

# **Three Strikes: The Unintended Victims**



—Photo by Ruth Morgan

Dale Broyles, shown here with his family, faces 25 years to life in prison. His story is on page 44.

**A case-history project by  
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## Acknowledgments

The authors wish to thank the many people who were generous with their time, skills and money in helping to make this study a reality. Foremost among them are the victims, family members, friends, parole agents, employers, service providers and defense attorneys of the individuals profiled in this report, as well as the defendants themselves.

We especially thank Ruth Morgan, who travelled around the state to help present visually those we profiled in words. Susan Holtzer Jones, of Caddo Gap Press in San Francisco, donated her time to the layout of this report, and we are very grateful to her. Michael Lightfoot, Mark Weisenthal, and Jeff Stein helped us obtain legal documents from distant court files that otherwise could only have been obtained at prohibitive cost. We also thank Peter B. Collins for his donated time and travel in helping present the results of our study to the public.

This project was funded by generous contributions from the San Francisco Foundation, the California Attorneys for Criminal Justice Foundation, the California Wellness Foundation, Sam and Mary Mills, the Kokoro Foundation, and the Judith Stronach/Raymond Lifchez Fund.

The Center on Juvenile and Criminal Justice is a public policy organization that engages in research and provides technical assistance on criminal and juvenile justice issues.

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## Introduction:

# The People Behind the Headlines

With speed rarely seen in the legislative process, California's lawmakers last March enacted a harsh new system of criminal punishment that will sweep thousands of people a year into prison for decades, at a cost of hundreds of thousands of dollars for each of them. Many of these men and women surely deserve severe punishment. But because of the "three strikes" law's simplistic, arithmetical formulae — based on a metaphor borrowed from baseball — many people will be sent to prison who may not merit such punishment. The Center on Juvenile and Criminal Justice set out to find and profile some of these people. We thought their stories would help to ground the current criminal-justice debate by shifting the focus from arithmetic to real people.

The victims of crime, no less than the public at large, deserve an accountability based on actual circumstances. Neither criminal nor victim is a metaphor. After all, the public's indiscriminate anger was provoked by the tragic murder of a real person. But the politicians' response extended far beyond that unspeakable act. Many unintended victims were caught in the net.

It was just a year ago that Polly Klaas, an innocent 12-year-old girl, was kidnapped during a slumber party at her home in Petaluma, Calif. She was subsequently murdered. That vicious crime, and the desperate search for the girl, drew national attention. For weeks before and after the capture of Richard Allen Davis, her confessed killer, the Polly Klaas kidnap-murder case made front-page headlines and top-of-the-hour bulletins.

After the capture and immediate con-

fession of Davis, a repeat felon with prior convictions for burglary and kidnapping, the case became an icon for what is wrong with the criminal justice system in California and across America.

California's governor and senior senator gave speeches at Polly's memorial service, and President Clinton singled out her tragic case for mention during his State of the Union address. "Leniency," "soft-headedness," and "mollycoddling convicts" were all blamed for a plague of crime that the public perceived was engulfing the nation. And tough, no-nonsense, inflexible sanctions were seized upon as the panacea.

At the same time, Mike Reynolds — a photographer from Fresno whose daughter had also been killed — was spearheading a then-fledgling movement to pass a rigid habitual offender act in California through both the legislative and initiative process. Several attempts to pass Reynolds' law had failed in legislative committees, and Governor Wilson had consistently refused to support the law prior to Polly Klaas' kidnapping. The act had been dubbed "three strikes and you're out" by the National Rifle Association, its primary promoter nationally, because of a provision requiring life prison terms for defendants convicted of any felony who had already been convicted of two purportedly "serious" or "violent" felonies.

The stage was set for the meteoric rise in popularity of the legislation with the catchy baseball name and the financial backing of the powerful NRA. It was

*"Neither  
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metaphor."*

presented as an all-or-nothing nostrum. Few stopped to read the fine print. Within weeks, almost every major candidate for governor<sup>1</sup>, senator, and attorney general from both parties endorsed the "three strikes" law, as did members of the grieving Klaas family. The public opinion polls, now showing crime as the No. 1 voter concern, were running 8 to 1 in favor of the state's newest crime-control cure-all. On March 7, 1994, following a special session of the Legislature on crime, Assembly Bill 971 — "three strikes and you're out" — was signed into law by Governor Wilson. That same day, enough signatures were submitted to the California secretary of state to qualify an initiative identical to AB 971 for placement on the November ballot in California as Proposition 184.

But in the interval between the rise of the "three strikes" concept, its signing into law, and the present day, Californians have had an unprecedented opportunity to examine both the "diagnosis" that gave rise to the law and the legislative "cure" that "three strikes" represents. The Klaas family, along with many legislators who voted for the law, have recanted their support. Virtually every major newspaper in the state that extensively covered the kidnapping of Polly Klaas has now taken a position in opposition to the "three strikes" initiative. Poll results are running 2 to 1 in favor of the law, although 85 percent of respondents express a desire to have a "violent-crime-only" proposition as an option on the ballot<sup>2</sup>.

With the intensive electoral scrutiny, two underpinnings of the "three strikes" law have been called into serious question: the contention that California has been reluctant to punish its offenders and the notion that crime is rising out of control. Since 1977, when California had 19,000 inmates in its prison system, the California Legislature has passed more than 1,000 bills lengthening sentences or defining new crimes, often in response to high-profile offenders such as Davis. The result has been a more-than-sixfold increase to today's population of 126,000. Between 1852 and 1984, California built 12 prisons. Since just 1984, California has constructed an additional 16 prisons.

But during the decade and a half that imprisonment was soaring, the crime rate in California has stubbornly refused to

budge, hovering today at approximately the 1977 rate. Indeed, during 1993 and the first half of 1994, the rate of both violent and property crime actually fell while public fear of crime inexplicably rose. A study by the Center for Media and Public Affairs in Washington, D.C., suggests one possible reason for such a paradox. The study shows that, while the murder rate nationally remained stable between 1992 and 1993, the number of homicides reported on the evening news of the nation's three major networks tripled. Not surprisingly, the report continues, from May 1992 to February 1993, there a sixfold increase in the number of Americans who rated crime as the country's most important problem.

This governance by hyperbole is having dramatic and often skewed effects on criminal justice policy-setting. As a victim of violent crime myself, I recognize that if I had the opportunity to set criminal justice policy 10 minutes after I was mugged, it would have been lousy public policy. Alternatively, it is obvious that, as long as the public believes that Richard Allen Davis is representative of the typical California inmate, no progress will ever be made in setting rational criminal justice policy in this state.

The attempt to demonize crime suspects was well demonstrated in something we encountered while investigating "three-strike" cases around the state. We learned that those Stanislaus County jail inmates charged with "third-strike" offenses are clothed in special canary-yellow jumpsuits to distinguish them from run-of-the-mill inmates. In effect, this creates a class of criminals so horrible that they must bear a special mark of shame even before they are brought to trial. We were not able to find a reasonable rationale for such official scapegoating, yet the attitude behind this sartorial decision is in many ways a metaphor for the "three-strike" law itself.

The individuals whose lives and cases are profiled in this report won't make the evening news or the front pages of the local paper. Their stories may come as a surprise to some observers, but for most of us who practice in the criminal justice system every day, they are just what we expected. These are the cases that fill the court dockets day after day. That's why we decided to undertake this study.

*"These are the cases that fill the court dockets day after day."*

Dale Broyles, for example, is a 25-year-old man who is charged with being an ex-felon in possession of a weapon. Broyles was deposited — drunk and unconscious — into the back seat of his car by some of his friends to sleep off his evening binge. The next morning, after his car was repossessed with him still sleeping in it, Broyles was brought to the attention of the sheriff's deputies by a startled repo man. While attempting to awaken Broyles, deputies noted a gun in the vehicle's front seat (which Broyles and other witnesses claim is not Broyles') and arrested him.

Or Edward Morrison, a parole violator serving a six-month term in state prison for testing positive for drug use. With slightly more than one month left to serve on this violation, the mentally disturbed Morrison walked out of the minimum-security prison in which he was confined. He was apprehended less than 12 hours later in the process of applying for a job at a gas station.

Then there are those facing decades in prison for petty theft, the most commonly committed and least frequently publicized offense in California. Eddie Jordan stole a new shirt from a J.C. Penney's store that he intended to wear at a job interview. Juan Muro attempted to steal wooden pallets from a parking lot to burn at a beach bonfire for the birthday party of a friend's son. Vincent Delgado and Clarence Malbrough stole less than \$90 worth of items from chain stores; both had longtime heroin addictions. Duane Silva and Ricky Spahn are both borderline mentally retarded defendants charged with property crimes. Michael Garcia stole a package of chuck steaks to feed his family. And Kendall Cooke shoplifted one can of beer from a 7-Eleven store.

Together, these eight defendants stole \$8,000 in goods. It will take only 15 days before the taxpayers' bill for their collective imprisonment exceeds that amount. Each of the 10 defendants profiled in this report is facing a life sentence. None of the 10 men was ever accused of physically harming a victim.

In this report, we chose to profile only people facing life sentences because that is the part of the legislation that has captured the public imagination. However, there are thousands of defendants facing sentencing under the "second strike" provision who

could just as easily have been included. Many asked not to be included in this study because they feared offending district attorneys, who are the only officials with the power to plea bargain on "three-strike" cases by ignoring prior offenses. It is a power that even the judges are apparently not permitted under the legislation, thereby granting traditionally judicial discretion to prosecutors.

One defendant we interviewed, Steve Percelle, stole a grocery cart full of groceries and liquor after he lost his job, in order to pay for medicine for his 2-month-old asthmatic son. Charged originally with a third "strike," the assistant district attorney in charge of the county's "three strikes screening team" decided to ignore one of Percelle's prior convictions after the media took an interest in his case. Percelle will instead spend four years in prison for that offense, over the objection of four of the assistant district attorneys on the county screening team who still wanted the life term.

There is a temptation to view these cases as oddities. But evidence is mounting statewide that such cases are becoming commonplace. According to the Los Angeles district attorney's office, 75 percent of the "third-strike" cases their office is now being compelled by the "three strikes" law to prosecute are non-violent and non-serious. No defendants in their right mind will plead guilty to a life term for a case that six months ago would have carried a short jail term. The Santa Clara County Executive's Office has estimated that jury trials there will triple over the next year alone because of the "three strikes" law. Civil courts in Los Angeles have already been closed repeatedly to handle the "three strikes" overload from criminal courts.

Clearly, to dub this group of defendants "the gang that couldn't shoot straight" would be to elevate their level of criminal sophistication. The Center on Juvenile and Criminal Justice undertook this study with the hope that these case histories would educate the public about the real lives of real defendants churning daily through our criminal justice system. Voters may read this and still feel that these men (and the women whose cases we were unable to profile) deserve life

*"This governance by hyperbole is having dramatic and often skewed effects on criminal justice policy-setting."*

imprisonment. As researchers, we felt it our responsibility amidst the current criminal justice feeding frenzy to put a human face on the "three strikes" law.

Through a quirk of legislative history, Californians have a rare opportunity to see in operation a sentencing system they are about to vote on. That system appears to us to need greater scrutiny. It is our hope that in considering this issue, voters will evaluate the experiences of real people rather than stereotypical desperadoes shrouded in the campaign rhetoric of fear

and vengeance.

If there is a lesson to be learned from the stories we present here, it's a message far older than Gilbert and Sullivan's "Mikado," where it was so catchily phrased: Let the punishment fit the crime.

—*Vincent Schiraldi, Executive Director  
Center on Juvenile and Criminal Justice  
October, 1994*

<sup>1</sup>State Senator Tom Hayden, then a candidate for the Democratic gubernatorial nomination, is the only exception to this list.

<sup>2</sup>The deadline for placing new propositions on the ballot has passed.

## Duane Silva

*Charge: Residential burglary*

*Value of stolen goods: \$1855 (VCR, jewelry and coins)*

Baudelia Silva leans forward, crying, gesturing, pleading, the words tumbling out one on top of the other, some in English, some in Spanish. She is trying to get someone to understand what she has told so many officials over the years: Her son, Duane, has "a head sickness ... loco ... he is mentally wrong." In prison, she says, "what will happen, how are they going to control it ... ?" She does not believe he will come out of prison alive. She wants to explain personally to the judge. She is sure that if she can make the judge understand, the judge would not sentence her son to prison for 25 years to life.

But because Duane — by all accounts a nonviolent, even passive young man — has just been convicted of his "third strike," and because Tulare County prosecutors have been insisting on imposing the "three strikes" penalty, the judge may have little choice.

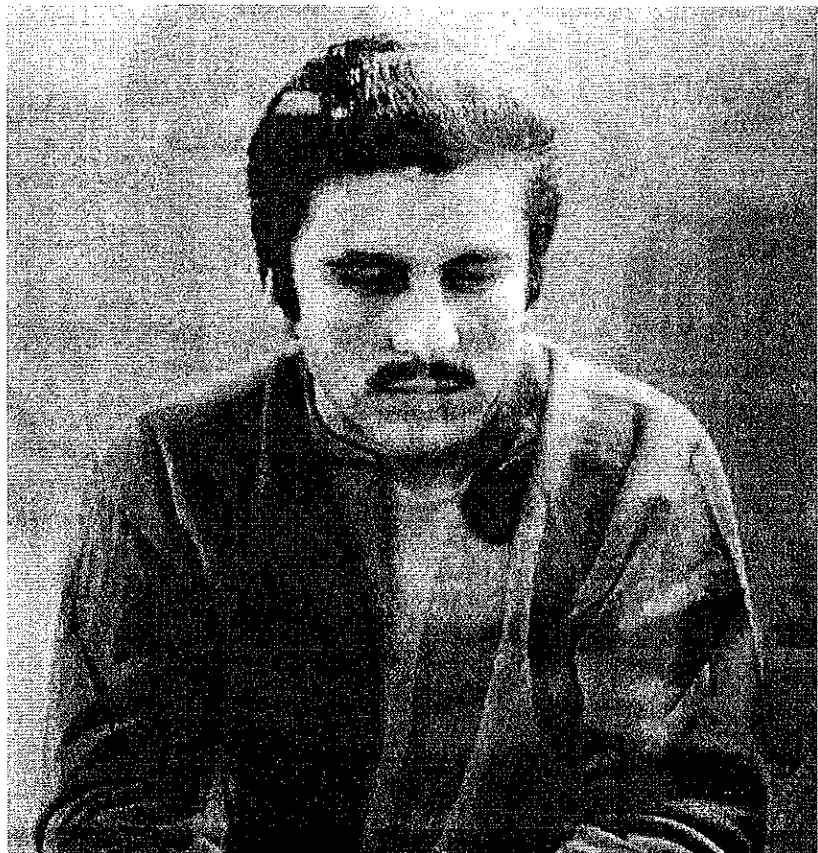
The "head sickness" is not just Mrs. Silva's diagnosis. In the more measured and less compelling words of a psychological evaluation performed a year and a half ago, Duane Silva's test results on a Wechsler Adult Intelligence Scale showed "a Full Scale IQ of 71, placing present intellectual functioning within the low borderline range." The report seconded an earlier diagnosis of "Schizoaffective Disorder, Bipolar; with an Axis II diagnosis of Mild Mental Retardation (IQ 70)." Among the recommendations of the Central Valley Regional Center were that Silva "may benefit from placement in a residential facility geared to the needs of persons with mental disorders, and which can provide him with the super-

vision he requires, and to assure that he complies with his psychiatric treatment regimen."

Duane Silva's criminal "career," all of it nonviolent, betrays the same random senselessness as other inexplicable incidents in his life. The 23-year-old acquired his first two "strikes" for arson when he was 20. He was convicted of those charges on the same day, as the result of a plea bargain.

*Duane Silva behind a glass partition at the Bob Wiley Detention Facility near Visalia*

—Photo by Ruth Morgan



One conviction was for two trash-can fires in the town of Strathmore. According to the police report, Silva acknowledged setting the fires, explaining that "he was working for Tulare County Sheriff's Office as a patrolman, to walk the streets of Strathmore and burn down all the dope dealer's [sic] businesses. [He] stated he was in charge of Strathmore, Lindsay, Woodlake, and Woodville."

Silva's second "strike" was for two small fires in trucks parked in Porterville. The more serious of the fires involved damage "to the area of the dash by the glove

box." Silva awakened the owner of the truck by "banging on the door and ringing the doorbell" to alert him that the pickup was on fire. The owner then put out the fire with a garden hose. Silva subsequently told fire investigators that "he was working undercover for the Strathmore Fire Department" and spotted four young men setting the fires. He added that the four men "tried to sell him gum that they took from one of the vehicles but he refused."

After the arson arrests, Silva

was declared incompetent to stand trial and was committed for a year to Atascadero State Hospital. Three months after his release from Atascadero, he was let out of jail as part of a plea bargain in which he pled guilty to two arson charges.

Tulare County Deputy Public Defender Hugo Loza recalls the circumstances of that plea bargain. As the young man's attorney, he worked with the judge and the county director of mental health to get the troubled Silva some help. "We were intent," said Loza, "to let him out of custody and have him continue with his involvement with mental health. So he pled guilty basically because it was going to be credit for time served, and the only real condition was that he follow up with mental health and take the medication that was prescribed."

"Who knew," Loza added, "what the ramifications were going to be in the future, that this was going to be one of the stepping stones for a life sentence?" It was the "three strikes" legislation passed 2 1/2 years later that was responsible for the un-

expected use of Loza's carefully crafted plea bargain designed to get Silva appropriate care.

Silva had one subsequent conviction, in 1993, for arson in a trash bin in a sanitation yard. He was released with time served and three years' probation after 240 days in jail.

Silva's third "strike" is a burglary at a 17-year-old friend's family home in Strathmore, a home where Silva had visited frequently in the past. The burglary occurred less than a week after the "three strikes" law went into effect, while Juan Macias and his family were in Las Vegas. When the Macias family came home from their weekend outing, they noticed the house had been burglarized. Missing were a VCR, about \$25 in old coins and several pieces of jewelry that the family estimated were worth \$1600.

Silva informed his longtime friend Juan Macias that he knew where a VCR like the missing one was located. After scouting out the location of the VCR with Macias, Duane Silva called 911 to summon deputies to his friend's house to inform them that the missing VCR had been spotted. The man in whose house the VCR was later found said he had bought it for \$40 from Silva, and Silva acknowledged as much to the investigating sheriff's deputy, stating that he himself had bought the VCR in Porterville and then sold it because he knew it was stolen. Silva also told the deputy that he had sold the missing jewelry for \$10 and had spent the missing quarters playing pool and buying soda and candy. Under further questioning he admitted the burglary, saying he had entered the residence to take a video game.

Silva told still another version of the story to an interviewer from the Center on Juvenile and Criminal Justice. In an interview at the sheriff's Bob Wiley Detention Facility outside Visalia, he denied selling the VCR and said he didn't think he had ever said that. "I didn't do nothing," he said. Silva claimed that the deputy who took the initial report "kept trying to tell me I did it and to say it, so I just gave up and let him write his own report." He said the officer "seemed to want me to say it."

"I have a TV and a VCR," he tells the interviewer. "Why do I need another one?" Perhaps for the money he could get from selling them, he was told. He replied



*Duane's mental problems were already apparent when he was a young child*



that he gets his disability money from his mom and "I don't spend much — just soda and some munchies."

The inability to tell when Duane Silva was fantasizing was among the childhood signs of the mental problems that have haunted the young man's entire life. "At home he would start inventing things. That's how he started," said Baudelia Silva, who, as a single mother of three, struggled to deal with her youngest child's aberrations. She recalls a day when she got home from work to find her house surrounded by police. Duane, who was about 7 or 8 years old at the time, had called the police and told them he had been kidnapped.

But the boy's problems were evident long before that. Mrs. Silva was told by a doctor once that Duane must have been hit when he was very young and that his brain was damaged, although she remembers no such accident. A psychological evaluation of the young man notes that "he reportedly did not sit until age 12 months, and did not walk until 3 years of age. Speech was evident at 2 years of age."

The problems with the boy accumulated as he grew older. Somewhere between the ages of 5 and 7 he began running away from the house — literally running — with no idea where he was going, sometimes even in winter weather. Typically, he would be found hungry in a park a few days later.

Also from a very young age he would destroy everything around the house, from toys to expensive televisions. He would either take them apart or cut them with scissors. Says his mother, "I've never said this is a toy that's been Duane's since he was small because everything he destroys. He still does that."

When Duane first got to school, officials noticed something wrong. They told his mother that they "didn't know what the problem was, but he wasn't a normal child." He was put in special education classes, which he seemed to enjoy. His mother says "he likes to draw and study and read a lot, but he can't learn."

The boy took to calling the police "when he's not right." Mrs. Silva said he would "tell different stories each time, and the police would never know what's true."

She described the raging moods to which her son was given. "When he doesn't have the problems with his head, he's very calm and he has no problems with anyone



—Photo by Ruth Morgan

and he's very quiet. But he gets mentally out of control from one moment to the other, and he just leaves and goes into the street and starts doing things."

Strathmore High School student coordinator Jerry Hinkle remembers trying to help the young man a number of times. He recalls a succession of incidents — bomb scares, an occasion when Silva thought he was a police undercover agent assisting a co-agent who ran a taco stand, other times when he wrote off-the-wall notes and acted out various TV fantasies. He said that Silva was "a pretty nice kid" when rational, "but you could always see it coming on when he was out of control."

Duane Silva was asked in the jail interview what he feels at times like that. With an impassive face, a monotone voice and as few words as he can use to answer questions, he ascribes those episodes to "my nervous system." He says it's something that comes over him "when it's hot." He describes his behavior at such times as "like a blackout."

"I realize afterwards I did something wrong," he said. "At the time I just do it."

*Baudelia Silva, Duane's mother and tireless advocate*

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Mrs. Silva is proud of her independence. While raising Duane and his two older sisters, she says, she has worked hard in the fields and in an olive plant until it closed two years ago. She never took welfare or asked for it. But she did need some help with her son. She took him to institutions. "I took him from one place to another," she said, speaking partly in English and partly through an interpreter. "And they would always shuffle me around, telling me, 'Oh, no, you don't belong here, you belong in this other place,' and on it went."

At least, when he was young, the police understood the problems, Mrs. Silva said, "but when he grew up and got 18 years, the police start to punish him and bring him to jails, but it is a big problem because it's a head sickness. And now he got two problems."

She described how she sent letters to judges pleading for help with her son so he wouldn't end up in jail, "and no one helped me." She said she would go to a clinic and ask for help when Duane got out of control, "and the lady at the clinic tells me, 'Well, we're taking care of him by order of the judge, so go talk to the judge. And I went to talk to the judge, and the judge says, 'Take him to the clinic.' One sends me one way and the other sends me back, and my problem runs out into the street. And the next day the police take Duane. It's not right."

Now, she says, "when he's in trouble, they put him in jail. He's sick, and he gets worse and worse and worse. It's hard for a person like that. No one understands me."

Her fears are far greater for her son if he is sent to state prison. In a typical year, she says, he has "two or three problems." She adds, "In prison, what will happen, how are they going to control it with a bunch of other inmates that are really criminals? So when he starts yelling and getting disorderly, they will kill him." The translator adds, "She doesn't believe that he will come out of a prison alive because he needs medical attention."

The mother's fear is echoed by the only other person who knows Silva well, on a day-to-day basis. Dan Hogan is a retired special education teacher at Strathmore High School. Silva was in his classes for four years, and Hogan often tried to help the young man and his mother on his own

time. In a telephone interview, he reacted with horror to the idea that Silva might be sent to state prison at all, let alone for a minimum sentence of 25 years. "They would chew him up," he says, and goes on to explain.

He described a polite, gentle and calm young man who "really wanted to please everyone, and he ended up by pleasing no one. All he's ever wanted to do was get along with people, to love and be loved." But, continued Hogan, in his anxiety to please, he destroyed the very things he was yearning for.

For years, Hogan said, the kids in school made fun of Duane — "he was easy pickin's." Mrs. Silva says it started even before he got to Hogan's classes. "They called him dummy, crazy, and hit, a bunch of kicks and everything." It was very hard on Silva, Hogan adds. He recalls incidents in high school when other kids would "go to his home when his mother was not at home, make Duane let them in and then eat all the food in the kitchen and play his video games. They used him to do these things that kids do. They take advantage of other kids, especially if they see that they're easy." They'd also "go out of their way to push him, thinking that was funny, but Duane would never retaliate. He didn't know how to retaliate to violence." Hogan speculates that perhaps the arson fires were the only way Silva could express his frustration at the abuse he suffered.

Now, says Hogan, he can imagine the fate that awaits Silva. "In state prison," he says, "he would probably be dead in a year, because this is a nonviolent, unaggressive, very open-to-everyone person. So they would destroy him shortly — very, very soon."

Silva himself recognizes the danger he faces in prison, but he is typically laconic as he explains it. He was asked about his fears, and he answered only: "gang-related stuff." Indeed, in the rigid Hispanic gang structure in California prisons, the young man has good reason for his fears.

Another special ed teacher at Strathmore High has particularly strong feelings about criminals, and with very good reason. "The person who viciously raped me should be in prison for life," said Mary Jo Lichty, but "I think that Duane is hopefully corrigible. His problems are mental. I

don't think he's in the same category as people who commit violent crimes."

The "three strikes" law, however, does put Silva in the same category, and it appears to give the judge no options in sentencing him. Both the judge and the prosecutor have rejected previous attempts to remove this case from the scope of the "three strikes" law and to challenge the law on constitutional grounds. One of the rejected constitutional challenges, said Silva's energetic public defender, Michael Sheltzer, was a "separation of powers" argument based on the fact that, under the law, judges do not have the discretion to dismiss "three strikes" cases in the interests of justice unless district attorneys ask them, thus giving essentially judicial powers to prosecutors.

Constitutional challenges aside, without this new legislation, said one veteran defense attorney, "no judge would send Silva to prison. This guy would get probation, no doubt about it."

Just about everyone who knows Silva,

including his mother, thinks he needs some kind of institutional care, but not a prison. Mrs. Silva, who for years has lived with the strain of dealing with her unpredictable son, wants to continue to help him but recognizes that she is unable to do so while he is on the streets. She said she would like to volunteer in any mental institution in which her son is placed.

Dan Hogan shares Mrs. Silva's hopes. "He just needs to be put somewhere where he would get gentle care ... where he can be looked after, and certainly not in a state prison," said Hogan. "He's just a docile young man. He would step out of his way to avoid an ant. That type, you know. Something is wrong. Somebody didn't do their work. Or it's the system. ... With all due respect to the law, this should not be."

The troubled young man summed up his own views on the "three-strikes" law: "It doesn't seem right."

## Clarence Malbrough

*Charge: Petty theft with a prior conviction of theft  
Value of stolen goods: \$80.67 (batteries)*

When Clarence Malbrough walked out of the Payless store in El Cerrito on March 9 with 13 packages of double-A batteries stuffed into his shirt, he was quickly apprehended by a security guard. Police subsequently cited and released him with a court date. The batteries were worth \$80.67, and Malbrough freely admitted the crime. It was the last of a number of petty thefts that had kept him behind bars for much of his 48 years.

"How did you get yourself into this mess?" he was asked.

"Well, I'm a drug addict," he replied simply. "A drug addict for 30 years."

In the weeks before his final arrest, he'd been picked up for walking out of stores with Tylenol in one instance, cologne in another. Ironically, his last theft, the batteries, came as

Malbrough was making a deter-

mined effort to "get back a life" by getting rid of "this monkey on my back" — heroin.

"He had paid a lot to society," said one of his three adult daughters, "and he was finally getting it together. ... He was on the right track."

For similar petty thefts in the past,

Clarence Malbrough had generally received jail sentences of about 30 days. This time, the mild-mannered, balding grandfather of nine, who had been considered harmless enough to be cited and released, was hauled back to jail when the Contra Costa district attorney's office realized he was subject to a law that had gone into effect just two days before the theft, a law that could keep him in prison for decades. If convicted and sentenced as a "third striker," the 48-year-old Malbrough may be in his '70s before he gets to go to the park again with his daughters and grandchildren.

Clarence Malbrough is a family man against all odds. From his earliest years to his final days of freedom — through addiction and crime and incarceration — he has maintained strong family ties. He was married to the same woman, also an addict, for 27 years, and in recent years has had a stable home life with a woman friend and her children. He has worked to re-establish family ties with his three daughters — a hospital receptionist, a security guard and a homemaker — and his grandchildren, who range in age from 6 months to 15 years.

He is also a deeply religious, Bible-quoting man; a gifted singer who once made a gospel tape at San Quentin prison; and an intelligent man who has read widely despite his prematurely terminated high school education.

Malbrough's father did not live with the family and, says Clarence's sister, Vivian, "was never any help to us" during their childhood years. But Clarence Malbrough was very close to his mother, Cleophas, a college-educated, disabled



*Clarence Malbrough stands with his friend Sandra Dickens*

teacher who raised him and his brother and sister to be Christians and law-abiding citizens. They were a happy, close-knit family, and his mother had firm standards. The kids always attended church and school activities — young Clarence was a school crossing guard and won trophies for talent contests — and they were not allowed to play with kids whose families weren't known to their mother.

Malbrough's childhood dreams were the American dream: "Like all kids, I wanted to be somebody — a doctor, a lawyer, a fireman, policeman. ... We all had those dreams of wanting to be successful. A singer. I wanted to be an entertainer. I wanted to do a lot of things." At one point, a teacher even considered taking the talented youngster to Europe to sing.

But those early dreams dissipated soon after his family moved from the supposedly rough but intimate neighborhood of North Richmond to the more upscale but anonymous atmosphere of South Richmond. In North Richmond, his life had revolved around Shields Park and the legendary Charlie Reid, "a man I idolized." Reid ran the park and taught sports to young Clarence and so many others — football, baseball, track, nighttime basketball, running, boxing. The park, in fact, is now called Shields-Reid Park. "That whole city of North Richmond was raised by that man," he says.

It was "a neighborhood where mostly everybody knew everybody," and he never got into trouble there.

But when the family moved to South Richmond, "the better part of town," when he was 15, Clarence fell in with a more rootless crowd. He can't explain how, but in a little time, "I just went astray and never got back on track. Maybe it was the wildness in me, maybe it was my destiny to do that."

Whatever the reason, he began drinking and taking drugs with his new friends and was first sent to juvenile hall for taking a deck of cards and a knife from someone in a park. He was with a friend, and he was drunk. He also raided the lockers at a local bocce ball court.

His first periods of imprisonment were in California Youth Authority institutions, which were "little kiddie places" back then. In time, he was back on the streets, with friends who were on heroin. He tried it

when he was 19 or 20 — "it was a real curiosity thing" — and he was soon committing a range of property crimes to finance his habit. His first big crime was forgery of an unemployment check, which got him a civil commitment in a California prison supposedly geared to rehabilitation. That did nothing to slake his addiction, and dirty drug tests and other violations soon had him returning to prison regularly.

In his mid 20s, Malbrough recalls, "I was mostly a follower," and one of the people he followed was an older friend who was a robber. "I had never been into that type of lifestyle," he says, but "it was fascinating to me back then — quick money, fast money." He followed that man into a motel robbery that got him a five year-to-life sentence in San Quentin, of which he served 2½ years. He was a model prisoner — singing and taking classes in broadcasting, speed reading, landscaping and college academic subjects — and the warden and others "went to bat for me."

When he got to prison, he says, "I was still a child. ... I walked inside and it was a whole different world. Everyplace you went there was guns, and when you eat there's guns, when you sleep there's guns over you, watching you. There's people dying all around you. It was hell. Violence was rampant. It's totally different from being on the street — it's a jungle, and only the strong survived. There was the prey and the predator. If you was not strong enough or knew someone who could give you the ropes on how to conduct yourself and how to grow into manhood, you didn't live. You died. I've seen a lot of my friends die. People there were so into killing each other."

It was a deeply unsettling experience for a man of whom his youngest daughter says: "My father has never committed a violent act in his life." Or, in the words of Malbrough's sister Vivian, "I have never known my brother to harm anybody or try to hurt anyone. But I just felt he's always harmed himself."

When he got out of prison, Malbrough held a variety of jobs, including several as a nurse's aide, and for a while he moderated his heroin use, using off and on. But he was a different person.

Prison, he said, "clammed me up. I wasn't able to function on the street when I got out. You don't know how to relate to

*Clarence  
Malbrough is a  
family man  
against all odds.*

people anymore.”

This decades-long drug addict grows intense and eloquent as he expands on the ravages of prison and drugs. When you get out of prison, he says, “you want to do right, and then you meet resistance, and you’re not that strong of a person anyway. You have frailties, you’re insecure — that’s the reason you’re in jail in the first place. ... They didn’t provide anything for you to better the condition while you was in there. You was taught by the people of your peers who are in the same condition, and you’re put back in the same environment when you get out.”

Heroin use, he continues, “is another crutch, another escape. You go into a shell when things don’t want to go your way. You try to hide from the reality of your situation. ... It’s frightful, and you fear that, and you fear jail, you fear what can happen to you. So the only peace that you find if you’re into drugs would be that solitude or that escapism that you find from the peace that you get from your drugs — for me, anyway.”

Out of prison and back on drugs in 1980, Malbrough asked a friend of a friend for some money. Some time later, when the man, who lived in the same building, asked for the money back. Malbrough didn’t have it. The man called the cops. Malbrough says that the DA convinced the victim he was scared, which elevated the crime to a strongarm robbery. He also says that he was let into the man’s apartment and didn’t break in, as he was accused of doing. But in either case, he took a deal for three years of prison time and was sent back to state prison. It was his second “strike.”

No one claimed to have been injured in either of Malbrough’s “strikes.”

Back in prison, Malbrough again sang in a gospel group. He also worked in a variety of positions, from nursing assistance to construction and cooking.

A few years later, Malbrough was back in prison for a daytime residential burglary. He recalls that the judge didn’t see him as a career criminal but rather as a “typical drug addict” engaging in property crimes. The judge, he says, wanted to send him to a drug program, but that option was not available because of his record, so he sentenced him to just two years because of the mitigating circumstances.

As Malbrough and his wife went back

and forth to prison because of the various crimes they committed to pay for their serious heroin habits — and subsequent parole violations for dirty drug tests — their three daughters were raised together by a “beautiful, Christian” foster family with whom they placed them. Malbrough emphasizes that the children were never taken from them by authorities and that they were raised by a good family with good values. When he and his wife were out of prison, the children would often come stay with them — “the door was always open for us ... we were never shut out.”

Often, over the years, Malbrough tried to kick his heroin habit by going into programs. But, said his sister, most of the them were short detox programs and couldn’t help him. And, adds a friend, the longer-term programs he explored, which might have done him some good, all had long waiting lists and didn’t accept MediCal.

Nor could he get a steady job. Many times, he said, he put in applications for positions for which he was well qualified but was not accepted because of his felony record. When he did once get a good job with an oil company, his parole officer showed up to verify that he was working; then, he said, with his felony record thus exposed, he was fired. After a while, he gave up on finding employment.

Malbrough’s life changed dramatically in 1989, after eight months in county jail for some petty thefts. He left his wife and fell in love with a woman who became an important, positive influence on him. His new woman friend, Saundra Dickens, was a straight, working woman who didn’t know at first that he was using heroin. When she found out, she gave him an ultimatum. For the first time in his life, Malbrough gave up heroin cold-turkey, without having to go to jail or prison. Dickens stayed with him through the sickness of withdrawal and showed him he could do it by himself with good, loving care and food.

Malbrough, who had spent most of his years “caught up in that street life,” as Dickens put it, settled easily with her into a stable routine — perhaps the first he had known since childhood. There were always lots of children and grandchildren around the house, and her children enjoyed the company of the man they called Dad. Malbrough and Dickens spent their evenings at home, playing Scrabble, canasta

*“You have frailties, you’re insecure—that’s the reason you’re in jail in the first place.”*

and backgammon and listening to music. They'd also have long discussions of current affairs.

Through the more than four years they lived together, Dickens put her foot down whenever he slipped back to drugs, and as a result his drugless periods stretched longer and longer. At one point, he was drug-free for 16 months before backsliding. He spent much of 1992 and all of 1993 going through a variety of detox programs and looking for an opportunity to get into a methadone maintenance program. To get into one of the detox programs he even advanced \$240 of his meager disability funds.

The process would have been easier, said Dickens, if they could have afforded to live in a better neighborhood, where drugs were less readily available. "He truly wanted to quit," she said, but Malbrough still had a psychological dependency; whenever anything went wrong with his life — like when they lost their home because of financial difficulties — he'd return to the crutch of heroin.

Shortly before his final arrest, once again on heroin and facing a string of petty theft charges, Malbrough realized he had reached the end of the line with his self-destructive way of life. Dickens, he says, "wanted her old guy back — not this new guy on drugs, whom I don't like myself." They had separated, with the understanding that they would get together again if he got straightened out and found a new place for them to live.

Malbrough was determined to "get back a life. ... I cried, and I prayed, and I got on this program." The program was a methadone treatment program run by Berkeley Addiction Treatment Services. It was not easy to get accepted; the program had a long waiting list. Every day, Malbrough went to the agency to see if his name had popped up. It took several months to get into the program. He entered the BATS 21-day detox program in February and began the maintenance program March 1.

After he entered the BATS methadone program but before he began the regimen of individual counseling and group therapy sessions, Malbrough committed his last petty theft — stealing the batteries from Payless. He wanted some money for cigarettes. He was, he says now, still "in the frame of mind of a heroin addict."

Walter Byrd, executive director of BATS,

says he recognized in Malbrough someone ready to change his ways. Malbrough, he said, was "tired of the same old grind," and he was persistent in seeking a slot in his program. But it does not surprise Byrd that Malbrough committed another petty theft after entering the program. It takes more than sobriety to change the behavior of a hardcore heroin user like Malbrough, he said, and "you can't do it alone — you need help."

"You don't know how to do things the way other people do," he said. The BATS program is designed to teach job, coping and social skills, and that process "certainly takes more than a few days." The treatment is "about learning to make good choices for yourself," Byrd said, and until then, recovering addicts will often revert to "whatever they learned to do to survive on the streets."

Malbrough did not attempt to run or hide from his last crime. "From the very first," he says, "I always said that I did the crime — there's no doubt about this. I cooperated in every way. It was a petty theft."

Malbrough is familiar enough with the customary penalties for petty theft. In the weeks following his Payless theft, judges in Alameda County sentenced him for nearly identical offenses. He was given a three-day sentence for the cologne theft and 30 days for the Tylenol theft — with a few more weeks of time dropped so he could continue in his methadone and counseling program.

But before Malbrough was released from those sentences, an arrest warrant was issued by neighboring Contra Costa County for the batteries theft for which had previously been cited and released. Although the charge was nearly identical to the one for which he was doing 30 days, this time the sentence could be 25 years or more. He was brought to Contra Costa's West County Detention Facility, one of the first Californians to face the "three-strikes" charge.

Subsequently, Malbrough was offered a deal by the Contra Costa prosecutors — six years for the petty theft, by "striking" a prior — but he rejected it. "I don't want six years for picking up some batteries — that usually carries 30 days. It's not fair. They're not giving me that much time for petty theft. The only reason they'd give

*"I cried, and  
I prayed, and  
I got on this  
program."*

*"It's hell.  
All your life  
goes before  
your eyes."*

you that much time is because they're using your past record, and your past record shouldn't be held against you, because you already paid for that."

Malbrough feels that the law shouldn't apply retroactively, with harsh new penalties set on the basis of crimes committed years before the "three strikes" law went into effect. "If they're gonna give people three strikes," he said, "they should start at one. Start it at the beginning, because [otherwise] everybody's already struck out — the people that it's gonna hurt. ... It's not getting at the people they want to get to."

Facing this newly legislated penalty is "a scary situation," he says, "it's hell. All your life goes before your eyes. And you see all your mistakes and wish that you could right them. You wish you could tell those people, 'Hey, I'm not like that no more. Can't you see how much I've changed over the years. ... If you look at a person's record and see that he's making a good attempt and effort to right wrongs and to stop the things he was doing ... and is not a threat to society, then that person should be given another chance."

Malbrough has found a kind of happiness despite the uncertainty of his present circumstances. Looking back, he says, "I think I was in a bubble and I couldn't find my way out of it. I just went round and round and round and round and round, and I finally found a way to get out of that bubble, and that's through my lord Jesus Christ. Now I'm happy."

Clarence Malbrough still has dreams of what he would do if given another chance. He'd like to resume the drug program that was terminated by his incarceration. He'd like to continue his daily visits with his daughters and grandchildren. "We'd been

doing a lot of catching up," said one daughter. And the children, who delighted in the wrestling, the park and zoo visits and the picnics with their recently returned grandfather, were devastated when he was unable to keep his promise to take them all to Marine World Africa USA.

But before he gets to try his wings again, Malbrough must pay for his last crime, and how much he ought to pay is an issue that troubles all involved. He says, as his sister put it, that "he is willing to pay for his crime — but not give up his life for a petty theft."

Understandably, the Payless manager from whose store Malbrough stole the 13 packages of batteries does not see the crime as a simple petty theft. His store loses \$1000 a day in disappearing inventory — mostly through shoplifting — and he finds it "extremely difficult to be sympathetic." Crimes like Malbrough's put his own job in jeopardy.

But the manager, John Scalet, agonizes over what is the appropriate sentence for such a crime. He thinks the amount of the theft and the previous criminal history must be taken into account. "Every case is different," he says, "but if it's repeated — if he's habitually a criminal — then that's where 'three strikes' has to come into play."

However, he says, you also have to ask, "Is he gonna get better in jail or out of jail. Someone has to answer that question. I don't know. ... Fortunately I'm not in the situation where I have to make those decisions."

In any case, he says, "it's hard for me to justify 25 years. ... Is 25 years too long? Probably. Could the person have been taught the same lesson in five? Probably."



## Michael Garcia

*Charge: Petty theft with a prior conviction of theft  
Value of stolen goods: \$5.62 (one package of meat)*

"I think the law is a good idea," stated Michael Garcia. "I mean, if I was to get busted for another serious crime, I'd think I'd have it coming."

Michael Garcia is a soft-spoken, 35-year-old Mexican American who was the picture of self-deprecation throughout his interview in the Los Angeles County Jail. He often had trouble making eye contact and freely expressed his shame for his actions. He still seemed in disbelief that he is facing a life sentence for stealing a package of meat.

"I don't think I should get away with it," Garcia said. "I mean, I'll go back to prison if they think I should, but I just think that life is a bit too much, you know."

Michael Garcia obviously struggles when discussing his crime and his inability to get control of his heroin addiction. "I just wanted to be a hard-working dude like my father, but for some reason I was never able to do that."

On March 12, 1994, five days after the "three strikes" legislation was signed into law, Michael Garcia, his stepmother, Mary, and his mentally retarded brother, Porfirio, had run out of money.

Mary had been erroneously overpaid by Social Security for several months. When the error was noticed, her subsequent payments were cut off until the account was reconciled. Meanwhile, Michael Garcia, who did temporary work fixing trucks for J & G Produce in Pomona, hadn't had any work in several months.

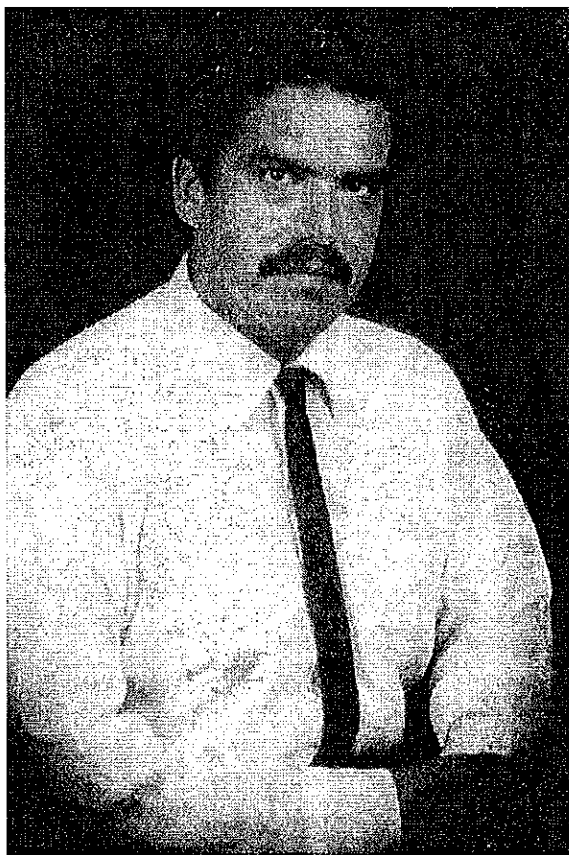
Garcia walked into the Stater Brothers' Market on South Garey Street, in Pomona, three blocks from his home. It was the store

in which he and his stepmother bought all of their groceries. But on March 12, he didn't have enough to buy the family's evening meal.

Michael's stepmother, Mary Garcia, was interviewed by phone while she was preparing beans for her and Porfirio's evening meal. She talked simply about Michael's motivation. "We didn't have anything to eat," she says. "My check was gone, and J & G hadn't had work for Michael in a while, so he had no income coming in. He never told me he was going to do that [steal the meat], or I would have told him 'no way.' I guess he just couldn't see us eating leftover beans again."

The store's security guard noticed Garcia shoving one package of chuck steak down his pants. The package had three steaks in it. "One for my mother, one for my brother, and one for me," notes Garcia. He was easily appre-

*Michael Garcia took three steaks — "one for my mother, one for my brother, and one for me"*



hended and immediately confessed. According to the Pomona Police Department's report, Garcia told an officer, "Yes, I know, I came in here to steal." Garcia remembers that after the arresting officers were able to bring up his prior record on their computer, they joked and wagered with one another as to whether or not he would be a "three strikes" candidate.

Michael Garcia talks about his background with great difficulty. It is not easy to get details from him, and he protects his loved ones zealously.

His parents, Edward Garcia and Margaret Alvarado, separated when Michael was 2. After the separation, Margaret didn't see Michael or his older siblings, Edward and Judy, until they had grown to adulthood. Michael was raised in the belief that his aunt, Virginia Redollar, was his mother. He found out that this was not the case when he turned 15. Shortly afterward, Michael relates, he "began hanging out with the wrong crowd in the barrio" and was arrested for the first time.

When Garcia is asked why his mother left and did not seek out her children for so many years, he responds that he "has no idea." He hints cryptically at problems with his father but is clearly unwilling to get into this aspect of his life.

It took a call to Garcia's mother, Margaret Alvarado, to learn the story of his upbringing. "I never kept in contact with my children because my ex-husband was a rough character. I was threatened, and believe you me in those days he meant it. Michael knows, but he keeps a lot of things inside. He doesn't want to say anything against his dad, especially since he's dead."

Margaret recalls "beating after beating" inflicted upon her by a husband inebriated on alcohol and pills, and a system that failed to protect her and her children. Prior to the breakup of her marriage, she had Edward Garcia arrested several times, once for breaking her nose. One of the Pomona police investigators warned her that she should "get out of there or she was gonna get killed."

After that arrest, Edward warned her that she had "better not go to sleep." Margaret wept openly when she described the last day that she saw her 5-year-old son, Edward Jr., her 4-year-old daughter, Judy, and her 2-year-old son, Michael. "Neither

Michael's father or I slept for two days, him because of the drugs, and me because I was afraid to go to sleep. He came in very drunk and high, and grabbed a hatchet and was threatening to kill me. He had a glazed look in his eye, and I believed he meant it. He was drunk enough where I convinced him that I had to go to the bathroom, and he let me. I don't know how I was able to squeeze through the tiny bathroom window, but I did it and got away. That was the last day I saw any of my kids until they were adults."

Margaret said that Edward had threatened to kill her if she tried to take the kids away from him. Based on her previous experiences with Edward and her disappointment in the system's ability to protect her, she believed him.

"Michael grew up ignored or abused by his father," Margaret stated. "He didn't understand why the person he thought was his mother [really his aunt] cared so much more for the other kids in the family. What he didn't know was that those kids were his cousins, not his brothers and sister, and were her real children. Michael didn't have a lot of love from either his mother or his father."

Michael Garcia's first arrest occurred when he was 16 years old, not long after he found out about his mother. On July 6, 1975, Garcia relates, he was standing in front of his house in his "barrio" in Pomona, when a car driven by several Latino youth sped by spewing gunfire at a neighbor girl. The girl was killed, and Pomona police arrived on the scene and questioned Garcia and other neighborhood residents about witnessing the murder.

Several drunk neighborhood youths subsequently drove by and saw the commotion near Garcia's house. They asked him what was going on, and he told them. "Can you drive?" the older youths asked. "Sure I can drive," Michael responded, trying to act brave. "Get in," they replied.

Garcia admits that he knew that "things were going to turn out bad" after he got into the car. He hoped that either they would be unable to find those responsible for the shooting or they would just scare them. The three 17- and 18-year-olds in the back seat were all drunk, and all had guns. In the next neighborhood they spotted the youths they believed to be the

*"Michael grew up ignored or abused by his father."*

culprits and fired, killing one of them. They were all subsequently apprehended. Although Michael did not shoot or even carry a gun, he pleaded guilty to murder, a crime for which he is legally culpable under California law. He spent three years in the California Youth Authority for this offense.

Neither of the two adult offenses that are charged by the Los Angeles County district attorney's office as "strikes" against Garcia involved physical harm to a victim. In 1979, high on heroin, Garcia used an inoperable, unloaded gun to steal \$20 from a truck driver in broad daylight in downtown Pomona. Garcia describes being "sick" — a heroin addict's code word for "needing a fix." He pleaded guilty and spent two years in prison for that offense.

In 1986, Garcia was again using heroin and again needed money for drugs. His girlfriend at the time was house-sitting for some neighbors. Garcia stole their VCR and was apprehended by police walking down the street carrying the VCR. He confessed and immediately led police to the home he had burglarized. Upon his release from jail approximately one year later, Garcia says, he met with his victim and apologized for the theft.

After his last release from prison, Garcia tried to stay off of heroin and get a job. His father, Edward Garcia, had been diagnosed with colon cancer while Garcia was in prison, and the disease was at an advanced stage by the time Garcia was paroled.

According to Mary Garcia, Michael stayed constantly at his father's side. His father was bedridden and wearing a colostomy bag. As it filled with feces and urine, Michael diligently emptied it and cleaned his father's stoma so that he did not become infected. Michael and Mary had the constant job of attending to Edward's every need in order to allow him to die at home and with dignity. Upon his father's death, Michael became severely depressed and resumed his use of heroin.

Garcia repeatedly tested dirty while on parole prior to his arrest. He had asked his parole agent several times for a referral to a drug program, but he was informed that there were no placements available.

According to Parole Agent Don Smith, "Michael is not a bad guy. He had some problems with dope use, but he's not dangerous." Smith indicated that he would have sent Garcia to a residential drug treatment program but every one had a long waiting list. Smith felt that the "three strikes" law should have been written for people who are dangerous. "Petty theft," he said, "shouldn't be 25 to life."



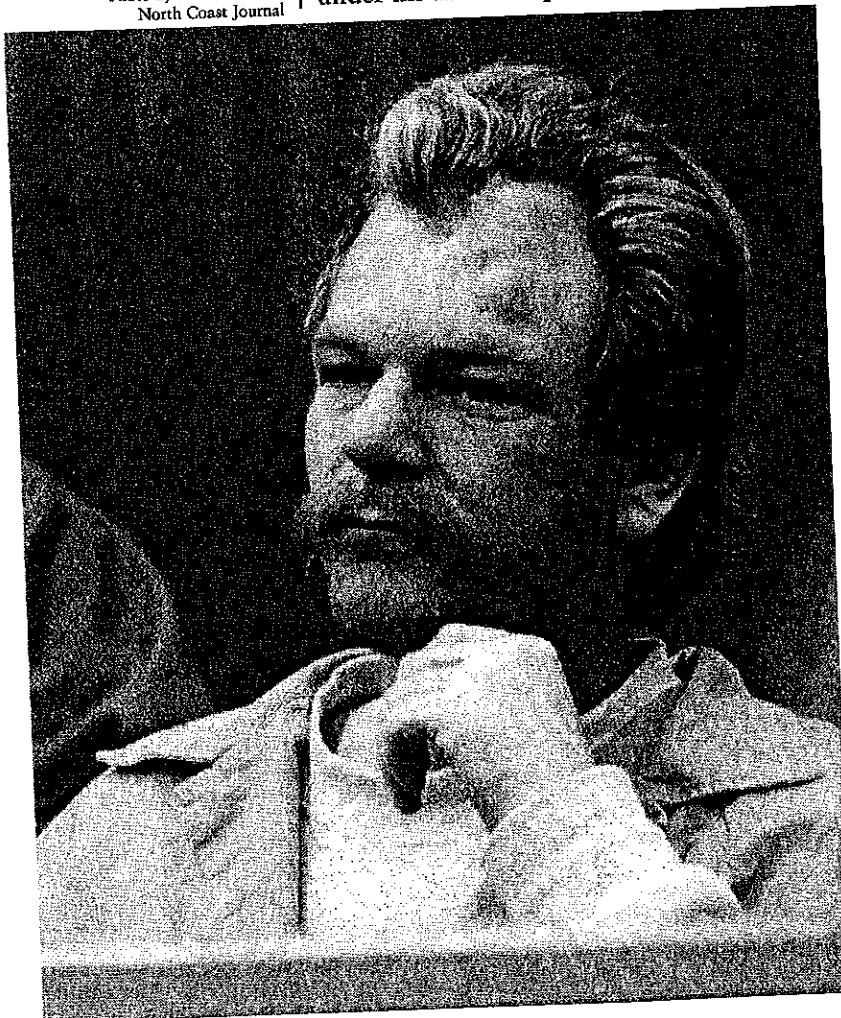
*Margaret Alvarado with her son Michael, whom she was forced to leave when he was 2 years old.*

## Ricky Dean Spahn

Charge: Residential burglary, three counts  
Value of stolen goods: \$5151.96

*Ricky Spahn has not been the same since an auto accident in 1966*

—Photo by Mike Harmon,  
North Coast Journal



Sean and Kimberly Riley were visiting friends on Hawthorne Street in Eureka that afternoon. They were with their hosts in the back yard when a 9-year-old neighbor girl ran into the yard and told them she had seen a man go into the hosts' house and come back out the front door with a purse under his arm. The purse was Kimberly

Riley's. The man ran into a nearby alley. The police were called and responded quickly.

The first officer to arrive talked to 9-year-old Jessica and learned from her that the man she saw run out of the house with the purse stayed at a white house with red trim on Union Street, which intersected Hawthorne. She knew this because she had seen the man come and go from the house several times recently. The sergeant on duty drove to that house on Union Street, talked to the owner and described the suspect. The homeowner quickly identified him as Ricky Spahn. He said Spahn often came to the house to visit his daughter, Stacy, who was Spahn's younger brother's girlfriend.

The officer cruised the neighborhood, and a couple of blocks away, at 2153 Pine Street, he observed Spahn helping another man repair an automobile. Spahn was detained without incident. The crime occurred at 12:45 p.m. Spahn was arrested 45 minutes later. The purse contained several credit cards, a wristwatch valued at \$16.96, a brown leather wallet valued at \$5, and \$55 in cash.

When blond-haired, blue-eyed, 30-year-old Ricky Spahn was booked into the Humboldt County jail at 6:30 p.m. on July 28, he had 49 cents in his pocket.

Despite his past prison commitments, Spahn is not the stereotypical, hard-nosed ex-con. He is eager to please, eager to admit all of his wrongdoing and even eager to confess to crimes that the police did not know had occurred. In fact, one such unreported crime is count one of the "three

strikes" prosecution he is currently facing.

Shortly after his arrest, he was interrogated by a Eureka Police Department detective who says he has known Spahn since he was 7 or 8 years old. Later in the day, Spahn and he drove around identifying other homes that he had burglarized. Spahn pointed out a total of 10 homes he said he had entered within the past few weeks. He told the detectives that he got about \$50 from one house, less than \$20 each from two others, but police later said that two rings valued at \$5000 were also missing. Amazingly, Spahn reported that he took nothing from the other seven houses.

Spahn is what police call a "green thumb burglar." He waits until he sees someone outside in the garden, watering the lawn or gardening, then dashes in and looks only for a purse or wallet, snatches it and runs quickly back out again. The detective's report states: "He would then take the purse or wallet and go to a nearby alley to take out the money. He would then throw the purse or wallet down and walk away. We asked him about the jewelry in some of these purses and he told us he never took any as he didn't know if any of it was real or not."

Is this criminal for real? Or is he the comic character that a local monthly newspaper described him as in the cover story of its October issue: "Local police enjoy a good laugh and Ricky Spahn has certainly provided one. He'll be remembered as the burglar who rummaged through a vehicle, found a Polaroid camera and took his own mug shot. Then he fled, leaving behind both camera, and incriminating photograph. ... He once tried to get a stolen television set home by wheeling it down the street in a shopping cart — in broad daylight." Actually, Spahn says, it was a baby carriage, not a shopping cart.

The interviewer asked Spahn why he did this — does he drink? "No, I don't," he replied forcefully. "Never touch the stuff." Then why keep pulling these burglaries? "I needed the money for supplies." Supplies? "Pot," he says with a sheepish grin. "You know, marijuana." Why did you want to get the marijuana? he was asked. "Because it makes my headaches better. You know, my spells."

Spahn's mother had a great deal to say about her son and his "spells." Ima Jean Spahn moved recently to Redding with

Ricky's younger brother, Zach. She was still living in Eureka when Ricky was released from prison in November 1993, and he lived at home from then until his arrest in July 1994.

"Ricky is a good son," his mother reports, "except for stealing things like he does. But when he was at home, he would give me \$250 each month out of his disability for the rent, and he always bought his own food." Spahn's father and mother are separated.

Spahn is one of eight children and the only one with a prolonged criminal history — and that has not a little to do with a tragic accident in 1966, when Mrs. Spahn was driving outside Eureka on Highway 101. The five oldest children were with her in the car, and she was pregnant. She lost control of the car, which rolled over three times before coming to a stop. Miraculously, the only injury was to Ricky, who suffered a terrible blow to the left side of his forehead. "He had his first spell two weeks later," Mrs. Spahn recalls, "and ever since then it has been nothing but pain and sorrow for that poor boy. Pain and sorrow and bad times."

Ricky was 2 years old at the time. For the next six years he spent months at a time in Stanford University Hospital and the University of California Medical Center in San Francisco. He was suffering from seizures, sometimes up to 30 or 35 of them each day. He also developed meningitis. The doctors tried a myriad of medications in an attempt to control the constant seizures, but nothing seemed to work.

"You know," Mrs. Spahn tells the interviewer, "it was like Ricky never really had a childhood. It was always in and out, down south and back home. He never got the kind of chance or schooling that other kids get. He was brave, though, and was a sweet child even with all those problems and those spells all the time."

Finally, the doctors exhausted their pharmaceutical solutions to Spahn's seizures, and they decided to try a surgical procedure. It was a very chancy operation, and the results were not too predictable. But the doctors thought that if they went in and took out part of the frontal lobe of the brain, and part of the tempo-

*"You know, it was like Ricky never really had a childhood."*

*"Kids are kids,  
and they just  
kept making  
Ricky's life hell."*

ral lobe, it was their best hope for mitigating or eliminating the seizures. They were grievously wrong.

"As I recall it, by the time the stitches came out and his hair grew back, you could tell it had done something to the boy," his mother remembers. "I mean, something besides making him a bit slow, which I suppose you might expect from that kind of an operation. After all, they take out that much of what there is, it has got to slow you down some."

The worst of it, however, was not the physical effects themselves. The surgical excorism was covered with a steel plate, but it still left a sizable, and very noticeable, dent in his forehead. And children can be terribly cruel and insensitive.

"I can't remember how many times his teachers and I talked about what could be done," Mrs. Spahn recounts as she speaks of how the other grade schoolers would tease Ricky, both for the "hole in his head" and about how "slow" he was. "The best they could do was speak to the other children, but ... well, kids are kids, and they just kept making Ricky's life hell. The staff, I suppose they did the best they could. And within a year or so, I got to admit, he was hard to keep an eye on."

Spahn's last year of formal schooling was in seventh grade. He says he reads at about the second-grade level. When asked why he quit, he shook his head and said, "They wasn't doing me no good. They wouldn't learn me anything, so I figured why should I bother to go." His mother did not protest the decision too vigorously.

"I tell you, right back then I think they cut out the wrong part or something," she says with obvious feeling in her voice, "because really, as soon as he could get up and run around again you could tell he was a different little boy. Within a year, by the time he was 9 or 10, he started getting into trouble. First it was that he just wouldn't listen. Then he was so hyper, you know? Never could sit still. Never could just sit down and be quiet."

And it got to where he just wouldn't listen ... he wouldn't sass me, but he just did his thing."

She also confirms that she didn't stop him when he first started smoking marijuana in the house. "He said that it made the pain from the spells better," she explained, "and at first it was just a couple a

day by himself. But then other kids would come around and ask him for some, and being the kind of boy that he is, he would always share with them." She pauses for a few seconds. "Then he didn't have any money to get more for himself," she continues, "and that's when he started going into people's houses."

Dr. Kurt Osborne is the neurosurgeon who, along with his partner, Dr. John Gambin, has been treating Spahn since the boy was 13, in 1977. He explains the medical effect of what happened to Spahn. He says that the 8-year-old's surgery was an experimental procedure at the time, and that while there is not yet unity of opinion in the field as to the results of such an operation, the literature is clear that the chemical imbalances caused by the removal of the brain matter from those areas can in fact cause severe personality changes.

"What happens after a seizure," he explains, "is that the brain goes into what is called a 'post-dictal state,' where you're not quite sure what is going on. You can understand, if the boy has 30 or 35 of these sort of mini-mal seizures a day, he is never free of that state of mind."

The literature, he said, reflects that after an operation such as Spahn's, patients develop personality patterns that are completely unknown to them prior to the operation. "Some people have developed hyper-religiosity," he explains, "while others have developed hyper-sexuality, and other hyper symptoms. For Spahn to have developed the hyperactivity his mother notes is entirely consistent with the pattern of personality change reported by the literature."

The doctor reports that he and his partner saw early on that Spahn's ability to respond to his environment was so obviously impaired that he was in need of a caretaker environment. "He is one of those rare, unfortunate patients who will probably always have seizures," the doctor reports. "Even in the first few months of this year, when I was seeing him frequently and know he was taking his medications, he was still having seizures. We switched his medication two or three times to try and find something that would work," Dr. Osborne said sadly, "but when I last saw him several months ago he was still having five or six seizures every night."

When the doctor learned that Spahn was probably headed back to prison, this time for 25-to-life, his response was one of disgust. "This guy doesn't belong in a prison," he declared. "You can lead him around by a ring in his nose he is so placid. I am not a neuropsychiatrist, but if I was, I'd commit him to a state hospital for the developmentally disabled."

When informed that the chief prosecutor, District Attorney Worth Dikeman, had called Spahn a "poster boy" for "three strikes" — that is, just the kind of criminal the "three strikes" law was designed to put away — the doctor retorted angrily, "The hell he is! If you want to call him a poster boy, he is more like a Ronald Reagan poster boy. He is exactly the kind of person who belongs in one of the scores of mental health facilities that Reagan dismembered when he was governor."

Spahn's first two "strikes" were for crimes very similar to the ones for which he is now awaiting trial. When he was almost 21 years old, he was convicted of two counts of residential burglary. He served two years in prison after spending a year in the county jail awaiting trial. He was paroled on June 23, 1987, and on Aug. 18, 1987, he was again arrested and charged with two counts of residential burglary. He returned to prison in October 1987 and was paroled after spending six years behind bars.

One of Spahn's victims, the woman whose home is represented by count two of his current, "third-strike" prosecution, has strong feelings about what should happen to him now.

Nancy Morse is a single parent in her 40s. She lives with her two daughters, ages 6 and 7. Her eldest daughter lives away from home and attends college. Morse takes legal courses at College of the Redwoods and hopes to become a legal assistant or paralegal so she can get off AFDC. "I really hate not being able to support myself and the kids," she says.

The burglary had an unintended consequence for Morse's youngest. The 6-year-old's birthday was July 25, and Morse was carefully saving her food stamps so the youngster could have several of her friends over for the celebration. But on July 23 disaster struck — disaster in the form of Ricky Spahn. Morse reported that at some point during the early afternoon, someone

came in the rear door of her home and took her purse. About an hour after she noticed it missing, a neighbor called and reported he had found it in an alley near her house. It was returned to her, minus some makeup, \$133 in food stamps and about \$50 in cash.

In describing the burglary at the Morse residence, Spahn said that he saw some people out front trying to jump-start a car, so he quickly snuck into the house through an open back door. He entered the back yard through an alley, and left unobserved the same way.

When Morse learned from Detective Charles Swanson that Spahn was a "third-strike" candidate and would be going to prison for a long, long time for his crime, she immediately took issue with the possible sentence. "I just don't think the sentence is appropriate to the type of crimes he has committed," she declares with feeling. "I mean, according to what the officer said, none of them was violent. He just isn't a violent person." Her voice becomes more animated as she adds, "There are people who have raped that are walking around out there. Prison beds should be saved for them. We should save the jail time for those people, not people who don't hurt others."

Morse also spoke to Spahn's lawyer, Deputy Public Defender Jim Steinberg, and learned of Spahn's physical condition and the seizures from which he suffers constantly. She was told that smoking marijuana makes Spahn "feel better" about the pain from his seizures. "My God," she said, "once you know his motive, the burglary doesn't even seem criminal. All kinds of people need marijuana for medical problems such as glaucoma and cancer, and if it helps them cope with their pain, they should be able to have it prescribed for them by a doctor."

"I feel strongly about this," she says. "It is really an issue society needs to confront. And I can't help but think that given his medical problem, a sentence like closely supervised community service would be a more appropriate justice-system reaction anyway. Who's to say he can't make some kind of contribution," she asks, "to pay society back for what he has done?"

Morse's understanding that Spahn is

*"There are people who have raped that are walking around out there. Prison beds should be saved for them."*

not a violent person was confirmed by the detective who questioned him after his arrest, and who in fact has arrested Spahn on four or five previous occasions. At the preliminary hearing, Swanson testified that he got along well with Spahn. He said that Spahn had never resisted arrest or caused any problems of violence in his presence and was generally cooperative with him. The detective also testified that the type of burglaries Spahn committed would be less likely to involve confrontations with people in the house.

Swanson was also asked about Spahn's cognitive ability, his ability to understand. "Well," replied the detective, "I think if things are spoken in simple sentences and questions and answers that he understands."

The charges facing Ricky Spahn have been the source of some attention in the media along the North Coast, where interest in the Proposition 184 is running high.

Both of Humboldt County's legislators are asking constituents to vote no on the "three strikes" initiative even though both of them voted in favor of the March 1994 "three strikes" law that is now on the books.

State Senator Mike Thompson says that seeing the law in actual practice has convinced him its broad sweep is a mistake. "In some ways it doesn't go far enough. In other ways, it goes too far," the senator told the North County Journal. "I want the people to vote against Prop. 184 so the Legislature can go back in January and make that third strike a hit that puts away the ones that should be put away, but doesn't waste money on petty thieves." Assemblyman Dan Hauser agrees.

And the North County Journal opined in its cover story on Spahn, "Wardens may soon have to face the question: Where will we put the rapists and the murderers if all the beds hold burglars and thieves?"



## Kendall Cooke

*Charge: Petty theft with a prior conviction of theft  
Value of stolen goods: \$1.14 (one can of beer)*

Kendall Cooke laughs easily. He has an engaging, joking relationship with the sheriff's deputies at the San Diego County Jail, where he is currently incarcerated. He is similarly at ease with a stranger ushered in to interview him, and soon he is relating proudly that he was recently crowned chess champion of his jail unit.

But a shadow passes over the face of the handsome, thoughtful 31-year-old when he begins to discuss his old neighborhood and his relationship with his ex-wife. And his eyes shift sadly to the floor when he talks of the heavy legal charges that could keep him behind bars for more than 25 years.

As Cooke tells it, he and his "ex," Beverly Lockhart, argued all through the evening of May 3, 1994. The couple's recent reunification was not going well, and it was becoming apparent to Cooke that they would soon break up again.

Kendall Cooke had been out of prison since 1990. He initially returned to his boyhood neighborhood of Inglewood. He relates that he was "hanging out" too much with his old "home boys" there, edging closer to the same self-destructive rut he had been in prior to prison.

Cooke, who had married and divorced Beverly Lockhart in the mid-1980s, never really expected the couple's relationship to work again because, as he put it, "we'd been split up for six years. Things weren't the same; the same feelings were not there."

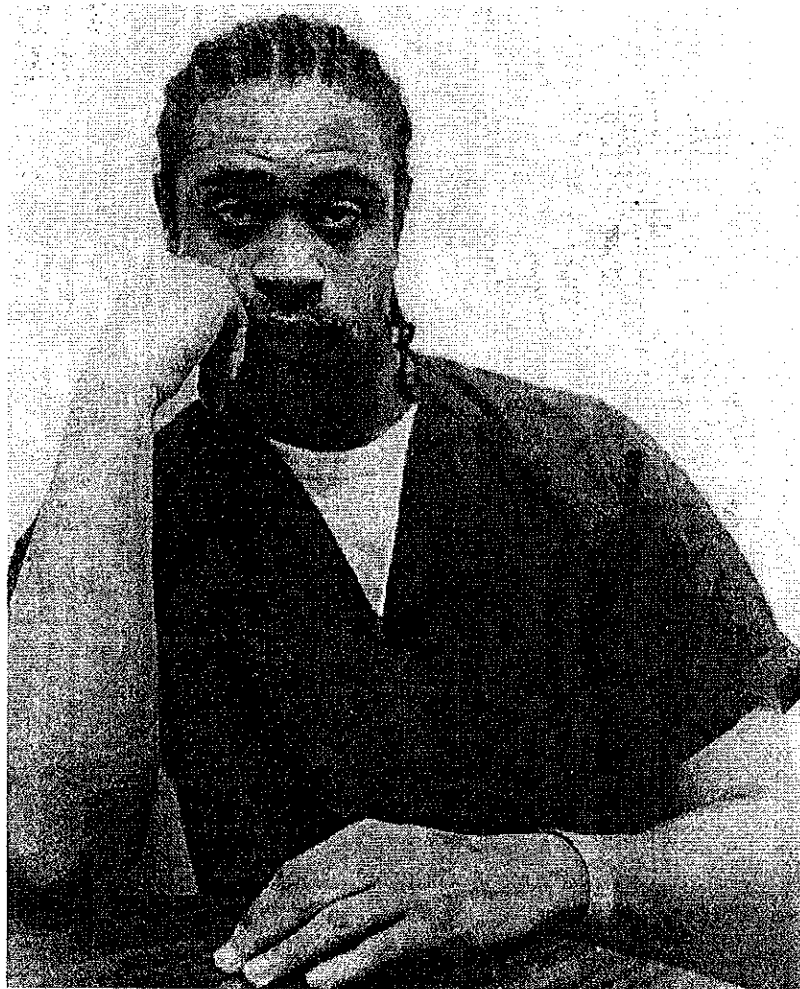
But he badly wanted to get out of Inglewood. Even though he had been out of prison for 2 1/2 years without getting rearrested, he knew there was only trouble for

him in his old neighborhood.

Cooke and his mother, Dortha Ashley, literally got down on their knees and prayed, trying to decide what he should do. Ashley urged Cooke to give it another try with Lockhart. Cooke received permission from his parole officer

*Kendall Cooke had been "seeking a way out ... through the church"*

—Photo by Ruth Morgan



to transfer to San Diego County, where Lockhart lived, for the final months of his parole. He moved in the fall of 1993.

Things went well for him at first. He obtained a job with Volt Temporary Services. Vicky Morrigan of Volt described the young man as a "super, super nice guy, nothing but polite."

He began attending church every Sunday as well. Pastor David Statler said that Kendall first entered the Skyline Wesleyan Church on Easter Sunday morning. "Kendall had lived the tough, L.A. street life all his life. He was seeking a way out — a better way of life — through the church," he said.

The Rev. Statler reported that Kendall immediately began to attend church services every Sunday. "Kendall was trying to start life with a clean sheet of paper. He was learning to live on the right side of life," he said.

Even Cooke's attempted reconciliation with his former wife started out well. But the relationship was souring rapidly, and that night, says Cooke, Lockhart had threatened that if the couple broke up, she would contact his parole officer and have his parole revoked.

Cooke left his home in the early morning hours of May 4, sleepless due to his nightlong argument with Lockhart and penniless for having spent his meager paycheck. "I just needed a beer," he said.

At approximately 7:30 a.m., he entered the 7-Eleven store at 807 East 8th Street in National City. He left with one, 16-ounce can of Coors Beer, valued at \$1.14. Cooke hadn't paid for the beer.

Store owner Alvin McKenzie caught up with Cooke in the parking lot and persuaded him to come back into the store. There, Cooke admitted to stealing the beer and calmly waited for the police to arrive to arrest him. After being read his rights by the police, he again confessed to his theft. All told, Cooke's apprehension by McKenzie and his repeat confession to 7-Eleven staff and police took about an hour. But the sentence for that single \$1.14 crime could keep keep him behind bars for life.

Kendall James Cooke was born to Dortha and pastor James Cooke on Oct. 25, 1962. Cooke's father left Dortha when the boy was 7 and his brother, Darnell, was 5.

Dortha worked as a meat wrapper at Boy's Market and tried to raise her two

sons as a single mother in Inglewood. When Kendall was 11, she met and married Eddie Ashley, a licensed construction worker.

By all accounts, Ashley was an alcoholic who was extremely violent to Dortha and the boys. When Kendall Cooke was 15, Ashley badly beat him with an extension chord and ordered him out of the family's home. Kendall had accidentally damaged his stepfather's car while vacuuming it.

Young Kendall was on his own from that day forward. "Kendall was a good child, but he went through a lot with his stepfather," Dortha admitted. "When he got kicked out of the house, that's when he started getting into trouble."

"I don't know why my momma married him [Ashley]," Cooke said, "but I think she had to stay with him because he had a good job and she just couldn't make it by herself."

At the age of 18, Kendall Cooke found himself surviving in homeless hotels by doing odd jobs and acting as a "runner" — or go-between — on drug deals. One day, Cooke reports, he decided to skip out on a drug customer and keep his money without delivering any drugs to the man. To Cooke's surprise, the man turned him in and accused him of stealing the money through "fear and intimidation" — the legal definition of strong-arm robbery. The man was unharmed, and no weapon was used or brandished.

Noting that the alleged victim was uninjured and still wearing several gold chains following the reported robbery, Cooke relates that the police who arrested him were skeptical. Cooke was known in the neighborhood, and robbery was not his "M.O." Still, the police had a complaining witness, and a robbery arrest was made.

Cooke's public defender was confident that they would beat the charge of robbery at trial, for it was the alleged victim's word against Cooke's. But the 18-year-old would have to wait in jail for two months until his trial. The district attorney was offering immediate probation in exchange for a guilty plea to robbery.

Cooke was, after all, guilty of a misdemeanor theft (although probably not a felony robbery), and an immediate release was better than gambling at a trial two

*"When he got kicked out of the house, that's when he started getting into trouble."*

months later. He took the deal.

Cooke's second "strike" involved even less forethought than his first. Needing a ride to his girlfriend's house in the San Fernando Valley from his apartment in Inglewood, Cooke spotted a car outside a convenience store. He reports that he impulsively jumped in and drove away as the car's owners were exiting the vehicle. He again pleaded guilty, and for this, his second robbery conviction, he was sentenced to five years in prison.

Reactions to Cooke's current prospect of a life sentence are varied. Parole agent Jeffrey Thomas, who had supervised him, considered Cooke "not particularly dangerous" and noted that he would probably have received a four-to-six-month parole violation had he been arrested prior to the effective date of the "three strikes" law. Thomas had some harsh words to say about "three strikes" and the politicians who passed it:

I think that the "three strikes" law should have been developed for guys who were violent offenders. Stealing a can of beer is not a violent offense. Most of the people who re-offend aren't violent offenders.

The criminal act Cooke committed is de-escalating, not escalating. He hasn't gone from where he was to killing someone or attempting to kill someone.

[The "three strikes" law] is not a good way to go. It's a safe way to go, if I was a politician, meaning that I'm covering my ass in showing the public I attempted to do something.

Alvin McKenzie, owner of the 7-Eleven Store from which Cooke stole the beer, disagreed. Angry that "these guys take money out of my pocket," McKenzie felt that "there is no maximum sentence a thief should get." He continued that some of the prisons he visited in Spain, in which prisoners had "no toilets and no beds," would be an improvement for California, whose prisons he considers "too cushy." He also volunteered that sanctions such as Singapore's caning would have merit locally.

"Horrible, just horrible," says Volt's Vicky Morrigan when she contemplates Cooke's threatened life sentence. "I thought it [the "three strikes" law] was only for violent offenders."

"Kendall once saw himself as a criminal, and now he sees himself as someone

who is loved by Christ," says Rev. Statler. "I'm praying that he is let out of jail so that he has a chance to prove himself."

"I think the law is stupid," offers Cooke. "I could see if I murdered someone or hit a lady upside the head, but not for a can of beer."

In the meantime, the battle continues to rage inside the courtroom over Cooke's case — a debate that features arguments repeated in courthouses throughout California. At Cooke's preliminary hearing on June 29, 1994, Deputy Public Defender Jack Hochman asked the court to consider the Legislature's intent in passing the law. He recalled the debate in the Senate Judiciary Committee, where the "three-strikes" bill's sponsor, Assemblyman Bill Jones, "assures all members of the [Senate Judiciary] Committee this law will not be applied in cases such as this, nor in cases of stealing a bicycle, against someone having possession of a gram of cocaine or for forging a check for \$10." Hochman continued:

*They further discussed it would not be used, in general, for thefts over \$400. They don't even get to petty thefts. They are saying it is targeted for much more serious felonies. ...*

*[W]hat happens to the defendant before the court is the court's concern now, and I would ask the court to exercise its power. Mr. Cooke has been in jail for 66 days, I believe — 90 days, with good-time credit. He was doing good in his life. He was working. I have confirmed his job. He was going to church.*

*He had a bad night with his girlfriend and stayed up all night, and when he ran out of money, stole a beer, which I think was an impulsive act, after completing parole and, generally speaking, turned his life around.*

But in response, San Diego Deputy District Attorney Peter F. Murray argued that the law is quite clear, and that the judge has no choice but to sentence Cooke to life:

*Let me make clear for the record. Our opposition [to reducing Cooke's punishment] stems from what we read as we go through this law known as "three strikes," the 667*

*"I could see if I murdered someone or hit a lady upside the head, but not for a can of beer."*

Penal Code section. What we find is that in granting the motion to reduce this charge, the court is, no matter how we look at it, going directly in contravention to the primacy language provided in Penal Code section 667, the "three strikes" law.

That "three strikes" law has provided that it is to apply notwithstanding any other law, and we can argue all day long that that may seem inappropriate, but that is, in fact, the language as it currently stands, and as the elected Legislature has passed and made into law earlier this year.

For a person like Mr. Cooke, he may have only stolen one can of beer on this day, but Mr. Cooke has been before the courts, and, specifically, as we offered to prove, with P.C. 211 [robbery] convictions in the State of California, Los Angeles County. He is the type of person that, whether we agree

or not, is exactly encompassed with the provisions of "three strikes."

The People of this State, through their elected representatives, have passed this law. If we don't agree with it, quite frankly, that is irrelevant, because it is the law, and the law says that when you have those kind of priors and you commit a subsequent felony ... he is subject to those enhancements.

Murray said the theft of a can of beer may seem de minimus — of little importance — but "I don't see anything in 667 [the "three strikes" law] suggesting a relatively de minimus crime will be treated differently."

The judge, Roy B. Cazares, ruled that the "three strikes" law is unconstitutional as it applies to Kendall Cooke's case. That decision is currently being appealed by the San Diego County district attorney's office.

## Eddie Jordan

*Charge: Petty theft with a prior conviction of theft  
Value of stolen goods: \$32 (one men's shirt)*

Eddie Jordan, 33, of San Diego is a heroin addict who has spent years dealing with the consequences of his addiction. He is also a hard-working man trying to build a future for himself and the woman he loves. "I guess he's a good worker," says his parole officer, Jose Lopez, "because when I put him into a detox program or back to Donovan [Correctional Facility] for a dryout, he still manages to find work pretty quickly." In fact, it was Jordan's determination to find a job and work his way out of a run of bad luck that put him in jail facing the "three strikes" penalty.

On September 15, at the Chula Vista J.C. Penney store, Eddie Jordan stole a shirt to wear the next day at a job interview. Ironically, he needed the shirt because his clothes had been stolen a short while before. It is for the theft of that shirt that he may spend the next few decades in prison.

When parole officer Lopez was asked if he thinks Jordan is a "violent and serious" criminal, he said the man wasn't like that at all. "He was into a lot of drugs, but as far as my supervision was concerned, he was low-key sort of a guy. He is not aggressive at all. Of course, most heroin addicts are laid-back kind of guys."

Jordan comes from a very close family. His siblings have also had their share of troubles, but Jordan blames only himself for his own misdeeds.

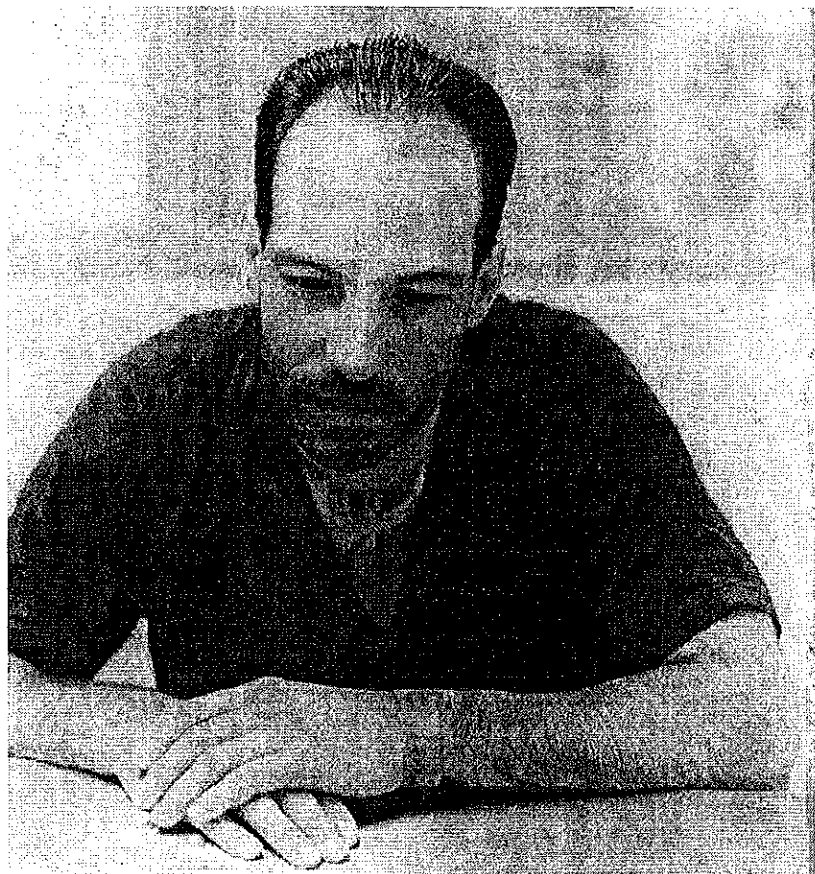
He has an older brother and sister and a younger brother and sister. One of his brothers has a much more serious criminal history than Eddie but has been doing well since his release from prison in 1981. Eddie Jordan is so close to his siblings that, he re-

ports, in 1992 he "took a conviction" for possession of crystal methamphetamine for sale to save his sister from possible charges. The methamphetamine was found in the house he shared with his sister, and Jordan is a heroin user and doesn't do crystal. Rather than take the chance that his sister would be charged, he "took the fall," he says.

Jordan's mother, Martha, and father got divorced when Eddie was 4 years old.

*Eddie Jordan is a hard-working man, a "lousy thief," and an addict*

—Photo by Ruth Morgan



Martha recalls that Eddie was always very nervous when he was going to visit with his father, but he couldn't explain why. In later years the family has had discussions about the kids blaming Martha for her husband's departure; they now have come to believe that it was their father who abandoned them, leaving their mother to raise them all.

Martha Jordan remarried, to a man that Eddie says "was a good man who always treated me fair. I got a lot of respect for him." Jordan shakes his head and sighs deeply. "Even when he told me I couldn't live at the house no more, he had warned me earlier that I could have one more chance but that if I messed up again, that was it. So even that was on me." Jordan says that straightforwardly, adding: "I had my chance and blew it."

Jordan played baseball beginning in grade school and did fine academically until about his sophomore year in high school, when he started having problems. One family member thinks that one of the kids' uncles was the person who first turned the children on to dope and then had them selling it for him. Because there was no work for his stepfather, the family moved to Yuma, Ariz., in 1980, returning to Chula Vista in 1981. After they returned, Jordan finished his education, graduating from Montgomery High School.

It was about that time that he became addicted to heroin. As he tells it, it wasn't supposed to happen that way. "When I was 18, before we went to Arizona, I had this beautiful Cadillac that was cherry [in mint condition]. I put all my money into that ride. So I started off just selling dope here and there, thinking that I'd never use it myself." He shakes his head and looks you right in the eye with a look of self-deprecation. "What a joke."

His first "strike" came for a 1982 residential burglary. He needed money for heroin. "I was hooked bad, and my regular job couldn't keep up with my Jones (addiction)," he reports. He kicks back in his chair in the San Diego County jail interview room and laughs out loud. "I make a lousy thief. I just barely even got out of the house before the cops were there." He was sent to the California Rehabilitation Center (CRC), which was developed to provide program services for addicts while they

were in prison. "The program was pretty good, you know," Jordan acknowledged, "but you've got to stay with the NA [Narcotics Anonymous] and 12-stepping when you get out. I did pretty good for a while, but then I started sliding again."

In 1984, he was helping to fix what he thought was a relative's truck. The relative, he says, had neglected to tell him that the truck was actually stolen. They were both convicted of receiving stolen property, and Jordan went to prison again. "But I got to go back to CRC," he recalls, "so all in all it might have done me some good." He grins at the thought. "At least I stayed clean in the joint." Since receiving stolen property is not considered a "serious" felony, it does not count as a "strike," but it does count as a prior prison term for the purpose of sentence enhancement, even without the "three strikes" law.

In a year, he was again paroled. After a few months of not being able to find a job, he got depressed and went back to using. He got addicted again and was arrested for being under the influence of a controlled substance.

In 1986, he was caught for his second strike — another residential burglary. "But it was such a lame beef," he said, "that in spite of my priors they gave me probation and six months in jail." It seems ironic that an offense that the authorities did not think was worth putting Jordan in prison for at the time may now help put him there for life.

Within months of his release, he was strung out again. "You know, I would be a rich man if I had a dollar for every time I tried to get into a decent program. I've even had my parole agent out there beating the bushes for me," he says appreciatively, "but unless you got some big bucks or some juice somewhere, it takes you forever and a day. Those programs all have waiting lists a mile long." He shakes his head again. "What junkie can wait?"

Then, nearly five years ago, Jordan got into a long-term relationship with Wendy (a pseudonym). She was a young, unattached mother who became a source of stability for him, and they have been making plans to live together. When you ask Jordan when he met Wendy, he answers immediately, "March 11, 1990." When you ask Wendy when she met Jor-

*"Those programs  
all have waiting  
lists a mile long.  
What junkie  
can wait?"*

dan, she answers immediately, "March 11, 1990." Neither answer reflects that they have known each other for years; neither answer reflects that each one's mother was already the grandmother of the same child, born to Wendy's brother and Jordan's sister. But they didn't really *know* each other, and had never even thought about dating until the day Jordan was released on parole — March 11, 1990.

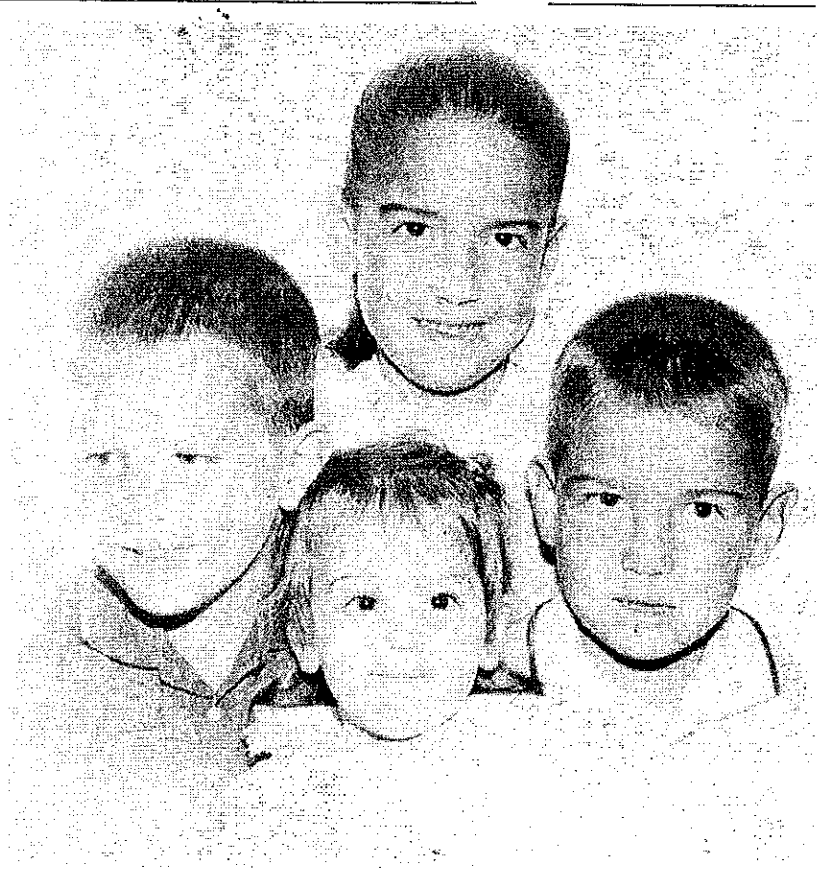
When interviewers caught up with her, she and her mother were in the kitchen of Wendy's condominium cooking dinner. As soon as we explained we were there to talk about Jordan, Wendy's mother began spewing a mouthful of cold-steel invective against Jordan. From her point of view, Jordan is a "no-good thief ... a filthy convict ... a man without honor, integrity or brains" and "the worst thing that ever happened" to her daughter. Wendy's brothers are convicts, too, and one of them is currently facing a violent third-strike charge of his own. Says their mother, "I'm their mother. How could I *not* love them?"

"Face it, Mom, your son is much worse than Eddie and you still love him," Wendy says as she holds out her hands plaintively, palms outstretched, "so why can't you understand that I love Eddie the same way?"

Possibly the mother was hoping for something better for her daughter. But after five minutes, Wendy took her guest outside to talk and escape her mother's verbal torrent. "There is real bad blood between our families," she explained, "and it has nothing to do with Eddie." It seems it is about the baby that joins the grandmothers. Custodial squabbles about the young girl have apparently resulted in a "Hatfields and McCoys" feud between the grandmothers that has fallen on the younger generation as well.

Except for Wendy and Eddie. When Wendy talks about Jordan, there is palpable caring and wistfulness. "You know, I'm all he has," she begins, and then her eyes start to sparkle and she wipes away a tear, then another. Then she doesn't even bother. "His folks don't really care for him. You see what my mother thinks. But he's not like Mom was saying at all. He's really so different from my brothers."

On that March day in 1990, Jordan's sister had invited Wendy over for his prison homecoming party. Watching him really for the first time, and talking to him, Wendy



liked him right away.

She says the first thing that struck her about him was that unlike most other convicts she knew, Jordan was ashamed of being an addict. The more they talked, not just that day but thereafter, the more she came to like his personality. He was quiet and respectful, sort of shy and conservative. He was curious about things, and he seemed more mature, not foolish and irresponsible. "He was just different from most of my brothers' friends," Wendy said.

"And there was this other thing that I love about him, too," she remarked. "When he was still living at [his parents'] home and working steady, we would go to Disneyland or the beach or park or some place with my kids. He didn't try to buy their love or affection. He told me one time that he wants them to just have fun with him, and that if we all did fun things together, he would win their affection that way. He wasn't pushy about it like other guys I've dated."

Wendy has never used drugs, and she made it clear to Jordan that she wanted to help him quit. For a while, it seemed to be working out. Jordan was employed

*Young Eddie (left) with his siblings*

*"Maybe I'm nuts, but I'm kind of proud of the fact that since 1986 I haven't done no more burglaries."*

full-time by a painting contractor that he really liked, and the company liked him. Wendy worked for the State Department of Economic Development, in an unemployment unit, and also made good money.

Then came the prison term in 1992. "That was a real bummer," Wendy says. "It was a very shaky case, but Eddie didn't want it to fall back on his sister, so he agreed it was his dope."

"But better me than her, you know," Jordan says with a shrug of his shoulders. "She's never been down, and what's one more time for me?" He served eight months in prison for that decision.

When he was released, they got lucky again. He got another good job, with a different painting contractor, this time in El Cajon. His boss, Dave Wageman, had a list of people he would call, and the workers' position on the list depended on how well they did their work and how well they responded when called. Jordan was a good worker, and as long as he had a car he could respond to wherever the job site was.

Then Wendy got conned. She fell for what dope fiends call the "okee doke." The way she tells it, her brother pleaded with her to help him stay clean while he was desperately trying to find a job — no easy task for an ex-con. All he needed was some money to tide him over, and couldn't she please just make a couple of entries in the computer at work so he could qualify for unemployment? Out of love and pity, she says, she did it. A short time later, he wanted her to do it for a friend. She refused. He reported her to her superiors, and she lost her job. At the same time, her mother had problems of her own and moved in with Wendy.

"That put too much pressure on me," she recalls, "and I guess I didn't have energy left over for Eddie." In January 1994, Jordan tested positive for heroin use and was sent back to Donovan Correctional Facility for what parole agents call "a 30-day dryout."

When Jordan got out at the end of February, his stepfather told him that this was his last chance. If he used dope again, he would have to move out of his parents' house. At the same time, he had been dropped to the bottom of Wageman's hiring list. Because of a general slump in the economy, Wageman wasn't getting enough jobs to reach the bottom of the list. Jordan

got only an occasional day of work. Then, on March 19, he was arrested again by the San Diego police for being under the influence of a controlled substance. That's when Eddie had to leave his house because of the understanding with his parents that he would not be living there if he used drugs again. He was now officially homeless.

Whenever he could afford it, he stayed in cheap motels. When he couldn't, he either flopped with friends or stayed in someone's car. He was going out with Wendy just on Saturday nights. "You know," he said, "it was just like that old joke. Wendy told me, 'Cheer up, things could be worse.' So I cheered up, and sure enough things got worse." His car quit running while he was on the freeway, and before he was able to get back to fix it, it was impounded. Now he had no way to get to a job even when Dave Wageman was able to offer him one. "I thought to myself, you know, if it wasn't for bad luck I wouldn't have no luck at all."

But with strong support from Wendy, he was clean until about two weeks before his arrest. Then he got an abscessed tooth. He went to the public hospital but couldn't get an appointment with a dentist for several days. He couldn't handle the pain from the tooth, so he shot up some heroin for the pain. "But I had it under control, you know," he rationalizes. "I took just enough for the pain. I wasn't going to let the monkey get on my back again. I just *know* that if I had made that job interview they would have hired me."

Jordan is referring to an interview he had lined up for the day after he was arrested for his third strike. But that day, with the bad luck that seems to dog him, he was ripped off. Jordan had stashed the two garbage bags with his clothes in a clump of bushes while he went out to get some food and to line up more job interviews. When he came back, the bags had been stolen and his clothes were gone. He had the job interview to go to and had only the clothes he was wearing. He felt he needed at least a clean shirt for the interview.

"You know something, I never had been off parole since 1982," Jordan said at the close of the interview. "Maybe I'm nuts, but I'm kind of proud of the fact that since 1986 I haven't done no more bur-



glaries. When I went into that J.C. Penney store, I really thought God was on my side and that He wanted me to get that job the next day."

Jordan stuffed a new shirt into his trousers and was apprehended just after leaving Penney's without paying. He confessed, offered no resistance, and calmly waited for police to arrive.

All that remained was to sort out what society should do with him, and the manager of the Penney's from which Eddie Jordan had stolen the new shirt has very definite feelings about the matter. "You must understand, I'm a very conservative person," said the trim, almost dapper man in his 50s, who prefers that his name not be used. "I think the prison system is sadly misguided. For many of these people, they have it much better inside than they do at home. They get clean clothes, three meals a day, all the showers they want, television — everything."

"How would you change that?" the manager was asked.

"I think they should get two meals a day, no television, a shower and clean clothes once a week, no weights so they can't pump themselves and come back out to beat up the rest of us. Make it painful to be in there," the manager replied. "Then they'll think twice about committing another crime and getting sent back."

What should the prisoners do all day?

"Let them make little rocks out of big rocks," he said.

The Penney's manager was unstoppable. He talked of the "three strikes" ini-

tiative, the state of the schools and neighborhoods, immigration, politicians, Christianity and crime rates. The conversation worked its way around to the finances of incarceration and the projected cost of three-quarters of a million dollars each to keep offenders like Eddie Jordan off the streets for 25 years to life — for a \$32 shirt theft. "If the cost keeps going up and up," the Penney's manager asked indignantly, "who is going to pay the piper? Obviously, taxes will have to be increased and new taxes will have to be imposed."

He considered for a while the balancing of social costs and concluded, "I want to discuss these facts with some of my friends. We may have to think about this issue some more. As a businessman, maybe I need to recheck the bottom line."

Jordan's parole officer Lopez also has given some thought to the bottom line. What puzzles him is that since quadrupling the number of state prisoners over the past 15 or so years hasn't brought the crime rate down, "then why all the hysteria to lock up so many more guys? I mean, if putting four times the number of people in prison hasn't lowered the crime rate, what is going to change except that we spend more money?"

"And you know," he closes, "it would be nice to have some program money for people like Eddie. I mean, some serious program money for some serious programs, not just the short-term programs we have now."

## Vincent Delgado

*Charge: Petty theft with a prior conviction of theft  
Value of stolen goods: \$62.05 (miscellaneous hand tools)*

Vincent Delgado, says one of his brothers, "is very bright, quick."

Sergeant Bill Moore of the Brentwood Police Department, who has known Delgado for years and once arrested him for a residential burglary, calls him "extremely bright."

Delgado's attorney, Suzanne Chapot, says, "I have spent a great deal of time with Mr. Delgado; he is a very bright young man."

"Smart?" says Delgado himself in an interview room of the Contra Costa County jail in Martinez. "I'd consider myself pretty intelligent, but smart? No. I've

*Vincent Delgado with his mother during his brief military career*



made a lot of stupid decisions."

The 27-year-old's most recent stupid decision was to steal \$62.05 of screwdrivers, pliers and wrenches from a Payless store in Oakley, Calif. He took the tools to get money for his next heroin fix, and soon after he was stopped near the store's front door he admitted to a police officer that he was under the influence of heroin. Delgado, an addict since his teenage years, says he had a \$40-to-\$60-a-day habit.

Delgado's police record includes several auto thefts and a string of seven daytime residential burglaries in 1989. They are the "strikes" that could send the young man to prison for 25 years to life under the "three strikes" law that went into effect nine days before his arrest at Payless.

The seven residential burglaries that are listed as priors all occurred within a several-week stretch when Delgado was 22 years old. None involved violence. In each case, he says, he looked for signs that the houses were unoccupied, then knocked on the door and broke in only after determining that no one was home. Whenever anyone answered the door, he "played campesino," asking for directions to a fictitious place in a "a 50-cent Mexican accent," then quickly departed.

Delgado stole mostly stereos, VCRs and other appliances he could resell easily at nearby farm labor camps for the cash to buy dope.

During every one of those burglaries, says Delgado, he was either high on heroin or in urgent need of a fix. "I'm in a desperation mode. I'm waking up sick, and I'm doing these asinine jobs." The pattern

of "waking up sick" every morning and "getting well" (getting a fix) started early for Vincent Delgado, and everyone who knows him says that the key to his future lies in getting a grip on his years-long addiction and removing himself from the environment that fed his addictive behavior. Delgado agrees, and he says he has begun to grapple with the issue in earnest: "It's a crossroads in my own life that I've come to."

Vincent Delgado was about 10 when his large family moved from California's Central Valley to Byron, a small town near Brentwood in Contra Costa County. They were a traditional Mexican-American family — devout, hard-working people. There were nine children in the family; Vincent was No. 7. It was not easy to get attention in such a large family, and Vincent's brother Manual speculates that his brother felt left out. Manual, in fact, used the same words his mother, Amada, used in a separate interview to describe Vincent's childhood — "he got lost in the shuffle."

Vincent's father, Chrispine, is a hard-working truckdriver who was usually on the road, and the children never felt they knew him well. When he did come home, says Ronald, another brother, he "was less than patient" with his children. He had high standards for his kids, and many of the disciplinary problems accumulated until "Pops" got home to straighten things out. Although Ronald remembers his father as a critical person back then, the boys all stress that they have enormous respect for their father and never suffered any abuse. "He's a good man," says Vincent, "and a good provider."

Amada Delgado had her hands full with the nine children. As if she wasn't busy enough around the house, Mrs. Delgado supplemented the family's income for much of Vincent's young years by working as a Head Start teacher, leaving the kids with a babysitter.

Nevertheless, Vincent displayed some unique talents. The quiet boy did well in school in his early years. He showed great artistic ability and at times dreamed of being an artist. Once, a drawing of his submitted to the San Francisco Chronicle was printed in the "Junior Art Champion" feature, and Vincent still remembers the morning he was awakened by relatives and shown his prize-winning drawing in the

newspaper. He received a \$2 check, and he recalls, "I was proud as a peacock." Manual Delgado says, "I always thought he'd be an artist."

It is a measure of Vincent Delgado's dramatically changed circumstances that he later took to selling his striking artwork to fellow prisoners for cigarettes.

When the Delgado family moved to Northern California, the children had to make a new set of friends, and, says Ronald Delgado, some of Vincent's new friends were "not exactly role models." He began to get into scrapes — fighting, trouble with teachers. In time, Vincent started indulging in alcohol and drugs. He says that relatives who lived in Mexican border areas where illegal drugs were more plentiful introduced him to some of those drugs. Several of his siblings were also doing drugs.

At the age of 15, Vincent had his first shot of heroin. "I was very, very impressionable at that age," he says. By 17, he was hooked. He was on heroin from then on, with only brief respites during a truncated stint in the army and during his subsequent imprisonments.

Vincent Delgado also got something of a reputation locally as a boxer, and he dreamed of being the welterweight champion of the world. "I was a natural fighter," he says, and he loved the sport, which he first tried when his father bought the boys boxing gloves and a punching bag. A local rancher got him interested in taking up the sport more seriously and even drove him to the Little C Athletic Club in neighboring Concord for training. He was to be on Little C's boxing team, but the long commute became too much to sustain and he dropped out.

Mostly what Delgado did in high school was hang out with the local circle of low riders, primping and strutting and drinking and getting into scuffles and passing the time of day. At the small regional high school, said James Martinez, Delgado's close friend during those years, there were a number of cliques — not gangs, although some of the Mexican groups evolved into today's tough gangs. Martinez said, "The athletic guys all hung out together, the cowboys hung out together, the studios people hung out together, and the homeboys hung out together — that was our group." Cholos,

*"It's a crossroads  
in my life that  
I've come to."*

they called themselves.

Their style of dress was "completely different from the rest of the school," Martinez said in an interview. They all wore white T-shirts and khaki or black pants, and they sported slicked-back hair. Above all else, they valued their "respect." "Someone commented about your dress or how you combed your hair and you'd punch him out," said Martinez. "If someone did something we didn't like, we beat them up. People feared us, but we thought they respected us. We were punks; we were shitheads."

Martinez says that Delgado "did no more fighting than any of the rest of us," and in those high school years the members of the tight little circle were not into robbing and stealing.

Martinez brings an interesting perspective to Delgado's story. He saw his friend daily during high school; he cut school with him; he drank beer with him; he hung out with him. If there was any difference between their paths in high school, Martinez recalls, it was that he got in trouble with his parents for cutting school, and it was his impression that Delgado did not. "My parents were a lot more strict than his," he says. "He came and went as he pleased; didn't have to go home any time or answer to anyone."

Basically, "we were the same kind of person until we were 17 or 18," he says, but Delgado "went one way, and I went the other." Today Martinez is a police officer in Brentwood. "I was the kind of person I go out and arrest now." And indeed, he once chased and caught Delgado in a stolen park and recreation department truck.

Delgado, he says, "never got out of the environment."

Delgado himself confirms the importance that the homeboy mystique had for him, and he sees in his high school behavior the origins of his present troubles. "I fed off the attention I got for being a cholo," he says. "I think with a little more guidance in my younger years ... if somebody would have took me back then and said, 'Why don't you try the art work or sports or pep club for that matter? When you get into high school, why don't you try this?' When I got into high school, I was basically on my own. We were just new into the area, and I wanted to be accepted ... accepted as a person on these terms and these terms

only. And my way of thinking was, 'Well, the best way to go about this is to develop some type of reputation. Hence all the fighting and whatnot.'

He says of the cholo lifestyle: "I wanted to be known for that. That was going to be my imprint on my surroundings."

Martinez believes that Delgado's heroin use was an extension of his desire for respect. He recalls the time Delgado came back from a visit to Southern California, bragging to him about the partying scene there and about shooting up heroin for the first time.

The officer also points out that Delgado went to prison very young. "It made him a tough guy around the neighborhood," he said, and "he acted as if it's cool" to have gone to prison.

"I send people to prison now; that's what I do for a living," said Martinez, but "I don't believe you get rehabilitated in prison. It just makes it worse."

In addition, in Delgado's case, life could have got "very uncomfortable for him in prison," Martinez said. That's because the Mexican American population in prison is divided into two main gangs, representing Northern California and Southern California. As a southerner who moved north, and as someone who did time in both Northern and Southern California, Delgado would have been under great pressure, says Martinez. "There's no option for these young Mexicans," he says. "Either you go with one gang or the other or you're someone's punk."

If prison couldn't change Vincent Delgado, what could? Martinez says it will happen only if he makes up his mind — "he's never had any reason to change" — and then he will "have to completely cut himself off from everybody he knows and get away from there." Martinez has his doubts that Delgado can do that.

But Delgado independently says he's going through just such a rethinking during his current incarceration. "It goes back to what my father's always telling me. He says, 'Vincent, you've got so much potential' and this and that. And I'm tired — I'm not tired of hearing that, I'm tired of spinning my own wheels on it. I want to see what I can do. And I want to do what I know I can do. I really don't want to let this life pass me by."

*"I'm tired of spinning my own wheels on it. I want to see what I can do. And I want to do what I know I can do. I really don't want to let this life pass me by."*

He says he can't yet "fathom what it would take ... what it *will* take ..." but he has the rudiments of a plan for success. It starts with his family. He wants to reaffirm close ties with them if and when he gets out. Previously when he was released from prison, he "never asked anybody else for help. I never admitted I had a drug problem." Now, he says, he recognizes he needs someone to lean on, to help him, which is why during his current incarceration, for the first time ever, he asked his parents to visit him in jail. In the past, they had always wanted to visit him, but he had never before consented.

And if he gets the opportunity, he wants to go back to school. "Knowledge is beautiful," he says. "History really interests me." And then there is his natural talent for art.

But he has no grandiose expectations for himself of the kind that sometimes has gotten him in trouble in the past. He says he wants to live "what other people would term a very, very dull life; and seeking those interests that I always knew were very interesting to me but never took the initiative and stepped forward to pursue. ... I'm a people person. I don't want to go out and save the world — I'm not the Mexican Joan of Arc or anything like that — but maybe I could start a noble cause or help with one. I certainly don't want to go back to where I came from."

These thoughts have been rattling around in Delgado's head since his most recent stay in a halfway house, the Volunteers of America Work-Training Program in West Oakland, where he came under the influence of a counselor named Roy Mays, who "made me take a very good look at myself" and had a simple but effective message for the 27-year-old heroin addict. It's time, he told Delgado, for him to love himself, to see value in his own life and stop seeking it through through external substances. Months later, Delgado still talks of Mays and his insights.

Mays, in an interview, said that with consistent support Delgado is a good candidate for rehabilitation in a program emphasizing abstinence, life skills and self-esteem. Without that support, he said, Delgado will fall back into the familiar, self-destructive habits that are all he knows. He says Delgado has been "playing Russian roulette with his life. He enjoys living on the edge."

The alternative sounds a lot like the boring life for which Delgado now says he yearns.

Delgado says he was never prepared for the future, that he was "blindfolded." So his interviewers asked what society should do with people like him besides throw them in prison for life. He replied, citing what he said was an old African proverb, that "it takes a whole village to raise a child." We raised this generation. ... These kids are all the product of what we made them, whether it's through the ghetto or whether it's through MTV gangster rap videos beamed out to suburbia. We made them."

"I wish," he goes on, with a passion that grew steadily in intensity as the jail interview proceeded, "that society could take me under a microscope and judge me for what I am, like you two [interviewers] are doing. But I don't think that will happen."

What will happen, barring some unexpected boon from the court system or the Legislature, is several more decades in prison. Nobody who knows Delgado thinks that long a stretch behind bars will do him any good. "He might as well die in there," said Ronald Delgado, who thinks his brother had finally begun to "mellow out."

"I think the 'three strikes' is a good law for some people — for violent crime or crimes against a person," said Officer Martinez. "But I don't think 25 years is the right punishment for stealing tools — not for shoplifting, no." He says "maybe five or six years" sounds about right to him.

Delgado's attorney, Suzanne Chapot, says that without the "three strikes" legislation Delgado might have gotten a sentence of 16 months, or at most two years.

Amada Delgado blames the judges



*Vincent at 2 years old*

and lawmakers who "werē up there trying to act like God and doing a bad job of it. They are saying, 'Well, this is as far as you go — your life is over. You're going to be incarcerated for the rest of it.' And that doesn't seem right. Vincent has a problem with drugs, you know. He's not violent. As far as I know he hasn't hurt anybody."

But, she says, he was always released from prison to "the same life," with no effective programs to help him.

Vincent Delgado says there is a limit to what society can put up with — the "rapists, armed robbers, murders" — but he does not put himself in the same category. He expresses his situation in metaphorical terms. The "three strikes" law, he says, "is almost like the net and the fish" — the environmental problem of dolphins being killed in nets intended for other fish. "And I almost feel like one of the dolphins being killed. And sometimes I don't think I'll ever get to play in the water anymore."

Although the "three strikes" legislation was designed to eliminate plea bargains, Delgado was offered a deal by the district attorney's office — they would strike one of his "priors" if he accepted a six-year prison term. He turned it down because "I don't think that was a viable

option for the crime. People come in here and they do 30 days for what I did. If I had to double the sentence, that would be fine" ... or triple, or quadruple. "But six years, not that."

As Delgado speculates about his future, he depicts a potential scenario in his mind that perhaps contributed to his refusal to accept the deal proffered by the DA's office. "They send me to some godawful penitentiary, and I'm back acting with the [prison] politics. And I get a big, thick, calloused skin, a facade, over me, and I slowly turn into one of these prison-made monsters — just waste away my life in there."

The man who "wasn't prepared for the future" and had finally begun to hope that he might make one for himself, sees a cruel parallel between his own life of heroin and the newly enacted crime nostrum that haunts his future:

"I'm society. ... The solutions to my [personal] problems were a quick fix [of heroin]. And just like society in the 'three strikes,' we're all looking for a quick-fix solution: Gas 'em, three strikes, lock 'em up, take away their welfare. ... I want to try that virtue called patience. I want to satisfy myself with a hard day of work."

## Edward J. Morrison

*Charge: Escape without violence*

In the weeks following enactment of the "three strikes" legislation in March, Edward Morrison had an increasingly tenuous grip on sanity, according to officials at the prison where he was incarcerated. What it was that triggered his "third strike" crime we may never know, but the results will probably be the same whether or not he has the presence to tell his own story.

Unlike the other defendants profiled in this report, Edward Morrison was never interviewed by a researcher from the Center on Juvenile and Criminal Justice. Morrison was "in the hole" — administrative segregation — when his private investigator attempted to obtain his permission for our interview.

At the time of our request, Morrison had been in isolation for more than five months. When the investigator asked him to sign the simple release form granting permission for a CJCJ researcher to interview him, Morrison was so paranoid that he refused to sign the form.

"That's a lot of time to be in the hole," said Morrison's defense attorney, Jim Maguire.

Morrison is and has been in isolation for so long because his third "strike" came when he was a state prison inmate. It is the policy of the California Department of Corrections (CDC) to place inmates who are accused of new offenses while in prison in administrative segregation until their cases are resolved. Because cases normally were resolved through guilty pleas prior to the advent of the "three strikes" law, this policy has not resulted in excessive overcrowding in segregation units statewide. "Third-

strike" cases, which almost invariably result in trials and not guilty pleas, may change all that.

On March 31, 1994, Edward Morrison left prison for less than one day. He had been acting increasingly "strange," according to prison staff, in the days leading up to his walkaway from

*"This law presumes that once someone commits a crime, they can't ever be changed and will never be worthwhile."*

the minimum-security section of the California Men's Colony in San Luis Obispo. According to a report written by Correctional Officer E.R. Geoiran:

*During the last two weeks Inmate Morrison E-72413, Dorm 20 Bed 43U has been observed to stay up all night and read and study his bible.*

*He also prowls the dorm at night when possible and wakes up inmates telling them that he is blessing them.*

*On March 31 at approximately 0300 hours he woke up his inmate neighbor and told him he was blessing him. He has been warned in the past and written a Disciplinary CDC-115 regarding his behavior. Morrison was also told to change his sleeping habits to sleep during the night instead of during the day. On March 26 at about 1300 hours he made what appeared to be an altar on his bed. He opened his bible and*

*"I didn't consider him dangerous and I wasn't afraid of him"*

*other religious books, set them up and stood back staring at them for an hour. He then took them down and walked out of the dorm. [Errors in original.]*

On the date of Morrison's "non-violent escape," as his offense is called, prison guard D. Peterson noticed Morrison within two feet of the prison's front gate. According to his report, "I yelled at him to get away from the gate. Inmate Morrison turned around and walked away, not saying anything." About seven hours later, at approximately 4:30 on the afternoon of March 31, Morrison was "out of place" when prison officials took their daily inmate "count." By 3:00 the next morning Morrison turned up at a gas station in Pismo Beach, less than 10 miles from the prison's gates. He had stopped to buy a pack of gum and answer a "help wanted" sign posted in the station's window.

Because Morrison won't talk to us in his current condition, little is known about his background, and many mysteries remain about why a man in a minimum-security prison with little more than a month to serve on a six-month parole violation would risk a new felony conviction on an escape charge. Upon arrest, Morrison reported that he had escaped to see his mother in an old-age home where the woman's health was reportedly failing.

But Morrison did not get to his mother's retirement home. Instead, he was spotted at two locations during his fewer than 12 hours in the free world — at a garbage dump and at a gas station — both times applying for work.

At the Cold Canyon Landfill, Morrison ran into a truckload of inmates from the San Luis Obispo Honor Farm providing community service as part of their sentences. According to witnesses, Morrison joined the work crew on a volunteer basis. While at the landfill, he obtained a job application from the dump's managers.

Morrison also picked up some discarded clothes at the dump and, ironically, a baseball cap emblazoned with the logo of the National Rifle Association. The NRA has emerged as one of the chief sponsors of the "three strikes and you're out" concept nationally, and is one of its largest financial backers in California.

Also found on Morrison at the time of

his arrest was a New Testament Bible and 17 cents. Morrison was found to have a blood blister on his toe from walking the 10 miles to Pismo Beach after his escape.

Morrison's prior "strikes" are as mysterious as his current offense. In 1990, he was living as a homeless person in Huntington Park, Calif. He entered the 7-Eleven store on Slauson and Pacific streets — a store he had frequented for years. Morrison attempted to purchase a single cigarette from the store's manager, Vichea Lim. Lim responded, "Eddie, you know we don't sell single cigarettes." Morrison then became angry and stormed out of the store. He stood outside soliciting single cigarettes from 7-Eleven customers.

After about 10 minutes, Morrison's emotional state apparently deteriorated. He approached a 7-Eleven customer, demanding a cigarette, and slit the tires on her car with a box cutter when she refused. He then entered the store and took two Nestle's Crunch bars. When Lim confronted him and said, "Hey, Eddie, do you have money to pay for that?" Morrison waved the box cutter at Lim and left the store.

Lim considered Morrison a "homeless bum" who had obvious mental problems and was often found sleeping on the street near Lim's store. "I didn't consider him dangerous and I wasn't afraid of him, although I could understand why some of the customers were." In fact, when questioned, Lim didn't recall Morrison ever threatening him.

Edward Morrison was sentenced to serve six years in state prison for that offense. Upon his release from prison in 1993, he was placed on parole for three years. Morrison was in prison for a technical violation of parole when the walkaway took place.

Morrison's previous "strike" before his 1990 conviction was for another robbery in January 1965, nearly 30 years ago.

Defense attorney Maguire asserts that the voters "are not really getting what they're paying for" with the "three strikes" law.

"I think that the 'three strikes' law is outrageous as it applies to this guy," says Maguire. "There is a general acceptance that 'three strikes' should be applied to the violent and the dangerous. What's happening in Morrison's case is very deceptive."



Maguire believes that, had Morrison escaped a month earlier, before the effective date of "three strikes," he probably would have received between 16 months and 3 years on top of what was left of his current sentence. Maguire, who has entered a plea of not guilty by reason of insanity for Morrison, said, "I understand that he should do time on this, if he's convicted. But no one was harmed by him, and the property he stole in his last offense is very small. A judge should have the ability to look at

this individual case and grant leniency. This law presumes that once someone commits a crime, they can't ever be changed and will never be worthwhile."

Lim put it another way. "If Eddie was to get some help, a place to live and job training and skills, I think he could be out again and be OK. But if he's just gonna be out on the street, begging for money, sleeping in the street and drunk all the time, he's probably better off in prison where someone will take care of him."

## 'Juan Muro'

Charge: Grand theft

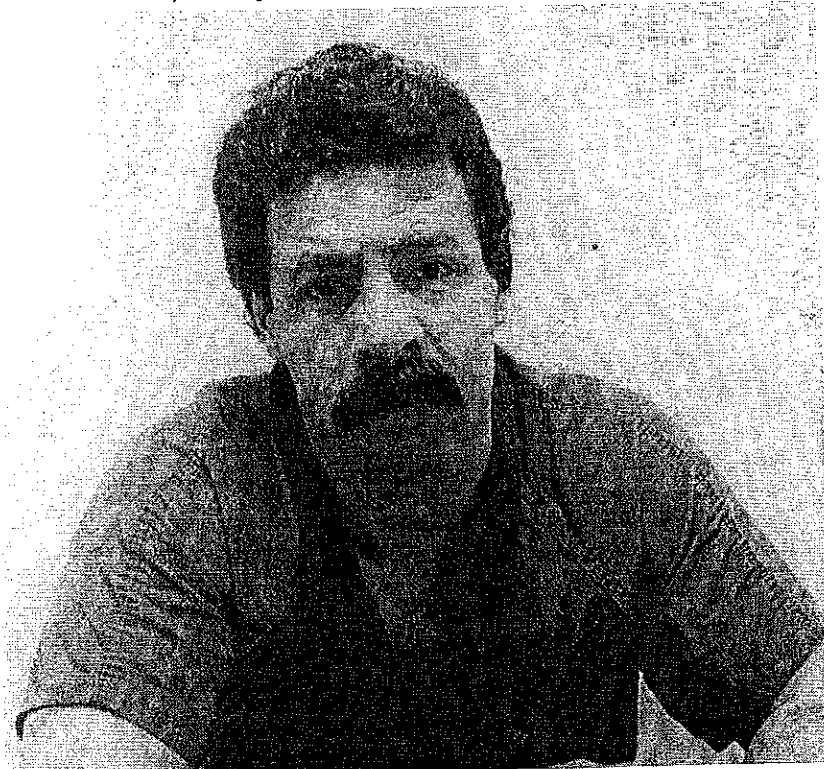
Value of stolen goods: \$830 (83 wooden pallets)

"I screwed up bad, I got to admit. But for taking some pallets to make a bonfire, it's too much time," the slight Mexican national said in sorrow. He was wearing the San Diego jail uniform of jeans and a white T-shirt. "I picture myself that, I commit a crime, I got to pay, but not to that point, you know? Not 25 years just for some old wooden pallets."

Juan Muro's theft qualified as a third strike because of two prior burglary convictions. When he was asked if he knew about the "three strikes" law before he came across the border this last time, he

*Juan Muro feels he is being punished for his addictions*

—Photo by Ruth Morgan



laughed and shook his head several times. "Hell no, man."

Deputy Public Defender Jack Hochman, who is defending the man who wishes to be called Juan Muro, suggests that someone should apply a "truth in advertising" standard to the "three strikes" law. "They bill it as a crime-fighting measure," he explained, "when in reality the intent of the law is to export our criminals to other states — or to Mexico."

When asked how society should respond to him, Muro replied, "I don't think that society should punish a person for his addictions. Let's face it," he says, shaking his head, "I'm such a bad drunk. I wish somebody would help me with this, you know, but they never did that yet. Now they going to lock me up for 25 years for such a small thing, because they say I always commit crimes so I am dangerous."

"No way," he stresses forcefully. "No way. I never beat nobody up, I never use a knife or a gun or nothing like that. No, I don't think I am dangerous to anybody." He pauses for a moment, shrugging his eyebrows, "Except maybe to myself, with the alcohol and the weed."

"But I not so sure about tomorrow," he continues. "Inside prison, I am a Mexican. I got no choice; you got to run with a gang, or everybody does things to you, you know? I am a Border Rat. If somebody fucking around with me, I got nothing to lose. I'm almost 40 years old now. With 25 years I got nothing to lose, you know. So that law, really, it just makes more criminal things happen, not less."

He was asked how far he would go to

protect himself. He thinks about it for a minute, then shrugs. "If somebody was to ... I don't know. Right now, I am not a gang member, but inside prison, if I'm going to be there a long time, I got to protect myself. Like I said, I'm a Mexican so I got to run with the Border Rats. If you don't do that, somebody take your property, somebody try to rape you. They do a lot of things to you in there. The place has got some bad people, you know. Not people like me, but truly bad people that hurt anybody, they don't care."

Up until now, he points out, he has always done short terms and has been able to stay out of trouble while incarcerated. In fact, he claims, "my whole time in prison, I only got one disciplinary report. I been able to not get involved, you know?"

Muro was born in Mexico. He first came across the border illegally in 1970, at the age of 14. He found a good job right away as a dishwasher and worked his way up to being a waiter. He then talked the cook into letting him be an apprentice, and soon became a cook himself.

His first burglary was in Pomona, in 1985. Tell me about it, he was asked. "I got caught," Muro said. Fair and square? "Fair and square."

He was working as a cook at the time, in Baldwin Park. It was at a restaurant that has since become a Denny's. He worked hard. It was his first job as a cook. His boss, Mike, told him at least once a week what a good job he did.

Muro still can't explain why he committed that residential burglary. "It was just stupid. I didn't want nothing. I didn't need nothing. I was with a friend, and he said he knew a house where there was a pound of weed and no one was home. So he said, 'Come on, let's go get it,' and I said, 'Yeah, let's do it.'" He scratches his head as he remembers. "We didn't find anything, and we came out of the house, we didn't have anything. No weed, no stuff, no nothing, 'cause we just wanted the weed, you know? We didn't want to steal nothing." But the neighbors across the street had seen them go around into the back yard, and when they came out of the driveway onto the street, the cops were right there.

Knowing what he knows now about the system, Muro doesn't understand why he didn't get probation for such a first offense — or, at worst, jail time. "I was mak-

ing about, more than \$200 every week. I told them I would pay a fine, but I don't know. They just, boom."

Asked how Muro could have gotten two years in prison for that first offense, Deputy Public Defender Hochman, an Indianan of German ancestry, answered, "I wouldn't tell you it's a racist society, but if you look at my list of defendants on third-strike cases, just one of them is white that they filed on in South Bay [San Diego County]. The rest are Hispanic or black, with maybe 2 percent Puerto Rican. But only one white guy out of about 40 third-strike cases that they've filed so far."

The story is no different in Los Angeles, which may explain why his Pomona crime resulted in a prison term for his first offense. When we talked to a deputy public defender who works out of the Pomona office, he indicated that offenses committed by minorities were probably prosecuted more harshly in Pomona than in southern San Diego County. "Face it, this is 'white flight' country from the '60s and '70s. Prison for a minority first offender isn't that unusual around here, and that happens even with minority prosecutors handling the case."

Hochman picked up that theme in a separate conversation. "Since we have a lot of Latino DAs down here, I talk to them and I say, 'Hey look, how can you do this? How can you support this?' And they say, 'Oh, no, we do them ourselves; it's just the way the records are.' And I say, 'Do you ever think it might be systemic? That it might be that 10, 15 years ago these guys didn't get the pleas, couldn't cut the deals that the whites got?'"

"What I've noticed recently," he points out, "is that many of the best minority DAs have gone back to the misdemeanor unit. They don't want to do third strikes anymore."

Muro served his first prison term at Chino, a minimum-security facility in next-door Pomona. For reasons he does not understand, the Immigration and Naturalization Service didn't bother Muro when he was released. They didn't even bother him the second time. "But from then on, each time, they deport me when I get out." So why does he keep coming back? "I don't know. I asked that myself.

*"Prison has got some bad people, you know. Not people like me, but truly bad people that hurt anybody, they don't care."*

*"He has worked for me for almost a year. He is a very good worker. A good mechanic. He comes to work every day."*

I guess it's because really I don't know anyone in Mexico except my mom." His father died in 1989.

Muro doesn't know anything about today's Mexico, having left that country nearly a quarter of a century ago. "Besides," he said, "I tried working in Tijuana a couple of times, but unless you sell dope or run people across the border, there's no work down there. You starve."

After his release from prison in early 1987, he again found work quickly. This time he was cooking at Cindy's Coffee Shop, a family kind of restaurant. Cindy was the owner and his boss. He did well for a couple of months, and he and the boss got along well. "I was respectful with her, you know, because she was a nice lady. And I always worked hard."

Then one day Cindy said, "I've got to let you go. I know you're on parole." He said, "Yeah, how did you find out?" She said his parole agent had called to verify that Muro was working there. Muro continued: "So what did you tell him?" She said, "I told him you were a good worker and that you're doing okay." "So why you letting me go?" "Well," she says, "he told me you were in prison for burglary and you a dangerous person and to watch out for you." With that kind of an endorsement, it is easy to understand why Cindy reluctantly ended his employment.

After two more trips to prison for non-"strike" offenses, Muro was arrested for a residential burglary in 1991.

Muro's fourth prison term — and his second strike — was another residential burglary in 1991. "We were trying to break into the house and they caught us. Right then." "Going in?" Muro is asked. "The back yard, the back yard," he insists. Out of prison, jobless and homeless, Muro and a friend had been living in the friend's truck. The friend said he knew where some money was, so Muro said the two of them went to the house. But the police were notified by someone, and the would-be burglars were quickly and quietly apprehended. Muro pled guilty to second-degree burglary and received a two-year term.

After being released this time, Muro was determined to try to do a better job of staying out. He was also determined to not drink so much beer. He hoped that if he got out of the Los Angeles area, he could turn himself around. The decision turned

out to be a good one. He went down to San Diego, and by a stroke of good fortune he landed a job right away. He worked as a mechanic at a garage owned by Vicente Via. The garage was located in a large industrial yard that contained several other businesses as well.

"He has worked for me for almost a year," Via said. "He is a very good worker. A good mechanic. He comes to work every day." Via's wife, Paula, also thinks highly of Muro. "I think he is a good man," she says. Both Vias volunteered to come to court to be character witnesses for Muro.

Muro's third strike occurred on July 22 of this year. A Chula Vista K-9 unit was on routine patrol in the business area of the Price Club. As the rear of the store came into view, the officer saw a pickup truck parked next to the 20-foot-high cement block wall that encloses the storage area. The pickup was loaded with wooden pallets. One man was in the back of the truck, and the other was out of sight on the other side of the wall. When the officer drove closer, Muro jumped down and ran off across the parking lot.

At this point, the officer recalls, "my K-9 partner was barking. The suspect stopped running, and I got out of my patrol unit to talk to him." Muro says he stopped because he knows what a K-9 dog can do. "I hear one of them bark, it's like that cop Hunter says on TV, it works for me."

Meanwhile, his crime partner got away before the backup officer arrived. Unfortunately for him, says Muro, it was the partner's truck and he had to go to the police station to get it out of the impound lot. So, Muro continued, his partner did the only sensible thing — he said Muro stole it. Muro maintains that the man he was staying with was home when his crime partner drove his truck over to pick Muro up, on their way to the Price Club. And, says the public defender's investigator, the roommate will corroborate Muro's story when he testifies in court. The fact that Muro has not been charged with auto theft lends some credence to story.

Why, after being law-abiding for a year, did he accompany a man at 1 a.m. to steal these pallets? Muro explained that the man who owns the industrial yard where he works was throwing a big birth-

day party for his son the next evening. The party was going to be on the beach. Apparently it is a local custom to build beach bonfires out of wooden pallets. Since the man had been nice to Muro, he says he didn't mind agreeing to participate in the pallet heist.

But Hochman explains how stupid the whole thing was. "I saw a Polaroid that the officer took of the pallets on the truck. Think about it. Eighty-three of those wooden pallets in the back of a regular

pickup truck." He grins as he tells us, "They were piled up more than 10 or 12 feet high. I don't care how well they might have been tied down, that truck was never going to get out of the parking lot."

As the interview with Muro ended, Hochman asked him, "Have you ever gone to trial?" The answer was no. But, he added after a pause, with a trace of a smile, "I'm sure as hell going to trial now."

## Dale Allen Broyles

*Charges: Possession of a controlled substance (methamphetamine) and ex-felon in possession of a firearm*

Unlike most of the others profiled in this study, Dale Allen Broyles may not even be guilty of the crimes with which he is charged. But the ambiguity of the evidence has not stopped prosecutors from asking for the full "three strikes" penalty. Meanwhile, the bizarre circumstances of his arrest and the specter of more than 25 years in prison have put his life into a state of suspension that torments him and those he treasures most in life — his wife and two young children.

Dale Broyles believes in fate. And indeed, the mild, even self-effacing young man

seems almost to have fallen into his criminal activities, without much action of the will. He is, he says, more of "a follower ... a sucker. I'm just like that." Certainly in the hours immediately before his "third strike" arrest he appears to have been incapable of will. He says, and his friends corroborate, that he was dead drunk.

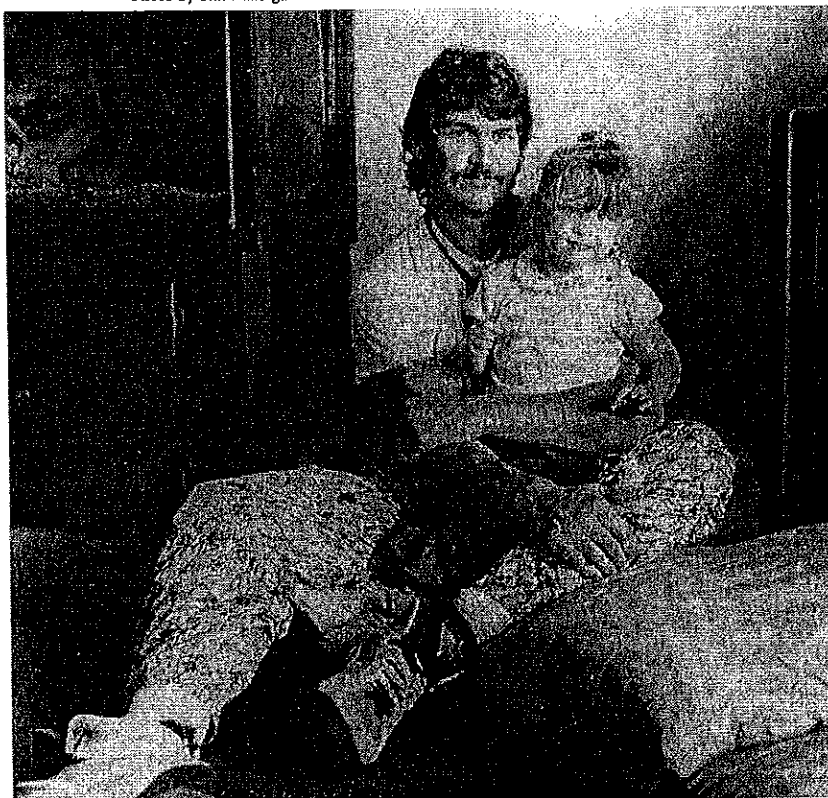
Broyles, who had lost his job a month and a half earlier and was separated from his wife, says he drank prodigious amounts of alcohol on March 8. That was one day after the "three strikes and you're out" law went into effect in California — although the fact meant nothing to him at the time.

The tall, handsome 25-year-old began drinking in the morning at his mother's home in Empire, near Modesto, where he had been staying since splitting with his wife. He started with hard booze and a six-pack of beer. At some point in the afternoon, his friend Jeff Faddis came over and parked his car at Broyles' mother's house. Then they went in Broyles' '84 Dodge Ram Charger over to Faddis' house in Keyes. Later, they were joined by Broyles' girlfriend Kim Bible. Broyles continued drinking there — about a half-gallon of whiskey, he says. "I was in a really kind of depressed state," he said in an interview, "because me and my wife ... I was going to lose everything I had — my children, my wife. I just didn't feel too hot about myself, you know. And I tried to wash away my troubles with booze."

Later in the interview at his and his wife's apartment in the Sierra foothills town of Jamestown, Broyles returned to

*Dale Broyles, shown playing with his daughter, Halie Elizabeth, has put his life on hold*

—Photo by Ruth Morgan



the topic of his drinking. That day, he says, "I was trying to kill myself, subconsciously, I think. I mean, I'm still trying to do it."

Dale Broyles says he was far too drunk to remember anything that occurred on the night of March 8 and the wee hours of March 9. Whatever else happened to him that night was reconstructed later. And some details are still not clear. But apparently sometime after 2 a.m., Jeff Faddis drove Broyles and Bible back to Mrs. Broyles' house in his wagon. Bible described her friend as "sloppy-ass drunk, to put it plainly," and she testified that he passed out sometime on the drive to his mother's house. Faddis then went home in his own car, and Bible, unable to find the garage door opener, left Broyles curled up in the back seat and went to bed inside.

At about 3:30 that morning, as fate would have it, a tow truck from Four Star Recovery arrived to repossess the Dodge wagon. Broyles says he was one payment behind. The wagon was towed about eight miles to the company's yard in downtown Modesto, and it was only there that the repo men discovered the body in the back seat. The wagon doesn't have a back door, testified one of the men, so "we tried yelling through there, but he didn't move so I thought he was dead."

After five or ten minutes of shouting into the wagon, the tow truck operators called the sheriff's office, and the dispatcher told them to tow the wagon, with the body in it, to the sheriff's headquarters a few blocks away. There, at about 5 a.m., deputies again tried to wake the man "cuddled up" in the back seat, knocking on the window and shining a flashlight inside. At some point, one deputy saw a short-barreled rifle in the vehicle, wedged between the driver's seat and the front-seat console.

Soon afterward, one of the deputies, ignoring the missing tailgate door, broke the passenger window and entered the wagon, again yelling unsuccessfully for the sleeping man to wake up. Broyles was finally given a faceful of pepper spray. The effect was immediate; he shot bolt upright. Broyles says that the deputies "were yelling obscenities at me when I came to."

"At that time," Broyles said, "I heard an officer say, 'Take him back down and book him for possession of a gun,' and I had no idea there was a gun in my vehicle. I never even knew it was there."

He was arrested for possession of the unloaded gun and for possession of some drugs that were found in a black, zippered fanny pack on the rear floorboard of the wagon. The pouch contained, among other items, a loaded syringe and a clear plastic bag holding traces of a white powdery substance. Chemists later determined that the syringe contained .3 grams and the powder .19 grams of methamphetamine. Officers testified that the methamphetamine samples constituted a "usable amount," however small. Broyles says that, to this day, he has never seen the bag.

It was at the preliminary hearing in June that Broyles first learned some of the details of what occurred while he slept off his hellacious bender of March 8 and 9. That was also the first time, he said, that he ever set eyes on the gun found in his wagon. Indeed, Jeff Faddis began to testify at the hearing that the gun was his. He said he wished to testify despite the possibility that he could be charged with felony possession of an illegal weapon, but Municipal Court Judge Roger Beauchesne convinced him that he might be better off with counsel. After consulting with a court-appointed attorney, Faddis took the Fifth Amendment. Kim Bible, however, testified that she had seen Faddis put the gun into Broyles' vehicle that night when he went off in it to go hunting, and Faddis' 12-year-old son testified that it was his father's gun.

But a deputy sheriff testified that Broyles indicated to him that the gun "belonged to a friend of his named Hector" and that "he knew the gun was in the vehicle." The deputy also said he did not "notice any odor of alcohol on or about" Broyles. He testified that Broyles, in the interview soon after he was awakened, did not know that his vehicle had been towed, nor did he know of any drugs in the wagon.

At the conclusion of the hearing, Broyles was formally charged with felony possession of methamphetamine and possession of a firearm by an ex-felon. And — although pretrial release is not typically considered for defendants facing life terms — bail was set at \$15,000.

Judge Beauchesne refused to reduce Broyles' drug charge to a misdemeanor. He also turned aside arguments by Broyles' attorney, Martha Carlton, that the "three

*The earlier "strikes" that subjected Broyles to the "three strikes" penalty all occurred when he was 19.*

*"He's just an all-good kid. He just needed a lot of love and didn't get it. He was really wanting a family life. He was always reaching out for love — and still is."*

strikes" penalty was inappropriate in Broyles' circumstances. "Well," said the jurist, "certainly it's not this court's responsibility to determine whether or not, in its wisdom — either its own wisdom or that of the Legislature — a 'three strikes' law should or should not apply to this kind of scenario."

The earlier "strikes" that subjected Broyles to the "three strikes" penalty all occurred when he was 19. In one instance, he was implicated in the theft of two guns from his uncle. The uncle didn't press charges, but the authorities did. Broyles maintained that he did not steal the guns but acknowledged that he knew who the thief was and that he protected the person out of friendship. "I was just doing what I thought was right for my friend," he now says. "I shouldn't have done that. I shouldn't have let him talk me into that."

Broyles took the deal that his lawyer recommended, he said, but the crime to which he pleaded guilty — grand theft of a firearm — was reclassified a year later as a serious felony, and thus a strike for the purposes of the "three strikes" legislation that was enacted years later. Had he any way of knowing about the two laws that were not yet enacted, he might have pled differently, but of course he could not have known how the Legislature would later construe his conviction. For the gun theft, he was sentenced to 120 days in county jail.

While Broyles was serving that county jail sentence, he was struck by a tragedy that still haunts him and that led to what later became his second "strike." He was called out of his cell and informed that his pregnant girlfriend of three years, Sherry, was killed in a car crash. Sherry had been trying for most of their years together to get pregnant. In the car with her, and suffering from burns over 90 percent of her body, was another dear friend of Broyles.

Broyles was given a two-day pass to attend the funeral, but, he says, "I needed more time than that." On the day of the services, the girl who was with Sherry in the accident died. "I lost my girlfriend. We wanted a kid so bad. And then my best friend died with her." It was too much for him, and "I felt real sorry for myself." Broyles did not return to jail.

The depressed young escapee, 19 at the time, met a young man who was planning a residential burglary. He joined in the bur-

glary and was captured 100 yards from the house. Although his co-conspirator had a gun, Broyles was unarmed. Of the burglary he says: "I didn't feel it was right, but I did it. I had no money. I was a kid. I was stupid." He pled guilty and was sentenced to the California Youth Authority for three years, four months, of which he did 16 months.

Over a period of three months, Broyles had acquired two "strikes," however inadvertently. He was not yet 20 years old. But he points out that "there's not a violent crime on my record."

Although that was the end of Broyles' "criminal career" until his rude awakening on March 9, it was hardly the measure of the young man's troubles. Broyles says he has no knowledge of the drugs found in his wagon, but he freely acknowledges his drug problems and his need for therapy. His entire life had been a nightmare of booze and drugs, divorce and new families, and what he perceived as abuse and neglect. In a manner of speaking, he says, "I never had a mom and dad, so I guess you can say drugs kinda raised me."

Throughout Broyles' childhood, "I was bounced all over the place." His father died in an auto accident when he was about 18 months old, and his mother was at loose ends at various periods during his childhood.

Even the image of the father he never met taunted the young boy. The father's sister, Donna Robinson, at whose house Dale spent some of his growing-up years, says that her brother, Dale Sr., was a lot like his son. She says he was on drugs "real bad" when he returned from a tour of duty in Vietnam. Although he later spent some time in a rehab center, he resumed his drug use, she said, and he did some time for selling drugs. He, like Dale Jr. later, was always getting in little troubles. He was often inexplicably paranoid, doing "crazy things" like hiding in the vineyards, and he was just 23 years old when he died in the car crash. Dale Broyles Jr. himself had a serious car crash at about the same age.

"All his life Dale was told, 'You act just like your dad; you're gonna turn out just like him,'" says Donna Robinson. "I think it was set in his mind his whole life, since he was a baby."

Dale Broyles Jr.'s mother, Vesta, remarried a few years after the death of her first



husband. Her son grew very attached to his stepdad, Tom, who was also his Little League coach. "I guess, Broyles says now, "that was about the only family environment that I was ever in where I had somebody I called Dad."

Dale's first disruptive behavior occurred when he was in kindergarten, at a time when Tom and Vesta had split for about nine months. The boy began throwing chairs at school, she said, and he was similarly unruly at home. Things got better after the reconciliation. Dale was much less disruptive and more eager to please.

After a number more years together in a deteriorating relationship, Vesta and Tom split for good. The divorce was very hard on the young boy, and starting in the fourth or fifth grade he spent increasing amounts of time with his best friend Chucky's family. Chucky's mother, Phyllis Hawkins, said Dale "just couldn't handle the divorce." He began to have problems at school — but not for being mischievous. "His trouble was not going to school or going to school and then leaving," said Hawkins. Often he would stay home to "take care of his mother," she said.

Vesta Broyles, says her son, "had a lot of men in her life. It was like somebody new living with us every week." When she next remarried, it was clear to her son that the new guy "didn't want me around."

Dale has a lot to say about aberrations in his family — neglect, physical or mental abuse and other misfortunes — but he refuses now to lay the blame on any one doorstep, and probably it matters little in discussing how the 25-year-old got to his current impasse. It is sufficient to understand that all of those factors played a part in his upbringing, and the effect was unsettling in the extreme. From the time he was 9, he lived for varying stretches of time with five different families — his mother, his paternal grandparents, his paternal aunt and uncle, his one-time stepfather, Tom, and his friend's parents. Sometimes he lived alone, and sometimes he would go back and forth, even at times playing the families off against each other, shopping around for the best deal.

His mother remembers that "there's been a lot of times I've been absent from the house," and her only son was lonely. She says she "was usually working, and nobody was home. He'd get mad and go to his grandma's. He'd call his grandma up and say, 'Grandma, come get me.' Of course,

Grandma, she'd get in her car and she'd drive over and get him. Well, then he'd get mad at his grandma and he'd tell her, 'I hate you. I want to go home.' And she'd bring him home."

But beneath the boy's manipulation was a vast well of pain. Phyllis Hawkins, who put up her son's best friend often for months at a time, says Broyles "is just an all-good kid. He just needed a lot of love and didn't get it. He was really wanting a family life. He was always reaching out for love — and still is." Young Dale was so much at home with the Hawkins that the school used to call there first if they couldn't find him. At one point, Dale even asked Phyllis Hawkins if she would adopt him, and he still calls her Mom.

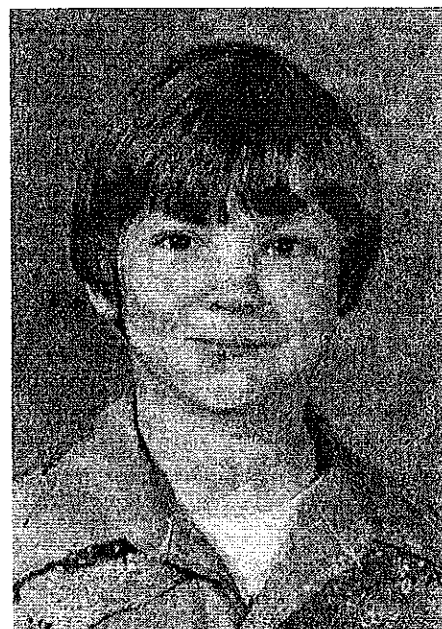
He also said in an interview that his "grandmother and grandfather have been more or less my mom and daddy. They're all I have." But because of their circumstances, it was not always possible for him to live with them.

He lived with his aunt Donna Robinson's family from the age of 14 1/2 to 16. Robinson calls her nephew "really a neat kid," never violent or disrespectful. "His basic problem is he needs help, and no one's ever given it to him." Although Dale "did real well" at her home, he left to return to his grandmother's because he didn't like the rules at his aunt's. By that time, he had become used to living without rules.

Vesta Broyles tried hard to help her son years later, after he got into trouble with the law, but she looks back regretfully at his younger years when, at times, "I just wasn't there for him."

The other subtext of those years was drugs and alcohol. "I've been in and out of drugs all my life," he says, and the same could be said for some other family members. His mother concedes that at stressful times in her life she "drank quite a bit." She says she has had three drunk-driving arrests over the years and has lost her driver's license as a result.

Vesta Broyles also did drugs "when I



*Dale in the first grade*

*"I know if I get 25 years to life, I don't want my kids to see me in there. I can't do that. So I'd just rather them grow up not knowing who I am."*

was younger. I went through the hippie era." And she recalls occasions with her first husband when "we'd go out partying with speed." She says she never did drugs with her son when he was young. And now? she was asked. "Well, I'm not saying we never have, but it's not a thing that I would practice." She added, "We'd, like, snort a line [of speed], you know, or make a joint."

Returning to the crime that Dale Broyles now stands accused of, an interviewer asked Vesta Broyles whether, in view of the number of people in Dale Broyles' environment who used drugs, "almost anyone could have left those drugs in his car."

"Exactly," she replied. "Could have been me. Could have been anybody."

She went on to say that she hasn't seen the fanny pack that held the drugs confiscated in the car, "but I have several fanny packs. ... I'd have to see it to even know."

Although Dale Broyles recognizes that he needs help with his drug problem, he is not entirely without resources. Broyles is not able to pursue the career for which he was trained and certified in the California Youth Authority because he has a felony record and cannot get bonded. But for a few years after his release from CYA he held a demanding job with a local high-tech company, MRL Industries, which builds elements for computer chips for many big-name national firms. He was fast, and he was good, and at the age of 23 he was made foreman. He worked 12- and 15-hour days, bouncing around from the day to the night shifts as needed and taking only three days' vacation in 2 1/2 years. He speaks with obvious pride of his accomplishments with the firm, but the pressures of working for the rapidly expanding company finally became too much for him. MRL president and owner Bill McEntire confirms that Broyles performed well for the company and became a team leader with "the wherewithal to give direction to other employees." When Broyles has resolved the issues that led him to resign, McEntire says, he

would be welcomed back to the company.

Broyles also would love to get counseling for his personal problems and to resolve things with his wife of four years, Terri, and children, Halie Elizabeth, 3, and Dale Ryan, 2. Meeting Terri, he says was "about the best thing that ever happened to me ... the only thing I see productive in my whole life that I've done." And he dotes on his children. During the interview, Broyles played absentmindedly and affectionately with his son's hand as the boy napped on the carpet at his side. He showed similar, casual affection for his daughter and his wife, but the family's reconciliation will have to await the resolution of his legal case, he says. For the past six months, "everything has been on hold."

The boy who was shuffled from home to home and always feared abandonment has now grown into a young man who faces 25 years to life in prison, and he refuses to allow his family to get too close to him until the legal case is resolved, for fear of hurting those he loves. Broyles' own father died when he was about the age his son is now, and Broyles thinks of his potential life sentence in similar terms. "I don't want everybody to be sad when I'm gone," he says. "To me, I feel like I'm dying. This is it. There's going to be no more Dale Broyles."

"I know if I get 25 years to life, I don't want my kids to see me in there. I can't do that. So I'd just rather them grow up not knowing who I am because I'll be nobody, I'll be a failure. For me, that's hard to accept because I don't see myself as a failure. I may be a failure to the system, but that's no reason to put someone away for life for something they'd get 180 days for, max, if this 'three strike' law wasn't in effect."

"They abducted me from my mother's driveway and took me to jail, and I wasn't doing nothing — I was sleeping. I can't see doing the rest of my life in prison for just sleeping. I could see if I'd hurt somebody, but I've never hurt no one — except for myself. I've never inflicted injury on anybody."