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TUESDAY, AUGUST 19, 2014

## Max Soffar's Last Appeal

*Michael Berryhill chairs the journalism department at Texas Southern University. He asked Grits to publish this extended guest post by him on the Max Soffar capital murder case, which also inspired this [recent Dallas Morning News editorial](#). Soffar, who for decades has maintained his innocence and may have falsely confessed, is terminally ill and likely will not survive until his execution. While on paper he has many years' worth of appeals left before the state can kill him, as a practical matter he probably has just a few months remaining to prove his innocence before death overtakes him.*

*Mr. Berryhill is also the author of [The Trials of Eroy Brown, the Murder Case that Shook the Texas Prison System](#), published by the University of Texas Press. Here's his article in full, with only minor copyediting by yours truly.*

\* \* \*

On the last Wednesday of July, a death row convict named Max Soffar gave what may well be his last news interview. Soffar, who is 59, has spent most of the last 34 years insisting he falsely confessed to helping another man kill three teenagers at a Houston bowling alley in 1980.

Harris County prosecutors, the leading experts in the nation at winning death penalty verdicts, insisted that no matter what his written confession said, Soffar acted alone. Although there is not a shred of physical evidence that links Max Soffar to the murders, not a trace of blood, not a hair, not a fingerprint, not a gun, not a getaway car, they have twice convicted him of shooting a young woman, one of the three victims of an execution-style murder and robbery.

Soffar was convicted once in 1981, and after he won a second trial because of his ineffective lawyers, a second time in 2006. During the final arguments, one of

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Soffar's prosecutors gloated to the jury that his lawyers "didn't bring you any evidence that someone other than the defendant committed this crime."

That is particularly galling to Soffar because the Harris County prosecutors and his judge, Mary Lou Keel of the 232<sup>nd</sup> District Court, did everything necessary to keep the jury from hearing a plausible story about who really committed the bowling alley murders. Now Soffar's appeal lawyer has turned up a reliable witness who has identified a convicted mass killer of seven people as being present at the Houston bowling alley a week before the murders.

"I hope my federal judge in Houston will let me put this witness on," Soffar said. "He was the one who saw this murderer in the bowling alley."

Soffar's lawyers need to hurry up to get that hearing, not because Soffar faces impending execution, but because he is terminally ill with liver cancer and has from five to eight months to live, maybe less. So many questions surround Soffar's conviction, which a judge for the Texas Court of Criminal Appeals has called "fishy," that he has never been scheduled for execution. Soffar has many years of appeals left: to the federal district court, to the Fifth Circuit panel of three judges, to the nine judges of the Fifth Circuit *en banc*, and to the Supreme Court. Such appeals could go on for several years. But Soffar is out of time.

Soffar's current *pro bono* appeals lawyer, Andrew Horne, has been feverishly working on new writs: an appeal for clemency from the Texas Board of Pardons and Paroles and Governor Rick Perry, and an appeal for an expedited hearing from the Southern District Federal Court. The odds of winning clemency for a twice-convicted capital murderer in Texas from Perry, who is preparing to campaign for president, are about zero. The petition for an expedited federal hearing for a terminally ill inmate breaks new legal ground, Horne told me. He said he hasn't found any precedent for it. But he wants his client to have one more chance to clear his name before he dies.

Horne, a young Scot with a Harvard law degree from the international firm of Kirkland and Ellis, has spent the last six years and millions of dollars of his employer's money to investigate Soffar's complicated case. The files alone fill sixty boxes in a small room at his firm's offices in midtown Manhattan. He had been warned that in a case that has been litigated for thirty years by dozens of lawyers, the chances were slim he would find something new.

Vowing to touch every piece of paper connected with the case, he found a witness

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that anyone with a sense of fairness (but perhaps not a judge or a Harris County prosecutor) would want to hear. He was a bowling alley employee named Patrick Pye, and two of his friends died that weekend. The case was widely publicized: it was a cold-blooded execution of some helpless teenagers that horrified the city.

On July 15, the Monday after the weekend killings, Pye told police that he and one of the bowling alley employees who was killed had a “run-in” with a white man at the bowling alley a week before the murders. The man bowled alone and drank alone, Pye told Horne, and he and Steve Sims had thrown him out for not paying.

“Pye stated that he got a phone call from this man,” the police report says, “who stated, ‘You better be watching over your shoulder.’ Pye stated that he thought he would be able to identify this man if he saw him again.”



Even 28 years later, Pye could identify him as Paul Dennis Reid, the man with the droopy eyes, from a wedding photo taken a couple of weeks after the murders.

If the Houston police had followed up on Pye’s story, they might have found Reid. For one thing, he had a criminal record. But more importantly, he resembled a police sketch of the murderer, drawn with the help of a surviving witness, Greg Garner. Garner lost an eye when he was shot in the back of the head, but he had a strong recall of how the robbery happened. Detectives interviewed Garner seven times, recording and transcribing the interviews, and even hypnotizing him to see if he could retrieve further details. It had happened quickly. There was one man, not two. The man said his truck had overheated and he needed water. He had a gun. He made them lie down. He said “good-bye,” and shot them one after another.

Garner remembered a single, mild-mannered robber who was white, beardless, muscular and more than six feet tall. His hair was parted down the middle, covered his ears and was down to his collar. It fit Reid. Within a few of days of the murders, Houston newspapers and television stations were circulating this drawing:

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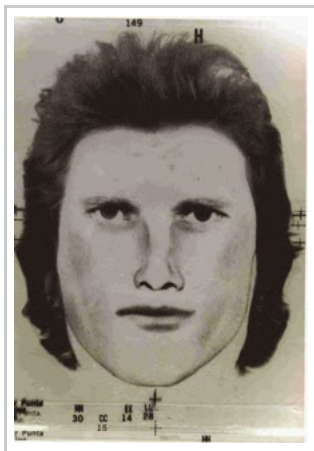
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It was this drawing that led to Max Soffar's downfall. A reward of \$15,000 was offered for the arrest of the killer, and Soffar had a crazy notion that his running buddy and partner in burglaries and drugs resembled the drawing closely enough that he could turn him in for the bowling alley murders and collect the reward. It didn't matter that his buddy was bigger and rounder than the drawing indicated, and wore mutton-chop sideburns. Max thought he looked just like the image.

"My sister, I told her I was going to do it," Soffar recalled, "and she said, 'Max, don't do that, because if you do, then you're gonna get in trouble.' And I'm thinking how am I gonna get in trouble? I'm telling them he did the murders.... I said 'They're going to listen to me and they're going to give me that money.' She said, 'You're crazy.'"

Thinking back 34 years, Soffar sighed, and said, "I guess I should have listened to my sister."

From birth Soffar had problems. He was the adopted son of a drug-using mother, and both his liver and brain were damaged from fetal alcohol syndrome. He was an impulsive and difficult child who beat his head against the wall. His parents had little idea of how to raise him. Soffar's adoptive father was a remote, alcoholic owner of a second-hand furniture shop in Alvin, who beat Max when he was little. His mother was a hoarder, who kept the house filled with so much junk and stacks of newspapers that a person could barely walk through the house.

From an early age he sniffed glue and gasoline. When he was 9, his parents had him committed to the Austin State Hospital, where he was often kept naked and terrified in a padded cell. He was given electroshock treatments and dosed with powerful anti-psychotic drugs. (At his second trial, in order to assert Soffar's future dangerousness, prosecutors falsely claimed he had been criminally confined, which created another point of appeal. During his long confinement in death row, Soffar has never been a threat to the inmates or correctional officers.)

When he came back home to Friendswood, his parents couldn't control him. He smoked marijuana, sniffed glue, and took methamphetamine and other drugs. He dropped out of school at the seventh grade. He worked as a truck driver for a while. In 1980, he was living at his parents' home, unemployed, committing

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burglaries, stealing cars and motorcycles, and taking whatever drugs he could find.

Galveston County sheriff's officers got to know him well, and for the most part, Max liked the attention. With no authority figures at home, he looked up to the police. He even helped them by ratting out drug dealers. Once in a while he made fifty bucks as a drug informant for the Galveston sheriff's office. He had a friend there, a detective named Bruce Clawson. Clawson thought of Max as having the mind of a 12-year-old, and testified that he never swore out a warrant on the basis of one of Max's stories, which could be lurid and exaggerated. Max learned that the wilder the story, the more attention he could get.

That's how he came up with the idea of turning in a friend for the reward money. It was going to be his big score. When he was arrested riding a stolen motorcycle three weeks after the murders, he was high on drugs. The cop who arrested him told Max he was going to see he got thrown in prison for life for being a habitual criminal. Soffar decided he wasn't going to spend life in prison for a stolen motorcycle. He had already bragged to a couple of drug dealers and that he and his buddy had done the bowling alley murders. Now he had something big to offer the cops. He figured he would soon be home with \$15,000 in reward money.

The Houston police and an assistant district attorney came to League City to listen. When Soffar balked at talking to them, they brought in his handler, Bruce Clawson, to get him to open up. Many years after Soffar's first conviction, Clawson expressed regret about how he had misled Soffar. Soffar had routinely waived his Miranda rights after they were read to him, but when a suspect refuses to talk, that's a sign under some legal interpretations that the interview should end, and the suspect wants a lawyer. Soffar asked Clawson what was involved in getting a lawyer and how soon it would take him to get one. Maybe a day, maybe thirty days, Clawson said. Clawson advised him that if he was guilty of the crime, he should talk to the police; if he was innocent, he should get a lawyer. I guess I'm on my own, Soffar told Clawson. Later, when Clawson observed a Houston detective questioning Soffar about the murders, he concluded that Soffar didn't know a thing about the crime, that the police were feeding him details that would lead to his conviction.

It took police three days for the Houston police to get the confession they wanted. In his first signed statement, Soffar said he was waiting outside in the get-away car while his partner robbed the bowling alley and shot the teenagers. The next day, at the urging of the detectives, he said he went inside and watched his partner do the killing.

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But forget about the partner. Harris County did. The son of a Houston police detective, he was hauled to the police station and appears to have invoked his Miranda rights successfully. His car and apartment were searched and nothing was found to link him to the crime. Greg Garner, the surviving witness, couldn't pick him out of a lineup as the killer. He couldn't identify Soffar, either. No record of the partner's police interrogation survived, except a scrap of yellow legal paper that says, "Suspect is crying." He was never indicted, because unlike Max Soffar, he never confessed.

It would have helped Soffar's case if police had tape-recorded their interrogations of him. His case has been used as an example for legislation requiring that they do. Police had the technology at the time, but seem to have used it only when it suited their purposes. (They recorded their interviews with Garner, for example.) Instead they talked to Soffar for hours, drove him to the bowling alley where he inaccurately described the crime, and wrote up statements for him to sign. By the third day of interrogation, Soffar was ready to say whatever he thought would get the process to end. And the police needed to charge him or let him go. Soffar told me he kept making up stories about buried guns and bodies that were so wild he thought the police would figure out that all he told was lies and that he knew nothing about the crime.

On the third day, the detectives told him he couldn't say he had just witnessed the murders. He had to say he helped out. They had already cut his supposed partner loose. Soffar signed a statement in which he said his partner ordered him to participate in the killing. After shooting two of the men, the partner threw the loaded handgun across the room to Soffar and told him he had to shoot the last two. Soffar signed a statement saying that first he shot one of the men. Next came the chilling sentences that led to his convictions:

"I walked around the other side of them and hesitated, and [he] said, 'Shoot her.' She had her face down and she just looked up at me and I aimed and turned my head and shot her. I think I hit her in the cheek."

Prosecutors have claimed that this is a detail that only the killer could know, even though it published in the first Houston Post story the day after the crime. Soffar says he didn't get the detail from the newspaper but from the police detectives.

Soffar said one of the detectives asked him, "Why did you shoot the girl in the face and everybody else in the back of the head or the side of the head? ' And

*Times criminal justice correspondent*

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"concise, knowledgeable,

that's how I knew that Arden Alane Felsher had been shot in the face. That key element put into one of the statements and that's how they hammered me into death row right there."

More than one judge had observed that Soffar's confession is all there is to this case, and none of it matches the surviving witness's account.

In 2002 a rock-ribbed conservative judge for the Fifth Circuit Court of Appeals, Howard DeMoss, read Clawson's affidavit and concluded that Soffar had indeed asked *for* a lawyer, not *about* a lawyer. He and a second judge concluded that Soffar's confessions had been illegally obtained and violated the Miranda act.

Had the court thrown out the confession as a violation of the Fifth Amendment, the state would have had no case because it had no physical evidence. The state appealed, and in a kind of tradeoff, the Fifth Circuit ruled that Soffar deserved a new trial because his court-appointed lawyer, the infamously casual Joe Cannon, known for sleeping during trial, had ineffectively defended him.

Then came the second trial in 2006, 24 years after the first conviction. It must have seemed strange to the jury to hear a case that old, with no mention ever made of the previous conviction.

Soffar's defense team had a witness named Stewart Cook who had partnered with Paul Reid in a series of armed robberies. With Reid in Tennessee death row for killing seven restaurant workers in two different robberies, Cook thought he would write a book about Reid, a boyhood friend. Cook signed an affidavit stating that Reid had told him he had committed the bowling alley murders. But Cook never went before the jury because the Harris County district attorney threatened to prosecute him for murder if he testified.

Judge Mary Lou Keel would not let the Tennessee police detective who helped convict Reid testify about how closely the Tennessee murders resembled the bowling alley murders. She concluded they weren't that similar. Nor would she let the defense show jurors how many of the details of the murder had been widely publicized on television and in newspapers.

When Garner testified, which he had not at the first trial, he couldn't remember much. The clean-shaven murderer with hair to his collar that he described to police did not resemble Soffar, who had a full beard and mustache and hair down to his shoulders.

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The prosecutors said he had grown it after the murders. Besides, how accurate could Garner have been? He had been shot in the head, lost an eye and suffered brain damage.

Soffar's defense was gutted.

His prosecutor argued that the confession was all the jury needed: "Why in the world would anybody ever do that, unless they did that or more and the answer is you wouldn't. You wouldn't say that. You wouldn't make an admission. You wouldn't say I shot Alane Felsher in the cheek..."



This was a masterful use of the word *you*. Most people are baffled by false confessions. They can't imagine doing such a thing. The jury can't imagine such a thing. And yet it happens all the time. More than one person confessed to the bowling-alley murders besides Soffar. He was a mental patient who was living with his mother. A [study of exonerations](#) holds that false confessions play a role in 25 percent of the cases.

One of the people who knows about false confessions is a judge of the Texas Court of Criminal Appeals, Cathy Cochran, who [wrote a concurrent opinion](#) about Soffar's case. She cited some of the better known cases such as the Central Park Five, the subjects of a documentary movie by Ken Burns, and the Norfolk Four, subjects of a book, *The Wrong Guys*. Four of the Central Park Five were minors, held without legal or parental help and coerced into confessing to a brutal rape and beating that left a jogger unconscious. When the real rapist confessed, insisting he had acted alone, and his DNA matched with the rape kit, New York police refused to concede their mistake. In the Norfolk, Virginia, case, four sailors confessed to raping and murdering a young married woman in a small apartment. The physical evidence of the scene contradicted the theory of a gang rape. None of the sailors' DNA matched the rape kit. The real rapist, whose DNA confirmed he was the criminal, confessed and said he acted alone, but again police insisted that anyone who confessed must be guilty.

In the Kafkaesque world of criminal appeals, Cochran concurred with the rest of

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the court that Soffar had no legal grounds for a new trial, writing: "...although I personally do not have great confidence in the reliability or accuracy of applicant's written statements and hence in his culpability for the triple murders, I was not the chosen fact finder. Applicant's experienced and extremely capable counsel presented the jury with all of the information it needed to decide that applicant made a false confession and that he was not involved in the bowling-alley murders. The jury rejected that factual conclusion, as it was entitled to do."

But the jury had never heard an alternate theory to the case. It was excluded. All they had was the painful choice of convicting Soffar or letting him go. They couldn't tell the judge that they had a reasonable doubt because they had never heard of Paul Reid.

When prosecutor Lynn McClellan retired, [he told the Houston Chronicle](#) that sending Max Soffar to death row a second time was the highlight of his career. He had read about the case when he was in law school, and hoped he would do something similar some day. It appears he missed what could have been a major triumph, admitting a mistake and prosecuting Paul Reid instead.

After Andrew Horne took on Soffar's appeals six years ago, he asked the Harris County office for conviction review to consider Soffar's case, but he never heard back. A couple of years later when he was in Houston and asked about the oversight, he recalls a prosecutor telling him, "Max is not a poster boy for innocence."

He lacks what could be called the Harrison Ford factor. Ford played an innocent doctor in the movie *The Fugitive*. The character is a handsome, intelligent, educated man without a trace of bad behavior. He's more like Michael Morton, the kind of innocent man who gets the most attention, the kind we can identify with. Max was not a good young man. He admitted to being a thief, a drug addict and a rapist. He tried to turn in a friend for a reward. Prison has changed him for the better, he said.

"I was a Class A knucklehead when I got there," he said. "I got beat pretty severely because I would not conform to the rules and regulations. But those were lessons where I learned to respect the authority of those around me.

"I've learned an awful lot behind these bars for 35 years. I've met a lot of interesting people. I've met a lot of truly dangerous, crazy people. I've met a lot of good people. I wouldn't change it for the world. I wouldn't change it for the world because if I had changed it, I would be dead. Because I had a habit of sticking a

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needle in my arm and stealing from my own mom and daddy, and lying to people and doing things I shouldn't have been doing. I surely wouldn't have survived. No way."

His liver cancer grew out of his battle with Hepatitis C, he said, which came from his needle use. Last December surgeons at John Sealy Hospital in Galveston removed tumors from his liver. Recently the pain came back, for which he is being given morphine.

"They told me I had this portal vein tumor," he said. "It's inoperable. Even a liver transplant wouldn't save me. No hospital in the world can do anything for me."

On August 11, Horne appealed to the Texas Board of Pardon and Paroles to commute Soffar's sentence to life and free him from death row for what little is left of his life. That would distinguish him from Paul Dennis Reid, who refused to talk to Soffar's lawyers about the bowling alley murders. Reid died of a heart attack last spring in Tennessee's death row.

Soffar could choose to move to the prison hospital at the Estelle Unit in Huntsville, but that would mean leaving behind his radio, his legal papers, and all of his belongings, including letters from the Swiss woman he married three years ago, and who visits him every six weeks. Bad as conditions are for death row inmates, if he can't be freed, he would rather stay put.

"I'd rather lie right there in my cell," he said, pointing in the direction of his block at the Polunsky Unit, "and die right where I grew up."

**MORE:** A columnist for the Houston Chronicle, Lisa Gray, reacted to this post with an article titled, "[Will an innocent man die on Texas' death row?](#)"

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How does a judge hand out a death sentence in a case with no physical evidence? Only in Texas. So happy I fled that sh\*\*hole.

[8/19/2014 03:00:00 PM](#)

Anonymous said...

Soffar said he was waiting outside in the get-away car while his partner robbed the bowling alley and shot the teenagers.

[8/19/2014 03:05:00 PM](#)

Anonymous said...

He's guilty, not eligible for clemency nor compassionate release per the law. And no, the federal court will not rush thru his appeal. If they did, they would just sustain the convictions.

[8/19/2014 09:37:00 PM](#)

Kerry Cook said...

My name is Kerry Cook. I spent over two decades on Texas death row in a wrongful conviction case legal scholars call the worst example of police & prosecutorial misconduct in Texas history. Five or six of those death row years was spent either next door or in a cell with Max Soffar on the "Work-Capable" program. It's eerie because the entire time Max and I shared a cell, he always maintained he was used as a scapegoat and did not commit the crime in which he was on death row for. When you're sharing a cell and people are being executed right and left all around you - - sometimes two at a time - - what would motivate a man to privately maintain innocence when there is nothing left to lose? I was able to help Anthony Graves in his case of innocence by bringing out of death row the confession of Robert Carter (I gave an affidavit to Graves attorneys) that Anthony Graves was indeed innocent and I sent Geraldo Rivera to Burleson County to interview former District Attorney Charles Sebesta where Sebesta let slip the admission that Carter had admitted sole

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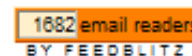
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responsibility for the crime (this is what got Anthony Graves case overturned and eventually led to his exoneration and freedom), but in Max's case, he was not as lucky and didn't have the same smoking gun.

In all the years I was on Texas death row with Max Soffar - - including years sharing the same cell - - I never witnessed Max hurt anyone. In fact, from prison guard to prison inmate, everyone liked and respected Max Soffar. And you would have to understand the dangerous and volatile world of Texas death row to fully appreciate that.

I didn't read the Dallas Morning News Editorial, or this Grits piece - - I don't have to: I already know the intimate details of Max's long and torturous legal journey. I find it impossible to believe that anyone could maintain their innocence in the darkness of a 5 by 9 death row cell for 33 years with nothing to lose and tell me over and over that they were innocent of the crime. People can post to this Grits story "Anonymously" all they want about "facts" they know nothing about. I lived in the cell with Max Soffar and never once - - not once - - did he ever swear anything but his innocence.

I believe him.

The hardest part is, while I could help Anthony Graves with his innocence case, I was not able to help the case of Max Soffar. If you execute him or he dies in prison, I will see Max's face on G-15 telling me over and over and over again, "I swear before God almighty, Kerry - - I am innocent...." Texas has made so many mistakes. How in the world can we even take a chance Max is wrong?

8/19/2014 10:51:00 PM

 JJ said...

Welcome back, Kerry.

8/20/2014 01:56:00 AM

Anonymous said...

"no, the federal court will not rush thru his appeal. If they did, they would just sustain the convictions"

Nonsense. The fed courts overturned his first conviction already. Thanks to Judge Keel this one looks ripe for a repeat if Soffar lives that long.

8/20/2014 07:21:00 AM

Anonymous said...

Nonsense is right. His attys admitted that he isn't going to win. Their goal is just to bring attention to the anti DP movement.

8/20/2014 08:55:00 AM

Anonymous said...

Then why did the federal courts overturn his first conviction, 8:55? You said if the federal courts hear the appeal "they would just sustain the convictions," but the opposite was true the last time the case got to them.

8/20/2014 09:22:00 AM



The Homeless Cowboy said...

Excellent Story Scott, I wish he could at least spend his last few months in Freedom, but Harris County is a really nasty place to get involved with the legal system. I really feel for him and I will say if Kerry Cook lived beside him on Death Row and he truly believes him innocent, he most likely is innocent. I know from experience that when we are in prison together, most of us don't lie to each other, there's no point in it. Convicts are really good at sniffing out the truth. It's kind of a specialty talent you learn.

8/20/2014 11:30:00 AM



The Homeless Cowboy said...

Oh and Welcome Home Kerry

8/20/2014 11:32:00 AM

Anonymous said...

Anybody who is rational and has looked at the evidence in Soffar's case will have concluded that Max Soffar is innocent and was coerced to falsely confess to capital murder. Despite that, he will have spent over thirty years on death row before dying there due to the devastating combination of viciousness and incompetence so ubiquitous to Texas authorities and exhibited in this case in particular by the likes of Lynn McClellan and Mary Lou Keel. They are the perpetrators of a grave injustice who should not hold positions of power.

8/20/2014 11:54:00 AM

Anonymous said...

*Then why did the federal courts overturn his first conviction, 8:55?*

IAC. But that was the 1981 trial. In 2006, he was retried, convicted, and again sentenced to death. Don't confuse the two.

8/20/2014 12:23:00 PM

Anonymous said...

12:23 did you read the story? In the second trial jurors weren't allowed to hear about the likely real killer and the judge wouldn't let in an expert on false confessions. Don't confuse winning a rigged game with seeking the truth.

8/21/2014 06:29:00 AM

Anonymous said...

8/21/2014 06:29:00 AM:

Triple hearsay is not admissible and the exclusion of the expert was addressed in detail in the state habeas corpus. Did you read it? Don't confuse stories on an anti DP blog with the truth.

8/21/2014 10:55:00 AM

Thomas R. Griffith said...

Hey Kerry, I'd welcome you back too but we all know you haven't went away in the first place.

You are already revered as a Public Hero and don't owe anyone anything. If you believe in your heart that he's innocent, then it's time to consider doing something about it vs. simply blogginaboutit. He needs to be polygraphed & hypnotized with the evidence being reviewed in a public setting. Let's go to Austin and raise hell before he dies. A Petition created by you would be awesome.

\*Afterwards - If you want to team up and prove innocence that doesn't have a damn thing to do with: Colors, Death Row, Exhausted Appeals, DNA and or, Open/Active cases, the PNG of Texas 'Ambassador' title is just waiting to be utilized. Two of the worst righting wrongs regarding the unqualified & ignored. It's a lifestyle and a calling. Thanks.

[8/21/2014 12:27:00 PM](#)

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