A TRAVESTY OF JUSTICE

An Overview of the Jury Trial of Balagoon (s/n John Charles Cole, Jr.) and Christopher Naeem Trotter

As a result of our participation in the February 1, 1985 rebellion at the "Indiana State Reformatory," me, Christopher Naeem Trotter, Charles Murphy, Kevin Murphy, Thomas Johnson, and Jeffery Parker were all charged with a multitude of criminal offenses.

On April 2, 1985, warrants were read on all of us. I was charged with the following offenses: two (2) counts of Attempted Murder, which is a class 'A' felony; two (2) counts of Battery, which is a class 'C' felony; four (4) counts of Criminal Confinement, which is a class 'B' felony; and one count of Rioting, which is a class 'D' felony.

Christopher Naeem Trotter was charged with the following offenses: four (4) counts of Attempted Murder, which is a class 'A' felony; four (4) counts of Criminal Confinement, which is a class 'B' felony; and one count of Rioting, which is a class 'D' felony.

Charles Murphy was charged with the following offenses: one count of Rioting, and one count of Conspiracy to Riot, which is a class 'D' felony; one count of Conspiracy to Commit Criminal Confinement, which is a class 'B' felony.

Kevin Murphy was charged with the following offenses: one count of Rioting, and one count of Conspiracy to Riot, which is a class 'D' felony.

Thomas Johnson was charged with the following offenses: four (4) counts of Criminal Confinement, which is a class 'B' felony; one count of Rioting, which is a class 'D' felony.

Jeffery Parker was charged with the following offenses: four (4) counts of Criminal Confinement, which i a class 'B' felony; one count of Rioting, which is a class 'D' felony.

The warrants were issued by the Madison County Superior Court Three (#3), located in Anderson, Indiana. We were all arraigned on these charges during the latter part of April 1985. During our arraignment we were all appointed Public Defenders by the court to represent us at trial.

Our trial was originally scheduled to commence in June of 1986, but was continued and re-scheduled several times for tactical reasons. Me and Christopher Naeem Trotter were scheduled to be jointly tried together.

Prior to our trial, Charles Murphy plead guilty to a mis-demeanor offense and received a six (6) month sentence for his participation in the February 1, 1985 Reformatory Rebellion. The charges filed against Kevin Murphy as a result of his participation in the February 1, 1985 Reformatory Rebellion were completely dismissed. In September of 1987, Thomas Johnson and Jeffery Parker were both jointly tried and convicted by the racist court of Judge Thomas Newman, Jr. They were found guilty by an all white jury of the offense of Criminal Confinement (two [2] counts) and were sentenced to thirty (30) and twenty (20) year prison terms respectively.

THE TRIAL

Our jury trial commenced on May 11, 1987. Our defense was defense of a third person, and self-defense, affirmative defense under the Indiana Statute I.C. 35-41-3-2. At trial i was represented by Attorney Michael Withers, and Christopher Naeem Trotter was represented by Attorney Jeffery Lockwood.

The Venire Panel and Voir Dire:

On May 11, 1987, there were a total of sixty-seven (67) peoples called to court to participate in our trial as potential jurors. Out of the sixty-seven (67) peoples who were called for jury duty only two (2) of them were black. The remaining sixty-five (65) potential jurors were all white.

We brought this fact to the attention of our defense counsels, who immediately made an objection to the trial court concerning the serious lack of prospective black jurors on the Venire Panel. Our defense counsels argued that we (the defendants) were black, and in addition most of the witnesses for the defense were black, and that they didn't think that the jury panel was representative of a jury of peers from Madison County. The jury panel was not representative of the Madison County population. The population of the city of Anderson is approximately 35 to 40% black, and throughout the county it is 10 to 15% black. On the basis of these statistics they argued that they expected that there at least be half a dozen members of the jury panel that are black.

This raised the question of whether or not constitutional guarantees at this early stage of our trial proceeding were being denied us. However, in the

face of this serious allegation, the court, without any elaboration or investigative questions, mindlessly overruled the objection.

Even when statements from a prospective white juror questioned the serious lack of black participation in the jury selection, obviously lending credibility to defense counsels previous claims, the trial court blatantly overlooked it and pushed the issue under the bench as a collateral matter.

To add insult to injury, the prosecutor (William Lawler) used a peremptory challenge to exclude one of the only two prospective black jurors from sitting on the Petit Jury, stating that her failure to uphold the law herself indicated that she was not fit to sit in judgment of others. (The record shows that Ms. Belinda Jordan had paid legal fines for having committed misdemeanors.) The fact that se had paid legal fines, it did not in any way infer that she would be partial to us (the defendants) who, quite unlike Ms. Jordan, were faced with multiple felony counts.

If the truth be told, the possibility of us having any blacks on our Petit Jury never existed. Of the two black venire women that were called to court among over 60 other whites, one was struck by the prosecutor. The other was mathematically eliminated, but did manage to reach the unneeded position of alternate juror status.

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Motions in Limine:

During a pre-voir dire hearing which was held on May 11, 1987, the prosecutor (William Lawler) advised the court that it had three (3) "motions in limine" that it wished to file with the court. The state's (prosecutor's) first "motion in limine" was a "debose motion," which prevents the defense from mentioning the severity of punishment, and the number of years of imprisonment that defendants face, to the jury. The state's second "motion in limine" was to prevent the defendants and their witnesses from mentioning the fact that several officers who worked at the "Indiana Department of Correction" had filed a civil action suit against the State of Indiana concerning the beating of Lincoln Love and other incidents that occurred on February 1, 1985.

The state's third "motion in limine" was a motion designed to prevent defendants and their witnesses from testifying to, or commenting on, any incidents regarding Lincoln Love and/or the beating of Lincoln Love on February 1, 1985 unless it can be shown to be relevant in this cause.

Our defense counsels had no objections to the state's first "motion in limine" because the law was clear on such an issue: the severity of punishment should not be mentioned to the jury. The trial court granted the state's first "motion in limine."

However, our defense counsels objected to the state's second "motion in limine" on the grounds that it was improper. The argued that the proper subject of a "motion in limine" is to prevent one side of a law suit from asking a question or mentioning a subject which is so prejudicial that the jury is likely to be overwhelmed with emotion or prejudice in favor of, or against, one side. The "motion in limine" is not supposed to be used by attorneys on one side in litigation as a sort of pre-objection. A question concerning a law suit or law suits has never been ruled to be so highly prejudicial that it is likely to unhinge a jury. Despite defense counsels' objections, the trial court granted the state's "motion in limine."

Our defense counsels objected to the state's third "motion in limine" on the grounds that it deprived or denied us of our statutory defenses. The argued that the statute of Indiana I.C. 35-41-3-2 provides the following:

> "Sec. 2 (A) -- A person is justified in using reasonable force against another person to protect himself or a third person from what he reasonably believes to be the imminent use of unlawful force. However, a person is justified in using deadly force only if he reasonably believes that force is necessary to prevent serious bodily injury to himself or a third person or commission of a forcible felony... no person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting himself or his family by reasonable means necessary."

Our defense counsels argued that this was the "Indiana self-defense statute" that the defendants intended to rely upon in their trial. Lincoln Love is the third person that our clients contend that they were attempting to protect at the time of these incidents. Our defense counsels argued that the "motion in limine" was extremely misleading in its generality. In addition, our defense counsels argued that there was no case which holds that you can merely file a "motion in limine" on any piece of evidence or information without showing how mere mention of it, in void dire or otherwise, would be so prejudicial for the state's case that its relevance would be outweighed by the mere mention of it. There was absolutely no attempt in this motion to explain to the court how that would be prejudicial. Defense attorneys argued that the state's "motion in limine"

was entitled a "motion in limine," but was really a motion to strike a defense!

Despite the logic and reasoning behind defense attorneys' objections, the trial court granted the state's "motion in limine" in part. Defense counsels then argued that if we (the defendants) were not permitted to mention the *res gestae* of these alleged offenses, then we in essence were being deprived of a defense. (Literally *res gestae* means things one and includes acts, statements, occurrences and circumstances that are so closely connected to the occurrence as to be part of it). Defense counsels argued that they have a right to voir dire the jury concerning whether or not they would follow the self-defense statute if there was evidence that defendants acted in self defense or in the defense of a third person. The state's "motion in limine" is totally devoid of any reason that this would allegedly prejudice them.

Defense counsels argued that Lincoln Love is a witness in this case and has been listed as a witness and to their knowledge no objection has been made to his name being added to the defendants' witness list. Defense counsels further argued that what happened surrounding the Lincoln Love incident on February 1, 1985 is part of the *res gestae* of this case, and that the state's witnesses cannot mention what happened without mentioning "Lincoln Love's" name. He is intricately involved with the incidents immediately preceding the alleged stabbing of these guards. Despite defense counsels logic and reasoning, the trial court maintained its earlier rulings.

After the selection of the Petit Jury had been completed, our defense counsels requested permission from the trial court to mention Lincoln Love and the circumstances that surround our defense, in their opening statement to the jury and in the evidence.

In response to defense counsels request, the state (prosecutor) requested permission to put on some evidence. The request was granted by the trial court. The state called Harold Delph (who was employed at Indiana Reformatory as a prison guard) to the witness stand. Harold Delph testified that he did not know Lincoln Love personally and that he did not see Lincoln Love on the morning of February 1, 1985. But during cross-examination by defense counsels, it was brought out that Harold Delph had given a sworn deposition at the "Indiana State Reformatory" on April 15, 1986 in which he stated that he had witnessed unprovoked beatings of inmates by guards. Harold Delph claimed that he was mistaken when he made that statement because he did not understand the question. Thus, he

changed his testimony and insisted that he did not witness any beatings of any inmates. It was also brought out on cross-examination by defense counsels that state witness Harold Delph was a plaintiff in a lawsuit pending in the U.S. District Court in the Southern District of Indiana against the "Indiana Department of Correction." In that civil complaint, Harold Delph alleged that it was a policy and practice to beat inmates at the "Indiana State Reformatory" and that he was viciously attacked in retaliation because of the beating of Lincoln Love . Defense counsels argued that the civil complaint is a sworn statement and they should be allowed to use it to impeach state witnesses who have changed their testimony.

The state (prosecutor) argued that what happened to Lincoln Love did not happen in the presence of their witnesses, that Lincoln Love was not on the unit, and that the beating incident was over when officer Delph, Officer Richardson, and Lt. Widner were stabbed by defendants. Thus, the defense of the third person should not apply. What happened on the M.R.U. had nothing to do with the stabbing Officer Delph, Officer Richardson, and Lt. Widner. Therefore, "Lincoln Love's" beating is not relevant, according to the state.

Defense counsels argued that the defense of a third person or self defense allows the defendants to rely on what they reasonably perceived or believed supported by the fact that Lincoln Love was in the D.O. building being beaten when defendants found out about it. That was how they knew about the incident. Thus, they may not have known where Lincoln Love was exactly, but they reasonably perceived or believed that he was in the D.O. building. The trial court ruled that the defendants can testify to what they knew when they acted in self defense. Defendants can testify to what their apprehension was, and what they believed, and counsels can tell the jury what they think their clients' testimony will be, but at this time the specifics of the Lincoln Love incident are not admissible.

Defendants may have known that Lincoln Love had been beaten and whatever else, but the specifics of this incident, unless they saw it, is not admissible. The trial court stated that the state's third 'motion in limine" was granted. The trial court then proceeded to state it agreed with defense counsels' argument about the federal lawsuits. The trial court stated that they (federal lawsuits) could be used for impeachment purposes and also to show bias and prejudice on cross examination. Defense counsels felt so strongly that the court ruling would unduly prejudice our case, they both made an oral motion to file an interlocutory appeal. The trial court denied the motions.

Ex-Parte Hearing and Prejudicial Transportation Order:

During the lengthy pre-trial period in this cause, my defense counsel filed various motions to transport his client to the Madison County Detention Center in order to allow us adequate preparation time. Motions were filed on March 3, 1986; May 12, 1986; June 27, 1986; January 26, 1987; and March 31, 1987. All of these motions were granted. The last motion filed on Mach 31, 1987, was granted the same day. Upon learning that no action had been taken to comply with the court order to transport his client, defense counsel then filed "a motion to show cause," on April 26, 1987 and this motion was denied on April 29, 1987. In denying this motion, the trial court ordered that (I) defendant be allowed thirty (30) minutes consultation with my defense counsel each day prior to trial and one (1) hour after the trial concluded daily. Defendant was to be transported each day from his place of incarceration at the Indiana State Farm, located in Putnamville, Indiana to Anderson, Indiana and returned there daily after the trial concluded. This was a daily round trip of approximately one hundred and eighty (180) miles.

On May 11, 1987 my defense counsel filed a "motion to dismiss" stating that he could not adequately represent me given so little time to confer prior to and after trial. The trial court denied the motion and the transport order remained in effect.

In a document filed with the court, my defense counsel also alleged that the Department of Corrections, Madison County Sheriff, and the prosecutor had an ex-parte communication with the judge without notice to defendant or his defense counsel which had resulted in his motion to transport being denied.

Although my defense counsel did not actually witness the ex-parte discussions or communications that took place between Judge Thomas Newman, Indiana Department of Corrections, Madison County Sheriff and the prosecutor (William Lawler), the trial court records clearly indicate that an ex-parte discussion or communication did in fact take place. There was nothing in the trial court records to explain the court reversal of defendant's motion to transport. I (the defendant) was unduly prejudiced by the ex-parte discussion or communication that took place. In addition, I was so unduly prejudiced by the trial court's denial of my motion to transport that it was impossible for me to receive a fair and impartial trial.

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Getting Paraded in Front of Prospective Jurors, as well as the Jury, while Defendants were Handcuffed, Chained and Shackled:

Our trial began on May 11, 1987, and concluded on June 12, 1987. Our trial lasted approximately four (4) weeks. During those lengthy four (4) weeks of trial we were both deliberately and maliciously paraded in front of prospective jurors, as well as the jury, while we were handcuffed, chained and shackled by D.O.C. prison guards who were heavily armed with automatic assault rifles, shotguns, as well as handguns. We were repeatedly paraded in front of the jury while we were handcuffed, chained and shackled by these heavily armed correctional guards.

During the presentation of evidence, defense counsels made an oral motion for a mistrial on the grounds that the jury had seen us in handcuffs, and leg irons, thereby destroying our (the defendants) presumption of innocence, which deprived us of a fair trial. The trial court denied our motion for a mistrial. However, it did caution the D.O.C. and sheriff not to allow this to happen again.

Despite this warning by the court, it happened again and again during the course of our trial. We were continually paraded in front of prospective jurors, and eventually the Petit Jury, like we were "savage beasts."

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Denial of Right to Impeach Various State's Witnesses by Means of a Verified Complaint:

During the state case-in-chief, the state called "Harold Delph" as a state witness. Harold Delph testified during direct examination that he had been summoned to the captain's office in the D.O. building on February 1, 1985 before he confronted the defendants. He testified that he had a conversation with Officer Richardson (Michael Richardson) regarding the defendant (John C. Cole, Jr.). He also testified that the defendant (John C. Cole, Jr.) made the following remarks that "He was tired of this shit," before he was stabbed by him.

During the cross-examination by defense counsels Harold Delph was asked was there anything going on that day unusual back in the Maximum Restraint Unit? Harold Delph's answer was that "he could not tell because he was not there." Harold Delph was then asked, "did he hear anything or see anything that made him believe that something was going on back in

the D.O. or M.R.U.? Harold Delph's answer was "no sir." Harold Delph was then asked, "do you know of any accepted policy of the reformatory to brutalize inmates?" The state objected on the grounds of relevancy. The trial court sustained the state's objection.

Defense counsels then requested to have an argument outside the presence of the jury. This was granted by the trial court. Outside the presence of the jury defense counsel "Jeffery Lockwood" made the following argument:

> "Your Honor, the question of whether he (Harold Delph) knows that there is a policy goes to the very heart of the defense, or whether on a routing basis there is abuse of prisoners goes to the heart of the defense. It is a part, and partial of the knowledge, the reasonable perception of these defendants when they saw what was going on in the M.R.U. The reputation of those kinds of things happening in the past is relevant and as I say an important factor in consideration in the way these defendants acted the way that they did. I think that I ought to be able to ask Mr. Delph about his knowledge of that because he has previously stated under oath that he did know that there was a disturbance in the M.R.U. and he stated that he saw someone come out, and put down a club and say that is for Officer Able. I believe he also has said in an official document that he has signed and filed a lawsuit with the Federal Court in Indiana and I am quoting now from paragraph 35 of that complaint in which Mr. Delph and others are plaintiffs and the Indiana Department of Corrections are defendants: 'Inmate beatings and the use of excessive force by correctional officers as used on Lincoln Love is a common occurrence and an accepted policy and practice of Indiana Reformatory.' Thank you."

Defense counsel "Michael Withers" made the following argument:

> "Your Honor, I would point out to the court that this man (Harold Delph) has already testified this morning that he came into the captain's office and heard statements made by Lt. Wicker that the beating of Lincoln Love was in retaliation for the stabbing of an officer, the beating was severe enough that a ball bat which was used on Mr. Love was broken. He has now testified that he did not see or notice anything unusual. I believe that he said, or didn't know that anything was going on in the M.R.U. Contrary to his prior testimony this morning, and also contrary to---------- I believe his deposition and it is also contrary to his signed and sworn complaint in Federal Court which in paragraph 34 states 'the armed inmates

> numbering approximately 10,' which is also different than his testimony today, 'happened upon the plaintiffs and viciously attacked them in retaliation for the beating of Lincoln Love.'
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> I should be allowed to go into that and find out why he has knowledge of that when he states that Mr. Cole said nothing to him other than pulled a knife, and stabbed him. And I think that we are into an issue here that the state has opened the door and I think that we should be allowed to pursue it on the grounds of impeachment of this witness. He has made three statements now which are contrary to previous statements, and sworn statements or testimony given this date in a preliminary hearing on the witness stand, and we should be allowed to question him about it for the purpose of impeachment."

The trial court asked: How did the state open the door on their direct examination? Defense Counsel Withers explained to the court how the state opened the door on their direct examination of Harold Delph. The trial court sustained the state objection, despite defense counsels' arguments.

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Charles Widner was called as a state witness. He testified on direct examination how he was attacked by the defendants on the morning of February 1, 1985. He also denied being aware of the brutal beating that was being administered to "Lincoln Love," notwithstanding the fact that his office was adjacent to the M.R.U. (Maximum Restraint Unit) and the anteroom. On the morning in question Charles Widener was the acting shift supervisor, which means he was in charge that morning.

During the cross-examination of state witness Charles Widener, defense Counsel Lockwood asked him, did he have a monetary or a pecuniary interest in the outcome of this trial? The state requested a hearing outside the presence of the jury.

Outside the presence of the jury the state objected on the grounds that it thought the court had granted its "Motion in Limine" which prevented the defense from mentioning the civil complaint filed in the Federal Courts. The state also objected on the grounds that the question asked by the defense called for a conclusion on the part of the witness.

In response to the state objection, the defense counsel Lockwood made the following arguments:

> "Your Honor, this witness has filed a lawsuit in the U.S. District Court in the Southern District of Indiana, Indianapolis Division. The suit was verified, the complaint was verified by, on behalf of this witness by his counsel. In the complaint he has prayed for monetary and punitive damages against the defendants that are named in the complaint are the Department of Corrections, members of the Board of the Department of Corrections, Norm G. Owens, Robert Shriner, Fred Hanks, Dan Jerroff, who this man testified was on the unit in the day in question and Lt. Wayne Wicker, who is also on the unit on the day in question. Among other allegations, Your Honor, that this witness has made is that the plaintiffs, and him being one of them, were unmercifully beaten and repeatedly stabbed during the attack and referring to an attack on him and other plaintiffs by inmates at the Reformatory. Another allegation that was made is that at the beginning of the 15 hour disturbance which would have been the time that he has now testified to in court the time that he was stabbed, the above-named plaintiffs, of which he was one, without provocation on their part, were viciously, maliciously and brutally attacked by rioting inmates who were armed with deadly weapons, namely homemade knives and/or shanks. That is two of the many allegations that have to do with the facts and circumstances of this case. Any witness is permitted to be impeached, with reference to any pecuniary interest that he might have in the outcome of a trial, or as to any other kind of interest that he might have in the outcome of a trial.
>
> If the Jury were to believe that my client were guilty of the malicious and vicious attack with homemade shanks, that Mr. Widener has alleged in his complaint that would go a long way towards establishing one element at least one of his paragraphs in his complaint, what he needs to do in order to receive a money judgment in federal court.

In regards to the state "motion in limine," Mr. Lockwood stated that:

> "The court did not sustain the state "motion in Limine," in fact the court specifically said that the witnesses in this case that this complaint could be used to impeach, for the purposes of impeachment."

In the conclusion of his argument, Defense Counsel Lockwood argued that:

> "The fact is a lawsuit has been filed, damages have been asked for, allegations have been made which are not only directly related to, but identical to, the allegation for which my client is charged. And he has an interest in that lawsuit. We should be allowed to explore that."

The trial court ruled that the defense could ask Mr. Widner the question if he has a pecuniary interest as a result of this trial. And stated that the defense could also use it (the civil complaint) as impeachment, as prior inconsistent statement.

Mr. Lockwood objected to the court ruling on the basis that he ought to be able to explore with this witness, whether he filed a lawsuit, whether that lawsuit is still pending, where it is pending, what he has asked for damages and whether or not his testimony from the outcome of this case might have any effect on the outcome of that case. He said, "... you are saying that I can't refer to it as a case. I could use it as though it was some prior inconsistent statement that he made. I am not using it as inconsistency necessarily, there may be some inconsistent statements through his testimony, but this point is that it is a lawsuit, it is an indication that he has a pecuniary interest in the outcome of this case. And as a lawsuit I should be able to use it for impeachment purposes; that is what the law says."

Despite Defense Counsel Lockwood's argument, the trial court refused to change its ruling.

The Improper Exclusion of Admissible Hearsay Evidence:

During cross-examination of state witness Harold Delph, was asked by Defense Counsel Jeffery Lockwood, if Lt. Wicker said anything about a billy club in his presence. The state objected on the grounds of hearsay. The defendants relied on the **Patterson** rule to prove it was admissible. The trial court interposed its own objection (*sua sponte* objection) that it was not proper cross-examination and failed to state specifically why it was not proper. The trial court cited the case of **Pearish v. State** as controlling and sustained its ruling.

The Pearish case held that any matter is a roper subject of cross-examination which is favorable to the cross examiner and tends to discredit or rebut the theory or claim of the opposing party, or which is

responsive to testimony given on direct examination and tends to elucidate, modify, explain, contradict or rebut testimony given in chief by the witnesses, or any logical inference resulting therefrom."

Harold Delph testified during direct examination that he had been summoned to the captain's office in the D.O. building on February 1, 1985 before he confronted the defendants. He also testified that the defendant's (John C. Cole, Jr.) made the following remarks that "he was tired of this shit."

The trial court improperly excluded cross-examination regarding conversations about the billy club, as well as statements he made in a verified federal complaint.

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During cross-examination of state witness Charles Widner was asked by Defense Counsel, Michael Withers, "Did he have any conversation with Lt. Wicker after he saw Mr. Love? (Lincoln Love)." The state objected on the grounds of hearsay.

Defense Counsel Withers stated that Lt. Wicker was listed as a witness and is available (Patterson rule). The trial court sustained the state objection. Despite the hearsay exception of Patterson.

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Limitation on Cross Examination:

During the state case-in-chief, the state called Michael Richardson as a state witness. Michael Richardson was a prison guard in charge of the prisoners' movement on the perimeter of the Indiana State Reformatory on February 1, 1985. During direct examination by the state, during which he was questioned about his duties at the Indiana State Reformatory, the Prosecutor asked Officer Richardson if he knew what happened at the D.O. building in the captain's office, and who was present.

Officer Richardson also testified that defendant (John C. Cole, Jr.) had made a statement to the effect that he was "tired of this shit and was mad about something." The Prosecutor asked Richardson did he have any weapons at the time? Richardson stated that he was carrying a liquid chemical which burned the flesh and eyes. The state concluded its direct examination of Michael Richardson by asking him about his physical and psychological condition.

Defense Counsels attempted numerous times to ascertain what Officer Richardson's particular duties were on that day. The state objected to each attempt made by Defense Counsels. The trial court sustained the state's objections.

Defense Counsels objected to the court's ruling. During further cross-examination of state witness Michael Richardson, Defense Counsel Jeffery Lockwood asked Michael Richardson if he heard any kind of commotion coming from the D.O. building while he was on the yard? Richardson answered yes. When asked by Defense Counsel Lockwood to tell the Jury what he heard going on, the state objected on the grounds that it was going beyond the scope of direct examination. The state suggested that if the defense wanted to elicit such testimony from their witness, for the defense to call the witness back as their own.

Outside the presence of the jury, Defense Counsel Lockwood made the following argument:

> He argued that the state had asked Mr. Richardson on direct examination if Lt. Widner had called him into the D.O. building, how many times, what Officer Richardson was asked to do, [insert missed word...] Defense counsel Lockwood argued that they should not have to recall the witness to elicit evidence to support his client's defenses and that the witness is a state witness, legally considered hostile towards the defendants. By requiring defense to call him as their witness, when, in fact, he is not, two or three things could happen procedurally: (1) the defense could not cross examine Mr. Richardson, which defense is entitled to do on every facet of his activity that day along with all of his testimony and all of the subject matter that has been opened up; (2) a witness can lie on direct examination or give a statement that the defense did not anticipate, and if that happens the defense is not allowed to impeach the witness. That is why the defense did not want to call state witness Michael Richardson as its own witness. Defense was presumed to know what its own witnesses would testify and would have to stand behind the veracity of its own witnesses. For these reasons, it would be an unreasonable restriction of cross-examination to prevent defense from asking state witness Michael Richardson about all that he heard and saw and what he did that day, merely ruling that defense should call him as its own witness.

The trial court stated that "the defense should be able to explore any doors that the state has opened up on direct examination, but at this point we do

not know what defendants saw or heard and so therefore the mere fact that Mr. Richardson would testify to something that he saw or heard does not mean that defendants saw or heard it. So I don't think that we can assume that... it is like getting the cart before the horse because we still don't know what defendants' saw."

Defense Counsel Lockwood responded to the trial court's logic by arguing that it is routine for the state to introduce evidence that they will later tie up. If the state had to do everything in chronological order, the state would hardly be able to put on a case. The defense has the additional problem of not being allowed to present any evidence until the state has concluded its evidence. Furthermore, defense stated that it did intend to tie it up and show that what defendants saw and heard was similar to what state witness Michael Richardson saw and heard. If it is dissimilar, then that is a question for the jury to decide. Defense counsels argued that they did not believe it was legally necessary for their clients to take the stand before they can elicit information from other witnesses belonging to the state that would substantiate and corroborate their clients' testimony.

The trial court then suggested that the defense could recall Mr. Richardson as a defense witness and that the witness would be declared as a hostile witness; defense would be allowed to explore or elicit testimony that would substantiate and corroborate what defendants actually saw, knew or heard. Defense counsels could use deposition and institutional statements to impeach Mr. Richardson if he changed his testimony.

Defense counsels again argued that they should be allowed to fully cross-examine state witness Richardson.

The trial court denied defense counsels motion to fully cross examine state witness Richardson.

Defense counsels then made an oral motion for a stay of these trial proceedings in order to file an interlocutory appeal. The trial court denied defense counsels' motions. The trial court ruling stayed in effect during cross-examination attempts by both attorneys. Both attorneys were led to believe that they would be allowed to elicit testimony from Mr. Richardson once he was recalled as a witness for the defense.

During further cross-examination of state witness Michael Richardson, defense counsels were not allowed to cross examine state witness Richardson regarding his psychological problems, after he testified on direct examination that he had such problems. While being cross

examined by defense counsels, Mr. Richardson referred to certain attitudes he had towards staff members of the Reformatory which arose from the incidents that occurred on February 1, 1985 was out of the routine. He replied yes. When asked what it was, the state objected on the basis that it was out of the scope of direct examination. The trial court sustained the objection and severely and improperly limited the answer. When asked about the statements that the defendant (John C. Cole, Jr.) made about being "tired of this shit" to which Richardson testified during direct examination, Richardson stated he knew specifically to what defendant (John C. Cole, Jr.) was referring. However, the trial court did not permit further cross-examination of this and immediately recessed for lunch.

The trial court did not permit state witness Richardson to testify about when a particular curtain -- used to cover the bar door of the front entrance of M.R.U. (Maximum Restraint Unit signified. Richardson testified that it was closed on February 1, 1985.

Repeatedly, Richardson was asked about what caused his particular emotional state on February 1, 1985.

The trial court did not permit Richardson to testify as to the specific causes of his emotional state. Our defense counsels were prevented from eliciting such testimony during their cross-examination of state witness Richardson.

Michael Richardson stated on cross-examination that he was offered money by the Attorney General's office to resign from his duties as a correction's officer, but the trial court did not permit him to answer why.

At one point during cross examination, state witness Richardson referred to a beating. The trial court did not permit cross-examination with respect to the beating. The trial court refused to allow cross-examination as to any events that were not routing procedure at the reformatory prior to the confrontation with the defendants.

The trial court's actions had the effect of cutting off all questioning about events (i.e., shakedown of the M.R.U. and the subsequent beating of prisoner Lincoln Love) that the Jury might reasonable have found furnished the witness a motive for favoring the prosecution in his testimony.

We as defendants were totally denied the opportunity to effectively cross examine state witnesses (particularly state witness Richardson) and from eliciting testimonial evidence crucial to our defenses.

* * * * * * * * * * *

The Defendants' Case-in-Chief:

After the state had finished presenting its case, the defense presented its defense. Our defense was "defense of a third person, and self-defense," an affirmative defense under the Indiana Statute I.C. 35-41-3-2.

Christopher Trotter and I (John C. Cole, Jr.) were the first witnesses to testify in our defense respectively. We both testified to the following:

On the morning of February 1, 1985 while acting in the capacity of lay advocates (inmate lawyers) at the Conduct Adjustment Board, located in the D.O Building, which is adjacent to the "Maximum Restraint Unit," we heard prisoners who were housed on the "Maximum Restraint Unit" hollering and yelling out of their cell windows in a hysterical and desperate manner that Lincoln Love was being beaten to death. The hollered about my name (John C. Cole, Jr.) and pleaded for our help.

Acting on what we had heard as well as feared, Christopher Trotter and I, along with several other prisoners, went to the captain's office in an attempt to stop the beating of Lincoln Love.

We actually believed that Lincoln Love was being beaten to death.

Upon our arrival to the captain's office, we were all confronted by several belligerent correctional guards (Michael Richardson and Harold Delph) who attempted to turn us away. We refused to leave and demanded to see the captain concerning Lincoln Love A heated argument ensued between us. The correctional guards pulled out their mace canisters in an attempt to gas us. When this occurred, we drew our knives and struck them (the guards(in an attempt to force entry into the captain's office. Based on what we had earlier observed and heard, it was our belief that Lincoln Love was being beaten in the back of the captain's office, also known as the anteroom. (Therefore, our attempted forced entry into the captain's office was motivated by a deep and desperate desire to save the life of Lincoln Love, the third person.) In the process of trying to gain entry into the captain's office, we repeatedly asked where was Lincoln Love at? We were told by "Michael Richardson" that Lincoln Love had been taken to the infirmary (also known as the prison hospital).

Upon hearing this, we stopped dead in our tracks, and turned around, and ran toward the prison infirmary.

Once inside the prison infirmary, we demanded to see Lincoln Love We were informed that Lincoln Love was in the x-ray room.

While inside the prison infirmary approximately ten (10) to twelve (12) correctional guards blocked both of the entries to the infirmary in attempt to trap us and prevent us from exiting. So before we actually got an opportunity to see Lincoln Love, to determine if he was still alive, as well as the extent of his injuries, we were forced to flee the prison infirmary out of fear for our own safety.

We fled the prison infirmary, while being pursued by approximately thirty (30) angry white correctional guards who were all armed with batons, and other weapons. As they chased us, they threatened to kill us. The guards in the guard towers were shooting at us as we both ran across the prison yard.

We feared that had we surrendered at this particular stage of the disturbance, we would have been killed.

We ran toward J-cell-house, where we eventually took refuge. Once inside of J-cell-house, we took four (4) correctional guards hostage. The seizure of J-cell-house, and the taking of hostages, was done out of the necessity of self defense.

At our trial, we had also testified that ,prior to the February 1, 1985 rebellion at the Indiana State Reformatory, we had been directly and indirectly threatened several times by the correctional guards who participated in the beating of Lincoln Love.

(This wasn't our testimony verbatim, but it's very close to it.)

Once our direct examination had been completed, the state attempted to discredit us on cross examination. However, there were no real contradictions brought on during our cross-examination by the state.

* * * * * * * * * * *

Denial of a Defense/or Opportunity to Present Evidence Relevant to Our Defense:

Michael Richardson was recalled as a witness for the defense. During the direct examination by defense counsel, Jeffery Lockwood, defense witness Richardson was asked the following questions: Did you participate in a

shakedown? Mr. Richardson answered, yes. When asked what did he do? Richardson stated that he was assigned to line up with several officers to remove an inmate in cell seven (7) by the name of Lincoln Love. When asked, did he enter Lincoln Love's cell... the state objected and asked for permission to approach the bench. The trial court dismissed the jury and arguments were made outside of the presence of the jury. The state objected to anything that might have occurred/or happened in cell seven (7) as it related to Lincoln Love, because the defendant Christopher Trotter never testified that he actually saw Lincoln Love being beaten by correctional guards. Therefore to allow Mr. Richardson to testify to something that the defendant did not see would be improper, and outside the scope of what he actually testified to.

In response to the state objection, defense counsel Mr. Lockwood made the following arguments:

> "Your Honor, the events that this witness (Michael Richardson) can describe concern what happened to Lincoln Love in cell seven (7) on the M.R.U. My client (Christopher Trotter) has testified that he was in a position to hear things that were being said about Lincoln Love and heard things that were going on i the M.R.U. He was also in a position to hear and took action on the basis of certain things that he heard emanating from the M.R.U., statements like they are beating him, you don't have to beat him, you don't have to drag him through the water. It certainly is relevant to show this jury whether or not those kinds of things were actually occurring, especially in light of the fact the statute under which we frame our defense requires that the action that we take be in an effort to save a third person from serious bodily injury.
>
> My client perceived from the noise and other factors that something was happening to Lincoln Love of a serious nature. We certainly are allowed to show that there is in fact substance to that, there could be no prejudice, I don't think, to the state's case it has already been established and testified to that Lincoln Love was beaten. This officer (Michael Richarsdson) was there. He was able to hear and see and know what was going on and he substantiates what my client says he heard and observed and he didn't say that he saw Lincoln Love, but he did say that he saw what was going on in the M.R.U. in the sense that there was a commotion, there was water on the floor, and the things that he heard. Anything that this witness has to testify will be, will have the effect of illuminating or adding credence

> to, the subsequent events that followed. And that is the definition of relevance.
>
> Any piece of information that tends to make a proposition more likely is relevant testimony. There is no question, Your Honor, under the law in the state of Indiana, evidence that explains what happened back there in the M.R.U., and what caused this commotion, is relevant as to, certainly, my client's state of mind, it certainly is not outside of the scope, when Mr. Richardson was on the stand before Mr. Lawler's continuous objection was that my questions were outside of the scope of his direct examination. Now he is my witness. And there is no scope for my questioning except to the extent of materiality and relevance. this testimony is clearly relevant to show that there was a basis and foundation and a legitimate one for fear and the anger that welled up on my client's heart that required him as he testified to take the actions that he took. It all has to do with my client's state of mind. If I can't show my client's state of mind, that's saying to me that I cannot present a legitimate statutory recognized defense."

Defense counsel Mr. Withers join in on Mr. Lockwood's motion and gave the following argument in addition:

> "Your Honor, in response to Mr. Lawler's motion, I would also add several state's witnesses have testified that they did not know what happened back in the M.R.U. and what happened to Mr. Love and that he received very few or no injuries. And in addition to the fact that this substantiates what actually did happen and does show bodily injury, Mr. Trotter has already testified that when Mr. Cole left he came back and said that he had seen Mr. Love back in the M.R.U., and my notes say that Cole returned and said that he had seen Love and that they were trying to kill him. And I think that this substantiates that and should be let in o those grounds too."

Despite cogent and legitimate legal arguments, which were supported by clearly established case laws, the trial court made the following ruling:

> "The witness can testify to the extent that Mr. Trotter testified to give a basis as to Mr. Trotter's reasonable belief that certain force was necessary to protect Mr. Love, but anything beyond that would not be relevant and would not even go to show Mr. Trotter's reasonableness or unreasonableness in his belief. If Mr. Trotter testified that there was chaos then this witness can be asked if there

was chaos and his answer be, yes. He can be asked toe same things that Mr. Trotter testified to, if Mr. Trotter did not see what actually happened, in that cell then Mr. Richardson cannot testify, to what he saw in that cell because it would not go, to establishing a basis for Mr. Trotter's belief. It would sort of be like Monday morning quarterbacking, that you did something because later you found out you were right in doing it. So we have to deal with Mr. Trotter's mind at the time based upon what he was aware of. And he has testified that on direct examination of what he was aware of and Mr. Richardson can corroborate that."

In response to the trial court ruling Defense Counsel Mr. Lockwood stated:

"Well, Your Honor, it is what he reasonably believed."

The Court:

"Right, what he reasonably believed, right."

Mr. Lockwood:

"And he has testified that he reasonably believed that Lincoln Love was being beaten."

The Court:

"Well, then you can ask Mr. Richardson was Lincoln Love being beaten?"

The state disagreed with the trial court reasoning, because it believed and anticipated that, if the defense was allowed to question Richardson about the beating of Lincoln Love, that we (the defense) would eventually get off into descriptive details of the beating. However, the trial court assured the state that it would restrict the witness responses to defense counsel's questions, as it relates to what happened in Lincoln Love's cell, to yes and no answers.

The trial court stated the following to support its rationale:

"What we are dealing with is Mr. Trotter's state of mind at the time and the reasonableness of his belief. I mean it is like if Mr. Trotter was the only person that testified to the jury, as to what he felt, he can do that, he can testify to the jury why he felt a certain way. It

would make his testimony more believable to the jury, if somebody else were to testify, to circumstances that justified him feeling that way, only to the extent of what Mr. Trotter actually saw or heard. I mean the fact that maybe Mr. Richardson saw three guards jumping up and down on Lincoln Love, Mr. Richardson cannot testify to that Mr. Trotter did not see the exact details of what happened in that cell. But he did testify that Mr. Love was getting beaten up and Mr. Richardson ought to be able to say, yes, that is true, he was getting beaten up. But how or what kind of clubs were used, if any, or guns, or whatever... I think not."

Despite defense counsel's logical legal arguments, the trial court steadfastly ruled that defense witness Richardson's testimony would be limited to what the defendants actually saw.

Defense Counsel Jeffery Lockwood made the following argument in opposition to the trial court's adverse ruling in which Mr. Withers joined:

"While the defendant appreciates the fact that the court has allowed the witness to testify as to things that would tend to corroborate what my client heard and acted upon, I would cite the court to cases in Indiana which define relevance. Relevance is the logical tendency to prove a material fact. Otherwise stated and has been stated in Indiana cases that evidence is relevant if it makes the sought for inference more probable than it would be without the evidence. The test for relevance, therefore, is a minimum one. And those are the cases of *State vs. Hall; McMahn vs. Snap On Tool Corporation; Smith vs. Crousehines Company*, and a number of other cases in Indiana, and I have the citations that I will be happy to provide to the court, as far as where they can be found. It seems to me that a parallel example of what my client is trying to do might be helpful to clear up what our argument is. 'A material element of the defense of a third person, and I will quote from the statute, Indiana Code 35-41-3-2, says,' the second full sentence, however a person is justified in using deadly force only if he reasonably believes that the force is necessary to prevent serious bodily injury to himself of a third person or the commission of a forcible felony.' That part of the statute has several elements, the defendant is only justified in using deadly force if he reasonably believes that one, a third person, himself or a third person. So you would have to prove that he was trying to prevent serious bodily injury either to himself or as in this case, a third person, or the commission of a forcible felony. The state has sought and is seeking to prevent evidence of the seriousness of

Lincoln Love's injury and the court has so far ruled that this witness cannot testify before the jury, as to what force was used on Lincoln Love, because my client did not see what force was used on Lincoln Love. The parallel example would be perhaps a father coming home from work and as he pulls into the driveway to get out of his car, he hears his daughter, yelling from his house, help me, help me, don't hit me anymore. So he reaches in the glove box and he gets a gun and he runs up the steps and kicks in the front door, and he shoots the first two things that he sees moving. Well, it happens to be an Avon lady and his daughter's eight-year-old playmate from next door. According to the court's ruling, the state would not be able to introduce evidence at the trial of this man, that his daughter was simply acting out a childhood game. Thereby influencing the jury that his action were not reasonable under the circumstances. That he did not act reasonably. It seems to me that, that is kind of a ridiculous scenario. And it would clearly be admissible as to what the circumstances were with regards to that daughter. Even though the father didn't see anything happening to the daughter. And if that evidence would be admissible then I think that it follows logically that the defendant then could also prove that in fact his daughter was being assaulted by an intruder or someone in the home and even though he didn't look to see who it was that he was shooting, his reasonable inference that, the reasonable inference that he drew in his actions were reasonable under the circumstances. That's the harm done to the defendant (C. Trotter) by this ruling and we have to show that this is not a harmless error..."

According to Mr. Lockwood, the trial court ruling harmed the defense's statutory defense in a number of ways:

"First of all, it prevents him from proving a material element or supporting his argument of a material element of his defense. Specifically, that there was in fact a forcible felony and I think that this would be a forcible felony beating an unarmed man, which is battery in just about any body's definition, with a deadly weapon. And that is a class 'C' felony. It also prevents him from establishing that Lincoln Love was the third person that he was trying to protect, who was in fact being injured seriously. That his bodily injury was serious. It also prevents him from supporting or bolstering his argument that what he did thereafter was in fact reasonable. And another harm that it does is that the state now can come before the jury in its final argument and basically say to the jury, Ladies and Gentlemen, the defendant, Chris Trotter, in this case has failed to

prove material elements of his defense. You have heard no evidence as to the seriousness of the bodily injury to Lincoln Love, you have heard no evidence as to whether or not Lincoln Love was beaten or how he was beaten or at whose hands or whether he was resisting. Therefore, Chris Trotter's actions are unreasonable. He acted merely on the supposition, and you are not to speculate, Ladies and Gentlemen, you have got to go with what the evidence is. You can't let Mr. Lockwood persuade you that, you know what happened because you haven't heard any evidence on it. That is how I see that the defendant is seriously harmed by the exclusion the evidence as to what actually did happen to Lincoln Love. We do not agree with Your Honor, respectfully."

In the conclusion of his arguments, Mr. Lockwood used the following analogy:

"If my goal is to prove that an automobile ran into a building, I can have one witness who can testify that I heard tires screeching and the sound of metal crashing and falling bricks, but I didn't go to the window. Another witness can come along and testify, I saw the car from my office window across the street, I saw a car hit the building. My client would not have to see what happened in order for the testimony of these witnesses to be admissible. It's not necessary.. We cannot, we should not, be required to pin all of our evidence that is necessary for our defense from one witness."

The trial court still sustained the state objection. The jury was called back into the courtroom, and the court reconvened.

Mr. Lockwood continued with his direct examination of Michael Richardson. Richardson testified that "As soon as he washed his hands, and arms, he went back into the supply room." Defense counsel Lockwood asked what did he wash his hands and arms for? Richardson stated that they "were covered with blood." When asked whose blood, Richardson stated that it was Lincoln Love's blood.

Defense counsel Lockwood then asked who else was in that supply room with Lincoln Love and you? Richardson stated that it was Lt. Wicker and Sgt. Myers. When asked did he see a club that day, Richardson answered yes. Defense counsel asked, "would you describe the club, please?" The state objected on the grounds of relevancy.

Defense counsel Mr. Lockwood argued that there has been previous testimony concerning a club and how it was broken for years previously. I think that I can show through this witness that is not the case. Despite defense counsel's argument, the trial court sustained the state objection.

During further direct-examination of Mr. Richardson, he revealed the following:

> That he saw, and heard, inmates yelling that they were beating Lincoln Love. When asked, were there any basis of fact for these statements, the state objected on the grounds of relevancy, and the trial court sustained state objection.
>
> That he heard inmates yelling that they are killing him. That he received instructions to actually kill Lincoln Love. That the Indiana Department of Correction and its official had attempted to influence his testimony in this cause, and other legal proceedings. when asked by defense counsel, "Did anyone try to influence you concerning a cover up of the Lincoln Love incident?", the state objected on the ground of relevancy.
>
> The trial court sustained the state objection. Mr. Richardson was not allowed to respond to the defense question.

The state asked permission of the court to ask a preliminary question. The trial court granted permission. The state's preliminary questions:

> Question: "When we are talking about in this case, are you talking about the State of Indiana vs. John C. Cole, and the State of Indiana vs. Christopher Trotter?"
>
> Defense witness Richardson answered, "No, sir."
>
> The state then stated to the court that it was objecting and that it was asking that all of the previous answers to defense counsel's questions be stricken. The trial court sustained the state objection.

When asked by defense counsel Lockwood, "Could he in his own mind separate the Lincoln Love incident from this proceeding?" Mr. Richardson answered, "No, sir!"

Richardson had previously testified that he had personal knowledge of previous beatings of inmates, black inmates in particular, specifically by reformatory correctional guards.

When asked by defense counsel Lockwood, "What, if anything, did you do about that knowledge or with that knowledge?" -- the state objected on the grounds of relevancy. The trial court sustained the state objection.

When asked by the defense, "Has anyone ever tried to influence you not to report a case of inmate beating about which you were aware?" -- the state objected on the grounds of relevancy. The trial court sustained the state objection.

When asked by the defense, "Have you ever reported incidents of inmates beatings including this one?" -- the state objected on the grounds of relevancy. The trial court sustained the state objection.

The defense argued that relevance is any evidence that tends to make a material fact more likely. We have to show that our clients' actions were reasonable under the circumstances and given the knowledge that he could have possessed, and says that he did possess.

Despite the defense counsel arguments, the trial court still sustained the state objection.

The defense then requested permission to make and offer of proof. The trial court granted the defense motion. (Offer of proof omitted.)

After the offer of proof had been completed, Mr. Lockwood argued that defense witness testimony would be clearly relevant to this case. In regards to whether or not the Department of Correction and the officers thereof, had told him or any other witness that they were to keep their mouths shut or to not make waves. It clearly indicates for the Jury's consideration that there may have been an attempt to cover up what happened to Lincoln Love and that affects the credibility of the state's case which I am entitled to do under Indiana law.

The state (prosecutor) maintained its objection, on the grounds of relevancy, and argued that the witness was drawing conclusions, and it didn't see how the defense testimony would affect the credibility of the state witnesses who had previously testified.

The defense again argued that this case is about Lincoln Love, and to the links threats to which the state has gone to, act like Lincoln Love is that man who wasn't there. Conversation took place the day after this man (M. Richardson) was stabbed. And he knows that it involves Lincoln Love and Superintendent Owens knows that it involves Lincoln Love and he says to the man, "You know, you are on Title 35, you get paid a year while you are off, don't make any waves." If that doesn't have to do with this case, then I don't know what does. The state determines when these charges are going to be filed. There is no law that says that someone has to get to the witness specifically and say, now, I am talking about the jury trial that is going to happen when the state files charges. Now, I am going to influence you in your testimony. It has to do with the overall circumstances that lead to the filing of these charges. Lincoln Love is inseparably and intricately involved in this litigation. He is involved in it because his beating in fact occurred, and because my client says under the statute, that he was acting to protect Lincoln Love, the third person, and again the state tries to throw up these artificial barriers and act like the Lincoln Love incident isn't relevant to this case. There is nothing any more relevant to this case than Lincoln Love and what happened to him and whether anybody tried to influence this witness as to the Lincoln Love incident. There could very well have been and I think, I suspect from hearing the testimony that there have been witnesses who have not told the truth in this case.

But the jury is entitled to draw their own conclusions about this and this is material evidence as to whether some of the witnesses may not have told the entire truth or whether or not they were outright lying. And if not being able to present evidence to a jury that some of the witnesses for the state are lying, or might be lying, if a defendant can't do that then he just can't defend himself.

Defense counsel Mr. Withers joins in Mr. Lockwood's motion.

The trial court maintained its sustaining of the state's earlier objections.

After Mr. Lockwood had completed his direct examination of Mr. Richardson, defense counsel Mr. Withers cross-examined him. Mr. Withers asked Mr. Richardson the following:

> "On February 1, 1985 were any riot sticks issued for the shakedown in M.R.U. that you participated in."

The state objected on the grounds of relevancy, and argued that it doesn't show anything with regards to defendant Chris Trotter's state of mind.

In response to the state objection, defense counsel Withers argued that this was cross-examination, and that he should not be limited to the state of mind of Chris Trotter.

The trial court sustained the state's objection.

Defense counsel Withers again attempted to cross-examine Mr. Richardson concerning the riot stick. But all to no avail!

Mr. Richardson was asked the following:

> "When you were in Lincoln Love's cell did you see a stick such as defendant Cole's exhibit B?"

The state objected again on the grounds of relevancy. And the trial court sustained it's objection.

Defense counsel Withers then asked:

> "Did you see any other kind of sticks or night sticks or riot sticks?"

The state objected again on the grounds of relevancy. And the trial court sustained its objection.

Defense counsel Withers then asked:

> There has been previous testimony in this case from Officer Vitatoe that riot clubs, standard issue riot clubs, are the only clubs that were used in the M.R.U. during the shakedown. To your knowledge, is that testimony correct?

The state objected again on the grounds of relevancy.

Defense argued in responses that his questions went to the credibility of the witness, and he had a right to impeach the state witness.

The trial court sustained the state's objection.

Defense counsel Withers requested an argument outside the presence of the jury which was granted by the trial court. Mr. Withers made the following argument:

> "Your Honor, this witness is called by Mr. Lockwood and Mr. Trotter as their witness. And he has had direct examination. I am now the cross-examination, and I would point out to the court that Mr. Cole may prove his case through the cross-examination of witnesses. Through the cross-examination of the state's witness and through the cross-examination of Mr. Trotter's witnesses. Mr. Cole at this point, Your Honor, is not required and does not have to put on any evidence. He can use cross-examination to prove his case. We are attempting to do that and part of the reason is that there have been previous statements made in front of this jury, the jury heard, by witnesses for the state either on direct or on cross-examination, and I can impeach those witnesses by the cross-examination of other witnesses. Including Mr. Trotter's witnesses. We are not limited in the scope of our direct examination at this point to Mr. Trotter's state of mind. We are not limited in what we can do in order to impeach witnesses.
>
> Their prior statements can be shown to be inconsistent, and not true by the testimony and cross-examination of other witnesses. We do not have to call any witnesses at this point, Judge. And if I can't do that what the court has done is denied my client his right of cross-examination and denied him his constitutional right to confront the witnesses against him. And to examine those witnesses and if the court persists in doing that, then we are going to have to stop before Mr. Cole presents any evidence and ask that we be allowed to take an interlocutory appeal on these questions. I think that the court is improperly restricting our right of cross-examination. Further, I don't think Mr. Lawler can make objections that my questions are outside of the scope of direct examination because it wasn't his direct examination. He has no right to make that objection. IT is improper, it is outside of the rules of procedure. And it is just not done. Mr. Lockwood is the one that has to make that objection, obviously as co-defendants whether or not he makes that objection is going to be up to him, not up to the state.

Defense counsel Mr. Lockwood asked for permission to be heard, which was granted by the trial court. Mr. Lockwood made the following arguments:

> When Mr. Richardson was here previously, Mr. Lawler objected a number of times to questions outside of the scope of direct examination and at that time, the court more or less ruled that if we wanted to get into those areas we could call Mr. Richardson as our witness and we have been all through that argument that he is not required to put on any witnesses. But the court continued to now, and I knew, I anticipated, that this might happen, now Mr. Lawler is saying, well, nothing that you are asking him about is relevant and the court is sustaining those objections on a regular basis not only in my questions, but in Mr. Withers' questions. We also can rely on evidence that is brought out in the cross-examination of Mr. Withers and that is why I am on my feet addressing this. But the ultimate effect of all of this is we are simply being deprived of an opportunity to present any kind of a viable defense at all.
>
> On the one hand, Mr. Lawler says and argues to the court let them call him as our own witness. And then, when he is called as our own witness, he is being allowed to control what we are being allowed to ask him on the grounds of relevance. And, how does Mr. Lawler always know what is relevant? I mean his definition of 'relevant' does not ,in my opinion, agree with the case law definition of 'relevant.' We didn't ask him where else he has been and what else he has done in his life. We are restricting all of these questions, having to do with his activities on that day and what he knows or what his testimony will be concerning issues that other witnesses have testified to. Judge, that is relevant. Sometimes Mr. Lawler objects because a minute ago he said this witness hasn't testified as to riot sticks, therefore it is not relevant to ask him about riot sticks. That is not a proper relevancy objection, Your Honor.

The state disputed everything that the defense argued, and maintained that its objections should be sustained for the very same reasons it cited earlier, which was that the defense questions should be limited to the defendant, Chris Trotter's state of mind, any questions outside of that should be deemed irrelevant. The state also argued that the riot stick, and the beating of Lincoln Love, were collateral issues, and therefore couldn't be used by the defense to impeach.

In response to the state argument, defense counsel Wither's argued that:

> The issue of Lincoln Love is not a collateral issue. The fact that these correctional guards were back there beating Lincoln Love, and came out and made comments about it, is not collateral issue because this is what actually excited the inmates back in the M.R.U. to yell out the windows to tell other people that Lincoln Love was being killed. Christopher Trotter has already testified that he knew this was going of his experience in the M.R.U. And they (both defendants) knew about this. What Christopher Trotter's state of mind was is really not important to my questions. The issue is whether or not I can impeach previous testimony of witnesses for the state who have tried to play down this beating, saying that nothing unusual occurred.
>
> Widner said that this stick was used, it has already been admitted that it was used in Lincoln Love's cell. One of the state witnesses has testified that the riot stick had been cracked for 16 years. Another one of the state witnesses (Officer Vitatoe) testified that Lincoln Love was resisting when he was brought out of his cell. I should be able to cross-examine this witness (Richardson) about that, he was there, he knew it, and he saw it. I can ask him about that. Officer Vitatoe also said that they don't use riot clubs, standard issue riot clubs, like Cole's Exhibit B. I can ask this witness about that if that is the case. He was there, and he saw it, and he knows. Vitatoe said that Love refused to come out of his cell, I ought to be able to ask this officer about that if that is the case. And impeach Vitatoe. Officer Sands said that there was no unusual noise on M.R.U. during the shakedown. I should be able to expound upon that in cross examination. Sands also said that nothing happened in the supply room with Love. I should be able to ask about that. Broyles said that Love was in the supply room, sitting. He seemed to have been gassed, sprayed with tear gas. That was all that was wrong with him. I should be able to ask about those things. "Your Honor, they go directly to the credibility of those witnesses. And those witnesses are the ones who testified that this man, my client, stabbed certain officers on February 1, 1985. Anything to attack their credibility is admissible. Whether it is on a collateral issue or no, but I don't think that it is on a collateral issue.
>
> This is cross examination for Mr. Cole. This is not direct evidence for Mr. Trotter. This doesn't have to do with his state of mind. That is Mr. Lockwood's limitation. It is not mine. I don't have to put on any

> evidence, Judge. I have a right to prove my case through the cross examination of witnesses. And that means impeachment of previous witnesses, I ought to be able to do that, otherwise the court is forcing me to have to present evidence. You are forcing me to put Mr. Cole on the stand and have him testify about what he saw and heard in his state of mind and then bring Officer Richardson back for a third time to testify about these events."

The trial court ruled that:

> "What happened to Lincoln Love in his cell is not relevant What Mr. Richardson heard the other inmates in the M.R.U. hollering, the water, what they said is irrelevant because Mr. Trotter testified to the same thing. What Mr. Love had for breakfast is not relevant and what he got beat with is not relevant."

Defense counsel Withers argued that he was not asking him "what he got beat with," that he was asking if he "saw the riot stick, and was it broken?"

The trial court ruled that it was not relevant.

Mr. Withers argued that it has already been testified to.

Mr. Lockwood argued in support of Mr. Withers' argument that the stick has already been described and testified to by witnesses in this case. It was a state's witness who said that the stick was cracked for 16 year.

(During the state case in chief, the state called Capt. Barry Sands as a witness. During cross examination, which was conducted by defense counsel Withers, Mr. Sands stated that the baton stick had been cracked for 16 years.)

The trial court asked what the statement by the state witness made on direct examination?

The state answered no!

Mr. Lockwood argued that it didn't matter whether it was direct or cross...

The trial court responded that yes, it does matter.

Mr. Lockwood:

> "I guess the ruling of the court is that, if a witness says something on cross examination that damages my case, I cannot therefore bring in a witness who will dispute what he said on cross examination..."

The trial court:

> "Especially if it is a collateral matter."

The defense counsels persisted to argue why they should be allowed to impeach the state witnesses.

The trial court became so infuriated with the defense that it showed its biases and prejudices against the defense when it made the following statements:

> "Well, I am prepared to sit here and continue ruling the way I am, and you gentlemen can continue asking the questions, it's all right will me."

Both defense counsels asked for a mistrial based on the fact that the judge was prejudiced against their clients. The bias and prejudice against the defendants was exhibited when the judge anticipated his future rulings. Both defense counsels asked that the trial judge disqualify himself from this case.

The trial court denied the defense motion for mistrial, and refused to disqualify himself.

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The Improper Exclusion of Admissible Evidence Critical to Defendants' Defense:

William A. Ralston was called as a witness by the defense. During direct examination by defense counsel Withers, which was conducted outside the presence of the jury, Defense witness Ralston was asked the following question: "Are you an inmate of the Indiana Department of Correction?" Ralston answered yes.

When asked by defense counsel Withers was he ever housed at the Indiana Reformatory in Pendleton, Indiana? -- in response to defense

counsel questions, defense witness Ralston gave the following testimony:

> That he had been incarcerated at the Indiana State Reformatory on several occasions. From 1976 through 1979; from 1982 to 1983; and from March 1984 to July 1984. That he was housed on the A/S unit while he was at the Indiana Reformatory in 1983. During this period of confinement, he was severely beaten by six (6) correctional guards while he was on the range of the A/S unit. That he was beaten, kicked and had his head rammed into the wall, all the way over to the hospital.
>
> That after receiving medical treatment for his injuries, Major Franklin (a correctional officer) told him if he causes any more trouble he would get more of the same.
>
> That he filed a criminal complaint with the Madison County prosecutor's office, while Mr. Erskine Cherry was Chief Prosecutor.
>
> That Mr. Cherry refused to prosecute the correctional guards involved in the beating of him. That upon his return to Indiana State Prison, Michigan City, in July 1983 he had several conversations with the defendant John C. Cole, Jr., where he described in vivid details how he was beaten by correctional guards at the Indiana State Reformatory.
>
> That he had also told the defendant, John C. Cole, Jr., about a beating that took place on the A/S unit recreation yard where five (5) black prisoners were severely beaten by reformatory correctional guards, while they were handcuffed behind their backs, as well as shackled, in 1982.
>
> That the correctional guards who directly participated in the beating of him were Officer Rider, and Officer Harold Delph threatened to kill him if any of his blood got on him. This threat occurred while Ralston was being escorted to the hospital by Officer Harold Delph.

Defense counsel Withers offered the aforementioned testimony of Anthony Ralston as an offer of proof of relevancy.

The state objected on the grounds of hearsay.

Defense counsel Withers argued that the testimony should be allowed because it goes to the defendant Cole's state of mind. And that Ralston's

testimony wasn't being offered to determine the truthfulness of what happened. It was being offered because it goes to defendant Cole's state of mind.

Despite defense counsel Withers' argument, the trial court sustained the state objection. The basis for the trial court's adverse ruling was that it could not find anywhere in its notes where the defendant, Mr. Cole, testified as to any conversation he may have had with Mr. Ralston and the basis for his fear. He testified that he had conversations with other inmates about the basis for his fear, but never with Mr. Ralston.

The trial court abused its judicial discretion and committed reversible error when it excluded as hearsay the testimony of William A. Ralston, thereby preventing defendants from presenting evidence critical to their defense.

* * * * * * * * * * *

The Improper Exclusion of Defendants' Exhibit-X into Evidence:

David Carter was called as a defense witness by defendants during direct examination by defense counsel. Mr. Carter told the court and jury that he was a negotiator and represented the grievance of prisoners on February 1, 1985. He presented defendants and other prisoners grievances to prison administrators. Mr. Carter was asked to identify the agreement reached between prisoners and administrators as exhibit-X. He identified exhibit-X as being the agreement negotiated on February 2, 1985.

Defense counsel offered defendants exhibit-X into evidence. The state objected on the grounds of relevancy. The court sustained state objection, and refused to give the grounds on which it based its ruling.

Defense counsel for defendant John C. Cole, Jr. made several attempts to elicit testimony from Mr. Carter that would have substantiated and showed the reasonableness of his client's action for taking hostages in J-Cell House on February 1, 1985, but was prevented from doing so.

Mr. Carter was asked by defense counsel:

> Were some of the concerns of John C. Cole and other prisoners inside J-Cell House that an agreement be reached before the situation could be resolved? He was asked did Mr. Cole indicate to you some of his concern about what the agreement should contain prior to the time that the situation was resolved?

The state objected on the grounds that it would call for conclusion on the part of the witness, and secondly, it would be hearsay.

The trial court directed the witness to answer yes or no. The witness answered yes, when asked could he relate to the court and jury what he was told by John Cole?

The state objected on the grounds of hearsay. The trial court sustained the state's objection. Defendants' defense counsels moved again for admittance of defendants exhibit-X into evidence. But the trial court maintained its earlier rulings.

During the course of the trial, it was the defendants position that the uprising at Indiana State Reformatory on February 1, 1985 was a direct result of the severe beating of Lincoln Love and the routing practice of the beatings and mistreatment of other black prisoners. These beatings, it was felt, were unlawful acts on the part of the correctional guards, and caused prisoners (particularly black prisoners) to fear for their lives. Defendants feared that Lincoln Love, but failed in the process of trying to protect and rescue Lincoln Love, defendants stabbed several correctional guards. Defendants subsequently seized J-Cell House and took several correctional guards hostage because they feared if they surrendered to Indiana State Reformatory officials that they would be killed.

* * * * * * * * * * *

The Improper Admission of Rebuttal Evidence:

After the defense had completed/or concluded its case, the state asked permission of the court to present rebuttal evidence. This request was granted by the trial court.

The state called Doctor Jones as its rebuttal witness. Doctor Jones gave testimony regarding the injuries he observed on Lincoln Love at Wishard Hospital after the beating. During direct examination of Doctor Jones, the state asked him to relay to the court and jury what injuries he observed on Lincoln Love to which the defense counsels objected to, on the grounds that we (the defendants) were not permitted to introduce any evidence describing the injuries Lincoln Love sustained.

Despite defense counsels' objection, the trial court still allowed the state to present this improper rebuttal evidence.

* * * * * * * * * * *

Final Instructions:

After the defense and the state had rested their cases, final instructions were presented to the jury. (The final instructions are too numerous to cite herein.)

Verdict:

After the final instructions were presented to the jury, they went to the jury room where deliberations began. Our case was presented to the jury for deliberations on June 11, 1987. The jury deliberated our case for close to fourteen (14) hours. On June 12, 1987, they finally agreed on a unanimous verdict.

On June 12, 1987, I (John C. Cole, Jr.) was acquitted by an all white jury which was comprised of five (5) men, and seven (7) women, of the charges of attempted murder, and battery, but they found me guilty of the four (4) counts of criminal confinement, and rioting.

Christopher Naeem Trotter was acquitted of two (2) counts of attempted murder, but was found guilty of one (1) count of attempted murder, and one (1) count of battery. He was also found guilty of four (4) counts of criminal confinement, and rioting.

Sentence:

On July 9, 1987, Judge Thomas Newman, Jr. of Madison County Superior Court No. 3 sentenced me to a maximum term of eighty four (84) years for my role in the "Indiana State Reformatory" rebellion on February 1, 1985. I received twenty (20) years for each count of criminal confinement, and four (4) years for rioting. My sentences are all running consecutive to each other.

Christopher Naeem Trotter was sentenced to a hundred and forty-two (142) year prison term for his role in the "Indiana State Reformatory" rebellion on February 1, 1985. He received a thirty (30) year sentence for the attempted murder charge; eight (8) years for the battery charge; eighty (80) years for the four counts of criminal confinement (20 years for each individual count); and four (4) years for rioting. All of his sentences are running consecutive to each other.

* * * * * * * * * * *

Motion to Correct Errors:

On August 8, 1987, defense counsel Michael Withers filed a "Motion to Correct Errors" with the Madison County Superior Court No. 3. This motion was filed with the court on the behalf of John C. Cole, Jr. Mr. Withers raised 38 issues in support of his motion. (See: Motion to Correct Errors, attached hereto.)

On December 10, 1987, Judge Thomas Newman, Jr. denied my motion to correct errors.

* * * * * * * * * * *

The Appointment of Appeal Counsel:

On December 8, 1987, Judge Thomas Newman, Jr. appointed Marianne Woolbert as a Public Defender to perfect an appeal on behalf of appellant John C. Cole, Jr.

On December 21, 1987, Attorney Marianne Woolbert filed a written appearance on behalf of appellant John C. Cole, Jr., accompanied by a praecipe (notice of appeal) directed to the clerk of Madison County, Superior Court No. 3.

* * * * * * * * * * *

Appeal Prepared and Filed with the Indiana Supreme Court:

On appeal, Attorney Marianne Woolbert's representation was totally inadequate for the following reasons:

(1) She misrepresented my issues, and argued them out of context;

(2) She deliberately omitted issued that were vital and essential to my defense, and appellate review. In his motion to correct errors, my trial attorney, Michael Withers, raised exactly thirty-eight (38) issues, which he considered to be serious trial errors. These numbers arose from a trial proceeding that required the transcription of fourteen (14) volumes of court documentation.

However, in my appellate brief, appellate counsel Marianne Woolbert only submitted eight (8) issues to be heard by the Indiana Supreme Court.

Out of the eight (8) issues raised on direct appeal by appellate counsel Marianne Woolbert, three (3) of them were misrepresented and argued out of context.

On November 30, 1989, despite my objections, an appeal was submitted to the Indiana Supreme Court, on my behalf, by Marianne Woolbert.

On or about February 12, 1990, appellant John C. Cole, Jr. submitted a "Verified Application for Leave to Amend Briefs" to the Indiana Supreme Court, in an attempt to withdraw my appellate brief. My efforts were all to no avail... The Indiana Supreme Court never acknowledged my motion. In the appellate brief that Marianne Woolbert filed on my behalf with the Indiana Supreme Court, she raised the following eight (8) claims:

(1) Whether the trial court erred in denying the defendant's motion to transport, and ordering that the defendant be transported 180 miles daily from the state farm for his trial, thus denying the defendant the right to adequately consult with his attorney and receive effective assistance of counsel;

(2) Whether the trial court erred in denying the defendant the right to present evidence that would substantiate his legal defense of a third person;

(3) Whether the trial court abused its discretion in allowing, on more than one occasion, the defendant to be paraded in front of members of the jury panel, as well as the jury, while under security in leg irons, chains, and shackles;

(4) Whether the trial court erred in allowing state's witness Correctional Officer William Phillips to testify regarding a conversation he allegedly heard between the co-defendants without possessing an independent recollection of the same;

(5) Whether the trial court erred in allowing the state's exhibits 23 and 24, that being two knives, into evidence without having first established a chain of custody, and proper identification of the items;

(6) Whether the trial court erred in not allowing the defendant to place exhibit-X into evidence, which consisted of an agreement entered into between the defendant's inmates, and state authorities at the close of the incident;

(7) Whether the trial court erred in denying the impeachment of various state's witnesses by means of a verified complaint;

(8) Whether the trial court erred when it sentenced the defendant.

Christopher Naeem Trotter, my co-defendant, was represented on appeal by Attorney Jerrery Lockwood, who was also his trial attorney. Mr. Lockwood's representation of Naeem Trotter was adequate.

* * * * * * * * * *

Denial of Direct Appeal:

On September 6, 1990, the Indiana Supreme Court affirmed our convictions. [See Cole v. State (1990) Ind; 559 N.E.2d 591; and Trotter v. State (1990) Ind; 559 N.E.2d 585]

Despite the blatant errors committed by the trial court, which deprived us of a fair trial, the Indiana Supreme Court upheld this Travesty of Justice!

* * * * * * * * * *

Post Conviction Relief Petition:

On September 4, 1991, I filed a *pro se* Petition for Post Conviction relief, with Madison County Superior Court No. 3.

In my petition for post conviction relief, I raised the following claims:

(A) Petitioner was denied the constitutional protection of the sixth and fourteenth amendments to the U.S. constitution because venire panel from which his petit jury was drawn did not meet the constitutional standards of the U.S. Supreme Court, as well as the Indiana Supreme Court, of being composed of a fair cross section of the community and county in which he was tried;

(B) The trial court's failure to sustain defense counsel's objection to improper and grossly disproportionate venire panel, which substantially excluded members of defendant's race, constituted reversible error, and a fundamental violation of defendant's sixth amendment guarantee;

(C) The trial court erred in denying the petitioner's right to present evidence that was admissible and relevant to his defense, and that

would have substantiated and corroborated his legal defense of self defense;

(D) The trial court abused its discretion when it erroneously excluded admissible evidence that was relevant to defendant's statutory defenses;

(E) The trial court committed fundamental error when it abandoned the position of neutrality and impartiality in favor of the prosecution, therefore making it impossible for petitioner to receive a fair trial;

(F) The trial court violated petitioner's sixth and fourteenth amendment rights of the U.S> constitution which guarantee him the right to assistance of counsel; to a fair and impartial trial; to equal protection under the law and freedom from invidious discrimination; and due process of law. The trial court violated petitioner's sixth and fourteenth amendment rights when it ordered the petitioner to be transported approximately one hundred and eighty (180) miles daily from his place of incarceration to trial;

(G) The trial court abused its discretionary power during the order of proof when it ruled that before defendants could elicit any testimony from their witnesses and/or state witnesses that would substantiate or corroborate their defenses, they must first testify before the court to establish what they knew, saw or heard. The trial court ruling violated defendant's right to remain silent; the trial court ruling violated defendant's privilege against self-incrimination; the trial court ruling constituted denial of due process in that it deprived defendant of the guiding hand of counsel in deciding not only whether the defendant would testify, but if so, at what stage;

(H) The trial court erred in not allowing the petitioner to place his exhibit-X into evidence which consisted of an agreement entered into between the petitioner, prisoners, and state authorities at the close of the incident;

(I) The trial court abused its discretion and violated defendant's due process rights under the fourteenth amendment of the U.S. constitution when it erroneously excluded the admissible testimony of Michael Richardson because of its veracity and because it was not favorable to the prosecution case;

(J) The petitioner was denied the effective assistance of appellate counsel, his constitutional right to the privilege and mandate of the sixth and fourteenth amendments to the U.S. constitution, and Article One, Sections Twelve and Thirteen of the Indiana constitution was blatantly denied;

(K) The trial court violated petitioner's fourteenth amendment right of the U.S. constitution which guarantees him equal protection under the law, when it subjected petitioner to a double standard of law, thereby depriving him of a fair trial;

(L) The petitioner was denied his right to effective assistance of counsel guaranteed by the sixth and fourteenth amendments to the U.S. constitution, and Article One, Sections Twelve and Thirteen of the Indiana constitution.

(See "Memorandum of Law," submitted in support of my Post conviction Relief Petition, attached hereto.)

On October 29, 1991, Deputy Public Defender Hillary B. Reeve, entered an appearance on my behalf.

On May 4, 1992, Hillary B. Reeve was replaced by Deputy Public Defender Ruth Johnson, who entered an appearance on my behalf.

On September 14, 1992, Ruth Johnson was replaced by Deputy Public Defender Richardson Denning.

After waiting four (4) years for legal representation from the office of the Indiana Public Defender, on October 27, 1995 I received a letter from Public Defender Richard Denning (dated and written on October 25, 1997) stating that he had reviewed my issues, and had concluded that my case lacks legal merits. Therefore he was withdrawing his appearance as my counsel.

I don't know exactly what P.D. Richard Denning's motivation was, but I do know this: his conclusion that my case lacks legal merits is contrary to the facts, circumstances, and the law!

Despite this setback, I proceeded with my "Petition for Post conviction Relief" *pro se*.

Denial of Post Conviction Relief:

On May 21, 1997, an evidentiary hearing was held on my petition for post conviction relief. I argued all the aforementioned claims cited herein.

The Special Judge Thomas Wright, who was assigned to hear my case, promised to review my case thoroughly.

On August 25, 1997, I received written notice by U.S. mail that my "Petition for Post Conviction Relief" had been denied by Judge Thomas Wright on August 20, 1997. (See Findings and Conclusions on Amended Petition for Post Conviction Relief.)

In its finding of facts, and conclusion of law, the judge does not specifically state why my petition was denied, which he is required to do by law. He simply makes general reference that the court "finds no facts presented upon any issue raised by petitioner's Amended Petition for Post Conviction Relief that entitle him to have his Judgment of Conviction and sentence set aside or constitute grounds for a new trial."

Trial courts very rarely reverse themselves, so the trial court's denial of my Petition for Post Conviction Relief was in no way a shock. As a matter of fact, I anticipated as much!

As I write, I am in the process of preparing my appeal to the Indiana Courts of Appeal concerning the denial of my "Petition for Post Conviction Relief."

Will justice eventually prevail? It remains to be seen, so stay tuned!

Sincerely,

Balagoon
In search of justice, if there is such a thing!