

Clara Boggs Steps Down From *Justice:Denied*

Justice:Denied's co-founder Clara Boggs has stepped down as the magazine's co-publisher and editor-in-chief. Clara also stepped down as president of The Justice Institute, which is *Justice:Denied's* parent company. Clara cited personal reasons for relinquishing her positions.

Hans Sherrer, who has been involved with the *Justice:Denied* since its founding, has assumed the responsibilities of being the magazine's publisher and The Justice Institute's president.

Justice:Denied's operation has been moved to Seattle, Washington from Coquille, Oregon. The new mailing address is: Justice Denied
PO Box 68911
Seattle, WA 98168

Justice Denied Editorial

Judge Mary Ann Ottinger Has Earned Removal From Office

On June 18, 2004 the Washington State Commission on Judicial Conduct (CJC) censured King County District Court Judge Mary Ann Ottinger, "for, among other misconduct, engaging in a pattern or practice of violating criminal defendants' fundamental constitutional and due process rights."¹ Judge Ottinger's misconduct included failing to advise unrepresented defendants at arraignment that they had the right to court-appointed counsel, the right to remain silent, and the right not to incriminate him or herself. She also accepted guilty pleas without informing defendants of the elements of the crime that had to be proven by the prosecution beyond a reasonable doubt, the maximum available penalty that could be imposed, and other legal consequences of a guilty plea.

The CJC noted "The nature, extent and frequency of the due process violations, in particular, have been significant. ... Because the practices implicate the Constitutional rights of the defendants involved, the nature of the violations cannot be overstated."² It further stated, "The extent to which Respondent's [Ottinger's] failure to properly advise defendants of their rights has had a substantial impact on the rights of the defendant's involved."³ Her misconduct was particularly grave, because "Protecting the rights of accused individuals is one of the highest duties of any judicial officer."⁴

The censure was part of a stipulated agreement the CJC entered into with Judge Ottinger. That agreement imposed several sanctions, the most meaningful of which was, "Respondent agrees that she will participate in training, approved in advance by the CJC, related to the proper administration of her court, including proper procedures for rights advisement..."⁵ In giving Judge Ottinger such a mild punishment for such serious judicial misconduct, the CJC took into the consideration the mitigating factor that she "... acknowledges her need to change or modify the conduct in question and represents that she will do so..."⁶

We now know Judge Ottinger didn't mean it and she successfully pulled the wool over the eyes of the CJC's members.

On June 14, 2005, the CJC filed a Statement of Charges against Judge Ottinger in which it is alleged that on July 7, 2004, less than a month after the filing of the agreement in which she effectively agreed in writing to respect a "criminal defendants' fundamental constitutional and due process rights," the CJC received a complaint that she was continuing to fail to do so. (See, Judge Charged With Continuing To Conceal Defendants' Rights, on page 11 of this issue of *JD*). The CJC commenced a new investigation of Judge Ottinger that resulted in the filing of the new charges that substantially duplicate those that were resolved by the stipulated agreement filed on June 18, 2004. The CJC's new complaint alleges that from August to November 2004, Judge Ottinger "repeatedly failed to comply with court rules and case law requiring full advisement of rights to counsel for criminal defendants at arraignments. In multiples cases, Respondent failed to properly advise criminal defendants of their right to counsel, of the maximum available penalties and other potential consequences of conviction, of their right to remain silent."⁷ The new complaint also alleges that Judge Ottinger continued to accept guilty pleas without informing unrepresented defendants of their right to counsel, of the elements of the crimes to which they pled guilty, and she "consistently failed to determine the defendants' understanding of the proceedings."⁸

The new complaint also alleges that Judge Ottinger committed serious misconduct related to bail hearings, probation revocation proceedings and alleged offenses involving non-citizens.

The CJC has the goods on Judge Ottinger since the Statement of Charges documents the defendant's name, the case number, and the date of more than a dozen representative alleged violations.

It needs to be kept in mind that every single person whose "fundamental constitutional and due process rights" has either admittedly or allegedly been disregarded by Judge Ottinger over god knows how many years, was at that time as legally innocent under the law of what they were accused of as you and I.

Michael and Becky Pardue's Message of Appreciation to Clara Boggs

From my husband and I who found in *Justice:Denied* a level of recognition and support in our struggle for Michael's freedom that was absolutely imperative to our ultimate success; we must acknowledge Clara Boggs.

We had been in the grips of the ongoing injustice known as *Alabama v. Pardue* for years when I received a note from Clara Boggs. I was astounded to learn that we were not alone in our battle. We all know the devastating feeling of seemingly having the entire world and all its endless resources against you. We all have experienced the helplessness and fear in knowing you are right and just in your position, yet the "good guys" are your enemy. We all have felt the grip of terror in not knowing if your loved innocent would survive another day in a cage created to minimize and destroy the very soul of its captives. Then, there comes a ray of light, a sprinkle of hope in the deluge of fear. Our sprinkle came in the form of a note from *Justice:Denied*, from Clara.

Everything changed with a simple acknowledgment from a stranger that we were not alone. Details aren't necessary, but our profound thanks are. Thank you, Clara, not for just saving us, but also for the thousands of lost and afraid souls you have touched and given hope. The immense value of your selfless drive for justice cannot be measured. Your energy and work stand as a beacon toward which we all can strive.

We acknowledge your long hours of work, your sleepless nights, your vision, your relentless drive, your tears and your successes. Thank you for these and the other endless efforts of which we are unaware.

With great gratitude,
Michael Pardue, free after 28 years of wrongful imprisonment and wife, Becky
May 2005

An unknown number of those people were undoubtedly actually innocent, and the only thing that stood in the path blocking their possible wrongful conviction was the very "fundamental constitutional and due process rights" that Judge Ottinger steadfastly refused to inform them that they had. We know with a moral certainty that she refused to inform defendants of their "fundamental constitutional and due process rights" and that it wasn't due to inadvertence or ignorance, because after agreeing in writing to engage in "proper procedures for rights advisement," she continued to repeatedly not do so throughout the many months that the CJC's investigation in 2004 was conducted.

Judge Ottinger's knowledge and intent is further established by her response to the CJC after it granted her the "insiders" courtesy of informally contacting her in 2002 after it received complaints about her lack of concern for the rights of defendants. Judge Ottinger "represented that she would correct her plea acceptance and rights advisement practices in the future to comply with CrRLJ 4.2 and Washington law."⁹ It was Judge Ottinger's failure to abide by what was her false representation to the CJC in 2002 that caused the initiation of the official proceeding that resulted in the June 18, 2004, stipulated agreement.

Judge Ottinger is every prosecutors dream judge, because she effectively sweeps aside the "fundamental constitutional and due process rights" that are the only impediment to a defendants summary conviction. Her actions systematically undermine whatever meager confidence people both in and out of her courtroom may have in the fairness of the criminal process. Each issue of *Justice:Denied* bears witness to the human carnage of lost dignity, life and property caused by the dismissive attitude of Judge Ottinger and other state and federal judges of her ilk across the country.

Judge Ottinger is a habitual offender who has twice made fools of the CJC's members by tricking them into not taking effective remedial action against her — and people who are innocent under the law have suffered because of it. The complaint filed on June 14, 2005 details the considerable depth of Judge Ottinger's deception and her cava-

lier manner of 'thumping her nose' at the CJC's mistaken belief that she signed last years stipulated agreement in good-faith.

Since 1982 the CJC has made the decision in three cases that the appropriate remedy for a judge's egregious misconduct was removal from office.

Judge Ottinger's removal would be a foregone conclusion if she had committed the one-time offense of taking the bribe of a car to fix a case, or feloniously assaulted a defendant who appeared before her. Yet those are petty offenses compared to the pervasive constitutionally violative misconduct she admitted to in 2002 and 2004, and which she is now charged with continuing to engage in.

One does not have to resort to hyperbole to describe the seriousness of Judge Ottinger's deliberate and egregious misconduct over a period of years that has obliterated "the integrity ... of the judiciary," and demonstrated her contempt for being "faithful to the law." A judge engaging in that quality of misconduct has earned removal from office.

Judge Ottinger earned removal from office for her censured conduct last year. She likely has powerful friends in high places, and that may be why the CJC has thus far chosen to ignore the gravity of her misconduct by agreeing to gently admonish her with "tsk-tsk" taps on her wrist. However the charges against Judge Ottinger transcend political back-scratching because they concern the quality of the type of society we live in - and aspire to live in.

A CJC spokesperson anticipates the public hearing concerning the complaint of June 14, 2005, will be scheduled for the fall of 2005. The hearings outcome will determine whether the CJC will be given the opportunity to rectify their error of last year by deciding that Judge Ottinger has earned removal from office. That is unless Judge Ottinger takes the cowards way out by resigning before-hand with full pension benefits, or the CJC once again shirks its oversight obligation to protect the public from judges like Ottinger, by making another sweet-heart deal that allows her to avoid responsibility for her actions that are destructive to the social fabric of our society.

Hans Sherrer

(Endnotes on page 6)

Article Submission Guidelines

PLEASE READ CAREFULLY!

1. DO NOT SEND JUSTICE: DENIED ANY LEGAL WORK! Justice: Denied does not and cannot give legal advice.

2. COMMUNICATION WITH JUSTICE: DENIED ARE NOT PROTECTED BY ATTORNEY-CLIENT PRIVILEGE! Only tell Justice: Denied what you want the entire world to know.

3. Justice: Denied is ONLY concerned with publishing accounts of the wrongly convicted. PERIOD. As a volunteer organization with limited resources, mail unrelated to a wrongful conviction *can not be answered*.

4. Anyone may submit a case account of a wrongful conviction for consideration by Justice: Denied. However your account should be no more than 3,000 words in length. Short accounts are more likely to attract people to your story. A typed account is best, but not necessary. If you hand write your account, *make sure it is legible* and that there are at least 1/2" margins to the edge of the paper. First impressions are important, so it is to your advantage to pay attention to the following guidelines when you write the account that you submit to Justice: Denied.

Take your reader into your story step by step in the order it happened. Provide dates, names, times, and the location of events. Be clear. Write your story with a beginning, middle and end. Tell exactly what facts point to your innocence, and include crucial mistakes the defense lawyers made. Do not soft-pedal the truth: Explain what the judge or jury relied on to convict you.

However, don't treat your story as a "true confession" and **only include information either in the public record or that the prosecutor already has.** Do not repeat yourself. Remember: the people reading your account know nothing about your case except what you tell them. Do not complain about the system or the injustice you have experienced: let the facts speak for you. At the end tell what the present status of the case is, and provide your complete mailing address. Include the name and contact info for the person you want listed as an outside contact. Also provide Justice: Denied with the name and email address and/or phone number of any independent sources necessary to verify the account or who can clarify questions. This can speed acceptance of your story, since if Justice: Denied needs more information, it can readily be requested.

Among the basic elements a story should include are: **Who** was the victim, who witnessed the crime, and who was charged?

What happened to the victim. What is the alibi of the person the story is about and who can corroborate that alibi? What was the person charged with? What was the prosecution's theory of the crime? What evidence did the prosecution rely on to convict you? **Where** did the crime happen (address or neighborhood, city and state).

When did the crime happen (time, day and year), and when was the person charged, convicted and sentenced (month/yr).

How did the wrong person become implicated as the crime's perpetrator?

Why did the wrong person become implicated as the crime's perpetrator?

The following is a short fictional account that has the elements that should be included in a story.

Mix-Up in Identities Leads to Robbery Conviction

By Jimm Parzuze

At 5p.m. on July 3, 2003, a convenience store on 673 West Belmont Street in Anytown, Anystate was robbed of \$87 by a lone robber who handed the clerk a note. The robber didn't wear a mask, brandish a weapon, or say anything. The clerk was not harmed.

My name is Jimm Parzuze and on July 17, 2003 I was arrested at my apartment on the eastside of town, about nine miles from the scene of the robbery. It was the first time I had been arrested. The police said that someone called the "crime hot-line" with the tip that I "sort of looked like the man" in a composite drawing of the robber posted in a public building. The drawing had been made by a sketch artist from the clerk's description of the robber. I protested my innocence. But I was ignored because I told the police I had been alone in my apartment at the time of the robbery. I was certain of my whereabouts because it had been the day before the 4th of July when I went to a family picnic.

After the clerk identified me in a line-up, I was indicted for the robbery. My trial was in November 2003. The prosecution's case relied on the clerk's testimony that I was "the robber." On cross-examination my lawyer asked the clerk why the drawing didn't show an unmistakable 3" long and 1/8" wide scar that I have on my left cheek from a car accident. The clerk said the right side of the robber's face was turned to him, so he didn't see the left side. My lawyer, a public defender, asked the clerk that if that was the case, then how could the police drawing show details on both sides of the robbers face - including a dimple in his left cheek - but not the much more noticeable scar? The clerk responded the drawing was based on the robber's image burned into his memory and it was the truth of what he saw.

I testified that I had never robbed any person or store, that I was at home at the time of the robbery, and that I was obviously not the man depicted in the police drawing.

In his closing argument my lawyer said that although I generally fit the physical description of the robber, so did probably 10,000 other people in the city, many of who had convictions for robbery and lived in the area of the robbery. He also argued that the clerk's explanation didn't make any sense of why he identified me, when unlike the robber he described to the police, I have a long, deep, and wide scar across my left cheek.

However the jury bought the prosecution's case and I was convicted. In December 2003 I was sentenced to eight years in prison.

My lawyer had submitted a pre-trial discovery request for the store's surveillance tape to prove I had been mistakenly identified, but the prosecutor told the judge it couldn't be located.

I lost my direct appeal. The appeals court said there was no substantive reason to doubt the clerk's ID of me. A private investigator is needed to search for possible witnesses to the robbery who could clear me,

and to try and locate the "missing" surveillance tape. If you think you can help me, I can be written at,

Jimm Parzuze #zzzzzzz

Any Prison

Anytown, Anystate

My sister Emily is my outside contact.

Email her at, Aaaa@bbbb.com

You can also read an issue of the magazine for examples of how actual case accounts have been written. A sample copy is available for \$3. Write: Justice Denied, PO Box 68911, Seattle, WA 98168.

Justice: Denied reserves the right to edit a submitted account for any reason. Most commonly those reasons are repetition, objectionable language, extraneous information, poor sentence structure, misspellings, etc. The author grants Justice: Denied the no fee right to publish the story in the magazine, and post it on Justice: Denied's website in perpetuity.

5. All accounts submitted to Justice: Denied must pass a review process. Your account will only be accepted if Justice: Denied's reviewers are convinced you make a credible case for being innocent. Accounts are published at Justice: Denied's discretion. If your account is published in Justice: Denied, you can hope it attracts the attention of the media, activists, and/or legal aid that can help you win exoneration.

6. Mail your account to: Justice Denied, PO Box 68911, Seattle, WA 98168 Or email it to: jdstory@justicedenied.org

Justice: Denied is committed to exposing the injustice of wrongful convictions, and *JD's* staff stands with you if you are innocent, or if you are the Champion of an innocent person.

Justice: Denied Disclaimer

Justice: Denied provides a forum for people who can make a credible claim of innocence, but who are not yet exonerated, to publicize their plight. *Justice: Denied* strives to provide sufficient information so that the reader can make a general assessment about a person's claim of innocence. However unless specifically stated, *Justice: Denied* does not take a position concerning a person's claim of innocence.

JD Editorial endnotes continued from page 3:

¹ In Re the Matter of Mary Ann Ottinger, No. 4475-F-119, Comm. Judicial Conduct, June 14, 2005, p.1.

² In Re the Matter of Mary Ann Ottinger, No. 3811-F-110, Comm. Judicial Conduct, June 18, 2004, p.3, II., b.

³ *Id.* at, 4, II., e.

⁴ *Id.* at, 4, II., g. (emphasis added)

⁵ *Id.* at, 5, III., 4.

⁶ *Id.* at, 5, II., 4. (emphasis added)

⁷ In Re the Matter of Mary Ann Ottinger, No. 4475-F-119, supra at, 2, II.A.

⁸ *Id.* at, 2-3, II.B. (emphasis added)

⁹ In Re the Matter of Mary Ann Ottinger, No. 3811-F-110, supra at, 2, I., A. 3.

Freeing The Innocent

A Handbook for the Wrongfully Convicted By Michael and Becky Pardue

Self-help manual jam packed with hands-on - 'You Too Can Do It' - advice explaining how Michael Pardue was freed in 2001 after 28 years of wrongful imprisonment. Soft-cover. Send \$15 (check, money order, or stamps) to: Justice Denied - FTI, PO Box 68911, Seattle, WA 98168. (See Order Form on p. 27)

"I congratulate you on your marvellous book *Freeing the Innocent*."

P. Wilson, Professor of Criminology, Bond University