

Dismissal of Rape Charge Follows Exoneration by DHS

by **John Haman**

Posted 7/14/1997 12:00 am

Updated 8 months ago

Ed Owens, the Mercantile Bank of Arkansas vice president once accused of raping the 5-year-old daughter of his girlfriend, is finally in the clear.

The charge, which arose from an investigation by the state Department of Human Services, was dismissed by Circuit Judge Marion Humphrey at the request of Special Deputy Prosecuting Attorney Marcus Vaden. Vaden said in his motion to dismiss the charge that the state could not meet its burden of proof in the case, but he did not return two telephone calls Arkansas Business made to his office in Conway seeking an explanation of how the case imploded.

The timing of the dismissal was interesting. Less than two weeks earlier, the DHS formally cleared Owens of any wrongdoing in the case after Owens appealed the agency's finding that he was guilty of "maltreating," the young girl. On June 25, Owens' name was removed from the Child Maltreatment Central Registry.

"Eventually, what happened is that the supervisory people at DHS ... we were able to demonstrate to them that the lower level people had grossly mishandled the case and had misstated certain key facts, omitted certain key facts, did some things wrong ... Upon their reanalysis of Ed, they exonerated him," says Jeff Rosenzweig, Owens' attorney.

DHS spokesman Joe Quinn said the organization had no further comment on the case but confirmed the sequence of events asserted by Rosenzweig as to Owens being exonerated.

Also, the day the charge was dismissed a pretrial hearing in the Owens case was scheduled where prosecutors might have been compelled to release information that had been withheld from Owens.

"We have been saying all along that these charges were bogus and unsupported by evidence," Rosenzweig says. "It shows the nuclear-level-type power when someone wants to claim sexual abuse."

Owens would not submit to an interview for this story, but he allowed himself to be photographed and made a brief statement to a reporter over the telephone.

"I want to thank everyone," Owens said, "all my friends and people in the community who stood behind me. It's been one of the things that's kept me going."

What Happened?

Owens was taken into custody March 11, 1996, by North Little Rock police after DHS investigator Kitty Breaux turned over information that the young girl was the victim of sexual abuse. But from the beginning, Rosenzweig said the rape and sexual abuse claims were manufactured by the girl's father, Robert May of Marianna, the former sheriff of Lee County, who Rosenzweig says was looking for an excuse to obtain custody of the child from her mother, Kimberly May.

Interestingly, a new trial over custody of the the child was going on in Lee County last week, according to sources close to the case. The case has been sealed, shutting off access to the case file and the proceedings. Robert May's attorney, Chuck Banks of Little Rock, could not be reached for comment during the trial.

In late 1995, Kimberly May sought an increase in child support payments from Robert May. Robert May lost a custody dispute in Lee County on Feb.1, 1996, but gained extended visitation privileges. Fourteen days later, Kimberly May took her daughter for a physical exam in North Little Rock, where she was found to be in excellent

health, with her hymen intact and her external genitalia normal. That same day, Robert May began visitation with his daughter.

The next day, Feb. 16, Robert May took the child to be examined by a Forrest City nurse practitioner, who later claimed to find evidence supportive of vaginal trauma and penetration. The nurse practitioner referred the child to a Memphis pediatric gastroenterologist. On Feb. 28, the girl was seen once again by a Memphis pediatric gynecologist. All of the examinations were paid for by Robert May.

On March 1, the nurse practitioner reported her findings to DHS. That same day, Breaux filed a complaint against Owens with the North Little Rock Police Department for sexual abuse. On March 5, NLRPD Detective Tina Smith interviewed the child and claimed that the child implicated Owens in sexual abuse.

Later, Rosenzweig would claim that the child "obviously had been coached."

Suspecting that Owens would be arrested, Rosenzweig convinced police to give Owens a polygraph test about the alleged abuse. But Owens failed the test, administered by Bob Bailey of Southwest Bureau of Investigation in Conway.

Bailey asked a series of 13 questions two times, and both times recorded "deceptive criteria" on the same four questions, all of which related to sexual contact with the girl.

Many of the other questions were "control questions," designed to set a baseline for the polygraph test and prevent Owens from "beating" the test by establishing a rhythm of denials. Other questions related to accusations for which Owens was never charged.

Three days later, on March 11, Owens hired his own polygraph tester, F. Dennis Williams of WCS Polygraph and Personnel Screening in North Little Rock, to ask the questions again. This time, Owens

passed, but records indicate that there was only one set of questions, and only one control question.

The Pulaski County Prosecuting Attorney's office authorized Owens' arrest that same day, and Owens turned himself in to North Little Rock police. He was charged with rape in North Little Rock Municipal Court and released on bond.

Passing It On

Then, the strangeness began. In June 1996, Prosecutor Mark Stodola asked to be removed from the case because he was being criticized by Rosenzweig and others for his handling of it. Stodola was in the midst of a Democratic primary race for Congress, and Rosenzweig thought he filed the charges only for political gain. North Little Rock Municipal Court Judge Jim Hamilton appointed Vaden, a deputy prosecutor in Faulkner County, to take over the case.

Ultimately, the case was moved to Circuit Court, where Vaden filed a rape charge against Owens. In February, though, the charge was dismissed by Circuit Judge John Langston because Vaden was without power to file charges in Circuit Court. The next day, Prosecutor Larry Jegley got Vaden officially appointed by another circuit judge, David Bogard, and the charge was refiled in Marion Humphrey's court, just before the state's speedy trial rule would have put Owens in the clear.

Throughout the entire ordeal, a forensic medical examination was never performed on the child to document whatever medical conditions might have existed. What's more, Owens contended in a court motion, the doctors who were paid by Robert May to examine the child were not provided with the child's medical records, which show that she has suffered from chronic vaginal infections and discharges whose symptoms mimic those of sexual abuse. These medical problems predated Owens' relationship with the child, the motion said.

In the 16 months leading up to the dismissal of the charge against Owens, Mercantile Bank stuck by him, allowing Owens to retain his job as a vice president in the central Arkansas operation.

"The management of the bank stood behind him because ... they realized that he was being caught in a crossfire of an extremely nasty dispute." Rosenzweig says.

Susan Blair, a Mercantile spokeswoman, declined to comment about the case because it relates to personnel issues.

<http://www.thefreelibrary.com/Sexual+abuse+or+abuse+of+the+system%3F+Attorneys+for+NLR+banker+allege...-a018390454>

Sexual abuse or abuse of the system? Attorneys for NLR banker allege frame-up, tainted motives.

Attorneys for NLRBanker Allege Frame-Up, Tainted Motives

Ed Owens, a well-liked and successful executive at a North Little Rock bank, stands to forfeit his reputation, his job and perhaps even his freedom after being arrested for the alleged sexual molestation of his girlfriend's 5-year-old daughter.

"It certainly caught me by surprise," says Owens, who seems genuinely unnerved by the events circling about him. "I feel like I'm in a foreign country."

Attorneys for the 39-year-old Owens, a vice president at Mercantile Bank of Central Arkansas, say their client is the unwitting victim of a stratagem allegedly conceived by the child's father, former Lee County Sheriff Robert May

Jr. of Marianna.

May began making allegations of sexual abuse only after it appeared his child-support payments would dramatically increase and after he lost a child custody case he expected to win, says Jeff Rosenzweig, an attorney for Owens. May and his former wife, Kimberly, have been divorced since 1991, and Rosenzweig says Robert May had never seen his child until Kimberly May filed a motion for increased child support.

Robert May, through his attorney, Joe R. Perry of Marianna, refused to speak with Arkansas Business about this matter.

After initially indicating May would consent to an interview, Perry did an about-face.

"On behalf of my client, we object to the publishing of any story relating to this matter," Perry said in a written response.

"I would like to point out that absolutely nothing would be served by your publishing any name and/or likeness of my client, his ex-wife or the minor child," Perry wrote.

At Perry's request, a Chancery Court judge sealed the records relating to the Mays' custody dispute, and the Pulaski County

Prosecutor's Office has declined to help Owens' attorneys get the records unsealed.

Owens' attorneys also suggest that Pulaski County Prosecuting Attorney Mark Stodola may have unintentionally stumbled into a vipers' nest of bitter domestic warfare when his office drafted an affidavit of arrest for Owens - despite substantial evidence pointing to his innocence and despite the irreparable harm such an arrest will do to Owens' career.

"If he is even arrested, he will be fired," Rosenzweig wrote in a March 7 letter to Stodola asking the prosecutor to hold off on charging Owens until additional evidence could be obtained and reviewed. "His career will be destroyed, all over a case in which the facts cry out that this is a frame-up."

Stodola says evidence warranted the action against Owens, who continues to work at Mercantile while free on \$20,000 bond.

"There's medical evidence that indicates very clearly that the child has been sexually abused," Stodola says. "This case was handled just like every other case would be handled in the prosecutor's office."

Owens' attorneys contend that Stodola promised them in a March 7 conversation that he would hold off on arresting their client until he'd had an opportunity to investigate and review additional relevant evidence. By authorizing the affidavit of arrest for Owens on March 11, Rosenzweig says, Stodola reneged on that promise.

Specifically, Owens' attorneys wanted the prosecutor's office to examine medical evidence of sexual abuse they considered obviously "tainted" and incomplete; a North Little Rock pediatrician's Feb. 15 report of an examination of the child that revealed no evidence of abuse; and the father's alleged history of manipulating the legal system for his own ends.

Robert May was a defendant in a federal lawsuit filed originally in 1986 by Marianna lawyer and now-state Sen. Roy C. "Bill" Lewellen over an alleged bribery prosecution. Lewellen won the case in 1988. (See related story below).

Assertions Denied

Pulaski County Deputy Prosecutor Tammy Harrelson, who listened to the March 7 conversation over a speaker-phone, is mystified by Rosenzweig's assertions.

"We all agreed we wanted to see additional pieces of evidence before the affidavit for the warrant was written," she says with some exasperation. "If Mr. Rosenzweig or Mr. [Greg] Bryant [another of Owens' attorneys] believes something else was supposed to happen, and they have a problem with it, they are welcome to come visit with me anytime."

Stodola, who during an interview tried to distance himself from the case, also dismisses the defense attorneys' gripes.

"I get hundreds of calls a day, so I don't know whether the [March 7] phone call occurred," Stodola says. "And it really doesn't make any difference. I mean, we got the information."

Rosenzweig says it makes a great deal of difference. Stodola denies ordering the arrest ("No, no - I don't operate like that," he says), but Rosenzweig claims Harrelson told him March 11, the day of Owens' arrest, that Stodola had authorized the arrest.

"That day, March 11, Stodola wasn't in town, and Tammy Harrelson said to me, 'We're going ahead [with the arrest]," Rosenzweig recalls. "We said we'd like to talk to Mark, and she said, 'He told me to go ahead with the charging.'"

Coincides With Hearing

The date of the arrest is significant because the second custody hearing was scheduled in Lee County Chancery Court the following day. North Little Rock Police Detective Tina Smith, the arresting officer in the Owens case, had been subpoenaed to testify in that hearing by Robert May's attorney, Joe Perry

But according to a letter written by North Little Rock Assistant City Attorney Jeanette L. Hamilton to Perry on March 11, her office advised the detective not to testify at the hearing while the Owens investigation was ongoing.

The detective did testify March 12, and custody was awarded to Robert May, partly on the strength of her testimony. She would have been unable to testify had Owens not been arrested by March 11.

"What you have here," Rosenzweig says, "is a person with political aspirations - he's running for Congress - and the last thing he needs is for someone to go to the media and say, 'Mark Stodola is protecting a child molester because he's a bank vice president.' It's easier to file charges and let it work itself out."

Stodola says the case "has nothing to do with politics."

"It has to do with the tragedy of a poor young child who, based on the medical evidence, has been sexually molested," Stodola says. "We're just doing our job."

Conflicting Medical Reports

The labyrinth of contradictory, murky and ambiguous medical reports on the child makes it difficult to sort out the truth of the situation. Owens' attorneys tell this story:

Soon after Robert May lost his custody case Feb. 1, he began telling his former wife he thought their child was being abused. Knowing Robert May was scheduled to have a visitation period with the child beginning Feb. 15 and suspicious of what the child's father might do, Kimberly May on Feb. 15 took her daughter to a North Little Rock pediatric clinic, where she was given a clean bill of health. In particular, the examination report states that the child's hymen was intact and the external genitalia were normal.

The next day the child, now with Robert May, was seen by a nurse-practitioner in Forrest City, who subsequently claimed to find evidence supportive of vaginal trauma and penetration. This nurse-practitioner referred the child to a Memphis pediatric gastroenterologist, who noted in his Feb. 21 letter to the referring nurse-practitioner that Robert May spoke to him about the child being sexually abused by her mother or someone else. This is roughly a week before the child ever made an allegation of sexual abuse herself.

Finally, on Feb. 28, the child was seen once again - this time by a Memphis pediatric gynecologist. Owens' attorneys make much of the fact that the nurse-practitioner's characterization of the alleged sexual abuse in a March 1 letter to the Arkansas Department of Human Services is that it is inconclusive. According to the letter, there is a "possibility" of hymenal penetration but nothing more.

Upon receiving the March 1 letter, DHS seemed remarkably quick to act. Detective Smith wrote in her March 11 arrest/disposition report that she was contacted by DHS investigator Kitty Breau on March 1

at about 7 p.m. The report also states that Breaux was first contacted the day before, on Feb. 29.

The interview with the alleged victim was held March 1 at about 3:45 p.m. According to the detective, Breaux also insisted that the source of her information be kept confidential.

With contradictions like those between the North Little Rock and the Memphis exams, an independent appraisal of the child might seem appropriate at this point. But Rosenzweig says the prosecutor's office is blocking him on this.

"Stodola's office has resisted in court our efforts to get an independent exam of the child," he says.

Who Is Ed Owens?

Owens has been at Mercantile Bank for six years; before that, he worked at First Commercial Bank, also for six years. Friends describe him as personable and honest.

Jeff Hildebrand, a senior vice president at Federal Savings Bank in Little Rock who has known Owens for seven years, says he would have considered many people capable of this crime, but not Owens.

"I have no doubt in my mind that Ed's innocent," Hildebrand says. "The charges are trumped up."

Hildebrand adds that the effects of the arrest on Owens' career likely will be devastating.

"Ultimately, Ed's not going to be able to do what he's been doing in this market, which is lending," he says. "It's going to be hard for him to go into a place of business and for somebody not to associate him with this case."

Hildebrand explains that for someone whose profession requires him to have the confidence of the general public, an arrest for a crime like this is a serious and perhaps fatal blow, even if the case doesn't go to trial or if Owens is found not guilty.

Susan Blair, senior vice president for marketing and a spokeswoman for Mercantile Bank, says Mercantile feels it would be inappropriate to comment on what it views as "personnel issues."

Of course, being found guilty is even worse than a damaged reputation or losing a job. If Owens is convicted of rape in Circuit Court, he faces prison time of 10-40 years or life.

Bad Timing

Owens' attorneys say their client's only crime is being in the wrong place at the wrong time. In this case, the wrong place was with Kimberly May, a woman Owens had been seeing for roughly six months; the wrong time was when Kimberly May applied for substantial increases in the child support payments she was receiving from her former husband.

Rosenzweig says the allegations about Owens abusing the child were simply part of a plan to obtain custody of the child and make the child-support issues moot. Unfounded child-abuse allegations are par for the course in custody disputes, he says.

As to whether the charge alone dooms Owens' career in Little Rock, Rosenzweig says, "We certainly

hope not, but we're aware of the realities of the case. And we know that the phenomenon of bringing charges first and then looking at the case later is not restricted to this case. We just wish a full political analysis had been done before the charges were filed.

"Ed is innocent, and we're going to fight any charges brought against him as vigorously as possible."

RELATED ARTICLE: Politics and Pressure in the Courtroom

In his career as Lee County sheriff, Robert "Bobby" May Jr. had the reputation in some circles as the kind of man who would do anything to win a case, especially if it was a case in which 1st Judicial District Prosecuting Attorney Gene Ruff had taken an interest.

Take the witness bribery case of state Sen. Roy C. "Bill" Lewellen, who in 1985 was a 34-year-old Marianna lawyer with political aspirations.

In June 1984, Almore Banks of Marianna was charged in Lee County Circuit Court with the rape of an 11-year-old girl. Banks engaged Lewellen as his attorney. Raff and his deputy, David Cahoon, represented the state.

In early September 1985, the mother of the girl who was allegedly raped said she had been approached with a deal from Lewellen: If she dropped the charges, Banks would leave town and she would be reimbursed the \$500 she had paid as a retainer to her lawyer.

To catch Banks, Raff and May decided to have the mother wear a wire to get him on tape making the bribery offer.

On Sept. 27 Raff and May charged Lewellen with witness bribery and conspiracy. Raff and May claimed to have heard Lewellen on tape making self-incriminating statements to the mother.

Allegation of Witness Tampering

Joe Patterson, then married to the child's mother, says any allegations that Lewellen attempted to bribe his wife were trumped up.

"I was sitting right there [in the room where the negotiations to drop charges were discussed]," Patterson says. "Bill Lewellen wasn't even there."

Patterson goes on to say that the Lee County Sheriff's Department had the tapes doctored.

"They cut out the part of the tape where she [his former wife] made the offer [of the quid pro quo]," he says.

He adds that May was not above pressuring him to confirm the prosecution's version of events.

"He threatened to have me locked up because I didn't say what he wanted me to say," Patterson says. "He'd do anything to try to get a case won, but I didn't think it was right for him to pressure me to say something that wasn't true."

Patterson believes the chief purpose of the prosecution was to make sure Lewellen lost his bid to unseat

incumbent state Sen. Paul Benham. Lewellen eventually lost that race by a substantial margin.

All Politics Is Local

In April 1986, Lewellen sued Raff and May, and others, seeking damages of \$30 million and injunctive relief from the bribery prosecution.

A Nov. 23, 1986, Arkansas Gazette story quotes Lewellen as saying the motivation for the prosecution was not originally to derail his political campaign against Benham, but in retaliation for his vigorous defense of Banks.

"But then a bulb lit up when they realized they could kill two birds with one stone," Lewellen said in the article. "The sheriff [May] had already told me not to run five months before this."

Finally, in late 1986 a District Court judge, George Howard Jr., blocked Raff's prosecution of Lewellen; Howard's grant of a preliminary injunction was affirmed in April 1988 by the 8th Circuit Court of Appeals in St. Louis. However, Howard ruled the plaintiff could not collect any damages, and the appeals court affirmed his ruling.

The Court of Appeals also affirmed the lower court's opinion that Lewellen's prosecution "was motivated by the prosecutors' desire to retaliate for and discourage Lewellen's exercise of his first amendment rights." In other words, if Lewellen knew that vigorous defense might cost him his chance at a Senate seat, he might defend his client less aggressively.

Lewellen won the Senate seat from Benham in 1990.

Little Rock lawyer John Walker, who was Lewellen's attorney, remembers May as "a rather affable fellow who was not trusted by people in the black community."

Walker says he finds it noteworthy that Raff and May weren't criminally prosecuted for malicious prosecution, "but that's a reflection of how east Arkansas politics work.

"The good-old-boy system is very much alive throughout the state of Arkansas - not just in the eastern part," Walker says.

- PAUL SPILLENGER

RELATED ARTICLE: A CHRONOLOGY OF EVENTS

Late 1995: Kimberly May seeks an increase in child support payments from her estranged husband, Robert May.

Thursday, Feb. 1, 1996: Robert May loses custody dispute in Lee County Chancery Court, gains extended visitation privileges.

Thursday, Feb. 15: Kimberly May takes daughter for a complete physical exam in North Little Rock; child is deemed to be "in excellent health." Child's hymen is intact and the external genitalia are normal. Robert May begins visitation with daughter.

Friday, Feb. 16: Forrest City nurse-practitioner examines child.

Wednesday, Feb. 21: Memphis pediatric gastroenterologist examines child on referral by nurse-practitioner.

Wednesday, Feb. 28: Memphis pediatric gynecologist examines child.

Friday, March 1: Nurse-practitioner reports results of her exam to the Arkansas Department of Human Services. DHS investigator Kitty Breaux files complaint against Owens with North Little Rock Police Department for sexual abuse.

Sunday, March 3: Owens learns from Kitty Breaux of the allegations that he has sexually abused the child.

Tuesday, March 5: NLRPDDetective Tina Smith interviews child, who Smith claims says Owens sexually abused her.

Wednesday, March 6: Greg Bryant, attorney for Owens, speaks to Pulaski County Prosecuting Attorney Mark Stodola; Stodola says he plans to leave the matter in the hands of the NLRPD.

Thursday, March 7: Jeff Rosenzweig, Owens' other attorney, writes a letter to Stodola asking him to do a full investigation before making an arrest. Rosenzweig makes Stodola aware of custody dispute, alleges that the medical evidence of sexual abuse is "tainted." Rosenzweig also describes father as "part of the notoriously wicked Lee County and eastern Arkansas political machine." Rosenzweig Phones Stodola. Stodola reads letter and, according to Rosenzweig, says he is "troubled" by the information it contains. Stodola agrees to look into the matter further before arresting Owens.

Monday, March 11: Ed Owens gives himself up in North Little Rock and is arrested for rape. He is charged in North Little Rock Municipal Court and released on \$20,000 bond.

Tuesday, March 12: A second custody hearing is held in Forrest City. Custody is awarded to Robert May following evidence presented of Owens' arrest.

Thursday, April 4: A preliminary hearing in North Little Rock Municipal Court is postponed after Pulaski County Deputy Prosecutor Tammy Harrelson says she needs more time to investigate the matter. Hearing rescheduled for Wednesday, May 8.