

# ADVOCACY AND ETHICS:

*Prosecutorial Misconduct and the Role of the Defense Attorney*

North Carolina Annual Spring Public Defender Conference  
Wilmington, North Carolina  
May 19, 2006

Richard Rosen, Professor  
UNC School of Law

# ADVOCACY AND ETHICS:

## Prosecutorial Misconduct and the Role of the Defense Attorney

Rich Rosen, Professor UNC School of Law

### **Section 1: The North Carolina Revised Rules for Professional Conduct.**

#### Rule 3.8 Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

- a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;
- d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;
- e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client, or participate in the application for the issuance of a search warrant to a lawyer for the seizure of information of a past or present client in connection with an investigation of someone other than the lawyer, unless:
  - 1) the information sought is not protected from disclosure by any applicable privilege;
  - 2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and
  - 3) there is no other feasible alternative to obtain the information;
- f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

Comment--

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate; the prosecutor's duty is to seek justice, not merely to convict. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely

how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. See the ABA Standards of Criminal Justice Relating to the Prosecution Function. A systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

[2] The prosecutor represents the sovereign and, therefore, should use restraint in the discretionary exercise of government powers, such as in the selection of cases to prosecute. During trial, the prosecutor is not only an advocate, but he or she also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all. In our system of criminal justice, the accused is to be given the benefit of all reasonable doubt. With respect to evidence and witnesses, the prosecutor has responsibilities different from those of a lawyer in private practice; the prosecutor should make timely disclosure to the defense of available evidence known to him or her that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment. Further, a prosecutor should not intentionally avoid pursuit of evidence merely because he or she believes it will damage the prosecutor's case or aid the accused.

Ethics Opinions Note--

RPC 152. Opinion rules that the prosecutor and the defense attorney must see that all material terms of a negotiated plea are disclosed in response to direct questions concerning such matters when pleas are entered in open court.

### Rule 3.3 Candor Toward the Tribunal

- a) A lawyer shall not knowingly:
  - 1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
  - 2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
  - 3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.
- b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

- c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.
- d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

#### Rule 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

- a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
- b) falsify evidence, counsel or assist a witness to testify falsely, counsel or assist a witness to hide or leave the jurisdiction for the purpose of being unavailable as a witness, or offer an inducement to a witness that is prohibited by law;
- c) knowingly disobey or advise a client to disobey an obligation under the rules of a tribunal, except a lawyer acting in good faith may take appropriate steps to test the validity of such an obligation;
- d) in pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
- e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, ask an irrelevant question that is intended to degrade a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused; or
- f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
  - 1) the person is a relative or a managerial employee or other agent of a client; and
  - 2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

#### Rule 3.5(a)4(c) Impartiality and Decorum of the Tribunal

- A lawyer shall not engage in conduct intended to disrupt a tribunal, including intentionally or habitually violating any established rule of procedure or evidence.

## Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- d) engage in conduct that is prejudicial to the administration of justice;

RPC 152. The prosecutor and the defense attorney must see that all material terms of a negotiated plea are disclosed in response to direct questions when the plea is entered in open court.

## **Section 2: Selected Examples of Prosecutorial Misconduct.**

### **Darryl Eugene Hunt**

*Summary—*

In 1984, Deborah Sykes, a Caucasian woman, was raped and murdered while on her way to work. Soon after and under great pressure, investigators charged 19 year old Darryl Hunt, a black man, with the crime. Hunt was convicted in a trial marked by the presence of unreliable witnesses including the prosecutor's chief witness, Thomas Murphy. Murphy had been a member of the Ku Klux Klan. The state's case was weak, too, in that there was a complete absence of physical evidence linking Hunt and Sykes. Prosecutors withheld hundreds of pages of police reports, including a two-page report of a 1986 interview with Willard Brown, whom police had briefly considered a suspect in the Sykes killing. That report was only released to Hunt's attorneys after Brown's arrest in 2003, 18 years after Hunt was first convicted. Brown confessed to the Sykes rape and murder in December 2003. After an appeals process that lasted well over 15 years and after three police investigations as well as a second trial, Darryl Hunt walked away from prison a free man on December 24, 2003.

- As late as two days before Hunt's release, District Attorney Tom Keith was steadfast in his belief that Hunt was involved in Sykes murder. Even after DNA evidence cleared Hunt of involvement and identified another man, Willard Brown, in the crime Keith was unwavering.<sup>1</sup> Brown later confessed to the crime.
- Assistant District Attorney Eric Saunders, in 2003, went so far as to question the accuracy of DNA results generally, as well as specifically in the Hunt case. He was settled in his belief that Hunt was guilty. He said, "After reading the [DNA] reports, there's no doubt in my mind that...Darryl Hunt committed this crime."<sup>2</sup>

---

<sup>1</sup> Patrick Wilson and Michael Hewlett, *DA Defends Handling of New Suspect*. The Winston-Salem Journal; December 22, 2003.

<sup>2</sup> Phoebe Zerwick, *Closed Doors: Case review finds that a series of troubling decisions cast a dark shadow of doubt over a divisive case*. The Journal-Reporter; 2003. [available at: <http://darrylhunt.journalnow.com/stories/parteight/story.html>]

*Timeline—*

1984	August	Deborah Sykes is raped and murdered on her way to work.
	September	Darryl Hunt is charged in the Sykes murder.
1985	June	Hunt is tried and convicted in Forsyth County on charges of first-degree murder. The jury, due to lingering doubts in the case, decides to give Hunt life in prison as opposed to the death penalty.
1989	May	North Carolina Supreme Court grants Hunt a new trial.
	November	Hunt is freed on \$50,000 bond.
1990	October	Hunt is convicted for a second time in the Sykes murder.
1994	November	DNA evidence excludes Hunt as the source of semen found on Sykes' body. Judge Morgan, however, denies Hunt's request for a new trial.
	December	North Carolina Supreme Court upholds Judge Morgan's decision.
1995	December	District Attorney Tom Keith orders a new round of DNA tests. Once again, Hunt is ruled out as a source of semen.
2000	February	United States Court of Appeals turns down Hunt's request for a third trial.
2003	December	<ul style="list-style-type: none"> <li>• Willard E. Brown confesses to the 1984 rape and stabbing death of Deborah Sykes.</li> <li>• Darryl Hunt is released from prison.</li> </ul>
2004	February	Superior Court Judge Anderson Cromer vacates Hunt's murder conviction.
	April	Governor Mike Easley grants pardon for Hunt.

*Quotes—*

"It was out of the question because they wanted me to plead guilty and I'm not pleading guilty to something I didn't do."

--**Darryl Hunt** responding to prosecutor's deal offering him release on time served [5 years] if he admitted guilt before his retrial. He refused and was reconvicted. He spent the next 15 years in prison.

"[The prosecution's] motto is: 'If the shoe doesn't fit, then break the foot and put the shoe on.'"

--**Larry Little**, a Hunt supporter, after prosecutors maintained their certainty in Hunt's continued guilt even after DNA evidence pointed directly to his innocence.

"I don't think that any [DNA] results on Darryl Hunt alone is [sic] dispositive of this case. All it shows is that he didn't have vaginal intercourse with her."

--**Eric Saunders**, Assistant District Attorney and prosecutor in Darryl Hunt case, after DNA evidence showed semen taken from murder victim was not a match with Hunt.

“To condemn Darryl Hunt to life imprisonment, despite the strongest evidence of innocence possible, because a judge might speculate about scenarios of guilt, not supported by any evidence, is wrong. It is unfair. It is unjust. It is an affront to the search for truth.”

--**Benjamin Dowling-Sendor**, Hunt’s assistant-appellant defender in 1994 DNA hearing, following Judge Morgan’s denial of a new trial despite DNA evidence disproving all previous theories of Sykes’s murder as advanced by the state.

### **Charles Wayne Munsey**

*Summary—*

During the 1996 Munsey murder trial, Timothy Hall, known in criminal law parlance as a “jailhouse snitch,” testified that Munsey had confessed to him while they were both incarcerated at Central Prison. Prosecutors did not tell the defense about Hall until the witnesses were listed at the start of the trial. The defense attorneys tried to investigate the allegations during the trial, and requested the assistance of the prosecutor in collecting prison records and information. The attorney general’s office investigated and sent a memo to the district attorney stating that the Department of Correction had no record that Hall had ever been to Central and that it was “nearly impossible” for Hall to have been there without a record having been kept. Undoubtedly, this should have been disclosed because it meant that it was “nearly impossible” for Munsey to have confessed to Hall. In the memo, however, the assistant attorney general went on to advise the prosecutor, “As a former prosecutor, I would argue that the absence of documentation does not preclude the possibility that Hall was at Central [Prison].” The district attorney, Randy Lyon, in fact made this argument to the jury without disclosing the exculpatory memo to the defense attorneys. The “smoking gun” memo was only revealed because of the provisions of the 1996 post-conviction discovery statute. Judge Ross found this to be a discovery violation warranting a new trial. Munsey was moved from death row to a different prison while awaiting a new trial, but died of natural causes a few months after the hearing.<sup>3</sup>

*Timeline—*

<b>1993</b>	<b>May</b>	Shirley Weaver bludgeoned to death with shotgun stock while at her boyfriend’s home.
	<b>July</b>	Charles Munsey charged in Weaver’s murder
<b>1996</b>	<b>June 6</b>	Timothy Hall, the state’s star witness, takes the stand and alleges that while both he and Munsey were jailed together at Central Prison, Munsey had confessed to

<sup>3</sup> S. Mark Rabil, *True Open File Discovery: The Remedy for Discovery Violations in Capital Cases*, 8 N.C. State Bar J. 4, 7-9.

		Weaver's murder.
	<b>June 10</b>	District Attorney Lyon receives a fax from Talbert in the State Attorney General's office stating that Hall and Munsey were never housed at Central Prison contemporaneously. Lyon does not turn this information over to either the court or to Munsey's defense. Munsey is subsequently convicted in the murder of Shirley Weaver. He is placed on death row.
<b>1997</b>	<b>February</b>	Another man, Michael Hawkins, gives a written confession that he is responsible for the Weaver murder.
	<b>January 5</b>	Judge orders District Attorney Lyon to turn over the entirety of his files concerning Munsey.
<b>1998</b>	<b>January 11</b>	Lyon hangs himself
	<b>May 14</b>	Munsey granted a new trial; he is held on \$250,000 bond.
	<b>September</b>	Munsey dies of lung cancer while still in custody.

*Quotes—*

"From my perspective as a lawyer and judge, the adversarial system has gotten to the point where winning is more important than justice."

--**Tom Ross**, former Superior Court Judge, on the Munsey case.

*\*see following page for Talbert's memo*



171

State of North Carolina  
Department of Justice  
P. O. BOX 029  
RALEIGH  
27602-0029

MICHAEL P. BASLEY  
ATTORNEY GENERAL

**TELECOPIER TRANSMITTAL SHEET**

**TO:** Randy Lyon  
Assistant District Attorney

**FAX NUMBER:** 667-7899

**FROM:** W. Dale Talbert  
Special Deputy Attorney General

**DATE:** 10 June 86

**TELEPHONE NUMBER:** (919) 715-6610

**SUBJECT:** Prison Records for Timothy B. Hall

**NUMBER OF PAGES INCLUDING TRANSMITTAL SHEET:** 1

**COMMENTS:** Randy,

A search of Inmate Hall's "unit records jacket" (the file containing prison records which goes with the inmate from facility to facility) and the files of DOC's Medical Services Section has failed to disclose any documents which would support Hall's claim that he was at Central Prison during the period November 83 through Jan 84 or any other time. The DOC has been able to locate only five pages of med records for Mr. Hall and they all came from his unit jacket. None show he ever was referred to or actually was at Central. These records are being faxed to you by the Medical Services Section. Additionally, no one in the med records section is willing to testify that Hall could have been referred to the hospital at Central Prison or actually been taken there without some written records being generated. In fact, I have had reported to me that the med records section staff would testify it would be nearly impossible for Hall to have been at Central for medical care without there being written documentation of the fact. However, as a former prosecutor, I would argue that the absence of written documentation does not preclude the possibility that Hall was at Central. Although, DOC keeps pretty good written records of prisoner movements, even one-day movements, personally I would not be surprised if his claim was true.

I am sorry to have been of so little help. If you could get from Hall the names of correctional officers who guarded him while at Central or transported him to or from Central, or if you could have him be more precise with the dates involved, I might be able to look elsewhere for additional records to support or discredit his claim.

DALE TALBERT (919-715-6610)



## Johnathan Gregory Hoffman

### *Summary--*

Hoffman was sentenced to death for a murder and robbery in Marshville, N.C. There is no physical evidence that ties Hoffman to the crime, and he has never made a confession to authorities. The state's star witness, Johnell Porter, explained that Hoffman had made a jailhouse confession to him. But Porter might have been viewed as less than credible because of a plea bargain that authorities offered him. Porter, a career criminal, saved himself from life in prison (instead he got eight years) by testifying against Hoffman (years later he admitted that he had lied about Hoffman's confession). The prosecution did not turn over this important evidence and gave the jury the false impression that the witness was not offered any immunity deals. There was no other evidence that tied Hoffman to the crime.<sup>4</sup> Seven and a half years later, the prosecutors' hiding of this evidence has come to light. As a result, Hoffman has a new trial scheduled for October 2006.

- Because of prosecutorial deception, the jury was unaware that the witness was motivated by a plea bargain. Prosecutors have claimed that they were unaware of the immunity deals, but unequivocal proof of their knowledge has since been discovered.<sup>5</sup> In an interview report under the headline "Things to do Ref. Porter [the witness]," one of the prosecutors wrote that they needed to "meet with U.S. Attorney and get some concessions made to Porter [the witness] in the event he testifies for us." Prosecutors gave an altered version of this interview report to the court, critically omitting this note.<sup>6</sup>

### *Timeline—*

<b>1995</b>	<b>November 27</b>	Danny Cook robbed at gunpoint and murdered. Johnathan Hoffman is soon charged with the crime.
<b>1996</b>	<b>October 8</b>	Hoffman's lawyers request all helpful information (including any deals the DA has cut with witnesses). DA Honeycutt states that there have been no deals.
	<b>October 17</b>	Deal struck between Honeycutt and Porter, the state's star witness. Honeycutt does not give the information to Hoffman.
	<b>October 31</b>	Prosecutors give judge the notes from an earlier, October 5, interview with Porter. They do not mention the meeting of the 17 <sup>th</sup> , nor do they mention any deal they have offered to Porter in exchange for his testimony.
	<b>November 14</b>	Hoffman found guilty and sentenced to death.
<b>2003</b>	<b>October</b>	Hoffman's counsel files appeal attaching original Porter-

<sup>4</sup> From "The Common Sense Foundation." [available online: [http://www.ibiblio.org/leftwich/?fnoc=/common\\_sense\\_says/03\\_august](http://www.ibiblio.org/leftwich/?fnoc=/common_sense_says/03_august)]

<sup>5</sup> Id.

<sup>6</sup> *State of North Carolina vs. Johnathan Gregory Hoffman*. In the General Court of Justice Superior Court Division 95 CRS 15695. Third Amendment to Defendant's Motion for Appropriate Relief. June 2003.

		DA-deal as found in Honeycutt's files.
2004	April	Hoffman awarded a new trial.

*Quotes—*

"Johnathan Hoffman never told me nothing. I improvised the story because he had snitched on me and robbed me. The opportunity came for me to get him back."<sup>7</sup>

--**Johnell Porter**, state's star witness against Hoffman, describing why he fabricated his testimony against Hoffman.

### **James Alan Gell**

*Summary—*

On December 16, 2002, Superior Court Judge Cy Grant Jr. vacated the 1995 Bertie County murder conviction and death sentence of Alan Gell based upon documents revealed during post-conviction discovery. Judge Grant found that the prosecutors failed to disclose nine witness statements from people who saw the victim alive—between April 6 and April 10—after the alleged date of death of April 3, 1995. This was significant because Gell was in jail between April 6 and April 14 (the date of discovery of the body). (Gell's alibi included evidence that Gell was out of the state on April 3 up until his arrest and incarceration, on unrelated charges, on April 6). Judge Grant also found that the prosecutors had failed to provide an exculpatory "secret tape-recording" made by investigators of the two eyewitnesses or accomplices—the two main witnesses against Gell at trial. That the two served reduced sentences for their cooperation also went undisclosed. Without their testimony, the case against Gell likely would have failed as there was no physical evidence connecting Gell to the murder—e.g. none of the 33 fingerprints found at the murder scene were Gell's. One of the most disturbing aspects of this case is that the state failed to produce all these exculpatory statements to the defense despite a court order to do so five months before the trial, and failed to produce the evidence to the trial court during an in camera inspection at the start of the trial.<sup>8</sup>

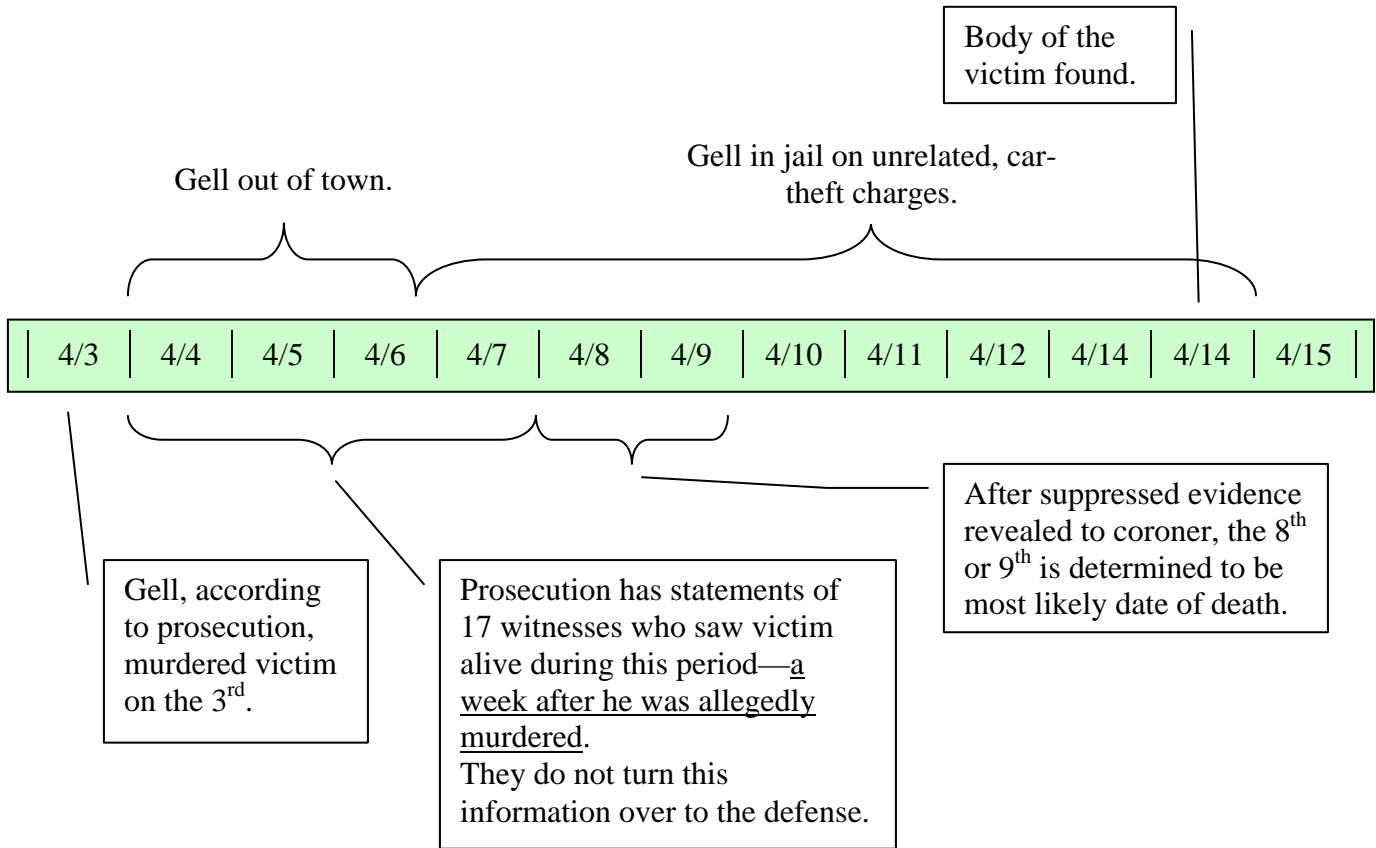
*Timeline—*

*\*following page*

<sup>7</sup> Associated Press, *Witness says he made up testimony in death case*. The Charlotte Observer; March 30, 2006.

<sup>8</sup> *Id.*, pp 9-12.

[April 1995]



*Quotes—*

“Here I am again with the system letting me down.”

--**Alan Gell**, after ex-prosecutors received the minimum punishment for their indiscretions at his 1998 murder trial.

"I haven't ever heard from them [Hoke or Graves, the ex-prosecutors], and they won't even look at me...[t]hey slapped high fives and hugged each other when I was sentenced to death. Is that professional conduct?"

--**Alan Gell**, of his former prosecutors.

**Section 3: Accountability for the Prosecution.**

**Generally**

The law has a remedy when helpful evidence is withheld; the defendant can win a new trial. However the law doesn't levy any punishment for withholding such evidence. "Punishment would come from the N.C. State Bar, the agency that oversees and disciplines lawyers. But that has happened only twice in the history of the State Bar. The only two times the organization took action against prosecutors for withholding evidence, it put the discipline on hold, saying there would be no penalty if there were no

further violations. So far, the State Bar has not suspended or revoked a prosecutor's law license, the most severe punishment it can exact. Shame has been the only punishment."<sup>9</sup>

- "They do get a lot of pressure. What that sometimes does, is it leaves prosecutors and investigators to try to identify a prime suspect very early in the investigation and then to focus the effort on proving that person is guilty rather than taking a more objective and measured view of what the evidence shows. They get invested too early."

--**Earl Dudley**, Professor at UVA School of Law, on the effects of pressures put upon elected district attorneys.

### The Cases

1. **The Hunt Case:** Following the vacating of Hunt's murder conviction, there has been a push for a cessation of the death penalty. Although a bill for a death- penalty moratorium died in the General Assembly last year, another reform bill, requiring prosecutors to share all their files with defense attorneys, passed the Senate unanimously and the House by a vote of 110-2. In Hunt's case, prosecutors withheld hundreds of pages of police reports, including a two-page report of a 1986 interview with Brown, whom police had briefly considered a suspect in the Sykes killing. That report was only released to Hunt's attorneys after Brown's arrest in 2003. An attorney for Hunt said that if he had known about Brown at the time, he might have been able to investigate him and solve the case years ago.<sup>10</sup>

2. **The Munsey Case:** Superior Court Judge Tom Ross tossed out Munsey's conviction and ordered a new trial because Wilkes County prosecutor, Randy Lyon, withheld impeachment evidence that the state's star witness, a jailhouse informant named Timothy Hall, was never in Central Prison, where Munsey supposedly confessed to him. During the trial, a deputy attorney general, Dale Talbert, advised Lyon that prison officials said it was nearly impossible for the witness to have been in Central Prison. There was no record of Munsey and Hall being housed contemporaneously.<sup>11</sup> Lyon did not share this information with the courts, nor did he share it with Munsey's defense. Furthermore, another man, Michael Hawkins, admitted to being the real killer. This admission was not pursued.

- Randy Lyon: On January 5, 1998, a trial judge ordered Lyon to turn over the entirety of his records. Six days later, Lyon attended church, then went home and hanged himself. Lyon's files contained Talbert's memo and Hall's prison records.

3. **The Gell Case:** In 2004, the NC State Bar charged that the two former prosecutors in the Gell case had withheld evidence and made false statements to a judge in the 1998

<sup>9</sup> Joseph Neff, *Justice Withheld: Cheating prosecutors ruin lives, go unpunished*. The Raleigh News and Observer; November 2, 2003.

<sup>10</sup> Supra, note 2.

<sup>11</sup> Joseph Neff, *Prosecutors Stifled Evidence*. The Raleigh News and Observer; December 19, 2004.

murder trial that put Gell on death row. The prosecutors, David Hoke and Debra Graves, withheld a tape recording of the state's star witness which stated that she had to "make up a story" about the murder for the police. The prosecutors also withheld eight witness statements that indicated the murder had occurred while Gell was in jail on an unrelated charge. The prosecutors told the judge that they had handed over all such statements. Hoke and Graves later stated that they did not know these statements existed as they did not know the full contents of their files.<sup>12</sup>

Ultimately the NC State Bar handed out "slight" punishment for the two ex-prosecutors. Formally charged with 1) failing to turn over evidence that would have been helpful to Gell; 2) failing to supervise the conduct of their chief investigator; and 3) bringing the judicial system into disrepute by their conduct; Hoke and Graves were given the least possible punishment, a reprimand—"a formal, written scolding." Stephen Culbreth, the disciplinary panel chair, said that he thought the punishment was congruent with their actions in that, in his mind, act intentionally.<sup>13</sup>

- David Hoke is presently serving as the Assistant Director of the Administrative Offices of the Courts in Raleigh.
- Debra Graves, according to a 2003 News & Observer article, works as a federal public defender.

4. **The Hoffman Case:** Prosecutors Ken Honeycutt and Scott Brewer have said they were unaware of Porter's deals, other than a promise they made to put in a good word for him when he was sentenced on a bank robbery charge. That deal was discussed several times in court. They said a federal prosecutor arranged the other deals with Porter's attorney and didn't tell them. Honeycutt and Brewer have denied wrongdoing. In an interview conducted in April of this year, Porter said Honeycutt and Brewer discussed the pending deals with him in the Mecklenburg jail. Porter's former attorney, Aaron Michel, has said in an affidavit that he, too, was at the meeting when Honeycutt discussed the deals. Brewer was there as well, the affidavit states. The N.C. State Bar has stated that it has evidence the men committed felonies--specifically obstruction of justice and subornation of perjury. However, the disciplinary committee of the N.C. State Bar, dismissed the complaint because the case had missed a filing deadline. Criminal action is now in the hands of Union County DA, Michael Parker.

- Ken Honeycutt retired from the DA's office 7 months after Hoffman was awarded a new trial. He is now in private practice in Union County.
- Scott Brewer is now a District Court Judge in Richmond County. In April 2006, new allegations surfaced stating that Brewer hid evidence in another murder trial. This allegation stems from the 1995 murder trial of Darrell Eugene Strickland. Strickland was convicted and is presently on death row.

---

<sup>12</sup> Joseph Neff, *False Actions Charged in Trial: Gell's prosecutors face bar inquiry*. The Raleigh News and Observer; April 9, 2004.

<sup>13</sup> Joseph Neff, *N.C. Bar Gives Ex-Prosecutors "Slight Punishment."* [available at [http://www.patrickcrusade.org/slight\\_punishment.html](http://www.patrickcrusade.org/slight_punishment.html)]