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## DAMN THE EVIDENCE – FULL SPEED AHEAD!\*

*Lousy policing and thoughtless prosecution  
cost three innocent men decades in prison*



For Police Issues by Julius (Jay) Wachtel. Virginia offers [three kinds of pardons](#): simple, conditional, and absolute. That last type can only be issued “when the Governor is convinced that the petitioner is innocent of the charge for which he or she was convicted.”

Needless to say, absolute pardons are rare. Yet within a recent thirty-day period [Governor Ralph Northam granted three](#). Two of the beneficiaries had been convicted of murder: Emerson Stevens, for abducting and killing a rural Virginia woman in 1985, and [Joseph Carter](#), for bursting into a Norfolk motel room in 1989 with an accomplice and robbing and killing an occupant. The third, [Bobby Morman, Jr.](#), was convicted of being the triggerman in a 1993 Norfolk drive-by shooting that fortunately injured no one. Here are some of the pertinent details:

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### Emerson Stevens

(click [here](#) for the *Washingtonian's* comprehensive two-part account.)



Mary Harding, a rural Virginia bookkeeper, disappeared on a day in 1985 when her husband, a fisherman, was reportedly at sea. Four days later her decomposing body was found in a marsh. It had been weighted down with a cinder block. Her back bore deep slashes, and a rope and chain bound her neck and right leg.

There were no obvious leads. But Mary’s husband said that a local fisherman, Emerson Stevens, a “loner and a drinker,” had been at Mary’s funeral and seemed “shaken.” A neighbor mentioned that she

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once caught Stevens looking through her bedroom window. And that was pretty much it.

When questioned, Mr. Stevens told the detective that he was home all of that fateful day, and repeated his assertion when polygraphed. But when informed that he failed, Mr. Stevens changed his story. He said that he actually drove to his sister's that day and briefly parked near the victim's home to urinate. Analysts found a single strand of hair in Mr. Stevens' pickup. Using microscopy they matched it to the victim.

Stevens was tried for murder. One expert confirmed that damning match. Another testified that a specialized hunting knife Stevens was known to carry could have inflicted the slashes. And another suggested that the victim's body could have floated from Mr. Steven's dock to where it was recovered, ten miles away. Mr. Stevens testified. He admitted lying to the detective, but only to get him "off his back." As for the knife, he said he had lost it. Several defense witnesses swore that they had dinner with Stevens that evening, and wife confirmed that he was home that night.

Jurors hung. But on retrial one of Stevens' cousins testified that he saw the defendant's truck at the victim's home on the day of her disappearance. Worse still, Mr. Stevens was again caught lying, this time on the stand. It turns out that he didn't "lose" the knife: his father testified he threw it out because his son "was hassled so bad."

Mr. Stevens was convicted of murder. In 2009, nearly a quarter century after his imprisonment, the Virginia Innocence Project took on his defense. And in time they thoroughly debunked the State's case. Only two years after Mr. Stevens' conviction, the cousin who supposedly saw his truck at the victim's home pled guilty to obstructing justice for testifying that he never asked about a \$20,000 reward offered in the case (in fact, he repeatedly did.) And the State withheld material evidence that contradicted their case. An FBI report estimated that the body floated no more than 600 yards. The medical examiner was now certain that the slashes weren't produced by a knife, but were inflicted by a boat propeller after Mary's death. Over the years, microscopic hair comparisons had led to many wrongful convictions and were thoroughly discredited.

Thanks to the project's work Mr. Stevens gained parole in May 2017. Three years later a Federal appeals court affirmed his right to pursue a claim that Virginia violated his right to a fair trial (956 F.3d 229, 2020.) Here's what one of the Judges wrote:

There is now no reliable physical evidence, the prosecution's theory that Stevens's knife caused the back wounds is no longer viable, the jury could seriously question at least one prosecution witness's credibility based on his false testimony, and the FBI report at least makes the prosecution's theory that the body traveled ten miles much more difficult to believe...At a minimum, Stevens

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has made a *prima facie* showing that, based on the evidence as a whole, no reasonable jury would have convicted him of this crime.

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## Joseph Carter

(click [here](#) for the National Registry account and [here](#) for the UVA summary)

What's known for certain is that on November 19, 1989 two men burst into a Norfolk motel room and robbed its occupants, stabbing one dead and clubbing the other. When first questioned, neither the survivor (he said both his assailants were masked) nor a female resident of the motel who got a glimpse of the duo (she said neither was masked) said they knew either of the robbers. Crime scene investigators found fingerprints in the room. They belonged to a known local man, Mark Pavona.



Pavona was interviewed by detective Glenn Ford. He denied being involved. However, Pavona said that two acquaintances, Joseph Carter and Brian Whitehead had told him that they planned to commit the robbery. Detective Ford displayed their photos to the survivor and the witness. Both identified Joseph Carter as one of the assailants.

Physical evidence was otherwise lacking. At trial neither the survivor nor the witness could identify Whitehead. So he was acquitted. But both positively identified Carter. They conceded knowing the defendant, who had once lived at the motel. In fact, the witness said that she spoke with Carter's wife about the crime on the day after. As for the survivor, he admitted not recognizing Carter when he was supposedly masked. But in court, his "body shape" and "the way he spoke" cinched it. It was Carter, allright.

Carter and his wife testified that they were home with their kids when the murder occurred. But that wasn't enough to carry the day, and jurors convicted Carter of murder.

In 2011, as Carter began his second decade of imprisonment, the investigating detective, Glenn Ford, then retired, [was sentenced to twelve and one-half years in Federal prison](#) for extorting money from drug dealers while he served as a cop. By then his reputation had been shattered by the notorious "[Norfolk Four" case](#), in which he gained the convictions of four Navy vets for a 1997 rape/murder by hounding them into falsely confessing. (They were conditionally pardoned in 2009 and fully exonerated in 2017.

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Ford's downfall reignited things, and the Virginia Innocence Project took on Carter's defense. Pointing out some glaring flaws in the ex-detective's work – for example, he didn't investigate Pavona, whose fingerprints were found in the room – they secured Carter's parole in 2016. Two years later the female witness admitted that she had succumbed to pressure to identify Carter. "The truth is that I have no idea who committed this crime, because I did not get a good look at either man."

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## **Bobbie Morman, Jr.**

(click [here](#) for the National Registry account and [here](#) for the UVA summary)



On August 4, 1993 gunfire erupted from a car occupied by several young men as it passed by a Norfolk residence. Three persons were standing outside; fortunately, none were struck. Each told police that the gunman was Bobbie Morman, Jr.

Mr. Morman went to trial. His accusers' accounts varied. One, who initially told authorities that she didn't see Bobbie Morman's face, testified that she was certain that he pulled the trigger. A second witness testified that he "figured" it was Bobbie Morman. When cross-examined, he conceded that he "was not exactly" sure. But the third witness was certain that the shooter was Morman.

Surprisingly, all of the vehicle's occupants testified. Each denied that the defendant had been in the car. One, Glen Payne, swore that *he* did the shooting and his companions confirmed it. Another defense witness said that he and the accused were playing video games at the time of the shooting. All this affected the jurors, who posed many questions to the judge during deliberations. But they nonetheless convicted.

In 2014, as Bobbie Morman began his second decade in prison, Mr. Payne, the confessed triggerman, [told a television host](#) that, as he had said "time and time" again, *he* was the shooter. He had only intended to scare, not to harm: "I shot in the air, just to scare them...No one was hurt... Bullets in the air...Pow...That's all it was."

That got the Virginia Innocence Project involved. Mr. Payne informed them that Bobbie Morman's lawyer had passed on instructions to not contact the police before the trial. As for the witness who "figured" the shooter was Bobbie Morman, he was now "even less less confident that I was right." All that had an effect, and Morman was paroled in 2016.

In Virginia qualifying for an “absolute pardon” requires that applicants have pled not guilty (that is, were convicted at trial) and always asserted their innocence. That describes the Norfolk Three. Yet it took decades for justice to prevail. Mr. Stevens was released thirty-one years into a 164-year term. Mr. Carter served twenty-six years of a sentence of two life terms plus 30 years. Mr. Morman, who wasn’t accused of hurting anyone, served twenty-three years, nearly half of his stiff, 48-year term.

How did three innocent men get locked up? After all, their culpability seemed questionable from the start:

- Of the three, only Mr. Stevens was connected to the crime scene by physical evidence. Still, that microscopic hair match proved by itself insufficient. Two decades after his conviction, innocence project lawyers learned the rest of the story. “[A box of potentially exculpatory case evidence](#)” replete with materials that Stevens’ lawyer never saw contradicted prosecution assertions about the wounds on the victim’s body and, as well, put the lie to its ten-mile voyage.

And there was more. According to [an in-depth piece in the Washingtonian](#) there were at least three very “viable” suspects other than Stevens, most prominently the victim’s husband. A potential witness had also complained that the investigating detective pressured him to lie about Stevens’ whereabouts during a critical timeframe (he was offended and refused.) Indeed, coercion seemed part of that cop’s toolbox. Years later a judge would excoriated the same detective for mercilessly bullying a 65-year old woman into falsely confessing to murder.

- Witness intimidation also helped doom Joseph Carter. According to the Virginia Innocence Project, “coaxing, pressuring, and even threatening witnesses to obtain the evidence and testimony necessary to secure convictions” [was how Norfolk P.D.’s Robert Ford went about his business](#):

“There was no physical or forensic evidence tying Mr. Carter to the murder; the Commonwealth instead relied solely on tainted witness testimony obtained by disgraced former Norfolk Detective Robert Glenn Ford and his partner. Instead of taking time to sufficiently investigate the murder, or critically evaluate witness testimony, the Commonwealth permitted Detective Ford to elicit false witness testimony that wrongfully implicated Mr. Carter in a crime he did not commit.”

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In his pardon message, Governor Northam noted that the detective “used his official capacity to extort witnesses in order to yield high solvability percentages.” After gaining Mr. Carter’s conviction he went on to persecute (and prosecute) the “Norfolk Four,” a notorious case that in time sealed his reputation.

- Mr. Morman faced far less serious charges. But as we suggested in “[The Usual Suspects](#)”, having a prior felony conviction puts defendants in a fix. Among other things, it can be used to impeach their testimony should they take the stand. And Mr. Morman’s alleged wrongdoing seemed virtually identical to the conduct that brought on that earlier conviction. (It was for “attempted malicious wounding.”)

That made for a heavy lift. It undoubtedly blunted the force of the testimony by the car’s occupants. Mr. Morman was also poorly served by the legal system. Mr. Morman’s lawyer reportedly advised that Glen Payne, the self-professed shooter, should wait until the trial to tell his story. Had Mr. Payne promptly alerted police, as he later said he intended, prosecutors would have had time to look into things. But that surprise testimony likely affected the judge, whose comments to Mr. Morman at sentencing (e.g., “Who do you think you’re talking to? I’ve taken time to listen to your parents and all the other witnesses...You asked for a jury trial, and you got a jury trial...”) reflected a great deal of skepticism. We’re not suggesting that Mr. Morman was a “nice” guy, but forty-eight years for a shooting that hurt no one seems exceptionally stiff.

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Good old-fashioned police work would have spared our three victims. But posts in our “[Quantity and Quality](#)” special section sound a deep note of warning. For example, “[Why do Cops Lie?](#)” focused on two eye-popping examples from the Big Apple: detective Louis Scarcella, whose “propensity to embellish or fabricate statements” led to the reversal of eight convictions, and detective Kevin Desormeau. “Once regarded as among the city’s most effective street cops,” [Desormeau was ultimately convicted of lying to a grand jury](#) for falsely testifying that he witnessed a sale of drugs.

Why do detectives go astray? Let’s self-plagiarize. When serious crimes aren’t promptly resolved, pressures mount from within and outside the ranks, to say nothing about forces within oneself. That’s when “confirmation bias,” the natural tendency to “interpret events in a way that affirms one’s predilections and beliefs” rears its ugly head. Should detectives fall prey, they may accept “evidence” that might otherwise seem sketchy or implausible (“[House of Cards](#)” and “[Guilty Until Proven Innocent](#)”). And as our self-professed guardians rush along, pressuring witnesses and turning “maybe’s”

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into “yes’s”, what’s inconsistent must be disputed or ignored (“[Can We Outlaw Wrongful Convictions II](#)”). That’s how a “house of cards” gets built (“[The Ten Deadly Sins](#)”).

We left out a tricky part of the puzzle: officer differences. In the writer’s twenty-plus years of investigating crime, nearly every cop and Fed with whom he worked was honest and trustworthy. Yes, there were a (very) few exceptions, whom he studiously avoided. In our experience, the NYPD detectives mentioned above are far from the norm. Yet as we recently set out in “[Third, Fourth and Fifth Chances](#)”, some agencies seem unwilling to reign in cops who repeatedly misbehave. Getting an agency to question the practices of highly “successful” detectives who repeatedly solve serious crimes may be tough. You see, that same “confirmation bias” – and self-interest – affects superiors, indeed, [the whole chain of command](#).

We’ve also ignored another difficult issue. Abundant evidence can point the wrong way. It took three trials before jurors convicted [Horace Roberts](#). Set up by his lover’s husband and another man, [who allegedly fabricated enough evidence to distract police from their own culpability](#), Mr. Roberts spent more than twenty years wrongfully locked up for murder. Yet according to the California Innocence Project, [it wasn’t the cops’ fault](#):

Mr. Harris [the victim’s husband] actually set our client up. It was evidence that was fabricated by, we believe, the actual killer. On top of that...he actually had the audacity to come in and testify at our client’s parole hearings, that he be kept in prison longer...it’s certainly something can’t be put on the police department or the district attorney’s office in terms of evidence; it was evidence that was actually fabricated.

However, we continue to be skeptical that cops and prosecutors did such a great job to start with. It seemed to us that the case against Mr. Roberts, which relied exclusively on circumstantial evidence, was thin to start with. That, after all, is why two juries couldn’t agree. This concern – that appearances *can* and often *do* mislead – [underlies the present struggle between cops and prosecutors in Chicago](#) over an August 15, 2021 shooting that killed a 7-year old girl and wounded her 6-year old sister. Police claim that their case against the alleged murderer, a parolee, is “solid”: prosecutors disagree. So the cops are threatening to go to court *without* the lawyers. That’s a really, *really* rare step. And if there eventually *is* a conviction, we hope that there will never be a need to examine how yet another miscarriage of justice came about.

Really, when one considers public and agency pressures to solve serious crimes, and the personal idiosyncrasies of cops and prosecutors alike, it may seem a miracle that wrongful convictions aren’t an everyday occurrence. That they’re not supports your

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writer's belief that a sense of craftsmanship still prevails in policing. Insuring that this continues, and that careless practitioners and possible lapses are promptly brought to light, is every cop's Job #1.

\* With apologies to Admiral Farragut for filching his classic line: "Damn the *torpedoes*, full speed ahead!"