$3 Million Wenatchee "Sex Ring" Award Tossed By WA Supreme Court

By Hans Sherrer

In the spring of 1995 Honnah Sims, her husband, and their 13-year-old son Daniel lived in the small north central Washington city of Wenatchee. She was a Sunday school teacher at the East Wenatchee church that became known nationwide as the center of an alleged child "sex ring" that ultimately resulted in the arrest of forty-four adults in 1994 and 1995 on 29,726 charges of sexually abusing 60 children.

During 1994 and through the Spring of 1995 Sims saw many of her fellow church members arrested and their children taken into the custody of the Washington State Department of Social and Health Services (DSHS) for placement in a foster home. After learning in April 1995 that she was accused in police reports of abusing children, Sims feared that her arrest was imminent. In order to protect their son Daniel from being seized and placed in a foster home by DSHS, Sims and her husband sent Daniel to live with a grandparent in Kansas. To prevent DSHS from trying to extradite Daniel back to Washington, they legally relinquished his guardianship to that grandparent.

Sims was arrested on May 22, 1995, after she was indicted on six counts of raping and molesting two children. Neither of those children were hers, Two months later a jury acquitted Sims of all the charges.

In November 1995 the family thought it was safe for Daniel to return home. He had been separated from his mother and father for seven months.

Sims Sues

After her acquittal, the Sims family and several other exonerated Wenatchee parents and their minor children filed suit in King County Superior Court (Seattle) against the City of Wenatchee, Douglas County and several other defendants. Among other claims, the defendants were alleged to have engaged in negligent investigation and negligent supervision.

The trial court dismissed the negligent investigation and negligent supervision claims and removed some of the defendants from the suit. The jury returned a verdict for the defendants on the remaining claims. Sims and the other plaintiffs appealed the two dismissed claims, which were allegations that would result in significant financial liability for the defendants.

The Washington Court of Appeals reversed the dismissal of the negligent investigation claim. The Court ruled that "negligent investigation of child abuse allegations by law enforcement" was a basis for civil liability. [1] The state Supreme Court declined to review the decision. With the case sent back for trial, there was a change of venue to Spokane County Superior Court (280 miles east of Seattle).

Sims Wins At Trial

After a trial, the jury determined Douglas County had engaged in a negligent investigation and awarded $2,000,000 to Sims, $1,000,000 to her husband, and nothing to their son Daniel.

Douglas County appealed. In their briefs they argued for the first time in the case, that at that point had gone on for more than five years, that the Simses had no cause of action because the statute under which they sued, 26.44 RCW, could only implicate liability "when DSHS conducts a biased or faulty investigation that leads to a harmful placement decision." [2] Douglas County argued they had no liability because they had not investigated possible abuse of Daniel by his parents, and the Simses proactive action of sending Daniel to live with a grandparent in Kansas had eliminated the possibility of a possible "harmful placement decision."

In 2004 the Washington Court of Appeals agreed with Douglas County, ruling that the Simses had no cause of action because "their child was not the subject of a negligent criminal investigation that led to a harmful placement decision." [3]

WA Sup. Ct. Rules Against Sims

The Simses appealed to the Washington Supreme Court, arguing that the Appeals Court committed error on two points: the law of the case making Douglas County liable had been determined by the Appeals Court decision in 2000; and, the county raised an issue on appeal not raised in the trial court.

On December 1, 2005 the Supreme Court decided in favor of Douglas County by a 5 to 3 vote.

The Court's decision tied the Simses two arguments together. In regards to the Simses argument about the 'law of the case,' the Court ruled that the 2000 Appeals Court ruling sending the Simses case back for trial was trumped by a state Supreme Court decision in 2003, *M.W. v. Dep't of Soc. & Health Servs*. That decision held DSHS is only liable under 26.44 RCW when it "conducts a biased or faulty investigation that leads to a harmful placement decision." [4] The Court rejected the Simses argument that since they had good reason to believe their son's removal by DHSH was imminent, their preemptive move of him to safety in Kansas was "tantamount to 'constructive removal' of him from their custody by the State. [5]

The Court ruled against the Simses other argument by relying on the same 2003 case. Since the Simses removed Daniel from the reach of the DSHS "through their voluntary acts," they had prevented themselves from suffering from his seizure based on "a harmful placement decision." [6] Thus, they had no cause of action under 26.44 RCW.

In his dissent, Justice Richard B. Sanders pointed out the Hobson's choice the Court's decision would force parents into making:

> The majority's holding forces innocent parents negligently investigated for child abuse to choose between forfeiting their beloved children to the state or forfeiting their claims under chapter 26.44 RCW. Presenting parents with such a choice contravenes the statutory aim of preserving the integrity of the family. [7]

So more than ten years after Honnah Sims was wrongly accused of the heinous crime of child rape, acquitted of those charges, and separated from her son for many months because of her baseless prosecution, her family has not been compensated in any way for the ordeal they were subjected to by local and state government agencies.

Postscript

Ultimately, nineteen of the adults arrested in the Wenatchee "sex ring" cases were convicted, and nine were acquitted or had their charges dismissed prior to trial. The information disclosed during the trials of the acquitted defendants and the appeals of those who were convicted creates serious doubt that any of the alleged abuse actually took place. All the evidence points to a Wenatchee detective's reliance on insubstantial allegations of child abuse to begin an investigation that was allowed to spin out of control due to inadequate oversight by police supervisors, DSHS agents, and prosecutors who uncritically accepted fantastic claims that over a long period of time many dozens of adults had routinely raped many dozens of children

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Wrongful Conviction Lawyer Cleared After Criticizing Judges

By JD Staff

Jerome Kennedy is a prominent Canadian lawyer and director of the Toronto based Association in Defence of the Wrongly Convicted (AIDWYC). Kennedy was a key person in the exoneration of Gregory Parsons and Ronald Dalton. Parsons' 1994 conviction of murdering his mother was quashed in 1998 when DNA evidence proved his innocence. Dalton's conviction of murdering his wife was quashed in 1998 when forensic medical evidence established that she had not been strangled, but had died from choking on a piece of food. He was acquitted after a retrial in 2000.

In July 2003, Kennedy made a speech in which he explained judges who "don't know what they are doing" are an overlooked cause of wrongful convictions. Kennedy also explained that many judges have "intentional or unintentional biases" toward a defendant that aids the prosecution. He also explained that using judgeships as a form of political patronage contributed to the problem. In addition, Kennedy expressed frustration that a public inquiry into three wrongful murder convictions in Newfoundland was not looking into the role of the judges involved as a contributory cause of the injustices.

Kennedy's activism on behalf of the wrongly convicted had for years been an embarrassment to the Canadian legal system. His speech raising questions about the integrity of Canada's judiciary provided an opportunity for those who didn't appreciate his idealism to put him on the carpet.

Newfoundland Supreme Court Chief Justice Derek Green promptly filed a complaint with the Law Society of Newfoundland and Labrador (U.S. equivalent of the bar association), alleging that Kennedy's comments could undermine the public's confidence in the impartiality of judges. The Law Society responded to the complaint by charging Kennedy with bringing the administration of justice into disrepute.

An adjudication panel began a public hearing in January 2005. It was, however, suspended when one of its ruling was appealed to the Courts.

Eleven months later Kennedy and Chief Justice Greene resolved the dispute by agreeing to a compromise. Kennedy wrote a letter to the Chief Justice in which he said he had "respect for the court" although it is "subject to fallibility in specific cases." Chief Justice Greene then wrote to the Law Society that he was satisfied, "Mr. Kennedy recognizes the importance of the court as an institution and has not intended to attack it as such." The Law Society formally dismissed the complaint on December 9, 2005.

After the complaint was dropped, James Lockyer, a prominent Toronto lawyer who has aided many innocent people, said it is an "obvious fact" that a judge can cause a wrongful conviction. Lockyer added, "Every player in the system, from witness to defence to Crown to police to judge, can all separately and independently be a cause of a wrongful conviction."

One consequence of the complaint against Kennedy is that it opened up a national debate about the use of judgeships as a form of political patronage. Hearings held in late 2005 by a House of Commons justice subcommittee heard testimony that condemned the political nature of selecting judges in much stronger terms than Kennedy had used in 2003.

Sources:
Newfoundland Lawyer Cleared of Charge, Richard Blackwell, *The Globe and Mail*, December 13, 2005.
Wrongful Conviction Lawyer In Hot Water For Criticizing Judges "who don't know what they are doing,, *Justice:Denied*, Issue 27, Winter 2005, p. 23.

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in an elaborate "sex ring." Based on the information that has surfaced, and is continuing to surface in the civil suits that are still ongoing, all of the Wenatchee defendants were wrongly convicted.

The forty-four adults arrested in the "sex-ring" cases were cumulatively jailed and imprisoned for more than 60 years.

Endnotes and sources:
1 *Roberson v. Perez*, No. 75486-1 (Wash. 12-01-2005); 2005.WA.0001815 ¶ 29 <http://www.versuslaw.com>. See also, *Rodriguez v. Perez*, 99 Wn. App. 439, 451-452, 994 P.2d 874 (2000))
2 *Roberson v. Perez*, No. 75486-1, ¶ 36 <http://www.versuslaw.com>.
3 *Roberson v. Perez*, 119 Wn. App. 928, 934, 83 P.3d 1026 (2004).
4 *M.W. v. Dep't of Soc. & Health Servs.*, 149 Wn.2d 589, 591; 70 P.3d 954 (2003)
5 *Roberson v. Perez*, No. 75486-1, ¶ 63 <http://www.versuslaw.com>.
6 *Id.* at ¶ 67.
7 *Id.* at ¶ 86. J. Sanders dissenting.

Additional source: $20 Million Wenatchee "Sex-Ring" Suit Back On Track, *Justice:Denied*, Issue 29, Summer 2005, p. 12.

Canadian Supreme Court Tosses "Bawdy House" Convictions

By JD Staff

On December 21, 2005, the Supreme Court of Canada quashed the convictions of two men convicted in separate cases of keeping a "bawdy house." By a 7-2 vote, the Court ruled in *R. v. Kouri* and *R. v. Labaye* (12/21/2005) that the test for an indecent act is it must be shown to "interfere with the proper functioning of society." and not simply that it might be contrary to community standards.

The defendants in the cases were James Kouri and Jean-Paul Labaye. The two men owned different swinger clubs in Montreal that allowed private sex acts, including swapping.

Kouri owned Coeur a Corps, and he had been fined $7,500 (Canadian) after being convicted of two counts of keeping a common bawdy house. Labaye owned L'Orage, a members-only club, and he was fined $2,500 (Canadian) after being convicted of one count of keeping a bawdy house.

The Court distinguished public sex acts that could be construed to be indecent because of their tendency to "interfere with the proper functioning of society," and the private acts allowed in the two private clubs that didn't harm the public.

In its ruling, the Court majority rejected the argument of the two dissenters that the standard of indecency for public acts should also apply to acts performed in private.

Separate Court of Appeal panels had sustained Labaye's conviction, and overturned Kouri's convictions. So the Supreme Court's ruling quashed both men's conviction by affirming the appeals court's *Kouri* decision, and reversing the *Labaye* decision.

Sources:
R. v. Kouri and *R. v. Labaye*, December 21, 2005, Supreme Court of Canada.
Swingers clubs don't harm society, top court rules, *CBC News*, December 21, 2005.

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