

Mother Fights the System, and Her Son Wins Courts: Sara Merrill waged a tireless two-year battle to overturn ex-Tustin Marine's conviction for coin shop murders. Now that he's been granted a retrial, she's still not assuming justice will be done.

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Many things are disputed in the case of Thomas R. Merrill, not the least being whether he committed a double murder for which he was sentenced to life in prison. But everyone agrees on this: If not for his mother, Merrill never would have won a new trial.

It was Sara Merrill who held an unyielding spotlight on her son's case, waging a campaign for the justice she believes was denied him when he was convicted of a 1989 double murder and robbery at the Newport Coin Exchange.

It was she who interviewed, financed and guided lawyers along the uphill course to a new trial for her son. It was she, the wife of an Episcopal priest, who rallied the nation's highest official in that church to join the fight on her son's behalf.

And in June, after a two-year legal battle, she and her son tasted victory. The judge who sentenced Merrill, 29, to life in prison found that the criminal justice system had shortchanged him. He had heard testimony that the district attorney's office withheld crucial evidence pointing to Merrill's innocence and that his court-appointed lawyer did not represent him adequately.

No new trial date has been set yet and Merrill remains in prison in lieu of \$1.3-million bail. His mother is encouraged by the promise of another crack at justice, but maintains her vigilant watch on the case, working cheek-by-jowl with her lawyers, still mistrustful of a system she feels so grievously wronged her youngest son.

"Before all this happened, I believed in the system," said Merrill, 55, a Welsh-born nurse whose soft accent lingers despite three decades living in Maryland. "Nothing you learn prepares you for something like this. I wish for justice and demand it from the bottom of my soul. That's all I want in this whole world."

Tom Merrill, a former Tustin Marine who was reared in an upscale Baltimore neighborhood and educated at Eastern boarding schools, has maintained his innocence since the day of his arrest in November, 1990. His mother was certain he would prevail at trial, but watched in horror as jurors delivered their guilty verdicts in July, 1991. That shock catapulted her into action.

Merrill launched a two-pronged campaign to prod the legal system and to get her church involved. Around her hometown, friends were not taking her anguish seriously. To them, she says, she was just another mother who refuses to believe her son was capable of awful things. She says that when she spoke of Tom's innocence, people would give her "that 'what-planet-are-you-from, lady' look." She turned elsewhere for support and action.

Using her community ties, Merrill asked a top Baltimore law firm to suggest California lawyers who could best handle an appeal. She flew to California and interviewed those three candidates herself. She chose William J. Genego, a former USC law professor who has taken on high-profile cases, such as a group of Middle Eastern immigrants who faced deportation in 1987 for their alleged links to a Palestinian terrorist organization.

Working with the unwavering, opinionated Sara Merrill, Genego says, has meant that he has not just a client whom he keeps informed of his decisions, but something more akin to a partner on the case, with whom he consults and strategizes.

"I have a tremendous amount of respect for her perseverance and her strength," Genego said. "She has been carrying a tremendous amount on her shoulders. She is responsible for us getting as far as we have."

Even Jeffrey L. Robinson, the prosecutor who led the charge against Merrill, admits that if it hadn't been for Merrill's mother, who flew to California repeatedly to attend court proceedings, Tom Merrill would still stand convicted of murder.

As she was working the legal avenues, Merrill also approached the Rev. Jim Lewis, an Episcopal priest from North Carolina who has gained national notice for his efforts to free prisoners from Death Row. Lewis said he found Sara Merrill "amazing."

"She has overwhelming perseverance and conviction. It's as if she said to herself inside, in her soul, 'I am going to go to death over this issue.' There is a frail tiredness in her. But underneath it is cast iron."

Having read in an Episcopal newspaper about Lewis' work on behalf of wrongfully convicted prisoners, she telephoned him in Raleigh, N.C., and briefed him on her son's case.

"I visit a lot of people in prison, so I hear a lot of the stories," Lewis said. "And when I listened to Sara, something was clicking."

Intrigued, he invited her to visit. She flew down, carrying armloads of transcripts and court documents outlining the case. For two days in May, 1992, Merrill hunkered down with Lewis, reading and discussing. Sitting for three hours in a delicatessen, they outlined a detailed strategy for winning support from the church.

They aimed for the top. They assembled a packet of documents outlining Merrill's case and submitted it to the highest Episcopal official in the country: Edmond L. Browning, the presiding bishop of the church. After his own staff did further research into the case, Browning agreed to get on board.

Having won Browning's support, Lewis used it to gain the support of two California bishops, the Rev. Frederick H. Borsch, who supervises the diocese encompassing a five-county region including Los Angeles and Orange counties, and the Rev. William E. Swing, who supervises the San Francisco Diocese. Borsch also contacted a local priest in Newport Beach, who helped Merrill sell his car and close his savings account once he was imprisoned, and has continued to visit him frequently.

Borsch and Swing, as well as a bishop from Maryland, wrote letters to California Atty. Gen. Dan Lungren requesting a new trial for Merrill.

In his June 11, 1992, letter to Lungren, Browning said Merrill's case had raised questions in his mind about "the fundamental fairness in our judicial system." He noted that he normally leaves such requests to bishops in the local jurisdictions, but said Merrill's case had "moved" him to address Lungren himself.

"There is very weighty information that demonstrates that Mr. Merrill did not receive a fair trial," Browning wrote.

In a written response to Browning, one of Lungren's deputies noted that Lungren's office was representing the state of California in fighting Merrill's appeal, and so it would be unable to help the bishops secure a new trial for Merrill. She suggested that they contact Merrill's lawyer, Genego, if they wished to lend their support.

Even though the bishop's entreaties were spurned by the attorney general's office, Merrill won a new trial anyway through another legal channel. And Lewis says that even though the bishops did not win Lungren over, he feels it was valuable to bring the church's pressure to bear on California law enforcement officials.

"We are saying to people there, 'We are watching. We want to see this handled fairly,' " he said. "Maybe this time, with more people watching, there will be a fairer result."

And if that is indeed what happens, it can be credited to Tom Merrill's mother, Lewis said. If there was anyone who could persuade the courts to revisit a criminal conviction and persuade a reluctant church to wade into the controversy, he said, it's Sara Merrill.

Merrill's persistence, intelligence and inner strength, combined with her ability to pay for a new round of legal appeals, made her a powerful force, he said. Lewis said that many prisoners he believes are wrongfully convicted remain behind bars because they lack the funds to pay for attorneys to go the next round.

"If it hadn't been for Sara, Tom would be another poor kid like so many I see, with no family and no resources, and the community wouldn't care, and he would stay in jail forever, amen," Lewis said.

That is exactly what Sara Merrill is fighting against. She struggles daily with the emotional strain of the case. Her 81-year-old husband, retired psychiatrist and Episcopal priest George Merrill, has had a series of small strokes which she is convinced stem from the stress of the case. Tom's older brother, a Baltimore realtor, fell into a severe depression. That left Sara alone, the sole provider of sustenance to those dearest to her.

Her smoking habit has tripled to three packs a day. She sees a psychiatrist, and says he has burst into tears on occasion listening to her. She has nightmares and flashbacks to Tom's trial. Sometimes she finds herself driving along familiar country roads in Maryland and forgetting where she is.

"I talk to myself a lot," said Merrill, who was a child in Britain during World War II. "I remind myself about people in concentration camps, and I say to myself if they can get through that, then I can get through this."

On Sundays, when she attends church, she walks past a black-and-white poster that was hung in the outer vestibule by a

sympathetic rector. There with Tom's photo and a short description of his case is a verse from the Bible, quoting Jesus about the holiness of helping the hungry, those in prison, or other unfortunates: "In as much as you did it to the least of these my brothers and sisters, you did it to me."

Merrill feels tired to her bones, and on some days, she says, she feels as if she could sleep forever. But she keeps her eyes focused on the change she hopes will come from all her effort.

"The day Tom walks through this front door," she said, "is the day it all will have been worth it."

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