



## **Wrongfully convicted, he now rights wrongs**

**12:52 AM PDT on Monday, April 24, 2006**

**By MEGHAN LEWIT  
The Press-Enterprise**

Standing in front of a large projector screen, Herman Atkins is part of a long line of men and one woman in the darkened conference room, all solemn and silent as their names and the number of years they spent in prison for crimes they did not commit flash across the screen.

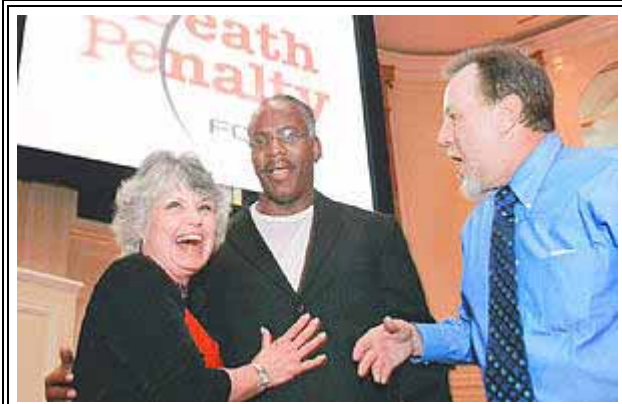
At a recent conference highlighting the causes and consequences of wrongful conviction, Atkins is a celebrity. He's trim and wears a sleek, brown suit. His dreadlocks, tinged with gray at the front, are pulled back into a ponytail.

In 1988, Atkins was convicted of the robbery and rape of a clerk in a Lake Elsinore shoe store. He served 12 years of a 45-year sentence before DNA evidence cleared him of the crime.

In court, and to this day, Atkins maintains he had never been to or heard of the city of Lake Elsinore until he was charged.

He told his story in the film "After Innocence" -- a documentary profiling exonerated prisoners that was recently screened in Riverside. A civil-rights lawsuit against one of the original investigators in the case, former Riverside County sheriff's Detective Danny Miller, will go to trial next month in U.S. District Court in Los Angeles.

"To be wrongfully convicted of a crime was something I heard of all the time I was coming up," said Atkins, 40, a Los Angeles native and the son of a California Highway Patrol officer. "My attitude was, stuff like that would never happen to me, especially when my father was a highway patrolman."



Scott Smeltzer / Special to The Press-Enterprise

Herman Atkins, center, Gloria Killian and Greg Wilhoit all were exonerated after being wrongfully convicted and sent to prison.

More than a decade in state prison shattered the comfortable presumption.

### **Arrested and Convicted**

On April 8, 1986, a man entered a shoe store in Lake Elsinore where a clerk was working. The young woman would testify at the trial two years later that the man pulled a gun, took \$130 from the cash register and her purse, and raped her twice.

After the attack, the woman saw a wanted poster with a photograph of Atkins hanging in a briefing room in the Sheriff's Department office in Lake Elsinore and identified him as the rapist.

At the time, Atkins was wanted in connection with an assault with a firearm on a peace officer in Los Angeles and use of a gun, according to court documents. During a recent interview, Atkins would only say that he was wanted for questioning for the assault.

The young woman at the shoe store later identified Atkins from a photo lineup. An employee who worked at a business next door also identified his photo, court documents show.

Seven months after the rape, Atkins was arrested in Phoenix for the Los Angeles County assault and was eventually convicted of that crime and sentenced to more than two years in prison.

DNA testing still hadn't transformed the criminal-justice landscape when Atkins' rape and robbery case went to trial in Riverside County in 1988. A state Justice Department

criminalist analyzed semen that was on the young woman's sweater. Tests used at the time found the results consistent with Atkins' blood type.

Atkins was sentenced to 45 years and eight months in prison for the rape and robbery in Lake Elsinore.

### **'A Strong Case' Weakens**

At the time, it was considered a strong case, Riverside County District Attorney Grover Trask said.

"There was physical evidence and the corroboration of two eyewitnesses," Trask said. "Obviously, any time you have eyewitness identification, you always do everything in your power in terms of investigation and review to collect circumstantial evidence."

Eyewitness misidentification is the leading cause of wrongful conviction, said Gerald Uelman, a law professor and executive director of the state Senate-created Commission on the Fair Administration of Justice.

The commission was created to look at the causes of wrongful convictions, and misidentification is the cause in about 80 percent of all cases, Uelman said.

After his release, Atkins' attorneys filed a federal civil-rights lawsuit against various county officials and agencies. All the defendants were dismissed from the suit except Miller, who conducted the original investigation.

In the upcoming federal trial, Atkins' attorneys said they will provide evidence to support allegations that Miller fabricated a report from a witness who placed Atkins in the Lake Elsinore area at the time of the attack.

Attempts to contact Miller through his attorney, Christopher Lockwood, were unsuccessful. Lockwood said he could not comment on pending litigation.

Barry Scheck, co-director of the Innocence Project in New York that eventually proved Atkins' innocence, said the procedures used to show photographs and identify Atkins were "unduly suggestive."

Sheriff's Capt. Darryl Birney was a detective in Lake Elsinore in 1986, and worked on the investigation. He was not named in Atkins' lawsuit.

Eyewitness identification is not infallible, Birney said, but it is up to the jury to evaluate the merit of a field or photo lineup.

"It still comes down to 12 people listening to evidence and making a decision if the person is guilty or not," he said. "From an investigation standpoint, everything was done

properly with the evidence and facts that we had. . . . We didn't have DNA. We have to go by the tools we were able to use."

The store where the rape occurred is long gone from Lake Elsinore.

Cathy Mayhall, a lifelong city resident whose family has owned a print shop on Main Street since 1958, said she remembered the brutal attack but didn't know what happened to the people involved.

"I didn't know the girl, but I felt sympathy for her. It did make you think, this could have been you," Mayhall said. "Then you go off and enter the world again."

### **Working for Justice**

Atkins' world became the walls of a prison cell. Appeals to higher courts all failed. Atkins said he wrote to a number of organizations, reaching out to "anyone who would listen" to promote his innocence.

In 1993, he wrote to the Innocence Project, a nonprofit legal clinic that works to exonerate the wrongfully convicted through DNA testing.

Attorneys Scheck and Peter Neufeld founded the project in 1992 in New York. Many clients write them as a last resort, when the appeals process has been exhausted, Neufeld said.

In Atkins' case, the semen collected in the investigation was released for testing by the FBI in 1999.

When the findings were returned, prosecutors filed a petition for a writ of habeas corpus - an objection to a defendant's unlawful imprisonment -- on Atkins' behalf, Trask said.

"We also have an obligation . . . not merely to convict but to see justice done," he said. "We're just as obligated to get an innocent person out of the justice system."

On Feb. 18, 2000, Atkins was released from Ironwood State Prison in Blythe.

"It was a matter of the truth coming to the light," Atkins said. "I never saw the light at the end of the tunnel until they got a hold of the evidence."

After his release, Atkins returned to Los Angeles and stayed with relatives. After several failed attempts to land a job, a family friend offered him clerical work, but Atkins said he didn't even know how to turn on a computer. He eventually started college, first at Southwest College in Los Angeles and later at Cal State Dominguez Hills.

Atkins recently remarried and moved to Fresno, where he has a vending-machine business, works as a social worker, and is pursuing a graduate degree in psychology, which he said he will use to help the wrongfully convicted.

After his release, Atkins said he found almost no resources were available to help exonerated prisoners readjust to a life outside prison.

"Society is so busy trying to sweep the matter under the rug and prevent any type of acknowledgment," he said. "My eyes have been opened, and I now choose to speak out about injustice."

He is one of seven exonerated prisoners featured in the documentary "After Innocence" that premiered at the Sundance Film Festival last year. The film, which explores the emotional struggles the prisoners face when they are released, was shown last week at La Sierra University in Riverside.

"I can't imagine what it's like to be (in prison) for so many years," La Sierra student Clayton Koh, 20, said after seeing the film. "I'm happy something is being done."

Jessica Sanders, the film's director and producer, said she found Atkins compelling and knew she wanted him in the film.

"A lot of exonerees are really amazing people. They're very positive and want to change the system," she said by phone. "What propelled (Atkins) was this experience, and having survived it for a reason."

Staff writer Gail Wesson contributed to this report.

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## **LIFE Foundation**

Herman Atkins has started the LIFE Foundation, a program that assists the wrongfully convicted with basic necessities after their release. The foundation can be reached at [exonereelife@aol.com](mailto:exonereelife@aol.com) or P.O. Box 9623, Fresno, CA 93793.

Survey

**What criteria should the courts use to review cases that were tried before DNA testing was available? [Comment](#)**

April 24, 2006 11:45 a.m.

This case is typical of Riverside County. Cops who fabricate evidence and a District Attorney that continues to prosecute innocent people under the guise of seeking "justice". Look at the recent stories of complaints against the Riverside Police Department and search the internet and one gets the feeling that corruption in law enforcement in this county is the norm rather than the exception. We need new leadership at the top and that starts with the District Attorney.

April 23, 2006 06:28 a.m.

We can not begin to assume that all cases decided before DNA testing was available are wrong. Each case should be decided on an individual basis with the burden of proof on the defendant challenging the existing verdict.

April 22, 2006 12:17 a.m.

In order to seek justice--outdated cases should be reopened using current modern investigative tools such as DNA. If older cases are found to be inaccurate the defendant should be given a new trial in order to present new evidence that may exonerate the defendant.

On the other hand modern investigative tools should also be used to seek justice against an pardoned defendant who is in reality GUILTY.

April 22, 2006 07:23 a.m.

Were there flaws in the trial? Inadequate defense? Misconduct by the judge? Prosecutor malfeasance? Dishonest testimony? Are other witnesses available who were excluded from the trial? Is other evidence available that has somehow survived the intervening years intact and untainted?

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