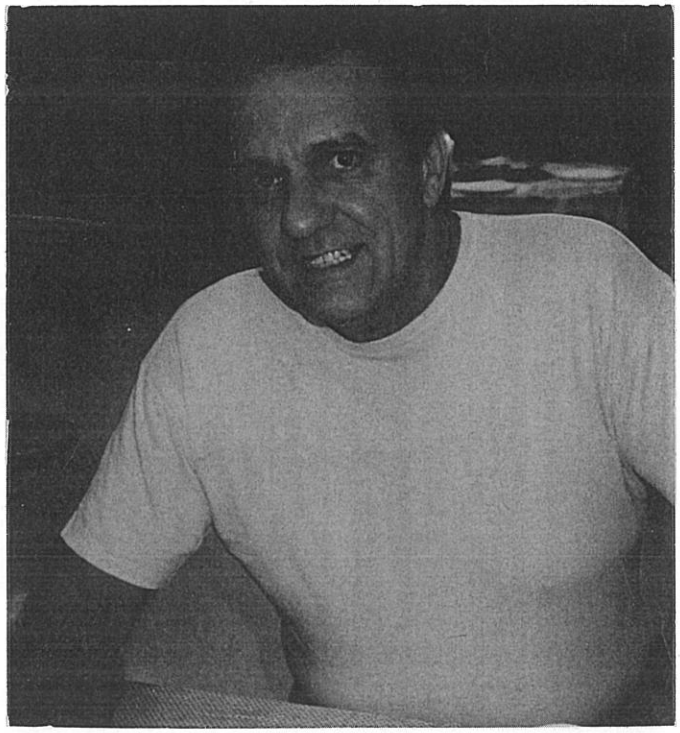
# JUSTICE DENIED



At his trial, state witnesses testified that they observed a person they said was William Kelley at a Daytona Beach, Florida hotel near the time of the murder in 1966. Those witnesses described the person at the hotel as being about 40 years-old, six feet tall and with dark hair.
In 1996, William Kelley was twenty-three years-old, he had blond hair, and he was at least six feet five inches tall!

## The Compelling Case of a Man Who Beyond any Reasonable Doubt is Innocent, Yet Still Sits on Florida's Death Row.

**"This case presents many incidents of prosecutorial misconduct. Hardy Pickard, Assistant State Attorney, has a habit of failing to turn over exculpatory and impeachment evidence."**

**Norman C. Roettger, United States District Court Judge, Southern District of Florida.**

## The Crime

On October 3, 1966, Charles von Maxey a wealthy citrus grower and rancher was brutally murdered in his Sebring, Florida home. The crime remained unsolved for several months.

Sometime during 1967, Irene Maxey, the wife of the murder victim, approached Florida Law Enforcement officers and "confessed" to the crime. Mrs. Maxey told police that she, along with her then lover, John Sweet of Boston, Massachusetts had in fact planned and arranged for the murder of her husband. In her confession, Mrs. Maxey claimed that she had paid Mr. Sweet over $35,000 to have her husband killed. She also claimed that her reasoning for coming forth with this information was that Mr. Sweet was now threatening her and her then five year-old daughter, while he was demanding an additional payment of $75,000 for the murder.

## The Criminal Prosecution of John Sweet

John Sweet was arrested in 1967 and placed on trial for the murder of Mr. von Maxey. Mrs. Maxey was granted immunity from prosecution by the Highlands County, Florida District Attorneys Office in exchange for her testimony against Mr. Sweet.

The first criminal proceeding against Mr. Sweet would end with a hung jury that was undecided as to his guilt or innocence. The state of Florida would bring Mr. Sweet to trial a second time. The second trial ended with a guilty verdict and a sentence of "life" in prison. However, for some unexplained reason, Mr. Sweet was allowed to remain free on bond while an appeal of that verdict was pending.

In 1970, the Florida Court of Appeals reversed Mr. Sweet's murder conviction. The reversal was based on evidence that the state's star witness, Mrs. Maxey, had been having a sexual relationship with the state's lead investigator in the case, Special Agent Roma Trulok of the Florida Department of Law Enforcement (FDLE). On November 16, 1971, the state of Florida officially dismissed its case against Mr. Sweet for the murder of Charles von Maxey.

By April of 1976, the state of Florida had just about given up on solving the murder of Mr. von Maxey. The state even went as far as to petition the Court to order that some of the physical evidence collected in the case, and presented at Mr. Sweet's trial be destroyed. The Court complied with that request. The evidence ordered destroyed included a bullet, a tire, a bloody sheet and a piece of a bloody shirt. Some additional forty to sixty pieces of evidence from the scene of the crime were preserved.

## New Criminal Charges against Mr. Sweet in Massachusetts

During 1981, some fifteen years subsequent to the murder of Mr. von Maxey, John Sweet was arrested by local and state police in Massachusetts. Mr. Sweet now faced a host of serious criminal changes including: prostitution, distribution of narcotics, arson, bribery, counterfeiting, hijacking and loan sharking.

Faced with the very real possibility of spending the rest of his life in prison, Mr. Sweet began looking for a way out. Not surprisingly, Mr. Sweet figured that his best chance of gaining

immunity from prosecution in the state of Massachusetts rested exclusively with his ability to concoct a believable story regarding the 1966 Florida murder of Mr. von Maxey. Being an able and long time criminal, Mr. Sweet was well aware of the fact that there is no statute of limitations for the change of murder anywhere in the United States. Mr. Sweet advised authorities that he would fully cooperate with both Massachusetts and Florida law enforcement agencies and state prosecutors. John Sweet provided authorities with two names, Andrew von Etter and William Kelley. Conveniently, Mr. von Etter had been dead for many years, having been found beaten to death and stuffed into the trunk of his car in Boston on February 2, 1967. At the time of Sweet's statements to authorities, the whereabouts of Mr. Kelley was unknown to law enforcement.

On March 11, 1981 Florida state prosecutor Hardy Pickard met with Massachusetts authorities and Mr. Sweet in New Bedford, Massachusetts. Immediately following his agreement with authorities to testify against Mr. Kelley in the Florida case, Mr. Sweet was granted immunity from prosecution for all pending criminal changes in Massachusetts. At this point, one could safely assume that Mr. Sweet had successfully manipulated the criminal justice system yet again.

**Indictment and Trial of William Kelley**

Based solely upon the testimony offered by Mr. Sweet, William Kelley was indicted for first degree murder on December 16, 1981 by a Florida Grand Jury. Mr. Kelley was eventually arrested on June 16, 1983 almost seventeen years subsequent to the tragic events that unfolded in Sebring, Florida on October 3, 1966.

The first of the two trials of Mr. Kelley began in the Highland County, Florida Criminal Court during January of 1984. The first trial of Mr. Kelley ended when the jury, who had heard all of Mr. Sweet's testimony, was unable to reach a unanimous verdict. Mr. Kelley's second trial ended on March 30, 1984 in a verdict of guilty. On April 2, 1984 William Kelley was sentenced to death for a crime that he has maintained his innocence of for over thirty years.

**Mr. Kelley's Appeals**

After a litany of subsequent appeals filed in Florida State courts, Mr. Kelley and his attorneys sought relief in the federal Court System. During his earlier appeals on the state level, Mr. Kelley had raised a number of very serious and certainly meritorious claims. One of those claims was in relation to a specific question that had been raised by jury members during his second and last trial.

During jury deliberations at the second trial, the foreman of the jury had sent the presiding judge the following request:

***"As a jury, we would like to know if John J. Sweet received immunity in Florida for the first degree murder and perjury before he gave information on the Maxey trial, and if he had anything to gain by his testimony."***

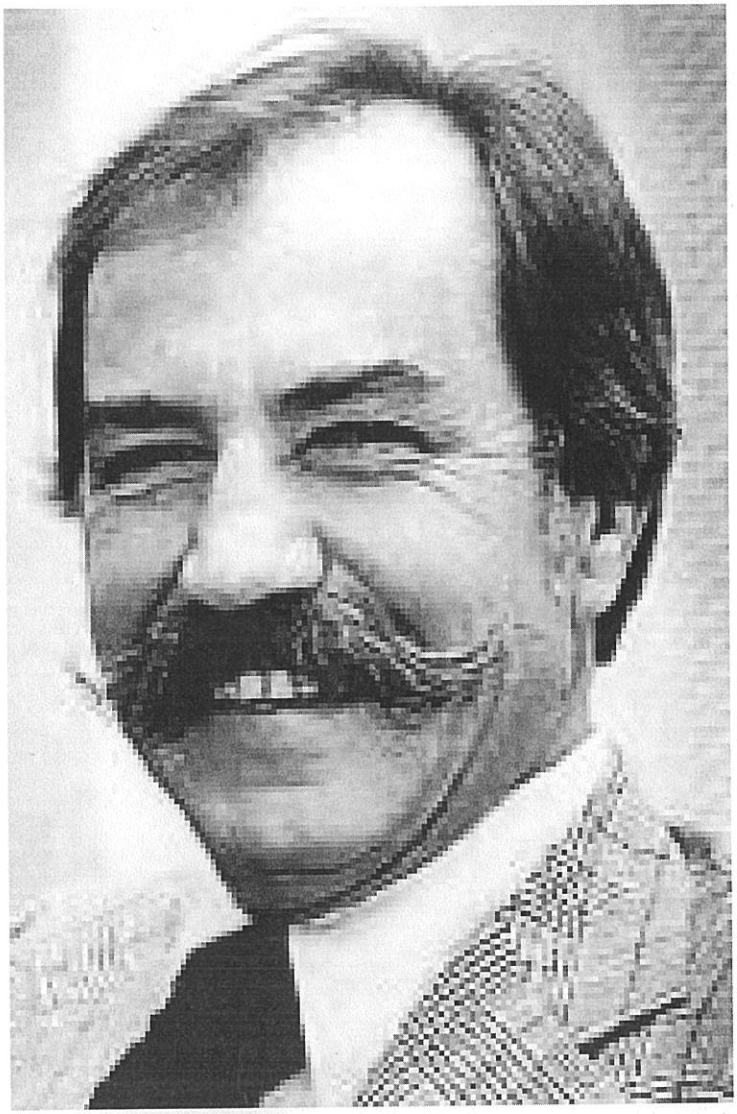
Remarkably, the trail judge refused to provide this critical information to the jury, information that could have aided the jury during their deliberations. In any criminal proceeding that rests entirely on the testimony of a single identifying prosecution witness, such as Mr. Sweet, that decision stands out as nothing short of extremely troubling. In fact, had the jury members been provided with the information they sought, they would have quickly discovered that indeed Mr. Sweet had a lot to gain by his trial testimony against Mr. Kelley. The very serious multiple criminal changes lodged against Mr. Sweet by the state of Massachusetts carried potential state prison sentences that totaled more than one hundred years.

In addition, and based upon a careful examination of all of the trial evidence presented in Mr. Kelley's case, there can be little doubt that Florida state prosecutor, Hardy Pickard knew that the grant of "immunity" from prosecution for Mr. Sweet in the Massachusetts cases was based entirely on the condition of his favorable

Senior
United States District Court Judge

Norman C. Roettger Jr.
Southern District of Florida

Some called him
**"The toughest Federal Judge east of the Mississippi."**



testimony against Mr. Kelley in Florida. It was only after the Florida state prosecutor Mr. Pickard had traveled to New Bedford, Massachusetts on March 11, 1981 to meet with Mr. Sweet and Massachusetts prosecutors **(the very day before the state of Massachusetts granted Mr. Sweet full immunity for all outstanding criminal changes)** that the deal with Sweet was fully sanctioned.

**Federal Habeas Corpus**

On October 9, 1992 Mr. Kelley's attorneys filed a Writ of Habeas Corpus in the United States District Court for the Southern District of Florida. That petition would linger in the Court for almost eight years before any action was taken. However, when the decision finally was handed down on August 31, 2000, it opened the door for further review by the Court in the form of an evidentiary hearing.

Prior to the evidentiary hearings, Mr. Kelley's principal Florida attorney, James Lohman and his team of professional investigators traveled north to Boston to interview a number of potential witnesses. What they discovered would convince them beyond any reasonable doubt whatsoever that Mr. Kelley had indeed been "framed" by John Sweet.

**The Boston Evidentiary Hearings**

The Federal Court evidentiary hearing was held in Boston, Massachusetts before the Florida Federal Judge who had issued the order. United States District Court Judge Norman C. Roettger. In an extremely rare and unusual move, Judge Roettger

# "The undersigned judge is not a foe of capital punishment and has granted only three 2254's (Habeas Corpus Petitions) in thirty-plus years on the Federal District Court bench."

**Norman C. Roettger, United States District Court Judge**

would personally travel from Florida to Boston to oversee the evidentiary hearings,. He would also interview witnesses and take sworn testimony in open Court. The Boston hearings took place on April 24th and 25th of 2001. Evidence presented at those hearings would cast serious doubt as to Mr. Kelley's involvement in the murder of Mr. Charles von Maxey. Federal Judge Roettger would later conduct additional evidentiary hearings in the Kelley case at the Federal Court in Ft. Pierce, Florida on July 9, 2001.

The evidentiary hearings produced some very remarkable testimony. Foremost, was that Mr. Sweet had not even seen Mr. Kelley until some five years **"after"** the Florida murder of Mr. von Maxey. That very brief meeting took place when Mr. Sweet ran into Mr. Kelley at a Boston night club. One of the thirteen witnesses who testified, Hobart Willis, stated under oath that a well known Boston criminal, Stevie "The Greek" Busias had admitted to him that he had in fact been the killer of Mr. von Maxey. According to Mr. Willis, Mr. Busias had also told him that Mr. von Etter was indeed the other person involved in the murder.

Charles Busias, the son of Stevie "The Greek" Busias also testified. Mr. Busias stated that he was aware that his father had traveled to Florida during 1966 and that when he returned to Boston, he had pockets full of $100 bills. Enough cash, he testified, to put a down payment on a small business (a Lounge), and to purchase a Buick Electra 225. Mr. Busias also testified that shortly after the death of his father, an associate, who was a well known hoodlum, told him that his father had purchased the Lounge with the proceeds of a contract murder in Florida. The hearing testimony of Mr. Busias was also backed up by that of another witness who told William Kelley's Attorney James Lohman that the Florida contract given to the older Mr. Busias and presumably Mr. von Etter, was indeed to murder Mr. Charles von Maxey.

After carefully considering all of the facts of the case and reviewing the hearing testimony, Judge Roettger did what he had only done on three other occasions during his thirty plus years as a Federal Judge. On September 19, 2002 he granted the Writ of Habeas Corpus and ordered that a new trial be held for Mr. Kelley. In a criminal procedure it is indeed a significant event when a federal Judge, especially one known to be **"The toughest Judge east of the Mississippi"** grants such a petition. In his ruling, Judge Roettger went out of his way to clarify his position as anything but a bleeding heart liberal. In fact the ultra conservative Judge wrote **"The undersigned Judge is not a foe of capital punishment and has granted only three 2254's (Habeas Corpus Petitions) in thirty-plus years on the District Court bench."**

Irrespective of events that would follow, Judge Roettger's granting of William Kelley's petition for a Writ of Habeas Corpus speaks volumes as to Kelley's actual innocence. Those who knew Judge Roettger say that there is **"no way at all"** that the Judge would have granted such a petition **"unless"** he was absolutely convinced that in all likelihood, the person filing the petition was in fact, actually innocent. This position is born out by the extensive amount of time Judge Roettger considered the case. Mr. Kelley's petition lingered in federal Court for over eight years before the decision. Adding to that factor, is the extremely unusual event of ordering evidentiary hearings held in a Federal Court that was located some one thousand plus miles from his Florida District.

### The State of Florida Appeals

On January 28, 2003, the state of Florida announced that it would appeal Judge Roettger's decision to the United States Court of Appeals for the Eleventh Circuit in Atlanta, Georgia. On July 23, 2004 the U.S. Court of Appeals reversed Judge Roettger's decision. A careful reading of the 109 page ruling that was issued by Judge Tjoflat of the Eleventh Circuit leaves one with nothing short of total disbelief.

Those from the legal community who are familiar with Mr. Kelley's case believe that the Court of Appeals completely ignored the **"actual innocence"** evidence that had been presented in favor of placing an unreasonable amount of trust in the argument presented by the state of Florida.

Some in the legal community also say that the state attorney, Carol Dittmar, misrepresented a number of very important facts in her argument to the Federal Appeals Court. Among those alleged misrepresentations was the true reasoning that Judge Roettger had "reversed" Mr. Kelley's conviction. It is alleged that Ms. Dittmar informed the Appeals Court that both the first and second trials of the state's star witness Mr. Sweet, contained the same information, when in fact they did not. More importantly, it appears that the Appeals Court was also misadvised regarding scope of the "immunity" deal that was afforded to Mr. Sweet by the state of Massachusetts.

Despite legal assistance from some of the most knowledgeable minds in America, including famed Harvard University Law Professor and Constitutional Scholar, Lawrence Tribe, the United States Supreme Court declined to review Mr. Kelley's case on a Writ of Certiorari.

### Plenty of Motivation for Mr. Sweet to Provide False and Misleading Testimony

It is relatively easy for one to see that the reasoning behind John Sweet's false and misleading trial testimony against William Kelley rested with the strongest of all motivations, self preservation. Prior to, and subsequent to Mr. Sweet's Florida trial and conviction for his involvement in the murder of Charles von Maxey, Mr. Sweet had already experienced a brief taste of Florida's harsh, and often unfair criminal justice system. Obviously, as one can imagine, neither he or any one else in a similar situation, would be in a big hurry to tempt the same fate in the state of Massachusetts. Given his close to middle age at the time, it is highly unlikely that John Sweet would have survived any term of incarceration, let alone the decades of imprisonment he faced in Massachusetts. In fact, Mr. Sweet would expire of natural causes a few years after his grant of immunity from prosecution and his testimony against William Kelley.

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### The Victim's Daughter Speaks out in Support of Mr. Kelley.

As astonishing as the facts of this case are, they are almost overshadowed by the sheer determination of one of William Kelley's most ardent supporters, and a true believer in his innocence, Marivon Adams, nee Maxey. Ms. Adams who was just six years old when the murder occurred, is the daughter of the murder victim Charles von Maxey. Ms. Adams, herself once a Sumter, Florida County Court Clerk, is absolutely certain that Mr. Kelley did not participate in the murder of her father. Ms. Adams, is so solid in her belief of Mr. Kelley's innocence, that she has attended many of his court hearings, including the one held by Judge Roettger in his Fort Pierce, Florida Courtroom. Ms. Adams has also offered continuous support for Mr. Kelley as he continues to struggle with the legal system to prove his innocence.

## "This Case Presents Many Incidences of Prosecutorial Misconduct. Hardy Pickard, Assistant State Attorney, Has a Habit of Failing to Turn Over Exculpatory and Impeachment Evidence."

There exists yet another, and extremely troubling area that speaks to the unfairness that existed in the state's proceedings against Mr. Kelley, **"prosecutorial misconduct."** As noted in the published opinion of United States District Court Judge Norman C. Roettger, the state prosecutor against Mr. Kelley, Hardy Pickard, has a long history of questionable conduct in criminal cases. In Kelley's case, there is no question whatsoever that an abundance of evidence favorable to Mr. Kelley was deliberately withheld by the state of Florida. In fact in a separate capital case in Florida, a case that resulted in a new trial and the eventual acquittal of another death row prisoner, Mr. Pickard was soundly chastised by a Judge for this exact type of misconduct.[1]

Prosecutors, such as Hardy Pickard, who either deliberately or inadvertently, withhold evidence that could prove the innocence of a defendant in a criminal proceeding are rarely held to account. In fact, United States Supreme Court case law exempts both state and federal prosecutors from being held fully accountable for such actions. Given those restrictions, we are only left to wonder as to the actual innocence of others beside Mr. Kelley.

According to the National Registry of Exonerations, established in 2012[2], there are in excess of 2,400 verifiable cases of wrongful criminal convictions in the United States. Details regarding the 1,232 exonerations that occurred between 1989 and October 2013 reveal the following: Eighty-three percent of those exonerated had been convicted after a trial by a jury and an astonishing 43% of those exonerations were the result of either police or prosecutorial misconduct. The misconduct in question included the withholding of exculpatory evidence from criminal defendants. According to the Registry site 52% of those wrongful convictions involved false accusations and/or perjured trial testimony. In murder cases, like Mr. Kelley's, that number rose to a staggering 65%. It is also worth noting here, that over 100 of the 1,232 individuals who were exonerated between 1989 and October of 2013 had received death sentences.

Perhaps the eventual fate of criminal defendants like William Kelley will only be justly determined if those responsible for the fair administration of justice heed the words of University of Michigan Law School Professor Samuel Gross, one of the founders of the National Registry of Exonerations. Professor Gross noted that: ***The most important goal of the criminal justice system is accuracy. Getting the right person and not getting the wrong person are obviously the most important goals. The only way to get those, are to learn how we made our mistakes. - What this shows is that the criminal justice system makes mistakes, and they are more common than people think.***

So far, at least in William Kelley's case, the criminal justice system has been extremely slow to correct a grave injustice. Now that they have another chance, we can only hope that the courts in the state of Florida will act expeditiously to correct the many years of injustice that Mr. Kelley, his lawyers, and his supporters have endured.

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(1.) State of Florida v. Melendez, No. CF-84-1016A2-XX (Tenth Judicial Circuit of Florida), slip op., filed December 5, 2001.

(2) www.exonerationregistry.org