

WILLFUL MISCONDUCT

THE TRAGIC STORY OF
PAN AMERICAN FLIGHT 806



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PRELUDE

Room 64G, in the cellars beneath the United States District Court for the Central District of California, is some way off the Los Angeles tourist route. Above it, in the filing section on the ground floor of the imposing building on North Spring Street, a stern notice forbids public entry. Beyond this sign, a steep flight of stairs leads down to a catacomb of roughcast concrete and dusty pipes. Here is a tomb without bones, a mortuary of long-forgotten files and long-abandoned catalogues of legal pain. It is a place where hopes and dreams and aspirations share the upright coffins of the filing cabinets with tragedy and pain. The paper detritus of the act of dying is all around.

Room 64G contains more than its fair share of death. Behind a dull green door, its lock stiff with disuse, are the exhibits that catalogue the end of ninety-seven lives: those of the men, women, and children who took their last trip on Flight 806 of Pan American World Airways from Auckland to Pago Pago on January 30, 1974.

I had gone to the courthouse in search of something; I

knew not what. I only knew that the crash at Pago Pago, so small and insignificant by later standards of disaster, had spawned the longest, most complex, and most expensive legal case in aviation history. I wanted to find out why. Perhaps here, where the exhibits were left at the conclusion of the first trial in July of 1978, I would find some clue.

I was dredging for inspiration, seeking to find some foothold from which to climb the mountain of research that would undoubtedly lie ahead. I was not to know that before the day was out I would hold in my hands an unexploded bomb, a document so explosive that lawyers and judges had spent years making sure it would never reach the public. It was called the Hudson Report.

I had heard of this document, at least by repute. In December 1975, in a progress report to his clients who were suing Pan American for damages, Los Angeles attorney Daniel C. Cathcart had referred to “a detailed FAA (Federal Aviation Administration) investigation of the Pan Am operation from the point of view of aviation safety.” He was full of confidence. “I feel we have reason to believe,” he added, “that the Pago Pago air crash litigation will be a matter of past history by this time next year.” Read in 1981, with the action still going full blast, the words had an air of sad bravado.

On March 24, 1976, in his fourth progress report, Cathcart wrote:

In addition, we have uncovered a group of reports by Pan American pilots based at San Francisco, citing the dangerous practices engaged in by Pan American . . . with the information which is now in admissible form,

contained in the FAA investigation reports, Pan Am's own in-house investigations of its operation, as well as the report submitted by Pan Am pilots, I cannot believe that the management will permit this case to go to trial.

The contents of these reports are by court order not to be released to anyone. Once this case goes to trial the order will not apply, and the press will undoubtedly pick up these reports, and the international dissemination of these documents has the potential to destroy Pan American as an operating entity.

It was strong stuff. Clearly, these documents were of the utmost importance. Yet at this point the trail went cold. There were no press accounts that I could trace, nor any indication that the reports had been produced at the trial. And there was one further mystery: I had been shown the report quoted above by one of the survivors of the crash. Yet when the lawyer subsequently opened his files to me, with apparent total frankness, that letter was missing from the sequence of progress reports stretching over seven years. What was more, the later documents had been renumbered, so that there was no reason to suppose one was missing. Had I not happened to chance upon it in New Zealand and had the accidental foresight to make a copy, I would never have known of this alleged sensational evidence.

Had the FAA report ever existed? That was the question that worried me. If so, had it been the subject of an elaborate cover-up operation to protect the reputation of America's most prestigious airline? One thing seemed certain: if such a cover-up had taken place, no one would have been so careless

as to leave the report lying around where inquisitive people like me could find it.

I resolved to take up the search in Washington, D.C., where I had friendly contacts in the aviation community. In the meantime, there seemed no harm in having a look at the archives of the California court where the long drama had taken place. There was no telling what might turn up.

The clerk in charge of the exhibits section of the district court was a pleasant and efficient young man named Lee Torbin Junior. Mr. Torbin received my request to look at the relics of the Pago Pago trial with polite disbelief. It was clearly beyond his experience that anyone, even a crazy British author, should want to see such things. I had the distinct impression that he had no idea where the stuff was kept, but luckily my total ignorance of its file numbers, which by regulation had to be written down before the request could be granted, saved him from having to admit the fact. Still, he was very nice about it.

The response was discouraging, but I had all day. Having traveled a long way and spent a lot of money to stand in that office, I was disinclined to give up without a struggle. I stayed on one side of the barbed-wire fence. Mr. Torbin stayed on the other, and for an hour or two we swapped polite suggestions and refusals while the more orthodox business of the records office went on about us.

At length, he seemed intrigued by my persistence. It was becoming plain that I had no intention of going away and leaving him in peace. "Hey, Charlie," he called to one of the other clerks, "didn't they put all that Pago Pago stuff in a cellar someplace?" Charlie thought they had. Someplace. All at once Lee Torbin Jr. reached a decision, probably born of

desperation. "Come on," he said to me. "Let's go look." And to my great surprise he beckoned me behind the counter, past the prohibiting notice, and down the stairs. We were headed for room 64G.

For a journalist, there is a very special thrill in being where he ought not to be, seeing what authority wishes him not to see, or reading what he is not supposed to read. I felt it strongly that day.

It took some effort to shift the stubborn lock on 64G, but at last we were in. Mr. Torbin and I were alone with the legal relics of Pago Pago. It was a shock. Where I had expected neat rows of filing cabinets and boxes of exhibits in duly labeled sequence, I saw instead a mountainous jumble of paper. The cellar, perhaps thirty feet square, was filled on every side to a height of about six feet with a great amorphous hotchpotch of boxes and files. Here and there the top of a filing cabinet poked through the surface like an iceberg in an angry sea. The records of Flight 806 had not been laid to rest by a tidy mind.

Where the hell did I start? I looked at Mr. Torbin and Mr. Torbin looked at me. I cleared the front of one filing cabinet and began to open the drawers. It became rapidly apparent that there was no more order inside the cabinets than outside.

Sheaves of paper—some in folders, some not, and none with any discernible label—tumbled out as I dug deeper. The damn things must have been breeding in the dark. A quick glance seemed to show that none was of any interest, though it was difficult to tell. I had the horrid feeling that the story of the century could be lurking in this Augean cellar, and I would be none the wiser.

I abandoned the first cabinet and took off my coat, wading

into the pile of boxes as though there might still be a survivor beneath them. Mr. Torbin stood uncertain, bemused by this latest evidence of literary derangement, then decided to humor me and lend a hand. It was clearly going to be the only way to get rid of me.

At length, in a far corner, a green filing cabinet emerged. It was like the rest, save for one thing: this one had numbers on the drawers. Hardly daring to hope, I pulled open the first to discover orderly file covers numbered in sequence. If someone had taken the trouble to put the contents in order while all around was chaos, it just might contain something important. I began leafing through the papers. The sharp, regular sound behind me was Lee Torbin Jr., tapping his foot.

And then I had it. Inside a plain brown envelope, unsealed, was an unmarked file cover. But the title page of the papers within made me catch my breath. It read: "Report of Pan American pilots of Council 56, and FAA Special Investigation Team at Training Building, San Francisco airport, May 6, 1974."

A swift glance through the contents showed that Cathcart had hardly been exaggerating. I hurriedly put the file back in the envelope and laid it aside, trying not to betray my excitement. Then I went back to the cabinet to resume the search. Where there was one gold nugget there might well be two. And so, it proved. The second was dated June 13, 1975. It was a report addressed to the assistant administrator, AEU-1 (whoever he might have been), from a certain Jack W. Hudson. Hudson was described as team coordinator as well as chief of the FAA's Air Carrier District Office at Fort Worth, Texas.

It was the third line that caught my eye: "SUBJECT:

Special Inspection - Pan American World Airways, 1974.” I had found it.

That was the limit of my success. There was no sign of the alleged in-house report by Pan American, which I later discovered was known as the Thomas Report, but it was enough. I was confident that I held in my hand evidence that had long been concealed. Would its revelation do anything to help the plight of those who were still suffering, uncompensated, more than seven years after the Pago Pago crash? I did not know, but I had to try.

Lee Torbin Jr. held out his hand. “I’ll take those,” he said. I reluctantly handed over the files as we left room 64G, which looked even more chaotic than when we had entered, and went back to the wire cage that served as his office. Torbin laid them on his desk and I stood there, unable to take my eyes off the brown envelopes, like a child in a candy store. My palms itched.

Torbin said, “I don’t think I can let you have these.” Oh shit, I thought. There they are, so close, I could just grab them and run. I had visions of being pursued from the courthouse by a screaming mob of legal bureaucrats, led by Lee Torbin Jr. But the thought came and went. Anyway, the wire cage was locked. Surely, I was not about to fail now. I knew it would be fatal to appear too anxious.

“Why not?” I asked as though it did not matter.

“I have a vague feeling,” Torbin said, “that some of those exhibits were put under judicial seal by Judge Byrne. [He had tried the Pago Pago case.] I think these might be among them.”

My heart did a double flip and landed in the region of my toecaps. It could well be so. That would explain why the

documents had disappeared so completely, never coming up in open court and never having been pried loose under the Freedom of Information Act. A judicial prohibition would have stopped all that. It would stop me, too. There was no way that Lee Torbin Jr. was going to put his job on the line for the sake of my bright blue eyes.

“I’ll have to check,” he said.

The next fifteen minutes lasted a long time. First, Torbin telephoned Judge Byrne’s clerk, Lori Serif. She was new to the job and did not know the answer. He rang the court reporter, who could not remember. He rang and rang, until my nerves were in shreds and there seemed to be no one left in the whole court building who had not been asked the question. But none of them knew the answer.

“Surely,” I ventured, “that must mean that they are clear. If they are under seal, one of these people is bound to know.”

But the ultracautious Mr. Torbin was having none of it. He had to have a positive answer before he would let me see those papers. I could not blame him. It was his neck.

Finally, he had an idea. “I know who can tell us,” he said. “Judge Byrne had a clerk at the time of the trial who retired not long ago. I’ll call her.” He found the number and explained the problem. His next words were ominous. “Is all the Pago evidence under seal?”

Four-letter words passed silently in coarse procession through my mind. The envelopes on the desk before me seemed to blur and recede. So near, and yet . . . I stood there like a dummy while the conversation continued. I could make little sense of what was being said and by now was paying scant attention. It was just a question of gritting my teeth, thanking Mr. Torbin for his help with as much sincerity as I

could muster, and writing off the whole episode to experience. Perhaps there would be another way to get hold of the Hudson Report. I doubted it.

At length Lee Torbin Jr. put down the receiver and smiled. “Do you want copies?” he asked. “They’ll cost you fifty cents a page.”

(I subsequently discovered that the lady in question had disliked Judge Byrne with a passion and had seized the opportunity to get her own back from the safety of retirement.)



Later that day, with the copies locked in my briefcase, I recounted the episode to one of the lawyers involved in the case. The reports, he told me, were definitely under judicial seal and had been for years. They would remain so at least until all the appeals had been heard—perhaps forever. He and the other lawyers in the case had copies but had been sworn not to reveal their contents to anyone.

So where did that leave me?

“Go ahead and publish,” he said. “No one can stop you. Remember the First Amendment to the Constitution.”

And so I will. For though the scandals they reveal are now history, history has a nasty way of repeating itself if nothing is done to prevent it. Things happened, and without public awareness, they could happen again. Somewhere, on some airline, they may be happening still. No one really knows.

The deeper I researched this story, the more unpleasantness came to light. Long-shut cupboard doors swung open to reveal a host of skeletons. For the tale of Flight

806 is more than the suppression of the Hudson Report, the training records of the flight crew, and all the rest of the evidence that the jury was never allowed to hear. It is basically the story of man's inhumanity to man: a little vanity, a little greed, and a little ruthlessness all added up to a major act of injustice.

In the view of some lawyers, the tale was not ready for telling at the time this book was first published. The last page in the saga had yet to be written. The skill of attorneys, the tardiness of some judges, and the creaking machinery of the legal system would prolong the agony for years.

But for the sake of those who had already waited more than eight years for compensation, for their own injuries or for the death of their loved ones, it seemed important that the story be told.

So here we go.

BOOK ONE

CRASH

ONE

CHRISTMAS 1973, high summer in the South Pacific, and the Hemsley family was where they could usually be found on such occasions: taking the sun at their beach house on New Zealand's North Island. The Hemsley family boat swung gently at its moorings, Hemsley family cars nestled in the shade, and the Hemsleys themselves sprawled around the barbecue set up on the white sand. Not many of these things were paid for, a fact that worried the Hemsley family not at all.

They were rich. And then again, they were not rich. It all depended on how you looked at it, how you judged such things. Charles Hemsley, head of the family, was a teacher. Not the most lucrative of professions, but his father had been a leading doctor in Auckland and had left him a modest income from investments, which helped to maintain the family lifestyle. Charles and his wife Edith had raised four sons, the eldest of whom, Edward, had finished his studies and was now working for a local law firm. William, next in line, had dropped out of college after a year and was off to see

the world. Roy was a varsity student. Desmond was still at school. But the darling of the family was Mary, a pretty child at eleven and growing prettier by the month. Dear Mary. Two doting parents, four protective brothers, and a world full of sunshine and lollipops. She had a lovely Christmas. Such a pity that it was destined to be her last.

The Hemsleys were not like other people. In an age of dissolving family ties, they were shackled one to the other by bonds of genuine love and affection. In material things they shared, lent, borrowed, and spent together with gay abandon. In times of doubt and tension, even in sleepy New Zealand, they had the effrontery to be happy.

The Hemsleys lived for the family, by the family, and with the family. Outsiders, like Edward's new wife and longtime girlfriend Bineta, were sucked into the loving maw and ever so gently digested. No television scriptwriter, desperate for soap opera material, would dare to invent the Hemsleys. He would not be believed for an instant.

They were all at the beach for that Christmas holiday. All, that is, except William. At twenty-one, William was roaming around the United States, working occasionally, taking a lot of pictures, and sending a lot of letters home. He had been away for nine months. There had been vague talk of setting up in business with his father when he got home, perhaps running a motel together, but no one was in much of a hurry to do anything about it. William was happy enough getting the travel bug out of his system. All the same, he missed his family and planned to take a cheap trip to Honolulu. His parents missed him, too. They had arranged to fly north for a holiday, taking Mary with them, and to meet up

with William in the Hawaiian Islands. It was the sort of thing the Hemsleys did.

The flight was all fixed, or so they thought. But then, over those Christmas days, there came a change of plan. Their party at the beach house was joined by a lawyer named Donald Pilkington who, with his wife Nina, owned an adjoining property. Pilkington was a friend. At least, he saw himself as such, touching the family circle at the narrowest of tangents, yet welcome enough at the party. He had, after all, recently taken young Edward into the firm of Auckland solicitors where he was senior partner, holding out to the lad a partnership in due course.

Pilkington somehow lacked the gravitas of the legal image. His taste in loud sports shirts, his plump, bespectacled figure, his extroverted nature, and his liking for a good time sat oddly with his position as vice president of the New Zealand Law Society. But the New Zealand legal world is small and fairly placid. Donald Pilkington was a big frog in such a tranquil pool. He also had a passion for traveling. As Edward Hemsley already knew, having been given the task of minding the office while he was away, it took the smallest excuse for a business trip to get him on an airplane to almost anywhere.

For a time, Pilkington had been the travel representative of the Law Society, and it was well known that he positively enjoyed making travel arrangements for others. There were rumors that he may also have obtained commission on the tickets, but what of it? There was nothing illegal or unethical in that.

When the Hemsleys told Pilkington of their plans to meet William in Honolulu, it was no surprise to them that he

should come up with a better idea. He could save them money, he said, by booking them on a different flight, and the Hemsleys were not so rich that they could refuse such an offer. And so, it was arranged. The tickets were changed. Charles, Edith, and Mary Hemsley joined the passenger list of Pan American World Airways Flight 806 from Auckland to Honolulu via Pago Pago on January 30, 1974.

FOR MICHAEL AND SUSAN ROGERS, young and starry-eyed, Flight 806 was going to be a magic carpet to adventure. They were newly married, had never been outside New Zealand, and neither had ever flown before. Now, having scraped together every dollar they could lay their hands on and bought their tickets and their rucksacks, they were off to see the world.

The Rogerses were an oddly disparate couple, like two sides of a coin left lying on damp earth. At twenty-one, Susan was blonde, bright, pert, and bouncy, full of purpose and ambition. She wanted to be a ballet dancer and she knew, she just knew, she had the talent to make the grade if only she could reach the great wide world outside.

Michael, a year her senior, was dark and intense. He had just left law school and was working, unhappily, for an Auckland firm of solicitors. He had never wanted to go to university and admitted no sense of vocation whatever.

He had met Susan at a law school dance. They were engaged in July 1973 and married two months later. Like most couples, they set out to explore each other's interests together, but Michael's idea of recreation was to go off

hunting in the bush. She loathed it. Susan dragged him to the ballet. He hated it. One thing they had in common was the desire to travel, she because she wanted to go to England for the sake of her dancing career, and he as a source of adventure.

Their plans were ambitious. Michael had a brother who had emigrated to the United States and had become an American citizen. The Rogerses' idea was to fly in stages to San Francisco, spending a week in Pago Pago and a week in Hawaii, and then to join Michael's brother for a drive down through Mexico and back up the East Coast. The party would then fly to England, from where Susan and Michael intended to travel by bus to Asia and the USSR. After that they would play it by ear, perhaps working in London for a year or so before returning to New Zealand.

They were determined to make their pipe dream a reality. They were young and very excited. The normal tourist routine was not for them. There was to be no staying at hotels in Pago Pago: they would take their sleeping bags, wander down to the beach, and make a nest among the sand dunes. Then they would move on to the local villages, hoping that the natives would be friendly. In their packs were a ten-pound block of cheese and plenty of tinned sardines. They were going to be all right.

On January 30, 1974, at just after eight o'clock in the evening, they said goodbye to their parents in the departure lounge at Auckland airport and climbed on board the Boeing 707 that was Pan Am Flight 806 to Pago Pago and beyond.

LEON MARTIN CLAIMED to be able to hold his breath for four minutes—a minor vanity, and an unusual one for a man of fifty-seven, but Martin was no ordinary American in late middle age. He had devoted his whole life to sports, had coached the US Olympic diving teams in 1964 and 1968, and ran his own swimming gymnasium in Phoenix, Arizona.

Martin had been in New Zealand for the previous four weeks coaching the Kiwis' national team for the Commonwealth Games in Christchurch and had been intending to wander home via the Far East, looking at diving talent along the way. He had no intention of taking the short route back to the United States via Pago Pago and Honolulu.

However, while the games were in progress, something happened to make him change his mind. He learned he was to be given the Fred Katey Award—America's most prestigious swimming trophy—and that the presentation ceremony would be in Los Angeles on February 2. Martin, an extrovert not averse to publicity, decided this was more important than his projected jaunt around the Far East. He left Christchurch two days before the end of the games and flew to Auckland, where he exchanged his previous booking for a ticket on Flight 806.

NOT EVERYONE who climbed the steps of the plane that evening was in a happy frame of mind. John Carter was far from cheerful. He was on his way back to the Tokelau island of Nukunonu, a remote speck in the South Pacific that he shared with 370 islanders and one other European. For the next twelve months, his only link with civilization would be

an unreliable radiotelephone and a mail boat that called every three months.

Carter's exile was self-imposed. A forty-three-year-old carpenter, he had gone to the islands to work as a building overseer for the New Zealand government after his twenty-year marriage had broken up in late 1971. This had been his first trip back to the mainland since, but it was no pleasure visit. Five days before the departure of Flight 806 he had filed for divorce to render the legal separation with Lucy Carter permanent. For a man like Carter, brought up in the Roman Catholic faith, it was a somber step. His state of mind was made no lighter by the knowledge that his nineteen-year-old son Richard, second youngest of the five Carter children, had had a motorcycle accident while he was overseas and was now a permanent paraplegic. Richard's accident had happened on Boxing Day 1972, only days after his father had left to work in the islands, and a pall of bitterness seemed to hang over the whole Carter family.

Financially, John Carter was poor. Not so Johannes van Heerden, who took his seat a few rows away. But the two men had something in common: neither saw much of their families. Van Heerden was fifty-seven, a self-employed shoe designer and manufacturer who had come to New Zealand from his native Holland with his wife and children in 1951. They had left Europe because they feared nuclear war, and van Heerden had brought his machinery with him to set up a shoe factory in Wellington, thus neatly evading the post-war currency regulations.

The factory prospered, shops were acquired, and by the early 1970s, the van Heerdens owned three houses and a beach chalet. Their younger son was at an expensive private

school, but they were not a close family. In fact, between 1968 and 1972, while she was living on the island of New Caledonia and he was living in Wellington, Grace van Heerden saw her husband only during rare visits.

Attracted by the prospect of cheap labor in Western Samoa, van Heerden sold his Wellington shoe factory in 1972 and opened another in Pago Pago. He wanted Grace to set up home with him in Samoa, but she decided it would be wrong to leave the children. As a diabetic with early indications of heart trouble, she also preferred the temperate climate of New Zealand.

Van Heerden went to Samoa on his own, returning occasionally to see his family and buy fresh supplies of leather. On January 30, 1974, he flew from Wellington to Auckland, where he rang Grace to say that he would be spending the night at the hotel in Pago Pago before going on to the factory. Neither had any premonition that they would never meet again.

The Hemsleys, the Rogerses, Van Heerden, Carter, and Martin, all human beings with their private thoughts, fears, desires, and ambitions, joined eighty-three other human beings and trooped across the tarmac to the waiting aircraft. Clutched in their hands, or stuffed into handbags and pockets, each carried a blue-and-white Pan American ticket. And the ticket, as required by international regulations, carried the following advice:

Passengers on a journey involving an ultimate destination or a stop in a country other than the country of origin are advised that the provisions of a treaty known as the Warsaw Convention may be applicable to the entire

journey, including any portion entirely within the country of origin or destination. For such passengers on a journey to, from, or with an agreed stopping place in the United States of America, the Convention and special contracts of carriage embodied in applicable tariffs provide that the liability of certain carriers, parties to such special contracts, for death of or personal injury to passengers is limited in most cases to proven damages not to exceed US Dollars 75,000 per passenger, and that this liability up to such limit shall not depend on negligence on the part of the carrier. For such passengers traveling by a carrier not a party to such special contracts or on a journey not to, from, or having an agreed stopping place in the United States of America, liability of the carrier for death of or personal injury to passengers is limited in most cases to approximately US Dollars 10,000 or US Dollars 20,000.

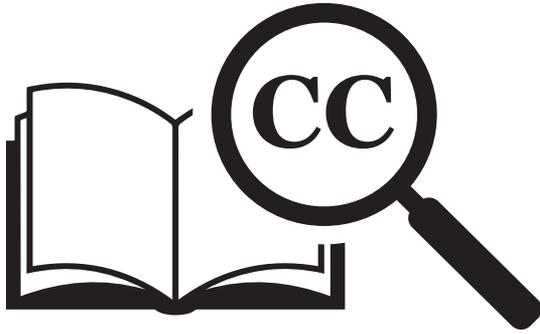
The names of carriers, parties to such special contracts, are available at all ticket offices of such carriers and may be inspected on request. Additional protection can usually be obtained by purchasing insurance from a private company. Such insurance is not affected by any limitation of the carrier's liability under the Warsaw Convention or such special contracts of carriage. For further information, please consult your airline or insurance company representative.

Note: The limit of liability of US Dollars 75,000 above is inclusive of legal fees and costs except that in the case of a claim brought in a state where provision is made for separate award of legal fees and costs, the limit shall be in

the sum of US Dollars 58,000 exclusive of legal fees and costs.

This classic piece of small print, which few passengers have ever bothered to read, left out one important feature of the Warsaw Convention: it would cease to apply, and that damages would be unlimited, should the airline be found guilty of willful misconduct. But what of it? Up to that point in time no airline had ever been found guilty of willful misconduct.

The passengers who boarded Flight 806 that evening could have no idea that these dull phrases were to dominate their lives and the lives of their families for the next eight years.



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DISCOVER THE TRUTH ABOUT THE CRASH THAT NEVER SHOULD HAVE HAPPENED.

In 1974, Pan American Flight 806 was hoping to land safely in Pago Pago, Samoa, but instead plummeted at 140 miles per hour into the jungle floor. The 101 passengers and crew members all survived this devastating crash. Unfortunately, only four of them escaped the wreckage before the ensuing fire that followed. After the disaster, Pan American was found guilty of “willful misconduct” after the longest and most expensive trial in aviation history.

William Norris sets out to discover the truth about the controversies surrounding the accident. What caused the crash, and what prevented the 97 passengers from escaping the aircraft with their lives? Among these questions, Norris discovers more answers to other mysteries about this devastating event and its trial along the way.

Willful Misconduct is a gripping tale full of courtroom drama, fascinating characters, and human tragedy.

William Norris is the author of numerous true crime books and novels inspired by his years as an award-winning investigative journalist. Look at the end of the book for a book club discussion guide and a preview of *Snowbird*.



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