

October 16th2004

Dear Bar Members,

Hello my name is Alan Gell, I am the human being behind the case that these hearings have been about. I am the man that the case actually affected, through actions whether intentional or non-intentional, I lost almost ten years of my life to North Carolina's Justice System. I have requested to speak at the hearing on Wed. October 20th 2004. Unfortunately I am told I will be unable to speak at the hearing but was told I could be heard if I composed a letter for each of you to read. I will try to keep this letter as short as possible, but I will be speaking about the loss of my freedom for almost 10 years so if it's a little long please bear with me. I can promise you it will not take 10 years to read this letter, although I have waited almost as long to write it.

I want to sort of give you a glimpse of the justice system as I unfortunately had to see it. I will start with July 27th 1995, that is the day Dwight Randsome the Eastern N.C. SBI agent came to first question me about the murder of Allen Ray Jenkins. Needless to say I was scared to death when I learned that I was a suspect in a murder. As I learned that two people I knew were blaming me for the murder, I begged of the SBI agent to please not believe what they were saying. I offered to make a taped phone conversation between myself and those wrongfully accusing me and was informed that it was against the law to make such a recording. I was misled when I was told this because later while sitting on death row I would receive transcripts of two phone conversations that were recorded in an attempt to help the case against me.

After offering to do all I could to assist the SBI in finding the truth of the matter, I was arrested for first degree murder, armed robbery, and conspiracy to commit both. The very first thing I did was to call on my mom you see I was a 19 year old kid. My mothers advise to me was to have faith in God and also in our justice system. Her words to me were that our justice system would not let an innocent man go to prison.

From the very start I learned that our justice system wasn't quite what me and my mom believed it to be. I sat awaiting trial for 2yrs 10 months in a single cell solitary confinement cell at the Bertie County Jail. The Bertie

Jail had harsh conditions, a few of them being, I was locked in my cell 24 hours a day, I was unable to have reading materials, no t.v. or radio, no one to talk to, and was provided to sheets of paper and one envelope per week. And this was the treatment of a man presumed innocent. As I awaited trial I went through 5 different lawyers. It actually felt as if I was being passed from one to the next. Two of my lawyers went to work for a D.A.'s office while working on my case, this is the event that sent my case to the A.G.'s office because of the conflict that was created. One of my lawyers on our first and only visit (after some 10 months of being her client) came to see me at the jail and as I asked to see how things were developing on the case I was asked to sit down. Upon sitting down I was told that things didn't look very well for me and her advice to me was for me to get to know Jesus and ask Him for forgiveness, as this was said she passed me a Bible and our visit then ended.

I was finally left with Maynard Harrell and Chuck Moore as my attorneys for these charges. As an innocent person charged with a crime it is really hard to assist your attorney because you can't tell them what happened, only what didn't happen. My lawyers and I had to rely solely on the information the State shared with us. As that turned out it was only autopsy notes and gun test from the SBI and statements that the co-defendants had given. Really all we had was some 7 different versions of a story none matching to go on to try and figure things out.

Going into my first trial I felt that things would be okay that the system would work for me. I felt strongly that with 7 versions of what happened and an 8th version being told at trial everyone would see that my co-defendants were not telling the truth. As things turned out I was wrong and I was convicted of all charges. I cannot tell you how it felt to be found guilty of those crimes. I am often asked about how it felt when I received the death sentence and I always have to say I don't know because I was numb from the guilt phase. To be honest as my sentencing phase was taking place I didn't care what happened because they had already gotten the most important part wrong. I was innocent!

After being sentenced to death, I was "comforted" by my original trial lawyers as they told me we still had appeals. But then the North Carolina Supreme Court affirmed my death sentence. Then the Federal courts didn't even hear my appeal. I felt really discouraged going into my MAR I had always tried to keep the faith and hope alive that one day the truth would

come out and I would once again have my life back.

Here is where things take an ugly spin, as if it wasn't ugly enough that I was wrongfully sent to die. The whole while I sat on death row and in jail awaiting trial I felt that the A.G.'s office didn't realize, that they were tricked by my co-defendants. I blamed my co-defendants for manipulating the system. Well, I will never forget the day my lawyer handling my MAR (Mary Pollard) came to Central Prison to see me. She had gotten the full files on my case from the A.G.'s and that is the day she let me know she believed me, that I was innocent.

In the file was statements from lots of people who saw the victim alive after April 3rd 1995 most of the dates ranged from April 8th to the 10th. Also in the file was two tape recorded phone conversations one where my co-defendants talk about making up a story to blame me that the SBI will believe. The other tape was a call between a guy I know and myself in which he tries to get me to confess for the SBI. As we talk I am informed that the murder weapon has been found, and I reply "Good"! The friend then says he don't know if it's good or not because he heard they got prints off the gun. My remark to him was "Good, man I am fixing to go home."

All along while I sat on death row I felt there was something out there that would help me to prove my innocence, I NEVER would have thought that the very information I was looking for was sitting right in the office of the A.G.'s. Suddenly I realized that April 3rd wasn't even the day the murder was committed. As my lawyer left that day from visiting me with the great information, I remember having a chilling thought later that night.....

They knew!! The A.G.'s office knew, suddenly I wondered why they would allow me to be sentenced to die knowing I was innocent. For days I couldn't quite understand things, were the A.G.'s that terrible of people? Then I was told of the concept of tunnel vision and things took a spin. This whole tunnel vision thing, does it exist, is it for real? I still don't know the answer to that to this day. I do know that there is such a thing as overzealous prosecutors.

After being let down by the system in my first trial things were finally ending my nightmare was over. Well at least I thought, see I had in my mind figured that since all the evidence of my innocence had come to light I would be home in the next few days. How wrong I was, it took over 2 more

years for me to ever get back home. My lawyers got together with the A.G.'s office and laid all the facts out for them and told them an innocent man is sitting on death row. What was done about it, well when we asked for a new trial to a Judge, the A.G.'s office fought it and asked the State to execute me still. Well there goes the tunnel vision theory out the window. I actually asked my lawyer was it the prosecution's duty to seek convictions regardless and was told no that they have a higher honor of duty than defense attorneys. And she went on to explain that they are to seek justice and truth whichever way it may lead.

Well I am sorry to say it but I truly believe that unfortunately that is often not the case. And for the A.G.'s office I think that they throw away the entire duty of a prosecutor while opposing appeals. The A.G.'s office fights to maintain a conviction regardless. Although the A.G. office said that it didn't matter if I was "probably" innocent, the Judge did not agree and granted me a new trial. And as you all now know I was finally able to end my nightmare and prove my innocence on Feb. 18th 2004.

After my release I really believed that I would be through with the system letting me down. Once again I was wrong, on many occasions since my release I have been let down. In my work to get a Moratorium passed I learned all sort of disturbing things. It would seem that with a process as extreme and irreversible as capitol punishment we would have an enormous amount of safe guards and some large standards to be met, unfortunately that is not so.

The one let down by my system that really hurt the most since my release was the Bar Hearing that was held for the prosecutors of my first trial. That of David Hoke and Deborah Graves. I was not looking for revenge for the 10 years they cost me, I was looking for a example to be made a message sent out to prosecutors about the withholding of evidence. It has become a passion of mine to do my best to ensure that no other person has to endure the things I did. And to see a prosecution so very weak and non-aggressive was truly a let down.

What is disturbing to me also is that Mr. Hoke and Mrs. Graves can say to the Bar, "I was handling a capitol case and didn't read the entire files of that case." And that be acceptable behavior for handling a case! I heard the defense attorney for Mr. Hoke and Mrs. Graves argue that the withholding was unintentional and therefore they should not be punished. I

say that if it was "unintentional" from a lack of reading a case file, then that is gross intentional neglect. I find it disheartening that the Bar couldn't even convey the message to other prosecutors to at least read their entire case file.

I was really let down by the fact that neither the Bar nor the Bar prosecutor ever called me to let me know of the Bar hearing. The morning of the second day of the hearing I was able to attend and as I saw Mr. Johnson the prosecutor for the hearing, I walked up to him to thank him for fighting for justice and as I did so I was brushed off more or less. And the largest thing about the hearing other than the weak prosecution is that the panel found as a mitigating factor at the hearing that Mr. Hoke and Mrs. Graves were sorry for their actions. That is really disturbing because the only people they have apologized to is the Bar. I have not heard a word from them since my release.

Since my release there has been only one thing said to me that just really hurts to hear. And that is the statement that the Alan Gell case proves the system works. Can you believe that? The system works! If the system works, it would have worked for me 10 yrs ago. If we have a system that takes 10 years to work right, something is wrong. Ask yourself, if you were charged with a crime you didn't commit, after being convicted then exonerated almost ten years later, would you or your wife say the system worked for you? Worst part is with the Alan Gell case it only shows how the system doesn't work.

It didn't work for me because I was an innocent man; charged, convicted (through misconduct), sentenced to die, and some decade later retried and found not guilty. But another big person the system didn't work for was Allen Ray Jenkins (the man who was murdered), and his family. The Jenkins family has absolutely no closure to the murdering of their loved one. Upon my release the State of N.C. officially closed the case to avoid any more stink from it. The SBI and the A.G.'s people worked really hard to convince the Jenkins family that I was the person who killed their loved one. Even went as far as to try and explain away all the forensic evidence, eye witnesses and all to make them believe I was the man. Now if they do believe I am the murderer which I seriously doubt they would most certainly say the system didn't work for them either. It would give them the closure they deserve if it was determined just who committed the crime, and it would give me closure to know who I lost those years for also. But the "case is closed" and "the system works".

I am writing this in hopes of making a difference with our system. This letter is not because I want revenge but because I want us to have the fair and just system we are supposed to have. In this letter you should already have read quite a few things that disturb you about our system. From prosecutorial misconduct, to the Bar prosecutors laying down for Mr. Hoke and Mrs. Graves, to victims not getting justice, to the justice system creating victims. I am sure that no one who reads this would want an innocent person sent to die or even to prison. Well I say to you until the Bar starts to set some standards for prosecutors and defense lawyers with repercussions behind their actions, we will continue to have innocence problems.

I can't begin to tell you how it felt to sit on death row a condemned man. Everything that was important to me, all that I loved taken away. Fearing death, hoping for life. Struggling to keep my faith and hopes alive. Seeing friends and people I had met executed, praying that it would not be me one day. There are not words to explain the pain and suffering brought upon me by the intentional or unintentional withholding of evidence. I wonder does the Bar or Mr. Hoke and Mrs. Graves realize that neglect is the same if not worse than intentional withholding. And I wonder if it is realized that either way a man was sentenced to die and lost almost 10 years of his life. In life we are supposed to learn from our mistakes, if anything is done about my case I hope it's that people will look at it and study it to see where things went wrong and work to prevent the same from ever happening again. I really don't care about the punishing of Mr. Hoke and Mrs. Graves, I care about the punishing of innocent people sent to death row or prison. And I hope that you care about them also, and will try to make this whole ordeal of mine one that is a mistake with a lesson that was learned not another ignored mistake. It will certainly make the years I lost and the pain I endured a little worth while.

Thank You And God Bless You,

James Alan Gell
PO Box 445
Lewiston, NC 27849
(252) 332-1023