

## *The Lesly Jean Story: A Quest For Truth, A Quest For Justice*

By Rebecca J. Britton



Lesly Jean in 1989, seven years into his nine years of wrongful incarceration.

At the age of 12, Lesly Jean came to the United States with his father to escape the poverty of Haiti. With the promise of democracy and freedom in the United States, Lesly was determined to make a future for himself and joined the Marine Corps at the age of 19.

In 1982, Lesly Jean was a lance corporal stationed at Camp Lejeune, had been overseas, and had earned a good conduct medal. Lesly was building the future he had dreamed of until he walked into a Dunkin' Donuts in Jacksonville, North Carolina, where the local police chief thought he might match a composite sketch of a rape suspect. Several months later, he was no longer a free citizen serving his country; he was a convicted rapist serving life.

Lesly believed in our system of justice. He cooperated fully. What he did not know, and what no one fully knew until years after his conviction and two life sentences, was that the rape victim who so firmly identified him at trial was hypnotized a short time after her assault. Her identification of her assailant dramatically changed in a myriad of ways through the hypnosis. She was hypnotized by a police officer who had taken a two-week seminar and decided to try out his new-found skills in order to enhance her memory.

While in prison, Lesly was fortunate enough to come in contact with attorney Paul Green. It was Paul Green, through Prisoner Legal Services, who discovered audiotapes and written notes from the police hypnosis—evidence never disclosed to the defense counsel at trial, in patent violation of Jean's right to due process of law under *Brady v. Maryland*.<sup>1</sup>

This evidence clearly proved Lesly Jean was planted in the victim's memory as her rapist. The victim was never able to identify Lesly prior to the hypnosis, but became dead certain it was he after the hypnosis.

Amazingly, the police never turned this information over to the prosecutor. The Fourth Circuit Court of Appeals recognized this injustice, and Lesly was released after spending nine years in prison.<sup>2</sup>

When Lesly was released, there was no press, no lights, and no cameras. Lesly was released on what many viewed as a technicality with no finding of innocence. In fact, when he attempted to retrieve the few items he had from the police department, they refused to give his military ID and dog tags back to him.

Lesly Jean left prison in July 1991 shackled with a conviction of rape, a dishonorable discharge from the Marines, nine years of time for which he had no real explanation when searching for a job, and the sad, traumatic, depressing memories of a life that was, but never again would be.

Lesly's dreams for his future in this great country were shattered, as was his life. His mother was murdered while he was in prison, and he had become distanced from his father and brother. He went back to New York City, where he grew up, because he had nowhere else to go.

In 1993, Paul Green contacted my partner, Rick Glazier. Rick and I decided to take Lesly's civil case. We sought to accomplish a number of things for him. First, we sought to clear his record with the military. Second, we sought to hold the police officers who withheld the evidence that would have cleared him responsible for their actions. Third, we sought to prove his innocence.

After considering the circumstances of his conviction and wrongful imprisonment, the military discharge board recognized the patent injustice. After some of the usual red tape and delays, the board upgraded Lesly's discharge to honorable.

Rick and I also filed a lawsuit against the officers who betrayed Lesly's civil rights. The Eastern District dismissed Lesly's

case, finding the officers had qualified immunity because they could not have known the hypnotically-induced identification by the victim should have been turned over to the prosecutor. We went to the Fourth Circuit three times, twice *en banc*, and to the U.S. Supreme Court twice.<sup>3</sup>

When the Court finally recognized that the officers should have known to turn this information over, an evenly divided Fourth Circuit (6–6) then decided not to recognize a legal claim against these officers.<sup>4</sup> The Court held that police officers have no independent

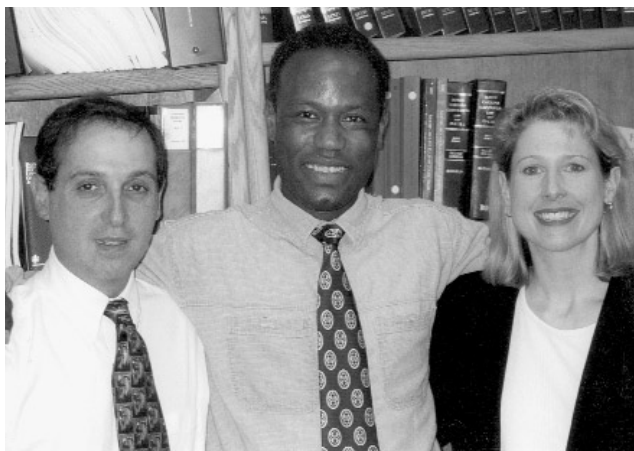
Brady duty to disclose exculpatory evidence to prosecutors.<sup>5</sup> Lesly Jean's release from prison after nine years for a crime he did not commit was supposed to be enough.

On January 8, 2001, the U.S. Supreme Court declined to consider Lesly's case any further, and the Fourth Circuit's ruling stands—in direct conflict to decisions from all other circuits that have ruled on this question.

Lesly had no justice from the officers who betrayed his civil rights. They were not held responsible for withholding evidence that would have set him free. Despite this, Lesly was determined to prove his innocence and clung to that determination and hope above all else. He often referred to his efforts to survive as “fighting fire with feathers.” But, he kept hope just the same.

Fortunately, there was a third front in this battle for justice, and that was going through the state pardon process to prove Lesly's innocence. In late 1999, we found that the criminal evidence from Lesly's case was preserved and sitting in a box in the clerk's office in Jacksonville. This evidence included the rape kit, the victim's nightgown with semen stains on it, and vials of blood taken from Lesly Jean.

In January 2000, we began the fight to allow DNA analysis. This fight was not with the district attorney's office, but with the police officers that were civilly sued. After much delay and many motions and superior court orders, we finally obtained an order for DNA testing on November 7, 2000. In December, the evidence was transported by a retired SBI agent to LabCorp, which conducted its analysis. On January



Jean in 2000 with his attorneys, Academy members Richard Glazier and Rebecca Britton of Fayetteville. Photos courtesy of Paul M. Green.

12, four days after the U.S. Supreme Court denied consideration of Lesly's case, LabCorp called with the results of the DNA analysis—after 19 years, Lesly Jean was conclusively cleared.

Amazingly, the DNA results did not end this delay of justice. Once the results were reported and Lesly's petition for pardon was filed, the DNA results were questioned by the Onslow County District Attorney. We had originally offered to conduct the testing in a cooperative effort with the district attorney, but the SBI refused to conduct the test. Now, the state would not give its blessing to any pardon until secondary state testing was conducted.

Angered and outraged, I called Lesly to tell him he would have to fly back to North Carolina from his home in New York to have a swab taken from his mouth so the SBI could conduct its own DNA analysis. While his wife wept in the background, Lesly proudly told me he would take a thousand tests and wait as many years if he had to, in order to prove his innocence.

Lesly flew down to give yet another sample for DNA analysis. After the testing, we went with Paul Green to visit the people at Prisoner Legal Services. We also drove over to Central Prison and sat in the parking lot for a while. Lesly and I then had a cup of coffee before I took him back to the airport.

Lesly said some amazing things to me that day that I will never forget. He told me: “I've come to understand this thing is much bigger than me. My story will change things, won't it?” We then talked about his hope that a law would be passed to allow DNA analysis for inmates who insist on their in-

nocence, and one that would provide access to DNA testing early on in the process. We talked about wanting to increase the compensation in this state for people who are wrongfully convicted: it was then limited to \$150,000, with a maximum of \$10,000 per year of incarceration upon a Pardon of Innocence. Lesly then said: “You know, I now understand that proving my innocence wasn't supposed to happen in my time, but in God's time.”

On February 9, 2001, Governor Easley signed Lesly's Pardon of Innocence, stating that Lesly had “paid a debt to society which he did

not owe.” On March 29, 2001, the Industrial Commission ordered that Lesly be compensated at the statutory amount of \$10,000 per year (\$88,075.00) for his wrongful imprisonment, and it retained jurisdiction pending clarification of the compensation statute regarding costs and loss of income during incarceration.

Due to Lesly's story and that of others, like Ronald Cotton, the Innocence Protection Act has been passed. It allows DNA testing for inmates and provides for DNA testing early on in the criminal process. This law should prevent the injustice that happened to Lesly from happening to others. The legislature has also included in this year's budget (passed on September 21, 2001) an increase in the statutory amount allowed for persons who are wrongfully convicted from \$10,000 per year to \$20,000 per year, retroactive to January 2001—so it will benefit Lesly Jean.

The late Judge Sam Ervin of the Fourth Circuit Court of Appeals referred to Lesly's case as one of “justice betrayed.” I know Lesly has felt betrayal and anger—he has every right to. But somehow he always manages to pull himself out of that, and no matter how bad things get, he finds a way to cling to the hope and the faith that truth and justice will find their way to him. In many ways, they finally have. ■

<sup>1</sup> Brady v. Maryland, 373 U.S. F.3d (1963).

<sup>2</sup> Jean v. Rice, 945 F.2d, 82 (4th Cir. 1991).

<sup>3</sup> Jean v. Collins, 107 F.3d 1111 (4th Cir. 1997); 155 F.3d 701 (4th Cir. 1998) (*en banc*), vacated and remanded, \_\_\_ U.S. \_\_\_ (June 1, 1999); 221 F.3d 656 (4th Cir. 2000) (*en banc*).

<sup>4</sup> 221 F.3d, 656.

<sup>5</sup> *Id.*