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NEWS & FEATURES

April 20, 2005

The Fire Inside

Dorathy Kaull lived to regret a decision she made 16 years ago. She's been trying to clear her name ever since. Last week, the governor stepped in.

by Amy Biegelsen



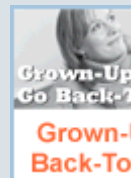
When Dorathy Kaull was 17, her mother and stepfather paid three men from Arkansas to burn down their home in Botetourt County. They were in the midst of a divorce and wanted the insurance money. Kaull wasn't home when it happened, and after she heard about the fire, she never went back. Nearly three years later, it caught up with her. One night just a few months shy of her 20th birthday in 1989, FBI agents and police officers from Richmond and Botetourt County knocked on the door of her new home in Richmond's South Side. Kaull was shocked, she says — “taken aback completely, totally blown away.” The officers arrested her, charging her with conspiracy to commit arson and the arson itself (the second charge was later dropped).

Before the case went to trial, Kaull decided to plead guilty to the felony. She says she was innocent, but thought a plea bargain would have the fewest repercussions.

Instead, it was the beginning of a 16-year struggle to clear her name. Today, Kaull is 36. And her fight has lasted through five Virginia governors and landed her in the midst of a unique legal situation triangulated between the governor, the office of the attorney general and the circuit court that convicted her.

It all came to a head last week.

The night Kaull was arrested, she couldn't post the \$250,000 bond, so she spent the night in Botetourt County jail.



"All I did was cry and throw up all night long," Kaull says, recalling her time in the cell she shared with two intimidating roommates. When she was released the next morning, her mother was waiting for her.

"I thought they got you," Kaull told her mother.

"They did," Kaull recalls her mother replying. "They were waiting for me to come get you."

When Kaull's mother arrived to pick up her daughter, authorities arrested her. (She eventually served an 18-month prison term, and Kaull's stepfather was locked up for two years — "and they deserved it," Kaull says. The arsonists served time, too.)

As for Kaull, the commonwealth's attorney suggested that he had evidence against her, she says. Her parents were likely going to jail, she thought, and she had spent one night behind bars already. On top of that, she says, she worried about going before a jury in such a small community.

"You get in these situations with the law when there are very great risks — sometimes it's better even if you're innocent" to plead guilty, says Stephen Wills, a defense attorney who represented Kaull years later. "We've had some juries just give some incredibly long sentences. It's a very conservative jury pool."

On the advice of her attorney at the time, Kaull pled guilty to conspiracy to commit arson and received two years suspended and two years' probation. She stayed out of jail but was hardly free. A felony charge is meant to be permanent.

So she began the process to regain her civil rights. She served her probation, waited through Gov. L. Douglas Wilder's five-year moratorium on rights restoration and weathered Gov. George Allen's rejection. Finally, in 2001, Gov. James S. Gilmore III reinstated her rights. Once again, she could vote and sit on a jury. It had taken 12 years.

Still, she was a felon, and the label continued to cause problems.

After Kaull and her husband had a baby, Kaull quit her job to stay home with her daughter. When she returned to work eight months later, she had to fill out a new job application, this time checking the box marked "convicted felon." Although the company has a policy of not hiring felons, it allowed her to return because she was originally hired prior to her conviction.

It was a stroke of good fortune. Her husband died a year and a half later. With her record, finding a job to support herself and her baby would have been difficult.

After her husband's death, Kaull says, "I felt like something was missing, and I wanted my daughter to have someone else in her life" — a sibling. Kaull contacted an agency in St. Louis and began the adoption process. But her record made her ineligible.

The experience focused her on the burden of her record, she says, and set her on a path to clear her name fully. She needed a pardon.

The state constitution consolidates pardoning power in one person: the governor. Because Virginia limits governors to a single term, governors typically are ascending in their political careers. That makes them careful.

"Virginia governors are sparing in their exercise of the pardoning power — that has always been the case," says Larry Sabato, professor of political science at the University of Virginia. "Naturally, governors ask themselves, 'If I pardon them absolutely, will this come back to haunt me if I run for something else?'"

There are different kinds of pardons, ranging from medical pardons for terminally ill inmates to absolute pardons, usually reserved for people on death row for whom DNA evidence has proven their innocence.

Kaull set her sights on an absolute pardon, because it would expunge her record and acknowledge her innocence. She filed for one April 11, 2002. Then, in July 2003, she received good news. The Virginia Parole Board had unanimously recommended her for pardon pending Gov. Mark Warner's approval.

While she waited, she hedged her bets. She knew how difficult it was to receive an absolute pardon, so she started exploring other options in 2003.

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She set up an appointment with Judge George E. Honts III, the same Botetourt County judge who had issued her learner's permit to drive when she was 15, and who had sentenced her in the arson case four years later.

The conviction had always haunted Honts. In a letter to Warner in November 2003 supporting Kaull's pardon, Honts wrote that except for testimony from characters "well known to the court" and "of questionable credibility," there was not "a scintilla of evidence to tie her to the crime."

It was only the second such letter Honts had written in his 18-year career. The first was to encourage the restoration of Kaull's civil rights.

Honts took it a step further. He issued an order for the Virginia State Police to expunge Kaull's criminal record, essentially making it disappear.

It was a bold move. The statute pertaining to expungements excludes people who initially enter guilty pleas.

Attorney Wills, who worked on Kaull's expungement case, characterized Honts as "very conservative, a law-and-order type judge himself, so it would be a very rare situation where he would grant an expungement." But, Wills continued, "he felt it was a very rare case. It's a valid order in my view."

It was a major victory for Kaull. All that needed to happen was for the Virginia State Police to process the paperwork and her name would be cleared.

But the Virginia State Police disagreed. They said that Kaull's guilty plea made her ineligible for such action.

Stuck with a judge's order they thought they could not legally enforce, the State Police asked Attorney General Jerry Kilgore to issue an opinion in 2003. Nothing happened.

The day Kaull discovered Honts' order had not gone through was the same day she read in the paper Honts had died. Kaull was crushed.

After the judge's death, Joel Branscom, Botetourt County's commonwealth attorney, asked Kilgore's office to uphold Honts' ruling.

"It was not a legally sound judgment. It was a morally sound judgment," Branscom says. "I thought it would be inappropriate to [Honts'] memory to have it overturned." He says he suspects that Honts was trying to "override the bureaucracy in the interest of justice."

Emily Luceri, a spokeswoman for the attorney general's office, says "this is a legal matter, and I can't discuss further."

But the attorney general's office has yet to challenge Honts' ruling, so technically it stands until it's challenged or appealed. Nevertheless, the Virginia State Police refuse to process it.

Judges are "not able to issue court orders that exceed the limit of the laws," state police spokeswoman Corinne Geller says.

Until last week, Kaull, in limbo, was prepared to litigate.

"I'm gonna put my house up for sale," she said. "I'm gonna take my daughter and live in an apartment" to pay attorney's fees, she said. "It means that much."

Kaull's stepfather still lives in western Virginia, but Kaull says she has no need to talk to him. Her mother moved to Richmond when Kaull's daughter was born. Although they're close geographically, the fire has left them with things to work out.

"My mom feels the worst because she and I were best friends," Kaull says, "and we've had a very, very strained relationship since then. She would have done anything for me not to be involved."

On Wednesday, April 13, Kaul was working from home, staying with her 9-year-old daughter, who'd just had her braces removed. The phone rang. It was Commonwealth's Attorney Patricia Tucker. Warner, she said, had decided to grant Kaul a simple pardon — an official forgiveness from the state.

"I broke down completely," Kaul says. "After I got off the phone I curled up in a ball and cried. I could barely talk, because once she said it was her, I knew it was something about this and started crying immediately."

The news wasn't exactly what she wanted to hear, though. Unlike an absolute pardon, a simple pardon does not automatically qualify her for an expungement. And the Virginia State Police aren't budging — "Not unless the attorney general tells us to," says Tom Lambert, legal specialist for the state police.

But Lambert thinks the simple pardon might be enough. Such an endorsement should balance out the felony on her record, he says: "She's been doing something right in her life. The fact that the governor acted on it probably speaks miles."

Kaul wants more. "I want my record clean," she insists. "This still needs to be handled, that needs to be processed."

For now it's a relief to have come this far. "It's the state that has forgiven me and understands," Kaul says. "It's not gonna be a tough ride — nothing near the 16-year fight it's already been." **S**

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Republican Wants to Clear the Air

January 19, 2005

Virginia Delegate Jack Reid (R-Henrico) had a special constituent in mind when he introduced a bill requiring electric power plants to significantly reduce harmful emissions.

Three years ago, Reid's wife, Judi, was diagnosed with a genetic form of emphysema exacerbated by toxins in the air. "She never smoked, never did anything to bring this on herself other than have her parents," Reid says.



As the General Assembly convened last week, he proposed requiring coal-fired plants in Virginia to cut sulfur dioxide emissions by 86 percent and nitrogen oxide emissions by 71 percent by the year 2011.

The Sierra Club and the American Lung Association support the bill. The pro-business Reid expects the business community to back it too. "It's a health issue and it's an environment issue," he says, "but it's also a business issue."

"We're getting tremendous support from businesses out in Shenandoah Valley," Reid says, especially from wineries whose grapes are hurt by air pollution.

The tourism industry also has a stake: Shenandoah National Park has been ranked as the nation's third most polluted park. Frommer's travel guide warns that the air is frequently smoggy in summer, obscuring mountaintop views.


Reid notes that Virginia's neighbors are taking action.

"North Carolina two years ago passed a bill with the support of Duke Power," he says. Maryland is considering similar legislation to curb power-plant pollution.

"We're sitting here in the middle of them and ignore it," Reid says. "There's a lot of lip service paid to quality of life, and it's time we took steps to actually ensure it."

North Carolina required power plants to install scrubbers in their smokestacks to filter nitrogen oxide, sulfur dioxide and mercury emissions. "The technology exists," Reid says. "It's off-the-shelf stuff."

In contrast to North Carolina's Duke Power, Dominion Virginia



Power opposes such legislation. Officials at Virginia's major electric utility say that air pollution should be addressed by federal agencies, not piecemeal by states.

The Environmental Protection Agency will circulate its rules on air pollution this spring, says Dan Genest, a Dominion spokesman. He says those rules will affect 29 states.

"Air pollution is not strictly a Richmond issue or a Virginia issue," Genest says. He contends that Reid's bill "would establish the most stringent controls on the East Coast, which we believe puts Virginia at an economic disadvantage."

But a recent Mason-Dixon poll showed that 66 percent of Virginians would be willing to spend a couple of extra dollars on their electric bills to clean up the air. Reid says he was surprised when he saw the poll results and predicts other legislators will be, too.

"Virginians get it," Reid says. "The cost will not be in any way extraordinary, and we're going to take this issue all over the state to make sure they understand that." — *Amy Biegelsen*