admit that after becoming a judge he prided himself on being the "meanest son of a bitch" possible, and that he always carried a "sawn off machine gun" in court, and that if he had it his way, he would have shot capital defendants "between the eyes" right there in court. Judge Stanley's own outrageous statements indicating extreme bias towards capital defendants could not be denied.

When Porter's case again reached the Florida Supreme Court, the court unanimously threw out his death sentence specifically upon finding that Judge Stanley's admitted bias deprived Porter of a fair and impartial resentencing in 1981. (see *Porter v State*, 723 So.2d. 191 1 Fla. 1998) But Porter only had his death sentences vacated as Judge Stanley's bias was only relevant to his resentencing in 1981 and not the 'guilt phase' of his trial.

Based upon Judge Stanley's own admitted extreme bias towards all capital defendants, in 1988 my post conviction lawyers filed a post conviction appeal arguing that these admissions constituted new evidence requiring an automatic new trial. By this time I was (and still am) the only remaining person still under a sentence of death imposed by Judge Stanley. But since Judge Stanley had presided over my entire trial (not just the sentencing as in Porter) we argued that I was entitled to a full new trial.

When this issue was presented to the lower court, Judge Corbin summarily denied it without allowing presentation of any evidence or considering the evidence that was proffered into the record. To further compound the issue, in 2001 Judge Stanley died and thus is no longer able to be deposed.

Based upon this my appeal before the Florida Supreme Court, we are arguing that the evidence of extreme judicial bias (supported by Judge Stanley's own admissions as well as an affidavit obtained from my trial lawyer Robert Jacobs) requires an automatic new trial, especially since Judge Stanley has now died, depriving e of any opportunity to depose him. If the Florida Supreme Court agrees, then a new trial would be ordered.

**V1) As the final claim of relief presented to the FSC, my lawyers combined several issues raised in the trial court arguing that the "Fundamental Miscarriage of Justice" doctrine of law established by the US Supreme Court to set aside any otherwise applicable 'procedural bars' (meaning politically created rules that prohibit a court from addressing the merits of claims if they were not properly presented in a timely fashion) and determine whether a sufficient "colorable claim of innocence" is presented and if so, then the court must also fully review previously raised claims that were 'procedurally barred' in earlier appeals.**

Most notably, this claim is raised in an attempt to compel the FSC to specifically address whether the wholly circumstantial evidence of alleged premeditation murder was legally sufficient to sustain the convictions under Florida law. Typically, this claim



is raised in the first ‘direct appeal’ following conviction, but the lawyer that was appointed to represent me at that time made no attempt to do so. By not specifically challenging the legal sufficiency of the evidence at the time under law I was then subsequently procedurally barred from raising this claim in later appeals.

As fully argued in the now pending appeal briefs, in Florida- and most other states- when a case of alleged premeditated murder is based upon wholly circumstantial evidence (no eyewitnesses, no physical or forensic evidence and no confessions to support that State’s theory of premeditated intent to kill) then a ‘special standard of review’ must apply- this standard of review demands that the conviction **cannot** be sustained unless the circumstantial evidence is not only consistent with the State’s theory, but also consistent with any ‘reasonable hypothesis of innocence.’

In my case which this means is that since the state has not and cannot produce any competent evidence to discredit any claim that the deaths of Aleisha Bryant and Moore/Lamberson was a spontaneous event and that I acted in involuntary self defense, under applicable law the convictions should have been thrown out on direct appeal. The Florida Supreme Court has consistently thrown out similar capital convictions, and in the past 10 years at least 8 death row inmates have been ordered acquitted and released under this standard of law.

To quote from one of the more recent cases in which this standard of law was applied; see *Ballard v State*, 923 So2d. 475, 482 (Fla. 2006):

“It is the actual exclusion of the hypothesis of innocence which clothes circumstantial evidence with the force of proof sufficient to convict. Circumstantial evidence which leaves uncertain certain hypotheses, any one of which may be sound and some of which may be entirely consistent with innocence, is not adequate to sustain a verdict of guilt, it is not thereby adequate to support a conviction if it is likewise consistent with a reasonable hypothesis of innocence.”

What this simply means is that because the evidence against me was circumstantial, the State was obligated not only to establish sufficient proof of guilt beyond or reasonable doubt that I acted with premeditated intent to kill, but the State also was required to produce evidence to exclude my own asserted claim of self defense. There is **nothing** in the record (the entire trial transcript is posted online at [www.southerninjustice.com](http://www.southerninjustice.com)) to discredit or otherwise disprove my claim of self defense. Therefore, under this standard of law the convictions should have been thrown out years ago and a judgment of acquittal entered.

But as is only too common in capital cases, the lawyer appointed to represent me on that original ‘direct appeal’ did not raise this claim and present the argument to the court. As a result, the court never addressed it- and now the only way I can compel the court to actually address whether under this standard of law the convictions should have been thrown out is to convince the FSC that sufficient newly discovered evidence has now been presented to the court that would allow the court to set aside the ‘procedural bars’ and directly address this claim as if it was raised in the original appeal.

If the FSC does apply this Fundamental Miscarriage of Justice doctrine and addresses my argument that under applicable Florida law the wholly circumstantial evidence of alleged premeditated murder was and is legally insufficient, then this would allow the court to recognize that the evidence presented by the State does not exclude a reasonable hypothesis that, as I specifically testified, I acted in spontaneous, involuntary self defense. If they do that then the reasonable conclusion is that the Florida Supreme Court will be compelled to enter a ‘judgment of acquittal’, ordering that I am legally acquitted of both charges and entitled to immediate release.

However, as this appeal remained pending before the FSC, in late 2008 several friends who were independently looking into my case unexpectedly came across several file folders originating from the Florida Dept. of Law Enforcement (FDLE) crime lab and the Twentieth Judicial Circuit State Attorney’s office. These

previously undisclosed files contained numerous reports and memorandum that collectively show that the State had deliberately fabricated the alleged ‘murder weapon’ introduced as evidence at trial.

These records indicated that in early 1983 the State Attorney’s office delivered a common ‘tire iron’ and T-shirt they claimed to have recovered from a creek under the direction of key witness Frances Smith. The FDLE Crime Lab processed this evidence for any forensic evidence that might connect these items to the alleged crime.

According to the FDLE Crime Lab, when this evidence was processed, they could not find anything to connect this alleged murder weapon to the crime. But they did find several ‘blond to blondish brown hairs’ that FDLE tests concluded were NOT consistent with hair samples obtained from either of the deceased. Memorandums and Lab Tech notes show that when they did discover these hairs, the FDLE lab technician contacted Assistant State Attorney Randall McGruther and advised him of the unexpected discovery- only to have McGruther then instruct the crime lad NOT to process the evidence any further.

Other documents contained in these undisclosed records show that the T-shirt was allegedly recovered wrapped around the purported ‘murder weapon’ was a size small. This is significant as Frances Smith claimed that I had worn this specific T-shirt when I had committed this alleged crime. But at the time in early 1983 I was 23 years old and already 5’10” tall. It is inconceivable that I would have worn a small size T-shirt.

Additionally the ONLY person connected to these events that had ‘blond to blondish brown hair’ at the time was Frances Smith. When this newly discovered evidence is considered collectively what it adds up to is that the hairs found (but never previously disclosed) are consistent with Frances Smith, and the ‘size small’ T-shirt is consistent with what Smith (not me) would have worn as her own arrest record at the time shows that she was 5’2” tall and 105 pounds.

Add to that the fact that the FDLE Crime Lab could find virtually no forensic evidence (hair, blood, fibers etc) on either the tire iron or the T-shirt, and collectively this strongly indicates that this tire iron and t-shirt never had anything to do with this case.

Upon learning of this additional evidence, yet another post conviction appeal was filed in the lower court. Technically anytime ‘newly discovered evidence’ is found that arguably questions the validity of a conviction, an appeal raising that evidence must be filed in the original trial court before it can subsequently be presented to the State and Federal appeal courts.

In this new appeal, in addition to arguing how the State crime lab documents that were not previously disclosed now shows that the tire iron presented into evidence as the alleged ‘murder weapon’ at trial **was not** what the State claimed it to be, a motion to compel DNA testing on the numerous ‘blond to blondish brown’ hairs found on this alleged murder weapon was filed. At the time in 1984 DNA testing was not available and under Florida law would now be allowed, but only if there’s reasonable cause to believe that the DNA testing would provide evidence undermining confidence in the verdict.

The argument presented to the lower court is that DNA testing of these hairs will show that they originated from Frances Smith. When considered in conjunction with the size of the t-shirt found with the tire iron being a ‘size small’, as well as other evidence, it shows that Frances Smith and the state deliberately fabricated this alleged ‘murder weapon’ and presented false material to the jury, requiring that the convictions now be thrown out.

At the time of this writing this new appeal remained pending before the lower State court and no hearings or rulings have been made yet.

As both the new evidence/actual innocence appeal remained pending before the Florida Supreme Court and this new appeal challenging the authenticity of the alleged murder weapon remained pending before the lower State Court, in August 2009 a

newspaper article in the Ft. Myers News-Press provided information that called into question the fairness of the previous post conviction proceedings that were conducted in 2004 and 2006 before Judge R. Thomas Corbin.

In these newspaper articles it was revealed for the first time that the local State Attorney Steve Russell and a small group of his closest friends, including the original prosecutor Randall McGruther in this case, as well as the local county sheriff Mike Scott had formed an alliance with a convicted felon by the name of Richard Spence and through this alliance they organized and conducted ‘political fund raisers’ that were used to manipulate and influence local elections, including the elections of a number of local circuit court judges.

What made this alliance suspicious is the fact that Richard Spence was known to be the primary money launderer for the infamous Columbian ‘Cali Cartel’ at a time when these drug lords were the largest importer of cocaine into the US. In 1998 Spence pled guilty to laundering approximately \$100 million dollars for the Cali Cartel and served almost four years in a Federal prison before being released and moving to southwest Florida.

Richard Spence wasted no time methodically building a political alliance with the local State Attorney and sheriff. Basically, this alliance amounted to a ‘political cabal’ that soon had so much influence over local elections that this small group effectively decided who would even be allowed to run for local offices, including the election of judges to the local courts.

When the lower court conducted ‘evidentiary hearings’ in 2004 and 2006 on the substantial wealth of evidence on the long pled claim that the local prosecutor Randall McGruther and members of the State Attorney’s office had deliberately collaborated and conspired with the key witness, Frances Smith, to fabricate the evidence used to support her story, nobody knew that in fact the local judge, R. Thomas Corbin, was himself dependent upon

McGruther and this insidious political cabal as Judge Corbin was running for re-election in 2006.

Knowing how this political cabal effectively controlled Judge Corbin, it is only now understood why Judge Corbin had found virtually all the evidence presented in support of the claim of innocence to be 'not credible' and denied relief specifically upon finding that the otherwise unsupported testimony of the prosecutor Randall McGruther and lead investigator Miles 'Bob' Daniels were 'credible,' and simply ignored all the evidence that conflicted with that finding.

Upon learning that Judge Corbin failed to disclose his political relationship with members of the State Attorney's Office that personally had an interest in the outcome of the case, a Motion to Disqualify Judge Corbin was filed, detailing Corbin's own unethical relationship with this political cabal and requesting that he be immediately removed from this capital case.

Not surprisingly, in direct and deliberate violation of applicable law, Judge Corbin summarily denied this motion to disqualify. However, a few months later the Twentieth Judicial Circuit Chief Judge G. Keith Cary abruptly ordered the removal of Judge Corbin from the case, and re-assigned the case to Judge Christine Greider.

But the appointment of Judge Greider itself immediately caused even more concerns regarding the ability to receive a fair hearing before the lower court, as soon after Judge Greider was appointed, a background check revealed that she had worked as an Assistant State Attorney for Steve Russell and Randall McGruther for 9 years prior to being politically appointed to the local court and this same political cabal that is now known to have manipulated and controlled the local elections of several other judges also provided substantial support and influence to the successful local election of both Chief Judge G. Keith Cary and Judge Christine Greider.

As fully detailed in a formal complaint with the State Judicial Qualifications Commission, it appears that Chief Justice Cary's assignment of Judge Greider to this case was actually intended to **deliberately obstruct and deny** fair review of the latest allegations of prosecutorial misconduct now pending before the lower court.

With one obstruction after another deliberately erected by those working for the State to prevent a full and fair review, in late September 2009 a comprehensive civil lawsuit was filed in the Leon County Circuit Court raising numerous 'causes of action' that collectively argue that Florida's politically corrupted capital post-conviction review process itself has been rendered deliberately dysfunctional and fundamentally unfair, as the process itself effectively obstructs fair and meaningful appellate post conviction review of capital convictions and sentences of death, especially in cases in which a legitimate claim of innocence is being raised, and that collectively this fundamentally unfair process creates a constitutionally intolerable substantial risk that Florida will inevitably put innocent men and women to death.

Nobody has ever challenged the appellate process itself in this matter, but in 2006 the United States Supreme Court had unanimously ruled (in *Hill v. McDonough*) that death sentenced prisoners can use the civil rights statutes allowing lawsuits to be brought against those acting 'under color of State' who knowingly violate the constitutional rights of any private party. Since this Supreme Court ruling a number of Florida death-sentenced prisoners have attempted to recruit legal counsel to provide representation in this type of challenge to the constitutionality of the process itself, but legal counsel could not be found.

Numerous other applicable State and Federal laws provide various 'statute of limitations' that require that any civil action be formally commenced within a specific period of time, and that time was quickly running out.

Faced with the choice of forfeiting any right to bring such a civil action if the time limitations expired, or filing it 'pro se'- without legal counsel- the only option was to go ahead and formally file the comprehensive lawsuit and hope that a law firm would subsequently be willing to take the case over.

Altogether this civil action amounted to 214 pages of factual argument detailing how the Florida judicial system has methodically obstructed fair and meaningful post conviction review, repeatedly assigning statutorily unqualified and incompetent counsel to capital cases while erecting judicially created procedural rules that prohibit the removal of even the most incompetent counsel, and refusing to allow death sentenced prisoners to subsequently attempt to refile claims, including innocence, so that the courts can review them on the merits after appointed counsel failed to adequately present the facts and evidence to the courts.

As specifically argued in this comprehensive civil action, the entire process itself relevant to death-sentenced post conviction appeals has become deliberately corrupted by the 'politics of death', where those elected or politically appointed to state office and responsible for protecting the fundamental fairness of this post conviction review process have themselves deliberately corrupted the process, resulting in a current system in which fair and meaningful review of Florida's capital cases has been effectively circumvented and obstructed.

Although it is said that the majority of Americans support the death penalty, as a matter of moral conscience very few would advocate the execution of the innocent. Without fair and meaningful post conviction review, it becomes **virtually impossible** to know whether or not innocent people have been and continue to be executed. This civil action methodically details just how this process has become corrupted and why the courts must now declare Florida's capital post conviction appellate review process **itself** unconstitutional.



This civil action is posted in its entirety online at [southerninjustice.com/2009state1983](http://southerninjustice.com/2009state1983) and is currently docketed in the Leon County Circuit Court as Lambrix v. McNeil, et al. case #2009-003819.

**Tuesday, 11 May 2010**

### **Florida Court Denies Lambrix's Innocence Appeal**

After denying review and final disposition of Michael Lambrix's state post conviction appeal arguing newly discovered evidence that substantiates Lambrix's consistently pled claim of innocence for many years, in a bizarre and even absurd ruling the Florida Supreme Court has categorically denied all relief, finding that the virtual wealth of evidence presented by Lambrix is not credible. See, *Lambrix v. State*, 2010 WL 1488028 (Fla.) (opinion released on April 15th, 2010)

As those who have followed this wholly circumstantial capital case already know, and as the State has repeatedly conceded itself, the State's entire case was based upon the testimony of Lambrix's estranged ex-girlfriend Frances Smith-Ottinger. Although, Lambrix's conviction and sentence of death were exclusively based upon the credibility of Smith-Ottinger, in denying Lambrix relief the Florida Supreme Court has now declared Smith-Ottinger "not credible." Of course, the court has made no attempt to explain how in a wholly circumstantial case (no eyewitnesses, no physical or forensic evidence, no confessions, etc.) dependent upon the credibility of a single key witness; the capital conviction and sentence of death can still be upheld when the same witness has now been declared "not credible."

Apparently, the Florida Supreme Court's concept of credibility is flexible and subjectively applied – as long as a witness is providing favorable testimony for the state to secure a conviction, even in a wholly circumstantial case; the witness is credible. But if and when that same witness provides testimony contrary to the

interests of the state, then the witness is not credible. That is how justice is administered in Florida.

The Florida Supreme Court's absurd conclusions actually are not about whether or not the State's key witness Smith-Ottinger is credible. What this case is really about is the Florida Supreme Court's unethical and constitutionally reprehensible protection of the Florida Supreme Court's Chief Justice, Peggy Quince. If putting an innocent man to death is necessary to protect Chief Justice Quince from allegations of misconduct, then so be it.

Although not mentioned in the recent denial of relief, but fully detailed in the appeal briefs submitted in this case; Chief Justice Peggy Quince was previously an Assistant Attorney General and part of the prosecution team during Lambrix's initial post conviction proceedings prior to her political appointment to the Florida Supreme Court.

In her former capacity, Chief Justice Quince was ("allegedly") personally complicit in the prosecutorial misconduct in this capital case. Lambrix filed a motion to disqualify the Florida Supreme Court, which the Florida Supreme Court summarily denied even though their own recent decision in other cases, required disqualification; (see, Wickham v. State, 998 So. 2d 593 (Fla. 2008.)) Apparently the Florida Supreme Court is not bound by its own established law.

What is clear by the Florida Supreme Court's ruling is they would rather put an innocent man to death than risk having Chief Justice Quince's own alleged acts of misconduct exposed. The fact that the Florida Supreme Court refused to even address the virtual wealth of evidence presented and the pled allegations of prosecutorial misconduct that collectively establish that the key witness Smith-Ottinger and the State's lead investigator conspired and collaborated together to deliberately fabricate this wholly circumstantial case of alleged premeditated murder ,shows the Florida Supreme Court simply will not allow their Chief Justice's own complicity in this deliberate miscarriage of justice to even be discussed.

At trial, in addition to Smith-Ottinger's testimony that Lambrix told her that he had killed the two deceased, apparently "to take their car," (which it should be noted, this vehicle was subsequently found in the exclusive possession of Smith-Ottinger, not Lambrix), the State presented testimony from Deborah Hanzel, who testified that Lambrix has also told her that he killed the couple to take the car. However, Hanzel has since provided sworn testimony that her trial testimony was deliberately fabricated – that key witness Smith-Ottinger and the State's investigator deliberately coerced her to provide this false testimony in a conspiracy to ensure that Lambrix would be convicted and to protect Smith-Ottinger from prosecution herself.

The Florida Supreme Court now finds that Hanzel's testimony that she was coerced to provide false testimony is "not reliable" and of course the court conveniently refused to consider any of the evidence that supports Hanzel's claim that the key witness Smith-Ottinger and the State worked together to deliberately fabricate the entire wholly circumstantial theory of alleged premeditated murder – evidence that if fully and fairly addressed cannot be credibly disputed.

Again the Florida Supreme Court relies upon the absurd conclusion that when Deborah Hanzel testified for the State, she was the epitome of credibility – but now that she has provided sworn testimony detailing how the key witness Smith-Ottinger and the State had coerced her to provide false testimony, and that they knew all along Lambrix was not guilty of premeditated murder, the Florida Supreme Court finds that Hanzel is not a reliable witness. This is the unwritten rule of law – as long as a witness is providing favorable testimony for the State, then they are credible. If the witness admits to being coerced to lie by the State, then they are no longer credible.

Nothing reflects the Florida Supreme Court's deliberate hypocrisy and distortion of the truth more than the manner in which the Florida Supreme Court addressed Lambrix's own post conviction testimony. What makes Lambrix's consistently pled claim of innocence unique is that Lambrix has admitted to being

in the company of the two people who were killed and that Lambrix was compelled to hit the male victim only after the male victim attacked and was assaulting the much younger female victim.

Lambrix's claim of a spontaneous event forcing him to act in involuntary self defense when attacked by Clarence Moore/ aka Lawrence Lamberson when Lambrix attempted to stop Moore/Lamberson from violently assaulting the teenage victim Aleisha Bryant, is actually supported by the State's own evidence, and the State has never provided any evidence to contradict this claim. In fact, the State knew all along that Moore/Lamberson was a career criminal and known associate of "drug smugglers" with a criminal history of violently assaulting other women in the same manner. A fact that the jury was not allowed to hear.

At Lambrix's trial, the court prohibited Lambrix from testifying so the jury was never allowed to hear Lambrix's account of what actually happened. It should be noted that key witness Smith-Ottinger also testified that she did not actually see or hear anything that transpired outside that night that led up to and resulted in the couple's death. Her only claim was that Lambrix subsequently told her he had killed both of them.

During the post conviction proceedings Lambrix was finally provided an opportunity to testify and did then graphically testify to what actually happened outside. As the record shows, the State could not discredit Lambrix's claim of self defense.

In the recent order denying relief the Florida Supreme Court (at page 11) "Lambrix himself (testified) at this most recent evidentiary hearing that he struck one of the victims using a tire iron, although he denied that he intended to kill either victim." Incredibly, the Florida Supreme Court actually twisted Lambrix's own testimony into somehow being a confession of guilt of premeditated murder.

In doing so, the Florida Supreme Court completely ignored the overwhelming weight of the evidence that actually substantiates Lambrix's claim. As reflected in the trial transcript, the jury was not allowed to know that Moore/Lamberson (the male deceased) had an extensive criminal history, including violently assaulting women. The jury did hear Smith-Ottinger's own testimony that there was virtually no indication of animosity or intent to commit any crime, between any of the parties. In fact, Smith-Ottinger conceded that Lambrix, Moore/Lamberson and Bryant were "laughing, teasing, and playing around" immediately before Lambrix and Moore/Lamberson went outside during the early morning hours.

Smith-Ottinger specifically testified that Lambrix remained outside with Moore/Lamberson for approximately 20 minutes then returned to the trailer they shared alone. At that time Smith-Ottinger was absolutely certain that Lambrix did not have any blood on him, was not in possession of the alleged murder weapon (a common tire iron) and "looked normal." According to Smith-Ottinger, Lambrix then went outside again with Aleisha Bryant as she remained inside alone cooking a spaghetti dinner.

Smith-Ottinger claims that Lambrix again returned alone, but this time was "covered with blood" and was carrying the tire iron, and told her "They're dead," then proceeded to wash up. Smith-Ottinger has consistently claimed that she did not actually hear or see anything that transpired outside and only knows that Lambrix told her he killed them, but she also insisted that "he never said why."

For this reason, only Lambrix knows what really happened outside. But by looking at the State's own evidence, it becomes clear that Lambrix's claim of being compelled to spontaneously act in self defense when attempting to stop Moore/Lamberson from fatally assaulting Aleisha Bryant is, in fact, supported by this undisputed evidence.

At trial key witness Smith-Ottinger testified that Lambrix told her that he had "choked the girl" and had "hit her in the back of the

head.” But the State’s own medical examiner Dr. Robert Shultz concluded that there was no evidence to show that Aleisha Bryant was “choked” or strangled to death. In fact, it is a medical certainty that if a victim is choked or strangled to death, there will be evidence to show this such as hemorrhaging/bruising around the neck and damage to the soft tissue and larynx as well as probable fracture of the hyoid cartilage. And if a person is strangled to death, there will always be “peticule hemorrhaging” visible in the eyes. But medical examiner Shultz found no evidence of any of these tell-tale signs, thus Smith-Ottinger’s claim that Lambrix choked or strangled Bryant cannot be true.

Although a witness might lie, this type of evidence does not. Additionally, it is inconceivable that a healthy young woman who was not restrained in any manner would simply stand by and allow herself to be assaulted and killed without struggling and fighting for her life. Smith-Ottinger has consistently conceded that Lambrix did not have any scratches or bruises on him that would have been consistent with a struggle with Bryant.

However, the State’s own medical examiner Dr. Schultz conceded that Moore/Lamberson actually did have numerous scratches and lacerations consistent with what Bryant would have undoubtedly inflicted if he had struggled with Aleisha Bryant as Lambrix claimed he did.

Further, the medical examiner Dr. Schultz concluded that Aleisha Bryant did not suffer any physical injuries that would have resulted in a substantial loss of blood. (Smith-Ottinger was certain that Lambrix did not have any blood on him when returning to the trailer after Moore/Lamberson went outside, but before Aleisha Bryant went outside). But Dr. Schultz concluded that Moore/Lamberson did have numerous injuries that would have resulted in substantial loss of blood. Thus the only way that Lambrix could have been “covered in blood” after Bryant went out but not before was if Moore/Lamberson was still alive outside when Bryant went out — supporting Lambrix’s claim that all three were together outside and it was a spontaneous event that resulted in their deaths, not “premeditated murder.”

The State's own evidence substantiating Lambrix's claim that he was compelled to act in self defense when attacked by Moore/Lamberson is even stronger. As the trial transcript reflects, the State's own medical examiner, Dr. Schultz, testified that Moore/Lamberson died as the result of blunt force trauma – being hit in the head with an object consistent with the tire iron.

However, Dr. Schultz testified with absolute certainty that Moore/Lamberson was struck eight times, specifically, that Moore/Lamberson died as the result of “multiple crushing blows to the head... resulting in severe fractures around the eyes and the cheeks,” and that these blows consisted of “eight (blows) – four times to the left frontal forehead, and four times to the right ... applied in a continuous side to side motion.” (See, [trial transcript](#), testimony of Dr. Robert Schultz)

More importantly, Dr. Schultz found virtually no evidence of any “defensive wounds,” and all of these blows were administered with Moore/Lamberson facing his assailant, leaving the only logical conclusion that – just as Lambrix claimed, Moore/Lamberson was coming at him and Lambrix was forced to swing in spontaneous self defense.

As if this evidence itself was not enough to substantiate Lambrix's consistently pled claims of involuntary self defense, while ignoring the overwhelming weight of this irrefutable evidence the Florida Supreme Court also refused to acknowledge the conclusive evidence that key witness Smith-Ottinger and the State did deliberately fabricate evidence to support their allegations of premeditated murder with the intent and purpose of having Lambrix wrongfully convicted and condemned to death.

Specifically, as reflected in the trial transcript, Smith-Ottinger testified that Lambrix had deliberately placed Aleisha Bryant “face down in a pond” to ensure that she would die. This testimony was used to convince the jury that there was no doubt that Lambrix did act with premeditated intent to kill Aleisha Bryant, thus convicting Lambrix of capital premeditated murder.

But there never was any such “pond,” and no question that this extremely prejudicial testimony used to prove actual premeditation was deliberately fabricated to inflame the jury and convince the jury to convict and condemn Lambrix to death.

In the post conviction appeal now before the Florida Supreme Court, Lambrix’s legal counsel proffered into evidence the sworn affidavit of the owner of the property, who attested under oath that there was no pond in the area where Bryant was killed. Additionally, two expert witnesses provided sworn statements as hydro-engineers and property surveyors that they went to the property and concluded that Smith-Ottinger’s claim that Bryant was placed face down in a pond to ensure she would die simply could not be true.

Not surprisingly, the Florida Supreme Court refused to even address Lambrix’s specifically pled claim of “fundamental miscarriage of justice” based party upon the proffered “expert report” of one of the country’s top homicide detectives, William Gaut, who was retained by Lambrix’s legal counsel to independently examine the case against Lambrix.

Mr. Gaut has over 40 years of experience in homicide investigations, and personally taught homicide investigation techniques in college classes. It was Mr. Gaut’s opinion after independently reviewing the case brought against Lambrix that the entire investigation and development of evidence used to convict and condemn Lambrix is “highly suspect” and not consistent with long established protocols. Quite simply, Mr. Gaut concluded that his own independent examination does support that the State’s key witness Smith-Ottinger and the state attorney’s head investigator Miles “Bob” Daniels, did conspire and collaborate together to wrongly convict and condemn Lambrix.

Why would the Florida Supreme Court deliberately ignore the overwhelming weight of this evidence? All of the records in the capital case are posted online, including the trial transcripts,



appeal briefs, and other relevant actions so that anyone can read the record and decide for themselves.

*The only logical conclusion is that the Florida Supreme Court is willing to deliberately put an innocent man to death for no reason but to protect the Florida Supreme Court Justice Peggy Quince, formerly herself part of the prosecution team in this capital case, from being exposed for her own complicity in the prosecutorial misconduct that resulted in Michael Lambrix being – by deliberate intent – wrongfully convicted and condemned to death.*

# **LIFE ON DEATH ROW**

**A COLLECTION OF ESSAYS BY  
MICHAEL LAMBRIX**

**WELCOME TO DEATH ROW- THE FIRST  
DAY**

**IT'S BEEN A YEAR NOW**

**CRYPT OF THE CONDEMNED**

**CONFRONTING MY OWN EXECUTION**

**THE DARK SIDE OF DEATH ROW**

**THE GREAT DEATH ROW ESCAPES**

**A DAY IN LIFE UNDER DEATH**

**THE YELLOW BRICK ROAD**

**TO SEE THE SOUL- A SEARCH FOR SELF**

**DOING LIFE ON DEATH ROW**

**CONDEMNED BY THE PERFECT STORM**

**DEATH ROW DADDY' S LITTLE GIRL**

## **WELCOME TO DEATH ROW- THE FIRST DAY**

My journey to death row began early on the morning of Friday March 23, 1984. Only the day before Judge Richard Stanley had formally sentenced me to death as I stood before him in the one room Glades County Courthouse. It was merely a formality as there was no question of what the sentence would be. A month earlier in that same small courtroom the jury had convicted me of both counts of capital premeditated murder I was charged with. At a subsequent sentencing phase my court appointed public defenders had called several family members to testify on my behalf in the hopes that the jury would show 'mercy' and recommend only a 'life' sentence. But as a stranger in a small southern town, the panel of 12 jurors felt no mercy or compassion towards me.

Walking into that courtroom chained and shackled like a mangy dog I knew just what to expect as my fate was already determined. On this day of reckoning none of my family was present and that was just as well. I didn't want to be there myself as I still felt angry and confused as to how this jury could have convicted me as they had to see that the State's wholly circumstantial case simply made no sense. Looking back now, I accept that their verdict was not about justice, but vengeance, so truth had nothing to do with it. The way they saw it, a young woman from their own small rural community lost her life- someone had to pay.

Sgt. Tommy Hearne seemed almost excited as he pulled me from the cell I had involuntarily called 'home' for the past year. As small as the county was, the local jail only had two cells with four bunks in each. No matter how bad prison might be, I certainly would not miss this backwater dump. It didn't take but a minute to grab what few possessions I had, which Sgt. Hearne carelessly threw into a small cardboard box- but gently laying my Bible on top.

Then Sgt. Hearne and another deputy instructed me to assume the position which anyone familiar with police or prison procedure knew to mean stand up facing the wall, legs spread, slightly bent forward. They first placed the heavy leg shackles on my feet, then a chain around my waist. Handcuffs were fed through an enlarged eyehook at the front of my waist, then each of my hands attached at the wrist. They then double-locked the handcuffs, and then placed a black box over the cuffs through which the squared eyehook was fed and the chain pulled through, with its end pulled to the side out of reach and attached with a heavy lock.

I didn't care to speak to Hearne. He was involved in the case and had on numerous occasions expressed his opinion that they should execute me. He was a small town redneck cop, intoxicated by his own power and I had nothing to say to him- I had nothing to say to any of them.

They then led me out the back door of the county jail where an inconspicuous two tone blue Chevy station wagon was parked and awaiting us. The back door was opened and I was instructed to sit in the middle of the seat, then a short piece of chain was secured with a heavy padlock to the shackles on my feet so that I could not run. The seatbelt was then placed around my waist and pulled tight. A moment later Sgt. Hearne and another deputy got into the front seat, and as we pulled away, my journey to death row began.

It would be a long trip from the flatlands and sugar cane fields along the western bank of Lake Okeechobee where the small town of Moore Haven (the county seat for Glades County) was located to where the "Reception Center" for the Florida prison system known most simply as "Lake Butler" was located in the rural north central Florida. Back then all prisoners coming into the Florida prison system went through Lake Butler. Less than two years earlier I had myself first entered the prison system at Lake Butler and spent almost a week there awaiting transfer to Baker Correctional- another state prison in north Florida. At least this time I knew what to expect, or at least I thought I did.

I watched out the window as we drove north up Highway 27 through the heart of the state, until we got to Polk County where we then went northwest on Highway 98, basically a two-laned state road that traveled through farms, orange groves and open ranch land. I watched through the window as the world I once knew passed by. I had traveled this same stretch of highway myself as a free man and I couldn't help but wonder if perhaps this was the last time I would ever see it.

Not long after that the Florida flatlands began giving way to the gently rolling hills around Ocala. This part of Florida reminded me of my home in northern California. Along the sides of the interstate were large horse farms with their planked fenced pastures, dotted by majestic grandfather oaks draped with Spanish moss. It seemed almost surrealistic that as we passed through this beauty and tranquility I was being driven to my own death. Again, I wondered if I would ever see such beauty again.

By mid afternoon we pulled off the Interstate on to a two-laned country road just north of Gainesville. I couldn't help but notice the name of the small town we then passed through... Providence. Not long after that was a sign pointing the way to Lake Butler- for some reason I was surprised that there actually was a town and a lake there in Lake Butler as for me and so many others it was simply known only for the prison reception center, a large complex containing the main building and prison medical center where all incoming state prisoners were received and processed, but also the large 3-storey main dormitory building located in the very center of the compound, where the infamous 'K-Wing' was located- a maximum security wing with a reputation of brutality at the hands of vicious guards known to all by such names as "K-Wing Slim" and "Breezeway Red" and their reputation feared by even the most hardened convicts, to the many smaller single storey open dorm buildings lined up along the perimeter of the back fence, to the open recreation area and its sheltered pavilion with rows of concrete tables and the adjacent softball fields, and basketball and volleyball courts where countless lost souls have passed time awaiting transfers to whatever state prison they might end up assigned to.

But I would see none of that on this trip to Lake Butler. Until I actually arrived at the reception center, it never occurred to me that death-sentenced prisoners were treated differently. I knew that all death row prisoners were then housed only at Florida State Prison near Raiford, but that's all I really knew.

After arriving at Lake Butler I was signed over to a prison sergeant who was then assisted by another sergeant as they removed the shackles and chains belonging to Glades County and immediately replaced them with almost identical shackles, chains and blackbox of their own. Other than asking me my name, they said nothing beyond curse orders to follow and then with one sergeant in front and another at my side I was led into the main room where at least 40 other prisoners sat in silence awaiting their own name to be called so they could be processed.

Unexpectedly, the sergeant in front all but yelled "death row coming through!" and the mass of prisoners and guards at the processing desk miraculously parked like the Red Sea and I was led to the front of the line. Other prisoners, who had waited many hours, perhaps even all day, silently stepped aside. At the desk they already had my file ready and it didn't take but a few moments to process me through the place.

I had assumed I would stay at Lake Butler a few days, just like all other prisoners do, but I was wrong. Within an hour I was processed into the system and given a cursory physical examination, then just as quickly escorted out of the building and into a plain white transport van. Although not that hot a day, the van was obviously also used to haul garbage and once inside the fully enclosed van the stench was almost overwhelming. But I didn't complain as the reality that in their eyes I was nothing but human trash was only too clear.

I knew where we were now going- Florida State Prison, commonly known then as the "East Unit"- the Alcatraz of the south. Its reputation as one of the most violent prisons in the country was well earned. Except for those condemned to death very few prisoners are sent directly to the East Unit. Rather, it

was the end of the line for the most violent Florida prisoners who could not be kept in any of the state's other 'correctional institutions'. Although housing about 1,000 prisoners, most ended up in the East Unit only after stabbing or killing someone at another prison, or becoming an escape risk. Nobody wanted to be sent to the East Unit.

This part of North Florida is known as the "Iron Triangle" as the entire economy of Bradford and Union County is built upon the numerous maximum security prisons in the area. In addition to the massive complex known as Lake Butler the oldest prison in the state, Union Correctional Institution, commonly known as "the Rock" was in Raiford.

Around the entire area, about 18,000 acres of state owned land, the prison has farmed and ranched the area for many decades. If one were to drive along Highway 16 and passed by these massive complexes they would see many homes and trailer parks lining the road, but this 'secret city' would not show up on any map. The streets have no names and the town doesn't exist. These homes are state owned, used to house prison employees. The almost too perfectly sculptured lawns and gardens were maintained by squads of 'prison chain-gangs'. This part of Florida has never evolved into the 21<sup>st</sup> century and continues to exist as a window into a darker past when slave labor and all the evils it entailed was an accepted practice in the Deep South.

Beyond the state subsidized housing for prison employees lies thousands of acres of cattle and farming operations, all state owned and maintained by inmate labor. Just outside the rear gate of Florida State Prison is a smaller unit known as "O-unit" where prisoner cowboys and farm laborers were housed. Much of the meat and produce used to feed the prisoner came from this camp until the mid 1990s when the prison system contracted these services out to private industry.

Behind the massive complex of Florida State Prison is another unit then known as the "Butler Transit Unit" (BTU). This unit was to house prisoners in transit between other prisons and was

part of Lake Butler. I spent a few weeks there myself in the summer of 1982 after being processed at Lake Butler and while awaiting transfer to Baker Correctional, a maximum security prison about 30 miles north. Back then BTU was nothing more than a row of flimsy plywood 'dorms' with close-quartered rows of steel bunk beds. In the stifling heat of the Florida summer the stench of 100 men packed neck to neck in a plywood bunkhouse without even so much as a fan for ventilation was often overwhelming. With only a single guard assigned to each bunkhouse, who more often than not would conveniently step outside to escape the heat and human stench himself, fights and even rapes were only too common. But it was prison and nobody really cared.

The van now pulled up to the back gate of Florida State Prison. Looking forward through the front of the van I could see the rows of wings of the prison. Like the skeletal remains of a beached whale, the main hallway ran like a backbone for over a quarter of a mile in a straight line while the individual wings branched out like ribs at consistent intervals a couple of hundred feet apart. Between each of these 3 storey wings was a grassy area. No movement could be seen, even the small fenced recreational yards at the end of each wing were empty.

To the left was a large open recreational area used by 'general population' inmates when they were allowed to do so. Beyond that was the row of plywood bunkhouses I once briefly called home. Within a few years these bunkhouses would be torn down under orders by a Federal Judge and replaced with permanent concrete structures renamed "New River Annex" as if simply changing its name could erase the inhumanity of its previous existence.

The van pulled through the massive gates and into an enclosed sally port where several guards inspected the van. Several moments later the sergeant started the van again as a second set of massive steel gates slowly opened and we were pulled through, finally entering the compound of Florida State Prison.



The sergeants led me up a ramp and down a short hallway until we came to a set of steel gates. The gate buzzed and we stepped into what is known as “Grand Central”, where the two main halls of Florida State Prison intersect. About ten paces to my right was a large steel cage with a wooden bench where I was placed and locked within while the sergeant went to a control room to do his paperwork.

A few minutes later the transport sergeant returned and without opening the cage I was in, he removed the shackles and chains and without a word he left. I would later learn that I had arrived just before afternoon (4 pm) shift change so was left in that cage for hours, until they were ready to process me into this prison.

In prison, patience is much more than merely a virtue - it’s a means of survival. No matter how long they would have me wait, nothing good could come of me trying to push them. Even with my limited experience in the prison system I knew only too well that a big part of the violence that was only too common came at the hands of the guards, not other prisoners. As the hours passed I knew enough to keep my mouth shut and just silently watch as prisoners from general population lined up in the main hallway waiting to go into the dining room. Still unfamiliar with death row, I half expected to be brought to the large open dining room myself.

After a few hours a guard stopped by my cage and asked “you eat yet?” and I said “no.” He turned and walked away. A few minutes later he returned, now accompanied by an inmate wearing white holding a plastic food tray, which he handed to me through a cutout in the gate. I accepted in silence, looking down at what appeared to be a noodle casserole. There was no fork so I quickly asked the inmate if he had a fork, but he just walked away. It didn’t matter as I wasn’t hungry anyway. I sat the tray on the wooden bench.

It must have been a good three or four hours before two sergeants finally came to the cage and ordered me to “cuff up”. Again, my prior prison experience proved helpful and I silently turned

around and stepped back towards the “bean slot” (aptly named as that is where the food trays are passed through) and they quickly handcuffed me behind my back then ordered me to come with them.

I was led to another larger cellblock located directly behind the main control room and placed in that cage, then they removed the cuffs. I came to learn that anytime I was removed from a cage or cell, I would be handcuffed behind the back. Only later did another prisoner tell me that they started doing that a few years earlier after a death row inmate stabbed and killed a guard. Before that death row prisoners were allowed generous out of cell time daily without the use of physical restraints. But as is only too often the case in prison, it only takes one incident to cost everybody a valued privilege.

In that cage I was ordered to strip. The clothes I was wearing were taken and I was given a pair of worn out prison denim pants- dark blue with a wide white stripe running the length of each side, and an apricot colored T-shirt that I would learn was to identify me as death row. At Florida State Prison they used different colored shirts to identify the classification status of all prisoners.

The general population inmates wore dark blue, unless they worked as a clerk or the canteen, then they would wear all white. The many who were in “closed management” which is what Florida calls those placed in punitive segregation- often for many years at a time- wore green shirts. Death row wore apricot shirts.

After I changed into the apricot shirt, the two guards again handcuffed me and we began our journey from the front of the prison towards the back down the long straight hallway that eventually ended at a partition that segregated the last 5 wings of the prison.

As we walked, I curiously looked into each open door, passing the prison chapel, the main dining room of general population and a large gymnasium with a basketball court and stage area

filled with weights for those who wanted to work out. I tried to take in every detail, assuming that I would soon be able to visit the dining hall, chapel and the gym- not knowing that I never would as death row was not allowed to participate in worship services or go to the gym, or even eat meals in the prison dining hall.

We passed wings housing prisoners, each directly opposite of the other. As I passed each door I could see that each was a three tier layout with an open center area. Many prisoners were walking around in each of the wings and there was a TV/Rec room adjacent to each population wing.

To the opposite side I first saw “W Wing” which was closed off by a solid steel door. I couldn’t see into that wing and I would later learn that I didn’t want to. W-Wing was the psychiatric housing unit for the prison and was infamous among prisoners for the horrors that took place within. Through the coming years I would become aware of the inhumanity inflicted upon those placed on that wing under the pretense of psychiatric care. I would hear firsthand accounts of prisoners who had been shackled naked to steel bunks for days and weeks at a time, and how physical brutality was the true form of mental control. I would come to know that even as brutal as death row solitary confinement might be, at Florida State Prison there were many levels to this man made hell and perhaps even far worse than even the infamous “Q-wing” where the death chamber used to carry out executions was, W-wing remained a horror even worse.

After W-wing there was a small barber shop off to the side of the main hall, followed by two more wings, each with its solid steel door closed. These wings housed those placed in “closed management” which was long term solitary confinement for those who had been found guilty of “serious” rule infractions such as assaults or stabbings- or just as often not really guilty of anything but arbitrarily incurring the wrath of a vindictive guard who then used his power to write an unfounded “disciplinary report” as a means of having the prisoner placed in segregated “close management”.

In coming years I would become only too familiar with how common it was for guards to abuse their power by writing fabricated “disciplinary reports” as a means of retaliating against a particular prisoner for some form of perceived offense. That is how it is and always will be. Although disciplinary sanctions are a necessary means of maintaining order within a prison, if you do have a problem with any guard you can expect to be subjected to a fabricated disciplinary report, which is then rubber stamped substantiated by the kangaroo court you’re brought before.

My journey continued as we came to a steel bar partition with electric controlled gates to each side. Beyond that gate remained the last 5 wings at the far end of the prison. At the time (early 1984) only the two wings on the left (S and R wings) were for death row, while the two wings to the right (N and P) were used for more “closed management” confinement prisoners.

I was led to the solid steel door (with a small ‘peep’ window) of S wing and the sergeant escorting me knocked on the door leading to the “quarter deck”. Each wing of Florida State Prison was laid out in a similar fashion, with a quarterdeck off the main hallway where the wing officers station was.

As I was turned over to the wing sergeant I was “logged in” and my name and inmate number was added to a large board. That only took a moment, then I was led to the staircase, and escorted downstairs. My assigned cell was “S106” meaning S wing, first floor, cell #6. Each floor was divided into a north side and a south side. I would be placed on the south side. Each side had a total of 17 cells, as well as two shower cells where we were allowed to shower three times a week.

It was already dark when I entered the wing. My first impression was the smell, an almost suffocation mixture of smoke, body odors of every sort imaginable, and humanity at its worst. I would come to learn that during the winters they would seal the windows shut so that for many months (from November until April or May) the wing would be almost sealed- and the smells and odors fester- with the exception of broken windows;

deliberately broken by the prisoners who would rather endure the freezing temperatures of a north Florida winter than suffocate by the smells.

The next unexpected thing I noticed was the sounds. Once we reached the first floor and approached the gate leading into the tier, all sorts of noises could be heard. The cellblocks were on the inside of the wing away from the outer windows, so that the prisoners could not have access to the windows. Outside the cells were “catwalk” runs, the second and third floor catwalks constructed of steel scaffolding. If standing on the first floor catwalk you can look up all the way to the 3<sup>rd</sup> floor as the area is open. Thus the noise being generated was not only the 17 cells on 1-south but a total of 71 cells.

The floor was dark with just a few light bulbs spread out along the way. Some of the cells had their lights on too. But most cells were only dimly illuminated by the light of a small black and white TV that each death row inmate had. And each TV was apparently tuned to a different station. A few used headphones, but most apparently preferred to simply turn up the volume on their own TV as a means of drowning out their neighbor, while others listened to small radios. This was certainly not what I had expected, but then I really didn't know what to expect.

As we came to cell # 6 the sergeant signaled an officer at the front gate, and a mechanical system “rolled” the cell door open. The sergeant reached for a light cord and pulled the string and the single light bulb that precariously hung from the ceiling at the front corner of the cell flickered on. As my eyes adjusted to my new home, I was disgusted by the mess- trash and even discarded food lay all over the floor. But I remained silent. The sergeant removed the handcuffs and left without another word.

No sooner did I hear the gate leading on the wing slam shut, I then heard a voice calling ‘cell 6’. I didn't realize that I was in cell six until suddenly an arm reached around with a rolled up newspaper and banged on the bars of the cell- I was in cell six and I had my first “phone call.”

Unlike the Hollywood version of being the new guy in prison, nobody called out “fresh fish” or taunted me in any way. The voice that called me quickly told me his name was J.D. (James D. Raulerson) and asked me what wing I came off- he thought I simply had a cell change. I told him I just came in, and that my name was Mike.

As I kicked the old newspapers and trash towards the front of the cell, J.D. talked to me. He held a mirror around the wall that separated our cells, so that I could see him- and I suppose more importantly, he could see me. He asked me if I wanted a cup of coffee or anything. I thought he was joking when I said, “Hell yeah!” but a moment later he was reaching around the wall holding a steaming cup of hot coffee out for me. As I accepted that from him, a moment later he reached around again with a pack of cookies.

As I hesitantly accepted the food I told him I didn’t have any money yet and he laughed. I’ll never forget what he told me- “Hey man, we’re all in this together. Back here we look out for each other.” Soon word got around the wing that a new guy was on the floor and others hollered at me, each introducing themselves by whatever name they chose to be called and more often than not, also asking me if I needed anything.

Within just a few hours various others sent me an assortment of snacks, a bag of instant coffee, several cups and spoons, even a few bars of soap and a new bed sheet to throw over the moldy canvas covered ‘mattress’ that lay on the steel bunk.

It didn’t take long to clean the cell as there wasn’t much to it, just a 6 foot by 9 foot concrete cage with nothing but a steel bunk attached to the side wall and a stainless steel toilet/sink combo at the back wall. I was exhausted from the long day but too curious about my new world to want to sleep. Besides, the noise would not die down until after midnight, so I stood at the front of the cell and talked to J.D. for hours as he patiently told me about my new world.

J.D. Raulerson had already been on death row many years by the time I came in early 1984. He was an easy going guy who called himself a ‘Christian Buddhist’ and was self-educated in many vocations. I could not have asked for a better neighbor as in the weeks and months that I adjusted to this new life, J.D. generously mentored me, never once asking for or expecting anything in return. But before the year was out the Governor signed his death warrant and in January 1985 James D. Raulerson was executed.

To my other side in cell # 5 was a Hispanic man named Louie Urango. He was quiet and preferred to keep to himself. A few years later Louie had his convictions thrown out by the court and was released. I later heard he had returned to Colombia, only to be shot and killed shortly after.

I came to realize that for the most part Florida’s death row was not unlike a college fraternity house. With few exceptions there was a “commadre” among its residents. And it was not uncommon for the guys to generously share what little they might have with each other, even occasionally some homemade ‘wine’ or a little bit of pot obtained by means never asked or spoken of.

As I came to know the others around me, I also came to know men who would by every right and reason become my brothers-my family. It would be years before any of my family would visit, but these guys taught me how to adjust to prison life “death row style”, and some even hooked me up with pen pals they knew.

Looking back at that floor I was first housed on, I can do a mental roll call and it’s reflective of what I’ve come to know. Many of those I originally met have been executed, but even more slowly succumbed to death by “natural causes” as they toll of prolonged solitary confinement took its measure. But equally so, a number of those I then knew were later exonerated and released- and others removed from death row by having their death sentences reduced to life.

As months became years and years became decades, I became one of the “old timers” myself, and in respect for the generosity so many showed me when I first arrived, I too try to share what I am blessed to have. By doing so I hope that those “new guys” that I meet will look back on their own first day descending into the uncertainty of a hell few can even imagine with a memory not of the overwhelming isolation and sense of abandonment we all feel while condemned to our solitary cells, but with a memory of the kindness of another condemned prisoner and the truth that ultimately no matter where we might find ourselves, as individuals we choose to be the person we each become and collectively we chose to create the environment we must live in.



## IT'S BEEN A YEAR NOW

It's been a year now since I descended into the bowels of the beast that has swallowed me alive. It has been a long year, but I have adapted to having to live in this solitary cage that I must now call home. Through these long months I have learned to tell the difference in the sounds around me. We all learn to listen as it is in our interest to know when something is going on out of the ordinary- if anything in this man-made hell can even be called 'ordinary.'

From my solitary cage I can see very little beyond the few feet of catwalk in front of my cell. Even when it comes to my immediate neighbors in the adjoining cells, the solid wall of concrete separates us so that we are mostly heard, but seldom seen.

As I became accustomed to the world around me I learned to tell the difference between the sound of a guard going on 2-south (the floor above me) and the floor I was housed on (1-south). If they did come on the floor at a time not normally expected, it often meant they were doing cell searches. I understand the necessity of cell searches, but still we see these as not merely an inconvenience, but a major invasion of what very little privacy we have. I'm in cell #6, so I'm only about a third way down this tier. When they do come I can now tell just by the sound of a cell door opening how far away they are- and whether it's a hit-and-run cell search, where they just quickly do one, or whether they're working their way down the tier towards me.

All of us have what they call 'contraband' as so much of what we have and need is contraband. Most of the guards won't take the usual stuff we all tend to accumulate, but some will. Most of the guards are here just to do their eight hour shift, then go home. But a handful of others have nothing but malice towards all of us for no reason but because we are on death row.

Sometimes the malice can become a tangible entity- you can feel this malice projecting from these guards. Of course, we also come to know which guards are just doing their job and the ones

who have taken it upon themselves to use (or should I say abuse) their position to inflict misery upon us.

A lot of this malice comes from their own need and desire for vengeance after one of the guards working on death row was stabbed and killed. This happened in 1981 before I came, but for many on both sides of the bars it created a lot of animosity and death row became a war zone.

From what I've heard and read, it didn't have to happen. At that time death row was a lot more relaxed. Rather than being forced to sit in our solitary cage all day every day, we would be allowed to get out of the cells and walk around the cellblock. On the 'catwalk' they had tables where the guys could play cards and other board games. It was a far more relaxed environment for both us and the guards, or so I'm told.

But as any prisoner comes to know only too well, it only takes one incident to get all privileges taken from everyone. That incident came in 1981 when Thomas Knight (a.k.a his Muslim name "Askari Mohammed") was told that he had a visit. Nothing means more to a condemned man than getting a visit from the outside world. Very few of us get any visits- in the year I've been on death row now, I have never had a visit. No family, no friends- not even a legal visit.

Askari anxiously prepared for his visit- his mother had driven all the way up from Miami to see him. The guards came to his cell to escort him to the death row "visiting park", which is a large room previously used as a dining hall for general population prisoners.

But Askari was not shaven. The rules say that all inmates must be clean-shaven, unless they have a medical pass that exempts them from this rule. Most of the black guys have a pass as the disposable razors that we must use cause their skin to break out. (This condition is called Barbellate.) Askari had a pass, but the guard told him that his facial hair was too long. Even with a pass, the facial hair could be no more than a quarter inch in length. How long Askari's facial hair was, I don't know. But the guard

said it was too long and he had to shave if he wanted to go on his visit.

The guard said Askari refused to shave and became argumentative. I've been told by prisoners who were on the floor at the time that it was not true, that the guard just told him he was not getting his visit because he wasn't shaven and walked away. Another version is that Askari only refused to shave with the disposable razor as his medical pass allowed him to do, and the guard refused to get the electric clippers. But whatever the version is the truth soon no longer mattered.

There are no boy scouts on death row. I hate to say it, but in too many ways we all become animals after being in a cage for years at a time. Common sense tells us that if you put any animal in a cage, then poke and provoke it again and again, sooner or later when that cage door opens someone is going to get bitten. But too many guards working in these prisons don't have any common sense.

I can only imagine how angry Askari must have been after being arbitrarily denied the long awaited visit with his mother. That anger built itself up into a rage, which would find its own destructive means of release. Of course the guard who unfairly denied the visit was not concerned as he knew that Askari was justifiably angry and so he dared not open the cell door.

But nobody bothered to tell the next shift that came on later that afternoon. They didn't know that Askari had reason to be upset about being denied his visit. Later that evening that shift had to shower the floor- meaning they had to let one person out at a time to use the shower, located at the front of the wing. At the time, the guards would simply open the cell door and the condemned prisoner would walk down to the front of the wing and be placed in the shower cell.

Officer Burke had worked the death row wing that evening. Nothing appeared to be out of place. Officer Burke had the reputation for being straight up with the guys, not one who would

hassle anyone in a futile attempt to prove their manhood as is only too often for many of the guards. Officer Burke was respected by those on the row and had no reason to fear anyone.

But when Officer Burke opened Askari's cell door, the unexpected happened so quickly that it was over before anyone could do anything. As the cell door opened, Askari leaped on with a homemade knife and repeatedly stabbed Officer Burke, who died almost immediately. The other guard assigned to the wing allegedly ran off the wing not even attempting to help his fellow officer. (Not surprisingly, that officer was later arrested for sex crimes against children at a local park.)

I'm told that it took awhile before the prison organized a squad to go into the cell block and retrieve Officer Burke's body. All the cells were locked down and guards flooded the wing. It wasn't enough just to remove Askari from the wing and then brutally beat him almost to death- the guards wanted vengeance from the entire death row, and squads of guards then methodically went cell to cell, using chemical gases on each condemned prisoner, often physically beating any who even appeared willing to resist.

As the guards did this, they also removed the property from all the cells, deliberately destroying everything. Sometime later a federal court ordered the prison officials to compensate the prisoners for the property, but that could not compensate them for the personal items that meant the most, such as irreplaceable photos of family and other things of personal value.

It only took that one incident to completely change death row. After Officer Burke was killed, procedures were adopted that required all inmates to be physically restrained with handcuffs behind the back before the cell door was opened. No longer were we allowed out of our cells during the day and the open area where tables once were was converted to add another continuous wall of steel bars to create an outer "catwalk" so the guards could walk the perimeter of the wing beyond the reach of the prisoners.

But the biggest change came in the animosity that now existed between the guards and the inmates. One of them was killed and many saw that as a declaration of war. Askari was moved to and then kept on the infamous “Q-wing” among others who also had committed an act of violence against a guard. By the time I came to death row, Askari had already been convicted of the “premeditated” murder of Officer Burke and given another death sentence.

Prisons are a violent world and death row was not an exception. Although cell searches for weapons and contraband were common, seldom did they actually find what was concealed. My first neighbor Louie Urango (who was later released, only to return to Colombia and killed) was moved a few months after I first came as they had to put another prisoner on the floor. My new neighbor on the low side was Pedro Medina, a Cuban refugee who was sentenced to death a few years before me. We called him “K.C” for reasons I never knew- but I did quickly learn that like so many others around me, the guy was nuts.

Medina was up on the third floor but had an argument with one of the guys up there. A few nights later as “K.C” walked to the shower, handcuffed behind his back and completely defenseless, “Pig” reached out of his cell with a “poke stick” and stabbed K.C in the stomach. After a few days over at the prison hospital, they moved him next to me. I learned that the easiest way to get along with K.C was just ignore him and talk to him only when necessary.

It wasn't that I didn't like the guy or that I personally had any problems with him, but that K.C was just nuts and if talked to him he would only too often go off on a rant that quickly evolved into a rage. Sometimes he was the nicest guy in the world and by far one of the best at playing chess. But then, at other times without any way of knowing when, he would be lost in another world where paranoia took over and everyone became his enemy.

Many of those I lived among were nuts, each in their own way. A few cells towards the back was Mollie Martin, who often

screamed out in the middle of the night that ghosts were raping him. He was convinced that he was possessed by a demon and would talk to the demons, using religious scriptures or profanity- and sometimes both- to banish the demon. But he never did. Sometime later when the State sought to put him to death his lawyers argued that Mollie was insane, but that proved unsuccessful and Mollie was ultimately executed.

Those that are nuts are called “bugs” in here. But not all the bugs are that bad as a few are easy to get along with. One guy we called “Sherlock” (Alvin Ford) was the kind that although a bug was easy to get along with. I have no idea why he was called Sherlock, but then I didn’t make it a point to ask a lot of questions. Sherlock’s case was a good illustration of insanity on death row as when they tried to execute him not long after I came to death row, his case went all the way to the U.S. Supreme Court and ultimately established new law prohibiting any state from putting a person to death that was mentally incompetent. (Ford v Wainwright, 477 US 399) Because of that decision, the prison had Sherlock transferred to the State mental hospital in Chattahoochee, Florida for years- forcing him to take anti-psychotic drugs at increasingly higher levels so that through the involuntary administration of these psychiatric drugs he could be rendered mentally competent enough to be executed. Imagine that... forcing someone to take drugs so that they could kill him.

But I smile when I remember Sherlock, especially one particular experience I had with him. Sherlock was about 4 cells down the wing from me and called me. “Hey Mike, someone’s calling me on the vent and I can’t hear them. Check it out for me.” That was not unusual as each cell had a small ventilation duct high on the back wall. Often this vent was used to communicate with guys on the other side of the wing. By yelling though the vent we could talk to others behind us, sort of like a telephone.

Because this small steel vent is about six feet off the floor, near the roof of the cell, I had to stand precariously on the edge of my bunk to reach it. This went also was the only securely tie my two clothes lines, so I had to maneuver my head between these

clothes lines, and push my food sack to the front. But for Sherlock, I didn't mind.

"Hey, who's calling Sherlock?" I yelled into the vent. No answer. I yelled again and waited for a response but still no answer. Then I yelled back down to Sherlock and told him nobody was responding. Sherlock immediately said that he heard them answer and to try again. No problem, again I loudly yelled into the vent. Sherlock said he again heard them- "They're back there, Mike, I heard them!" Patiently I pressed my head to the vent and listened, but heard nobody. One last time I again yelled into the vent. No response.

Then my neighbor called me, whispering around the concrete wall that separated us, telling me that I had to know Sherlock hears voices and there's nobody calling him- it's all in his head. To confirm his revelation, he hollered down to Sherlock asking him who was calling him- and Sherlock said it was his father.

All the guys around us had a good laugh at my expense, and I laughed too. For many years after that some of the guys who know what happened would joke around about it, telling me that someone was calling me on the vent. I still smile when I think about it, especially now that Sherlock is dead. They never did make him competent enough to be executed- he died in his cell.

I learned a lot about how to survive in a solitary cage that first year, most importantly how to find ways to stay busy, as you got to do the time- not let the time do you. Although I had done a little time before coming to death row, the row was a whole other world.

I was fortunate enough to have J.D as my neighbor through most of that first year. Through him I got in touch with a group on the outside that helped me to enroll in a correspondence course college program and I began to study Christian Theology through Calvary Christian College and Seminary. Although I had attended church most of my younger life and even was an altar

boy for a few years, by the time I came to the row I didn't consider myself religious.

But when you're buried alive in the bowels of the beast, you have to have faith in something greater than yourself. I wasn't a "holy roller" and I never would be, but I found comfort in studying the Bible if for no other reason but through learning how so many others have confronted even greater adversities and found the strength through their own faith to survive.

Another reason I found a growing comfort in religion was because at the time the prison regularly allowed church volunteers to come into the prison each weekend and visit with us. These were the only visits most of us got and just being able to talk to someone who was willing to be a friend, even if just for a few minutes, meant a lot.

Some of the church volunteers who regularly visited death row did become 'friends' to the few of us who were receptive to opening up. On many Saturdays I would look forward to the familiar volunteers coming on the wing, a few who knew where certain prisoners were housed and would make a point of coming down. Often I would make a cup of coffee and just chat with them.

As coincidence would have it, some of the volunteers were people I knew on the street. Back then most of these volunteers came up with 'Prison Crusade', a ministry founded by Abe Brown in Tampa, Florida. Some of the volunteers belonged to churches from the area outside of Tampa where I had been to school and lived.

One day a man came to my cell and introduced himself as 'Norman'. He was from Brandon, an area where I had lived. It was awkward at first as he seemed familiar but I couldn't figure out why. For a few minutes we talked and I soon learned that he worked in the high school in Brandon. I told him I had lived outside of Brandon a few years back and then he said he had been a cleaner at Horrace Mann Junior High School. Immediately, I



then knew where I had known him. Norman had been the Dean when I briefly attended Horrace Mann Junior High when my family first moved to Florida. At the time I was 14 years old. But I remembered him as one day at school I didn't have lunch, or any money for lunch and he had given me fifty cents. That single act of kindness was why I remembered him. Now again our paths crossed and yet again this man was selflessly reaching out to the unfortunate, to the lowest of the low, and sharing a momentary touch of compassion.

Some of the volunteers came regularly for a year or two, a few even longer. But most only came a few weekends then would never be seen again. With each new face that came and went the questions so many of us asked mostly centered on the strings that tied us together with those in the real world. Each volunteer was repeatedly asked, 'Where are you from?' and if their response was from an area we knew then each of us in our own way would almost desperately try to build that bridge back 'home'.

As these common bonds formed the opportunity for spiritual fellowship grew. On death row we are not allowed to attend religious services that most prisoners have access to. Every prison has a chapel where prisoners can physically attend religious services. But the condemned are not allowed to attend. We are allowed to have group recreation and contact visits, but not religious services. I have often wondered about the logic of this rule. But equally so, I remained thankful for these volunteers who came to 'minister' to us and share their faith as this outreach reminded me and many others that when it comes down to it, our faith and spirituality is all too often the only part of us that truly is strong enough to survive this virtual hell that we have been cast down into.

In this year I came to know many of those around me. Equally so, I came to understand the politics of doing time. In a lot of ways the death row community could be comparable to living among a pack of hyenas- as long as you're part of the pack you're relatively safe. But if you fall from grace and become an outsider then those you must live around can and do only too often

become your worst tormentors. Many labels were attached to those ostracized from the collective community- ‘snitches’, ‘baby-rapers’, ‘bugs’ and an infinite number of other labels.

Doing time on death row is unlike any other time I’ve ever done. Before coming into this warehouse of lost souls, I have done time at county jails and state prisons. But nothing compares to death row and the paradox of the place. In this world of the living dead you must become especially aware of the moods and attitudes of those you live around a there is that constant and ever present anger and even insanity around you.

I suppose you could say that death row is about a fragile communication with unpredictable forces. All too often I have learned that a man’s personality can so quickly change. The catalyst of change can be something as tangible a receiving a letter from a loved one with bad news- or not receiving mail from someone, to the fears and phobias within the person themselves.

One day you feel like the man in the adjoining cell is your friend and many hours each day for months and even years at a time that neighbor becomes as close as a brother could. Then just as quickly something unpredictable will be said- or not said, and suddenly it is a stranger next door. Too many times I’ve seen men around me suddenly perceive an offense and feel betrayed by something said and before the conversation is over that anger within each takes over and what might have been a friendship turns to malice and hate.

Many of those who have been here the longest tend to crawl back into their own shells, choosing to avoid contact altogether. This is especially true when someone they have known and come to see as a brother completes his appeals and is facing imminent ‘death warrant.’ In that first year there were many who faced actual execution and with each that sense of loss and feeling of helplessness touched us all.

Looking back I can see that my first year was a major transition in my life, a period of time that changed the person I was. Death

row became a reality to me, one that I learned to accept and discovered a strength within myself that let me know I could- I would- survive.

There I was among what society has labeled to be the absolute worst of the worst- ‘cold-blooded killers’- and yet among these men I found a depth of humanity and compassion far greater than anything I have ever known to exist. Even as much as any individual on ‘the row’ might be capable of cutting my throat without even a second thought; I did not feel fear as I came to know these men as something other than a murderer.

In this first year I grew both as a man and as a human. In that small concrete cage I confronted many of my own faults and for the first time in my life I took a good look at the person I was- and accepted the need to change. In that first year I could have easily stumbled and got lost in the subculture of prison and the destructive forces that too many give in to as their own means of survival but by the compassion of the ‘cold-blooded killers’ around me I learned to rise above the negativity and follow that proverbial ‘Yellow Brick Road’ towards the hope and promise of escaping this man-made hell I was trapped within.

Perhaps that was my greatest lesson of all- to understand the difference between hope and hate, the importance of holding on to that hope so that I am not filled with hate. As long as hope remains I know I can rise above the hate and anger as is all too common in this world. Whether the hope comes in the form of the next appeal and the hope of freedom, or someone such as the men I live among, or the volunteers that come into the bowels of this hell just to share a moment of compassion, it didn’t matter. All that really mattered was that I did reach out and touch it, to grasp it, and to possess it.

I learned the importance of holding on to hope, to find the strength both within myself and within others around me, to rise above whatever might come along and refuse to let it drag me down. In that first year I found the strength I needed to survive,

even what that one year ultimately became many more years that followed. And yet I survived, and remain hopeful.

## **CRYPT OF THE CONDEMNED**

March 1988

As I look out through the bars of my cage, across the catwalk and through the window in front of my cell I can see that dawn is slowly breaking. With over 100 other men on this wing with me the silence seems almost unnatural, hanging over this concrete crypt like an ominous dark cloud.

Outside, below and to my left, I can see the circular courtyard of a paved road that leads from the rear gate at Florida State Prison to the back door of “Q-wing”, known to most as Florida’s death house where the State carries out its executions. As I watch, two darkly tinted white vans pull close to the rear door. I cannot see it, but I know that these vans carry those who have come to witness the execution of Willie “Shango” Darden.

Most of these witnesses are professional journalists who have faithfully flocked to the prison to fulfill their obligation to report the news. And the news today is that Shango must be put to death. A few others represent the State and have requested to be present. That is their reward for winning the conviction and condemnation of the man about to die...they are allowed to now watch him die.

Whether as a journalist or an agent of the State, witnessing the death of a condemned man will seem almost ritualistically humane. They will sit together within just a few feet of the intended victim, separated only by a glass partition. They will silently watch as prison officials lead Shango into the death chamber, then strap him into the three legged oak chair infamously known as “Ole Sparky.” With morbid fascination, they will note the exact procedure as the guards attach both the

electrical cables to Shango's one ankle, and a steel 'hat' strapped to his shaved head.

The warden Tom Barton will then ask Shango if he has any last words and they will lean forward just a bit, not wanting to miss a single syllable of Shango's last spoken words. Then, in a well rehearsed ritual, Warden Barton will nod his head towards an unseen masked man cowering behind a panel to deliberately conceal his identity and that paid executioner will dutifully throw the switch that sends a cycle of 2,000 volts of electricity surging through Shango's body.

The witnesses will sit transfixed as Shango involuntarily strains against the leather straps, as this surge of raw electricity violently rips through his internal organs to cause death. As the low hum continues, they can hear the leather straps stretch against Shango's convulsed body then just as the hum abruptly stops, Shango's body will relax and settle heavily into the chair. They will not hear him scream, and he will never utter another word. It is done.

The witnesses do not gasp in shock at the horror of watching a man being violently put to death. Most have witnessed this spectacle before. The only evidence of what had taken place on the other side of that single plane of transparent glass is the smell that quickly envelopes the small room- an invisible cloud of burning flesh. Those who watched closely would have noticed the wisp of smoke that had risen from the condemned during the execution.

An electric fan can be heard as they attempt to quickly vent the room. This fan blows out of a duct facing the Q-wing recreation yard. When the wind is blowing right, this smell of burnt flesh will be then pumped in the windows of the wings housing other death row prisoners. Once after such an execution I wiped the dust from my cell bars and wondered if perhaps that was part of the incinerated flesh of a friend. And then I puked at the thought.

When this spectacle ended, the crowd of about two dozen silently filed back out that rear door and into the waiting state vans. I could watch from my death row cell as one particular man in a white shirt walked around the front of the van and waved his arms over his head, signaling to those who had gathered outside the prison's fence that the execution had been carried out. Ironically, at the same moment, I could see a "live" coverage on my TV as the television reporter covering the execution unemotionally spoke of how that signal was confirmation that the execution had been carried out.

I look at my watch. It's now 7.18 in the morning of March 15, 1988. As I make a mental note of this, the single light bulb in my cell suddenly goes out only to momentarily flicker, then come back to life as the prison switches back from generator power to regular power. For reasons beyond me, all executions by electrocution in Florida are carried out by using a diesel generator housed in a building about a hundred feet from Q-wing. We can all hear when that generator is cranked up and running, just as it is every Wednesday afternoon to ensure that it is in proper working order- and perhaps to maliciously remind all of us condemned that they will be ready for us, too.

The vans have now departed and the circular courtyard is now empty. No evidence is visible to indicate what only just moments ago had taken place. Leaving my cell door now, I walk the few feet back to my steel bunk. In this six foot by eight foot concrete crypt I am kept confined to there is no room but to walk just a few short steps. Sitting on the edge of my steel bunk, I struggle with my own emotions, remembering how Shango had patiently taught me how to compose sentences and would almost teasingly correct my misspelled words. Through his selfless tutorship, he nurtured my own interest in writing as when I first came to "the row", like so many others, I was uneducated and all but functionally illiterate. Now my teacher, my patient friend, was gone.

Thinking of him, I reach to my nearby sink. Although I don't smoke, I had placed a single cigar there on the edge of my sink. I

had seen Shango in the holding cage a few weeks earlier as we both waited for a visit from a mutual friend. Shango knew he might not make it. A black man whose inner presence made him appear larger than he actually was, he reminded me that the pen truly is mightier than the sword, and to truly defeat the beast, you must first expose it. With a persona not unlike that of James Earl Jones, Shango was seldom seen without his trademark cigar. In his memory, I then lit the cigar and took a long drag- and spontaneously coughed. Then I laughed- a loud laugh that probably awoke a few of those around me, but nobody said a word. Shango would have laughed, too.

This wasn't the first time that I've sat helplessly here in my solitary crypt as someone I've known for years and come to know as a brother was then taken from among us and led away on his last walk, then ritualistically put to death: and for what, but to feed a hunger for vengeance at the cost of victimizing another.

As I write this, I have only been on Florida's death row now for four years this month. When I came there were less than two hundred of us spread out on six floors of two wings. For the first few years I had remained in the cell that I was originally assigned on the bottom floor of "S" wing. But the winters were too cold on that first floor and so I requested a cell change and was moved. Now I'm on the second floor of "P" wing, facing out towards the east side of the wing where they carry out the executions. I think I would prefer that cold cell now.

Like so many others, when I came I had nothing. Because of the nature of my charges and the year awaiting trial in that small country jail any contact with family was lost. But then, we were never really that close to begin with. Even with an extended family of nine brothers and sisters, I always felt someone alone, like an outsider that didn't belong among them.

When I joined the ranks of the condemned, I became part of a community of similar lost souls, the majority of whom, like myself, had been abandoned by their families and friends. In this community of the condemned we became "family."

The first cell neighbor I came to know, James “J.D.” Raulerson, became like an older brother. In those weeks and months he generously took me under his wings and taught me the skills necessary to survive in this man-made hell. The first rule he taught me was that I got to do the time- I can’t let the time do me. It’s all about controlling the time, finding a way to stay physically and mentally active, so that you don’t stagnate and just rot away.

Within those first months we spent countless hours talking around the solid concrete wall that separated our solitary cages. He became my brother and we formed a bond that I did not even share with my blood brothers. Often we would talk late into the night, whispering around the four inches of concrete that separated us, and yet still brought us together.

As that first year slowly crawled by J.D. generously shared his own meager possessions. He had already been on the row for almost 9 years, one of the earliest occupants after Florida reinstated the death penalty. J.D. taught me how to write to places that would help me find pen pals, which I found out was what most of those on the row did for contact with the outside world. He showed me how to contact organizations that would send me educational and religious books so that I could “do the time” productively by studying, and soon I was on my way to earning a college degree in Christian Theology. It was all about staying busy- managing the time.

But that was also a rough year. Only a few weeks after my arrival they executed Arthur Goode, who I did not know and never met. Still, I came to quickly know how my new community dealt with any executions. Before that year (1984) was out, many more executions followed, almost one a month. And many of those among our ranks felt they might be next. With each, the reality of my own condemnation was driven home, like a rusty nail being driven into my soul. With each execution, something within each of us died.



As each of these executions were carried out the change in J.D. became more noticeable. He was nervous and uncertainty of when they would come to take him away manifested itself in undeniable, yet indiscernible ways such as how he'd suddenly grow very quiet when the gate leading to the floor unexpectedly opened.

A big part of living in a monotonously structured environment is that you learn to notice when things around you are not right. Those things that are out of place become a tangible presence. It's the same way when you share a limited space with another and can know his mood without actually even seeing him, but just in the way he is talking, or not talking at all.

J.D. was retreating into his own shell. Increasingly he talked about religion and spiritual beliefs, and joked about whether they would even let him into heaven- gallows humor. He became easily agitated, sometimes over nothing at all. Often late into the night I could hear him walking, pacing the few steps from one end of his cage to the other, sometimes all night long. I would come to know only too well that we all do that. Yet no matter how much we might walk, or even run, we can never outrun the demons that haunt us.

Towards the end of that year J.D. became convinced they would come for him any day now. Back then, we all knew when a new death warrant was coming as the Governor always sent someone to the prison by plane, and we could hear that small plane as it landed on the nearby prison airstrip. When that plane came in early December, J.D. already knew his number was up.

Later that same day a squad of guards escorting a "white shirt" (Lieutenant) came on the wing and straight to our floor. J.D. was told to "cuff up" and they pulled him from his cell. As he walked by all I could say was "good luck." Someone else yelled out, "See ya on the other side, bro!" But that was the last time I ever saw J.D. Just after Christmas, on January 30, 1985 J.D. was executed.

That was the first time anyone I actually knew was put to death. That was an especially tough one. J.D. was on the row for killing a cop in a shootout during an armed robbery in Jacksonville, Florida. When the day came for him to be put to death, many members of the Jacksonville Sheriff's Dept. gathered outside the prison, cheering on the process. For them, it was a joyous occasion that they celebrated with custom made T-shirts and a circus atmosphere...police officers sworn to serve and protect now gathered outside the prison like an intoxicated lynch mob making sport of the death of another man.

Since then the years have crawled by slowly. After J.D was put to death I learned to keep a distance from those around me, just as those around me also kept their distance. Even in our solitary crypts we learn to build up walls around us and exist emotionally in our own little world as the man we might befriend today as a brother may be put to death tomorrow. Yet there's still a bond formed between us, a brotherhood that makes us all one. Just as much as part of us dies when someone we've come to personally know is put to death, so too is our individual and collective hope inspired when one of us wins his appeals and walks off the row with a reduced sentence, even to his long awaited freedom.

Each of us here in my world has experienced that emotional roller coaster unique to the condemned. In our own way, each of us knows what it feels like to live here in the crypt of the condemned, now knowing when it's all over if we might live or die. We cling to hope as if it were the substance of life itself, knowing that if ever we give up that hope our battle will be lost.

Too often though, those around me do slowly give up, their own hope eroding away until one day it's simply gone. Many of those retreat into a world of their own, detaching from the reality around them. You can see it in their eyes, eyes that no longer shine, but only stare into a faraway distance, cold and empty. But late at night when all else is quiet, you can often hear them frantically whispering to someone who is not there, the torment of their tormented soul reaching out in desperation for whatever might be there, even if it is nothing at all.

Then there are the suicides that we don't speak of. It's a funny thing. Many times I've had or heard conversations recalling a friend who had been executed- the memory of a friend living through our memories. But we don't speak of those who ended their misery in their own way. We don't speak of those who have committed suicide as their last desperate act to escape a reality they could no longer deal with. To speak of those who have taken their own lives is to allow ourselves to wonder "why not?" as I'm sure that each of us has contemplated that easy way out. To think of it is to think of doing it, and so by unspoken agreement we don't talk of suicide. Yet it still finds too many.

In the years I've been entombed in my solitary crypt I too have travelled an emotional and spiritual exodus from one extreme to another. As if my own life had become trapped in Dante's "Inferno", I too have descended into the depths of hell, with each step bringing me only lower and lower, each level worse than the last. In defiance to the demons that would drag me down, I've held my head high, anxiously searching for the proverbial means of escape from the bowels of this beast that has consumed me.

Many times I even thought I had finally found that elusive escape, whether it be through spiritual faith or a more secular hope through the appellate process. But each time, just when I think I have it in my grasp, I suddenly find it's not to be, that it simply evaporates and is again gone. Just when I thought I found that "door," I instead crash into yet another brick wall.

Too often I've felt the overwhelming urge to just sit at the "wall" and go no further, to refuse to give the cruel powers that be that evidently delight in torturing not only my body, but my very soul, no more gratification- refuse to play this game I call my life any further. Too often I've been compelled to ask myself what was the point, as in the end would it really make any difference? Even when I've ran that last mile, will my final step only bring me into that death chamber? Do all my efforts really serve no purpose but to delay the inevitable?

Or when all is said and done, will “justice” finally prevail and I walk out of this hell back into a world I no longer know; when I finally walk through that elusive door that leads to my physical freedom, will I only walk out a stranger, a shell of the man I once was? Will this eternal exodus through the crypt of the condemned have already taken from me the ability to “experience” life? I don’t know.

These are the thoughts I ponder as I sit at the edge of my steel bunk. A noise catches my attention, and again I stand at the front of my cell looking at the distant window. Below me, about fifty feet away, a white hearse is now parked. The rear door is opened wide, although I see nobody around it. Silently I stand guard as long moments pass. The witnesses and reporters are now long gone. Their stories will be on the local news this evening. The public will hear the story of yet another man’s execution, a story told by those who only came briefly to the prison to watch him die.

Never have they sat within the walls of a cell and never will they tell the story from the eyes of the condemned. But then, our story doesn’t matter. As these thoughts wander through my mind two men now exist the rear door of the “Q- wing” Between them they pull a silver gurney, on top of which is a single black body bag. This is all that now remains of my friend Willie “Shango” Darden.

I continue to watch as they load him into the hearse, then cover him with what appears to be a blanket. Then they drive away.

### **CONFRONTING MY OWN EXECUTION: STATE SANCTIONED RUSSIAN ROULETTE**

If you or I were to hold a gun to someone’s head and tell them we intended to kill them, then make them wait for hours as they helplessly contemplated the uncertainty of their fate, then finally put the gun to their head as they remain conscious of their imminent death, only to have the hammer fall on an empty chamber with a resounding click – and announce that death will

have to wait until we reload the gun, then come back awhile later and finally inflict death, under Florida law (consistent with all other death penalty states) there is no question we would be charged with capital premeditated murder – and be eligible for the death penalty under the “aggravating circumstances of “cold, calculated, and premeditated” and “heinous, atrocious, and cruel.”

The courts have consistently imposed the death penalty on criminal defendants who had allegedly forced their intended victim to confront their own imminent death as when imposing the death sentence, the courts proclaim that the “psychological torture,” of forcing an intended victim to endure the trauma of a prolonged wait while death was imminent, amounts to cruelty beyond imagination.

Incredibly, that consistently held standard of law applied to condemn a man to death does not apply when it is the state that intends to inflict death upon the condemned. Although the many years, even decades, of solitary confinement awaiting the uncertainty of one’s fate is itself incomprehensible, it is when the condemned actually confront their own imminent execution that the true depth of that psychological torture can no longer be denied... especially when inflicted upon the innocent.

At least half of the over 130 men and women who were wrongfully convicted and condemned to death before being exonerated and released from death row were forced to confront their own imminent execution; forced to count the days, even hours, to their own death. Very few will even talk about this trauma, as no words could ever begin to adequately describe this experience. The following is my attempt to provide an account of my own experience in confronting my own imminent execution.

Anyone who might doubt my assertion that capital punishment is a contemporary evolution of a state sanctioned modern lynch mob need only witness the crowds as they gather outside the gates of a prison when an execution becomes imminent. I first witnessed this spectacle shortly after I came to death row, and my

first “neighbor” J.D. Raulerson had his “death warrant” signed and execution scheduled. He was condemned to die for the murder of a Jacksonville Sheriff’s Department deputy killed during a shootout. As Raulerson’s execution became imminent, a large crowd of cops gathered outside wearing t-shirts advocating his death, and loudly cheered on the execution.

Even that pathetic display by law enforcement paled in comparison to the circus atmosphere of the execution of Ted Bundy a few years after Raulerson’s. Mainstream media came from all over the country, while crowds of people gathered outside the prison, virtually intoxicated into a rabid foaming-at-the-mouth frenzy as they fanatically demanded that he die. Holding signs emblazoned with the image of “Old Sparky” (Florida’s electric chair), while in a growing fever the crowd ritualistically began chanting “Burn Bundy Burn” until suddenly breaking out in a loud and joyous cheer when the prison guard waved a white handkerchief from the rear door of the execution chamber to indicate that Ted Bundy was dead. As I sat in my own cell on P-wing, I could hear them outside joyously cheering on the death of someone I knew as a friend.

About a year after Bundy was put to death, an execution warrant was signed on another friend, Jesse Tafero. As the only child of one of the most compassionate women I ever had the privilege of knowing, his mother Kay stood by helplessly as Florida brutally executed Jesse for a crime he did not commit. After his execution, his common law wife and co-defendant Sonya Jacobs, was exonerated and released from death row after irrefutable evidence was revealed that showed that Sonya and Jesse *did not* commit the crime.

On the morning of May 4, 1990 Jesse was passively led into the execution chamber and strapped into the electric chair behind the glass partition where only a few feet away 39 stoically silent witnesses gathered to watch him die.

Shortly after 7:00 a.m. the warden gave the executioner the signal to start the cycle of lethal electricity. Those watching were

horrendously shocked as fire and smoke leapt from behind the black leather mask used to conceal Jesse's face. The witnesses remained transfixed as Jesse physically struggled against the leather straps only a few feet from them. They would later report that the smell of burning flesh filled the witness room – some reported becoming so physically repulsed that they became sick.

As that first cycle of electricity ended, medical personnel found that Jesse was still alive and struggling to breathe, but no mercy was shown. The signal was given to apply another cycle of electricity – and again flames were seen bursting from Jesse's body as clouds of smoke and the smell of burning flesh enveloped the room. Jesse was again seen struggling, obviously still alive and as the surge of electricity ceased, the witnesses could visibly see Jesse relax and medical personnel verified that he remained alive. No attempt was made to end this horror – yet again the warden gave the signal to send yet another (this time continuous) burst of electricity into Jesse's already tortured body and the room of witnesses watched in horror as Jesse was literally burned to death before their eyes.

Like many other states Florida has a long history of “botching” their executions and after at least two other men “caught fire” while being put to death (Pedro Medina and Allen “Tiny” Davis), Florida decided to switch to “lethal injection” – which has itself proven to be far less than perfect. Please read the article, “Condemned Man Tortured to Death in Florida” and also, “Witness to a Botched Execution,” providing actual court transcript of an eyewitness to the “botched” execution of Angel Diaz in December 2006.

These are the thoughts that haunt me as only too often I have sat in my solitary cage at the Florida State Prison among the condemned as our cell lights would momentarily flicker, then go out, knowing only too well that at that moment the electricity was being diverted so that they could kill another, and on occasion I have retched in physical illness as I was overcome by the smell of burning flesh drifting through the open window from the nearby execution chamber.

Even as difficult as it is to reflect upon the memories of the many I've come to know that have now been put to death, it is the memory of my own imminent execution that remains the hardest of all to talk about. For many years after coming within hours of my own execution, I built up a wall around me; deliberately pushing anyone who dared to get too close away as my own emotional emptiness all but overwhelmed me. As the years passed I began to receive psychiatric care and ever increasingly larger doses of anti-depressant drugs to get through the days – but it was the long nights of lying awake in a cold sweat afraid to fall asleep for fear of the nightmares that tormented me the most.

How do I describe my personal experience of being taken from my solitary cell, physically hand-cuffed and shackled and chained like a rabid dog, then silently paraded down the long main corridor of Florida State Prison and unceremoniously delivered to the warden's office, and ordered to then stand before him, and as I felt my own knees tremble and grow weak beneath me, with cold and callous indifference the warden read the black-bordered "death warrant" to me; calmly advising me that the day and the hour of my own execution had now been scheduled. See, "Death Warrants Signed on Three Killers," Gainesville Sun, September, 1988.

How do I recount the overwhelming sense of hopelessness and abandonment as I was then slowly paraded back down that long corridor, both my body and mind now numb, until we reached the very end at the solid steel door of "Q-wing" (also known as X-wing), and then down a flight of stairs to the very bottom floor that housed the "death watch" cells – and just beyond them, the death chamber itself.

I was then placed in cell #2, between Robert Teffeteller and Amos King. The three of us would then spend the next 8 weeks alone together as our lawyers fought to win a stay of execution. We remained on "death watch" as only a few feet away they executed Jeff Daugherty, and then as Ronald Woods and Leo Jones came within hours, each of us wondering if we might be next. But first Bob Teffeteller got a stay of execution – only to



die later of cancer. Then Amos King and I were moved around to phase II cells immediately adjacent to the room with the electric chair.

Amos won a stay of execution next only to be executed years later. I alone remained on “death watch,” as the days drew down to hours. As required by established “execution protocol,” once I was within 24 hours of scheduled execution, the designated execution team was required to perform a “mock execution” to make sure the electric chair was functioning properly. Although separated by a steel door, I could hear their voices as they “walked” through the mock execution, and as I sat on my bunk with my feet on the concrete floor — as they repeatedly tested “Old Sparky” I could physically feel each massive surge pulsating through the floor beneath me and yet I was unable to simply lift my feet from the floor.

A few hours later I was again shackled and chained and ordered to stand before the Assistant warden, as an unknown individual meticulously measured me for the state provided “suit” they intended to use only to kill, then bury me in. Then with indescribably surreal detachment, I struggled to recall my favorite foods as another prison official impatiently waited to write down what I wanted for my “last meal,” and only then did I again sit down in the solitude of my death watch cell and silently pray that, that last meal would never come.

With growing anxiety I struggled to not count down the final hours as the hour of my own execution grew nearer. As if to meticulously taunt me, the clock on the wall above the death watch sergeant’s desk tolled increasingly louder with each eternal second, echoing again and again in the numbness of my consciousness. Desperately trying to distract myself from my own impending death, I would all but involuntarily leap to the cell bars each time the nearby phone would ring, hoping that, it would be the call to stay my execution – and with each disappointment silently begging, then cursing, the God that had seemingly abandoned me in the hour of my need, and would allow the unjustified execution of yet another innocent.

In my mind, with my execution set for early the next morning, I knew that the courts would close and the judges all go home by late afternoon. I told myself they had to grant a stay by 5:00 p.m. that day, but then 5:00 p.m. passed. With each passing moment a part of me died as I confronted the growing certainty of my own inevitable fate. Although physically and mentally exhausted, I could not sleep and I methodically paced back and forth like a restless animal in a cage, deliberately counting out each step out loud in a failed effort to drown out the incessant thundering of each click of the clock on the wall.

Then, at long last, that call I had so anxiously awaited came, but then in what can only be described as the most cruelest of inhumane acts imaginable, as if maliciously wanting to taunt and break me, I was told that by a 4 to 3 vote, the Florida Supreme Court had rejected my appeal, and granted only a 48 hour “temporary” stay of execution to allow my lawyers to appeal to the Federal Court. (See, “Killer Wins Last Ditch Stay of Execution,” *The Gainesville Sun*, November 30, 1988.)

In a brief moment of illusory reprieve, the state pulled the gun from my head and told me they’d be back to kill me later. Then just as quickly, callously cocked the gun again and told me I would now die. This is the insidious insanity of this game of state sanctioned Russian roulette, as they uncompassionately turned back the hands of the clock that counted down my final hours – and told me to start counting it down again.

Tick, tick, tick... each eternal second ticked away until another long night of restless exhaustion and anxiety of my uncertain fate slowly passed, then the hours of yet another long day with no word. On the early evening of my second scheduled execution the prison arranged for a “final visit” with my family – but no one came. Just as much as I was condemned to live alone, so too would I die alone. As an act of unexpected compassion, I was allowed a phone call to my family, and my father answered the phone.

Allowed only a moment to speak, I struggled to tell him that the State court denied my appeal, and it didn't look like I would make it. Then I heard silence, then the phone crashed to the floor, and a moment later my teenage sister came on the line, and hysterically told me that Dad had just collapsed and she had to hang the phone up to call an ambulance. I never even got to say goodbye.

As if an even greater weight had come crashing down upon me, I laid on my bunk in a fetal position facing the wall, never before, and never again feeling so completely alone and overwhelmed. Sometime a few hours later a Federal Judge granted an "indefinite" stay of execution, and I was told that I would immediately be moved from "death watch." Then, in the late evening of Thursday December 1, 1988 – only hours from my second scheduled execution in as many days – I climbed each step that led up from death watch and the execution chamber, and with each step I felt a great weight being lifted from me.

I had confronted my own death and at least temporarily defeated it, and now felt almost glad that I was being returned to my regular solitary death row cell, among the many others that are also condemned. I was still alive – but equally so I remained condemned to a prolonged and indefinite living death.

## **THE DARK SIDE OF DEATH ROW- FLORIDA STATE PRISON**

With over 100,000 prisoners now incarcerated within the Florida Department of Corrections, there are almost 70 different prisons throughout the state. Most are not all that bad, with large open compounds where the prisoners can spend long afternoons playing sports and just “hanging out” with each other as their sentence ticks down one day at a time and they dream of the day they can go home.

Florida State Prison is the exception. All prisons in Florida are formally called “correctional institutions” and by law are intended to provide a “rehabilitative” environment where the offender can participate in various programs before being released back into society, hopefully a better man going out than when he came in. But Florida State Prison is the only institution actually formally called a “prison” in Florida – and for good reason. At “FSP” there are no rehabilitation programs and prisoners are not allowed to go out to an open compound. Rather, the prison is intended to do nothing but confine the prisoner in a solitary cell until they either die or must be released back into society.

I’ve personally been in “the system” almost 30 years now – the past 26 years on death row. Many of these years have been spent here at FSP, beginning back in the early 80’s when FSP was a different place, a prison commonly known as “the Alcatraz of the South”, and for good reason. Other than those sentenced to death, which automatically came to FSP, this was the end of the line for prisoners who, because of their propensity for violence or stupidity, could not be housed anywhere else.

Back then, most of the “wings” at FSP were “open population”, where the prisoners were allowed out of their cells to work jobs within the prison during the day, then locked in their cells at night. They had a large recreation yard where they could play sports or work out with weights.

Since FSP opened around 1959, it has always had a history of extreme violence. It was a kill or be killed environment where assaults and murders were simply part of the daily routine. Florida State Prison was also more commonly known for being home to “Old Sparky” (the electric chair) where Florida carried out its executions. The lesser known truth was that far more prisoners went out in body bags, after being killed in general population, than were executed by the State of Florida. Many of these long forgotten souls rest in the prison’s graveyard “boot hill”, where prisoners who die in the system are laid to rest if nobody claims their bodies. Only their prison inmate number marks the grave, their own name is soon forgotten.

By the early 1990’s FSP started to drastically change. One wing at a time they eliminated “general population”, replacing the most violent offenders with mentally imbalanced inmates, where they now remain for years and even decades in solitary confinement. New housing units were built where the recreation yard used to be and it now houses minimum or medium security inmates who journey over to the “main unit” each morning to work; clean up, kitchen and maintenance jobs.

By December 1992 the Department of Corrections opened a newly constructed 332 bed unit at Union Correctional Institution (UCI) specifically as the new “death row” and within months the majority of Florida’s death row prisoners were transferred to the new unit. Only a few death row prisoners remained at FSP, those who allegedly had a history of assaulting or killing guards.

But it didn’t take long before the new death row unit filled to capacity and those originally sentenced to death row after 1992 continued to be sent to FSP where they remained until a cell became available at UCI. Equally so, death row inmates in UCI who allegedly became a "security threat" or those who created too many problems by filing many grievances or stepping on the wrong toes found themselves transferred back to FSP.

After UCI opened I was one of the first ones transferred there. It was a new building, clean and shiny and the cells were bigger than at FSP. It was a big improvement over the deplorable living conditions at FSP where the cellblocks were infested with cockroaches, rodents – even bird and snakes. If you had to be on death row, the UCI unit wasn't a bad place to be. To an outsider looking in, it was perhaps pure hell but for those of us living for years at FSP, it was like winning the lottery and moving into a big mansion.

But then there's the darker side of death row. Beginning in the early 1990's it became increasingly common for guards to target prisoners for violent assaults, especially those who dared to file grievances. In late 1996 I had to file a grievance when a book I had mailed in was taken. The Administration Sergeant (Norman Gemelli) had me brought to his office, of course handcuffed and shackled. At first Sgt. Gemelli began talking to me, clearly agitated because I dared to file a grievance. That quickly escalated and suddenly without provocation he came at me and began to violently assault me. The other officers pulled him off, but not before I sustained injuries and then spent the night in the prison infirmary.

I've never been one to back down and so I soon filed formal complaints against Sgt. Gemelli and then a Federal lawsuit. As it's only too common within the Florida Department of Corrections (or as many newspapers have described it, the "Department of Corruptions") after the lawsuit was filed Sgt. Gemelli was promoted to a supervisory position and I soon found myself being transferred back to FSP.

In the first weeks of January 1998 I walked back into Florida State Prison and descended back down into the bowels of the beast. But FSP had radically changed since I had left in December 1992. I walked into a familiar world in which I was a stranger. Never could I have imagined that even as bad as FSP was in the past, it had become an even more brutally violent place. Only now it was not the prisoners responsible for the violence and chaos but rather the guards. I quickly found out that

under Warden James Crosby the guards were allowed to violently assault prisoners and actually FSP was now run by the guards. Of course, while assaulting a prisoner they made sure the inmate was handcuffed and physically restrained, completely unable to defend himself. Not all the guards got involved with this, but each shift had its own group of guards that became the predators in this jungle. Like a pack of rabid dogs they preyed upon their victims, assaulting anyone they choose to target for whatever reason. These coward thugs had no respect for the badge of law enforcement they wore and were themselves nothing but state paid violent criminals.

Repeatedly I saw one prisoner after another pulled from his cell under pretenses such as a medical callout or cell search, only to be taken to the “quarterdeck” where other inmates could not see the actual assaults, and a few minutes later they would be brought back bruised and bleeding from the violence that had been inflicted upon them for no other reason but that these coward dogs just had to bite someone.

In June 1999 I was subjected to a “disciplinary report” for allegedly disrespecting one of these guards. Soon I found myself being moved to “X-wing” (now called Q-wing) where I was to do 30 days in lock-up (disciplinary confinement). Death row lock-up was on the third floor of X-wing and already there were several other death row prisoners housed up there, including Frank Valdes, who was sentenced to death for allegedly killing a prison guard in South Florida.

## **MURDER OF FRANK VALDES**

Maybe it was the loud banging of the solid steel cell doors, or the screams of pain and agony that suddenly awoke me from my sleep in the early morning hours of July 4, 1999, but I certainly was awoken. Slamming steel doors and screams of pain were not at all uncommon, but this night was different. This night would be long remembered, not just by me, but by many.

Florida State Prison's infamous X-wing (formally known as Q wing) is where prisoners were sent to die. Although this one wing, with 3 floors and only a total of 30 cells was small there's no question that more men and women have died on this one wing than any other wing in Florida's entire prison system.

The bottom floor has only 6 cells- and Florida's electric chair. That floor is reserved exclusively as Florida's death house as those six cells are only for 'death watch'. I have personally been on that floor in late 1988 when I was scheduled to be executed and came very close to that, not once, but twice. I know only too well of that indescribable anxiety that only a condemned man confronting his own execution at the hands of those that gathered outside the cell like vultures. I know what it was like to confront death and live to tell it.

The upper two floors of X wing have 12 cells per floor, used to house the 'worst of the worst,' inmates who cannot be housed anywhere else. Many of the more permanent residents are those sentenced to death for killing a guard and are singled out for informal special treatment. Arguably, their fate is even worse than death, and deliberately so.

Other cells on the upper floors of X-wing are used to house a wide variety of prisoners who for whatever reason have been singled out for special time. I've been sent to X-wing many times throughout the years I've been imprisoned. It's fair to say that I'm one of the very few, perhaps even the only prisoner who has been housed on every floor of the X-wing. That's not something I'm proud of, but just a tragic commentary on my collective prison experience- and why I am only too familiar with the horrors within this house of death.

Most of my trips to X-wing came about because I've earned more than my fair share of malice and resentment from the prison guards. Through the years I have done what few dare to do- take on the powers that be through numerous lawsuits challenging the deplorable and oppressive conditions of death row confinement through numerous legal actions. This advocacy has made me a



target for retaliation at the hands of the guards. But I accept that as a worthwhile consequence.

In July 1999 I was on X-wing after being written up on a bogus allegation of disrespect by a guard who wanted to intimidate me into silence after I spoke out against his brutal assault upon another death row prisoner. But I would not so easily be silenced, not even on the numerous occasions when I was the target of such violent physical assaults at the hands of the guards.

This is something that has always perplexed me. As Americans we sure do have a truly twisted and even hypocritical sense of morals and concepts of basic human rights. On one hand we so quickly condemn countries like China on their own history of human rights violations on the other hand we commit the same atrocities against our own citizens, and yet nobody cares.

This pathetic self righteous hypocrisy makes me want to puke. Incredibly, most of these 'moral' Americans expressed their outrage at how Iraqi prisoners were being treated at Abu Graib prison are deliberately oblivious to the very same types of physical torture routinely committed upon American prisoners.

I only wish that the American media would report on the physical abuse and torture of American prisoners as they so quickly did on Iraqi prisoners. If only a few American journalists of moral conscience could have shared that cell with me as an objective observer during the month of July 1999 and personally witnessed what had transpired that month. But what took place was known to many, year reported by very few as the American media is selective in what they report and the horrors that take place in American prisons are seldom reported.

July 4th is the day Americans celebrate our independence and our freedom founded upon the constitutional democracy bought with the blood and sacrifice of those who were willing to die rather than live under an abusive and tyrannical government. This Constitution we so proudly celebrate specifically incorporates protections against abuse by those who act on behalf of the state.

But American prisons are a whole other world, and this Constitution we proudly embrace is not worth the paper it's written on within the walls of America's prisons

On this 4<sup>th</sup> of July I was involuntarily awoken by the sounds of horror around me and my own anxiety was quickly escalating. Each cell on the two upper floors of the X-wing had a solid steel door on the outside of the cell, completely enclosing it in darkness.

I had no way of knowing what was going on, but it was not at all uncommon to be awoken in the middle of the night as the guards would 'run in' on a particular prisoner they had malice towards. The truth is although only a small number of guards will routinely assault prisoners, there is an unspoken code of silence among all the other guards that compels them to ignore what's going on. Any guard who 'snitches' out another guard would find himself targeted for retaliation. As one former Florida DOC director subsequently admitted, the Florida prison system during this time was a "culture of corruption" with employees at the highest level of the FDOC engaging in a continuous pattern of criminal enterprises.

What happened at FSP actually began on the afternoon of July 4, 1999 at Hamilton Correctional Institution. Hamilton was known to be one of the prisons where guards could do as they wanted and often prisoners were targeted for assaults, commonly known in the prison system as an 'attitude adjustment'. As a result there was a lot of suppressed anger within the prison population just waiting for that moment when it would spontaneously erupt in violence.

As for the incident, I was told by two of the four inmates involved that they were simply walking along a sidewalk towards the 'rec' field when two female officers walked towards them. Both officers were white and both inmates were black.

One of the officers ordered the inmates to step off the sidewalk until they passed. This was the Deep South and the deliberate

racial implications were obvious. For whatever reason, they ignored the guards' order to step off the sidewalk. Immediately the female guard ordered the black prisoners to the ground and again they refused. Words were exchanged and the unnecessary confrontation quickly escalated. One of the female guards attempted to physically take down one of the prisoners and when he resisted, the other guard jumped in.

It quickly became a major incident when other prisoners rushed in to try and break it up, only to have other guards rushing in and physically assaulting them. In less than a moment it quickly became a free for all as others jumped in to the fray.

Just as quickly it was over. The female guards both suffered physical injuries, and one suffered a miscarriage as a result of this confrontation. As any prisoner knows, nothing incites male guards into extreme acts of violence than a prisoner even looking at a female employee the wrong way.

As the incident was brought under control at least 12 prisoners were immediately placed in lock up at Hamilton. It was decided that they would be sent to the maximum security prisons at Charlotte or Union in Raiford.

But five were sent to Florida State Prison where guards were inclined to commit extreme acts of violence against prisoners on the X-wing. It was common knowledge that there were gangs of guards who would routinely be sent to target a particular prisoner for physical assault. Often these gangs of guards trolled the prison like a pack of rabid hyenas just looking for an opportunity to attack.

It was not a coincidence that the four prisoners who were first involved in the incident at Hamilton were sent to Florida State Prison. They would pay a high price for attacking a guard as other guards would exact their revenge.

Late that night a prisoner known as Sirlaith Cross was placed in the cell next to me. Another, Jerry Charles, was brought to a cell

at the end. I was awoken when Cross and Charles were ‘escorted’ by a large pack of guards. From the moment they were on the wing they were repeatedly and violently assaulted, their screams of pain barely heard over the barrage of boots kicking them and the sounds of the guards enticing each other on. Not surprisingly these guards were all white and racial slurs were used without reservation.

As both were virtually beaten into their cells, these brutal assaults continued. Only a few inches of concrete separated me from the cell that Cross was being moved into and in all the years that I have been imprisoned, and the countless acts of violence I have witnessed, nothing before or since has come close to this. I could only sit silently as these guards all but virtually beat these two prisoners to death. It was at least several hours before the guards finally left and the wing again became silent- or almost silent, as even through the wall I could hear Cross still gasping for breath and uncontrollably sobbing.

I sat at the edge of my concrete bunk the rest of the night, in the dark silence, not really knowing what had happened or why. Sometime before breakfast I heard the tell tale knocks upon the steel toilet which I knew was Frank Valdes calling me, wanting me to ‘get on the vent.’

Each cell had a small vent on the back wall, high above the floor. This vent led into ‘pipe alley’ the space for the plumbing that separated the west side of X-wing from the east side. Frank Valdes was another death row prisoner who was housed there after killing a guard. Even though this crime didn’t happen in prison the consequences remained the same- once on the X-wing the brutal assaults began. For many years Frank, his co-defendant William Van Poyck and Ronald Knight- all convicted of killing guards were permanently housed on X-wing and routinely subjected to assaults.

Whilst standing on my bunk to reach the vent Frank told me that another had been brought to his floor and one more on the floor above him. Another unknown voice joined in the whisper and

said he was one of the four and his name was Willy. His voice was obviously strained as he struggled to tell us they came from Hamilton and needed help, that the guards were killing them. Willy told us there was a riot at Hamilton, and some guards got banged up and that's why they were being jumped on.

That made sense to me as years before I had been caught up in a riot at Baker Correctional when I was doing a 2 year prison sentence during the late summer of 82. In that riot, numerous guards were injured and the other guards organized vigilante gangs and systematically assaulted the prisoners involved. Many of the prisoners had to be hospitalized.

Not long after that the Federal law enforcement official investigated reports of prison brutality and as a consequence, eight of the guards, including two high officials, were indicted on criminal charges and ordered to stand trial. Known as the 'Baker Eight' they were acquitted of all charges and returned to work, even though they had beaten at least 20 prisoners almost to death. Many were immediately promoted as a reward for their 'loyalty' to the department of corruption, I mean, department of corrections.

However in all fairness, only a few will be involved in the assaults but very few would openly speak out against the brutality because of the certainty of retaliation against them and even their families. One Sgt, who was worthy of respect, once told me that he came to work to lock up criminals, not become one, and that those who assault prisoners are nothing but criminal thugs themselves.

At first me and Frank were only able to find out bits and pieces of what happened and why these four prisoners from Hamilton were being so brutally assaulted. Throughout that next day on at least three separate occasions, each of these Hamilton prisoners was again brutally assaulted by gangs of guards while in their cells. Without exception, as is always the case, a prisoner is handcuffed behind his back and virtually defenseless- if it were a fair fight most of these guards would run like the cowards they are.

These systematic assaults continued over the next few days. But it wasn't just the violent assaults, but also that these prisoners were not being allowed any form of medical treatment, and were not even being fed. Their outer doors remained closed and locked, opened only when these guards wanted to commit yet another assault.

After a few days me and Frank Valdes decided that we had to let someone on the outside know about what was going on. That was not an easy decision as by doing so we both knew that would become targets, too. But if we did nothing then it was just a matter of time before the guards did kill one of them.

I personally sent letters to numerous lawyers, as well as several newspapers around the state. I also wrote a long letter to Federal Judge Harvey Scheslinger in Jacksonville detailing what was going on and pleading with the Judge to instruct Federal marshalls to look into the situation.

All of my letters were ignored. Gangs of guards brutally beating prisoners is just not a story- not even a Federal judge could care about such an event. These assaults continued, barely decreasing, over the next week. Every shift took their turn, and even the highest ranking prison officials were undoubtedly aware of what was going on- and even came to the wing to watch! Yet nobody did anything to stop it.

That Friday we found out that someone did contact the prison asking what was going on. Suddenly I was moved of X-wing and back to the wing that was used to house death row, but they put me in a cell on a floor with no one else around, deliberately isolating me. That night a group of about 6 guards came to my cell and handcuffed me, then took me to a shower cell. I was placed inside, then they went back to my cell. For several hours they tore up all my property, even deliberately defecating on several of my magazines and urinating on my bed.

I was then brought back to my cell and placed inside. The Sgt. only said, that "Now you will know to keep your mouth shut." It

was clear that they now knew that I had sent letters out telling of what was going on in X-wing, and I was now a target for their retaliation.

But that relatively minor incident of cowardly retaliation was nothing compared to what was yet to come. At the time I could only assume that the guards would also target Frank Valdes for retaliation. I just could not have imagined the price he would soon pay.

Word travels very quickly within the prison walls. That next day we heard that the guards had killed Frank Valdes, apparently that morning. At least six guards had beaten and kicked him to death while in his cell. His body was virtually covered with distinctive boot prints- the details of this bloody and inconceivably brutal assault were subsequently a matter of public record.

That night, shortly before dinner, I too had yet another visit. They knew that I knew why they had killed Frank Valdes- and they had to keep me silent. I was again removed from my cell by Sgt. Bergman and Officer Walker, and as is done all too often, taken to the secured cell used for showers. Why the shower cell? Because it is tiled and easy to clean. At FSP these shower cells were routinely used to assault prisoners as there would be no witnesses, and any blood could be easily washed away.

I had every reason to be afraid, as I knew only too well what was coming. The only question was whether they would kill me, too. I cannot even begin to describe the overwhelming sense of helplessness I felt as I was escorted to this shower cell, and while still handcuffed behind the back, pushed inside with both Sgt. Bergman and Officer Walker following. The guards do not go into the shower cells with the prisoner unless they intend to assault him.

As Officer Walker held me from behind, Sgt. Bergman forcibly and repeatedly slugged me in the stomach. Even though I saw it coming and attempted to prepare for this blow, it still took my breath away. Sgt Bergman then grabbed me by the hair, pulling

my head back, and then with his own face close to me, Sgt. Bergman asked me if I was ready to die. From behind, Officer Walker, a muscle bound redneck larger than I, pulled on my handcuffs, causing excruciating pain from my arms to my shoulders. For several moments he held me like this, so that my body weight itself caused extremely torturous physical pain, but conveniently left no physical marks beyond the cuffs cutting into my wrists. Unless a person actually experiences this particular type of assault, it would be hard to imagine just how painful this is.

I was again then violently slugged in the stomach- a common means of assault as they know better than to leave obvious injuries. Again Sgt. Bergman told me in the form of a rhetorical question that I would keep my mouth shut about what happened on the X-wing. I could only shake my head.

The assault on me lasted a few moments, and then I was again escorted back towards my cell. But just as I walked out of the shower cell and into the catwalk leading back to my cell, suddenly I felt my head being forcibly pushed forward, crashing with extreme force into the wall of steel bars lining that catwalk. Although dazed, I quickly recognized that another officer, John Hall, had come up behind me and like a punk coward had attacked me from behind. I can only suppose that he felt left out as only Sgt. Bergman and Officer Walker had the opportunity to assault me in the shower cell.

Surprisingly, Sgt. Bergman immediately responded with anger- not towards me but towards Officer Hall. He told him to stop, pissed because Officer Hall's assault left an obvious injury on my forehead and side of my face. Unlike the surgically inflicted assault in the shower that was intended to have no obvious signs that I was assaulted, now the entire side of my head was obviously injured as if I was beaten with a baseball bat. Sgt. Walker was not angry because Officer Hall had assaulted me- he was angry because it was done in a way that left obvious and undeniable injuries.



I knew better than to request medical care. That's how they really got you. Anyone who has ever been the subject of an assault in prison knows that is how they do it. First they will 'touch you up' - a relatively minor assault intended to do nothing more than compel you to seek medical care. They'll then take you to the clinic and have a prison doctor examine you. Of course he will find that there's no injuries to support a conclusion that you were physically assaulted. Often your medical records will say something to the effect that 'contusions apparent, but appears self-inflicted'. Prison doctors routinely look out for the guards they work with as they must depend upon these guards to protect them.

Once they have brought you to the medical clinic for such an examination, and your medical records reflect that you were seen and that no significant injuries were found, then they escort you back and really jump on you, knowing that they will get away with it as you were already provided medical attention so if you did complain of the subsequent assault later, your medical records would show that you did receive medical care that day.

But by the next morning I had no choice and told another Sergeant that I needed to go to the clinic. The pain had not subsided and I was concerned that I might have suffered internal injuries. Reluctantly the day shift Sgt. had me brought to the clinic and only then did I find out that both the Federal and State police had taken over the prison that morning after learning of Frank Valdes's death.

As I sat in the holding cage at the clinic, I watched as one after another inmate with obvious physical trauma was escorted to the clinic by Federal agents. Soon I learned that the Federal and State police had done a wing by wing search of the prison, finding countless prisoners who had been assaulted by guards, then left in their cells without receiving any medical attention, including the four prisoners on X-wing who had been beaten daily and were found with broken bones and substantial injuries.

Never before had I seen Federal agents and State police take over a prison, especially a maximum security prison. By the next day pictures were taken of my own injuries – one of the pictures used on the front page of the Miami Herald in an article about the violence against prisoners at FSP. To my surprise, the medical staff actually went by the book and documented my injuries, then the Asst. Warden Turner personally came to the clinic and asked me what happened.

After receiving medical treatment I was brought back to my cell. The next day a lawyer from the Florida Institutional Legal Services in Gainesville came to the prison and took numerous pictures of the injuries I received by that assault. Some of those pictures were on the front page of the Miami Herald newspaper the following morning, accompanying an article about how in the week prior to Frank Valdes's murder I had written the newspaper about the escalating pattern of violent assaults by the guards, warning that unless someone looked into it, it was just a matter of time before these guards killed someone.

But it wasn't newsworthy until after the guards actually did kill someone- Frank Valdes. Nobody cared whether prisoners were being brutally assaulted by guards- only when they finally crossed the line and killed a death row prisoner did it suddenly become worthy of a story.

That evening after the front page story in the Miami Herald was published, I was suddenly transferred from Florida State Prison to the North Florida Reception Center at Lake Butler. Once there I was placed in a maximum security lock up on the infamous K-wing of the main building. This was the equivalent of the X-wing, except it only had two cells and was part of a much larger cellblock, so not isolated.

I was only told that I was transferred for my own safety. Only much later did I learn that some of the guards at Florida State Prison had planned to silence me that night, but one of their own had informed on them. The regional inspector ordered my

immediate transfer- even though I was on death row, I was suddenly housed in a regular prison.

For over two weeks I remained in 'protective custody' there at Lake Butler confined to that solitary cell. I was not allowed to have visits, not even from my family. I later found out that numerous journalists had requested to speak to me, but were not allowed. Although they told me I was being held at Lake Butler for my own protection, this isolation also served the purpose of prohibiting any newspapers from talking to me about what was going on at FSP.

In mid August 1999 I was finally transferred to the main death row unit at Union Correctional Institution. I had previously been at the North east unit of UCI from late 1992 until January 1998- but ironically had been transferred to FSP after being assaulted by the death row 'administrative Sgt.' Norman Gemelli. They had ordered my transfer to FSP in January 1998 after I had filed a lawsuit against Sgt. Gemelli in the Jacksonville Federal Court. Now I was being suddenly returned to the northeast unit because of another assault.

In the following months the circuit State Attorney Rod Smith formally filed murder charges against the prison guards directly involved in the brutal beating death of Frank Valdes. In February 2000 Captain Timothy Thornton, Sgt Jason Griffiths, Sgt Charles Brown and Sgt. Robert Sauls were all formally arrested and charged with the murder of Frank Valdes. If convicted, they would each face life in prison.

But they would never be convicted. As the case progressed towards trial, reports came that any witnesses who gave information against them were being threatened by other guards. This is a small community and guards stick together.

The intimidation of any potential witness was only part of the problem in prosecuting any prison guards- the bigger problem was the political corruption of the judicial process itself. The entire geographical area, often called the 'Iron Triangle' is

completely dependent on the jobs within the prisons. Within a 10 mile radius of Starke, there are a dozen major prisons, employing thousands of people. The rest of the community, from car lots to fast food restaurants, is economically dependent upon the patronage of these prison employees.

Nobody was surprised when the circuit State Attorney Rod Smith announced that the murder trial would be held in Starke. He knew that no jury in this community would actually convict these guards of murder, and this was his way of washing his own ethically corrupt hands of it.

This pretense of a judicial process took place by the end of the year. Virtually every juror admitted that they had either an immediate relative, or a close friend who worked in the local prisons. But they swore before God that they would be 'impartial'. Outside the courthouse countless prison guards gathered in full uniform to show their support for these accused killers.

Some spoke out saying that the State Attorney Rod Smith was deliberately throwing the case, and had no intention of seriously prosecuting these prison guards even though the evidence showed they deliberately beat Frank Valdes to death. Others openly joked that the guards only did what the State paid them to do- they killed a man sentenced to death. So what if the evidence showed that Valdes was brutally beaten and kicked in over 50 places, breaking every rib and puncturing organs? This wasn't a state sanctioned execution; this was a gang of rabid animals inflicting a torturous death upon a virtually helpless victim.

Nobody was really that surprised when the jury came back with a 'not guilty' verdict, refusing to convict any of the guards of the crime. A Jacksonville TV station later interviewed one of the jurors, who claimed that they did believe these guards brutally beat Valdes- but the state didn't really prove which specific guard was actually responsible for killing Valdes.

Not long after this absurd acquittal, State Attorney Rod Smith announced that he would run for the Senate in the next election. Public records show that the majority of his campaign donations subsequently came from those employed at or doing business with the local prisons. Some argued that he bought his seat by deliberately throwing the Valdes case, which I believe he did do—the facts speak for themselves.

After matters settled down a bit the lawyers at the Attorney General's office came to the prison to talk with me about accepting a monetary settlement in exchange for not pursuing a Federal civil action. At the time I had two separate Federal civil actions pending in the Jacksonville Federal Court. One was in connection with the physical assault upon me by Sgt Gemelli in 1994, the other a recently filed civil action in connection with the 1999 assault at Florida State Prison.

I knew only too well that it would prove almost impossible to litigate any Federal lawsuit against prison officials, and that as long as I attempted to litigate these claims I would be subjected to further retaliation, even assaults, by guards. Reluctantly I agreed to accept a relatively substantial monetary settlement from the State in exchange for dropping my lawsuits.

The Valdes family pursued their own Federal lawsuit against the prison system and the State, naming then FSP Prison 'warden' James Crosby as their primary defendant, arguing specifically that during the period that Crosby was warden at FSP he allowed the guards free reign to systematically assault- and even kill- prisoners. Even former FSP wardens voluntarily testified that they personally told Crosby that these guards were 'out of control' but he ignored them and failed to take any action.

Incredibly, shortly after this event, Warden Crosby was named as defendant in numerous lawsuits stemming from hundreds of documented assaults upon prisoners at FSP, Florida Governor, Jeb Bush, actually promoted Crosby to position of Secretary of the Florida Dept. of Corrections. Even though Crosby had already proven his inability to competently manage the one

prison, now Governor Bush appointed him to manage the entire Florida prison system!

Crosby continued his 'culture of corruption' at the very highest levels of the prison system, flagrantly promoting his the 'good ole boys' he worked with at FSP. But inevitably their blatant corruption would become their downfall. After a few years as director of the State Prison system James Crosby was indicted in Federal court for taking kickbacks- deals with private contractors that provided services within the prison system in exchange for illegal cuts of the profits. Many of these contracts were for services that sold 'canteen' or telephone services to prisoners.

Ultimately Crosby pleaded guilty in a plea agreement that required him to turn against his fellow corrupt prison officials. By helping the Federal agents build a case against others, Crosby himself was only given an 8 year sentence in a Federal prison, where he will remain until 2012.

Governor Bush could not avoid the public embarrassment brought on by his close association with James Crosby. In an attempt to save face, he brought in an 'outsider' to clean up Florida's corrupt prison system, appointing a former army colonel James McDonough to take control of Florida's prison system.

What made McDonough different from the start was that he openly expressed his intolerance for any criminal misconduct by prison employees. Shortly after taking office, he summarily fired 90 top prison employees that he believed were corrupt and demoted 280 others.

McDonough described what he found as a 'culture of corruption'. In an interview with CNN News in February 2008 McDonough compared the FDOC with the mafia, claiming that many high level prison officials were involved in what amounted to organized crime, including accepting and even extorting bribes from contractors, extorting money from prisoners' families for exchange for transfers to prisons close to home, systematically

smuggling drugs into prisons, using taxpayer money to throw ‘booze parties’ even hiring women and having ‘drunken orgies’ on state prison property- and having gangs of guards on call to threaten and even assault anyone who might dare report them to law enforcement.

Under McDonough Florida’s prison system was partially cleaned up. But even during the time McDonough served as the top prison official, violent assaults upon death row prisoners continued. These assaults were and are committed by a small number of cowardly thugs employed by the Florida Dept of Corrections.- and occur only because top prison officials refuse to take action against any prison employee for fear of suffering the political consequences. Not surprisingly, in 2008 James McDonough resigned from his position as FDOC director, giving interviews to the media after stepping down detailing how the culture of corruption among prison employers runs so deep that it simply cannot be cleaned up.

Shortly before McDonough stepped down the State of Florida reached a settlement with the family of Frank Valdes, paying them over a million dollars to drop the lawsuit they filed at his death at the hands of the prison guards. That case, and the circumstances of systematic violent assaults against prisoners can be read at Valdes v, Crosby, 450 F.3d. (11<sup>th</sup> circuit 2007.)



Frank Valdes

## **THE GREAT DEATH ROW ESCAPES- OR MAYBE NOT**

Death row sucks. If I know nothing else about this hell I have been condemned to it is that one absolute truth is that death row sucks. I don't think anyone can blame a guy for wanting to get the hell out of here by any means necessary. Through the many years I've been here I've seen more than a few guys come up with ideas on how to get out of here. But most of these plans provided nothing more than a good laugh for the rest of us and the genius who thought it up never got anywhere.

In the past quarter of a century that I've lived on Florida's death row there hasn't been one successful 'escape.' But that doesn't mean that a few haven't tried. Shortly before I came up here in early 1984 there were apparently two separate successful escapes. Both of these guys simply walked out the front gate. Apparently simplicity is the way to go if you really want to go. (But who would want to give all this up?)

I thought I might share a few of the great death row escapes with you. If nothing else, they are good for a few laughs. But in fairness to the guys involved, although each of them is well known to us and I will only talk about the ones who were already caught, I will only use their initials, unless it is someone who is already dead now.

But I will start with the ones that succeeded before I came up here. Both were caught and are no longer on death row. I actually heard about the first one even before I came up here as my trial lawyer Robert Jacobs had represented him.

Myron Flemming was charged with capital murder in Fort Myers in connection with an armored car robbery in which a security guard was shot. During this robbery Myron (who we called 'Mo') was also shot in the neck. The bullet blew out his larynx and he could not speak unless through the use of an electronic voice box. His lawyer, the same public defender who later represented me,



convinced Mo to throw himself on the mercy of the court by pleading guilty in the hope of sparing Mo from the death penalty. Mo did as Mr. Jacobs advised and pled guilty- and was quickly sentenced to death. So much for any ‘mercy.’

Back when Mo first came to the Row it wasn’t that bad a place to be. This was before another death row inmate had killed a guard so many of the restrictions that continue to this day, such as always being handcuffed behind the back before being removed from our cells, didn’t exist. At that time there were not too many on Florida’s death row, either- only one wing at Florida State Prison was used to house all of them, which amounted to less than 100.

With such a relatively small number of condemned prisoners there was no need for a dedicated ‘visiting park, which is what we call the large, enclosed room where we are allowed our social visits with family and friends. Back then the prison simply used an open lounge area where the administrative offices inside FSP were. This lounge was also frequently used by guards when death row prisoners were not having social visits.

Prisoners can be pretty resourceful, and we tend to notice things that others may not necessarily notice. Apparently Mo had noticed that the guards had a closet where extra uniforms were kept next to the bathroom in the waiting area. It didn’t take long to figure out just how easy it would be to grab a guard’s uniform on the way to the bathroom and throw it on.

This is where it actually gets funny. Like I said, Mo is a pretty smart and resourceful guy- and one hell of an artist, too. Anyone that has spent time in any prison soon becomes familiar with the routines such as shift changes. So Mo arranged for a social visit in the afternoon and as the time approached for shift change, Mo ducked into the bathroom with one of the guard’s uniforms and dressed the part- then walked right out the front gate with a group of guards.

But don't forget, this is guy who could not talk at all without the use of an electronic voice box that he had to hold up to his throat. Mo did not take his voice box with him- he later said he forgot it while changing in the bathroom.

FSP is about 10 miles outside the town of Starke. Mo didn't have any transportation- he had to walk to town and then catch a ride. As the story goes, Mo was walking along the two laned Highway 16 when a Sgt. who worked at the prison pulled over and offered him a ride. Mo didn't want to accept, but without his voicebox he couldn't tell the Sgt. no, or give any reason why not. So Mo jumped up in the truck and caught a ride to town.

Years later the Sgt, who is now retired, told a local newspaper he kind of thought something was funny when he didn't recognize the guard and the guy wouldn't say anything. But nobody knew that a death row inmate had escaped until hours later when the prison did a master count. By that time the Sgt. had already dropped Mo off near the local bus station and Mo was long gone.

When I came to the row years later Mo was still out there in the wind. For many of us Mo was a hero, not only because he successfully escaped, but because of how he did it. Needless to say, the guards' uniforms were no longer kept in that visiting lounge closet. But a few years later they caught Mo. He had changed his name, married a woman, and even built his own masonry business designing and constructing stone walls and landscaping.

After apprehending Mo he was sent back to Florida State Prison which is the most maximum security prison in Florida and was known among prisoners as the 'end of the line.' While Mo was away the courts had reduced his death sentence to life and as irony would have it, Mo then became a 'runner' on death row, which is what we call the prisoners who feed us and clean up the death row wings.

One would think that after Mo had so easily walked out with the guards at shift change, it would be impossible for anyone else to

even try. But prisons don't exactly make a point of employing the brightest of the bunch, and the simplicity of the plan was too good to pass up.

Not long after Mo walked out another condemned prisoner, Bobby Lewis basically pulled the same thing. Easy access to guard's uniforms was no longer available but there wasn't much difference between the guards' brown uniforms and the trustees' white 'class A' uniforms. With just a bit of custom tailoring-needles and thread were sold in the prison canteen- and a can of brown shoe polish to use as dye, and suddenly Bobby had himself what appeared to be a guard's uniform, too.

Like Mo before him, Bobby walked right out the front gate. But Bobby wasn't as smart or resourceful as Mo and his adventure into the free world was short lived. Bobby did get out and could easily have gotten away. But his only contact was the wife of another death row prisoner. From what I heard, she turned him in as quickly as she could. Bobby was brought back and locked down on Q-wing. A few weeks later the guy whose wife turned Bobby in was stabbed out on the death row recreation yard.

Personally, I have a problem with that. Even assuming that Walt's wife did call the cops on Bobby and got him busted, Walt had nothing to do with that. The guy who stabbed Walt, Robert Straight, was executed a few years later.

Not only that, but Bobby Lewis was and is a snake. Like Mo Flemming, Bobby had his sentence of death reduced to life and then became a 'runner' on death row. Desperate to be approved for interstate transfer to his home state of Texas, Bobby turned snitch on a number of people not the least was Danny Rolling. The warden, acting on the request of the State undoubtedly, deliberately had Lewis moved to the wing where Danny Rolling was housed, and then Bobby Lewis elicited conversations from Danny, which the State then used to convict and condemn Rolling to death.

Someone who does something like that is no better than a common crack whore and nobody was surprised when shortly after the State used Bobby Lewis's testimony to condemn Danny Rolling, Bobby was transferred to a prison in Texas. A few years ago Danny Rolling was executed.

Almost a year after I came to death row Ted Bundy and another death row prisoner were caught with hacksaw blades allegedly obtained from the prison's maintenance department. They were caught on a fluke- one of the cell bars that was cut accidentally fell off just at the wrong moment. But given the infamous status of Ted Bundy, that set off a storm within the entire prison and the guards tore the whole place up.

During the massive shakedown they found numerous homemade zip guns and ammunition (bullets), as well as all sorts of knives and homemade tools. On the wing next to death row a 'gen. pop' (general population) inmate named Bob Sheley was allegedly found with a real pistol concealed up his anal cavity. Don't ask me how that was even possible as I don't have a clue. But I sure do hate to think what would have happened if it accidentally discharged!

The shakedown led to substantial changes at FSP, which was already known as the deadliest prison in Florida, maybe even the country at the time. Suddenly they installed metal detectors at the entry points and even brought machines to X-ray any packages coming to death row from the outside world. I guess that was to be expected.

There's always been those who talk about their great escape plans and it's only that, just talk. But in late 1986 this rhetoric significantly increased when Florida began to regularly carry out executions. At one particular time there was even a plan to do a group attempt on a particular day- at least 30 of us planned to jump the rec. yard fence and hit the outside fence at the same time.

At that time I was housed on what was known as ‘S-wing’. For weeks we watched closely as maintenance crews were replacing sections of the razor wire on the outside fence. It became clear that if timed right at least one section would not have any razor wire for a short period of time and that was to be our window of opportunity. Only a few months earlier the Florida Supreme Court had denied my appeal and my hope of winning my freedom legally was destroyed, so I agreed with others that this was our chance.

We only got out to the yard twice a week, for at best two hours at a time. But if the weather was bad they would simply cancel our yard. On the outside perimeter of the double fence they had gun towers spaced about 2,000 feet from each other and none of us wanted to get shot so we had to time it when a section of the fence was down in the middle area between the two towers.

That next week seemed like it was time. Back then the guards didn’t really care if we brought stuff to the yard with us, and didn’t think anything of the number of guys who wore extra sweat shirts and jackets, and even took their personal photos of loved ones to the yard. It was cold and windy that day, but we were ready to go. Once we got out of the yard we then had to wait for the guys on the adjacent R wing to get out to their yard. That was also death row and each yard had about 30-35 of us, but not everyone knew.

One of the older guys who knew he couldn’t go planned to start a fight on S-wing as we knew that would get the guards from each of the adjacent wings to rush to that yard. That would leave no guards between the yard and the outside fence.

Anxiously those of us in the know waited and waited, but R wing never went to the yard. We didn’t know it, but they had cancelled their yard because they didn’t have enough guards to run it that day. Then about an hour into our hour time they unexpectedly cancelled our yard and ordered us to the gate. If we refused, or tried to make a run for it, they’d immediately be on the radio and we could not succeed. Heads hung low, we walked to the gate

and marched back to our cells. The next week all years were cancelled because of inclement weather and by the time we went out two weeks later the maintenance crew had already finished the fence and our opportunity was lost.

In the years that followed, many of those who had planned to make a run for it that day were executed. Others had their sentences reduced to life, while a few more died of ‘natural causes.’ Two of our band of brothers later won their appeals and walked back into the world, legally free. But of that original 30 about 8 of us still remain here almost 22 years later. Not long ago I talked to one of the guys and we both agreed that had we known then that we would be on death row all these years, we would have hit that fence even if it meant getting shot down like rabid dogs. When it came down to it, I know now that my quarter of a century in solitary confinement condemned to death is surely a fate even worse than death itself. But then, I never planned to stay here that long.

A few years later we had one of the more comical ‘escape’ attempts- at least that’s their story and to this day they’re sticking to it. Both are still here, so will only refer to them by their first initial. T and K lived side by side on the bottom floor of S wing. One of them came up with the bright idea of using a support beam on our steel floor lockers as tools to chip through the walls and to their freedom. Basically, by breaking the spot welds that held this light steel support beam to the lid of our lockers, it provided a steel ram about 30 inches long.

Their plan was to first chip away a hole in the wall between their cells so that both could then be in the same cell and work on the outside wall together. For at least a week they could be heard chipping away, nobody on the wing alerted the guards, which looking back was somewhat of a surprise as death row could be a real snake pit.

They succeeded in making a rather large hole in the one wall and used that to go from each other’s cells. Using large posters to cover the hole, it could not be seen from the outside. But we all

knew that the guards would often come into our cells when we went to the yard or to call outs (such as lawyer visits, medical etc.) For the life of me I don't know why, but for some reason they decided to go to the rec yard that day.

Not long after they ran our wing to the rec yard suddenly at least 30 or 40 guards, accompanied by almost as many 'white shirts' (Lts, Majors, Captains, Asst. Wardens etc) came flooding out to the yard and pulled us all in. Most of us (including me) didn't have a clue why. Both T and K were immediately moved to Q-wing, where maximum security lock up is. The entire wing was thoroughly searched from top to bottom.

Only later did we learn why- and we were not happy as that incident cost most of us our 'water bugs' (homemade immersion heaters used to boil water for making coffee and soups.) But our anger wasn't directed at T or K as how could any of us blame them for wanting to get out of this zoo? In the coming months both were formally charged with attempted escape and received substantial sentences of between 15 years to life on each. But those additional sentences don't really matter as both remain on death row on their original sentences of death. What's a few more years when you are already condemned to die?

In December 1992 Florida opened its new death row unit at Union Correctional Institution (UCI), not more than a mile from Florida State Prison. Most of us were transferred to this new high security unit, and nobody complained much as the cells were a full foot wider (7 feet by 9 feet) and the unit was much cleaner.

In my own unqualified opinion by far the funniest 'escape attempt' on Florida's death row took place about 8 years ago at the U.C.I death row unit. Again, I will only use the first initials of those involved.

C, R, K and T were long time friends, often housed on the same floor and shared yard regularly. How this great escape plan evolved, I don't really know. But it actually could have worked for them if only....To set the stage I must first explain how most

of those on death row will meet new friends by placing pen pal ads in various lonely hearts publications, and more recently, on the internet. Some of the guys are pretty good at 'reeling them in'- it really is a lot like fishing as your chances of successfully forming a lasting friendship, or even a romantic relationship, are more dependent upon your ability to land the catch than merely getting a nibble.

Through the years I've known a number of guys who met their wives through this pen pal network. Some have met numerous wives, while others take what they can get and move on to the next mark. To each his own: I'm not throwing stones as I have personally met numerous people myself through these personal ads. Some remain close friends to this day while most others have come and gone.

In this case at hand a couple of guys met two women who then started to visit them and obviously fell in love. Obviously there's not much of a future in a relationship with a condemned man and it's perfectly natural (at least, I would think) that two people who love each other would want to be together in the real world.

But things are not always what they might appear to be and the truth of the matter is that many prisoners do exploit lonely women who reach out to those imprisoned. In this case, these two women fell in love and were willing to do whatever it took to be physically together with their new found soulmate.

The plan was simple enough- the two women were talked into hiring a local helicopter under the pretense that they were looking for real estate. Once in the air, the women pulled guns on the pilot and instructed him to fly to the prison where they planned to then swoop in and pick up their boyfriends as they waited out on the death row rec yard.

But this plan was doomed to fail from the very start- especially for these two women, neither of whom had thought it through. Both of these women were quite large and the helicopter (a Bell Ranger) was quite small. Unknown to these two women, the



actual plan was to have them hijack the helicopter and when they made it to the prison the women themselves would be forced out of the helicopter as the 4 men got in and made their escape-leaving the 2 women helpless on the prison rec yard.

For the life of me, I cannot see how these women did not see this coming. Surely they had to realize that a small helicopter could only carry so much and they weighed the most, so who did they think would be left behind?

As planned, they chartered the helicopter from the adjacent county and once in the air they pulled a gun on the pilot and ordered him to fly to the prison. But the pilot began talking to the women, getting them to see why the plan wouldn't work. Even if by chance they were able to survive the expected gunfire from the prison towers, and made it to the death row rec yard inside the prison grounds, the pilot convinced the women of the obvious-surely they did not expect these condemned prisoners to actually let them then fly away and leave their friends behind.

At some point prior to reaching the prison the women saw the light and realized what the pilot said was true- that they were being used and it was never intended that they would be allowed to fly back out. The women then ordered the pilot to land and attempted to flee on foot. But within hours the county police found them and they were quickly arrested. Their act of desperate love for the condemned men they came to believe were their soulmates earned them long prison sentences for armed kidnap and air piracy. These two women selflessly gave up their own lives to chase a dream, and would now probably die of old age in prison.

As for the 4 men, they were immediately transferred back to the maximum security lockup at Florida State Prison, where they remained for years to come. Only in the last few years have they again joined the regular ranks of death row and again live on the regular wings.

All 4 remain on death row. After years of having their visitation privileges suspended and their contact with the outside world severely limited, at least two of the four are now allowed visits again and have met new girlfriends.

That particular great escape plan had consequences that affected not only all other death row prisoners, but all prisoners in Florida. After learning that death row recreation was regularly scheduled on a predictive rotation, the top brass ordered all death row recreation to be provided randomly with only the supervising Sgt. knowing which floor would go out on any particular day. Nobody knew when they would have rec yard, so they could not plan any further escapes.

But the worst consequence affected all Florida prisoners. When certain politicians long known for their hostility towards prisoners learned that the women who hijacked the helicopter had met their beloved condemned prisoners through personal ads, they used this incident to push through draconian rules that now prohibit all Florida prisoners from placing personal ads. Any prisoner who attempted to place any ad to solicit a pen pal, friend or whatever, would be charged with a violation of this rule and not only subjected to a month in lockup but also have all mail privileges suspended for up to 6 months- for each infraction.

This rule effectively pulled the rug out from under thousands of Florida prisoners, as without the ability to meet new friends that might be willing to provide support, the already limited contact with the real world fades away to complete isolation.

Like myself, most of those on death row have been here for decades- many now well over 30 years. As these years pass by even family and the closest of friends slip away. In the years since these rules prohibiting 'pen pal ads' were passed, many of those on death row no longer have anyone at all. As if the isolation of solitary confinement while condemned to death was not already overwhelming, this one rule has made our hell that much more unbearable. But that is the nature of the best as there are many out there who have such hate and animosity their hearts

towards all of us on death row that they will jump on any excuse to insidiously inflict that much more misery on us.

In the end the simple truth is that the only way to successfully escape from Florida's death row is to die as in all these years only two have actually gotten out the gates and both were dragged back. The only real hope for freedom I can grasp on to is that justice might yet prevail. But I still wonder, what if I had hit that fence twenty years ago? Even if I was shot and killed in such a desperate attempt for freedom, at least I would have escaped this never ending nightmare.

## A DAY IN LIFE UNDER DEATH

What a pathetic sight I must be as I attempt to squint here at the very edge of my steel bunk seemingly transfixed by the way the slivers of sunlight slowly steal their way across my cold concrete floor on a journey that will soon enough lead up to my evening ritual. With a cup of coffee in my one hand I sip at the bitter taste as I patiently wait for that moment when the distant descending sun will stretch these slivers of light their fullest length allowing me to then see the sun itself as there, so far beyond the three sets of bars that separate me from that narrow dusty window I can look outside across the barren field where the infamous [“Raiford Rock”](#) once stood for more years than anyone I know can even remember, but now an empty field where not even weeds will grow as if even the hope of life itself has long been abandoned.

At a distance beyond that condemned piece of ground I can see a row of tall Grandfather Oak trees running along a road that leads to the front gate of Union Correctional Institution on the main prison compound. Just beyond those stately trees stands the simple brick structure of the prison chapel with its traditional towering white steeples reaching towards the heavens.

Soon the sun will set beyond that distant horizon directly behind this chapel and that horizon will ever so very slowly explode into a kaleidoscope of brilliant colors of fiery reds, pastel oranges, and accents of yellow before slowly surrendering into darker groups as far as I can see in either direction and but for a brief second that fading light will perfectly silhouette that distant chapel cradled in the branches of those trees as a portrait of tranquility trapped between the two worlds of night and day.

It is at that moment of each day that each day itself is defined for me, that moment of comfort and private communion that renews my physical strengths if but only by the knowledge that I’ve survived yet another day. Soon that stealthy light will be consumed and swallowed by the distant horizon and I will rise from where I now squint and face yet another of what has already been far too many long and cold nights in my solitaire cage

relentlessly haunted by the demons of what once was and what might have been – and even more by the thoughts of what may well never be.

Just as my hopes and dreams live with the light of each day, my fears and regrets come with the cold loneliness of each night as when the small world around me grows silent I am reminded of just how alone and abandoned I truly am. As the many years have slowly passed too often sleep would never come, perhaps my way of holding on to today for fear of having to confront yet another tomorrow, until I finally surrendered to a dependency on antidepressant tranquilizers that each night induced an involuntary sleep as without that temporary refuge of unconsciousness one day would become the next and too quickly overwhelm me.

It has been a long and difficult journey. A few photos hang on my wall to remind me of the generation that has now passed me by. There's the photo of me taken just before my arrest in early 1983, a young man with a whole life still ahead. A photo of my now long divorced ex-wife holding our daughter on the day we brought her home from the hospital, now faded and tattered at the edges; and then, the more recent photo of me holding my grandson in the death row visiting park. My children were so young when I was first imprisoned – and now I am a grandfather: a generation has passed.

Each day has a beginning and an end and yet it is the end of the day that I look to, to define my beginning. As each day begins I will awake from the sound of the chow cart coming through the steel door and moving down the wing towards my cell. Reluctantly I will stretch and then half stagger towards the combination sink and toilet a short step away. The cold water brings me to life as I blindly reach to the wall for my towel. As I dry off, I incoherently voice a vile thought towards this new day and then walk the few steps to the front of my cell to receive the tray of bland, cold food I've actually become accustomed to.

My cell has no table or chair and to eat I must precariously balance the plastic food tray on my lap while sitting on the steel footlocker that holds all of my worldly possessions. We are allowed only a plastic spoon to eat with but then eating cold oatmeal or grits with a plastic spoon is not that difficult and few foods we are served would require more than that.

After I eat my breakfast I will turn my small black and white T.V. on and listen to the morning news as I read through old newspapers or magazines that are passed down the line and shared. Although we are allowed to receive magazine subscriptions, few of us can afford to so what any of us receive are most often shared and passed down the cellblock.

The magazines not only keep me informed on what's happening in the real world but also provide pictures of the rapidly changing world beyond us in full color. It's funny how you never really think about it, but in my world the system methodically attempts to deny us any color. The walls around me are cold and gray – not *really* gray as they are actually a light tone of beige with brown trim and the bars flat black. But in my mind I still see only grey... cold, cold, colorless gray.

The State provides a T.V. donated by various religious organizations – but prison rules prohibit color televisions and allow only a small black and white one, as well as a small “walkman” type radio. Reception on both is often, at best, bad but it brings in the sound of the real world even if the colors are prohibited. I smile when I think of that as at times a particular song will play on the radio and someone will holler out, and as others quickly tune into that station a number of men will simultaneously break out singing along; because all radios must be operated with headphones, the song itself is not heard – only the broken voices of the men; each singing along but not necessarily in tune. In stolen moments like that we each in our solitaire cell become one.

The hours pass by mid-morning the cellblock begins to come alive. Down the hall I can hear a couple of guys calling out chess

moves and I momentarily follow the game. Closer to me two others exchange trivial conversation around a concrete wall that separates them and at the far end I can hear one of the “bugs,” those of us so-called because we – or I should say he – has lost touch with reality and will spend the day talking and yelling to himself, or imaginary others.

As the morning passes and noon approaches I again hear the metallic clang of the food cart and wash my hands to eat. Soon enough the cart is at my cell and I silently accept my tray, most often some form of mystery meat or breaded “fish” complimented with half cooked rice and watery beans. Whether or not the particular food served that day is different from the day before remains debatable, as the bland food all tastes the same, if one can tell the taste at all.

Then the long afternoon passes and if it is not my floor’s day to go to the outdoor recreation yard -- an enclosed concrete pad with high fences topped by shiny razor wire – I will pass the day reading a book if I have a book worth reading, or writing a letter. If we go out to “rec” we are allowed two hours each time, but no more than a maximum of four hours each week, to play basketball or volleyball, or just to talk to other guys on the floor without the concrete and bars separating us.

By late afternoon the guards change shifts and as the new shift comes on we prepare to shave and shower. As simple as showering may be, it becomes a humiliating and even painful experience in this world as each time we leave our cells we must first be handcuffed behind the back and then escorted to a small shower cell at the very front of the wing. Once securely locked in that shower cell the handcuffs are removed and a quick shower is taken before the guards replace the cuffs and escort us back, one at a time. Cheap plastic disposable razors are passed out just before we shower and collected and counted immediately after.

As evening approaches it is time to eat again, yet it’s just another meal very much the same as that fed at lunch. There is little variety in the food we eat as the menu repeats itself weekly – for

years at a time. If I happen to forget what day it is, I'm quickly reminded by what we are served at breakfast. I eat what I can but even after so many years I'm unable to eat most of what is served. That which I do not eat I feed to my cellmate Johnny Coe Mode, that being the toilet and believe me, he eats well and is apparently even grateful, as he's never complained.

My time with my ritualistic sunsets varies and is at times broken by the evening meal. For now I am fortunate that I am in a cell with this view as most of the cells look out over the concrete rec yard and to the adjacent wing beyond. But even then I would look out if for no other reason than to watch the birds on the yard.

We all engage in our rituals this time of day as the cellblock becomes abnormally quiet while we anxiously await the day's mail run, each of us hoping to get a letter from someone we love. And after the mail runs it remains silent – the few who got mail quietly read that cherished letter while those who did not retreat into a depressed silence that can last for hours –even days. Even as uplifting as it is to receive even one letter, it's the despair of not receiving any at all that overwhelms you.

The evening turns to night and most of us withdraw to watch television, the electronic pacifier that helps us maintain our relative sanity as God forbid that we should lose touch with reality and become mentally incompetent as if deemed to be incompetent we cannot be executed. The televisions are not a luxury provided for our comfort but a necessity provided to maintain our sanity so that we can ultimately be executed.

That tranquility of my evening ritual marks my day, both beginning and end. Another day has run its monotonous course and my cage has become my refuge as I even become accustomed to this small, solitary world. My world is deliberately structured to methodically institutionalize me and intellectually I know that. I accept that the deliberate degradation and humiliation are intended to ever so slowly erode away my identity and even humanity so that by the time I do reach that fate that awaits me I am reduced to something inhumane and



unworthy of compassion. By breaking me completely when the time comes to face that fate I am programmed to surrender passively, even welcoming my fate as a means of finally escaping a fate even worse than death itself... the fate of slowly rotting away in solitaire confinement as that fate stalks you relentlessly.

This was my day today and will be my day again for all of my tomorrows. In my own mind I chase the ghosts of the past to acquire the strength to survive the future, as the only life I know is the life I once had. In the world I've been condemned to I am neither allowed to live or die and it's that existence without the ability to exist that is my worse fate of all.

### **THE YELLOW BRICK ROAD**

Outside the window a cricket sings out in its private celebration of life, as the humid aroma of recent showers steaming off the hot concrete barely overcomes the stench of a hundred living souls compressed into an abyss of lost humanity.

Darkness, in its possessive manner, steals its way forth as I stand at the front of my cell.

Beyond the bars that separate me from the rest of the world, I can bask in the simple pleasure of watching day give way to night in my own selfish celebration that I have endured - and even survived -yet another day.

This is my evening ritual; my way of paying homage to the ability and inner strength of perseverance.

And even in this shadow of condemnation, I do find strength.

I accept that the definitive measure and molding of character is not simply the ability to survive adversity - but to overcome and even manipulate the essence of adversity into a productive entity of which I might find the strength to master.

I cannot see beyond this artificial hell in which I've been confined.

The horizon I see is nothing more than a scattered number of lights flooding the compound grounds and dancing with glittering fire upon the honed edges of razor wire that lie between the statuesque "iron curtain" perimeters.

The only sign of life in this world outside is a spotlight, as it lazily rakes its way across the grounds in an unpredictable, haphazard manner.

But even as they've confined and condemned my body, there remains a part of me that is rebelliously free; that no amount of steel and stone can confine and no man can condemn.

Within the inner self of the man I am, just as within every condemned prisoner, there's a path that leads its way off into a different horizon

.This path is landscaped and lined with the symbolic fruits of faith, hope, encouragement and perseverance; stolen moments of our humanity - and even sanity.

For each of us, we strive to maintain some recognizable, progressive forward motion, refusing to succumb to the environment, finding inner strength to keep pushing ahead one slow step at a time.

And all too often, it is a constant struggle, as this imaginative path takes its twists and turns through the highest of emotional peaks, to the lowest of emotional valleys.

For me, I call this imaginative escape from the reality of condemnation the "Yellow Brick Road", in personal reflection of the theologically symbolic nature and promise of the covenant of the rainbow; because even in the worst of storms, there's always the presence of a rainbow.

And somewhere over the rainbow is the promise of hope.

And this Yellow Brick Road is my odyssey through Oz - my exodus through hell. And somewhere at the end of the Yellow Brick Road is my redemption

And it is a strange road.

There's night and there's day.

With the night comes; the uncertainty and even fear of darkness; the long moments and hours of hopelessness and despair, the feeling that all has already been lost, and that to continue would be futile, the mocking echo of silence, which serves to remind me that I am alone in this concrete crypt.

Long nights of lying awake - unable to sleep as thoughts of what was and what might have been haunt me.

The demons of darkness creep stealthily in to rob me of my most prized possessions of hope, faith, and the strength of perseverance.

But then comes the new day and with it mixed confusion. Darkness, and all it holds, has again been defeated - but there is no joyous victory as the new day does little to restore the gradual erosion of those values that compel me forth.

The day brings with it the anticipation and anxiety of uncertainty; of hopelessness borne of living in an environment of forced conformity and dependence.

Life of the condemned is not life at all.

Rather, it is an existence somewhere between hell and who knows where. A constant state of forced limbo, like a puppet on a string. Having been condemned by society, we now are not

allowed to live - or die. Only exist ... if being stored in a virtual warehouse devoid of emotion can be said to constitute an existence.

If life is but the struggle for mere existence and its value judged by longevity - then perhaps by cheating those disciples of death that now demand the forfeiture of my life is itself worthy of that unknown cricket's celebration of life.

I only wish I could find some justification and comfort in that argument. But, I do not; for me life is not merely a struggle for biological existence. Without the preservation of my humanity and individuality, such an existence would have no meaning, or worth. Here on death row, we do exist.

Yet through the condemnation imposed upon us, society has deprived us of the recognition of our existence -- denying our humanity.

It is not enough to condemn us.

In society's demented state of moral consciousness, we must first be stripped of our humanity before being deprived of our life. To recognize our humanity is to create a reflection of their own inherent imperfection, as well as face the truth that they are taking a human life. But to make us less than human pacifies society's guilt.

They don't kill any particular individual, but rather something less than an individual.

And so for years on end a death of the inner self is methodically inflicted upon us so very gradually that it's practically unperceivable. An erosion of all emotion, until having been subjected to the endless rigor of administrative conformity, the person within is lost in a penologically conditioned sacrificial surrender.

The strength to resist no longer remains and without realizing it - we have been subdued.

Conformance, and compliance - even the acceptance of death - become a form of adoptive security, protecting us from confronting atrocities we've suffered in the name of justice and "We The People."

But for each of us, there is a Yellow Brick Road; an escape from the reality of our condemnation; a place of solace and security.

The adversity we suffer remains and continues to plague us; continues to rob us of the humanity and individuality we so desperately cling to. But as long as we each keep sight of our own Yellow Brick Road, we will deprive our captors and executioners of the theft of our humanity and stand strong in our inner strength.

Not only to survive -- but to overcome.

### **TO SEE THE SOUL- A SEARCH FOR SELF**

A simple plastic mirror hangs upon the door frame of my death row cell, faded with the age of years gone by. I could easily replace it with a new one, but I don't want to. That inanimate object has become my friend. I can look within its reflection and see a person I'm still coming to know. I doubt anybody else would ever understand, but I do. And that's good enough for me. You see, years ago when I first arrived and was placed within the confines of my solitary crypt, condemned to an existence of a seemingly endless state of judicial limbo, we had no mirrors. For reasons beyond my personal comprehension, any type of reflective object was deemed to be a threat to the security of this institution. For years I did not see myself, with the exception of a few opportunities stolen along the passage of time. But it was just as well, as even when confronted with the reflection of my own being, I couldn't recognize the person who looked back. It was a stranger I did not know, and could not understand. And it scared me.

My true friend, the mirror, is a patient being. Willingly, it has given me the time to look deep within myself, grasping in almost maniac desperation for the person that I knew existed beyond that shell of emotional void. So many battles in the past had tempered my ability to rationalize and overcome. I came to this crypt with a death wish, as I saw death as an escape. It would allow me to end the continuous cycle of adversity that plagued my life. As a crutch enabling me to survive, I had come to accept that I was not at fault or the way my life had painfully twisted its way through one nightmare after another. Responsibility for my personal actions was an alien concept. I had conceded that for reasons unknown to myself, my life was cursed. I came to accept that philosophy, no longer even attempting to defend against the plague of pain that continued to fall forth.

Yet, ever so slowly over the years I've gained a new understanding of the man in the mirror. Oh yes- I've still fought what I did not want to see. I still created my own justifications for what I chose not to accept. But in its silent wisdom, that inanimate piece of plastic ever so patiently drew me back into its reflection of self. At times I would spend hours doing nothing but staring at this stranger I knew so well, but didn't know at all. In the stillness of night I lay awake searching the very depths of my soul for understanding. I expected a miracle. I anticipated the day I would awaken and hold all the answers. It never came. But ever so slowly I came to know that once-stranger.

I came to accept reality, no longer imprisoned within my imaginary world of excuses. I could at long last identify the paths I've travelled, ascertaining the many places along the path in which I've chosen to challenge the natural flow and do things my way. I've come to accept that the deceptive vehicle of illusive charms which I've followed and travelled upon so blindly in reality the foundation of my life's disasters. In the ignorance of my youth, I had adopted the use of intoxicants as my crutch from reality. Rather than confront the problems of life, I turned in weakness for the closest available form of deception. Alcohol. Drugs. It didn't matter. I would use either without hesitation. And somewhere along that river of intoxicated stupor, I continued to

flow even further apart from the person within. But I am not an old man. I have not spent a life of absolute intoxication. I am not the proverbial ‘wino’ our society so quickly identifies as a model of alcoholism, or the ‘junkie’ that haunts the depths of the inner city. I was only a young man- a working man, a husband, a father, an alcoholic and a coward who could not and would not face that truth; a teen alcoholic who had matured only physically into an adult alcoholic. I had become a person trapped and imprisoned by the compelling need to drown all time within a bottle, or whatever else might be readily available- any escape from the harsh truth of reality.

Now I look at the person within, and find someone I can identify with. No longer am I a stranger trapped within myself. Only, the search of self came too late. In at last escaping from the imprisonment of alcoholism, I have only awoken to find myself now condemned to death as a direct result. I cannot retrace that path of the past. I cannot recreate what has already been. Yet I feel as if a burden has been lifted. Still I can sense the inner freedom as I explore who I am, the one within. And over these years I’ve kept journals about my solitary environment. Perhaps one day I will gather these thoughts and reflections together and allow others to look within as I have done myself. For now I’m satisfied with simply confiding my thoughts upon that paper, creating my own security blanket, another trustful friend who will hold my deepest secrets and always gladly spare a listening ear. And within those many pages I will form a trail to follow, a path in which I will be able to see the metamorphosis of self as it slowly evolves, as I come to know even more of ‘me.’ And as I see more of the true self emerge from the dark recesses of the past, I am inspired and motivated to push even harder toward a future. I am compelled to tell others of the experience, as I realize that I had been cheated out of my own life by a bottle, but even more so by the deceptive justifications I had so readily created to rationalize why I had fallen into the well of alcoholism.

In coming to know myself, I have realized what had first instilled within me the weaknesses that led to my addiction, and by identifying that weakness, I have found the strength to overcome

the circumstances now present in my life. For the first time, even though imprisoned and condemned to death, I am in control of my life. I know what I want to achieve and can make plans to do so. I can look beyond the moment of today and the eternity of tomorrow. For me, that in itself, is a victory. Nothing I say or do can change the past. But I know now that I can use yesterday's battles as a source of strength in building a future, because I am willing to accept my addiction to alcohol, and how it can so easily become my master, enslaving me to an existence of irresponsibility and failures. For this realization I owe a great debt to that mirror that still hangs silently as if in its wisdom, it knew all along that time itself would slowly bring about the unity of my body and soul. The piece of plastic could only reflect back what could be seen. It could only show me the physical being, but it was the stranger I saw that forced me to look deeper. Time, itself, brought about the gradual evolution of the stranger and the soul, each discovering the other along the path of a desperate search.

I can now only wonder what I would have become had I continued to live as I once did. Could any alternative path be worse than my present state of condemnation? Yes, I believe it could, as I can deal with what I face today. I may not still understand how it all came to be, but I continue to pray an opportunity will eventually present itself, allowing me to exhibit all the facts, all of which I am now willing to accept and confront. I have no doubt that if such an opportunity was to present itself, even this condemnation would be lifted. For now, though I accept it. And I equally accept the truth that my prison of today is not at all as restricting or enslaving as the prison of alcoholism I had been previously confined to. In this small, solitary cage I am free not only to discover self, to explore who I am and to allow myself the hopes and dreams of what tomorrow might bring. The prison of alcoholism had never allowed that. It only mastered my body, but entrapped my soul. In my present condemnation I have found the true essence of life and in my solitary confinement I have found freedom.

And all in the reflection of a plastic mirror.



## DOING LIFE ON DEATH ROW

There's a song I recall from many, many moons ago in a life now far, far away ~ the words still haunt me from time to time, and I smile... "*Once was the thought inside my head, before I reach 30 I'll be dead...*" At 47 years old now. I've spent almost my entire adult life in a solitary cage on Florida's death row. Doing life on death row isn't about living at all, but about dying slow, a day at a time. If there's anything even harder than living alone, it's got to be dying alone, as I only exist in a very small world where death is the only absolute reality and everything else is just part of that path getting there.

But there's many kinds of deaths ~ there's the death of the body and the death of the soul. There's a point man can reach when even physical death is seen as a blessing, as a means in which to end a nightmare that has no end. I remain alive only because I still have the strength within me to cling desperately to the remnants of hope that pass my way. But perhaps hope is the greatest deception of all ~and the loss of hope the cruelest death. I've seen it only too often, men I've known for years slowly broken down by the existence in this artificial environment until you can see it in their eyes ~ that dull look that means only one thing... they've given up hope and now await the fate of the condemned, a fate that ultimately becomes more of a mercy killing than an execution, as that physical death brings with it the promise of freedom from a fate far worse than death itself.

That's what doing life on death row really is ~ it's a fate worse than death. It's being condemned not merely to death, but the torturous, methodical degradation of one's humanity in a world designed to first break you down and make you something less than human before they finally strap that broken flesh to a cold chair or gurney and ritualistically terminate your existence. In truth, most of those ultimately executed at the hands of the state have already given up the ghost long before and have embraced death as the end of a long journey through a hell few could begin to imagine.

## HANGING ON TO HOPE

Each month all of us receive a slip of paper that advises us of any “gain time” we might have received that previous month. By law, the prison officials are required to do this, as well as provide the prisoners “presumptive release date” recalculated each month to reflect the deduction of any gain time that might have been awarded.

Every prisoner on Florida’s death row has a presumptive release date in the year 9999. That gives me only 7992 years yet to go before my presently scheduled release and I’m already counting it down one day at a time. I’ve read in the Bible that Methuselah lived to the ripe young age of 969 years and that was thousands of years ago. So, with modern medical breakthroughs extending the average lifespan I figure I’ve got a good shot at it... all I’ve got to do is live to be at least 8,039 years old and then I’ll walk out the front gate a free man.

This is the kind of humorous “hope” that we cling on to. When these slips of paper are passed out each month, inevitably someone on the wing will holler out, “Hallelujah, baby ~ I’m coming home!” or just as often one guy hollering down the row for all to hear, “Pack your sh\_\_\_, Bubba, they’re throwing you out.” And some laugh.

A lot of us talk about going home and in that stolen moment of fantasy we can see the green, green grass of home. For some, this hopeful fantasy evolves into a form of psychosis and they not only believe they’re soon going home, but know the exact date and when that date approaches they even give away their personal belongings and awake that particular morning and await the guards to escort them to the front gate. Reality is nothing more than what any of us chose to perceive it to be, and in their own little corner of their own little world, that’s their reality and in a way I truly do envy them as I remain trapped in my reality.

Through the years many have gone home, having proven before the courts that they were wrongfully convicted and upon that

legal exoneration they won their freedom. There's been more than I can remember, but knowing that there have been so many is, itself, a form of hope.

About five years ago or better a long time friend of mine, Juan Melendez, known affectionately to us as "Puerto Rican Johnny" was on the floor I was on. Johnny and I had lived in the same area out on the streets and we would often talk about places and even people we both knew. Johnny would show me pictures of the house he grew up in, of his elderly mother, and talk about how when he got out he would return home and take care of his mother.

Just before Christmas back then he got word that the lower state court threw out his convictions, recognizing that the State had illegally withheld exculpatory evidence. Mucho Macho Johnny cried that night and in our own way we all shared a tear with him. In the sixteen years that he lived among us, he became our brother. Then a few weeks after Christmas, the warden came up on the floor and told Johnny to get his stuff as they were releasing him that day. Johnny's cell was down towards the end of the hall and as he passed he spoke to each of us momentarily. As Johnny approached my cell I felt only joy ~ sharing his joy ~ as he told me, "Rum and coke, esso" ... remembering our promise to have a drink in the free world. And then he was gone, but a part of each one of us walked out that front gate back into the free world with him.

Hope...yet another four letter word, a mistress that can and gladly will deceive and seduce you with her elusive charms. It's that whisper of a promise that your time there will come too, that gives a man the strength to keep that hope alive. But when hope fails then that mistress can become the Angel of death as that lost hope becomes nothing more than the desperate last act at the end of the rope. And there are few things more despairing than to watch helplessly as the guards rush into a cell in the middle of the night and can be heard cutting a man down, then moments later passing by your cell with the cold body of someone you knew and lived among for years.

## **ROTTING AWAY ONE DAY AT A TIME**

While hope is a stolen luxury that brings with it a fragile strength, death continues to be a reality that cannot be denied. For too many of us now doing life on death row this condemnation is about slowly growing old and rotting away until death claims us not at the hands of an executioner, but by “natural causes.”

Although I have now been on death row almost a quarter of a century, there are many who have been here much, much longer. After the Supreme Court threw out the death penalty in *Furman v. Georgia* (1972) Florida was the first state to rush newly written laws into effect to allow the continued use of capital punishment. Although these new laws didn't pass constitutional challenge until 1976 in *Proffitt v. Florida*, many of the men still on Florida's death row today have been here since at least 1974.

When I was charged with the capital murder case that brought me here, I was 22 years old. Recently divorced at the time, I had three young children; my youngest barely a year old. I look in my mirror today and it's hard to see that young man I once was, as the face looking back is that of a grandfather. My full head of hair is long gone and what hasn't fallen out is turning gray.

I am not alone. Death by default that's what it is. Too often when morally corrupt prosecutors know they cannot kill you, they will maliciously drag your case out until you simply die of old age. Under any circumstances living in solitary confinement under the stress of being condemned to death takes its toll upon the physical and mental health of even the strongest men.

Inevitably, we all grow old, and again, death is the only absolute reality. In a way I should consider myself lucky as at least I came to the row while still a young man. There are many more significantly older when they arrived and the years living in a cage were not as easy. For every man executed in the past 30 years, there's been at least one other slowly rotting away and inevitably dying of old age.

I read recently in the past 10 years alone at least 30 men have died of “natural causes” on Florida’s death row. Some were of old age ~ others of various types of cancer... many I personally knew. With so many here now for well over 25 and even 30 years, death row is growing gray. At the front of each death row floor there is a handicapped cell intended to house the many who are already confined to wheelchairs. More than a few are now over 75 and will almost certainly slowly rot away and die in their cell as even if they lost all their appeals the governor would not sign a death warrant on them as it’s politically incorrect to put an old, physically disabled man to death ~ but it’s perfectly acceptable to, instead, let him rot away until he eventually dies.

In some cases this is actually by intent and purpose. I know at least a few here today who have lost touch with reality and if ever scheduled for execution the courts would be forced to reduce their sentence to life as it’s constitutionally prohibited to execute a person who has become legally insane. It’s also politically unacceptable to recognize their insanity and reduce their sentences to life. So that they can be transferred to a prison psychiatric unit and receive proper care. The solution is to simply ignore them ~ to deliberately let them rot away until they die in that cage. Inevitably they do... they always do.

But nobody cares. When was the last time you saw any newspaper talk about the many on death rows growing old and dying alone? Recently a national debate about the constitutionality of using lethal injection as a means of carrying out executions generated substantial media interest after Angel “Popo” Diaz was allegedly “tortured” to death by a botched execution and witnesses said it took at least 24 minutes to kill him.... 24 minutes.

But what of the many more who are slowly dying in their cells? If prolonging a man’s death for 24 minutes constitutes cruel and unusual punishment, then why can’t it also be argued that allowing a man to slowly rot away in solitary confinement for many decades until he dies is also cruel and unusual? As a presumably civilized society we are ultimately defined by the

measure of humanity we show to others and yet nothing personifies that malignant evil within the heart of man than by looking at the inhumanity we so deliberately inflict upon the least of the least ~ and nothing in our contemporary society illustrates this truth better than the deliberate deprivation imposed upon the condemned ~ it's not enough to want to take our lives, society demands that we must also suffer until we are slowly broken and then ~ for those who are lucky ~ something less than human is put to death.

## **FROM COCKROACHES & RODENTS TO RATS & SNAKES**

When I first came to death row in March of 1984 this was a much different place ~ not only physically, but the mentality was different. At that time Florida's main death row was at Florida State Prison, long infamous as the end of the line, where prisoners were warehoused when they could not be securely kept elsewhere. Physically, the wings housing death row were comparable to Third World living conditions. In the winter we froze and in the summer we boiled. With "open wings" (the interior of the wings open from the first tier all the way up to the third tier) it was noisy, as a hundred men would be yelling or watching TV or whatever. With no screens on the always broken windows, the wings were quite literally infested with cockroaches, rodents, even snakes, and birds ~ and then there were many wild cats that would come in to feed off the mice and rats.

But as bad as the physical conditions were it was a better place. In 1992 they built and opened a new building designed exclusively to house death row. Soon after the majority of the over 300 condemned were transferred to this "Northeast Unit" of the Union Correctional Institution. As I write this I can look outside the window on the catwalk and in the distance I can see the Florida State Prison ~ so close, and yet so far away.

At "FSP," as we call it, there was a unity ~ even a "brotherhood" ~ that tied us all together. We lived in close proximity to each

other and looked out for each other. If a guard came down and screwed with one of us without cause, he took on the whole wing. Although there were always a few assholes and idiots on both sides of the bars, most of us looked out for each other. Back then you knew the difference between a convict and an inmate and a correctional officer and a guard ~ and there is a world of difference. A convict is a stand up guy whose word is his bond and he knew enough to mind his own business and keep his mouth shut when he didn't know something for a fact. An inmate was seen as a prison rat; the lowest form of life; worthy of no respect. An inmate was by nature unworthy of respect, he was the kind of guy who would lie, gossip, and backstab even his own best friend; often for no reason at all. Inmates were rare on death row back then.

Equally so, the difference between a corrections officer (known only as an "officer") and a guard was like night and day. An officer came in to work his eight hours and go home ~ it's just a job and he wasn't going to take it personally. An officer had no personal malice towards the prisoners and didn't go out of his way to provoke anyone. If he came in to do a cell search ("shakedown") he did it without maliciously destroying your property and didn't have to prove his manhood by being a jerk. Although avoided as much as possible, officers were respected ~ guards were not.

A guard was commonly referred to as inbred redneck scum, the kind of guy who got the job because he couldn't work anywhere else. A guard didn't just work eight hours ~ he lived the job and it ate him away like a cancer until all that was left was a bitter broken man who went out of his way to make everyone else miserable. He has malice in his heart and was looked upon with nothing less than contempt, not only by prisoners, but the officers who respected their job.

In those early years a man was allowed to do his own time. In the early 80's we had only just began to see politicians begin to campaign on promises to lock up more people and make sure prisoners did "hard time." Although physically our environment

was deplorable, we would all gladly go back if we could have all our privileges returned. Back then we had packages sent in from family and friends four times a year with personal clothes, shoes, cosmetics, maybe even a decent watch or ring and a nice radio. We were allowed to receive “hobby craft” packages monthly with materials for painting, crocheting, and all sorts of other stuff. All of that is long gone now ~ nothing comes in from the outside world anymore and anything we might get must be bought from the prison store at significantly marked up prices; the profits used to subsidize our incarceration, as the prison system has become a virtual industry with thousands of companies now dependent upon contracts they receive to provide everything from the food we eat to the toilet paper we wipe our asses with. It’s all about politics now.

Death row has changed, in every conceivable way. No longer is a man able to do his own time and mind his own business. A new generation has taken over and even so many of the old timer “convicts” are now nothing more than inmates themselves. Because of this death row has become hard time as now not only do we live in a much more deliberately segregated building with only 14 men on each closed run, but you learn to keep to yourself as the man you call a friend today will only too quickly backstab you tomorrow. Respect means nothing in this new generation. And it’s become a much lonelier place.

## **WATCHING THE WORLD SLIP AWAY**

I see that outside world only through the very limited media I’m allowed... a small TV, which the powers that be have determines necessary to prevent against insanity ~ if I were to go insane, then they could not kill me. A small “walkman” type battery powered radio, that doesn’t pick up any stations, and a few magazines and newspapers.

In my world there are no computers, no cell phones, and none of the electronic conveniences that most people take for granted. In the past 24 years I have not touched dirt or grass as our small fenced yard is nothing more than a concrete pad between two



wings. I sometimes wonder if the moon and stars still exist as I haven't seen the night sky in so many years it becomes hard to even remember it.

The deprivation of those material things that most people simply take for granted out there in the real world certainly pales in comparison to those things that really do matter; especially in this world ~ those things that once separated make it seem that we are helplessly watching the world slowly slipping away.

It is the nature of prison to alienate a man from those he loves. For most, with very few exceptions, as the years pass the few family and friends that once stood by slowly drift away and move on with their own lives. Through the years I can count on the fingers of a single hand the number of death row prisoners who have had family consistently stand by them. Friends tend to drift away even quicker.

That's not to say they deliberately abandon those they love at the time they need them most. I'd like to believe that most of our families and friends never intended to abandon any of us, but simply moved on and we became less and less of their lives. I'm personally blessed with a large family but haven't had any communication at all with most of them for many, many years. Life out there in the real world doesn't come to a stop just because we are no longer in it and as time takes its toll the distance becomes greater and before you know it you're no longer part of their lives. That's just the reality of doing time. Accepting that reality doesn't make it any easier and many in here do turn cold and bitter as they're abandoned by those who mean the most.

Most of us learn early on not to count on anyone other than ourselves. Contrary to a popular myth the prison doesn't provide all our needs ~ at best, it provides only the absolute minimum and even then does so in such a way that encourages ~ if not coerces ~ each prisoner to actually purchase even the basic necessities from the prison store, as with each purchase the prison makes a substantial profit.

Without a friend or two outside willing to help prisoners ~ especially those on death row ~ life can become even worse than what might be imagined. At least in general population most prisoners can work a job and “hustle” for what they need through a long established barter system. Death row prisoners are not allowed to work a job and have no means in which to barter ~ our only means of survival with minimal comfort is through the compassion and generosity of those who care about us.

As family and friends tend to drift away we are forced to try and reach out to new friends and establish new ties with that outside world. But there are many who hold nothing but malice in their hearts towards prisoners ~ especially death row prisoners ~ and have exerted political pressure to pass laws that now prohibit prisoners from placing personal ads that might allow them to meet new friends, perhaps even a girlfriend who might want to visit.

Florida is unique in the country in implementing these draconian rules prohibiting prisoners from attempting to meet new friends and the result can be seen ~ more and more. Those of us who have been here the longest are increasingly isolated from the free world; effectively abandoned and left to die alone. More and more I see strong men break down and give up, unwilling to have to beg their neighbors for a simple cup of coffee or bar of soap and slowly retreating into his own world of self consuming bitterness and anger and a fate far worse than death.

When it comes down to it, that’s what doing life on death row is really all about... it’s not about living, but about dying one slow day at a time. It’s about simply existing in a solitary concrete crypt. Increasingly isolated from all that really matters, of being methodically deprived of the most basic elements that make us human ~ companionship, compassion, and hope, as hope itself is dependent upon a reason to live.

As I am increasingly isolated from all that matters, that hope and will to live continues to erode ~ I’m not doing life on death row ... I’m simply waiting to make my death final.

## CONDEMNED BY THE PERFECT STORM

A few years ago there was a movie called “The Perfect Storm” that told of the tragedy of lives lost in the North Atlantic when several powerful storms systems coincidentally came together, resulting in many deaths and many more lives changed forever.

How many of us have watched that movie and thought about events in our own lives that were (and are) an anthology of that event? Can circumstances coincidentally come together in our own lives that forever, often tragically, change – or even predestine – our own fate? Can we look back upon this confluence of circumstances and see now that we were helplessly swept along in fate’s current until finally tossed ashore, our own lives victim of a perfect storm?

I’ve given that a lot of thought as I personally struggle with the “why” of me spending the last 23 years **in solitary confinement** condemned to death and have concluded that I am not on death row for any crime I allegedly committed but rather that I am condemned by the perfect storm, and that even my innocence simply doesn’t matter... rather, the elements that subsequently led to my present fate formed long *before* any crime allegedly occurred. When those preexisting elements in my life collided with contemporary circumstances these collective elements formed a perfect storm that sealed my fate and led me to death row.

Each year there are *many thousands* of murders in America. According to my World Almanac, in 1983 (the year my alleged crime took place) there were 19,310 homicides in the United States, but less than 100 men and women sentenced to death. *Why* did so few end up on death row -- **why me**? In 1972 the U.S. Supreme Court ruled that the death penalty was unconstitutional (illegal) because it was “arbitrary and capricious” and ordered the states to rewrite their statutes to provide better guidance – but has anything *really* changed?

Simply question... why me? About the same time my capital crime was allegedly committed in rural Glades County, Florida a rich young man about my age was charged with what was called “the worst mass murder in Collier County history.” This man’s guilt (and stupidity) was never in question... he loaded the family vehicle up with explosives, then lured his entire immediate family into the vehicle and blew them up. The motive was clear – he wanted the entire family fortune for himself. Both cases were prosecuted by the same State Attorney’s office at the same time. So, *why* did I get death, and he got life?

Of the thousands of men and women presently on death row there are an equal number of individual paths that brought the condemned here. But there is also an undeniable common journey, consistent contributing factors that have *nothing* to do with the alleged crime and as you objectively look beneath the surface an undeniable truth becomes self evident – we **do not** sentence people to death because of the particular nature of their alleged crime... rather, the fact is that we, as a society, decide who will live and who will die based upon who they are and their (in)ability to defend against the infinite resources of the State.

Let me ask you this... where would O.J. Simpson be today if he stood trial for the **exact** same crime in a small southern county and didn’t have the money to hire his “dream team” defense lawyers? **That’s** the undeniable truth – almost without exception. Those on death row are not condemned because of the particular crime they stood trial for, but because they were unable to defend against the resources available to the State... it is the lack of capital that makes you eligible for capital punishment.

Without the ability to defend against a capital murder charge, even your innocence becomes irrelevant. Of the approximately 130 men and women who have been legal exonerated and released from death row in past years, not even one of them came from wealth and privilege – and not even one had a “dream team” defense. Coincidence?

Before I came to prison I was completely ignorant of our legal system. To be honest, I never even gave it any thought. If someone had asked me back then if I supported the death penalty I probably would have immediately thought of Ted Bundy, as back then that's all the news talked about and I would have said "Hell, yes!!" as **that** is the image I associated the death penalty with... *that* is the image prosecutors and politicians want *all of us* to see when we think about the death penalty.

Is Ted Bundy the archetypical image of the condemned man? Is his case emblematic of the average capital case that leads a man to death row? No, it is not! But the politicians and prosecutors do not want you to know that – they do not want you to **think** about the true portrait of those condemned to die

Having become familiar with the reality of the system and its inherent prejudices against those **least** capable of defending against the formidable resources of the state, I now realize and accept that factors that eventually led me to be condemned to death, the elements of the storm that subsequently collided together with force and fury to create that "perfect storm," began to form long *before* any alleged crime ever took place. In truth, the capital crime I allegedly committed was one of the **least** significant factors in determining my fate.

Like most of the others on death row the elements of my own storm began brewing the day I was born.... By being born, I was condemned to die. How's that for irony? Bt far, the most significant factor that eventually led to me being condemned to death was simply being born into the family fate blessed me with.

Almost without exception (virtually none that I personally know of) those condemned to death share a common background. This will begin by being born into a dysfunctional family environment then being raised in extremely abusive surroundings. As the child of fate grows, this will predictably evolve into truancy, inevitable substance abuse (alcohol/drugs) at an early age and relatively small scrapes with the law.

Before any capital crime is allegedly committed that person is already a candidate to be condemned to death. Consistently, my fellow *lumpenproletariats* (just call me “Lumpy” for short) share common traits... dysfunctional family, abusive childhood, lack of formal education, and serious psychological issues. The truth is, we were born to die.

Then comes the second storm front... the alleged crime. Often this crime will take place in a relatively rural county in the south. The case will be locally sensationalized so that before any jury is ever seated the redneck community has already formed a legally sanctioned lynch mob screaming for vengeance. A local hero will step up to the plate – the local politically ambitious and pathetically overzealous prosecutor – and will promise the good town folk that justice will be done. At that point even innocence becomes irrelevant and such novel concepts of truth and justice are quickly forgotten.

Last, but by no means least, comes the final element, that fatal front that collides with force and fury against the preceding two elements and that that perfect storm is formed. This is reflected when a lawyer is assigned to represent that person. While the State will have relatively infinite resources to prosecute the case and the power of the “good government” behind them, the soon to be condemned will be assigned a relatively inexperienced lawyer already out gunned and overwhelmed. Any defense is quickly becomes a pretense and a verdict of guilty is assured. Again, just look at the O.J. Simpson case and so many others like it. In America, the crime you stand accused of is a distant second to your ability to generate resources necessary to defend against it. Those condemned to die are not condemned to death for the crime they allegedly committed but because of their inability to defend against it.

All of these elements came together in my case. I’ve long ago accepted that my innocence is simply irrelevant as I am condemned to death for who I am, **not** what I allegedly did. I am condemned by the perfect storm.

Thursday, 19 February 2009

## DEATH ROW DADDY'S LITTLE GIRL

Although now condemned to death for over a quarter of a century there are windows that allow me to look beyond my world of steel and stone and look back to the life that I once had. These windows are the photographs that I still have from a time long ago, from the life that I once called my own.

One of these pictures is perhaps my greatest treasure. When I look upon it, I can still vividly recall that very moment when I took that picture. It was in April, 1979 just afternoon on a seemingly perfect spring day. It is a picture of my now ex-wife (divorced in 1981) holding our firstborn, our daughter Jennifer Nicole – whom we lovingly called “Nikki” This photo was taken on the lawn at my father’s house, our first stop as we brought Jennifer home from the hospital. Looking back, I realize now that we were both still kids ourselves, both me and my ex-wife still in our teens.



We had met in high school while both of us were participating in the ROTE program. (for those unfamiliar with “ROTE”, it stands for “reserved officer training corps” a quasi-military type elective course provided at most American high schools and colleges.) We were both only 15 at the time. A serious relationship would only come later. At 17 we became inseparable and by 18 we were married. Both of us coming from impoverished families, the ceremony was at the Polk county courthouse in Barlow, Florida. The very next day I enlisted in the army, following a path both my older brothers took before me, believing that a military career would provide the means to take care of my family.

In late 1978 my days as a soldier abruptly ended with a duty related accident at Ft. Sill, Oklahoma. By the end of December 1978 I was honorably discharged and thrown back into civilian life. In less than 10 weeks I was to be a father.

The birth of any child is a memory all parents cherish. Nothing I can say can define the anxiety both of us felt as we counted down the days, wondering when the moment would come. Of course, there were always the relatives on both side of the family around only too willing to offer their advice and insight. Some would swear it would be a boy, others just as convinced it had to be a girl. But for us, it just didn’t matter. I can remember the first time she took my hand and gently placed it on her swollen stomach, and the sparkle in her eyes as she whispered “feel this” and how amazed I felt as the child within her womb kicked- and I felt it!

Then the moment came when we knew it was time. We were so certain as we rushed in a frenzied panic that hour drive from the rural area of the county where we lived to Tampa General Hospital. But it was a false alarm. Her water had not broken. Only a day later the real thing came around. I’m sure I had a puzzled look on my face as she told me her water had broken. But we again quickly sprang into action.

Then came the too many hours of anxiously waiting in the soon-to-be-daddy room. For reasons unknown to me, I wasn’t allowed



to stay with her. They would call me when it was time. Many hours passed, but nobody called me. Then a nurse came in and I knew something was wrong. She quietly whispered to follow her, and I silently did. We went into a small room and a doctor joined us. There had been unexpected problems, an intern had misread the monitors and after almost 8 hours of labor our little girl was determined to be brought into the world, but the birthing canal didn't open as it was supposed to. Their voices echoed in my ears as I struggled to listen. They explained in an emotionless monotone that they had to perform an emergency "c-section" The doctor touched my arm and assured me that my wife would be alright. But he then told me that my daughter might not make it. I don't remember what else was said. In that moment everything around me ceased to exist. Something within my very soul died. I can only now vaguely recall the many more hours that passed before again a nurse approached me and I was allowed to see my wife. As I entered the room our eyes met and our pain became one as I then held her in my arms, both of us crying. She asked me if I had seen Jennifer yet – the first time I heard our daughter's name spoken. I said no.

Another nurse stood nearby and told us that we could see Jennifer soon. At the moment of birth she was stillborn. Because of the complications during delivery she had come to life while still in the womb. Her first breath filled both her little lungs with the fluid in the womb and she quite literally drowned. It took some time to perform the c-section and pull her from the womb, and in that time she was deprived of oxygen. There would be brain damage, but they wouldn't know how severe.

As that evening passed into the morning, we periodically got updates. Faceless doctors and nurses doing what they could to keep us informed, yet never willing to answer the infinite number of questions we had. Only much later would we come to know that the unexpected complications were the result of inexcusable incompetence. But none of that mattered as we only wanted to see our newborn daughter and know she was alright.

Many hours passed before we were finally told that we could see Jennifer, but to do so we would have to go to the neo-natal intensive care unit. Neither of us knew what to expect, but nothing could have prepared us for what we were about to see. First we were led into a small room where we had to thoroughly wash our hands, then a nurse gave us gowns and latex gloves to put on. Only then were we led into the neo-natal unit, and to an incubator. Our Jennifer lay inside. She had all forms of wires and tubes attached to her, with various machines on each side. Someone stood nearby and explained that our Jennifer had her lungs filled with fluid, causing double pneumonia and was in a critical condition, dependent upon the machines to keep her alive. She also suffered serious brain damage and was having seizures. We were told that if she made it the first few days her chances were good that she would survive. But for now they would keep her in an induced coma until she was strong enough to breathe on her own. We could only look down upon our little girl and pray that she would know that we were there.

The following day my wife was discharged from the hospital, but we didn't want to go home. We were only allowed to visit Jennifer about an hour each day. After a few days we finally did go home but no sooner did we arrive that the hospital called and said that Jennifer had gone into cardiac arrest and we should return immediately. We drove the two hours back to Tampa General Hospital and spent the rest of the day and that night in the waiting room. Jennifer had been revived but was still in a coma. For at least a week after that we refused to leave her. Mostly we stayed in the waiting room until they would allow us to go into the neo-natal unit and be with our baby girl. Sometimes they would allow us a few minutes even when they were not supposed to. We were told that we couldn't sleep in the waiting room, so we would take turns sleeping in the car so that one of us would always be there.

Then the day came when we were told that they would allow Jennifer to wake up. We both stood at the side of the incubator for several hours before her little body, still attached to all kinds of tubes and wires, started to move - the first movement we has

seen of her. My wife squeezed my hand. Then Jennifer cried, a soft cry, but the most beautiful sound we could ever hope to hear.

As the days passed we were allowed to touch Jennifer through the holes in the incubator. As I touched my little girl's hand, her tiny fingers wrapped around my own finger and she refused to let me go. Somehow she knew who I was and that we loved her and she didn't want to let us go.

As coincidence would have it, at the incubator beside Jennifer was a little boy born prematurely to a friend of ours (Terri Simpson) from Plant City. At the time following my discharge from the army we were renting property from her father. But only a few days after he was born he passed away. I never even knew if he was given a name as the sticker on the incubator only said "baby Simpson." But I'll never forget the look on Terri's face as we watched from across the room as they told her that her little boy had passed away, as the color drained from her face and the anguish physically overwhelmed her...a bleach blonde teenager mother already experiencing a pain that no mother should ever have to know.

As the weeks passed Jennifer grew stronger and one by one they began to remove the tubes and wires that had sustained her. Soon we would be allowed to hold her for the first time. When that day came, my wife silently cried as she sat in a chair placed next to Jennifer's crib and the nurse gently placed our daughter in her open arms. All else ceased to exist that moment. Then came my turn. I can still remember the anxiety and fear as if it were yesterday. It was one day after my 19th birthday when I nervously took that precious gift into my arms and marveled as she wiggled, then opened her eyes to look up at me – for the first time I realized that she has my eyes, that she was truly daddy's little girl. Then, like a little angel she snuggled up and went to sleep in my arms.

About a week later we were finally able to take Jennifer home. She was strong and she grew healthier each day. But the botched

birth had its consequences and we knew that she had suffered brain damage. To control the frequent seizures we had to give her liquid Phenobarbital several times a day. Because of the medication Jennifer slept a lot and rarely cried, others noticed but were too polite to comment.

With the pride of new parents we left the hospital with our baby girl and went straight to my parents to show her off. That is where that picture, that I now so dearly treasure, was taken – Kathy Marie proudly holding Jennifer on the front lawn of my father’s house.

Many moons have passed since then and yet each time I look at that picture I’m transported back into time, to that moment. A little over a year later we had our son Daniel Brian, who was born perfectly healthy. A week after the divorce was final, my ex-wife remarried. Because I refused to take part in the divorce proceedings or even go to court, my ex-wife was given sole custody. A few months later I learned that she then allowed her sister to legally adopt our son.

From that year on I have been almost continuously incarcerated, with the exception of just a few months in early 1982, the again in early 1983. In February 1983 the deaths of Aleisha Bryant and Lawrence Lamberson resulted in these capital charges being brought against me. By early 1984 I was on death row where I have remained ever since.

Through the years I often tried to find ways to get in touch with my children. But I wasn’t able to hear even so much as a rumor. Either my family, the few who stayed in touch, did not want to tell me, or my children had fallen of the face of the earth.

Years and years passed but I never gave up. Often I would write letters to radio shows, asking them to play songs and make dedications. One nationally syndicated radio show “Delilah after Dark” would sometimes read my letters on the air, then play a song for “Nikki” Each time I hoped that she would hear it, but she never did.

The in the summer of 2003 a friend suggested I get someone to look at state records on the then new “internet”. For months I saved every cent I could with the hopes of hiring an investigator, only to have it come back with no “Lambrix’s” in state records under either Jennifer’s or Daniel’s name. But then I found out that they could also search state records for just their first names and dates of births. Again I anxiously waited for news from the investigator.

Exactly five years ago this week the letter arrived from the investigator. A single sheet of paper with two names and addresses, the only two matches – but they matched perfectly! My little girl “Nikki” was now 24 years old and lived only a few miles away. Her last name had been changed, but everything else matched.

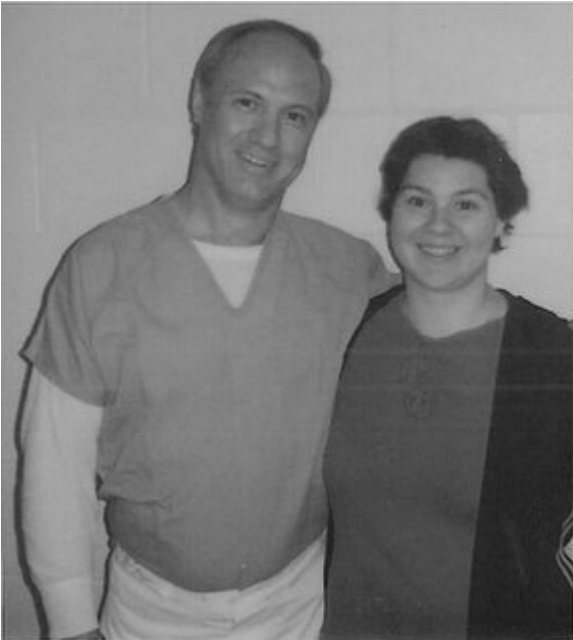
It took me days to write and rewrite that first letter. What if it wasn’t her, but just by coincidence another Jennifer Nicole with the same date of birth? Jennifer was a common name. I began the letter with an apology if I was wrong, but that ‘You might be my daughter.’ I sent her a poem that I had written many years before just for her. Then I waited. What if it was her but she didn’t want anything to do with me?

Several weeks slowly passed and each day my hope faded. Then there was a single small envelope from the Jennifer I had written. I nervously held it, afraid to open it for fear of the response within. I sat on the edge of my bunk just looking at the envelope and then finally I opened it. Only a single folded page within, and as I pulled it out I prepared myself for the rejection.

Then there it was in my hand, unfolded. And it began “Dear Daddy” and I cried. Like the scribble of a young child, it was difficult to read. But it was her – it was my little girl and she was happy to hear from me and wanted to get to know me. A few days later I got another letter from my ex-wife. They had moved to the adjacent county in 1986 when she remarried (for the 4th time) and had been living just a few miles away all these years. She explained how Jennifer had suffered permanent brain

damage and was mentally handicapped, with the functional capacity of somewhere between a child and a young teenager. She didn't think it was in Jennifer's interest to know me since I was on death row, as they assumed I would be executed and Jennifer couldn't deal with that.

But Jennifer got my letter and wanted to get to know me. Through the next few weeks we exchanged several more letters. Then my parents offered to help by picking Jennifer up when they came to visit so we arranged to get Jennifer on my visiting list. Before long, there she was - after all these years I was having a visit with my daughter. As she came into the visiting room I gave her a big hug as if I didn't want to let her go. Her smile lit up the room and she giggled as only little girls can do. Then we talked for hours and she told me about the little kitten she had and the movies she liked and the friends that she had known forever and on and on, and throughout it I could only smile.



In recent years we had many more visits. I came to know that more than anything else she just wanted to have a normal life. She wanted a boyfriend, then a husband and a family of her own.

And I just wanted her to be happy. Last year she met someone she fell in love with. Now 29 years old, although limited, she is capable of independent living. She wanted to be loved and he loved her. He too has limited mental capacities, but able to work a job and drive a car. Suddenly I realized my little girl was grown up. After so many years of praying that I could be part of her life, she now wanted more....she wanted to be Billy's wife.

How could I let my little girl go? But it wasn't my choice. What mattered most is that she would be happy. Jennifer and Billy married and I haven't seen her since. They had moved further away to be closer to where Billy worked and with a very limited income, they simply couldn't afford to visit.

A few months ago Jennifer gave birth to her first child, a healthy little girl they named Sarah Anne. Now I anxiously await the day that I might meet my new granddaughter, knowing that it may be some years. But like with my daughter, I will not give up hope, because I know that as long as hope remains the impossible might yet happen. It pains me to know that my little girl now must struggle just to pay the bills and yet there is nothing I can do. I assure them that I understand that they can't afford to visit and I will be patient. But in my heart of hearts, it cuts to my soul knowing they are so close and yet so far away. And each day I pray the day will come when I get to see my little girl-and my granddaughter, and I will.

**FRIENDS & ASSOCIATES LOST**

**BUT NOT FORGOTTEN**

**ARTHUR RUTHERFORD**

**DANNY ROLLING**

**BILL CODAY**

**WAYNE TOMPKINS**

**FRANK LEE SMITH**

**HENRY GARCIA**



## FRIENDS & ASSOCIATES LOST BUT NOT FORGOTTEN

January 2007

### **‘Another Day; Another Dead’- ARTHUR RUTHERFORD**

You’d think by now I’d have grown accustomed to the ritual I’ve seen played out only too many times. Since I’ve been on death row there’s been many – too many – people put to death. But it never seems to get any easier. Through these many years I have lived in close proximity to those taken out and killed. I come to know them as a friend, even a brother, as when you do live in such close proximity you can’t help but get to know that person in the next cell only too well.

Today, Arthur Rutherford was put to death, executed by the State for the crime he allegedly committed. I’ve always known him by Dennis, and I’ll always remember him by Dennis. I’ll remember the long conversations we had around the solid concrete wall that separated our cells, often late at night when neither of us could sleep. He was a simple man, proud to be a “county boy” and what you saw was pretty what you got without any pomp or pretense. He could ramble on for hours talking about how barely an adult he went into the Marines and fought for his country in Vietnam. He’d talk of the friends that never made it home, those lost in a war that never made any sense – but it did to him as it was a simple issue... he served his country when they called him to duty, and was proud to do it.

Other times he could and would often talk for hours about his kids. Often while talking he would make small toys for his daughters out of yarn we would get in hobby-craft packages. I complimented him on a little turtle he made once and a few days later he sent me one just like it for my daughter. He did never have much money so I wouldn’t have asked, but then I didn’t need to because that was just Dennis.

It's been almost a year since the Governor had signed his death warrant and sent him back to Florida State Prison where they carry out executions. He was originally scheduled to be executed on January 21, 2005 but at the very last minute the U.S. Supreme Court granted a stay of execution to consider the question of whether the method in which lethal injection administered in Florida is unconstitutionally cruel and unusual.

As I understand it, they actually had him strapped to the gurney with the needle in his arm before he was granted that stay. I watched a local television station covering the anticipated execution "live" from outside the prison on my own television. They talked with his daughters and I was surprised that they were all grown. As they stood outside the prison on that cold winter day they had to ask the television crew if their father had gotten a stay as it was already after 6:00pm – the designated time executions are carried out – and they didn't know.

Nobody spoke of his children huddled outside the prison waiting to hear whether their father was dead. The families of the condemned are the forgotten victims in all of this and seldom is their voice ever heard. What crime did they commit? What did they ever do to deserve that torment they are deliberately put through?

Today they lost their father. Is society now somehow safer than it would have been if Dennis were simply allowed to live out the rest of his life in a maximum-security prison? What good was actually accomplished by putting Dennis to death?

Today, we as a society choose to deliberately kill a man. Although convicted of murder, that is not who he was... that is a simple tragic event, an isolated act, and not the sum of his total life. Dennis was more than that, Dennis was a simple country boy not unlike many of us, and proud of it. He was equally proud to serve his country honorably when called to duty; sacrificing so much of himself in a war most of us still can't make sense of. He came home a troubled young man but still committed himself to being a responsible husband and father. He was a Christian and

believed in the power or forgiveness even when other refused to show mercy and compassion towards him.

Tonight the cellblock is much quieter than it usually is as many others around me that also actually know Dennis silently mourn the loss of a friend. In my own silence, I pray for his children who once again had to gather outside the prison and wait for what must have seemed like an eternity to learn whether their father lived or died. Tonight the lost their father and that's something none of us should forget. When we pray for the victims, let's remember all the victims.

### **'Countdown To An Execution' - DANNY ROLLING**

There is something uniquely surreal about sitting in a death row cell watching your television as virtually every local station out of Jacksonville and Gainesville all cover the "Countdown To An Execution" live from outside the prison.

It's a circus of its own peculiar morbid design but fortunately seldom seen. The parade of pretty people in front of their camera's telling the story of the soon to be killed killer doesn't come in droves except when someone of special status is to be executed.

Today it is the infamous Danny Rolling, a pathetic man in his own right who had pled guilty to five murders in the Gainesville area a dozen years ago. That entitled him to being labeled a "serial killer" and those killing not only defined his life but also will now define his meticulously and deliberately inflicted death.

What does that say about us? Have we really come that far from the days when we gathered outside local county courthouses to watch a public hanging in the town square? Or even a midnight lynching at an old oak tree?

Thanks to the media, the ritual of execution is now carried to our living rooms. The bleached blonde reporters will walk you through it, all competing with each other to provide a graphic

description of the moments leading up to that execution and as the clock ticks down they will hold your attention by telling you to watch the backdoor of the wing housing the death chamber as once the execution has been carried a prison employee will appear at that door and wave a towel, a white towel, signifying that the execution has now been carried out. For long moments the viewer will watch in silent anticipation, waiting for that sign yet another person has been put to death.

Although disgusted by the pathetic circus, I watch too. I had a personal connection as I knew Danny Rolling – I lived in close proximity to him for many years. Perhaps I knew him better than any of them now congregated at the prison to watch him die. I never knew him as a killer – I knew him as a fellow inmate. I didn't judge him by acts of momentary violence against innocent victims, but by years of interaction, seeing him as a person with obvious mental issues and personality flaws. In my world we all have issues – I've been on death row now for so long that my issues have developed issues of their own.

Did I mention that I'm disgusted by the spectacle the media is making of this? How can we not be disgusted by the organized and intentional celebration of the death of another human being? What does it say about us as a society when we gather around to watch another man being deliberately put to death?

After the circus is over will any of his victims be brought back to life? What exactly is accomplished by putting the man to death? Certainly by now we know that these so called serial killers feed off public attention, so doesn't all this attention only inspire other pathetic losers to gain their own fame by killing even more? Is it just a coincidence that the increase in the number of "serial killers" corresponds directly with the increase of the public attention we provide them? Take away their spotlight and what motivation will be left? By making a media circus of Danny Rolling's execution today, how many more innocent people will die at the hands of other serial killers out to gain their fame?

Here's another thought... when was the last time you saw these swarms of media trucks gather outside a prison to cover the release of an innocent man? Since we cranked up the killing machine in recent years there's been over 130 men and women exonerated and released from death row after being wrongfully convicted and condemned to death. When was the last time you saw the media gather at the gates of a prison to cover the release of an innocent man? In 23 years I've never seen it – not even once.

We accept serial killers are “sick,” but are we not as equally sick by wanting to watch them be methodically put to death? As we celebrate their death aren't we doing the same thing we've condemned them to death for? How many of us have ever shown the same level of interest in advocating the release of an innocent man as we do in advocating the death of a presumably guilty man?

Today “We the people” put Danny Rolling to death and many celebrated by participating in the media circus that covered every detail. But where will these people be tomorrow when yet another innocent man walks out of prison alone and already forgotten? What does that say about us? Every circus has its clowns – today “We the people” became the clowns.

Did you hear of how he actually sang a Christian gospel song as his final statement? It's hard to deal with the freaking circus they make of it -- it's all so one sided as the media competes to come up with the best sound bite to graphically portray the death of a "monster." Even if we were to assume that he was a monster, maybe we should ask what it was or who created that monster? And what is the difference between him stalking his victims and those who make careers out stalking the death of condemned men and women? Are not both ultimately defined by the end result -- they brought about, by deliberate design and intent, the death of another human being.

When "we, the people" killed Danny Rolling it only made monsters out of all of us as we ultimately did the very same

things we condemned him to death for. Only we made our victim suffer under the threat of inevitable death for years and being in solitary confinement awaiting the uncertainty of your fate really is a lot like having a gun held to your head.

Just so you don't get too comfortable with that, with each new appeal you build up the hope of a reprieve as if the gun might just be lifted, but instead the courts deny you -- as if they're recocking the gun and pulling the trigger like a game of Russian roulette. When they pull the trigger at the end of that next appeal, will that be the round that kills you? Or will it be the next one? It's really the prolonged uncertainty that describes why capital punishment is "cruel and unusual" as if that Constitutional concept even has any meaning in our contemporary society.

Wednesday, 14 May 2008

[‘Bill is dead’](#) BILL CODAY

After 25 years of continuous solitary confinement on Florida's death row the rigorously structured monotony of my Monday mornings is only too predictable. As long as I can remember Mondays have always meant awakening to a meager breakfast of two palm-sized pancakes with a side serving of bland oatmeal. Considering that on the other days breakfast mostly consists of cold "grits" or powdered eggs, the pancakes with the small packet of artificially flavored corn syrup has become my favorite meal, or at least at breakfast anyways.

Every meal is served in our cells on plastic trays and we are each given only a plastic spoon to eat with as even a plastic fork is too "sharp" an instrument to entrust a condemned man with. There is no kitchen and no dining hall on death row as we are in an isolated confinement unit deliberately set apart from the other areas of the large prison complex. All our meals are cooked somewhere out there, then placed on large carts and transported to this unit. The carts are then brought to each floor of the unit, where the individual food trays are off-loaded on to a smaller cart, and inmate runners will push that cart down each tier to feed

us, a ritual repeated at each meal. A guard will open the lock on each cell's "bean flap" as the non-death row inmate "runner" will hand each tray to the individual prisoner within the cage. Monday mornings are predictable – but this Monday morning was not...

As I reached to accept my food tray from the runner; he quickly whispered "your buddy Bill just died." Bill was William Coday, and it was no secret he was a close friend. But it was too early for my mental facilities to absorb this unexpected information and I responded only with a puzzled and almost incoherent "what!?" Again the runner spoke, nervously watching the guard, "Bill cut himself up last night and died" No way man, Bill's right above me, physically not more than a few feet away and separated only by a few inches of concrete. I would have known. But then, that's the nature of our interminable solitary confinement – although virtually warehoused in close physical proximity to each other, even though physically only a few inches away, each of our solitary cells remain isolated and a world of its own.

I laid my breakfast tray down. My appetite now gone and sat at the edge of my bunk silently digesting this shocking news I just received. After the guard left the floor, I stepped to the rear vent (ventilation duct) and hollered upstairs to another guy I knew and got confirmation, it was true – Bill was dead... As the morning hours ever so slowly passed I could hear the cell door above me clanging open and shut, and I realized that they were now cleaning up the blood and packing up what meager personal property Bill had. In no time another condemned man would be placed in that cage, like stock awaiting their slaughter.

Bill was dead – that reality repeatedly reverberated in the numbness of my mind. Slowly it sank in and emptiness filled me. Each time a runner or a guard passed my cell I desperately picked them for more information – trying to understand the how and why of it all and somehow make sense of it. Bill was dead and now I knew how.

Sometimes in the early morning hours as the whole wing slept, Bill had silently taken some form of sharpened instrument and

slashed both his wrists and his own throat. He never cried out and nobody heard anything as he then lay back on his bunk and went to sleep for the last time...

Bill was dead. Understanding the “how” was the easy part – it’s the “why” of it that ate at my gut. In my world, death is no stranger; death is the condemned man’s unrelenting protagonist and like Ahab and his great white whale, only too often it is difficult to tell the hunter from the hunted, even when death ultimately prevails. Death is a palpable presence always amongst us as we are condemned to perpetually waste away in solitary confinement, isolated and abandoned by the world beyond as we grow old and die. In recent weeks, 3 others have died too (Charles Globe, Burley Gillium and William Elledge).

I caught my case when I was only 22 years old. At the time the father of 3 young children who have now grown up without me. I’m now 48 years old and a grandpa. Many around me have been here much longer, some almost 35 years now. All of us condemned and continuously caged and warehoused until we die. More often than not death comes from old age or suicide, not the state sanctioned execution we were sentenced to.

That’s the dirty, dark secret of America’s death rows that society and the mainstream media do not want to confront and will not talk about. With thousands of men and women now virtually warehoused on death rows across America, even the most fanatical proponent of capital punishment knows that the vast majority of us will never actually face execution. Rather we are condemned to a fate even worse than death as in reality we are condemned to slowly waste away in solitary confinement, in a manmade virtual hell meticulously designed to break our will to live and reduce each of us to something even less than human. While each of us inevitably drifting further and further away from the world we once knew, drowning in the infernal sea of inhumanity where no man is intended to come out alive.

As time sluggishly passes, each of us struggles that much harder to find the strength to sustain our ever-eroding will to live. Too



often, something slowly dies and life itself becomes a formidable prison we desperately seek to escape from. Now Bill is dead, and I am left to struggle to understand the incomprehensible “why” of it, even though a part of me knows only too well what had compelled Bill to take the easy way out.

I do understand the “why” and perhaps that is the hardest part: Some would say that Bill killed himself, but I know that he did not. Rather, Bill freed himself from a fate that he knew he could not defeat – not the negligible threat of facing a state-sanctioned execution, but the inescapable reality of the inhumane prolonged solitary confinement under unrelenting oppressive physical and mental conditions insidiously intended to feed off our flesh while systematically stripping us of our will to live. (Please check out [www.doinglifeondeathrow.com](http://www.doinglifeondeathrow.com))

In America, we claim to be a Christian nation, but compassion and mercy elude us. As Supreme Court Justice Stevens recently recognized in *Baze v Rees* (USSC, April 16, 2008), the contemporary practice of capital punishment is not about justice, but about retribution and revenge. Today’s death penalty is a modern-day manifestation of a state-sanctioned lynch mob, and the inhumanity of our solitary confinement an intended part of the often unjustified vengeance society seeks.

In the desperate act of yet another suicide, Bill freed himself from a fate few of the condemned can escape. At that thought, the heaviness in my heart at the loss of a friend begins to lift just a little as I got to believe that Bill is in a better place now. Here’s to you Bill....I will miss you.

### **‘When does Execution Become Murder?’- WAYNE TOMPKINS**

On February 11, 2009 the State of Florida put Wayne Tompkins to death by lethal injection at Florida State Prison. Tompkins had spent over 20 years on death row, of which at least the last six years were on “death watch” Through the years there have been

many appeals, most of which focused on Tompkins's consistently pled claim that he was not guilty of the alleged rape and murder of his then girlfriend's 14 year old daughter.

The evidence against Tompkins was completely circumstantial. There were no witnesses, no physical or forensic evidence, and no confessions to establish that Tompkins actually raped or killed the young woman. At trial the State convinced the jury of Tompkins's guilt by calling upon another teenage girl who claimed that she had visited the house where Tompkins and the teen victim – her “best friend” – told her to “call the police” This witness then left, but did not call the police or contact anyone.

The body of the teen girl was later discovered concealed beneath the house where they had lived. But arguably because of decomposition no forensic evidence (DNA, hair etc) could be recovered.

At Tompkins's trial nobody could say that they actually saw Tompkins kill the victim and nobody could say that she was the victim of a sexual assault. But as is only too common in questionably, wholly circumstantial cases, the State called upon a ‘jailhouse snitch’ to testify that Tompkins confessed to him that he committed this crime. For those who are unfamiliar with what a “jailhouse snitch” is, it is another inmate who agrees to testify for the State to help convict someone in exchange for a reduced sentence in his or her crime.

The courts have consistently recognized that the testimony of jailhouse snitches is highly unreliable. Basically you have a person in jail for committing a crime who knows that by agreeing to testify that another prisoner “confessed” he will have his own sentence significantly reduced. Some courts have gone as far as calling such testimony prosecutorial prostitution, using these jailhouse snitches as whores paid to knowingly lie and send innocent men to their death just to help themselves.

In the Tampa Bay area where Tompkins was convicted and condemned to death, the local prosecutors had long relied upon

“jailhouse snitches” to win convictions. As reflected in published cases a great number of these convictions were later overturned and in many cases it was later revealed that the “jailhouse snitch” deliberately fabricated the incriminating testimony, knowingly sending an innocent person to prison – and even to death row – just to win a reduced sentence on a crime they did not commit.

Considering the well established unreliability of jailhouse snitch testimony, and the long history of unethical prosecutors using that they know is false testimony deliberately elicited by the lowest form of scum – those that would sell out their own mother just to avoid prison themselves – should we as moral society to be put to death upon the word of a jailhouse snitch?

I have been on death row myself now for almost 26 years. During that time I came to know Wayne Tompkins personally. As an American Native, he went by the name “Grey Cloud”. A few years back I introduced him to a female pen-pal who he later married. I think it’s fair to say that me and Grey Cloud were close, even perhaps “friends”. In all the time that I’ve known him he has always insisted that he did not kill that young woman.

Now does it make sense that only one prisoner out of thousands that Grey Cloud came to know through the years said he admitted his guilt? How is it that a man can be convicted and condemned to death on the word of this one inmate when many other prisoners would readily testify that Grey Cloud has always said that he was innocent?

Grey Cloud’s execution bothers me. Many of those that I’ve come to know through the quarter of a century here on Florida’s death row have been executed, or committed suicide, or died of natural causes and it’s never easy when someone you know passes on.

But what about when the State sanctioned execution becomes murder? The death penalty is a punishment imposed under law and exclusively dependent upon first finding that the person to be put to death actually did commit the crime of capital murder.

Even then though, the death penalty can only be imposed if additional “aggravating circumstances” are found and the jury hearing the evidence specifically recommends imposing the death penalty.

But nobody can deny that our judicial system is far less than perfect. In recent years at least 25 prisoners on Florida’s death row alone have been found to have been wrongfully convicted and then judicially exonerated and released from prison. Recently the “Innocence Project” has announced that just in the last decade they have proven the innocence of at least 200 men through DNA evidence. This undeniable virtual epidemic of injustice should compel any person of moral conscience to question the validity of any conviction based upon wholly circumstantial evidence. The fact is that as a civilized society we owe it to ourselves to insist that if we are going to put a person to death, there cannot be any question of guilt. To allow any execution of a person whose guilt is not in question will inevitably result in the execution of an innocent person.

When capital punishment is carried out in the name of “We, the People” and even if one innocent person is wrongfully executed, then we as a society are all guilty of cold-blooded murder. Maybe even in spite of my wrongful conviction I still remain naïve, but I like to believe – I’ve got to believe that we as a society are better than that.

That brings me to what also really bothered me about grey Cloud’s execution last week – his long pled claim of innocence wasn’t even an issue, not a single newspaper or television station even mentioned it although just a few months ago the Florida Supreme Court specifically addressed the claim of innocence in a published court opinion. Although obviously the court ruled against him on a legal technicality, the legitimate issue of innocence was not fully addressed and resolved.

What if Wayne Tompkins actually was innocent? What if yet again our judicial system made a mistake – only this time that mistake went uncorrected and we, as a society, just murdered an

innocent man? Can even one person today step forward and declare under oath with absolute certainty based upon personal knowledge that Wayne Tompkins actually committed the murder that he has now been executed for?

Nobody can. Wayne Tompkins was not executed because the State proved his guilt beyond a reasonable doubt. Rather, as is only too common, Wayne Tompkins was put to death because he couldn't prove his innocence. Maybe Tompkins actually was guilty, but how do we know for sure? And if we don't know for sure, then how do we know with moral certainty that we did not execute an innocent man?

No matter what side of the fence you stand on the issue of capital punishment, I know of no one who would argue that the execution of an innocent person is justified. But if we are not morally certain of the condemned man's guilt, then how can we be certain that we didn't just execute an innocent man?

**Wednesday, 25 March 2009**

### **'Everybody's Innocent'- FRANK LEE SMITH**

You know what my biggest problem is? It's that everyone is innocent. There are no guilty men or women on death row. We are all innocent. So what if in most cases there was physical or forensic evidence, even eyewitnesses or a co-defendant who testified that they committed the crime together, and just as often the condemned man now claiming innocence actually confessed to the crime-we are all still innocent.

See, that's just how most people see it – there are so many men and women on death rows across the county claiming that they are innocent that they dismiss all claims of innocence with a sarcastic “oh yeah – they are all innocent.” Even the courts and media often respond to a claim of innocence with a yawn, followed by “here we go again.”

The truth is that many who might claim innocence are not innocent. As case after case is picked apart and claims of innocence are discredited by the courts, the credibility of all claims of innocence is undermined. As we see case after case in which a condemned man or woman claims to be innocent in spite of overwhelming evidence the very concept of innocence itself is discredited and not surprisingly most of the public, the courts, and even the media become skeptical of all claims of innocence.

But I'm not throwing stones at those who claim innocence in spite of overwhelming evidence of their guilt. The fact is that in the 26 years that I have been on death row I have seen too many cases where men were convicted and condemned to death on what appeared to be solid evidence, only to later learn that the prosecutor deliberately fabricated evidence, of key witnesses had reason to lie, or alleged 'confessions' were not what they seemed to be.

In these many years I also have seen one thing above all else that convinces me that the State will knowingly and intentionally convict, condemn, and execute innocent people. That is that in almost 150 cases in which a condemned man or woman has been exonerated and released from death row, even when DNA evidence conclusively clears the wrongfully convicted of the crime, not even once has a State Attorney admitted they made a mistake.

Maybe claims of innocence are being abused – but when our judicial system has such a well documented history of wrongfully convicting and condemning innocent people and those representing the State categorically refuse to acknowledge that they might have made a mistake, then how can any of us actually know with any measure of moral certainty who is innocent and who is not?

Many years ago a man named Frank Lee Smith came to Florida's death row. He was convicted and condemned to death for the brutal rape and murder of an 8 year old girl in Broward County,

Florida. The evidence seemed to be convincing despite the fact that Frank insisted he was innocent.

It didn't help that Frank wasn't exactly wrapped too tight to begin with, or that only a few weeks prior to this horrific crime he was released from prison. Those factors almost seemed to create a presumption of guilt. Since he was a bit nuts and an ex-con to boot, surely he had to be guilty? Besides, with his past criminal record who could believe his claim of innocence?

Frank spent about 16 years on Florida's death row and that was not easy times as if being on death row itself wasn't bad enough, Frank also caught pure hell from both other prisoners and guards because he was convicted of raping and killing a young child. In prison, baby killers are not very popular.

I am ashamed to admit that I was one of the many who deliberately shut Frank out. On death row most of the guys generally look out for each other. If you have coffee and your neighbor doesn't, you give him a cup or two until he gets up on his own feet or if chow that night isn't too good (and it never is!) maybe you split a pack of cookies with him.

But Frank didn't have much of nothing – and nobody wanted to look out for him. Like Dante's "Inferno", there are many levels of this hell we call "death row". I was only one of too many who made Frank's "hell" that much more unbearable by deliberately refusing to reach out to him as like so many others I judged him based upon what he was convicted of, and no matter how much Frank protested his innocence, I completely dismissed it, refusing to give him the benefit of the doubt- the same benefit of doubt that I ask others to give to me.

How could I have been so wrong? As the many years passed, I knew only too well just how completely corrupt our judicial process is. I knew without any doubt what so ever that it is all too common for innocent men and women to be wrongfully

convicted and condemned to death and yet in my admittedly small mind I made the decision that he had to be guilty because he was convicted.

About ten years ago I was transferred from the regular Florida death row at Union Correctional Institution to the maximum-security “x-wing” at Florida State Prison, where “high risk” death row inmates were kept. On the bottom floor of the “X-wing” (now renamed “Q-wing”) was Florida’s electric chair (“Ole Sparky”) and the “death watch” cells. On the two floors above the death chamber were a total of 24 cells for maximum security confinement.

As coincidence would have it, Frank was in a cell two cells away from me. There’s not a lot to do when you’re “locked down” on X-wing as you’re not allowed to have any TV, radio, magazines, books, or anything. So breaking many years of silence, I started talking to Frank, or at least I did when he could stay in touch with reality long enough to carry on a conversation as through the years Frank had ‘bugged out’ as we call it.

I’ve long had a reputation as a “jailhouse lawyer” and guys regularly ask me for my help on legal matters. Most of the time I do what I can to help, even if it’s really nothing more than build their faith up and keep the hope alive.

Frank told me how many years his lawyers have been trying to compel the court in Broward county to do DNA tests and how his lawyers found out that the prosecutor had arrested another man for similar type of sex crimes in the same area where he allegedly raped and killed that little girl, and people who knew that other man were saying that he committed the crime Frank was convicted of, so he needed that evidence to finally prove his innocence. But the problem was that both the Broward County State Attorney (prosecutor) and the Florida Attorney General’s office were refusing to allow his lawyers to do DNA tests on that evidence. Even though they knew this other man may have committed the crime Frank was convicted of, and the DNA



evidence could conclusively prove who actually committed that crime, the State refused to even allow the evidence to be tested, and they did all they could to prohibit Frank's lawyers from being able to test that DNA evidence.

To further compound this injustice, Frank was dying of cancer. Although I couldn't see him through the concrete wall that separated us, Frank was crying as he told me he just wanted to prove his innocence and let everyone know he was not a baby-killer before he died. For many hours after he told me that, I could still hear him crying late into the night. For the first time in the many years that I had known Frank, I really felt for him. That next morning I gave him my breakfast tray.

A few months later I was transferred back to the main death row at Union Correctional Institution and I never saw Frank again. Not long after that I heard that he had died of cancer, just as so many others do here in the row.

Less than a year later I received a letter from a friend. She sent me an article from the Ft Lauderdale "Sun Sentinel" newspaper that told how almost a year after Frank Lee Smith died of cancer, the DNA evidence his lawyers had fought to have tested for almost a full decade was finally tested- and not only did the result conclusively show that Frank was innocent all along, but the evidence also showed that the other man who was already in custody for similar crimes in the area actually committed the rape and murder of that young girl they convicted and condemned Frank for.

Subsequently the POS program "Frontline" did a special about the Frank Lee Smith case, and the tragedy of him spending 16 year on Florida's death row for a crime he did not commit – and how the State had deliberately obstructed his lawyers for almost a full decade, refusing to allow the DNA evidence that ultimately exonerated him to be tested.

You see, I do understand the skepticism that is all too common when we hear yet another death row prisoner protest his

innocence. As a condemned prisoner protesting my own innocence, even I fell into that trap of doubting Frank's claims. But I was wrong. And I can't help but wonder now if maybe I had given him the benefit of doubt; maybe – just maybe – it would have made a difference. I probably couldn't have done much to help him in his legal fight and I couldn't have cured his cancer. But I could have been a friend and by just doing that I could have made his days in this man-made hell just a little easier.

Looking back at how I treated Frank Lee Smith – how almost everyone on the row treated him – because I chose to dismiss his claims of innocence and did not give him the same benefit of doubt that I ask others to give me, I am ashamed. I could have been – and should have been – a better man than that as the truth is that I did not know whether he was innocent or not. Rather, I simply assumed that he had to be guilty. I was wrong.

To this day, now almost ten years later, this bothers me. But this experience also made me realize just how easy it is to become complacent, and even indifferent, to the claims of innocence we so often hear. Maybe everybody who claims to be innocent is not innocent - but how do we know who is and isn't? What we do know without any doubt is that there are far too many men and women being wrongfully convicted and sentenced to death - and we know that no matter how conclusive the evidence is that exonerates the wrongfully convicted, those working for the State will never admit they are wrong.

## **Thanksgiving with Henry'- HENRY GARCIA – 2009**

Thanksgiving is the traditional American Holiday, the one day of the year when family and friends gather around the table with a feast laid out in abundance and give thanks for the blessings that have been and might yet be endowed upon us. Up until just a few years ago the prison system would recognize Thanksgiving with a special holiday meal of real turkey and all the trimmings, as

well as various tasty deserts and we would all look forward to that one meal a year. Weeks and even months ahead of time we would make deals with each other to trade a favorite food such as maybe trade the turkey to someone for their pumpkin pie. Everybody had their favorite food, for me it was the turkey more than anything else.

But in recent years they've all but eliminated the traditional Thanksgiving dinner for prisoners. We haven't seen real turkey in many years now. The prison system will tell you that they still serve us a "holiday meal" but it's not like it was before and what they do serve now isn't worth writing home about.

For this reason many of us will plan ahead and make our own holiday feast by saving up what few extra dollars we can and buy foods off the canteen. Both as a means of communion with those we live among, who have become our surrogate family, and to share costs of the purchases. Many of us will plan ahead with our cell neighbors as we must order the necessary items at least a week ahead of the time on order to get them on time.

This year me and Henry decided we would eat good. Henry's been my cell neighbor for a few years now, and was my neighbor on another wing before that. But for awhile now Henry has been fighting liver cancer. He's put up a pretty good fight, which is not a surprise as Henry is a natural fighter and never had an easy life. Born in Texas of Mexican descent, he grew up poor and gave in to the lure of an outlaw at a very young age. Through the years Henry did time in some of the worst state and federal prisons in the country back when doing time meant struggling to survive every day. Yet through these hard years Henry remained one hell of a man, and was quick to share his sense of humor and in all the years I've known him, not even once did he have a harsh word to say about anyone.

Neither me nor Henry had any reason to expect a visit over the Holiday weekend. Although we both come from large families, through the years our families slowly drifted away and that's just how it is, and we accept that. So, when it came to planning our

Thanksgiving Holiday each of us became the others “family” and we spent countless hours what we would make to have a holiday meal that was different and special.

Last week and the week before we got the packs of tuna and mackerel to make fish steaks, the Ramen soup so we would use the noodles a make a casserole, with more tuna and assorted packs of potato chips for flavor, with a dill pickle on the side. And that was just for the main course.

It wouldn't be Thanksgiving without a lot of sweets. In past years I would make up a big batch of chocolate treats for everyone on the floor. But between the elimination of many items necessary to make them and substantial increases in the prices of what is now sold, it just is no longer possible. So we pitched in together and bought a Hershey chocolate bar for everyone on the floor so that everyone would at least have a little something.

With meticulous details we planned our meal. In a lot of ways, planning out what we intended to eat was almost as good as the eating itself! First, as an appetizer we would share a box of Ritz crackers, with beef and Jalapeno cheese sticks to go with them. We planned to start at around 10 o'clock that morning, and then around noon we would make up the main course. It would take me a few hours to make the fish steaks, which were a lot like crab cakes, but made with a mixture of tuna fish and mackerel steaks, mixed with crushed Ritz crackers and then seasoned with the spice pack of the Ramen “spicy vegetable soup” and a packet of soy sauce, and a bag of crushed spicy potato chips for flavor. Then coated with a crushed Ritz cracker crust. We would each have two.

The tuna casserole was basically flavored Ramen noodles mixed with tuna fish, a lot of mayonnaise and sweet relish and poured over crushed sour cream onion potato chips, with generous slices of dill pickles.

After having the main course, we planned to each have a Bear-claw pastry for dessert, with a cup of hot chocolate. Although we

can only purchase the small envelopes of hot chocolate of the canteen, by adding some coffee creamer and a Hershey chocolate bar, it made a cup of thick hot chocolate which goes really good with the cinnamon and spice bear-claw pastry.

Later in the day we planned for some more sweets and snacks as football would be on TV all day – another Thanksgiving tradition. We had bought a box of Swiss rolls – basically small chocolate covered, crème filled cakes, and we'd make up some big cups of sweet tea to go with it. For later in the day we planned to use up the last big bag of Doritos Nacho Cheese chips I still had, pouring two packs of hot chili with beans over it, then topping it off with numerous packs of melted Jalapeno cheese spread – you just can't put too much Jalapeno cheese on anything!

Yep, me and Henry planned to eat pretty good this Thanksgiving. Although holidays are meant to spend with family, in here it's the guys we live around that become our family and we looked forward to sharing it together.

This year Thanksgiving would be on Thursday, November 26. Every year it's on the last Thursday of November. But for all our meticulous plans it's always the unexpected that comes along to ruin them.

On Monday our floor had recreation yard and Henry went outside to play volleyball for a few hours. With his health problems, yard usually left him exhausted but he would sleep it off and be ready to go again. Monday was not different and by early afternoon Henry was joking around, as we often do. By dinner he was his usual self, and then we had the thrice weekly showers (Monday, Wednesday and Friday) and nothing seemed out of the ordinary.

After showers the mail comes in and we talked a bit about that it was late on Monday as the guard who normally passes out the mail has the week off. So we didn't get our mail until around 8.00 PM. Henry said he got one letter, but was concerned as he didn't hear from his longtime dear friend Liz. I told him that they

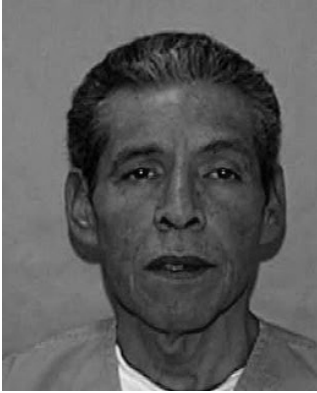
probably just didn't pass out all the mail – he'd probably get a letter from her tomorrow.

About an hour later they came around for the nightly “master count.” That's the only time of the day we must each stand up and give our number – not our name, but only our prisoner number as in here that's all we are – a number. Henry's cell light was on and he said he was going to write a letter. But when the Sgt. got to his cell he found Henry slumped over his table and the end of his bunk and Henry was not responsive. For a few minutes they yelled and banged on his door, assuming he was asleep as that was not uncommon, and the Sgt. got on the radio and called for the nurse.

After several minutes Henry responded and awoke, but seemed somewhat out of it and wasn't able to get up. So the Sgt. decided to send him to the main unit infirmary so they could check him out. This Sgt. is a pretty good one and goes the distance to help us out. A few years ago he was working the floor when another guy fell ill and if not for this Sgt's quick response in getting this guy out he would have died. Once again, this Sgt. (who I am deliberately not naming) was quick to call for medical help.

They brought a wheelchair and Henry got on it and they pulled him out. As he stopped for a moment in front of my cell while they grabbed his photo ID I spoke to Henry and he seemed a bit out of it. But said he'd be right back.

A little while later I caught the Sgt. making his rounds and asked how Henry was doing. By that time, he should have been back. The Sgt. said that after they pulled Henry out, he started to cough up a lot of blood so they decided to keep him over at the main unit infirmary for the night.



But in the early morning hours just before breakfast the midnight staff came and packed up all of Henry's belongings. If they expected him right back they would not pack up his property so I knew something was up. Throughout the day I asked others how he was doing and they said he's not too good and would probably stay over at the main unit infirmary for a few days just to keep an eye on him. But they said they'd save his cell next to me, so I didn't think much of it.

By Wednesday afternoon those I asked started saying that Henry took a turn for the worse and didn't look good. Anxiously I squeezed all the information I could from those I knew would know.

Early Thursday morning, Thanksgiving Day, I was told that Henry had died at 2:30 am, but that he didn't suffer. I try to tell myself that at least his fight is over and he's now in a better place and that at least his suffering was not prolonged as only too often it can be with cancer. But somehow it isn't much of a comfort as he was a good friend and neighbor – he was family.

Just that quickly on Thanksgiving there isn't much to be thankful for. The plans we made for weeks for our holiday feast now meant little as Henry was gone and so was my own appetite. Instead I spent the day just pacing my floor back and forth, four

quick steps to the front then four quick steps to the back, listening to the radio and trying to get my head out of this place.

Then a song came on that made me smile....maybe even a message from Henry to a friend and brother who already greatly misses him. Bob Dylan's "Knocking on heaven's door" a song that not so long ago me and Henry sang together. Hearing that song brought tears to my eyes – but I smiled, as just hearing that song, at that particular moment, let me know that Henry's alright and is now in a better place. Here's to knocking on Heaven's door – I will miss you my brother.



Bill Coday



Danny Rollings



Frank Lee Smith



Wayne Tompkins



**POLITICS OF THE DEATH  
PENALTY**

**PROSECUTORIAL CONDUCT; DOES  
IMMUNITY INVITE INJUSTICE?**

**ANATOMY OF A CORRUPT FLORIDA  
PROSECUTOR**

**FLORIDA COURTS CAUGHT FABRICATING  
RECORDS**

**DOES DNA CONDEMN THE INNOCENT???**

**RESURRECTION OF THE STAR CHAMBER**

**THE NEW FACE OF BIGOTRY**

**WHERE DO WE DRAW THE LINE OF MORAL  
RESPONSIBILITY?**

## **PROSECUTORIAL MISCONDUCT: DOES IMMUNITY INVITE INJUSTICE?**

It has long been recognized that a prosecutor's duty is to seek justice. In *Berger v. United States*, 295 U.S. 78 (1935) our Supreme Court declared this mandate recognizing that prosecutors should "prosecute with eagerness and vigor" but may not use "improper methods calculated to produce a wrongful conviction." If a prosecutor's misconduct "so reflects the trial with unfairness as to make the resulting conviction a denial of due process," then the conviction might be vacated – but only if the Court finds that the prosecutor's actions constituted "egregious misconduct." *Darden v. Wainwright*, 477 U.S. 168 (1987)

In other words, as long as the reviewing court determines, based upon their own post-conviction subjective interpretation, that the evidence notwithstanding the alleged misconduct is sufficient to support the conviction, a prosecutor's *deliberate* misconduct is judicially tolerated, and the conviction cannot be vacated. This is generally called the "harmless error" rule ... if the reviewing court determines that the person is probably guilty anyway. Then the "error" of a deliberate prosecutorial misconduct is deemed "harmless." See, e.g. *Cargle v. Mullin*, 317 F. 3d 1196 (10th Cir. 2003) ("A prosecutor's misconduct will require reversal of a conviction only where the misconduct sufficiently infected the trial so as to make it fundamentally unfair.") *Mason v. Mitchell*, 320 F. 3d 604 (6th Cir. 2003) ("The misconduct must be so pronounced and persistent that it permeates the entire atmosphere of the trial.")

Imagine a world where traffic laws said that you must stop at a red light, but another rule is then established by the courts that says that even if you do deliberately run that red light, as long as you don't hit anyone it's "harmless error." What if we change the laws prohibiting drunk driving – but only if you actually hit and kill someone? No harm, no foul ... that's simple enough.

The problem with this perverted logic is that the true harm is not

in the result of the deliberate misconduct – but in the misconduct itself. Our constitutional democracy works because we have become a nation of laws that evolve as necessary to protect the rights of all citizens. If we create a system that effectively absolves deliberate prosecutorial misconduct based upon subjective interpretation of actual harm inflicted and not the act of misconduct itself, do we not invite and even encourage prosecutorial misconduct?

As a civilized society we embrace the concept of law and order. Without laws there can be no “order” as one cannot exist without the other. Now imagine a world where every individual is subject to accountability – *except* those empowered by the government to *enforce* those laws. In today’s system with an epidemic of wrongful convictions increasingly undermining confidence in the system as a whole, prosecutorial misconduct has become the leading cause of miscarriages of justice.

Even with this epidemic of prosecutorial misconduct victimizing innocent men and women with wrongful incarceration and even condemning them to death, prosecutors enjoy “absolute immunity” from judicial accountability. In *Imbler v. Pachtman*, 424 U.S. 409 (1976) the Supreme Court concluded that prosecutors – even when they deliberately fabricate evidence, present false evidence, and knowingly use perjured testimony, even when they deliberately prosecute someone they know is innocent – are entitled to “absolute immunity” and cannot be held judicially accountable. The Supreme Court concluded, “The ultimate fairness of the system could be *weakened*” if prosecutors were held accountable in court for even deliberate misconduct.

The majority of prosecutors do exercise self-constraint and do act in good faith. But borrowing from an old adage, it only takes a few bad apples to spoil the whole bunch. Add to that the political consequences that make admitting error, the equivalent of career suicide, and a culture that promotes those who will win at any cost; where the most “successful” prosecutors are those who practice the philosophy that “the ends justify the means” and you

have a system that *invites* injustice, and becomes by its very nature inherently corrupt from within.

The most extreme injustice conceivable is that of an innocent man or woman being wrongfully convicted and condemned to death. Florida by far leads the country in the number of wrongful capital convictions in which innocent men and women were condemned to death only later to be judicially exonerated. But *why* does Florida wrongfully convict and even condemn so many innocent people?

For one thing, Florida remains the exception to most other states in establishing a means of statutory compensation for those found to have been wrongfully convicted. Most states provide compensation to those found to have been wrongfully convicted ... but not Florida. Common sense tells you that if the State has to pay substantial amounts of money to compensate those victimized by the system, then inevitably there will be a call to hold those responsible for inflicting the injustice accountable. In Florida at least 24 men and women have been judicially exonerated after being wrongfully convicted and condemned to death – yet not even once has the prosecutor found to have engaged in deliberate misconduct been held accountable.

How can we deny that the *absence* of accountability is itself *an invitation to injustice*? If our system can identify the small numbers of specific prosecutors who have *reportedly* engaged in deliberate misconduct then is there not a moral responsibility to at the very least ensure that these few corrupt individuals *never* practice law again? If we identify a doctor that has deliberately engaged in malpractice causing injury to his or her patient, do we not take action to strip them of their license to practice? Why would we demand anything less of a person entrusted to represent “We, the people” in a court of law? Is not the deliberate violation or that most sacred test at least as equally contemptible – and intolerable – as a physician deliberately engaging in acts of malpractice that victimizes his patients?

The hypocrisy that presently exists is perpetuated by the system itself. The Florida Supreme Court has repeatedly admonished prosecutors for deliberate misconduct in capital cases, promising that disciplinary actions would follow if that behavior continues, yet not even once has the Court actually taken action. This judicial rhetoric is readily found in case law ... In *Ruiz v. State*, 743 So. 2d 1 (Fla. 1999) the Florida Supreme Court stated that, “we warned of the dire consequences of such ‘inexcusable prosecutorial overkill.’” citing, *Hill v. State*, 477 So. 2d 553 (Fla. 1985) “... yet in spite of our admonishment in *Hill* and despite subsequent warnings that prosecutorial misconduct will be subject to disciplinary proceedings by the Florida Bar, we nevertheless continue to encounter this problem with unacceptable frequency.”

Both *Ruiz* and *Hill* were capital cases in which the victimized defendant was sentenced to death; but they’re certainly not the only capital (death sentence) cases in which the Court rhetorically admonished prosecutors for acts of deliberate misconduct. See, e.g. *Garcia v. State*, 622 So. 2d 1325 (Fla. 1993) (“Once again, we are compelled to reiterate the need for propriety, particularly where the death penalty is involved.”); *Nowitzke v. State*, 572 So. 2d 1346 (Fla. 1990) (“We are distressed over the lack of propriety and restraint exhibited in the overzealous prosecution of capital cases.”); *Garron v. State*, 528 So. 2d 353 (Fla. 1988) (“Such violations of the prosecutor’s duty to seek justice and not merely ‘win’ a death case cannot be condoned by this Court.”) and *Bertolotti v. State*, 476 So. 2d 130 (Fla.1985) (“We have recently addressed incidents of prosecutorial misconduct, in the face of repeated admonitions against such overreaching, to be grounds for appropriate disciplinary proceedings.”)

All of these cases in which the Florida Supreme Court explicitly recognized acts of prosecutorial misconduct share several things in common ... each of these cases the defendant was sentenced to death (several of these defendants have since even been executed) and in each of these cases *no* actual disciplinary action was taken against the prosecutor found to have engaged in such

misconduct.

Two distinct forms of prosecutorial misconduct have accounted for the majority of cases in Florida in which a wrongfully convicted and condemned person was subsequently exonerated by the Courts and released from death row. The first form are acts of prosecutorial misconduct in which a prosecutor is subsequently found to have knowingly withheld material evidence of an exculpatory nature from the defense – In *many* cases evidence that would have proven the person innocent. The second form are acts of overzealous prosecution in which a prosecutor has a wholly circumstantial case of specious nature, yet proceeds to prosecute by simply manipulating the jury into believing the evidence proves guilt beyond reasonable doubt even though the evidence is legally insufficient to support guilt.

The most recent exoneration released from Florida's death row after almost six years of incarceration is [John Ballard](#). After being convicted and condemned to death without *any* eyewitnesses, no physical or forensic evidence, and no confession; the Florida Supreme Court concluded that the erroneous conviction was the product of overzealous prosecution; that the prosecutor (Deputy Assistant State Attorney Randall McGruther) improperly stacked circumstantial inference upon inference to convince the jury of Ballard's guilt even though no credible evidence actually supported guilt. See, *Ballard v. State*, 923 So 2d 475 (Fla. 2006)

This same prosecutor, Randall McGruther, has a history of unethical overzealous prosecution, especially in wholly circumstantial capital cases – Mr. McGruther was the prosecutor in my own case in which the evidence now shows that the entire wholly circumstantial case of alleged premeditated murder was deliberately fabricated with an intent to have me wrongfully convicted and condemned to death.

Has any disciplinary action ever been pursued against Mr. McGruther? No. In fact, Mr. McGruther is now the top prosecutor in the Twentieth Judicial Circuit States Attorney's

Office, *handpicked* as “Deputy Assistant State Attorney” by the elected State Attorney Steve Russell himself.

Additionally, that particular State Attorney’s office, although comprised of the mostly rural farming counties of Southwest Florida and relatively small in population, has the *highest* rate of wrongful convictions in capital cases in the entire county. *At least* five men have been judicially exonerated since 1980 after being wrongfully convicted and condemned to death by *that* office itself, (Dilbert Tibbs, James Richardson, Bradley Scott, John Landry, and John Ballard) yet to date there has never been an investigation into *why* that office accounts for such as abnormally high number of wrongful convictions in capital cases.

Capital cases may only reflect a small minority of the collective number of criminal cases prosecuted in this country; but it is these cases that society is asked to impose and extract the most extreme measure of justice. If these examples of injustice, resulting from acts of prosecutorial misconduct, can be found to be what amounts to *deliberate policy and practice*; then does it not stand to reason that this cancerous corruption of our judicial system exists at an even greater scale in cases that are not subjected to such thorough judicial scrutiny?

Prosecutorial misconduct is a corruption that acts as a cancer upon the very integrity of our judicial system as a whole. This corruption exists *only* because the judicial system itself is allowing it to exist. When a small group of prosecutors engage in repeated acts of deliberate misconduct resulting in convicting and condemning innocent men and women to death, then those few individual prosecutors become nothing less than **state sanctioned killers** and it is society’s responsibility to insist that these prosecutors who have been found to have engaged in deliberate misconduct never practice law again. If we are not willing to hold them accountable, then we invite the injustice that inevitably results.

## ANATOMY OF A CORRUPT FLORIDA PROSECUTOR

It's a simple enough truth... when you play in the mud; you're going to get dirty. This truth is especially applicable in the shadowy and often corrupt world of politics. Where money buys influence and favors at a relatively cheap price. Anyone with even minimal political acumen knows how to play the game – when a candidate is running for an elected office that campaign is financed by monetary contributions from those who want that particular individual elected. After they win that particular elected office, the unspoken doctrine of *quid pro quo* comes into effect... I scratched your back, now you scratch mine. When that same candidate –even elected judges and State Attorneys – run for office numerous times with the same contributors consistently funding that campaign, then an obvious bond is forged.

If we truly value the concept that “justice is blind” then the marriage of politics and justice is a contemptuous abomination – an entity of evil that can only and ultimately bear evil fruit. However, in Florida each judicial circuit elects its top State Attorney and circuit court judges locally. Thus, each time the same candidate runs for the same “office” they become inherently dependent upon the continuing support of local contributors. Thus, at least theoretically, of course, if a person wanted to corrupt locally elected State Attorneys and judges to protect against any prosecution in the future, then they could simply become a generous campaign contributor – and call in the favor when trouble does inevitably arise. That's how American democracy works – that's the American way.

The Bible teaches us that “money is the root of all evil,” and this truth is especially applicable in the shadowy and corrupt world of politics. Consider the case of the elected State Attorney Steve Russell in the 20th Judicial Circuit of Florida. Steve Russell has worked in that circuit for over 30 years, since graduating from Stetson University and passing the Florida Bar. When previously long-time elected State Attorney Joseph D'Alessandro retired, Russell ran for that job and took office in 2003.



During the 30 years that Steve Russell has worked in the 20th Judicial Circuit State Attorney's Office (much of the time serving as the top prosecutor), although relatively small and comprised mostly of the rural farming communities of Southwest Florida, that office has established a record of having the highest number of wrongful convictions in capital cases **in the entire country**. Incredibly, just this one office has sent more innocent men to death row (subsequently released by the courts) than most other entire states, combined.

Steve Russell's long-time personal friend and Stetson Law School alumnus Randall McGruther has worked alongside Russell for almost 30 years himself. But then a few years ago McGruther screwed up and attempted to go into private practice (which obviously pays more) only to shortly thereafter find himself under investigation for unethical misconduct after a witness in a criminal case alleged that Randy McGruther had attempted to coerce him into signing a false affidavit. Apparently, McGruther didn't realize that although as a prosecutor he could get away with that, as a private lawyer he is not as protected.

Shortly after these allegations were publicly disclosed, his long time good buddy, Steve Russell, by then the elected State Attorney, abruptly called McGruther back into the flock (birds of a feather...), and even appointed McGruther as his new Chief Assistant State Attorney, making McGruther the top prosecutor in the office! Not surprisingly, shortly after this appointment the allegations of misconduct previously lodged against Randall McGruther conveniently disappeared.

Does that sound just a bit fishy? But it actually only gets better, as a search of public records shows that in recent years McGruther has personally contributed thousands of dollars to Steve Russell's campaigns... quid pro quo, baby! In fact, these public records show that McGruther has personally contributed well over \$4,000 in recent years, with these substantial monetary contributions being made by McGruther while he was going through a contentious divorce and facing allegations of

professional misconduct... and all on the salary of a public servant?

Although most of that money went to Steve Russell's political campaigns, public records also show that McGruther contributed to the campaigns of numerous locally elected Circuit Court Judges, which raises substantial questions of conflict of interest. Money buys influence and in the political world there is no such thing as a free favor. So **why** was McGruther contributing money to the campaigns of locally elected judges that he knew he would argue cases in front of? If you were a criminal defendant being tried before a judge who was elected to that bench by monetary contributions made by the prosecutor, do you think you'd get a fair trial?

These facts are a matter of public record and **cannot** be denied. But this is not the end of the story. In 2006 the Florida Supreme Court threw out the capital convictions and death sentences against [John Ballard](#), ordering his immediate release from death row upon the finding that Randall McGruther's prosecution against Ballard was unfounded... that no credible evidence existed to support the convictions. See, *Ballard v. State*, 923 So. 2d 475, (Fla. 2006.)

This Ballard case is an example of **numerous** other wholly circumstantial cases prosecuted by the 20th Judicial Circuit State Attorney's Office that subsequently resulted in the appellate courts throwing the convictions out upon find that no sufficient evidence existed to support the convictions. (Delbert Tibbs, James Richardson, Bradley Scott, John Landry, John Ballard, etc.) Each of these cases was based upon specious — and arguably fabricated — circumstantial evidence in which the person was wrongfully convicted and sentenced to death only to be exonerated and released from death row by the Appellate Courts.

In another wholly circumstantial case prosecuted personally by Randall McGruther almost 24 years ago, newly discovered evidence has now come to light that shows that the State Attorney's Office *knowingly collaborated and conspired* with a

key witness to deliberately convict and condemn Michael Lambrix to death for a capital crime they knew he was innocent of.

In that case, Lambrix was charged with a double murder in a locally sensationalized case in Glades County, Florida in early 1983. There were no eyewitnesses, no physical or forensic evidence, and no confessions. The entire case was built upon the testimony of Lambrix's estranged ex-girlfriend's testimony, who conveniently claimed that Lambrix told her he committed these murders, but only after she was charged with a another crime herself.

Lambrix pled not guilty and has consistently maintained his innocence. At trial the jury was not allowed to hear that this witness, Frances Smith-Ottinger, had actually told law enforcement officials numerous conflicting stories and had even failed a state administered polygraph test. Additionally, Lambrix was prohibited from personally testifying and virtually no defense was presented. Lambrix was convicted and condemned to death and has remained on Florida's death row since March 1984.

In recent years another witness has come forth stating that she was coerced into falsely testifying, Lambrix admitted killing the deceased, at trial by both the key witness and the State Attorney's lead investigator. An investigation into these allegations then revealed that at the same time Lambrix was prosecuted in this capital case, the key witness was engaged in a secret, illicit affair "of a sexual nature" with the State Attorney's investigator, Robert Daniels – the **very** person who had sworn out the affidavit initiating the charges against Lambrix, then this same investigator personally supervised the development of the specious circumstantial evidence presented at trial.

Additionally Investigations revealed that the very evidence McGruther presented to the jury to convince them of Lambrix's guilt was fabricated – and that McGruther **knew** this evidence was fabricated. More recently evidence has come to light that

contrary to the key witness' testimony at trial, she was given complete immunity from prosecution in exchange for her "cooperation" – all other charges against her were dropped shortly after Lambrix was convicted and condemned to death.

After almost 20 years of methodically stalking Lambrix's wrongful execution, in 2004 McGruther was disqualified from the case due to the allegations of misconduct. However, no action has been taken against him – and under the protection of elected State Attorney Steve Russell, McGruther remains the top prosecutor in that Circuit.

Incredibly, McGruther now has bigger plans. With the history of alleged misconduct preventing McGruther from running for any publicly elected office, Randy McGruther is now posturing himself for political appointment to the bench. Public records reveal that McGruther became a substantial contributor to the most recent gubernatorial campaign of now governor "Chaingang Charlie" Crist. Once again, McGruther is spending money to manipulate the system. If Randall McGruther is successful in being appointed to the State Appellate Court bench by now Governor Crist, because of McGruther's substantial contributions to his campaign, then with McGruther politically appointed for "life" without ever having to publicly campaign – his history of unethical misconduct will never have to be publicly debated.

All of these facts are a matter of public record and can easily be confirmed. The questions now is whether the public should allow someone like Randy McGruther to so brazenly manipulate the system to his advantage – do we *really* want someone like McGruther appointed to this bench for life?

## **FLORIDA COURTS CAUGHT FABRICATING RECORDS**

Imagine being charged with a serious crime -- maybe even capital murder. You're arrested and thrown in jail and placed in a cellblock with a dozen other prisoners. Word gets around what

you're charged with and anyone who has spent even a few weeks locked up knows how the system works.

Whether you're innocent or not becomes irrelevant. Virtually every county jail in the country is infested with rats – “jailhouse snitches” who are often themselves career criminals and know only too well how to play the system. It's all about giving up a bigger fish... turning “jailhouse snitch” to get out of your crime and the bigger the crime the other guy is charged with, the better.

Prosecutors not only know how the game is played, but actually encourage it. Prisons are full of inmates convicted at least partially upon jailhouse snitch testimony. Some courts have recognized that this self-serving testimony in which some form of biological toxic waste turns State on another prisoner, claimed “he told me he did it” is inherently unreliable. Clearly the snitch has a reason for turning State – this parasite is not coming forth out of civic duty but because he knows that by becoming a State witness he will be rewarded by the State with a significantly lesser sentence than he would have otherwise received – maybe even have the charges against him dropped altogether if he becomes an important witness in a capital case.

Anyone charged with a major crime and thrown in jail to await trial becomes a target. Not surprisingly the use of jailhouse snitches by prosecutors is significantly higher in circuits that have a history of wrongful convictions, where morally and ethically corrupt prosecutors adopt a “win by any means necessary” mentality and encourage county jail inmates to turn snitch on each other. Prosecutors know they can **knowingly** use false testimony and cannot be charged themselves even if caught as prosecutors are protected by immunity.

The legal system attempts to protect against wrongful conviction of innocent men and women by establishing rules that require prosecutors to disclose any deals or agreements made to these parasitic jailhouse snitches so that when they do testify the jury will know that they have an interest and substantial incentive to testify against another inmate.

By law, the State must fully disclose all promises or deals made to any witness in exchange for their cooperation to the defense counsel. Thus, when a jailhouse snitch does testify the defendant's lawyer can then subject the snitch to cross-examination and expose his personal motivations for testifying against another inmate.

As stated, most of these jailhouse snitches are actually career criminals themselves, and they have no problem falsely claiming another inmate confessed to them – it's not like truth means a lot to a burnt out junky and career criminal out to save his own pathetic butt. If this snitch is actually testifying only because he (or she) stands to personally gain by turning snitch, then certainly the jury needs to know that before they can weigh the credibility of that crucial testimony.

But once again we see that the legal system itself is so inherently corrupt that now it is revealed that the judges themselves are secretly collaborating with State prosecutors **to deliberately conceal** deals made to snitches in criminal cases, intentionally hiding crucial information from the jury.

In an investigation conducted by the Miami Herald a few months ago, it was discovered that the Miami-Dade and Broward County Courts were working **secretly** with local prosecutors to fabricate false records to protect snitches. (Please read, "Dockets doctored to shield snitches," Miami Herald, November 18, 2006). This investigation only looked into court records in Miami-Dade and Broward Counties – but what of Florida's other 65 counties? If those records are deliberately concealed, then how can it be determined just how widespread this practice is?

Incredibly, the judges and State prosecutors caught collaborating together to fabricate these false records to protect snitches now claim that their conduct is justified as it actually serves a public interest to conceal the truth.

But what of those wrongfully convicted and even condemned to death because of the use of false testimony provided by a

jailhouse snitch only because he was secretly awarded a deal for his “cooperation?” The truth is that there are literally **hundreds** of men and women presently on death row today because of testimony provided by a jailhouse snitch, an experienced criminal – who was rewarded for that testimony with favorable treatment in exchange for his “cooperation.” This favorable treatment has enabled may a career criminal to continue his criminal career and even end up back in jail numerous times to snitch and do it all over again and again.

How can it ever be within the public’s interest for the courts and the prosecutor to secretly collaborate together to conceal the very evidence necessary for exposing the truth and prevent an innocent person from being wrongfully convicted and often even condemned to death? If a jailhouse snitch’s testimony is for all purposes being bought and paid for by the State, then shouldn’t the jury know this so they can consider that when weighing the credibility of that snitches own self-serving testimony **before** possibly convicting an innocent person?

Consider this, too – almost without exception these parasitic jailhouse snitches are themselves career criminals, knowledgeable in how to manipulate the legal system to their own advantage. They **know** that by giving the State a bigger fish they will be rewarded with a substantially reduction in their own sentence, or even have their own charges dropped altogether, then are released back on the streets to then continue their own criminal career.

By “playing” the system these snitches know that they have been granted what amounts to **complete immunity to commit more crimes** often even violent crimes – as even if arrested again and again they are protected by prosecutors and need only to find another innocent victim to turn upon in the jail to again buy their own freedom. In **many** cases jailhouse snitches have actually repeated this cycle **many** times over, which begs the question... how can it ever be in the public’s interest to release a career criminal back on to the streets with what amounts to complete

immunity to commit more crimes and continue his own criminal career?

The real tragedy here is that the general public still continues to conveniently ignore the truth... Our contemporary judicial system is inherently corrupt and the corruption comes from **within** the system itself. Truth and justice no longer matter, as prosecutors today are politicians who climb their career ladders by winning convictions **by any means necessary**, and ethical constraint is a career liability.

Today's judicial system **accepts** and even embraces that it is all right if a few innocent men and women are wrongfully convicted and even condemned to death. But maybe they wouldn't see it that way if it were them (or their own child) who became a victim of today's corrupt judicial system.

### **DOES DNA CONDEMN THE INNOCENT?**

This past week the media reported that according to the Innocence Project, the 200th person has now been exonerated by DNA evidence. This sobering milestone was reached when [Jerry Miller](#), a now 48-year old former Army cook was proven innocent by DNA. Evidence from a brutal kidnapping and rape that took place in Chicago in September of 1981 had sent Miller to prison. The victim never identified Miller as her assailant but two parking lot attendants did identify him.

Miller spent 25 years in several Illinois prisons insisting he was innocent before recently being paroled. Through these many years Miller filed numerous appeals challenging the validity of his wrongful convictions; to no avail. With no appeals left, about ten years ago Miller sought out the assistance of the New York based Innocence Project, co-founded in 1992 by renowned Attorney Barry Scheck. Agreeing to take the case, Miller was released from prison on parole before the DNA testing was completed. Last week the Cook County Court granted a motion vacating Miller's convictions and legally exonerating him.



But with all the attention focused on DNA testing, has exoneration by DNA evidence now become the new litmus test for proving innocence? If so, then could it be that DNA is now actually condemning more innocent people than it is exonerating? Through the past 30 years over 125 men and women have been legally exonerated and released from death row; after being found to have been wrongfully convicted and condemned to death. Of that number, only a handful, were exonerated by DNA evidence.

Of the 200 exonerations through DNA evidence, 54 of those were convicted of murder – with less than 10 also wrongfully sentenced to death. Like in the Miller case, the leading cause of the wrongful conviction was mistaken identity, followed closely by faulty scientific evidence. False confessions accounted for only about 25 percent.

There is no question that DNA testing has proven to be a valuable tool in exonerating the innocent. In fact, the very first criminal case in which DNA testing was used in an attempt to prove guilt actually resulted in an unexpected exoneration. The story of how DNA testing came to be utilized in criminal cases begins in Leicestershire, England. In November 1983 a local 15-year old Lynda Mann was raped and strangled to death with her body callously discarded in a field not far from her home. Although the local community searched for the killer, the case went unsolved.

Then almost three years later in August 1986 the body of another 15-year old girl (Dawn Ashworth) was found – she too had been raped and strangled in a manner remarkably similar to Lynda Mann. An investigation led local police to Richard Buckland, a porter at a nearby hospital. Buckland soon confessed to the Ashworth murder, but given the similarities and proximity of the earlier murder of Lynda Mann the police felt that Buckland had to also be responsible for that murder.

Anxious to close the books on both murders the police called upon Alec Jeffries, a professor at Leicestershire University, in England, who while attempting to identify the myoglobin

producing gene, which governs the tissues that carry oxygen from the blood to the muscles discovered that DNA is unique to each individual.

The English police thought this new discovery could help them prove that Richard Buckland had also murdered Lynda Mann and Professor Jeffries collected blood samples from Buckland to compare against semen recovered from both of the young victims. The results shocked both Professor Jeffries and the police – contrary to his own confession; Buckland did not commit either murder! The semen taken from both Lynda Mann and Dawn Ashworth undoubtedly did come from the same man – the same man committed both crimes – but it wasn't Buckland.

With this DNA evidence now able to identify the true killer, the police launched an extensive manhunt, collecting over 5,000 DNA samples from men living around the Leicestershire area – but no match was found, The cases seemed to be destined to remain unsolved and the killer free to kill again until the police unexpectedly received a call from an acquaintance of Ian Kelly, a baker who lived some distance from the area of the crime. He claimed that Kelly had told him that he had provided the DNA sample for a friend and information led the police to Colin Pitchfork. Pitchfork's DNA was then proven to be a match for the semen found in both victims.

Based on this evidence in January 1988 Pitchfork became the first ever person convicted based upon genetic fingerprinting and was then sentenced to life on both murders.

There can be no question that DNA's genetic fingerprinting has proven to be an invaluable tool in both identifying the guilty and exonerating the innocent. And that those who are committed to fighting for justice by using DNA to exonerate the wrongfully convicted should be commended for their work. Barry Shack and the Innocence Project, as well as the many universities that now have similar projects, have brought hope to countless victims of injustice and have successfully brought justice to at least 200.

But the problem is that the success of these numerous DNA exonerations has effectively stolen the limelight. Increasingly, because of all the attention on exonerations by DNA evidence, those who cannot prove their innocence by DNA – because it doesn't exist or was lost by the State in their case – are ignored. Most of the Innocence Projects today will not even accept cases unless there is forensic evidence that can be subjected to DNA testing. Almost without exception, those exonerated by DNA evidence were convicted of sexual assaults, yet these crimes account for only a small percentage of those wrongfully convicted.

Historically most of those exonerated after being wrongfully convicted (and even condemned to death) never had any DNA evidence to prove their innocence – does this make them less innocent? If society and the judicial system place too much dependence upon DNA to prove a person's innocence, then ultimately this dependence on DNA evidence as the litmus test of innocence will actually condemn far more innocent people than it will exonerate.

It is an unfortunate tragedy that there are very limited resources available to handle the many thousands of cases in which wrongfully convicted and even condemned prisoners allege innocence. Our judicial system generally has proven unwilling to provide legal support to the allegedly innocent and contemporary politics has resulted in Draconian procedural rules that actually make it almost impossible for a wrongfully convicted person to even argue – much less prove – his or her innocence.

Is it really fair that with all the attention on DNA and the vast majority of these limited resources available to the organization dedicated to fighting the injustices of wrongful convictions are now dedicated almost exclusively to cases where DNA evidence is an issue? What about the larger number of prisoners wrongfully convicted that do not have DNA evidence that are being deliberately ignored and forgotten?

Am I the only one troubled by the fact that in the numerous articles I read proclaiming the 200th person exonerated by DNA evidence this past week, not even one article mentioned that DNA exonerations actually account for only a small percentage of the cases in which the wrongfully convicted and condemned were subsequently exonerated and released? That in fact, DNA exonerations are almost exclusively limited to cases involving and alleged sexual assault and that of the now over 125 men and women exonerated and released from death row across the country in recent years, less than ten percent were exonerated by DNA evidence.

It is not my intent to negate the commendable job, Barry Scheck and many other dedicated lawyers associated with these Innocence Projects are doing. These are the heroes of all those wrongfully convicted. But it is my belief that they have a responsibility to remind the public that DNA exonerations are actually only the more visible tip of the proverbial iceberg and that the greater mass of wrongful convictions cannot be so easily exposed by DNA testing. Without constantly reminding the public of this undeniable truth the greater injustice will be perpetuated by the very individuals so obviously and selflessly devoted to exposing injustice, as the general public becomes fixated on DNA evidence as the litmus test of innocence. As attention becomes increasingly focused on DNA exonerations inevitably overshadowing the significantly greater number of wrongful convictions that cannot be exposed by DNA testing, then ultimately DNA will actually condemn far more innocent people than it will exonerate – and that would be the greater injustice.

## **RESURRECTION OF THE STAR CHAMBER**

Imagine being only a few feet away from the shore in a body of water way over your head – and you're drowning. Desperately you look to a crowd of people who have gathered to watch you go down and yet not a single person even attempts to throw you a rope. You struggle to tread water, but it's a losing battle and slowly you begin to sink into the cold depths and still those gathered to watch, those who could so easily save your life, just

stand there and let you go down. Your life means nothing to them – they don't care.

As a death sentenced prisoner, that's just how I feel. I'm drowning and my death means inevitable. And yet the lawyers the state pays to throw me the rope and save my life are just standing there, watching me go down. The rope is right there at their feet and all they have to do is just bend over, pick it up and throw it. But they won't. My expectations are unrealistic as in truth they don't work for me, they work for the State – the same State that wants me to die. Saving me from death is not in their interest as that would be biting the hand that feeds them.

I don't understand it and yet I've seen it too many times. When it comes to the death penalty, who lives and who dies is not decided upon the nature of the crime allegedly committed, but upon the quality of legal representation the condemned is provided. However, the State doesn't play fair – they deliberately stack the deck by creating obstructions to prevent appointed legal counsel from too “zealously” representing their clients – and the lawyers play along as they adopt the Marxist philosophy that the good of the many outweigh the good of any one man.

Even the innocent are expendable when it comes to the politics of death. But my innocence is irrelevant and the US Supreme Court has already proclaimed that the US Constitution does not prohibit the State from putting a person to death simply because they are innocent *Herrera v. Collins* (1993)

For the reason my only chance to avoid being executed in spite of my innocence is to present material “new evidence” that sufficiently “undermines confidence in the verdict,” thereby establishing the foundation upon which the courts can grant a new trial by throwing out the wrongful conviction.

But specifically in our politically corrupted courts this is a very difficult thing to do, especially when the evidence used to convict you was wholly circumstantial – meaning there never was any eyewitness, or physical or forensic evidence, or confessions.

Although the US Supreme Court does recognize a “fundamental miscarriage of justice” exception to politically manufactured and statutorily created procedural bars that would allow the litigation of a successive post conviction appeal, this exception requires the condemned prisoner to first produce “reliable new evidence” such as scientific evidence (DNA evidence) or other physical evidence substantiating innocence. See *House v. Bell*, 547 US 518 (2006)

The problem is that if there never was an eyewitness, or physical, or forensic evidence to begin with then how could it even be possible to produce this type of evidence? The fact of the matter is that the less evidence there was to convince a jury to convict you, the easier it is to execute you. How does that even make any sense?

Anyone who might doubt that the innocent ARE being executed should consider the words of now retired former Florida Supreme Court Chief Justice Gerald Kogan, who had public ally stated that: “And there is no question in my mind, and I can tell you this having seen the dynamics of our criminal justice system over the many years....that convinces me that we certainly have, in the past, executed those people who never didn’t fit the criteria for execution in the State of Florida, or who – in fact – were not guilty of the crime for which they have been executed”

The irony of all this is that the vast majority of people out there believe that the courts thoroughly review every capital conviction specifically to ensure that the person actually is guilty of the crime before they are executed. That simply is not true. The courts actually are legally restricted to review only the specific claims raised on appeal as presented by appointed legal counsel. A free-standing claim of innocence cannot even be raised on appeal, as innocence in itself is simply irrelevant.

The entire appeal process is governed by a complete set of procedural rules that prohibit legal counsel from raising claims unless they deal with the alleged deprivation of a specific right that arguably deprived the “convicted killer” of a “fair trial” See,

as the US Supreme Court explicitly states in *Herrera v. Collins*, 506 US 390 (1993) in America, you have the constitutional right to a “fair trial” but you do not have a constitutional right to be protected from execution simply because you are innocent.

This is where the complexity - and the insanity – of the capital post conviction appeal process really takes its toll. Because of the politics of death, over the years pro-death penalty politicians and judges have created a complex maze of rules that govern death penalty appeals. By arguing the need “to expedite the finality” of capital convictions so that the sentences of death imposed upon the condemned can be carried out without “unnecessary delay” these pro-death penalty advocates have created procedural rules that because of their complexity the condemned prisoner cannot possibly attempt to pursue his own appeals and must depend upon legal counsel to do so.

But in numerous cases the US Supreme Court has declared that there is no right to legal counsel in capital (death-sentence) post conviction appeals. See, *Murray v. Giarratano*, 492 US 1, (1989), recently reaffirmed in *Lawrence v. Florida*, 549 US 327 (2007.)

Here in Florida, this created a problem. After the death penalty was re-instated in Florida in 1974 and found to be “constitutional” in *Proffitt v. Florida*, 428 US 242 (1976) Florida was once again cleared to crank up its killing machine and in 1979 Florida became the first state to put a person to death (John Spenkellink) against his will. In the years that followed, beginning with the execution of Robert Sullivan in the late 1983, Florida then took the lead in the number of executions it carried out – back then (1983-1986) not even Texas could keep up with Florida. But then Florida reached a bottleneck. During these dark days of cranking up “ole Sparky” a small group of volunteers (Susan Carey, Charlotte Holdman etc) worked diligently to recruit lawyers willing to represent the growing death row population. But as the number of death sentenced prisoners steadily increased, there simply were not enough lawyers willing to volunteer to represent them – and yet then Governor Robert Graham kept pushing for more executions.

Under the law that existed at the time; see *Graham v. State*, 372 so 2d 1365 (Fla. 1979), although there was no constitutional right to appointment of post conviction counsel in capital cases, the Florida Supreme Court ruled that “due process” (a constitutional right governed by the concept of “fundamental fairness”) required the courts to appoint legal counsel “ when a prisoner filed a substantially meritorious post conviction motion and a hearing on the motion was potentially so complex that the assistance of council was needed”.

By 1984 the Florida Supreme Court was compelled to begin composing “stays of execution” to stop the execution of those who did not have legal counsel. Politically, this did not look good for governor Graham and then Florida Attorney General Jim Smith, so they got together to talk about what could be done to provide legal representation to the condemned so that they could continue carrying out more executions.

As this umbrella of politically influenced circumstances came together, both governor Graham and Attorney General Jim Smith proposed establishing a state-funded agency that would be responsible for doing nothing but representing the condemned, sort of like a ‘public defenders’ office.

By mid 1985 this state-funded agency came to exist as “Capital Collateral Representatives”. A small group of dedicated lawyers (director Larry Spalding, along with a staff of three lawyers) were hired to run it. At first, to avoid any appearance of politically motivated conflict, the State allowed this small staff of lawyers free reign to manage the office, but as these original “CCR” lawyers proved very effective at aggressively representing the condemned and executions in Florida came to a sudden stop, the very politicians that originally advocated for the creation of this state-funded agency believing that it would serve to expedite more executions now began seeing it as an obstruction.

In 1986 pro-death penalty Republican Robert Martinez became governor in Florida and quickly adopted an insidious plan to



circumvent the effectiveness of this “CCR” office. His policy was to simply sign numerous “death warrants” so that the minimally funded and staffed “CCR” office would be overwhelmed and rendered ineffective. Once again the rate of executions in Florida picked up.

But the pro-death penalty politicians in Florida’s capital were now at open war with the rag-tag band of “idealists” who fought to prevent any executions. A then relatively new Republican politician by the name of “Chain gang Charlie” Crist led the political fight against this state-created “CCR” agency. As the years passed “Chain gang Charlie” built his political career feeding off the blood-lust lynch mob frenzy of the pro-death penalty advocates and eventually rode that wave all the way up the political ladder to where he is now – Florida’s elected governor.

With mounting political pressure, the original “CCR” director Larry Spalding was metaphorically tarred and feathered, and run out of town. By law, the governor was responsible for appointing a new director but could not so obviously appoint anyone too pro-death penalty for fear that to do so would create a legal challenge due to conflict of interest.

As the years passed this “CCR” office continued to fight the fight, but increasingly it was losing a battle. The agency was completely dependent upon state-funding and the pro-death penalty politicians increasingly invented new ways to limit their allotted budget as a means of choking off the lawyers’ ability to adequately represent the condemned clients. See *Spalding v. Duggar*, 526 So 2d 71 (Fla, 1988); *State ex rel Butterworth v. Kenny*, 714 So 2d 404 (Fla 1998); *Arabalaez v. Butterworth*, 738 So 2d 326 (Fla. 1999), etc.

In 1992 the Florida Supreme Court joined the political battle to restrain the lawyers assigned to represent the condemned and created the “Supreme Court Committee on Post Conviction Relief in Capital Cases”. The specific purpose of this committee was to identify and eliminate the causes of delay in executing

those condemned to death. Consistent with this politically motivated agenda, the Florida Supreme Court formally adopted new rules governing capital post conviction appeals, and imposed a strict time limit for filing these capital appeals – one year if the condemned prisoners post conviction was not filed within that one year after the conviction became “final”, then the entire post conviction appeal was automatically “procedurally barred” and lost forever.

Because of the political interference, increasingly the lawyers responsible for representing the condemned were performing inadequately. Largely in part because of inadequate funding the Attorneys did not fully develop and present the post conviction claims that should have been raised. As a result numerous death sentenced prisoners began to argue that the constitutionally protected right to “meaningful” post conviction review was being circumvented by the “ineffectiveness” of appointed post conviction counsel.

The argument that a death sentenced prisoner might be entitled to pursue a whole new post conviction appeal if he could establish that the lawyer the State provided did not provide reasonably competent representation and failed to raise claims that should have been raised suddenly threatened to undermine the pro-death penalty political efforts to expedite executions. Suddenly the statutorily created “right” to post conviction counsel arguably opened the door to the State being responsible if that appointed counsel failed to provide adequate representation.

The Florida Supreme Court knew that to recognize this argument would open the door to a virtual flood of new post conviction appeals, which would undoubtedly agitate the powerful pro-death penalty politicians. That simply could not happen. In this author’s own case, the Florida Supreme Court ruled that claims that appointed post conviction counsel failed to provide ‘competent’ representation were not cognizable as there was no constitutional right to post conviction counsel in the first place, thus there could be no protected constitutional right to receive competent post conviction representation. *Lambrix v. State* 698 So2d 247 (Fla.

1996)

In plain English that means that the State of Florida only wanted to establish the pretense of post conviction representation – NOT the actual privilege of competent representation. In other words, the Florida Supreme Court decided that as long as they assign a lawyer to the case they have fulfilled any obligation – if by chance that lawyer proves to be completely incompetent, well – too bad.

Not surprisingly it didn't take long after this absurd, politically motivated ruling for the pro-death penalty politicians and judges to invent yet another way to obstruct death-sentenced prisoner's ability to pursue meaningful review of capital convictions. Once again under the fictitious pretense of preserving the "fairness" of this corrupt process, and only after yet another politically motivated "commission" empanelled to find new ways to expedite executions "recommended" restructuring the state funded "CCR" office, the predominantly pro-death penalty Florida legislature rewrote Florida statistics, chapter 27 to "break up" the "CCR" office, and in its place create three separate "regional" offices.

These offices became known as "Capital Collateral Regional Counsel." The North Florida office was known as "CCR-North," the central Florida office as "CCR- Middle" and the southern Florida office was referred to as "CCR-South." By law the Governor was responsible for appointing the director to each of these regional offices, and each director was obligated to answer to the newly created "Commission on Capital Cases" which is overseen by a board of directors comprised of – not surprisingly – pro-death penalty politicians. These changes brought with it a complete collapse of confidence in these state funded agency's commitment to adequately and effectively provide post conviction representation. In all fairness, a number of lawyers previously employed by the original "CCR" office continued working in the regional offices and did all they could to provide adequate representation – but not without political consequences.

Systematically the “old school” lawyers who continued to aggressively represent Florida’s death sentenced prisoners were run out of the office, often deliberately replaced by former prosecutors and completely inexperienced lawyers. Increasingly the condemned prisoners sought to have these lawyers discharged due to incompetence, or even try to raise the necessary legal issues themselves (what is known as “pro se” filings.)

But once again the arrogance of those so deliberately determined to corrupt the process in the interest of circumventing meaningful post conviction review rose to a whole new level when the pro-death penalty politicians became angry and even incensed when the CCRC-North office (under the direction of Michael Reiter) dared to successfully appeal numerous capital convictions, resulting in the Florida Supreme Court being compelled to throw out at least three condemned prisoners appeals (Barry Hoffman, Michael Mordenti and James Floyd) and two others were thrown out in the lower courts (Juan Melendez and Rudy Holton). All of these convictions were thrown out because of prosecutorial misconduct used to wrongfully convict them. Juan Melendez, Rudy Holton and Michael Mordenti were all set free, while both Barry Hoffman and James Floyd “pled out” to lesser sentences. All five could now not be executed. Suddenly these rabid pro-death penalty politicians controlling the state funded offices responsible for representing Florida’s condemned were (metaphorically) foaming at the mouth – how dare these lawyers actually win these appeals, setting these “convicted killers” free! (so what if they were innocent!) Within months these politicians came up with yet another way to keep these lawyers in check – in blatant, politically motivated retaliation, these politicians abruptly eliminated the state funding for the CCRC –North Office, and closed it down. (This office had won these appeals.)

The political message was loud and clear – the lawyers employed by the State to provide post conviction representation to Florida’s condemned prisoners were not hired to provide competent representation, but rather only the pretense of representation if any of these lawyers dared to too aggressively represent their

condemned clients they would find themselves unemployed. It was as simple as that.

Among the condemned prisoners, the knowledge that these lawyers were providing nothing more than a pretense of representation became only too clear in a desperate attempt to protect their own interests. Those death row inmates that could began to file “pro se” supplemental appeals, arguing in these hand written legal “briefs” that their appointed post conviction counsel was not providing adequate representation, and thus they attempted to raise the arguments themselves.

But once again the Florida Supreme Court acted with deliberate indifference to protect the politically corrupted capital post conviction process. Confronted with these “pro se” actions, the Florida Supreme Court literally invented a judicially created rule that specifically prohibits any prisoner from filing a pro se action if they are represented by legal counsel. *Logan v. State*, 846 So2d 472 (Fla. 2003) Although *Logan v. State* actually was not a capital case involving a death sentenced prisoner, immediately the Florida Supreme Court began to aggressively apply this “Logan” rule to any pro se action submitted to the courts by death sentenced prisoners. See, *Lambrix v. State*, 900 So2d 553 (Fla. 2005), *Lambrix v. State* So2d (Fla. 2007) (Fla. Sct Case \*SC06-0038)

Numerous death-sentenced prisoners, including myself, then moved to have these “CCRC” lawyers removed so that the necessary supplemental actions could be filed – only to have the Florida Supreme Court then apply the rule to automatically dismiss and strike these motions to discharge counsel. Incredibly, the Florida Supreme Court has now adopted the policy and practice of refusing to allow Florida’s death sentenced prisoners to discharge these “CCRC” lawyers, leaving death sentenced prisoners in Florida with virtually no means of protecting against the incompetence of appointed counsel, thus accomplishing a complete pretense of representation.

To illustrate this complete deprivation of the most basic concept of fundamental fairness I would encourage you to read in its entirety the action entitled “Petition for Declaratory and/or exercise of All-Writs,” which can be easily reviewed at [www.southerninjustice.com/collateral-actions/](http://www.southerninjustice.com/collateral-actions/) In this comprehensive petition, I specifically attempted to argue that the Constitution’s “Due Process” clause that governs the concept of “fundamental fairness” requires judicial recognition of protection against incompetence by appointed post conviction counsel before the Incompetence results in the irreparable deprivation of meaningful post conviction review. Quite simply put, that the basic concept of fairness requires that the courts provide some means in which to allow death-sentences prisoners to fully present their post conviction appellate “claims” if appointed counsel is not doing so.

But once again I underestimated the pervasive political corruption within the Florida Supreme Court, naively believing that I could appeal to their sense of moral conscience, and compel the court to do what was right.

On March 11, 2009 the Florida Supreme Court ordered that my pro se Petition for Declaratory Judgment was an unauthorized pleading under Logan v. State, and ordered that this petition be stricken from the record.

As if that was not enough, I have now been informed that if I do continue to file any further legal actions attempting to challenge the competency of the CCRC counsel the State has appointed to represent me, that under Florida law I can and will be subjected to “disciplinary actions at the hands of prison officials under the pretense that since any and all pro se actions are now prohibited under this draconian “Logan” rule, any further filings will be deemed “frivolous.”

What this means is that the Florida Supreme Court has now decided that to shut me up they will instruct the prison officials to subject me to inter-departmental disciplinary actions, which will result in me being placed in “disciplinary confinement” with a complete loss of any privileges (TV, radio, visits, canteen, reading/writing material, etc) for a period of 30 days each time I attempt to file any further action. Additionally, since I would have to mail any such action to the court, I would also be disciplined for “improper use of the mail” and will be subjected to suspension of all “mail privileges” (and contact/communication with the outside world) for up to 6 months for each alleged infraction.

This brings us to the complete resurrection of the infamous “Star Chamber!” By this I do not mean the Hollywood movie starring Michael Douglas as a corrupt judge who moonlights as a vigilante, stalking and killing those who have escaped justice by some legal technicality. Rather, I am referring to the infamous quasi-judicial tribunal that existed in England in the 16th century. In *Faretta v. California*, 422 U.S. 806, 821 - 23 (1975) a far more “liberal” US Supreme Court used the historical example of this draconian “Star Chamber” to conclude that a criminal’s right to address the court in person is fundamental, and cannot be denied. As the Supreme Court fully explained:

“In the long history of the British jurisprudence there was only one tribunal that ever adopted a practice of forcing counsel upon an unwilling defendant in a criminal proceeding. The tribunal was the Star Chamber, that curious institution which flourished in the late 16th and 17th centuries, was of mixed executive and judicial character, and characteristically departed from common law traditions. For those reasons and because it specialized in trying “political” defenses, the Star Chamber has for centuries symbolized disregard for basic, individual rights. The Star Chamber not merely allowed, but required defendants to have counsel. The defendant’s answer to an indictment was not accepted unless it was signed by counsel. When counsel refused to sign the answer, for whatever reason, the defendant was considered to have confessed (See, J.Stephen, “A history of the

criminal law in England”, 341-42) (1883) As Stephen commented on this procedure, “There is something especially repugnant to justice in using rules of practice in such a manner as to debar a prisoner from defending himself, especially when the object of the rules so used is to provide for his defense.”

Most people out there do not realize just how pathetically corrupt the death penalty process in America is. It’s no wonder that those most familiar with our judicial system such as former Florida Supreme Court Chief Justice Gerald Kogan publicly admit that Florida has, and will continue to, execute innocent men and women.

Florida has deliberately re-created this infamous “Star Chamber”. There is no criminal penalty more “political” than capital punishment. Just as in England’s “star chamber”, the State of Florida has established a system of legal representation that is virtually controlled by pro-death penalty politicians who openly and intentionally manipulate the lawyers employed to represent these sentenced to death, so that these lawyers provide nothing more than a pretense of representation.

As with the “star chamber”, these lawyers cannot be discharged no matter how incompetent they might be, and by law (Florida Statutes, Ch 27) they are prohibited from pursuing or raising any defense not specifically authorized under these statutory provisions. Like the infamous “star chamber”, these lawyers can be subjected to severe consequences if they attempt to prevent an unauthorized appeal, including the suspension of their license to practice law, thus depriving them of their livelihood.

Finally, just as with the Star Chamber, through the adoption of fundamentally unfair judicially created rules, the courts will only accept pleadings specifically filed by appointed counsel, and if such counsel screws up and fails to adequately present the appointed counsel, the condemned prisoner is prohibited from presenting the claims to the Florida courts himself, and ultimately will be put to death.



Bottom line – only the defense authorized by the State, and presented by the State controlled legal counsel are allowed. But this is not new – this has been going on for years, and yet not a single lawyer or organization has challenged this system.

You see, I don't blame the pro-death penalty politicians and judges who openly use their political powers to manipulate and corrupt the process in their own agenda to expedite more executions even if it means putting innocent people to death. They are what they are, as that is their nature. They have no moral conscience. Rather, the ones truly responsible for the continued existence of such a blatantly corrupt system are the lawyers who represent the condemned prisoners. For the most part, they have sold out – they have become cowards, willing to stand by and watch their client drown yet unwilling to simply pick up the rope and throw it in before their client goes under.

In have no doubt that the State paid and State controlled lawyers appointed to provide for my legal representation are fully aware that the manner in which my post conviction appeals have been, and continue to be, handled is “fundamentally unfair” and this corrupt process could be challenged in Federal Court – but these lawyers are not willing to pursue any action that might offend the political powers that control these state-funded offices, as they know that to do so will undoubtedly result in the office losing its funding. I suppose when it comes down to it, it is better to be paid to throw your client to the wolves than not be paid at all.

As I have previously quoted in other articles, as Abraham Lincoln so well said “Evil can only triumph when good men choose to do nothing”. I will continue to try to tread water as long as I can, but I know that ultimately it may very well be my fate to succumb into the dark, cold depths as those I must trust to save me stand idly by, watching as I sink deeper and deeper. If that is to be my inevitable fate, then I have but one final question to ask...to paraphrase the words that the father of democracy, the philosopher Socrates, once spoke to the corrupt tribunal that condemned him to die..... “to which of us go the worst fate – you or I?”

## **THE NEW FACE OF BIGOTRY**

There is an insidious epidemic of injustice in America, a malignant plague of moral and ethical corruption that is eating away at the integrity of our judicial system from within, undermining any confidence our society can have in our judicial system itself.

Is our contemporary use of capital punishment being maliciously exploited by the new face of bigotry as morally and ethically corrupt prosecutors and judges deliberately manipulate the judicial system to convict and condemn innocent men and women for no other purpose but to unscrupulously advance their own political agendas? Are the poor and underprivileged now the new faces of victims of morally intolerable discrimination, especially in the Deep South, as these politically ambitious parasites willfully send innocent men and women to death row, condemning them not because they are guilty of a crime, but because of their inability to defend against the charges?

In recent years over 125 men and women have been exonerated and released from death rows across the country after being found by the courts to have been wrongfully convicted and condemned to death. What do virtually all of these victims of injustice have in common? Every one of these men and women were poor and underprivileged, financially incapable of defending against the relatively infinite resources of the State. How many of these victims of the ultimate injustice were deliberately targeted for prosecution not because of a good faith belief in their guilt, but because of their impoverished status; they were easy to convict in spite of innocence?

The undeniable truth is that there are two distinct systems of law and justice in this country – there is justice for the rich and there is justice for the poor. When it comes to “justice” in America, you get what you pay for. On one hand we watch as those of wealth and privilege accused of horrific crimes buy their justice with multi-million dollar “dream team” defenses while at the opposite extreme we consistently see the poor and

underprivileged being victimized by a judicial system that has grown increasingly indifferent, even openly hostile, to the basic concepts of fundamental fairness and equality of all men before our Courts of Law.

Even if unquestionably guilty (much less actually innocent!) those of wealth and privilege as never condemned to death. In our system in which justice is supposedly “blind,” it certainly recognizes the smell of money as capital punishment in America is reserved exclusively for the *lumpenproletariats* of our society – the lowest of low, only the poor and underprivileged.

What is the difference between racial prejudice and socio-economical prejudice? As a progressively maturing society we have grown justifiably intolerant of racial prejudice, recognizing bigotry for the morally destructive malignancy that it is. Where once in the not so distant past our Courts even found slavery to be constitutional, today our contemporary judicial system rightfully – if not obviously belatedly – recognizes as a matter of moral conscience and judicial integrity a contempt for racially motivated injustices.

But has our seemingly inherent need to hate actually only evolved into a less visible but equally insidious means of practicing discrimination by now embracing a socio-economical bias in our administration of justice, which invites unethical prosecutors to deliberately target the poor and underprivileged and unjustly convict, and even condemn them to death, in spite of innocence?

The administration of “justice” is defined as the action, or principle, of treating all persons equally and fairly in accordance with the law. Constitutional due process demands the preservation and practice of equality and fairness within our judicial system. Ultimately, any society is not judged by the privileges afforded those of wealth, but by the protections provided to the very least of society against the arbitrary and unfair actions of government.

When our judicial system cannot – or will not – protect the very least if our citizens against prejudicially motivated injustices resulting in the unconscionably high rate of wrongfully convicted and condemned men and women as evidenced by a consistent, self-evident pattern of socio-economical bias, then that intolerable deprivation of equality under the law constitutes a pervasive moral corruption that will inevitably eat away at the very soul of our society, ultimately undermining the fundamental foundation upon which our democracy remains precariously balanced.

### **Does Innocence Really Even Matter?**

What if you are the deliberate victim of an unethical, overzealous prosecutor who maliciously uses his power of office to manipulate – even fabricate—wholly circumstantial evidence with the calculated intent to have you wrongfully convicted and condemned to death in spite of your innocence? What few people realize is that our United States Supreme Court has given even corrupt prosecutors “absolute immunity” – that as long as they are acting in a prosecutorial capacity they can intentionally fabricate evidence and even conspire with and coerce witnesses to commit perjury to deliberately have an innocent man wrongfully convicted and condemned to death, and remain absolutely immune from accountability. *Imber v. Pachtman*, 424 U.S. 409 (1976)

There is a common misconception that after a person is convicted and condemned to death every capital case is thoroughly reviewed by the appellate courts to ensure specifically that the person is actually guilty of the alleged crime. That is absolutely not true! By law, the courts are only authorized to review specifically raised claims of alleged error. The burden is upon the condemned to prove that error was sufficient enough to have resulted in the deprivation of a “fair trial.” A claim of actual innocence by itself cannot be raised or reviewed as our Supreme Court has unequivocally declared that our Constitution only guarantees a “fair trial” – it does not prohibit the States from

executing an innocent person. *Herrera v. Collins*, 506 U.S. 390 (1993)

If you are wrongfully convicted and condemned to death for a crime you are innocent of – even if God himself and a council of twelve archangels were to miraculously appear before the Supreme Court to attest your actual innocence – the Courts are legally prohibited from vacating that conviction merely because you are innocent.

The entire system of appellate review is inherently dependent upon the condemned prisoner receiving competent legal representation not only at trial, but throughout the entire post conviction review process as any claims of alleged error must be properly – and timely – presented to the courts for review. Any failure to fully comply with the myriad of technically complex rules applicable to capital appellate review results in strictly enforced procedural defaults that prohibit a court from reviewing that alleged error; *Coleman v. Thompson*, 501 U.S. 722 (1991). Even when newly discovered evidence conclusively proving your actual innocence is not properly raised by competent legal counsel within applicable time limitations the courts are prohibited from reviewing the evidence.

Since only the poor and underprivileged are sentenced to death, once a person is wrongfully convicted and condemned to death for a crime they are innocent of, they become entirely dependent upon the system to provide them with the legal representation necessary to raise their claims of alleged error. However, the Supreme Court has declared that indigent death sentenced prisoner do not have any right to appointment of legal counsel once a conviction has been affirmed on initial review. In fact, the Court held that a condemned prisoner has no right to legal representation at all in post conviction proceedings. *Murray v. Giarratano*, 402 U.S. 1 (1988).

Most States accept that they cannot “morally” carry out an execution unless the condemned prisoner is technically represented by legal counsel; so the States create politically

controlled agencies to represent the condemned (See, “A Matter of Law and Death,” St. Petersburg Times, April 10, 2006) which then arguably by deliberate intent and design appoint inexperienced and even pathetically incompetent lawyers. Intentionally reducing post conviction review to nothing more than a pathetically superficial pretense with the objective of expediting executions by circumventing meaningful review of capital convictions.

Does innocence really even matter? No, innocence is not even a legitimate legal issue once you’ve been wrongfully convicted and condemned to death. As our U.S. Supreme Court plainly said, our Constitution—our American judicial system – does not prohibit the conviction and subsequent execution of an innocent person.

### **WHERE DO WE DRAW THE LINE OF MORAL RESPONSIBILITY?**

Not so long ago there was a story about a woman who was being brutally beaten and presumably robbed on the streets of New York City as countless people walked by ~ not one stopped to help, or even protest what was going on. The media responded with moral outrage at the deliberate indifference of those that could have helped, but chose not to. Most of those that read this story ~ certainly not the first one of its type ~ felt shame and even sadness at this latest example of the cold and callous society we have become. As a matter of moral conscience, how could we witness such an act and not at least try to help?

Can you imagine how that poor woman must have felt as one after another walked by turning their heads away ~ maybe even hanging their heads in shame? I would think that in that moment she felt so alone and abandoned, even betrayed by those that silently walked by. I can only imagine the depth of her despair as she desperately cried out for help only to be so deliberately ignored.

Most of us would like to think we are “Good Samaritans” and that in identical circumstances we would have intervened and

stopped that brutal assault. Yet for all of this self-bravado and pretense of moral outrage towards those that refused to intervene and stop that injustice; are we not all equally guilty of the very same thing? When it comes down to it, just where do we draw the line of moral responsibility for acts of injustice that are happening around us? Perhaps it has become our nature, and what we have evolved into as a society; to simply ignore the world around us and silently hang our heads as we just walk by.

The tragic truth is that most of us are aware of injustices occurring around us every day, and yet we do make a conscious decision not to intervene and have our own voice be heard even though we know that if we did, others might also find the strength to speak out and an injustice brought to its end.

All too often we read about a story such as this young woman in New York and for a moment anyways we feel that sense of moral outrage towards those that would just walk on by. Abraham Lincoln once said, “Evil can only hope to triumph when good men chose to do nothing.” But the paradox is that all too often we do choose to do nothing ~ we just don’t want to admit to possessing that moral weakness within ourselves. It’s just so much easier to simply look the other way ~ than throw stones at those that were more directly responsible. Doing the right thing is seldom the easiest thing to do, but at the end of the day, it’s still the right thing to do. Recently I heard it said that a man’s moral character is defined by possessing the integrity to do what is right especially when doing so is not the popular thing to do.

How many of us truly do possess that measure of moral character necessary to do what is right when we know that by doing so we might risk a backlash if retaliation ourselves? What if you spoke out against an act of violence only to become a victim yourself? Perhaps even the fear of becoming a victim itself is all it takes to intimidate us into silence and justify our own deliberate indifference. It doesn’t take much to rationalize our moral decisions when self preservation becomes an issue.

Imagine if you suddenly found yourself in the midst of a lynch mob that has already escalated itself into a rabid frenzy, intent on taking the life of an accused. All around you are those all but slobbering at their mouth, intoxicated by their own blood-thirsty hunger for vengeance and incapable of objectively weighing the question of whether the accused actually committed the crime at all.

As you stand in the crowd you find yourself being caught up in their passion, suddenly you see the face of the accused and you know with absolute certainty that he is innocent. Maybe you had seen him the night before at the time the crime was committed on the other side of town, or you knew for whatever reason that someone else had committed the crime. For whatever reason, you knew that the person about to be lynched was innocent. But what do you do?

If you stand up to defend that soon to be hung man, you know that crowd might just turn on you, too. But as a matter of moral conscience, how can you just stand by and remain silent while an innocent man is put to death?

This very scenario actually takes place only too often here in America. Although we no longer allow lynch mobs to hang the accused in a public square while mobs of blood-thirsty vigilantes scream for “justice,” our contemporary system of capital punishment is not much different today.

Today the accused must stand trial before a jury and be found guilty beyond a reasonable doubt. But all too often the jury trial itself is nothing more than a pretense, blatantly manipulated by the State – by the deliberate fabrication of evidence and coercion of false testimony. Truth and justice become irrelevant as overzealous politically ambitious prosecutors manipulate the process to win by any means necessary.

Once wrongfully convicted and condemned to death in spite of innocence, the insidious “politics of death” make it all but impossible for those of moral conscience to stand up and contest



the verdict. Although we have become far more subtle and arguably even more “civilized” ~ at least at a superficial level ~ the result remains the same... it is far more important that someone; anyone ~ even the innocent ~ pay for the crime than that we only convict the truly guilty. When it comes down to it, factual innocence becomes irrelevant as all that really matters is that the crime has been avenged.

Years ago here in Florida there were a series of brutal rapes and murders of young college women around the University of Florida in Gainesville. It didn't take long before the entire community was whipped into a blood-thirsty frenzy, screaming for local law enforcement to catch this cold-blooded killer and bring him to justice.

As luck would have it the investigation quickly focuses on a local college student (Humphries) who because of what others thought to be odd behavior and was an outsider, seemed like he had to be the killer. With no evidence that he actually had anything to do with these murders, Humphries was quickly arrested on “other charges” and placed in custody as the State began to build a case against him.

The local prosecutor publicly swore that justice would be served and this killer would fry in Florida's electric chair. Numerous witnesses came forward claiming that they had seen Humphries in the area around the time of the murders. A few even swore that Humphries told them that he had committed these murders. A wholly circumstantial case was being built up against him and the State was well on its way to send Humphries to death row.

But then the case took an unexpected turn. Another man proved to be a better suspect, and was already in custody on similar charges in another jurisdiction. It wasn't long before Danny Rollings confessed to the crimes, giving graphic details that only the true killer would know, then Rollings led the police to the murder weapon. Danny Rollings was formally charged, then convicted and condemned to death and subsequently executed by the State of Florida.

What if Danny Rollings didn't confess and the connection was never made? Would Florida have brought Humphries to trial and by any means necessary, connect and condemn him for these rape murders? The community would not have rested until someone was held to account and as is only too often the case the local prosecutor had political ambitions, so someone had to be convicted.

Once an innocent man or woman has been convicted and condemned to death the State never admits to even the possibility of error. Recently, in the best seller, "The Innocent Man" renowned author John Grisham told the true story of Ron Williamson, a man who was convicted and condemned to death in Oklahoma for the rape and murder of a young woman in a small Midwest town.

A number of people knew that Ron Williamson could not have been the killer, but few dared to speak up for fear of being persecuted by others in the small town who wanted someone to pay for the crime. With nothing more than specious circumstantial evidence Ron Williamson was convicted and condemned to death. For many years he then sat on Oklahoma's death "death row" awaiting his own execution until by sheer luck a lawyer stepped in and compelled testing of the evidence.

At the time Williamson was originally tried, DNA testing was not yet available. But now it could be – the tests came back *proving conclusively* that Ron Williamson was not the one who had committed the crime. But even with this conclusive evidence, the local prosecutor refused to accept that Williamson was innocent. The State of Oklahoma fought to uphold Williamson's conviction, even disingenuously arguing now that perhaps Williamson had another accomplice. In the end Williamson was released, but died of "natural causes not long after."

A similar case here in Florida involved a black man, Frank Lee Smith, who was convicted and condemned to death for the rape and murder of an 8 year old girl in Broward County, Florida. The entire case was wholly circumstantial evidence and Frank Smith

adamantly swore he was innocent. But a witness testified to seeing Smith in front of the house where the young girl's body was found. The local prosecutor convinced the jury "beyond reasonable doubt" that Frank Smith was the killer, and Smith was convicted and condemned to death.

As in the Williamson case, DNA testing was not available when Frank Smith originally stood trial. Smith spent almost a full decade on Florida's death row insisting on his innocence as one court after another denied his appeals. It seemed almost certain Frank Smith would surely be executed.

Then his court appointed lawyers heard that the police had arrested another black man with a mental history on very similar crimes committed in the same area around the same time, and that this man had even confessed to committing the murder that sent Frank Smith to death row.

Based upon this newly discovered evidence, Smith's lawyers moved for DNA testing of the forensic evidence recovered at the scene, but the State pulled out all stops to fight against having this DNA evidence tested. As is only too common in these capital cases the State's main argument was that because Frank Smith's conviction was already upheld repeatedly by the courts, and further review must be procedurally barred and "justice" demanded that Frank Smith be executed.

For 9 years the State fought tooth and nail to prevent Smith's lawyer from conducting these DNA tests, but ultimately the tests were done and the results proved beyond any reasonable doubt that Frank Smith was actually innocent – and that the other man who had confessed to committing this crime did actually commit it.

Once again even confronted with conclusive proof of innocence, the State refused to admit even the possibility of error. Tragically, only months before the DNA tests were finally released Frank Smith died of Cancer while still on Florida's death row – justice would never prevail for Frank Lee Smith.

Florida, by far, substantially leads the entire country in the number of men and women who have been wrongfully convicted and condemned to death. In recent years, *at least* 26 men and women have been exonerated and released by the courts after spending years, even decades on Florida's death row. *Not even once* has the State of Florida admitted that an innocent man or woman was wrongfully convicted and condemned to death – not even when the overwhelming evidence proved their innocence.

According to numerous independent studies, the State of Florida has also actually executed several innocent men in recent years. In fact the recently retired Chief Justice of the Florida Supreme Court, Gerald Kogan, has now publically admitted that Florida has executed innocent men. As Chief Justice Kogan stated:

*“There is no question in my mind, and I can tell you this having seen the dynamics of our criminal justice system over the many years... that convinces me that we certainly have, in the past, executed those people who either didn't fit the criteria for execution in the State of Florida, or who in fact, were factually not guilty of the crimes for which they have been executed.”*

When the evidence overwhelmingly shows that the State of Florida simply cannot be trusted to protect the innocent from being deliberately put to death for a crime they did not commit, then who does that leave to protect the innocent?

Regardless of what our own personal position is on the death penalty, the one common ground both advocates and opponents of capital punishment stand firmly united upon is that as a matter of moral conscience it is absolutely unacceptable that our legal system allows for the execution of the innocent. Those that we entrust to administer our system must do so in a manner that protects the *integrity of the judicial process itself* by protecting against the execution of the innocent.

The pervasive “politics of death” have now corrupted our judicial process and too many of those we have empowered to administer justice have become morally and ethically corrupted by their own

politically motivated “win by any means necessary” mentality in which they deliberately perpetuate these inconceivable injustices, refusing to admit that mistakes can and do happen.

I don’t believe that anyone expects our contemporary judicial system to be perfect. Mistakes will inevitably happen and we know with absolute certainty that innocent men and women have and will continue to be, wrongfully convicted and even condemned to death for crimes that did not commit.

It is for this reason that as a matter of moral responsibility those that we trust to administer justice must possess the character and integrity to rise above the pervasive corruption of the politics of death and admit to errors when they occur so that if and when such an injustice is discovered the immeasurable trauma upon the wrongfully convicted is minimized and the integrity of the judicial process itself is preserved.

Those that so deliberately perpetuate an injustice by methodically obstructing evidence of innocence to be revealed must be exorcised from the judicial system. Prosecutors and Attorney Generals are constitutionally obligated to protect the legal rights of all citizens – even those accused of a crime. As the Courts have repeatedly recognized, it is not their job to win a conviction by any means necessary, but to exercise the power that has been entrusted upon them *to seek justice*, which includes admitting any errors that might occur and *advocating the exoneration of the innocent*.

Where do we draw the line of moral responsibility? In a constitutional democracy when the State seeks to take the life any person, they do it in our name. As individuals, we give them the power to act in our behalf, and ultimately we are responsible for how those empowered exercise that power. As Martin Luther King Jr. said, “*Injustice anywhere is a threat to justice everywhere.*”

Each of us has a moral responsibility to speak out against injustice. We each have a responsibility to hold those that would

perpetuate an injustice accountable and to force the removal from office any State lawyer or judge that abuses the power we have entrusted them with to victimize the innocent. The question is, what have you done to fulfill your own moral responsibility to fight against injustice?" Or have you chosen to turn the other way and deliberately ignore what is going on?

## **RELEASED FROM FLORIDA'S DEATH ROW**

Florida leads the US with the highest number of those released, exonerated or resentenced from death row. Something is obviously very wrong with the system in Florida. The following have been released from death row. Information from the website of Floridians for Alternatives to the Death Penalty (FADP) [http://www.fadp.org/fl\\_exonerated.html](http://www.fadp.org/fl_exonerated.html)

### **1. David Keaton Florida Conviction 1971 Charges dropped 1973**

On the basis of mistaken identification and coerced confessions, Keaton was sentenced to death for murdering an off duty deputy sheriff during a robbery. Charges were dropped and he was released after the actual killer was identified and convicted.

### **2. Wilbert Lee Florida Conviction 1963 Released 1975 AND**

### **3. Freddie Pitts Florida Conviction 1963 Released 1975**

Although no physical evidence linked them to the deaths of two white men, Lee and Pitts' guilty pleas, the testimony of an alleged eyewitness, and incompetent defense counsel led to their convictions. The men were sentenced to death but maintained their innocence. After their convictions, another man confessed to the crime, the eyewitness recanted her accusations, and the State Attorney General admitted that the State had unlawfully suppressed evidence. The men were granted a new trial but were again convicted and sentenced to death. They were released in 1975 when they received a full pardon from Governor Askew, who stated he was "sufficiently convinced that they were innocent."

### **4. Delbert Tibbs Florida Conviction 1974 Conviction overturned 1977**

Tibbs was sentenced to death for the rape of a sixteen-year-old white girl and the murder of her companion. Tibbs, a black

theological student, was convicted by an all-white jury on the testimony of the female victim whose testimony was uncorroborated and inconsistent with her first description of her assailant. The conviction was overturned by the Florida Supreme Court because the verdict was not supported by the weight of the evidence, and the State decided not to retry the case. Tibbs' former prosecutor said that the original investigation had been tainted from the beginning and that if there was a retrial, he would appear as a witness for Tibbs.

#### **5. Anibal Jarramillo Florida Conviction 1981 - Released 1982**

Jarramillo was sentenced to death for two counts of first degree murder, despite the jury's unanimous recommendation of life imprisonment. On appeal, his conviction was reversed when the Florida Supreme Court ruled the evidence used against him was not legally sufficient to support the conviction. Evidence suggests that the murderer may have been the victims' roommate.

#### **6. Anthony Brown Florida Conviction 1983 - Acquitted 1986**

Brown was convicted of first degree murder and sentenced to death despite a jury recommendation of life imprisonment. At trial, the only evidence against Brown was a co-defendant who was sentenced to life for his part in the crime. At retrial, the co-defendant admitted that his testimony at the first trial had been perjured, and Brown was acquitted.

#### **7. Joseph Green Brown Florida Conviction 1974 - Charges dropped 1987**

Charges were dropped after the 11th Circuit Court of Appeals ruled that the prosecution had knowingly allowed false testimony to be introduced at trial. Brown was convicted of first-degree murder and sentenced to death on the testimony of Ronald Floyd, a co-conspirator who claimed he heard Brown confess to the murder. Floyd later retracted and admitted his testimony was lie. Brown came within 13 hours of execution when a new trial was



ordered. Brown was released a year later when the State decided not to retry the case.

#### **8. Anthony Ray Peek Florida Conviction 1978 - Acquitted 1987**

Peek was convicted of murder and sentenced to death, despite witnesses who supported his alibi. His conviction was overturned when expert testimony concerning hair identification evidence was shown to be false. He was acquitted at his third retrial.

#### **9. Juan Ramos Florida Conviction 1983 - Acquitted 1987**

Despite a jury recommendation of life in prison, Juan Ramos was sentenced to death for rape and murder. No physical evidence linked Ramos to the victim or the scene of the crime. The Florida Supreme Court granted Ramos a new trial because of the prosecution's improper use of evidence. At retrial, Ramos was acquitted.

#### **10. Willie Brown Florida Conviction 1983 - Released 1988**

#### **11. Larry Troy Florida Conviction 1983 - Released 1988**

Brown and Troy were sentenced to death after being accused of fatally stabbing a fellow prisoner. The main witness against them was Frank Wise, whose original statements exonerated the men. Pending retrial, the charges against the men were dropped when Wise admitted that he had perjured himself.

#### **12. William Jent\* Florida Conviction 1980 - Released 1988 AND**

#### **13. Earnest Miller\* Florida Conviction 1980 - Released 1988**

These half-brothers were convicted and sentenced to death largely based on testimony of three alleged eyewitnesses. However, a re-examination of the autopsy report demonstrated

that the crime never took place the way the eyewitness's described it. When the actual time of the murder was established, it was discovered that the men had airtight alibis. In 1987 a federal district court ordered a new trial because of suppression of exculpatory evidence, and Jent and Miller were released immediately after agreeing to plead guilty to second degree murder. They repudiated their plea upon leaving the courtroom and were later awarded compensation by the Pasco County Sheriff's Department.

#### **14. Robert Cox Florida Conviction 1988 - Released 1989**

Cox was convicted and sentenced to death, despite evidence that Cox did not know the victim and no one testified that they had been seen together. In 1989, Cox was released by a unanimous decision of the Florida Supreme Court that the evidence was insufficient to support his conviction.

#### **15. James Richardson Florida Conviction 1968 - Released 1989**

Richardson was convicted and sentenced to death for the poisoning of one of his children. The prosecution argued that Richardson committed the crime to obtain insurance money, despite the fact that no such policy existed. The primary witnesses against Richardson were two jail-house snitches whom Richardson was said to have confessed to. Post-conviction investigation found that the neighbor who was caring for Richardson's children had a prior homicide conviction, and the defense provided affidavits from people to whom he had confessed. Richardson's conviction was overturned after further investigation by then-Dade County State Attorney General Janet Reno, which resulted in a new hearing.

#### **16. Bradley P. Scott Florida Conviction 1988 - Released 1991**

Scott was convicted of murder and sentenced to death. His arrest came ten years after the crime, when the evidence corroborating his alibi had been lost. Scott was convicted on the testimony of

witnesses whose identifications had been plagued with inconsistencies. On appeal, he was released by the Florida Supreme Court, which found that the evidence used to convict Scott was not sufficient to support a finding of guilt.

### **17. Sonia Jacobs Florida Conviction 1976 - Released 1992**

Jacobs and her companion, Jesse Tafero, were sentenced to death for the murder of two policemen at a highway rest stop in 1976. A third co-defendant received a life sentence after pleading guilty and testifying against Jacobs and Tafero. The jury recommended a life sentence for Jacobs, but the judge overruled the jury and imposed death. A childhood friend and filmmaker, Micki Dickoff, then became interested in her case. Jacobs's conviction was overturned on a federal writ of habeas corpus in 1992. Following the discovery that the chief prosecution witness had given contradictory statements, the prosecutor accepted a plea in which Jacobs did not admit guilt, and she was immediately released. Jesse Tafero, whose conviction was based on much of the same highly questionable evidence, had been executed in 1990 before the evidence of innocence had been uncovered.

### **18. Andrew Golden Florida Conviction 1991 - Released 1994**

Golden, a high school teacher in Florida, was convicted of murdering his wife. His conviction was overturned by the Florida Supreme Court in 1993. The court held that the State had failed to prove that the victim's death was anything but an accident. Golden was released into the waiting arms of his sons on January 6, 1994.

### **19. Robert Hayes Florida Conviction 1991 - Released 1997**

Hayes was convicted of the rape and murder of a co-worker based partly on faulty DNA evidence. The Florida Supreme Court threw out Hayes's conviction and the DNA evidence in 1995. The victim had been found clutching hairs probably from her assailant. The hairs were from a white man, whereas Hayes is black. Hayes was acquitted at a retrial in July, 1997.

## **20. Joseph Spaziano Florida Conviction 1976 - Not Released**

Spaziano was tried for the murder of a young woman which had occurred two years earlier. No physical evidence linked him to the crime. He was convicted primarily on the testimony of a drug-addicted teenager who, after hypnosis and "refreshed-memory" interrogation, thought he recalled Spaziano describing the murder. This witness has recently said that his testimony was totally unreliable and not true. Hypnotically induced testimony is no longer admissible in Florida. Death warrants have been repeatedly signed for Spaziano, even though the jury in his case had recommended a life sentence. In January, 1996, Florida Circuit Court Judge O.H. Eaton granted Spaziano a new trial, and this decision was upheld by the Florida Supreme Court on April 17, 1997. In November, 1998, Spaziano pleaded no contest to second degree murder and was sentenced to time served. He remains incarcerated on another charge.

## **21. Joseph Nahume Green Florida Convicted 1993 - Acquitted 2000**

Joseph Nahume Green was acquitted on March 16, 2000 of the murder of Judith Miscally. Circuit Judge Robert P. Cates entered a not guilty verdict for Green, citing the lack of any witnesses or evidence tying Green to the murder. Green, who has always maintained his innocence, was convicted largely upon the testimony of the State's only eye witness, Lonnie Thompson. In 1996, Green's conviction was overturned by the Florida Supreme Court, which held that Thompson's testimony was often inconsistent and contradictory, and that he not been fit to testify during Green's trial. (St. Petersburg Times, 3/17/00)

## **22. Frank Lee Smith Florida Convicted 1985 - Cleared 2000**

Frank Lee Smith, who had been convicted of a 1985 rape and murder of an 8-year-old girl, and who died of cancer in January 2000 while still on death row, was cleared of these charges by DNA testing, according to an aide to Florida Gov. Jeb Bush. After the trial, the chief eyewitness recanted her testimony.

Nevertheless, Smith was scheduled for execution in 1990, but received a stay. Prosecutor Carolyn McCann was told by the FBI lab which conducted the DNA tests that: "He has been excluded. He didn't do it." Another man, who is currently in a psychiatric facility, is now the main suspect. (Washington Post, 12/15/00 (AP))

### **23. Joaquin Martinez Florida Convicted 1997 - Acquitted 2001**

Former death row inmate Joaquin Martinez was acquitted of all charges at his retrial for a 1995 murder in Florida. Martinez's earlier conviction was overturned by the Florida Supreme Court because of improper statements by a police detective at trial. The prosecution did not seek the death penalty in Martinez's second trial after key prosecution witnesses changed their stories and recanted their testimony. An audio tape of alleged incriminating statements by Martinez, which was used at the first trial, was ruled inadmissible at retrial because it was inaudible. The new jury, however, heard evidence that the transcript of the inaudible tape had been prepared by the victim's father, who was the manager of the sheriff's office evidence room at the time of the murder and who had offered a \$10,000 reward in the case. Both the Pope and the King of Spain had tried to intervene on behalf of Martinez, who is a Spanish national.

### **24. Juan Roberto Melendez Florida Conviction 1984 Released 2002**

Juan Roberto Melendez spent nearly 18 years on Florida's death row before being exonerated of the crime for which he was sentenced to death. Melendez, who was born in Brooklyn, New York and raised in Puerto Rico, was sentenced to die in 1984 for the murder of Delbert Baker. In December 2001, Florida Circuit Court Judge Barbara Fleischer overturned Melendez's capital murder conviction after determining that prosecutors in his original trial withheld critical evidence, thereby undermining confidence in the original verdict. The judge noted that no physical evidence linked Melendez to the crime. The State had

used the testimony of two witnesses whose credibility was later challenged with new evidence. (Associated Press, 12/5/01) Following the reversal of the conviction, prosecutors announced the State's decision to abandon charges against Melendez. (Associated Press, 1/3/02)

## **25. Rudolph Holton Florida Conviction 1987 Released 2003**

Florida death row inmate Rudolph Holton was released on January 24, 2003, making him the 103rd person exonerated and freed from death row nationwide since 1973. Holton's conviction for murder was overturned in 2001 and prosecutors announced today that the State was dropping all charges against Holton, who had spent 16 years on death row. Crucial evidence had been withheld from the defense that pointed to another perpetrator.

## **26. John Robert Ballard Conviction 2003 - Acquitted 2006**

Death row prisoner John Robert Ballard was acquitted by a unanimous decision of the Florida Supreme Court, which ordered his conviction overturned due to a lack of evidence connecting him to the crime. After serving almost three years on death row for a crime he did not commit, Ballard was freed and has become the 26th person to be exonerated and released from Florida's death row since 1972.

## **27. Herman Lindsey Conviction 2006 – Acquitted 2009**

July 9, 2009, the Florida Supreme Court ruled unanimously that Herman Lindsey be acquitted and released from Death Row. The court said that “the State had failed to produce any evidence in this case placing Lindsey at the scene of the crime at the time of the murder,” and that the evidence presented was “equally consistent with a reasonable hypothesis of innocence.” Lindsey became the 135th person to be exonerated from U.S. Death Rows since the Death Penalty was reinstated. )

**DOCUMENTS, NEWSPAPER ARTICLES &  
MISCELLANIA**

**NEWSPAPER ARTICLES**

**LETTER TO MR AND MRS BRYANT, 1986**

**ONLINE INTERVIEW WITH MICHAEL  
LAMBRIX**

## NEWSPAPER ARTICLES

### **Witness Admits Affair With Investigator**

April 6, 2004

#### LAMBRIX MURDER CASE

BY MIKE HOYEM Staff News-Press Fort Myers

A key witness against convicted killer Cary Michael Lambrix testified Monday she had an affair with a lead investigator in the case while Lambrix was being prosecuted.

Frances Ottinger, 51, who was Lambrix's girlfriend at the time of the 1983 murders of Alisha Bryant and Lawrence Lamberson, was at one time a suspect in the killings herself.

She was arrested after being caught driving Lamberson's car and could have been jailed for aiding and abetting Lambrix, who was an escaped prisoner at the time.

Ottinger, who was known as Frances Smith in 1983, wasn't prosecuted and testified against Lambrix during his 1984 trial.

Lambrix, 43, has been on death row since 1984 and is trying to get a new trial because of what his lawyers call new evidence in the case.

During a hearing Monday in which Lambrix also testified - claiming he killed Lamberson in self-defense after Lamberson killed Bryant - Ottinger admitted having an affair with Robert Daniels, a former investigator for the State Attorney's office.

"For a very short time," Ottinger said.

"And it was sexual in nature?" Lambrix's public defender, Silvia Gonzalez, asked.

"Yes," Ottinger said.



Attorney Dan Hallenberg, who also represents Lambrix, called it "pretty significant."

"Mr. Daniels was involved with taking some of her sworn statements," Hallenberg said. "This is something that was never disclosed to the defense. Everything now, in my opinion, is placed in a whole new light in terms of her credibility."

Assistant State Attorney Mark Ahlbrand disagreed, calling the testimony "a negligible comment on the limited issues before the court."

Daniels couldn't be reached for comment.

Lambrix was sentenced to death in March 1984 for luring Bryant, 19, of LaBelle, and Lamberson, 35, of Key Largo to his Glades County trailer on Feb. 5, 1983, and killing them.

Ottinger testified she was making a spaghetti dinner for the four of them when Lambrix asked the pair to go outside. She said Lambrix later walked back in covered with blood and told her he'd killed the two. She said he made her help bury the bodies and threatened to kill her if she told anyone.

Ottinger was caught driving Lamberson's car a few days after the murders. After being freed from jail, she talked with an Attorney and decided to tell police about the slayings.

Lambrix's lawyers are asking Lee Circuit Judge R. Thomas Corbin to grant a new trial based largely on the testimony of witness Debra Hanzel, 51.

Hanzel testified Feb. 9 that she lied to jurors during Lambrix's trial because she was scared Lambrix might kill her if he remained free.

She also said Ottinger called her, asking her to lie because she also feared what Lambrix would do if he wasn't imprisoned.

Ottinger testified there were some things she can't remember after 21 years. But she repeatedly denied asking Hanzel to lie.

Clad in a red jail outfit with his hands cuffed and his legs in irons, Lambrix testified he heard a scream from behind his trailer that night, picked up a tire iron, went to investigate and found Lamberson - who was also known as Clarence Edward Moore - attacking Bryant.

"Lamberson had gone nuts," Lambrix said. "When I attempted to intervene, he had come at me and I had to swing at him."

Lambrix claimed he tried to give Bryant cardiopulmonary resuscitation, but she was dead.

"It's very interesting that he's saying, 'I didn't lay out self-defense in my trial but I'm going to do it now, 21 years after the trial,'" Ahlbrand said.

"He told his Attorneys he wanted to testify," Hallenberg said. "His Attorneys ended up basically not allowing him to testify."

### [A Parody of Justice](#)

St. Petersburg Times - St. Petersburg, Fla

. Author: MARTIN DYCKMAN

Date: Aug 31, 1997

Michael Lambrix has written hundreds of letters from the 9-by-6-foot cell he has inhabited for 15 years on Florida's death row. Printed painstakingly in small, precise letters, page after page, they assert his innocence, argue that he did not have a fair trial and berate the courts bitterly for relying on pompous legal technicalities to deny him a new one.

I have not met Lambrix, but the writing reflects a keen mind. Whether it is also a cunning one is impossible to know. As I have

written before, however, it's not the sort of case that should leave anyone comfortable with his execution. His guilt is not exactly ironclad. His sentencing process wasn't fair. Procedurally, the case has been a parody of justice.

Most recently, the U.S. Supreme Court denied Lambrix a new sentencing hearing on the same grounds - vague jury instructions - for which it had given one to another Florida death row inmate. New rules, said the court's gibberish, don't apply retroactively.

But that's not the only way in which Lambrix's has been a case apart. Lambrix and his girlfriend had been drinking heavily with a couple they had just met. The couple's bodies were eventually found where Lambrix had buried them. The State persuaded a jury that he had killed them to steal their car. Lambrix's version: It was the other man who killed the woman. He killed the man while trying to save her. He panicked and fled because he was already on the run from a work-release center where he was serving a bad-check sentence.

"I am guilty of gross stupidity and bad judgment in what took place that night. However, I am not guilty of murder," he says.

It could be a lie, of course, but the State had no evidence that would disprove it. Lambrix's girlfriend, who testified against him, didn't see the killings.

True or false, he had a constitutional right to tell his own story from the witness stand if he wished. The record is clear that he wasn't allowed to.

As his first trial began at Moore Haven in December 1983, one of his two public defenders, Robert Jacobs II, told Circuit Judge James R. Adams that Lambrix had changed the story he had been telling them and that they could not "ethically allow him to take the stand and say something that is not what he told us actually occurred."

"Well, now he's got a right to take the stand if he wants to," Adams reminded them. "You can't keep him off of it."

Conceding that, Jacobs said the defenders "would be forced to withdraw," as legal ethics require in such situations. The judge said the trial would go on without them. "You are not going to stall this thing anymore," he admonished Lambrix.

Lambrix did not testify. His Attorneys won him a hung jury.

A new judge would conduct his second trial, but Lambrix did not again ask to testify. By failing to do that, says the State, he waived his right. Ever since, the courts have agreed.

This is technicality triumphant over common sense. Someone like Lambrix, a poorly educated alcoholic raised in an abusive home, could hardly know that each trial begins with a clean record, that Adams' warning no longer applied, that defenses not raised are lost forever.

This aspect of the case contrasts glaringly with what happened when Ellis Rubin, the high-profile Miami lawyer, was defending a coke-dealing ex-con named Rusty Sanborn, accused of murdering an 18-year-old socialite during a bizarre scheme to rob her parents.

Sanborn wanted to take the stand to tell what Rubin knew to be a pack of lies. In his book, *Get Me Ellis Rubin*, the lawyer wrote that he tried to quit the case but Judge Sidney Shapiro wouldn't let him. Shapiro suspected Sanborn was simply trying to delay the trial. So Shapiro proposed a compromise: Sanborn would testify, Rubin would not question him or cite any false testimony in his summation to the jury. Believing that to be unethical too, Rubin refused. Shapiro, who had to delay the trial for a new lawyer, sent Rubin to jail for 30 days. He lost his appeals and had to serve them.

Sanborn, meanwhile, got a new lawyer, a delay in his trial and the opportunity to spin his tale for a jury, which convicted him of murder and every other crime in sight. But the jury also voted 9-3 to spare his life, which was another break that Lambrix didn't get.

Lambrix's jury was told little if anything of his woeful background.

In a federal habeas corpus appeal many years later, Roy Black, the top-notch criminal lawyer who successfully defended the William Kennedy Smith rape case, testified as an expert witness that Lambrix's defense had been ineffective. Alan Sundberg, a former Florida Supreme Court justice, gave a similar opinion as to the quality of Lambrix's initial appeal.

"I was certainly not very complimentary to the appellate services," Sundberg recalled Friday.

Robert Josefsberg, a former general counsel to Gov. Bob Graham, was representing Lambrix at that point. But Lambrix lost that appeal, too. The Florida Supreme Court ruled against him for a seventh time this month. His could be the next death warrant that Gov. Lawton Chiles signs. If so, it will find Lambrix without a lawyer. Josefsberg will say of that only that Lambrix "is very demanding and does not want us to remain as his counsel."

Lambrix wrote another letter last week, addressed to Chiles. It asks for his own death warrant.

"The only way I'm going to have substitute legal counsel timely assigned to my capital case, and to then have what legal claims that may remain to be pled and disposed of in the typical cursory fashion, is to have a death warrant signed and execution date set," Lambrix wrote.

"And as you do so," he added, "I ask you to reflect on this one thought - what murder could be more methodically premeditated than the execution of a man condemned for a crime that never took place? . . . Each of those who have contributed to effecting this act of murder will themselves ultimately stand accountable. And so when you sign my death warrant, I ask that you reflect upon this, and then ask yourself - which of us go the worst fate, you or I?"

## LETTER TO MR AND MRS BRYANT, EARLY 1986

Mr & Mrs Bryant,

Please excuse my intrusion, as I do not wish to cause you any pain in bringing up the past. I have children myself, and know personally how it is to lose a daughter by means which cannot be justified. I got your address through court records, and have wrote over 100 times in the past years. I know you must have asked yourself “why”, as from what you know of the case, all of this has no reason. I would appreciate it if you would allow me to explain, to give you further insight so you can possibly at least understand “why”.

I would first like to point out several things. I doubt that the State is keeping you informed on the status, so right now I’m awaiting “clemency”, which I attempted to have waived, as I have no desire to have my sentence commuted to “life” for any reason. Also, I am personally exhausting all possible issues of appeal, because to wait on lawyers would take years. You and I are in agreement on one item...justice delayed is justice denied. To delay the inevitable is only emotional torture on both parties.

Also, if you wish, you can forward this letter to the State Attorney, who will use it against me in the event my case ever comes up again...And if you find this letter especially intrusive, you can also write the prison and have my “priviledges” taken away for about 30 days, although that would be useless, as I never get any visits or mail or canteen anyways. I’ve already lost everything, from my children to family. Nobody can take anything else that matters, but it is your option.

I am aware that you both have no doubt as to my guilt. This letter will answer areas the State would never discuss with you, as their

objective is the max conviction. And if you ever had even D.W.I, then you know that the only area they will discuss is pro-conviction, and any evidence will be interpreted towards their very narrow minded objective.

You would had known exactly what happened sooner if not for a lot of lawyers telling me to shut up. You deserve to know what happened, and eventually both you and I will stand before the ultimate judge, (God), with all parties present and only the truth will be revealed so if what I say is not the truth, you have the comfort of the knowledge that in His court justice is always done, without the humanistic ambitions and motivations.

I will start from the night in question and continue to areas which are relevant to reason.

That Sat, Feb 5, I went with Frances (the State witness) to LaBelle. It was about 10.30, and with the intention of having a relaxing night out. I had spent the day replacing a timing chain and gear on our car, which was not operating, so we caught a ride into town. I had absolutely no knowledge that I would meet your daughter or anyone. How could I? The events of that night are very clear, as I've relived it a million times.

After being at the "Town Tavern" for approx. 15 minutes, a man, who became known as "Chip" introduced himself and joined us at our table. We talked some and he said he was waiting on his date. Your daughter arrived a short while later. The four of us talked and got into an argument with some guys at the adjoining table, so we all agreed to leave. Incedently, I did know your daughter from several times she was at Jim's "Hide-Away" lounge down on Bridge Street (south). She was there several times playing pool and I met her then, not just that night. If it at all matters, even though I didn't know her that well, I considered a friend.

So the 4 of us left the Town Tavern, and your daughter first drove her chevy to the trailer, then we all went in Chip's Cadillac to "Squeaky's" up at the county line. Throughout the night Chip got

pretty loaded and made a big deal of how he was involved in the “drug business”. The only reason all of us stayed out so late was because your daughter had to go to work at 6.00 am the next morning, and Chip was leaving for Miami, so it was his last night in town. He had no choice but to leave, as he was broke. He couldn’t even pay his motel room. Your daughter and I took turns buying rounds, and he bought nothing. He couldn’t.

So, about 2.00 am Squeaky, (the owner) told us it was time to close. It was a Saturday night and we were the last ones to leave. Chip was too loaded to do any driving, so we all agreed to go to my place for something to eat and to pass time until Alicia had to go to work. I bought a bottle of rum and your daughter bought an 8 pack of coke, along with cups. Then we drove out to the trailer, I believe you went out there yourself, so you know the area. We got there some time just past 2.00 am and went inside. The trailer was very small, with the kitchen directly adjoining the living room. It was run-down, but all I could afford with my job.

All of us went inside and Frances started cooking, which got the inside of the trailer pretty stuffy. The three of us, myself, Chip and your daughter were sitting in the living room area just joking around and listening to the radio until about 15 minutes myself and Chip went outside, not to “look at some plants”, because that would be impossible. We went outside because it was hot inside due to the cooking and to get some right-trak tapes from the car. For a bit, we sat outside on the car and talked. All of us were having a pretty good time, joking around, and even as Frances said “teasing with each other”. Well, Chip wanted to “play a joke on Alicia” so came up with the idea to scare the girls, just harmless fun. At first, we both went to the backside of the trailer and scratched on the window but they didn’t see or hear us. So Chip went across the 1<sup>st</sup> fence to hide behind a feed trough that was set in a stand of young oak trees. I was to tell Alicia that he wanted her to come outside.

I went back to the trailer and got her. Because of what it was all about, only Alicia came out, Frances stayed inside. And as you know from both trials, one area she is consistent in is the fact that



I “looked normal”, and had nothing with me. You also know from trial that Chip was killed in such a way that it would be impossible for me NOT to have blood on me, so he HAD to be alive when Alicia came out.

Me and your daughter went out, going behind the trailer across the first fence. The area where Chip was only about 60-75 feet behind the trailer, so it took only a moment. Chip had climbed on top of the feed trough, into a lower branch of the tree. As we walked up to the (?), he jumped down, and you know your daughter. She didn’t think it was funny at all. She got angry and more or less cussed Chip out. The two of them then started argueing pretty good, so I started back to the trailer, going the long way around the fence. It wasn’t my business with their argueing, and it wouldn’t be right for me to stay.

It took maybe 10 minutes to get up to the trailer, and about the time I got into the yard, I heard a scream, which I could tell was Alicia. The only two out there was her and Chip. Anyone could tell which it was, and that it wasn’t just out of fun. I stopped for a moment to stand, when she again screamed. That’s when I knew something was wrong, so I started back out. I was right there at the car, and it was up on a jack on the front, so as I went by, without even thinking, I grabbed the tire iron. It took me maybe a minute to cross the fence and to back there, but they were not at the feed trough and it was pitch-dark. I had no light or nothing. So I kept going in the direction of which I heard the scream. I went back, I heard sounds towards the rear fence, which was about 300’ away. I went towards that, and came upon them. There was enough light to determine that Chip was straddled over your daughter and shaking her like a rag doll. As I came up, I told him to get off her, or something to that effect, in which he cussed me out, telling me indirectly to get lost. All of this took place within a matter of seconds. There was no time to think, and he wasn’t letting Alicia up, so I pushed at him with the tire iron, hard enough to knock him to the side. (I believe this is what caused the puncture in his back-side.) As he went to the side, he immediately came at me from a crouching position, like a cat, I

don't know, but as he did, I just started swinging. And he went down. It wasn't intentional, but a reaction.

I then tried to help your daughter. You may not believe it, or even want to believe it, but then again, eventually the truth will come out in a "court" which no deceptions can compromise it. So I went to your daughter, and at first I thought she was only unconscious. I picked her up and started back to the trailer but she was too heavy. I got about 1/2 way, and had to set her down, when I did, she was still out, and I tried to give her mouth-to-mouth- but she wasn't responsive. At that point, I didn't know what to do. There was nothing I could do. I went back to Chip and it was obvious he was dead. I then went back to the trailer. It was like I was a third party, looking down, as I felt totally disorientated.

When I got back to the trailer, Frances was startled by all the blood. All I said to her was that they were both dead. I never told her, or anyone else how or why. That part either she made up so she would be clear, or the State did to get their conviction by fabricating a "motive". Frances did several times ask me "why" but I repeatedly told her I didn't want to talk about it. For one thing, I didn't want her to get into trouble.

I couldn't go to the police because of why I was an "escapee" I just had no choice. I know the State has convinced you that I am a career criminal, but in fact, my only "criminal" act was about 3 checks that "bounced" out of my own account. I've done lots of stupid things in my life, and have had a few bouts with the law, mostly stupid stuff, but never for intentionally going out and committing a crime. I wrote those checks because I had a lot of bills. For that I pled guilty without a trial because I was guilty. And when I violated my probation, I again pled guilty without a trial because I was guilty. For that was my only "previous conviction", I got 2 years in prison.

All that deals directly with why I couldn't go to the police. When I went to prison I was 22 (1982). I wasn't from a large city, so I wasn't "street-wise". Most of my time was spent working as a

clerk for the school. But prison isn't a country-club, as most seem to think. And to put it short, I got into a situation where 4 blacks felt I was depriving them of their "business", getting money off the weaker ones. I wouldn't cooperate with them, nor did I feel that I "owed" them for the "loss". So it came down to getting jumped by all four, as I was in a laundry stockroom. I got beat pretty good, and raped. I did all I could, but that wasn't enough. After the administration found out, they put me in "protective custody" until I was moved to work release, at Lakeland. But I had a lot of problems with adjusting and got into trouble and was told that one more problem and they would send me back to prison. Then 2 days before Christmas my ex girlfriend confronted me at work wanting money for our son, for presents, with the ultimatum that I either give her the money, or forget him. He's blind, so visits are the only way he could know me. So I gave some money, which is against all the rules, so if I went back to the center (work release) I'd be sent back to prison. So I left and eventually went to LaBelle, under a new name. I got a job and even went to church. But not once did I break the law. I wouldn't even drive a lot because I didn't have a driver's license.

Then all this came up. I know I was wrong, in not going to the police, but I felt I had no choice. Then came my arrest and I knew I had the "escape" plus I knew that I did kill Chip so from then on all I could do is have the State "prove" it. That was my only chance, I felt. I believe in capital punishment. In 1981 my wife was raped and left for dead in an empty lot in Tampa. I haven't seen her since, as she could never face me. But since then I believe in the principle of capital punishment and I told my lawyers that it will be either "death row" or nothing. And second, the only thing I could accept was either aquital or death. What I didn't know is that it takes so long. So I just kept telling my lawyers to let the State "prove it".

If you got this far, then I just wanted to say that I don't expect you to believe any of this. The only thing you have left to preserve the memory of your daughter is to see that "justice" is carried out. You owe that to her. I just wrote because I felt you have a right to know. If you want to, you could even look at the

court pre-trial records, things that never got out at trial. You'll only find that what I said is not only supported by the State's own case, but also the only, or at least most reasonable explanation for what happened.

I'm really sorry that you had to go through this, and for what happened. As much as you need to believe that I did kill your daughter, I did not. The person who killed her is dead, and in all honesty, I don't regret that he is. The more I think about what he done, what he was involved in and that he'd do it to someone else is not stopped, how can I regret it? That night I did nothing intentional, except try to do what was right; try to help your daughter. I had no way of knowing how it would all come out, but now I do.

This letter is against everything my lawyers have told me. If they had it their way, they'd stall for 10 more years and then win a new trial. But they're out of the picture now. In the next 12 months I will exhaust every possible issue by filing it all myself. I will not win a new trial, and then the State will have no choice but to sign my warrant. Maybe you'll even be a witness to the execution. I don't know. It wouldn't matter to me, and if you feel that's what you want, then it's your right. But I won't be executed for killing your daughter. I didn't do that. Your daughter was a victim, and a situation she created (?) by going with him. He had no plans to stay. He already checked out of the motel. And her clothes were like that when I came up on him, maybe, that is why, subconsciously, I used so much force when he came at me. Only God knows.

All I know is that I've lost everything, not only a daughter but my 2 sons, my family my liberty and my life. It doesn't matter if you believe a word. The only reason I don't waive appeals is because it would be intentionally killing someone; me. And my only "justice" will come in the next life, so I can't do that. You had a right to know the complete ....truth, whether you believe it or not.

C. Michael Lambrix

## ONLINE FILES

<http://www.southerninjustice.com/wp/wp-content/uploads/2009/02/affidavit-robert-jacobs-ii-pd-20th-cir.pdf>

Affidavit of original public defender Robert Jacobs

<http://www.southerninjustice.com/wp/wp-content/uploads/2008/06/bar.pdf>

Affidavit of Mary Lambrix

<http://www.southerninjustice.com/wp/wp-content/uploads/2008/06/bar.pdf> from page 17

COURT OPINIONS:

**494 So.2d 1143 (Fla. 1986)**

<http://lambrix.blogspot.com/2006/10/494-so2d-1143-fla-1986.html>

**529 So.2d 1110 (Fla. 1988)**

<http://lambrix.blogspot.com/2006/10/529-so2d-1110-fla-1988.html>

**698 So.2d 247 (Fla. 1996)**

<http://lambrix.blogspot.com/2006/10/698-so2d-247-fla-1996.html>

**72 F. 3d 1500 (11th Cir. 1996)**

<http://lambrix.blogspot.com/2006/10/72-f-3d-1500-11th-cir-1996.html>

**520 U.S. 518 (1997)**

<http://lambrix.blogspot.com/2006/10/520-us-518-1997.html>

## Interviews with the Condemned

Interview no.25 (2007-10-30)



**Question:** Where were you born and raised?

**Answer:** San Francisco, California ( USA )

**Question:** Will you share with us what it was like for you growing up? (Did you have a pet, a favorite game, hiding place, or favorite toy? Were you raised by both parents, a single parent or relative?)

**Answer:** I grew up in the San Francisco Bay Area during the 1960's and early 1970's when the hippie movement was in full swing in the area, it was a unique experience. I have a large family (or should I say had) and loved the outdoors as we went camping a lot. I miss the mountains, lakes and ocean.

**Question:** Do you have a favorite childhood memory? If so, what is it?

**Answer:** A favorite childhood memory? Yes – spending the entire summer of 1974 (when I was 14) at Yosemite National Park in California – which is (to me) the most beautiful place in the world.

**Question:** Did you like school? If so, share with us your favorite memory from your school years.

**Answer:** We moved a lot when I was growing up so it seemed we were always going to a new school where we didn't fit in. So, no – I didn't like school that much and dropped out and left home when I was 15. My real school came working carnivals and fairs from age 15, out on my own... school of hard knocks.

**Question:** What person or event impacted you most as a child?

**Answer:** Patty Hearst – When I was a young boy scout in California we distributed the food to people which they demanded as ransom for her kidnapping, only to find out she was part of the gang herself. That was a real awakening! Even poor little rich girls can be gangsters and nobody wants to believe it until they cannot deny it.

**Question:** What hobbies or activities did you participate in while growing up, e.g. scouting, sports, etc.

**Answer:** Boy scouts, and altar boy from the Catholic Church. I played some sports in school (American football, Softball, etc.) but never got into it. But I loved the scouts as we did a lot of camping and I love the outdoors.

**Question:** What was your first job? Please describe your duties/responsibilities and whether or not you liked the job.

**Answer:** My first real, full time job was working game concessions with a carnival at county / State fairs throughout



much of America, it was fun as a teenager as we traveled a lot – and always partied a lot, but I would not want to do it now.

**Question:** As a child or teenager, what did you want to do when you grew up? Why?

**Answer:** What did I want to be when I grew up? Peter Pan! Who wants to grow up? Being an adult totally sucks! Really, I did not have any specific dream of what I wanted to be when I grew up – but I knew what I didn't want to be stuck in the prison of a destructive family environment like the dysfunctional “family” I grew up with.

**Question:** Do you have a favorite movie or book? Please elaborate.

**Answer:** My favorite movie – actually, there's many. But if I had to choose just one I think I'd say “Dead Poets Society” with Robin Williams. It's all about learning to live fully, suck the marrow out of life. As for a book, how about “The Last Testament” (fiction) by Man Gold – what if Jesus had written his own testament? It boggles the mind. Quality entertainment is about making us think about the “what if?”

**Question:** Where was the most beautiful or special place that you can remember having visited? Please describe it.

**Answer:** Yosemite National Park , in the Sierra Mountains of California – its beauty cannot be described, it has to be experienced and once experienced, even the memories will bring a tear to your eyes. If there is truly a heaven, it would look like Yosemite Valley.

**Question:** What is the funniest thing that ever happened to you?

**Answer:** I was born – what a joke! (Yet nobody's laughing!)

**Question:** What job or occupation did you have prior to your incarceration? Were you employed at the time of your arrest?

**Answer:** I was a mechanic just before my arrest. I also did some time in the army before having an accident and before that I worked with a traveling carnival working county and State fairs throughout a lot of America.

**Question:** Were you involved with drugs or alcohol prior to your incarceration? If so, please share the effects this had on your life.

**Answer:** Yes, I used too many soft drugs (not hard drugs) and drinking – and it had severe consequences. I cannot say drinking destroyed my life, as they didn't – I did. I choose to do that stuff. And I suffered the consequences of that bad judgment as through that it destroyed my marriage and led me to death row.

**Question:** What do you miss most about the outside world and why?

**Answer:** What is an “outside” world? I've been here 24 years – is there really something left beyond these cold walls? What I miss most is obvious – freedom. But what I've learned through the years is that freedom is a State of mind. Although I miss outside freedom, I've adapted and it no longer imprisons me with thoughts of what I miss. After an entire life-time in a solitary cage condemned to death, freedom can be a scary thing.

**Question:** What is the one thing you regret most?

**Answer:** Not being able to be there when my 3 children were growing up. Missing all the little things that come with being a parent. When I got locked up my children were still very young so they didn't really know me and got along without me. But not a day went by that I didn't wish I could be there with them. Now I have two grandchildren, who I am also denied any opportunity to know and be a part of their lives.

**Question:** Do you have any strong spiritual or religious beliefs? If so do they influence how you view the future?

**Answer:** Yes, I do. Although I've grown disgusted by contemporary organized religion, I remain spiritual with strong traditional Christian beliefs. I believe that our physical life is the mortal condemnation of an eternal soul and in physical death we overcome that condemnation and will exist spiritually. I'm still undecided as whether heaven and hell is real or only metaphorical. I guess I'll know when I get to heaven, as I'm already in hell.

**Question:** How important is it for you to have contact with your family, friends and/or the outside world? Please elaborate.

**Answer:** Nothing is more important than the contact and communication with family and friends. In that brief time when writing letters or share a visit, I am allowed to escape the reality of the hell I'm condemned to and share their world with them. Without that contact / communication I would not have had the strength to survive – they keep me sane and are the ground that I stand upon.

**Question:** Do you remember your first thoughts when hearing the jury's verdict of death as your sentence? Will you share this experience with us, e.g. your thoughts, feelings, reactions?

**Answer:** I was stunned when the jury found me guilty, especially after my first trial ended in a hung jury. I was innocent and I know I did not commit this crime. The jury's verdict of guilt was a shock – but after that, I was not at all surprised by the jury's recommendation that I be sentenced to death. And I didn't care. At that point, I wanted to die – I didn't know I would die by being condemned to rotting away in solitary confinement one slow day at a time for my entire adult life – 24 years and the nightmare continues.

**Question:** What is a typical day like for you on death row?

**Answer:** Structured monotony. Wake up. Eat garbage unfit for a mangy dog. Walk (pace) my floor hours until what they call lunch. Spend afternoons writing letters or reading, hoping I might

get some mail, especially from my kids. Then survive dinner and watch TV and before you know it the day is gone and I sleep to wake and start it all over again.

**Question:** Do you feel that capital punishment serves as a deterrent? Yes/No Please elaborate on your answer.

**Answer:** A few years ago we had a guard working death row – until he killed his girlfriend. Not long after that a gang of guards beat a death row inmate to death and were charged with murder. Several death row prisoners previously worked as death row runners before they were charged and condemned to death for killing another prisoner. No, capital punishment is not a deterrent – if anything, it promotes killing by encouraging people to eliminate any potential witnesses.

**Question:** If you could change one thing in the world today, what would it be and why?

**Answer:** If I could change anything it would be to eliminate hate from the hearts of all people. Can you imagine a world without malice or vengeance? Maybe miraculously infect the entire planet with a virus that escalates only a feeling of love and compassion so that all of humanity would feel only empathy and compassion for each other. Hate is the destruction of humanity and its plague is growing.

**Question:** If you could go back in time, where and to what date would you travel and why?

**Answer:** March 29, 1981- My 21<sup>st</sup> birthday. Anything further than that and my kids would not be conceived. No matter what I might have the power to change, I would not change that. Equally so, at that time I had no criminal record and could relive my life responsibly, avoiding my mistakes as a more responsible person – and be there for my children, even though as a divorced father (sorry – I'd rather keep the divorce!).

**Question:** What has been the most important and life-altering event you have experienced?

**Answer:** Death Watch, November 1988, when I came within hours of being executed twice within a few days. In that time, I felt communion with God and a peace I never experienced before or since. Confronting my own mortality believing I would die was a unique growth experience and life-altering event.

**Question:** What is the most important thing that you want our visitors to know about you?

**Answer:** I am actually innocent. I know that “everybody” says that, but too often it is actually true! Please don’t judge me until you’ve read about my case, which is readily available online at: [www.southerninjustice.com](http://www.southerninjustice.com)

**Question:** If you have anything else that you would like included as a part of this interview, please share it with us now.

**Answer:** I would like to thank all of those who so generously help us, who give so much of themselves and do so out of genuine compassion. Without those who are willing to advocate for the lowest of the lows, our already pathetic existence would become truly unbearable. Knowing that there are people who do care gives all of us hope and strength, so I want to thank all of us.