


JUSTICE DENIED


The Journal for the
Wrongly Convicted

\$190 MILLION AWARDED EXONERATED PEOPLE IN 2009


SEE P. 14




Steve Moore
Fired by Pepperdine University for advocating that Amanda Knox is innocent of murder in Italy.
See page 7



Alan Newton
Awarded \$18.59 million for 12 years of wrongful imprisonment in New York for rape.
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Zhao Zuohai
Released after 11 years of wrongful imprisonment in China for murdering a man who was alive.
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Filed a 770-page habeas corpus petition documenting she is innocent of a Las Vegas murder.
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Awarded trauma counseling for 17 years of wrongful imprisonment for 21 murders in England.
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Message From The Publisher

Justice:Denied's article in 2000 about four young Navy men convicted of the 1998 rape and murder of an 18-year-old woman in Norfolk, Virginia was the first published article that questioned the men's guilt. Those four men became known as the Norfolk Four, and as of August 2009 they were released from prison. The lead detective on the Norfolk Four case was convicted in October 2010 of lying to the FBI and extortion. See p. 9.

Numerous experiments and real life cases have established that eyewitness testimony is unreliable under the best of circumstances. But it pushed the envelope when prosecutors in Baltimore, Maryland relied on a legally blind eyewitness to ensure Tony Williams' 1999 murder conviction. See page 8.

Dr. Adrian Grounds' research has discovered wrongful imprisonment has a similar psychological effect on a person as being in a war zone. After years of effort by Paddy Hill the British government finally approved special trauma counseling to help him deal with the after-effects of 17 years of wrongful imprisonment for 21 murders that he and his five co-defendants did not commit. See page 9.

The consequences of publicly advocating a convicted person is innocent have been separately experienced by two supporters of Seattle native Amanda Knox who was convicted in 2009 of murdering a woman in Italy. See page 7.

Two major police scandals, one in Tulsa, Oklahoma and the other in Camden, New Jersey, involve the framing of dozens of innocent people by planting evidence, falsifying police reports, perjury, and other techniques. See pages 8 and 9.

Justice Denied is proud to announce that it has published *From The Big House To Your House*, a cookbook written by six Texas women prisoners, two of whom claim innocence of their murder convictions. The 200 recipes can be made by people in an out of prison. See p. 13.

Hans Sherrer, Editor and Publisher
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Information About *Justice:Denied*

Justice:Denied promotes awareness of wrongful convictions and their causes. It provides information about convicted people claiming innocence, exonerated people, and compensation awards, and provides book and movie reviews, and reports about court decisions, and law review and journal articles related to wrongful convictions.

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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.

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



Rachel Jernigan was arrested on November 10, 2000 and charged with the September 2000 robbery of a Bank of America branch in Gilbert, Arizona, a few miles east of Phoenix. She was also charged with two other Phoenix area bank robberies committed in October 2000. She was not released on bail.

Based on grainy bank surveillance video and witness statements the robber of all the banks was described as a very short (5') Hispanic woman with severe acne or pock-marked skin. The robber said nothing and demanded money from the teller with a handwritten note that said she had a firearm.

The 31-year-old Jernigan was about 5', Hispanic, and she acne, but when questioned by the FBI she denied being the robber or knowing anything about the robberies. She told the FBI she was a homemaker and mother of four children, not a bank robber.

Within weeks of Jernigan's arrest Bank of America branches in the Phoenix suburbs of Chandler and Tempe were robbed by a woman fitting Jernigan's description and using the same method of operation as the three robberies she was charged with. Then less than a month after Jernigan's arrest a different Bank of America in Gilbert was robbed by a silent woman of the same description and using the same M.O.

The judge granted s defense motion to sever the September 2000 bank robbery charge from the other two robberies. Her federal court trial for the September 2000 robbery began in March 2001. Neither prior to nor during Jernigan's trial did the prosecution disclose to her lawyer that at least three banks were robbed in the greater Phoenix area after her arrest by a woman fitting her physical description and using the same M.O. as the robberies she was charged with.

The prosecution did not present any physical or forensic evidence during Jernigan's trial linking her to the September 2000 bank robbery. Their only evidence was the grainy bank surveillance video and the testimony of five eyewitnesses – none Hispanic – who identified Jernigan in court. Not knowing about the bank robberies after Jernigan's arrest, the jury rejected her mistaken identity defense. Jernigan was convicted and sentenced to 14 years in prison and five years of supervised release. The government agreed to dismissal of Jernigan's indictment for the two October 2000 bank robberies.

Nine months after Jernigan's conviction something remarkable happened. In De-

Mother Of Four Mistaken For Bank Robber Freed After Seven Years Imprisonment

By Hans Sherrer

ember 2001 a woman fitting Jernigan's description robbed the same bank that Jernigan had been convicted of robbing in September 2000, and she robbed it using a similar note and she said nothing. Less than an hour after the robbery the woman was arrested. The physical description of the woman – Juanita Rodriguez-Gallegos – was nearly identical to Jernigan. Gallegos was charged with three bank robberies, but she pled guilty to a firearms charge in exchange for the bank robbery charges being dropped.

Jernigan eventually learned of Gallegos' arrest from fellow prisoners. She immediately informed her attorney who investigated and discovered the prosecution failed to disclose the three bank robberies that were committed after her arrest and before her trial. Since less than three years had elapsed since her conviction, in January 2004 Jernigan filed a motion for a new trial based on new evidence under Federal Rule of Criminal Procedure 33, and the U.S. Supreme Court's ruling in *Brady vs Maryland* (1963). The *Brady* decision requires the prosecution to disclose potentially exculpatory evidence to a defendant. Her motion alleged she was denied a fair trial because the prosecution failed to disclose to her lawyers that a similar looking woman using the same M.O. robbed a number of Phoenix area banks after her arrest.

**"The government has deprived Jernigan of a fair trial and placed a possibly innocent woman behind bars."
Federal 9th Circuit Court of Appeals**

To prove a *Brady* violation Jernigan had to establish that the non-disclosed evidence was material, i.e., that if her jury had known about the continuing bank robberies there is a "reasonable probability" her trials' outcome would have been different. Jernigan's trial judge denied her motion, ruling the evidence of the bank robberies wasn't material because even though they were the same size, Hispanics and had skin problems, Jernigan and Gallegos were not look-a-likes and the eyewitnesses had identified Jernigan as the robber. Since the judge ruled the new evidence wasn't material, it didn't support a new trial under Rule 33 or *Brady*.

The Ninth Circuit Court of Appeals agreed to review the denial of Jernigan's motion. A



Rachel Jernigan and her attorney, Alan Simpson, look at pictures of a lineup which led to her wrongful conviction of bank robbery in 2001. (AP photo)

three-judge panel upheld the lower court's ruling by a two to one vote, agreeing that the new evidence wasn't material so it didn't support granting a new trial.

The Ninth Circuit agreed to review the panel's decision *en banc*. The Court overturning Jernigan's conviction by a vote of 13-2. *U.S. v. Jernigan*, No. 05-10086 (9th Cir., July 9, 2007) The opinion stated the prosecution's case was solely based on the "inaccurate or inconsistent" eyewitness testimony, and the witnesses identification of Jernigan were "questionable" because four of the five witnesses weren't asked to identify Jernigan until about the time of her trial six months after the robbery. The identifications of Jernigan were "particularly suspect" because none of the witnesses was Hispanic, and psychology research by psychologist Elizabeth Loftus and others has demonstrated the tendency for cross-racial identifications to be inaccurate.

The Court's opinion also emphasized the remarkable similarity of how all the robberies were executed, and that FBI statistics reveal that women and Hispanics rarely rob banks: "The likelihood of two short, Hispanic female robbers with pockmarked skin holding up banks in the same area is therefore extremely low." The opinion concluded:

The existence of another bank robber for whom Jernigan may well have been mistaken also magnifies the significance of the gaps and inconsistencies in the prosecution's case. The most obvious gap, as noted earlier, was the complete lack of physical evidence connecting Jernigan to the crime. Even after Jernigan was arrested, the police failed to produce any physical evidence connecting her to the crime: a fingerprint lifted from the victim teller's window did not match Jernigan's print, and, after Jernigan was arrested, the police failed to find the stolen money, the firearm used to conduct the robbery, or any clothing resembling that worn by the robber.

Jernigan cont. on p. 4

Mikhail Khodorkovsky Tells Judge The Case Against Him Is “Utter Rubbish”

Mikhail Khodorkovsky was Russia's richest man and the 16 wealthiest man in the world when he was arrested in 2003 and charged with tax evasion. There was widespread speculation the charges were politically motivated because he was publicly critical of then Russian President Vladimir Putin and he funded opposition parties. Khodorkovsky's prosecution neutralized his influence on the 2004 Russian Presidential election.

Khodorkovsky was the largest stockholder in the oil company Yukos. Khodorkovsky's partner and Yukos' second largest stockholder, Platon Lebedev, was also charged with tax evasion. The two were held without bail. After an 11 month trial they were convicted in May 2005 and sentenced to 9 years in prison, which was later reduced to 8 years.

Khodorkovsky's conviction made news in the U.S. when it was reported that President George Bush expressed concern to Russian President Putin that Khodorkovsky “had

been judged guilty prior to a fair trial.” Khodorkovsky and Lebedev were several months from being eligible for parole in 2007 when they were charged with embezzlement and money laundering. The new charges prevented their release prior to the 2008 Russian Presidential election. If convicted of the new charges they would be imprisoned during both the 2012 and 2016 elections that Putin is expected to participate in.

The men's trial began in March 2009 and the close of evidence didn't end until 19 months later in October 2010. Khodorkovsky, 47, gave his own closing argument on October 26. It lasted for three hours. The men are accused of stealing oil worth \$27 billion and Khodorkovsky told the judge that if that amount of oil were placed in freight trains they would circle the equator twice. He then told the judge, “I am sure that you are competent enough to understand that the allegations made by the prosecution are utter rubbish” that hadn't been proven, and he urged the judge to dismiss the charges.

When Khodorkovsky was brought handcuffed into the courtroom dozens of his supporters, including former World Chess



Mikhail Khodorkovsky (left) and Platon Lebedev in 2004 during their first trial. In Russia defendants are kept in a cage in the courtroom. (Life magazine)

Champion Garry Kasparov, cheered and chanted “Freedom, freedom!” Kasparov told reporters, this “political trial will determine the configuration of the future government in Russia.”

The verdict in Khodorkovsky and Lebedev's case is expected on December 27, 2010.

Once a multi-billionaire, *Forbes* magazine has estimated that because of his legal troubles and the collapse of Yukos that Khodorkovsky has only a fraction of his wealth left.

Khodorkovsky and Lebedev's official website is, <http://www.khodorkovskycenter.com>

Jernigan cont. from p. 3

... As we view the withheld evidence in the context of the entire record, it is apparent to us that the evidence [of other bank robberies] was material and that Jernigan was prejudiced by its suppression. Withholding knowledge of a second suspect conflicts with the Supreme Court's directive that “the criminal trial, as distinct from the prosecutor's private deliberations, [be preserved] as the chosen forum for ascertaining the truth about criminal accusations.” *Kyles*, 514 U.S. at 440. By suppressing this evidence, the prosecution arrogated to itself a central function belonging to the criminal jury and pursued its role as adversary to the exclusion of its role as architect of a just trial. The government has deprived Jernigan of a fair trial and placed a possibly innocent woman behind bars. Because the evidence withheld by the government was material, we reverse the decision of the panel and district court, and remand to the district court for further proceedings consistent with our opinion. *U.S. v. Jernigan*, No. 05-10086 (9th Cir., July 9, 2007)

For seven months Jernigan remained im-

prisoned in a limbo-land. She did not know if the government was going to drop the charges or retry her. Then on February 5, 2008, the government submitted a motion to dismiss Jernigan's indictment. The motion detailed that two days earlier Gallegos confessed to federal law enforcement officials that she robbed the three banks Jernigan had been indicted for robbing. Due to the unusual circumstances the judge immediately granted the motion and ordered Jernigan's release from custody after 7 years and 4 months of imprisonment.

The night of her release she had dinner at a Phoenix area McDonald's with her husband, children and other family members. Two days after Jernigan's release she told reporters she needed a job. “I don't care what it is. I'll work at McDonald's, I'll work at Jack in the Box, Circle K, whatever. I'll do whatever they'll let me do.”

Jernigan's attorney was Alan Simpson, who represented Ray Krone when he was released from Arizona's death row in April 2002 after new DNA evidence proved he did not commit a Phoenix murder. Simpson told reporters about Jernigan, “This is a classic misidentification. Misidentifications do happen. (Witnesses) aren't being mean or nasty, but psychologically, if you have a

bad lineup, that can taint what happens in the courtroom.”

Gallegos remained in federal prison until her release on November 27, 2009. She was not charged with the bank robberies she confessed to committing.

Jernigan filed a federal civil rights lawsuit in December 2008 that named as defendants the FBI agents involved in her case, the city of Gilbert, and several other people. In June 2010 the judge denied Jernigan's motion to amend her complaint. As of November 2010 her lawsuit has not been resolved.

Sources:

U.S. v. Jernigan, No. 05-10086 (9th Cir., July 9, 2007).

“Mom freed; served 7 years for heist she didn't commit,” *Arizona Republic*, February 7, 2008.

Jernigan v. Richard et al, No CV-08-2332-PHX-GMS (filed December 23, 2008).

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Temujin Kensu's Murder Conviction Overturned By Michigan Federal Judge

Temujin Kensu? (formerly known as Fred Freeman) was convicted in 1987 of murdering a man in Port Huron, Michigan in 1986. His defense was that at the time of the murder he was 450 miles away in Escanaba, Michigan

Kensu's case was taken up by the Innocence Clinic at the University of Michigan Law School, and Proving Innocence, a Michigan based organization that investigates cases of wrongful conviction.

After almost 24 years of incarceration U. S. District Judge Denise Page Hood granted Kensu's federal habeas corpus petition on October 14, 2010. Judge Hood granted Kensu's habeas petition based on 3 grounds:

1. Ineffective Assistance of Counsel
 - a. Obstruction of Petitioner's Right to Testify in his own Defense
 - b. Failure to Call Michelle Woodworth (his main alibi witness)
2. Prosecutorial Misconduct
 - a. Jailhouse Informant's Concealment

of Promises By Prosecution (Philip Joplin, who made up a Kensu confession in exchange for leniency)

3. Ineffective Assistance of Appellate Counsel

Judge Hood's 52-page ruling concludes:

It is hereby ordered that petitioner's application for writ of habeas corpus is conditionally granted, unless the state takes action to afford petitioner a new trial within ninety (90) days of the date of this opinion. If no appeal is taken, otherwise, within ninety (90) days after any appellate avenues are exhausted and a mandate issued, petitioner may apply for a writ ordering respondent to release him from custody forthwith.

When notified of Judge Hood's ruling, Kensu's wife A'miko Kensu was overjoyed, telling reporters, "It's been 24 years. To say you're innocent for 24 years and to finally have someone acknowledge that things weren't right in the trial is uplifting."

Although the State appealed Judge Hood's ruling, and Kensu has not yet been released, years of effort by the Innocence Clinic at the University of Michigan Law School and Proving Innocence has overcome the huge



A'miko Kensu, left, and her husband Temujin Kensu. (2004 prison photo)

hurdle of getting a federal judge to acknowledge Kensu didn't receive a fair trial.

Ironically, Judge Hood found that prosecutorial misconduct was committed by fellow federal judge Robert Cleland, who in 1987 was the lead St. Clair County prosecutor in Kensu's case.

Sources:

Overturing convictions uncommon, The Times Herald (Port Huron, MI), October 16, 2010.

Freeman v. Trombley, No 07-10350 (USDC ED MI, October 14, 2010.

Woman Too Short To Be Criminal Is Exonerated

Malenne Joseph testified during her June 2010 trial in Orlando, Florida that she was not working as a painter in December 2007 and she was not the "Marlene" who splashed paint in a house causing \$10,000 dollars in damage after she wasn't paid for a painting job.

The contractor who built the house testified, and even though he had not seen the culprit for 2-1/2 years, he identified Ms. Joseph. Based primarily on his identification the jury convicted her of felony criminal mischief.

While awaiting sentencing Ms. Joseph insisted to her new lawyers that she was innocent. Her lawyers decided to interview the contractor and when told that Ms. Joseph was 5'-2" tall, he said she couldn't have committed the crime because the woman who splashed the paint was taller than him and he is 5'-6". Ms. Joseph's lawyers also found new evidence that during the week of the crime she was working two jobs -- one at Burger King and the other at a nursing-home facility -- but not as a painter.



Malenne Joseph after her release. (Joshua C. Cruvey)

Her lawyer's filed a motion for a new trial based on the new evidence, and the *Orlando Sentinel* published a story about her case on September 1, 2010. After reviewing the motion and investigating its claims, the Orange-Osceola State Attorney's Office agreed to release Ms. Joseph on bail on September 15, 2010, after she had been jailed for 3 months.

The State's Attorney's Office filed a motion on September 28 to set aside her conviction.

Ms Joseph would have been acquitted if her trial lawyer had simply had her stand up when the contractor testified at trial, because he would have known then that she was the wrong person.

Malenne Joseph's attorneys, Paula Coffman and Nicole Benjamin, deserve credit for believing her when she insisted she was innocent and finding the evidence to prove it.

Source:

Prosecutors ask judge to throw out guilty verdict against Malenne Joseph, *Orlando Sentinel*, September 28, 2010.

Freeing The Innocent A Handbook for the Wrongfully Convicted

By Michael and Becky Pardue

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

Soft-cover. Send \$15 (check, money order or stamps) to: Justice Denied; PO Box 68911; Seattle, WA 98168. (See Order Form on p. 17). Or order with a credit card from JD's website, www.justicedenied.org

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

Paul Wilson, Professor of Criminology, Bond University

"Thank you for the great book. I have to share it with so many that have helped and continue to help on my appeal."

JD, Florida Death Row Prisoner

Man Acquitted By Rhode Island Supreme Court Of Drug Convictions Based On Speculation

In November 2003 Robinson Berroa picked up two women at the airport in Warwick, Rhode Island. His car was subsequently stopped by police, and Berroa fully cooperated in providing his identification, vehicle registration, and he consented to a search of his car.

During the search cocaine was found in the purse of both women. Berroa was eventually charged with possession of a controlled substance (cocaine) and conspiracy to violate Rhode Island's Uniform Controlled Substances Act.

Berroa waived his right to a jury trial. The prosecution had no evidence that Berroa had any knowledge there was cocaine in the women's purses, so their case was based on the fact that since he picked them up from the airport he must have known they had cocaine. In May 2008 a judge found him guilty of the charges. After the verdict Berroa's attorney made a motion for a judgment of acquittal

based on insufficient evidence, which the judge denied. Berroa was sentenced to 10 years in prison and 10 years probation.

The Rhode Island Supreme Court acquitted Berroa of all charges on November 1, 2010. In their opinion the Court ruled there was insufficient evidence of Berroa's guilt because it was pure speculation that he had any knowledge the women had cocaine in their purse, and the prosecution substituted their speculative "pyramiding of inferences" as a substitute for actual evidence Berroa had committed any crime. The Court stated in part:

"In our opinion, this case is firmly controlled by a myriad of holdings that prohibit the pyramiding of inferences. We have said, "it is well established that '[t]hrough a process of logical deduction, the state may prove guilt from an established circumstantial fact through a series of inferences.'" [citation omitted] However, "[i]f [the] pyramiding of inferences becomes speculative, [then] proof of guilt beyond a reasonable doubt will not be found." [citation omitted] "We have recognized that pyramiding of inferences becomes speculative when the initial inference rests upon an ambiguous fact that may support other

inferences which are clearly inconsistent with guilt."

Furthermore, when the evidence before the trial court was insufficient to support a conclusion beyond a reasonable doubt that the defendant had knowledge of and intended to exercise control over the cocaine found in the women's purses, it defies logic to extract from the same set of facts a supportable inference that he agreed with these same women to traffic in drugs. ... Here, there is simply no evidence that can serve as a reasonable foundation for an agreement between Mr. Berroa and the two women he picked up at the airport.

For the reasons set forth in this opinion, we vacate the judgment of conviction. The record is remanded to the Superior Court for entry of judgment of acquittal."

Robinson Berroa was subsequently released from prison.

Sources:

State v. Robinson Berroa, No. 08-53-C.A. (RI Sup. Ct., November 1, 2010.)

New Bedford man's RI drug conviction vacated, *Boston Herald*, November 2, 2010.

The Philippines Considers Compensating The Wrongly Convicted

A bill has been filed in the Philippines Senate to compensate an innocent person for their wrongful imprisonment. Senate Bill 1409 authorizes compensating a person for as much as twice the amount of his or her income during the year prior to his or her incarceration, or the amount of \$2,200 (P100,000) for each year of incarceration, whichever is higher.

The proposed bill would require that a "claimant" establish by clear and convincing evidence that:

- He/she was unjustly convicted of a crime and subsequently sentenced to a term of imprisonment, and has served all or any part of his sentence.
- He/she did not commit the crime for which was convicted.
- He/she did not, by their own conduct, cause or bring about their conviction.

"No justice system is perfect," said Senator Loren Legarda who filed the bill, "but because the State is the guardian of the

The Innocents Database Now Includes Over 3,000 Wrongly Convicted People

The Innocents Database linked to from Justice Denied's website is the world largest database of wrongly convicted people. As of November 2010 the database lists 3,105 cases. All the cases are supported by sources for research. Those sources include books, newspaper and magazine articles, and court decisions.

The Innocents Database includes:

- 542 innocent people were sentenced to death.
- 626 innocent people were sentenced to life in prison.
- 1,315 innocent people convicted of murder were imprisoned an average of 9-1/4 years before their exoneration.

people's rights it is mandated to protect the rights of persons wrongfully convicted of a crime."

Source:

Compensation for person wrongfully convicted urged, *Manila Bulletin*, August 19, 2010.

- 456 innocent people convicted of rape were imprisoned an average of 10 years before their exoneration.
- 450 innocent people were exonerated after a false confession by him or herself or a co-defendant (216 of these people were convicted in the U.S. and 219 in other countries.)
- 138 innocent people were convicted of a crime that never occurred.
- 49 innocent people were convicted of a crime when they were in another city, state or country from where the crime occurred.
- 789 innocent people had 1 or more co-defendants. The most innocent co-defendants in any one case was 28, and two other cases had 12 co-defendants each.
- 11% of wrongly convicted persons are women.
- The average for all exonerated persons is 7-1/2 years imprisonment before their exoneration.
- 31 is the average age when a person is wrongly convicted.
- Innocent people convicted in 93 countries are in the database.

The Innocents Database is on the Internet at, www.forejustice.org/search_idb.htm

Ex-FBI Agent Fired By Pepperdine University For Advocating Amanda Knox Is Innocent

Steve Moore was an FBI Special Agent for 25 years. With the FBI he was a Supervisory Special Agent with the investigation and prosecution of violent crime, from murder to mass-murder and terrorism. He was the supervisor of the Al Qaeda Investigations squad, and ran the FBI's Los Angeles-based "Extra-Territorial Squad" responding to terrorism against the United States in Asia.

After his retirement from the FBI Pepperdine University in Malibu, California hired Moore as deputy director of public safety.

At the urging of his wife, in his spare time

Moore began looking into the case of Amanda Knox and her boyfriend Raffaele Sollecito. They were convicted in December 2009 of the November 2007 murder of Knox's roommate in Perugia Italy, where the two women were attending college. Knox, 23, is from Seattle, Washington and she attended the University of Washington before going to Italy to study. She was sentenced to 26 years in prison and Sollecito was sentenced to 25 years in prison.

Moore became convinced that Knox and Sollecito are innocent. He then began advocating for them by writing online articles and speaking out publicly. The Injustice in Perugia website has Moore's articles online.

Although Moore only conducted his activities on behalf of Knox and Sollecito when he was not working, Pepperdine reacted to the media attention Moore was garnering by firing him on September 28, 2010. Moore filed a wrongful termination lawsuit against



Steve Moore and his wife Michelle Moore
(Photo by Karen Quincy Loberg / Ventural County Star)

Pepperdine University on October 7, 2010.

Amanda Knox's appeal of her conviction began on November 24, 2010 in Perugia Italy. An appeal in Italy consists of a retrial that can include consideration of new evidence.

Sources:

Pepperdine fires man trying to free American Amanda Knox, *Ventura County Star*, October 8, 2010.

Judge Michael Heavey Admonished For Advocating Amanda Knox Is Innocent

Amanda Knox is a 23-year-old Seattle, Washington native whose prosecution for the November 2007 murder of her college roommate in Perugia, Italy is an international cause célèbre. She and her boyfriend Raffaele Sollecito were convicted of the murder in December 2009. Knox was sentenced to 26 years in prison and Sollecito was sentenced to 25 years in prison.

King County Superior Court Judge Michael J. Heavey's daughter went to school with Knox, and he became an outspoken advo-

cate for Knox's innocence. Among Judge Heavey's activities on behalf of Knox is he wrote three letters to officials in Italy that included a judge.

After an investigation, in April 2009 the Washington Commission on Judicial Conduct began proceedings based on alleged ethical wrongdoing by Judge Heavey for advocating Knox's innocence. After negotiations with Judge Heavey, on September 24, 2010, the Commission released its STIPULATION, AGREEMENT, AND ORDER OF ADMONISHMENT that found Heavey guilty of violating three Canons of judicial ethics -- Canons 1, 2(A), and 2(B). Those Canons relate to a judge lending the prestige of their office to advance the private interests of the judge or others, and that activity doesn't uphold the integri-

ty of the judiciary by failing to avoid impropriety and the appearance of impropriety, and by acting at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Judge Heavey's punishment was an admonishment, which is the least severe punishment the Commission can impose.

Amanda Knox's appeal of her conviction began on November 24, 2010.

Sources:

In re The Honorable Michael Heavey, NO. 5975-F-145, WA CJC, September 24, 2010 (Stipulation, Agreement, and Order of Admonishment)

"As appeal approaches, Knox circus won't slow down," *Seattle Post-Intelligencer*, September 28, 2010.

Troy Anthony Davis "Is Not Innocent" Rules Federal Judge

U.S. District Court Judge William T. Moore Jr. denied Troy Anthony Davis' habeas corpus petition on August 24, 2010. In his 172-page ruling Judge Moore ruled "Mr. Davis is not innocent" of murdering "City of Savannah Police Officer Mark Allen MacPhail on August 19, 1989." Davis' habeas corpus petition was based on his claim of being actually innocent of the crime, and Judge Moore's determined that Davis had failed to prove by "clear and convincing

evidence" that he was in fact innocent.

Davis has garnered international publicity in his effort to overturn his capital conviction and death sentence, based on the recantation of seven of the nine eyewitnesses who testified at his trial. Judge Moore ruled in regard to the new evidence:

Ultimately, while Mr. Davis's new evidence casts some additional, minimal doubt on his conviction, it is largely smoke and mirrors. The vast majority of the evidence at trial remains intact, and the new evidence is largely not credible or lacking in probative value. After careful consideration, the Court finds that Mr. Davis has failed to make a showing

of actual innocence that would entitle him to habeas relief in federal court. Accordingly, the Petition for a Writ of Habeas Corpus is DENIED. (170-171)

Davis may be able to bypass the 11th Circuit Court of Appeals by directly appealing Judge Moore's ruling to the U.S. Supreme Court.

Davis' sister Martina Correia has led the campaign to free her brother, and the official Troy Anthony Davis website is at, <http://www.troyanthonydavis.org>

Source:

In Re Troy Anthony Davis, No. CV409-130 (USDC SD GA, 8-24-2010).

Alan Newton Awarded \$18.6 Million For 12 Years Wrongful Imprisonment

By John Schuttly

Alan Newton was wrongfully incarcerated a total of 22 years for a rape he did not commit. He was released in 2006 after DNA testing of the victim's rape kit excluded him as her assailant.

Newton filed a federal civil rights lawsuit against the New York City, the NYPD, and several officers. False arrest and malicious prosecution claims were dismissed by the judge prior to trial, principally on the ground that the arresting police officers could reasonably rely on the two eyewitness identifications that allegedly led to Mr. Newton's arrest and conviction. The judge also ruled



Alan Newton

that Newton could only claim damages for the last 12 years of his incarceration. During those years New York City failed to produce a misplaced rape kit to him for DNA testing between 1994 and 2005. After a 3-½ week trial the jury awarded Newton a total of \$18 million in damages against New York City; the jury also awarded Newton \$500,000 against a senior police supervisor, Deputy Chief Jack Trabitiz; and \$92,000 against another supervisor, Sergeant Patrick McGuire, for "intentionally inflicting emotional distress" upon Newton.

About the author: John Schuttly was Alan Newton's civil attorney. His website is, www.johnschuttly.com

Five Camden, New Jersey Police Officers Charged In Fake Evidence Scandal

The FBI's two year investigation into the Camden, New Jersey Police Department has resulted in the United States' largest scandal involving the framing of innocent people since the discovery that 38 innocent people were convicted of drug charges in Tulia, Texas in the late 1990s and early 2000s, and the discovery that over 100 innocent people were convicted based on wrongdoing by the Los Angeles Police Dept's Rampart Unit in the late 1990s.

From May 2007 until 2009 a group of Camden police officers systematically robbed drug dealers of money and drugs, and then planted the drugs on people who they had no evidence were involved in drug activity.

In early 2010 three Camden police officers pled guilty to federal charges resulting from the FBI investigation. Those officers, Kevin Parry, 30, Jason Stetser, 32 and Dan Morris, 47, are awaiting sentencing and face up to 10 years in prison.

On October 13, 2010, two more Camden police officers were indicted on federal charges related to falsifying police reports and planting drugs on innocent people. The two officers are Antonio Figueroa 34, and Robert Bayard, 32.

The Camden County Prosecutor's Office

reports the FBI investigation has resulted in the dismissal of charges against at least 210 people. That includes at least 171 defendants whose indictments were dismissed either prior to or after their conviction. Because a judge has sealed the court records, the prosecutor's office has declined to provide specific information about the cases.

Dozens of defendant's have been released from prison, and numerous lawsuits have been filed against the Camden Police Department, the City of Camden and the officers involved.

At the news conference announcing the indictment of the two officers, U.S. Attorney Paul Fishman said the Camden police officers "intentionally and systematically abused their authority" and carried out a "lengthy and frightening pattern of crimes."

Sources:

Officers accused of planting evidence on drug suspects, *Courier Post* (Camden, NJ), October 15, 2010.

Camden drops charges against 185 people after police misconduct investigation, *The Associated Press*, March 19, 2010.

"A lie goes 'round the world while truth's still putting its boots on, sweetheart."

Dialogue in *A Cry in the Dark*, a movie about the 1982 wrongful conviction of Lindy Chamberlain for the murder of her infant daughter who was actually killed by a dingo.

Murder Conviction Overturned Because Of Prosecution's Reliance On Blind "Eyewitness"

Tony Williams was convicted in 1999 of the 1998 murder of his fiancée in Baltimore based on the testimony of two witnesses. His conviction was overturned in 2003 and a new trial ordered because the prosecution failed to disclose that one of their two key witnesses was a paid police informant who was expecting a sentence reduction for his testimony.

The other witness was a woman who testified that from her bedroom window she saw Williams leaving the apartment building where the shooting took place. It was disclosed for the first time by a detective during a hearing preceding Williams' 2007 retrial that the woman was legally blind when she identified Williams from a lineup and at his trial. The woman had died, but the prosecution sought to admit her videotaped testimony from his first trial. Williams' lawyers objected on the ground that because she was dead Williams was unable to use the new evidence to cross-examine her about her eyesight and the accuracy of her identification. However, the trial judge allowed her videotaped testimony, ruling that the defense could argue during opening and closing statements that her blindness prevented her from accurately identifying that Williams was the person she saw leaving the apartment building after the woman was shot.

The informant did not testify at Williams' second trial.

On November 3, 2010, Maryland's Court of Appeals overturned Williams' conviction and ordered a retrial. The Court ruled the prosecution had an obligation to disclose the woman's impaired eyesight to Williams' lawyers prior to his first trial, and therefore his lawyers did not have an opportunity to effectively cross-examine her about her impaired vision. Consequently, the judge abused his discretion in allowing her videotaped testimony at his second trial about anything she may have seen.

Although the Court didn't bar Williams' from a third trial, the prosecution now has no witness identifying him as being involved in the crime.

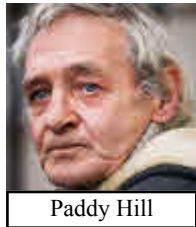
Source: *Tony Williams v Maryland*, No. 30 (MD Ct of Appeals 9-27-2010). Available at, www.mdcourts.gov/opinions/coa/2010/30a09.pdf

Paddy Hill Awarded Trauma Counseling For 17 Years Wrongful Imprisonment

Paddy (Patrick Joseph) Hill was one of six men exonerated and released in 1991 after 17 years of wrongful imprisonment for several IRA bombings of pubs in Birmingham, England in 1974 that killed 21 people and injured 162. The press dubbed the men the Birmingham Six.

The intense media coverage of the wrongful conviction cases of the Birmingham Six (1991), the Guildford Four (1989) (made into the movie *In the Name of My Father* starring Daniel Day-Lewis), and the Maguire Seven (1991) were the driving force behind creation of England's Criminal Case Review Commission in 1995. Since it began operating in 1997 England's CCRC has assisted in the exoneration of 302 people.

The Birmingham Six were financially compensated, but the British government refused to provide specialized psychological counseling required by an innocent person traumatized by many years of wrongful imprisonment. Dr. Adrian Grounds, the lead-



Paddy Hill

ing researcher on the psychological effects of wrongful imprisonment on an exonerated person, has described it as a form of post-traumatic stress disorder similar to that experienced by combat soldiers after they return home. In 2007 Dr. Grounds reported the Birmingham Six's mistreatment had been so severe that they had suffered "irreversible psychological damage."

Lawyer Gareth Peirce represented the Birmingham Six and the Guildford Four, and after many years of effort she was able to get the British government to agree to provide special trauma counseling to Paddy Hill. Peirce told reporters, "There simply is not any treatment available in the National Health Service for victims like Paddy, who have experienced such extreme torture and false imprisonment at the hands of their own government."

Sources:

Paddy Hill wins trauma counselling for Birmingham Six ordeal, *Guardian* (London), October 19, 2010.

British justice's shaky history, *New Statesman* (London), November 15, 2007.

Criminal Case Review Commission, www.ccr.gov.uk

21 Defendants Freed In Tulsa Police Corruption Scandal -- Convicted Police Officers Will Collect Pensions

A police corruption scandal in Tulsa, Oklahoma has resulted in the overturning of 21 state and federal convictions. The defendants were framed on drug and/or weapons charges by a variety of police tactics. The most recent overturned conviction was on October 27, 2010, when Demario T. Harris was freed from a life sentence for a federal drug conviction.

Six current and former law enforcement officers have been indicted on federal charges that include allegations the officers stole drug money, falsified reports, planted drugs, tampered with witnesses, and committed perjury and civil rights violations.

There has been testimony in federal court by Tulsa Deputy Police Chief Mark McCrory that at least one of the officers, John K. Gray, is also implicated in a multi-state burglary ring that may be linked to several homicides. Gray has pled guilty to stealing money during an FBI sting.

Sheila Devereux is serving a life sentence for a state drug conviction. She may have her conviction overturned because the officers involved were two of those indicted in the cases already overturned. Devereux turned down a plea deal of 7 years, claiming she was innocent, and she was sentenced to life in prison after her conviction by a jury.

One thing the indicted officers won't have to worry about if they are convicted and sent to prison, is receiving their pension payments. Under the rules of the Oklahoma Police Pension and Retirement System pension payments are not affected by a conviction for engaging in criminal activity while a police officer, unless the officer was convicted of stealing from the OK Retirement System.

A spokesman for the Oklahoma Police Pension and Retirement System said that if convicted and imprisoned the officer's pension benefits of about \$30,000 per year would be deposited directly into an account of the holder's choosing.

Sources:

Tulsa man's life sentence vacated, *Tulsa World*, October 28, 2010.

Norfolk Four Detective Convicted Of Extortion And Lying To The FBI

Robert Glenn Ford is the retired Norfolk, Virginia homicide detective who extracted the false confessions of four young navy men convicted of the rape and murder of Michelle Moore-Bosko in July 1997. Those four men became known as the Norfolk Four. During the post-conviction investigation of their case by supporters, it was discovered there were numerous allegations made against Det. Ford during his career that he had extracted a false confession from a suspect.

False confession expert Dr. Richard Leo co-wrote *The Wrong Guys* (The New Press, 2008) about the Norfolk Four case.

All of the Norfolk Four have been released. Eric Wilson was released after 8-1/2 years in prison in 2005 when he completed his sentence. On August 6, 2009, the other three defendants were released when they were conditionally pardoned by Virginia Governor Tim Kaine. Derek Tice, Danial Williams, and Joseph Dick, Jr. were wrong-



Robert Glenn Ford

ly imprisoned for more than 11 years.

On September 14, 2009, a federal judge granted Tice's federal habeas petition and overturned his conviction.

On October 27 Ford was convicted by a federal court jury in Norfolk of two extortion counts and one count of lying to the FBI.

During the trial numerous witnesses testified that Ford accepted bribes in exchange for favors. In 2003 he took a \$19,000 bribe to stop a drug raid. There was testimony that most of Ford's bribes were for between \$3,500 and \$4,500.

Ford retired in 2007, and he is free on bail pending his sentencing scheduled for February 25, 2011. He could be sentenced to between 5 and 10 years in prison.

Sources:

Witness: Norfolk detective took \$19,000 bribe, *The Virginian-Pilot*, October 21, 2010.

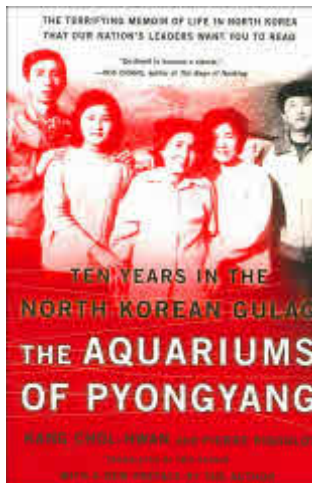
Former Norfolk detective guilty of 2 extortion charges, *The Virginian-Pilot*, October 27, 2010.

Aquariums of Pyongyang is Kang Chol-hwan's first person account of his life in North Korea and eventual escape to South Korea.

Aquariums of Pyongyang: Ten Years in the North Korean Gulag

By Kang Chol-hwan and Pierre Rigoulot
Translated from French by Yair Reiner
Basic Books, NY, 2005, softcover, 238 pgs

Review by Hans Sherrer



Chol-hwan was born in 1968 in Pyongyang, North Korea's capital and largest city. His grandfather was a high government official, and his family had a lavish standard of living by North Korean standards. However, his grandfather courted danger by being an outspoken critic of the government's inefficient bureaucracy. Chol-hwan was nine in July 1977 when his grandfather disappeared, a typical fate of government critics.

In North Korea an arrested person's family is considered culpable for that member's real or imagined offense, so a few weeks after his grandfather disappeared the Security Force (North Korea's equivalent of the FBI) arrested Chol-hwan, his sister, father, grandmother and uncle. Political prisoners such as Chol-hwan's family are confined in North Korea's Gulag, which is comprised of a nationwide network of forced labor camps. (North Korea is about the size of Pennsylvania.) There is no intermixing between convicted criminals that are confined in regular prisons, and political prisoners in the Gulag. Chol-hwan's family was immediately transported to the labor camp at Yodok.

Yodok is a very large valley enclosed on three sides by mountains that was turned into a vast labor camp by the erection of a barbed wire fence across its open end. The valley is also divided by barbed-wire fences into several camps that have no contact with one another. Many thousands of political prisoners are interned at Yodok.

Chol-hwan's family was sent to Yodok's camp for "redeemables." Which meant that while they hadn't been accused, tried, convicted or sentenced for committing any crime, they would only be released if the authorities thought they had successfully been re-educated into having unwavering loyalty to North Korea's government. That also meant loyalty to Kim Il-sung and his son, Kim Jong-il, who were not just North Korea's leaders – but worshiped as gods.

There was also a camp at Yodok for "irredeemables" and their unfortunate family members. "Irredeemables" would never be released because their transgression – such as spying for South Korea or the United States – was considered too severe to be correctable. There were camps for "irredeemables" in oth-

er places – such as those set-up to build top secret military facilities – in which the prisoners were deliberately worked so hard and so ill-treated that none would survive to tell anyone outside the camp what they knew of the facility.

Chol-hwan candidly acknowledges the conditions at his family's camp were better than what was experienced by the "irredeemables." However, his description of the horrid living and working conditions at his camp and the punishments meted out for the slightest transgression makes you wonder how that is possible. The prisoners work seven days a week with two days off per year. The day begins at 5 a.m. and work generally ends at dark. A major industry is the brutally hard work of harvesting timber almost entirely by manual labor. The workers are slave laborers only provided with room and board, and the rudimentaries of life. The staple food is corn, but the food rations aren't nutritious enough to stave off starvation or vitamin deficiency diseases. So survival depends on learning to acquire a taste for insects such as grasshoppers, roaches and ants. Rats are the only source of meat. Chol-hwan writes about how he thought of rats as vile disgusting creatures when he arrived at Yodok, but he learned to consider them as friendly animals vital to keeping him and his family alive.

In North Korea an arrested person's family is considered culpable for that member's real or imagined offense. ... No contact is allowed between a person in the labor camps and the outside world. No mail or visits are allowed.

People who can't adapt to the back-breaking work schedule and a meager unconventional diet die quickly. Chol-hwan writes that if a person learns the skills to survive the first year, they have a good chance of living for years. Unless of course the person becomes gravely ill or suffers a serious injury. In that case the medical care consisted of being given one or more days off from work and treatment by a prisoner with no

medical supplies to speak of. A prisoner who needs a life-saving operation or medicine simply dies from lack of care.

Absolute obedience is expected and discipline is swift and severe. Anyone captured after trying to escape is immediately and publicly executed. Being caught stealing food from the camp's stock can also result in summary execution. A minor rule violation is rewarded with a severe beating. While a serious transgression earns a three month stay in the

"sweat box," which is Yodok's form of solitary confinement. One offense that is guaranteed to result in a "sweat box" visit for a man is being caught engaging in sexual relations – even with one's wife – since it is prohibited. The "sweat box" is an uninsulated wooden box located outdoors that is only large enough inside for a person to squat. A person can't stand, lie down or even sit during their three months in the "sweat box." The person is not allowed out for any reason. Many people don't survive the "sweat box," and those that do often have their health broken and are physically crippled.

No contact is allowed between a person in the labor camps and the outside world. No mail or visits are allowed. So people at Yodok literally live in a limbo land, and relatives and friends on the outside don't know if they are alive or dead.

Once a year a dozen or so "redeemable" families are released. After ten years Chol-hwan's family was deemed rehabilitated. On the same day they were told they were being released, they were transported to live in a rural community. Chol-hwan was 19. Six years later he and a friend escaped across the border into China. As a control mechanism North Korean authorities typically punish the family members of an escapee, so Chol-hwan knew his family would likely suffer in the wake of him fleeing the country. After months dodging Chinese authorities that would have forcibly deported the two young men to North Korea, they made their way to South Korea.

The book's title comes from the fish aquariums that Chol-hwan had at the time of his arrest in Pyongyang. They symbolize the civility of his life in the city contrasted with the brutishness of life at Yodok. Co-author Pierre Rigoulot describes North Korea as the last Stalinist regime, and writes that upwards of

Aquariums cont. on page 11

Police Torture Victims Awarded \$493,000

On July 21, 2010, twenty-one people tortured by the police were awarded a total of \$493,000 (Kshs. 39.2 million) by Kenya's High Court.

The 21 plaintiffs were tortured between 1982 and 1997 in what is now known as the Nyayo House Torture Chamber in Kenya's capital of Nairobi. After their arrest for a variety of offenses, each of the twenty-one received the same treatment. They were stripped naked and held incommunicado in a small completely dark waterlogged basement cell. When interrogated to obtain information or extract a confession, they were blasted with pressurized cold water, subjected to extreme heat and cold air, and denied sleep and nutrients during long interrogation sessions.

Some of the plaintiffs confessed and were sentenced to a prison term after pleading guilty. While those who didn't confess continued to be held in the dungeon and interrogated – some for more than two years.

The twenty-one plaintiffs filed separate lawsuits against Kenya's Attorney General seeking compensation for breach of their fundamental rights and freedoms under various sections of the Constitution of Kenya.

Because they made similar claims all the lawsuits were combined.

The Attorney General's four primary defenses were: the fundamental rights of Kenyans are not absolute so the plaintiff's treatment was not illegal; the lawsuits were filed after expiration of the one-year statute of limitations; the lawsuits did not disclose the complete facts of their claims; and their claims of mistreatment should be handled by Kenya's Truth, Justice and Reconciliation Commission. The High Court ruled in regard to those defenses:

- Kenya is a signatory to the "UN Convention against Torture, and other Cruel, Inhuman and Degrading Treatment or Punishment" that was ratified by Kenya, and its definition of torture is applicable to the Kenyan Constitution's protection of fundamental rights and freedoms. Nyayo House was a government institution and the acts of physical and mental torture alleged by the plaintiffs were committed by government employees.
- "There was no limitation period for seeking redress for violation of the fundamental rights and freedoms of the individual under the Constitution of Kenya."
- The plaintiffs had given sufficient particulars of their arrest and confinement to enable the A.G. to know the nature of the plaintiff's claims.

- The plaintiffs were "seeking declaratory relief and monetary redress for violation of their fundamental rights and freedoms under the Constitution," not to simply have the truth of what was done to them exposed publicly.

The High Court ruled it had the Constitutional authority to award damages for violation of a plaintiff's fundamental rights and freedoms by the A.G.'s deliberate endangerment of their health and infliction of mental pain that amounted to torture. The High Court also opined that in addition to actual damages it could award punitive damages based on the rights violated and the period of time the violations occurred.

In conclusion the High Court determined the twenty-one plaintiffs had each established substantial violations of their fundamental rights and freedoms under the Kenyan Constitution. The High Court awarded damages to the plaintiffs that varied from \$12,579 (Kshs. 1 million) to \$37,736 (Kshs. 3 million).

Note: Kshs. Are Kenyan shillings.

Sources:

Harun Thungu Wakaba and 20 others v The Attorney General [2010] eKLR
"Torture Victims awarded close to Kshs. 40 million in damages," Kenya Law Reports weekly e-newsletter, July 30, 2010.

Aquariums cont. from page 10

200,000 political prisoners are incarcerated at any given time in its forced labor camps – which is about 1% of the country's population.

Aquariums of Pyongyang is the first published true-life account about the inner workings of the North Korean Gulag. It makes it evident that there is a rule of law in North Korea, but it is the rule that a person is subject to summary arrest and indeterminate confinement as a slave laborer with no option for challenging their imprisonment. Chol-hwan describes a Kafkaesque world in which innocence is irrelevant and no one knows whether he or she will ever be allowed to emerge from being buried alive in hell on earth.

Aquariums of Pyongyang is available from *Justice:Denied's* BookShop for \$15.95. (check, money order or stamps) Use the order form on page 15, or order with a credit card from Justice Denied's website at, <http://justicedenied.org/books.html>

Gladys and Jamie Scott Getting National Publicity In Bid For Mississippi Pardons

For years Nancy Lockhart was a lone voice in the wilderness advocating on behalf of the innocence of Gladys and Jamie Scott. In 1994 the sisters were convicted of robbing two men in Scott County, Mississippi of \$11. The men were not injured. Three boys confessed to the robbery and agreed to plea deals giving them jail sentences of less than a year in exchange for testifying against the sisters, who insisted at their trial they were not involved in the robbery. Both sisters were convicted and sentenced to life in prison.

One of the boys has signed an affidavit the sisters didn't have anything to do with the robbery and he only testified they were so

he would get a short jail sentence. There are also two other affidavits clearing the sisters of the crime.

The Scott sisters filed a pardon petition, and the outrageousness of their case has attracted national attention, even being featured on MSNBC. Even without their credible claim of innocence, life in prison for a non-violent \$11 robbery is draconian.

More than three hundred people rallied in support of the Scott Sisters at the capital in Jackson, Mississippi on September 15, 2010. The *Jackson Clarion-Ledger* published a major article with pictures.

For current information about the Scott Sisters and who you can contact to help them in their effort to be pardoned. See their website maintained by their mother, <http://www.freethescottisters.blogspot.com>



Jamie & Gladys Scott

In February 1998 the nephew of Zhao Zhenhang reported his uncle was missing to the police in Zhaolou, a village in China's Henan province. He reported his uncle had not been seen for more than four months. He also told the police he suspected a man named Zhao Zuohai killed his uncle. The police detained Zuohai while they investigated, but they did not find any evidence Zhenhang was murdered or that he was even dead. Zuohai told the police that he and Zhenhang had gotten into a fight in October 1997 and after Zhenhang hit him hard on the head he disappeared. The police released Zuohai for lack of evidence after detaining him for more than 20 days.

The next year, in May 1999, a corpse was found while a well was being dug in Zhaolou. It couldn't be identified because the head was missing and the body was badly decomposed. Zhenhang's relatives told the police they believed it was his corpse. On May 9 detectives held a village meeting during which the corpse was tentatively identified as Zhenhang. Zuohai was immediately detained as his suspected murderer. The police vice-director – Ding Zhongqiu –

Zhao Zuohai Released After 11 Years Imprisonment When Murder Victim Turns Up Alive

By Hong Liu

instructed that Zuohai would be interrogated continuously by investigators divided into three groups.

For more than a month, from May 8 to June 10, Zuohai was tied either to a chair leg, the leg of a bed, or a motorcycle. During interrogations a gun was held to his head and he was beaten with a stick or the handgun. He was not allowed to rest for long periods of time and poorly fed. Zuohai confessed nine times, but after his interrogations ended he recanted them, claiming he had been tortured to make them.

Zuohai's wife was also arrested and detained for more than a month. She was beaten until she confessed that plastic bags found around the headless body came from their house. After her release she recanted, saying she had been forced to make her confession.

In spite of Zuohai and his wife's confessions, prosecutors twice did not approve the police's application to prosecute him, because there was no reasonable proof the corpse was Zhenhang. Although the prosecutors refused to consider the case again, the police insisted Zuohai was guilty and detained him indefinitely without charges.

After Zuohai had been in custody for almost 3-1/2 years, in August 2002 there was a national campaign to review cases involving a suspect's extended detention. The police submitted Zuohai's case to the local political-legal committee. The committee approved Zuohai's prosecution based on his nine confessions and his wife's confessions. Within 45 days Zuohai was tried for capital



Zhao Zuohai

murder. Zuohai's defense was there was no positive evidence the corpse was Zhenhang's body or that he was dead, and his nine confessions and his wife's confessions were false and coerced. Zuohai was convicted in October 2002 of Zhenhang's murder and sentenced to death. His sentence was later commuted to 29 years in prison at forced labor.

On April 30, 2010, Zhenhang dramatically appeared 12-1/2 years after his nephew last saw him. Zhenhang told the police that the day he left he had fought with Zuohai over a woman and hit him on the head with a kitchen knife. He thought Zuohai might die from the blow so he ran away to avoid being charged with murder. He only returned because he was seriously ill and needed to file his claim for government welfare payments in his home village of Zhaolou.

Less than a week after Zhenhang's return the High Court of Henan province began reviewing Zuohai's case. On May 8 the High Court ruled Zuohai was innocent of murder and ordered his immediate release. Five days later Zuohai was awarded "state compensation" of US\$96,000 (650,000 yuan) for his 7-1/2 years of imprisonment after his conviction. He was not compensated for his 3-1/2 years of pre-trial detention.

In July 2010 five police investigators were criminally charged with torturing Zuohai to force his false confessions. The head of Zuohai's investigation – former police vice-director Ding Zhongqiu – was charged with dereliction of duty.

About the author: Hong Liu is a lecturer of law at the East-China University of Political Science and Law in Shanghai, China.

China Raises Wrongful Conviction Compensation To \$18.50 Per Day

China increased its compensation to a wrongly convicted person to \$18.50 per day (125.43 yuan), from the current rate of about \$2 per day (13.44 yuan) of imprisonment. The new compensation rate that equals \$6,750 per year of wrongful imprisonment, took effect on December 1, 2010.

Source: China Raises Compensation Level for Wrongful Imprisonment, CriEnglish.com, July 16, 2010.

Kirstin Blaise Lobato Files 770-page Habeas Corpus Petition

Kirstin Blaise Lobato's story of twice being convicted in the murder of a homeless man in Las Vegas on July 8, 2001, when the then 18-year-old was 170 miles from the crime scene, was recounted in *Justice Denied* Issues 26 (Fall 2004) and 34 (Fall 2006). After her convictions became final Lobato filed a *pro se* 770-page Nevada state petition for a writ of *habeas*



Kirstin Blaise Lobato while awaiting her 2006 retrial

corpus to be granted a new trial. The petition includes 79 grounds, including 21 new evidence grounds, 2 grounds the prosecution concealed exculpatory evidence, 1 ground each of prosecutor, police and jury misconduct, 52 grounds of ineffective assistance of counsel, and one ground of her actual innocence.

The new evidence includes reports by: Four forensic entomologists; a forensic pathologist; two impressions experts; a foren-

sic scientist; a dental expert; a polygraph expert; and a psychology expert.

In November 2006 Travis Barrick, the losing candidate for Nevada Attorney General in the 2010 election agree to represent Lobato *pro bono* in her state *habeas* petition.

The revised and updated version of *Kirstin Blaise Lobato's Unreasonable Conviction* by Hans Sherrer was published in November 2010. See page 15 for order information.

Extensive information about Lobato's case is at, www.justicedenied.org/kbl.htm

Is “Conviction” Factual, Or A Fictionalized Movie Of Kenneth Waters’ Case?

The movie “Conviction” is about the case of Kenneth Waters, who was released from prison in 2001 after 18 years of wrongful imprisonment for robbery and murder. The movie began showing in theaters in October 2010, and it focuses on the role his sister Betty Anne Waters played in her brother’s exoneration and release. The movie received some good reviews, and there is buzz that Hilary Swank may get another Best Actress Oscar nomination for her role as Betty Anne Waters. The movie is being promoted as factually true.

However, a *Providence Journal* interview of Kenneth Waters’ sister Carolyn Waters and two of her grown children suggests that Betty Anne Waters may be falsely taking credit for work done on Kenneth’s case that was actually done by Carolyn Waters.

The article about the interview states:

“... it was Carolyn Waters? who did the many years of legwork to help her brother.

Beginning in the early 1980s, Carolyn Waters communicated with lawyers and others, took information to national television programs, such as “Geraldo,” and



found out in 1992 about DNA evidence kept in Ayers, Massachusetts, where the murder occurred in 1980.

It was Carolyn, who regularly visited the numerous Massachusetts

prisons where Kenneth Waters spent his 18 years, with other family members going only if Carolyn was driving.”

The interview also suggests that the old adage of ‘follow the money’ may help explain how the role Carolyn Waters played in helping her brother has been written out of the “official” history of Kenneth Waters case. Kenneth died in September 2001 about six months after his release, from injuries suffered in a fall.

In July 2009, the Town of Ayer, Massachusetts and five of its insurers settled a federal civil rights lawsuit filed on behalf of Kenneth Waters, for \$3.4 million. In September 2009 a federal judge ruled that the Ayer’s sixth insurer was liable for an additional \$7.3 million. So the total awarded to Kenneth Waters’ estate is \$10.7 million. That doesn’t even include the money paid to Kenneth Water’s estate or directly to Betty Anne Waters for the movie.

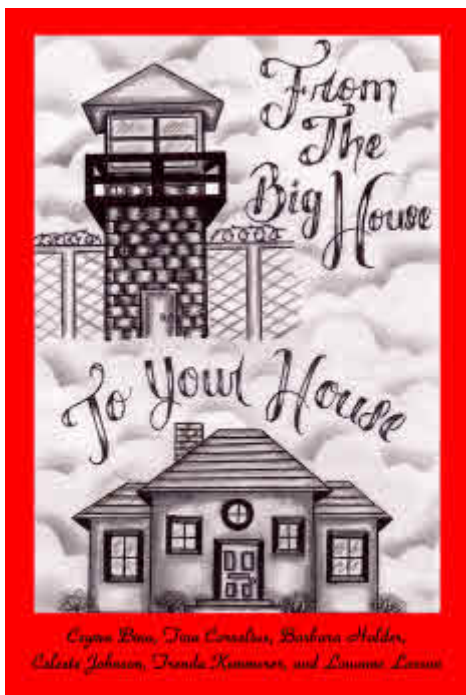
The *Providence Journal* article also states: “Carolyn Waters said Betty Anne Waters had indicated she and [Barry] Scheck would represent all of the family when the suit was filed. But things changed, and it is her sister who has profited, Carolyn Waters said. In the months since the settlement, she and her children contend, her sister shared settlement money with the other family members. Carolyn Waters said her sister had offered her \$30,000 from the settlement, but she turned it down, given all the time she had devoted to her brother’s case. She said she has not received any money and does not want any.”

So Betty Anne Waters is not only getting the public credit for her brother’s exoneration ... she is apparently also getting the money or at least control of how it is spent.

‘Conviction’ is worthwhile to see for its entertainment value, but as a Hollywood movie it is too much to expect for it not to shade or ignore truths that are inconvenient to its story line, and that could reduce its box office value.

Source: Sister disputes Betty Anne Waters’ role in freeing brother, *The Providence Journal*, October 10, 2010.

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Cooking in prison

With

Ceyma Bina, Tina Cornelius, Barbara Holder, Celeste Johnson, Trena Kemmerer, and Louanne Larson

From The Big House To Your House has two hundred easy to prepare recipes for meals, snacks and desserts. Written by six women imprisoned in Texas, the recipes can be made from basic items a prisoner can purchase from their commissary, or people on the outside can purchase from a convenience or grocery store.

From The Big House To Your House is the result of the cooking experiences of six women while confined at the Mountain View Unit, a woman’s prison in Gatesville, Texas. They met and bonded in the G-3 dorm housing only prisoners with a sen-

tence in excess of 50 years. While there isn’t much freedom to be found when incarcerated, using the commissary to cook what YOU want offers a wonderful avenue for creativity and enjoyment! They hope these recipes will ignite your taste buds as well as spark your imagination to explore unlimited creations of your own! They encourage you to make substitutions to your individual tastes and/or availability of ingredients. They are confident you will enjoy the liberty found in creating a home-felt comfort whether you are in the Big House, or Your House!

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International Compensation 2009

In 2009 at least \$4,892,205 was awarded to wrongly convicted people in countries other than the United States. The

- follow are there name, country, offense, years imprisoned and amount awarded:
- Erin Walsh, Canada, murder, 10 yrs, Amount not publicly disclosed.
- Moses Kutumela, South Africa, robbery, 4 yrs, \$5,850.
- Andrew Mallard, Australia, murder, 12 yrs, \$2,540,314. (All amounts adjusted to US dollars on the day of the award.)
- Ellis Sherwood, England, Murder and Robbery, 11 yrs, \$2,346,041.

Compensation Awarded In The United States To The Wrongly Convicted In 2009

Name	Compensation	Paid By	State	Convicted	Released	Exonerated	Years	Avg. Yearly	Awarded	Exonerated By	Crime	Sentence
Ulysses R. Charles	\$ 500,000	State of Massachusetts	MA	1984	2001	2001	19	\$ 26,316	2009	DNA	Robbery & Rape	72-80 yrs
Ulysses R. Charles	\$ 3,250,000	City of Boston	MA	1984	2001	2001	19	\$ 171,053	2009	DNA	Robbery & Rape	72-80 yrs
Thomas Doswell	\$ 3,780,000	City of Pittsburgh	PA	1987	2005	2005	19	\$ 198,947	2009	DNA	Rape	13-26 yrs
Shawn Dunningold	\$ 14,000,000	City of Boston	MA	1989	2003	2003	15	\$ 933,333	2009	Brazdy violation	Murder	Life in prison
Kenneth Foley	\$ 50,000	Santa Clara County	CA	1996	2007	2007	11.5	\$ 4,348	2009	Actual culprit found	Burglary	25 yrs to life
Antoine Goff	\$ 2,900,000	City of San Francisco	CA	1990	2003	2003	14	\$ 207,143	2009	Brazdy violation	Murder	27 yrs to life
Louis Greco	\$ 28,000,000	U.S. Government	MA	1968	1995-DP	2004	28	\$ 1,000,000	2009	Frame-up exposed	Murder	Death - then LI
Olmedo Hidalgo	\$ 2,000,000	City of New York	NY	1992	2005	2005	14	\$ 142,857	2009	New evidence	Murder	25 yrs to life
Olmedo Hidalgo	\$ 625,000	State of New York	NY	1992	2005	2005	14	\$ 44,643	2009	New evidence	Murder	25 yrs to life
Madison Hobbly	\$ 6,500,000	City of Chicago	IL	1990	2003	2003	13	\$ 500,000	2009	Brazdy violation	Murder	Death
Juan Johnson	\$ 21,015,000	City of Chicago	IL	1991	2002	2004	11.25	\$ 1,868,000	2009	Retrial acquittal	Murder	Life in prison
Juan Johnson	\$ 15,000	Reynaldo Guevara	IL	1991	2002	2004	11.25	\$ 1,333	2009	Retrial acquittal	Murder	Life in prison
Shirley Kinge	\$ 250,000	State of New York	NY	1990	1992	1992	2	\$ 125,000	2009	Police misconduct	Burglary and arson	18 to 47 yrs
Peter Limone	\$ 26,000,000	U.S. Government	MA	1968	2001	2001	33	\$ 787,879	2009	Frame-up exposed	Murder	Death - then LI
Dennis Maher	\$ 3,100,000	City of Ayer	MA	1983	2003	2003	19.5	\$ 158,974	2009	DNA	Rape	Life in prison
Javier F. Ovando	\$ 750,000	Los Angeles County	CA	1997	1999	1999	2.5	\$ 300,000	2009	Police misconduct	Attempted murder	23 yrs
George Rodriguez	\$ 5,000,000	City of Houston	TX	1987	2004	2005	18	\$ 237,778	2009	DNA	Rape	60 yrs
Jeffrey Rodriguez	\$ 1,000,000	Santa Clara County	CA	2002	2007	2007	5	\$ 200,000	2009	Witness recantation	Robbery	25 yrs to life
Joseph Salvati	\$ 29,000,000	U.S. Government	MA	1968	1997	2001	30	\$ 966,667	2009	Frame-up exposed	Murder	Life
John Stoll	\$ 5,500,000	Kern County	CA	1985	2004	2004	20	\$ 275,000	2009	Witness recantation	Child Rape	40 yrs
Enrico Tameleo	\$ 13,000,000	U.S. Government	MA	1968	1985-DP	2002	17	\$ 764,706	2009	Frame-up exposed	Murder	Death - then LI
John J. Tannison	\$ 4,600,000	City of San Francisco	CA	1990	2003	2003	14	\$ 328,571	2009	Brazdy violation	Murder	25 yrs to LI
Paul Terry	\$ 2,700,000	City of Chicago	IL	1976	2003	2003	27	\$ 100,000	2009	DNA	Rape & Murder	Life in prison
Teddy P. Thompson	\$ 257,000	State of Virginia	VA	2000	2007	2007	7	\$ 36,714	2009	Witness recantation	Robbery	17 yrs
Kenneth Waters	\$ 3,400,000	City of Ayer	MA	1983	2001	2001	18	\$ 188,889	2009	DNA	Murder and robbery	Life in prison
Kenneth Waters 2	\$ 7,300,000	City of Ayer	MA	1983	2001	2001	18	\$ 405,556	2009	DNA	Murder and robbery	Life in prison
John Jerome White	\$ 500,000	State of Georgia	GA	1980	2007	2007	20	\$ 25,000	2009	DNA	Rape	Life in prison
Arthur Whitfield	\$ 632,867	State of Virginia	VA	1982	2004	2004	22	\$ 28,767	2009	DNA	Rape	63 yrs
Totals (U.S.)	\$185,624,867						336.1	\$552,735				

1 This total doesn't double count the years for the four people who have awards from two different sources, so this total is the actual years the 24 people were imprisoned.

2 Waters' settled his lawsuit with five of Ayer's six insurers for \$3.4 million. In September 2009 a federal judge awarded Waters a total of \$10.7 million for his lawsuit, so Ayer's sixth insurer is liable for the \$7.3 million balance.

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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

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The Criminal Law Handbook (11th ed.) (Sept. 2009) by Attorneys Paul Bergman & Sara J. Bergman-Barrett - \$39.99 - 680 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, 2009). #10

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

No Crueler Tyrannies: Accusation, False Witness, and Other Terrors of Our Times by Dorothy Rubinsowitz - \$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 Amtravault case in Malden, Massachusetts, where bizarre false allegations were taken seriously. #52

The Innocent Man by John Grisham - \$7.99 - 448 pgs. Best selling author John Grisham spent two years researching and writing this account of Ron Williamson's life, and how he was convicted of rape and murder and sentenced to death in Oklahoma in spite of being innocent. #95

In Spite of Innocence: Erroneous Convictions in Capital Cases by Michael Radelet, Hugo Adam Bedau and Constance Putnam - \$24.95 - 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

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Wrongly Convicted: Perspectives on Failed Justice Ed by Sandra Westervelt and John Humphrey - \$25.95 - 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

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Dehumanization Is Not An Option by Hans Sherrer - \$10 - 106 pgs. Explains that the mistreatment of prisoners is not due to the rogue actions of a few "bad apples." It is a predictable response of placing people in a position of authority over others that they see as undeserving of humane treatment. This attitude of treating people barbarically is unleashed in those working in an authoritarian prison environment. #106

The I Chong: Meditations from the Joint by Tommy Chong - \$14.95 - 224 pgs. First person account of how a criminal drug case was contrived against Tommy Chong (of the comedy duo of Cheech & Chong) that resulted in him spending nine months in federal prison in 2003-2004. A straightforward account 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 - \$51 - 304 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 - \$16.99 - 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

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\$190 Million Awarded To Exonerated People In 2009

In 2009 28 people in the United States and other countries were awarded a total of \$190 million in compensation for a wrongful conviction.

See the chart and article on page 14.

The Journal 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.

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