

Louisiana Makes First Wrongful Conviction Award of \$150k To Gene Bibbins

By JD Staff

On July 12, 2005, Louisiana became the 20th state in the U.S. to enact a wrongful conviction compensation statute. That law H.B.663 (Innocence Compensation Fund), provides a maximum award of \$15,000 per year for up to 10 years imprisonment to a person whose conviction has been reversed or vacated, and who can prove by "clear and convincing" evidence that he or she is "factually innocent" of the crime. The law also provides for the payment of training, education tuition, and counseling. Prior to passage of the law Louisiana would provide \$10 and a bus ticket "home" to an exonerated person as they left a state prison.

In February 2006 Gene Bibbins became the first person in Louisiana awarded compen-

sation under the new law. State District Judge Timothy Kelly ruled that the DNA evidence excluding him as the assailant of the woman he had been convicted of raping met the law's requirement that he prove his factual innocence by clear and convincing evidence.

Bibbins' innocence of raping a 13-year-old girl in 1986 had been established when DNA testing unavailable at the time of his 1987 trial excluded him as her assailant. Bibbins was released on \$5,000 bond in December 2002. His conviction was reversed and his sentence was vacated on March 7, 2003.

The girl had testified at Bibbins' trial that he was the man who crawled through her bedroom window and held a knife to her throat while raping her. Bibbins was found to be in possession of a radio stolen from the girl's room. Based on the girl's eyewitness testimony, the jury didn't believe his claim that he found the radio discarded on the street. The exclusionary DNA test indirectly established that he had been as truthful

about finding the radio as he had been in denying raping the girl.

Since Bibbins had been wrongly imprisoned for 16 years, Judge Kelley ruled he was entitled to the statutory maximum of \$150,000. The judge also said Bibbins should receive the educational benefits and job training provided for in the statute. However, he couldn't order it because the statute's language is vague as to whether those benefits are to be provided in addition to the monetary award, or if they are to be paid by deducting their cost from the \$150,000.

A catch to Bibbins' collection of the award is that there is no money in the Innocence Compensation Fund. Before he can be paid, state legislators will have to appropriate money for the compensation fund.

Sources:

Judge Rules Innocent Man Due Money For 17 Years in Prison, *The Advocate*, Baton Rouge, February 7, 2006.

DNA Tests Free Convicted Rapist, AP Story, *CBS News*, December 6, 2002.



In March 1986 Steven Avery was convicted of raping a woman also severely beaten on July 29, 1985, on a Lake Michigan beach in Manitowoc County, Wisconsin.

Steven Avery Settles Wrongful Imprisonment Suit For \$400k

By JD Staff

To obtain Avery's conviction, the prosecution depended on the jury's acceptance of the believability of two key witnesses. One was a crime lab analyst, who after a microscopic examination of a hair recovered from

the crime scene, determined it was "consistent" with Avery's hair. The other was the lone eyewitness identifying Avery as the woman's assailant.

source of the hair. Later that day the judge granted the Manitowoc County District Attorney's motion to dismiss the charges. Avery was released the next day after 18 years imprisonment. While he had been imprisoned his wife divorced him and his five children had all grown to adulthood.

The Wisconsin Innocence Project at the University of Wisconsin Law School provided key assistance to Avery in having the exonerating DNA tests conducted.

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but if honestly investigated by state or federal law enforcement authorities could have grave criminal consequences for him.

McEachern lost re-election in March 2004 after 14 years as the district attorney for Swisher, Hale and Castro counties. He is now in private practice in Plainview, Texas.

The Bar's action against McEachern resolves the legal actions thus far initiated as fall-out from the Tulia cases, unless Coleman's appeal of his perjury conviction is successful,

Although the prosecution had the two key witnesses, the jury couldn't have decided Avery was guilty beyond a reasonable doubt unless it disbelieved each one of his 16 alibi witnesses. Each of those witnesses placed him over 40 miles away in Green Bay throughout the day of the attack. Those witnesses included a cement contractor, friends, family members, and even clerks at a Shopko store where Avery was buying paint at the approximate time of the attack. He was accompanied at the Shopko by his wife and five children, and the sale was corroborated with a receipt.

Avery's conviction was affirmed by the state appeals courts.

The same DNA tests that excluded Avery indicated that Gregory Allen, imprisoned for a 1995 sexual assault, was the woman's actual assailant. It later came to light that for two weeks prior to the woman's July 1985 assault the Manitowoc police had been suspicious enough of Allen to have tailed him.

After his release Avery filed a \$36 million federal civil rights lawsuit naming as defendants: Manitowoc County, former sheriff Tom Kocourek and former district attorney Denis Vogel.

Endnotes and source:

1 Disciplinary Actions, *Texas Bar Journal*, September 2005, 758-9.

2 *Id.* at 758.

3 Telephone conversation between Hans Sherrer and a spokesperson with the Chief Disciplinary Counsel's Office on March 8, 2006.

4 Disciplinary Actions, *supra.* at 758.

5 *Id.* at 758.

For background information see, Travesty in Tulia, Texas, *Justice Denied*, Issue 23, Winter 2004, page 3, and sources cited therein.



In April 2002, after Avery had languished in prison for almost two decades, he relied on a post-conviction DNA testing statute to obtain a court order for the DNA testing of a pubic hair recovered from the victim immediately after the attack. Seventeen months later, on September 10, 2003, the final test results were released: Avery was excluded as a

In February 2006, Avery and the defendant's agreed to settle the suit for \$400,000. The settlement was to be paid by the county's insurance carriers. Avery was designated to receive 60%, \$240,000, with the remaining going to pay attorney fees and expenses.

Source:

Avery Settles Suit Over Jailing, Tom Kertscher, *Milwaukee Journal Sentinel*, February 14, 2006.

