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 innocent 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.

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.

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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."

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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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.

Spriko'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