

## Fabricated Prosecution Expert Testimony And Evidence Nets Michael Green \$2.6 million for 13 Yrs Wrongful Imprisonment

By JD Staff

In 1988 Michael Green was convicted of raping a Cleveland Clinic patient. He was released in October 2001 after being excluded as the woman's attacker by the DNA analysis of a washrag found at the crime scene that was used by the rapist to wipe himself. Green had been wrongly imprisoned for 13 years.

It was also learned during the reinvestigation of Green's case that Cleveland police lab technician Joseph Serowik falsely testified as an expert witness about key prosecution evidence. He testified that after analyzing the victim's and Green's pubic hair and head hair, he made a match and that his finding was statistically supportable – when it wasn't. He also testified that the washrag had only the rapist's semen on it - which he falsely claimed was Greens'. However it was impossible for the washrag not to have also had the victim's fluids on it – and it was later discovered it did. Thus the washrag was invaluable as evidence excluding any man whose semen was dissimilar to that on it. Furthermore, when Serowik's lab notes were reviewed by Green's lawyers, they discovered he knew at the time he testified that the washrag had a detectable presence of fluid from both the attacker and the victim.

The *Cleveland Plain Dealer* published a series of articles about Green's case in 2002 titled, *The Burden of Innocence*. Although Green had been released the previous year, Rodney Rhines confessed to the rape a week after the articles appeared, and he is currently serving a five-year sentence.

In May 2003 Green filed a multi-million dollar federal civil rights lawsuit in Cleveland naming as defendants: the Cleveland Clinic Foundation and several of its officers, the city of Cleveland, and two of his former lawyers. Among the suit's allegations were that Cleveland police investiga-



tors provided the victim with information that led her to identify Green in a lineup after she had previously failed to do so, and that the police fabricated some of the prosecution's evidence.

On June 7, 2004, Cleveland and Michael Green agreed to settle his claims against the city for \$1.6 million to be paid in ten annual yearly installments beginning in 2004, and the city also agreed to reinvestigate all criminal cases that meet at least one of the following four criteria:

- All cases from January 1, 1987 on, in which forensic lab technician Joseph Serowik testified at trial.
- Any cases in which Serowik performed serology and/or hair analysis before the defendant pleaded guilty before trial.
- A random selection of all other files involving Serowik and serology and/or hair evidence.
- A random selection of other forensic lab employees where serology and/or hair evidence has been analyzed since 1987.

Cleveland hired attorney James Wooley to oversee the forensic audit, that it is believed will include more than 100 cases.

At the time the suit was settled, the director of Cleveland's crime lab, Subodh Chandra, admitted about Serowik, "He's still in the lab. He still has his job. He's not doing serological or hair analysis any more." However both Serowik and his supervisor were later put on unpaid leave pending completion of Wooley's investigation.

After the settlement was announced, Michael Green commented about its unusual provision requiring an independently supervised audit of the Cleveland crime lab's work dating back 17 years, was, "This is a chance for me to reach through the bars and help the inmates I left behind."

Green had previously been awarded about \$1 million in compensation by the state of Ohio.

Source: City to pay \$1.6 million for man's prison time, Connie Schultz (staff), *Cleveland Plain Dealer*, June 8, 2004.

## Ken Marsh \$50 Mil. Claim Rejected

In 1983 Ken Marsh was convicted of murdering Phillip Buell, his girlfriend's two-year old son. On August 10, 2004 his conviction was vacated and he was released from prison after his petition for habeas corpus was granted without opposition from San Diego District Attorney Bonnie Dumanis. Marsh's petition was based on the analysis of numerous medical experts that Phillip's injuries were consistent with those that would be caused by him hitting his head on a brick fireplace hearth after falling off of a couch.

That is not just what Marsh had claimed from the time he was first questioned about Phillip's injury, but the investigating officers with the San Diego Police Department concluded that Phillip's death was accidental from a fall. However doctors with San Diego's Children's Hospital influenced the San Diego DA to pursue murder charges against Marsh.

On September 3, 2004, Dumanis announced she was dropping the charges against Marsh because of an independent evaluation of the medical evidence by a Florida forensic pathologist, who was "unable to conclude beyond a reasonable doubt or to a reasonable degree of medical certainty that [Phillip Buell] was a victim of child abuse." The charges were dismissed that same day, after Marsh had spent 21 years wrongly imprisoned.

In early February 2005, Marsh filed a \$50 million claim

against San Diego County, claiming that county officials conspired to convict him of Phillip's death. The claim also named San Diego's Children's Hospital and several doctors as potential defendants.

The claim also alleged Marsh was convicted "as a result of false and misleading statements and statements made with reckless disregard for the truth by the county and its employees."

The county rejected Marsh's false imprisonment claim on March 23. Other claims were rejected by the county on February 15 as being untimely (late). Since Marsh has six months to file a lawsuit from the date the claim was rejected, Paul Leehey, one of Marsh's attorneys, anticipates a lawsuit will be filed on or before August 10, 2005.

For more information about Ken Marsh's case, see, *Toddler's Accidental Death Ends With Babysitter's Murder Conviction: The Ken Marsh Story*, *Justice:Denied*, Issue 25, Summer 2004, p. 4; and, *Ken Marsh Exonerated of Murder on September 3, 2004*, *Justice:Denied*, Issue 26, Fall 2004, p. 10.

Source: Man freed after doubt shed on conviction files claim, Greg Moran (staff), *San Diego Union-Tribune*, February 9, 2005. Attorney Paul W. Leehey email to Hans Sherrer, June 28, 2005.



Ken Marsh and his wife Brenda Warter. They were married after Ken's release from prison in the fall of 2004. (NBC7 San Diego)

## Roberto Miranda Receives \$5 Million For Wrongly Spending 14 Years On NV's Death Row

By JD Staff

In 1980 Roberto Miranda immigrated to the United States from Cuba. In 1982 he was charged with the 1981 Las Vegas murder of Manuel Rodriguez Torres. Although he only spoke Spanish, Clark County, Nevada (Las Vegas) prosecutors administered a polygraph examination in English that he had great difficulty understanding. After performing poorly on the exam, the Clark County Public Defenders office assigned him an inexperienced lawyer a year out of law school who had never handled a capital murder case. Protesting his innocence, Roberto was convicted and sentenced to death.



After losing his direct appeal, Roberto filed a state post-conviction petition requesting a new trial. Roberto claimed he had been deprived of a constitutionally permissible level of representation by his lawyer. Among his claims was that his lawyer failed to investigate leads Roberto provided him with that would have supported his innocence and cast doubt on his guilt, as well as failing to vigorously contest the veracity of the prosecution's physical and testimonial evidence. Roberto also alleged that his lawyer had not pursued disclosure of exculpatory evidence concealed by the prosecution.

In 1996 a state District Court judge who stated in part — "The lack of pretrial investigation and preparation by trial counsel ... cannot be justified" - ruled Miranda had been denied effective assistance of counsel, reversed his conviction, and ordered a new trial. The murder charge was dismissed after prosecutors declined to retry Miranda. He was released after spending 14 years on death row.

Represented by Spence, Shockey & McCalla (Gerry Spence's Jackson, Wyoming law firm), in 1998 Roberto filed a federal lawsuit against Clark County, Nevada, the Clark County Public Defenders' office, and the lawyer who represented him at trial. His basic claim was his civil rights were violated by their handling of his case. A U.S. District Court judge dismissed the lawsuit on the ground that Roberto couldn't sue the county, the public defenders office, or the lawyer for poor representation. Roberto appealed that ruling, which was upheld by a three judge panel in the Ninth Circuit Court of Appeals. However sitting en banc, the Ninth Circuit partially reversed itself after granting Roberto's motion for reconsideration. In remanding the case back to the district court for trial, the Ninth Circuit ruled that Roberto could sue Clark County and the director of the Public Defenders office who assigned the inexperienced lawyer to Roberto's case (because he represented Clark County when he did so). However the Court ruled Miranda couldn't sue the ineffective lawyer. Clark County appealed the ruling to the U.S. Supreme Court, which in October 2003 declined to review the decision.

Facing a possibly catastrophic jury verdict for its egregious mishandling of Roberto Miranda's representation, Clark County agreed to a \$5 million settlement that was finalized on June 22, 2004 with the dismissal of his civil suit.

Sources: Settlement Ends Ex-Inmates Sage, Carri Geer Thevenot, *Las Vegas Review-Journal*, June 30, 2004. Wrongful Incarceration Suit Settled for \$5 Million, Press Release, Spence, Shockey & McCalla, June 29, 2004.