

<http://www.victimsofthestate.org/court/People-v-Balu.htm>

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LAKE

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

ARVIND BALU,

Defendant and Petitioner.

Action No. CR904408

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION
FOR FINDING OF FACTUAL INNOCENCE PURSUANT TO PENAL CODE
§851.8(c).

I. Introduction:

On May 16, 1997, a twenty one year old college student named Arvind Balu was arrested and charged with five serious felonies after a teenager named Melissa F. reported that he had tied her up, raped her at knife point, cut her with the knife, and then licked her blood. This assault was supposed to have occurred approximately nine months earlier during July, 1996, at the Konocti Harbor Resort.

Knowing what we now know, it seems remarkable that criminal charges were ever brought as a result of these allegations. What has come to light are a remarkable number of circumstances that plainly establish that these charges were false. These circumstances include the implausible and inconsistent accounts given by Melissa to police and others; her unexplained failure to say a word about them to anyone for more than nine months; her immediate destruction of the pages in her diary relating to her trip to Clear Lake once, against her wishes, her rape accusation was reported to the authorities; and much other information that casts doubt upon her credibility.

Now that all charges against Mr. Balu have been dismissed, there is one final step to be taken. Pursuant to Penal Code §851.8(c), he respectfully asks this court to evaluate all of the evidence bearing on the truth or falsity of the charges, and to determine whether that evidence supports a finding of probable cause to believe he committed those crimes. If it does not, then a finding of factual innocence should be made, and Mr. Balu should be given a chance to rebuild his life free from the stigma of these false and infamous

accusations. The increasingly sensational nature of the accusations made against Mr. Balu by Melissa generated much publicity. Mr. Balu now exists in that grey zone where he is not guilty, but the accusation hangs heavily over his head. Unless formally cleared, this accusation will remain an anchor around his neck.

II. Legal Standard:

Penal Code §851.8 provides a mechanism for defendants whose criminal charges have been dismissed to seek a judicial finding of factual innocence upon a showing that there is no reasonable cause to believe the charges are true. (Penal Code §851.8(b), (c); *People v. Adair* (2003) 29 Cal.4th 895, 902-904; *People v. McCann* (2006) 141 Cal.App.4th 347, 352-355.) “Reasonable cause is a well-established legal standard, defined as that state of facts as would lead a man of ordinary care and prudence to believe and conscientiously entertain an honest and strong suspicion that the person is guilty of a crime.” (*Adair*, supra, 29 Cal.4th at 904, citations omitted.)

According to the statute, “the initial burden of proof shall rest with the petitioner to show that no reasonable cause exists to believe [he] committed the offense[s] for which the arrest was made.” (Penal Code §851.8(b); *Adair*, 29 Cal. 4th at 903.) Once that burden has been met, the statute shifts the burden to the prosecution to show that reasonable cause does, in fact, exist to believe the defendant is guilty of those charges. (*Ibid.*)

This post-dismissal assessment of the evidence is made on the basis of evidence available at the time of the hearing on the petition, as opposed to the date the arrest was made or the charges were filed. Further, all relevant evidence bearing on the issue of guilt or innocence may be considered, even evidence that would have been inadmissible at trial. (*People v. Chagoyan* (2003) 107 Cal.App.4th 810, 815-817.) A judge hearing a petition under Penal Code §851.8 is a fact finder and is not required to accept all testimony as true. The Court is empowered to make credibility determinations based on all of the currently available evidence, and these determinations are entitled to the usual deference on appeal. (*Adair*, 29 Cal.4th at 901.)

III. Evidence Showing Mr. Balu’s Innocence:

With these principles in mind, petitioner will summarize the facts and circumstances that show there is no reasonable cause to believe he is guilty of these crimes. These facts and circumstances include: (1) Melissa’s implausible and inconsistent accounts of the alleged crimes, which lack corroboration and, in at least one respect, were proven false by subsequent police investigation, (2) her failure to say anything to anyone about the alleged crimes for more than nine months, (3) her destruction of evidence, namely the pages of her diary relating to her stay at Clear Lake, as soon as her accusation was reported to the authorities against her wishes, (4) other entries in her diary beginning just three days after the alleged crimes that conspicuously fail to mention anything bad happening during the trip to Clear Lake, and whose tone and substance is incompatible with her allegations that she bound, gang raped, and cut with a knife just a few days earlier, (5) evidence from multiple sources that Melissa frequently lied about sexual

matters, and in particular, that she falsely claimed that she was sexually assaulted by another man with a knife just one month before the alleged crimes in this case, and (6) evidence that Mr. Balu passed a polygraph examination in 2001 concerning all of the charges in this case.

Any one of these categories of exculpatory evidence would be sufficient to raise serious doubts about the truth of the charges in this case. The confluence of all permits only one rational conclusion – the charges against Mr. Balu are false, and that there is no reasonable cause to believe he committed those crimes.

A. Melissa's Implausible and Inconsistent Accounts of the Alleged Crimes.

Even the most basic facts of Melissa's story do not jibe with common sense notions of human behavior. According to Melissa, she was tied up, raped and assaulted with a knife by two U.C. Berkeley students. By her version, the students decided to commit these outrageous crimes in a hotel room where they were registered under their own names, knowing that at least two other witnesses had seen them in the room together, and knowing that Melissa's father was a police officer who was staying at the same hotel. (RT 1150-1151.) This scenario makes no sense, unless one is prepared to believe that these university students with bright futures could not have cared less about being arrested and prosecuted for the violent rape of a police officer's daughter.

The implausibility of Melissa's story, however, is by no means the most striking evidence of its falsity. In addition, there is the stunning lack of corroboration. Melissa's account that she was slammed against a wall, wrestled onto a bed, stripped and tied by her wrists and ankles to the "posts" on Mr. Balu's bed, then cut several times with a knife while she was forcibly raped by the two defendants was uncorroborated by any physical evidence or observations of physical evidence, and in at least one important respect, was proven false by the subsequent police investigation.

There was no physical evidence, like blood stained clothing or sheets, that would corroborate Melissa's story of violent sexual assault. In fact, the Lake County deputies who investigated the case discovered that there were no bedposts or other features on the bed in Mr. Balu's room that Melissa could have been tied to, proving that this aspect of Melissa's story was clearly false. (RT 1965-1966, 1712-1713.) When asked about this, Melissa initially said that maybe just her hands were tied, then later claimed – under oath – that she never told the police she was tied up at all. (RT 1730-1731, RT 848-850.)

In addition, there was no evidence that Melissa displayed any consistent physical injuries on the date these crimes are supposed to have occurred, and no credible evidence that she displayed any injuries during the days and weeks that followed. Likewise, there was no evidence that Melissa exhibited any adverse emotional reaction on the date these crimes are supposed to have occurred, and no credible evidence that she displayed such a reaction during the days and weeks that followed. It strains credulity that a fourteen year old virgin could be tied up, be cut repeatedly with a knife while being raped by two men while on a vacation with her parents, and then not betray in some way that these crimes

have occurred. The absence of any physical evidence, injury, or emotional reaction that one would expect to find after such an outrageous attack strongly indicates that it did not occur.

Other inconsistencies in Melissa's story, from one telling to the next, relate to important details such as whether her shirt was removed during the assault (RT 846-848, 1966), whether she saw a knife at any point during the assault (RT 850-853, 1105, 1109-1110), and who was in the room when her "blindfold" was removed (RT 737, 1967), all details she could be expected to remember. Finally, as discussed below, Melissa's account of how these alleged crimes finally came to be "disclosed" more than nine months later was also riddled with inconsistencies and falsehoods, and further demonstrates that her allegations in this case are unworthy of belief.

B. Melissa's Failure to Tell Anyone About the Alleged Rapes for Nine Months.

Melissa's failure to say a word to anyone about these alleged crimes for more than nine months (RT 749, 905) is additional, powerful evidence that they never occurred. It is true, of course, that delays in reporting a sexual assault do not necessarily mean that such a report is false. However, under the circumstances presented by this case, that is by far the most likely explanation.

First, we are not talking about a confused child with an emotional or familial attachment to the perpetrator, but a teenager who displayed only contempt for Mr. Balu, and no inclination to want to protect him.

Second, Melissa was clearly not inhibited by her personality or tender years from understanding or talking about sexual matters. On the contrary, the evidence shows that at the time of these events, she was more or less preoccupied with sex, and with being victimized sexually. In her diary and her conversations with peers, Melissa frequently and graphically described sexual activity, and was widely known as someone who told lies about sex and sexual victimization in order to get attention or sympathy, including falsely claiming that she was attacked by a man with a knife just one month before the alleged crimes in this case. (See, part III. E., post.) Aside from the obvious relevance this information has to Melissa's credibility, it also negates, as an explanation for her delayed reporting of these crimes, that she was too naive or embarrassed to speak about such matters.

Third, the circumstances under which Melissa first reported these alleged crimes provide further evidence of her dishonesty, and also rebut any innocent explanation she might have had for destroying all of the pages in her diary concerning the trip to Clear Lake. (See, part III.C., post.) According to a drug and alcohol counselor at Melissa's school, Cheryl Minton, Melissa first reported an alleged rape on April 24, 1997, while attending a counseling session for "Outrageous Girls" with her friend, Melissa Strong. (RT 1818-1821; Exhibit C, Minton's report.) According to Ms. Minton, Melissa spontaneously volunteered during this session that she had been raped by "someone" the previous summer at the "reservoir." (Ibid.) When Ms. Minton informed Melissa that she was

required to report this matter to the authorities, Melissa's demeanor quickly turned to panic, and she begged Minton not to report it. (RT 902; Exhibit D, letter from Melissa Strong.) Ms. Minton was legally obligated to make the report, however, and promptly sent a memo containing this information to the school guidance counselor, Barbara Schulman. (Exhibit C.) Ms. Schulman then met with Melissa that Friday afternoon and the following Monday, and together they reported the rape allegation to Child Protective Services. (RT 884-888.)

Melissa lied to the jury repeatedly about these events. At trial, she testified that the triggering event, in her mind, for all of these meetings with school counselors was the theft of her diary from her backpack at school. After which rumors about the rape began spreading among the students. (RT 795-797, 910-912, 939.) According to Melissa, right after this happened, she was approached by Ms. Schulman, who she claimed already knew about the rape and asked her about it. (RT 796, 884-888, 916.) Melissa testified that she assumed Ms. Schulman found out about the rape by reading her diary, which is also what she told her parents when it became clear that they, too, would find out it. (RT 794-795, 880, 883, 912.)

The truth, however, is that Ms. Schulman found out about the rape allegation from Melissa herself, who showed up at her office in an attempt to prevent her accusation being forwarded to Child Protective Services. (RT 1817-1824, 1860-1862; Exhibits C and E.) Clearly, Melissa's aim in going to Ms. Schulman was to try and convince her not to report the "rape" to the authorities or her parents because it was a false accusation. As for the counseling session with Ms. Minton, Melissa testified that Minton also already knew about the rape and had asked her about it. (RT 885, 898) This we know from Ms. Minton and Melissa Strong also to be false. (RT 1817-1824; Exhibit D.)

Accordingly, Melissa's initial "reports" of the alleged crimes in this case provide evidence that her allegations against Mr. Balu are lies; a fabrication that was cobbled together after her initial play for sympathy from Melissa Strong and the school counselor caused events to spin out of her control. She had not anticipated the reporting requirement and when confronted with it she first tried to stop the report from being made. When that failed, she began to make things up as she went along. Each telling becoming more lurid than the last.

In the first place, her reports to both school counselors lack too many critical details that were added in the later versions Melissa later gave to police and jurors. For example, these initial reports neglected to mention that there were two assailants, or that Melissa had been tied up, or that a knife was involved, or that she was on vacation with her parents. In addition, these initial reports apparently lacked any of the emotion one would expect to find when the burden of such a terrible secret is lifted. Finally, Melissa's later accounts of how she came to make these reports at school were characterized by duplicity at every turn. Ultimately, the circumstances of Melissa's delayed "disclosure" of the alleged crimes in this case leave the trier of fact with no credible, innocent explanation as to why she would wait more than nine months to tell anyone, and no credible, innocent

explanation as to why she would destroy all of the pages in her diary relating to these allegations as soon as they were reported to the authorities.

C. Melissa's Destruction of the Crucial Diary Entries.

Melissa's destruction of all of the pages in her diary relating to her trip to Clear Lake, and the timing of that destruction of evidence, is perhaps some of the most compelling evidence that her allegations are false. Her explanation for why she ripped these pages out of her diary and tore them into little pieces was that she was angry at other students for having read them. This is also her explanation for how the counselors got involved and forced the report of the matter to the authorities. (RT 797-800, 917-919, 921-922, 932-938, 1132-1133.)

Even if this explanation made any sense, which it doesn't, we know it is false. As set forth in part III.B., ante, we know that it was Melissa who first brought up the alleged rape during the counseling session with Ms. Minton, which means that she knew from the very beginning that the diary played no role in the publication of her rape story. Given that Melissa's own explanation for destroying this evidence was false, there is only one reasonable explanation for destroying all of the pages in her diary relating to Clear Lake right after her rape accusation was reported to the authorities. Melissa didn't want anybody to read these diary entries because they would prove she was lying about what happened. Melissa's methodical destruction of the only contemporaneous record of what happened at the Konocti Harbor Resort as soon as she knew her story would be subjected to public scrutiny is the smoking gun that proves that story is false. There is no other reasonable explanation for her conduct.

D. Other Entries in Melissa's Diary

The balance of Melissa's diary provides even more compelling evidence that her accusations in this case are false. These diary entries, which begin on July 9, 1996, and continue through March 21, 1997, do not even obliquely refer to a sexual assault, or indeed anything bad happening during the trip to Clear Lake. (Exhibit B, pp. 26-36.) In fact, the first three entries after the eleven pages Melissa destroyed, dated July 9, 10, and 11, 1996 (i.e., the third, fourth, and fifth days after the alleged rapes) are concerned exclusively with trivial squabbles with her friend, Jenn, and passing infatuations with two boys named Josh and Toad, and do not even hint at the possibility that Melissa was the victim of a terrifying gang rape three days earlier. (Id. at pp. 26-28.) The remaining twelve entries after the trip to Clear Lake, covering the next six months, are similarly concerned with trivial social events and a succession of older boys that Melissa professes to "love" on one page of the diary, and "hate" on the next. (Id. at pp. 29-36.) No mention is made of a rape, or anything bad happening during the trip to Clear Lake or at all that summer.

Not only are Melissa's diary entries following her trip to Clear Lake incompatible in tone and substance with the notion that she was the victim of a terrible sexual assault on July 6, 1996, they also conclusively rebut the testimony of her parents that she became

increasingly withdrawn and depressed after the trip. In fact, the last eight diary entries before the trip that were not destroyed by Melissa, dated May 6, 1996 through May 28, 1996, express a great deal more pain and self-hatred than any of the entries made after the trip. (Id. at 19-24.)

For example, on May 21, 1996 Melissa writes:

Broken hearts and hollow sounds are what make this wicked world go round. Painful words that sting right to the bone and solemn faces are what used to be my home. I look back and what do I see, the other side of my broken family. The more I cry, the more I die. (Id. at 21.)

Then, on May 27, 1996:

Well, I figured out why Jarrod doesn't like me. It's not just cause I'm fat. It's cause I'm a whore. God, why do I do things I do? (Id. at 22.)

And the next day, a "poem":

My cries are silent, no one can hear. My cries are violent, no one is here. I almost go crazy, without a thought in my mind. My life is only hazy, with only crime. I feel like crying. No one can see. For my cries are so silent, and no one knows. Even then no one cares. I feel really depressed, yet I like to share. I am really impressed by the face I have on in front of everyone. But when I leave, my cries are silent. And then I feel violent. (Id. at 24.)

No diary entry by Melissa after the trip to Clear Lake expresses similar feelings of depression and self-hatred. On the contrary, the diary entries that follow the trip, except for a couple of entries concerning her father and stepfather, are much more carefree and "boy crazy" than the ones that come before. These diary entries effectively disprove the belief of Melissa's parents that she became traumatized and depressed after the trip to Clear Lake, and in fact, tend to prove the opposite.

Finally, various entries in Melissa's diary suggest a psychological explanation for her false accusations in this case. Although no clinical information is available concerning Melissa's psychological state in 1996 and 1997, her diary supports the conclusion that she suffered from extremely low self-esteem during this period, and compensated for this by acting out sexually. When that strategy inevitably failed, Melissa would be confronted with the consequences of her behavior, namely, even lower self-esteem and a damaged reputation. Her way of dealing with this was to tell lies, which only made the problem worse.

Two months before the trip to Clear Lake, for example, Melissa wrote: "Why am I so obsessed with the idea of playing guys?" (Id. at 19.) Then, on May 27, 1996: "Well, I figured out why Jarrod doesn't like me. It's not just cause I'm fat. It's cause I'm a whore. God, why do I do things I do?" (Id. at 22.) Finally, on July 31, 1996, just three weeks

after the alleged crimes in this case, Melissa wrote: “So far this vacation has taught me I’m a slut and a fake. Even though both aren’t true!” (Id. at 28.)

This is not a young woman who likes or respects herself. Rather, in 1996 and 1997, Melissa was an insecure teenager who defined herself by the sexual encounters she sought out. Unfortunately, these encounters inevitably made her feel like a “slut” and a “fake”, and she would resort to lying to shore up her damaged reputation. This dysfunctional pattern not only helps explain how Melissa sought out Brendan Loftus at Konocti, but also why she would feel the need to lie about it ten months later.

Melissa’s high-risk, low self-esteem, deceitful personality is further corroborated by information gathered from her peers after the trial. They verify her predilection for lying about sexual matters, in particular, in order to get the attention and sympathy she craved. (See, part III.E, post.)

E. Melissa’s Reputation For Dishonesty in the Community:

In addition to the other evidence that Melissa’s allegations in this case are false, there was considerable evidence developed after trial that she had a reputation for telling lies, especially about sexual matters. Attached to this petition are records of interviews with five of Melissa’s classmates and one parent of a classmate, all of whom provide specific examples of her dishonesty, including the astounding revelation that she falsely claimed she was attacked by a man with a knife just one month before the alleged crimes in this case.

Deborah Barton, who testified at the hearing on a motion for new trial in this case in 1998, states in her declaration that Melissa often “told lies to seem more cool and get people to like her.” (Exhibit F, p. 1.) She specifically recalled the following conversation with Melissa in June of 1996, just one month before her trip to Clear Lake:

Melissa told me that a man jumped out of the bushes [behind the coffee shop where they hung out] and tackled her and cut her shorts open. She said she thought he was trying to rape her. She got away, but did not tell me how she managed to get away. Melissa told me this story without any real drama, but only said she was scared. I did not believe her, and never heard about this incident again. (Id. at p.4.)

Deborah spoke to Melissa about the trip to Clear Lake after she returned, and recalled that Melissa told her she “met a couple of really cute guys [there] and the trip was a lot of fun.” (Id. at p. 3.) She further stated that she saw Melissa almost every day that summer, and that she never mentioned anything bad happening during the trip to Clear Lake. Finally, Deborah confirmed that she did not notice any change in Melissa’s personality, or any cuts on her legs, after that trip. (Id. at 1-2.)

Other classmates and acquaintances of Melissa’s corroborate Deborah’s observation that Melissa had a tendency to tell lies about her sexual experiences, and about being victimized sexually. Mike Del Monte, for example, executed a declaration in December

of 2001 that he had sexual intercourse with Melissa after he turned seventeen in August of 1997. (Exhibit F, at p.1.) According to Del Monte, a few weeks later, he confronted Melissa about rumors he had heard that she was saying he had gotten her pregnant with twins. Melissa responded that “if [he] did not accept responsibility for the ‘twins’, that she would call the police and tell them that [he] had raped her.” (Id. at p.2.) According to Del Monte, he could not possibly have made Melissa pregnant, and after that meeting, he never heard another word about it. (Ibid.)

Four other witnesses interviewed by defense investigators confirmed Melissa’s reputation as a liar. Carlos Martinez, for example, told investigators that he knew Melissa very well, and that she was “a liar ... [and] would do anything for attention.” (Exhibit G., p. 1.) According to Martinez, Melissa also told him, in 1997, that she was “pregnant with twins” and that the father was a “gang banger in San Francisco.” (Id. at p. 2.)

Another former classmate, Lindsey Fox, and her mother Carolyn, who was employed as a coordinator of drug and alcohol treatment at Mount Diablo Medical Center, both described Melissa as “habitually dishonest” and “manipulative”. (Exhibit H, pp. 1-2.) Carolyn added that Melissa “exaggerates and tells stories to make herself seem more interesting.” (Id. at 2.)

Finally, Melissa’s friend, Jessica Jones, told investigators in 1998 that Melissa liked to “manufacture drama” in her life. (Exhibit I, at p. 1.) Jones was very close to Melissa, and recalled hearing about the alleged rapes around the time Melissa started going to court in 1997. She described Melissa’s demeanor when she spoke about these alleged crimes as “oddly detached, even casual.” (Id. at p. 4.) She concluded that Melissa’s rape allegations in this case were “part of a larger pattern of telling stories about traumas and crises in her life.” (Ibid.)

F. The Polygraph Examination.

Finally, attached is a report of a polygraph examination administered to Mr. Balu in 2001 by a highly qualified polygraph examiner named Francis M. Connolly. (See, Exhibit J.) Mr. Connolly was employed by the F.B.I. for many years as a polygraph examiner, and during that time was entrusted with conducting polygraph examinations involving issues of great importance. (Id. at pp. 4-5.) He has qualified in state and federal court as an expert in the administration and interpretation of polygraph examinations, and has taught the subject at the F.B.I. Academy and elsewhere. (Ibid.)

Mr. Connolly’s written report verifies that he detected no signs of deception when Mr. Balu stated (1) that he did not have sexual intercourse with Melissa F., (2) that he did not coerce or pressure Melissa into engaging in any type of sexual conduct, and (3) that he did not possess a knife at any time in her presence. (Id. at p.3.) Although this evidence would likely have been inadmissible in a jury trial of this case, the report is being submitted for the court’s consideration under the relaxed rules of admissibility that apply to non-jury proceedings, in general, and to hearings on a petition for relief under Penal Code §851.8, in particular. (Chagoyan, supra, 107 Cal.App.4th 815-817.)

Like all of the other evidence that has been placed before this court, the results of this polygraph examination point unerringly to the conclusion that Mr. Balu is innocent of all of the crimes he has been charged with.

IV. Conclusion

Following the preliminary examination in this case on July 10 and 11, 1997, the committing magistrate, Judge Arthur Mann, had the following to say about Melissa F.'s demeanor and credibility as a witness:

The Court had a great deal of problems with the credibility of the prosecuting witness. Her attitude was flippant. I don't believe she was attempting to tell the truth in most instances.

Judge Mann was able to reach this conclusion without the benefit of most of the exculpatory evidence presented in this petition – without the diary entries and all that they reveal, without the catalog of lies told and retold by Melissa, without the information from Melissa's peers that, at least during her teenage years, she was a very specific kind of liar. The issue of probable cause may have been a close call after the preliminary hearing in this case, but it is no longer a close call. The evidence of fabrication that permeates this case overwhelms any possibility that Melissa's accusations of forcible rape and armed assault by Mr. Balu are true.

For the reasons set forth above, Mr. Balu respectfully requests that this petition for a finding of factual innocence under Penal Code §851.8 be granted.

DATED: _____

Respectfully Submitted,

Andersen & Zimmer

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Attorney For Petitioner ARVIND BALU



<http://www.deathpenalty.org/article.php?id=407>

Arvind Balu

County: Lake

Convicted of: Gang Rape

Year of Conviction: 1997

Sentence: 20 years

Year Released: 2005

Years Served: 8 years

Wrongful Conviction Factors: False Testimony, Inadequate Representation, Prosecutorial Misconduct

On May 16, 1997, a twenty one year old college student named Arvind Balu was arrested and charged with five serious felonies after a teenager reported that he had tied her up, raped her at knife point, cut her with the knife, and then licked her blood. This assault was supposed to have occurred approximately nine months earlier at the Konocti Harbor Resort.

Given what is known now, it seems remarkable that criminal charges were ever brought as a result of these allegations. What has come to light are a remarkable number of circumstances that plainly establish that these charges were false including the implausible and inconsistent accounts given by the alleged victim to police and others; her unexplained failure to say a word about them to anyone for more than nine months; her immediate destruction of the pages in her diary relating to her trip once her rape accusation was reported to the authorities, and much other information found post-trial casts doubt upon her credibility; she claimed she had done this out of rage because her school counselor had found the diary and questioned her, initiating the case; however the two school counselors testified that she initiated the complaint and they never saw a diary, eliminating her excuse for destroying the evidence. Also, a classmate later declared that she admitted to making the whole story up; that she met cute guys on her trip, wanted to have sex, but was refused. This witness and another close female classmate also declared that the accuser had no cuts on her legs after her trip. In addition, there was absolutely no physical evidence implicating Balu.

Arvind's trial attorney was grossly incompetent and failed to fully investigate the case. The fact that Arvind had been in trouble with the law as a juvenile for minor infractions, and that he was bi-polar, may have been used against him during the police investigation.

Arvind recalls, "I went into shock when they told me I was facing 60 years in prison."

Once convicted, Arvind spent eight brutal years behind bars. He painfully remembers, "I was held in solitary for three years, much without sunlight. I was beaten and tortured, even electrocuted (by guards); I slashed my own wrists. One day, under my bunk in a pile of unread newspapers, I found an article about myself and my co-defendant. It said the Court was going to reverse some convictions. It was a four month lockdown at Salinas; and had I not seen this article I would have taken my life. My head

hurt from not walking for so long. It felt like it would explode. Because of the type of case, they (prison) condone your death. This happened in California while the lawyers were sipping wine and the dot.com generation was out dancing. No one did a thing, unless paid; this despite all the news publicity. I wrote every petition myself. California owes me as a whole for this atrocity.”

Arvind’s co-defendant Brendan Loftus, who was white, was also wrongfully convicted. However, he received a considerably lesser sentence of 5 years. He was completely cleared by the First District Court of Appeal within two years of his conviction.

After being released, Arvind continues to struggle, “I returned to Cal-Berkeley for a couple of years, only to face discrimination. I have begun my own activist project; my goal is to create electronic tools to free people from oppression and expand the Innocence Project.”

<http://www.eastbayexpress.com/ebx/room-for-one/Content?oid=1078058>

By Justin Berton

Justin Berton

Cooling his heels at the Oakland Marriott: Arvind Balu.

Arvind Balu flicked ash from his filterless Camel cigarette onto the carpeted floor of his hotel room. The move was not deliberate, but still, Balu declined to clean the mess.

"When I come back from the swimming pool, it'll be cleaned up and taken care of," he said.

Such is life at the Courtyard Marriott, one of downtown Oakland's swankier hotels. As of last Thursday, the 34-year-old former Cal student had been living in the kingsize pad overlooking Broadway for sixteen days at \$170 a night. He was on the lam, he said, taking cover from his deep-pocketed neighbors in the Montclair district.

Five months ago, Balu was released from prison on a charge of forced oral copulation. That earned his mugshot a place on the Megan's Law Web site. While he awaits a retrial that he believes will fully exonerate him -- his original rape conviction already was overturned -- news of his move into Montclair shook the hillside hamlet nonetheless. While residents didn't exactly picket outside his parents' home, Balu said the neighbors harassed the state's Department of Corrections until the agency agreed to investigate the dilemma. In the meantime, he moved into the Courtyard Marriott at 988 Broadway and registered it as his new address, as required by state law.

It's uncommon for newly released sex offenders to live so high on the hog. Most parolees find quarter only in the pitiful environs they typically can afford -- flophouses, trailer parks, run-down motels. Maps from the state's sex offender Web site show clusters of blue dots in downtrodden neighborhoods, while the same dots merely pepper more exclusive ZIP codes.

But in Balu's case, his family can afford the luxuries of the Marriott, complete with room-service club sandwiches, late-afternoon dips in the heated pool, and free DSL for his laptop. The hotel has been a good home, Balu said; he is confident that its managers would be reluctant to ask him to leave if they ever learned of his criminal past. "If they discriminated against me, they'd be sued," he said. "I don't think a corporation this rich would risk getting into that kind of litigation."

Balu gets up before 10 a.m. most days and wanders down to the sunlit Garden Cafe, where a buffet chef prepares his favorite omelet to order: bacon, tomatoes, spinach. In the restaurant, he crosses paths with traveling businessmen who "aren't as alert in the morning as I thought they'd be."

Then again, the suits might peg the long-haired Balu as a grad student, and a trust-funder at that. They'd be close. The son of a Rutgers professor, he came to Berkeley on an academic scholarship as a pre-med. In 1996, over the July 4 weekend, he took a trip to Lake County with college friend Brendan Loftus. A few weeks later, both men were arrested in what became known as the "Vampire Rape Case." The accuser claimed that, while Loftus raped her on a motel-room bed, Balu cut her legs with a knife and licked her blood.

Balu was released on bail, but the events in his life got even stranger. In August that summer, he was arrested after he burst into a packed auditorium and attempted to swipe a copy of the Medical College Admission Test, which he was scheduled to take in the following days. Two months later, he was arrested yet again outside Blake's on Telegraph Avenue in Berkeley after he showed a bouncer a handgun in his waistband. "In my youth, I was up to some dynamic stunts," Balu explained while he smoked.

Two years after their arrest, Balu and Loftus were convicted of the Lake County rape, but not without media outcry. The San Francisco Chronicle's Joan Ryan reported at length on contradictions in the accuser's testimony -- including the theory that the girl's cuts were self-inflicted.

Loftus was sent to San Quentin while Balu went to Atascadero State Hospital after he was found "mentally incompetent." During the trial, he had shouted profanities at the judge and once used the defendant's table to strike a yoga pose.

After the two men spent two years behind bars, a state Court of Appeals overturned both convictions, ruling that the judge shouldn't have excluded the girl's diary from evidence, reasoning it contained information that might have suggested she wasn't raped. Loftus was cleared on all charges, but Balu's conviction for forcible oral copulation was not overturned. He remained imprisoned until January of this year, when he moved into his family's home in Montclair.

After breakfast, Balu often walks down to the county courthouse to study up on his case: "They have a self-help center there that's very useful." He sometimes grabs lunch at a nearby Chinatown restaurant and carries the leftovers back to the hotel, where he rents out a small refrigerator for an extra nightly fee. In the late afternoon, the former lifeguard enjoys a hot tub and some lounging in the guest pool. "While I'm swimming, I use the time to coach myself on how to approach the next day," he said. "I'll visualize what I need to do."

Once retired for the night, Balu takes in at least two movies, he said. Recent favorites included Full Metal Jacket and Alexander the Great, which, he added, "isn't even in Blockbuster yet."

In the hotel, Balu's neighbors don't bother him. Rather, the only knocks on his door have come from a random drunk woman who eventually realized that her friends were staying on another floor, and a determined businessman who tried inserting his card key several times until finally giving up and returning to the front desk.

Otherwise, the Marriott has been a relaxing spa for Balu. "I definitely wanted, in this time of stress, to be taken care of," he said. "And they've taken care of me here. I wanted to be pampered. They'll even turn up the heat in the pool a few degrees, if you ask them. ... I wanted this to be a therapeutic stay."

Balu's stay is not only therapeutic, it's indefinite. He'd like to return to Montclair, and he said his parole officers definitely believe that living with his family is the most stable environment for him. "It's a room with a great view," he said. "But I'm a little scared of

the people in the neighborhood. They're all millionaires. They're all worried about their property values. There's no negotiating with those people."

Still, he's aware that he is privileged. After all, he is expecting a convertible Mercedes Benz for his birthday later this month. Most guys who are only five months removed from the big house and have their picture up on the Megan's Law Web site have a difficult time scraping together rent and a job, much less hiring a good attorney.

"In that sense, I'm glad my dad hires lawyers and is able to pay for a defense," Balu said.

"At least I've got someone sticking up for me. Nonetheless, this is still a shaming and humiliating situation."