

## Justice under fire

# THREE CASES: A CLOSER LOOK

### Timothy Mims:

#### Beyond a case of simple assault

TYLER — Defense attorney Brandon Baade sat in a Smith County courtroom and felt the sting of defeat. Baade watched Timothy Mims, his 25-year-old client, walk away in April to begin serving two concurrent 15-year sentences for aggravated assault and felt that he could have done more.

As described, the circumstances surrounding Mims' crimes had seemed puerile: head-butting another young man, waving a pistol and spraying a 16-year-old girl with a water hose, then threatening her with a gun. The state's main witness, the 16-year-old girl, had seemed deceitful, though steadfast, in her account, and Baade had been unable to convince the jury that she was lying.

Mims was a hard case with a city-wide reputation for fighting. The 17-year-old he head-butted was a prominent Tyler attorney's son from the city's influential south side.

As a result, Baade had an audience. A number of lawyers sat in on the trial, which was prosecuted by chief prosecutor David Dobbs with District Attorney Jack Skeen at his side.

A month later, however, Baade's pain of defeat had changed to outrage at betrayal. The Smith County district attorney's office, he believed, had coerced their main witness to embellish her testimony and had hidden some dark secrets in her past from Baade.

"The Smith County district attorney's office absolutely suppressed evidence in this case and I only learned it by accident," Baade said. "It made the difference in aggravated assault and simple assault, and that cost Timothy Mims a big chunk of his life."

"Simple assault would have been one year."

No one, including Mims, denied that he committed simple assault.

Mims had been cruising with his date and another couple around midnight last Oct. 4 when they saw 17-year-old Ty Yarbrough, son of attorney Trey Yarbrough, and another youth waving from a convenience store parking lot. Mims, apparently taking Yarbrough's actions for an insult, stopped, stepped out of his vehicle and butted Yarbrough with his head, splitting the younger boy's lip.

Much later that night, after Yarbrough had gone home, police were called and Yarbrough told the officers that Mims was holding a pistol when he attacked him. Five other witnesses, including the 16-year-old girl, made no mention of a weapon.

The girl was a reluctant witness. She missed several appointments with investigators before talking to them.

When she did, however, she made their case. The girl told a long, colorful tale of being sprayed with a water hose that night and being threatened by Mims with a pistol. The altercation with Yarbrough, which she also said she witnessed, occurred earlier.

In that incident, she also confirmed that Mims was armed in the parking lot and shouted, "I'm going to kill everybody!"

And one count of aggravated assault grew to two.

Baade hammered at the girl on cross-examination, asking her about the fact that she had not returned home after the episode with Mims, but had continued cruising with another girl and had called several boys, asking them to meet her.

The girl's testimony convinced a jury, however, and Mims was convicted on both counts.

Then, in May, Baade learned more about the girl and the case.

Long before the trial, there had been four accusations that she had molested her younger siblings — complaints made by her mother. Since 1997, there had been complaints to crisis intervention centers, the Troup Police Department, Smith County's sheriff, Child Protective Services and the district attorney's office.

Three separate psychologists had examined the younger siblings and determined that they had been molested.

The mother said another psychologist had examined her teen-age daughter and found her prone to fabricating tales.

None of that information was included in the discovery material in Mims' case.

Skeen and Dobbs said they had no knowledge of those accusations on April 11, the opening of Mims' trial. Hence, no mention was made of them in the discovery material Baade received prior to the case.

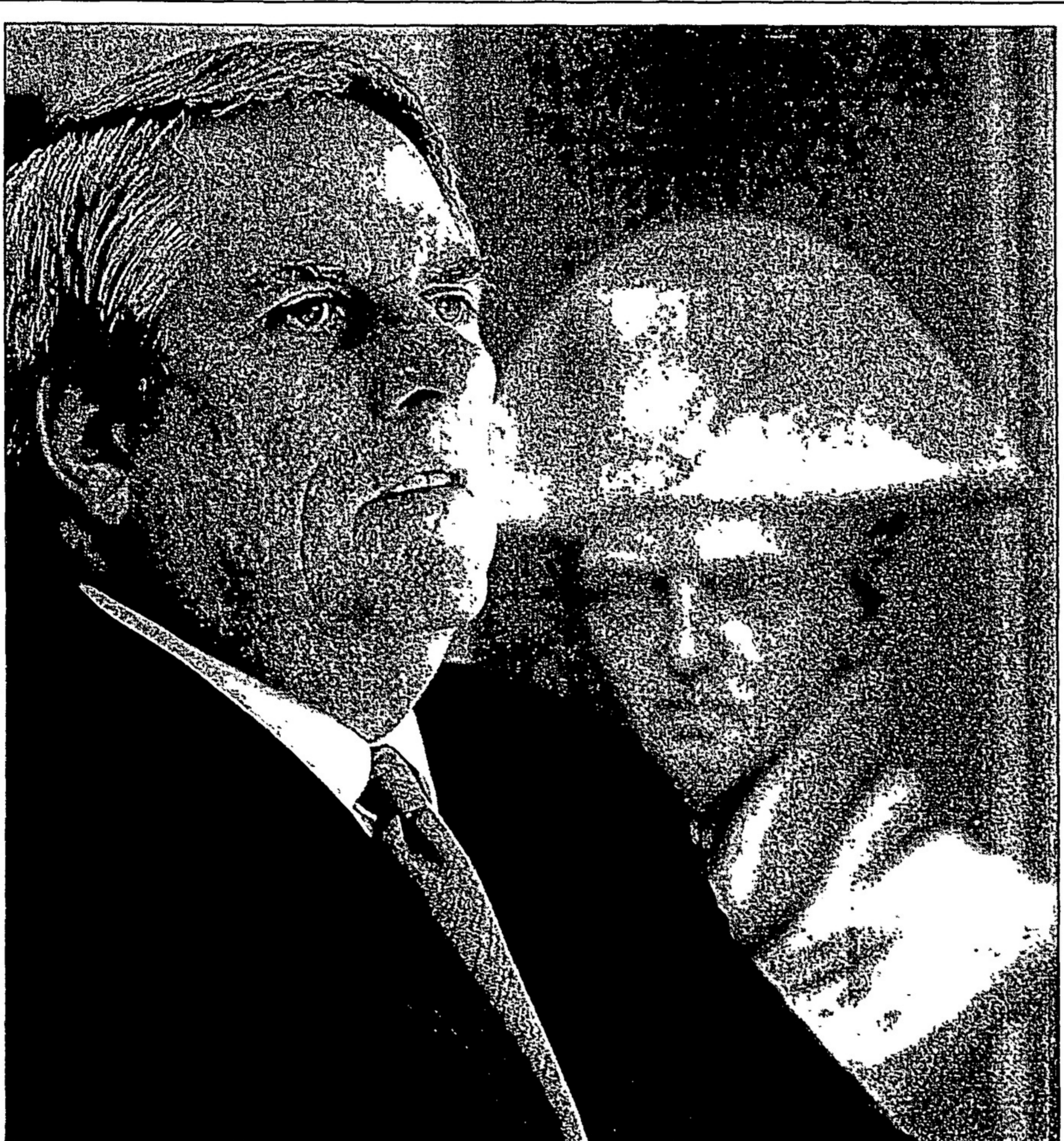
"We didn't know about that at the time of the trial, or, at least, not until after the trial had already started," Dobbs said.

He agreed that the mother's reports to CPS by policy should have been forwarded to Skeen's office.

"But, sometimes, there's a mistake," Dobbs said.

Such mistakes would have to have happened repeatedly in this case.

The mother began calling CPS in March 1997 and repeated those calls over the next several years. She had asked for a protective order to keep her older daughter away from her younger children and her family, she



D. Fahleson / Chronicle

Mike Smith believes he was targeted for indictment because District Attorney Jack Skeen had a friendly relationship with a local TV station. Smith won a \$3.2 million settlement from KLTU, but says, "I just regret that I couldn't sue Jack Skeen."

### Mike Smith: Under perpetual indictment

Stories  
By EVAN MOORE  
Houston Chronicle

TYLER — The strange case of Mike Smith began as a business disagreement, escalated into lawsuits and burgeoned into a felony theft case that kept Smith under perpetual indictment for four years.

It started in 1989, when the Tyler advertising broker was sued by a car dealer who contended that Smith had overcharged him for television advertising time. Smith countersued and both cases were eventually dropped.

That was before the Smith County district attorney's office and a television station became involved, however.

Before it was over, Smith found himself indicted for theft, arrested in his office, handcuffed, fingerprinted and booked into the Smith County Jail. He then got to relive most of the episode on the KLTU evening news.

"It seemed strange at the time," said Smith. "No other station's cameraman was there when I got to the jail and the story ran only on KLTU," even though Tyler has three TV stations.

Over the next four years those incidents would repeat themselves as Smith watched indictments come and go. The first came Dec. 28, 1989, and was dismissed on the eve of trial in November 1990. The second came on Dec. 4, 1990, on the heels of the earlier dismissal. That was dismissed in October 1991, only to be followed by a third on Nov. 7, 1991.

That third indictment hung over Smith until he approached a grand jury on his own and was exonerated in December 1992.

In all, he was indicted three times for a crime that has yet to be explained.

Finally, after Smith sued the car dealer and KLTU for false prosecution and received a \$3.2 million settlement, the indictments stopped.

Not, however, before Smith, a husband and father, lost his business, his house, several job prospects and a lot of sleep.

"It almost ruined me," said Smith. "I lost my ad agency. I interviewed for some jobs in other cities, but as soon as I'd tell them I was under indictment for theft, that would be the end of that."

"We lost our house and moved into a rent house my father-in-law owned and I finally wound up tending bar to make a living."

Today, Smith's case is only somewhat clearer than it was 10 years

ago. Basically, Smith appears to have been accused of making more than a 15 percent profit on television spots he sold to car dealer Jack Dimond. Making more than 15 percent, or any percentage, however, is not a crime.

"It could be a crime if you had an oral agreement that you were not making more than a certain percentage and you misrepresented how much you were making," said Smith County chief prosecutor David Dobbs.

There was never any evidence of an oral agreement in the Smith case, however. In fact, there was almost no evidence at all. As part of their settlement, Dimond had signed an affidavit stating that he did not wish to prosecute Smith, or testify against him, "nor put the state to the expense of trying a matter that has

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Mike Smith

been properly resolved in the civil courts."

"That affidavit came from a civil case," said Smith County District Attorney Jack Skeen. "It didn't prevent our office from pursuing the criminal case."

Skeen said the first indictment was dropped and a second one issued because the case was broken into multiple counts in the second indictment, one count for each instance in which Smith sold Dimond air time. That case was dismissed and a third indictment sought because the prosecution's lead witness, Dimond's comptroller, was ill at the time of trial, said Skeen.

Smith, however, believes he was targeted by KLTU because of a long-standing business rivalry between himself and the station; he believes

he was targeted by Skeen because of a close relationship between the district attorney and KLTU.

Skeen denied any relationship with the station "other than the same relationship I have with all the other media." KLTU, owned at the time of the first indictment by Buford Television, had been sold by the time of the third indictment to TV-3.

Buford Television directed questions to Brad Street, station manager under both owners, and Street did not return calls.

In his suit Smith cited what he saw as a conspiracy among Dimond, KLTU and Skeen to prosecute him for a nonexistent crime. In that suit, Smith's attorneys subpoenaed files from the district attorney's office.

Among those, they found several notes written by Skeen to "keep KLTU informed" and "KLTU wants this prosecuted" at various junctures of the case.

"I almost didn't file it," Smith said. "No lawyer in Tyler would take it. I went to at least 12 and they all turned me down. They either wouldn't even talk to me or told me I didn't have a suit."

Smith was eventually represented by Houston attorney Julius Glickman.

"I wanted to sue Jack Skeen, but (Glickman) said there was no compensation to be gained there, so we stuck with KLTU," said Smith.

By 1994, said Smith, just as his suit was nearing trial, he was working as a bartender late one evening when he was approached by chief prosecutor Dobbs.

"Dobbs told me Jack (Skeen) was a political animal and we could make all these indictments stop if I'd just agree to settle my suit," said Smith. "He said he thought I could get \$200,000 or \$300,000 for my trouble."

Dobbs denied making any such overture to Smith, though he admitted having a conversation with Smith late one night in the bar.

"It was an error in judgment on my part to talk to him," said Dobbs. "But I didn't offer him any deals. He (Smith) approached me and wanted to explain the ad brokering business."

Smith eventually settled his suit for \$3.2 million. Today, at 53, he has a new business and is publisher of Tyler Today, a monthly magazine.

"It took a big chunk out of my life," said Smith. "I just regret that I couldn't sue Jack Skeen."

cause the victim's father is well-respected. Now, I think it was more than that."

Trey Yarbrough denied that he exerted any influence over the case.

"I never had any impression that who I may be had anything to do with this case," Yarbrough said.

Baade, however, believes influence was key in the gravity of the charges against his client.

"I don't think Timothy Mims would have been a big deal if he hadn't jumped on the wrong kid," he said.

"It's not that he's completely innocent, but he doesn't need to spend 15 years in (prison) for what happened in that parking lot."

"In Smith County what counts is who you are, who your lawyer is and what you've done for the DA's office lately."

### Dennis Bendy:

#### Convicted despite recanted stories

TYLER — In the evenings, as Dennis Bendy watches local television, he flinches in anticipation of seeing his picture there.

Bendy, 41, is not a particularly news-worthy character. He pours concrete for a living, serves as a deacon in a small Baptist church and occupies a modest house with his wife and three sons.

Once a week, every week, however, Bendy's picture makes the news. His unflattering prison photo is shown as part of public service broadcasting on Tyler stations because, since July 3, 1997, Bendy has been a convicted child molester.

Bendy was convicted despite the fact that the victim, a girl who was 9 at the time of the alleged incident, recanted her accusation and told Smith County prosecutor Alicia Cashell that no offense had occurred.

He was convicted despite the fact that a material witness in the case, a 13-year-old and a cousin of the younger girl who had claimed Bendy had molested her as well, recanted her story also and told the prosecutor that Bendy had never touched her.

And he was convicted despite the fact that the parents of both girls say they were present on three separate occasions when the girls told Cashell that Bendy had had no improper contact with either girl and members of both families said they did not want to see the case prosecuted.

Bendy's story began in November 1996, when the 9-year-old told her parents that Bendy, a relative, had molested her during a family gathering months before. Bendy was arrested Thanksgiving night and members of his church collected \$5,000 to make his bond.

Bendy pleaded indigence, saying he could not afford a lawyer, but state District Judge Cynthia Kent refused to appoint an attorney, pointing out that, if Bendy could afford a bond, he could afford a lawyer's retainer.

For six months, Bendy waited in the Smith County Jail. During that period, however, his accuser told her parents she had lied about the molestation.

The older cousin said she had lied also in an effort to bolster her younger cousin, and both girls and their parents approached Cashell. Both families have reiterated those statements to the Houston Chronicle.

"The thing is, all we ever wanted was to get some counseling for our daughter," said the father of the 9-year-old. "We didn't know if it happened or not, but we figured, if she said it happened, she needed some psychological help either way."

"When we told the prosecutor it didn't happen, she said we were going to trial anyway."

Both girls said Cashell told them to answer "yes" to whatever she asked them on the stand and not to worry about how the questions were worded.

Dennis Bendy was convicted and received 20 years.

Cashell denies accusations that she counseled the girls to perjure themselves.

"I would never do that and I've never done that," she said.

The prosecutor agreed that the girls had attempted to retract their accusations, but, by that time, the case was out of their hands. She pursued the case, she said, because not only had the girls accused Bendy but an older relative contended Bendy had repeatedly molested her as a child.

Other family members, however, characterized the relative as untruthful. "It's not infrequent for families to want to recant in these cases," said Cashell. "They don't want the embarrassment of having a family member in jail for that offense."

"They don't realize that, once they go to Child Protective Services, CPS has to call us and it's out of the family's hands."

Two years after Bendy's conviction, however, Bendy retained attorney Brandon Baade, who secured a new trial, based on trial error during jury selection.

Baade also had investigators question the girls and learned of the recanted stories and the family's attempts to stop the trial.

Baade cited prosecutorial misconduct for Cashell's withholding the fact from Bendy's previous attorney that the cousin had recanted her accusation. He subpoenaed Cashell to testify at a hearing on his motion for Bendy's second trial. A special prosecutor was called in, and a hearing on the new trial motion was held in November 1998.

Prosecutors then offered Bendy a deal: Plead no contest to the molestation charge in return for a sentence for the two years he had already served and walk away from the courtroom.

Bendy entered his plea and walked away a convict.

The family of the 9-year-old said their daughter never received the counseling they originally sought.

Today, they continue to visit Bendy's home and invite him to theirs.