



John Michael Harvey

In 1987, John Michael Harvey's old girlfriend had financial troubles and contacted Harvey for help. Harvey let the woman and her children move into his Bedford, Texas home. In February 1989, Harvey's girlfriend sent her then 3-year-old daughter to live with her grandmother in New York. Soon after, the grandmother reported that the girl had accused Harvey of sexually abusing her.

Harvey was arrested in 1989, and released shortly thereafter to await trial. Nothing happened on the case for several years, and Harvey had trouble keeping his job while the charges were still pending.

In 1991, Harvey became engaged, and wanted to clear his name before he married, so he voluntarily pursued a trial. The girl's mother said that the grandmother was fabricating the abuse allegations because she had never liked Harvey.

At trial, the doctor who examined the girl in New York testified that he saw no evidence of abuse. However, a counselor purporting to be an expert in sexual abuse, said she had met with the victim a number of times, and the girl had described the abuse in detail.

Harvey testified in his own defense, and vehemently maintained his innocence, saying the girl's mother had never confronted him about the abuse, and he didn't know about the allegations until he was arrested. The prosecution, however, implied during Harvey's cross examination that he had physically abused the girl's mother as well.

After Harvey denied the abuse, the prosecution called a surprise witness, a friend of his girlfriend's. This friend testified that she had picked up Harvey's girlfriend one day in 1990, after the woman had called her, and had seen red marks on her face. Harvey's girlfriend had told her that Harvey beat her up after she confronted him about molesting her daughter.

The victim also testified. She initially denied that anyone had ever touched her inappropriately. However, after the prosecution repeated the questions using Harvey's name, the girl answered yes to questions about whether she was abused. In October 1992, a jury convicted Harvey of rape, and he was sentenced to 40 years in prison.

After his conviction, Harvey's appellate attorney discovered notes in the prosecution's files indicating that the victim had originally described her abuser as a large man with a tattoo. Harvey was skinny and had no tattoos. It was also discovered that the supposed expert counselor who testified for the prosecution had no real training in sexual abuse and had obtained her counseling education, such as it was, from unaccredited courses.

Further, the friend who testified that she had picked up Harvey's girlfriend after he beat her had been facing criminal charges for writing bad checks – charges that were dismissed after she testified at

State: Texas

County: Tarrant

Most Serious Crime: Child Sex Abuse

Additional Convictions:

Reported Crime Date: 1988

Convicted: 1992

Exonerated: 2005

Sentence: 40 years

Race: Caucasian

Sex: Male

Age: 24

Contributing Factors: Perjury or False Accusation, Official Misconduct

Did DNA evidence contribute to the exoneration?: No

Harvey's trial – and phone records did not support her story. None of this information had been disclosed to Harvey's trial attorney. Nonetheless, Harvey's appeals failed.

In 2003, when the victim was 17, she came forward and said that Harvey was not the man who molested her. She later said she could not remember being molested at all. In 2004, a Texas State District Court agreed to release Harvey without overturning his conviction, but he refused because he would be required to register as a sex offender.

In December 2004, the Texas Court of Criminal Appeals granted his habeas corpus petition and reversed his conviction. Prosecutors did not seek a retrial. As of 2012, Harvey had received \$778,000 in state compensation.

- *Stephanie Denzel*

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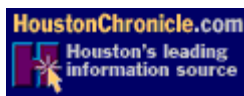
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Man free after 12 years in prison for wrongful conviction

Houston Chronicle By Angela K. Brown

December 11, 2004

John Michael Harvey missed out on a lot the past 12 years behind bars: marrying the love of his life who never believed he molested a 3-year-old girl, spending time with his parents who never doubted his innocence.

His relationship with his fiancée fell apart after he was sentenced to 40 years in prison in 1992. After draining most of their life savings to defend him, his father died of health problems in 2000, and his mother lost her battle with cancer in 2002.

Now that he has been cleared of the conviction and is finally free again, Harvey must start over. His old life is gone.

"In order for the next several years not to be contaminated and ruined, I need to put closure on it and try not to feel sorry for myself," said Harvey, 40. "I want to have future relationships and not be sad and sour. I need to get back to the man I once was."

The Texas Court of Criminal Appeals on Wednesday upheld a lower court ruling of "actual innocence," saying Harvey had been wrongfully convicted. The alleged victim, now a teenager, had recanted.

On Friday, a sheriff's deputy drove Harvey from a prison in the Texas Panhandle to the Tarrant County Jail. He was released that evening after the appeals court received documentation that prosecutors would not seek a new trial for Harvey.

He started walking in downtown Fort Worth, carrying two small bags of belongings, but had no money and nowhere to go. His Houston attorney, Sean Buckley, picked him up Friday night, took him out for a steak dinner and drove back Saturday to Houston, where Harvey has relatives.

"This has allowed the public to see that a wrongful conviction is not as rare as they once thought it was," Buckley said.

Harvey's nightmare started in 1989, when he returned from a trip and learned police had searched his Bedford apartment. When he went to authorities to find out why, they arrested him for sexual assault of a child.

Harvey said he grew up in a small New York town and had never heard of the crime, so he thought the charge was child abuse. When he denied hitting his friend's daughter, police said they believed he had sex with her — a charge he also vehemently denied.

Harvey, who had no criminal record, was released on bond and remained free until his trial. He got fired from a few jobs when his employers discovered the allegations, so he took some college classes and planned his wedding to his girlfriend.

He was offered a plea deal, but he didn't want to admit to something he didn't do, he said.

"If you're guilty, you're worried. Being innocent, I wasn't concerned," Harvey said.

After the shock of his conviction wore off, Harvey sank into a depression. He lost 30 pounds, and over the years several appeals were denied.

"I went through a three-year period where the sun didn't touch me," Harvey said. "I could have gone outside with the barbed-wire fence, but it just made me sick. I couldn't get on a motorcycle

and ride away or spend a romantic evening with my girlfriend by the lake."

Then a few years ago, the alleged victim found out that Harvey was in prison; she had been too traumatized from testifying as a child to realize what had happened.

The teenager told a relative that she had been coerced into lying to authorities. The girl got in touch with Buckley, who had been hired by Harvey's mother to work on getting him released on parole.

With renewed hope that Harvey could be cleared, Buckley presented the new evidence at a March hearing in Fort Worth, where the girl denied that Harvey molested her. The girl's brother testified that he remembered the girl being coached by a relative who had a long-standing grudge against Harvey.

State District Judge Sharen Wilson ruled that Harvey was "actually innocent" and recommended his release. But Harvey refused because he did not want to register as a sex offender.

Harvey thought the appeals court would rule in 60 days to clear him. Although it took much longer, Harvey is glad he waited because he is no longer a convicted felon.

Now, after eating only with spoons the past 12 years, Harvey looks forward to using a fork and cooking his own meals. He wants to take long walks, looking into the sky with no barbed wire obscuring the view.

After spending the holidays with relatives in Houston, Harvey plans to live in Florida and finish writing a book about his ordeal.

"They (prosecutors) destroyed my home here," Harvey said. "I loved living here, but there are too many memories. I had a great friend base. To have all that taken away from me - I don't want to see it anymore."


But as Harvey tries move past the pain of losing 12 years, he realizes how lucky he is.

"On the flip side, I've done an amazing accomplishment," he said. "There are innocent people in prison, and I've done something an awful lot of people have been fighting and trying to do. I'm beat up as hell - there's no two ways about it - but I won in the end."

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Penned In

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By **Scott Nowell** Thursday, Jun 12 2003 Comments (0) A A A

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In 1987, 23-year-old John Michael Harvey was on the inside track of the high-tech circuit. The New York native was working for one of the hottest companies in Dallas, [Electronic Data Systems \(EDS\)](#), running programs that monitored ATM machines.

But he was no computer geek. Harvey had already amassed a flashy sports car, a fast motorcycle, sharp clothes and a cool apartment. Women were attracted to this guy who could party on Saturday night and still be a regular at Sunday worship services.

Then came the call from a stranger that changed everything 16 years ago. A friend of Harvey's high school sweetheart, Karen, sounded frantic on the phone. Karen was staying with her in [South Carolina](#) -- and was destitute. She needed help.



Daniel Kramer

Harvey demanded dismissal or a trial on the charges that later sent him to prison.

Five years had passed since he'd last spoken to Karen. He had never seen the son he'd fathered by her in 1981. Harvey didn't have to think too long before catching a plane to [Charleston](#). He found his former flame in squalor, now with two small children. "She was diminished," Harvey remembers. "They were living in a run-down trailer, beer cans everywhere. I couldn't leave them like that."

Harvey took Karen and the children back to live with him in his one-bedroom bachelor pad.

Today, he doesn't even need to say the obvious -- not when Harvey is retelling his story from the sweltering cell of a Texas prison, where he has lived for the past 11 years, branded as a child molester. His rescue of them would destroy his

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Daniel Kramer

Better times: Harvey and his mother in 1991.



Houston's Eva Archer-Smith (shown with husband Rick Smith) developed key evidence for her cousin Harvey.



Attorneys Habern and Buckley believe the facts will lead to freedom for Harvey.

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own life.

Harvey protests his innocence -- convicts often do. But almost everyone familiar with his case now strongly doubts his guilt. That includes the jury foreman and judge in his trial, appellate attorneys and investigators and even the findings of a lie detector. The mother of the victim also disputes the verdict.

Most of all, the victim herself -- now a 17-year-old Houston-area student -- swears she tried to describe the real rapist to authorities but was harangued and manipulated into falsely accusing an innocent man.



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The relationship between Harvey and Karen has always had an air of tragedy. Like a low-rent version of the Montagues and Capulets, there has been bad blood for a generation between their families. (To avoid publicly identifying the rape victim, Karen's name and those of her family members have been changed.)

They grew up together in the small town of Geneva, New York, and had their first "date" in the sixth grade. When the two got back together in high school, Karen's mother was so outraged she shaved her daughter's head to make her unattractive. Karen says she had nothing but stubble left, but she donned a bandanna and continued seeing Harvey.

Friction between the families worsened when Karen became pregnant at age 16. Harvey denied paternity, and his parents shipped him off to Pennsylvania to finish school. When son Mikey was born, Harvey was gone.

"The relationship between John Michael's mother and Karen's mother was ugly," says Eva Archer-Smith, a Houston businesswoman and Harvey's cousin. "It was like a vendetta. They felt this was the father of this child and he took no responsibility."

Worse yet, the paternity case filed by Karen's family evolved into a brutal confrontation. Harvey's relatives got other men to testify about sexual relations with Karen -- inflaming her kin -- although a judge ruled that blood tests indicated Harvey was the father of her child.

After he finished school, Harvey landed a Florida job with Delta Airlines, which transferred him to Dallas in 1984. He went on to work for Avis car rentals, then U.S. Sprint. While Texans don't always warm to Yankees, Harvey immediately liked the Lone Star State. He drank beer, smoked a little weed, had a live-in girlfriend for a few years, relished his rising career in computers and was a regular at church.

Joanie Ruppel, the organist at a Greek Orthodox church in the Dallas suburb of Euless, remembers that Harvey volunteered to help at the church's booth at Texas Rangers games and made most church functions. He was "just the nicest guy," she says. "He was always dressed very nice and was very respectful."

Back in Geneva, Karen wasn't faring nearly as well. She gave birth to another child, Melissa, out of wedlock in 1985. Karen moved to South Carolina in 1986 to live with Joe and Linda Walker, the parents of a girl she'd known. She married an air force man named J.R. Williams but soon separated from him.

She went back to the Walkers, who kicked her out in less than a year. She says they told her to take Mikey with her, although they wanted to adopt Melissa. Karen says Joe Walker always had a keen

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interest in Melissa. "He would do the world for that girl," she says.

Karen and her kids left the Walkers and were taken in by a friend, who placed the pivotal call that got Harvey involved. "I guess we weren't doing so hot," Karen says of that period.

Soon after he flew them back to the Dallas area, Harvey noticed Karen was pregnant, and too far along for him to have been the father. Karen sent her children away so they would not know she would put the new baby up for adoption. After that child was born in 1988, Mikey was with Karen's brother and Melissa had returned to the Walkers.

Karen got a decent job and Harvey was hoping she was on her way to independence so their increasingly strained relationship would end. He urged her to return to New York; she wanted to bring Melissa back and get a separate apartment. The three-year-old girl returned for two months in 1988, until Karen sent her back to Geneva to visit her grandmother in January 1989. In total, Melissa lived with Harvey for about five months.

Harvey says Karen began using crystal methamphetamine, or crank; she says he indulged in it at times himself. They fought. Twice the police came to their home, once arresting Harvey, the next time Karen. When she was busted, police found pot and crank in her purse.

Harvey bailed her out and encouraged her to seek treatment. When she went to the hospital, records show she suffered from severe depression, likely because of physical abuse from her mother during childhood.

While Karen was in treatment, Harvey took a camping trip to get away from it all in 1989. When he returned, his apartment manager told him police had searched his residence. "What the hell?" thought Harvey.

An incredulous Harvey called police in his suburban town of Bedford to find out what was going on. When he drove down to the station at their request he was immediately arrested.

Police investigator [Rhonda Moore](#) told him he was being charged with aggravated sexual assault of a child. "I didn't even hear the sexual part," Harvey says. "I thought they were talking about physical abuse. I told them, 'I don't even spank Melissa.' "

This had nothing to do with spanking. It was rape.

Harvey told Moore there must be a mistake. "Melissa's only three," he said. "That wasn't even on my radar, that someone would want to have sex with a three-year-old."

Harvey later learned that the police who went through his apartment were looking for child pornography. They found none.

Karen checked herself out of the hospital and freed Harvey, using his car for bond money. At his request, she moved back to Geneva, after swearing in an affidavit that she believed Harvey was innocent of the allegations.

Harvey had never been charged with anything more serious than traffic tickets. He still had his job at EDS, although the company refused to promote him or give him any raises until the disposition of the case. After six months of waiting on an advancement there, he told his boss the charge was dropped. He was fired when EDS found out otherwise.

He moved on to Westinghouse, only to be fired again when the charge came to light. He got a job recruiting for a technical school, always dreading the day when his boss would walk in and say, "Harvey, get out of here."

Instead, nothing happened.

The accused man watched the months turn into years as the case seemed to be forgotten.

By 1991, he was in love with a woman named [Amy Martin](#). They moved in together, got engaged -- and Harvey decided he would confront the charges against him before marriage.

Whether the [Tarrant County District Attorney's Office](#) ever would have pursued the case against Harvey is unclear. But one thing is clear: Harvey, an alleged child molester, was allowed to do as he pleased for more than three years.

Harvey tells of going to his attorney, former prosecutor [Stan Hatcher](#), and saying, "Either I want the charges dropped or I want to go to trial." The lawyer was confident that he'd never "spend a day in jail," Harvey says.

The case headed to trial in October 1992. The assistant district attorney was [Lisa Mullen](#). She'd earned a reputation for hardball tactics in compiling one of the most successful records of any [Fort Worth](#) prosecutor.

And her next target was John Michael Harvey.

Karen, contacted by Mullen in New York, stressed to the prosecutor she wanted the charges dropped. Mullen told her it was now a matter between the state and Harvey. Karen says Mullen "was trying to drill it into my head that he did it. I could not comprehend that."

Forensic evidence seemed scant. Mullen, herself eight months pregnant during the trial, had [Dr. Andrew Nicolai](#) testify that he examined Melissa in 1989. He said he had found no abnormalities. "There were no abrasions, lacerations, bruises." He testified that the child's hymen was still intact, making penetration "extremely unlikely." Her vagina was "a little wider than it should be," but he said that could be congenital.

A psychologist told jurors that Melissa suffered from attention deficit disorder, which could make her prone to fantasizing. Melissa had never indicated to the psychologist that she had been sexually abused. A Texas doctor who treated Melissa for the flu and diaper rash around the time of the alleged rape testified that he had noticed nothing unusual.

However, the criminal investigation had started when Karen's mother, [Anna Martinez](#), was taking care of Melissa in Geneva. She called a sexual abuse hot line and took Melissa to social workers and wanted them to provide day care, saying the child had been acting out sexually. The grandmother testified that Melissa had told her in 1989 that Harvey "bit her tush."

Martinez also admitted she had never liked Harvey.

Melissa was interviewed by [Becky Wendt](#), the director of family violence services for a nonprofit agency in Geneva. She testified that Melissa "spontaneously said, 'John touched it, my peepee, with his hand.' " Wendt says the child also told her that Harvey locked her in a closet and threatened her to keep quiet.

Wendt said that in five sessions with the young girl, Melissa detailed vaginal, oral and anal rape -- and says the girl told her the man who did it was [John Harvey](#).

However, Melissa was hardly as spontaneous on the witness stand.

Mullen asked her, "Has anybody ever done anything, something to you, touched you in a way you didn't like?"

"No," the girl replied.

"Okay, has anybody ever touched you in a private place?"

"No."

"Do you remember anything bad happening to you while you were here?"

"No."

Mullen delved into questions about whether anyone "put anything in one of your private places" and even asked if she was just scared.

Melissa kept telling her no.

At several points, the girl tried to get up and leave. Mullen told her to sit down. "She froze," Mullen says. "I thought I was going to have to ask for a dismissal."

What happened next is what critics contend was coached testimony.

The child told Mullen she remembered talking to her earlier, but she said she hadn't told her about anyone touching her inappropriately.

"You need to listen to my question, okay?" Mullen said. "Do you know somebody named John Michael Harvey? Let me ask you that."

"Yes."

Melissa began saying yes to all of Mullen's questions -- the same questions she'd said no to moments earlier -- except now Mullen was saying "John Harvey" with each inquiry about sexual contact. Melissa said yes to all of it.

"I knew what [Mullen] wanted me to say," Melissa says today. "I have never been pushed as hard as I was pushed that day.

"I would have said anything to get off that stand. I was just so embarrassed. My mother wasn't there" -- Karen was to testify later and was not allowed in the courtroom -- "so I couldn't say, 'Mommy, come get me.' All I had was my grandma, and she just kept putting her hand up at me, like, 'Sit up there. Stay.'"

Harvey still had his witnesses. One of them was Karen, who said she noticed no abuse of the child and that her mother had been vindictive toward Harvey. But she seemed hazy on details. She also testified that Harvey told her that were he to be convicted, she might get in trouble for not reporting the abuse.

Harvey himself denied any sexual contact with Melissa, then told Mullen he'd never beaten Karen.

"I guess, then," the prosecutor shot back, "you don't recall an evening where she confronted you and you beat the hell out of her?"

An irate [Judge R.E. Thornton](#) immediately retired the jury and scolded Mullen for her "highly inflammatory and highly improper" question. Jurors were told to disregard the comment, but Thornton refused to grant a mistrial.

Then Mullen, *Perry Mason*-like, called a surprise witness. She said she had a rebuttal to Harvey's denial of physical abuse: a former neighbor.

Texas, with rare exceptions, doesn't allow surprise prosecution witnesses. Mullen had never notified the defense that she intended to use the neighbor in the trial -- the prosecutor said she thought Harvey would admit to domestic abuse so there would be no need to call that witness.

Hatcher's objections were overruled, and devastating testimony followed. The neighbor said Karen had called her collect from a phone booth in 1990, and she had picked up the bruised woman. She said Karen told her Harvey beat her after she confronted him with allegations of child sexual abuse. The neighbor insisted she even had the phone records to prove it.

Hatcher didn't ask for that proof, and he didn't call Karen back to the stand to deny the testimony.

The jury deliberated for two days. When the verdict was read, Harvey's mother turned to comfort his fiancée, Amy Martin. "Don't worry," she said. "We'll get him out soon. He won't do four years."

Martin told her, "They said 40 years -- not four."

[Beverly Harvey](#) has since devoted her life to freeing her only child. Her tiny Florida condo has been mortgaged and converted into a legal office. She has spent more than \$200,000. Over the past decade, a small army of attorneys, investigators, family and friends has been working on the case.

Harvey had told almost no one in his family about the trial, saying, "I never thought I could lose." Archer-Smith only found out in 1995 that her cousin was in prison. Initially, she thought Harvey might be guilty. She wondered, "Why else would a jury convict him?"

Archer-Smith began researching the case and found that the phone records of Harvey's former neighbor showed there had never been a collect call from Karen -- who has always denied the neighbor's story.

Also curious was that the neighbor had two hot check charges pending when Harvey was indicted. Those bad check charges were later dismissed -- by prosecutor [Ken Mullen](#), Lisa Mullen's husband at the time.

Harvey contends that the ex-neighbor had been doing crank with Karen in 1988, and that the neighbor was angry with him after he rebuffed her advances.

Jury foreman [Marty Marion](#) says that what convinced him of Harvey's guilt was the testimony of Becky Wendt. But while Wendt was testifying in Texas, she was under fire in New York for a case somewhat similar to Harvey's.

Wendt had interviewed two children involved in allegations that led to more than 2,000 counts of sexual assault against their father, [Richard Knupp](#), in 1988. His wife was charged with 600 counts, all later dismissed.

Knupp was convicted of 11 counts, largely on the basis of testimony elicited by Wendt. The children sat in her lap when they testified via closed-circuit television. They later recanted, and Knupp passed a polygraph examination.

Spurred by a series of articles in the *Rochester Democrat and Chronicle*, Knupp was granted appellate hearings that revealed the charges were initiated by a vindictive and abusive grandmother who wanted custody of the kids. Knupp's convictions were overturned. After serving four years, he was acquitted at a second trial.

Wendt still believes Knupp was guilty. "He got away with it," she says. She also stands by her testimony against Harvey.

Harvey says his trial lawyer, Hatcher, was aware of the controversy surrounding Wendt but believed it would be better not to get into that subject in testimony.

As with the Knupp children, Wendt's interviews with Melissa were not videotaped -- now standard procedure in both New York and Texas. Experts also question Wendt's serving as both the forensic, or fact-finding, investigator, as well as the children's therapist in those cases.

Standards now advise against such dual roles if impartiality is to be maintained, says [Lisa Bourgoyne](#), a forensic interviewer for the Children's [Assessment Center](#) in Houston. But ten years ago, she says, "It was a new field, and it was wide open."

Moore, the Bedford police investigator, appears to have had a close working relationship with Wendt. She even asked Wendt to interview Karen and her mother, a job normally reserved for law enforcement agencies.

Bourgoyne says her Houston agency investigates more than 300 cases of sexual abuse a year, and about a third of them turn out to be groundless. She says child custody issues are the top warning sign about potentially false statements.

Karen's mother, Anna Martinez, was involved in custody issues herself. She had a 1981 misdemeanor conviction for welfare fraud for claiming too many dependent children to authorities.

Eleven years later, while Martinez was in Texas testifying, welfare agencies were investigating her again for fraud, for allegedly not reporting a settlement from a car accident while she was receiving benefits for herself, her youngest child and Melissa. That led to a conviction of grand larceny in 1994, when she was ordered to pay back more than \$26,000 to the state of New York. None of that information came out at Harvey's trial.

[Father Gabriel White](#), the Harveys' priest at Geneva's Greek Orthodox church for more than 30 years, accuses Melissa's grandmother of wanting the girl in her custody so she could collect more welfare payments.

White contends that after Harvey's conviction, the grandmother told him, "It's good for him to be in prison. He won't be in there long, anyway." The priest says, "She's an evil bitch -- be sure to write that."

Harvey's appellate lawyer, David Chapman, raised several issues in a 1997 challenge of the conviction. The same polygraph examiner used by [Tarrant County](#) administered a lie detector test to Harvey -- he passed impressively. Chapman alleged that Hatcher botched the case, and that Lisa Mullen committed misconduct.

At the core of his complaints is a note that he discovered in the prosecutors' files that Chapman received as part of the 1997 appeal. Done in Mullen's handwriting, the note includes Melissa's name at the top, with an arrow drawn from there to the notation, "Tattoo on his butt -- Eagle."

Melissa says she remembers telling Mullen before the trial that the man who assaulted her was a big man with a tattoo, which she now recalls as being the image of some kind of animal. Melissa says that before the trial, "She started asking me what kind of tattoo it was and I kept saying, 'Lady, I don't know.' "

Harvey, a small man, has no tattoos.

Karen says Mullen asked her before the trial if Harvey had any tattoos. She says she also told Mullen that she thought the molester may have been a South Carolina man with multiple tattoos who was particularly fond of Melissa while she was staying there. Karen says Mullen told her not to mention the tattoos, or the man.

Mullen hotly denies the versions from the girl and her mother: "I swear to you, that child did not tell me that." No mention of tattoos was ever made at Harvey's trial.

In a rare appellate hearing granted in 1999, the trial attorney for Harvey testified he had never seen the note. If it had been written before the trial, it would have been required to be handed over to the defense.

Mullen testified that maybe she wrote the note during the trial, maybe about another case. She said she didn't remember when she wrote it, but she was sure it wasn't during her pretrial interview with Melissa.

Chuck Mallin, appellate chief of the Tarrant County D.A.'s office, dismisses the tattoo note as "gibberish." He says the appeal lacked merit, and that trial attorney Hatcher "did a damn fine job in that case." Hatcher, now back working as a Tarrant County prosecutor, did not return calls from the *Houston Press*.

[Judge Harry Hopkins](#) didn't buy Mullen's explanation about the note. "By far the most disturbing matter before the court is the allegation of prosecutorial misconduct, especially as it relates to the failure of the prosecutor, Ms. Mullen, to disclose exculpatory evidence to defense counsel," he wrote. "Ms. Mullen's attempted explanation was something less than convincing as to just what prompted this handwritten note."

However, Hopkins upheld Harvey's conviction, saying there was no direct evidence at the hearing that the victim had ever told anyone that the perpetrator had a tattoo.

Without Melissa's testimony, the judge implied, there was no smoking gun. Harvey's family had searched in vain for the girl, hoping to get her side of the story. Mallin says investigators for the district attorney had also tried to find Melissa in 1999, but "her stepfather didn't want her to be found."

In a state where critics say the standards for overturning a conviction are impossibly high, it seemed that Harvey had only one way out after the appellate hearing. He would be eligible for parole in 2002, after serving one-quarter of his 40-year sentence.

His case falls under a Texas law with a parole rate of less than 1 percent. Twelve of the 18 parole board members -- not just a simple majority -- must vote to release him.

The family enlisted veteran parole attorneys [Sean Buckley](#) and Bill Habern, but both were skeptical initially. "You can't win those child molester cases," Habern says. But after reviewing the evidence, he says, "I started thinking, 'This guy is innocent. We might be able to do something here.' "

At the parole hearing, the attorneys presented videotaped testimony from Karen, a letter from Judge Thornton supporting Harvey's parole, the polygraph results and other evidence from the 1999 hearing. The parole board voted 10-8 in Harvey's favor, still two votes shy of freedom.

Archer-Smith offered to have Harvey stay in her home if paroled, but prison officials nixed that plan -- as a sex offender, he wouldn't be able to come within 500 feet of any children, even her two kids. "It seemed like all the doors were closed," she says. "We had pulled out all the stops trying to find Melissa and there just seemed like there was nothing left to do."

Actually, an investigator for Beverly Harvey found Melissa living in California with relatives of the stepfather, J.R. Williams, who had been granted custody after Harvey's conviction.

Harvey's family says Williams kept Melissa hidden from them and told her John Harvey raped her.

Melissa also says that Williams, before Harvey's trial, "told me to say this is what John did to me and I need to say this and this and this, and he needs to be put away." She now says Williams was angry that Karen had left him in 1986, and he blamed Harvey for that. (Williams could not be reached for comment.)

Beverly Harvey's investigator got into an ugly confrontation with Williams's relatives. Williams sent the girl back to Karen, who hadn't lived with her daughter in eight years.

It wasn't until last winter that the two began talking about the rape and the trial. "One day the floodgates opened and it all came out," Melissa says. She hadn't realized earlier that Harvey was in prison for the rape, she says, because the 1992 trial had seemed like a weird dream. Karen remembered that Harvey had a cousin in Houston, and in February she called Archer-Smith.

"You may not know who I am," Karen's phone message began.

"I knew exactly who she was," says Archer-Smith. "I had read her name 10,000 times. I knew the birth dates of her children. Even though I'd never met her, I felt like I knew her better than I know most of my friends."

Archer-Smith was stunned that Karen had left a Houston number. "I called back immediately. When I asked if she knew where Melissa was and she said, 'She's with me,' I nearly wrecked the car."

Melissa wanted to help free John Harvey. Attorney Buckley thinks their statements, along with the other evidence, will convince an appeals court to overturn Harvey's conviction. The centerpiece of

Buckley's argument is Melissa's affidavit. It begins:

"Around the time I was 3 or 4 years old, I was sexually molested by a man. I do not know the man's name, but I think I might recognize him if I saw him again. I do remember that he was a very big man with a tattoo. I also know for sure, and I have always known for sure, that the man was not John Michael Harvey."

Harvey, her affidavit says, never molested her.

"I am very angry with the prosecutor," Melissa says in the affidavit. "I feel that she took advantage of me because she wanted to win her case."

Mullen is adamant that she did nothing improper, but declined an opportunity to read Melissa's statement. Becky Wendt said she would read it and then comment to the *Press*. She did not return further phone calls after the *Press* faxed the affidavit to her in early May.

Jury foreman Marion read the affidavit and offered to assist with Harvey's appeal.

After signing her statement in March, Melissa had one question: "When do I get to see him?" Harvey would like to know the answer to that question, too.

Lisa Mullen and another prosecutor were fired from the D.A.'s office in 1998, after an incident at a softball game. A group including Mullen began heckling opposing Hispanic batters with shouts such as "Yo quiero [Taco Bell](#)." Mullen says she didn't taunt anyone but admits drinking beer illegally at a city park.

Sources who worked with Mullen say she was fired for her abrasive manner -- that the softball incident was just a pretext. A former prosecutor said that "she's the type of person who would get pissed off if a police officer was late to a meeting." District Attorney [Tim Curry](#) was tired of listening to complaints about her."

The other prosecutor fired then was quoted in the *Fort Worth Star-Telegram* as saying he was a "sacrificial lamb," let go only to justify Mullen's dismissal.

Mullen now faces criticism as a defense attorney for her role in another case that also involves surprise witnesses, dubious testimony and nonexistent phone calls.

Her client, [Jimmy Watkins](#), shot his wife, Nancy, and her boyfriend in 1999. He thought he was out of bullets and fled, only to find later that he had more ammo. Watkins drove back and emptied his pistol into his wife, killing her as she was talking to a 911 operator.

Mullen used a "sudden passion" defense by presenting her surprise witnesses, a mother and daughter who said they were with Watkins hours before the shooting. They testified that Watkins received a call from his wife and handed his cell phone to them. They heard the unmistakable sounds of [Nancy Watkins](#) performing oral sex on her boyfriend, they said.

"That was the sudden passion," says [James Cook](#), the Tarrant County prosecutor who handled the Watkins case. "They were providing the proof of a triggering event, and the jury went for the testimony." Mullen's client got probation for murder.

But Cook felt he was hearing lies, even if he couldn't prove it at trial. He wondered, "What does a blow job sound like over a cell phone?" He subpoenaed Watkins' phone records and found "there

was no such call."

The women pleaded guilty in April to misdemeanor perjury. Cook says, "They admitted they lied during that trial."

Mullen did not comment on the Watkins case or on allegations raised by Harvey's lawyer, Sean Buckley.

"What the evidence shows here are some acts that go beyond just malicious...There's a pattern here of 'Don't get in my way,' " Buckley says.

Last month, Buckley discovered yet another note handwritten by Lisa Mullen in the prosecutors' files. That note indicates that Mullen was considering having photographs made of a tattooed man in South Carolina. Melissa and her mother say they suspected him of being the rapist.

Buckley hopes to get Harvey's conviction overturned on the basis of "clear and convincing evidence of innocence." There is legal precedent based on the case of [Joe Elizondo](#).

The Texas Court of Criminal Appeals narrowly voted to overturn Elizondo's conviction in 1996, after his stepchildren recanted their claims and said their biological father was the real molester.

However, the judges now on that court are far more conservative, and have been known to reject appeals even when DNA tests and other evidence have shown prisoners were wrongly convicted.

Habern is confident that Harvey can be released when he comes up for parole again next year, but Harvey does not want that way out because it would require him to confess to a crime he swears he never committed.

Release as a registered sex offender would also vastly restrict his future. Harvey would have to wear monitoring devices, post a warning sign outside his residence and avoid anyplace where children commonly gather.

In Fort Worth, Chuck Mallin has Melissa's affidavit sitting on his desk in the district attorney's office. "We're going to have to reinvestigate, again," he says. Buckley has agreed to share his evidence, hoping that Mallin will not contest the appeal.

Back in Houston, Buckley has been pulling 14-hour workdays on the appeal, which was filed May 23.

"I just want to get this guy out," he says. "It's the most clear-cut case of innocence I've ever dealt with."

Thirty miles from his office, Melissa is adamant that Harvey did absolutely nothing to her, and she wants him to have his freedom. "I remember him as a very, very sweet person. I want to do this for him." As for her abuse, she says, "It's in my memory, but it's in the past and I'm trying to get on with my life now."

The vivacious teenager enjoys floral design, which she eagerly shows off to visitors. Melissa wears a ribbon on her jacket in memory of a classmate who died of cancer earlier this year.

In Florida, another woman has cancer. Beverly Harvey, who has spent all she has, and much she doesn't, suffers from a recurrence of bone cancer in her ribs and back. "I only hope I can live long

enough to see my son freed," she says.

Near [Wichita Falls](#), a 38-year-old man shares a nine- by 12-foot cell that will hit temperatures of over 90 degrees by noon and stay there past midnight. Like most prisoners, he prays for summer rains that will cool the scorching bricks and metal roofs confining him. Mostly, he prays for his name to be cleared, and Melissa is the only chance he will ever have for that.

In prison, as in America, rational thought tends to fly out the window when the topic is pedophilia. Children are sacred, and adults who violate them are considered to be the worst of the worst. As far as a convict's standing among his peers, it's better to have murdered a family of four than to have fondled a three-year-old. "I don't talk about my case in here," Harvey explains in a prison interview.

He recalls what he once had. His eyes moisten at the mention of his former fiancée, Amy Martin. Archer-Smith sent him a handsome photo of the couple a few years ago. Harvey returned it, saying, "It's too painful to look at."

A few weeks after Harvey's conviction, Martin had a nervous breakdown. Her parents took her back to Pennsylvania, and Harvey has not heard from her since. While Harvey's been in prison, his father and two aunts have died. His mother is too ill to travel, and he may never see her again.

"I wouldn't mind the bad meals, the bad showers or the 40 years," he says. "I believe child molesters ought to be treated this way. I don't have a problem with that. But I didn't do anything."

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Posted on Thu, May. 29, 2003

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UPDATE: [Harvey free after 12 years in prison for wrongful conviction](#)

Seeking freedom

Man convicted in 1992 of molesting a 3-year-old girl cites new evidence in his request to reopen the case

By Max B. Baker

Star-Telegram Staff Writer

John Michael Harvey rests his head in his hands, grabbing a moment of solitude. The cool, quiet interview room seems miles away from the noisy, sweaty prison cell where he has lived for more than a decade.

Harvey, 38, of Bedford was sentenced to 40 years in prison in 1992 after a Tarrant County jury found him guilty of molesting a 3-year-old girl, the daughter of his live-in girlfriend.

From the beginning, he has said he is innocent.

Now, Harvey's attorney has asked a Tarrant County judge to reopen the case, citing new evidence, including a sworn statement from the victim -- now 17 -- that Harvey is not the man who molested her. The lawyer also accuses the prosecutor of misconduct.

Harvey, meanwhile, waits at the Texas prison system's James V. Allred Unit near Wichita Falls.

"It didn't register in my mind that if you prosecute an innocent man, he will be found guilty beyond a reasonable doubt," he said quietly during a recent interview.

"I knew I was innocent. I thought I would get off."

Tim Curry, the Tarrant County district attorney, said his office is investigating the matter.

"If there has been some injustice done, we will do our part to rectify it," Curry said. "That is what you do."

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"It didn't register in my mind that if you prosecute an innocent man, he will be found guilty beyond a reasonable doubt," John Michael Harvey says.

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John Michael Harvey says he pushed for a trial because he was sure that he would clear his name.

SPECIAL TO THE STAR-
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"If all of my claims are accurate, I am just blown away," says Sean Buckley, John Michael Harvey's attorney. "I would think they would have to come to the conclusion that the district attorney had a rogue prosecutor on his hands."

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JOHNSON

John Michael Harvey is serving a 40-year sentence in the Allred unit after being convicted of molesting a former girlfriend's daughter.

Putting the pieces together

Harvey's attorney, Sean Buckley of Houston, filed a request last week in Tarrant County seeking a hearing in state district court, the first step toward taking the new evidence to the Texas Court of Criminal Appeals.

Buckley said the evidence points to Harvey's innocence.

"If all of my claims are accurate, I am just blown away," Buckley said. "I would think they would have to come to the conclusion that the district attorney had a rogue prosecutor on his hands."

The allegations add to concerns raised by two judges who heard previous testimony in the case, but an appellate chief in Curry's office said the new evidence has already been rejected.

The prosecutor, Lisa Mullen, now a criminal defense lawyer in Fort Worth, said she can't remember specifics about the case, but she denies any wrongdoing.

"I would have no interest in prosecuting him if I didn't think he was the actor," Mullen said Wednesday. "I dismissed cases where there were doubts."

Mullen said she resents any allegations of misconduct, saying that she worked hard as a prosecutor and that as a defense lawyer continues to protect clients within the bounds of the law.

"I take ethics very seriously," she said.

The victim, however, said recently in a sworn statement that she named Harvey as her attacker on the witness stand under pressure from Mullen.

In the statement, the victim said: "I am also very angry with the prosecutor. I feel that she took advantage of me because she wanted to win her case."

She also said that Harvey "never molested me at any time and never touched me sexually at any time."

The girl, who recently returned to Texas to live near Houston with her mother, declined through Buckley a request to be interviewed by the *Star-Telegram*.

Buckley said the girl came forward voluntarily last month to discuss the case with Harvey's family. She said she had been isolated by her family and only recently became aware that Harvey was in prison.

In the court documents, the girl is identified only as S.R. and her mother as Gloria R. The *Star-Telegram* typically does not name sexual abuse victims or members of their families.

The girl and her mother moved to Bedford from South Carolina to live with Harvey in the late 1980s, after Gloria R. became estranged from her husband, S.R.'s stepfather. Harvey had known the girl's mother since grade school, and they had been romantically involved.

The girl periodically returned to South Carolina, and in 1989 she was sent to live with her grandmother in Geneva, N.Y. Within a few weeks, she began acting improperly and told her grandmother that she had pain in her genital area.

The grandmother called an abuse hot line, spurring an investigation by New York and Texas

authorities. Harvey was indicted in 1989, but Gloria R. said then that she thought that her mother had coached the child into making the allegations against Harvey.

At the time, S.R. said that the man who attacked her was a "very big man with a tattoo."

Harvey, who has always been skinny, has no tattoos.

In her recent statement, S.R. said that her stepfather told her not to mention the tattoo during her testimony, and she said the stepfather insisted that Harvey was the man who molested her.

The girl's story is supported by her mother, who said she told Mullen that another man in South Carolina molested her daughter and that Harvey did not have tattoos. The mother said in a sworn statement that Mullen told her not to mention the other man's name during the trial.

Buckley said that two notations in the prosecutor's files indicate that Mullen knew about a tattoo before the case went to trial. One handwritten note in the file mentioned an eagle tattoo; another indicates that Mullen was considering taking a photo of the South Carolina man.

Buckley said the statements and notes alone should be enough to reopen the case.

"It is something that she said 10 years ago," Buckley said. "It just didn't come out of the blue ...

"It has too many coincidences to be a coincidence," he said.

Who knew what and when

Buckley's filings with the court say that Mullen acted improperly by not disclosing exculpatory evidence concerning the tattoos before Harvey's trial in 1992.

In an April 1999 hearing on a previous request from Harvey for a new trial, questions were raised about the tattoo notation, but no reference was made to the notation about the photo.

At the 1999 hearing, Mullen testified that the victim did not tell her that the man who molested her had a tattoo. She said the note was not from an interview but was simply scribbling done during the trial, according to court documents.

Mullen also testified that if she had been told about the eagle tattoo, she would have filed a motion with the trial court to take pictures of Harvey.

But Judge Harry Hopkins, who presided over the 1999 hearing, said in his ruling that the tattoo was never mentioned during the trial and that Mullen's explanation "was something less than convincing as to what prompted this handwritten note."

He nonetheless denied the request for a new trial.

Buckley said the second notation indicates that Mullen knew about the tattoo in 1992.

"The new evidence [about the tattoo] is going to cause some people severe problems with Mullen's testimony at the previous hearing," Buckley said.

Buckley also accuses Mullen of knowing that one of her witnesses, a former Bedford neighbor of Harvey's, committed perjury.

The neighbor testified that she was called by Gloria R. in the middle of the night in July 1990, saying that Harvey had beaten her after she confronted him about the sexual abuse accusations.

The neighbor said she contacted Bedford police shortly after picking up Gloria R. and said the police already had Harvey in custody.

But telephone records submitted as part of Harvey's new appeal indicate that the phone calls never occurred. Gloria R. denied making the call, and records show that she was living in South Dakota at the time.

Arrest records reveal that Harvey was not in custody at the time.

Notes included in Buckley's court filing, however, indicate that the jury considered the neighbor's testimony crucial.

"My understanding is that they did not give the victim's testimony a lot of credibility, but they felt the other testimony was strong," Buckley said.

Mullen said Wednesday she couldn't remember the contents of the notes, but said there is no question that "those notes came from the trial and from getting ready for the trial."

Chuck Mallin, chief of the appellate division of the district attorney's office, said many of Buckley's claims were raised during early court proceedings and they "didn't go very far."

"Most of this stuff has already been litigated," Mallin said. "I take recantations with a grain of salt. The court has to be careful in overturning a jury verdict."

The judge in Harvey's original trial, however, also said recently that he had concerns about the conviction. Visiting state District Judge R.E. Thornton said that after the jury delivered its verdict in 1992, he "didn't feel right when it went down." Still, Thornton decided to honor the jury's decision.

Thornton added that he did not feel that Mullen was abusing the system during the trial but said he wrote a letter to the parole board recommending that Harvey be granted parole.

A dark cloud

Today, Harvey spends his days with people he'd rather not know.

"I'm serving time with guys who do molest children. Who do hate. Who do commit violent crimes against other people," Harvey said as he rubbed his hand over his shaved head. "Life like that is horrible."

Harvey said he pushed for the original trial because he wanted to clear his name. He says he would not have pushed for the trial if he had been guilty.

"I had this dark cloud hanging over me that needed to go somewhere," Harvey said.

Since his conviction, his family has worked for his release and hired private investigators. In addition, Harvey passed a 1998 polygraph test.

So far, however, his appeals have been rejected.

"If I don't get justice this time, the whole system is shot to hell," he said.

UPDATE:

Posted on Tue, Jun. 10, 2003

DA seeks more time to study innocence claim

By Max B. Baker
Star-Telegram Staff Writer

FORT WORTH - The Tarrant County district attorney's office asked a judge Monday to give it more time to investigate claims that a Bedford man was wrongfully convicted in 1992 of sexually molesting a 3-year-old girl.

John Michael Harvey's attorneys asked the court to reopen the case last month after the victim -- now 17 -- said that the prosecutor pressured her during the trial to identify Harvey as her attacker.

The girl, identified as S.R. in court papers, also said she told the prosecutor, Lisa Mullen, that she was attacked by a "very big man with a tattoo." Harvey is thin and has no tattoos.

The *Star-Telegram* typically does not name sexual abuse victims or members of their families.

"We want to look and see if there was a lapse," said Steve Conder, an assistant district attorney in the appellate division. "We take each of these [innocence claims] seriously."

The judge will set a schedule for conducting the investigation after consulting with Harvey's lawyers.

Sean Buckley, the Houston attorney representing Harvey, said he is pleased with the district attorney's response. He said the office has been very "attentive" and sent someone to interview S.R. and her mother in Houston last week.

"So far, so good," Buckley said.

Beverly Harvey, the defendant's 69-year-old mother, who lives in Palm Beach, Fla., said she has spent nearly \$200,000 over the years trying to prove her son's innocence. She was elated that her son's case was being reopened.

"I hope and pray that God will finally get him justice," she said.

Harvey was sentenced to 40 years in prison in 1992 after being found guilty of molesting the girl, the daughter of his live-in girlfriend. Harvey has always claimed to be innocent and the victim of an overzealous prosecutor.

Mullen, who is now a defense attorney, has denied doing anything wrong but said she can't remember specifics about the case.

S.R. recanted her testimony in a sworn statement in March. In the statement, she said that Harvey "never molested me at any time and never touched me sexually at any time."

S.R. said she did not speak out earlier because her family had kept her isolated and she didn't know that Harvey was in prison.

Her mother, identified only as Gloria R., also gave a sworn statement saying she told Mullen that another man in South Carolina molested her daughter and that Harvey did not have tattoos.

The mother said Mullen told her not to mention the other man's name during the trial.

Buckley has also accused Mullen of withholding evidence from Harvey's attorneys and of knowing that one of her witnesses committed perjury during the trial.

In documents filed with the court Monday, Conder said a court ruling in 2000 rejected accusations of prosecutorial misconduct by Mullen and that they can't be raised again.

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