



Chief Leschi
(Washington Historical Society)

Chief Leschi Exonerated of Murder — 146 Years After His Execution

by Hans Sherrer

Thirty-four years before the Washington Territory became the State of Washington, the Nisqually Indian Nation and white

settlers in the Puget Sound area were engaged in what became known as the Indian War of 1855-56. The territorial government precipitated the war after members of the Nisqually Tribe refused to agree to a land cession treaty that would have created a 900 acre reservation in western Washington for the tribe.

On October 31, 1855 a firefight occurred east of present day Tacoma between the territorial militia and members of the Nisqually Tribe. During that skirmish, volunteer militiaman Colonel Abrams Moses was shot and killed.

Territorial Governor Isaac Stevens blamed Nisqually Chief Leschi for Moses'

Nisqually during the war. However Gov. Stevens didn't think the territorial government was bound by the Army's agreement. On November 16, 1856, three days after his arrest, Leschi was put on trial for Moses' "murder" in the federal territorial court.

The prosecution's case rested on one eyewitness — Antonio Rabbeson — who claimed Leschi was present when Moses was shot. However Leschi claimed he wasn't involved in the skirmish during which Moses was killed, and his counsel vigorously attacked Rabbeson's credibility. One distinct irregularity was Rabbeson chaired the grand jury that indicted Leschi for capital murder. The trial ended in a hung jury because two jurors held out for Leschi's acquittal. One of those jurors, Ezra Meeker, stated that Rabbeson was "obviously lying."¹

Leschi was convicted of murder and sentenced to death after a retrial in March

"murder," and ordered his arrest. More than a year later, Leschi surrendered after being assured by the Army that he wouldn't be prosecuted for acts committed by the

1857. The territorial Supreme Court affirmed his conviction after refusing to consider new evidence: an Army map indicated Leschi was miles away from the scene of Moses' death. In its decision, the Court wrote that Leschi was the "leader of the Indian forces that "cruelly waged" war on settlers, "sacrificing citizens" in the Puget Sound region."² The Court's decision exhibited passion and prejudice against Leschi, who was the chief of the Nisqually Tribe that reacted hostilely to being displaced from their lands by white settlers.

Leschi was hanged on February 19, 1858, outside of Fort Steilacoom, south of present day Tacoma. The Army refused to participate on the grounds that Moses was a casualty of war, and had not been murdered. At the time many people, including his executioner, believed Leschi was innocent. Charles Grainger, his hangman later said, "I felt then I was hanging an innocent man, and I believe it yet."³

Since the time of his conviction and execution, the Nisqually have considered that Chief Leschi was unfairly prosecuted for Moses' death. Beginning in 2002, members

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- NSW, 1980. Douglas Harry Rendall was convicted of murder. Rendall served nine years before a judicial inquiry into his conviction concluded he was innocent. Rendall was released from prison and granted an unconditional pardon.
- Northern Territory, 1982. Lindy Chamberlain was convicted of murder. Served four years before a Royal Commission of Inquiry headed by Mr Justice Trevor Morling concluded she was innocent. Lindy Chamberlain was released from prison, compensated for wrongful imprisonment and granted an unconditional pardon.
- Queensland, 1983. Barry Mannix was accused of murdering his father at Surfers Paradise. After allegations Queensland police fabricated Mannix's confession to the murder, three other men were arrested and confessed to the crime. Barry Mannix was immediately released from prison.
- Queensland, 1984. Kelvin Condren was convicted of murder. He served six years before the High Court of Australia and the Queensland Court of Criminal Appeal cast serious doubts on the conviction and his alleged confession. After examining the evidence, Queensland Attorney-General Deane Wells recommended

Condren's release from prison. Condren was set free in 1990.

- NSW, 1990. Roger Graham Bawden, surrendered himself to Queanbeyan police and confessed to a murder he committed in 1973. Another man, Johann Ernst Siegfried (Ziggy) Pohl, had been convicted of the murder and had already served over ten years in prison. The murder of Kum Yee "Joyce" Pohl at Queanbeyan became the subject of a special judicial inquiry which cleared Ziggy Pohl of the murder. Pohl was freed from prison and granted an unconditional pardon.

The wrongful imprisonment of an innocent person is a grave miscarriage of justice. But the execution of an innocent person is an irrevocable miscarriage of justice. There is no reprieve from the grave.

In February 1955, British Home Secretary Chuter Ede revealed the weight of that responsibility when he addressed the House of Commons on the death penalty in the Timothy Evans case:

I was the Home Secretary who wrote on Evans' papers "the law must take its course."

I think that the Evans case shows, in

spite of all that has been done since, that a mistake was possible and in the form of which a verdict was given in a particular case, a mistake was made.

I hope no future Home Secretary, in office or after he has left office, will ever have to feel that - although he did his best, although none would wish to accuse him of being either careless or inefficient — in fact he sent a man who was not guilty, as charged, to the gallows.

Reprinted and edited with permission of the author. Bernie Matthews is a convicted bank robber and prison escapee who has served time for armed robbery and prison escapes in Australia — New South Wales (1969-1980) and Queensland (1996-2000). During his periods of incarceration he studied journalism and received scholarships to study as an external student at the University of Southern Queensland. He is now a journalist.

The unedited version of *The Hangman And The Electric Chair - Part I* (July 28, 2005), and *Part II* (July 29, 2005) is available at,

<http://www.onlineopinion.com.au>



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of the Nisqually Tribe, including some of Leschi's descendants, began a concerted campaign to clear his name. The effort paid off in 2004 when both the Washington State House and Senate passed resolutions recommending that the State Supreme Court conduct an extraordinary review of Leschi's conviction. Although Chief Justice Gerry Alexander declined to have the Supreme Court review the conviction, he was instrumental in organizing a Historical Court of Inquiry and Justice to retry Leschi in absentia.

Chief Leschi's Retrial

The trial was arranged to be held on December 10, 2004, in a make-shift courtroom seating about 200 people in the basement of the Washington State Historical Society in Tacoma. Seven judges were selected to sit in judgment of the case — six state judges that included Chief Justice Alexander, and a judge representing the Nisqually Tribe. Alexander said before the trial, "This really is uncharted territory. It's got real challenges and greater difficulty." ⁴ Indicative of the trial's uncharted territory, is it was a hybrid adversarial proceeding, combining elements of both a trial and an appellate review.

Chief Leschi's retrial attracted national attention. *The New York Times* was among the newspapers that published a story about the controversy surrounding Leschi's conviction and execution.

Several current prosecutors, led by Carl Hultman, represented the territorial government. A team of lawyers, led by John Ladenburg, represented Leschi in absentia.

The prosecution did not present any witnesses. Their case was based on the legal record, and that "the territorial justice system was thorough and professional, strictly adhering to the rules of law." Consequently it was argued Leschi's conviction was soundly based on what the trial court and the Territorial Supreme Court agreed was relevant and incriminating evidence.

The defense countered with 11 witnesses who focused on establishing three points: That Leschi wasn't at the scene of Moses' death; that Rabbeson's testimony was unreliable; and that the Nisqually and the Washington Territorial government were at war, and thus under



Cynthia Iyall, a descendant of Chief Leschi, who helped lead a two-year effort to reopen his murder case, at his grave in Tacoma, Washington. (Annie Marie Musselman/*The New York Times*)

the "law of war" Moses' death was not a murder by whoever killed him, but an unfortunate consequence of the conflict.

After more than three hours of testimony and presentation of evidence, the prosecution and defense made their closing arguments.

Prosecutor Hultman passionately and methodically argued the State's position that the Court should be bound by the regular rules of appellate procedure, and not consider any evidence that wasn't in the trial record. He asserted that under the appellate standard of viewing the evidence in the light most favorable to the prosecution, the Court should defer to the jury's guilty verdict in 1857 that was affirmed by the Territorial Supreme Court.

Defense counsel Ladenburg countered that the verdict was fatally flawed in light of the evidence of Leschi's innocence that wasn't considered by the jury, and the failure of the jurors or the Supreme Court to consider that Moses' death could not be considered a murder under the state of war that existed between the Nisqually and the territorial government. Ladenburg argued that irrespective of the compelling evidence of his innocence, it is reasonably probable that the failure of Leschi's lawyer to request an "enemy combatant" instruction affected the outcome, and thus constituted reversible error. Ladenburg contended that since Leschi was deprived of due process by ineffective assistance of counsel, his trial was constitutionally defective. It was also noted by Ladenburg during his closing argument that another Nisqually prosecuted and convicted of murdering a combatant during the war was pardoned prior to his scheduled execution. Ladenburg closed by telling the judges, "We cannot bring Leschi back to life, and we cannot restore Leschi to his land. We can, we must, restore his good name." He continued, "The only fair and just result for a historical court is to correct the historical record of our state and declare Leschi exonerated." ⁵

Court's Verdict

After the closing arguments the Court recessed to consider its verdict. When the Court reconvened, Chief Justice Alexander first announced that the seven judge panel unanimously agreed to the answers to two interlocutory questions posed by the prosecution or defense: The Court's deci-

sion had historical significance; and, a state of war existed between the Washington Territorial government and the sovereign Nisqually Nation at the time of Moses' death on October 31, 1855.

Justice Alexander then announced the Court's decision that was based on all evidence relevant to determining Leschi's guilt or innocence — irrespective of whether it was within or beyond the bounds of the trial record. The judges unanimously decided that regardless of who shot Moses, "The killing was a legitimate act of war, immune from prosecution." ⁶ Consequently, Leschi was declared "exonerated" of Abrams Moses' death.

Thus, even though there was significant and compelling evidence that Leschi was not present at the scene of Moses' death, as judges are apt to do, the seven member court took the shortest route to reaching its decision by deciding that irrespective of his whereabouts, he had been charged, prosecuted, convicted and executed for a non-existent crime.

One of the judges that exonerated Chief Leschi, Thurston County Superior Court Judge Daniel Berschauer, observed, "Even though this decision has no legal consequence, it clearly has a historical consequence." One of those consequences is that as many as 500 Washington State history books may be amended by various means to reflect the Court's decision.

Cynthia Iyall, a descendant of Chief Leschi's sister and chairwoman of the Committee to Exonerate Chief Leschi said after the verdict, "I'm just happy; this is really about the future. This is for all the kids: they need to know who that man was and what truthfully happened to him."

Although Chief Leschi is currently remembered in the Puget Sound region, with a school, a park and a Seattle neighborhood named after him, Dorian Sanchez, chairperson of the Nisqually Tribe, noted, "Now the world can know him as we know him, "warrior, leader, hero and innocent." ⁷

Another historical aspect of Chief Leschi's case is that he was the first person sentenced to capital punishment and executed in the Washington Territory that became the State of Washington — and he is now exonerated.

Since the precedent of a Historical Court of Inquiry and Justice has been established, it may now be possible that other miscarriages of justice in Washington state may be

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Wrongly Imprisoned Man Won't Shut Up About It

JOLIET, IL—George Howard Buell, an inmate wrongfully imprisoned at Stateville Correctional Center for third-degree sexual assault and aggravated battery, won't shut the hell up about being innocent.

Buell, 46, an Elmhurst, IL electrician, was convicted of raping and burglarizing his elderly neighbor in 1994, despite the fact that he was at work when the crime occurred. He was mistakenly sentenced to a prison term of 20 years to life. Since then, his imprisonment has been a source of nonstop bellyaching.

"I'm completely innocent of the charges brought against me," Buell said in yet another long-winded jailhouse statement last week. "I am a victim of inept police work, conflict-of-interest issues among the prosecution, and a lackadaisical defense. Anyone with even a peripheral familiarity with my case could see the inconsistencies. It's a complete miscarriage of justice."

Buell's insufferable tirades have taken the form of numerous appeals to state and federal courts, unsuccessful attempts to launch public

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reopened for review. The same procedure could be instituted in other states to rectify injustices that are outside the bounds of the regular legal system.

Prime cases for such review are the second-degree murder convictions of seven men under very dubious circumstances related to an Armistice Day fracas between pro-union and anti-union people in Centralia, Washington on November 11, 1919, that resulted in the deaths of four men, and the lynching of one man kidnapped from the county jail.⁸

End notes:

¹ Historical Court Clears Chief Leschi's Name, Gregory Roberts, *Seattle Post-Intelligencer*, p. B1, B4, December 11, 2004.

² Historical Court Clears Chief Leschi's Name, Gregory Roberts, *Seattle Post-Intelligencer*, p. B1, B4, December 11, 2004.

³ Indian Chief Hanged in 1858 is Cleared, AP, *The New York Times*, December 12, 2004.

⁴ Chief's Retrial, 146 Years in the Making, Sarah Kershaw, *The New York Times*, December 5, 2004.

⁵ Historical court clears Chief Leschi's name, By Gregory Roberts, *Seattle Post-Intelligencer*, December 11, 2004.

⁶ Historical Court Clears Chief Leschi's Name, Gregory Roberts, *Seattle Post-Intelligencer*, p. B1, B4, December 11, 2004.

⁷ Justice, 146 years later, By Rob Carson, *The News Tribune* (Tacoma, WA), December 11th, 2004.

⁸ One of the most complete accounts of this case is, *The Centralia Conspiracy* by Ralph Chaplan (1920).



petitions, and e-publishing a 400,000-word autobiography titled *Won't Someone Please Hear My Anguished Plea?*

"Okay, I get it—he's innocent already," said Eric Holsapple, Buell's court-appointed attorney. "Like

I don't know that. I only toiled for, like, forever years making a case out of it. Every time I talk to him, I have to brace myself—okay, here comes the sob story, again."

After spending four years trying to capture the media's attention with the story of his innocence, the wrongfully imprisoned inmate began pestering the courts in 2001 for additional DNA testing or a declaration of a mistrial.

"I will take a lie-detector test. I will do anything. I don't belong in prison," the incessant motormouth said. "The security tape in the garage where I work shows me pulling into the lot at the time the crime took place. It wasn't admitted as evidence. That fact alone should be grounds for a mistrial."

Buell's cellmate, Bob Hannan, has heard the "in jail for a crime I didn't commit" song and dance "about a million times." Said Hannan: "The parking lot surveillance videotape, the horrible injustice. I've heard it all. A lot. I didn't like the way they handled my case either. But you don't hear me yammering about it all the time. It's called moving on."

The consortium of attorneys and social-justice activists who were unlucky enough to have been assigned the task of getting Buell and his big, wrongfully imprisoned mouth out of jail have gotten perhaps the biggest earful of his whining.

Darron and Eugene Buell speak to reporters after dragging themselves to yet another prison visit to hear their brother go on and on about his innocence.

Tania Schultz, a senior staff attorney at Northwestern University's Center On Wrongful Convictions, has worked on Buell's case for over two years. Although she is convinced that Buell is innocent, she is "fed up" with the subject.

"Even the unjustly incarcerated should do other things in prison, like lift weights, or knit," Schultz said. "Sadly, securing his freedom seems to be George's sole interest in life. He's obsessed with getting his life back."

Added Schultz: "All the time, it's 'free me'

this, 'free me' that. Me, me, me, me, me."

Buell's brother Darron, who visited the prisoner last Friday, reported afterward that Buell "did most of the talking. No prizes guessing what he was talking about," Darron added.

Buell's sob story will be heard by the Illinois State Supreme Court during its next term.

"I can't wait. Since being incarcerated, my innocence is all I have to cling to in this horrible, horrible place," said Buell, echoing comments that he has made to anyone who's had the misfortune of being in contact with him at any time during the past decade. "This goes beyond my worst nightmares of anything I could imagine ever happening to me, and I hope the justice system finally does something—anything—to free me from this living nightmare."

"I just wish he'd shut his trap about it," attorney Holsapple said. "I'm working on his appeal. That's more than most prisoners get. But is he satisfied? No. All he cares about is getting out of jail. I'm like, 'George, get a life.'"

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52 weekly issues of *The Onion* are \$39.95.

The Onion

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