http://www.capdefnet.org/htm_library/innocence1.htm

Larry Hicks was convicted in 1978 was sentenced to death in Indiana. Two weeks prior to his scheduled execution, with the help of a volunteer attorney, Hicks received a stay. The Playboy Foundation became interested in this claim of innocence and supplied funds for a reinvestigation after he passed lie detector tests. At retrial, Hicks was acquitted and released after evidence established Hicks's alibi and showed that eyewitness testimony against him at his original trial was perjured. *See* M. Radelet, et al., "In Spite of Innocence" 313 (crime 1978 - exoneration 1980).

http://www.law.northwestern.edu/wrongfulconvictions/exonerations/inHicksSummary.html

LARRY HICKS

Larry Hicks was sentenced to death in Lake County in 1978 and exonerated in 1980

Larry Hicks was convicted of a double murder in Lake County, Indiana. The only evidence against Hicks was the testimony of two women who said they had seen him arguing with the victims and waving a knife; the victims were stabbed.

After the conviction, no appeal was filed. Hicks's execution was only two weeks away when the warden of the prison where he was being held persuaded two lawyers to look into the case.

The lawyers obtained a stay and, after Hicks's trial counsel acknowledged that he interviewed no witnesses and was unaware that his client faced the death penalty until a week before the trial, the trial judge overturned the conviction. Then, with funds provided by the Playboy Foundation, the lawyers hired an investigator who interviewed the original witnesses, both of whom recanted their testimony. Hicks was acquitted on retrial.

Hicks is African American as were the victims.

Larry HICKS

Classification: Murderer?
Characteristics: Eyewitness testimony against him at his original trial was perjured
Number of victims: 2 ?
Date of murders: February 5, 1978
Date of birth: February 12, 1958
Victims profile: Norton Miller,28, and Stephen Crosby, 26
Method of murder: Stabbing with knife
Location: Lake County, Indiana, USA
Status: Sentenced to death on September 1, 1978. At retrial was acquitted and released on November 21, 1980

Larry Hicks
Indiana Conviction: 1978, Acquitted: 1980
Hicks was convicted on two counts of murder and was sentenced to death. Two weeks prior to his scheduled execution, with the help of a volunteer attorney, Hicks received a stay. The Playboy Foundation became interested in this claim of innocence and supplied funds for a reinvestigation after he passed lie detector tests.
At retrial, Hicks was acquitted and released after evidence established Hicks's alibi and showed that eyewitness testimony against him at his original trial was perjured.

HICKS, LARRY # 2
OFF DEATH ROW SINCE 04-02-80
DOB: 02-12-1958
DOC#: 13124 Black Male
Lake County Superior Court
Judge James C. Kimbrough
Prosecutor: Michael Greener, Marilyn Hrnjak
Defense: J. Robert Vegter, Nile Stanton, Kevin McShane
Date of Murder: February 5, 1978
Victim(s): Norton Miller B/M/28 and Stephen Crosby B/M/26 (No relationship to Hicks)
Method of Murder: stabbing with knife
Summary: Hicks attended a party at the apartment of a neighbor. Hicks was seen waving a knife in his hand while arguing with Norton Miller and Stephen Crosby. They were later found stabbed to death in an alley outside the apartments.
Conviction: Murder (2 counts) (Jury hung on death sentence)
Sentencing: September 1, 1978 (Death Sentence)
Aggravating Circumstances: b(8) 2 Murders
Mitigating Circumstances: 19 years old at time of murder, no prior criminal record.
Direct Appeal: None. Following his sentencing, Hicks filed a Motion to Correct Errors and a Motion for Competency Hearing.
On April 2, 1980, trial Judge James C. Kimbrough, following the appointment of two psychiatrists, granted the motions and held that at the time of the defendant’s trial, he was

incompetent.
A new trial was held on November 12-21, 1980 with Nile Stanton and Kevin McShane representing Hicks, and Deputy Prosecutor Marilyn Hrnjak representing the State. Two eyewitnesses, who had identified Hicks in the first trial as menacing the victims with a knife in his hand, recanted their testimony in the second trial. Other evidence confirming Hicks' actual innocence was also presented. Hicks was found Not Guilty of the charges.

The Ordeal of Larry Hicks:
How an Innocent Man was Almost Executed
February 1, 2009
When it happened almost 30 years ago, a Chicago newspaper blared the headline "Lawyer Snatches Man from the Electric Chair" and an Indianapolis newspaper wrote "Attorney Rescues Forgotten Man from Death Row." Senior Editor Bill Helmer of Playboy magazine titled his May, 1981, article about the case simply "The Ordeal of Larry Hicks."
The Facts and Nothing But the Facts:
Represented by an incompetent public defender, Larry Hicks, a poor-as-dirt 19-year-old black man from the deep ghetto of Gary, Indiana, was sentenced to die in the Indiana electric chair for supposedly murdering two men by stabbing them to death in a fight inside a Gary home. Before that trial, Larry's public defender (PD) wasn't even aware that his client faced the death penalty until a week before the trial took place. (The lawyer admitted this in open court before trial, and it is in the transcript.) Larry's PD failed to investigate Larry's alibi that he wasn't present at the time the brutal slayings took place, failed to examine the dark red stains on the jeans Larry wore on the night of the murders (which stains, without chemical examination, the prosecution would term "blood"), failed to examine the knife which the state claimed Larry used to stab the two men, and -- as revealed by the PD's 1/4-inch thick file on this death penalty case -- otherwise totally failed to prepare for the one and a half day long murder trial that would result in Larry Hicks being sentenced to die in Indiana's electric chair.
After Larry was granted a new trial on what some conservative "law 'n order" folks might call a "legal technicality" (but which assuredly was not*), a few of the critical true facts relevant to the case proved to be as follows:
(1) The murders did not occur around midnight, as the prosecution claimed, but around 5 a.m. while Larry Hicks was not at the murder scene but at his own home. The coroner's report contained this information, but Larry's original trial attorney never used it. Nor, of course, did the state refer to it.
(2) Scientific forensic analysis proved that what the state claimed was "blood" on Larry's pants were bits of rust from old barbells he used in the basement of his home, exactly as Larry had claimed.
(3) Scientific forensic analysis further proved that the knife that the state said was the murder weapon could not have possibly made the nature of the wounds inflicted on the men who were murdered. Rather, the actual murder weapon had to have been a much longer and narrower blade, a fact consistent with the description of the stiletto commonly wielded by the person the defense named as the real killer and proved to have been present at the time the murders took place.
And, there was much more evidence confirming Larry's actual factual innocence in

addition to these few things.

At Larry's second trial, our defense team was able to do this: Even after the judge had pounded into the jurors' heads that the "burden of proof is on the state to prove guilt beyond a reasonable doubt" and had instructed the jury that the defense had no obligation to prove anything at all, here is what took place. In my opening statement to the jury, I reminded them of those instructions from the judge and then told them that, despite the legal burden of proof being on the state, the defense in this case would gladly accept the burden of proof and affirmatively prove that this young man was absolutely innocent of the brutal murders he had been accused of. And, we powerfully did precisely that.

In addition to the true facts of the case noted above, we had further (although inadmissible) evidence of Larry's innocence which the jury could not lawfully hear and never did: Among a plethora of other inadmissible evidence, Larry passed a polygraph test administered by John O. Danbury. Danbury had been the top polygraph expert for the Indiana State Police for 20 years before retiring to set up his own private firm. After Larry passed Danbury's examination, we hired the top polygraph expert in the nation -- Leonard Harrelson of Chicago's famed Keeler Institute; and Harrelson also concluded that Hicks was telling the truth when he claimed not to have been involved in the double murders.

In the poverty-stricken, crime-filled, deep ghetto of Gary, Indiana, Larry Hicks had, even at the age of 19, proved to have some sort of extraordinary strength to him. Here was a young man who had never been in trouble with the law, who never drank alcohol, and who never used drugs. Larry was a youngster who dropped out of high school but was still trying to get his diploma by taking a few evening courses here and there, and while having no real specific "skill" always searched for part-time work, found it, and who -- according to those who hired him -- worked harder than any other ten men put together. That was the sort of man Larry Hicks was. While most people in his neighborhood loved him for it, some people stayed away from him because they couldn't come to grips with Larry's eternal optimism, helpful ways, and unselfish nature. In the Gary ghetto, Larry Hicks' nickname was "Black Jesus."

No, no insanity defense was interposed in either of Larry's trials, only straight ordinary pleas of not guilty. And, as noted above, at his second trial, we produced an abundance of evidence in support of Larry's innocence.

When the verdict was returned, and after the jurors were excused (but still present in the courtroom), I pointed to the prosecutor and said, "This case should never have been prosecuted in the first place." To which, the prosecutor said, "I agree." Then, eleven of the 12 jurors and the judge joined us at the defense team's suite at the Crown Point, Indiana, Holiday Inn; and all, including Larry, celebrated until dawn. Larry had nothing but a couple of soft drinks, while the rest of us imbibed everything from coffee to Dom Perignon. At the festivities, a young and quite attractive female juror decided that Larry deserved a bit of special attention after his more than two years on death row and enticed him into the bathroom. He exited there in under a minute. The next day, Larry told me of her offer of sex in the bathroom and said he thought that the only proper thing to do would be to decline since, after all, she was a married lady.

Nile Stanton

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*The grounds for setting aside the original death sentence and verdict and for ordering a

new trial? Larry, while being of low I.Q., always knew right from wrong and absolutely trusted our criminal justice system. The easiest grounds for the judge to have awarded a new trial on would have been for him to find that Larry's trial attorney had been grossly inadequate in preparing to represent a totally innocent man in a death penalty case. But, we knew that most judges are not prone to finding their own public defenders to be incompetent. So, we gave the judge another solid alternative reason upon which to grant a new trial. (Understand, here, that Larry's new trial was not ordered by some appellate court but, rather, by the original trial judge himself -- the very judge who had sentenced Larry to death.)

The original pre-sentence investigation had resulted in a report for the judge that included comments from three psychiatrists the judge had ordered to examine Larry before imposing sentence. (Trial counsel never even used these in mitigation at the sentencing hearing, let alone as grounds for a new trial.) One of the psychiatrists had reported that he thought Larry was fine. Another said that Larry's I.Q. was so low that he had a doubt as to Larry's competency to stand trial (as opposed to "insanity") at the time the original trial took place. To be "competent" to stand trial, there was a three-pronged test in Indiana at the time: (1) Does the accused understand the nature of the charges? (2) Can the accused effectively communicate with counsel? And, (3) does the accused appreciate the gravity of the situation? Since the law forbids competency to stand trial to be determined after a trial takes place but only before trial, I argued that there was a reasonable doubt about Larry's competency to initially stand trial but that this could not be rectified retroactively except by ordering a new trial. The judge agreed, promptly ordered a new trial, and -- of course -- ordered psychiatrists to examine Larry to determine whether he was competent to go through the second trial.

Larry was found competent to stand trial (and we never suggested that he wasn't); but one psychiatrist was prepared to testify, had he been asked the right questions, that he doubted Larry's competency because Larry "had such blind faith that he might fail to appreciate the gravity of the situation since he had no worry about the outcome." I learned this from the psychiatrist when we went out for some coffee after the competency hearing. The psychiatrist told me that he had no problems with the first two components of "competency to stand trial" but that the third factor ("appreciate the gravity of the potential consequences") gave him pause. I asked why that was. He told me that the problem was that he thought that Larry might not appreciate the potential consequences at all. Stunned, I asked why. He told me that this was due to the fact that Larry had no fear of the consequences whatsoever because he knew that God had sent a lawyer to save his life. (This made me feel very strange, of course.) Larry confirmed the gist of this to me later, noting that the psychiatrist had told him that he probably should not tell the judge about the matter else the judge might think that he was crazy.

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