

Betrayal

By Larry "Rocky " Harris

Everyday across America, the innocent are sent to prison. This is an ugly fact that most citizens of this great country do not want to deal with. It is not a topic that will come up over cocktails with friends.

The segment of the American population involved in this nightmare is usually the poor, specifically a poor man sold out by the public defender appointed to the criminal case. The case I write about falls into this category: a poor man raising his daughter by himself and struggling in the first year of running his own business, every asset invested in his tools. This man had no funds to hire an attorney. His fate was sealed long before he ever reached his trial.

The man had a criminal history. He had served a term in prison for armed violence--five years in a six-by-nine foot cell. He did not want that life anymore. While on parole, he received custody of his daughter. His oldest son was giving his mother a hard time and lived with his father off and on after the father's release.

The man worked hard six days a week to pay bills and make ends meet. These were great times for him. He was not rich in money, but was blessed with his kids and the satisfaction of starting his own business. The prison time was behind him—he had paid his debt to society, or so he thought.

A contract between a lawyer and his client is the most sacred of all contracts. The attorney holds his client's life, the future of the man's family and children, in his hands. Most people in America believe that the courts are places to find justice. The courts do represent the promise of justice, but only if all the parts fall into place. The first and foremost piece of the puzzle is a competent attorney to defend the accused. Public defenders are overworked and underpaid. This leads to a lack of adequate representation in many trials. The innocent fall through the holes in the system, and America's prisons are full of them. This man suffered that fate.

The arrest came unexpectedly. The man was getting ready to pick up his daughter from school and then go back to work. A knock on the door, the door answered, officers with warrants, handcuffs, the police car. The man had enjoyed his last moment of freedom.

The charges involved four counts of armed robbery and one count of vehicular theft. The bond was set too high for him to pay. He was living paycheck to paycheck. There was no cash for a bond or for a lawyer. The courts assigned Talmadge Brenner to prepare for trial. Mr. Brenner was a good man. He was a competent attorney that went to work preparing the defense. The State's case was weak, based totally on jailhouse informant testimony and circumstantial evidence. There were no eyewitness, no money and no gun to tie the accused to the crime. The case was fourteen months old as they prepared for trial. But an unholy alliance between a con artist convict looking for a deal and a prosecutor looking to the easy way out, sealed the innocent man's fate.

Talmadge Brenner had other plans. He firmly followed the "Canon Rule Seven." This rule states that a lawyer must defend his client to the best of his abilities and never fail to exhaust all avenues of defense. Attorney Brenner was on the job and doing it well. This had the prosecutor worried. He went to the judge and together, they devised a plan to get rid of Mr. Brenner. The prosecutor needed this conviction to clinch a spot as circuit judges when the current circuit court judge retired. The prosecutor needed someone to take the rap for unsolved armed robberies. He considered the accused just another ex-con, just another piece of poor white trash. Nobody would be concerned if he did another bit. Brenner was not to go so far as to win the case. The prosecutor set up a court date the Friday before the trial. The judge was in on the fix.

That Friday afternoon the accused sat in county jail awaiting Monday. His day of reckoning was within reach. The family was suffering. He was the only source of income. His children were in a bad way. Suddenly the guard called his name. "Get dressed. You are going to court in a few minutes."

The defendant knew he had no court appearance set for that day. A chill went down his spine, the chill of the grave. He was taken to the courtroom of the hanging judge. It was quiet and no one was there except Mr. Brenner. Every other hearing had people from the press, spectators and family present. The judge entered the courtroom. Mr. Brenner said everything would be explained. With a sad look on his face, Mr. Brenner told the accused that he had been removed from the case. "The judge will explain it," he said.

The judge spoke in a loud voice as he called order and took up the case. "Mr. Brenner represents, as a client, one of the state's witnesses in the case. The prosecutor has explained that

this witness would be crucial in presenting his case. Brenner will not be able to cross-examine his own client on the stand. Do you understand that? Sir, we have a conflict of interest here."

The defendant did not understand it at all

The man then learned that the state's witness was Jason Whitaker. He had not been in any discovery presented by the prosecutor. He was a sixteen-year-old kid, a friend of the defendant's son, Roderick. The boy knew nothing about the armed robberies. Why was this going on?

The defendant was ready for trial. He needed the trial so he could get home and save his home and family from ruin.

The judge got defensive. "Sir, you do not have the right to pick your own public defender. Mr. Brenner has been dismissed because of a conflict of interest here. Mr. Jonathan Barnard has been assigned to represent you. Your fast and speedy trial motion is waived, as your attorney will need time to get acquainted with the case. Mr. Barnard will be up to see you in the jail. You can discuss your defense with him . This hearing is over."

The man was taken back to his cell with his head spinning. He was no fool. He had been around the block a few times. He knew all the public defenders and this guy was not one of them. As a young man, the defendant had been a bit wild. He rode the iron horse and lived the life of an independent biker. He would not bow to any man. He had been in front of the judges a few times. He knew all the players in this town and Public Defender Barnard was not one of them.

Jason Whitaker would never be called to testify in the trial. Public Defender Barnard took one look at his client and decided he was guilty. The fix was in, and the poor man went back to lock up knowing something was not right; he just could not put his finger on it. Now he had to deal with a new attorney; now he was starting all over again.

Later that day the defendant was called out again. This time it was to talk to his new public defender. The man knew his own innocence and just wanted to get to trial. He strongly believed in the empty dream that no innocent man would go to prison. The truth would come out at trial. Barnard started going over the state's case. When he reached the testimony of Police Investigator Robert Power, the defendant told the attorney the cop was lying. The accused told the public defender that his phone records would prove the cop never called his home and that the cop was lying about talking to State Witness Humphrey at the accused man's home on

December 12th, 1992. The officer's testimony would be given to bolster the testimony Humphrey gave.

Humphrey had worked for the accused man; the accused man knew him well. Humphrey's story was that he was staying at the defendant's house, that the defendant was forcing him to do the armed robberies, and that Police Officer Power called the defendant's home and talked to Humphrey on the phone during his investigation of the crime. The crimes happened on November 30 and December 8. If true, the state would have strong circumstantial evidence tying Humphrey to the defendant--but it was not true. The defendant had no phone service at the time, therefore no calls could be made to or from his home in November or December of 1992.

The defendant explained to his new lawyer how an acquaintance, Lori Chatfeld, had stolen his calling card. She had sold it to the girls at the Peoria Work Release Center. They called all over the nation and he had refused to pay the two thousand-dollar phone bill in the summer of 1992. The phone company had terminated his service due to the outstanding bill. All this was on his phone records. He instructed Public Defender Barnard to produce these records so that on cross-examination of Officer Power, he would catch him lying on the stand. The case was based solely on Humphrey's testimony and false evidence created by the overzealous prosecutor. Public Defender Barnard's response still haunts the man today, but at the time he never let it sink in. Public Defender Barnard stated, "I cannot believe a police officer would take the stand and give false testimony, but I will check it out."

The rest of the afternoon and well into the evening the accused fed his lawyer all the evidence he would need to catch state witness Humphrey lying on the stand. He told the attorney about the bank records, paychecks to Humphrey, photos of his wedding, insurance and business records that would blow Humphrey's lies wide open on the stand. He watched in wonder as Barnard did not write anything down.

The defendant had an alibi witness, his fifteen-year-old son, Roderick. The boy had spent Thanksgiving weekend at his sister's home in Camp Point. There he had helped her husband, Charlie, pour a concrete floor for his garage. The defendant had picked his son up the Sunday before school was to begin. The boy had stomach problems and was sick. The boy had stayed up with his father until after midnight. The next day he missed the school bus to school because he was in the bathroom when it arrived. His father had taken him to school late, explaining to the principle that he had given the boy medicine, and if the boy said he needed to use the bathroom,

to please excuse him from class. This was documented in the boy's school records. Public Defender Barnard promised to interview Roderick. This was a crucial point, as the state was calling him as a witness to the stand. It was crucial to point out to the jury that Roderick was home watching television with his father on the night of November 29-30, 1992. The defendant could not have been there with his sick son and also out robbing The Silver Dollar Tavern at the same time. Any lawyer worth his salt would interview an alibi witness in a criminal case.

After having the conference with Barnard, the defendant felt like it would all be over soon. Everything was in place to expose the lies. He was ready to go to trial. The days slowly ticked away. Finally it was time to pick the jury. It was a beautiful Monday in January of 1994. The trial started early that Monday morning. The state presented their case for two and one half days. Barnard had nothing. He did not produce one document to rebut the state witnesses' lies. He failed to expose any of the false evidence to the jury. When the judge gave the case over to the defense, he stated that he had nothing to present. Four hours later the jury returned a verdict of guilty on two counts.

The defendant sat through four days of trial hearing the lies and false evidence presented to the jury. Every time his public defender, Barnard, failed to rebut the lies, the defendant felt the noose tighten around his neck. He had been sold out. Public Defender Barnard had not even interviewed his son, his alibi witness. Jonathan Barnard had taken one look at the accused and decided he was guilty. Then he decided he was not wasting his time investigating his defense. This happens in courts all over America, every single day.

The Sixth Amendment of the United States Constitution guarantees each citizen the right to a fair and fundamental trial, the right to present evidence in one's own defense and the right to confront one's accusers in open court. Public Defender Barnard failed to produce the phone records to show that Humphrey and Officer Power had developed that whopper for the jury. Barnard failed to produce the bank record to rebut Humphrey's lies about his involvement with the defendant, his job, and his active role as an employee of the defendant. He failed to interview the owner of J&J Marine, to establish the fact that Humphrey was fired on May 13th, 1993 for stealing a new chainsaw from him. Barnard failed to interview the Vandahaar Construction contractor to expose Humphrey's lies on the stand. Barnard did not call one employee of the defendant. All would have exposed Humphrey as a liar on the stand. Had the facts been

presented, would the jury have returned a guilty verdict based solely on Humphrey's circumstantial testimony?

Was the defendant given a fair trial here? The state presented its case. That was all the jury heard, as public defender Barnard failed to produce one document in evidence, one witness in rebuttal. These facts can all be verified in *The People of the State of Illinois v. Larry Harris Case #93-CF-307* out of Quincy, Illinois.

After the conviction, the prosecutor became the circuit judge, the public defender became the state's attorney and the defendant became the innocent man serving a sixty-five year term in prison. Oh yeah, and Humphrey only got fifteen years. He was released from prison in 2000. The defendant has seventeen more years. Humphrey was facing sixty years in Missouri when Prosecutor Scott Walden made the deal. He got Missouri to drop the years to twelve. Humphrey pled guilty and was transferred to Illinois, where his twelve years ran concurrent to the fifteen Walden had secured for him after his false testimony.

The innocent man will not be eligible for parole until 2026.

A former light weight Golden Glove professional boxer, Larry Harris is a prisoner at Lawrence Correctional Center, Sumner, Illinois. He is a prison "jail house lawyer," prison activist and writer and is the chief plaintiff in Harris et al. v. Brown, et al., Case No. 3:07-cv-03225.

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