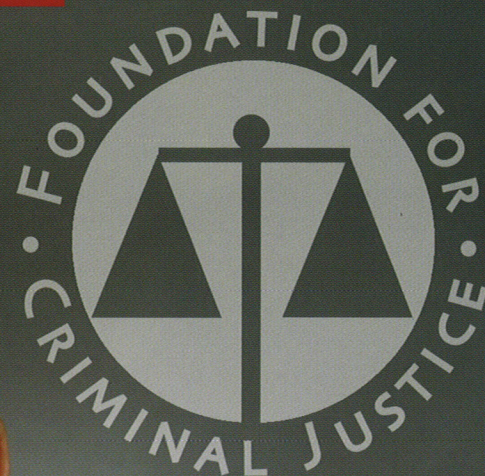


T H E National Association of Criminal Defense Lawyers

CHAMPION

August 2010



Jim E. Lavine
NACDL's 52nd President



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PERIODICALS

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- WASHINGTON, DC >>>> SEE PAGE 8**
October 7-8 / NACDL's 9th Annual State Criminal Justice Network Conference
- LAS VEGAS, NV >>>> SEE PAGE 48**
Oct. 14-16 / NACDL @ NCDD's 14th Annual DUI Seminar
- SAVANNAH, GA >>>> SEE PAGE 52**
Nov. 3-5 / NACDL's 2010 Fall Seminar Defending Sexual Assault Cases
- LAS VEGAS, NV >>>> SEE PAGE 58**
Nov. 18-19 / NACDL's 3rd Annual Defending Drug Cases Seminar
- ASPEN, CO >>>> SEE BROCHURE**
Jan. 16-21 / NACDL's 31st Annual Advanced Criminal Law Seminar
- LAS VEGAS, NV >>>> SEE BROCHURE**
March 25-26 / NACDL @ CACJ's 4th Annual Forensic Science Seminar

VERBATIM

BY DARRYL A. BURTON

Search for the Truth

I give thanks to Jesus Christ. I was not always a believer, but after what I experienced behind bars for almost a quarter of a century, and coming out of a place that can only be described as hell on earth, it would be foolish for me not to be a believer today. Thanks for allowing me to explain what happened to me in St. Louis in 1984.

A man stood by his car pumping gas one night, and another man approached him and killed him. Three people gave a description to the police of the man who did it. They said the man stood five feet five inches or five feet six inches tall, and was medium to light skinned. I am five feet nine inches to five feet 10 inches tall, and as you can see, I am a very dark man.



Photo: Valerie Carthen

Darryl Burton

Family members of the victim interjected my name into the case. They said that either I was responsible or another man was responsible. The other man, who fit the description, had shot the victim two years prior, and had shot at him two other times. That's three recorded shootings, but he was never brought in and never questioned as a suspect.

There was no motive, no DNA, no ballistics, and no confession. Nothing connected me to the crime with the

Editor's Note: Darryl A. Burton was a presenter on August 12, 2010, in Toronto at NACDL's Annual Meeting. He served 24 years in a Missouri prison for a crime he did not commit. Read more about him at www.dabex.org.

exception of witnesses — snitch witnesses, prosecution witnesses, and police informants. They made deals with the police, and then they came into court and told lies. It is as simple as that. They received favors, and they were released.

I was facing capital punishment if lawyers in the District Attorney's Office decided that's what they wanted to pursue. They waived capital punishment. The court sentenced me to life plus 50 years, which meant I would have had to serve 75 calendar years before I would have been eligible for parole. I was 23 when I was convicted. Seventy-five plus 23; you do the math. I would have been very old when I came out of prison. I would have died in prison.

A Jury of Your Peers

On the day I was sentenced, the judge asked if I had anything to say. He let me speak: "Your honor, I think this court, the prosecutor, the witnesses, and my defense attorney are part of a conspiracy. You have confiscated my freedom." He replied: "I did not find you guilty. Your lawyer did not find you guilty. If you are mad at anybody, you should be mad at the jury of your peers because that's who found you guilty." I told the judge that the witnesses submitted perjured testimony. He said that no court was going to overturn what 12 jurors decided. For years, he was correct. As I left the courtroom, I told the judge I was going to fight until I proved my innocence. That was my challenge. That's what the anger did for me. There were times in prison when the anger almost went in the wrong direction. There are many angry people in prison. A prison — inmates, administrators, and guards — is a culture of evil, corruption, and hate. And I was at the height of my hate.

Life Inside

I was in prison in Jefferson City, Missouri. They process you in — 30 or 40 guys. They strip you naked. They tell you to "spread eagle" and they spray every part of your body with bug spray. Then you are told to stand aside for a few minutes; it seems like an eternity. They give you some clothes, and assign you a number and a housing unit. On the first day, I saw two



men being stabbed. The first day! On the day I was released — August 29, 2008 — they rushed a man to the prison infirmary after someone cut his throat. Many things happened between entering prison and coming out. I cannot even begin to give you an account of all the close calls that I had. There are some that I am aware of, but there are many that I am not aware of.

There are so many prison nuances that people on the outside have no clue about. In prison, you have to be aware of how you look at a person, how you walk, how you talk, and even how you smell. If you are living in one of these cages with an individual who does not like the way you smell, he may not say anything. He might wake up one morning — after smelling you four weeks, months, or years — and start stabbing you without any provocation. That's prison life. It is a subterranean culture, and I don't think there is anything else like it on earth. As I speak, someone is being raped. Someone is being stabbed. Someone is being brutalized.

Pleadings and Letters

When you are in a place like this and you are innocent, how do you adjust? How do you keep your sanity? And let me remind you, today I am a calm, thoughtful, respectful individual. I was not always this way. I was full of

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anger and rage toward prosecutors, judges, police officers, and lying witnesses. I grouped all of them together, which was not the right thing to do. There are thousands of police officers, prosecutors, judges, and other people in law enforcement. I would tell myself that these thousands of people would have to know that they could not get it right 100 percent of the time. They must know that there are innocent people in prison. And for years, I did not think that anyone would believe me. I took a paralegal course while in prison. I tried to understand the legal language — Latin words like *corpus delicti*, *actus reus*, *mens rea*, and *ad testificandum*. I went into the law library and studied. I had to read the law books. I started to understand how to do legal research, and how to Shepardize. I began to file motions and pleadings as I worked on my case.

I was in two prisons, one physical and one spiritual. I wrote a lot of motions, and they were denied, denied, denied. I started writing letters, eventually writing over 600. I wrote an organization here in Canada that was involved with Rubin Hurricane Carter. I wrote Barry Scheck, Oprah Winfrey, NBC, ABC, and CBS. I wrote an organization in Princeton, New Jersey, called Centurion Ministries. I was rejected many times. But I was determined to find someone who would hear my plea. Centurion Ministries wrote me back in 1990. Basically, they said, we are a small organization with limited resources. We do help free the innocent who are in prison. We receive thousands of requests every year from inmates who claim to be innocent. Of all those requests, we take two or three per year. If we take your case, it will be 10 years before we get to it. *That's fine. I will write to you for 10 years.* And I did write them every year. Sometimes I wrote them twice a year.

In the year 2000, Centurion took my case. In 2008, I was exonerated. So that was an 18-year process. That's how long some of these cases can take. I did not have the benefit of DNA. In non-DNA cases, it seems hard for some courts and district attorneys to believe that the system failed. Twenty-four hours. When I was arrested, that's how long I thought it would take them to figure it out and get it right. It took 24 years.

Buying Testimony

A lie, in and of itself, should not send anyone to prison. If a person is getting any kind of deal for testifying, that kind of evidence should be banned. There should not be any deals for any

witness. You are buying testimony. The defense cannot do that. The defense cannot offer a guy probation or leniency in exchange for his testimony. To me, that's fundamentally unfair. It is not due process. It is not equal protection under the law. If the defense cannot do it, the prosecution should not be allowed to do it. This is my humble opinion.

In my case, the lawyers went back and investigated. They discovered that there had been a witness — the gas station attendant working the night the crime was committed. She told the police, back in 1985, "You have the wrong man. That's not the man I saw commit this crime. That man is too dark." The police said nothing. That testimony did not come out until 2007. This lady traveled from Baltimore, Maryland, back to Missouri. She said she had waited for a chance to tell a court, a judge, or somebody that there was an innocent man in prison and his name was Darryl Burton. To me, this was a miracle because this lady was not young. Anything could have transpired in her life. Had she died, I still would probably be in prison because her statement is the thing that turned the case for me.

They also discovered that the key witness for the prosecution — who they said had a couple of convictions and was facing a couple of years in jail — had 12 convictions and was facing 30 years in jail. He was also on record as being a perjurer. Five months after I was found guilty, he signed a sworn affidavit saying he submitted perjured testimony against me and he wanted to recant. This information did not come to light until 2007. Sometimes there is a problem with disclosure and with facts being presented to the defense.

In all of these cases, I believe there is one fundamental search — the search for the truth. That's what you are looking for. What really happened? What took place? Had I been the brother or relative of a police officer or anyone who prosecutes or defends these types of cases, the effort, energy, and interest would have been different. In many cases of wrongful conviction or actual innocence, the one thing we have in common is that we are poor people. It does not matter if we are black, white, male, or female. We cannot afford good legal representation. That's why many of us are sent to prison wrongfully. I was not compensated for my 24 years in prison. The Missouri statute gives compensation only to prisoners exonerated by DNA evidence. All I received was, literally, a handshake. Thank you for listening. ■