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From the Los Angeles Times

## Justice Department urged to investigate FBI staffer

The ex-Riverside County deputy was found to have made up evidence that led to a false rape conviction.

By Henry Weinstein

Los Angeles Times Staff Writer

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A coalition of national nonprofit groups asked the Justice Department on Tuesday to investigate and suspend an FBI employee who was found by a jury to have falsified evidence against a man who served 12 years in prison before being exonerated by DNA evidence.

The National Innocence Network, which is dedicated to clearing people who are wrongfully convicted, asked Justice Department officials to investigate former Riverside County Sheriff's Deputy Danny Miller, who now works for the FBI.

A federal jury found in April that Miller had helped wrongly convict Herman Atkins on robbery and rape charges 19 years ago.

The jury, seated in Los Angeles to hear Atkins' civil rights claim over the wrongful conviction, unanimously concluded that Miller had "intentionally attributed a statement" to a witness that the man did not make.

The jury also unanimously concluded that Miller had "failed to disclose" that he had "fabricated" the statement and that there was a "reasonable probability" that if he had told the truth the outcome of Atkins' trial "would have been different."

During the trial, Miller testified that he now works as an intelligence analyst for the FBI, focusing on homeland security, at the agency's Little Rock, Ark., office.

Tuesday's action marked the first time that the National Innocence Network, made up of organizations at 31 law schools, "has ever asked that a law enforcement officer be suspended and investigated for misconduct that led to a wrongful conviction," said Kathleen Ridolfi, executive director of the Northern California Innocence Project at Santa Clara University Law School.

The coalition made the request in a letter to Inspector General Glenn A. Fine of the Justice Department's Civil Rights & Civil Liberties Complaints Office in Washington.

Atkins, now a Fresno resident, was convicted of rape and robbery in Riverside County and sentenced to 45 years in prison, stemming from a 1986 robbery and rape at a shoe store in Lake Elsinore.

He steadfastly maintained his innocence.

In 2000, DNA tests conducted by Richmond, Calif., forensic scientist Edward Blake, and later confirmed by the FBI, eliminated Atkins as the source of semen found on the victim's sweater.

Atkins was released from prison the same year. The actual rapist was never identified.

Two years later, Atkins filed a civil rights case in federal court, alleging, among other things, that Miller had fabricated evidence and withheld information that raised doubts about whether Atkins had committed the crime.

At Atkins' criminal trial, Miller had submitted a statement attributed to a man named Eric Ingram, saying that he knew Atkins to be a gang member and had seen Atkins in Lake Elsinore at the time of the crime.

Years later, a private investigator tracked down Ingram, who signed a sworn statement saying he did not know Atkins and had not told Miller that he had seen Atkins in the vicinity of the crime scene.

During Atkins' civil trial this year, Miller denied that he had made up evidence.

But on April 30, the jury awarded Atkins \$2 million in damages and filled out a special verdict form stating that Miller had fabricated and suppressed evidence.

Ridolfi's letter to the Justice Department said that "in light of these extraordinary developments," the innocence network was asking that Miller be the subject of a formal investigation, "which could result in the termination of his employment with the Bureau. Indeed, given the security and sensitivity of Miller's assignment, we urge you to consider suspending him pending the outcome of the investigation."

"We are confident that the FBI and the Department of Justice will conclude . . . that it is inconceivable that our nation's homeland security will rely on the intelligence analysis of a man found in a court of law to be a liar and an evidence fabricator," Ridolfi added.

Peter Neufeld, co-founder of the Innocence Project at Cardozo Law School in New York, said that although there had been evidence of police misconduct in many wrongful-conviction cases, no request of this kind had been made in the past because "in almost all of our cases the cops who engaged in the misconduct have retired or died" before the evidence came to light.

This case is different, Neufeld emphasized, because the officer in question still has a significant job in law enforcement.

The Justice Department did not respond to inquiries seeking comment.

Last week, in a related development, U.S. District Judge Dean D. Pregerson in Los Angeles awarded \$1.3 million in fees and \$165,000 in costs to Neufeld and his three co-counsel, who represented Atkins in his civil rights suit against Riverside County.

Pregerson said the case involved "complex and novel issues" and that the attorneys' briefs and oral arguments "were excellently presented."

Riverside County has appealed the damage judgment, and it is anticipated that the county will also appeal the fee award.

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