

## **Hidden Evidence and the Death Penalty**

*One of the most basic requirements of a fair trial is that the accused have access to evidence the prosecution has gathered in the case. That is essential in any criminal proceeding, but especially in death penalty cases, where someone's life is at stake. Prosecutors are sworn to seek justice and justice requires that trials be fair. Fairness is undermined when the state fails to live up to its obligation to share important evidence.*

### **Hidden Witness Statements and a Secret Tape Recording**

In 2002, a superior court judge in Bertie County threw out the murder conviction and death sentence of Alan Gell after the judge learned that the Attorney General's office had withheld compelling evidence of innocence from Gell's trial attorneys. That evidence included an audiotape of two teenage girls involved in the murder discussing how to frame Gell as well as interviews with 17 witnesses who said they saw the victim alive well after the only time Gell could have committed the murder. Attorney General Roy Cooper decided to retry Gell despite the newly revealed evidence. The jury in the second trial deliberated for less than three hours before finding Gell not guilty. On February 18, 2004, Gell was released from prison after spending almost nine years in jail, more than four of which were on death row, for a crime he did not commit.

### **Hidden Memo that Proved Eyewitness was Lying**

A superior court judge in Wilkes County threw out the conviction and death sentence of Charles Munsey in 1999 after the judge learned that prosecutors withheld evidence that the key prosecution witness lied. The witness told the jury that Munsey confessed to him when both men were in Central Prison. The withheld evidence included a memo from the Attorney General's office to the district attorney saying that prison records showed the witness was never in Central Prison with Munsey. The memo advised the prosecutor to continue to seek a death sentence for Munsey. After the judge's ruling, the murder charges were dropped, but Munsey died before he could be released from jail.

### **Hidden Evidence of Deal Offered to Key Witness**

In 2003, a superior court judge in Richmond County threw out the conviction and death sentence of Jerry Hamilton after the judge discovered that prosecutors had withheld a letter written by the state's star witness seeking a deal with prosecutors for his testimony against Hamilton. The witness initially confessed to the crime and later recanted, saying instead that he saw Hamilton murder the victim after having sex with her. The prosecutors told the jury that DNA evidence did not point to the guilt of anyone in the case. DNA testing after the trial revealed that the DNA actually matched the state's witness, not Hamilton. Hamilton is awaiting a new trial.

### **Hidden Statements Cast Doubt on Guilt**

A superior court judge in Catawba County is considering a motion to throw out the conviction and death sentence of Glenn Chapman because prosecutors failed to turn over crucial witness statements that shed doubt on Chapman's guilt in a double murder case for which he was sent to death row in 1994. A witness saw one of the victims alive after Chapman was last seen with her. Another witness identified a man who had threatened to kill one of the victims for stealing his ring. The witness said the victim got into a vehicle with that man the night of the murder well after Chapman had last been seen with the victim. A portion of that report was provided to the defense, but the crucial information that implicated another suspect had been deliberately marked out. Chapman remains on death row awaiting a hearing in superior court.

### **Hidden Evidence of Deal Given to Key Witness**

A Superior court in Union County is considering a motion to throw out the death sentence and conviction of Jonathan Hoffman because prosecutors failed to reveal that they made a deal with their star witness. In return for his testimony the prosecutor gave the witness cash, agreed not to prosecute him for other serious crimes, and cut 15 years off his prison sentence. Documents brought to light in a recent story in *The News and Observer* showed the prosecutor not only hid evidence, but also misled the court by altering documents to conceal the deal. Hoffman remains on death row awaiting a hearing on the hidden evidence.