

**LEGAL MATERIAL**

To: The Governor of South Australia  
Government House, North Terrace, Adelaide  
c/- GPO Box 2373  
Adelaide SA 5001

From: David P Jarrett  
(DCS No. 69405)  
Yatala Prison  
c/- 1 Peter Brown Drive  
Northfield SA 5085

re: Formal Petition to State's Governor to rectify miscarriage of justice.

20 APRIL 2008

Dear Governor for and of South Australia

I respectfully request your assistance, pursuant to the provisions of Section 369 of the Criminal Law Consolidation Act, 1935 South Australia, to rectify a judicial conviction of guilt, via jury finding, for the crime of arson.

It has taken me many attempts over several years to learn about, then obtain the proof I needed to qualify my complaint of miscarriage of justice and wrongful conviction.

Such evidence includes police statements, trial transcript, witness statements and crime scene photographs (Crown Exhibit).

If at all possible, that you exercise your legal powers to formally direct said arson conviction be quashed, after investigating this matter, or that you might direct the matter to the Attorney General for South Australia and/or State's DPP for Reference to Judicial Determination with your request for said conviction to be overturned.

Thank you

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20 APRIL 2008

## PETITION FOR MERCY

Pursuant to the provisions of the Criminal Law Consolidation Act 1935, Section 369, I submit this Formal Petition to the Governor of South Australia, and respectfully ask the Governor's legal powers be exercised to in effect quash, or at the very least set aside my current criminal conviction for 'arson', dating as at mid 1993 trial and conviction.

I ask the Governor's appreciation for my lack of legal knowledge and attempt to write in legalese.

My complaint of 'wrongful conviction' and 'serious miscarriage of justice' relates to my 1993 arson conviction:

Before- Judge Lee (Adelaide District Court)  
Numbers- 2142/92, 876/93  
Sentencing- 16 June 1993  
CLCA- Section 85(1) arson

This complaint will qualify my claims of police officer 'perjury', police officer 'tailoring of evidence', crime scene photographer 'negligence' and 'misleading reporting of crime scene evidence', prosecutor presenting 'false and seriously misleading evidence' to jury, prosecution 'failure to present facts' rather than tailored and fraudulent evidence to jury, prosecution 'failure to present all known material facts/evidence' to jury, defacto 'non-disclosure of material facts and evidence' to jury thereby 'tailoring prosecution's case to deny me a fair and just trial', and 'real chance to prove innocent of crime and receive "not guilty" verdict'.

## BRIEF BACKGROUND

- 1) Date of arson : 10-01-1991 at Hungry Jacks Restaurant (railway carriage).
- 2) Date of Official Fire Report :  
10-01-1991, by Constable Caunce.
- 3) Initial Responding Uniforms :  
Constables Caunce and Kitto.
- 4) Mid July 1992 : Jarrett arrested for murder (unrelated matter).
- 5) Late July 1992 : 1st. time Jarrett 'questioned' by police about said arson.
- 6) December 1992 : Committal Hearing, arson charge.
- 7) 25 May 1993 : Arson Trial.
- 8) 16 June 1993 : Arson Sentencing.
- 9) Mid 1994 : Murder Trial.
- 10) approx. 2002 : Jarrett obtains archive files re arson and murder, from original solicitor's files (David Stokes), after Stokes sold his Legal Firm.
- 11) After obtaining evidence I needed, from David Stokes' office files, which I had been trying to obtain for a long time, I sighted some evidence for the first time, including fire reports, officer statements, hospital records, crime scene photos (had only seen specific photos directed to look at whilst in trial witness box).

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- 12) Repeated written requests to David Stokes over several months prior to trial, for all fire, police, medical etc. statements and reports, got me Stokes' response 'not received from Crown yet'. I later proved (via 2002 archive file), that Stokes received most of that shortly after Committal Hearing but kept denying such to me. I can prove this via my 'original' hand-written letters to Stokes which his office 'stamped' as "received" with date, which I obtained from 2002 archive file. Also, Stokes' letters to me that Crown had not provided material yet. If required I would gladly show such documents to your investigator.
- 13) What this means is that I went to trial not even knowing or ever seeing much of the official State's evidence.
- 14) After reading, trying to understand, try to investigate and try to obtain legal meanings and processes about such evidence, I then applied for Legal Aid Funding. Their Funding Refusal stated 'my representation was adequate by David Stokes and properly dealt with by David Stokes', thereby shutting the door on me. After Judicially complaining about Legal Services' treatment of me (relating to my 1994 murder trial and prior to trial), a few years ago I have had significant problems even trying to see a duty solicitor, the LSC Director "instructed" duty solicitors "not to visit me". I was then forced to conduct a full investigation as far as I could re arson matter.
- 15) Aside from David Stokes' conduct prior to arson trial, my trial lawyer was Michael Barnett. David Stokes dumped my trial representation on M. Barnett on 19-05-1993, only days before trial. M. Barnett wrote a letter to DPP's trial prosecutor stating that he'd just been given my trial work.
- 16) This is significant because of document facts I have now seen. I suspect some of the document evidence I will indicate later, were not even seen by M. Barnett prior to or during trial. Additionally, though conduct by David Stokes denied me adequate or competent trial representation, that does not excuse the actions of State Government employees including trial prosecutor, some police officers and a Royal Adelaide Hospital Doctor.
- 17) Cite: H.C. of Australia  
Dietrich v The Queen  
[1992 177 C.L.R.]  
page 299  
"RIGHT TO A FAIR TRIAL  
The right of an accused to receive a fair trial according to law is a fundamental element of our criminal justice system (33)."

### THE EVIDENCE

- 18) Crown's case based substantially around a) "staged crime scene" claim re broken train carriage window, and b) "told different reasons when questioned" about why I went to investigate train carriage.
- 19) On day of fire told police [1] 'to investigate light on in train'. During trial I reiterated [2] 'went to investigate light in carriage'. That is the only answer I've given for why went to train.
- 20) PROOF of my initial answer [1] above, is clearly written on Police Fire Report dated 10-01-1991 by officer Counce, page 2 at top portion:  
[3] "located cleaner who stated that he observed a light in the train carriage and upon investigation was confronted..."
- 21) PROOF of my initial answer [1] above, is clearly written on Statement by Police Officer K. Modra (CIB), dated 07-08-1992:  
[4] "...he advised that he had seen a light in the railway carriage..."
- 22) But neither Police Fire Report document or its contents were presented to jury, nor Statement or its contents by K. Modra (CIB), presented to jury. I also did not know they existed and I suspect M. Barnett also did not know they existed.



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- 23) Police Officer Caunce in his [5] Statement dated 07-08-1992 declared:  
[6] "...this assault had taken place when Jarrett had gone to investigate a fire inside the railway carriage..."
- 24) But then in trial proper Caunce first declared:  
[7] "Q: ... first of all whether you made notes of that conversation.  
A: No, I did not.  
Q: What is your memory about your conversation with Jarrett.  
A: Fairly good.
- Then when questioned by prosecutor Rice:  
[8] "Q: Did he say why he had gone there.  
[9] A: To clean it."
- 25) The prosecutor failed to inform the court and the jury that its significant material witness, a police officer (no less), had lied to the court and seriously misled the jury. Perjury at [7] above "fairly good", and a lie at [9] above.
- 26) Caunce has therefore officially provided 3 very different answers to the same question. Answer 1. at [3] above (fact). Answer 2 at [6] above (lie). Answer 3 at [9] above (lie).
- 27) The prosecutor has an absolute legal obligation to inform the court and jury of any such differences between its witness' Police Statement and trial answers, yet the prosecutor failed to do so. Why then is the prosecutor not complicit in the improper conduct of its own witness, especially when the prosecutor did and said nothing to inform the court or jury of said differences?
- 28) Only when Caunce questioned by defence M Barnett did I become aware of such difference in answers (as I still had never seen any statement by Caunce), additionally that's also when jury informed of such different answers by Caunce:  
[10] "Q: The same as it is, the sequence and the detail you have recorded in your statement, it is the same as you have told the jury about?"  
[11] "A: Yes."  
[12] "Q: You told the jury that Mr Jarrett told you that he had gone to the carriage to clean it."  
[13] "A: Yes."  
[14] "Q: I suggest to you you put in your statement that Mr Jarrett had told you that the assault had taken place when he had gone to investigate the fire inside the railway carriage, do you agree that that is in your statement.  
A: It could be."  
[15] "Q: You appreciate there is a difference between what you have told the jury and what you have recorded in the statement about the conversation.  
A: Yes."  
[16] "Q: Does that refresh in your memory what he said to you.  
A: Yes, it would be."
- 29) Caunce continues to mislead the jury at [16] above and in no way tries to tell the truth about my actual reason for going to the train, which is directly known by Caunce re [3] above.
- 30) The prosecutor had obvious knowledge that I was telling the truth about what I did actually say to Caunce on day of fire, re why I went to train carriage.
- 31) Chain of Fact re [1], [2] and [3] above:  
Caunce - in statement and trial said 'he spoke to me'.  
Kitto - in statement dated 07-08-1992 said [17] "Caunce then had conversation", and in trial said [18] 'he did not speak with me'.  
Modra - in statement at [4] above confirms [1] and [3] above.

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To prove from whom Modra received details of [4] above, refer to the following.

Caunce Statement:

[19] "... Elizabeth CIB arrived then they had a conversation with FCC Kitto".

Kitto Statement:

[20] "...D910 arrived at the scene and I had a conversation with them".

- 32) Therefore, I told Caunce [1] above. Caunce then informed Kitto of [1] above. Kitto then informed Modra of [1] above.
- 33) Modra was not questioned about [4] above from police statement (by prosecutor), to further discredit Caunce and prove Caunce was continuing to mislead jury. I certainly had not ever seen Modra's statement until 2002 archive file obtained. Jury therefore was still being fundamentally misled and seriously and unfairly prejudiced by not being properly informed about such significant material facts known to the prosecutor as [3] and [4] above.
- 34) Modra's Statement was not shown to jury.
- 35) I was repeatedly badgered by prosecutor during trial questioning, about Caunce's two versions of me going to train carriage, and my trial answer of 'to investigate a light on' resulted in prosecutor's claims and accusations of tailoring my evidence.
- 36) Royal Adelaide Hospital Doctor R. Behrens' Statement dated 20-08-1992 stated:  
[21] "Jarrett's behaviour during examination indicated to me that he was agitated and upset."
- 37) However, during trial questioning stated:  
[22] "Q: How long were you actually with him..  
A: Ten to fifteen minutes, around that time."  
[23] "Q: Would you describe his demeanour, as you were doing that.  
A: He was remarkably calm and self-possessed, and didn't seem at all agitated or concerned."
- 38) Reiterated [23] above by prosecutor when questioning Jarrett during trial:  
[24] "Q: That doctor told us on Tuesday 'he was remarkably calm and self-possessed. He didn't seem at all agitated or concerned.'"
- 39) Not only has the Doctor significantly changed his evidence, comparing [21] above to [23] above, but this fact is also not challenged by prosecutor.
- 40) Prosecutor's professional witness has clearly lied to jury, mis-represented medical file evidence which was also known to said Doctor, it was his own Statement, seriously and significantly misled jury, and yet prosecutor failed to notify or inform court and jury of such differences.
- 41) How can that prosecutor be acting according to Supreme Court Rules (Duty of Prosecutor), when known material facts are hidden from the jury by prosecutor and substituted with 'tailored', 'false', 'misleading' and 'inaccurate' evidence from Crown's own witnesses?
- 42) It is therefore impossible for me to receive a 'fair' trial according to Law.
- 43) Regardless of my trial lawyer M. Barnett's lack of knowledge of the existence of certain Crown evidence (documents), or content of such document evidence, or negligent conduct of my solicitor David Stokes which fundamentally denied me adequate, competent or reasonable legal defence representation prior to and during trial, the conduct by the State's prosecutor Mr Rice and some of State's professional witnesses, was of such a degree of impropriety and abuse of position and agency to suggest 'malicious prosecution' and 'criminal disregard' towards factual evidentiary representation of Crown's evidence to jury in criminal trial proceedings.
- 44) Crime Scene Investigator M. Pollard declared in his Statement dated 10-11-1992:  
[25] "...employed by NZI Insurance...since February 1991."



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- [26] "...attached to the Technical Services Division and have been since January 1982."  
[27] "At approximately 6.10am" (attended crime scene).  
[28] "...it was discovered that on the southern side the fourth window from the western end that the perspex window had become loosened on the bottom edge. (photograph 9 refers)."  
[29] "On entering the carriage from the western end (photographs 10, 11 and 12 refer)."  
[30] "In doorway between the western end and the eastern end of the carriage but still in the western end was located a plastic squeeze bottle..."  
[31] "Towards the eastern end of the carriage in the eastern end on the southern side was a round steel container..."

45) M. Pollard declared during trial questioning:

- [32] "Q: Did you make notes of your attendance...  
A: I did."  
[33] "Q: When were those notes made.  
A: Whilst I was examining the scene."  
[34] "Q: Your principal function was to examine the railway carriage...  
A: Yes'  
[35] "Q: Did you examine one or a number of doors to that carriage...  
A: Yes,"  
[36] "Q: Did you conduct an examination of that window.  
A: Yes, I did."  
...  
[37] "Q: In a lot of respects, these photographs can speak for themselves.  
...  
[38] "Q: If you would proceed through the balance of these items..."  
"A: The next ... HJ2 ... was a full can..."  
[39] "Q: HF4.  
A: HF4 was a paper sample used as a control."  
...  
[40] "A: ...I actually made an error ... because I took it from the rear section of the truck..."  
[41] "Q: Was that a paper towel.  
A: Yes, from the same source as HF4."  
[42] "Q: So that also has the distinct possibility of having been contaminated by petrol.  
A: That's correct."  
...  
[43] "A: ... And HJ6, which is a pair of shoes from Mr Jarrett.  
Q: At what stage did you collect those from him.  
A: Can't recall.  
A: ... I have not recorded when I actually collected..."  
[44] "Q: In any event they (shoes) were taken from him that morning at Hungry Jacks, upon his return.  
A: Yes."

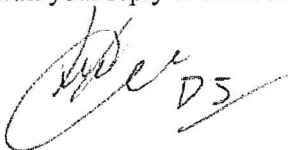
- 46) Pollard was in last few weeks of job when started investigating crime scene ([25] above).
- 47) After many years in this field should be a professional and know exactly how to perform his duties expertly, and all required procedures ([34] above).
- 48) Claims to have properly examined doors and locks, lights and switches, metal can and lid, match box and window (photograph 9), and yet not a single item was finger print tested. There were no photos of door locks or light switches to support his claims relating to them. With no visual evidence to qualify his claims, how can a Court justify such claims as material evidence/fact? His words are not sufficient, especially when his conduct proves professional negligence and procedural neglect, and investigatory incompetence.
- 49) Claims to have examined 'ajar window' (at [28] and [36] above), and somehow failed basic visual examination. Refer crime scene photograph 9.

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- 50) The exterior yellow paint around window frame. There is absolutely no smoke or soot residue on yellow paint. Suggesting that window was not broken at time of fire, and was only broken after smoke had been subdued. Uniform police stated 'thick, black smoke pouring out both end doors', yet this window shows no such signs.
- 51) No residue testing on exterior surface, negligent.
- 52) In photograph 9 look at the 'clean wood' of window frame (unpainted), which would be covered by perspex edge and window putty if window was undamaged. The wood is 'clean', no sooting or evidence of smoke/soot staining, suggesting window not damaged prior to or during fire.
- 53) Suggest crime scene tampering.
- 54) Jarrett in hospital when window was actually damaged and could not have been damaged by me, which is a major point from the Crown that I 'staged crime scene by breaking that window'
- 55) Within Pollard's Official Report there is no indication that Pollard contaminated "HJ4 or HJ5". This was a significant material fact, legally required to be reported Officially, yet not disclosed to defence until trial proper. That is therefore a tailored report improperly not disclosing all investigation notes from crime scene, non-disclosure of 'chain of custody' of all crime scene testing equipment ([39], [40], [41], [42], [43] and [44] above), using contaminated 'controls', no chain of custody for collection of "HJ6" (work boots). From whom were boots collected, who collected boots, what time, what date, at what location, and their is no 'field receipt' for collection of boots. What an absolutely negligent and unprofessional and incompetent crime scene investigation. There is no way correct Police Procedure was complied with, yet such impropriety was still used by The State to wrongfully and unlawfully prosecute me for this charge.
- 56) Constitutional Right of a fair and just trial were denied to me by the Crown during trial, and by The State.
- 57) The Crown, on behalf of The State, had clear evidence of criminal abuse of power by government employees, thereby employing complicity by the trial prosecutor to effect a conviction.
- 58) Trial prosecutor did not comply with Supreme Court Rules whilst prosecuting me, used perjury by some Crown witnesses to taint and mislead jury during trial, and made absolutely no attempt to inform the Court or jury when its own witnesses contradicted/significantly changed evidence from their statements with witness box evidence during trial. That is a requirement of the Crown, yet not performed by trial prosecutor.
- 59) There was also no forensic testing for smoke/soot from "HJ6", or any of my other clothing.
- 60) Impropriety by The State to force a conviction of arson, should not be left to stand, especially when some acts of impropriety are described within Criminal Law Consolidation Act as unlawful (criminal misconduct), eg:
  - Part 5 Div. 6 Sec. 140, Sec. 142
  - Part 7 Div. 1 Sec. 237, Sec. 238
  - Div. 3 Sec. 242, Sec. 243, Sec. 244
  - Div. 4 Sec. 251
  - Div. 6 Sec. 256

I eagerly await your reply to this Petition at your earliest convenience.

D P Jarrett



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Adelaide SA 5001

From: David P Jarrett  
(DCS No. 69405)  
Yatala Prison  
c/- 1 Peter Brown Drive  
Northfield SA 5085

re: Petition to Governor dated 20-04-2008

Your Ref: 01/03/039

10 JUNE 2008

Dear Governor

In further support of my recent Petition (20-04-2008), relating to my 1993 conviction for arson, I provide the following information which has recently come to my attention.

The matter of Defendant G Stafford, convicted of September 1991 murder of 12 year old girl, Queensland Criminal Courts.

His conviction Appeal rejected by Queensland Appeal Court. However, his Petition to the Governor of Queensland was in his favour.

It was found in part, that two Crown Witnesses provided significantly different details in their Statements, compared to their trial answers when questioned in witness box.

Additionally, "Fundamental assertion by the crown in trial was seriously misleading."

It was also considered that incompetence by his trial lawyer failed to afford him reasonable and fair opportunity to defend himself in trial.

The above information was sourced from ABC Television on 12-01-2008, "Body of Evidence" title on "Australian Story" series.

I have not had the means available to me to obtain the correct Judgment Number for the above matter.

I trust this information is of assistance.

Regards.



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Northfield SA 5085

re: Petition to State's Governor dated 20-04-2008.

26 JUNE 2008

Dear Governor

I apologise for not providing the following supporting particulars as part of my Formal Petition document proper, which I should have identified earlier.

Having to deal with a great deal of (long term), personal issues often interferes with my ability to maintain adequate levels of thinking to deal with matters such as this Petition. This is a field I am obviously not professionally trained in and at times are forced to 'learn as I go'.

With reference to my Petition Document proper (dated 20-04-2008), therein paragraphs "20)" and "35)", I ask the following supporting details also be considered.

- 61) PROOF of my initial answer [1] is also supported on Statement by David Sparrow (restaurant manager), dated 23-01-1991, page 3:  
[45] "He said, "I saw the back light of the train on..."

Thank you.

A handwritten signature in black ink, appearing to read 'D P Jarrett' with a stylized flourish at the end.

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Adelaide SA 5001

From: David P Jarrett  
(DCS No. 69405)  
Port Augusta Prison  
c/- PO Box 6  
Port Augusta SA 5700

re: Petition dated 20-04-2008

Your Ref: 01/03/039

Dear Governor

Response to your letter dated 23-10-2008.

I note in your letter that your Advice was from the Attorney-General, as per procedure, therefore the legal Opinion you received was from the same Government Agency my Petition describes as a party to the miscarriage of justice against me.

Especially where the South Australian Premier purports to fight for 'Law and Order' and 'stamp out corruption', I don't understand how your Decision to "dismiss" my Petition can in any way be supported by judicial fairness (to me, the accused), or integrity from the Office of the DPP.

My Petition describes the type of impropriety which the Government is prohibited from being a party to, pursuant to State and Federal legal obligations not to act corruptly and/or deny judicial fairness to an 'accused' person.

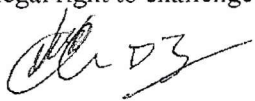
At the very least I would have thought the Full Court be the appropriate Judicial body to determine the legal merits of my Petition, and given the legal understanding I now have in addition to the PROOF DOCUMENTS to support my Petition, why have you accepted a legal opinion from the same Agency I am accusing of 'corruption' and 'impropriety'?

The Criminal Law Consolidation Act allows you to "refer the matter to the Full Court" for proper Judicial determination, and I ask that you at least allow me to proceed in such manner.

Additionally, I don't object to a representative of yours speaking with me at the prison, at which time I would be able to show your representative my 'proof documents', and they would be permitted by me to photocopy the said documents for your benefit and/or investigation.

I also ask, if you decide not to direct my Petition to the Full Court, that I be provided with a copy of the Attorney-General's legal advice to you, as such advice appears to be a 'psuedo judicial decision', and as such denies me a legal right to challenge as I am not issued with particulars of the Decision.

D Jarrett



23-11-2008.