



# Centurion Ministries

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John Zwerling and Pat West  
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Dear John & Pat:

I can't believe that almost one half of 2005 has vanished; but here we are, and it's time for Centurion's semi-annual letter to our Friends and Benefactors.

## 1. Three Men Cleared With the Reversal of a 29 Year Old Conviction

For the last 16 years, Centurion's **Kate Germond** has been laboring on behalf of three men who were falsely convicted of murder in a District of Columbia courtroom almost 30 years ago. Please see the enclosed *Washington Post* article for more details of this wrongful conviction.

On May 26, 2005 U.S. District Court Judge Rosemary Collyer (a 2003 Bush appointee) granted a writ of habeas corpus and reversed the January 1976 convictions of **Wayne Eastridge, Nick Sousa, and Michael Damien** and declared in her opinion that "*the Court finds that this is the rare case in which Petitioners can prove their actual innocence of the crime charged as well as violations of their constitutional rights at trial.*" In her opinion, Judge Collyer stated that, "*the petition is supported by evidence unearthed by Centurion Ministries, a non profit prison advocacy center, during an eight year investigation of the case.*" And in a footnote, she expresses her "*gratitude to Centurion Ministries and to Wilmer Cutler Pickering Hale and Dorr, LLP for their extraordinary work on this matter for almost two decades.*" To this Centurion happily adds the name of **John Zwerling**.

John Zwerling is an exceptional criminal lawyer in Arlington, Virginia who was the first attorney signed up with Centurion for this case. He, in turn, introduced us to his friend, **Art Mathews**, a partner at the legendary firm of (then) Wilmer, Cutler, and Pickering. Sadly, Art died in 1998. All the lawyers are owed a debt of gratitude that we cannot ever repay. They all worked pro bono for 15 years. More importantly, while Centurion certainly produced good investigative work in the field, were it not for the tenacity and creativity of the attorneys, this case could have easily faded away. Instead, through a thorough search of case law, the attorneys came up with the legal procedural means heretofore not used successfully in D.C. that gave this case one more bite at the "judicial apple." They have provided a precedent that will enable other D.C. convicted innocent people the potential to obtain judicial relief in the Federal Courts if they have been denied access to the D.C. courts.

This case was denied repeatedly in the District of Columbia courts and languished in the U.S. District Court for a number of years prior to Judge Collyer assuming the bench and this case in

January 2003. Once she was able to sink her teeth into the voluminous record, she ordered an evidentiary hearing that took place in December 2004. A highlight of the hearing was the testimony of Stephen Jones, one of the real assailants of the victim, Johnnie Battle. For the first time, Mr. Jones described in riveting detail the events leading up to the murder as well as the actual killing of Mr. Battle. Jones named those who repeatedly stabbed Mr. Battle to death. Mr. Jones was convicted of this murder in 1976, but was sentenced to 5 years in prison as a Youthful Offender. Recently, he completed 20 years of parole for this crime.

Another key witness at the hearing was Pamela Heim, Mr. Jones' girlfriend at the time of the crime. Her testimony revealed that two of the killers had run all the way from D.C. to a friend's house in Arlington looking "distracted" and stating that they "got to lay low."

A former member of the Pagan Motorcycle club testified that one of Mr. Battle's killers confessed the crime to him, named his stabbing accomplices, and lamented about the false conviction of Eastridge, Sousa, and Damien. The ultimate effect of these and other witnesses at the December 2004 hearing exonerated these three men of any participation in the crime; and, at the same time, identified the real killers.

In her ruling, Judge Collyer ridiculed the U.S. Government for changing its theory of the case when confronted with credible new evidence of innocence. She states that, "*In argument and briefing before this Court, the government continues to beat a retreat from its original certainty that these Petitioners stabbed Johnnie Battle.... Instead it recapitulates an aiding and abetting theory of guilt that lacks a factual underpinning.*" At another point in her opinion, Judge Collyer sticks a finger in the eye of the U.S. Department of Justice prosecutors by characterizing them as "*unexpectedly tacking with the changing winds*" when faced with the new evidence which forced them to abandon old theories and adopt empty and useless ones.

Meanwhile, Wayne, Nick, and Michael served a total of 69 years for a crime they had nothing to do with. After serving 29 years, Wayne was paroled this past March. Nick and Michael had been paroled in 1995 after each needlessly spent 20 years in prison. Tragically, Michael Damien is not with us to enjoy his day of vindication. He died of a massive heart attack on December 9, 2002 at the age of 54. A case can certainly be made that the extraordinary stress produced by his false imprisonment directly contributed to his premature death. Since Nick Sousa's daughter was born a week or so after his conviction, he couldn't participate in her life until she was in college. Wayne Eastridge's father fought tirelessly for his son's freedom, working long after his retirement to pay lawyers and investigators to help his son until Centurion stepped in to take that burden off his shoulders. It is our pleasure to return his son to him, fully exonerated. Wayne's mother, however, who only talked about and lived for the day that her only child would return to her, developed Alzheimer's. Consequently, she does not know exactly who this grown man is who has suddenly appeared in her life. She's happy for the attention and visits, but does not know that it is her son who has returned home to be with her in her final days. These wrongful convictions take their toll on loved ones and family in ways that are incalculable and quite devastating.

## 2. A Retrial Based on a False Confession to Rape and Murder

On June 11, 2003, three Long Island, NY men, **Dennis Halstead, John Kogut, and John Restivo**, were freed after 18 years of wrongful incarceration. The Nassau County District Attorney joined a defense motion to vacate their convictions after DNA testing showed that none of the men were the source of the seminal fluid found in the victim, whose body was discovered in December 1984 after she had been missing for a month. At trial in 1985, the State's theory of the case was that the three men abducted, raped, and murdered, her. This theory was supported by a coerced confession and jailhouse snitches. The theory was proven false by three separate DNA tests, the last test being the most sophisticated STR DNA test performed on the largest vaginal swab. Their freedom was the culmination of 10 years of hard work by Centurion's **Kate Germond**.

Since their release two years ago, the prosecutor has selected John Kogut for retrial. It was Kogut's false confession 20 years ago that enabled the State to proceed against all three men because John's confession falsely incriminated not only himself, but had Halstead and Restivo raping her prior to her murder.



John's retrial will begin this fall. Pretrial preparations, reinvestigation, and Frye hearings have already occurred and will continue to be extensive and costly. Currently, Centurion and retained trial defense attorney, **Paul Casteleiro**, are conducting hearings for the purpose of convincing the trial judge to allow social scientists to offer trial testimony on how police interrogation tactics can lead to false confessions by innocent people.

A confession, even a recanted one, is one of the strongest pieces of evidence a prosecutor can hope for. Most people unschooled in this particular forensic subject simply do not believe that innocent people will confess to committing a serious crime, especially a rape/murder, which they did not do. The reality is that such an act does occur with alarming frequency. As an example, of the 160 DNA post conviction exonerations that have occurred in the U.S. in the last 15 years, at least 20% of those freed and vindicated gave police a false confession upon arrest and interrogation.

John Kogut is one of them. Twenty years ago, 21-year old John Kogut was placed in a small police interrogation room for almost **18 hours** without food or sleep. He was allowed to consume only coffee and cigarettes. He gave the detectives six different versions until they accepted the last one, and then had John repeat it while they videotaped it. Among other lies told to John, the rotating investigators said that John had failed a polygraph when in fact he passed. Confused and exhausted, John was overcome by isolation and despair. Desperately desiring to stop the interrogative nightmare, John gave the police what they wanted – a confession. Little did anyone know at the time that future DNA technology would prove the centerpiece of the confession to be totally false; namely that Halstead and Restivo raped the victim before she was killed.

At the ongoing Frye Hearing, we are bringing in various forensic Ph. D. researchers and professors of social psychology from universities around the country who have conducted extensive pioneering research during the last two decades into the specific subject of police interrogation practices and how they have yielded false confessions by innocent defendants. Most states in this country have held that juries are perfectly capable of deciding whether a confession is true or false without the aid of well-researched expert testimony. Study after study has shown that this is a tragic mistake because not only can juries not tell a false from a true confession, neither can police. It has been demonstrated time and again that experienced police officers believe liars and disbelieve those who are telling the truth just as often as they get it right. Police are not the human lie detectors that they think they are.

It is our hope that the trial judge will allow the jury to evaluate the Kogut confession not strictly as a lonely tree in a desert, but as one of many trees in an orchard of false confessions. Suffolk and Nassau Counties are notorious for eliciting false confessions. If the judge gives the green light to the forensic expert testimony, such an allowance will be groundbreaking in the State of New York where this kind of contextual testimony has only been authorized in four other instances. More and more states are recognizing the wave of wrongful convictions involving false confessions, and are beginning to address it in courts. New York is an important state to win this fight. If we prevail on behalf of Mr. Kogut, things will change dramatically for other New York defendants who have falsely confessed to crimes they did not commit.

By the time of the next Centurion Ministries Friends and Benefactors Letter that will be distributed this coming December, the Kogut trial will have hopefully concluded with a resounding acquittal; and we will have paved the way for expert testimony to educate juries about false confessions and how they are elicited through misguided and heavy-handed police interrogation tactics.

### **3. Jim Driskell Completely Exonerated**

Jim Driskell was convicted in 1991 for a Winnipeg murder. As you may recall from our June 9, 2004 Friends and Benefactor letter, Centurion worked hand in hand with our Canadian counter-part, AIDWYC (Association In Defense of the Wrongly Convicted), to free Jim Driskell. In November 2003, Jim Driskell was released on bail by a Manitoba Provincial Judge, pending a final review of his 1991 conviction by Canada's Federal Minister of Justice. In Canada, if an imprisoned person has new evidence of innocence or evidence that severely impeaches the original conviction, he must present his case for review to the Federal Minister of Justice. To put this in U.S. perspective, Canada's Federal Minister of Justice is comparable to our U.S. Attorney General.



This past March 3<sup>rd</sup>, Canada's Federal Minister of Justice Irwin Colter announced the findings of his office's review of the Driskell conviction. He ordered a new trial and at the same time made a public statement to the nation saying that, "*In my view, yes, this was a wrongful conviction. On a personal level, I can say to (Driskell) I'm sorry both for him and his family that he had to endure this miscarriage of justice.*" He added that Mr. Driskell has been "*vindicated in his innocence.*"

Also, on March 3<sup>rd</sup>, the Manitoba Provincial Attorney General announced that he would be initiating a Commission of Inquiry to determine who was responsible for the Driskell wrongful conviction and what went wrong to produce such a false result. Unlike the U.S. where this has never been done, in Canada such an Inquiry is commonly conducted in cases of wrongful convictions. Additionally, the Manitoba Provincial Prosecutor announced that all charges against Driskell will be dismissed and that they will not seek to retry him for this offense.

This is a tremendous victory for Mr. Driskell and a day he has long waited for since his arrest 15 years ago. *His* nightmare is now over, but those provincial police and prosecutors who had a hand in framing Mr. Driskell await their ordeal as they try to explain their misdeeds before the soon to be established Commission of Inquiry.

#### 4. Finances

Since John Kogut's release two years ago, Centurion has spent \$150,000 in preparations for his upcoming trial. This is a huge and costly undertaking. Essential expenses continue to mount. I expect that by the completion of his trial at the end of this year, we will have spent another \$100,000 for a total of \$250,000. It is a heavy burden on Centurion's treasury, but one that certainly needs to be done. If Kogut is found not guilty, then the entire case is over and Dennis Halstead and John Restivo will have no fear of a retrial.

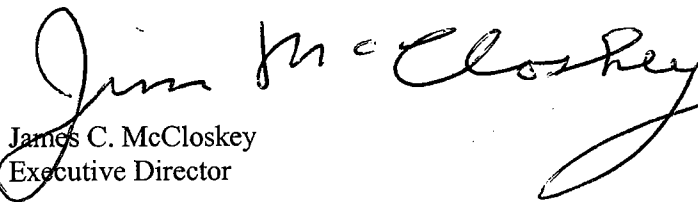
There have been important new developments in the **Clarence Moore** case, which I will detail in the next Friends and Benefactor Letter. Since we freed him in 2001, Centurion has spent \$130,000 in extensive litigation that so far has staved off a retrial. Included in the legal effort was a New Jersey State Supreme Court mandated evidentiary hearing to evaluate the reliability of hypnotically refreshed eyewitness testimony. After hearing the testimony of forensic experts on this case (paid for by Centurion), the Atlantic County trial judge's ruling disallowed such testimony, and recommended to the New Jersey Supreme Court that it no longer be accepted in criminal court proceedings.

As you can see, Centurion is devoting a good chunk of its resources (time and treasury) towards the retrials of those we have freed. These efforts are very costly and time consuming. Additionally, we are working on behalf of 25 other convicted innocent folks throughout the nation. We need HELP in underwriting all of these expenses. If you haven't given to us recently or if the thought has crossed your mind about giving to us, I ask you to please do so at your earliest convenience. It seems like the stones that we push up the hill are getting heavier and the hills are getting steeper.

**Your generous financial assistance will certainly help lighten our load.**

Thank you to all who continually support our work. I greatly appreciate your financial assistance.

Yours truly,



James C. McCloskey  
Executive Director

P.S.: You can also donate online via our website, [www.centurionministries.org](http://www.centurionministries.org).



## Ruling Clears Long-Jailed Men in 1970s D.C. Slaying

By CAROL D. LEONNIC  
and HENRI E. CAUVIN  
Washington Post Staff Writers

The 29-year-old murder convictions of two former members of a white biker gang in a racially charged trial were thrown out yesterday by a federal judge who concluded the men could not possibly have helped stab and kill a black customer outside a Northwest Washington lounge.

U.S. District Judge Rosemary M. Collyer found that Joseph W. Eastridge, who served 29 years in prison for the crime and has since been released, and Joseph N. Sousa, who served 20 years and also has been released, were innocent and should not have been convicted of the 1974 murder of Johnnie Battle.

The ruling revisits one of the District's most notorious murder cases of the 1970s. Testimony showed that Battle was slain in November 1974 after a confrontation in which members of the Pagans biker gang made racial insults. Battle, 26, fired a gunshot that wounded one of the bikers. Some of the others chased him across Wisconsin Avenue NW and stabbed him. He had 17 stab wounds.

Thanks to numerous appeals and hearings, the judge declared that "the fog has lifted" over who was responsible in the aging case. The evidence, she said, was deficient against Eastridge and Sousa, now in their late fifties, and another defendant, Michael Diamen, who died in December 2002.

Collyer also found flaws in the way the case was tried. Prosecutors concealed evidence from the defense that implicated other members of the biker gang, she said in a ruling that was made public yesterday.

No logical jury would convict the three men today, because the eye-witnesses and facts indicated they were in a car several blocks from the scene of the stabbing when it occurred in an alley near the intersection of Wisconsin and Emery Place, the judge stated.

"God has blessed me! The truth has come out," Eastridge declared

See DISMISS, B5, Col. 5

## Judge's Ruling Clears Two Convicted of 1974 Slaying

DISMISS, From B1

when reached in Stafford, where he lives under house arrest with electronic monitoring while on parole. "What hurt me so much was the prosecutors' lies," he said.

Sousa, an ironworker released 10 years ago and now on parole, said in a telephone interview that "the original prosecutors — they just had to know the truth. But it was easier to convict us than to go to the trouble to prove the real case. That's what was so bad about it."

A spokesman for the U.S. attorney's office, Channing Phillips, said that prosecutors were reviewing the ruling and had no comment.

Eastridge, Sousa and several of their defenders said prosecutors were bent on convicting someone in the high-profile, racially tinged crime, and appeared to go after the easiest targets, then tarnish them with guilt by association.

On one count, Collyer and prosecutors agree: Stephen C. Jones, also convicted in 1976, was indeed guilty of first-degree murder. Jones, who had just been initiated into the Pagans at the time of the killing, testified at a hearing last year on behalf of Eastridge and Sousa, saying they did not join him in the pursuit and attack.

For Eastridge and Sousa, the ruling ends a marathon quest. They were aided by a nonprofit investigative group, as well as lawyers who worked for free for the past 15 years. At every step, they said, prosecutors and the court machinery seemed bent on defending the result despite the facts.

The killing came after the bikers, celebrating the birthday of their president, went to the Godfather Lounge on Wisconsin Avenue. A fight broke out when members of the group were told by the bouncer to leave.

The bikers then exchanged cross words with Battle and two other black customers passing by. Then a misunderstanding turned it into a fatal confrontation.

One Pagan pulled a knife when he thought one of the black men had pulled a knife — which actually was a comb. Battle ran to his car to get a gun. When he came back, Jones taunted him with a racial insult. Then the Pagans surrounded him with knives. Battle shot at the Pagans, ran off and was killed within minutes.

Eastridge, Sousa, Diamen and Jones were arrested in a car about 20 minutes after the fracas. The first three men said they picked up a bloody Jones after the incident, but did not take part in the killing. Jones since has admitted beating Battle and made statements to prosecutors that three other men — not Eastridge, Sousa and Diamen — participated in

the attack. He said that he did not stab Battle but joined in beating him.

The men's defense was first championed by Centurion Ministries, a nonprofit group devoted to investigating unfair prosecutions and freeing innocent people. After investigating for five years, Centurion persuaded the firm of Wilmer Cutler Pickering Hale and Dorr and lawyer John Zwerling to appeal the convictions for free. The lawyers estimate they have donated several million dollars worth of work to the case.

After losing at several turns, the attorneys decided in 2000 to file a claim of wrongful imprisonment in federal court. In hearings last year and this spring, they presented numerous witnesses who said they knew the Pagans who were involved and these three men were nowhere near the stabbing.

Jones identified Charles Jennings, Chesley Barber and John Wood as his accomplices. Jennings and Wood are deceased, and Barber has denied wrongdoing.

In her ruling, Collyer noted that there was no physical evidence tying the men to the stabbing. The only direct witness was a former girlfriend of Sousa who was angry that he had ended their relationship and whose story was rebutted by numerous other witnesses.

Jennings and Wood, whom witnesses placed at the scene, told a grand jury before the trial they were never at the Godfather, a fact raising doubts about their innocence and one which prosecutors did not share with the defense.

Yesterday, Eastridge said he was ecstatic that he would no longer be labeled a murderer.

"I don't think there are words that can describe the pain and agony you go through, being in prison when you know you're innocent," he said. "At first, you're full of hate. Nothing's real. But I could see the hate was destroying me."

Eastridge said prosecutors can't make up what he lost: freedom; the chance to have a family.

Sousa said he lost the chance to father his child.

"My daughter was born a week or so after we got found guilty," Sousa said. "I just missed her whole life. When I got out, she was a sophomore in college. That was hard."

Sousa said he has eyed his peers, as he worked hard days and endured numerous firings when employers learned he was a convicted murderer.

"My friends now are all retired. They've got nice homes," he said. "It's hard to explain all that's lost."

Staff researcher Bobbye Pratt contributed to this report.