

Out Of The Fire - The Jennifer Hall Story

By Nadia Pflaum

When Harrisonville fire investigator Wayne Schraml and officers from the Missouri State Fire Marshal's Office failed to notice a bead of copper on a wire at the Cass County Medical Center after a fire in the respiratory therapy office in 2001, it cost then-20-year-old Jennifer Hall a year of her life in prison.

The fire, which caused an estimated \$23,000 in damage to a desk, a computer and a wall in an office (to which Hall had one of the only keys), occurred near tanks that control a flow of oxygen to the entire Harrisonville hospital.

Hall was the respiratory therapist on duty at the hospital when the fire started, shortly after 7 p.m. January 24, 2001. She says she had left the building to get a soda out of her truck, thinking she wouldn't have time to get it later because she would be observing a patient in a sleep study.

When she heard the fire alarm, she rushed inside the hospital and joined two co-workers. All three heard over the intercom that the fire was located in the respiratory therapy offices. One of the workers, Violet Warren, ran to get a fire extinguisher while Hall and Mark Berry went toward the source of the fire to reach the oxygen-shut-off valve to prevent an explosion.

The trio made it through two doors before the smoke became too heavy for them to continue. Berry leaned farthest into the smoke, trying to see the source of the fire, and Warren reached around Hall to grab Berry's sleeve and pull him back. When Berry lost his balance, Hall says, he bumped into her accidentally, and she reached out to steady herself on a metal door frame, which was hot.

Schraml and his co-investigator from the fire marshal's office, Lee Johnson, could find no obvious cause for the blaze but noted the burn on Hall's hand and what they considered an unusual amount of charred paper in the vicinity of the fire. They concluded that it had been intentionally set. Three weeks later, police arrested Hall.

Hall's parents, Don and Debi Hall, say they now regret their next move, which was to hire Gary Cover of Clinton, Missouri, a lawyer recommended by a cousin.

In court transcripts, Cover routinely mixes up facts, dates and names. Don and Jennifer Hall say they both asked Cover whether he should examine the computer, clock and other equipment in the fire. But Cover said it was unnecessary. He did contact the assistant prosecutor handling the criminal case and ask to look at the items seized from the scene. But when he was told that the items were in the possession of the insurance company for the hospital, Cover focused instead on proving that Hall wasn't near the scene of the fire when it started.

Prosecutors Michael Yost and Jamie Hunt told Cass County jurors that Hall had burned herself on a match while setting the fire, not on a hot door frame, and that she had worn her hair curly that day — it was normally straightened — because she expected to be the center of attention after the arson allowed her to stage a heroic attempt to put out the fire.

Schraml, the investigator, testified that he saw no other explanation for the fire and that it must have been intentionally set. The prosecutors, meanwhile, claimed that Hall's motivation was her unhappiness over a sexual harassment claim that she'd made against a co-worker. "That motive, to us, was just insane," says Hall's father, who explains that the man about whom his daughter complained had died of a heart attack two weeks before the fire.



A fire investigator failed to notice a faulty wire — and Jennifer Hall paid dearly for his mistake by being wrongly convicted and imprisoned for arson.

The jury found Hall guilty of second-degree arson and recommended a sentence of three years in prison.

Hall says that on the day of sentencing, Cover advised her that the court might look more favorably upon her if she "took responsibility" for the fire.

"He said that I needed to go with their theory that I was doing it for attention," Hall tells the Pitch. "And I said, 'I don't want to say that, because it's going to make me look even worse.'" Instead, feeling pressure from her attorney to look conciliatory, she says she made up a story about setting the fire accidentally by dropping a cigarette. "I've never smoked," she says. A probation officer reported Hall's confession to the judge.

Cover billed the Halls \$10,000. The family hired another attorney, Matt O'Connor, for Hall's appeals.

O'Connor did what Cover did not: He hired an expert, a forensics specialist named Carl Martin.

Martin says that when he was granted access to items removed from the fire scene and examined the power cord on a clock that had been close to where the fire started, he said to himself, "Is this a joke?" A bead of copper gleamed from a small, burned break in the cord, visible to the naked eye. The short circuit hadn't been noted in the report written by Schraml, the Harrisonville fire investigator whose testimony was key in convicting Hall.

"I don't know what the heck went on in that case, but I've never seen anything like it before," Martin says. "There wasn't any doubt that there had been an electrical short circuit. Everything was very consistent with it being a long-term short circuit in a very old power cord on an old clock very near the fire's origin. It was black-and-white after we tested it. There was no other way.... Unfortunately, the investigators and police and the prosecutors were unable to see that. I don't know if they had bad vision. I don't know why they chose not to consider the most significant piece of evidence they had."

The large amount of paper around the site of the fire can be explained, O'Connor says, by the fact that a black file tray was knocked over during the fire. As the tray melted, the plastic cascaded down the side of the computer in a gooey mess. The paper that was in the tray could have fallen near the site of the fire in a big, charred clump.

O'Connor filed numerous appeals on Hall's behalf. The first, a motion for a hearing based on newly discovered evidence, was denied. The Missouri Court of Appeals denied a second appeal on July 22, 2003. O'Connor filed a motion in November 2003, claiming that Hall was denied effective assistance of counsel, in part because Cover had failed to investigate possible alternative causes for the fire.

Meanwhile, Hall spent from July 25, 2003, to July 23, 2004, at a women's maximum-security prison in Vandalia, where she shared a cell with four other inmates.

She recalls being scared her first day. Another inmate told her, "Just act like you've been here before, and nobody will mess with you."

Despite her pretending, the stress got to her. An epileptic, she usually suffered one seizure every eight to ten months, but while in prison, she had two or three a week. Because O'Connor

distrusted Vandalia's medical care for inmates (a well-publicized medication mix-up last summer caused a dozen inmates to be hospitalized), he says he faxed information regarding Hall's epilepsy medication to the prison every day.

"Not everybody in prison says they're innocent, but a lot of people do," Hall says. And like the others, she wasn't believed. But worse, she says, was the threat she felt living in proximity to a roommate Hall says was serving time for murder.

"I called [O'Connor] to tell him that if I die, this is who did it," Hall says. "I flat-out told him, I think I'm going to die in here. Bad things can happen there. You wouldn't believe what people can make into a weapon. Anything."

Meanwhile, her parents were struggling to afford their daughter's legal bills. Don, an employee at Kansas City Fire and Security, and Debi, who works as an assistant at an Overland Park dentist's office, both took night jobs answering phones for Pizza Hut's delivery line.

On June 29, 2004, the original judge to hear Hall's case, Jacqueline Cook, found that Hall had received inadequate counsel and agreed that Cover should at least have hired an expert to examine the fire site and damaged equipment. She set aside Hall's sentence and sent the case back to Cass County for a possible new trial, if prosecutors wanted one.

Hall was paroled from the prison in Vandalia just one week before the judge's motion to set aside her sentence took effect. But five months later, Cass County Prosecutor Theresa Hensley and her assistant, Jamie Hunt, decided to try her again.

The new jury found Hall not guilty in February 2005.

The Halls are critical of Cass County prosecutors for retrying their daughter. They believe it was done out of spite. O'Connor says that even if the new jury had found her guilty, she would not have been eligible to spend any more time in jail because she had already served her sentence. The new trial cost the Halls another \$20,000, bringing their total bill that they owed O'Connor for legal services to \$100,000.

Cass County Prosecutor Theresa Hensley says that her office pursued the case because they believed they still had enough evidence to convict Hall. "We could have decided not to retry her," Hensley says. "Jamie Hunt, who second-chaired the first trial, believed he had enough evidence to find her guilty, that she had, in fact, started the fire. That's why we have courthouses and a jury system. The experts don't always agree, and that's why we have trials. Twelve jurors in the second trial believed their expert [Martin] over our expert [Schraml]. Jamie is a prosecutor I think highly of. I think he has good judgment. I think if you asked him today, he would tell you he still believes she did it."

Schraml's colleagues at the Harrisonville Police Department and at the Missouri State Fire Marshal's Office stand behind him, too. Schraml testified that he has investigated more than 300 fires and that he bases his success on how many convictions his reports have helped secure.

Schraml is taking a medical leave of absence from the Harrisonville Police Department, where he has worked for five years. Lt. Doug Catron, his superior, confirms that Schraml is the department's only fire investigator. Harrisonville's population is less than 10,000.

Apparently unaware that Hall had been exonerated, Catron says, "There is a rumor that circulated from the family of Ms. Hall that the fire could have been caused by an extension cord. Our department firmly stands behind both our investigator and the state fire marshal who co-investigated that fire." What about the bead of copper on the wire, indicating a short circuit that Schraml missed? And what about O'Connor's forensic findings?

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Federal Prosecutor Resigns Under Heat of Criminal Investigation For Possible Frame-up Of 35 People

By JD Staff

In June 2003 two men were convicted in Detroit of providing “material support” for terrorism, and two other men were acquitted of that charge. The verdicts came in the United States’ first major terrorism trial post-September 11, 2001. The chief federal prosecutor was Assistant United States Attorney Richard Convertino.

After their terrorism convictions, the defendants filed a pre-sentence motion for a new trial based on allegations that the prosecutors involved in the case concealed exculpatory evidence and witness statements, and offered tainted testimony. Convertino and his immediate superior were removed from the case in December 2003 after the trial judge ordered the Justice Department to respond to the defendant’s motion. In its response of August 31, 2004, the Justice Department conceded the prosecution committed multiple Brady violations that prejudiced the due process rights of the defendants to a fair trial. On September 2, 2004 the judge vacated the men’s convictions and the terrorism charges were subsequently dismissed. (See: Terrorism Conviction Of 2 Men Tossed - Prosecutor Criminally Investigated For Frame-up, *Justice: Denied* magazine, Issue 27, Winter 2005, page 7.)

In March 2004 the Justice Department’s Public Integrity Section launched a criminal investigation of Convertino. The impetus for the investigation was that Convertino’s actions in the “terrorism” case may have amounted to nothing less than his orchestration of the deliberate frame-up of four men he had every reason to believe were inno-

cent of materially supporting terrorism. Particularly since there was no evidence the men were guilty except for what Convertino was placed under criminal investigation for possibly contriving.

The Detroit News reported in December 2004 that the Justice Department had secretly expanded its criminal investigation of Convertino to include two major drug cases in which a total of 31 defendants were convicted in the late 1990s. Convertino was the lead prosecutor in both cases, that were based on the testimony of numerous defendants who pled guilty and favorably testified for the government in exchange for leniency. Several of those defendants subsequently executed sworn affidavits detailing Convertino’s intimidation of them into committing perjury. Those affidavits came to light when they were included in a petition for a new trial by one of the men whose conviction was based in part on the allegedly perjured testimony. Furthermore, according to the petition Convertino not only concealed the existence of the deals for leniency from the jurors, the trial judge and the defendants, but he was duplicitous about the negotiations that resulted in those deals. According to the *Detroit Free Press*, “Convertino went to extreme lengths to portray that no agreement had been reached” with the government’s witnesses. The implication of the sworn affidavits and allegations set forth in the petition is that all or some of the 31 convicted defendants in the two cases under investigation may be the innocent victim of a frame-up by Convertino’s use of tactics similar to those used to frame the two innocent terrorism defendants convicted in June 2003. In another case Convertino is being criminally investigated for improperly recommending leniency for an informant charged with drug crimes.

On May 16, 2005 Richard Convertino resigned after 15 years as an Assistant U.S. Attorney. As of June 2005 no public announcement has been made about completion of the criminal investigation of Convertino.

Sources: U.S. Prosecutor Resigns, David Ashenfelter (staff), *Detroit Free Press*, May 17, 2005.
U.S. Widens Probe of Prosecutor, David Shepardson (staff), *Detroit News*, December 3, 2004.

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“Someone could say the sun might not come up tomorrow, and who could refute that?” Catron says.

Deputy Chief Jim Wilson with the state fire marshal’s office tells the Pitch that missing a short circuit is “not uncommon.”

John Spirko Update

John Spirko’s story of being on Ohio’s death row when there is evidence he was over 100 miles from the scene of the crime was in *Justice Denied*, Winter 2005, Issue 27: Case Based On “Foundation Of Sand” Enough To Send Man To Death Row - The John Spirko Story.

In May 2004, Judge Ronald Lee Gilman on the Federal Sixth Circuit Court of Appeals voted to grant John Spirko an evidentiary hearing, writing that the case against him was built on a “foundation of sand,” and that the “complete absence” of physical evidence raised “considerable doubt” that he had been lawfully convicted. However Judge Gilman was outvoted 2 to 1. Spirko appealed the Sixth Circuit’s decision to the Supreme Court. On March 28, 2005 the Supreme Court declined to hear Spirko’s case.

Spirko’s lawyers then filed a petition with the Federal Court in Detroit, and U.S. District Court Judge Carr has issued discovery orders. In spite of the ongoing legal action (as of late June), the State of Ohio has set a tentative execution date of September 20, 2005.

John Spirko’s website has the most current information about his case, <http://www.johnspirko.com>

Even Schraml admitted that the cause of the fire might have been a short-circuit. In O’Connor’s deposition of Schraml, taken in December 2004, the officer admitted that the clock cord was a plausible ignition source for the fire. But Schraml told O’Connor that he didn’t get to use a microscope to examine the wire. O’Connor says the bead of metal was visible to the naked eye.

O’Connor calls Schraml “incompetent to the point of being dangerous.” Schraml did not return calls from the Pitch.

Cover, the lawyer found ineffective by Judge Cook, tells the Pitch, “All I can say is, I’m confident that I did a good job in representing Ms. Hall, and my representation was very professional.”

Hall is home now, but the family has installed a security camera that feeds a picture of the front doorstep to a monitor in Hall’s room.

“I’m constantly worried, even now that it’s over, that they’re going to come back with something else,” she says.

Hall, now 24, lives at home and works for Farmer’s Insurance. She is struggling to get licensed, she says, because of her erroneous conviction. She lives at home to help her parents pay her legal bills. The family has hired a new lawyer, Geordie McGonagle, to investigate possible civil suits.

“People still don’t believe you totally, even if you’ve been exonerated,” Hall says.

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Judge Charged With Continuing To Conceal Defendants’ Rights

By JD Staff

Washington State court rules and case law requires a judge to publicly advise every defendant on the record of their legal rights at the time of their arraignment, and to advise a defendant of the legal consequences of making a plea of guilty prior to accepting such a guilty plea.

On June 14, 2005 King County, Washington District Court Judge Mary Ann Ottinger was charged by Washington’s Commission on Judicial Conduct (CJC) with failing to inform criminal defendants of their due process rights on numerous occasions from August to November 2004. Among the rights she didn’t inform defendants about were their right to a court-appointed lawyer, their right to remain silent, and their right against making incriminating statements. Judge Ottinger was also charged with repeatedly accepting a guilty plea from a defendant who had not been informed by her of the elements of the crime, the maximum penalty she could impose, and other real and potential consequences of pleading guilty. Judge Ottinger was further charged with imposing bail and pretrial release conditions on defendants without first making a probable cause finding.

In June 2004, Judge Ottinger was censured by the CJC for committing many of the same violations she was charged with committing in the June 2005 complaint. The CJC found that in regards to Judge Ottinger’s conduct, “Because the practices implicate Constitutional rights of the defendants involved, the nature of the violations cannot be overstated.”¹ The CJC also determined that Judge Ottinger’s misconduct was “routine.” (See, WA Judges Conceal Rights From Defendants, *Justice Denied*, Issue 26, Fall 2004, p. 11.)

As punishment for her conduct that she admitted in a stipulate agreement (the equivalent of a plea bargain in a criminal case) violated the Code of Judicial Conduct, Judge Ottinger agreed to being publicly censured, and to participate in training “related to the proper administration of her court, including proper procedures for rights advisement related to accepting pleas and imposing probationary terms and conditions.”²

The CJC’s June 2005 complaint documents alleged violations by Judge Ottinger that occurred during the four-month period from August to November 2004, which was after she was censured and agreed to punishment for the previous charges against her. In response to the new complaint, Judge Ottinger’s attorney complained in the *Seattle Post-Intelligencer* that the CJC was focusing on technicalities, and that “She’s an excellent judge.”³

A CJC spokesperson told *Justice: Denied* that under CJC procedures a public hearing will likely be scheduled for late fall 2005 to determine if Judge Ottinger committed the violations alleged in the new complaint.

Out of about 4,600 complaints that have been made to the CJC from 1982 to June 2005, 118 Washington state judges have been disciplined for violating the Code of Judicial Conduct. The CJC has determined the misconduct of three judges was egregious enough to warrant removal from office.

Primary sources: *In re Mary Ann Ottinger*, CJC No. 4475-F-119, Statement of Charges, 6/14/2005, <http://www.cjc.state.wa.us/>
In re Mary Ann Ottinger, CJC No. 3811-F-110, Stipulation, Agreement and Order of Censure, 6/18/2005, <http://www.cjc.state.wa.us/>
Endnotes:

1 *In re Mary Ann Ottinger*, CJC No. 3811-F-110, Stipulation, Agreement and Order of Censure, 6/18/2005, <http://www.cjc.state.wa.us/>
2 *Id.*

3 Censured Judge Is In Hot Water Again, *Seattle Post-Intelligencer*, June 15, 2005, p. B2.