

JUSTICE DENIED

\$3
Retail

The Magazine for the
Wrongly Convicted

ROLL CALL OF INNOCENT PEOPLE EXONERATED OR PARDONED IN 2006

SEE P. 36

Wrongful Conviction Hall of Honor Inaugural Inductees

- **Voltaire**
Father of the innocence campaign.
- **Max Hirschberg**
Wrongful conviction lawyer and author.
- **Edwin Borchard**
Compensation advocate and author.
- **Erle Stanley Gardner**
Founder of the Court of Last Report and author.
- **Alfred Hitchcock**
Director of movies about the wrongly accused.
- **David Janssen**
Millions watched *The Fugitive* weekly for years.
- **James McCloskey**
Founder of the U.S.' oldest innocence project.
- **Gareth Peirce**
Wrongful conviction lawyer and CCRC inspiration.
See page 20



Juan Catalan

Saved from a capital murder conviction by HBO video outtake filmed at L.A. Dodgers baseball game that corroborated his alibi. False imprisonment suit settled for \$320,000.
See page 11



Joseph Hazel

Released from St. Kitts' death row after appeals court ruled DNA evidence was insufficient to overcome his alibi.
See page 8

Lee Long

Sued attorney for malpractice for botching New York State compensation claim for six years wrongful imprisonment for rape. Settled suit for \$900,000.
See page 13



In This Issue

Henry Myron Roberts Exonerated Five Years After He Died In Prison!

Was Karlyn Eklof Framed For A Friend's Murder By Police And Prosecutors?

Fed. Appeals Court OKs Lawsuit Against Los Angeles County Prosecutors!

U.S. Supreme Court Tightens Filing Deadline For False Imprisonment Lawsuits!

Man Proclaims – "I am alive!" – After Woman Is Arrested For Murdering Him!

South Korean Awarded \$1.4 Million After Wrongful Spy Conviction!

**Issue 35
Winter 2007**

Justice:Denied - Issue 35, Winter 2007

Table of Contents

| | |
|--|----|
| Anatomy Of A Murder Frame-up – The Karlyn Eklof Story..... | 3 |
| Henry Myron Roberts – Eulogy For An Innocent Man..... | 4 |
| Peter Rose Settles Lawsuit For \$1 Million..... | 4 |
| Timothy Howard Dies After \$2.5 Million Compensation Award..... | 4 |
| <i>Murder and Injustice in a Small Town</i> by John Grisham – Review of the book..... | 6 |
| Non-fiction Books Related To Wrongful Convictions Published In 2006..... | 7 |
| DNA Ruled Insufficient To Support Capital Conviction – St. Kitts Man Released From Death Row..... | 8 |
| Post-Hypnotic Evidence Barred In Canada..... | 9 |
| \$1.4 Million Awarded Korean After Espionage Exoneration..... | 10 |
| \$320,000 Awarded Man Cleared Of Capital Murder By HBO Video Tape..... | 11 |
| John Spirko Update..... | 11 |
| Lee Long Awarded \$900,000 In Attorney Malpractice Suit For Botched Compensation Claim..... | 13 |
| “I’m not dead” — Man Proclaims After Nevada Woman Arrested For His Murder..... | 14 |
| Conviction Of Barking At Dogs Tossed..... | 14 |
| U.S. Supreme Court Restricts Time For Filing A False Imprisonment Federal Civil Rights Lawsuit..... | 15 |
| Darryl Hunt, The NAACP, And The Nature Of Evidence..... | 17 |
| Darryl Hunt Settles With City For \$1.65 Million..... | 17 |
| Stolen Cellphone Leads To Wrongful Robbery Conviction..... | 19 |
| Wrongful Conviction Hall of Honor..... | 20 |
| James McCloskey – Founder Of The Oldest Innocence Project In The U.S..... | 20 |
| Gareth Peirce – A One Of A Kind Lawyer..... | 21 |
| Erle Stanley Gardner – Passion For Justice Leads To Founding Of The World’s First Innocence Project..... | 23 |
| Alfred Hitchcock – Cinema’s Greatest Friend Of The Wrongly Accused..... | 24 |
| Edwin Borchard – Pioneer In Analyzing Wrongful Convictions And Advocate For Compensation..... | 24 |
| David Janssen – a.k.a. Dr. Richard Kimble a.k.a. The Fugitive..... | 25 |
| The Lost Days Of <i>The Fugitive</i> | 25 |
| Max Hirschberg – One Of The World’s Great Wrongful Conviction Lawyers..... | 27 |
| Pathology Of Criminal Justice..... | 28 |
| Voltaire – Father of the Innocence Campaign..... | 29 |
| Biased Judges Condemned Jean Calas..... | 30 |
| Roll Call Of Innocent People Exonerated Or Pardoned In 2006..... | 36 |
| <i>Justice:Denied’s</i> Bookshop..... | 37 |

Message From The Publisher

After germinating as an idea for several years, this issue includes the initial honorees selected for the Wrongful Conviction Hall of Honor (see p. 20). These eight people are not just deserving of public recognition for their accomplishments, but they provide a context to understand that wrongful convictions are a persistent ongoing problem in countries around the world.

Justice:Denied can only cover a fraction of the news stories related to wrongful convictions, so we have started a blog so visitors to *JD’s* website can learn about many of these stories that they would otherwise miss.

In February Central Missouri State University in Warrensburg, Missouri hosted a conference on Miscarriages of Justice: Current Perspectives. This wasn’t a back-slapping gathering, but an academic conference that featured over fifty first-class presentations related to wrongful convictions by experts from the U.S., Europe and even a woman who traveled from Hong Kong. I made a presentation on how non-precedential (and non-published) opinions contribute to miscarriages of justice, and the need to make all opinions precedential. CMSU Criminal Justice Professor Don Wallace did an amazing job of organizing and smoothly running the conference.

Justice:Denied published the first of two articles about Philip Workman’s case in March 2000. Even though the prosecution’s case the jury relied on to convict Workman of shooting a policeman in 1981 has been undermined by new evidence, neither the Tennessee Supreme Court nor the U.S. Supreme Court granted him a new trial. After 25 years on death row, Philip Workman was executed on May 9, 2007.

Hans Sherrer, Publisher
Justice:Denied - the magazine for the wrongly convicted
www.justicedenied.org – email: hsherrer@justicedenied.org

Justice: Denied’s logo represents the snake of evil and injustice climbing up on the scales of justice.



Information About *Justice:Denied*

Six issues of *Justice:Denied* magazine costs \$10 for prisoners and \$20 for all other people and organizations. Prisoners can pay with stamps and pre-stamped envelopes. A sample issue costs \$3. See order form on page 39. An information packet will be sent with requests that include a first-class stamp or a pre-stamped envelope. Write: Justice Denied, PO Box 68911, Seattle, WA 98168.

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

If you have an account of a wrongful conviction that you want to share, send a first-class stamp or a pre-stamped envelope with a request for an information packet to, Justice Denied, PO Box 68911, Seattle, WA 98168. Cases of wrongful conviction submitted in accordance with *Justice:Denied’s* guidelines will be reviewed for their suitability to be published. *Justice:Denied* reserves the right to edit all submitted accounts for any reason.

Justice:Denied is published at least four times yearly. *Justice:Denied* is a trade name of The Justice Institute, a 501(c)(3) non-profit organization. If you want to financially support the important work of publicizing wrongful convictions, tax deductible contributions can be made to:

The Justice Institute
 PO Box 68911
 Seattle, WA 98168

Credit card contributions can be made on *Justice:Denied’s* website,
www.justicedenied.org/donate.htm

Justice:Denied volunteers directly contributing to this issue:
 Karyse Phillips, Editor; Natalie Smith-Parra, Editor; Terri Smith, Mailing;
 Katha McDonald, Mailing; and Hans Sherrer.

James Salmu was reported missing after a pizza party at his Springfield, Oregon residence on March 21, 1993. He had taken in an indigent woman, Karlyn Eklof, and her three children, sharing expenses, since she had become homeless several months before. The party was to celebrate her new relationship with Jeffrey "Jethro" Tiner, a man she had met on a trip to her hometown, San Diego, a few weeks before. Salmu was invited, as were 20 or 30 other friends, one of whom, Al Hope, had sold Tiner a small handgun a few days before. The pizzas were made by John Distabile, who stayed around to help clean up. When Distabile and Tiner tried to bribe Salmu to leave his own house for the night, hostilities began building. At Eklof's request, Distabile took her children to his house for the night.

On Monday Salmu did not show up at his work. After a friend went to his house to check on him, he reported Salmu missing. The police questioned Eklof. Salmu's car was found parked at the local tavern where he had a woman friend. That's where Eklof reported he had gone.

Eklof goes to San Diego

Since Tiner was obliged to return to San Diego or face a parole violation, Eklof hoped to wait it out until he was gone before reporting what had happened. However, the police came with Salmu's landlord and Eklof was evicted. She felt she had no choice but to go with Tiner to San Diego, since she and her kids were homeless and he had her car.

Tiner stopped in Fresno where he regaled his brother Dave with his shooting of Salmu and other details of the crime. He also bragged to his brother about his "tough" new girlfriend, who he said had assisted him by using a plastic knife to stab Salmu 30 to 50 times.

After arriving in San Diego, Eklof slipped away to regularly telephone the police in

Karlyn Eklof's complete story is told in *Improper Submission: Records of a Wrongful Conviction* by Erma Armstrong. (Quality paperback, 381 pages, Tanglewood Hill Press, 2005). It can be ordered by sending \$10 postage paid (check, money order or stamps OK) to: Justice Denied, PO Box 68911, Seattle, WA 98168.

Or order it with a credit card from JD's online Bookshop at www.justicedenied.org/books.html

Anatomy Of A Murder Frame-up — The Karlyn Eklof Story

By Erma Armstrong

Springfield about her whereabouts, eventually asking for their help when she was severely beaten and robbed by Tiner of \$714 her grandparents had given her for an apartment. By the time Springfield detectives Steve Walker and Rick Lewis arrived two weeks later, she had been released from the hospital, bruised, battered, and with a shattered leg from a ritual abuse scene Tiner had sold her into. The detectives did nothing to help her, even though she had pleaded with Springfield Police Captain Jerry D. Smith in a phone call, "Just get me into a safe place, and I'll tell you what happened."

Eklof was afraid for the safety of family members to tell them the extent of her terror of Tiner and the extent of his abuse of her. She was also ashamed because she had introduced him to them as the "man of her dreams" when she first met him a couple of months before.

Eklof takes bus to Salt Lake City

Finally, leaving her older son in her mother's care, she escaped from Tiner by making her way back to Eugene with her two youngest children, ages five and three. She went to Distabile, thinking he would also want Tiner arrested. Instead he put her and her children on a bus to Denver, saying that he and Patrick Walsh, who had accompanied her on her trip to San Diego and introduced her to Tiner, "didn't want any attention drawn to this case."

Having no other friends or resources she went as far as Salt Lake City, where she could go no further because of pain in her back and neck. There, in the care of Catholic charities, she sought to gain assurance from Springfield police that she would not lose her children if she came forward with what she knew.

Detectives Walker and Lewis visited Eklof in Salt Lake City in January 1994. They promised her protection, even a trip to Hawaii, if she would come to Eugene to testify against Tiner, who was by then in prison in California for other crimes. They also asked her to write down in notebooks exactly what happened to Salmu. On April 27, 1994 Eklof and her two children were met by the detectives at Portland, Oregon's airport. Eklof gave her notebooks to Walker and Lewis upon her arrival, but they then "disappeared."

Eklof's interrogation

Eklof was taken to Springfield, and under the direction of Captain Smith, she was interrogated steadily for nine days, 8-10 hours each day. She was provided with food, baby-sitting, and a closely watched motel room. During the good times they assured her she was not a suspect and needed no attorney. During the bad times, Smith, whose scheme this interrogation was, tried dreams and hypnosis, to get a confession from her that matched Tiner's bragging to his brother. On the last day Smith had her lie back, and when she abruptly awoke, his body activity alarmed her. He shouted at her and yelled she was not to "embarrass this department" and he had her "apologize" to Lewis and Walker, who were somewhat baffled.¹

Shortly afterward, they began to tape a fourth video, after failing on three previous videos to get her to confess on camera that she had stabbed Salmu using the small plastic knife that she repeatedly told them she had picked up to try to keep Tiner from murdering her friend Salmu. Smith instructed her to repeat his fabrication of a possible scenario that had her stabbing Salmu — which she quickly retracted as Smith's story, not hers.

Eklof indicted for Salmu's murder

When Eklof was indicted of aggravated murder based on her recitation of Smith's stabbing scenario as an alleged "confession," Lane County District Attorney Fred Hugi laughed at her, "You're the small fish." Hugi knew he could not touch the "big" fish, Tiner, until he had finished serving a prison term in California. After stealing and wrecking a car in which his then girlfriend was paralyzed for life, Tiner fled the crash scene on foot. Tiner's imprisonment was just another episode in his history of violent conduct. He bragged that during a stretch in California's Folsom Prison he killed an alleged child molester with a screwdriver.

Twenty months after Salmu's disappearance, and after Eklof's indictment, mushroom pickers found his body draped over stones near the McKenzie River, east of Springfield. He was in a sleeping bag, with three severed fingers, a symbolic thing by Tiner, because he was obsessed with avenging child abuse, and he believed Salmu was a child molester.

Eklof's trial

Eklof's trial was in September 1995. Her co-defense counsel Jeffery T. Murdock referred positively to Eklof's character in his opening statement. Murdock thereby enabled the prosecution to bring in "bad act"

Eklof cont. on page 34

Henry Myron Roberts — Eulogy For An Innocent Man

By Douglas Scott Arey

Sixty-three year old Henry (Hank) Myron Roberts proclamations of his innocence fell on deaf ears when he was tried and convicted of second-degree murder in 1993. He was sentenced by the Baltimore City Circuit Court to 50 years in prison. He died in December 1996 while imprisoned.

More than five years later, in April 2002, Robert Tomczewski pled guilty to committing the murder that Hank Roberts had been wrongly convicted of committing.

It was Hank's old cell buddy Art who put it together for me; connected the dots.

"Did you hear about Hank?" "No," I said.

"You know, the guy who's been on all the news. He was innocent! It was Henry Roberts!"

Peter Rose Settles Lawsuit For \$1 Million

For three weeks after being raped in a Lodi, California alley in 1994, the 13-year-old victim told police she did not see her attacker's face. Her aunt knew 24-year-old Peter Rose and suggested to the police that he might be a suspect. The police assumed he was the perpetrator, and after being intensely pressured by police interrogators, the girl eventually named Rose as her attacker. Rose was convicted in 1995 based on the girl's testimony and sentenced to 27 years in prison.

In 2005 Rose was exonerated after ten years imprisonment, when the girl recanted her identification of him, and he was excluded by a DNA test of the rapist's semen on the girl's underwear.

Rose filed a claim under California's wrongful conviction compensation statute providing \$100 per day of imprisonment, and in 2006 he was paid \$328,000. (See, CA Awards Peter Rose \$328,000 For Ten Years Wrongful Imprisonment, *Justice:Denied*, Issue 30 Fall 2005, p. 8)

Rose also filed an \$8 million federal civil rights lawsuit in November 2005 that named multiple defendants. In January 2007 the claims against the suit's primary defendants were settled for \$1 million.

The city of Lodi, whose officers investigated

Henry Roberts? Hank? And then it all clicked in my mind. The Hankster?! Unbelievable!

I called him the Hankster because it rhymed with prankster, as he was always cutting up in spite of his dire circumstances. It also segued into hamster, and that's what I'd thought over the years as I watched him endlessly circling his wheel, always nipping at the heels of the criminal justice system in a desperate effort to get anyone to listen about the injustices of his case.

And then I smiled, though I couldn't believe he'd finally been vindicated more than five years too late.

When Governor Glendening changed correctional policies and removed lifers from work release, I was put in a dormitory, or "annex," at the Maryland Correctional Institution (MCI) in Hagerstown. It was in the annex that I lived with Hank and his friend Herbert (Herb) Webster, "Buckeroo" for short, the last few years of Hank's life as he sought a sympathetic ear about the travails that befell him.

the case, will pay \$625,000. San Joaquin County, which prosecuted Rose, will pay \$100,000. And the state of California, whose crime lab analyzed the evidence, will pay \$275,000.

Rose's lawyers will get 1/3 of the \$1 million. Rose will get 2/3 of the remaining \$666,666, and his three children will share 1/3. The money to Rose and his children will be paid out over a period of years.

Lodi's deputy city attorney, Janice Magdich, was very pleased with the settlement, commenting that Rose would have favorably impressed jurors, and he could have been awarded as much as \$18 million if he had taken his case to trial. So the city saved a possibly huge jury award, and attorney and witness fees that would have exceeded \$500,000.

After the settlement was announced, Rose's attorney Mark Merin said of Rose's conviction, "It was a conjunction of events. It's the little bit of evidence that gets spun to someone else and becomes more than what it is. ... you put all that together and it's a travesty." He also commented, "The thing that bothers me the most about this case is that he exhausted his appeals ... by happenstance there was a little bit of evidence left that could establish ... DNA that did not match him. But for that, he would not have been exonerated."

Sources:

Lodi to pay \$625,000 to man wrongly convicted of rape, By Layla Bohm, *Lodi News-Sentinel*, January 9, 2007. Ex-Lodi man settles suit over 10-year rape term, *Stockton Record*, January 6, 2007.

Prior to his incarceration Hank lived in Armistead Gardens in Baltimore, next door to George and Rosa Webster, Herb's mom and step-dad. Herb lived with his parents for several years prior to Herb's arrest and incarceration.

So it was a great surprise to Herb when Hank got his own charge and was sent to prison. Probably the only comfort Hank had in his last years was the strange twist of fate that he ended up in MCI's annex with his friend Herb.

I loved it, as the Hankster was the life of the annex. He kept things going with his prickly personality; neither age nor size kept the bantamweight steelworker from biting his tongue for anyone, and if they tried anything it was guaranteed that he'd stir the pot in response. I love great American characters, and Hank filled the bill. He was lively and spry when he

Roberts cont. on page 5

Timothy Howard Dies After \$2.5 Million Award

In April 2003 Timothy Howard and Gary James were released from 26 years of wrongful imprisonment for a murder committed during a 1976 Columbus, Ohio bank robbery. The men's death sentences were commuted to life in prison when Ohio's death penalty law was declared unconstitutional in 1978.



Timothy Howard

After his release Howard sued for compensation under Ohio's wrongful conviction compensation statute that requires a civil finding that a claimant is "actually innocent." In March 2006 a jury found Howard was "actually innocent." Four months later, in July, the State of Ohio agreed to pay him \$2.5 million — \$1.4 million immediately with one-third going to his lawyers, and the remaining \$1.1 million was to be paid to Howard in monthly installments over thirty years.

Howard died on March 19, 2007, several days after suffering a heart attack.

In May 2007 Ohio agreed to settle Gary James' compensation suit for \$1.5 million — with \$700,000 paid immediately and \$500,000 paid over 15 years. James' lawyers were to be paid the remaining \$300,000. James was awarded less than Howard because his legal fees were less and his lost wages were deemed to be less.

Sources: Man Wrongly Imprisoned for 26 years dies, AP story, *Coshocton Tribune* (Coshocton, OH), March 20, 2007. Former prisoner gets \$1.5 million, AP story, *The Plain Dealer* (Cleveland, OH), May 19, 2007.

Roberts cont. from page 4

was up, and when he got depressed about his case he'd usually sleep it off. As Herb noted, "Hank never lost hope, he always believed that someone would eventually listen to him."

It was that ability to find hope in a hopeless place and situation that made me admire Hank, and be thankful for his presence as a blessing, a reminder of normal people from the street. As Herb said, "Hank was a character. Everyone liked him in spite of his gruff exterior, and he liked everyone he met unless they crossed him. He cursed like a sailor, but just the way he did it made it seem funny."

And that was one of the joys of life in the annex when lifers lost work release; at least I was put in a place where Hank and Herb were cut-ups, along with Sergeant "Judy" Verdier and Officer "Bernie" Decker, as they too were cut-ups. The four were masters at analyzing the latest absurdities of the criminal justice and corrections systems, and all bureaucracies in general; when they got rolling they could easily keep half the annex in stitches for an hour at a time.

"Hank was a loving person, I thought," said Sergeant Verdier. "He would always help someone. He had an adorable personality, but you couldn't print everything he'd say. And his bunk was right near the officer's desk, so when I'd bring an off-color joke he'd laugh and say, 'Ah, you're crazy, get out of here!'"

Herb remembered that "Hank had a small Steelworkers union pension, and everyone he met in here he tried to help out as best he could. If a guy didn't have anything Hank would try to get him something he needed and didn't have, and never asked for anything in return."

That's how he was – a little "banty rooster" with a huge heart in spite of everything.

And when visiting hours came, Herb and Hank would be called out together, since Herb's mom Rosa and step-dad George, and Hank's best friend Gary Garland, would travel from Baltimore together, and come in the visiting room together to assure they could all sit together. Every one of them believed Hank was innocent, and they did all they could to keep his spirits up and assure him that no stone would be unturned in an effort to get him justice.

When I told Herb I was writing about Hank, he said I must write: "How many times have you heard guys say, 'I was framed. I'm innocent. It was a set-up, blah, blah, blah!' But here's a real case!"

"Hank always used to say the police were

wrong; there was no way that gun washed down that creek! And Gary did everything in his power, he went out of his way, to try to prove Hank's innocence. Gary hired a photographer to take pictures of little Herring Run Creek behind Hank's house when it was raining, and then when it was nice out, to show the difference in the water level, and that the current wasn't strong enough to wash the gun a half-mile down the stream."

"He also had Gary get all the weather reports for every day that month. Hell, little Herring Run is only about six inches deep after a rainstorm, and only two or three inches before a rainstorm! The 'Herring Run trickle' would be more like it."

"Look, I have a picture of Hank's back yard. On the other side of this manhole in the picture, about a foot away, is the creek where Hank allegedly threw the gun after his nephew and him got shot. You can see there is nothing there to throw a gun into – it's more a little bunch of trees than a creek and on the other side is a nothing but a little bunch of houses." A gun thrown into Herring Run Creek wouldn't wash two inches downstream – much less half-a-mile.

Herb also said, "Channel 13 or 11 – I can't remember which one, but one of the local TV stations, did a piece on that creek when some fuel oil washed down stream. There is no kind of aquatic life that lives down there, it wouldn't stand a chance, and I guess that's why Hank wrote the Baltimore *Sun* about the boys who said they were 'hunting for frogs' when they found the gun."

"Gary also devoted a lot of hours to research, contacting everyone who could possibly help Hank prove his case. Gary really tried to help him. Gary was a devoted friend who went out of his way to help Hank in his quest for justice. But everyone turned a deaf ear."

"And when I left him in the annex and moved to the north dorm, I would not see him for weeks and weeks and then the first thing he would talk about would be his case when I did see him, not even a 'Hi, how are you doing?' The case really upset him."

Herb continued, "I am just so glad that Hank has been exonerated of all the charges, and so sad that he didn't live long enough to hear those words for himself. It's just a damn shame that he died all alone, knowing he was innocent, and had to spend the last years of his life miserable in prison." "I know he doesn't have a tombstone, but just a little grave marker which is covered over — they had it on TV — and I think the State should get him a real headstone."

"That's the least they could do," Herb lamented. "He lost everything over this, he had to sell his car and his house; his Social Security was stopped; he lost everything he worked all his life to get, and he spent all the proceeds trying to prove his innocence."

Sergeant Verdier said, "To see Hank struggle – what a struggle trying to defend himself – I don't know how to put it in words. Here's a man who wasn't guilty so you can just imagine the hurt — all the terrible things that had to go through his mind. And what this shows is the pain of an innocent person when victimized by the system."

"He'd say, 'Dammit, I'm not guilty.' And he wanted the truth to come out but it didn't – what a shame – bless his soul. It's just a real sad case."

Yet the saddest part of Hank's case is the media coverage accompanying the news of his innocence. When Hank's not around to say anything about what occurred, the Baltimore City State's Attorney said: "We feel relieved that the case has been brought to justice and that justice was served. This shows that the system can come back and do what needs to be done."

Excuse me? Did the system bring Hank Roberts back to life and restore his lost years, and lost home and car and Social Security?

Excuse me? Hank had no prior record, and for truthfully protesting his innocence he got his sentence increased to 50 years in prison for a murder he didn't commit! As Baltimore *Sun* columnist Roderick said: "The way I measure things, a 50 year sentence for a 63-year-old-man amounts to capital punishment . . ."

Excuse me? Robert Tomczewski, the 29-year-old murderer, had a lengthy prior record of violence for crimes that included armed robbery and assault. Yet he was sentenced to only 10 years in prison after admitting he committed the crime, when the innocent 63-year-old Hank who had no criminal record was sentenced to 50 years for protesting his innocence!

Excuse me? Tomczewski was not charged for many other crimes such as his burglary of Hank's home a year before the murder when he stole Hank's money, gold watch and gun. That was the same gun Tomczewski later used to seriously wound Hank and kill Hank's nephew, and that was found in the creek where Tomczewski dumped it a half-a-mile downstream from Hank's home.

Excuse me? Justice served? Ha! I'd suggest this is just another case where the legal

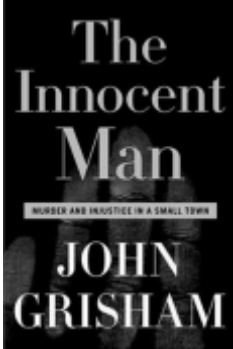
Roberts cont. on page 33

The Innocent Man: Murder and Injustice in a Small Town

By John Grisham

Doubleday, 2006, 368 pages, hardcover,
paperback edition available November 2007

Review By Natalie Smith Parra



Ron Williamson's obituary in *The New York Times* on December 9, 2004 led well-known fiction writer John Grisham to the subject of his latest book and his first work of non-fiction – *The Innocent Man: Murder and Injustice in a Small Town* (Doubleday, 2006). Grisham wrote 18 novels before embarking on the two years of research and writing that went into *The Innocent Man*. Grisham said of the project, "Never in my most creative moment could I have come up with a story like this."

The Innocent Man reads almost like one of Grisham's legal thrillers: A 21-year-old woman is raped and strangled, and messages in blood are scrawled on her naked body and on the walls and furniture in her apartment.

The victim was Debbie Carter. She lived alone in her Ada, Oklahoma apartment when she was murdered in December 1982.

Ada detectives determined the crime was too violent to have been committed by only one person. They contacted all of Debbie's known male acquaintances – friends, coworkers, boyfriends, enemies and ex-bosses. No one refused to go to the police station and provide their fingerprints and samples of their saliva, and head and pubic hair.

Glen Gore was an acquaintance of Debbie's who was the last person known to have seen her alive. He told police that the night before her murder he saw her at the Coachlight lounge where she worked. Gore had an extensive criminal record and a history of violence against women. The entire police report of Gore's interview reads as follows:

"Glen went to school with Debbie. Glen saw her 12-7-82 at the Coachlight. They talked about painting Debbie's car. Never said anything to Glen about having problems with anyone. Glen went to the Coachlight about 10:30 p.m. with Ron West. Left with Ron about 1:15 a.m.

Glen has never been to Debbie's apartment."

Ron Williamson was 18 when he signed with the Oakland A's in 1971. Many people in Ada thought he would be the next Mickey Mantle, but he was playing in the minors when an injured shoulder forced him out of professional baseball. The premature end to Ron's baseball career led to bouts of depression and drastic changes in his personality. By 1982 the Ada police knew Williamson as an unemployed guitar picker who lived with his mother, drank too much, and "acted strange."

Three months after Debbie's murder Detectives Dennis Smith and Mike Kiesweiser went to the Williamson home and interviewed Ron for the first time. Ron studied Debbie's picture carefully and said maybe he had met her, maybe not, but he couldn't be sure. Yes, he told police, he had frequented the Coachlight, the club where Debbie worked, as well as other clubs around Ada. Ron's mother Juanita showed the detectives a detailed diary that had an entry for the night of the murder that Ron was in the house by 10 p.m.

In 1973 Dennis Fritz had a child named Elizabeth with his wife Mary. Mary worked for a college and Dennis, who had a degree in biology, worked for the railroad. On Christmas Day 1975, while Dennis was working out of town, his 17-year-old neighbor shot and killed Mary while she was sitting in a rocking chair in the family's Ada home.

Dennis went into a deep depression and was unable to work for two years. He took care of his daughter and eventually pulled himself together. In 1981 he got a job teaching high school science.

Dennis and Ron were drawn together by loneliness and loss. They became friends and played the guitar together.

Meanwhile, in another interview with police, Gore added a new touch to his story: he claimed Debbie asked him to dance with her that night at the Coachlight because Ron was making her uncomfortable. The fact that no one else had seen Ron at the Coachlight that night was apparently insignificant to the police.

Police finally coerced a confession, or said they did, from Ron Williamson. Ron neither wrote nor signed the document. In fact, he never even read it.

Ada detectives arrested Dennis and Ron for Debbie's murder, even though there was no

evidence that either of them had ever met her. The detective claimed that Dennis and Ron had been suspects for over a year, but didn't explain how or why. Deadening years in jail followed.

Ron and Dennis were tried separately. Dennis was tried first based on the prosecution's theory that if he could be convicted, Ron's conviction would be easier, and the jury would be more likely to impose the death penalty on him. Dennis was convicted and sentenced to life in prison.

Ron was unable to listen to much of his trial proceedings without outbursts of anger, so he stayed in a cell in the county jail during much of his trial. Even with Ron's history of mental illness and medical records readily available to the court, and even with the death penalty on the table, neither the prosecution nor the defense questioned his competency. The prosecution's plan of trying Dennis first worked: After Ron's conviction he was sentenced to death.



Ron Williamson
(Day of release in
April 1999)

Ron and Dennis were exonerated in 1999. Their release got a lot of national media attention, and there were stories about their trips to Yankee Stadium and Disney World. They were also on a number of television programs.

But the fear of going back to prison consumed Ron. He began to drink, and then gave away his back social security payments to TV evangelists and charities for starving children.

Forty-four people submitted fingerprints for analysis during the investigation of Debbie's murder. Gore's prints, however, were not among them, even though he had a history of violence against women, and he was the last known person to see Debbie alive.

This mystery was partially explained fourteen years after the arrest of Williamson and Fritz, when Gore signed an affidavit stating that during the 1980s he was selling drugs in Ada, specifically methamphetamine, and that some of his transactions involved Ada police.

In 2001, two years after Ron and Dennis were released and almost 19 years after Debbie's murder, a reinvestigation of the case was concluded. Gore was charged with Debbie's murder. After his conviction he was sentenced in June 2003 to life in prison without the possibility of parole.

Innocent Man cont. on page 7

Innocent Man cont. from page 6

Ron was 51 years old in the fall of 2004 when his stomach pains began. He was diagnosed with cirrhosis of the liver. Although he had a few bright moments in his short years of freedom, most of it had been painful before his December 2004 death.

Taryn Simon is a noted photographer who traveled the country profiling exonerees for a book. That book, *The Innocents* (Umbrage, 2003), included pictures of Ron and Dennis and a short summary of their case. Each was asked to contribute a few words to accompany his photograph. The pain of Ron's experience is etched in what he said:

"I hope I go to neither heaven nor hell. I wish that at the moment of my death that I could go to sleep and never wake up and never have a bad dream. Eternal rest, like what you've seen on some tombstones, that's what I hope for. Be-

cause I don't want to go through the judgment. I don't want anyone judging me again. I asked myself what was the reasons for my birth when I was on death row, if I was going to have to go through all that? What was even the reason for my birth? I almost cursed my mother and dad – it was so bad – for putting me on this earth. If I had it all to do over again, I wouldn't be born." (From *The Innocents* (Umbrage, 2003))

The Innocent Man is a must-read. The style is as satisfying as good fiction: characters we relate to and root for, characters we hate, suspense, a huge injustice, and a victory, albeit somewhat hollow in the end, all combine to make this book one of the most important books of the year. Grisham himself admits that, even as a lawyer, he didn't know much about the world of wrongful conviction before he began to research *The Innocent Man*. We all have much to learn from this heartbreaking and infuriating story.

The Innocent Man is being released in paperback in the U.S. in November 2007. *Justice:Denied's* Bookshop sells the hardcover for \$20 plus \$5 s/h. Send a check or money order to: Justice Denied, PO Box 68911, Seattle, WA 98168. Or order with a credit card from *Justice:Denied's* website at, www.justicedenied.org/books.html



Dennis Fritz
(Dec. 2006)

***The Innocent Man* Was Bestseller**

With sales of 618,000 copies, *The Innocent Man* was the #2 bestselling Adult Non-Fiction Hardcover book in 2006. Source: Nielsen BookScan.

With \$21 million in royalties from his books, John Grisham was the fifth highest paid author in 2006. Source: Delin/Corbis Outline

Non-fiction Books Related To Wrongful Convictions Published In 2006

| Title | Sub-title | Author | Publisher | Summary | Country | Cover | Pgs |
|------------------------|--|---------------------------------------|---------------------------|--|---------|----------------|-----|
| An Expendable Man | The Near-Execution of Earl Washington, Jr. | Margaret Edds | New York University Press | About the wrongful conviction of Earl Washington Jr. for the rape and murder of a woman that was based on his alleged false confession. Sentenced to death, at one point Washington came within nine days of being executed before his exoneration by DNA evidence in 2001. | US | soft | 288 |
| Arthur & George | | Julian Barnes | Vintage | Fact based novel of Sir Arthur Conan Doyle's role in the 1903 exoneration of George Edalji's conviction of mutilating livestock. Doyle authored the <i>Tarzan</i> and <i>Sherlock Holmes</i> books. | US | soft | 464 |
| Darkest Before Dawn | Sedition and Free Speech in the American West | Clemens P. Work | University of New Mexico | About the wrongful conviction of 78 people for violating Montana's 1918 Sedition Act, the mood of the times that caused their prosecutions, the pardons granted them by Governor Schweitzer in 2006. | US | soft | 328 |
| Enemy Combatant | My Imprisonment at Guantanamo, Bagram, and Kandahar | Moazzam Begg and Victoria Brittain | New Press | Moazzam Begg tells of his secret abduction by U.S. forces in Pakistan, his detainment at U.S. air bases for more than a year and at Guantánamo Bay for two more years as an enemy combatant. Begg was released from Guantánamo in 2004 under pressure from the British government. | US | hard | 352 |
| Innocent | Inside Wrongful Conviction Cases | Scott Christianson | New York University Press | Analyzes 42 New York state cases for the factors that contributed to the occurrence of a wrongful conviction. | US | soft | 208 |
| Journey Toward Justice | | Dennis Fritz | Seven Stories Press | About the wrongful conviction of Dennis Fritz and Ron Williamson for an Ada, Oklahoma rape/murder. See also, <i>The Innocent Man</i> . | US | hard | 482 |
| Losing Their Grip | The Case of Henry Keogh | Robert N. Moles | Elvis Press (Australia) | About the 1995 conviction of Henry Keogh for allegedly murdering his fiance two weeks before their scheduled marriage. | AUS | soft | 285 |
| My Story | | Schappelle Corby with Kathryn Bonella | Pan Macmillan (Australia) | First-person account of Schappelle Corby's conviction and imprisonment in Indonesia for drug trafficking based on marijuana found in her boogie bag at the Bali airport when she arrived for a family vacation. | AUS | soft | 320 |
| Shattered Dreams | A Savage Murder and the Death of Three Families' Innocence | John Philpin | Avon | Story of how Stephanie Crow's older brother and his two teenage friends were pressured by the police into falsely confessing to her brutal murder in their Escondido, California home. | US | soft | 240 |
| Sweet Freedom | Breaking the Bondage of Maurice Carter | Doug Tjapkes | Faithwalk Publishing | Story of how Doug Tjapkes aided Maurice Carter's release in 2004 after 28 years of wrongful imprisonment for murder. | US | soft | 240 |
| The Dreams of Ada | | Robert Mayer | Broadway Books | About the wrongful convictions of Tommy Ward and Karl Fontenot for the April 1984 murder of a young woman in Ada, Oklahoma. The circumstances of their convictions were similar to those of Ron Williamson and Dennis Fritz for murder in Ada several months before. | US | soft - reprint | 494 |
| The Innocent Man | Murder and Injustice in a Small Town | John Grisham | Doubleday | True life account of Ron Williamson and Dennis Fritz's wrongful convictions for the 1982 rape and murder of a young woman in Ada, Oklahoma. Williamson was sentenced to death and Fritz to life in prison. Both men were exonerated by DNA and released in 1999. | US | hard | 368 |
| Triumph Over Tragedy | | Trina Rea | Gill & Macmillan | Story of Eilish Enright, who was wrongly convicted of sexually abusing one of her daughters and sentenced to six years in prison. | GBR | soft | 256 |

All U.S. published books are available from JD's online Bookshop at <http://justicedenied.org/books.html>

In January 2000 multi-millionaire retired British businessman Tony Fetherston and his wife Margaret were spending their annual holiday at their Caribbean vacation home in Basseterre, the capital of St Kitts.

About 7 p.m. on the 26th, Margaret was talking on the telephone when she heard their enclosed yard's doorbell, which rang when someone opened the gate. She asked Tony to see who it was. He went outside, and after several moments she heard him say "Oh god," followed by a loud noise. She called out to Tony. After he didn't answer she hung-up the phone and closed and locked the door. She peeked out the window and saw a figure with a "mask-like head covering" with two eye slits. She heard the person say something about money, but he didn't try to get into the house.¹

Margaret called emergency services. Tony was pronounced dead at the scene and his autopsy determined he died as the result of a shotgun blast to his chest.

Fetherston's murder was a major news story in England, and the St. Kitts authorities were under a lot of pressure to solve the crime.

Suspects ID'd and evidence tested

During the ensuing investigation four people were identified as suspects in the murder. One of them was Joseph Hazel, a 27-year-old house painter and neighbor of the Fetherstons.



Joseph Hazel

In a corner of the Fetherston's yard the police found a piece of maroon cloth with two holes cut in it – resembling the "mask" described by Margaret. Also, near the Fetherston's house, police found maroon colored jeans with the right leg cut-out above the knee.

Four hair roots were recovered in the "mask," but no blood was visible. Hair and blood samples of Hazel, the other three suspects, and Fetherston were sent along with the jeans and "mask" to the Forensic Science Centre in Barbados for analysis. The lab determined that "there was a physical fit when the 2 items were placed next to each other."² The lab could not link any of the suspect's hair or blood to the clothing items, so they were sent to the London Metropolitan Police Laboratory.

DNA Ruled Insufficient To Support Capital Conviction – Joseph Hazel Released From Death Row

By Hans Sherrer



Tony Fetherston

The clothing and biological samples were examined by 15 lab technicians during the seven months the items were at the London laboratory. The final report by Dr. Kamala De Soyza concluded that the four hairs found in the mask did not match any of the four suspects, and neither did biological material believed to be saliva recovered from the inside of the mask. There was no blood detected on the "mask."

No hair or blood was found on the jeans, but a small amount of biological residue in the crotch area revealed the DNA profiles of two persons. Hazel couldn't be excluded as one of those persons, and the lab's report stated two possibilities: "One was that the DNA came from Hazel and an unknown person unrelated to him. The second proposition was that the DNA came from two unknown persons unrelated to Hazel."³

Hazel insisted he had nothing to do with Fetherston's murder and he was with friends when it occurred. However, based on the lab report he was charged with capital murder in June 2001.

Hazel's trial

After being jailed for almost three years, Hazel's trial began in March 2004. The prosecution's case rested solely on the possibility that Hazel's DNA might have been present on the jeans from which the mask was possibly fashioned – even though he wasn't linked to the mask presumably worn by the assailant. There was no other evidence of any kind suggesting Hazel committed the crime, and there was no testimony of any acrimony between the two men. The DNA evidence's value in implicating Hazel was undercut on cross-examination when Dr. De Soyza testified, "A person's [Hazel's] DNA could have found its way" onto the jeans if a person sat "on a chair on which the person [Hazel] sat."⁴

The value of the DNA evidence to implicate Hazel was further undercut when De Soyza also acknowledged on cross-examination, that "...the DNA tests revealed "moderate support" that the cloth came from the pants and moderately strong support for the view that the maroon cloth was worn as a mask."⁵

Thus there was scientific based doubt as to whether the "mask" that had no known connection to Hazel, was fashioned from the jeans, or actually from some other material source.

Nevertheless, based solely on De Soyza's testimony suggesting Hazel's DNA might have been present on the jeans from which the "mask" – that didn't have his DNA – might have been fashioned, the jury convicted him of Fetherston's murder by a 10-2 majority verdict. Sentenced to death, Hazel appealed.

Hazel's appeal

In November 2006 the Eastern Caribbean Court of Appeal considered Hazel's appeal substantive enough that he was ordered released on bail pending the Court's decision. Three months later, in February 2007, the Court quashed Hazel's conviction.

The three-judge panel ruled that the passions inflamed by Fetherston's life being ended by "a very sad and cold-blooded incident" could not be allowed to cloud the truth that the DNA evidence relied on by the jury "did not clearly link Mr. Hazel to the murder." The Court wrote:

"Because DNA profiling is a function of the random occurrence ratio, the question whether the evidence from a DNA test shows that an accused person actually committed the crime for which he or she is charged is often, as in the present case, a matter of statistical probability. Lord Hope explained the effect of this in *Michael Pringle* in this way:

"Let it be assumed that the evidence about the random occurrence ratio is that one person in 50,000 has a DNA profile which matches that which is obtained from the crime scene. The fact that the defendant has that profile tells us that he is one of perhaps fifty thousand people who share that characteristic. ... But that is all that can be said about it. The question whether the statistic points to the defendant as the actual perpetrator will depend on what else is known about him. If it is plain from the other evidence that he could not have committed the crime because he was elsewhere at the time, the fact that the defendant's DNA profile matches that on the sample taken from the crime scene cannot be said to show that he did commit it. That proposition will have been negated by the other evidence. So the probative effect of the DNA evidence must

Hazel cont. on page 9

Post-Hypnotic Evidence Barred In Canada

By JD Staff

Canada's Supreme Court ruled in a February 2007 decision that post-hypnotic evidence cannot be used in criminal trials. (*R. v. Trochym*, 2007 SCC 6 (Feb. 1, 2007))

Stephen Trochym was a postal supervisor convicted in 1995 of murdering Donna Hunter, a woman he was intimately involved with. Her throat had been slashed with a bread knife.

Hunter's body was found in her Toronto apartment in October 1992. It was determined that she had been murdered in the early morning hours of a Wednesday, and that eight to twelve hours afterwards her body had been repositioned. It also appeared she had been sexually assaulted before being murdered.

During the investigation of the crime, a neighbor, Ms. Haghnegahdar, was questioned by the police. She gave a statement in

which she described seeing Trochym in the area of Hunter's apartment at 3 p.m. on Thursday, the day after her murder.

No evidence recovered from the crime scene implicated Trochym in the murder, but the police pursued their only tenuous lead: That Trochym had been involved with Hunter and he was seen in the vicinity of her apartment the day after she was murdered. To find out if the neighbor would change the day she saw Trochym to Wednesday, the police obtained her consent to have her memory enhanced by hypnosis. After being hypnotized she changed her original recollection by saying she saw Trochym at 3 p.m. on Wednesday – not Thursday.

Trochym was then charged with Hunter's murder. The prosecution's theory was he murdered Hunter very early Wednesday morning and returned about 12 hours later to move her body to make it appear she had been killed during a rape. The lynchpin of the prosecution's case was the neighbor's post-hypnosis recollection that she saw Trochym on Wednesday.

Trochym's lawyers objected to the admissibility of the neighbor's testimony based on

her post-hypnosis recollection of when she saw Trochym. The trial judge, however, sided with the prosecution and allowed the jury to hear the neighbor's post-hypnosis testimony. With her as the prosecution's star witness, the jury convicted Trochym of second-degree murder in July 1995.

After Trochym's appeal to the Court of Appeal for Ontario was dismissed in July 2004, he applied for and was granted leave to appeal to the Canadian Supreme Court.

The Supreme Court quashed Trochym's conviction by a 5-3 majority on February 1, 2007. After examining the scientific basis of hypnosis using a multi-pronged analysis similar to the U.S. Supreme Court's *Daubert* test,¹ the Court ruled it is a scientifically unreliable technique. Consequently, the trial judge erred by allowing the neighbor's post-hypnosis testimony into evidence. The Court stated in part:

"Although hypnosis has been the subject of numerous studies, these studies are either inconclusive or draw attention to

Canada cont. on page 10

Hazel cont. from page 8

depend on the question whether there is some other evidence which can demonstrate its significance."⁶

Based on their understanding that the suggestive DNA evidence was inadequate to support Hazel's conviction without complementary evidence, the Court wrote in regards to Hazel's claim on appeal that the prosecution's evidence was insufficient:

"Dr. Browne [Hazel's appellate counsel] complains that in the first place the trial judge should have withdrawn the case from the jury at the end of the case for the defence because insufficient evidence linking Hazel to the murder made it unsafe for the judge to have left it to the jury.

The attack was made on the sufficiency of the DNA evidence because identification was a critical issue in this case. ...

... Where, on assessment, the judge thinks that the quality of the evidence is poor, the judge should withdraw the case from the jury and direct an acquittal. No witness saw Hazel kill Mr. Fetherston. The prosecution relied on circumstantial evidence based on the DNA results to link Hazel to the crime.

... While DNA profiling is rather reliable

in providing individual genetic blueprints it will not in every case perfectly and clearly link a person to a crime."⁷

The Court concluded its analysis by observing:

"In this case the DNA evidence did not link Hazel to the murder of Mr. Fetherston in a manner that would support his conviction on proof beyond a reasonable doubt. ...

... The identification evidence was tenuous. ... the DNA evidence was not by itself so conclusive that it provided sufficient circumstantial evidence to make a *prima facie* case against Hazel. It was a question of statistical probability that the DNA evidence pointed to Hazel as the possible perpetrator of the murder. ... there was no 'other evidence' that supported the DNA evidence so that, compendiously, the jury could properly have inferred guilt therefrom. In his summation, the learned judge told the jury that there was no evidence in the case that supported the DNA evidence.

In the absence of DNA evidence that clearly linked Hazel to the murder and there being no supporting evidence, ... The learned trial judge should have withdrawn the case from the jury because there was insufficient evidence of identification to make a *prima facie* case

against Hazel. I would therefore grant the appeal on this ground, and, in the result, quash the conviction and sentence against Joseph Hazel."⁸

Fetherston's widow responded to the news of Hazel's release and quashed conviction, "I am shattered – but not totally surprised, because there has always been confusion [about Hazel's identification]."⁹

Since Hazel's conviction was quashed due to insufficiency of the evidence, he cannot be retried without new evidence. Hazel was jailed for 5-1/2 years, including 2-1/2 years on death row.

Endnotes:

1 Although a very wealthy couple, the Fetherston's St. Kitts house was very modest. A person who lived in Basseterre wrote the following: "I looked at a couple other rentals, including a small house in Fortlands. The agent who showed it to me mentioned in passing that it was Tony Fetherston's house. It was a tiny little house, I mean there are tents bigger than that, and I sort of liked him for having billions but being quite comfy with his wife in a little poky house. No one had lived in it since the murder. I didn't take the house." Source: Personal – from Gall and Gumption blog, Wednesday, February 28, 2007.

2 *Joseph Hazel v The Queen*, ECSC1606, ¶ 9.

3 *Id.* at ¶ 12.

4 *Id.* at ¶ 33.

5 *Id.* at ¶ 32.

6 *Id.* at ¶ 31 (Quoting from, (*Michael Pringle v The Queen*, Privy Council Appeal No. 17 of 2002).

7 *Id.* at ¶¶ 25-29.

8 *Id.* at ¶¶ 32, 34-35.

9 St. Kitts murder conviction quashed, *Suffolk and Essex online*, February 21, 2007.

\$1.4 Million Awarded Korean After Espionage Exoneration

By JD Staff

Twenty-one year-old Ham Ju-myeong was trapped in North Korea when the Korean War ended in 1953. As a ploy to return to South Korea and be with his family, he volunteered to be a North Korean agent.

After being smuggled across the border Ham surrendered and told South Korean authorities about his scheme of pretending to want to spy for North Korea in order to get out of the country. Ham was released after an investigation and placed for a time on probation.

Twenty-nine years later, in early 1983, Ham was arrested on espionage charges. He confessed to spying for North Korea after many weeks of intensive interrogation. Charged with violating South Korea's National Se-



Painting of waterboarding from Cambodia's Tuol Sleng Prison, that currently serves as a torture museum.

curity Law, Ham recanted his confession at his trial, claiming he had only done so to stop being tortured. The judge rejected Ham's recantation, and after his conviction he was sentenced to life in prison.

In August 1998, after almost 16 years of imprisonment, Ham was released as part of a general amnesty following South Korea's return to civilian rule after years as a military dictatorship.

In 1999 the man who oversaw Ham's torture, Lee Geun-an, admitted Ham told the truth at his trial - his confession was contrived after 45 continuous days of physical and psychological mistreatment that included waterboarding, sleep deprivation, physical beatings, and electrical shocks: all while Ham was blindfolded and naked.

Based on the new evidence his confession was coerced, Ham filed a petition in 2000 to quash his conviction. His evidence was compelling enough that in 2003 his petition was granted and a new trial was ordered. It was the first time that a South Korean espionage conviction had been overturned.

Acquitted after his July 2005 retrial, Ham filed a compensation suit for his wrongful conviction and years of imprisonment. In September 2005 Ham and his family were awarded \$320,000. The South Korean government appealed, arguing that the statute of limitations had expired before Ham filed his suit.



'Mothers With Purple Scarves' (also known as the Minkahyup) is a South Korean human rights group that for 32 years has protested the government's wrongful imprisonment of people. Ham Ju-myeong said after his exoneration, "When nobody paid attention to our pleas of innocence, the mothers of Minkahyup were the only ones who fought for us."

Source: Militant moms mark 20 years of protests, *JoongAng Daily*, December 12, 2005.

In November 2006 the appeals court ruled the statute of limitations doesn't apply to civil suits involving claims of "illegal, inhumane crimes perpetrated by state agencies." It also increased the lower courts compensation award more than 400% to \$1.4 million.

Sources:

Were not more wrongly accused of espionage, Editorial, *The Hankyoreh*, July 16, 2005.

High court overturns faulty spy conviction, *JoongAng Daily*, September 5, 2005.

Korea Democracy Foundation Newsletter No. 4, November 2005, esp. 2-3.

Militant moms mark 20 years of protests, *JoongAng Daily*, December 12, 2005.

We cannot turn our backs on the unjustly accused, Editorial, *The Hankyoreh*, November 6, 2006.

Canada cont. from page 9

the fact that hypnosis can, in certain circumstances, result in the distortion of memory. Perhaps most troubling is the potential rate of error in the additional information obtained through hypnosis when it is used for forensic purposes. At the present time, there is no way of knowing whether such information will be accurate or inaccurate. Such uncertainty is unacceptable in a court of law."

...
"The admission of Ms. Haghnegahdar's post-hypnosis testimony constitutes an error of law." *R. v. Trochym*, 2007 SCC 6, ¶55 and ¶67 (02/01/07).

The Court also rejected the proposition that a jury could be exposed to hypnosis testimony by a witness whose recollection didn't differ from what it was prior to the hypnosis, since it could improperly suggest to the jurors that the hypnosis increased the likelihood the testimony was truthful.

The three dissenting Justices contended that barring post-hypnosis evidence was too drastic of an action by the Court. They argued it is sufficient to instruct a jury about the unreliability of hypnosis recovered memories, and to instruct the jurors that they should weigh the hypnosis testimony in the context of other evidence in the case.

The Supreme Court's decision makes Canada the first country with an English common law legal tradition to bar post-hypnotic evidence.

¹ *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993).

Exposed !!

The new face of bigotry and injustice in the South

www.southerninjustice.com

Visit the Innocents Bibliography

www.forejustice.org/bibliography.htm

Info about more than 300 books, movies and articles related to wrongful convictions is available.

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, m/o or stamps) to: Justice Denied; PO Box 68911; Seattle, WA 98168. (See Order Form on p. 39). Or order with a credit card from JD's website, <http://justicedenied.org>.

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

P. Wilson, Professor of Criminology, Bond University

\$320,000 Awarded Man Cleared Of Capital Murder By HBO Video Tape

By JD Staff



Juan Catalan

Juan Catalan and his six-year-old daughter spent the evening of May 12, 2003 having fun at Dodger Stadium watching the Los Angeles Dodgers beat the Atlanta Braves, 11 to 4.

Toward the end of the game a murder was committed 20 miles away in the San Fernando Valley. Four teenagers gave a detailed description of the murderer who shot 16-year-old Martha Puebla in front of her home.

Police investigating Puebla's murder learned she had testified against a defendant in a 2002 murder case. They began operating on the theory that Puebla's murder had been a revenge killing. They found out that Catalan's brother Mario was a co-defendant in the murder case. Even though Puebla had not testified against Mario, the 24-year-old Catalan became their prime suspect in her murder.

The four eyewitnesses didn't identify Catalan – he didn't fit their description of the shooter's height, weight or skin color. However, another witness identified Catalan from a photo lineup. He was arrested in August 2003, and charged with Puebla's murder with the special circumstances of murdering a witness and lying in wait. The special circumstances made Catalan eligible for the death penalty.

Catalan resisted the efforts of interrogators to pressure him to confess, insisting he had nothing to do with the murder. On three separate occasions Catalan's interrogators refused his request to take a lie detector test.

When Catalan's girlfriend learned out the date and time of the murder, she recalled that was when he and his daughter had been at the Dodgers game. She located the ticket stubs and gave them to Catalan's lawyer, Todd Melnik. The prosecutors dismissed the ticket stubs as only providing evidence Catalan may have been at the game when it started, but they didn't prove he was at the game when the murder was committed. Ironically, based on the prosecution's theory of Puebla's murder, the ticket stubs could be considered incriminating "proof" of Catalan's premeditation of planning an alibi.

Knowing that with an eyewitness tagging him

as the shooter Catalan was facing a likely conviction and possible death sentence, Melnik set out to find evidence substantiating Catalan's alibi. Melnik subpoenaed the Fox Network's tapes of the game that they had broadcast, Catalan's cell phone records from Nextel, and the Dodgers' "Dodger Vision" tapes of the game.

The cell phone records established that at about the time of Puebla's murder a call from Catalan's cell phone had been transmitted by Nextel's cell tower serving Dodger Stadium. However, Fox's game tapes of shots where Catalan's ticket showed he and his daughter were sitting weren't clear enough to identify him. Likewise, the "Dodger Vision" tapes for the game didn't distinguish Catalan from the crowd. ("Dodger Vision" is the image shown on the scoreboard during breaks in the game and between innings, which often includes shots of spectator areas.)

When those tapes turned out to be a dead-end, Catalan's girlfriend recalled that Melnik told her an HBO program had been filming at the game in the area where he and his daughter were sitting. That program was "Curb Your Enthusiasm," starring Larry David, co-creator of "Seinfeld."

Melnik contacted David's production company, which agreed to allow him to view the video footage they recorded at the Dodger game. First viewing the program edited for broadcasting on HBO, Melnik didn't see Catalan. He then started viewing the video footage that had been cut from the final version. Melnik said later, "I got to one of the scenes, and there is my client sitting in a corner of the frame eating a hot dog with his daughter. I nearly jumped out of my chair and said, 'There he is!'"¹ The tape was date and time coded, proving Catalan was at the game shortly before Puebla's murder 20 miles away.

Based on the cumulative evidence of the cell phone record and the "Curb Your Enthusiasm" outtake, Melnik filed a motion to dismiss the charge against Catalan. In January 2004 the capital murder charge against Catalan was dismissed for "insufficient evidence." He was released after five-and-a-half months in custody. Catalan said when interviewed, "To hear the words from the judge's mouth, I just broke down in tears. It was the happiest moment in my life."²

When told about Catalan's release, David quipped tongue-in-cheek, "I'm quitting the show to devote the rest of my life to freeing

those unjustly incarcerated."³

Catalan resumed working at his family's machine-tool business. He also hired a civil lawyer, Gary Casselman, and filed a claim against the City of Los Angeles alleging false imprisonment, misconduct and defamation. On March 7, 2007, the LA City Council agreed to settle Catalan's claim for \$320,000.⁴

After Catalan's release the LAPD arrested another suspect, who was subsequently charged with Puebla's murder.

The fortuitous, and near miraculous discovery of the outtake from "Curb Your Enthusiasm" saved Catalan from a very possible capital conviction and a cell on San Quentin's death row. But the storyline of the episode Catalan's image was cut from provides a bit of levity to the entire affair. In the episode David hired a real-life prostitute from the streets of Los Angeles to accompany him to the Dodger game so he could use the carpool lane to bypass the worst of the traffic to Dodger Stadium.

Endnotes and sources:

- 1 HBO video curbs police enthusiasm, *CBS News*, June 2, 2004.
- 2 *Id.*
- 3 'Enthusiasm' saves defendant wrongly accused in murder case, By Lisa Sweetingham, *Court TV*, June 5, 2004.
- 4 Man with TV show alibi wins settlement from L.A., By Patrick McGreevy, *Los Angeles Times*, March 8, 2007.



Larry David

John Spirko Update

John Spirko's first-person story of being on Ohio's death row when there is evidence he was over 100 miles from the scene of Elgin, Ohio Postmistress Betty Jane Mottinger's 1982 abduction and murder, was in *Justice: Denied* Issue 27, Winter 2005.

At the request of Ohio Attorney General Jim Petro, on March 27, 2007 Governor Ted Strickland ordered a sixth stay of Spirko's execution. The five month stay postpones Spirko's execution until September 18, 2007.

Spirko's lawyers urged A.G. Petro to request the stay to allow time to complete state-of-the-art DNA testing on old evidence in the case. The DNA testing of more than 150 evidentiary items has thus far been inconclusive to either link or exclude Spirko, 60, from the crime.

Sources:

- DNA tests fail to solve Spirko case, By Alan Johnson, *The Columbus Dispatch*, March 6, 2007.
Convicted killer gains another reprieve, *Toledo Blade*, March 28, 2007.

9th Circuit OKs Lawsuit Against Prosecutors

The federal Ninth Circuit ruled in *Goldstein v. City of Long Beach*, No. 06-55537 (9th Cir. 03/28/2007), that prosecutors can be held civilly liable for damages related to their failure to perform constitutionally required administrative obligations under *Giglio v. United States*, 405 U.S. 150 (1972). Thomas Goldstein was convicted of murder in 1980 based on the testimony of a jailhouse informant. Goldstein's trial lawyer wasn't provided with the impeachment evidence that the informant had an extensive history of exchanging prosecution favorable testimony for a sentence reduction. After his release from 24-years of wrongful imprisonment, Goldstein filed a federal civil rights lawsuit (42 U.S.C. §1983) against the Los Angeles District Attorney and his chief deputy, alleging they failed to develop policies and procedures and they failed to adequately train and supervise their subordinates, to fulfill their constitutional obligation of ensuring that information regarding jailhouse informants was shared among prosecutors in their office. The Ninth Circuit ruled that a prosecutor only has qualified, not absolute immunity, from civil liability for failing to perform the administrative functions alleged in Goldstein's lawsuit. Excerpts from the *Goldstein* opinion follows.

Goldstein v. City of Long Beach,
No. 06-55537 (9th Cir. 03/28/2007)

[1] United States Court Of Appeals For The Ninth Circuit

...

[3] 2007.C09.0001470

< <http://www.versuslaw.com> >

[4] March 28, 2007

[5] Thomas Lee Goldstein,
Plaintiff-Appellee,
v.

City Of Long Beach, et al, Defendants, And John Van de Kamp And Curt Livesay, Defendant-Appellants.

...

[11] For Publication

...

[15] Opinion

[16] In this case, we are asked to determine whether an elected district attorney and his chief deputy are entitled to absolute immunity from suit based on allegations that they failed to develop policies and procedures, and failed to adequately train and supervise their subordinates, to fulfill their constitutional obligation of ensuring that information regarding jail-house informants was shared among prosecutors in their office. See *Giglio v. United States*, 405 U.S. 150, 154 (1972). For the reasons discussed in this opinion, we hold that they are not, and we therefore affirm the opinion of the district court.

[17] I. Background

[18] After serving twenty-four years in prison, Plaintiff-Appellee Thomas Lee Goldstein was released on April 2, 2004, following this Court's affirmance of the [U.S.] district court's order granting Goldstein's petition for habeas relief. Goldstein has now filed a complaint seeking damages under 42 U.S.C. § 1983 based on his wrongful conviction for murder. Although he has sued several individuals and entities ... only his claims against Defendants-Appellants John Van De Kamp and Curt Livesay are at issue in this appeal. Van De Kamp was the Los Angeles County District Attorney at the time Goldstein was prosecuted and convicted, and Livesay was his chief deputy.

[19] The claims relevant to this appeal stem from the testimony at Goldstein's 1980 criminal trial of Edward Floyd Fink, a jailhouse informant. Fink testified that Goldstein confessed the murder to him while both were being detained in the Long Beach City Jail. Goldstein alleges that this testimony was false, as was Fink's testimony that he was not receiving any benefits for testifying against Goldstein and had never received any benefits for assisting law enforcement in the past. Fink had, in fact, been acting as an informant for the Long Beach Police Department for several years and had received multiple reduced sentences in return. Although other deputy district attorneys in the Los

Angeles County District Attorney's Office were aware of the benefits provided to Fink in exchange for his testimony against Goldstein, this critical impeachment evidence was never shared with the deputy district attorneys prosecuting Goldstein's case, allegedly because no system of sharing such information existed in the District Attorney's Office at the time and because deputy district attorneys were not adequately trained or supervised to share such information. As a result, evidence that could have been used to impeach Fink was not shared with Goldstein's defense counsel, in violation of *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

[20] Several years prior to Goldstein's arrest and conviction, the Supreme Court explained that prosecutors' offices have a constitutional obligation to establish "procedures and regulations . . . to insure communication of all relevant information on each case [including promises made to informants in exchange for testimony in that case] to every lawyer who deals with it." *Giglio*, 405 U.S. at 154. Thus, Goldstein alleges that Van De Kamp and Livesay are liable under § 1983 because, as administrators of the Los Angeles County District Attorney's Office, they violated his constitutional rights by purposefully or with deliberate indifference failing to create a system that would satisfy this obligation. Goldstein further alleges that Van De Kamp and Livesay violated his constitutional rights by failing to adequately train and supervise deputy district attorneys to ensure that they shared information regarding jailhouse informants with their colleagues.

[21] Van De Kamp and Livesay sought dismissal of the claims against them, under Federal Rule of Civil Procedure 12(b)(6), based on an assertion of absolute prosecutorial immunity. The district court denied their motion on March 8, 2006, finding that Van De Kamp and Livesay's alleged conduct was administrative rather than prosecutorial and, therefore, not entitled to the protections of absolute immunity. ...

[26] III. Discussion

[27] Courts have recognized two types of immunity from suit under 42 U.S.C. § 1983: qualified immunity and absolute immunity. *Buckley v. Fitzsimmons*, 509 U.S. 259, 268 (1993). Only absolute immunity is at issue in this appeal ...

...

[30] A prosecutor is entitled to absolute immunity under § 1983 for conduct that is "intimately associated with the judicial phase of the criminal process," *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976), and "occur[s] in the course of his [or her] role as an advocate for the State," *Buckley*, 509 U.S. at 273. However, conduct is not shielded by absolute immunity simply because it is performed by a prosecutor. Id. To the contrary, a prosecutor is entitled only to qualified immunity "if he or she is performing investigatory or administrative functions, or is essentially functioning as a police officer or detective." ... Thus, when determining whether absolute immunity applies, courts must examine "the nature of the function performed, not the identity of the actor who performed it." *Forrester v. White*, 484 U.S. 219, 229 (1988).

[31] Applying this functional analysis, the Supreme Court has held that prosecutors are absolutely immune from § 1983 liability for decisions to initiate a particular prosecution, to present knowingly false testimony at trial, and to suppress exculpatory evidence. *Imbler*, 424 U.S. at 431 & n.34. Prosecutors also enjoy absolute immunity for decisions not to prosecute particular cases, ... and for gathering evidence to present to the trier of fact, as opposed to gathering evidence to determine whether probable cause exists to arrest ...

[32] On the other hand, prosecutors do not have absolute immunity "for advising police officers during the investigative phase of a criminal case, performing acts which are generally considered functions of the police, acting prior to having probable cause to arrest, or making statements to the public concerning criminal pro-

Goldstein cont. on p. 13

Lee Long Awarded \$900,000 In Attorney Malpractice Suit For Botched Compensation Claim

By Hans Sherrer



Lee Long was convicted of rape, robbery and sexual abuse by a New York city jury in April 1995. His convictions were based on the eyewitness testimony of the victim, who identified Long as the perpetrator of the 1994 attack. In convicting him, the jury rejected Long's alibi that he was with his girlfriend the entire night that the rape occurred.

The 35-year-old Long was sentenced to two concurrent terms of 8 to 24 years imprisonment. His convictions were affirmed on direct appeal in 1997.

Long filed a post-conviction motion for a new trial, and during an interview with a Queens Legal Aid Society (Legal Aid) lawyer, he

reiterated his alibi. He also said a NYPD officer had called his girlfriend before his trial, and verified his alibi. Legal Aid investigated his claim by tracking down the officer – who confirmed what Long said. The prosecution had concealed that information during Long's trial by neither having the officer testify, nor turning over his report to Long's lawyer.

Based on the "new evidence," Legal Aid filed a motion in March 2000 to set aside Long's conviction on three grounds: violation of his constitutional rights, newly discovered evidence, and dismissal in furtherance of justice. On June 23, 2000, Justice Joseph Golia issued an Order vacating Long's conviction and dismissing his indictment. Three days later, on June 26, Golia issued a written Memorandum in which he wrote, "the defendant's motion to set aside the judgment of conviction, pursuant to CPL 440.10, is granted, and the indictment is dismissed, in the interests of justice in accordance with CPL section 210.40."

Long was released after six years of wrongful imprisonment.

After his release Long contracted with the New York based for-profit law firm of Cochran, Neufeld and Scheck to pursue compensation for his experience. Barry Scheck – co-founder of the Innocence Project at Cardozo School of Law – subsequently filed on Long's behalf, a federal civil rights lawsuit against the City of New York and the NYPD.

On May 16, 2002, almost two years after Long's indictment had been dismissed, Scheck filed a motion to vacate Long's conviction on the ground of "newly discovered evidence," which Justice Golia did not do in June 2000. In an Order dated, May 28, 2002, Justice Golia wrote that "...defendant's convictions must be vacated" pursuant to CPL 440.10(g) [newly discovered evidence], and the indictment is dismissed in the interests of justice." The indictment's dismissal was a reiteration of the Justice's order of June 26, 2000.

Scheck then prepared a claim for state compensation with the New York Court of Claims. The claim was verified by Scheck and filed on June 26, 2002, two years to the day after Justice Golia issued his written

Long cont. on page 14

Goldstein cont. from p. 12

ceedings." ... Unlike the removal of a deputy attorney from a particular case, which falls "within the District Attorney's prosecutorial function" because it is "intimately associated with the judicial phase of the criminal process," we determined that these challenged actions were "personnel decisions" falling "squarely within the District Attorney's administrative function." ...

[33] Neither the Supreme Court nor this Court has considered whether claims regarding failure to train, failure to supervise, or failure to develop an office-wide policy regarding a constitutional obligation, like the one set forth in *Giglio*, are subject to absolute immunity. ...

[35] ... Goldstein does not contend that Van De Kamp and Livesay are liable because they knew about, condoned, or directed any specific trial decisions made by the deputy district attorneys prosecuting Goldstein's criminal case. Goldstein does not, for instance, assert that Van De Kamp and Livesay

knew that Fink had been granted immunity for perjured testimony in Goldstein's particular case, or that they condoned withholding such information from Goldstein's criminal defense attorney. Instead, Goldstein rests his theory of liability on Van De Kamp and Livesay's alleged failure to develop a policy of sharing information regarding jailhouse informants within the District Attorney's Office and on their alleged failure to provide adequate training and supervision on this issue.

[38] In this case, Van De Kamp and Livesay contend that the challenged conduct was prosecutorial in function even if it may have been administrative in form. We disagree. In the context of determining whether absolute immunity applies, "prosecutorial" refers only to conduct that is "intimately associated with the judicial phase of the criminal process." *Imbler*, 424 U.S. at 430. Thus, an act is not "prosecutorial" simply because it has some connection with the judicial process or may have some impact at the trial level. Were that the rule, then prosecu-

tors would be absolutely immune from any suit because all actions taken by prosecutors arguably have some connection to the judicial process – even those, such as personnel decisions, that we have explicitly held fall outside the protections of absolute immunity. ... As the Supreme Court has cautioned, "[a]lmost any action by a prosecutor, including his or her direct participation in a purely investigative activity, could be said to be in some way related to the ultimate decision whether to prosecute, but we have never indicated that absolute immunity is that expansive." *Burns v. Reed*, 500 U.S. 478, 495 (1990).

[39] ... we conclude that Goldstein's allegations are administrative and not prosecutorial in function. ... Van De Kamp and Livesay have failed to demonstrate the required "close association . . . [with] the judicial phase of [Goldstein's] criminal trial," ... Administrative work cannot be "retroactively transform[ed]" into the prosecutorial simply because "the evidence this work produced" might affect whether a prosecutor de-

cides to bring a case or, if a case is brought, how the evidence is presented at trial. *Buckley*, 509 U.S. at 275-76. The allegations against Van De Kamp and Livesay, which involve their failure to promulgate policies regarding the sharing of information relating to informants and their failure to adequately train and supervise deputy district attorneys on that subject, bear a close connection only to how the District Attorney's Office was managed, not to whether or how to prosecute a particular case or even a particular category of cases. Consequently, the challenged conduct is not prosecutorial in function and does not warrant the protections of absolute immunity.

[40] IV. Conclusion

[41] For the above reasons, we hold that the district court correctly determined that Goldstein's allegations against Van De Kamp and Livesay describe conduct in furtherance of an administrative rather than prosecutorial function. ... Accordingly, the decision of the district court is AFFIRMED.



“I’m not dead” — Man Proclaims After NV Woman Arrested For His Murder

Krystal Yvette Warbington, a 22-year-old resident of Elko, Nevada was arrested on August 24, 2006, for the first-degree murder of David Scott in Navajo County, Arizona.

The fugitive warrant executed by the Elko police alleged that on June 3, 2006, Warbington murdered Scott by pushing him out of her car and running over him. Her bail was set at \$250,000. The next day the *Elko Daily Free Press* published a front-page story titled, “Elko woman arrested in Arizona killing.”

Long cont. from page 13

Memorandum related to Long’s vacated conviction and dismissed indictment.

On August 18, 2003, the New York State Court of Claims granted the State’s motion to dismiss Long’s claim on three grounds:

- The statute requires that a claim must personally be verified by the claimant, and not his or her attorney – as Scheck had done. (“... the claim must be personally verified and that an attorney’s verification for an out-of-county claimant is fatally defective.”) *Long v. State*, 2 Misc.3d 390, 768 N.Y.S.2d 552 (N.Y.Ct.Cl. 08/18/2003) 2003.NY.0010213 ¶43 <www.versuslaw.com>.
- The statute of limitations for filing a claim is within two years after dismissal, and Long’s indictment was dismissed on June 23, 2000 – so Scheck filed Long’s claim three days late when he did so on June 26, 2002. (“... the statute of limitations had run before the claim was filed ...”) *Id.* at ¶43.
- Verification of the claim by Long five months after it was filed could not cure Scheck’s defective verification, because the statute of limitations had expired. (Long verified the claim in a letter dated November 20, 2002) (“... a corrected verification could not replace the defective one.”) *Id.* at ¶43.

Scheck appealed the ruling on Long’s behalf.

The New York Supreme Court, Appellate Division unanimously (5-0) denied Long’s appeal, but they ruled in favor of the State on a ground different than had the Court of Claims. In their decision of June 20, 2005, the Court ruled that Long’s indictment was dismissed in the “interests of justice,” when the compensation statute requires that a claim must state the dismissal is based on “newly discovered evidence.” Therefore Long did not make a viable claim. (“... both

Several days later the newspaper received a phone call from Scott during which he informed a reporter, “I’m not dead.” Scott had learned of the news report that Warbington had been arrested for his murder, and he wanted to set the record straight that there had been a major mix-up.

When contacted, the Navajo County Attorney’s Office said that the warrant was erroneous, and Warbington was actually charged with attempted murder.

Sources:

Elko woman arrested in Arizona killing, by Marianne Kobak, *Elko Daily Free Press*, August 25, 2006.
‘Murder victim’ not dead; calls newspaper, by Marianne Kobak, *Elko Daily Free Press*, August 30, 2006.

the decision dated June 26, 2000, and the order dated May 28, 2002, specifically indicated that the court was dismissing the indictment in the interests of justice. ... Accordingly, ... the claimant failed to make out a viable Court of Claims Act § 8-b claim...” *Long v. State*, No. 2003-09245 (N.Y.App.Div. 06/20/2005) 2005.NY.0006427 ¶21 <www.versuslaw.com>.

Prior to the state Supreme Court’s issuance of its decision, Long fired Scheck and his firm, and hired NYC attorney Joel Berger.

In May 2005 Berger filed an attorney malpractice suit in federal court against Scheck. Long sued Scheck for \$3 million in compensatory and punitive damages, plus treble damages and attorney fees. In October 2005, a federal judge denied Scheck’s motion for summary judgment, paving the way for Long’s suit to go to trial.¹

Berger also took over as the attorney of record for Long’s federal civil rights lawsuit against New York City and the NYPD.

After the state Supreme Court’s adverse decision in June 2005, Long appealed to the New York Court of Appeal.

On July 5, 2006, the Court of Appeal issued a unanimous (6-0) decision against Long. The Court ruled that Scheck’s verification of the claim was fatal, because the statute requires it to be verified by the claimant only. (“... claimant’s failure to verify his claim in compliance with the statute mandates its dismissal.”) *Long v. State*, No. 90 (N.Y. 07/05/2006) 2006.NY.0006809 ¶30 <www.versuslaw.com>. The Court also awarded the State “costs.”

Although the Court’s published decision went against Long, it did clarify several is-

Conviction Of Barking At Dogs Tossed

Kyle Little, 19, of Newcastle, England was arrested in August 2006 and charged with violating the public order when two policemen saw him barking and growling at two barking dogs.

At Little’s trial the officers testified they thought he was causing the dog’s owner distress. Convicted of causing harassment, alarm or distress, Little was fined \$100 (£50) and ordered to pay court costs of \$300 (£150).

Little appealed, and the Court quashed his conviction, stating, “growling or barking at a dog does not amount to an ... Offence.” Little’s lawyer Chris Mitford quipped, “I think the police were barking up the wrong tree.”

There was public outrage that while the police complain about a money shortage, \$16,000 (£8,000) was spent on Little’s prosecution.

Source: He might be barking, but he’s not breaking the law, by Michael Horsnell, *The Times* (London, UK), April 28, 2007.

issues that may be of benefit to future litigants seeking compensation in New York state.

- The court ruled that the statute of limitations began tolling when the dismissal of the charges against Long was actually filed by the court clerk on June 28, 2000, not when the judge ordered the dismissal on the 23rd, or when he issued his Memorandum on the 26th. That means Long’s claim was timely filed on June 26, 2002.
- The Court also ruled that the statute (Court of Claims Act § 8-b) only requires that a conviction be vacated on one of the designated specified grounds – regardless of the basis upon which the indictment is dismissed. That means Long’s claim was valid since his conviction was vacated on the basis of “newly discovered evidence.” Which is one of the statute’s designated grounds for compensation.

Although Long’s claim for state compensation was denied, on November 20, 2006, he agreed to a settlement of the malpractice suit against Scheck and his firm for \$900,000. Long also agreed to settle his lawsuit against New York City and the NYPD for \$50,000.²

The 47-year-old Long now lives in Alabama.

Endnotes:

1 Brooklyn: Case Against Lawyer To Go Ahead, *New York Times*, Metro Briefing, October 12, 2005.

2 Innocence Project Co-Founder Settles Malpractice Claim, by Tom Perrotta, *New York Law Journal*, November 21, 2006.

U.S. Supreme Court Restricts Time For Filing A False Imprisonment Federal Civil Rights Lawsuit

The U.S. Supreme Court established a new rule of law in a February 2007 decision that can impact a person considering pursuit of money damages for an alleged false imprisonment or arrest, under the federal civil rights statute (42 U.S.C. §1983).

In *Wallace v. Kato*, 127 S.Ct. 1091 (U.S. 02/21/2007), the Court ruled by a 7-2 majority that the statute of limitations for filing a suit under §1983 for false imprisonment or arrest begins when a person's detention becomes a "legal process" due to an appearance before a judge or magistrate. At that point the detention can no longer be attributed to the "absence of legal process" due to a warrantless arrest. The statute of limitation for filing is dictated by the tort law of the state where the suit is filed.

The Court also clarified that the rule established by *Heck v. Humphrey*, 512 U. S. 477 (1994) — that the statute of limitations for filing a §1983 suit begins upon the termination of a criminal proceeding — only applies to a lawsuit based on claims related to "malicious prosecution," i.e., the "wrongful institution of legal process."

The immediate impact of *Wallace v. Kato* will be for people who from the date they first appeared before a judicial officer did not, or have not filed a §1983 lawsuit claiming false imprisonment or arrest within their state's filing deadline for a tort. (One exception may be that the filing deadline may be extended if the person was a minor during all or part of the alleged false imprisonment.)

Apart from its immediate effect, *Wallace v. Kato* can be foreseen to have several other consequences related to its time mandate for filing a §1983 lawsuit alleging false imprisonment or arrest. Those include:

- Unless a case has been favorably terminated in a person's favor prior to expiration of the statute of limitations, they are unlikely to interest a lawyer in handling the case on a contingency basis. That

means the person and his or her family will have to front the expense of hiring a lawyer — which is an extremely expensive proposition for a federal lawsuit.

- In the absence of being able to afford a lawyer to pursue the lawsuit, the complaining person will have to do so *pro se*, which is a daunting task for a lay person to do so competently.
- Often times the evidence proving that a person was falsely imprisoned or arrested doesn't surface until years after their conviction — and long after a §1983 suit filed within a specified period from the person's first appearance before a magistrate or judge would have been dismissed.
- Police and prosecutors now know that if they can successfully conceal evidence until the filing deadline expires, that the unconstitutional conduct related to a person's false imprisonment/arrest will likely not result in a §1983 lawsuit.
- After a person has been exonerated following many years of wrongful imprisonment the judge, and in most cases the prosecutor and the prosecutor's investigators, are absolutely immune from a lawsuit. Thus the person(s) most likely to be targeted in a lawsuit are the ones most vulnerable to being held financially responsible under §1983 — the law enforcement officers involved in the person's false arrest — and the strict filing deadline mandated by *Wallace v. Kato* will make it so a person with incontrovertible proof of police wrongdoing may be barred from collecting damages.

Justice Breyer alluded in his dissent to a significant rationale underlying the *Wallace v. Kato* decision, that Justice Roberts mentioned when the case was argued orally. That is the desire to allow a police officer to have peace of mind that wrongdoing in a case won't come back to haunt him or her in the form of a §1983 lawsuit filed by a person exonerated years later.

Excerpts from *Wallace v. Kato* follows:

Wallace v. Kato, 127 S.Ct. 1091 (U.S. 02/21/2007)

[1] Supreme Court of the United States
...

[3] 127 S.Ct. 1091, 75 USLW 4107,
2007.SCT.0000025

<<http://www.versuslaw.com>>

[4] February 21, 2007

[5] Andre Wallace, Petitioner
v.

Kristen Kato, et al.

...

[17] The opinion of the court was delivered
by: Justice Scalia

...

[19] Petitioner filed suit under Rev. Stat. §1979, 42 U. S. C. §1983, seeking damages for an arrest that violated the Fourth Amendment. We decide whether his suit is timely.

[20] I.

[21] On January 17, 1994, John Handy was shot to death in the city of Chicago. Sometime around 8 p.m. two days later, Chicago police officers located petitioner, then 15 years of age, and transported him to a police station for questioning. After interrogations that lasted into the early morning hours the next day, petitioner agreed to confess to Handy's murder. An assistant state's attorney prepared a statement to this effect, and petitioner signed it, at the same time waiving his *Miranda* rights.

[22] Prior to trial in the Circuit Court of Cook County, petitioner unsuccessfully attempted to suppress his station house statements as the product of an unlawful arrest. He was convicted of first-degree murder and sentenced to 26 years in prison. On direct appeal, the Appellate Court of Illinois held that officers had arrested petitioner without probable cause, in violation of the Fourth Amendment. *People v. Wallace*, 299 Ill. App. 3d 9, 17-18 (1998). According to that court (whose determination we are not reviewing here), even assuming petitioner willingly accompanied police to the station, his presence there "escalated to an involuntary seizure prior to his formal arrest." *Id.*, at 18... On April 10, 2002, prosecutors dropped the charges against petitioner.

[23] On April 2, 2003, petitioner filed this §1983 suit against the city of Chicago and several Chicago police officers, seeking damages arising from, *inter alia*, his unlawful arrest. The District Court granted summary judgment to respondents and the Court of Appeals affirmed. According to the Seventh Circuit, petitioner's §1983 suit was time barred because his cause of action accrued at the time of his arrest, and not when his conviction was later set aside. *Wallace v. Chicago*, 440 F. 3d 421, 427 (2006). We granted certiorari ...

[24] II.

[25] Section 1983 provides a federal cause of action, but in several respects relevant here federal law looks to the law of the State in which the cause of action arose. This is so for the length of the statute of limitations: It is that which the State provides for personal-injury torts. ... The parties agree that under Illinois law, this period is two years. ...

...

[27] ... False arrest and false imprisonment overlap; the former is a species of the latter. ... We shall thus refer to the two torts together as false imprisonment. ... the allega-

Wallace cont. from p. 16

Wallace cont. from p. 15

tions before us arise from respondents' detention of petitioner without legal process in January 1994. They did not have a warrant for his arrest.

[28] The running of the statute of limitations on false imprisonment is subject to a distinctive rule – dictated, perhaps, by the reality that the victim may not be able to sue while he is still imprisoned: “Limitations begin to run against an action for false imprisonment when the alleged false imprisonment ends.” ... Thus, to determine the beginning of the limitations period in this case, we must determine when petitioner's false imprisonment came to an end.

[29] Reflective of the fact that false imprisonment consists of detention without legal process, a false imprisonment ends once the victim becomes held pursuant to such process – when, for example, he is bound over by a magistrate or arraigned on charges. ... Thereafter, unlawful detention forms part of the damages for the “entirely distinct” tort of malicious prosecution, which remedies detention accompanied, not by absence of legal process, but by wrongful institution of legal process. ... Thus, petitioner's contention that his false imprisonment ended upon his release from custody, after the State dropped the charges against him, must be rejected. It ended much earlier, when legal process was initiated against him ...

[30] ... the tort cause of action accrues, and the statute of limitations commences to run, when the wrongful act or omission results in damages. The cause of action accrues even though the full extent of the injury is not then known or predictable. ...

[31] We conclude that the statute of limitations on petitioner's §1983 claim commenced to run when he appeared before the examining magistrate and was bound over for trial. Since more than two years elapsed between that date and the filing of this suit – even leaving out of the count the period before he reached his majority – the action was time barred.

[32] III.

[33] This would end the matter, were it not for petitioner's contention that *Heck v. Humphrey*, 512 U. S., 477 (1994), compels the conclusion that his suit could not accrue until the State dropped its charges against him. In *Heck*, a state prisoner filed suit under §1983 raising claims which, if true, would have established the invalidity of his outstanding conviction. We analogized his suit to one for malicious prosecution, an element of which is the favorable termination of criminal proceedings. ...

[36] ... the *Heck* rule for deferred accrual is called into play only when there exists “a conviction or sentence that has not been ... invalidated,” that is to say, an “outstanding criminal judgment.” It delays what would otherwise be the accrual date of a tort action until the setting aside of an extant conviction which success in that tort action would impugn. ...

[38] ... If a plaintiff files a false arrest claim before he has been convicted, it is within the power of the district court, and in accord with common practice, to stay the civil action until the criminal case or the likelihood of a criminal case is ended. ... If the plaintiff is ultimately convicted, and if the stayed civil suit would impugn that conviction, *Heck* will require dismissal; otherwise, the civil action will proceed, absent some other bar to suit. ...

[41] Justice Breyer argues in dissent that equitable tolling should apply “so long as the issues that [a §1983] claim would raise are being pursued in state court.” ... Equitable tolling is a rare remedy to be applied in unusual circumstances, not a cure-all for an entirely common state of affairs. ...

[43] We hold that the statute of limitations upon a §1983 claim seeking damages for a false arrest in violation of the Fourth Amendment, where the arrest is followed by criminal proceedings, begins to run at the time the claimant becomes detained pursuant to legal

process. Since in the present case this occurred ... more than two years before the complaint was filed, the suit was out of time. ...

[52] Justice Breyer, with whom Justice Ginsburg joins, dissenting. ...

[55] Where a “plaintiff because of disability, irremediable lack of information, or other circumstances beyond his control just cannot reasonably be expected to sue in time,” courts have applied a doctrine of “equitable tolling.” ... The doctrine tolls the running of the limitations period until the disabling circumstance can be overcome. ...

[57] I find it difficult to understand why the Court rejects the use of “equitable tolling” in regard to typical §1983 plaintiffs. ... The Court's alternative – file all §1983 claims (including potentially *Heck*-barred claims) at once and then seek stays or be subject to dismissal and refile – suffers serious practical disadvantages. ... For one thing, that approach would force all potential criminal defendants to file all potential §1983 actions soon lest they lose those claims due to protracted criminal proceedings. For another, it would often require a federal court, seeking to determine whether to dismiss an action as *Heck* barred or to grant a stay, to consider issues likely being litigated in the criminal proceeding (Was the Constitution violated? Was the violation-related evidence necessary for conviction?). The federal court's decision as to whether a claim was *Heck* barred (say, whether the alleged constitutional violation was central to the state criminal conviction) might later bind a state court on conviction review. Because of this, even a claim without a likely *Heck* bar might linger on a federal docket because the federal court (or the plaintiff who has been forced to early file) wishes to avoid interfering with any state proceedings and therefore must postpone reaching, not only the merits of the §1983 claim, but the threshold *Heck* inquiry as well.

[58] Principles of equitable tolling avoid these difficulties. Since equitable tolling obviates the need for immediate filing, it permits the criminal proceedings to winnow the constitutional wheat from chaff, and thereby increase the likelihood that the constitutionally meritless claims will never (in a §1983 action) see the light of day. ...

[60] The use of equitable tolling in cases of potential temporal conflict between civil §1983 and related criminal proceedings is consistent with, indeed, it would further, §1983's basic purposes. It would provide for orderly adjudication, minimize the risk of inconsistent legal determinations, avoid clogging the courts with potentially unnecessary “protective” filings, and, above all, assure a plaintiff who possesses a meritorious §1983 claim that his pursuit of criminal remedies designed to free him from unlawful confinement will not compromise his later ability to obtain civil §1983 redress as well.

[64] ... My problem with the Court's approach lies in its insistence that all potential plaintiffs (including those whose suits may be *Heck* barred) file immediately – even though their suits cannot then proceed. With tolling, only rarely would a plaintiff choose to file a potentially *Heck*-barred §1983 suit while his criminal case is pending; and in those cases the district court could, if it wished, stay the action, or simply dismiss the suit without prejudice, secure in the knowledge that the suit could be timely filed at a later date.

[65] ... With equitable tolling, ... defendants will be sued once, in suits with constitutional claims that a state court has not already found meritless, at a time when the suit can be promptly litigated. Given the practical difficulties of the Court's approach, I would not rule out now, in advance, the use of an equitable tolling rule along the lines I have described.

[66] ... For these reasons, I respectfully dissent.



Darryl Hunt, The NAACP, And The Nature Of Evidence

By William L. Anderson

One of the central issues in the Duke Non-Rape, Non-Kidnapping, and Non-Sexual Assault case has been the absence of what some might call “evidence” that demonstrates even minimal contact between the accuser, Crystal Gail Mangum, and the three former Duke student athletes, Reade Seligmann, Collin Finnerty, and David Evans. While the State of North Carolina still insists that these three young men beat and sexually assaulted Mangum, many of us are arguing that evidence should matter. Enablers of the state, however, declare that evidence matters only when they want it to matter.

One of the loudest voices demanding that the three young men go to trial has been the North Carolina NAACP. In an earlier article, I likened what the NAACP has done in this case to what occurred during the Jim Crow era. I had hoped that in the four months since I wrote those words, the North Carolina NAACP would be willing to look at the exculpatory evidence and see that this case truly is a hoax.

Instead, the NAACP has become even more shrill in its rhetoric. For example, even though the first Duke prosecutor Michael B. Nifong dropped rape charges, the NAACP in its website still insists that the three young men raped Crystal Gail Mangum.

As I noted in my previous article, the NAACP has gone against literally everything it has urged be established law, and has even gone against its own record for cases like this. To provide an example, I will tell the story of Darryl Hunt, who was wrongly convicted in a North Carolina court for rape and murder and served nearly 20 years in prison before being exonerated and ultimately pardoned by Governor Mike Easley in 2004.

I will say up front that I approve of the release

All Charges Dismissed Against The Duke Lacrosse Three

North Carolina Attorney General Roy Cooper announced on April 11, 2007, that all charges were being dismissed against the Duke Lacrosse Three — Reade Seligmann, Collin Finnerty, and David Evans. It has been estimated that the families of the Duke players falsely accused by Crystal Gail Mangum spent over a million dollars in legal fees.

and exoneration of Hunt, who through the Innocence Project and the urging of the NAACP finally was released, although even though it was obvious

he was not guilty, the state’s prosecutors nonetheless (and not surprisingly) dragged their feet. My purpose in using his example is twofold. First, we have to understand that wrongful convictions exist, and there is no excuse for them. None. One rarely, if ever, finds a wrongful conviction where there was not prosecutorial misconduct or a refusal to look at other evidence, no matter how compelling it might be. Second, I wish to point out the terrible inconsistency that the North Carolina NAACP has demonstrated in its demands that Seligmann, Finnerty, and Evans be tried and convicted for something that never happened. At least there was a dead body in the Hunt case.

Invariably, as one looks at what happened during the course of an “investigation” and trial that has led to a wrongful conviction, there always are gaps, many of them huge, in the “evidence” that ultimately (and wrongfully) swayed a jury that all too often wanted to be swayed in the first place. And that is what happened to Darryl Hunt. Here, briefly, is his story.

On the morning of August 10, 1984, Deborah Sykes, a white copy editor at the *Winston-Salem Journal* was walking to work after parking her car two blocks away. Witnesses later said they saw two black men walking with her, but no one at the time suspected anything was happening. In fact, somewhere between her car and the newspaper office, Sykes was raped and murdered, stabbed 16 times.

I remember when the crime occurred because she had only recently left the newspaper in Chattanooga where I had my first real job after being graduated from college. Sykes was tall, attractive, and well-liked, and her brutal rape and murder shocked not only people in North Carolina, but also those who knew her from Chattanooga.

Ultimately, police arrested Darryl Hunt, who at the time was 19, black, and jobless and not looking to go anywhere in life. He did not have a criminal record, but neither did his life show any real promise at that time. Like so many police investigations of such a brutal crime, there was strong community pressure to “solve” it, and, more specifically find the suspects who could be charged. As medical science later would show, the rapist and mur-



Darryl Hunt

Darryl Hunt Settles With City For \$1.65 Million

The city of Winston-Salem, North Carolina announced on February 19, 2007, that it had agreed to pay \$1.65 million to Darryl Hunt to forestall him filing a federal civil rights lawsuit against the city for his 18 years of wrongful imprisonment for murder. The settlement was midway between the \$2.6 million sought by Hunt and the \$500,000 the city had been offering. The city council also formally apologized to Hunt for his ordeal.

In 1985 Hunt was sentenced to life in prison after being convicted of murdering 25-year-old Deborah Sykes in August 1984. After his conviction was overturned he was retried in 1990, and again convicted and sentenced to life in prison. In December 2003 another man was matched to the crime scene DNA and he confessed to Sykes’ murder. The charges were dismissed against Hunt on February 6, 2004. Governor Mike Easley granted Hunt an unconditional pardon on the basis of his actual innocence, on April 15, 2004.

The state of North Carolina paid Hunt \$358,545 in 2004 based on the state’s compensation law providing \$20,000 for each year of wrongful imprisonment. The payment precluded Hunt from suing the State, but it didn’t bar a suit against Winston-Salem or its police department.

Hunt’s case is the subject of the documentary, *The Trials of Darryl Hunt*, that was among the final fifteen candidates for consideration for the 2006 Academy Award for Best Documentary. The documentary’s official website is, <http://www.breakthrufilms.org>



derer left his calling card all over the body with his DNA, but it would be more than a decade before such testing became reliable, so there was no way that DNA could convict – or acquit – Hunt when he went to trial in 1985.

Hunt cont. on page 18

Hunt cont. from page 17

Space simply does not permit the details needed to explain what happened in the Hunt trial and subsequent conviction, but I have linked the outstanding series that the Winston-Salem Journal has done, and to permit the reader to draw his or her own conclusions about what happened – and what did not happen. We do know that in order to gain their conviction, police and prosecutors were forced to push square pegs of evidence into round holes. Writes the Journal:

District Attorney Don Tisdale didn't like much of anything about the case against Darryl Hunt, though he didn't say so publicly. Privately, he made it clear that the police had relied too heavily on unreliable witnesses to charge Hunt with the murder of Deborah Sykes.

The police hadn't even bothered to check on the background of their chief witness, Thomas Murphy. Had they done so, they would have discovered, as the defense had, that Murphy had briefly been a member of the Ku Klux Klan 10 years earlier. Murphy's near obsession with the case also troubled Tisdale. In a blistering, six-page memo to acting Police Chief Joe Masten on Oct. 19, 1984, Tisdale characterized Murphy as "an eyewitness who felt guilt because he did not stop and help Deborah Sykes."

This was a victory that ultimately would cost Tisdale his job – just as making arrests in the Duke case ultimately would secure Nifong's job with the voters. In both cases, the key voters were black. Despite Tisdale's apprehensions, and despite the sentiment in the local black community that Hunt was not the perpetrator or had been present at the rape and murder, he tried and won the case before a mostly-white jury. But even the jury had lingering doubts and refused to give Hunt the death penalty, opting for life in prison instead.

In May, 1989, the North Carolina Supreme Court overturned the conviction on the basis of testimony from Hunt's former girlfriend. Hunt was to receive a new trial. Prosecutors offered him a plea bargain, but he stood firm in his claim of innocence. He would take his chances before a jury in 1990.

The state, while using some of its old witnesses, also resorted to another tactic called "jumping on the bus." Authorities find someone who had contact with the accused while in jail, either in prison or in a holding cell, and then feed that person details of the case that supposedly only the perpetrator could know. The prisoner – usually in exchange for a reduced sentence or even freedom – then

tells the jury that the accused "confessed" to him while the two were together.

It is a smarmy and thoroughly criminal tactic, but one that has been popular with prosecutors and law enforcement people for many years. In the Hunt case:

Two prison snitches – Jesse M. Moore and Donald Haigy – testified that Hunt had confessed to the crime in prison. The defense discredited Moore by pointing out that he was a racist, motivated by a belief that black inmates got preferential treatment. The defense also called another inmate whom Moore had identified as a witness to Hunt's confession, and that inmate denied Hunt had ever confessed. To discredit Haigy, the defense called his brother, who testified that he was a liar. Tom Sturgill, a retired SBI agent who knew Haigy, said recently that he was not a credible witness. "I know he did testify," Sturgill said. "Anyone that knew him then thought it was a joke."

A woman named Debra Davis said she saw Hunt and Mitchell (another suspect) outside Crystal Towers the morning of the murder, though she didn't come forward until after his arrest. The defense pointed out that she was on probation for welfare fraud and anxious to gain favor with the police.

This time, Hunt faced an all-white jury in a rural county, his attorney having asked for and receiving a change of venue. While his defense was able to poke holes in the prosecution's case, the cast of characters who testified in Hunt's defense were not exactly from the best part of town. As one juror had commented after the first trial, the people in the story came from the "underbelly" of Winston-Salem, and that is a world that was almost wholly unknown to those rural jurors in the second trial.

Thus, jurors ultimately figured that the prosecution would not bring a case unless it believed it to be true, and they convicted Hunt of robbery, kidnapping, sexual assault and rape, but this time not murder. But DNA evidence, which was just being perfected at about the time the jury voted guilty, ultimately would force people to take another look at the Hunt convictions.

In September 1994, a nurse would draw two vials of blood from Hunt's arm and the DNA testing was on. It did not take investigators long to find that the semen found in and on Sykes' body did not match the DNA of Darryl Hunt. In fact, all they had was eyewitness testimony that always had proven to be shaky, even from the prosecution's point of view, but now the prosecution had a problem. Their eyewitnesses had made Hunt to be the rapist,

yet science was clearly telling them that Hunt could not have raped Deborah Sykes. It was like Sykes herself testifying from the grave that they had convicted the wrong man.

Yet, prosecutors are stubborn and, as they represent a state that claims omniscience, they hurriedly came up with a new theory: Hunt must have accompanied the murderer, but he still must have been involved. Either that, or Hunt raped her, but did not ejaculate. (Prosecutors forgot that even skin-to-skin contact is going to leave DNA evidence, something we have learned over and over in the Duke case.)

It did not matter that the prosecutors' new claims, in effect, impeached the testimony of their own witnesses. The DNA results were casting doubt literally on everything prosecutors claimed had occurred, all the way to the DNA not matching another person that the authorities said they believed had raped Sykes. Yet, the State of North Carolina was not willing to give an inch. It had secured convictions and it would not admit to anything but its original stories, even if those original stories were mutually exclusive to whatever claims the state was making up to explain what might have happened.

The state ultimately prevailed and the North Carolina Supreme Court ruled 4-3 in 1995 not to overturn the conviction. The DNA results were interesting, but the court did not believe that it would be central to the case or the conviction. But the case was not over.

In 2003, Willard Brown, who then was in prison, was found to be the one with the DNA match to the body of Deborah Sykes, and he confessed to her rape and murder. In February 2004, Hunt was freed, this time for good.

Not surprisingly, some police and prosecutors stick to their original claims of Hunt's guilt. Sykes' mother still believes that Hunt was involved in the murder of her daughter, DNA testing and Mitchell's match and confession notwithstanding. While I do not believe that their reluctance to accept the facts is racially motivated, nonetheless it points to the powerful emotions that occur when people have committed themselves to a certain point of view.

In the aftermath of Mangum's accusations, the whole Duke case seemed to be something almost as terrible as the Sykes rape and murder. Granted, Crystal was alive, but the accusations that three young men took a young black woman, beat and raped her for a half hour while she fought them off, were horrendous, and the reaction was predictable.

Hunt cont. on page 19

Hunt cont. from page 18

But, unlike the Sykes case, there was no proof of rape. For example, we read on the NAACP's current website:



Mike Nifong

Prosecutor who filed charges against the Duke lacrosse players without any evidence of their guilt.

The sexual assault nurse examiner (SANE) found the "victim had signs, symptoms and injuries consistent with being raped and sexually assaulted vaginally and anally." The SANE also said the injuries and the victim's behavior were consistent with a traumatic experience. Theresa Arico, the SANE coordina-

tor at Duke Hospital said "there was a certain amount of blunt force trauma present to create injury" and that the injuries the victim suffered were "consistent with the story she told." The ER doctor on duty that night also has reported that Ms. M. suffered trauma consistent with her story.

Literally, not one word of that statement is true. The medical reports do not say anything about "blunt force trauma." That comes from a highly-discredited police report made without notes and leaked to the *New York Times* in late summer, and even the *Times* has been running away from that story ever since. Neither do the medical reports say anything close to what the NAACP alleges. In short, there was no rape, and even Nifong had to back down from that shortly before he handed the case off to the state attorney general's office.

Then there is the question of DNA. While the NAACP was willing to defend Hunt against the critics who claimed (wrongly) that Hunt could have raped and beaten Sykes and left no DNA anywhere, it now urges that the courts absolutely ignore any exculpatory DNA evidence in the Duke case. Interestingly, the same people who tell us that the Hunt DNA evidence is "proof" of his innocence are telling us that in the Duke case, DNA means nothing, and that these young men somehow could have raped and beaten Mangum, but left no physical traits on her or her body.

This simply is nonsense, yet the NAACP has made a number of political threats to North Carolina Attorney General Roy Cooper, using the *Wilmington Journal* as a mouthpiece. Try this case, the organization demands, or Cooper will pay a political price.

In the end, we see a sad reversal. Darryl Hunt was wrongly convicted, and it is obvious now that the state never had a case worthy of trial. It is further understood that once again, we saw North Carolina juries failing in their duties to seriously evaluate evidence instead of just assuming that prosecutors are omniscient and would not bring a case to trial unless they had serious evidence.

The NAACP and other black organizations were right in demanding Hunt's release, and I am glad that the authorities finally listened. Yet, I now see those same voices demanding the very kind of trial and conviction that they would denounce if the racial situation were not what it is in the Duke case. From its unrelenting praise of Nifong — who now faces serious misconduct charges from the North Carolina Bar Association — to its contemptuous dismissal of exculpatory evidence, the NAACP has discredited itself.



Crystal Gail Mangum

She told investigators six different stories about the alleged rape/assault by Duke lacrosse players. She has a history of making false assault allegations. Durham PD photo, March 16, 2006.

In the Duke case, the DNA — the very science that led the NAACP to demand the release and exoneration of Darryl Hunt — is the witness against the prosecution and for Seligmann, Finnerty, and Evans. The DNA and many other aspects of the case tell us clearly that it is a hoax.

About the author: William L. Anderson, Ph.D, teaches economics at Frostburg State University in Maryland, and is an adjunct scholar of the Ludwig von Mises Institute. The LvMI website is, www.mises.org.

Reprinted with permission of the author. Originally published on LewRockwell.com, February 10, 2007, at, www.lewrockwell.com/anderson/anderson170.html

Stolen Cellphone Leads To Wrongful Robbery Conviction

Lloyd Simons' claim of innocence fell on deaf ears when he was convicted in December 2001 and sentenced to 33 years in prison for armed robbery, being an accessory to a rape, and unlawful possession of a weapon and ammunition. His convictions were solely based on him having sold a cellphone in 1998 that was stolen when those crimes were committed a year earlier in the North West province of South Africa.


After Simons' sentencing, his family hired a private investigator. The investigator uncovered proof that Simons bought the stolen cellphone from a man involved in the crimes, and Simons later sold the phone to another man. When use of the stolen phone was traced to that man, he identified Simons as the person he bought it from.

Simons' convictions were quashed based on the new evidence and he was released in late 2002 after a year of wrongful imprisonment.

In February 2007 a hearing was held in Pretoria's High Court concerning Simons' claim for \$157,700 (R1.1 million in South African money) in damages caused by the police's failure to properly investigate his case. Simons' asserts he not only had to endure imprisonment for a sex-related crime, but he lost his state job and had to sell his home to pay his legal fees. The Court did not immediately make a decision.

Source: Innocent man claims R1.1m from police, By Zelda Venter, *Pretoria News*, February 8, 2007.

In *United States v. George W. Bush et. al.*, former federal prosecutor Elizabeth de la Vega lays out a grand jury indictment against defendants George W. Bush, Richard Cheney, Colin Powell, Donald Rumsfeld and Condoleezza Rice, for the crime of conspiracy to defraud the United States.



Ms. de la Vega's expert review of the evidence and law establishes that President Bush and his team used the same techniques used by Enron's Ken Lay, Jeffrey Skilling, and fraudsters everywhere — false pretenses, half-truths, deliberate omissions — in order to deceive Congress and the American public into going along with the 2003 Iraq invasion and occupation that has resulted in more than 700,000 American and Iraqi deaths (as of Dec. 2006) and is projected to cost over \$1 trillion.

Softcover. 256 pages, Seven Stories Press
\$14.95 + \$5 S&H (Stamps OK) or combine with books on p. 37 and 38 to order \$35 worth of books and eliminate shipping charge. Order from:

Justice Denied
 PO Box 68911
 Seattle, WA 98168

Or order with a credit card from JD's website,
www.justicedenied.org/books.html

Wrongful Conviction Hall of Honor

Wrongful convictions are not a recent phenomena. They have occurred during the thousands of years since people first began organizing a tribunal of some sort to determine whether a person would be judged guilty of committing an act that was deemed to be criminal. However, the near instantaneous communication techniques available today may make it seem to the uninitiated that their prevalence is unique to our age.

The correction of a wrongful conviction, publicizing their occurrence, and analyzing their causes or prevention only occurs because of the efforts of interested persons. There have been many such people through the years, and *Justice:Denied* is inaugurating a Wrongful Conviction Hall of Honor to publicly recognize the contribution these people have made in one form or another, to rectifying, alleviating, or publicizing wrongful convictions.

The initial eight honorees are a diverse group. Two are from England, one is from France, one is from Germany, and four are from the United States. They include two authors, a law professor, an actor, a movie director, a seminary graduate, and two lawyers. Six are deceased. What they share is a personal significance when looking at wrongful convictions from a historical perspective. These eight are far from being the only people deserving of recognition. Their accomplishments, however, sets a standard to evaluate future selections. In the order of their birth, the eight honorees are:

- Voltaire. 1694-1778. Father of the innocence campaign and compensation after exoneration. (See p. 29)
- Max Hirschberg. 1883-1964. A wrongful conviction lawyer, and the author of many articles and a 1960 book about wrongful convictions. (See p. 27)
- Edwin Borchard. 1884-1951. Pioneer advocate of wrongful conviction compensation in the U.S., and the author of a 1932 wrongful conviction book. (See p. 24)
- Erle Stanley Gardner. 1889-1970. Founder of the world's first innocence project and publicist of wrongful prosecutions in books, and on radio and television. (See p. 23)
- Alfred Hitchcock. 1899-1980. Director of many movies portraying the plight of a wrongly accused person. (See p. 24)
- David Janssen. 1931-1980. Portrayed Dr. Richard Kimble's four-year search for evidence to exonerate himself of murder as millions watched *The Fugitive* weekly. (See p. 25)
- Gareth Peirce. Living. Wrongful conviction lawyer whose many successes inspired creation of England's Criminal Case Review Commission. (See p. 21)
- James McCloskey. Living. Founder and director of Centurion Ministries, the United States' oldest innocence project. (See p. 20)

Following this introduction are articles about each of the eight honorees.

The search for difficult truths has defined James (Jim) McCloskey's life, the founder of Centurion Ministries, the oldest innocence project in the country.

James McCloskey – Founder Of The Oldest Innocence Project In The U.S.



By Elizabeth Perry

Centurion Ministries is a secular organization that has freed 40 people convicted of crimes they did not commit through exoneration or early parole by exhaustively re-examining their cases and finding new evidence.

McCloskey left a successful career in international business after feeling compelled by God to join the ministry. His life changed again when he met an innocent man in prison and couldn't walk away.

"The Jim McCloskey the world knows now is not the Jim McCloskey his friends knew. They were shocked when he decided to do this," said Kate Hill Germond, Assistant Director of Centurion Ministries.

She marvels at McCloskey's decision, knowing it didn't come easily.

"For me, I've always done this but for Jim, he hasn't—but then his heart changed." says Germond.

Jim McCloskey grew up in suburban Philadelphia and graduated from Bucknell University in 1964. McCloskey was awarded the Bronze Star for courage under

fire as a naval officer in Vietnam, though he declined to discuss the circumstances, saying he did "nothing really heroic."

McCloskey excelled in the business world, working as an executive in Tokyo and Philadelphia. Despite his outward success, McCloskey struggled inwardly.

"I didn't share my decision to leave the business world with anyone. It took two years to come to the decision and the only person I consulted with was my minister," he says.

McCloskey entered Princeton Theological Seminary in 1979, and in 1980 was assigned to chaplain Trenton State Prison where he met Jorge De Los Santos.

McCloskey became convinced De Los Santos was innocent. He delayed his studies for a year to prove it. When he told his parents "they thought all kinds of dark thoughts but eventually came to support me."

"He had to right a wrong, and that became his life's work," says Germond.

Through McCloskey's efforts, De Los Santos was freed in 1983. After McCloskey earned his degree, several things coalesced, causing him to incorporate Centurion Ministries that same year.

De Los Santos introduced him to two other New Jersey inmates he believed were innocent. His parents gifted him \$10,000 which could be used as "seed money." Then McCloskey had a dream he came to see as a spiritual message.

"I had a dream I was in Vietnam in the Mekong Delta," says McCloskey. He describes standing on a riverbank and a boat loaded with Vietnamese villagers sank before him. Just as he was mourning their fate, a helicopter full of green berets appeared in the sky. They dove into the churning water and saved the Vietnamese.

McCloskey decided, "I am going to come to the prisons and bring them out."

Centurion Ministries is named after the Roman Centurion who stood at the foot of Christ's cross and said, "Surely, this one is innocent."

For the first seven years of the project, McCloskey's worked and lived rent free in

McCloskey cont. on page 21

Gareth Peirce is one of Great Britain's most prominent lawyers, and she definitely fits being described as 'one of a kind'.

Prior to entering into the legal profession, Peirce was in her mid-20s when she moved to the U.S. in the 1960s to work as a journalist. Among her assignments was following the civil rights campaign of Martin Luther King. After returning to Great Britain in the early 1970s, Peirce earned her law degree and began working at Benedict Birnberg's law firm, which was known for representing people in unpopular and controversial causes. Peirce was 38 when admitted as a solicitor in December 1978. ¹ Eschewing a career as a highly paid corporate lawyer, she continued working with Birnberg, and became one of her era's most effective human rights lawyers.

Among Peirce's many accomplishments during her career, is she was the key person responsible for the exoneration of the Birmingham Six. Those six men, all alleged by the prosecution to be Irish Republican Army (IRA) members, were sentenced to life in prison in August 1975 after being convicted of 21 counts of murder related to two Bir-

Gareth Peirce – A One Of A Kind Lawyer

By Serena Nicholls



mingham, England pub bombings. After Paddy Hill, one of the Birmingham defendants, wrote Peirce, she became convinced of the men's innocence and began representing five of them. Over a period of years she discovered the police fabricated false confessions, and suppressed forensic evidence favoring the innocence of the six men, who contrary to the government's claim were not IRA members.

The new evidence resulted in the Court of Appeal's grant of a new hearing in March 1991. During that hearing Lord Justice Lloyd stopped the prosecutor mid-sentence and announced, "we have heard enough." He then told the defendants, "In light of fresh evidence which has become available since the last hearing in this court, your appeal will be allowed and you will be free to go as soon as the usual formalities have been discharged." ² The men were released after 16 years of wrongful imprisonment.

Their innocence was acknowledged by the government when they were awarded compensation ranging from \$1.7 to \$2.4 million (£840,000 to £1.2 million). ³ Paddy Hill acknowledges that he and his co-defendants owe their freedom to Peirce's nine years of *pro bono* work. He said after his release, "I wish you could either clone her or that there were 1,000 more solicitors like her. She's a cross between my mentor and a big sister." ⁴

At the same time she was aiding the Birmingham Six, Peirce was engaged in a years long campaign for exoneration of the Guildford Four. Those three men and one woman were sentenced to life in prison after being convicted in 1975 for the IRA bombing of a Guildford, England pub in 1974 that killed five people and injured sixty-five. ⁵ The Guildford Four lost their appeals and languished in prison for years, even though during their 1977 trial the IRA's Balcombe Street gang instructed their lawyers to 'draw attention to the fact that four totally innocent people were serving massive sentences for the Guildford bombing.' ⁶

Peirce cont. on page 22

McCloskey cont. from page 20

the home of an elderly woman in exchange for help running errands.

After reading a *New York Times* article about McCloskey and Centurion Ministries in 1986, Germond felt compelled to join his crusade.



Kate Germond

"I thought he needed my help to organize the work and generally be a partner," says Germond.

"She's amazing and I'm lucky to have her. So are a lot of other people," said McCloskey.

Germond feels the same about McCloskey. "Usually in life, familiarity breeds contempt, but there's not a day that goes by I don't stand back and marvel at what he's done. I've found what I want to do and it's because of Jim." says Germond.

Pulitzer Prize winning journalist turned private investigator Paul Henderson began working with the organization in 1988 and in 1996 he became a full time investigator.

Centurion Ministries has four full-time employees and about two dozen volunteers.

When Centurion Ministries investigates a case, McCloskey is known for getting information from suspects others can't. He ascribes his success to respect. McCloskey develops a rapport and checks any judgements at the door before he enters the individual's home.

"Most people have a heart. If you can reach the heart you get that person to talk." said McCloskey. More than anything, he simply listens.

Of the 80 wrongful conviction investigations Centurion Ministries has conducted, five individuals who made it past the initial screening process were found through their research to be guilty.

Each one hurt McCloskey's spirit, but none more than Roger Keith Coleman, a Virginia man convicted of raping and murdering his sister-in-law.

A massive effort was made to prevent Coleman's execution. McCloskey even shared Coleman's last meal — a cold Domino's pizza they ate through the bars of his cell. It took McCloskey six years to emotionally recover enough to lobby for DNA testing after Coleman was executed.

The evidence proved Coleman's guilt. Rather than running from the truth, McCloskey approached the press, pushing to reveal his mistakes as intently as he'd pushed to review Coleman's case. Despite personal humiliation and critics who tried to use this instance to undercut his life's work, he doesn't regret the effort.

Since 1980 Centurion Ministries has aided the release of 40 wrongly convicted men and women.

"It was the first time we convinced a sitting governor to test DNA on an already executed prisoner." said McCloskey, feeling it would

open the door to future cooperation between activists and government.

McCloskey speaks in parables and colloquialisms, often using bible quotes to illustrate his point. When asked if he does God's work, McCloskey says he's never certain, using the New Testament story of a man whose son had died to explain.

The father asks Christ if he can raise his son from the dead, to which the Lord replies "O ye of little faith."

The desperate man then prays for the faith that would allow him to believe. McCloskey says he is like this father — negotiating through his doubt in the face of staggering injustice with hope.

Peirce cont. from page 21

After working *pro bono* for years on the case of the four Guildford defendants, Peirce came into possession of proof that the police had doctored notes of interviews with the defendants to fit the prosecution's case and concealed exculpatory evidence. An appeal was filed based on the new evidence. The exoneration of the Guildford Four in 1989 after more than 15 years of wrongful imprisonment was a defining moment in British legal history. The enduring effect of the case is such that sixteen years later, for the first time in British history, a Prime Minister, Tony Blair, acknowledged the innocence of the people involved in two miscarriages of justice, the Guildford Four and the McGuire Seven, and apologized for the ordeal they and their families experienced: "I am very sorry that they were subject to such an ordeal and injustice...they deserve to be completely and publicly exonerated."⁷

Gerry Conlon was one of the Guildford defendants. In his 1990 autobiography he compared Peirce's Herculean effort in his case to what Joan of Arc would have done. Peirce's involvement in the Guildford Four case was given the Hollywood treatment in the film version of Conlon's autobiography. *In the Name of the Father* was a successful 1993 film nominated for seven Academy Awards, including Daniel Day Lewis' portrayal of Conlon for Best Actor, the movie for Best Picture, and Emma Thompson's portrayal of Peirce for Best Actress.

During her career that has spanned four decades, Peirce has been involved in many other high-profile cases including, former MI5 operative David Shayler, Abu Qatada (aka 'Europe's Al-Qaeda Ambassador'), Judith Ward, the family of Jean Charles de Menezes, and Guantanamo Bay detainees Bisher Amin Khalil al-Rawi and Moazzam Begg.⁸

In Begg's harrowing account of his arrest in Afghanistan and his years of imprisonment by the U.S. military without charges, *Enemy Combatant: My Imprisonment at Guantanamo, Begram and Kandahar* (New Press 2006),



The Birmingham Six outside the courthouse – released after 16 years wrongful imprisonment. (*Forever Lost, Forever Gone* (1995))

he writes that when he learned Peirce had become involved in his case he had his first real hope that he would eventually be released.

Peirce is highly respected within the legal community, especially for her patience and tenacity in her long campaigns for justice. Journalist and author Sir Ludovic Kennedy described Peirce in the following way: "Gareth just refuses to be defeated in any case no matter how unfavourable it looks. She has an incredible patience as she beavers away, usually on her own, until she proves that a client has been the victim of injustice."⁹ As a result of Peirce's uncompromising diligence she is viewed by her colleagues as a formidable opponent.

The importance of Peirce's efforts go far beyond the numerous people she has personally helped. The Birmingham Six case, following on the heels of the Guildford Four, publicly exposed the deep flaws of the normal criminal appeal process – that relies on analyzing a case for legal errors – to correct a wrongful conviction based on factual errors or extraordinary circumstances.

Widespread knowledge within the legal community and amongst the general public that the government was able to seamlessly convict large numbers of innocent persons and successfully oppose their appeals for many years, was the impetus behind England's 1995 legislation establishing the Criminal Cases Review Commission (CCRC). The CCRC is a body that operates independent of the normal court, prosecution and public defender system. It investigates the conviction and/or sentence in a case for a possible miscarriage of justice, and refers the cases that pass its review process to the Court of Appeal (COA) for consideration on the grounds set forth by the CCRC. The CCRC began operating in 1997, and in its first ten years the conviction was quashed in 218 cases it referred to the COA.¹⁰ None of those exoneration was based on DNA evidence.

Birnberg summed up Peirce's impact on the legal profession, that includes establishment of the CCRC, by saying she had "transformed the criminal justice scene in this country almost single-handedly."¹¹

Peirce's world-wide notoriety for her legal exploits on behalf of victims of injustice is not due to personal grandstanding. She shuns the spotlight and rarely gives interviews. Her typical response to an interview request is that given to *The Sunday Telegraph* (London)

when she politely declined, "I ask you to consider that lawyers are, and deserve to be, the focus of little attention. If I could persuade you to write about some of the urgent issues, I would be pleased to do so."¹²

Peirce has never sought any personal glory or public recognition for the time and energy she has spent aiding innocent men and women. When she was awarded the distinguished honor in 1999 of Commander in the British Empire (CBE) for "services to justice," she declined it, stating that she would be unable to accept such an award.

After the release of *In the Name of the Father*, which Peirce has never seen, she self-effacingly stated, "My own personal regret is that an extremely unimportant participant in the story has been portrayed and given a seemingly important status, albeit in what I acknowledge is a drama not a documentary."¹³ Her lack of pretentiousness is remarkable considering that there is every reason to believe that without her dogged efforts the Guildford Four defendants never would have been cleared and they would have died in prison.

Although now in her mid-60s, Peirce has not cut back her workload, nor has her intolerance for injustice waned. Since September 11, 2001, she has been a vocal critic of the relaxing of legal protections around the world for people suspected of terrorism. She told the BBC in March 2004, "Say terrorism and it excuses everything."¹⁴ She is currently representing several former Guantanamo Bay detainees in civil suits, including Moazzam Begg. Peirce has spent her entire career associated with Birnberg, and she is currently a senior partner at Birnberg Peirce and Partners, London, England.

Peirce's passion and concern for humanity and the ephemeral concept of justice sets a high bar for others to strive to achieve. Both the magnitude of her professional accomplishments and her personal modesty underscores how unique of a person she is.

About the author: Serena Nicholls lives in Queensland, Australia. She has completed a Bachelor of Laws, a Bachelor of Arts in Psychology, a Graduate Diploma in Legal Practice and a Masters of Laws. She is completing her Doctor of Philosophy in the field of wrongful conviction.

Endnotes:

- 1 England has a dual system of categorizing lawyers. In very general terms, a solicitor handles and prepares legal matters outside the courtroom, while a barrister advocates legal matters in court.
- 2 *Forever Lost, Forever Gone*, By Hans Sherrer, *Forejustice.org*, http://forejustice.org/wc/bh6/forever_lost.htm
- 3 Birmingham Six, Wikipedia.com, http://en.wikipedia.org/wiki/Birmingham_Six

Peirce Endnotes cont. on page 33

Erle Stanley Gardner – Passion For Justice Leads To Founding Of The World’s First Innocence Project

By JD Staff



Erle Stanley Gardner was the driving force behind the founding in 1948 of the world’s first innocence project. The Court of Last Resort was a loose consortium of lawyers, investigators and experts around the country who were aided by *Argosy* magazine, which provided support with expenses and published accounts of cases. The structure and approach the Court of Last Resort used in investigating cases is perhaps most faithfully followed today by Centurion Ministries and the Innocence Institute at Point Park University, but all innocence projects in the country use a variant of it.

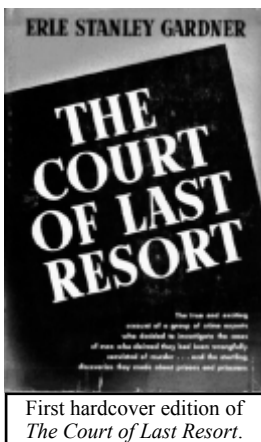
During the Court of Last Resort’s decade and a half of existence, the organization aided a number of wrongly convicted people. Gardner wrote a book about the organization and the wrongly convicted people it helped that was appropriately titled, *The Court of Last Resort*. First published in 1952, a revised edition was published in 1954. Gardner was 71 when he left the organization in 1960, and it dissolved several years later.¹

Gardner was not a young man in 1948. However, helping found an organization at the age of 59 to help victims of grave errors by the legal system wasn’t surprising considering his background and passion for justice.

Brief biography

After graduating from Palo Alto (CA) High School in 1909, Gardner was expelled during his first-term at Valparaiso University in Indiana when he was falsely accused of participating in a dormitory bottle-smashing incident involving a professor. Returning to California, he was admitted to the bar association in 1911 after serving a two-year apprenticeship in a lawyer’s office.

As a young lawyer in Southern California, Gardner became known for his flamboyant trial tactics during his defense of poor white folk and minorities he thought were getting short-shrifted. During one trial, for example, he exchanged the identities of Chinese merchants to discredit his client’s identifi-



First hardcover edition of *The Court of Last Resort*.

his first two stories in 1921 to the magazine *Breezy Stories*. In 1923 he sold his first novella. He became successful enough writing primarily short legal mysteries and whodunits that by 1932 he was only practicing law two days a week, and writing and editing his stories the other days.

After two full-length books, *Reasonable Doubt* and *Silent Verdict*, had been rejected in 1933 for serialization by a number of magazines and several book publishers, William Morrow and Company agreed to publish them under new titles: *The Case of the Velvet Claws* and *The Case of the Sulky Girl*. The main character of the books was a defense attorney named Perry Mason who relied on his faithful secretary Della Street and private investigator Paul Drake.

The books sold well. Thus began what became a series of 82 Perry Mason books over almost 40 years that helped establish Gardner as the all-time best-selling American author. From 1933 to his death in 1970 he wrote a total of 140 books, some under pseudonyms, of which almost 100 sold a million or more copies.

Showing his intense interest in false accusations (perhaps because of his experience in college), in each Perry Mason book, “Mason defended a client charged with murder. The client is always entangled in a set of suspicious circumstances which makes him look guilty. When it seems as if all is lost and his client will be convicted, Mason risks everything – his life, disbarment, and/or a jail sentence – on a desperate last bid, confident that he can win acquittal. In a surprise ending, Mason’s desperate bid pays off and he saves his client in a climatic courtroom scene, producing evidence at the last moment which not only clears the defendant but reveals the real murderer as well.”²

After a radio version of *Perry Mason* had been airing since the mid-1940s, Gardner formed Paisano Productions in the mid-1950s to produce a television version of *Perry Mason*. With

Raymond Burr starring as Perry Mason, the weekly program aired for nine years (1957-1966) and became the most successful lawyer series in television history. Gardner appeared as the judge in the final *Perry Mason* episode.

Although he was in his late 60s and early 70s, Gardner lived at a break-neck pace from 1957 to 1960 when he was writing books, editing *Perry Mason* scripts, and working with The Court of Last Resort.

The *Perry Mason* television program not only made tens of millions of dollars for Gardner, but it fueled interest in his many books, which averaged sales of 26,000 copies per day during the mid-1960s.

Gardner finished his last Perry Mason book in 1967 and he died three years later at 81.

Perry Mason re-runs and made for television *Perry Mason* movies starring Burr are still aired on cable television. Dozens of Perry Mason books are still in print, and they sell well enough that major booksellers stock them on their shelves.



Gardner as the judge in *Perry Mason*’s final episode (1966)

Between his wildly popular books, nationally broadcast radio program, network television series, and articles and books about The Court of Last Resort, Gardner undoubtedly raised the consciousness about wrongful prosecutions and convictions more than any one person in U.S. history.

Endnotes:

- 1 See, The Court of Last Resort: A Historical View of *Justice: Denied*, By Theodore Ponticelli, *Justice: Denied*, Vol. 2, Issue 9.
- 2 Erle Stanley Gardner 1889-1970, *Contemporary Authors Online*, Gale, 2003.

Visit Justice:Denied’s Website:

www.justicedenied.org

Back issues of *Justice: Denied* can be read, late breaking news is listed, there are links to wrongful conviction websites, and other information related to wrongful convictions is available. JD’s online Bookshop includes more than 60 wrongful conviction books, and JD’s Videoshop includes many dozens of movies and documentaries related to wrongful convictions..

Two years after becoming law librarian of Congress, 29-year-old Edwin Borchard wrote *European Systems Of State Indemnity For Errors of Criminal Justice* in 1913.

¹ The 35-page document advocated providing compensation to a person victimized by a miscarriage of justice.

During his tenure as Congress' law librarian Borchard also wrote *Diplomatic Protection of Citizens Abroad* (1915), which is considered a classic text in its area.

After Borchard's appointment in 1917 as a professor at Yale University Law School, his specialized knowledge of international law resulted in contacts with the country's leading political and legal figures. He also traveled widely around the world as a result

Edwin Borchard – Pioneer In Analyzing Wrongful Convictions And Advocate For Compensation



of his involvement in resolving international disputes and participation in international law conferences. His legal stature internationally was such that he was the first American professor invited to lecture at the University of Berlin after WWI.

Knowing of Borchard's keen interest in legal reform, Harvard law professor and future Supreme Court Justice Felix Frankfurter suggested he write a book about the persistent problem of wrongful convictions. This

was shortly after Frankfurter's valiant failed effort to stave off the 1927 execution of Sacco and Vanzetti, whose innocence he passionately wrote about. ² Borchard acted on Frankfurter's suggestion and several years later *Convicting the Innocent: Sixty-Five Actual Errors of Criminal Justice*, was published by Yale University Press (1932).

Convicting the Innocent was widely read, and along with Borchard's behind the scenes advocacy, contributed to the enactment in 1938 of a federal law compensating persons erroneously convicted in federal court. *The New York Times* wrote, President Roosevelt "presented to Mr. Borchard the pen used in enacting the bill into law in

Borchard cont. on page 25

Alfred Hitchcock – Cinema's Greatest Friend Of The Wrongly Accused



Alfred Hitchcock is most well known for directing the classic psychological thriller *Psycho*. His fascination with directing psychologically suspenseful movies extended to an unusual film genre – a person wrongly accused of a crime. His interest in that subject matter was such that he directed more movies that have a wrongly accused person as part of the plot than any other director in cinematic history. Those movies, and the year they were released, are:

- *The Lodger* (1927)
- *The 39 Steps* (1935)
- *Young and Innocent* (1937)
- *Saboteur* (1942)
- *Spellbound* (1945)
- *Strangers on a Train* (1951)
- *I Confess* (1953)
- *To Catch a Thief* (1955)
- *The Wrong Man* (1957)
- *North By Northwest* (1959)
- *Frenzy* (1972)

An interesting tidbit about these eleven films is that only *The Wrong Man* was directly based on a true story. The theme of an innocent man on the run, hunted down by the police and self-righteous members of society, so dominated Hitchcock's work that it was in the plot of his first talking

movie, and his next to last movie – made 45 years apart. A number of Hitchcock's films also had the added element of a "double chase": while being pursued the innocent person pursues the guilty person.

Another Hitchcock movie, *The Paradine Case* (1947), had the twist that a young attractive woman claiming innocence of murdering her older wealthy husband was in fact guilty, and the truth came out during her trial.

Hitchcock also delved into an aspect of a person's false accusation that is rarely explored in films: its psychological effect on family members. In *The Wrong Man*, the wife of the wrongly accused man has a mental breakdown from the stress of the situation.

There has been much speculation as to what personal experiences contributed to Hitchcock's fascination with the theme of an innocent person's pursuit by authorities. Several events during his formative youthful years have been identified as possible influences.

Hitchcock was born in London, England in 1899, and his father was a strict disciplinarian. When Hitchcock was four or five, his father reacted to his disobedience by sending him to the local police station with a note. The note asked the police to lock Hitchcock in a cell for several minutes to teach him a lesson. A policeman followed the notes instructions, telling young Hitchcock as he was locked in the cell, "This is what we do to naughty boys." ¹ Several biographers refer to that incident as imbuing Hitchcock with a life-long ambivalence toward law enforcement. When asked years later by a New York *Herald Tribune* columnist what frightened him, Hitchcock's second answer was "Policeman." ²

Also when he was young, Hitchcock was a student at a Jesuit school in London. After becoming an acclaimed director, Hitchcock said in an interview, "It was probably during this period with the Jesuits that a strong sense of fear developed – moral fear – the fear of being involved in anything evil. I always tried to avoid it. Why? Perhaps out of physical fear. I was terrified of physical punishment." ³

Whatever the source of his inspiration, Hitchcock's movies have conveyed the idea to untold tens of millions of people how easily circumstances can result in an innocent person being wrongly accused or suspected of a crime. Complimenting that idea was Hitchcock's accompanying plot nuance that the pro-active efforts of the wrongly accused person was critical for the truth to come to light, and that the person's innocence was established in spite of, and not because of the efforts of the police.

Although he emigrated to the United States in 1939 and became a naturalized U.S. citizen in 1955, shortly before his death in April 1980 at the age of 80, Hitchcock was knighted by Queen Elizabeth II for his contribution to English cinema.

More than a quarter century after his death, Hitchcock's talent continues to be recognized. A December 2006 article in *The Atlantic Monthly*, "Influential Filmmakers," named Hitchcock as one of the five most influential persons in the first hundred years of filmmaking in the United States.

Endnotes:

¹ Alfred Joseph Hitchcock, *Dictionary of American Biography*, Supplement 10: 1976-1980, Charles Scribner's Sons, 1995.

² *Id.*

³ *Id.*

Borchard cont. from page 24

recognition of the role the Yale jurist played in the legislation.”³ The compensation amounts specified in that 1938 bill remained unchanged for 66 years, until they were increased by The Justice For All Act of 2004.

A less well-known aspect of Borchard’s career is that as one of the world’s leading experts on international law, he was a life-long advocate of U.S. neutrality. He was a vocal critic of the United States’ entry into WWI – arguing that there was no national interest to do so. He was also the country’s leading legal professional opposed to 1936’s so-called “Neutrality Bill.” In his January 1936 testimony before the House Foreign Affairs Committee, Borchard described the bill as misnamed because it altered established rules of international law that ensured the United States’ neutrality in disputes between other countries. Borchard prophetically told the Congressional committee that the bill “would be likely to draw this country into the wars it is intended to avoid.”⁴

In 1937 Borchard co-authored the seminal work advocating U.S. neutrality, *Neutrality for the United States* (rev. ed. 1940). After his worst fears about what would result from the failure of the U.S. to follow neutral policies were realized and the country became embroiled in WWII, Borchard opposed the federal government’s disregard for the rights of Americans in the name of national security. Borchard wrote briefs in two of the most important cases to reach the Supreme Court involving challenges to the U.S. military’s summary imprisonment of 120,000 innocent Japanese-Americans in concentration camps. The two cases were *Hirabayashi v. U.S.*, 320 U.S. 81 (1943), and *Korematsu v. U.S.*, 323 U.S. 214 (1944).⁵

In June 1950 Borchard retired after 33 years as a member of Yale Law School’s faculty. He died in July 1951 at the age of 66.

Sources:

Edwin Montefiore Borchard, *Dictionary of American Biography*, Supplement 5: 1951-1955.

Endnotes:

1 European Systems Of State Indemnity For Errors of Criminal Justice, by Edwin Borchard, 3 *J. Am. Inst. Crim. L. & Criminology* 685, May 1912 to March 1913. Available on JD’s website, www.justicedenied.org/borchard_1913.pdf

2 The Case of Sacco and Vanzetti, by Felix Frankfurter, *Atlantic Magazine*, 1927

3 Edwin Borchard, Law Expert Dead, Obituary, *New York Times*, July 22, 1951.

4 Neutrality Bill Is Called Peril, *New York Times*, January 10, 1936.

5 For background information about *Korematsu v. United States*, see, “In Memoriam, Fred Korematsu (1919-2005),” *Justice:Denied*, Issue 28, Spring 2005, p.5.

David Janssen – a.k.a. Dr. Richard Kimble a.k.a. The Fugitive



house who either murdered Kimble’s wife or knew who did. Kimble’s quest was hampered by being a fugitive from the police, since he escaped from the train taking him to the death house after he was wrongly convicted of his wife’s murder.

Although actor David Janssen starred in four television series from 1957 to 1975, his most memorable role was his four year portrayal as Kimble.¹

Janssen’s role as Kimble touched a nerve in viewers. Many prisoners wrote Janssen that they too had been wrongly convicted. People around the country reported sighting a suspicious one-armed man. A southern pris-

From 1963 to 1967, many millions of people throughout the world watched *The Fugitive* and Dr. Richard Kimble’s four-year pursuit of the one-armed man he saw running from his

on warden changed his mind when prisoners threatened to riot after he announced that he intended to stop them from watching *The Fugitive*. In England a grass-roots action committee formed by viewers was successful in persuading Granada TV to reverse its decision to take the program off the air as a bad influence.²

Kimble was exonerated when the mystery surrounding the death of his wife was resolved in *The Fugitive*’s final episode in August 1967. That program was the highest rated program in U.S. television history up to that time. Four decades later it is still the third highest rated episode of a television series in history.³ Janssen was so popular as Kimble that the series finale was seen by many times more people than saw the 1993 movie version in theaters, that starred Harrison Ford as Kimble.

David Janssen died of cancer at the age of 48 in 1980.

Endnotes:

1 David Janssen’s four series were:

• *Richard Diamond, Private Detective*. Four years, 1957-1961.

• *The Fugitive*, Four years, 1963-67.

• *O’Hare, United States Treasury*. One year, 1971.

• *Harry O*. Two years, 1974-75.

2 *The Fugitive* website,

<http://www.nostalgiacentral.com/tv/drama/fugitive.htm>

3 Only the final episode of *M*A*S*H* (1983) and the Who Shot JR? (1980) episode of *Dallas* outrank it. *All-Time Top-Rated TV Programs*,

http://www.chez.com/fibler/tvstats/misc/all_time.html

The Fugitive debuted on September 17, 1963 as an hour-long weekly ABC television series. The plot of *The Fugitive* was straightforward: Dr. Richard Kimble saw a one-armed man in his headlights running away from his house as he arrived home one night. When he went inside he found his wife Helen dead in their living room. Kimble had been seen by neighbors arguing with his wife earlier that evening – so the police didn’t believe his story about the one-armed man, and neither did the jury that convicted him of murdering her. It looked to them like he had murdered his wife and tried to manufacture an alibi for himself by leaving and then returning home. An innocent man sentenced to death, Kimble was able to escape when the train carrying him to death row wrecked. He was thus given a reprieve from the grim reaper, and a chance to embark on what turned into a four-year search for his wife’s killer.

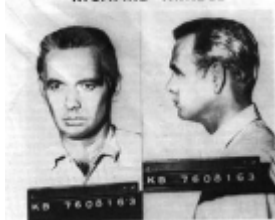
However a twist in the storyline of *The Fugitive* from the beginning of the series in 1963

The Lost Days Of The Fugitive

by Hans Sherrer

WANTED

INTERSTATE FLIGHT - MURDER
RICHARD KIMBLE



DESCRIPTION
CRIMINAL RECORD

to its final episode in 1967, was what makes the series unique in television history. Week after week, year after year, as Kimble pursued his Don Quixote like quest for his wife’s killer, strangers from one end of this country to the other helped him. While not always knowing Kimble’s identity at the beginning of an episode, the people he befriended each week, who he rented a room from, or who had given him a job, knew who he was by the end of the program. Yet knowing he was an escaped convicted murderer – of his wife no less – those people believed in his innocence and helped him elude capture. How did they help Kimble? They would give him money, or a tip on where to maybe look next for the one-armed man, or try to keep the police one step behind him by telling them when questioned, that he went in a different direction than he had actually gone, or by denying that they had seen him.

Lieutenant Philip Gerard was Kimble’s nem-

Fugitive cont. on page 26

Fugitive cont. from page 25

esis. Gerard was as relentless in his pursuit of Kimble around the United States as Inspector Javert was in tracking Jean Valjean around France in Victor Hugo's *Les Misérables*. Gerard was constantly frustrated by Kimble's knack for eluding capture, but he was ever optimistic that he would soon nab him. While Kimble saw finding the one-armed man as his salvation, Gerard saw Kimble as his resourceful quarry.

Kimble was the ultimate underdog, a homeless, penniless, hunted man who had to spend his hours awake looking over his shoulder and sleep with one eye open.

This country's television viewers took Kimble's search for his wife's killer very seriously. The 120th and final episode of *The Fugitive*, titled Judgment, was broadcast on August 29, 1967.¹ Four decades haven't diminished the gripping drama of that episode as Kimble finally cornered the one-armed man, Gerard learned the truth of what happened the night of Helen Kimble's death, and Kimble and Gerard went their separate ways from the courthouse after the murder charge was dropped against Kimble.

The popularity of *The Fugitive* was such that it seems like all America watched the final episode: Almost 3/4ths of the nation's television viewers saw the finale, and it was the highest rated program in TV history up to that time. Forty years later, and after more than half-a-century of regular TV broadcasts, Judgment remains the third highest rated episode of a television series in history: Only the final episode of *M*A*S*H* (1983) and the Who Shot JR? (1980) episode of *Dallas* outrank it.²



The Fugitive's unique place in television history continues to be recognized by those with a memory of the time when it was broadcast. *The Fugitive* was so skillfully produced and popular that *TV Guide* honored it in 1993 as the Best Dramatic series of the 1960s. In the same year, best-selling author Stephen King wrote, "*The Fugitive* ... was .. absolutely the best series done on American television. There was nothing better than *The Fugitive* – it just turned everything on its head."³

Yet as dramatically powerful and popular as it was in the mid-1960s, today's television viewers would likely find *The Fugitive* quaint, its storyline unbelievable, and not

watch it in sufficient numbers to keep it on the air after its initial run of episodes. Why? In the United States of today it is unimaginable that over a period of four years, hundreds and hundreds of people across the country would knowingly risk imprisonment by committing the crime of aiding an escaped convicted wife killer to keep him from being recaptured. Even if they believed him innocent.

However in the mid-1960s, the spirit of people in this country was such that the idea was believable that Kimble's freedom from capture depended on the compassion of strangers and their willingness to take risks on his behalf.

Although it certainly may be possible that today a clannish group of people or those of a particular ethnicity or religion might band together to protect someone they think is being unjustly treated or pursued by the police – that wasn't what *The Fugitive* was about. People of different regions, ethnicities, races, and religions who had not had any previous contact with Kimble reached out to help him. Furthermore, there was nothing phony or contrived about the spirit of human goodness portrayed on *The Fugitive*. Its gritty realism was due in part to being filmed on location throughout the country as Kimble hunted the one-armed man from Washington to Florida, from California to New York, while being hunted himself.

Although the 1993 movie version of *The Fugitive* was a box office success, it was made as an action flick that had the draw of starring Harrison Ford and Tommy Lee Jones. The original series of *The Fugitive*, in contrast, was a low budget human interest drama featuring Barry Morse as Lt. Gerard and David Janssen as Dr. Kimble, neither of whom was a matinee idol.

The noticeable change in this country over the past four decades that people as a whole are more subservient toward authority is summed up in the title of the book *Snitch Culture* by James Redden.⁴ That book documents that the U.S. has evolved into a society dominated by people all too willing to snitch on their friends, neighbors, co-workers and family members – not to say strangers. The popular television program *America's Most Wanted* e.g., glorifies snitching, and provides a toll free hot line to make it as easy to do as ordering from Domino's Pizza.

So if law enforcement authorities say someone is guilty – such as Richard Kimble – people will dutifully call 911 and ease the

path for him to be carted to the death chamber even though he is innocent.⁵

The transformation of a large segment of this country's populace into eager undeputized "cops" is so noticeable that it has been seriously analyzed and written about by scholars.⁶

The reduction in the independent spirit of Americans has been catastrophic for the innocent. That change is symbolized by observation that in the 1960s about 20% of all defendants took their case to trial, while today that figure is about 4% (in some federal districts the trial rate is 2%). That reduction of at least 500% can be attributed in part to the "trial penalty" of a harsher sentence imposed on a person who doesn't take a plea bargain, and the prospect of being on the receiving end of that penalty is compounded by a higher rate of jury convictions today than in the 1960s. So it is much riskier for an innocent person to go to trial today than it was when *The Fugitive* was broadcast each week into America's homes.⁷

So the end of *The Fugitive* in 1967 symbolizes the "lost days" of a time when the innocent were less likely to be convicted, and it was believable that strangers would risk imprisonment to help right the wrong that a person had suffered at the hands of the legal system.

An epilogue to *The Fugitive's* theme is its accurate portrayal that without the generous help of strangers outside the legal system – and his sister that he occasionally had contact with and who refused to sell him out to the authorities – Kimble would have been captured long before tracking down his wife's killer. All hope of proving his innocence would have then ended with the slamming of the death chamber's door, and his gassing by those within the legal system whose main concern was closing his case file, and not whether he was guilty.

JD note: A paperback unabridged edition of *Les Misérables* by Victor Hugo (1488 pgs) is available from JD's Bookshop for \$7.95 plus \$5 S&H (Stamps OK). Or combine with books on p. 37 & 38 to order \$35 worth of books and eliminate S&H. Order from: Justice Denied; PO Box 68911, Seattle, WA 98168. Or order with a credit card from JD's website, www.justicedenied.org/books.html

Endnotes:

- ¹ *The Fugitive* website, <http://www.fiftiesweb.com/tv/fugitive.htm>
- ² *All-Time Top-Rated TV Programs*, http://www.chez.com/fbible/tvstats/misc/all_time.html
- ³ Stephen King, Introduction, p. xi, *The Fugitive Recaptured*, Ed Robertson, Pomegranate Press, Ltd, Los Angeles, 1993.
- ⁴ See the review of *Snitch Culture* in *Justice: Denied*, V. 2 No. 5.
- ⁵ A related instance of this attitude is that 90% plus of people in the United States supported the bombing and invasion of Afghanistan after the events of September 11, 2001, even

Fugitive Endnotes cont. on p. 33

The Rocky Mountain Law Review published an article in December 1940 with the intriguing title “Wrongful Convictions.”¹ Several months later, “Pathology Of Criminal Justice: Innocent Convicted In Three Cases,” was published in the *Journal of the American Institute of Criminal Law and Criminology*.² Both articles were written by Max Hirschberg, a German lawyer who was 56 when he emigrated to the United States in 1939.

Even though Hirschberg is virtually unknown in the United States, he is one of the greatest lawyers in history at rectifying wrongful convictions. The impressiveness of his achievements is magnified by the fact that it was in Germany during the tumultuous years preceding Hitler’s ascendancy to power in 1933 that he accomplished overturning the convictions of plainly innocent defendants.

Brief biography

Born in Munich, Germany in 1883, Hirschberg passed the state legal examination in 1911. He started a private law practice in Munich and soon gained respect for his skill as a criminal defense lawyer. His career was interrupted by WWI, when he was mobilized into the German army in 1914. He served on the Western Front and was awarded two decorations for valor before his discharge after the Armistice in November 1918.

Hirschberg resumed his legal career, and he became the leading criminal defense lawyer in Munich, and some say all of Germany.

In 1925 the German Reichstag passed legislation allowing the appeal of a conviction by the People’s Court.³ Hirschberg’s legal work resulted in him receiving letters from imprisoned people claiming innocence. Since he had represented a person convicted of treason in spite of his innocence, Hirschberg didn’t casually dismiss the pleas for help.⁴ When Hirschberg became convinced of a person’s innocence, he dedicated himself to overturning their conviction – oftentimes working *pro bono* for years on a case. He would methodically deconstruct a case to understand the flawed evidence relied on to convict the person, and he then proceeded to accumulate new evidence exposing the flaws and establishing the person’s innocence.

The first person that Hirschberg helped exonerate illustrates his technique. Johann Pfeuffer was a married father of six whose pregnant young mistress died while the two were alone in the woods. Pfeuffer claimed she became ill while she was aborting her pregnancy. He was convicted of second-degree murder based on

Max Hirschberg – One Of The World’s Great Wrongful Conviction Lawyers

By Hans Sherrer

the prosecution’s argument that he suffocated her after she refused to abort her pregnancy, and he was sentenced to fifteen years imprisonment. Hirschberg investigated Pfeuffer’s case and discovered scientific evidence that his mistress didn’t die from suffocation, but from an embolism caused by her attempted self-abortion. Pfeuffer was granted a new trial, and released from prison after his acquittal of murder.⁵ When word began circulating through Germany’s prisons about Pfeuffer’s release, Hirschberg received “hundreds of letters from convicted persons asking for help.”⁶

After Hirschberg was successful in exonerating another man wrongly convicted of murder – the man’s fiancée died during a botched self-abortion – a play was written in 1929 and produced across Germany that attacked the country’s law criminalizing abortion.⁷

Hirschberg also invested time and energy promoting awareness of the problem of wrongful convictions among his German legal peers, by writing nine articles on the subject.⁸

At the same time Hirschberg was defending accused criminals and aiding the wrongly convicted, he was involved in a number of high-profile political civil cases. Munich was the birthplace of Nazism and during the 1920s and 30s he butted heads with the Nazis in the courtroom. There was even one major case in which Hitler was personally involved.

A particularly memorable exchange between Hitler and Hirschberg occurred during the 1930 factual appeal of Hitler’s successful libel suit against the *Munich Post* newspaper (and several individuals) for reporting that Hitler made a secret deal with Italy’s Prime Minister Mussolini: In exchange for a large sum of cash from Mussolini, Hitler would, if he became Germany’s Chancellor, surrender territorial claims to the German-speaking region of South Tirol (The northernmost Italian province on the border with Austria.). During the appeal’s hearing, Hirschberg ignored an associate’s warning that he was endangering his safety by presenting a former Nazi as a witness who had personal knowledge of the deal. Hitler’s lawyer and personal legal advisor, Hans Frank, later reported that during the ex-Nazis’ testimony Hitler became more “enraged” than he had ever seen him.⁹



Hitler’s rage was directed at Hirschberg when he objected to a question during Hitler’s vigorous cross-examination of the former Nazi. Hitler was personally conducting the cross-examination and he lashed out at Hirschberg, “We listened to you without interruption for an hour.”¹⁰ Hitler attempted to undermine the witness’ credibility, but a newspaper reported, “Hitler foamed” when Hirschberg “proffered rebuttal evidence point by point.”¹¹

Assassination and assaulting of public and political figures occurred in Germany during the 1920s and early 1930s, as various factions (of which the Nazis were only one) jockeyed for political influence and power. Although Hirschberg was able to avoid physical harm, it was only a matter of time before he would experience the Nazis’ wrath. That happened five weeks after Hitler became Germany’s Chancellor in January 1933, when Hirschberg was arrested in a pre-dawn raid on his home. After almost six months of imprisonment without charges, Hirschberg was released.

Knowing it wasn’t safe to stay in Germany, Hirschberg, his wife and 12-year-old son Erich went into exile in Milan, Italy in April 1934. Five years later the family obtained visas and emigrated to the United States in 1939. Hirschberg settled in New York City, and it was shortly after he arrived in the U.S. that he wrote his two perceptive articles about wrongful convictions. Hirschberg did not practice law in the U.S., but he became a citizen in 1944.

After WWII ended, Hirschberg began representing dispossessed Jewish families seeking restitution and reparation from the German government for their losses. Since he was only dealing with overseas legal matters he did not have to be a bar member to represent his Jewish clients. He was very successful at recovering compensation for property stolen or destroyed by the Nazis.

Hirschberg’s experiences and thinking about the causes and prevention of wrongful convictions was synthesized in his 1960 book written in German and published in Germany, *Das Fehlurteil im Strafprozess: Zur Pathologie der Rechtsprechung*. (English translation, *Miscarriages of Justice in Criminal Trials*.) Although Hirschberg’s biographer Douglas Morris considers Hirschberg’s book to be the best one published on the subject of wrongful convictions, it has not been translated into English.¹²

Hirschberg cont. on page 28

Hirschberg cont. from page 27

Hirschberg was 80 when he died in New York City. He was considered a significant enough person that *The New York Times* published a six-paragraph obituary on June 22, 1964. It had the heading, "Dr. Max Hirschberg, Lawyer, Anti-Nazi."

Hirschberg's legacy

Morris' scholarly biography of Hirschberg, *Justice Imperiled: The Anti-Nazi Lawyer Max Hirschberg in Weimar Germany* (University of Michigan Press 2005), is the most comprehensive source in English of information about Hirschberg's life. As the sub-title suggests, the book intensely focuses on his career from 1919 to 1933 when he was representing people victimized by the extreme political unrest and widespread violence in Germany, and actively rectifying wrongful convictions.

There are people in Germany who think that if there had been more people with Hirschberg's principles and fortitude, Nazism could have been stopped before it took control of Germany's government. Dr. Reinhard Weber, editor of Hirschberg's memoir published in Germany in 1995, has said, "He was very early against the Nazis and that was a cause very near to his person. He defended several Nazi opponents and if there had been more Max Hirschbergs there may have been no Hitler."¹³

Hirschberg was recently honored for his courage in risking his life to aid journalists and politically unpopular people in pre-Nazi Germany by the naming of a street after him in a Munich suburb – Max Hirschberg Way.

Erich Hirschberg, who as a youngster delivered food for his dad to the prison where the Nazis imprisoned him, is in his mid-80s and lives in Greenwich, Connecticut.

Justice Imperiled by Douglas Morris (464 pages) is only available in hardcover. It can be purchased from *Justice:Denied's* Bookshop for \$30 plus \$5 s/h, Send a check or money order to: Justice Denied, PO Box 68911, Seattle, WA 98168. Or order with a credit card from *Justice:Denied's* online Bookshop at, www.justicedenied.org/books.html

Endnotes:

- 1 "Wrongful Convictions," 13 *Rocky Mountain Law Review* 20 (December 1940)
- 2 "Pathology Of Criminal Justice: Innocent Convicted In Three Cases," 31 *Journal of the American Institute of Criminal Law and Criminology* 536 (Jan.-Feb. 1941)
- 3 The People's Court was a special court with truncated procedures, established in the chaos following WW I. They were abolished in 1924, but were resurrected by the Nazis.
- 4 Morris, Douglas; *Justice Imperiled: The Anti-Nazi Lawyer Max Hirschberg in Weimar Germany* (University of Michigan Press 2005), pp. 67-155. (The man wrongly convicted of treason was Felix Fechenbach in 1922.)

Hirschberg Endnotes cont. on p. 33

Pathology Of Criminal Justice*

By Max Hirschberg

Introduction to the Problem

A comparison between American Criminology and European Criminology is extremely interesting. ... we find a striking similarity of problems and methods. ... Everywhere there has been collected enormous, valuable material about the psychology of the criminal, the fallibility of testimony, the unreliability of evidence by expert witnesses, but the main problem, the *psychology of criminal justice* itself, is neglected. We are in the strange position of possessing a psychology of the criminal and the witness, but not of the judge and the jury. ... And so we have a criminology which is neglecting its main problem, that is to say, the psychology of just that person who has to make the decision and has to assume the responsibility for the life or death of the defendant. This responsibility is very heavy: the life or death of the defendant is at stake, not only when a death sentence is involved; a man of blameless conduct, who is convicted of fraud or forgery, is just as well dead. Thus arises the very serious problem of *wrongful conviction*. (536) ... But the scientific analysis of wrongful convictions is more important than the analysis of the criminal or the witness. A system of medicine without general and special pathology surely would be an absurdity, but just as absurd is the position of modern criminology without a psychology of the judge and the juror and without a careful analysis of wrongful convictions. We need a radical, a really Copernical turning around of the general position in criminology; we need a *pathology of criminal justice*.

... The method of a pathology of criminal justice has to resemble the methods of medical pathology. ... We may see exactly where and why justice faltered, with what obstinacy the Court tried to insist on the errors once committed; we look at the long and difficult fight against the reluctant Courts and finally we see the recognition of the mistake and the acquittal of the innocent man. ... (537)

... The author has learned by his own experience that the scientific results of modern criminology have not penetrated deep enough into criminal justice. We have collected an enormous material about the fallibility of testimony; but criminal justice often acts as if there were no perjury, no error in identification, no hysteria of female witnesses, no fantastic stories of children trembling on the witness stand. ... We know much today of the fallibility of expert witnesses, but the blind confidence of criminal justice in the expert witness and his

Justice:Denied Comment

Although published almost seventy years ago, the *Pathology of Criminal Justice* has perceptive insights that are still not a part of general discussion's concerning wrongful convictions. Four of Hirschberg's most compelling observations are:

- Wrongful convictions are a breakdown in the legal process that need to be as systematically examined for their cause and correction, as are medical errors.
- The psychology of judges and their role in wrongful convictions needs to be examined.
- Reliance on the probability standard of "reasonable doubt" is inadequate to prevent wrongful convictions.
- Expert witnesses are given too much deference for the alleged authoritative-ness of their opinions.

alleged authority has not been shattered. ...

A second main reason for wrongful conviction is the superficial judgment, which contents itself with probability or half-evidence and overlooks the doubt still remaining. The Court contents itself with a *feeling of certainty*; but only *exact evidence* excluding every possible doubt justifies a sentence which may destroy the life and happiness of a man and his family forever. Criminal justice often soothes the remaining doubts light-heartedly with the common-place idea, that it is human to commit errors and that only "reasonable doubt" must be eliminated. Even Nathaniel F. Cantor [*Crime Criminals and Criminal Justice* (1932), p. 243] states: "In scientific research, evidence is rejected unless accompanied by data which support one hypothesis and do not support alternative hypotheses. Judicial proof rests on probability rather than certainty." Here we have the main problem: criminal justice which is satisfied with probability instead of certainty is exposed to endless wrongful convictions. The task of the defense of tomorrow will be to analyze every inference with the weapon of exactness as long as some doubts remain. Every doubt is "reasonable" when life or death of our fellow-beings are at stake. ... (538)

Of course, wrongful convictions are not altogether unavoidable; it is only indolence in thought and sentiment to resign before the "unavoidability" of error in justice. Today we are able to restrain to a considerable amount these errors and their terrible consequences, in making use of the methods of precision provided by modern criminology. ... (539)

* Excerpts from: "Pathology Of Criminal Justice: Innocent Convicted In Three Cases," 31 *Journal of the American Institute of Criminal Law and Criminology* 536 (Jan.-Feb. 1941) (All italics in original.)

Twenty-two year-old Francois Marie Arouet was exiled from Paris in May 1716 for writing a verse about the incestuous relationship a government official was having with his daughter. He was allowed to return to Paris five months later.

After Arouet's return to Paris an anonymously authored six-line poem was published that described an official sleeping with his daughter. The well-founded suspicion that Arouet was the author led to his arrest in May 1717, and his imprisonment without charges in the dungeon-like Bastille.

Being imprisoned in a windowless cell with walls ten feet thick without knowing when he would be released, or if he would ever be released, had a profound effect on Arouet. When he was released 11 months later in April 1718, the 24-year-old rechristened himself Arouet de Voltaire. ¹ He became known, and to this day remains known by his chosen name of Voltaire.

Months after Voltaire's release from prison, a revised version of his play *Oedipe* opened in Paris in November 1718. The plays sensational success marked the beginning of one of the most remarkable and controversial literary careers in world history.

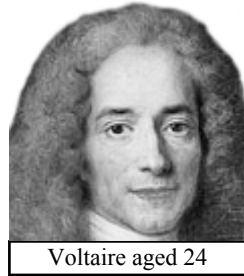
In 1726, an aristocrat offended by Voltaire hired ruffians to beat him up. When Voltaire demanded their quarrel be settled by a duel, he was arrested without charges and imprisoned again in the Bastille. His release was conditioned on his agreement to leave France.

Voltaire spent the next three years in exile in England. During his stay he was impressed that various groups of people with significant religious, political and/or ideological differences peaceably co-existed in English society. He eagerly embraced the ideas of John Locke, Sir Isaac Newton and other English thinkers and scientists.

Allowed to return to France in 1729, Voltaire again incurred the wrath of French authorities when five years later he wrote a series of essays in the form of "letters to a friend." These essays have been described as "the first bomb dropped on the Old Regime." ² Among his remarks were, "It has taken centuries to do justice to humanity, to feel it was horrible that the many should sow and the few should reap." ³ As one of the first public calls for political, religious and philosophic freedom in France, government officials quickly responded by seizing all copies of the essays. Fearing arrest, Voltaire fled Paris. Underground copies were

Voltaire – Father Of The Innocence Campaign

By JD Staff



Voltaire aged 24

circulated around Paris as *Letters philosophiques*.

Although he continued to incur the displeasure of government authorities, over time Voltaire's stature rose throughout Europe. In his later years he became known as the "conscience of Europe," after becoming involved in several cases of manifest injustice, that included the cases of Calas, La Barre, Sirven, and the Abbeville judges.

The most well-known of those cases was his three-year campaign (1762-1765) to overturn Jean Calas' murder conviction that resulted from a son's death by hanging – which was actually a suicide. (See "Biased Judges Condemned Jean Calas" on page 30 of this *JD* issue.)

Calas never wavered in proclaiming his innocence even though his arms and legs were broken and he was tortured on the rack. He was nevertheless found guilty and executed in March 1762 by being publicly strangled. His body was then burned.

The members of Calas' family at home when the son died were also punished – even though they were not convicted of a crime. Calas' daughters were confined in a convent, his wife was left destitute after the family's money and clothing store was seized, and a son was exiled.

**"Every man is guilty of
the good he didn't do."**

– Voltaire

Voltaire became aware of the case about ten days after Calas' execution. He soon learned information that convinced him of Calas' innocence. Outraged, Voltaire, then 68, plotted a campaign to clear Calas of his son's death and restore the family's honor and position in society. His campaign revolved around three facets:

- Investigate to acquire convincing evidence of Calas' innocence.
- Publicize the facts of Calas' case to inflame public outrage over his wrongful conviction and execution, and the mistreatment of his children and wife, so as to pressure reluctant officials to reopen the case.
- Legally maneuver to convince officials at each necessary stage to support the steps

necessary to posthumously overturn Calas' conviction and have his innocence declared.

To accomplish the first facet, Voltaire employed investigators. To accomplish the second, Voltaire wrote several pamphlets about the case that were distributed throughout France and Europe. To accomplish the third he hired lawyers to make sure the proper procedures were followed.

Voltaire used "his friends, his purse, his pen, his credit" to publicize the case. ⁴ In one of the pamphlets Voltaire "tugged skillfully at the heartstrings as he evoked the defenseless innocence of [the Calas] family and depicted each stage in their terrible drama." ⁵ He also ghost wrote pamphlets updating the case as it progressed.

To inform the public that the legal system made grave mistakes, and could act to correct them, Voltaire wrote and distributed a pamphlet about an English case in which nine people had been sentenced to death after being wrongly convicted of kidnapping and holding a girl in a brothel. What actually happened was that with the aid of an aunt the girl had made-up the false accusation to conceal an unwanted pregnancy. Her deception was discovered before the death sentences were carried out.

On June 4, 1764, the Royal Council unanimously overturned Calas' murder conviction and ordered a retrial. Calas was acquitted on March 12, 1765, after a retrial. Voltaire's campaign to clear Calas' name had taken three years.

After making an application to the King, Madame Calas was awarded 12,000 livres, the two daughters were each awarded 6,000 livres, 3,000 livres was awarded to each of the sons and the Calas' housekeeper, and 6,000 livres was awarded to the family to cover legal expenses. ⁶ One thousand livres was equal to 10.8 ounces of gold, so these were very significant sums in 1765 given the generally low standard of living in France.

Thus the Calas case involved all the elements of a modern day innocence campaign: investigation, publicity, legal aid, and after exoneration, compensation.

A year after Calas' acquittal, Voltaire's influence with Frederick the Great resulted in Prussia's adoption of the world's first legislation providing for payment of compensa-

Voltaire cont. on page 30

Voltaire cont. from page 29

tion to a person released from custody on the basis of innocence. That 1766 statute stated in part, "If a person ... has been released from custody, and in the course of time his complete innocence is established, he shall have not only complete costs restored to him, but also a sum of money as just indemnity, according to the circumstances of the case, ... so that the innocent person may be compensated for the injuries he has suffered." 7

One of Voltaire's lasting legacies was demonstrating the power of public opinion to move public officials (even in a monarchical society) to act in a way they otherwise would not. In his 1906 biography of Voltaire, Gustave Lanson wrote, "He accustomed public common sense to regard itself as competent in all matters, and he turned public opinion into one of the controlling forces in public affairs." 8

Voltaire was 83 when he died on May 30, 1778. He was such a prolific writer that his plays, poetry, novels, essays, pamphlets, historical and scientific works, and more than 20,000 letters, fill 70 volumes. His personal library of over 21,000 books remains intact at the Russian National Library in St. Petersburg.

Considering the multiple times Voltaire was imprisoned, exiled, or forced to flee to safety due to something he wrote or said, it is understandable that he is credited with the well-known quote, "I disapprove of what you say, but I will defend to the death your right to say it."

Voltaire shrewdly invested the considerable money he made from his writing, and he was somewhat of an anomaly for his time — a self-made wealthy man.

Endnotes:

1 Voltaire is an anagram of the latinized spelling of his surname "Arouet" and the first letters of the sobriquet "le Jeune" (the younger).

2 Voltaire, *Encyclopedia of World Biography*, 2nd Ed. 17 Vols. Gale Research, 1998.

3 *Id.*

4 Voltaire Biography, *Notable Biographies*, <http://www.notablebiographies.com/Tu-We/Voltaire.html>

5 Voltaire *Almighty: A Life in Pursuit of Freedom* by Roger Pearson, Bloomsbury, 2005, p. 288.

6 *Id.* at 290. Eight ounces (a mark) of gold was worth 740 livres. See, "French livre" in Wikipedia.com.

7 Decree of January 15, 1766, from the Prussian Staatsarchiv, cited in, "European Systems of State Indemnity For Errors Of Criminal Justice," Edwin M. Borchard, *Am. Inst. Crim. L. & Criminology*, 684 May 1912 to March 1913, at 689.

8 Gustave Lanson, *Voltaire* (1906; Trans. 1966).



Biased Judges Condemned Jean Calas

By Matthew Surridge

Francois-Marie Arouet was an eighteenth-century French intellectual who wrote under the pen name "Voltaire." He became internationally famous for his works of poetry, drama, and philosophy that reflected his hatred of injustice and intolerance, especially religious intolerance, and his belief in the improvement of humanity through the development of reason. Voltaire was a strong-willed man whose unconventional beliefs, cutting wit, and argumentative personality often alienated those around him, although he maintained several friends at the court of King Louis XV.

Despite Voltaire's influential connections, the French king was personally offended when, in 1750, at the age of fifty-five, Voltaire left France to spend three years in Prussia at the court of King Frederick II. When Voltaire attempted to return to France, King Louis refused to allow him to approach Paris. At first Voltaire settled in Geneva, Switzerland, and then, in 1758, he moved to a manor named Ferney on the Swiss border. From Ferney, Voltaire maintained his friendships with acquaintances throughout Europe by becoming a prolific letter writer. Many of his letters, circulated widely by his friends, became celebrated for their wit and style.

In March of 1762, Voltaire made a sarcastic reference in one of these letters to a recent murder in Toulouse, in the south of France. Jean Calas, a Huguenot, or French Protestant, had been accused by the Parlement de Toulouse of killing his son Marc-Antoine to prevent him from converting to Catholicism, the faith of the majority in France. Calas had been tortured and executed for the crime on March 10. Voltaire was appalled that a father would kill his son for wanting to convert to a different religion.

A day or two later, Voltaire spoke with an acquaintance from Marseilles who knew the Calas family and believed that Jean Calas was innocent and had only been convicted due to religious prejudice on the part of the Catholic investigators. Voltaire decided to look further into the case. He was outraged by the idea that an innocent man might have been tortured and killed.

Voltaire sent letters to various acquaintances, whom he believed might be familiar with the case, asking for more information about the murder and for their opinions of the trial.

None of Voltaire's correspondents was able to settle the question of Jean Calas's guilt, but Voltaire learned that one of Calas's surviving sons, Donat Calas, was in Geneva, and he decided to speak to the boy.



Jean Calas

Although Donat had not been present on the night of the supposed murder, the description he gave of his father and his family convinced Voltaire that Jean Calas had not killed Marc-Antoine.

Convinced that the Parlement de Toulouse — made up of several dozen Catholic magistrates — had wrongly executed Calas, Voltaire decided to dedicate himself to clearing the name of Jean Calas and the Calas family. He wrote to a friend: "You will ask me, perhaps, why I interest myself so strongly in this Calas who was broken on the wheel? It is because I am a man, because I see that all foreigners are indignant at a country which breaks a man on the wheel without any proof."

Voltaire sent letters to the Parlement de Toulouse asking for copies of the trial records, but he did not receive a reply. Voltaire suspected that members of the Parlement would try to cover up any evidence of possible malfeasance on their part. Voltaire decided to approach a higher authority. The King's Council in Paris had the power to open an investigation into the Parlement's actions, but Voltaire knew that the chancellor of France, Guillaume de Lamoignon — the man who had the power to bring the matter before the Council — was reluctant to get involved in the matter.

To change de Lamoignon's mind, Voltaire used two tactics: he asked his aristocratic friends for support, and he also tried the then-novel tactic of seeking support from common people by publicizing his suspicions of official wrongdoing. Voltaire believed that the injustice done to Jean Calas was so shameful that if it became widely known, public outrage across France and the rest of Europe would force French authorities to reopen the case. In a letter explaining his idea to a friend, he observed: "If there is anything which can stop the frenzy of fanaticism, it is publicity."

In April of 1762, Voltaire wrote up a summary of what had happened the night Marc-Antoine Calas was killed, according to witnesses. On October 13, 1761, Jean Calas and his wife, Anne-Rose, had had dinner in their home above their shop with their sons Marc-Antoine and Pierre, their Catholic servant Jeanne Viguere, and Pierre's friend Gaubert

Calas cont. on page 31

Calas cont. from page 30

Lavaysse. No other family members were present. Donat, the youngest son, was then serving an apprenticeship in Nîmes, 150 miles away, and the Calases' two daughters, Rosine and Nanette, were also away from home. Their third son, Louis, had become estranged from the family due to his conversion to Catholicism several years before.

According to everyone who had been present at the meal, Marc-Antoine excused himself after dinner, saying that he was going for a walk. The others remained behind, talking, until Lavaysse decided to leave. Pierre accompanied his friend, and as they left, they discovered Marc-Antoine's body hanging from a doorframe in his father's shop — clearly a suicide.

Two magistrates were summoned, and a crowd began to gather around the house. The Calas family knew that Marc-Antoine had been depressed since his Protestantism had led to the rejection of his application to join the French Bar. Unable to find another means of making a living, he had committed suicide. But as the magistrates were removing Marc-Antoine's body, someone shouted out: "Marc-Antoine has been murdered by his father because he intended to become a Catholic!" One of the magistrates, David de Beaudrigue, then arrested the Calas family on suspicion of having murdered Marc-Antoine.

After a five-month-long investigation that inflamed local Catholics against the Calas family, the judges investigating the case had Jean Calas tortured. Calas did not incriminate himself or his family while under duress, but the judges pronounced him guilty all the same and sentenced him to death. The Parlement de Toulouse commanded that Pierre Calas be banished while Anne-Rose Calas, Gaubert Lavaysse, and Jeanne Viguere were released without an official verdict. The two Calas daughters were taken into custody and placed in two different convents.

Voltaire, after reviewing these facts, claimed that it was impossible for Jean Calas, a man in his sixties, to have physically overpowered his healthy twenty-nine-year-old son. A conspiracy was unlikely, as the Catholic servant Jeanne Viguere would almost certainly have had to be included in the plot. Further, Louis Calas had already converted to Catholicism without any threats of violence from his family, and Viguere, who had been responsible for Louis's conversion, had continued to be employed by the family. Voltaire also noted that of thirteen judges overseeing the trial, five had consistently declared their belief that Calas was innocent but were outvoted. Final-



Jean Calas on the rack

ly, no hard evidence was ever brought against Jean Calas during the course of his trial.

The Parlement de Toulouse continued to refuse to release to Voltaire any documents about the case.

Voltaire wrote to Anne-Rose Calas, urging her to write down her story and then go to Paris, to seek justice for her family. Madame Calas agreed to write an account of the night of her son's death, but she was afraid to go to Paris. She believed that the authorities in Toulouse would convince those in Paris to have her arrested. Voltaire understood her fears, but he believed that it was necessary for her to go to Paris so that she could personally spread the story of the injustice done to her husband and her family. Voltaire thought that Parisians were more likely to sympathize with her cause if she spoke directly to them.

To assist Madame Calas, whose property and money had been confiscated, Voltaire promised to support her financially. He found lodgings for her in Paris, and he wrote to his friends the Count and Countess d'Argental, urging them to protect "the most virtuous and unhappy woman in the world" from any attempts by the Parlement de Toulouse to have her arrested. Madame Calas agreed to go to Paris only after Voltaire promised to do all he could to free her daughters from the convents where they were confined.

When Madame Calas arrived, Voltaire wrote numerous letters of introduction to prominent Parisians and appointed two celebrated lawyers to represent her. Her presence in the city attracted some attention to the widow's plight, but Voltaire knew that a greater outcry would have to be raised before the authorities would take action. He decided to publish Madame Calas's account of the night of her son's death. Voltaire wrote an essay in which he laid out the known facts and details of the death of Marc-Antoine Calas and the subsequent prosecution of Jean Calas. He decided to publish these two documents together in a pamphlet.

The pamphlet, *Pieces Originales* [Original Documents], was published in July of 1762.

It criticized many aspects of the French judicial system, especially its secrecy. The public response was immediate and positive. Influential courtiers began to believe that Jean Calas had been the victim of injustice.

In July, Pierre Calas joined his brother Donat in Geneva. After speaking with both of them, Voltaire composed a *Memoire* (Memorandum) that he attributed to Donat and a Declaration ostensibly by Pierre. Voltaire published both of these documents to further publicize the Calas case.

The Parlement de Toulouse continued to refuse to release any documents having to do with the trial of Jean Calas. Although the public was beginning to openly question Calas's conviction, neither the Parlement de Toulouse nor the government of France showed any sign of reacting to the pressure.

Voltaire, however, refused to give up the fight. "What horror is this," he wrote in a letter, "a secret judgment, and a condemnation without explanations! Is there a more execrable tyranny than that of spilling blood on a whim, without giving the least reason? In any case, it is not just [Madame Calas] who interests me, it is the public, and it is humanity. It is important for everybody that such decisions should be publicly justified."

Although some of the king's ministers had begun by the end of July to support Voltaire and Madame Calas, there was no sign that the King's Council would open an investigation into Jean Calas's trial, a necessary first step towards his exoneration. Accordingly, in August, Voltaire published another pamphlet, *Histoire d'Elizabeth Canning et de Jean Calas* [The History of Elizabeth Canning and of Jean Calas]. Elizabeth Canning was an Englishwoman who had committed perjury to secure the execution of an innocent man. Voltaire presented her story as a sarcastic counterpoint to the Calas affair, which he presented in a more sober style.

The dark wit of the pamphlet caught the attention of his readers and successfully raised public interest in what Voltaire presented as an ongoing miscarriage of justice.

Demands for an investigation into the Calas affair grew more numerous and insistent. The King's mistress, Madame de Pompadour, observed in a letter to the King's minister, the Duc de Choiseul, that "all France cries out for vengeance." In August of 1762, Chancellor de Lamoignon, moved by the widespread support in Paris for Madame Calas, called for the trial records to be released. The request was unofficial, and the Parlement de Tou-

Calas cont. on page 32

Calas cont. from page 31

louse ignored it, but it was a sign that Voltaire's strategy of raising a "public outcry" was meeting with some success.

In September Voltaire and Madame Calas' lawyers published a series of Memoires that stressed the weakness of the case against Jean Calas and the importance of maintaining the integrity of the French judicial system. One of the Memoires was endorsed by fifteen of Paris's most prominent lawyers, further increasing support for the Calas family.

By this time, the Pieces Originates had been translated into English, German, and Dutch, and interest in the case had been raised outside of France. Queen Charlotte of England, Empress Catherine the Great of Russia, and King August III of Poland all supported Voltaire's efforts. The Calas affair had become an international concern.

In response to growing pressure, Chancellor de Lamoignon informally agreed to bring the Calas affair before the King's Council, but before this could take place Voltaire received a letter from the King's minister, the Duc de Choiseul. The Duc stated that Voltaire should not expect the Calas decision to be overturned, and complained that Voltaire had gone too far in a letter published in England where he had attacked King Louis XV.

The Duc was referring to a letter that Voltaire had written to his friend Jean D'Alembert in Paris months before, and that had since been published in the English newspaper, the Saint James Chronicle. In the letter, Voltaire had expressed his outrage over the injustice that had been done to the Calas family, but the letter as published in the English newspaper had been altered. Someone had added several forged passages that attacked King Louis XV, laying full responsibility for the Calas scandal on the monarch, instead of on the Parlement de Toulouse. The uproar caused by the publication of the letter threatened to discredit the cause of Jean Calas, as well as threatening to personally disgrace Voltaire.

Voltaire wrote to D'Alembert, to whom he had sent the original copy - of the controversial letter. Luckily, D'Alembert still had the letter. He returned it to Voltaire, who sent it to the Duc de Choiseul to prove that the version published in England was a forgery. The duke circulated the original letter; and the furor over the English version of the letter faded. As the letter had also been widely passed around when it had first been written, it was impossible to prove who had produced the altered version. Voltaire suspected that it

had been created by opponents of his campaign to reverse the verdict against Jean Calas.

Shortly after the affair of the forged letter, the Parlement de Toulouse seized copies of the Memoires that Voltaire and his lawyers had written, and forbade their further distribution in the area of Toulouse. Voltaire wrote letters protesting this action, but to no avail. The power of the Parlement in its own district could not be challenged.

In December of 1762, one of Voltaire's friends, a duchess whom he had convinced to help Madame Calas, secured the release of Calas's daughters from the convents in which they had been imprisoned. Upon their release, they went to Paris to stay with their mother and help in her campaign for justice. One of the nuns at the convent where Nanette Calas had been held had written a letter supporting the family. Nanette brought the letter with her to Paris, and copies were widely circulated in the city. The nun was the sister of the president of the King's Council, and as a result her letter caused a sensation, keeping the Calas case before the public.



Imprisoned Calas family told of Jean's acquittal

On March 1, 1763, the King's Council met and referred the Calas affair to the king's Great Council, which included Louis XV's chief councilors, secretaries, ministers, and bishops, all presided over by Chancellor de Lamoignon.

On March 6, Madame Calas and her daughters traveled from Paris to Versailles, the capital of France and the meeting place of the Great Council. She was warmly received. The next day she formally gave herself up as a prisoner, a legal formality that was necessary for her case to be heard by the Great Council. The jailer allowed her to sit in a comfortable armchair and served her hot chocolate. The Council met soon afterward and listened for more than three hours while Voltaire's lawyers made their cases. Chancellor de Lamoignon then formally decreed that the evidence in the case of Jean Calas should be re-examined, and that Madame Calas should be released. He ordered that the Parlement de Toulouse send a copy of the trial record to Madame Calas.

At his manor on the Swiss border, Voltaire was overjoyed to learn of this outcome, and he sent out triumphant letters stating: "The reign of humanity is announced. . . Here is one of those occasions when the voice of the people is the voice of God." His campaign to raise public opinion in aid of the Calas family had succeeded.

In Toulouse, news of the Great Council's decision was met with outrage. The Parlement was slow to produce the trial records, and demanded a large fee to cover the costs of copying the documents. Voltaire donated some of the fee from his own pocket and raised the remainder by soliciting donations from his supporters. The copies of the documents arrived in Paris in July of 1763.

On June 4, 1764, the Great Council formally annulled the judgments made by the Parlement de Toulouse. A new trial was ordered in Paris, in the Court of Petitions. On February 28, 1765, just before the new trial began, the Calas family was arrested as a matter of form. Over the next several days, the tribunal held five six-hour meetings and one eight-hour session as they reviewed the case. Voltaire and the Calas family waited nervously for the result. Finally, on March 9, three years to the day after the Parlement de Toulouse had reached the original guilty verdict, Jean Calas and the Calas family were acquitted of all the charges against them. The death of Marc-Antoine Calas was officially ruled to be suicide. "This is an event," wrote Voltaire, "that seems to allow one to hope for universal tolerance."

The Calas family was freed. The king of France granted the family a total of thirty-six thousand livres as compensation. An engraving was made of the Calas family and prints were sold to raise more money to help support Madame Calas.

Voltaire went on to fight against other miscarriages of justice, continuing to use his technique of raising what he called a "public outcry." His use of the technique in the Calas affair is considered to mark the first time that public opinion was purposefully engaged to remedy official injustice.

Reprinted with permission. Originally published in *Old News*, April 2006. One year subscription (9 issues) to *Old News* is \$18. Send check or money order to: Old News; 3 West Brandt Blvd.; Landisville, PA 17538-1105.

Sources:

Davidson, Ian. *Voltaire in Exile*. New York: Grove Press, 2004.
Nixon, Edna. *Voltaire and the Galas Case*. London: Victor Gollancz Ltd, 1961.
Tallentyre, S.G. *The Life of Voltaire*. New York: Loring & Mussey Publishers, n.d.

Roberts cont. from page 5

system punishes the honest and innocent and rewards those who are guilty and manipulate the process!

Excuse me? The State's Attorney said ... our prosecutors went to prison to get him out." As Herb observed, "I couldn't believe that! The prosecutor said they came looking to find Hank and release him only to learn he had passed away! I'm sure they came to find and release Hank the same way they came to find and release Michael Austin when they suddenly discovered he was innocent!"

Excuse me? Hank died in prison, but the State doesn't even know what year it was, much less how he passed? Baltimore *Sun* stories echoed that fuzziness on when Hank died. On April 9, 2002, the *Sun* headlined their article, "Inmate who died in 1995 was innocent." On April 10 the *Sun* reported, "... in May 1997, Roberts died at age 68 ..." And on April 11 the *Sun* reported Hank "... collapsed outside his cell ... and died a day later, on December 22, 1996"! Thus on three consecutive days the *Sun* reported that Hank died in 1995, then 1997, and finally got it right that he died in 1996.

The most unsettling aspect of Hank's case is that if he had been a little less ornery he may have lived to see his vindication.

"You know Hank believed everything people told him," said Herb. "They told him Jessup had a better program for seniors, that they weren't locked up all the time. When he first got into processing at Jessup he was locked down almost all day. They went in one morning to check on him and found him deceased. And it happened only about two weeks after he left here, and then he laid in the morgue longer than he was in Jessup, because they had a hard time locating his sister."

Hank had heart problems after Tomczewski shot him in the chest, but Hank was in an annex with just a score of prisoners. We looked out for him, and Sergeant Verdier and Officer Decker also looked out for him. There was something special about Hank; his guardian angels seemed to tell us we'd better keep helping him, and Hank knew it.

And while Hank listened to others, once he had made up his mind about something he was more stubborn than an old mule. He knew about the POPS program – Project for Older Prisoners – from *Washington Post* and *Wall Street Journal* articles outlining Professor Turley's program at George Washington University School of Law. POPS enabled

students to conduct exhaustive and detailed investigations into an older prisoner's background, criminal history and parole plans to evaluate whether they warranted consideration as a low risk for violence or recidivism, and thus might merit release. Ever hopeful, Hank thought the POPS program just might be able to do something for him.

Hank heard POPS was operating from the "Old Man's Dorm" at the House of Correction in Jessup, where about 100 prisoners 60 years of age or older have their own space. He wanted some freedom. We fussed with Hank and pointed out that as the only old-timer in the annex we could get him prompt medical attention every time he was feeling ill. Also, several times Warden Waters had gone out of his way to see to it that Hank got his prescriptions renewed when the medical contractors tried to skimp on costs.

We begged Hank not to transfer, pointing out that as just one of a hundred old-timers in Jessup's "Old Man's Dorm" his voice for care and attention would be overwhelmed by others, and the officers would probably be too burdened to look out for him. They'd have their own concerns and ignore Hank.

But Hank had faith, said it was what he needed to do, and impatiently waited for months until classification got him transferred to Jessup. At Jessup he would also be closer to Gary Garland, so Gary wouldn't have to travel so far to see him.

Hank never even made it into the vaunted "Old Man's Dorm" much less into the POPS program. It didn't seem like ten days after his transfer when we got word by telephone, letters and messages from friends and family members, as well as prisoners at Jessup, that Hank had trouble getting his medication renewed, and he had died.

Adding insult to injury, Maryland's criminal justice system has never acknowledged its last "oversight" in the case of Henry Myron Roberts. I looked in every paper for his obituary, but never saw it. I guess run-of-the-mill criminals who die in prison don't deserve one.

But now we know the Hankster wasn't run-of-the-mill, now we know he was innocent. Perhaps by printing this eulogy and tribute to his spirit, and an anatomy of the body of his case, we can finally say, "Rest in Peace, Hank."

Reprinted with permission of the author. Originally published in *MCIH Weekly Inside Report*, No. 2-27 Maryland Correctional Institution, Hagerstown, Md.

Fugitive Endnotes cont. from p. 26

though the government of Afghanistan did not commit any act of war against the United States.

6 See e.g., *The New Individualists: The Generation After the Organization Man*, Paul Leinberger and Bruce Tucker (HarperCollins 1991), at pp. 16-18. Also see, *Managing Globalization in the Age of Interdependence*, George C. Lodge (Jossey-Bass 1995). See also Mr. Lodge's previous book, *The New American Ideology*, George C. Lodge (Alfred A. Knopf 1975). Written less than a decade after *The Fugitive's* last episode, it was apparent to Lodge that the men, women and children who accept the sovereign authority of an organization – such as the government – are considered to be one of its appendages.

7 Yale psychology professor Stanley Milgram's obedience experiments first conducted in 1961 demonstrated that a significant segment of society at that time in the United States was unduly obedient to authority. However, his experiment also revealed a solid one-third of the participants drew a clear line in the sand and refused to obey an instruction when they thought their action would cause harm to an innocent person. See, *Obedience To Authority*, Stanley Milgram, 1975, New York, Harper & Row. It is people of the ilk of those conscientious people that either overtly would have helped, or at the very least would have done nothing to harm Kimble.

Peirce Endnotes cont. from p. 22

4 "When Sir Ian heard who the lawyer was, it is likely he let out a long, hard sigh," By Andrew Alderson and Nina Goswami Nina, *Telegraph* (UK), August 21, 2005.

5 In the Name of the Father, By Hans Sherrer, 2 *Justice:Denied* 4, http://forejustice.org/wc/in_the_name_of_the_father_JD_v2_n4.htm.

6 Guildford Four, *Wikipedia*, http://en.wikipedia.org/wiki/Guildford_Four
7 British P. M. Tony Blair Apologizes To Guildford Four and Maguire Seven, *Justice:Denied*, Issue 31, Winter 2006, p. 45.

8 Gareth Peirce, *Wikipedia*, http://en.wikipedia.org/wiki/Gareth_Peirce

9 "When Sir Ian heard who the lawyer was," *supra*.

10 The CCRC can refer a case to the Court of Appeal when it finds there is a possibility to overturn a conviction based on:

- An argument not raised in the court proceedings.
- Evidence was not presented to the court; or,
- Other exceptional circumstances were present.

As of February 28, 2007, the conviction was quashed in 218 of 310 cases referred by the CCRC to the CoFA. (70%). *CCRC website*, http://www.ccr.gov.uk/cases/case_44.htm. The U.K. has about 20% of the U.S.' population, so the 218 exonerations due to the CCRC would be the equivalent of about 1,100 in the U.S.

11 Profile: Gareth Peirce, By Andrew Walker, *BBC News*, March 10, 2004.

12 "When Sir Ian heard who the lawyer was," *supra*.

13 *Id.*

14 Profile: Gareth Peirce, *Supra*.

Hirschberg Endnotes cont. from p. 28

5 *Id.*, at 195-99. (See also, "Pathology of Criminal Justice," *supra* at 546-8.)

6 *Id.*, at 199.

7 *Id.*, at 203.

8 *Id.*, at 200. The articles were written from 1927 to 1935.

9 *Id.* at 262. Hans Frank was one of the Nazi Party's earliest members, having joined in 1919, and he knew Hitler intimately. He was captured after WW II ended, and he was one of the defendants in the Trial of the Major War Criminals Before the International Military Tribunal in Nuremberg. During his defense he testified, "A thousand years will pass and the guilt of Germany will still not have been erased." Frank was found guilty of war crimes and crimes against humanity, and sentenced to death. He was executed by hanging on October 16, 1946.

10 *Id.* at 256-263 (Events related to the trial); Hitler's quote at 262.

11 *Id.* at 264.

12 The Justice Institute is attempting to have Hirschberg's book translated into English.

13 Lawyer's courtroom battles with Nazi party, *Greenwich Time* (Greenwich, CT), June 18, 2006.

Visit the Innocents Database

www.forejustice.org/search_idb.htm

Information about more than 2,100 wrongly convicted people in 52 countries

Justice:Denied's Bookshop

www.justicedenied.org/books.html

More than 60 books available related to different aspects of wrongful convictions.

Eklof cont. from page 3

evidence to counter his claims. Witnesses were found to describe incidents of her feisty temper. Those included “bouncing” a customer from a bar where she was employed as a cashier, threatening acquaintances that had taken her food stamps and stolen her car, and accidentally elbowing a girl’s eye in Fresno. The incidents were intended to influence the jury to believe that Eklof was someone capable of stabbing a friend who had offered her and her children a place to stay when she was destitute after leaving her boyfriend.

Although it opened the door for the prosecution to paint Eklof in a negative light to the jury, Murdock’s positive reference to Eklof’s character was considered “harmless error” in her appeals. Although it is not known if Murdock was mentally impaired by drugs or alcohol when making Eklof’s opening statement, his disciplining after her trial by the Oregon State Bar for drug use, alcohol abuse and embezzlement was confirmed by the Oregon Supreme Court when it ordered his suspension from practicing law on March 1, 1997. Less than two years later the Oregon Supreme Court ordered Murdock’s disbarment on January 5, 1999. Murdock’s status (as of May 1, 2007) is he is “Disbarred” from practicing law in Oregon. [JD Note: On May 1, 2007 *Justice:Denied* verified the Oregon State Bar’s disciplinary history of Jeffrey T. Murdock #871394, <http://www.osbar.org/members/display.asp?b=871394>]

The jury was plainly misled by much of the prosecution’s testimony about Eklof’s alleged stabbing of Salmu and the alleged blood evidence. When Smith told the jury “she said” she stabbed Salmu 30 to 50 times, who were they to believe? Smith, a police captain, or Eklof, an accused murderer? Although Salmu’s autopsy revealed no evidence he was stabbed, under Hugi’s questioning the medical examiner did not rule out stabbing as Salmu’s cause-of-death. The jury was also told a black and white photograph showed blood on a dryer, when it was actually water spots. Also, there was testimony that it was “conclusive” there was blood spatter at the scene, when years later this was discovered to be untrue – it was actually “inconclusive.” Then there were Hugi’s references to Eklof’s “lying” about Salmu’s murder, without stating how he knew that she wasn’t telling the truth.

When Hugi called Eklof a “biker bitch,” John Kolego, her lead defense counsel, objected. “It’s in the evidence,” ruled Judge Merten. Kolego also objected to testimony about Eklof’s alleged “confession,” arguing it was coerced. Merten told Kolego not to keep “popping up” about testimony con-

cerning her alleged “confession.” (Although preserved as an appealable issue, the alleged “confession” wasn’t raised by Eklof’s lawyers in her subsequent appeals.)

The prosecution’s final two witnesses were their “stars.” They were intended to provide the testimony to convince the jury that Eklof had both helped plan and participated in Salmu’s murder. Al Hope testified that Eklof arranged to procure a gun from him before her trip to San Diego, which was when she first met Tiner. Although the gun used to murder Salmu wasn’t recovered, the prosecution asserted it was the one Hope said he gave to Eklof, and which Tiner used to shoot Salmu. The other witness intended to convince the jury of Eklof’s involvement was Distabile. He testified that Eklof told him she stabbed Salmu to put him out of his misery.

The jury bought the prosecution’s case and convicted Eklof of aggravated murder, aggravated felony murder, and abuse of a corpse. She was sentenced on December 12, 1995 to two life sentences plus 202 months.

Tiner was tried and convicted of Salmu’s capital murder in 2000. Sentenced to death, as of the spring of 2007 he is on Oregon’s death row.

On the surface it appeared the murder of James Salmu was solved. Case Closed! But the reality of a criminal case is sometimes deliberately submerged by dishonest and unethical, if not downright criminal acts by police, witnesses and prosecutors. It was subsequently discovered that Eklof’s case was infected with that sort of smarmy conduct — and without it there was no evidence she had any role in Salmu’s murder.

Two women befriend Eklof

It is difficult for strangers to get lawyers to recognize evidence they had not bothered to discover for themselves. Family members might have some clout, but not a person who followed the case because of some interest.

Eklof became friends with two women who took an intense interest in her case. The first was Nancy Gottfried, a student in a Criminal Justice class taught by Captain Smith at Lane Community College in Eugene. Gottfried noticed that the case she had elected to study did not conform to what Smith was teaching them about how the justice system worked. That case was Eklof’s. Gottfried followed Eklof’s trial, and after becoming friends with her she obtained all of Eklof’s journals and records. Erma Armstrong lived near Salem, Oregon, and she met Eklof when a friend teaching a journal writing class at the woman’s prison in Salem asked

her to type a story written by Eklof. When Gottfried left the area she convinced Armstrong to follow Eklof’s case and try to help her. She also turned over to Armstrong two full boxes of information about Eklof’s case.

Prosecution’s frame-up of Eklof exposed by concealed evidence

During Tiner’s prosecution for Salmu’s murder, Armstrong read a Motion to Dismiss in his defense file outlining the extent of the treachery that had gone into Eklof’s coerced alleged “confession.” Armstrong furnished this to Beverly Long Penz, Eklof’s post-conviction (PC) counsel. Getting the brush-off from Penz, Armstrong paid Steve Gorham, a Salem lawyer, \$1,000 to look into Eklof’s chances for PC relief. She also called Tiner’s attorneys to inquire about Tiner’s Motion to Dismiss.

Armstrong was soon called by the office of Tiner’s attorneys, who wanted to get in touch with Eklof’s PC attorney. Instead Armstrong put them in touch with Gorham. After talking with them, Gorham was suddenly excited about Eklof’s chances. After contact with Penz, he asked Armstrong to send copies of the videotapes of Eklof’s interrogation to Penz.

When the PC relief was denied, Armstrong asked Gorham if he could represent Eklof in her PC appeal. He would only do so with a substantial retainer. Lacking the money to pay Gorham, Armstrong picked up from his office the boxes of documents she had provided him with.

Later she discovered a packet of legal papers in one of the boxes that she didn’t recognize. These were the documents that Tiner’s lawyers had forwarded to Gorham, hoping he would get them to Penz. For reasons unknown, Gorham didn’t forward the documents to Penz. However, given her career problems, it is uncertain if it would have done any good.

After a suspension in 2000 and a reprimand in 2002 for ethical violations, Penz resigned from the Oregon State Bar on January 25, 2005, when faced with another more serious disciplinary proceeding. As of May 1, 2007 Penz is “Resigned” from practicing law in Oregon. Penz’s 2000 suspension was for egregious misconduct she committed during the time she was Eklof’s PC attorney, although it didn’t directly involve Eklof’s case. [JD Note: On May 1, 2007 *Justice:Denied* verified the Oregon State Bar’s disciplinary history of Beverly Long Penz #843202, <http://www.osbar.org/members/display.asp?b=843202&s=1>]

Eklof cont. on page 35

Eklof cont. from page 34

Thus Eklof's PC attorney and one of her trial lawyers have been drummed out of the legal profession for serious ethical misconduct committed while they represented her.

In the packet of legal papers that Armstrong discovered was a 42-page "Notes for Counsel." It described the *Brady* violations by Lane County DA Hugi that enabled him to orchestrate the framing of Eklof for Salmu's murder. Among the evidence concealed from Eklof's trial lawyers was:

- Salmu's cause of death was bullet wounds, and there was no evidence he had been stabbed.
- The forensic test of crime scene evidence was "inconclusive" that Salmu had been stabbed, contrary to the testimony at her trial.
- Al Hope and John Distabile exchanged their prosecution favorable testimony for extraordinary favors from DA Hugi.

Accompanying the "Notes for Counsel" was the supporting documentation for the concealed exculpatory and impeachment evidence. Of particular interest were the details of the prosecution's procurement of Hope and Distabile's testimony.

The information indicates Al Hope had been arrested for child pornography involving his daughter. Eklof's prosecutors were involved in a deal that he would provide the testimony they wanted from him – that she obtained a gun from him before Salmu's murder – in exchange for his indictment being "postponed" (for almost two years). DA Hugi also secreted Hope's arrest warrant to another county, to conceal from Eklof's lawyers and the jurors that Hope was accused of involving his daughter in kiddie porn. Knowledge of that would have so completely destroyed Hope's credibility as a witness, that it is debatable if the prosecution would have dared have him testify.

Neither was it disclosed to Eklof that before her trial Hope was identified as a suspect in Salmu's murder in a letter to Oregon State Police Detective Dan Wolverton from a criminologist in the OSP Crime Laboratory.² Then a month after Eklof's sentencing, in a teletype that referenced Hope's arrest warrant related to his daughter's sex abuse, Wolverton wrote: "Hope ... was recently involved in a homicide in Springfield, for which he was not charged, but acted as a participant."³ In another report Wolverton commented in regards to Hope's sex charges involving to his daughter, "The warrant was not entered into computer files."⁴ Hope was eventually given a sweetheart plea deal by Hugi that protected him from a conviction of sexually abusing his daughter.

In regards to Distabile, who was also considered a suspect in Salmu's murder, there was a letter from his attorney requesting what amounted to immunity from prosecution for his possible criminal activity with Tiner. Consequently, when Armstrong contacted Lane County for their records about Distabile, she was told they had a mug shot of him, but there was no record of his arrest. DA Hugi testified in 2000 during a pre-trial hearing in Tiner's case that he made an immunity deal with Distabile for his testimony against Eklof. That deal wasn't disclosed to Eklof's trial lawyers.

Eklof's PC appeals attorney, John Manning, sat for a year and a half on the "Notes for Counsel" that Armstrong sent him by certified mail along with a notarized authorization from Eklof for Armstrong to act in her behalf. Finally, Manning called Armstrong to learn where she had obtained the document. She directed him to Gorham, who told him that he knew nothing about it. Manning considered the new information in the "Notes for Counsel" so important that he attempted to remand Eklof's PC petition to incorporate the newly discovered evidence. His effort was denied, but in his appeal of her PC he cited some of the new evidence. Oregon Attorney General Hardy Myers opposed consideration of the claims based on the "new" evidence, asserting Eklof was procedurally barred from seeking relief based on those claims because they weren't incorporated into her PC.

Eklof files federal habeas after state appeals denied

After her state appeals were exhausted, in 2004 Eklof filed a habeas petition in Portland's federal court. Her claims were considered meritorious enough that she was appointed representation by Federal Public Defender Anthony Bornstein.

Bornstein filed a second amended habeas petition on July 28, 2006 that stated five claims for relief. Among them are claims that Eklof's right to due process was violated by the prosecution's failure to comply with its *Brady* obligation to disclose the multiple levels of evidence that impeached the credibility of Hope and Distabile's testimony; her trial lawyer's failure to object to DA Hugi's improprieties during his closing argument denied her effective assistance of counsel; and she was denied due process by being convicted of "offenses for which she is "actually innocent."⁵ The petition also challenges her "consecutive life sentences for the same homicide in a case involving a single victim."⁵

Bornstein explained in his Memorandums of Law that Eklof's had not procedurally defaulted on her key claims concerning the

non-disclosed *Brady* evidence related to Hope and Distabile. He argued she couldn't have raised the claims in her state appeals because she didn't learn about the evidence concealed by the prosecution until after the Oregon Supreme Court affirmed her direct appeal and her PC had been denied. Consequently, applying the procedural default doctrine to Eklof's new evidence would reward the prosecution for concealing the impeachment and exculpatory evidence from her.

Bornstein also contended that since the prosecution's multiple *Brady* violations were deliberate, they "may be regarded as an admission that performance would injure the government's case; an admission, so to speak, of prejudice which might, particularly in close cases, tip the scales."⁶ Thus DA Hugi's deliberate concealment of the *Brady* evidence from Eklof amounted to him cheating by putting his feet on the scales of justice to make up for his lack of evidence that she was involved in Salmu's murder.

The State's response to Eklof's habeas petition is due in the late spring of 2007.

Members of the prosecution team that framed Eklof cost the city of Springfield \$2 million in 1998 for concealing exculpatory evidence in the case of Christopher Boots and Eric Proctor. The men were released in 1994 after serving eight years in prison for allegedly murdering a convenience store clerk.

An old Chinese saying is, "The laws sometimes sleep, but never die." One hopes the truth, and justice, will awaken and prevail for Karlyn Eklof. She can be written at:

Karlyn Eklof 11054880
CCCCF
PO Box 9000
Wilsonville, OR 97070

Eklof's outside contact is Erma Armstrong. Anyone wanting to contact Erma can email JusticeDenied and it will be forwarded to her. Put Erma Armstrong in the email Subject Line and send to, contact@justicedenied.org

Endnotes:

1 Eklof filed a Memorandum to Suppress due to Sexual Harassment on February 23, 1995, based on Captain Smith's sexual activity. Springfield Police Chief DeForrest and Smith filed a response on February 25, 1995. Eklof believes the charges against her were motivated at least in part to destroy her credibility as a witness against Smith for the incident. Smith has since been promoted to Springfield's Chief of Police.

2 *Eklof v. Hoefel*, Civ. No. 04-1141-HA (DC OR), Supplemental Memorandum in Support Of Second Amended Petition For Writ Of Habeas Corpus, 2-3, also, p. 17, fn. 6.

3 *Eklof v. Hoefel*, Civ. No. 04-1141-HA (DC OR), Supplemental Memorandum in Support Of Second Amended Petition For Writ Of Habeas Corpus, 3.

4 *Id.* at 3.


5 *Eklof v. Hoefel*, Civ. No. 04-1141-HA (DC OR), Second Amended Petition For Writ Of Habeas Corpus, 2-3.

6 Supplemental Memorandum in Support Of Second Amended Petition For Writ Of Habeas Corpus, *Supra* at 15-16.

ROLL CALL OF INNOCENT PEOPLE EXONERATED OR PARDONED IN 2006

| Name | ST | Yrs | J.A. Griffith | MT | 1 | Frank McVey | MT | 2 | Judith Scruggs | CT | 0 |
|--------------------|----|-----|---------------------|----|----|---------------------|----|----|-----------------------|----|----|
| Gilbert Amezquita | TX | 8 | John Harrington | MT | 1 | John Milch | MT | 0 | William C. Shearer | MT | 0 |
| Caspar Andersen | MT | 0 | Minnie Harris | MT | 0 | Joseph Milch | MT | 0 | Grace Sherwood | VA | 7 |
| William Arnoldy | MT | 1 | Travis Hayes | LA | 7 | August Adam Miller | MT | 1 | Billy James Smith | TX | 19 |
| Tom Bakke | MT | 0 | Frank Heil | MT | 0 | Billy Wayne Miller | TX | 22 | Ernest Smith | TX | 1 |
| John R. Ballard | FL | 3 | Herman Heimann | MT | 0 | Florence Miller | MT | 0 | Janet Smith | MT | 2 |
| Herman Bausch | MT | 2 | Ray Helvey | MT | 2 | James D Miller | WI | 2 | R. Bruce Smith | MT | 0 |
| Daniel Bayly | TX | 1 | Josef Hocevar | MT | 3 | Martin Morley | MT | 0 | Timothy Smith | KY | 5 |
| Johnnie Beck | NC | 10 | Charles Hohrmann | MT | 1 | Arthur M. Mumphrey | TX | 20 | W. K. Smith | MT | 2 |
| Orlando Bosquete | FL | 13 | Ed Horn | MT | 1 | Tom Murphy | MT | 0 | Bennie Starks | IL | 20 |
| Ted Bradford | WA | 9 | Michael Hutchinson | CA | 7 | Alan Newton | NY | 21 | E. V. Starr | MT | 3 |
| Johnny Briscoe | MO | 23 | Francis J. Israel | MT | 0 | James Ochoa | CA | 1 | Adam Steck | MT | 1 |
| Albert Brooks | MT | 2 | Rosemarie Jackowski | VT | 0 | Christopher Parish | IN | 10 | Louis C. Steffer | MT | 0 |
| James Brown | TX | 0 | Willie Jackson | LA | 16 | Marlon Pendleton | IL | 14 | James Tenny | TX | 9 |
| Thomas Burans | MT | 1 | Ernest Johnson | WV | 4 | Duarnis Perez | NY | 4 | Ralph Thunder | MN | 3 |
| Ellsworth Burling | MT | 1 | Matt Johnson | MT | 2 | Vishnu Persad | FL | 2 | James C. Tillman | CT | 18 |
| Tom Cason | MT | 2 | Ben Kahn | MT | 3 | Larry Leon Peterson | PA | 18 | Ernest Tunander | MT | 0 |
| Louis Christiansen | MT | 1 | John Kelly | MT | 0 | Thomas Peterson | MT | 0 | Loren G Turner | TN | 2 |
| Allen Coco | LA | 11 | Clyde Kennard | MS | 3 | Frank Quattrone | NY | 0 | Robert Vanlandingham | MT | 0 |
| Alan Crotzer | FL | 25 | Ben Kiper | KY | 6 | Frank B. Rakstis | MT | 0 | Fred Vogel | MT | 1 |
| J.M. Darby | MT | 0 | Theodore Klippstein | MT | 2 | Julie Rea-Harper | IL | 2 | Frank Waara | MT | 1 |
| Jeffrey Deskovic | NY | 16 | August Lembrecht | MT | 1 | Matt Regan | MT | 0 | Douglas Warney | NY | 10 |
| Tony Diedtman | MT | 2 | Richard Lohe | MT | 0 | Joe Reilly | MT | 1 | James Weaver | MT | 0 |
| William F. Dunn | MT | 0 | Daniel Lucas | MT | 0 | Leo Reno | MT | 2 | Martin Wehinger | MT | 2 |
| Louis Effinger | MT | 0 | H. F. (Harry) Lucas | MT | 3 | Clarence Robinson | KY | 1 | Andrew (Drew) Whitley | PA | 18 |
| Pete Ervik | MT | 1 | Peter Lutnes | MT | 0 | Fred Rodewald | MT | 2 | Cedric Willis | LA | 12 |
| Scott Fappiano | NY | 21 | Christopher P Mace | MO | 0 | Herman Rohde | MT | 3 | Marrío D'Shane Willis | OK | 3 |
| Martin Ferkovich | MT | 3 | Albert Maker | MT | 0 | Frank Rooney | MT | 0 | Harry Peter Wolf | MT | 1 |
| Edward A. Foster | MT | 0 | John J. Manning | MT | 0 | John Ruck | MT | 1 | R.L. Wyman | MT | 3 |
| Louis R. Fowler | MT | 0 | Herbert Mansolf | MT | 1 | Joseph Rudig | MT | 0 | A. Zimmer | MT | 0 |
| William Fuhs | TX | 0 | Rasheem Matthew | OH | 16 | Fay Rumsey | MT | 1 | | | |
| Larry Fuller | TX | 19 | James A. McGlynn | MT | 0 | Anton Schaffer | MT | 0 | | | |
| Robert Furst | TX | 1 | William McKee | MT | 1 | John Ryan Schlamp | MD | 3 | | | |
| John Silas Geiser | MT | 0 | A. L. McKenzie | MT | 0 | Robert Schroeder | MT | 0 | | | |

131 PEOPLE WRONGLY IMPRISONED 534 YEARS



Improper Submission
Records of a Wrongful Conviction
Erma Armstrong

This is the story of Karlyn Eklof, a young woman delivered into the hands of a psychotic killer. She witnessed him commit a murder and she is currently serving two life sentences in Oregon for that crime. *Improper Submission* by Erma Armstrong documents:

- The way the killer's psychotic bragging was used by the prosecution against Karlyn.
- The way exculpatory and witness impeachment evidence was hidden from the defense.
- The way erroneous assertions by the prosecution were used by the media, judges reviewing the case, and even by her own lawyers to avoid looking at the record that reveals her innocence.

Paperback, 370 pages, Send \$10 (postage paid) (check, m/o or stamps) to:
Justice Denied
PO Box 68911
Seattle, WA 98168
Or order from JD's Bookshop, www.justicedenied.org

Possibility of Guilt: Kirstin Blaise Lobato's Unreasonable Conviction

Kirstin Blaise Lobato has twice been convicted of a 2001 Las Vegas murder based on the prosecution's argument it is "possible" she committed the crime. That claim and her convictions are unreasonable because there is no physical, forensic, eyewitness or confession evidence placing her at the crime scene, and ten eyewitnesses and telephone and medical records corroborate the then 18-year-old Lobato's alibi of being at her parents house 170 miles north of Las Vegas on the week-end of the murder. *Possibility of Guilt* is the full story that was condensed in *Justice: Denied* Issue 34.

\$15 (postage pd.) (Stamps OK) Softcover. Order from:
Justice Denied
PO Box 68911
Seattle, WA 98168
Or order with a credit card from JD's online Bookshop, www.justicedenied.org

Dehumanization Is Not An Option
An Inquiry Into Law Enforcement and Prison Behavior
By Hans Sherrer

This compilation of essays and reviews explains that the dehumanization characteristic of institutionalized law enforcement processes is as predictable as it is inevitable. The beginning point of thinking about alternatives to the dehumanizing aspects of law enforcement systems is understanding their causes. The essays include:

- *Quiet Rage*: The Stanford Prison Experiment
- Obedience To Authority Is Endemic
- Dehumanization Paves The Path To Mistreatment

\$15 (postage paid) (Stamps OK) Softcover. Order from:
Justice Denied
PO Box 68911
Seattle, WA 98168
Or order with a credit card from JD's online Bookshop, www.justicedenied.org

JUSTICE: DENIED'S BOOKSHOP — All of the books listed are paperback, except for those marked with **Hardcover** in Bold. Prisoners, before ordering a hardcover book, check with mail and/or property staff to make sure it will be delivered. Each book's Order Number is in the lower right hand corner. E.g., the first dictionary below is #02

Oxford Pocket American Dictionary - \$12.95 - 1,004 pgs. Over 180,000 entries. Includes over 3,000 biographical and geographical entries. Most comprehensive paperback dictionary available. #02

Merriam-Webster's Dictionary - \$6.50 - 939 pgs. Over 75,000 definitions. Good basic dictionary. #03

Merriam-Webster's Spanish-English Dictionary - \$6.50 - 800 pgs. More than 80,000 entries and 100,000 translations. Many examples of a word's use in context. English-Spanish and Spanish-English. Includes Latin-American Spanish. #04

Roget's 21st Century Thesaurus in Dictionary Form - \$5.99 - 976 pgs. Includes more than 1 million word choices. Features easy-to-use dictionary format, plus a Concept Index that also arranges words by idea. Includes definitions for each main entry. #05

Merriam-Webster's Vocabulary Builder - \$5.99 - 576 pgs. Good resource to expand one's vocabulary. Includes over 1,000 words with definitions and explanation of the words usage, including examples of its use in a sentence. #06

Essentials of English Grammar by L. Sue Baugh - \$8.95 - 176 pgs. Explains parts of speech, punctuation, capitalization, spelling, frequently confused words, and much more. Includes styling on how to write with economy, clarity, and accuracy. #07

Merriam-Webster's Dictionary of Law - \$15.95 - 634 pgs. Over 3,000 legal terms defined. Includes chapters discussing important legal cases, important laws. There's also a section on important legal agencies in the U.S., and the full U.S. Constitution. More complete than the paperback edition of a well-known law dictionary that sells for \$29.00. #08

Legal Writing in Plain English by Bryan A. Garner - \$16 - 227 pgs. A guide to clear and effective legal writing. Includes: Tips on generating thoughts, organizing them, and creating outlines; Sound advice on expressing your ideas clearly and powerfully; Dozens of real-life writing examples to illustrate writing problems and solutions; Exercises to reinforce principles of good writing; Helpful guidance on page layout. A punctuation guide that shows the correct uses of every punctuation mark; and model legal documents that demonstrate the power of plain English. Probably need at least the equivalent of a high-school education to make use of this book. #09

A+ Style Manual for Legal Writing in Plain English by Research and Education Association - \$9.95 - 106 pgs. Practical manual for law students, paralegals, lawyers and anyone who prepares legal documents. Includes rules of citation, abbreviation and capitalization, footnotes and numbers, and grammar and punctuation. Aids in writing legal papers in "plain English" instead of "legalese." Less detailed than *Legal Writing in Plain English*, but more understandable for a layperson. #40

Visit JD's online Bookshop: <http://justicedenied.org>

The Criminal Law Handbook (8th ed.) (Sept. 2006) by Attorney Paul Bergman & Sara J. Bernum-Burrett - \$39.99 - 640 pgs. Explains what goes on in a criminal case. Covers: arrests; booking; preliminary hearings; charges; bail; courts; arraignment; search and seizure; defenses; evidence; trials; plea bargains; sentencing; juveniles. Covers Supreme Court cases and changes in criminal law (through August 2005). #10

The Citebook - \$41.95 - Many hundreds of positive case citations that "give you a right, not take one away." are listed in alphabetical categories for easy inclusion in your legal brief. Up-to-date. New edition published yearly. #11

Everyday Letters For Busy People (Rev. ed.) by Debra Hart May and Regina McAloney - \$16.95 - 288 pgs. Hundreds of sample letters for all occasions, including: Letters to government officials and agencies; Business letters; Complaint letters; Community action letters; Job-search letters; Thank-you letters. Letters can be adapted for your situation. Includes helpful tips and techniques to effectively get your message across. Includes email tips. #13

New York Times Almanac - \$10.95 - 1,008 pgs. Includes a wealth of comprehensive information about a diverse range of topics related to the U.S. and the rest of the world. Includes social, political, population, geographic information, and sports. #14

Eyewitness Testimony by Elizabeth Loftus - \$22.50 - 272 pgs. Loftus is one of the world's leading authorities on the unreliability of eyewitness testimony. She explains the basics of eyewitness fallibility, such as poor viewing conditions, brief exposure and stress. She also covers more subtle factors, such as expectations, biases, and personal stereotypes that can result in a suspect's erroneous identification. Loftus also explains that experiments have repeatedly proven that eyewitness memory is chronically inaccurate. #21

Surviving Justice: America's Wrongfully Convicted and Exonerated edited by Dave Eggers & Lola Vollen - \$16 - 512 pgs. Thirteen exonerates describe their experiences, the events that led to their convictions, their years in prison, and their new lives outside. The exonerates tell of the devastating effect of incarceration on them and their loved ones, and how they have been forever changed by their experience. #49

No Crueler Tyrannies: Accusation, False Witness, and Other Terrors of Our Times by Dorothy Rabinowitz - \$13 - 256 pgs. Examines some of the sex-abuse cases of the 1980s and 90s that saw dozens of innocent adults convicted of absurd charges. Included are the "sex-ring" cases in Wenatchee, Washington where 19 people were wrongly convicted of sex abuse charges. Also included is the Amiraault case in Malden, Massachusetts, where bizarre false allegations were taken seriously. #52

Legal Blunders by Geoff Tibballs - \$15.95 - 384 pgs. Includes 38 cases of legal blundering, including some involving wrongful convictions. The legal horror stories are shocking, occasionally unbelievable, and sometimes amusing. They run a gamut of error from the tragic misjudgments at Waco to a disastrous case of mistaken identity that led to the shooting of an innocent man by the London police. #53

Presumed Guilty: When Innocent People Are Wrongly Convicted by Martin Yant - \$36 - 231 pgs. **Hardcover**. Yant is an investigator who has aided the release of a number of innocent people. He brings his first-hand perspective to explaining the different factors that can contribute to "justice" going awry. Published in 1991, but the innocent are still convicted by the same methods, so a revised edition would likely only include a few advances in scientific evidence that has aided exonerations. #19

In Spite of Innocence: Erroneous Convictions in Capital Cases by Michael Radelet, Hugo Adam Bedau and Constance Putnam - \$22 - 416 pgs. Details how over 400 Americans were wrongly convicted in cases carrying the maximum penalty of a death sentence. Expands on well-known 1987 Stamford Law Review article by Radelet and Bedau that has been cited several times in U.S. Supreme Court opinions, most recently in June 2006. #15

Actual Innocence by Barry Scheck, Peter Neufeld and Jim Dwyer - \$14.95 - 432 pgs. Latest edition. Case histories explain how people have been wrongly convicted by erroneous eyewitness identification, jailhouse informants, junk science, perjured testimony, prosecutor and police concealment of evidence, etc. Explains how new evidence, including scientific tests, has helped free wrongly convicted people. #16

Wrongly Convicted: Perspectives on Failed Justice Ed. by Sandra Westervelt and John Humphrey - \$23.95 - 301 pgs. Articles by leading authorities explain how and why wrongful convictions occur. The book is divided into four sections: the causes of wrongful convictions; the social characteristics of the wrongly convicted; case studies and personal histories; and suggestions for changes in the legal system to prevent wrongful convictions. #18

Suspect Identities: A History of Fingerprinting and Criminal Identification by Simon Cole - \$18.95 - 400 pgs. Most comprehensive book available about the history of fingerprinting and why it may not be the "gold standard" of evidence that most people believe it to be. Professor Cole is one of the world's leading critics of Court's allowing fingerprint examiners to testify as experts. A must have book by anyone with an interest in fingerprinting. #20

Bloodworth: The True Story of One Man's Triumph over Injustice by Tim Jenken - \$13.95 - Kirk Bloodsworth was sentenced to death for the 1984 rape and murder of a young girl. After nine years imprisonment, DNA testing of crime scene evidence exonerated him as the girl's assailant. Upon his release he became the first person exonerated by DNA testing who had been sentenced to death. #39

The I Chong: Meditations from the Joint by Tommy Chong - \$14.95 - 224 pgs. First person account of how Tommy Chong (of the comedy duo of Cheech & Chong) became a target of the Bush administration and how a case was contrived against him that resulted in him spending nine months in federal prison in 2003-2004. One of the most straightforward accounts of how the federal government misuses the criminal laws to prosecute critics of political policies. Written with the heart and wit that one would expect from a professional entertainer. #86

Mistaken Identification: The Eyewitness, Psychology and the Law by Brian L. Cutler and Steven D. Penrod - \$9.99 - 300 pgs. Reviews research concerning the adequacy of safeguards protecting a person from being convicted due to a mistaken eyewitness identification. The presence of counsel at line-ups, cross-examination, and judges' instructions have proven ineffective at preventing a mistaken identification. Expert psychological testimony educating the jury about how memory processes work and how eyewitness testimony should be evaluated, shows much greater promise as a safeguard against mistaken identifications. #74

How to Argue & Win Every Time: At Home, At Work, In Court, Everywhere, Everyday by Gerry Spence - \$15.95 - 307 pgs. Most successful defense lawyer in American history shares his secrets to successfully convince others to see your point of view. #17

**Bulk Issues of
Justice:Denied are
available at steep discounts!**

Bulk quantities of the current issue and issues 29 through 34 are available (price includes shipping):

- 5 issues \$10 (\$2.00 each) (1 29 to 35 only)
- 10 issues \$18 (\$1.80 each) (1 29 to 35 only)
- 20 issues \$30 (\$1.50 each) (1 32 to 35 only)
- 50 issues \$60 (\$1.20 each) (1 33 to 35 only)
- More than 50? Check for availability.

Send check or money order & specify which issue you want to:

**Justice Denied
PO Box 68911
Seattle, WA 98168**

Or, use your **Credit Card** to order Bulk Issues or Back Issues on JD's website, <http://justicedenied.org>

**Citizens United for Alternatives
to the Death Penalty**

www.CUADP.org 800-973-6548

Dedicated to promoting sane alternatives to the death penalty. Community speakers available. Write for info: CUADP; PMB 335; 2603 Dr. MLK Jr. Hwy; Gainesville, FL 32609

YOUR VIRTUAL ASSISTANT

HEAVENLY LETTERS offers services for individuals with limited or no available resources. Our many services include but are not limited to the following:

- Email Service - \$20 per month. No limit - mailed weekly to prisoners.
- Research - \$10 for 25 pages. 10¢ for additional pages.
- Skip Tracing - \$5 per name
- Typing - \$1 page double-spaced, \$2 page single-spaced
- Advertising - \$25 one-time only fee per item
- Copies - \$5 for 6 copies from photos to documents. Other copy services avail.
- Calendars - \$2; Postcards - 50¢; and, Custom Greeting Cards - \$1;
- Stationary Sets - \$15

Questions? Orders! Write:
Heavenly Letters
PO Box 851182
Westland, MI 48185
(Please include a SASE or 39¢ stamp with inquires.)
Email: info@heavenlyletters.com

California Lifers' newsletter is chock full of info (court decision summaries, reports, news stories, etc.) of interest to prisoners serving life in CA and their family members. Prisoners \$15 yr. (6 issues). All others \$20 yr. Write: CLN; PO Box 687; Walnut, CA 91788.

Criminal Justice Services for all NY inmates
Parole Specialists! Send SASE to: Prisoner Assistance Center, PO Box 6891, Albany, NY 12208. Lots of info on the web at: <http://prisonerassistance.org>

Prison Legal News is a monthly magazine reporting on prisoner rights and prison conditions of confinement issues. Send \$2 for sample issue or request an info packet. Write: PLN, 2400 NW 80th St. #148, Seattle, WA 98117

**www.justicedenied.org
- Visit JD on the Net? -**

Read back issues, order books and videos related to wrongful convictions and much more!

Coalition For Prisoner Rights is a monthly newsletter providing info, analysis and alternatives for the imprisoned & interested outsiders. Free to prisoners and family. Individuals \$12/yr, Org. \$25/yr. Write: CPR, Box 1911, Santa Fe, NM 87504

**Sell Your Art
On the Web**

Sell prisoner-created art or crafts (except writings). Send only copies, no originals!

Prison Art is a non-profit website that charges a ten percent service fee if your art or craft sells. Send a SASE for free brochure.

Prison Art
P.O. Box 31574
San Francisco, CA 94131
www.prisonart.org
art@prisonart.org

Humor! Puzzles! Recipes! Legal stuff! 24-page magazine for prisoners. Send 5-39¢ stamps, or 9x12 envelope with 3-39¢ stamps, or \$1.95 check or m/o.
The Insider Magazine
P.O. Box 829; Hillsboro, OR 97123

**"Thank you for the great book. I have to share it with so many that have helped and continue to help on my appeal."
JD, Florida Death Row Prisoner**

**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. See review, *JD*, Issue 26, p. 7. Order with a credit card from Justice Denied's website, <http://justicedenied.org>, or send \$15 (check, money order, or stamps) for each soft-cover copy to:

**Justice Denied
PO Box 68911
Seattle, WA 98168**

Mail to:
Name: _____
ID No. _____
Suite/Cell _____
Agency/Inst _____
Address : _____
City: _____
State/Zip _____

Freeing The Innocent - ___ copies at \$15 = _____
Prisoners - 6 issues of JD (\$10) _____
Non-prisoner - 6 issues of JD (\$20) _____
Sample JD Issue (\$3) _____
Total Amt. Enclosed: _____

SSRI antidepressants are known to cause suicidal and violent behavior in otherwise peaceful people. "Stop Antidepressant Violence from Escalating" (S.A.V.E.) is offering an SSRI Information Packet to any prisoner who believes that their conviction was the result of SSRI intoxication. Request the "SSRI Info Pack" by writing:

SAVE
c/o Advocates For Justice
PO Box 511
Beatrice, NE 68310

The Poverty Postal Chess League has enabled chess players to play each other by mail since 1977. Membership is \$5/yr; (stamps OK). Members receive a quarterly newsletter and can enter all tournaments or challenge others to a game. Write:

PPCL
c/o J Klaus
12721 E. 63rd St
Kansas City, MO 64133

Change of Address

Please notify *Justice:Denied* of your change of address promptly. The U.S. Postal Service charges *J:D* for each returned issue. *Justice:Denied* can only accept responsibility for sending an issue to the address provided at the time an issue is mailed!

Don't Miss Any Issues of *Justice:Denied*!

Six issues of *Justice:Denied* is only \$10 for prisoners and \$20 for all others. Mail a check, money order, or stamps (pre-stamped envelopes OK) to:

Justice Denied
PO Box 68911
Seattle, WA 98168

Or use your credit card online
www.justicedenied.org

Check Your Mailing Label

For Your Renewal Date

If your mailing label says **Issue 35**, this is your **LAST ISSUE**. If your label says **Issue 36** you have **ONE ISSUE** remaining. Please renew promptly to ensure that you don't miss a single issue!

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.

\$15, softcover, order info on page 39

"The greatest crime of all in a civilized society is an unjust conviction. It is truly a scandal which reflects unfavorably on all participants in the criminal justice system."

New York Judge John Collins

(In 1992 when he vacated Albert Ramos' rape conviction after eight years of wrongful imprisonment.)

JUSTICED DENIED

The Magazine for the
Wrongly Convicted

Justice Denied
P.O. Box 68911
Seattle, WA 98168

Non-Profit Org.
U.S. Postage
PAID
Seattle, WA
Permit No. 575

"The Moment of Truth for a practicing lawyer occurs whenever a prospective client tells a story that seems morally compelling but legally hopeless. That is where the attorney's legal research should begin, not where it should end. Too much injustice persists in the world because tired legal thinking has accepted unjust patterns as legally inevitable."

Anthony D'Amato,
Leighton Professor of Law
at Northwestern University
School of Law.

The scales of justice are tipped against innocent people all across the country - from Maine to Hawaii and from Alaska to Florida.

Justice: Denied provides a public voice for innocent people victimized by that tragic reality.