

Small Town Justice-Part I

The accused was mentally retarded; the victim may never have existed.
July 7, 2002

By MICHAEL LUO
AP National Writer

BUTLER, Ala. - Victoria Banks' court-appointed lawyers explained the prosecution's offer to her as best as they could, using the simplest language. She sat quietly as they laid out her options across a mahogany law library table.

There are two choices, the lawyers said. We can take the case to the jury, or we can accept a plea bargain.

There's a good chance we can win, the lawyers said. The police never found a body. We can argue that you, your sister and your estranged husband were confused by police questioning - that the confessions were contradictory and coerced.

But something could go wrong, they continued. You might be sent to prison for the rest of your life. Or even die in the electric chair.

As they spoke, the lawyers couldn't be sure how much the mentally retarded woman understood.

A trial is all or nothing. The risk is enormous for both sides.

A plea bargain removes risk, replacing it with a compromise that neither side may like but that both can accept.

We like to think that justice is about finding the truth, but when defense lawyers and prosecutors weigh whether to risk everything or play it safe, something essential can be lost.

Did Victoria Banks really kill her baby?

Can we even be sure it was ever born?

When the defendant is retarded, the truth can be particularly hard to find.

Banks was in the Choctaw County Jail, awaiting trial on another charge, when she started telling people she was pregnant.

She'd been arrested in October 1998, after teachers found bruises on her 11-year-old daughter. The girl had been raped by her mother's new boyfriend, George Bonner. The



Victoria Banks poses at the Tutwiler Prison for Women in Wetumpka, Ala., on March 28, 2002. Banks was accused of killing a newborn baby in a controversial Alabama case. (AP Photo/Dave Martin)

way police figured it, he told Banks she wasn't satisfying him and she let him have her child.

At 27 years old, the poor, black mother seemed like a child herself - quiet, shy, easily manipulated, prone to dissolving into giggles. She had an IQ of 40, had dropped out of special education in the ninth grade to have the first of her six children, was cowed by an abusive boyfriend.

Experts in retardation and criminal justice disagree about whether people such as Banks, who suffer from flawed judgment and poor impulse control, should be held fully culpable for crimes they may commit. Experts also ask whether reasoning difficulties put retarded defendants at an unfair disadvantage in dealing with police.

The debate reached a milestone last month when the U.S. Supreme Court outlawed the death sentence for retarded people. Executing them, the court decided, neither appropriately punishes the criminal nor serves as a deterrent.

In early February of 1999, after telling guards she'd been missing her period, Banks was taken to Dr. Roshdy Habib, 74, the jail doctor for two decades. Banks told Habib she was six months pregnant.

Habib wanted to do a pelvic exam, but Banks refused. The doctor examined her abdomen but

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saw no swelling. When he asked about a scar on her belly, Banks explained she'd had her tubes tied in 1995.

Fallopian tubes can spontaneously reattach after a tubal ligation, but Habib knew it happens rarely - in just one out of 100 cases. He wrote his conclusion in his records: Banks was faking pregnancy to try to get out of jail.

But Banks kept telling people she was pregnant, and after a while, some inmates thought the short, stocky woman was starting to look it. "She was showing," said Jonathan Rodgers, who was serving time for burglary.

A pair of church evangelists, who held weekly services at the jail, saw Banks' body changing, too. They prayed with her for the health of the baby.

Around that time, Habib retired, and Katherine Hensleigh, one of four doctors left in Butler, took over Banks' care. Where Habib saw fakery, Hensleigh saw pregnancy.

She measured Banks' abdomen in February and again in March, and found it consistent with a pregnancy of five or six months. She attached a heart monitor to Banks' abdomen and picked up a rhythmic sound distinct from the mother's heartbeat.

"It wasn't difficult to hear," she said later, adding that nurses and Banks heard the fetal heartbeat too.

Sheriff Donald Lolley did not regard this as good news. Lolley, who declined to be interviewed for this story but talked to the AP earlier about the case, felt his jail was no place for a pregnant woman. Besides, those around him say, he didn't want Choctaw County footing the obstetrics bill.

Lolley saw to it that Banks' bond was lowered so her mother could bail her out.

On May 14, 1999, Banks walked out of jail and back into Butler, a town with one diner, one motel and a Texaco gas station that serves catfish and chicken-fried steak - all nestled in the woods of western Alabama. It's home to

1,952 people, roughly split between black and white, with both races holding elected offices. The country club recently admitted its first black members.

Banks got a job at the chicken plant, more than an hour's bus ride across the Mississippi state line. That's where common folk in Butler go if they can't get work close by at the Georgia Pacific paper mill.

She moved into a friend's trailer, set on concrete blocks at the bottom of a dead-end dirt road on the outskirts of town. It's a neighborhood of trailers, shacks and hog pens, where her estranged husband, Medell Banks, liked to hang out all day drinking beer.

It was a couple of months later, in late July, that Sheriff Lolley happened to look out his office window and spot Banks strolling from Bill's Dollar Store across the street.

Her belly was gone.

On August 3, 1999, Banks sat across from Lolley in a cramped, dimly lit office with his old campaign posters hung on the wall.

What happened to the baby? the sheriff asked.

Miscarriage, Banks replied.

Lolley didn't believe her.

There isn't much crime in Butler, but in a quarter century as sheriff, Lolley had seen a few big cases. This might be one of the big ones - capital murder.

Lolley held Banks, and also picked up two of her relatives: Banks' estranged husband, Medell, and her sister, Dianne Tucker. Like Victoria Banks, both are mentally retarded.

Over five days, Lolley and detectives from the Alabama Bureau of Investigation questioned them, often late into the night, starting up again the next morning. Between interrogations, the three waited in their cells, without lawyers to advise them.

Investigators turned on a tape recorder when they thought they could get something useful. What was said when the tape was off isn't

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known for sure.

Victoria Banks says investigators told her, again and again, "You goin' to the 'lectric chair," but the threat isn't on tape.

Investigators did bluff, according to tape transcripts. "There is DNA evidence," Lolley told Medell Banks at one point - although there wasn't.

Threats and bluffs are acceptable tactics in police interrogations. However, experts such as Chris Slobogin, a University of Florida law professor, say police often underestimate how easily retarded suspects become confused, how suggestible they are, how eager most are to please.

As the questioning continued, a contradictory set of stories emerged. The three suspects were either terribly confused or bad liars. Nearly every account they gave, the tape transcripts and police statements show, differed from the last.

Victoria Banks was the first to stop insisting there had been a miscarriage. She gave birth at Tucker's house in neighboring Halsell, she said, but didn't know if the baby was alive or dead. Tucker's husband, she said, wrapped the baby in a blue blanket and threw it in the garbage.

Soon, she changed her story, saying her sister smothered the infant.

Two days later, she told an entirely different story: She gave birth in an abandoned trailer near where she'd been living. Her estranged husband, Medell, cut the cord, wrapped the infant in a blue towel or blanket, said not to worry about the "damn baby" and walked out with it.

Why, then, had she said her sister had killed the baby? police asked.

"Because I thought she was there," Victoria Banks said. "I had pictured in my mind that she was there, and then I stopped and thought last night, it wasn't her."

In various accounts, Victoria Banks said:

- That she very much wanted the baby - and

that she didn't want it because the father was the man who had raped her daughter.

- That she watched the baby being born - and that she passed out and didn't remember the birth.

- That her sister, Diane Tucker, helped with the delivery - and that Tucker wasn't there at all.

Soon, Tucker was talking too. The baby was born at her home, she said. She suffocated it with a yellow towel and went with her husband to bury it in a ditch. Before long, she changed part of her story, saying she and her husband left the body for the coyotes and snakes.

By the third day of questioning, Tucker was saying the baby wasn't born at her place at all. The birth occurred in an abandoned trailer, she said. Medell Banks took the baby away and returned an hour later empty handed. She'd lied before, she said, because she was afraid of Medell.

Medell Banks denied knowing anything about the baby. Police tried baiting him, suggesting he was angry with his estranged wife and her boyfriend about the pregnancy. But he remained steadfast.

On the day police thought the baby was delivered, he was drunk as usual, Medell Banks said. He couldn't remember anything.

At one point, police asked if he had heard a baby cry, and Medell Banks agreed that he had. But moments later, he denied even being present. Victoria's story - the one about him cutting the cord - couldn't be true, he said, because he wouldn't know how to do that.

Police tried another approach; they took Medell Banks down by the trailer and asked him to help find the body. Nothing came of it.

Investigators combed the area for days, tramping through swampy woods with a cadaver dog. They picked through trash in the trailer. They also looked in Halsell, in and around Tucker's home.

But they found no body.

Investigators carted away sofa cushions, a

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mattress, sheets and a shovel for analysis, but lab work turned up no blood or other physical evidence of a murder - or even of a birth.

No one in any of the nearby trailers came forward to say they had seen or heard a baby.

Still, police continued to hold the three suspects.

About two weeks after his arrest, still without a lawyer, Medell Banks told the sheriff a new story, according to police statements. Tucker killed the baby and asked him to get rid of it, he said, so he put it in a hole across the road.

But later, he returned to denying knowing anything at all.

At this point, little seemed certain.

Had Victoria Banks faked her pregnancy to get out of jail, as one doctor thought?

Could she have had a hysterical, or "false" pregnancy?

Had she overcome 100-1 odds and become pregnant despite her tubal ligation, as another doctor thought?

If so, might she have miscarried?

Might the child have been born dead?

Or was the child born alive and then murdered?

And if so, by whom?

It fell to District Attorney Bobby Keahey, elected straight from law school 15 years earlier, to make sense of it all.

Keahey had no body, no physical evidence, no consistent accounts from witnesses - and no doubt about what to do.

EDITOR'S NOTE - AP correspondent Garry Mitchell in Mobile contributed to this story.

Small Town Justice-Part II

I'm getting ready to say I'm guilty for something I didn't do.
July 8, 2002



District Attorney Robert Keahey works in an office at the Choctaw County Courthouse in Bulter, Ala., March 27, 2002. Keahey said he never doubted the guilt of three suspects he charged with capital murder in the alleged death of a newborn baby. (AP Photo/Dave Martin)

By MICHAEL LUO
AP National Writer

BUTLER, Ala. - District Attorney Bobby Keahey studied the wildly different, ever-changing statements the three mentally retarded murder suspects had made to police. In them, he found a pattern.

At one time or another, all three said they heard a baby cry.

When they weren't denying the baby was born, they all said it was a boy.

And at one time or another, all three mentioned the baby being wrapped in a blue blanket (although in some statements, the blanket was yellow and in others it was blue and yellow and in still others it was a towel.)

What are the chances of all three suspects mentioning those same three things when they were questioned separately? Keahey said in a recent interview. "If you could do that, you could pick three numbers on the lottery." (Police records show, however, that two of the

suspects were questioned together at least once and that, between interrogations, two of them talked together about the case in their cells.)

True, there were some holes in the case. No body had been found. There was no physical evidence of a murder, or even of a birth. And five years earlier, Victoria Banks had undergone a tubal ligation, making it unlikely she could have conceived the child she and two others were suspected of killing.

But according to Keahey, he had no reservations about the evidence, no doubt that the three suspects were guilty.

He brought capital murder charges against Victoria Banks, her sister Dianne Tucker, and Banks' estranged husband, Medell. (Nearly two years would pass before the U.S. Supreme Court ruled, last month, that executing retarded people is unconstitutional.)

Victoria Banks, already serving 15 years on an unrelated charge, was sent to the death row unit of Tutwiler State Prison for Women,

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standard procedure in Alabama for those charged with crimes punishable by execution. She shared the cell block with a woman who had shot a policeman.

On Nov. 27, 2000, Victoria Banks returned to Butler for her murder trial at the Choctaw County Courthouse. The brick, three-story building sits in the middle of town. A statue of a Confederate soldier stands guard on the courthouse lawn. Across the street is the Dixie Gas Station, which displays the rebel flag.

A few years earlier, some townfolk proposed adding another monument to the courthouse lawn. They wanted to honor a civil rights protester who had been run down by a white driver right in front of the courthouse. The board of county commissioners rejected the idea in a 3-2 vote, all three white members voting "no." One of them said he feared the monument might stir racial tensions.

Now it was the Banks murder case that was making folks uneasy.

"You have a white sheriff, a white D.A., a white judge," said Tommy Campbell, editor and lone reporter at the Choctaw Advocate. "The defendants, they're all black, mentally retarded, poor, indigent."

Victoria Banks entered the courtroom in clothes borrowed from her lawyer's wife. She followed her attorneys' directions, looking at the jurors and keeping her hands folded in her lap.

She stood trial alone, with Medell Banks and Dianne Tucker scheduled to be tried later.

Among the witnesses for the prosecution were the two evangelists who had visited Victoria Banks in jail. The young women were positive she had been pregnant. They came across as smart, honest and convincing.

Would such testimony convince jurors that Victoria Banks had become pregnant despite her tubal ligation - that she was the one woman in 100 whose tubes grow back together after the procedure?

A simple medical test could show for sure whether her tubes were still blocked. If they were, her lawyers thought, she would almost certainly be acquitted. But what if the test showed the tubes had reopened? That might be enough to send her to the electric chair.

Weighing the risks and benefits of learning the truth, defense lawyers decided it was too big a risk to take.

The fourth day of the trial was devoted to tape recordings of Victoria Banks' conflicting denials and confessions, made during the weeks she questioned without the advice of a lawyer. With the jury absent, Circuit Court Judge Harold Crow spent several hours listening to the scratchy audio and then to lawyers debating whether they should be admitted into evidence.

The issue was undecided as court adjourned for the evening. Keahey, the prosecutor, approached Spencer Walker, a defense lawyer, in the hallway and offered a deal:

Banks could plead guilty to manslaughter.

She would be sentenced to 15 years, to be served concurrently with her conviction for helping her abusive boyfriend rape her daughter. That meant she wouldn't have to serve a single additional day in prison.

But, as a condition of the plea agreement, she would have to declare that she had given birth and that her sister and estranged husband had been present.

Walker weighed the odds. Accepting the plea would remove the risk that Victoria Banks might be sentenced to life in prison, or even executed. However, it would undermine Medell Banks' and Dianne Tucker's defense.

Walker didn't represent them. It was Victoria Banks' interest he was duty-bound to protect.

The next day, he explained the offer as best he could to his client. She asked a few tentative questions but didn't seem to agonize. He gave her the weekend to be sure.

On Dec. 4, 2000, Victoria Banks stood before

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the judge and mumbled her acceptance of the guilty plea.

Several months later, Medell Banks, accompanied by several of his relatives, sat in a small conference room at the courthouse to consider a deal Keahey had for him.

Medell Banks' court-appointed lawyer, Rick Hutchinson, had never handled a capital murder case before. His practice consisted largely of Social Security law. However, the devout Seventh-day Adventist harbored a deep belief in individual rights and social justice.

This case wasn't about justice, he told his client. It was about figuring the odds.

There is little evidence that you committed a crime, Hutchinson said, speaking slowly to help his client understand. Medell Banks had spent 12 years in special education and his IQ was just slightly higher than his wife's.

But juries can be hard to predict, Hutchinson said. There is always a chance you could be found guilty. If that happened, Hutchinson said, you would probably be sentenced to life in prison without parole.

You can remove that risk, the lawyer continued, by accepting the prosecutor's deal and pleading guilty to the lesser charge of manslaughter.

Circuit Court Judge Lee McPhearson would sentence you to no less than 10 years and no more than 15, Hutchinson said. Because of prison overcrowding, well-behaved Alabama inmates typically serve about a third of their sentences before being paroled. And the 22 months you have spent in prison awaiting trial would count as part of your sentence, he told his client.

Hutchinson used a yellow legal pad to do the math. Accept the plea, he told Medell Banks, and you could be out of prison in 18 months, or at worst in 38 months.

The defendant and his family members spent two hours talking about what to do, weighing the odds. Several times the defendant wept,

his relatives recalled later.

Medell Banks kept bringing up his son from a previous marriage. If he gambled and lost, he might never see the boy again. It was a risk he just couldn't take.

"I'm getting ready to say I'm guilty for something I didn't do," he said.

His co-defendant, Dianne Tucker, was offered the same deal. After a similar discussion with her lawyer, she made the same decision.

On May 7, 2001, they both stood before Judge McPhearson and pleaded guilty.

The judge rejected the 10-year sentence their lawyers had hoped for and imposed 15 years. The fates of the three mentally retarded defendants, it seemed, was settled.

But Hutchinson, Medell Banks' lawyer, wasn't ready to give up. He had one last card to play.

The medical test that would determine once and for all if Victoria Banks' tubal ligation remained intact was too much of a risk when she was on trial for her life, but there was nothing to lose now.

Last July, Victoria Banks lay on an examination table at the University of Alabama at Birmingham as a doctor injected dye into her uterus.

If the dye spread from her uterus, through the fallopian tubes, to her ovaries - a distance of four inches - it would mean Victoria Banks could conceive and give birth. But if the dye stopped in the tubes, it would mean the tubal ligation was still intact.

On a TV monitor, the dye was a ghostly black against the white of Victoria Banks' internal organs. Three lives depended on this, Hutchinson knew, as he watched the dye slowly fill the uterus and edge into the tubes.

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The judge wondered: Where is justice to be found in this confounding case?

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Attorney Rick Hutchinson examines copies of X-rays showing the tubal ligation of Victoria Banks at his office in Butler, Ala., on March 26, 2002. The X-rays became crucial evidence in the capital murder case against Banks and two others charged with killing a newborn baby. (AP Photo/Dave Martin)

By MICHAEL LUO
AP National Writer

BUTLER, Ala. - Rick Hutchinson drove 2½ hours straight from the doctor's office in Birmingham, his excitement building as he barreled down the country roads, past piney woods, logging trucks and pulp mills.

At the end of a dirt road on the edge of town, the Banks clan and their friends had gathered to hear his news. The lawyer stepped from his SUV clutching a set of X-rays.

Victoria Banks' fallopian tubes were blocked, he said; her tubal ligation was still intact.

It was quiet for a moment as the group grasped the importance of this information. Then they the hooted, hugged and danced.

This was all the evidence he needed, Hutchinson thought. The three mentally retarded residents imprisoned for killing a baby must be innocent. There had never even BEEN a baby!

Hutchinson represented only one of the three -Victoria Banks' estranged husband, Medell Banks. He quickly asked a state court to overturn the conviction of his client. Lawyers for the other two, Victoria and her sister Dianne Tucker, didn't join the appeal. Instead, they waited to see what the court would do.

On Aug. 20, 2001, Banks family members and their supporters packed Judge Lee McPhearson's sweltering courtroom on the second floor of the Choctaw County Courthouse.

Dr. Michael Steinkampf, director of Reproductive Endocrinology and Fertility at the University of Alabama at Birmingham was the main witness for the defense. The test he had conducted on Victoria Banks, he said, proved with absolute certainty that she was sterile.

He had no doubt, he said, that the woman had faked her pregnancy.

District Attorney Bobby Keahey argued the test proved nothing of the kind.

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Victoria Banks still could have given birth in 1999, he said -although this would have required an improbable chain of events:

After her tubal ligation, the tubes spontaneously repaired themselves (which happens in one out of 100 cases), allowing her to get pregnant. After she gave birth, she acquired a sexually transmitted disease, leading to a pelvic infection that reblocked the fallopian tubes.

Keahey called Dr. Timothy Hughes, a Mobile gynecologist, to the stand to testify that this was all possible. And the prosecutor introduced evidence that Banks had indeed been treated for a sexually transmitted disease a few weeks after the suspected birth date of the baby.

Steinkampf protested. X-ray pictures of the blockage in Victoria Banks' fallopian tubes were not consistent with this scenario, he testified. Blockage caused by disease would occur higher in the tubes. Instead, the X-rays showed the tubes ending close to the uterus, in neat, symmetrical nubs, just as one would expect in a successful tubal ligation.

To Judge McPhearson, this sounded like a draw: two competing theories by two reputable physicians.

But the prosecutor wasn't finished. He called Victoria Banks to the stand.

Did she remember admitting giving birth when she pleaded guilty to manslaughter? Keahey asked her.

"Yeah," said Banks, her voice barely audible.

"Tell the judge if that's the truth or not," the prosecutor said.

"Yeah," she answered.

Keahey sat down and Hutchinson rose to cross examine her.

Why had she accepted the plea agreement, he asked, his tone soothing, fatherly.

"I can't remember," Banks said.

You were afraid of the electric chair, weren't you? Hutchinson said.

Banks hesitated, then said: "I don't know."

"For your sake, and the sake of this court, we all need to know the truth," Hutchinson said. "Did you have a baby in the summer of '99?"

Banks did not respond.

"And was Medell and Dianne present?"

Still, she was silent.

Judge McPhearson told her she needed to answer.

"No," Banks said.

"Pardon?" McPhearson said.

"No," Banks said. "I didn't."

For a moment, the courtroom was still.

Then Keahey rose.

Hadn't Banks told her doctor that she was pregnant, he asked.

She admitted that she had.

And hadn't she told the same thing to Sheriff Donald Lolley?

"Yes," she said.

And her cellmate, Connie James?

"Yes," she said.

"Were you pregnant when Dr. Hensleigh saw you?" Keahey asked.

Banks paused a moment, then said: "No."

Soon, the hearing was over, leaving Judge McPhearson to ponder where justice was to be found in this confounding case.

He could give no weight to Banks' testimony, he thought. She never told the same story twice. But Steinkampf's test -that was significant new evidence.

To throw out the conviction, the judge had to find that the new evidence "probably" would have resulted in a different verdict. Was the test enough to overcome the witnesses who said Victoria Banks had looked pregnant, the prison doctor who was convinced she had been?

The judge, as he admitted later, was torn.

On Sept. 28, 2001, a month after the hearing, McPhearson gathered the attorneys in his chambers to announce his ruling. His first words:

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"None of you are going to be happy with this."

He could not find that Steinkampf's test probably would have resulted in a different verdict, only that it might have, the judge said. So Medell Banks' conviction would stand.

However, he said, he was reducing Medell Banks' sentence to 28 months followed by five years probation. Having already served two years, he would soon be a free man.

Months later, McPhearson explained his thinking to The Associated Press.

"Under Alabama law, I'm not so sure that the defense met their burden," he said, "but you've got a situation where you can't ignore that test."

How important was it?

"There could be an innocent person in jail," he said.

Even if Medell Banks is innocent, the judge said, overturning his verdict might not be "the proper thing to do." Keahey would just retry him, exposing the retarded man once again to a risk of life without parole.

Unable to determine the truth, Judge McPhearson did what other participants in the case had done before him. He weighed the risks and benefits, figured the odds.

The judge thought his decision would bring the two-year-old Medell Banks case to a reasonable conclusion. It did not.

Seeking complete vindication for his client, Hutchinson went to the state Court of Appeals on Oct. 5, 2001, asking them to overturn the verdict and grant a new trial.

Keahey responded by appealing the sentence reduction, noting that state law gives a judge only 60 days to reduce a sentence after it is imposed. When McPhearson ruled, that deadline had expired.

The Court of Appeals, which has not yet ruled on the request for a new trial, quickly agreed with the prosecutor about the sentence reduction, reinstating the 15-year sentence late last November.

Medell Banks and his two co-defendants were back where they started, but now they had a small army of supporters on their side. A band of their friends and neighbors began meeting on Sundays after service at a small Baptist church on the edge of town, where several of Medell Banks' relatives worship.

Led by Carrie Johnson, a 73-year-old retired school teacher and the mother of the young civil rights worker run down 30 years ago near the courthouse, the group held a press conference and started a legal fund. A petition was circulated and fliers were posted around town.

The Equal Justice Initiative, a civil rights group in Montgomery that usually limits itself to death penalty cases, has taken up Tucker's cause. The group is arguing that she is innocent, that she had incompetent legal counsel, that prosecutors withheld evidence.

Today, Medell Banks has completed the substance abuse program at the Draper Correctional Facility. Hutchinson attended his graduation ceremony in May.

Victoria Banks is taking GED classes at the Julia Tutwiler Prison for Women. Her sister, Dianne Tucker, couldn't pass the qualifying test for the program, and is working as a prison housekeeper. Their mother died recently, and their father, suffering from diabetes and cancer, is near death.

As for Keahey, the district attorney, he isn't done with Victoria Banks yet.

She lied when she told Judge McPhearson she had not been pregnant, Keahey says. He has brought a new charge against her -perjury.

To folks in town who think this seems vindictive, he says this:

"I'm not going to let it lie until they do."

EDITOR'S NOTE -AP correspondent Garry Mitchell in Mobile contributed to this story.

Justice System

Re-examining how the legal system deals with retarded suspects

July 7, 2002

By MICHAEL LUO
AP National Writer

Momentum is growing across the country to re-examine the way mentally retarded people are treated by the criminal justice system.

Citing a growing national consensus, the U.S. Supreme Court recently banned the execution of mentally retarded people. The landmark decision was just the latest milestone.

Over the last 15 years, state legislatures have moved steadily to outlaw capital punishment for the mentally retarded, reflecting widespread belief that such defendants are less culpable than those without mental disability and that they are uniquely vulnerable to wrongful convictions.

While exact figures are hard to come by, studies indicate that mentally retarded people are convicted and incarcerated at higher rates than others, less likely to successfully plea-bargain and more likely to be abused in prison.

Most estimates put mentally retarded inmates at 4 percent to 10 percent of the U.S. prison population. In contrast, the American Association on Mental Retardation estimates up to 3 percent of the general population is mentally retarded.

The statistics make perfect sense, said Ruth Luckasson, president of AAMR.

"They're at higher risk for waiving their rights, coming up with a confession, not having enough money to hire a lawyer, getting confused, all that stuff," she said.

Inequities exist in every step of the criminal process, according to advocates, but they are particularly concerned about interrogations that result in confessions. Investigators are often unaware of how suggestible mentally retarded suspects are and how confused they can get under stress, experts say.

People with mental retardation often pick up cues from their questioners and adopt

whatever story seems best to try to please them, said Chris Slobogin, a criminal law and psychology professor at the University of Florida.

"They try to hide their retardation because they're embarrassed by it. One way of doing that is to agree with whatever is being suggested," said Slobogin, who has written a book on psychological evaluations for courts.

"The research indicates that children who are older than toddlers, that is, 6, 7, 8, are no more suggestible, probably less suggestible, than people who are mentally retarded."

Experts suggest that police avoid leading questions and that they videotape interrogations so they can be evaluated.

Advocates point to cases involving defendants like Earl Washington Jr., a mentally retarded farmhand from rural Virginia. In 1982, after a lengthy interrogation, he confessed to a series of crimes, including stabbing a young woman. Washington, whose IQ was measured between 57 and 69, came within nine days of being executed before DNA evidence exonerated him. He was freed in February of 2001 after 18 years behind bars.

No one knows how many of the 3,700 people currently on death row are mentally retarded, but estimates have ranged as high as 20 percent. At least 35 of the 781 people executed since 1976, when the death penalty was reinstated, were mentally retarded, according to the Death Penalty Information Center.

Polls show that most Americans, including those who support the death penalty, now oppose the harshest punishment for mentally retarded inmates.

Since 1989, the number of states barring execution of retarded people has jumped from 2 to 18. Thirteen states forbid all capital punishment. The federal death penalty statute also forbids executions of the mentally retarded.

The Supreme Court cited this growing

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consensus as evidence that society's views have changed, and that the execution of retarded people is now considered cruel and unusual.

"It is not so much the number of these states that is significant, but the consistency of the direction of the change," Justice John Paul Stevens wrote in the court's majority opinion.

Those who disagree with the decision cite the problem of assessing mental retardation. Experts usually base the diagnosis on a combination of factors, including an IQ test, measurement of adaptive skills and childhood learning problems.

The Supreme Court places the IQ cutoff at 70 (average IQ is about 100). But test results in which a few points can mean life or death are likely to be bitterly contested.

Intelligence, unlike height or weight, is not a fixed measurement, and IQ scores can differ depending on the test given and the circumstances under which it is administered.