JUSTICE DENIED

$3
Retail

The Magazine for the Wrongly Convicted

$69.1 Million Awarded Exonerated People In 2006

See p. 20

Georgia Thompson

Fraud convictions overturned and released from federal prison on hours after federal appeals court hears oral arguments .
See page 12

Daisy Angus

Drug smuggling conviction overturned and released after 4-1/ 2 years of imprisonment.
See page 6

Ellen Reasonover

Appeals court disregarded pervasive police and prosecutor wrongdoing in affirming dismissal of lawsuit after 16 years of wrongful imprisonment for murder.
See page 14

President Gloria Macapagal Arroyo

The Philippines Congress abolishes capital punishment after President Arroyo commutes death sentences over concerns innocent people are executed.
See page 7

In This Issue

Issue 36
Spring 2007

Justice:Denied - **Issue 36, Spring 2007** ISSN: 1937-2388

Table of Contents

Message From The Publisher

One consequence of reporting on cases worldwide is that it provides the perspective to know the U.S. can learn much from policies and practices in other country's influenced by their awareness that wrongful convictions occur.

The Philippines abolished capital punishment in part because of widespread recognition an innocent person can be executed. (See p. 7) In this country influential people pooh-pooh that it can happen here.

In Canada exhaustive inquiries have been conducted into the circumstances contributing to a wrongful conviction. In this country an exoneration is treated as an aberration in a reliable system.

In Australia investigations have been conducted into suspect police behavior underlying a wrongful conviction. In this country there is minimal (if any) accountability for extensive police wrongdoing, that may only be publicly exposed during a lawsuit for compensation.

In South Africa a judge can be subject to discipline for contributing to a wrongful conviction. In this country judicial oversight commissions empowered to enforce obtuse ethical rules typically ignore a judge's professional deficiencies and personal characteristics that can contribute to a wrongful conviction.

In England and Scotland, a Criminal Case Review Commission provides an independent venue to evaluate new evidence or argument for the suitability of submitting a case to the Court of Appeal for review. In this country there is no politically independent state or federal forum for the evaluation of how new evidence or argument affects the reliability of a conviction. Also in England, the COA functions with a conscientiousness that is difficult for a person in this country to believe. In 2006 *32%* of convictions reviewed were quashed, and from 1996 to 2006 the percentage ranged from 30% to 42%. Yet activists in England complain that not enough convictions are overturned! Let them review the situation in this country's state and federal courts, and and they will be thankful for what works in their system.

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 23. 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 Philips, Editor; Natalie Smith-Parra, Editor; Terri Smith, Mailing; Katha McDonald, Mailing; and Hans Sherrer.

1,070 Miles From Crime Scene Not Enough To Prevent Murder Conviction – The Richard Rosario Story

By Karyse Philips *

Richard Rosario was in Deltona, Florida the entire day of June 19, 1996. On that same day on a street in New York City's Bronx borough someone fatally shot Jorge Collazo. It is indisputable that being over a thousand miles from where a murder occurs is significant evidence proving the truth of the claim, "It wasn't me." It is not sufficient, however, to convince NYPD detectives, the Bronx's District Attorney, or New York state judges that Rosario didn't shoot Collazo.

The Crime

On the morning of June 19, 1996, Collazo and his friend Michael Sanchez were walking in the Bronx from Collazo's school to Sanchez's home when they encountered two young men, an African-American and a Hispanic. Collazo and the Hispanic got into an argument that lasted about one minute. Collazo and Sanchez then resumed walking. After they had walked a few blocks the Hispanic approached them from behind. He hollered something like, "So, what's up now?", and then fatally shot Collazo in the head. Sanchez was not injured and he ran after the fleeing shooter, but he could not catch up to him. Collazo was carrying a loaded firearm at the time he was shot.

Robert Davis was the porter for the apartment building next to the crime scene. He was sweeping the sidewalk with his back turned towards Collazo and the shooter when he heard someone angrily yell. As Davis turned around he saw the shooter take a gun out of a coat or jacket pocket and shoot Collazo in the head. Davis claimed he was standing approximately two car lengths from where the shooting took place.

A hot dog vendor, Jose Diaz, witnessed the initial argument between Collazo and the shooter, but he did not see the actual shooting a few minutes later.

On the day of the shooting, the detectives asked Sanchez and Diaz to look through "mugshots" of persons whose photographs were on file in the 43rd precinct. Diaz was unable to recognize anyone as the shooter. Sanchez, however, eventually selected the picture of 20-year-old Richard Rosario as the shooter. According to the police, Davis also selected Rosario's picture later that day. Based solely on the two "mugshot" identifications, a warrant was issued for Rosario's arrest.

Rosario's alibi

Rosario was in Deltona, Florida when he found out about the warrant for his arrest from family members who lived in the Bronx. They told him that the NYPD was looking for him in connection with a recent homicide. Since he hadn't been in New York at the time of the murder he was confident that he could easily resolve the situation. Rosario voluntarily went back to New York on a Greyhound bus on June 30 – eleven days after Collazo's murder. Rosario telephoned the police when he arrived in New York on July 1, and told them that he had just returned from Florida. He also told them that he would come to the precinct. Nevertheless, after his call a police car was sent to his mother's home and he was arrested.

On the day of his arrest, Rosario provided a detailed statement to NYPD detectives about his whereabouts during the preceding month. He identified thirteen eyewitnesses who could attest to the fact that he had been Florida during the month of June 1996 – and so it was impossible for him to have murdered Collazo, who he didn't know and had never met.

> After his arrest Richard Rosario gave a statement to the NYPD that named 13 alibi witnesses who could verify that he was in Florida in June 1996 when Jorge Collazo was murdered in New York City. There is no evidence that the police or prosecutors attempted to interview any of those witnesses to determine if they had arrested the "right man."

Rosario also explained that he first traveled to Deltona from New York in December 1995. He returned to Deltona in February 1996, at which time he became friendly with a group of people who lived there, particularly John Torres and his fiancée (now his wife) Jenine Seda. In March of 1996 Rosario was arrested in Florida for an outstanding warrant in New York, and he was not released from jail until approximately one month later. He immediately returned to New York upon his release.

In late May 1996, Rosario returned once again to Deltona, informing his fiancée, Minerva Godoy, that he was looking for a job and an apartment so that she and their two children could join him there. In reality, Rosario was staying with Torres and Seda, hanging out with friends, and dating other women. He spent a significant amount of time with one woman, Denise Hernandez. [*JD* note: It was Ms. Hernandez who first contacted *JD* about Rosario's case.] Rosario never obtained employment and was not working during his time in Deltona. Godoy, however, wired him spending money by Western Union and talked with him on the telephone.

On June 20, 1996, one day after Collazo was murdered 1070 miles away in New York, Seda gave birth in Deltona to her first child, John Torres, Jr.. [1] The birth of this child enabled Rosario to distinctly remember the days immediately before and after the date of the murder, and provided an unmistakable frame of reference that enabled many people in Deltona to recall seeing Rosario there during that same time period.

After Rosario's arrest, Sanchez and Davis chose him out of a lineup as the man they previously identified from his mugshot.

Lack of pre-trial defense investigation

The court appointed Joyce Hartsfield to represent Rosario. Hartsfield hired an investigator, Jessie Franklin, to aid her with the preparation of Rosario's defense.

After meeting with Rosario and learning the details of his alibi, Franklin attempted to contact various witnesses in Florida. However, because Franklin was unable to contact many of the witnesses by phone, in October 1996 Rosario's lawyer asked the court to approve expenses to send Franklin to Florida to continue her investigation. Franklin submitted an affidavit in conjunction with this request, specifically stating that she was "unable at a long distance to render an effective investigation on this very serious case." On March 19, 1997 – nine months after Rosario was arrested — the court granted the request and approved expenses to send an investigator to Florida.

Hartsfield, however, didn't follow-up on the court's authorization because she never told Franklin to go to Florida. Many months passed with no further investigation into Rosario's case. Finally, in frustration, Rosario requested another lawyer. The court granted his request, and in February 1998 assigned Steven Kaiser as substitute counsel. Kaiser was unaware that the court had approved

Rosario cont. on page 4

Rosario cont. from page 3

travel expenses for an investigator, so he did not send a defense investigator to Florida.

Consequently, prior to Rosario's trial, neither the defense nor the prosecution sent anyone to talk to his many alibi witnesses in Deltona. Furthermore, Kaiser never spoke by telephone to many of the witnesses named in Rosario's post-arrest statement to the police, and he made no attempt to document Rosario's alibi through phone records, Western Union receipts for money wired to him by Godoy, or Florida police records.

Rosario's trial

Rosario's trial began in the Bronx on November 10, 1998, with Kaiser representing him.

Sanchez and Davis identified Rosario as the shooter. The prosecution also called Diaz, the hotdog vender who had witnessed the argument leading up to the shooting, expecting him to make an in-court identification. However, Diaz refused to identify Rosario as the shooter. The prosecution presented no other evidence linking Rosario to the shooting. Although many people in the Bronx knew Rosario and his fiancee lived there, the prosecution presented no witnesses who said they saw him in New York during the month of June — except the two strangers who briefly glimpsed Collazo's murderer.

Rosario's defense was he was the victim of mistaken identity, and that at the time of the crime he was more than 1,000 miles away in Deltona. Torres and Seda agreed to travel to New York at their own expense to testify as witnesses at the trial. Also called as a witness for the defense was a representative from Greyhound, who testified about Rosario's bus ticket for his return trip from Deltona to New York on June 30, 1996. Rosario also testified in his own defense about his presence in Florida in June 1996, with particular reference to events around the time of the birth of Torres and Seda's child. Rosario's attorney, however, did not examine Torres, Seda, or Rosario about many of the facts detailed in Rosario's post-arrest statement to the police. Neither did the jury hear testimony from any of the eleven other witnesses Rosario named in his statement that could corroborate he was in Florida at the time of the murder.

On cross-examination, the prosecution attempted to discredit the two alibi witnesses as close friends of Rosario. The prosecution attacked Rosario's credibility through a rebuttal witness from the Volusia County Department of Corrections, who testified about Rosario being jailed in Florida in March 1996. Rosario's attorney didn't ask him about the jail sentence, so the prosecution suggested Rosario attempted to conceal it from the jury – even though it was in his post-arrest statement. The prosecution also suggested that Rosario wasn't the person who traveled from Deltona to New York on June 30, since Greyhound didn't require a passenger to present identification.

Rosario's trial ended on November 23, 1998, when the jury returned a guilty verdict for the charge of second-degree murder.

Sentencing

On December 17, 1998, Rosario was sentenced to a prison term of 25 years to life. The court noted Rosario's prior criminal history of robbery, criminal possession of stolen property, and a probation violation – all of which took place while he was a juvenile. During his sentencing Rosario continued to maintain his innocence.

Direct appeal

The Legal Aid Society, Criminal Appeals Bureau, was appointed to represent Rosario, and they filed an appeal of his murder conviction. The New York Appellate Division affirmed the judgment of conviction, (*People v. Rosario*, 288 A.D.2d 142, 733 N.Y.S. 2d 405 (N.Y.App.Div. 2001)) and in 2002 the N.Y. Court of Appeals denied leave to review.

Motion to vacate Rosario's conviction

In addition to challenging Rosario's conviction on direct appeal, the Legal Aid Society retained an investigator, Joseph Barry, to locate additional alibi witnesses. Barry traveled to Florida to investigate the information provided by Rosario in his 1996 post-arrest statement. Even though it was five years after the murder, Barry was able to locate at least five individuals who had not been contacted by Hartsfield or Kaiser, but had a clear memory of seeing Rosario in Florida in June 1996. Barry also performed polygraph examinations on Rosario, Torres, Seda, and Fernando and Margarita Torres — the parents of John Torres, who also resided in Deltona. Barry concluded that all of these individuals were absolutely truthful when they stated that they saw Rosario in Florida on June 19, 1996, except for Margarita Torres, whose examination was deemed inconclusive.

During the course of its investigation, the Legal Aid Society became convinced that Rosario was the victim of a mistaken identification and wrongful conviction. Consequently, on June 11, 2003, Legal Aid filed a motion to vacate Rosario's judgment of conviction pursuant to Section 440.10 of the New York Criminal Procedural Law. The motion asserted that Rosario had received ineffective assistance of counsel, that there was newly discovered evidence, and that Rosario was completely innocent of the crime charged.

Faced with fierce opposition to Rosario's Section 440.10 motion by the Bronx County District Attorney, in March 2004 the Legal Aid Society enlisted the law firm of Morrison & Foerster to serve as co-counsel to Rosario. Morrison & Foerster had the legal expertise and financial resources necessary to properly represent Rosario in his complicated case. During the subsequent investigation, numerous witnesses in New York and Florida were interviewed who had not previously spoken with Rosario's counsel or investigators. Documentary evidence was also pursued that supported Rosario's alibi. Through Florida police records not previously obtained by the defense, Rosario's claim was confirmed that he had contact with Florida police on May 30, 1996 – less than three weeks before the shooting. Attempts were also made to retrieve phone records and proof of Western Union wire money transfers – leads that Rosario had provided to his pretrial and trial attorneys, but which they didn't pursue. During the exhaustive investigation funded by Morrison & Foerster, the Bronx D.A. refused to cooperate in any way or entertain the possibility that Rosario was a victim of mistaken identification.

An evidentiary hearing on Rosario's motion took place in August and September 2004. The defense called seven exculpatory witnesses to testify on Rosario's behalf. Most of these witnesses had little, if any, contact with Rosario during the eight years from the time of his arrest, and they did not have a close personal relationship with him or any reason to not tell the truth. The lack of a personal relationship between Rosario and most of the seven witnesses underscores the truthfulness of their testimony that they saw him in Florida on or about June 19, 1996. Four witnesses testified specifically that they saw him on June 19 – the day before his friend Jenine Seda gave birth to her son.

In spite of the new evidence supporting Rosario's misidentification as the shooter, the court denied his motion to vacate on April 4, 2005. Although the court acknowledged there was a serious misunderstanding by both Hartsfield and Kaiser in believing that the trial court had denied the request for approval of investigative expenses when in fact it had been granted, the court considered the mis-

Rosario cont. on page 5

Rosario cont. from page 4

take as harmless error since it "was not deliberate." In its decision the court failed to take into account the failure of Rosario's attorneys to pursue documentary evidence and, notably, the court made no finding that any of the witnesses at the hearing were not credible. That is significant and makes the court's ruling somewhat inexplicable, because if even one of the seven witnesses was judged to be credible (and hence telling the truth), then Rosario is actually innocent, and the victim of a miscarriage of justice.

The New York Appellate Division denied Rosario's motion for leave to appeal the lower court decision.

Federal habeas petition

With his state appeals exhausted, on September 15, 2005 Rosario's attorneys filed a writ of habeas corpus on his behalf in the U.S. District Court for the Southern District of New York. The writ states four grounds for relief:

1. Petitioner did not receive constitutionally effective assistance of counsel
2. The prosecutor's use of peremptory challenges established a *prima facie* case of racial discrimination
3. The prosecutor's introduction of extrinsic evidence on a collateral matter deprived petitioner of his constitutional due process right to a fair trial
4. Due process requires reversal of petitioner's conviction because the evidence demonstrates that he is innocent.

The essence of Ground 1 is that the failure of Rosario's pre-trial lawyer Hartsfield, and his trial lawyer Kaiser, to locate and interview numerous exculpatory witnesses and investigate documentary evidence supporting Rosario's alibi, amounted to deficient representation under the Sixth Amendment to the federal constitution. In *Wiggins v. Smith*, 539 U.S. 510 (2003), the U.S. Supreme Court established the principle that defense counsel has a constitutional responsibility to investigate their client's defense in preparation for trial.

The essence of Ground 2 is the prosecution violated the U.S. Supreme Court's prohibition set forth in *Batson v. Kentucky*, 476 U.S. 79 (1986) against juror discrimination on the basis of race, by using all six of its peremptory challenges to strike African-Americans from the jury.

The essence of Ground 3 is that Rosario's federal right to a fair trial was violated when the trial judge permitted the prosecution, over the objections of Rosario's attorney, to introduce evidence of Rosario's jailing for a month in Florida several months before Collazo's murder.

The essence of Ground 4 is that the new testimony and documentary evidence the jury did not consider establishes that Rosario is actually innocent of murdering Collazo, "rendering his continued incarceration to be a violation of his due process rights and the prohibitions against cruel and unusual punishment." [2]

The petition's Memorandum of Law describes the absurdity of the prosecution's case against Rosario:

> According to the State's theory, the following events must have occurred: (i) Petitioner returned to New York from Florida sometime between May 30, 1996, and June 19, 1996, without contacting his fiancée, Minerva Godoy, or their children; (ii) he spent time with an unidentified friend, rather than his family, in the Bronx; (iii) he engaged in a random verbal argument with Collazo — a stranger — on the street; (iv) after this verbal argument, he approached Collazo from behind and lethally shot him in the head; (v) sometime between June 19, 1996, and June 30, 1996, he traveled back to Florida from New York; (vi) on June 30, 1996, he again returned to New York from Florida; and (vii) on July 1, 1996, he called the police to go voluntarily to the police station the following day. Meanwhile, John Tones, Jenine Seda, Fernando Tones and Chenoa Ruiz each must have lied under oath that they saw Petitioner in Deltona, Florida, on June 19, 1996. Clearly, no reasonable juror could view these facts and find Petitioner guilty of Collazo's murder beyond a reasonable doubt. This is especially true when considering the weakness of the People's case, which consisted of only two eyewitnesses who had only minutes, if not seconds, to see the shooter. [3]

U.S. Magistrate Judge Henry Pitman was assigned to evaluate Rosario's writ of habeas corpus and submit a report and recommendation to U.S. District Court Judge P. Kevin Castel. On March 13, 2007 Rosario's attorneys submitted a letter to Judge Pitman informing him of two relevant federal decisions filed after Rosario submitted his reply brief on May 8, 2006.

The first case was *Garcia v. Portuondo*, 459 F.Supp.2d 267 (S.D.N.Y. 2006). Jose Garcia's federal habeas petition was granted based on the ineffectiveness of his counsel for failing to investigate witnesses and documentary evidence corroborating his alibi that he was in the Dominican Republic when the murder occurred in New York City that he was convicted in 1993 of committing. Like Rosario, Garcia's conviction was based solely on eyewitness testimony. In *Garcia* the federal court rejected the government's contention that the defense lawyer's failure to conduct a thorough alibi investigation was a "strategic" decision. The *Garcia* decision is precedential for Rosario because it was issued by a federal judge in the Southern District of New York, where Rosario's habeas petition was filed. The same as Rosario, New York state courts refused to grant Garcia a new trial – even though there is compelling unrefuted evidence he was more than 1,500 miles from New York City at the time the murder occurred.

The other case was *Raygoza v. Hulick*, 474 F.3d 958 (7th Cir. 2007). Christopher Raygoza's defense counsel was found ineffective for failing to interview all available alibi witnesses before deciding which ones to call to testify at Raygoza's first-degree murder trial. The court ruled, "In a first-degree murder trial, it is almost impossible to see why a lawyer would not at least have investigated the alibi witnesses more thoroughly." *Id*. at 964. Similar to Rosario's case, Raygoza's lawyer didn't investigate seven alibi witnesses.

Current status

As of early summer 2007, Magistrate Judge Pitman has not issued his response to Rosario's habeas petition. The Legal Aid Society and Morrison & Foerster continue to represent Rosario. He can be written at:

Richard Rosario 99A0325
Upstate Correctional Facility
P.O. Box 2001
Malone, New York 12953

His outside contact is attorney Jin Hee Lee.
Her email is: jlee@nylpi.org
In the Subject line write: Richard Rosario

* This article was derived (with permission) from a Memorandum written by three of Rosario's lawyers, and other case documents available for no-charge downloading or printing on the Justice Denied website at, www.justicedenied.org/rr/rrdocs.htm

Endnotes:
1 It is 1,072 miles from Deltona, FL to the Bronx, NY, according to mapquest.com. Last checked June 20, 2007.
2 *Rosario v. Robert*, Case No. 05 CV 8072 (PKC) (S.D.N.Y.), Memorandum Of Law In Support Of Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus, December 16, 2005, p. 57.
3 *Id.* at 57-8.

Daisy Angus Cleared Of Being Drug Smuggler After 4-1/2 Years Imprisonment

By Hans Sherrer

Twenty-two year-old Daisy Angus was arrested on November 21, 2002, while preparing to board a KLM North-West Airline flight from Mumbai (formerly Bombay), India to Berlin, Germany. Angus, a British citizen, and her traveling companion, Israeli citizen Yoram Kadesh, were subsequently charged with attempting to smuggle 10 kilograms (22 lbs.) of cannabis out of the country.

Angus was an experienced international traveler who worked as a senior citizen fitness instructor in England. From the time Angus was a youngster she had visited or lived in Asia, Africa, Europe, Russia and Mexico. As a child she had even lived for five years in Calcutta where her parents worked as volunteers in Mother Teresa's orphanage and home for the elderly.

She met Kadesh over the Internet in 1999. While she was in India on a round-the-world trip they arranged to meet for the first time in person. After they met, Angus' luggage was burglarized and she was left with the money she had on her. She had planned to travel to Australia from India, but Kadesh made her a proposition. He said he had excess baggage for his flight to Germany, so he offered to pay her fare to Germany and then to Australia, if she would help him out by sharing his luggage. She agreed. However, both were arrested at Mumbai's airport when the x-ray of Kadesh's "blue Delsey suitcase" revealed seven bricks of hashish in a hidden compartment.

The two were imprisoned for three years and seven months awaiting their trial for drug smuggling. Mumbai's Byculia jail did not have separate facilities for foreigners or grant them special privileges. Angus was the jail's only female European prisoner, so she taught English and learned Hindi. She was locked for 16 hours a day in a cell 25' x 25' with 20 other women. The cell had one open toilet, a single bucket of water for drinking and sanitation, and the women slept on the floor. Angus was hospitalized several times after she contracted malaria and other infections and illnesses.

Angus' mother and her father, until his December 2005 death from leukemia, publicized her plight, championed her innocence, and traveled from England a number of times to visit her.

During Kadesh and Angus' June 2006 trial in the Sessions Court, her defense was that she had been duped into helping provide cover for Kadesh, by giving him deniability that he was transporting the drugs. Angus claimed the suitcase was Kadesh's, that it was in his possession when it was inspected, and she knew nothing about the hashish. Kadesh claimed just the opposite: the bag was Angus' and he knew nothing about the drugs hidden inside. Kadesh was acquitted on the basis of insufficient evidence and released. Angus was found guilty and sentenced to ten years "rough imprisonment." She was also fined 200,000 rupees ($6,480), and two years would be added to her sentence if the fine wasn't paid.

Angus rejected the option of transferring to a prison in England to serve her sentence, because it would have required her to give up the right to appeal her conviction. She filed her appeal in October 2006. As she awaited the decision, the international Foreign Prisoner Support Service reported, "Daisy has continued to show remarkable courage throughout her ordeal and though she may be living in very poor conditions, she is holding up remarkably well and hasn't lost any of her fighting spirit. She has faced difficulties but has overcome them and is doing her best to remain positive." [1]

Mumbai's High Court announced its decision during a hearing on April 5, 2007. They determined that Angus' conviction was not consistent with facts disclosed during the trial of her and Kadesh. Particularly, that witnesses testified Angus was only carrying a small shoulder bag and a cloth handbag when she and Kadesh were detained for inspection and questioning by the Indian Air Intelligence Bureau. Consistent with that exculpatory testimony was that the baggage tag for the "blue Delsey suitcase" was attached to Kadesh's plane ticket. Thus the trial evidence was that the suitcase was not in Angus' possession, and consistent with that was the absence of testimony that she had any knowledge drugs were hidden in the suitcase. The High Court also noted that the direct and circumstantial evidence excluding Angus from involvement in the crime was complimented by the fact that Kadesh and his brother were known drug traffickers, active in the Indian cities of Goa and Manali.

Having found that there was insufficient evidence to support the charges against Angus, the High Court quashed her conviction and ordered her acquittal and release from custody. Angus' mother Nadine traveled to India for the hearing. When the High Court announced its decision she was overcome with emotion, "After nearly five years of litigation, we have finally got justice." [2]

Angus' high-profile Indian attorney, Mahesh Jethmalani, said the Court's decision corrected "an unfortunate miscarriage of justice." [3]

Three days after the Court's ruling, Angus was released after 4-1/2 years imprisonment. She issued a statement after her release:

> "I am over the moon to finally be free. Knowing that I was innocent and that justice would eventually prevail is one of the things I have clung onto during the past five grueling years.
>
> I could not have got through this without the love and support of my family, especially my mum who has stood by me throughout, working tirelessly to get me out and prove my innocence. I just haven't been able to stop hugging her since coming out of jail." [4]

The now 26-year-old Angus' passport expired while she was imprisoned, so before she was able to return to England she had to wait several days for a replacement to be issued.

Sources and endnotes:
Daisy Angus Case File – 2002-2007, FPSS website, http://www.usp.com.au/fpss/case-daisy_angus.html

1 Waking up from a nightmare journey, *Doreset Echo* (Doreset, UK), April 7, 2007.
2 It took 5 years to justice - HC rules daisy was erroneously sentenced to 10 yrs', *Daily News and Analysis* (Mumbai, India), April 6, 2007.
3 Free of drugs taint, UK backpacker walks free after 5 years, By Sunanda Mehta, *Indian Express Newspapers* (Mumbai, India), April 10, 2007.
4 Cleared at last, British girl who spent years in an Indian prison, By Richard Savill and Rahul Bedi in New Delhi, *The Telegraph* (London), April 9, 2007.

The Foreign Prisoner Support Service website is a valuable source of credible information about people imprisoned in foreign countries and the conditions of their confinement. The FPSS website is, www.usp.com.au/fpss

To ensure delivery, please notify *Justice:Denied* promptly of a change of address! Write: Justice Denied
PO Box 68911
Seattle, WA 98168
Or enter a change of address online at,
www.justicedenied.org

Wrongful Conviction Concerns Lead To Abolishment Of Death Penalty In The Philippines

Based on concerns about the execution of innocent people and the morality of the death penalty, in May 2006 President Gloria Macapagal Arroyo commuted the sentence to life in prison, of everyone in the Philippines whose death sentence had been affirmed on appeal. Two months later the Philippines Congress abolished the death penalty. When President Arroyo signed the law, the more than 1,200 people sentenced to death had their sentence commuted to life in prison without parole.

One of the most vocal advocates of ending the death penalty in the Philippines was Father Shay Cullen. *The Manila Times* published the following article he wrote following President Arroyo's announcement that she would commute all finalized capital sentences to life in prison. The reader will note Father Cullen's mention that the Philippines Supreme Court recognized in a 2003 decision that it dismissed the charges or acquitted the defendant in more than 10% of 907 death penalty cases it reviewed.

Abolishing The Death Penalty Is Justice For The Poor


Father Shay Cullen

By Father Shay Cullen

It was a happy moment and a surprise for many when President Gloria Macapagal-Arroyo announced in a simple statement on Holy Saturday that the Philippines would change its policy of executing convicted criminals. The death penalty, abolished by the Constitution, was strangely restored by an act of Congress in 1993 amid much opposition by the Church and human-rights groups.

Of the 1,205 inmates on death row, many have been wrongfully convicted, according to human-rights groups representing some of them. Only 230 of these convictions have been affirmed by the Supreme Court. One study, citing a decision of the Supreme Court in July 2003, *People v. Mateo*, showed that the lower regional trial courts had close to a 72-percent wrong conviction rate. In reviewing 907 death-penalty cases, the Court admitted that 26 were dismissed, 555 modified, 65 acquitted and 31 remanded. This underlines just how flawed is the system of justice in the Philippines which the justices have been trying to reform for years.

Most death-penalty sentences are unsafe and those convicted are overwhelmingly the poor who are unable to hire a lawyer. The public defender, no matter how dedicated, is inexperienced, undertrained, has no resources or help to investigate the circumstances and uncover evidence that would exonerate his client and expose lies. Convictions are handed down despite the preponderance of reasonable doubt. The rich have the best of lawyers and the power and influence and bribe officials, police and scare off witnesses. They almost never get convicted.

The death penalty was reinstated in the Philippines not because it was a just punishment but because it was a high-profile and desperate remedy to quench public anger at the rising tide of heinous crimes.

Kidnapping, murders, rapes, extortion rackets, drug trafficking, holdups and bank robberies were the daily headlines for many years. Most of them were abetted by corrupt police or military elements. Some of which had their own criminal gangs. When they were suspected, they eliminated the gang in a spectacular shootout that "solved" the crimes and won them a medal. The crime wave of the 1990s abated, not because of the death penalty, but because some of the suspected top cops and generals ran for pubic office and won, based on their crime-fighting successes against their own gangs.

Reprinted with permission of the PREDA Foundation. Their website is, www.preda.org

About the author: Father Shay Cullen is a Catholic Missionary priest born in Ireland. He was sent to the Philippines in 1969. In 1974, he established the PREDA Foundation. — The People's Recovery Empowerment Development Assistance Foundation Inc. During the 1980's Cullen campaigned successfully for the removal of the U.S. military bases in the Philippines and the establishment of economic zones to replace them.

Single Eyewitness OK For Murder Conviction Says India's Supreme Court

Om Prakash was convicted by the Sessions Court in Rajasthan, India and sentenced to life in prison for the murder of his wife on May 14, 1992. Prakash denied committing the murder and there was no physical or forensic evidence linking him to the crime. So the prosecution's case depended on the testimony of one person who claimed to have witnessed the murder – the dead woman's brother.

Prakash appealed to the High Court, which set aside his conviction and ordered a judgment of acquittal on the basis that a conviction cannot be sustained that is based solely on the eyewitness evidence of an "interested witness," such the victim's brother in Prakash's case.

The State appealed the High Court's decision to India's Supreme Court. In June 2007 the Court ruled that a "conviction can be based on the testimony of a single eyewitness ... provided, the sole witness passes the test of reliability. ... [M]ere relationship of the witness with the deceased is no ground to discard his testimony, if it is otherwise found to be reliable and trustworthy." Having rejected that independent corroboration of eyewitness testimony by an "interested witness" is necessary to sustain a conviction, the Supreme Court overturned the High Court's decision. The Court's ruling resulted in the reinstatement of Prakash's murder conviction and life sentence.

Source:
Conviction can be based on testimony of sole witness, By Legal Correspondent, *The Hindu*, June 17, 2007.

Murder Conviction Based On Jailhouse Snitches Unsupported By Evidence – The John Merritt Story

By Edward Olshaker

The 123 people released from death row since 1973 stand as undeniable proof that the US criminal justice system is alarmingly flawed. It is impossible to know how many more unjust homicide verdicts have slipped by unnoticed and unreported. One such miscarriage of justice, which has stayed under the media radar for two decades, is the murder conviction of John Edward Merritt.

John Merritt's case eerily echoes that of Ronald Keith Williamson, whose harrowing ordeal was recently the subject of John Grisham's first nonfiction book, *The Innocent Man*. Like Williamson, Merritt was convicted and sentenced to death for a 1982 murder in a small southern town; Williamson's conviction was, in the words of the book's description, "based on zero physical evidence and the word of disreputable snitches"— and so was Merritt's conviction.

On March 1, 1982, Darrell Davis was murdered in his home in Lake City, Florida. The 48-year-old ambulance driver was found in the kitchen, face down, hands tied behind his back with a leather belt, shot to death execution-style. The details of the crime scene indicated Davis had walked in on a burglary in progress.

The 1,000-plus-page trial transcript from 1986, as well as depositions taken in 1989, reveal that there is no physical evidence tying Merritt to the Davis murder. There was not even circumstantial evidence. The case was based solely on the conflicting testimony of two convicted felons, Gregory Hopkins and Gerald Skinner, and to a lesser extent Hopkins' wife Belinda (who was Skinner's sister). Brothers-in-law Hopkins and Skinner both cut deals in 1985 to drastically reduce their prison sentences in exchange for implicating Merritt. Merritt was initially sentenced to death, but a 1989 appeal reduced the penalty to life in prison.

Merritt claims he was at work at the time of the murder, but apparently because the trial did not begin until four years later, his ex-boss no longer had the 1982 time cards and did not want to testify to something that might not be true, so Merritt's lawyer did not subpoena him.

Hopkins, Skinner, and Merritt were facing long prison sentences in 1985 for an armed robbery. Merritt admitted his guilt and was sentenced to 25 years in prison. His two partners-in-crime conveniently found a way to cut their own prison time down to a tiny fraction of what they were facing.

Skinner was the first to offer information he claimed to know about the Davis murder. A very candid 2005 e-mail from one of the prosecutors to independent researcher Mollie Wilde—who, along with private investigator Bob Cracknell, brought this case to my attention—leads one to wonder why the State's Attorney's office would base a murder case on the changing stories of a man they regarded as dangerously deranged. In the e-mail, the prosecutor recalls with amusement that Skinner, whom he met with at Chattahoochee, Florida's institution for the criminally insane to discuss Skinner's allegations, had a history of "shooting people whom he disliked" and shares an anecdote about this that he seems to think is funny.

Skinner needed to "recover" from mental illness in order to be used as a witness. Miraculously, after brief treatment he was deemed to have regained his sanity, and was transferred from the mental institution to a regular prison. He pointed to both Hopkins and Merritt as the murderers, and later received a reduced sentence of 2-1/2 years in prison and 15 years probation for multiple felonies. One of his crimes, blowing away part of a man's leg with a shotgun ("because he was running around with my wife"), was reduced to "shooting into an occupied car," even though he testified that the victim was not in a car.

> As a reward for testifying against John Merritt, Gerald Skinner was sentenced to 2-1/2 years imprisonment for multiple violent felonies, and Gregory Hopkins served 10 months instead of 25 years.

Columbia County Sheriff's Office Chief Investigator Neal Nydam then went to Virginia to question the incarcerated Hopkins and Merritt based on Skinner's accusation. Hopkins naturally said he was innocent; he also used the opportunity to claim he had information about the murder and his "memory might improve" if nearly all of the extensive pending felony charges against him were dropped. After he was satisfied that Nydam would help him out, he claimed Merritt had confessed to the murder. (Hopkins would go on to serve a prison sentence of 10 months instead of 25 years, and Nydam even obtained employment for him, working for Nydam himself.)

Hopkins' brother-in-law Skinner then changed his story, saying he had made a mistake in implicating Hopkins in the murder. His new story was that it was Merritt alone. The prosecution adopted his second account and pretended his first account didn't exist; it didn't fit the storyline and strategy they were assembling. When Nydam went to the Virginia prison to question Hopkins, based on what Skinner had said, Hopkins voluntarily submitted to physical tests, giving Nydam samples of his hair and fingerprints. In the trial, prosecutor John Terhune emphasized that examination of this physical evidence showed that Hopkins had not been at the murder scene. Yet defendant Merritt's hair and fingerprint samples were also taken, and none of these samples, nor any other physical or circumstantial evidence, connected him with the murder scene.

In claiming Merritt had confessed to the murder, Skinner and Hopkins gave differing accounts of the circumstances of his alleged confession. Prosecutor John Terhune, anticipating the defense would note their conflicting stories, acknowledged this weakness while attempting to portray it as a small matter: "Their stories were a little bit different, as that they were walking or in a car, whether or not Mr. Skinner had gone up to a house, or not." To the extent that their stories partially matched, they could have been coordinated even when the two men were in separate prisons, through communications with Skinner's sister/Hopkins' wife Belinda, who had 40 to 50 phone conversations with Hopkins during this key period.

Skinner testified in the trial that "I told [Nydam] about Merritt, that I thought he may have killed a man." Thought he may have? This is a far cry from "beyond a reasonable doubt" proof sufficient to convict a man and sentence him to execution—even if it had come from a reputable witness who was not offering a story as his sole way of getting out of jail.

Terhune said repeatedly in his closing argument, regarding Hopkins' story of Merritt's alleged confession, "There is no way that anybody could have known that much detail [about the Davis murder], unless they were there." Yet all three were in Columbia County at the time of the horrific murder, and could have easily learned the details from newspapers, television, radio, or talking with others. Defense attorney Martin Black noted that the details were well-known. Also, Skinner later revealed in his deposition, in Merritt's 1989 appeal of the death sentence, that he had read newspaper accounts of the murder and that Nydam had showed him crime-scene photographs when he met with him in jail. In addition, Skinner's ex-wife Luca said in a sworn

Merritt cont. on p. 9

Chicago Pays $8 Million To End Roscetti Four Lawsuit

By JD Staff

In October 1986 23-year-old medical student Lori Roscetti was raped and murdered in Chicago. Three months later Chicago PD detectives sweated a confession from 17-year-old Marcellius Bradford to the crime. Bradford said that he and his friend Omar Saunders (18) watched as Calvin Ollins (14) and his cousin Larry Ollins (16) raped and then killed Roscetti. Bradford exchanged his testimony against the three for a guilty plea to kidnapping and a 12-year sentence.

After an intense interrogation the Chicago PD was able to also get a confession from Larry Ollins, although he recanted it as coerced before his trial. Saunders and the Ollins cousins were all convicted in 1988 and sentenced to life in prison. The press dubbed the four young men the Roscetti Four.

Bradford was released in 1994 after serving 6-1/2 years of his sentence.

In 2001 DNA testing excluded the four men as Roscetti's attacker. The exculpatory DNA tests were supported by disclosures that the prosecution's forensic expert, Chicago PD Crime Lab technician Pamela Fish, gave false trial testimony to bolster the case against the three teenagers who went to trial. DNA expert Edward T. Blake characterized Fish's testimony as "scientific fraud." (See accompany article.)

The Ollins cousins and Saunders were released in December 2001 after almost 15 years of wrongful imprisonment. The irony of the DNA test results is that prior to Saunders' trial his lawyer filed a motion in 1987 for DNA testing that was denied by the trial judge. If the testing had been granted the four men would have been spared spending a total of more than 50 years wrongly imprisoned, and the confessions of Bradford and Larry Ollins would have been promptly exposed as false.

In October 2002 Illinois Governor George Ryan pardoned the four men on the basis of their actual innocence. In 2003 they were awarded $120,000 each in compensation by the State of Illinois.

The four men also filed a federal civil rights lawsuit against the Chicago PD, Fish and other public employees involved in the case. In 2003 Calvin Ollins settled his suit for $1.5 million, and in December 2006 Bradford settled his suit for $900,000.

Based on the recommendation of a federal mediator, in April 2007 the City of Chicago agreed to pay Larry Ollins and Saunders $4 million each to settle their lawsuit. The settlement ended the civil proceedings related to the false arrest of the four teenagers twenty years earlier for Rosecetti's rape and murder.

Sources:
$8 million for pair cleared in killing, By Fran Spielman, *Chicago Sun-Times*, April 12, 2007.
$8 million deal is in pipeline 2 more freed inmates ready to settle in 1986 murder case, By Mickey Ciokajlo, *Chicago Tribune*, April 11, 2007.
Center on Wrongful Convictions at Northwestern School of Law, www.law.northwestern.edu/wrongfulconvictions

Pamela Fish Aided Prosecutors To Procure Many Wrongful Convictions

Pamela Fish played a key role in at least three wrongful convictions in Chicago before her false testimony in the Roscetti Four case was exposed. She was instrumental in the wrongful convictions of John Willis (convicted in 1992 of sexual assault and exonerated in 1999); Donald Reynolds (convicted in 1988 of sexual assault and exonerated in 1997); and Billy Wardell (convicted in 1988 of sexual assault and exonerated in 1997).

Merritt cont. from p. 8

statement that he told her "that some investigators showed him photos of the Davis murder scene before the trial at the time he was in the Live Oaks jail." She added, "Gerald never mentioned John Merritt killing anyone."

Incredibly, to denigrate Merritt's defense, Terhune told the jury, "The judge is going to tell you, straightforward, that one of the things that you can use to determine whether or not someone is telling the truth, is whether or not they had been convicted of a felony." Merritt had indeed been convicted of felonies, but so had Terhune's two witnesses. With this statement to the jury, instructing them that felons were not to be believed, the prosecution blew away the one weak leg their entire case rested on. (A few sentences later, Terhune says of his two felons, "I suggest to you, that there was not one reason presented to you, ladies and gentlemen, not to believe their testimony.")

Terhune also noted in his closing argument, "Now the testimony and the evidence was that law enforcement did everything possible to get every single bit of evidence that they possibly could, to be able to identify the person who did this." Yet we now know this simply was not true.

At one point in his closing argument, prosecutor Terhune told the jurors their role was to consider "the weight of the evidence," a synonym for the "preponderance of the evidence" normally used in civil cases. The weight of the evidence—51 percent is enough to tip the scales—is sufficient to win when bickering friends and neighbors go to court in the types of cases featured on the "Judge Judy" program. This message to the jury might have been nothing more than an unintentional slip on Terhune's part, yet is consistent with the casual, careless way the state conducted the entire case.

The trial transcript and depositions provide a disturbing look at a justice system willing to use nothing more than the conflicting testimony of richly rewarded felons to convict a man of first-degree murder, while literally ignoring solid physical evidence. The Merritt conviction thus has implications that go far beyond this single case. If a man can be found guilty and initially sentenced to death so cavalierly, one wonders how many others have been wrongfully convicted and how many innocent people have been executed. (The extent of the systemic failure even surprised as seasoned a criminal-law veteran as Grisham, who, after chronicling the Ronald Williamson case, told an interviewer, "My eyes were opened to the world of wrongful convictions … unfortunately, they happen all the time in this country, and with increasing frequency.")

Merritt's case is now being considered by the Florida Innocence Initiative. [*JD* Note: *Justice:Denied* contacted the Florida Innocence Initiative, about John Merritt's case. As of early July 2007 they are in the process of reviewing his case transcripts and other information, to decide whether to accept his case.]

John Merritt can be written at,
John Merritt 058704
Hardee Correctional Institution
6901 State Road 62
Bowling Green, FL 33834-9505

His outside contact is Christina Barrauda. Her email address is, christina.barraud@gmx.ch

Reprinted with permission of the author and condensed from the original article. Edward Olshaker is a freelance journalist whose work has appeared in *The New York Times*, *History News Network* and other publications. His book, *Witnesses to the Unsolved*, is an exploration of the uses of parapsychology in criminal investigation, was named a 2006 Independent Publisher Book Awards finalist in the True Crime category.

Bruce Lisker Granted Miscarriage Of Justice Exception For Late Filing Of Federal Habeas Petition

By JD Staff

Seventeen-year-old Bruce Lisker was arrested in 1983 for murdering his mother Dorka, on the same day he reported finding her beaten and stabbed in her Sherman Oaks, California home. Two years later he was convicted of second-degree murder and sentenced to 16 years to life in prison. His conviction was based on five key prosecution points:

- He couldn't have first seen his mother lying on the floor by looking into the house through the outside windows where he said he was standing.
- There were blood drops on his clothes.
- He allegedly confessed to a jailhouse informant.
- His bloody shoeprints were allegedly found at the scene.
- His motive of robbery was established by money allegedly missing from his mother's purse.

His conviction was affirmed on direct appeal and his state habeas was denied. However, he didn't immediately pursue challenging his conviction in federal court.

Lisker filed his first federal habeas corpus petition in 2004, nineteen years after his conviction and eight years after enactment of the Anti-terrorism and Effective Death Penalty Act (AEDPA). The AEDPA includes a one-year statute of limitations after finalization of a state conviction, for a person to file a federal habeas petition. (The calculation of the statute of limitations is subject to a number of factors.)

Lisker's petition was based on his allegation of ineffective assistance of counsel by his trial attorney, and that his right to have a lawyer present during police questioning was violated. The state responded with a "Motion to Dismiss" that contended Lisker's petition was barred by the AEDPA's one-year filing deadline. Lisker countered that his petition was timely under the U.S. Supreme Court's miscarriage of justice "gateway" exception in *Schlup v. Delo*, 513 U.S. 298 (1995).

After a week-long evidentiary hearing in December 2005, U.S. District Court Magistrate Ralph Zarefsky submitted his 57-page "Report and Recommendation" to District Court Judge Virginia Phillips. Excerpts of that May 4, 2006, "Report and Recommendation" follow:

> The Supreme Court has assumed, without deciding, that there is a constitutional right to federal habeas review of state court judgments. *Felker v. Turpin*, 518 U.S. 651, 663-64 (1996). If such a right exists, then the writ could well be rendered ineffective or inadequate ... by a limitations period which prevents a petitioner, who can demonstrate probable innocence, from proceeding in a first federal petition. ...
> ...
> ... the *Schlup* miscarriage of justice concept is a well-established equitable doctrine, the Court concludes that AEDPA's statute of limitations must be tolled when an evidentiary showing demonstrates that its application would work a miscarriage of justice under *Schlup*. ...
>
> **VI.**
> **THE STANDARD FOR DETERMINING INNOCENCE**
>
> … under *Schlup*, a petitioner is "actually innocent" if it is more probable than not that no reasonable juror would find the petitioner guilty beyond a reasonable doubt in light of the new evidence. *Schlup*, 513 U.S. at 327. ... *Schlup* requires the habeas court to posit a hypothetical jury that is entitled to consider both admissible and inadmissible evidence, so long as the inadmissible evidence is reliable. ... In *Schlup*, the Supreme Court refers to this decision as a "probabilistic determination, ..."
> ...
> ... this Court finds that in order to pass through the innocence gateway, Petitioner is required to show that it is more likely than not that no reasonable juror would convict him in light of the new evidence.
>
> Respondent also has argued that "new evidence" under *Schlup* should include only evidence which Petitioner had not discovered at the time of trial. The Ninth Circuit has held to the contrary; "new evidence" is evidence which was not presented at trial. ...
> ...
>
> **VII.**
> **PETITIONER HAS SATISFIED THE *SCHLUP* STANDARD**
>
> This Court retains no confidence in the verdict achieved through the presentation of evidence at Petitioner's trial because none of the evidence from that trial, upon which the conviction rested, withstands scrutiny in light of the newly presented evidence here. Petitioner could have seen his mother from outside the house; ... The shoe prints inside and around the house did not all belong to Petitioner. ... The blood on Petitioner did not suggest guilt any more than innocence. The victim's purse contained most of the missing money. Hughes' testimony was not credible either in isolation or in conjunction with other evidence. ...There was a different suspect who was not "convincingly cleared" and whose involvement police appear to have ignored in spite of compelling evidence. ...
>
> ... The evidence Respondent relied on consists primarily of the conditional guilty plea Petitioner entered when he was to be considered for placement in the California Youth Authority … and the statements Petitioner made during his parole proceedings from 1991 to 1998. …
>
> At first blush a guilty plea seems quite damning. But the mere existence of the guilty plea itself is not conclusive. ... This particular plea cannot be considered very reliable.
> …
> ... Petitioner ... pled guilty ... based on the assumptions of what the evidence would have shown at the time, and that is the very evidence which the hearing in this Court undermined in its entirety. …
> ...
> Lacking in any detail … Petitioner's 1984 conditional plea … [is] not strong evidence of his guilt. ...
>
> Petitioner's admissions of guilt in parole proceedings are even less persuasive evidence of Petitioner's guilt. … these admissions were made with everything to gain and nothing to lose, … Most important ... the admissions either were almost entirely devoid of details which might give them verisimilitude or contained statements that conflicted with the evidence ...
> ...
> In sum, the [hypothetical jury envisioned by the Supreme Court in *Schlup*] would know that there is essentially no evidence of Petitioner's guilt … In such circumstances, it is more probable than not that no reasonable juror would find Petitioner guilty of murder beyond a reasonable doubt. ...
> …
>
> **IX.**
> **RECOMMENDATION**
>
> For the foregoing reasons, IT IS RECOMMENDED that the District Court (1) issue an Order accepting and adopting this Report and denying the motion to dismiss the action; and (2) refer this case back to

Lisker cont. on page 11

Lisker cont. from page 10

the undersigned for further proceedings.

DATED: May 4, 2006
Ralph Zarefsky
United States Magistrate Judge [1]

Zarefsky's analysis that a jury would reject Lisker's admissions of guilt as false and acquit him after considering the new exculpatory evidence was consistent with the opinion of five jurors from Lisker's 1985 trial. Those jurors have said they would have voted to acquit Lisker if they had known the evidence upon which Zarefsky relied in making his decision. While reading a *Los Angles Times* article about the new evidence, juror Linda R. Kelly said, "It was making me sick to my stomach. I just hate to think that I was a party to this. I feel that I made a mistake. Hopefully, he will get a new trial and he can have the rest of his life." Another juror, Mary L. Tweten, said about the LAPD and the prosecution, "They didn't do their job right. They didn't present us the whole truth." She also said if the evidence had been presented during Lisker's trial, "I would not have voted guilty — absolutely not." Juror Lorraine Maxwell said in a sworn statement, "I am saddened, as well as angered, that the evidence … was not presented to the jury," and there is "no way" she would have convicted Lisker if the evidence had been introduced during his trial. [2]

Judge Phillips announced in October 2006 that she agreed with Zarefsky's "Report and Recommendation," and she accepted Lisker's habeas petition as filed timely under *Schlup's* miscarriage of justice "gateway" exception.

Having successfully demonstrated that a jury would probably acquit him based on the new evidence, the path was cleared for Lisker to be granted a new trial if he proved his habeas' claim that the alleged violations of his federal constitutional rights deprived him of his right to due process. [3]

After the federal Ninth Circuit Court of Appeals denied the California Attorney General's interlocutory appeal of Judge Phillips ruling, Lisker filed an amended habeas petition with two new claims. Magistrate Zarefsky agreed with the California AG's objection that Lisker's new claims had not been exhausted in state court. Zarefsky then stayed Lisker's federal habeas on January 12, 2007, to give him the opportunity to pursue the new claims in state court.

Lisker filed what was his second successive state habeas corpus with the California Supreme Court on February 12, 2007. His previous writs were in 1989 and 2003. He cited four Grounds For Relief:

1. Petitioner's Conviction Violates Due Process Because it Was Based on False Evidence Material to the Verdict.

2. Petitioner Was Denied the Effective Assistance of Counsel by His Counsel's Failure to Investigate and Advance a Third-Party Culpability Defense. ("The above evidence is sufficient not only to support a third-party culpability defense, but to return a swift guilty verdict [against Michael Ryan as the person who murdered Dorka Lisker.]." p. 66.)

3. Petitioner's Sixth Amendment Right Was Violated By the State's Knowing Exploitation of An Opportunity to Confront Him Without Counsel.

4. The Cumulative Effect of the Errors Entitle Petitioner to Relief. [4]

As of early July 2007 Lisker's state habeas is pending.

Sources and Endnotes:
A previous *Justice:Denied* article about Lisker's case is, "Not So Solved – The Bruce Lisker Story," By Amy Fisher, *Justice:Denied*, Issue 29, Summer 2005, p. 6, 38-40.

1 *Lisker v Warden*, CV 04-2687-VAP(RZ), (U.S.D.C. C.D.CA), Notice Of Filing Of Magistrate Judge's Report And Recommendation, May 4, 2006.
2 "Jurors Now Fear They Knew Too Little," By Matt Lait and Scott Glover (staff), *Los Angeles Times*, May 24, 2005.
3 "Inmate's Bid For Freedom Can Proceed, Judge Rules," By Matt Lait and Scott Glover (staff), *Los Angeles Times*, October 12, 2006.
4. *In Re Bruce Lisker*, CA Supreme Court, Memorandum of Points and Authorities, D. 1, 2, 3, and 4.

Magistrate Zarefsky's 57-page Report and Recommendation can be ordered for $5. Lisker's 82-page Feb 2007 CA state habeas and memorandum can be ordered for $5, or order both for $10. Mail check, money order or stamps with a request for "Zarefsky Report" or "Lisker Habeas" to:

Justice Denied
PO Box 68911
Seattle, WA 98168

Zarefsky's R&R and Lisker's habeas can be viewed or printed from JD's website at, www.justicedenied.org/liskerdocs.htm

In Memory Of Evan Zimmerman

By Mike "Pie" Piaskowski
(Exonerated of murder in 2001 after six years of wrongful imprisonment.)

Evan Zimmerman was a fellow Wisconsin exoneree and good friend of mine. Sadly, Evan passed away of cancer on June 30, 2007. He was only 61.

Evan's ex-lady friend, Kathy Thompson, was found strangled to death in February 2000 in Eau Claire, Wisconsin. Her murder was "solved" when Evan, a former police officer, was arrested about a year later. Evan steadfastly denied any involvement in her death from the time he first became a suspect. Nevertheless, he was convicted in 2001 of first-degree homicide and sentenced to life in prison.

After more than three years of imprisonment, the Wisconsin Innocence Project aided Evan's successful appeal of his conviction, and his retrial was ordered. In 2005, with the prosecution's case in shambles, the D.A. dramatically dropped all charges during the middle of Evan's retrial.

After his release from prison Evan filed a wrongful-conviction lawsuit against the Eau Claire police department. Unfortunately for Evan, in September 2006 the federal court dismissed his suit.

In June 2006 the A&E cable channel first broadcast a documentary about Evan's case – *Facing Life: The Retrial of Evan Zimmerman*.

Evan was a wonderful person and will be missed by many. Let us pray that we can all work together, in Evan's name, as well as all of the exonerees throughout the country, to help eliminate wrongful convictions and all other forms of injustice created by our justice system.

Visit Justice:Denied's Website

www.justicedenied.org

Back issues of *Justice: Denied* can be read, 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 wrongful conviction movies and documentaries.

Federal Appeals Court Tosses Fraud Conviction And Orders Georgia Thompson's Release

By Hans Sherrer

Adelman Travel Group (Adelman) and Omega World Travel (Omega) were the two leading bidders in 2005 for a contract to book $30 million in travel by Wisconsin State employees. A three-part bid evaluation process resulted in a statistical tie between Adelman and Omega – each with 1027 out of a possible 1200 points. [1] Of the three criteria, Adelman had the lowest bid and was rated higher for service, while Omega was considered to have given a better oral presentation of its proposal.

Georgia Thompson, a section chief in the state Bureau of Procurement presided over the bidding process, and she was on the six-member committee responsible for awarding the contract. Some members were in favor of deciding the tie in favor of Omega, while Thompson argued in favor of granting the contract to Adelman. She told the other members that her boss Pat Farley, a political appointee, would favor Adelman since it was a Wisconsin based company, whereas Omega was based in Fairfax, Virginia. To break the impasse, a committee member other than Thompson "suggested that the contract be rebid on a best-and-final basis, as state law permitted." [2] Adelman then further reduced its bid to $27,000 under Omega, and based on the "tie-breaking procedure specified by state law" the committee awarded the contract worth about $750,000 to Adelman. [3]

Three months after Adelman won the contract Thompson was granted a $1,000 merit increase in her annual salary to $77,300, after a job performance review showed she was typically working 10 to 12 hours per day because of short-staffing in her department.

Thompson investigated and indicted

Thompson subsequently became a party of interest in the investigation by Republican Steven Biskupic, U.S. Attorney for the Eastern District of Wisconsin, of campaign contributions to Wisconsin Governor Jim Doyle, a Democrat. Biskupic's investigation sought to find a link between two $10,000 campaign contributions to Doyle's re-election campaign by different Adelman corporate officers, and award of the travel contract to Adelman.

Although Biskupic didn't any connection between the contributions and the travel contract, Thompson was indicted by a federal grand jury in early 2006 on two counts related to how the contract was awarded. One charge was an alleged violation of 18 U.S.C. §666, "Theft or bribery concerning programs receiving Federal funds." The other charge was 18 U.S.C. §1341, "Frauds and swindles," that includes a "scheme or artifice to deprive another of the intangible right of honest services."

Doyle reacted to Thompson's indictment by promptly canceling the State's contract with Adelman. The governor's cancellation of the contract was widely reported throughout Wisconsin, and it may have had the effect of sending the message to Thompson's prospective jurors that there was something fishy about the way the contract was awarded.

U.S. District Judge Rudolph Randa denied Thompson's motion to dismiss the indictment, and her trial began in Milwaukee's federal courthouse on June 4, 2006.

The prosecution's theory was that Thompson violated §666 by misappropriating state money when she argued that Adelman should be awarded the travel contract, when Omega could have been awarded the contract because it had tied in the evaluation process. The prosecution also theorized that she violated §1341 by depriving Wisconsin of her "honest services" when she agreed with implementation of the tie-breaking process that resulted in awarding of the contract to Adelman.

The prosecution alleged that Thompson's intent in aiding Adelman was to improve her job security by benefiting her bosses politically, and that she was rewarded with the $1,000 merit pay raise. Although the prosecution didn't allege that Thompson had favored awarding the contract to Adelman as a *quid pro quo* for its contributions to Governor Doyle, Judge Randa allowed testimony about the contributions and the close ties between the travel agency's executives, and Doyle and his aides. Thus Randa enabled the prosecution to cast the shadow over the trial that Thompson favored Adelman as part of a "pay to play" political corruption scheme involving the governor.

Thompson's defense was that she had never met Governor Doyle, at the time the travel contract was awarded she knew nothing about any contributions by Adelman to Doyle, she had been hired in 2001 when Wisconsin had a Republican governor, she was a civil servant protected from being fired for political reasons, and as a purchasing supervisor she was required by state law to purchase a qualified product at the lowest possible price. Thus by favoring award of the contract to the low bidder Thompson was just doing her job by looking out for the State's interest.

Thompson convicted

After a six-day trial Thompson was convicted by a jury of both counts. She was then fired, as a convicted felon, from her state job.

Republicans politicized Thompson's conviction by blanketing the state with ads that her conviction was an example of corruption in Doyle's Democratic administration of state government.

At Thompson's September 2006 sentencing hearing, the prosecution argued her sentence should be enhanced above the guideline recommendation because she refused to accept responsibility for her convicted crimes. She was sentenced to 18 months in federal prison by Judge Randa.

Randa denied Thompson's motion to remain free on bond pending her appeal, based on his assessment that it was unlikely her convictions would be reversed on appeal. Thompson began serving her sentence in November 2006. She was scheduled for release in March 2008, under what would be much different personal circumstances than before her indictment. The 57-year-old Thompson was financially devastated after selling her condominium that she owned free and clear, and cashing in her state retirement, to pay her legal bills that were estimated to total between $250,000 and $400,000.

Thompson's wins her appeal and release

A three-judge panel of the federal Seventh Circuit Court of Appeals heard the oral arguments in Thompson's appeal on the morning of April 5, 2007. During the hearing Thompson's lawyer, Steve Hurley, argued that her convictions were entirely based on the government's speculation – unsupported by any facts – that she favored awarding Adelman the contract as part of a political pay-off scheme. He argued, "The bottom line is there is nothing in the indictment that charges that she even knew about the political contributions and certainly nothing in the evidence." [4]

The three judges asked the government sharp questions about the case. The tone of the

Thompson cont. on page 13

Thompson cont. from page 12

questioning by all three judges was reflected by Judge Diane Wood in her comment to the assistant U.S. attorney, "It strikes me that your evidence is beyond thin." [5]

Several hours after the hearing the judges announced they had decided to vacate Thompson's convictions and acquitted her of the charges. Since Thompson was acquitted, they instructed Judge Randa to order her immediate release from custody. The panel said they would later issue a written decision.

Complying with the appeals court's instructions, Judge Randa entered a judgement of acquittal and issued an order to the federal Bureau of Prisons to immediately release Thompson. Within hours of the appeals court's ruling, Thompson was released from federal prison. She had been wrongly imprisoned for 4-1/2 months.

The print and broadcast media immediately began reporting that Thompson had been wronged by her prosecution that caused her personal suffering and financial harm. Somewhat ironically, that was the same media that after her conviction castigated her as a criminal and embarrassment to honest government workers.

Legal experts expressed astonishment that within hours of Thompson's oral argument the three judges took the extraordinary actions of unanimously vacating her convictions, acquitting her, and ordering her immediate release from custody. Former Assistant U.S. Attorney Chris Van Wagner said of their decision, "It's a statement to the government that you never had enough evidence to get out of the starting gate." [6] Frank Tuerkheimer, a UW-Madison law professor and a former U.S. Attorney, said the appellate panel's decision was all the more remarkable because, "This is not recognizably a pro-defendant panel. If anything, it's pro-prosecution." [7]

Governor Doyle lamented in a statement "It's obvious an innocent woman was used as a political football for political reasons." [8] He said in an interview, "Millions and millions of dollars were spent by my political opponents trying to make this woman appear to be a terrible criminal." [9] He further said, "This is a woman who I've never met who has never been part of any political process at all. Can you imagine the horror of this? She's doing her job and then she get caught up in all of this." [10] The Republicans considerable efforts to make political hay out of Thompson's convictions were for naught when Doyle was re-elected as governor in November 2006.

Thompson's attorney Hurley expressed his disgust with her prosecution in a statement:

> "The government charged Georgia Thompson with conduct that did not constitute a crime. It cost Georgia her job, her life savings, her home and her liberty; and it cost Georgia her good name. At sentencing, the government urged a longer period of incarceration because Georgia did not accept responsibility. Today, the government ought to accept responsibility for the consequences of its acts." [11]

Written decision issued on April 20, 2007

The appeals panel's written decision was issued on April 20. (United *States v. Thompson*, 484 F.3d 877 (7th Cir. 04/05/2007).

The decision stated that "a narrow reading … limits §666 to theft, extortion, bribery, and similarly corrupt acts …" [12] Yet, "Neither Thompson nor anyone else in state government was accused of taking a bribe or receiving a kickback." [13] The panel also noted that even if Thompson had presided over an erroneous implementation of the bid tie-breaking regulations, that was not a violation of §666, because "the sin is civil (if it is any wrong at all) when a public employee manipulates the rules … to save the state money or favor a home-state producer that supports elected officials. … As long as the state gets what it contracts for, at the market price, no funds have been misapplied …" [14] Thompson consequently could not have violated §666.

The Court next analyzed Thompson's conviction of violating §1341:

> "§1341 forbids "any scheme or artifice to defraud" that predictably employs the United States mails. What "fraud" did Thompson commit, and who was the victim? Thompson did not bilk the state out of any money or pocket any of the funds that were supposed to be used to buy travel. …
>
> For the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.
>
> The prosecutor's theory, which the jury accepted, is that Thompson deprived Wisconsin of her "honest services" …
> …
> According to the prosecutor, Thompson "misused" her office when she lent it to political ends (even if the "political" end was just a lower price, about which incumbents could crow) and obtained a "private gain" when she got a raise. The prosecutor adds that, by currying favor with Farley, Thompson improved her job security. This is implausible; Thompson already had security as a civil servant." [15]

Although there was no proof Thompson favored Adelman for political reasons, the Court took pains to explain that even if she had, that wouldn't in and of itself have violated §1341. "The idea that it is a federal crime for any official in state or local government to take account of political considerations when deciding how to spend public money is preposterous." [16]

In regards to the prosecution's claim that Thompson's 1.3% ($1,000) raise three months after Adelman was awarded the contract constituted an illegal "private gain," the Court wrote:

> "It would stretch the ordinary understanding of language, however, to call a public employee's regular compensation, approved through above-board channels, a kind of "private gain." The history of honest-services prosecutions is one in which the "private gain" comes from third parties who suborn the employee with side payments, often derived via kickbacks skimmed from a public contract. … getting a raise through normal personnel practices does not sound like an aspect of a "scheme or artifice."
>
> The United States has not cited, and we have not found, any appellate decision holding that an increase in official salary, or a psychic benefit such as basking in a superior's approbation (and thinking one's job more secure), is the sort of "private gain" that makes an act criminal under §1341 and §1346. …" [17]

The Court then established a new precedent for the Seventh Circuit, "We now hold that neither an increase in salary for doing what one's superiors deem a good job, nor an addition to one's peace of mind, is a "private benefit" for the purpose of §1346." [18]

Consequently the Court declared that Thomson's role in the travel contract being awarded to the low bidder wasn't a crime: "This prosecution, … led to the conviction and imprisonment of a civil servant for conduct that … was designed to pursue the public interest as the employee understood it …" [19]

Thompson cont. on page 17

ELLEN REASONOVER was convicted in 1983 of a murder committed in a St. Louis, Missouri suburb. Her conviction was based on the testimony of two jailhouse informants who made secret deals for their testimony with prosecutor (now St. Louis County Circuit Court Judge) Steven Goldman. Released in 1999, Reasonover filed a federal civil rights lawsuit in 2003 that named many defendants. In 2004 she settled with Dellwood Police Captain Dan Chapman for $7.5 million. The district court judge, however, granted summary judgment to the other defendants, and dismissed Reasonover's suit. Reasonover appealed to the 8th Circuit Court of Appeals. Excerpts of that court's affirmation of the district court's decision follows.

Reasonover v. St. Louis County, Missouri

447 F.3d 569 (8th Cir. 05/08/2006)

[1] United States Court of Appeals For The Eighth Circuit

…

[3] 447 F.3d 569, 2006.C08.0000744 <www.versuslaw.com>

…

[5] Ellen Maria Reasonover; Charmelle Bufford, Plaintiffs/ Appellants, v. St. Louis County, Missouri, et. al., Defendant/Appellee

…

[10] I. BACKGROUND

[11] On January 2, 1983, [James] Buckley was shot to death at the Vickers gas station in Dellwood, Missouri, a northwest suburb of St. Louis. The City of Dellwood requested the assistance of the St. Louis Major Case Squad (MCS), … and then appointed as commander Dellwood Police Department Captain Dan Chapman…

[12] … On January 3, 1983, Reasonover, … contacted the police claiming she had been at the Vickers station around the time of the murder. The next day Reasonover spoke to Captain Chapman. Reasonover told him she had seen a car leaving the station. …

…

[13] The police … discovered Reasonover had recently complained to the police about an ex-boyfriend, Stanley White …

…

[15] On January 6, the police arrested White. … White stated he was with the Weston family the night Buckley was killed. Police officer Robert Pruett … interviewed the Westons, and wrote a report stating the Westons said they had not seen White for more than a week before the murder. Later, during Reasonover's habeas proceedings, two of the Westons stated Officer Pruett's report was incorrect.

[16] On January 7, the police arrested Reasonover. …

[17] The police placed Reasonover in a cell next to White in the Dellwood jail. Reasonover and White could hear but not see each other. Reasonover and White engaged in what they thought was a fifty-six-minute private conversation, but the police had planted a recording device in the area between their cells. The taped conversation (Reasonover-White Tape), as Reasonover accurately states in her brief, "reflected that Reasonover and White were bewildered by their arrests, knew nothing about the crime, and were confident they would soon be released because police would realize they had made a mistake."

[18] The Reasonover-White Tape was not transcribed, logged, or made the subject of any police report, and no officer has admitted making the recording or accepted responsibility for the tape. The state's prosecutor, Steve Goldman, later admitted … he did not disclose the tape to Reasonover's counsel … The tape was finally found in an envelope ... and the tape was released in 1996 during Reasonover's habeas proceedings.

[19] Later on the evening of January 7, the police took Reasonover to the Jennings jail, where they placed her in a cell with two women, Marquita Butler Hinton and Rose Jolliff. In the morning, the police, including Detective Eichelberger, Detective Tillman, and Officer Richard Needham, took a statement from Jolliff, who stated Reasonover confessed to Jolliff … that she committed the murder with White and Robert McIntosh. …

[20] Police released Reasonover on January 8, 1983. … At some point Joliff spoke with Goldman and agreed to testify against Reasonover as part of a plea bargain.

[21] On February 8, the police arrested Reasonover … [and] placed Reasonover in a cell in the St. Louis County jail with several women, including Mary Ellen Lyner. … Goldman alone interviewed Lyner, … Lyner stated to Goldman that Reasonover confessed to her. It was later discovered Lyner made a deal for leniency in an earlier case, even though she denied doing so during Reasonover's trial.

[22] Reasonover was charged with the capital murder of Buckley. The evidence against Reasonover was based almost entirely on Reasonover's supposed confessions to Jolliff and Lyner. …

[23] Reasonover was convicted in December 1983 and sentenced to life in prison without the possibility of parole for fifty years. Reasonover appealed her conviction … The state refused to release the tape, claiming it was not exculpatory under *Brady v. Maryland*, 373 U.S. 83 (1963). The Missouri Court of Appeals affirmed Reasonover's conviction in part because of a lack of record evidence of the tape's content. *State v. Reasonover*, 714 S.W.2d 706, 713 (Mo. Ct. App. 1986).

[24] Reasonover began habeas proceedings in 1996. The [federal] district court held a hearing on her various claims. The district court ultimately found the case against Reasonover was based almost entirely on testimony of Jolliff and Lyner, and their testimony was discredited by the contents of the Reasonover-White Tape and the Reasonover-Jolliff Tape. *Reasonover v. Washington*, 60 F. Supp. 2d 937, at 943, 954-57, 963 (E.D. Mo.1999). Having listened to the tapes, the district court concluded, based primarily on the two tapes, Jolliff's secret deal, and Lyner's false denial about her previous deal, it was "more likely than not that no reasonable juror would have found [Reasonover] guilty beyond a reasonable doubt," and the state's suppression of the evidence deprived Reasonover of due process. ... After serving over sixteen years in prison, Reasonover was released.

[25] In 2001, Reasonover and [her daughter Charmelle] Bufford filed the present lawsuit. …

[26] … the district court on November 25, 2003. … granted all of the remaining defendants' respective motions for summary judgment except for that of Captain Chapman… Reasonover and Captain Chapman later settled. [JD Note: Reasonover settled with Chapman for $7.5 million in September 2004.] Reasonover now appeals the district court's orders granting summary judgment to the various defendants.

[27] II. DISCUSSION

…

[29] A. Officer Pruett

[30] Reasonover argues the district court abused its discretion in granting Officer Pruett's motion for summary judgment without allowing Reasonover sufficient time to respond. …

[31] Reasonover's arguments fail. District courts have broad discretion to set filing deadlines and enforce local rules. … With Reasonover failing to file a timely response, the district court did not abuse its discretion in deeming facts set forth in Officer Pruett's motion admitted. …

[32] … Officer Pruett's factual statements are deemed admitted to by Reasonover. Reasonover has therefore failed to show Officer Pruett's conduct deprived her

Summary judgment was granted to Dellwood Police Officer Robert Pruett on the basis that Reasonover's attorneys filed late her answer to Pruett's motion for summary judgment. Consequently, his version of events (denying he violated her constitutional rights, and therefore he had no civil liability under 42 U.S.C. §1983) was accepted as factually true.

Reasonover cont. on p. 15

Reasonover cont. from p. 14

of a constitutional right. … Thus, we affirm the district court's order granting Officer Pruett's motion for summary judgment.

[33] B. Prosecutor Goldman

[34] The district court concluded Goldman was entitled to absolute immunity from liability under 42 U.S.C. § 1983. …

[35] A prosecutor enjoys absolute immunity for acts performed "in initiating a prosecution and in presenting the State's case." *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976). "[F]unctions[] 'intimately associated with the judicial phase of the criminal process[]' as opposed to investigative 'police work' or administrative duties [are] absolutely shielded" from liability under section 1983 claims. … Immunity is not defeated by allegations of malice, vindictiveness, or self-interest. …

[36] All of Goldman's acts complained of by Reasonover were prosecutorial functions and therefore are protected. … Even if Goldman knowingly presented false, misleading, or perjured testimony, or even if he withheld or suppressed exculpatory evidence, he is absolutely immune from suit. …

[37] Finally, a prosecutor is absolutely immune from a civil conspiracy charge when his alleged participation in the conspiracy consists of otherwise immune acts. … Because Goldman is absolutely immune from liability for prosecuting Reasonover, he cannot be held liable for conspiring to violate Reasonover's constitutional rights by prosecuting her.

[38] C. Detective Eichelberger, Officer Banaszek, and Detective Tillman

[39] Reasonover argues the district court erred in finding Detective Eichelberger, Officer Banaszek, and Detective Tillman were not responsible for suppressing the Reasonover-White Tape, feeding information to Jolliff, falsely arresting Reasonover, or conspiring to convict Reasonover wrongfully. …

[40] "[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." … Here, we … hold Reasonover fails to show Detective Eichelberger, Officer Banaszek, and Detective Tillman violated Reasonover's constitutional rights. …

[41] 1. Suppressing the Reasonover-White Tape

[42] Reasonover's evidence that the officers suppressed the Reasonover-White Tape consists of the following: all three officers' names were written on the tape, with Det. Eichelberger's name on the side containing the taped conversation; none of the officers documented the conversation or marked the envelope containing the tape to reflect the Reasonover-White conversation; …

[43] … Names and dates on the tape's label, even taken in a light most favorable to Reasonover, do not raise an inference of unlawful suppression of the tape.

[44] 2. Feeding Evidence to Jolliff

[45] Reasonover asserts Detective Eichelberger and Detective Tillman fed Jolliff information before interviewing her and used leading questions to elicit the responses they wanted. …

[46] … While we do not commend Detective Eichelberger's use of leading questions as an interview technique under these circumstances, the facts presented by Reasonover do not raise a genuine issue that Detective Eichelberger intentionally fed or planted evidence.

[47] 3. False Arrest

[48] Reasonover's false arrest claim, that an officer in the position of the officers could not have reasonably believed they had probable cause to place Reasonover under arrest for Buckley's murder, is dependent on her allegations that the officers suppressed the Reasonover-White Tape, fed Jolliff information for her interview, and Officer Banaszek created a false report regarding the January 7, 1983, interview with Reasonover. As demonstrated above, the first two allegations lack merit. Regarding the third allegation, Reasonover only claims the report should have contained her denials of involvement in the murder. Reasonover cites no case law, and we are unaware of any case law, holding it is a violation of a suspect's constitutional rights if a police report does not contain the entirety of a suspect's denials of involvement in the suspected crime. As a result, this claim fails.

[49] 4. Conspiracy

[50] To advance past the summary judgment stage, Reasonover must "allege with particularity and specifically demonstrate material facts that the defendants reached an agreement." … The officers may have jointly pursued their investigation based on a belief Reasonover was guilty, but this does not constitute an unlawful conspiracy. …

...

[55] E. Officer Welling

[56] Reasonover argues Officer Welling's failure to document Reasonover's denials of involvement in Buckley's murder during Reasonover's interview with Officer Welling and Officer Banaszek, and Officer Welling's failure to disclose the Reasonover-White Tape, violated Reasonover's constitutional rights. … Reasonover has not produced evidence Officer Welling intentionally withheld or destroyed evidence. ...

...

[61] G. Officer Needham

[62] … Reasonover … argues Officer Needham acted in concert with Detective Eichelberger and Detective Tillman in feeding Jolliff information for her statement. … Reasonover has not shown Officer Needham fed Jolliff answers. We therefore affirm the district court's grant of summary judgment to Officer Needham.

...

[68] J. Familial Association Claim

[69] Reasonover argues the defendants violated her right to familial association as a result of her incarceration, … Neither the Supreme Court nor this court has clearly held wrongful prosecution and incarceration of a family member violates a right to familial association.

...

[95] III. CONCLUSION

[96] In summary, we affirm the district court's orders granting summary judgment in favor of the defendants.

JD Comment:

An unstated undercurrent of the 8th Circuit's decision is they considered Reasonover's $7.5 million settlement with Dellwood Police Captain Chapman enough compensation for her ordeal.

The three-judge panel's decision assumed an "Immaculate Conception" view of the damning evidence of police and prosecutor wrongdoing. It assumed both jailhouse informants independently contrived similar false testimony without any prosecution assistance. It also assumed there was no nefarious involvement by the prosecution in the mislabeling and incorrect filing of the two exculpatory audio tapes that weren't disclosed to Reasonover's trial counsel.

See previous *JD* articles about Ellen Reasonover's case:

"Good Samaritan Freed 16 Years After One Juror Saved Her From A Death Sentence," *Justice:Denied*, Vol. 1, Issue 8.

"Ellen Reasonover Awarded $7.5 Million Compensation For 16 Years Wrongful Imprisonment," *Justice:Denied*, Issue 28, Summer 2005, p. 14.

The U.S. Supreme Court's Kafkaesque Decision In *Bowles v. Russell*

By Michael C. Dorf

In *Bowles v. Russell*, No. 06-5306 (U.S. 06/14/2007) the Supreme Court held that a federal appeals court had no jurisdiction to hear an appeal from the denial of a habeas corpus petition because the notice of appeal was filed two days late—even though it was filed one day before the date that the federal district judge had (mistakenly) told the petitioner that it was due. As a consequence of the ruling, Keith Bowles loses his one chance to have a federal appeals court correct what he alleges were errors resulting in his murder conviction and sentence of fifteen-years-to-life in prison.

Of course, no legal system could function without deadlines, and sometimes missed deadlines unavoidably result in miscarriages of justice. However, the majority opinion in *Bowles*—written by Justice Clarence Thomas—appears to go out of its way to avoid doing justice. It is the *reductio ad absurdum* of legal formalism. It is, as I argue below, almost literally Kafkaesque.

The Procedural Issue

The dispute in the *Bowles* case concerned Rule 4 of the Federal Rules of Appellate Procedure, which authorizes a district court to reopen the filing time for an appeal for a period of 14 days. After denying Bowles's petition on the merits, U.S. District Judge Donald Nugent granted Bowles's request to reopen the filing time, pursuant to Rule 4, and—*in a written order*—specified that Bowles had to file his notice of appeal by February 27, 2004.

Bowles filed on February 26. But Judge Nugent had made an error. He should have only given Bowles until February 24. Nonetheless, because the two-day delay was undoubtedly due to his own, rather than Bowles's, error, Judge Nugent treated the notice of appeal as timely.

However, the U.S. Court of Appeals for the Sixth Circuit reversed Judge Nugent's decision, and ordered the appeal dismissed without ever considering the merits of the arguments raised by Bowles.

The "Jurisdictional" Question: Can the Courts Waive the Time Limit?

In affirming the Sixth Circuit dismissal, Justice Thomas distinguished between two kinds of time limits. First, there are the time limits that appear in judge-made rules, which, he said, serve only to ensure that the work of the courts proceeds in an orderly fashion. The courts have discretion to waive these limits in appropriate cases. In contrast, there are the time limits that appear in statutes written by Congress. Such time limits are part of what defines the jurisdiction of the courts. Such "jurisdictional" time limits, Justice Thomas wrote and the majority held, cannot be waived by the courts.

The time limit at issue in *Bowles* appears in the Federal Rules of Appellate Procedure, but that rule merely restates what also appears in a federal statute. Thus, the majority in *Bowles* said, the limit was firm.

> "The District Court told petitioner Keith Bowles that his notice of appeal was due on February 27, 2004. He filed a notice of appeal on February 26, only to be told that he was too late because his deadline had actually been February 24. It is intolerable for the judicial system to treat people this way, and there is not even a technical justification for condoning this bait and switch.
> ...
> Surely this is more than equity demands, and unless every statement by a federal court is to be tagged with the warning "Beware of the Judge," Bowles's lawyer had no obligation to go behind the terms of the order he received."
>
> Justice Souter dissenting in *Bowles v. Russell*

In dissent, Justice Souter (joined by Justices Stevens, Ginsburg, and Breyer) took issue with the majority's claim that all statutory time limits are jurisdictional and therefore unwaivable. According to the dissent, while court rules are never jurisdictional, only those statutory deadlines that Congress intends to be jurisdictional count as jurisdictional.

As a matter of logic, the dissent clearly has the better of the argument here. Suppose Congress specified a time limit for filing some sort of document, but added in the text of the statute that "this time limit is not jurisdictional and may be waived in the interests of justice as found by the courts." Clearly, the time limit would not then be jurisdictional, as even the *Bowles* majority acknowledges by stating that Congress could, if it wished, authorize judges to waive the deadline in future cases.

Accordingly, the real dispute in *Bowles* is what the default rule should be. In other words, when Congress does not expressly state whether a deadline is waivable, should Congress be presumed to intend that it is, or is not, waivable? Given the dire consequences, the dissent said that statutory deadlines should be treated as mere claim-processing rules—and thus waivable—unless they clearly concern the courts' jurisdiction.

The majority did not deny the harsh consequences of its holding. Indeed, the majority seemed to relish them, proudly pointing in a footnote to a recent case in which a petition for review in the Supreme Court itself had been rejected by the clerk without even being distributed to the Justices—and the petitioner executed—because the petition was a day late.

Nonetheless, the majority embraced the rule that statutory deadlines should be presumed to be jurisdictional because of the rule's predictability in application. The dissent's approach, Justice Thomas warned, would only inspire litigation over deadlines.

The Majority's Rejection of the "Unique Circumstances" Exception

Much of the disagreement between the majority and the dissent in *Bowles* concerned how to read the Court's own precedents. The majority purported to apply a longstanding principle that statutory time limits are (presumptively) jurisdictional limits, while the dissent pointed to very recent (unanimous) decisions that adopt a different approach.

Yet even if one thinks that the majority has the better of that general argument, might there not be an exception for unusual cases—like *Bowles* itself—in which some unforeseen circumstance excuses strict compliance with a deadline?

The dissent thought so, and pointed to two cases from the 1960s, in which the Court had excused non-compliance with supposedly jurisdictional deadlines where "district court errors [had] misled litigants into believing they had more time to file notices of appeal than a statute actually provided."

The majority responded by simply overruling those prior cases. The Court, Justice Thomas said, never had the authority to fashion a unique circumstances doctrine, because jurisdictional time limits simply can't be waived.

The Estoppel Analogy: Why It Isn't Persuasive

Perhaps the best that can be said for the majority opinion in *Bowles* (although the

***Bowles* cont. on page 17**

Bowles cont. from page 16

majority does not make this argument) is that the rule announced is not materially worse than the applicable rule in the administrative context. If you rely to your detriment on a government official's characterization of the law—an IRS agent's informal prediction of the tax consequences of some investment, say—but it turns out that the official was mistaken, you will not ordinarily be excused from complying with the law as written. Put another way, the government is not bound—in legal terms, estopped—by the erroneous representations of its low-level functionaries.

Likewise here, it could be argued, Bowles and his lawyer should not have taken Judge Nugent's statement of the deadline as authoritative. They should have consulted the rules and calculated the deadline themselves.

But three important caveats make the administrative example a questionable analogy. First, although the Supreme Court has rejected every claim of so-called "estoppel against the government" in the administrative context, it has never ruled out the possibility that a sufficiently extreme case would warrant estoppel, and the lower courts have occasionally deemed particular cases sufficiently extreme. Thus, the rules in this area are reasonably close to the "unique circumstances" doctrine that the *Bowles* Court overrules.

Second, even if there were a per se bar on estoppel against the government in the administrative context, that would not justify such a bar where the relevant official is a federal district judge, rather than a relatively low-level bureaucrat. Estoppel against the government can be a dangerous doctrine if it effectively gives thousands upon thousands of low-level agency employees the power to overturn decisions made by Congress. However, the professionalism, relatively small number, and constant review of the work of federal judges together place them in a wholly separate category.

Third, the particular facts of *Bowles* are indeed extreme. There is no claim of any prejudice to anybody as a result of the two-day delay. Moreover, as Justice Souter explained in dissent, there was nothing on the face of the order to indicate that it stated the wrong deadline (because the clock runs from the date an order is "entered," which does not appear on the order itself). Thus, Bowles and his attorney had no reason to check Judge Nugent's math.

It turns out, then, that the best that can be said for the majority opinion is not very much at all.

Kafka's *The Trial*

The facts and circumstances of the *Bowles* case are strikingly similar to a chilling allegory in the penultimate chapter of Franz Kafka's dark novel of the bureaucratic state run amok, *The Trial*. The protagonist, K, stands accused of an unnamed crime in a court system with enigmatic procedures. When K stumbles upon the prison chaplain, the latter explains to K that his approach to the law has been naïve.

The chaplain tells a story of a man from the countryside who comes to the door of the law, only to be told by the doorkeeper that he can't be let in at the moment but it's possible that he could be permitted entry later. The man waits before the door for years, until as he is dying, he asks the doorkeeper why, given that everyone wants access to the law, no one but he has come to the door during his many years of waiting. The doorkeeper answers: "Nobody else could have got in this way, as this entrance was meant only for you. Now I'll go and close it."

Like the man from the countryside, Keith Bowles was told by a doorkeeper to the law—a federal judge—just what he needed to do to gain access. For following those instructions, he was repaid only by having the door to the law shut in his face by the Supreme Court.

The Court split 5-4 in *Bowles* along what are conventionally described as conservative-liberal lines, but in this case "conservative" seems a poor description for the majority view. Opposition to arbitrary exercises of power by the bureaucratic state has been one of the hallmarks of the conservative tradition in Anglo-American thought for over two centuries.

The majority opinion in *Bowles* would be better described as statist than conservative. As Justice Souter wrote in dissent: "It is intolerable for the judicial system to treat people this way, and there is not even a technical justification for condoning this bait and switch."

Reprinted with permission of the author. Originally published on, writ.findlaw.com, June 20, 2007.

About the author: Michael C. Dorf is the Isidor & Seville Sulzbacher Professor of Law at Columbia University. He blogs at www.michaeldorf.org

Read or print *Bowles v. Russell* on JD's website, www.justicedenied.org/bowles_russell.pdf
Or order a copy for $3 (stamps OK) from, Justice Denied; PO Box 68911; Seattle, WA 98168

Thompson cont. from page 13

Aftermath

Biskupic responded defensively to the firestorm of publicity that followed in the aftermath of Thompson's exoneration. His spokesperson, Michelle Jacobs, defended the government's prosecution of Thompson's, saying, "They acted on the evidence as they found it, convinced a jury of 12 that there was criminal conduct, convinced a judge who has been sitting on a state and federal bench for 33 years that the verdict was sound. But we just did not convince the court of appeals …" [20]

One of the jurors, Marvin Bizzelle, was irritated by the appeals court's declaration that Thomson was "innocent" of committing a crime by doing her job and acting to save the state government money. He said, "As far as I'm concerned – and I'm sure any other juror you talk to will tell you the same thing – she was guilty of manipulating the contract." [21] Bizzelle comment was prior to the appeals court's written decision, and as they made clear, what he characterized as "manipulation" was nothing more than Thompson's support for awarding the travel contract to the low bidder, and she only had one vote out of six in the committee that awarded the contract.

It so happened that at the time Thompson was exonerated there was a furor in Washington D.C. over possible improprieties in the firing of at least eight U.S. Attorneys. There were suggestions that some of the U.S. Attorneys who weren't fired, such as Biskupic, showed their loyalty to the Bush administration's pro-Republican political agenda by engaging in questionable partisan activities, such as the prosecution of Thompson who was bluntly described by the appeals court as "innocent."[22]

Thompson was rehired by the state of Wisconsin, and on April 23, 2007 she returned to her old job at her previous pay of $77,300 annually. She was also paid back pay of $67,161. On June 14 Thompson filed a claim with the state Claims Board for reimbursement of $359,048, which included more than $340,000 related to legal expenses [23] She may also qualify for about $18,000 under the federal compensation statute that provides for $50,000 per year of wrongful imprisonment.

Endnotes:

1 The evaluation was tied when the scores were rounded to the nearest whole number. Omega had a score of 1027.3 while Adelman's was 1026.6, so the actual difference between the two bidders score was about 6/1000ths of a percent.
2 *United States v. Thompson*, 484 F.3d 877 (7th Cir. 04/05/2007); 2007.C07.0000350 ¶15 <www.versuslaw.com>
3 *Id.*, at ¶15.
4 *Id.*, Oral Arguments before the Seventh Circuit Court of Appeals on April 5, 2007.
5 *Id.*
6 Experts say ruling hits prosecutor's credibility, By Jason Stein, *Wisconsin State Journal*, April 7, 2007.

Thompson Endnotes cont.on p. 19

Troy Hopkins Awarded $229,419 For 10 Years Wrongful Imprisonment

Virginia Legislature

An Act for the relief of Troy D. Hopkins.

[S 609]

Whereas, on December 21, 1990, Troy D. Hopkins (Mr. Hopkins) was convicted by a jury in the Circuit Court of the City of Richmond, Virginia, for the murder of Curtis Kearney and for attempted robbery, use of a firearm in the commission of murder, and use of a firearm in the commission of attempted robbery; and

Whereas, on March 20, 1991, Mr. Hopkins was sentenced to 28 years in the penitentiary; and

Whereas, on March 13, 2001, Mr. Hopkins was released on parole after serving 10 years, two and one-half months; and

> Virginia Governor Mark Warner pardoned Troy Hopkins in August 2005, stating: "I am convinced that Mr. Hopkins is innocent of the charges for which he was convicted."

Whereas, after the trial, numerous witnesses came forward and testified during hearings that Mr. Hopkins did not kill Curtis Kearney, but that Mr. Kearney was killed by Adrian Epps; and

Whereas, Adrian Epps subsequently admitted killing Mr. Kearney and signed an affidavit in 1992 confessing to the murder; and

Whereas, Joseph Morrisey, the Richmond attorney for the Commonwealth at the time of Mr. Hopkins' trial in 1990, concurred in a request by defense attorneys representing Mr. Hopkins for a new trial based on newly discovered evidence, but the court denied the request; and

Whereas, David Hicks, the Richmond Commonwealth's Attorney who succeeded Mr. Morrisey in that office, stated the following in a 2003 affidavit: "In light of the wealth of exculpatory evidence, it is my position that Hopkins was convicted for a crime which he did not commit and that he is innocent for the crime in question. The continued existence and possible dissemination of information relating to Hopkins' unjust conviction represents a manifest injustice given the fact that Hopkins is wholly innocent of all crimes for which he was convicted. Hopkins should not be subject to the negative consequences that flow from his erroneous conviction. Therefore, in the interest of justice, Hopkins' conviction should be invalidated, the record should be corrected in order to reflect Hopkins' innocence regarding the crimes for which he was convicted, and all of Hopkins' rights should be restored to that of every citizen recognized in the Commonwealth of Virginia"; and

Whereas, Mr. Hopkins is currently employed and is married and has led a law-abiding life since his release from prison; and

Whereas, on July 21, 2004, Mr. Hopkins petitioned Governor Mark Warner for a grant of executive clemency based on the existence of substantial evidence that Mr. Hopkins was unjustly convicted and is innocent; and

Whereas, on August 3, 2005, Governor Warner issued an absolute pardon from all offenses for which Mr. Hopkins was convicted on December 21, 1990; and

Whereas, Mr. Hopkins spent $15,750 for attorneys fees related to his legal defense and appearances before the Parole Board; and

Whereas, Mr. Hopkins has also suffered severe physical, emotional, and psychological damage as a result of this incarceration and has no other means to obtain adequate relief except by action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. § 1. That the following shall be paid for the relief of Troy D. Hopkins from the general fund of the state treasury, upon execution of a release and waiver forever releasing (i) the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof, (ii) any legal counsel appointed pursuant to § 19.2-159 of the Code of Virginia, and (iii) all other parties of interest from any present or future claims he may have against such enumerated parties in connection with the aforesaid occurrence the sum of $229,419 to be paid to Troy D. Hopkins on or before August 1, 2006, by check issued by the State Treasurer on warrant of the Comptroller.

§ 2. That Troy D. Hopkins shall be entitled to receive career and technical training within the Virginia Community College System free of tuition charges, up to a maximum of $10,000. The cost for the tuition benefit shall be paid by the community college at which the career or technical training is provided. The tuition benefit provided by this section shall expire on July 1, 2011.

Signed by Governor Tim Kaine
April 6, 2006

Ben LaGuer Denied New Trial

Justice:Denied reported on Benjamin LaGuer's more than twenty year quest for a new trial in Issue 33 (Summer 2006).

In LaGuer's case the victim said she was raped repeatedly and beaten over an eight hour period in her apartment by a lone intruder. No physical evidence linked LaGuer to the crime and he denied involvement. The prosecution's case rested on the victim's identification of LaGuer initially made under the influence of the investigating detective.

Eighteen years after the attack, LaGuer discovered that the prosecution had not disclosed that days after the attack he was excluded as the source of four fingerprints found on the base of the telephone where the intruder would have grasped it to yank off the phone cord he used to tie-up the victim. The only reasonable source of the fingerprint set is the assailant, and LaGuer filed a motion for a new trial.

On March 23, 2007 the Massachusetts Supreme Judicial Court denied LaGuer a new trial. (*Commonwealth v. Laguer*, No. SJC-09765 (Mass. 03/23/2007)) The Court ruled the four prints weren't exculpatory and their non-disclosure wasn't a *Brady* violation, because they don't change that the (now deceased) victim identified LaGuer. The Court also emphasized that prior to LaGuer's trial it was disclosed to him that a lone partial fingerprint found on the phone didn't match his prints, so they reasoned the non-disclosed set of four fingerprints was cumulative to the evidence considered by the jury that convicted him.

The Court's rationale didn't take into consideration that the new fingerprint evidence proves that someone other than LaGuer handled the telephone, and presumably that was the person who removed the phone cord. Neither did it consider that the trial judge concealed the victim's long history of psychiatric problems — that could have affected her testimony — from the jury.

Two weeks after the Court's decision a Massachusetts newspaper exposed that the full extent of the victim's ongoing psychological problems wasn't disclosed by the prosecution prior to LaGuer's 1984 trial. This new evidence further undermines the reliability of the victim's identification of LaGuer – and thus his conviction. (See, "Tragedy Times Two," By Eric Goldscheider, *Valley Advocate* (Easthampton, MA), April 5, 2007). The new evidence may provide the opportunity for the Court to reassess their March 23 ruling.

The SJC's March 2007 ruling is available at, www.justicedenied.org/comm_v_laguer.htm

Ben LaGuer's website is, www.benlaguer.com

TN Theft Conviction Tossed

By JD Staff

In late 1999 Linda Maples and her husband took their 1982 Chevrolet Silverado to McMahan's Garage in Pigeon Forge, Tennessee for refurbishing. The Maples' also delivered a new engine for installation in the truck. McMahan's didn't finish the refurbishing before the death of Mr. Maples in April 2001. When she inquired about her Silverado, Ray McMahan told her it had disappeared from his storage lot. She then reported it stolen.

About two years later, when her vehicle still hadn't been found, Maples began investigating on her own. In November 2003 she found that the serial number of an engine in a truck owned by Rod Mills, a former employee of McMahan's Garage, matched the engine she had delivered to McMahan's almost four years earlier. Mills' truck was inoperable at the time Maples matched the engine serial number.

Maples provided the information to the Pigeon Forge Police Department, which conducted an investigation. In January 2004 Mills and McMahan were each indicted on "one count of theft over $10,000."

McMahan died in November 2004, prior to his trial. Mills elected to have a bench trial, which was held in May 2006. He was found guilty and sentenced to five years imprisonment. Mills appealed to Tennessee's Court of Criminal Appeals.

Mills' trial strategy had been that the prosecution didn't have sufficient evidence to prove he committed a crime. That is why, after the prosecution presented its case, Mills' lawyer rested without Mills testifying or presenting any witnesses in his defense. Mills' appeal was based on the same strategy by relying solely on the insufficiency of the evidence.

The appeals court issued its ruling on June 5, 2007. (*State v. Rod Mills*, No. E2006-02207-CCA-R3-CD (Tenn.Crim.App. 06/05/2007))

The Court recounted the basic facts of the case, including that Mills told the police investigator that McMahan gave him the vehicle in June 2001 as payment for money he was owed by McMahan for mechanic work, and that McMahan didn't tell him he didn't own the truck. Mills said he didn't make any attempt to transfer the title because he parted out the Silverado, and he only put the engine in his own truck. McMahan told the investigator the same thing: he gave the truck to Mills for back wages and he never told him the truck belonged to Maples.

The Court explained that the theft statute (Tenn. Code Ann. * 39-14-106(20) (2003)) requires that a "… person knowingly obtains or exercises control over the property without the owner's effective consent." The Court stated that in regards to the theft statute's *mens rea* requirement, to have acted "knowingly" Mills would need to have had "actual or constructive knowledge that the truck was stolen."

Since it was undisputed that Mills had control over McMahan's Silverado without her consent, the question was if the prosecution had presented proof beyond a reasonable doubt that he had done so "knowingly."

The Court recited that the serial number hadn't been altered or removed from the engine; that Mills fully cooperated during the police investigation; that McMahan confirmed Mills' explanation that he was given the truck for back wages; that McMahan confirmed he never told Mills that the vehicle belonged to someone other McMahan; and that McMahan had been truthful in confidential information he had provided the Pigeon Forge PD about automobile thefts throughout Sevier County.

The Court concluded by deciding: "The entirety of the evidence is not consistent with the defendant's guilt and does not exclude every other reasonable hypothesis except the guilt of the defendant. The evidence produced at trial did not prove, beyond a reasonable doubt, that the defendant had actual or constructive notice that the truck was stolen at the time he was found with the truck in his possession. As such, the defendant's conviction must be reversed.

Since Mills' conviction was reversed for insufficient evidence he committed a crime, the indictment was dismissed and he was released from custody after 13 months of wrongful imprisonment.

Thompson Endnotes cont. from p. 17

7 *Id.*
8 *Id.*
9 Federal appeals court orders Thompson released from prison, By Ryan J. Foley, *The Janesville Gazette* (Janesville, WI), April 6, 2007.
10 Court orders ex-state employee freed from prison, *WISN Channel 12* (Milwaukee, WI), April 6, 2007.
11 *Id.*
12 *United States v. Thompson*, 484 F.3d 877 (7th Cir. 04/05/2007); 2007.C07.0000350 ¶28 <www.versuslaw.com>
13 *Id*. at ¶ 27.
14 *Id*. at ¶¶ 29-30.
15 *Id*. at ¶¶ 31-33, 35.
16 *Id*. at ¶ 37.
17 *Id*. at ¶¶ 40-41.
18 *Id*. at ¶ 41.
19 *Id*. at ¶ 42.
20 Conviction may cost Thompson $300,000, By Steven Walters and Patrick Marley, *Milwaukee Journal-Sentinel*, April 6, 2007.
21 *Id*.
22 Georgia Thompson case warrants congressional probe, Editorial, *The Tomah Journal*, April 16, 2007.
23 State worker files claim, By Patrick Marley, *Milwaukee Journal-Sentinel*, June 15, 2007.

Fingerprint Doesn't Stop Quashing Of Conviction

Three masked men stole more than $50,000 (£30,000) after overpowering 60-year-old Neil Bateman outside his Bodenham, England home in April 2004.

In February 2006 two brothers, Khalid and Mohammed Khan, pled guilty to the robbery.

A third man charged with the robbery was auto mechanic Sirfraze Ahmed. The Khan brothers didn't implicate Ahmed in the robbery, but his fingerprint was found on a black plastic bag left at the crime scene after it had been worn as a mask by one of the robbers.

At his October 2006 trial, Ahmed testified that at the time of the robbery he was almost 50 miles away in Birmingham, where he lived, attending a birthday party at this mother's house. Several witnesses corroborated Ahmed's alibi. He also testified that he knew the Khan brothers, and that he had helped Khalid fix cars at the house the brothers shared.

Ahmed said that they would put plastic bags on the seat of a car to prevent oil stains, and that he could have touched the bags, so that is how his fingerprint could have gotten on the bag found at the crime scene.

The jury rejected Ahmed's alibi and convicted him. He was sentenced to four years imprisonment.

In June 2007 the Court of Appeal heard arguments in Ahmed's appeal. Afterwards the three-judge panel unanimously quashed his conviction on three grounds: The judge failed to properly instruct the jury about the sufficiency of evidence necessary to convict Ahmed; there was insufficient evidence to sustain Ahmed's conviction; and the jury may have been overly influenced to infer Ahmed's guilt from the guilty pleas of his friends and co-defendants, the Khan brothers.

The Court stated in regards to the fingerprint evidence: "The jury could not properly be sure that the fingerprint found on such a common item as a plastic bag was sufficient evidence on which to conclude that this appellant was involved in the robbery."

Since Ahmed's conviction was quashed due to the insufficiency of the evidence, the Court didn't order a retrial. He was immediately released from custody after eight months of wrongful imprisonment.

Source: Conviction quashed, *Hereford Times* (Hereford, England), June 29, 2007.

Compensation Awarded To The Wrongly Convicted In 2006

Name	Compensation	Paid By	State	Convicted	Released	Exonerated	Years	Avg. Yearly	Compensated	Exonerated By	Crime	Sentence
Omar Aguirre	$ 3,000,000	City of Chicago	IL	1999	2002	2002	5	$ 600,000	2006	Perpetrators found	Murder	55 yrs
Stephen Avery	$ 400,000	Manitowoc County	WI	1985	2003	2003	18	$ 22,222	2006	DNA	Rape	32 yrs
Paul Bastidas	$ 810,000	City of Los Angeles	CA	1998	2000	2000	2.5	$ 324,000	2006	Police frame-up exposed	Drugs	
Gene Bibbins	$ 150,000	State of Louisiana	LA	1986	2002	2002	16	$ 9,375	2006	DNA	Rape	Life
Marcellius Bradford	$ 900,000	City of Chicago	IL	1988	1994	2001	6.5	$ 138,462	2006	Blood test	Kidnapping	12 yrs
Stephan Cowans	$ 3,200,000	City of Boston	MA	1998	2004	2004	6.5	$ 492,308	2006	DNA	Attempted murder	35-45 yrs
Alejandro Dominguez	$ 9,000,000	City of Waukegan	IL	1990	1994	2002	4	$2,250,000	2006	DNA	Rape	9 yrs
Clarence Elkins	$ 1,075,000	State of Ohio	OH	1999	2005	2005	7	$ 153,571	2006	DNA	Murder & Rape	Life + 50 yrs
Robert Gayol	$ 740,000	City of Chicago	IL	2001	2002	2002	5	$ 148,000	2006	Perpetrators found	Murder	Life
Anthony Hicks	$ 25,000	State of Wisconsin	WI	1991	1996	1997	5	$ 5,000	2006	DNA	Rape & Robbery	20 yrs
Troy Hopkins	$ 229,419	State of Virginia	VA	1990	2001	2005	11	$ 20,856	2006	Perpetrator found	Murder	28 yrs
Jeffrey S. Hornoff	$ 600,000	City of Warwick	RI	1996	2002	2002	6.5	$ 92,308	2006	Perpetrator found	Murder	Life
Timothy Howard	$ 2,500,000	State of Ohio	OH	1977	2003	2006	26	$ 96,154	2006	*Brady* violations	Murder	Death - then Life
David A. Jones	$ 720,000	City of Los Angeles	CA	1995	2004	2004	11	$ 65,455	2006	DNA	Murder	Life
Eric Kittler	$ 2,000,000	City of Chicago	IL	1999	2002	2002	5	$ 400,000	2006	Frame-up exposed	Murder & Robbery	35 yrs
Eddie J. Lloyd	$ 3,250,000	City of Detroit	MI	1985	2002	2002	17	$ 191,176	2006	DNA	Murder	Life
Eddie J. Lloyd	$ 600,000	State of Michigan	MI	1985	2002	2002	17	$ 35,294	2006	DNA	Murder	Life
Eddie J. Lloyd	$ 200,000	Wayne County	MI	1985	2002	2002	17	$ 11,765	2006	DNA	Murder	Life
Lee Long	$ 900,00	Cochran, Neufeld & Scheck (law firm)	NY	1995	2000	2000	5	$ 180,000	2006	Alibi verified	Rape & Robbery	8-24 yrs
Lee Long	$ 50,000	City of New York	NY	1995	2000	2000	5	$ 10,000	2006	Alibi verified	Rape & Robbery	8-24 yrs
Ken Marsh	$ 756,000	State of California	CA	1983	2004	2004	21	$ 36,500	2006	Medical evidence	Murder	Life
Larry Mayes	$ 9,000,000	City of Hammond	IN	1982	2001	2001	21	$ 428,571	2006	DNA	Rape & Robbery	80 yrs
Arvin McGee	$12,250,000	City of Tulsa	OK	1989	2002	2002	13	$ 942,308	2006	DNA	Rape & Kidnapping	365 yrs
Arthur Mumphrey	$ 452,082	State of Texas	TX	1986	2006	2006	18	$ 25,000	2006	DNA	Rape	35 yrs
Donald Paradis	$ 900,000	Kootenai County	ID	1981	2001	2001	21	$ 42,587	2006	*Brady* violation	Murder	Death - then Life
LaFonso Rollins	$ 9,000,000	City of Chicago	IL	1993	2004	2004	11	$ 818,182	2006	DNA	Rape	75 yrs
Peter Rose	$ 328,000	State of California	CA	1994	2004	2004	9.5	$ 36,500	2006	DNA	Rape	27 yrs
Edar Duarte Santos	$ 3,000,000	City of Chicago	IL	2002	2002	2002	5	$ 600,000	2006	Perpetrators found	Kidnapping	12 yrs
Eric Sarsfield *	$ 2,000,000	City of Marlborough	MA	1987	1999	2000	9.5	$ 210,526	2006	DNA	Rape	10-15 yrs
John Stoll	$ 704,700	State of California	CA	1985	2004	2004	19.3	$ 36,500	2006	Witnesses recanted	Child abuse	40 yrs
Steven Toney	$ 253,000	State of Missouri	MO	1983	1996	1996	13.8	$ 18,250	2006	DNA	Rape	Life
Kareem White	$ 100,000	State of Texas	TX	1999	2003	2003	4	$ 25,000	2006	Police frame-up exposed	Drugs	60 yrs
Totals	**$69,093,201**						**323**	**$213,580**				

* In Oct. 2006, seven months after Sarsfield settled with the city, a federal judge ruled he was due a total of $13.6 million for his lawsuit, but it is unknown if he can collect the additional $11.6 million from other parties.

Justice:Denied's Bookshop

Pay with check, money order, or stamps
(pre-stamped envelopes OK)

Note: There is a $5 service charge per *book* order less than $35, except for the books listed at the bottom of the order form.

Book Title or Number (write in or circle your selections)		Price
Sub-Total		
If **Sub-Total** is less than $35, ADD $5 Service Charge		
Freeing The Innocent (No service charge)	$15	
Improper Submissions (No service charge)	$10	
Prisoner 6-issue *Justice:Denied* subscription	$10	
Non-Prisoner 6-issue *JD* subscription	$20	
Sample issue of *Justice:Denied* magazine	$ 3	
Total		

Order Mailing Information

Name: _____

DOC #: _____

Suite/Cell: _____

Agency/Inst: _____

Address: _____

City/State/Zip: _____

Extra Line: _____

Mail Payment To:
Justice Denied
PO Box 68911
Seattle, WA 98168

Or order with your **credit card** from *Justice:Denied's* website:
http://justicedenied.org
Questions? Email: info@justicedenied.org

_____ **Victims of Justice Revisited** by Thomas Frisbie and Randy Garrett - **$19.95** - 468 pgs. Tells the story of Rolando Cruz and his two co-defendants accusation of kidnapping and murdering Jeanine Nicarico in 1983 from the day the crime occurred to their exoneration in 1995 after three trials, to the trial of seven law officers accused of conspiring to deny Cruz a fair trial and falsely have him executed. #23

_____ **Innocent: Inside Wrongful Conviction Cases** by Scott Christianson - **$18.95** - 208 pgs. The 42 cases collected and graphically documented in *Innocent* reveal the mistakes, abuses and underlying factors that led to miscarriages of justice, including the presumption of guilt, mistaken identification, eyewitness perjury, ineffective assistance of counsel, police misconduct, prosecutorial misconduct, and forensics, while also describing how determined prisoners, post-conviction attorneys, advocates and journalists struggled against tremendous odds to win their exonerations. #76

_____ **Tulia: Race, Cocaine, and Corruption in a Small Texas Town** by Nate Blakeslee - **$14.95** - 464 pgs. Definitive account of the five year travesty of justice in Tulia that resulted in the wrongful conviction of 38 people on trumped up drug charges. Blakeslee is the award-winning reporter for the *Texas Observer* who broke the Tulia story in 2000. #25

_____ **Exit to Freedom** by Calvin C. Johnson Jr. with Greg Hampikian - **$18.95** - 286 pgs. After his 1983 conviction for rape and related crimes, Calvin C. Johnson Jr. told the judge, "With God as my witness, I have been falsely accused of these crimes. I did not commit them. I'm an innocent man." Sentenced to life in prison, *Exit To Freedom* is Johnson's story of how he spent the next sixteen years working to free himself before DNA testing ruled out the possibility he was guilty, and he was released in 1999. #26

_____ **The Death of Innocents: An Eyewitness Account of Wrongful Executions** by Helen Prejean - **$14** - 336 pgs. The book's first part focuses on the execution of two men who were likely innocent: Dobie Williams, a black man with an IQ of 65 from rural Louisiana represented by incompetent counsel and found guilty by an all-white jury based mostly on conjecture and speculation; and, Joseph O'Dell, convicted of murder based on a jailhouse informant who later admitted to testifying falsely for his own benefit. The book's second part details the inequities in capital prosecutions and the arbitrary imposition of the death sentence. #27

_____ **Win Your Case: How to Present, Persuade, and Prevail – Every Place, Every Time** by Gerry Spence - **$14.95** - 304 pgs. Written for defense lawyers or lay people. In his 50+ year career Spence has never lost a criminal case. He considers every case a "war," and he focuses on what is necessary to win. The book deals with waging the war: improving one's storytelling skills, conducting effective opening and closing statements and using witnesses. #72

_____ **Last Man Standing: The Tragedy and Triumph of Geronimo Pratt** by Jack Olsen - **$15.95** - 512 pgs. The story of Geronimo Pratt's 1970 conviction and life sentence for an LA murder committed when he was 350 miles away from the crime scene and under FBI surveillance in Oakland, CA. Pratt was exonerated in 1997 and awarded $2.75 million in 2000. This is a textbook case of abuse of the American legal system for political ends. #63

_____ **Last Words From Death Row** by Norma Herrera - **$19.95** - 264 pgs. Leonel Herrera was executed in 1993 after the U.S. Supreme Court ruled evidence of his factual innocence was irrelevant to issuing a writ of habeas corpus. Leonel's last request to his sister was to tell his true story. His experience demonstrates that in the U.S. the legal system is more concerned with procedure than finding the truth of a person's guilt or innocence. #88 (Pub. April 2007)

_____ **Freeing The Innocent: A Handbook For The Wrongly Convicted** by Michael and Becky Pardue - **$15** - 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. #01 (No Service Charge)

_____ **Improper Submissions: Records of a wrongful conviction** by Erma Armstrong - **$10** - 370 pgs. The true story of how Karlyn Eklof was delivered into the hands of a psychotic killer by traffickers in porn and mind control. After she witnessed a murder she was prosecuted and convicted for that crime, and is currently serving two life sentences in Oregon. *Improper Submissions* documents that exculpatory and impeachment evidence was hidden by the prosecution, and bragging by the killer (later convicted and sentenced to death) was used by the prosecution against Karlyn. #28 (No Service Charge)

_____ **Who Killed Sarah?** by Sheila and Doug Martin - **$16.95** - 272 pgs. Although there was no physical evidence, no witnesses to the crime and no murder weapon, Penny Brummer was convicted of first-degree murder in the death of Sarah Gonstead by a Madison, Wisconsin jury in October 1994. But did Brummer do it? Or was she herself a victim of overzealous prosecutors, tunnel-vision investigators, contradictory forensic scientists, and a prejudiced judge? It's a twilight zone, but it's real. #29

_____ **Hurricane: The Miraculous Journey of Rubin Carter** by James S. Hirsch - **$15** - 384 pgs. In 1966, two men shot four people in a New Jersey diner, killing three. Rubin "Hurricane" Carter, a onetime contender for the middleweight boxing crown, and John Artis, an acquaintance of Carter's, were charged with the murders. After their convictions without any definitive evidence of their guilt, Carter began what became a 22-year effort to exonerate himself and regain his freedom. #30

_____ **Sweet Freedom** by Doug Tjapkes - **$12.99** - 224 pgs. The untold story of the friendship between African-American Maurice Carter and white journalist Doug Tjapkes. Wrongly convicted of attempted murder, Carter was released in 2004 after 28 years imprisonment. Rubin "Hurricane" Carter said afterward, "Maurice Carter's release is due basically to Doug Tjapkes' tenacity." #31

_____ **The Wrong Men: America's Epidemic of Wrongful Death Row Convictions** by Stanley Cohen - **$15** - 256 pgs. Sociologist Cohen examines some 100 instances where people sentenced to death were later exonerated. Cohen also analyzes the chief reasons why wrongful convictions occur so frequently, and he presents a convincing argument to suspect the reliability of capital convictions. #32

_____ **Devil's Knot: The True Story of the West Memphis Three** by Mara Leveritt - **$15** - 432 pgs. Dissects the prosecution's case against the three teenagers convicted of the gruesome murders of three eight-year-old boys. Leveritt demonstrates the murder investigation didn't examine other suspects, and the three youth's convictions were based on a single confession from a retarded youth, and the defendants' alleged ties to satanic rituals. #65

_____ **Arbitrary Justice: The Power of the American Prosecutor** by Angela J. Davis - **$29.95** - 264 pgs. **Hardcover**. Intense and long-overdue serious examination of the expanding power of prosecutors and their increasing politicization. Law Professor Davis explains how the day-to-day practices and decisions of prosecutors produce unfair and unequal treatment of defendants. Davis argues that the mechanisms purportedly holding prosecutors accountable are ineffectual and foster a climate of tolerance for misconduct. #84 (Pub. March 2007)

***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 words 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 style tips 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 Attorneys Paul Bergman & Sara J. Berman-Barrett - **$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 suspects'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 exonerees describe their experiences, the events that led to their convictions, their years in prison, and their new lives outside. The exonerees 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 Amirault 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 Stanford 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 Saundra 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

_____ **Bloodsworth: The True Story of One Man's Triumph over Injustice** by Tim Junken - **$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 excluded 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 - **39.99 -** 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. He teaches some of these techniques to the lawyers who attend his Trial Lawyer's College in Wyoming to learn how to win. #17

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

Bulk quantities of the current issue and issues 29 through 35 are available (price includes shipping):

- **5 issues $10 ($2.00 each)** (I 29 to 35 only)
- **10 issues $18 ($1.80 each)** (I 29 to 35 only)
- **20 issues $30 ($1.50 each)** (I 32 to 35 only)
- **50 issues $60 ($1.20 each)** (I 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

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

"Thank you for the great book. I have to share it with so many that have helped and continued 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:

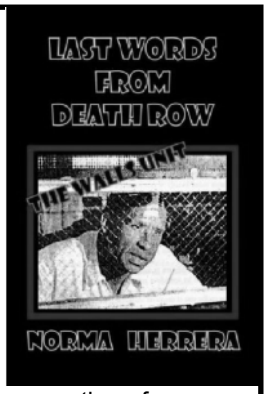
Justice Denied
PO Box 68911
Seattle, WA 98168

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: _____

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

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

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



LEONEL HERRERA was executed in 1993 by the state of Texas after the Supreme Court rejected the evidence of his factual innocence as irrelevant to granting him a writ of habeas corpus. Justice Blackmun wrote in dissenting: "The execution of a person who can show that he is innocent comes perilously close to simple murder."

Leonel's last request to his sister Norma Herrera was that she tell his true story. *Last Words From Death Row* is Leonel's story from the grave of how an innocent man can be executed in the U.S. by a legal system more concerned with procedure than finding the truth.

Paperback, 264 pages, published April 2007. Order for $19.95 (shipping included) (Check, M/O or Stamps): Justice Denied; PO Box 68911; Seattle, WA 98168. (See order form on page 21)

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

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 5-41¢ stamps, or 9x12 envelope with 3-41¢ stamps, or $2 check or m/o.
The Insider Magazine
P.O. Box 829; Hillsboro, OR 97123

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 *JD* 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 36**, this is your **LAST ISSUE**. If your label says Issue 37 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

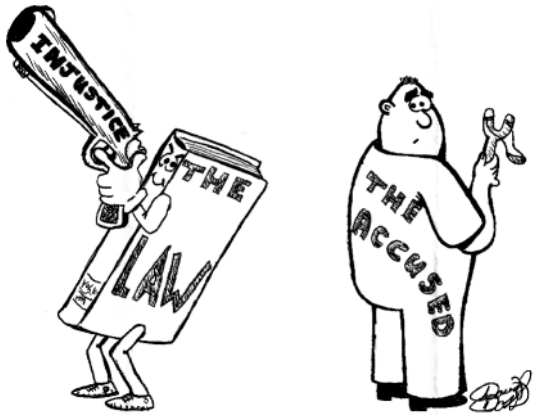
Self-help manual jam packed with hands-on - 'You Too Can Do It' - advice explaining how Michael Pardue was freed in 2001 after 28 years of wrongful imprisonment.

$15, softcover, order info on page 23

"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.)



JUSTICE DENIED

The Magazine for the Wrongly Convicted

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.

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

Non-Profit Org.
U.S. Postage
PAID
Seattle, WA
Permit No. 575