

# How could this happen in Los Angeles?

A first-person account of the wrongful murder conviction of Ray Jennings, and what it took to free him

**By Jeffrey I. Ehrlich**  
*Editor-in-Chief*

On June 1, 2015, my son Clint asked me during lunch, “Dad, if I can show you that an Iraq-war vet has been wrongfully convicted of murder here in Los Angeles, could we take on his habeas corpus case *pro bono*? On the retelling of the story, I’d like to say that I said, “Yes!” But I said “I’ll think about it” — parent-speak for “no.” After all, I am a civil appellate lawyer. I do a lot of insurance cases. I have not worked on a criminal case since I was a law clerk, in 1984. A *pro bono* habeas case was the last thing I needed.

But Clint has a way of convincing me to do things that I’d not considered doing before. He has a fierce intellect and often sees things that others don’t. As my apprentice for several years under the auspices of the State Bar’s Law Office Study Program, he had developed extraordinary lawyering skills, even

though he was not yet a lawyer. Once again, he convinced me.

Just over a year after our first conversation, the same District Attorney’s Office that had prosecuted and convicted Ray Jennings for murder told a judge that it had lost confidence in the conviction. Ray walked out of the courthouse after spending the previous 11 years behind bars. This is the story of how he ended up there and how we persuaded the District Attorney’s Office to let him out.

## The limits of habeas corpus

About a month after we began our endeavor, Clint emailed me a copy of an article about wrongful convictions by Judge Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit. As you would expect from Judge Kozinski, the article was a great read. (44 Geo. L.J. Ann. Rev. Crim. Proc. (2015).) But one sentence in the 42-

page article leapt off the page: “*We [meaning federal judges] now regularly have to stand by in impotent silence, even though it may appear to us that an innocent person has been convicted.*”

Wait, what? Federal judges *regularly* see habeas petitions filed by people they think are innocent, but are powerless to help them? How could that be? I had taken on Ray Jennings’ case thinking that if I could show a court that he was innocent, he would go free. And now Judge Kozinski is telling me that innocence may not matter?

The source of Judge Kozinski’s frustration was the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), a federal law that placed numerous restrictions on habeas corpus relief. Given the problems created by AEDPA, one of the reforms suggested by Judge Kozinski (in addition to repealing AEDPA) was the expanded use of so-called “conviction integrity units” within

*See Ehrlich, Next Page*



Ray Jennings, left, flanked by his attorney, Jeffrey Ehrlich.

prosecutor's offices to deal with cases that AEDPA would otherwise prevent courts from considering.

Within days of reading the Kozinski article, I also read an article in the Los Angeles Times explaining that Los Angeles District Attorney Jackie Lacey had secured the funding to establish a new conviction integrity unit within her office, called the Conviction Review Unit ("CRU"). I decided that there was nothing to lose by asking the CRU to review Ray Jennings' case.

### **Michelle O'Keefe's murder**

On the night of February 22, 2000, an 18-year old college student, Michelle O'Keefe, was shot and killed as she sat in her car, which was parked in a Park-and-Ride lot in Palmdale. Earlier that day, she had left her car, a new Ford Mustang, in the lot and had driven to Los Angeles with a friend to work as extras in a music video. They returned about 9:20 p.m. Michelle moved her car to a darker area of the lot so she could change out of the "club attire" she wore in the video shoot and into an outfit more suitable to attend a college class that night.

February 22, 2000, was also Ray Jennings' second day on the job as an unarmed security guard for All Valley Security. He was 25 years old, married, and had four children. He had enlisted at age 17 in the National Guard. He had never been arrested or accused of any crime. He held a "secret" security clearance, and was studying to be a U.S. Marshal. He owned a .380 pistol, which was lawfully registered, but he did not bring his gun to work because All Valley Security did not allow its guards to carry guns.

At roughly 9:30 p.m. he heard a car-alarm go off and then heard a gunshot. He ducked down behind a car. A few seconds later he heard several more shots in quick succession. He peered over the hood of the car and saw a blue Mustang about 400 feet away in a dark area of the lot. It slowly rolled backwards and came to rest with its rear wheels in a planter. A commuter van parked next to the Mustang blocked Jennings from getting a glimpse of the shooter.

Jennings radioed his supervisor that he heard gunshots, and was patched through to the Los Angeles Sheriff's Department ("LASD") dispatcher. His supervisor, Iris Malone, arrived in the lot several minutes later. She told Jennings to get into her car and accompany her to the Mustang. He refused, fearing that the shooter might still be on the scene. Malone then drove to the Mustang and illuminated it with her headlights and a spotlight. She again told Jennings to join her at the scene, which he did.

The first law-enforcement officer arrived at 9:49 p.m. Michelle's body was slumped in the driver's seat. The driver's door was ajar and her left leg was out of the car with her foot on the ground. The glove box was open, and her wallet, which held \$111 in cash, was found in the gap between the driver's seat and the center console. Her cell phone was missing and was never recovered. Shell casings were found on the ground near the car and in the car. One bullet had been fired into the ground, leaving a "strike mark."

The medical evidence established that while Michelle was outside of her car she had been struck in the forehead with some type of blunt object. She then got into the car and was shot once in the chest point-blank, and then three more times in the neck and face from two-to-three feet away. The latter shots killed her instantly.

### **The investigation**

Jennings spoke to the LASD deputies who responded to the call, and then agreed to wait at the scene for several hours to speak with the homicide detectives, Diane Harris and Richard Longshore. Neither the deputies nor the detectives found anything suspicious about Jennings' demeanor, appearance, or conduct. They spoke with him and sent him home without searching him or his car.

He later agreed to more interviews, including an 8-hour "cognitive interview" — an investigative tool designed to help witnesses recall as much as possible. In the hours he spent with the detectives

Jennings told them what he'd seen and heard, and at their urging he shared with them his theories about what might have happened.

A few weeks after the murder the detectives received an anonymous tip stating that the crime was a "carjacking gone bad," which had been committed by two young gang members. The tip also said that gang members were concerned that they had been seen by another witness, a 30-year old male. The detectives were unable to corroborate the tip.

At about the same time the tip was being investigated, Detective Harris interviewed a 17-year-old woman, Victoria Richardson, who had been arrested on an unrelated charge. She told Harris that she had been in the parking lot when Michelle was shot. She explained that she, two friends, and her four-year-old godson were in a car she had rented, and they had gone to the lot (as they often did) to smoke marijuana and listen to music. She said that as they sat in the car someone tried to force open the door and then she heard some kind of metallic tapping noises, so they decided to leave. As they drove out, she saw the Mustang in the planter. Richardson said that as she left the lot she stopped and asked the security guard what happened, and he told her that he did not know. She drove away as the police sirens approached.

She also volunteered that before she left the lot she saw a man in a late-model Toyota Tercel, wearing a white t-shirt and a red baseball cap, driving out of the parking lot.

Upon hearing this from Richardson, the detectives thought it suspicious that Jennings had not mentioned her to them. (The security guard supervisor, Iris Malone, also failed to mention Richardson, so perhaps the detectives had framed their questions in a way that caused both Jennings and Malone to focus on the initial moments they saw the crime scene.)

The detectives went to Jennings' house and asked him if there was anything he could recall that he had previously not

*See Ehrlich, Next Page*

told them. He said that he could not think of anything. They then said that they had located a new witness, and related what Richardson told them. Jennings then said that he remembered the encounter with Richardson and described her companions.

The detectives concluded that Jennings had failed to mention Richardson because he was fearful that she or the others in her car might have seen him commit the murder. They also found it suspicious that he had told them that he had seen Michelle's Mustang parked in the lot before the shooting, but he had not noticed that it had been moved from the initial parking spot to the one 17 spaces away.

Although the detectives were suspicious of Jennings, they were frustrated because they had no physical evidence to connect him to the crime. There was no gunshot residue on his clothes. There had been no transfer of any kind of hair, fibers, or other trace evidence between Jennings and Michelle. She had a man's blood under her fingernail, but it was not Jennings' blood.

The investigation came to a dead end in February 2005. Five years after the murder, Deputy District Attorney Robert Foltz formally rejected the case for prosecution. Foltz wrote, "There is simply insufficient evidence to prove beyond a reasonable doubt that Jennings did the killing."

Heartbroken, Michelle's father created a PowerPoint presentation consisting of edited video clips from Jennings' various police interviews and his civil deposition (where he had appeared without counsel and had answered questions without invoking the Fifth Amendment). Mr. O'Keefe then met privately with Foltz and showed him the presentation. In November 2005, Foltz filed a first-degree murder case against Jennings. When later asked what had changed between the time he rejected the case and the time he filed it, Foltz said, "I can't put my finger on precisely what the difference is, but it was clear we had a fileable case."

In 2005, Ray Jennings was serving in the infantry in Iraq after being called up to active duty. But he was arrested in

December 2005, when he returned to California on leave to visit his children. Bail was set at \$1 million; far more than he could afford. So he sat in L.A. County Jail for years as his case moved through the system.

The case was assigned to Deputy District Attorney Michael Blake. In April 2006, five months after the case had been filed, Blake wrote a memo to his superiors explaining that there was no physical evidence to link Jennings to the crime. He inventoried every piece of evidence and recommended elaborate additional testing.

After receiving his request one of the technicians in the LASD crime lab wrote an email to her colleague stating that Blake "would like a microscopic examination like they do on CSI. You know, where they look at every square inch with a super sensitive microscope with the great graphics, right down to the sub-atomic level. I digress. Needless to say, I will discuss this with him."

### The case against Jennings

Jennings was tried three times. The first trial started in 2008 and took a month to try. The jury hung. The second trial started in early 2009, and also resulted in a hung jury. Both trials were held in downtown Los Angeles, 80 miles from the Antelope Valley community where the murder occurred. Blake persuaded the court to allow him to try the case a third time, and to hold the third trial in the Antelope Valley. Despite years of heavy publicity about the case in that community and over 100 articles suggesting that Jennings was the killer, the court overruled Jennings' objection to the change of venue.

The third trial started in late 2009. In order to overcome the lack of evidence that tied Jennings to the crime the State relied on circumstantial evidence that can be loosely grouped into four categories:

**A. Evidence that Jennings purportedly implicated himself by revealing details of the murder that only the killer could have known.**

The State claimed that Jennings (1) knew that all the shots had come from the

same gun; (2) knew that gun was a 9mm pistol; (3) knew that the chest wound had been fired point blank; (4) knew that the shot to the chest was fired before the shots to the head; (5) knew that the shooter had fired a shot into the ground, leaving a strike mark; and (6) knew that Michelle had not been raped.

In a similar vein, the State noted that Jennings said that when he saw Michelle's body after the shooting, he saw a slight pulse in her neck and saw her hands twitch. The State argued that he could not have seen these things when he had seen her body after Malone had arrived, and he was therefore describing what he saw when he shot Michelle, not what he saw later when he and Malone saw her body in the car.

**B. Evidence that Jennings acted in a suspicious manner after the shooting, and tried to deceive the police by lying about what he witnessed before, during, and after the shooting.** The State pointed to Jennings' failure to mention seeing Richardson and his refusal to accompany Malone to the Mustang immediately after the shooting. Blake argued that Jennings refused because he was worried that Michelle might be alive and identify him. It also argued that if Jennings had been standing where he claimed to have been standing when the shooting occurred, he "should" have seen the shooter.

**C. Evidence that the modus operandi of the shooting demonstrated firearms skills indicative of military training.** The State claimed that the shooter demonstrated skilled marksmanship, and that the mix of ammunition used – a combination of hollow point and jacketed rounds – and the progression of shots from the chest to the head showed that the shooter had tactical training.

**D. Evidence that the murder was a sexual crime committed by someone who worked at the Park-and-Ride.** The State relied on the opinion of an expert, retired FBI profiler Mark Safarik. He ruled out the possibility that the crime had been a robbery because Michelle's money had not been taken. He ruled out a possible carjacking because Michelle's car had

See Ehrlich, Next Page

not been taken. He ruled out the possibility of any connection to gang activity because he was unaware of any gang activity in the Antelope Valley, and the Park-and-Ride lot did not seem to him to be the kind of place where anyone would just hang out.

Instead, because Michelle was found with her tube stop slightly askew and her left nipple partially exposed, Safarik theorized that the crime began as an attempted sexual assault that escalated into a murder. He theorized that Jennings asked her to get out of her car; she complied because he was a security guard; he then tried to accost her; and she fought back. This, according to Safarik, caused Jennings to go into a blind panic because he realized that he could be easily identified by his uniform, so he shot her. But he then immediately “pulled himself together,” calmly called in the “shots fired” report, and stayed to talk to the police without giving them any reason to suspect him.

### **Presumed guilty!**

During closing argument in the third trial Blake told the jury that Jennings could be *presumed* to be guilty of second-degree murder simply because he was present when Michelle was killed. He said:

What I do want you to understand is, if two people go into a room, [and] they are in there alone; no one knows what’s happening between them. One of them walks out, and the other is inside dead. *Without knowing anything else, the law presumes that to be a second degree murder.* That’s an important concept in your law. The killing is presumed to be malicious and is *presumed to be murder, again, without knowing more.*

This misstatement of the law met with no objection from Jennings’ defense counsel, David Houchin; nor did the trial judge correct it.

The jury deliberated for a month before convicting Jennings of second-degree murder. He was sentenced to life in prison, and would not be eligible for parole for 40 years.

Jennings was assigned a new lawyer for his appeal, a State Bar certified specialist – in family law. The principal

argument on appeal was that the evidence was not sufficient to support the conviction. Division Eight of the Second Appellate District disagreed and affirmed the conviction in an unpublished opinion. The Supreme Court denied review.

The Innocence Project gave Jennings some assistance with his *pro se* habeas petition, but they simply took the opening brief from his direct appeal and added boilerplate about the legal standards for habeas corpus. His petition had been fully briefed for two years and was destined for summary denial when the case came to our attention.

### **Clint serendipitously discovers the case**

On May 31, 2015, Clint was surfing the internet and saw a link to a 2010 NBC Dateline program about the case, titled “The Girl in the Blue Mustang.” He watched it and was unable to discern how the evidence was sufficient to support a murder conviction. Seeking to answer that question, he pulled up the appellate opinion, but was left even more curious. To him, the grounds relied on to justify the conviction seemed suspect. He stayed up all night, digging into facts about the case that he found on various websites.

The next day he convinced me to take on the case. I reached out to Ray’s fiancé; she spoke to Ray that night; and he took me up on the offer. I filed an appearance in the federal habeas matter in early June 2015, asking the court to stay the matter so I could review the record and develop the various grounds for relief we had discovered.

The court denied the motion without prejudice and gave me 90 days to review the record and re-file a stay motion. Based on my interest in presenting the case to the CRU as a way to speed up the process, Clint started preparing a critique of every aspect of the State’s case. As we learned more about the flaws in the case, it cemented our belief that Ray was innocent.

### **The case for innocence**

Based on the arguments Clint developed, we prepared a 34-page single-spaced letter to the CRU, critiquing

every aspect of the State’s case. My younger son Reid helped us pull together all the evidence we needed. On October 2, 2015, we filed a renewed request for a stay in federal court, and submitted our letter and supporting evidence to the CRU. In early March 2006, I supplemented our submission to the CRU with new arguments and evidence I had obtained from several experts.

Our showing caused the CRU to agree to re-open the investigation into Michelle’s murder, and that investigation then developed more new evidence. As I write this article, the LASD and District Attorney’s Office continue to investigate and appear to have developed additional information – none pointing to Ray. The principal points that caused the District Attorney’s Office to lose confidence in Ray’s conviction are summarized below.

#### **1. Exculpatory physical evidence.**

Contrary to the State’s claim, the lack of incriminating physical evidence was highly significant. If Ray had committed the crime in the manner the State claimed, there would have been physical evidence pointing to his guilt. Its absence provided powerful physical evidence of his innocence.

First, if Ray had shot Michelle, there would have been gunshot residue on the cuffs of his jacket. There was none. Blake argued that Ray must have washed it off, but the crime lab’s notes stated that the jacket was “worn and dirty” when collected, and did not appear to be washed. Second, if Ray had fired a shot into the pavement at his feet, as the State claimed he had, there would have been evidence of “pseudo stippling” – bullet and pavement fragments – present on Ray’s pants. There was none.

None of this information had been presented to the court or the jury.

#### **2. No reason for Ray to have a 9mm pistol.**

Since Michelle was shot with a 9mm pistol, the State’s burden should have included proof that he had such a weapon with him on the night of murder. But the State never offered any proof that Ray had a 9mm pistol, nor any

*See Ehrlich, Next Page*

reason why he would bring such a gun to work. Blake conceded that Ray did not come to work intending to commit a crime. And if he had wanted a gun for protection at work he would have brought his lawfully registered .380 pistol.

**3. Ray was not the only other person in the lot when the murder occurred; nor was he the most likely suspect.** The crux of the State's case was that Ray was the only person present at the murder scene. But this was false. The State knew that Richardson was there with two other adults. And she told the investigators that she saw a man in the red baseball cap leave the scene just before she did.

The investigators did not seem to give her story any credence. Why? Perhaps because they knew that Richardson was not a credible witness because she was affiliated with the "Bloods" gang, and despite her young age had a long criminal history of violent crimes and drug sales. She was in prison during the third trial, and Blake relied on the transcript of her prior testimony.

One of the people in her car was a young man I'll call "John Doe." Like Richardson, he was a gang member, and he had a lengthy criminal history. But for reasons that have never been explained, neither the LASD investigators nor the District Attorney's Office made any attempt to look into his background. Sadly, neither did Ray's defense attorney. As a result, the case was presented to the jury as if Ray were the only viable suspect. In truth, had even an elementary background check on Doe been done as part of the investigation, the entire posture of the case would have changed. Because the new investigation into Michelle O'Keefe's murder is ongoing I am not at liberty to provide further specifics. But I believe that if the investigators had looked into Doe's background the case would not have struck them as a particularly difficult one to solve. And if the jury had been aware of Doe's presence at the scene and his background, Ray could never have been convicted.

Many of the facts underlying Safarik's theory were wrong. He seemed



COURTESY THE EHRlich FIRM

Ray Jennings with his mother and fiancée after his release.

unaware that Michelle's money was in a purse that had slipped between the seat and console, and was therefore not visible in a dark car. His assumption of no gang activity was contradicted by Richardson and Doe's presence. Doe's criminal history ran counter to many of the assumptions that Safarik relied on to formulate his theory about the murder. Had he been made aware of the information, Safarik would either have had to entirely re-work his theory, or have his credibility savaged on cross-examination.

All of these facts were available to the prosecution before charges were filed. But because they were so focused on making a case against Ray no one on the prosecution team had made any inquiry into the background of the other people the authorities knew were at the murder scene.

**4. The State had no basis to speculate that Ray "should have" seen the shooter because it could not prove where the shooter was standing.**

Blake argued that because Ray did not see the shooter, he must be the shooter. (Wouldn't it be more likely that if he had been the shooter, he would

have made up a phantom suspect?) But the State's expert admitted on cross-examination that she was unable to form any opinion on where the shooter was standing when the shots were fired. Without that critical fact there was no basis to argue that Ray "should have" seen the shooter. This point was not argued to the jury.

**5. Ray had no special knowledge of the crime.**

The State's "intimate knowledge" theory failed to take into account the reality that Ray was a witness to the crime. He heard the shots fired and saw the crime scene up close. The State also frequently treated his agreement with the premise of a suggestive question as "knowledge." Ultimately, none of its claims that he had special knowledge of the crime withstand scrutiny.

He heard the shots fired. Since they did not overlap it sounded to him as though they came from a single weapon. He could tell the shot to Michelle's chest was fired point blank because he could see the powder burns (stippling) around the wound.

He could deduce that the shot to the chest was fired before the shots to the head because if they had been fired in the opposite order Michelle would have been unable to start her car, release the emergency brake, and put the car in neutral.

He could reasonably conclude that she had not been raped because she was found fully clothed and he had not seen or heard any struggle before the shooting.

The State's claims that he "knew" the caliber of the murder weapon and that there was a strike mark where the killer fired into the ground are false. The first LASD deputy on the scene testified that *he told Jennings* that the shell casings near the Mustang were from a 9mm pistol. Nor was Ray aware of the strike mark. Rather, the detectives confirmed that he saw the bullet lying on the ground; not the strike mark. He thought that the bullet had likely been fired into the ground because it was unlikely to have bounced off the Mustang.

*See Ehrlich, Next Page*

Ray not only lacked special knowledge of the crime, he was often *wrong* about many of the details he offered. He incorrectly thought that Michelle had been shot in the forehead; in reality she had been struck with an object. He thought he saw brain matter in the car interior, but there was none. And he was wrong about seeing Michelle's hands twitch or a pulse. The medical testimony was that she died instantly from the head and neck wounds and there would not have been a pulse or twitching. The prosecution ignored this evidence, as it ignored the absence of physical evidence. And Ray's defense counsel failed to point out most of these discrepancies.

**6. Ray's refusal to immediately go to the crime scene was consistent with his training.**

All security guards must take and pass a State-mandated training course. Ray took his a few days before the murder. His initial refusal to accompany Iris Malone to the Mustang was completely consistent with his mandatory training. It was Malone who acted irresponsibly by driving directly to the Mustang before the police had cleared the area. Ray's defense lawyer did not present this evidence.

**7. Ray's firearms training was exculpatory because the shooter was untrained.**

By firing the first shot into the ground at his feet and using two different types of ammunition, the shooter revealed that he had no firearms training or expertise. Firing a shot into the ground indicates a lack of "trigger discipline," a basic firearms-safety skill. And young criminals often load two different types of ammunition into their guns because they tend to indiscriminately scrounge for ammunition from any source available.

The theory that the progression of shots from the chest to the head was consistent with military training was also false; our expert explained that soldiers are trained to fire "center mass." Nor did the shooting require advanced marksmanship. Rather, the State's expert

conceded that because the shots were fired from such close range they could have been made by someone who had never fired a gun before.

**The DA's Office "loses confidence" in the conviction**

The CRU is staffed by four experienced prosecutors. They concluded after reviewing our material and conducting their own investigation that Ray had simply been a witness to Michelle's murder, and was not the killer. But the CRU is not the final decision-maker. It reports to a CRU Committee, which then makes a recommendation to the District Attorney's Chief Deputy, who decides what the office will do.

The CRU process allows the original prosecutor to participate. Even after being apprised of the new evidence and the flaws in the case against Ray, Michael Blake remained adamant that Ray was guilty. He fought tooth-and-nail to maintain the conviction and to keep Ray imprisoned.

Until the final decision was made, we had no way to know how the internal battle within the District Attorney's Office would turn out. But the Chief Deputy agreed with the CRU's recommendation, and on June 23, 2016, the District Attorney's Office appeared before a Superior Court judge and advised him that the office had "lost confidence" in the conviction because it appeared that someone else had committed the crime. It asked that Ray be released from prison immediately, on his own recognizance. The court agreed, and Ray walked out of the courthouse building that afternoon, free.

As I write this, we are scheduled to return to court in a few weeks. The District Attorney's Office has told the court that it expects to complete its new investigation into Michelle's murder by then, and that as long as no new information implicates Ray it will agree to have the court vacate his conviction. I'm told that the new investigation has not focused on Ray as a suspect.

**You can help**

Ray was imprisoned for 11 years. He was released with \$4 to his name, and neither L.A. County nor the State has offered him any assistance. Compensation may be forthcoming, but not for many months, or longer. Clint has set up a GoFundMe campaign for Ray, [www.gofundme.com/rayjennings](http://www.gofundme.com/rayjennings). All help is welcome.

**Concluding thoughts**

I am often asked who is "responsible" or "at fault" for Ray's wrongful conviction. There is ample blame to go around. No one who had any role in the case before the CRU became involved has reason to feel satisfied.

It's much easier to assign credit for righting an injustice. Ray would still be in prison if District Attorney Jackie Lacey had not had the courage to create the CRU and the wisdom to appoint Deputy District Attorney Ken Lynch to head it.

The CRU is a lightning rod for criticism. The defense side complains when cases are rejected. And their wrath is nothing compared to the internecine conflict that flares when the CRU exposes and seeks to correct the office's prior mistakes. But Ken Lynch and the CRU staff take it all in stride, resolutely working for justice. If this article were a book I would dedicate it to them.

*Jeffrey I. Ehrlich is the principal of the Ehrlich Law Firm, with offices in Encino and Claremont, California. He is a cum laude graduate of the Harvard Law School, a certified appellate specialist by the California Board of Legal Specialization, and a member of the CAALA Board of Governors. He is the editor-in-chief of Advocate magazine and a two-time recipient of the CAALA Appellate Attorney of the Year award.*

