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# Newsroom

## Horwitz on Woodmansee Plea Bargain

Dean Andrew Horwitz spoke to the Providence Sunday Journal about the 1983 plea bargain that may soon set a convicted child killer free.

**Providence Sunday Journal:** ["Earned prison good time was not part of plea bargain when Woodmansee got 40 years in 1983"](#) by Tom Mooney, Journal Staff Writer



**March 20, 2011:** On the day she would recommend a plea bargain for child-killer Michael Woodmansee, then-prosecutor Susan E. McGuirl wanted the state's reasoning placed on the record. The decision, she said, resulted from two months of discussions and "soul searching" with the parents of Woodmansee's victims, 5-year-old Jason Foreman and Dale Sherman, the teenager who survived the killer's strangulation attack.

It was Feb. 24, 1983.

A transcript of the day's events in the Washington County Courthouse reveals the efforts the state made to abide by the families' two biggest wishes: that Woodmansee, who had kept Jason's shellacked bones in his bedroom, remain behind bars for a "very substantial, very long time"— Rhode Island had no life-without-parole statute at the time — and that Jason's remains be turned over as soon as possible for a proper burial.

No one wanted the little boy's bones lying on a court table as trial exhibits.

The transcript shows how the prosecutors' office had repeatedly spoken to the families about the possibility of Woodmansee being paroled. But the transcript makes no explicit reference to prosecutors discussing with the families the manner in which Woodmansee now may go free 12 years sooner than many expected: earned prison good time.

McGuirl, now a Superior Court judge, said Friday that she would have discussed the possibility of earned prison good time privately with the Foremans and the Shermans as she did normally in other “significant cases.”

But Jason’s father, John Foreman, doesn’t recall ever being advised that Woodmansee “would be receiving additional time off his sentence for behaving in prison,” said Foreman’s lawyer, Erik Wallin. “He believed that Woodmansee would serve his full sentence.”

While McGuirl and Foreman may disagree over what was said 28 years ago, the reason why McGuirl did not raise the subject of prison good time in open court that day in 1983 when she recommended Woodmansee serve 40 years, is understood by both prosecutors and defense attorneys.

Earned good time is such a wildcard component to when an inmate may get out of prison — determined only by the inmate’s future behavior behind bars — that it is never a consideration in plea negotiations, say several legal experts. When deciding to approve a plea deal, judges cannot even consider it.

“We’ve never in this office had a situation where we talk to prosecutors about good time because good time is not something you can predict,” says John J. Hardiman, head of the state’s Public Defender Office.

Certainly, says Hardiman, defense lawyers and their clients discuss the potential for prison good time — as they do parole eligibility — when considering how long a defendant may actually serve behind bars if he accepts a plea deal.

But it’s not part of negotiations with prosecutors, he said.

“That depends on the inmate’s behavior once at the ACI, so it’s not something talked about.”

J. Richard Ratcliffe, a former state prosecutor now in private practice, agrees.

Prison good time is never discussed between prosecutors and defense lawyers working on a plea arrangement “because the people engaged in the discussion have no control over it. It can change.”



While the two sides may not discuss the topic, it's certainly part of both sides' strategy when approaching a plea bargain, **says Andrew Horwitz, president of the Rhode Island Association of Criminal Defense Lawyers and associate dean for academic affairs at Roger Williams University School of Law.**

"People are aware of it. If you are a prosecutor or a defense attorney or a judge you certainly know it's a factor [in plea bargaining]. If you aren't thinking about that, you're simply not thinking about the world that exists."

However, "It's very rarely, if ever, discussed on the record as part of the disposition," **says Horwitz.** "That would be an extremely unusual thing."

Supporters of good time argue the system serves as a vital component of running a safe prison while trying to rehabilitate offenders and reduce future crime. It provides incentive for inmates to behave, as well as the carrot to enroll in programs.

Back in 1983, no one would have anticipated Woodmansee being capable of earning significant good time, said McGuirl, because of the atrocities, including possible cannibalism, he may have committed against Jason's body, and his constant hand-twitching demeanor in the courtroom that left many questioning his stability. (Woodmansee had been found competent to stand trial.)

A more realistic concern was parole, said McGuirl.

By law, Woodmansee would become eligible for parole consideration after 10 years. And although it was unlikely he would make it on his first attempt, there would likely be other attempts in the future.

The transcript reports McGuirl recalling for the record before Superior Court Judge Thomas H. Needham, how she approached both Joice Foreman and Mary Sherman, the mothers of the two children involved, to explain the terms of the agreement in which Woodmansee would plead guilty to second-degree murder.

"I explained to them all the consequences of that, including consequences of parole," the transcript reads, quoting McGuirl. "I told them that the attorney general, on the day of the plea, intended to send a letter to the chairperson of the Rhode Island Parole Board, indicating his strong objection to any parole for this defendant at any time prior to serving his full time...; that he felt this case was exactly the type of case where a defendant should serve the full term imposed by the court."

McGuirl again approached the parents of both boys a day before the plea agreement: "I said to John and Joice Foreman, do you think that this is the right thing for us to do? If you don't want me to make that recommendation in court tomorrow, I will not make it. ... They both gave me that assurance yesterday afternoon. The Shermans also did, during the course of yesterday afternoon."

McGuirl said Friday that there would not have been any plea bargain had there been the possibility of life without parole for Woodmansee.

The Parole Board denied Woodmansee parole in the 1990s. Woodmansee's parole request prompted outrage in South Kingstown, where Woodmansee and his victims lived. Woodmansee never asked for parole consideration again.

While Foreman's lawyer Wallin says he understands why possible good time hasn't in the past been a topic of discussion between prosecutors and the victims of crime, perhaps now it should be, since lawmakers in 2008 passed legislation allowing inmates to earn more good time as a cost-saving measure.

"I think certainly going forward that victims and victims' families should be advised not only that this person can be eligible for parole, but there is also a possibility that this person could possibly be earning literally half off their sentence depending on the defendant's behavior."

Each day inmates walk out of the Adult Correctional Institutions sooner than their sentences were set to expire because of their earned good time.

They can be serious offenders who, unlike Woodmansee, slip away without the glare of notoriety following them.

Take the case of Steven G. Rodi.

Rodi was serving 10 years for rape when he was paroled in July 1974. Within 10 months of going free, he murdered one woman and kidnapped and robbed seven others before he was again arrested and put behind bars for 50 years.

Last month, because of 14 years shaved off his sentence for earned good time, Rodi finished his sentence at the ACI without a single shout of outrage.

He would be on the streets today if not for a concurrent sentence that has him severing more time now in Massachusetts.

Unless an inmate is serving life without parole — only about 30 are now — they all get out. Eventually.

*To read full story, click [here](#).*