

JUSTICE DENIED

The Magazine for the
Wrongly Convicted



Toshikazu Sugaya

Awarded \$965,600 for 17 years wrongful imprisonment for murder in Japan.

See page 6

Kevin T. Glasheen

Sued by Texas Bar for alleged misconduct in representing two exonerated men seeking compensation.

See page 10



Robert Glenn Ford

Norfolk Four detective sentenced to 12-1/2 years in federal prison for extortion and lying to the FBI in Virginia.

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Louis Mickens-Thomas



Released after 45 years imprisonment in Pennsylvania for a murder there is no evidence he committed.

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Joshua Kezer

Settled lawsuit for \$4 million for 16 years wrongful imprisonment in Missouri for murder.

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Message From The Publisher

Nancy Smith and Joseph Allen were convicted in 1994 of charges related to the alleged sexual assault of children in a Head Start program in Lorain, Ohio. Judge James Burge vacated their convictions in February 2009 and they were released on bail. In June 2009 Judge Burge acquitted Smith and Allen. On January 27, 2011 the Ohio Supreme Court vacated their acquittals and ordered reinstatement of their convictions. See pages. 12 and 13.

The majority of exonerated people in the U.S. are not compensated for their years of wrongful imprisonment. The Texas Bar is suing Kevin T. Glasheen for alleged misconduct in representing two exonerated men who retained him to pursue compensation. See p. 10.

It is known from hundreds of actual cases that false confessions occur because of the interrogation techniques used by law enforcement officers throughout the U.S. Richard Lapointe's inaccurate "confession" to his grandmother-in-laws murder in Connecticut that he didn't have enough time to have commit, has the earmarks of being a false confession. See p. 3.

Serious problems in the operation of the DNA unit of North Carolina's State Bureau of Investigation crime lab were exposed in an audit reported in August 2010. Yet it is business as usual in the lab. See p. 15.

Robert Glenn Ford was the lead detective in the Norfolk Four case of four Navy men wrongly convicted of the 1998 rape and murder of an 18-year-old woman in Norfolk, Virginia. Ford was convicted in federal court in October 2010 of extortion and lying to the FBI regarding cases unrelated to the Norfolk Four case. On February 25, 2011 Ford was sentenced to 12-1/2 years in federal prison. See p. 9.

Hans Sherrer, Editor and Publisher
www.justicedenied.org — email: hsherrer@justicedenied.org

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Introduction

A strong body of evidence suggests that coerced false confessions by criminal suspects lead to “miscarriages of justice,” or the wrongful arrests, convictions, and incarcerations of non-guilty parties. It has been studied and demonstrated, for instance, that lay jurists overwhelmingly favor confessions as a criteria for conviction over other, ostensibly less “reliable,” measures of guilt. Both administrators of criminal justice and lay jurors routinely “treat confession evidence as dispositive,” to a point where “they often allow [confession evidence] to outweigh even strong evidence of a suspect’s factual innocence.” In what amounts to a paradox of sorts, we as a society are simultaneously suspicious of police tactics which elicit or coerce such false confessions, and yet we are overly-hasty in our acceptance of the end result of such tactics (the confessions themselves) once they appear before us (as jurors) in American courtrooms.

Taking into account the considerable body of evidence and criticism surrounding police tactics and false confessions, it is difficult to believe that judges and criminal prosecutors — both state actors bound by an oath to uphold justice — are not aware of the danger of injustice inherent in criminal cases where the accused individual’s very liberty and livelihood rest on minimal, even nonexistent, substantive evidence supplemented only by a confession. Moreover, any such skepticism should be triggered where the case against an accused party is *built solely* upon such a confession, and where clear variables exist which are suggestive of either (a) police coercion, or (b) a defendant’s susceptibility to manipulation or coercion-through-duress in the confession process. Where both of these variables are present, and other evidence of guilt is best characterized as “scant,” particular attention to the potential for injustice should be allocated. Both of these variables are present in Richard Lapointe’s case.

Richard Lapointe’s prosecution for Denise Martin’s murder

On July 4, 1989, 46-year-old Richard Lapointe, a Rockville, Connecticut resident, was helping his wife prepare an evening picnic in celebration of the holiday. His preparations were interrupted around 3:30 PM when he received a call from the Man-

The Case of Richard Lapointe — A Lesson in Wayward Justice

By Matthew Salla

Chester Police Department asking if he would come to police headquarters and assuring him that he would not miss the celebration. Leaving the site of the picnic, Mr. Lapointe arrived at police headquarters sometime later, where he was immediately read his *Miranda* rights, whisked to an interrogation room, and presented with a series of graphic charts portraying fabricated forensic data purporting to link him to a gruesome act of murder-rape-arson. The victim of these acts was Lapointe’s own 88-year-old grandmother-in-law, Bernice Martin, whom two years earlier had been strangled with an elaborately-tied ligature, stabbed nine-times in the back and one time in the stomach, raped with a “blunt object,” and whose home was lit ablaze from three separate points of origin and burned to the ground by the perpetrator.

Eyewitnesses reported to the police seeing a “large man...running away from the scene of the crime.” Richard Lapointe is 5 feet 4 inches tall and has been described by personal acquaintances as a man who by necessity “only walks and never runs.”

Contrary to the content of the forensic charts shown to Mr. Lapointe during his interrogation, no physical evidence linking him to the murder of Bernice Martin existed at the time of the interrogation, nor has any been uncovered since.

The detective in charge would later rationalize the use of these falsified forensic charts by referring to them euphemistically as “devices for reducing the suspect’s inhibition for telling the truth.” The detective’s duplicity was at least fruitful. During the course of what evolved into a continuous nine and one-half hour interrogation, the contents of which were not recorded, Mr. Lapointe signed not one but *three* contradictory confessions, each containing different factual accounts of the murder. Because Richard Lapointe could not read or write, each confession was prepared for him by his interrogators, ready-to-sign. The first confession, written in large block letters by an interrogator, read “ON MARCH 8, 1987, I WAS RESPONSIBLE FOR BERNICE MARTIN’S DEATH AND IT WAS AN ACCIDENT. MY MIND WENT BLANK.” The final aspect of this first confession—that Mr. Lapointe’s “mind went blank”—was not accidentally included by his interrogators: Richard Lapointe truly had no recollection of having committed this murder, or even of

having been in the vicinity of Bernice Martin’s home at the time of the attack.

Richard Lapointe trusted and idolized police officers. In his capacity as dishwasher at a local diner, he frequently encountered and interacted with local law enforcement officials. He simply could not believe that an officer would lie to him as he was being lied to by the Manchester PD. Nowhere is this fact better illustrated than in Lapointe’s own words, made as he signed his third and final confession (a confession which was factually dissimilar to the prior two), he exclaimed: “if the evidence shows that I was there, and that I killed her, then I killed her...but I don’t remember being there.”

Contrary to Lapointe’s “confessions” the evidence available to the Manchester Police at the time of Lapointe’s arrest indicates he was not “there,” and that it would have been “virtually impossible for Lapointe to have committed the crime in the time available to him.” Lapointe’s alibi, provided by his wife *prior* to there being any indication that her husband was even suspected of having committed these murders, accounted for his whereabouts — far from the home of Bernice Martin — for all-but thirty to forty-five minutes of the day in question.

As one person who reviewed the evidence deftly points out, the timeline available to the Manchester Police would have required that Lapointe, in this brief period of thirty to forty-five minutes: (1) walked the ten minutes to Bernice Martin’s apartment, (2) had coffee with her (evidence suggests the killer sat down for coffee prior to the crime), (3) raped her with a blunt object and *then* masturbated on her bedspread, (4) bound her arms in an elaborate knot, (5) stabbed her ten times, (6) strangled her with an elaborately tied knot, (7) carried her 160-pound body to another location in the apartment, (8) set her apartment on fire from three separate points of origin, and (9) walked the ten minutes *back* to his apartment. All of this while being accompanied by his dog that he was taking for a walk at the time. By some accounts, the window proposed for Mr. Lapointe to have committed the crime was a mere *twenty minutes*—barely sufficient to account even for the walk to Bernice Martin’s apartment and back. Without knowing a thing about Richard Lapointe, anyone can see that this fact pattern makes his commission of the crimes a factual impossibility.

However, we *do* know many things about Richard Lapointe. We know that he had no criminal background whatsoever. We know

Lapointe cont. on p. 4

Lapointe cont. from p. 3

that he has been described by acquaintances as being “good natured” and that he had displayed no propensity for violence during the course of his life prior to the accusations. We know that there was no evident motive for him to have committed such uncharacteristically heinous and savage acts. We know that due to physical limitations resulting from his disability, he was “incapable of lifting more than fifty pounds,” saying nothing for the fact that the police’s scenario has him moving Bernice Martin’s 160-pound body across her mid-sized apartment. We know that due to these same physical limitations, he is a man who does not run—he is 5’-4” tall and a slow-moving man by many accounts, an attribute which fits *neither* the time frame proposed by the police *nor* the eyewitness accounts which place a “large man...*running* away from the scene of the crime.”

Furthermore, we know that Richard Lapointe’s physical limitations make it less likely that he committed the elaborate and “athletically” violent acts inflicted upon Ms. Martin. We also know that Mr. Lapointe’s disability makes it more likely that he would confess to crimes he did not commit while under coercion and police-induced duress.

Lapointe has Dandy-Walker Syndrome, a congenital brain condition which causes a number of disabilities, “especially with respect to social understanding.” One characteristic which experts identified in Richard Lapointe was his propensity for extreme “compliance” in social venues — that is, he had learned to cope with social situations and discrimination relating to his disability partially by projecting an exceptionally acquiescent demeanor. Taken with Mr. Lapointe’s particular admiration for law enforcement officers, this is significant in-and-of itself. What’s more, the detectives involved in questioning Mr. Lapointe were later forced to admit that they utilized questionable tactics and “ignored interrogation procedure.”

In the course of their nine and one-half-hour marathon interrogation — during which time bathroom breaks were made conditional upon receiving a full confession — the detectives told Mr. Lapointe they “knew” he had committed the crime; they told him he had already taken and failed a lie-detector test (he had not); they told him that his wife and son would “go to prison or be taken away” if he did not confess; and finally they told him that he would not be allowed to go to the bathroom until he confessed. All of these accusations directed at a man whom they suspected on a

meager hunch. Richard Lapointe ultimately confessed so that he could go to the bathroom, and signed the third confession so that he could finally go home to his wife and son after a grueling, nearly ten-hour long escape.

Meanwhile, across town, another detective on the case was utilizing similarly coercive techniques in his questioning of Richard Lapointe’s wife, Karen Martin, who also has a disability. These exchanges *were* recorded. The tapes show that the detective told Mr. Lapointe’s wife that she could be charged with hindering prosecution, and that she was at risk of losing custody of her preteen son unless she provided the police with “some very important details.” This, presumably, was the false pretense under which the detective compelled Karen Martin to explain that Lapointe had left the home—for an amount of time insufficient to have committed the crime—in order to walk the family dog. It was *this* shockingly thin admission by Karen Martin, in tandem with Richard Lapointe’s three “confessions,” which constituted the key evidence of his “guilt” that the jury relied on to convict him.

So what content characterized Lapointe’s three contradicting “confessions” — none of which he wrote and that weren’t audio or video recorded or transcribed by a stenographer? Surely the “confessions” themselves must have been truly damning in order to move the case forward; in order for the prosecutors, the judges, and the jurors involved not to cry foul. Not so. The “confessions” themselves constitute the *most* glaring hole in the prosecution’s case: the supposedly willful confessor, Lapointe, could not even accurately describe the facts surrounding his own alleged crime. In one of Mr. Lapointe’s “confessions” he “admits” to having stabbed Bernice Martin while she was sitting on her couch. Coincidentally, the working theory for the Manchester Police, at the time of the interrogation, was that she had been stabbed while on the couch. Medical testimony later disproved this theory, establishing that she was actually killed at another location in the house and moved across the apartment. So not only was Richard Lapointe’s alleged recollection of the facts incorrect, it also just *happened* to match exactly the theory being utilized by the interrogating detectives. Similarly, Lapointe “admitted” that he had committed the murder using “manual strangulation” — that is he used his hands to strangle Bernice Martin. *Again*, this was disproven by the medical examiner, who demonstrated *at trial* that the murder had been perpetrated through a method of “strangulation by compression”—in other words she had been strangled with an ob-

ject. *Again*, Lapointe’s erroneous “recollection” of the facts just *happened* to match the police interrogator’s working theory of the crime. Finally, Lapointe “admitted” to having physically raped Bernice Martin, an account which coincidentally coincided with the Manchester Police’s theory at the time. Medical testimony again later disproved this account, showing that she had not been physically raped, but rather had been raped with a “blunt object.”

Other glaring discontinuities existed at the time of Lapointe’s arrest:

- How had he lifted and moved Bernice Martin’s 160-pound body?
- How had he arrived home after committing such an “athletic” crime without appearing “sweaty or disheveled?”
- Why were the killer’s gloves, which were left at the scene, far “too large to have fit Lapointe’s tiny hands?”
- How often is it that a killer commits a crime, laden with evidence of perverse enjoyment and clear premeditation (wearing gloves, having coffee, moving the body, burning down the house), and yet cannot remember *any* of the nitty-gritty details behind the enactment of that crime?
- How often is it that a killer willfully confesses, under duress, and yet cannot remember:
 - (a) *how* they committed the crime;
 - (b) *where* they committed the crime;
 - (c) with *what* object they committed the crime; and,
 - (d) *when* they committed the crime?

Richard Lapointe could not accurately describe a *single aspect* of the crimes he supposedly perpetrated.

A motion to suppress Lapointe’s “confessions” as coerced was denied prior to his 1992 trial. Later in 1992 Lapointe was convicted of capital felony murder and eight related charges. In 1996 his convictions and sentence were affirmed on appeal by the Connecticut Supreme Court in a 5-2 decision. That same year, his case was denied review by the U.S. Supreme Court. Since then, attorneys representing Mr. Lapointe have filed two petitions for a writ of *habeas corpus* in an effort to have his convictions overturned. Although both petitions were denied by the same judge who presided over Lapointe’s trial, on March 25, 2009 Connecticut’s Appellate Court issued an opinion stating that it was wrong to dismiss Lapointe’s *habeas corpus* petition that was based on suppression of exculpatory evidence and ineffective assistance of counsel during his trial and direct

Lapointe cont. on p. 5

Lapointe cont. from p. 4

appeal. Consequently, a new *habeas* hearing was conducted in May of 2010, and the decision is still pending.

In writing his dissent in 1996 to the affirmation of Lapointe's convictions, Connecticut Supreme Court Justice Robert Berdon cited U.S. Supreme Court Justice William J. Brennan regarding compelled self-incrimination: "I am unwilling to accept the risk of an erroneous determination that [a] confession was voluntary when it may in fact have been coerced...[to think otherwise] we must be prepared to justify the view that it is no more serious in general to admit involuntary confessions than it is to exclude voluntary confessions...compelled self-incrimination is so alien to the American sense of justice that I see no way that such a view could ever be justified." Justice Berdon and his colleague Justice Joette Katz were the only members of the Connecticut Supreme Court who were not comfortable allowing Richard Lapointe to be convicted on the sole basis of involuntary confessions, where the accused individual's particular disability inhered in him an "unduly submissive personality" particularly disadvantageous in the apparently unbridled and unpredictable bailiwick of the police interrogation room.

In the State of Connecticut crimes such as those alleged of Mr. Lapointe qualify for the death penalty. Richard Lapointe was spared this fate thanks in part to expert testimony in the punishment phase regarding his disability as a mitigating factor. Ironically, Lapointe's I.Q. (Intelligence Quotient) is actually above the Supreme Court's "cut-off," under which it is "cruel and unusual" and therefore illegal to submit someone to the death penalty. The Connecticut Supreme Court addressed the issue of Lapointe's I.Q. while making its decision not to overturn his conviction, and it is difficult to believe that their bias regarding the correlation between disability and I.Q. did not play a role in their finding that his confession was "voluntary." To this court, maybe, the term "intellectual disability" is synonymous with the term "low I.Q." and any further understanding is merely auxiliary. Either way, the legal system found Richard Lapointe's disability sufficient to save him from the death penalty and yet insufficient to warrant a more nuanced investigation into the context, circumstances, and police tactics inhering in his alleged "confession" to Bernice Martin's murder. So rather than enjoying the freedom that is his birthright, away from the spotlight and far from the beguiling glare of legal mysticism, Richard Lapointe has instead emerged

as an unfortunate and lasting lesson in the arbitrariness of American justice.

We know the facts of Richard Lapointe's case and they are sufficient in-themselves to establish his innocence. However, further examination yields a picture of police manipulation, discrimination, and a true miscarriage of justice which will be twenty-two-years-old this Independence Day, and an innocent man will have spent nearly one-third of his lifetime deprived of his fundamental liberty, far from his wife and son.

About the author. Matthew Salla is a student at the Syracuse University College of Law. He is also pursuing an M.A. in educational policy.

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11. Website: Friends of Richard Lapointe; "History of the Case," For more information on this case, please visit www.friendsofrichardlapointe.com, a website created and maintained by one of the Friends of Richard Lapointe, Attorney Anne Treimanis, dedicated to the goal of freeing Mr. Lapointe. Over the past decade, the Friends of Richard Lapointe have worked tirelessly and devoted countless unpaid hours to his case. As defense attorney Anne Treimanis points out, it is difficult to hear about Mr. Lapointe's case "without immediately wanting to become involved."
12. Edmund Mahoney, *Lapointe Lawyers Focus On Manchester Detective's Interview Tactics*, from The Hartford Courant (May 8, 2010).
13. *State v. Lapointe*, 678 A.2d 942 (1996).
14. *Atkins v. Virginia*, 536 U.S. 304 (2002).

Defamation Conviction For Criticism Of Scientific Report Overturned

Genetically modified crops are not permitted to be grown in Peru, and their illegal introduction into the food supply is a controversial issue in the country.

Two prominent people in the public debate about the issue are Antonietta Ornella Gutiérrez Rosati, a biologist at the La Molina National Agricultural University in Lima, and biologist Ernesto Bustamante Donayre, scientific director of the private genetic-screening firm BioGenómica.

In early 2008 Gutiérrez accused Bustamante of defamation — a criminal offence in Peru — for publicly criticizing her published report that genetically modified maize was found in plots 120 miles north of Lima.

Bustamante was prosecuted and in April 2008 he was convicted of defamation. He was fined 5,000 soles (US\$1,800) and his travel was restricted.

After his conviction more than 650 scientists from around the world signed a public petition supporting Bustamante's right to publicly question Gutiérrez's findings. Biochemist Paul Englund with Baltimore's Johns Hopkins University said after Bustamante's conviction, "He's someone that speaks his mind honestly, based on data. It's outrageous that he's being criminally prosecuted for it."

Bustamante's conviction was overturned on appeal in late December 2010. The appellate court found the trial court had not demonstrated Bustamante had sufficient motivation to harm or defame his alleged victim. Afterwards Bustamante told reporters, "It would have been nice to have a judge come out and say, 'Yes, science should not be taken to court.' That's for us scientists to state and to express and to fight for."

The conclusions of a government study of the crops in question may affect the ultimate outcome of the case.

Sources:

Peruvian biologist's defamation conviction overturned, *Nature News*, January 11, 2011, at www.nature.com

33% Chance Of Guilt Not Enough Says Illinois Court Of Appeals

Allen Brown was sentenced to 100 years in prison in 2008 for the murder of his landlord in Peoria, Illinois. The September 2007 murder of Hung Tien was grisly since he was beaten to death with a ball-peen hammer and a pry bar.

There were no witnesses to the murder and there was no physical or forensic evidence tying anyone to the crime or the crime scene. When questioned Brown denied any involvement in his murder. Brown was charged because one of his shirts was found in a trash bin with some of Tien's blood on it, but there was no way to determine who put it there or when they did so. In addition, the DNA of unknown persons was recovered from both Brown's shirt and Tien's clothing.

During Brown's trial he presented testimony that he had discarded the shirt when he was preparing to move prior to Tien's murder. His lawyers were also able to bring out that at least two other tenants had the same means and opportunity to kill Tien, and they had motives at least equal to Brown who at

one time during a dispute with Tien was heard to have told him he was going 'to kick his ass.' Brown testified in his defense and denied any involvement in Tien's murder.

Brown appealed and the Illinois Court of Appeal overturned his conviction based on insufficiency of the evidence. The Court ruled on January 11, 2011, that a 33% chance that Brown was the murderer was insufficient to support his conviction:

Regardless of whether the evidence is direct or circumstantial, the evidence must establish more than the presence of defendant's shirt at the scene of a murder to prove that defendant committed the murder. The State failed to produce evidence of anything more than that. Instead, the State asked the jury to simply infer, from circumstantial evidence, that it was defendant who wore the shirt while the murder was being committed.

...
However, there is both direct and circumstantial evidence that defendant discarded the items in question before the murder.

...
A 33 percent possibility is not enough to survive reasonable doubt when two other tenants of the house shared the same motive for murder."

The Court held that:

"Where the State's DNA evidence failed to exclude potential suspects with same alleged motive as defendant as contributors of unknown DNA recovered from clothing associated with murder, evidence failed to prove defendant guilty beyond a reasonable doubt."

Illinois v Allen Brown, No. 08-CF-0124 (IL Ct of Appeals, 1-11-11)

In its public response to the Court's ruling, the State's Attorney's Office stated it was sufficient to prove Brown's guilt from the fact he was a dissatisfied tenant of Tien's, he had a criminal history, and the blood evidence. The State's Attorney's Office said they are going to appeal the ruling to the Illinois Supreme Court.

If the Supreme Court affirms the ruling overturning his conviction, Brown will be released and not retried, because the prosecution did not present sufficient evidence of his guilt during his trial.

Sources:

Illinois v Allen Brown, No. 08-CF-0124 (IL Ct of Appeals, 1-11-11)

"Appellate court throws out Peoria man's murder conviction," *Journal Star* (Peoria, IL), January 13, 2011.

Toshikazu Sugaya Compensated \$965,600 For 17 Years Wrongful Imprisonment



Toshikazu Sugaya in the courtroom after his acquittal on March 26, 2010.

Toshikazu Sugaya was convicted in December 1992 of the 1990 kidnapping and murder of a 4-year-old girl in Ashikaga, Japan, about 50 miles north of Tokyo. Sugaya became a suspect because he was a kindergarten bus driver.

Japanese police are allowed wide latitude in the techniques they use to question a suspect, which results in a very high percentage of confessions by suspects. That is reflected in Japan's 99% plus conviction rate for prosecutions.

Under the pressure of intense interrogations Toshikazu Sugaya confessed, withdrew his confession, then confessed again, and again withdrew it.

Although Sugaya insisted he only confessed because his police interrogators were kicking

him and pulling his hair, he was convicted based on his repeated admissions of guilt and a DNA test a prosecution expert witness said implicated him. Sugaya was sentenced to life in prison. His conviction and sentence were affirmed by Japan's High Court in 2000.

In December 2008 the Tokyo High Court ordered DNA tests comparing Sugaya's DNA with the assailant's bodily fluid found on the young girl's clothing.

On May 8, 2009 the High Court released the test results that excluded Sugaya as the girl's assailant. The prosecution agreed not to oppose Sugaya's retrial and he was released on bail on June 4, 2009, after 17-1/2 years of incarceration from the time of his arrest in 1991.

Sugaya was granted a retrial by the Tokyo High Court on June 23, 2009. During his retrial Sugaya's lawyers argued that during his 1992 trial his confessions were inadmissible because they were coerced and he had not been informed of his right to consult with an attorney and to remain silent, and the DNA tests were not conducted in a scientific manner so they were too unreliable to be admissible.

Sugaya, 63, was acquitted on March 26,

2010, with the presiding judge stating for the unanimous three-judge panel, "The DNA tests had no admissibility as evidence, Sugaya's confession was false, and it has become apparent to everyone that he is not the culprit." The judge also said, "I feel sorry as a judge that we did not listen to Mr Sugaya's truthful voice, and as a result, took away his freedom for 17 and a half years."

Sugaya was the first person exonerated in Japan with the assistance of new DNA evidence.

In September 2010 Sugaya filed a claim under Japan's Criminal Compensation Law as recompense for the mental distress he suffered during the 17-1/2 years he spent in prison.

On January 13, 2011, Sugaya was awarded 80 million yen by the Utsunomiya District Court. (\$965,600 converted to dollars on 1-13-2011) After being notified of the award, Sugaya told reporters, "I think the amount is appropriate. The 17-and-a-half years were long, but today marks a closure."

Sources:

Man wrongfully convicted of 1990 murder acquitted; more than 1,500 line up for 48 seats, *Japan Today*, March 26, 2010.

Man acquitted of 1990 murder to receive Y80 mil in compensation, *Japan Today*, January 13, 2011.

Joshua Kezer Awarded \$4 Million For 16 Years Wrongful Imprisonment

By Hans Sherrer

Joshua Kezer was convicted in 1994 of murdering 19-year-old Angela Mischelle Lawless in the southeast Missouri town of Benton in November 1992. Seventeen at the time Lawless was found dead in her car, Kezer was sentenced to 60 years in prison.

Although there were signs Lawless struggled with her assailant before she was killed, none of the physical or forensic evidence connected Kezer to Lawless' murder, and there was no eyewitness to the crime. Scott County Sheriff Bill Ferrell admitted during his testimony that there was no evidence Kezer and Lawless knew each other.

Kezer's alibi defense was that on the day of the murder he was 350 miles away in Kankakee, Illinois where he was living. Several alibi witnesses corroborated Kezer's alibi.

Key prosecution evidence was testimony by Mark Abbott, a suspect in the crime who came forward four months after the murder and allegedly claimed he saw Kezer at a convenience store the night of the killing near the crime scene.

The prosecution also relied on three jailhouse informants who testified that Kezer confessed to the murder while awaiting his trial. Prior to Kezer's trial they all recanted to Kezer's lawyer, admitting in signed statements that they lied in the hope of getting a reduced sentence in their own cases. However, shortly before the start of Kezer's trial the prosecutor — future U.S. Congressman Kenny Hulshof — filed a motion to disqualify Kezer's private counsel on the basis a lawyer cannot be both a witness and an advocate on the same case. The motion also alleged that Kezer's lawyer coerced the recantations by threatening the three prisoners. With Kezer's family financially unable to hire a different lawyer, and Kezer having already been jailed for 15 months awaiting trial and not wanting the lengthy continuance that assignment of a public defender would involve, Kezer agreed his lawyer would not testify. So Kezer was unable to take advantage of his lawyer's knowledge that the three jailhouse informants had willingly recanted in writing their claims he confessed.

Post-conviction investigation of Kezer's case resulted in the discovery of new evidence, including that the prosecution had failed to

disclose key documents that Abbott had in fact identified a man named Ray Ring as the driver of the car, and that at least one of the prisoners had recanted in a written statement to prosecutor Hulshof prior to Kezer's trial. Based on the new evidence Kezer filed a writ of habeas corpus based on two claims: Brady violations by the prosecution's failure to disclose exculpatory evidence, and his actual innocence of the crime.

Cole County Circuit Judge Richard Callahan vacated Kezer's conviction in a 44-page ruling he issued on February 17, 2009. Judge Callahanon ruling states in part:

"This Court concludes that the nondisclosure of the above-described exculpatory materials constituted a violation of Josh Kezer's constitutional due process rights within the holding of *Brady v. Maryland*, and, consequently, for this reason alone Josh Kezer's convictions for the murder of Mischelle Lawless and the related armed criminal action cannot stand and should be vacated, and Josh Kezer is entitled to habeas corpus relief. (p. 36)

... In addition to his Brady claim, Petitioner has met the heavier burden under *Amrine* of demonstrating actual innocence by clear and convincing evidence that undermines this Court's confidence in the correctness of the judgment. As such, confidence in his conviction and sentence are so undermined that they cannot stand and must be set aside. *Kezer v. Dormire*, No. 08AC-CC00293 (Cole County, MO Cir Ct, 2-17-2009), p. 44.

Judge Callahanon also wrote:

"There is little about this case which recommends our criminal justice system. The system failed in the investigative and charging stage, it failed at trial, it failed at the post trial review and it failed during the appellate process. ... Tragically for the family of Mischelle Lawless, the real killer or killers remain at large." (pp. 1-2)

Kezer was released the next day on bail after spending 15 years and 10 months incarcerated for a murder he had nothing to do with. During an impromptu press conference after his release Kezer told reporters, "There are untold other (innocent) people in prison. They don't have what I had. They don't have million-dollar attorneys. They don't have friends that are relentless."

The murder charge against Kezer was subsequently dismissed.

In August 2009 Kezer filed a federal civil rights lawsuit that named as defendants



Joshua Kezer laughs after his release from the Jefferson City Correctional Center on February 18, 2009 (AP photo)

Scott County, and former Scott County Sheriff Bill Ferrell and deputy sheriff Brenda Schiwitz. The lawsuit sought damages in excess of \$20 million. It claims included the defendant's, "failure to disclose exculpatory evidence, false arrest, wrongful arrest, assault and battery, false imprisonment, procure-

ment and promotion of unreliable and false evidence, ... for which Plaintiff seeks compensation for personal physical injuries and physical sickness, past and future medical bills and expenses, physical pain and suffering, actual damages, pecuniary losses, loss of enjoyment of life, lost ages and income..."

It was reported in the Southeast Missourian on August 14, 2010, that Kezer's lawsuit had been settled. However, there was no official announcement about a settlement or its terms. Consequently, Justice Denied filed a Public Records Request with Scott County for a copy of the settlement agreement. Scott County complied with that request and provided a copy of the Settlement Agreement. The following is key information in the agreement:

- The settlement was entered on August 7, 2010.
- Kezer settled all his claims against the defendants for a total of \$4 million.
- All of Kezer's attorney fees, costs and expenses are to be paid from the \$4 million
- All of Kezer's compensation is for his "personal physical injuries and physical sickness within the meaning of §104(a)(2) of the Internal Revenue Code."
- None of Kezer's compensation is "payment for lost wages and income, punitive damages and other nonphysical injuries and damages."
- Since none of Kezer's compensation is considered personal income under the IRC, the Defendant's agreed "not to issue and file IRS Form 1099" for the payments to Kezer.

Due to the way the settlement is structured, Kezer will not have to pay federal income tax on the \$4 million in compensation, less whatever portion of that he agreed to pay his lawyers.

The unsung hero in Kezer's case is Jane Williams. Ms. Williams worked in Columbia, Missouri as a social worker and she

Kezer cont. on page 8

Louis Mickens-Thomas Released After More Than Four Decades Of Imprisonment

Centurion Ministries is the oldest organization in the United States dedicated to helping secure the exoneration of innocent persons. They have had great success in doing so. In the 31 years since Centurion's founder and director Jim McCloskey first began working on the case of an innocent person, they have assisted in the exoneration of more than 40 men and women. But since Centurion takes "tough" cases that typically require years of work to obtain new evidence, they sometimes don't succeed in helping a person to be outright exonerated. In that situation the best they can hope for is a person's sentence commutation or some form of supervised release.

Louis Mickens-Thomas is one of those cases. Thomas was tried in 1967 for the rape and murder of 12-year-old Edith Connor three years earlier in West Philadelphia. Thomas became a suspect because he lived about 50' from the apartment where the girl's family lived and his shoe repair shop was nearby. The only evidence tying Thomas to the crime was the testimony of crime lab technician Agnes Mallatratt that microscopic particles brushed from the girl's clothes were "similar in all physical characteristics" to materials in Thomas' row house and shoe shop.

The particles found on the girl's clothes included microscopic fibers and paint chips. Even though those particles were common to the area where her body was found, the jury convicted Thomas who was then 38-years-old, and he was sentenced to life in prison without parole.

After Thomas' conviction it was discovered that Mallatratt was a junior high school



Louis Mickens-Thomas

dropout with no formal training who had repeatedly committed perjury in trials by inventing academic and scientific credentials. Thomas' conviction was overturned since it was based on Mallatratt's testimony.

In 1969 during Thomas' second trial, the crime lab's director testified that he directly supervised all of Mallatratt's work. However, a glaring inconsistency is that during Thomas first trial Mallatratt testified she worked alone and the director didn't testify,

Thomas was reconvicted and again sentenced to life in prison without parole.

Centurion Ministries began investigating Thomas' case in 1990. Based on evidence of Thomas' innocence uncovered by Centurion's investigation, in 1995 outgoing Governor Robert P. Casey didn't pardon Thomas, but he did commute his sentence to life with parole. Thomas effort to be granted parole turned into a years long battle with Pennsylvania's parole board that was spearheaded by Centurion. That effort culminated in January 2004 when in unanimously granting Thomas' writ of habeas corpus the 3rd Circuit U.S. Court of Appeals cited the State's willful non-compliance, bad faith, and vindictiveness in denying Thomas parole. (*Louis Mickens-Thomas v. Vaughn*, 355 F.3d 294 (3rd Cir., 1-14-2004)).

Thomas' parole was revoked because he kissed a woman at his church.

Thomas was subsequently paroled, but it was revoked 18 months later when he reported to his parole officer that he kissed a woman at his church without her consent. He was sentenced to 9 months in prison for his violation,

but when that time was up the parole board refused to release him. Centurion began a new effort for Thomas' release. That culminated in the granting of Thomas' writ of habeas corpus by the 3rd Circuit U.S. Court of Appeals on January 20, 2011. The Court ordered the "Superintendent of the Pennsylvania State Correctional Institute at Graterford, and the Board to release Thomas on parole forthwith." (*Louis Mickens-Thomas v. Vaughn*, No. 09-3744 (3rd Cir. 1-20-2011))

In ordering Thomas' release the Court explained that the parole board justified denying Thomas' parole "because he has demonstrated an "escalating pattern of high risk behavior." This claim relies on a single incident in which Thomas kissed a woman at church against her will. This incident does not credibly constitute an "escalating pattern of high risk behavior.""

Centurion found a nephew and his wife willing to let the 82-year-old Thomas live with them in Pennsylvania's Pocono mountains, and he was released on Tuesday, January 25.

Thomas spent almost 45 years in prison for a crime there is no evidence he committed except for the testimony of a crime lab technician who not only lied repeatedly in court that she had formal education and specialized training that she did not have, but who stated on the record that her job was "to fit the suspect to the crime." That is exactly what she did in Thomas' case.

Although Centurion's 21 years of working on Louis Mickens-Thomas' case hasn't yet resulted in his exoneration, it has resulted in him able to live his final years outside a prison's walls.

Sources:

Louis Mickens-Thomas v. Vaughn, 355 F.3d 294 (3rd Cir., 1-14-2004)

"Philly man wins release from prison after more than four decades," *Philadelphia Inquirer*, January 21, 2011.



Kezer cont. from page 9

founded the local chapter of Love INC, an organization that connects with people recently released from prison into the community. Williams met Kezer in the chapel at the Jefferson City Correctional Center and took an interest in his case after he exhausted his appeals. She obtained his case files and found what she believed were significant problems with the prosecution's case and the evidence the jury relied on to convict Kezer.

Williams wrote a 20-page overview of Kezer's case and sent it to an attorney she knew in Boston. After looking it over he



Jane Williams and Joshua Kezer after his release

contacted St Louis attorney Charlie Weiss. After reviewing Williams' overview and looking into the case Weiss agreed to represent Kezer pro

bono. After Weiss became involved Scott County Sheriff Rick Walter, who as a reserve deputy was the person who found Lawless' body in her car, voluntarily reopened the investigation into her murder. With access to the prosecution's internal case files, Walter's investigation uncovered the key documents prosecutor Hulshof con-

cealed from Kezer's attorney. Although the efforts of Weiss and Walter's were invaluable to Kezer's release, he would have completed his 60 year sentence without Jane Williams' investigation and efforts to bring attention to his case. Weiss said of Williams, "She instigated this whole thing. Without her, we would never be involved."

Sources:

Kezer receives settlement, not apology, Southeast Missourian, August 14, 2011.

Mo. man convicted of '92 slaying freed, MSNBC.com, February 18, 2009.

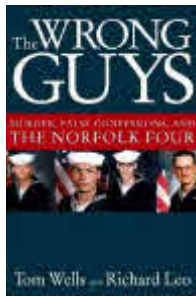


Affidavit Alleges Detective Robert Glenn Ford Told Witness The Norfolk Four Are Innocent

Robert Glenn Ford was the lead detective in the investigation of four young navy men convicted of the July 1997 rape and murder of Michelle Moore-Bosko in Norfolk, Virginia. Those four men have become known as the Norfolk Four. Their convictions were based on their confessions that they all recanted as false, claiming Ford coerced them during intense interrogations.

False confession expert Dr. Richard Leo co-wrote *The Wrong Guys* 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 sen-



tence. On August 6, 2009, the other three were released when they were conditionally pardoned by Virginia Governor Tim Kaine. Derek Tice, Daniel Williams, and Joseph Dick, Jr. were wrongly imprisoned for more than 11 years.

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

Williams has a pending *habeas corpus* petition that seeks to overturn his convictions. Williams' pro bono attorney Donald Salzman has filed an Affidavit in support of his petition that Detective Ford told a witness that he thinks the Norfolk Four are innocent. The Affidavit states:

"Detective Ford has stated that he believes that the Norfolk Four are innocent

of the rape and murder for which they have been convicted."

Salzman writes in his Affidavit that the witness is identified in the Affidavit as "Witness A" because the witness fears retaliation. Another witness describes concerns in the Norfolk Police Department prior to the Norfolk Four's convictions about the lack of evidence against them other than their confessions.

After the Affidavit was filed Ford's attorney denied that Ford has told anyone the Norfolk Four are innocent.

For additional information about the Norfolk Four case read 'The 'Norfolk Four' Convicted of Brutal Rape And Murder Committed By Lone Assailant,' by Larry Tice, *Justice Denied* Issue 30, January 2006.

Source:

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

"Report: Ex-detective thinks Norfolk Four innocent," *The Virginian-Pilot*, December 21, 2010.

Norfolk Four Detective Sentenced To 12-1/2 Years In Federal Prison For Extortion And Lying To The FBI

Former Norfolk, Virginia Detective Robert Glenn Ford was convicted on October 27, 2010, by a federal court jury in Norfolk of two extortion counts and one count of lying to the FBI.

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

Ford was sentenced on February 25, 2011 to 12 years and 6 months in federal prison. Ford, who had been free on bail pending his sentencing, was immediately taken into custody to begin serving his sentence.



Robert Glenn Ford entering the Norfolk, Virginia federal courthouse for his sentencing. (L. Todd Spencer -- *The Virginian-Pilot*)

Michelle Moore-Bosko in Norfolk, Virginia. Those four men became known as the Norfolk Four. Their convictions were based on their confessions that they all recanted as false, claiming Ford coerced them during intense interrogations.

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

U.S. District Judge Jerome B. Friedman justified sentencing Ford above the federal sentencing guidelines by describing Ford's conduct as "dishonest, detrimental, unethical" and "an abuse of power."

Ford was the lead detective in the prosecution of four young Navy men convicted of the July 1997 rape and murder of

three were released when they were conditionally pardoned by Virginia Governor Tim Kaine. Derek Tice, Daniel Williams, and Joseph Dick, Jr. were wrongly imprisoned for more than 11 years.

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

Ford's convictions involved cases unrelated to the Norfolk Four prosecution.

It is all too rare poetic justice that Ford is imprisoned while the Norfolk Four who were imprisoned because of his testimony they confessed, have been freed.

Sources:

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

"Former Norfolk detective convicted of extortion," *The Virginian-Pilot*, October 28, 2010.

"Ex-Norfolk detective gets 12 1/2 years for corruption," *The Virginian-Pilot*, February 26, 2011.

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Kevin T. Glasheen Sued By Texas State Bar For Alleged Misconduct In Representing Two Exonerated Men

A Disciplinary Petition has been filed by the State Bar of Texas against Lubbock attorney Kevin T. Glasheen for alleged professional misconduct in his representation of Steven C. Phillips and Patrick Waller. The petition was filed in the District Court for the 99th Judicial District in Lubbock County on February 7, 2011, after the Texas Supreme Court appointed Judge Robin M. Darr from Midland to preside over the case.

Glasheen elected to have the petition's allegations tried in a public proceeding, instead of by an internal review process. The disciplinary rules require that a visiting judge hear the case to avoid any conflict of interest with a Lubbock County judge familiar with Glasheen.

Phillips and Waller separately retained Glasheen to represent them after they were exonerated of their convicted crimes.

Phillips was exonerated in August 2008 of rape after being wrongly imprisoned for more than 25 years. He signed a contingent fee contract with Glasheen in December 2008. Glasheen agreed to "investigate, evaluate and pursue to settlement or judgment all claims for damages that [Phillips] may have against the City of Dallas and State of Texas and others resulting from his incarceration." In exchange, Phillips agreed to pay Glasheen 40% of all money obtained through a civil rights lawsuit, which increased to 45% if the money was recovered after an appeal. Phillips also agreed to pay Glasheen's expenses and fees up to a maximum of 50% of the total money paid to Phillips. Phillips also agreed to pay Glasheen 25% of all the money he was entitled to receive under Texas' administrative procedure for compensating a person declared innocent of their convicted charges.

Waller was exonerated and released on July 3, 2008 of robbery and kidnapping after being wrongly imprisoned for 16 years. He signed a contingent fee contract with Glasheen on July 14, 2008 — 11 days after his release. Waller's contract was similar to Phillips contract with two exceptions. First, Waller agreed to pay Glasheen 33% of all the money he was entitled to receive under Texas' administrative procedure for compensating a person declared



Kevin Glasheen
(Glasheen, Valles, Inderman
LLP website photo)

innocent of their convicted charges. Second, Waller's contract included a provision that 40% of all money paid to Glasheen would be paid to two other attorneys. One of those attorneys is Jeff Blackburn, co-founder and lead counsel of the Innocence Project of Texas based in Lubbock.

Under Texas' compensation law a person declared innocent is entitled to a one-time payment of \$80,000 for each year of wrongful incarceration, plus a lifetime annual annuity. [Endnote 1] Making a claim involves filling out a one page form and submitting it to the Texas Comptroller of Public Accounts along with public documents proving the person has been declared innocent. Glasheen's contracts with Phillips and Waller entitled him to 25% and 33% respectively, of all the money they were paid under the compensation law.

Phillips terminated the contract with Glasheen on September 16, 2009 because he had neither filed a lawsuit nor a claim for the compensation Phillips was owed under Texas law. On the next day Phillips filed a lawsuit in Dallas County seeking a declaratory judgment that Glasheen was not entitled to any of the money due Phillips under Texas' compensation law. Phillips' lawsuit alleged that during the more than ten months Glasheen was retained he "had performed no meaningful legal services for Mr. Phillips." Under the contract Glasheen could claim to be owed about \$1 million of the total state compensation Phillips filed to receive after he terminated the contract.

Waller likewise terminated the contract with Glasheen because he had neither filed a lawsuit nor a claim for the compensation Waller was owed under Texas law. In December 2009 Waller filed a lawsuit in Dallas County seeking a declaratory judgment that Glasheen was not entitled to any of the money due Waller under Texas' compensation law. Waller also sued Jeff Blackburn. Under the contract Glasheen could claim to be owed over \$600,000 of the total compensation state Phillips filed to receive after he terminated the contract, of which over \$100,000 would go to Blackburn.

After filing their lawsuits Phillips and Waller filed separate ethics complaints against Glasheen with the State Bar of Texas. After Glasheen was given the opportunity to respond in writing, a staff attorney in

the Office of the Chief Disciplinary Counsel determined there was "just cause" to charge Glasheen with a number of ethics violations. The Disciplinary Petition filed on February 7, 2011 in Lubbock County alleges regarding Phillips complaint:

1. Glasheen failed to provide Phillips with sufficient information for him to make an informed decision to hire Glasheen.
2. Since a lay person with no legal skill can fill out the one page form and acquire the public documents necessary to file a Texas state compensation claim, it was unconscionable for Glasheen to charge 25% of the amount Phillips was owed under the law to file a claim (Which Phillips did after he fired Glasheen.)
3. Texas state law prohibits the assignment to Glasheen or encumbrance of any of the anticipated annuity money Phillips was owed under the compensation law.

The Petition alleges regarding Waller's complaint:

1. Glasheen failed to provide Waller with sufficient information for him to make an informed decision to hire Glasheen.
2. Since a lay person with no legal skill can fill out the one page form and acquire the public documents necessary to file a Texas state compensation claim, it was unconscionable for Glasheen to charge 33% of the amount Waller was owed under the law to file a claim (Which Waller did after he fired Glasheen.)
3. Texas state law prohibits assignment to Glasheen or encumbrance of any of the anticipated annuity money Waller was owed under the compensation law.
4. Glasheen's contract with Waller unethically included a provision that 40% of all money paid to Glasheen would be paid to two attorneys who "did not agree to assume joint responsibility for the representation of Waller nor did they provide professional services to Waller."

The petition describes that Glasheen's contracts with Phillips and Waller "constitute an arrangement for or a charge of an illegal fee or a fee prohibited by law."

Glasheen can request a jury trial, he can conduct discovery in accordance with the Texas Rules of Civil Procedure, and the allegations in the petition must be proven by

Glasheen cont. on page 11

Glasheen cont. from page 10

the State Bar's Chief Disciplinary Counsel by a preponderance of the evidence.

If Glasheen is found guilty of misconduct, Judge Darr can impose as punishment a sanction ranging from admonishment to disbarment. Glasheen can appeal a guilty finding or the sanction to the Texas Court of Appeals, and if necessary to the Texas Supreme Court.

What Glasheen did do during the period of time he represented Phillips and Waller was lobby the Texas Legislature to increase the lump sum payment to a person declared innocent by a court from \$50,000 to \$80,000 per year of incarceration, and to add the lifetime annuity. In May 2009 the Texas Legislature approved the additional compensation and lifetime annuity.

Glasheen's lobbying of the legislature is not mentioned in the Disciplinary Petition because neither Phillips nor Waller hired Glasheen as a lobbyist, and payment to him for his lobbying activities is not included in their respective contracts.

Glasheen had contracts with a number of exonerees similar to Waller's contract. Phillips contract was the only one that didn't

include a provision that a significant percentage of the state compensation money would be paid to other attorneys as an apparent "referral fee." Glasheen didn't file a lawsuit on behalf of those exonerees, but it is estimated their contracts obligated them to pay him between \$5 and \$8 million of the total money they were paid under Texas' compensation law. After Phillips and Waller filed their lawsuits, Glasheen told the Dallas Morning News, "There is no doubt that we made a lot of money, and we earned it."

The State Bar's complaint against Glasheen has helped fuel the public debate about questionable practices by lawyers involved in seeking compensation for a person exonerated of their convicted crimes. The Innocence Project of Texas provided pro bono assistance in the exoneration of the people who subsequently signed contracts with Glasheen that contained a provision that a significant percentage of the money paid to him would be paid to attorneys not involved in obtaining compensation – namely the chief counsel for the Innocence Project of Texas. Another situation is that the non-profit Innocence Project in New York has assisted in the exoneration of a number of people who subsequently retained Barry Scheck and Peter Neufeld's private New York law firm – Neufeld, Scheck & Brustin,

LLP [Endnote 2] – to pursue obtaining compensation. On June 4, 2010, attorney Scott H. Greenfield wrote on his Simple Justice blog about Scheck after his private law firm settled Barry Gibbs' civil rights lawsuit against New York City for \$9.9 million: "First, his innocence project obtained Gibbs' freedom. Then, in his private lawyer capacity, he obtained compensation. Yes, he took his third, but nobody hands Scheck those sweet suits he wears for free, you know."

Maureen Ray, Special Administrative Staff Attorney for the Office of the Chief Disciplinary Counsel, told Justice Denied that even when it involves a trial, the disciplinary process isn't necessarily protracted. So it is possible the misconduct allegations against Glasheen could be resolved sometime in 2011.

Endnotes:

- 1 The Texas Legislature increased in May 2009 the payment to \$80,000 per year of wrongful incarceration or part thereof from \$50,000, plus they added lifetime annuity.
- 2 The name was changed to Neufeld, Scheck & Brustin, LLP on June 12, 2009 from Cochran, Neufeld & Scheck, LLP

Additional Sources:

Innocence Project counsel criticized for profiting on exonerees, *The Dallas Morning News*, December 11, 2009

Man Uses Google Earth To Overturn Conviction

Wrongly convicted persons are increasingly able to use technology to establish their innocence. In what is believed to be a first, a man in Australia has used the Google Earth software program to overturn a conviction.

Mastaa Al Shakarji is a 24-year-old 4th year pharmacy student at James Cook University in Townsville, Queensland, Australia. His family emigrated to Australia from Iraq in 2002.

In April 2009 Al Shakarji was issued a speeding ticket for going 36 mph in a 25 mph school zone in Bowen, about 125 miles east of Townsville. He told the officer that he wasn't speeding and the officer's radar must have picked up another car.

Al Shakarji contested the ticket. Prior to his June 2010 trial in the Bowen Magistrates Court he conducted research with Google Earth that enabled him to use satellite imagery to navigate the road where he was given the ticket. He found that he would have been at the top of a hill and not even visible to the

police car at the time the officer claimed on the ticket that he was speeding. Based on Al Shakarji's research the officer clocked a different vehicle speeding down the hill.

The judge refused to consider Al Shakarji's Google Earth evidence that his car had been misidentified as the speeding vehicle. The judge found him guilty and fined him \$200 and court costs of \$71.50.

Al Shakarji appealed to the Brisbane District Court, arguing that "Based on the timing guidelines to view the vehicle speeding and then administer the radar, his vehicle would have been at the top of the hill and thus "not visible to the officer."

The appeals court overturned Al Shakarji's conviction, ruling there is "reasonable doubt as to whether the appellant was exceeding the speed limit." The court also ruled the Magistrate unduly restricted Al Shakarji's cross-examination of the officer.

When interviewed by the Townsville Bulletin on January 3, 2011, Al Shakarji described why he went to such lengths and expense to fight a \$200 traffic ticket (the appeals court in Brisbane is 845 miles from Townsville):

"I am from a country rife with corruption in the police and the government, but Australia is so different. In Iraq I couldn't stand up to speak out but here you can when you don't think it's right so why wouldn't you? The justice system is great in this country everyone is the same under the law. You don't realise how lucky you are in Australia because you can go to court and ask the police questions."



Mastaa Al Shakarji holding the ticket that he used Google Earth to prove misidentified his car as speeding near a school.

Al Shakarji ingeniously used Google Earth to establish his car had been misidentified as the speeding vehicle, but it is just a matter of time before Google Earth and similar technology tools will be used to assist in proving a person accused or convicted of a serious felony is innocent.

Sources:

Google used to appeal ticket, *Townsville Bulletin*, January 4, 2011.

Ohio Supreme Court Is Deaf, Dumb and Blind To Evidence Of Nancy Smith and Joseph Allen's Actual Innocence

By Hans Sherrer

Nancy Smith and Joseph Allen were convicted in November 1994 of multiple charges related to the alleged rape of children attending a Head Start program in Lorain, Ohio.

Smith was a Head Start school bus driver. The prosecution's theory was that after dropping off most of the kids at school she drove the bright yellow school bus to Allen's home in a residential neighborhood, where the sexual abuse occurred in the front yard and inside his home.

The prosecution's case was based on the testimony of several children and hearsay testimony by several adults about what other children had said. There was no incriminating physical or medical evidence, and no adult eyewitness corroborated any of the children's claims. So there was no verifiable evidence any crimes occurred.

The jury rejected Smith and Allen's protestations of innocence, and their claim that prior to being charged they had never met. Smith was sentenced to 15 to 90 years in prison. Allen was sentenced to 20 years to life in prison.

Over a period of years new evidence of Smith and Allen's innocence was discovered. Smith's lawyers chose the tactic of filing a motion in 2008 for resentencing under Ohio Criminal Rule 32(C) based on a defect in her sentencing order: the order didn't meet the requirement of stating she was convicted by a jury. Allen filed a similar motion. Their trial judge had retired, and a new judge assigned to their case could take a fresh look at the evidence and resentence them to time served.

During a hearing on February 4, 2009, Lorain County Common Pleas Court Judge James Burge went beyond resentencing Smith and Allen by unexpectedly vacating their convictions. After 15 years imprisonment Smith was immediately released on \$100,000 bail. Allen was released on \$100,000 bail on April 14, 2009.

The prosecution appealed, but the Ohio Court of Appeals upheld Judge Burge's au-



Nancy Smith

thority to vacate the convictions and sentences.

After Smith and Allen were convicted in 1994 they filed separate motions for acquittal under Ohio Criminal Rule 29(C) that were denied by their trial judge. During a hearing on June 24, 2009 Judge Burge reviewed the evidence presented at trial that the jury relied on to convict Smith and Allen. He then announced, "I have absolutely no confidence that these verdicts are correct." He then sua sponte ordered judgments of acquittal entered for Smith and Allen. He based the acquittal on his reconsideration of their Crim. R. 29(C) motions filed in 1994. He ordered the return of their bonds and they walked out of the courtroom free persons.

The State appealed Judge Burge's acquittal of Smith and Allen to the Ohio Court of Appeals. The Court upheld Judge Burge's acquittal of Smith, but ruled that Allen's Crim. R. 29(C) motion had been filed untimely in 1994 so it vacated his acquittal.

The State appealed the ruling upholding of Smith's acquittal to the Ohio Supreme Court. The State cited two grounds. One was that the original sentencing orders were not defective so there was no legal basis for Smith and Allen's motions for resentencing under Crim. R. 32(C). The second ground was that Judge Burge did not have the jurisdiction to acquit Smith and Allen as a remedy even if their sentencing orders were defective.

On January 27, 2011 the Ohio Supreme Court unanimously ruled the original sentencing orders for Smith and Allen were technically defective, but that Judge Burge only had the authority to add to the sentencing orders the missing words that Smith and Allen were convicted by a jury. (See, *State ex rel. DeWine v. Burge*, Slip Opinion No. 2011-Ohio-235)

The Court let stand the Court of Appeals order vacating Allen's acquittal, and ordered that Judge Burge vacate his acquittal of Smith and correct the clerical error in Smith and Allen's sentencing orders.

The Court's ruling did not take into consideration the rationale underlying Judge Burge acquittals of Smith and Allen – there is no credible evidence they committed their convicted crimes or that the crimes ever occurred.

Since Smith and Allen refuse to admit guilt, it is unlikely they will ever be paroled. So



Joseph Allen

barring future legal proceedings that successfully challenge their convictions or a pardon by Ohio's governor, the Ohio Supreme Court's order likely means that Nancy Smith and Joseph Allen will die in prison for crimes that they are not only innocent of committing – but which there is no evidence ever occurred.

Martin Yant, a Columbus, Ohio private investigator who has researched and investigated Smith and Allen's case for 14 years told the Lorain *Morning Journal* that the Ohio Supreme Court's ruling is "a classic example of how procedural rules in our criminal justice system sometimes get in the way of true justice. By that, I mean, that it's very obvious to the judge who has jurisdiction over the case that Nancy Smith and Joseph Allen are innocent. The rules and procedures prohibit him from executing that belief. And the net result is a travesty of justice. When you look at the totality of the case, there was nothing there. ... What this is, is hysteria. And hysteria can be a very frightening thing when it takes hold in the community and that's what happened in this case. When people take hold of hysteria, they suspend rationality and they jump to conclusions. When you get hysteria, you get scary judgments. People forget Jesus Christ was convicted by a mob. That's what we had here. A mob that started with one parent who had problems. This is a horrible injustice and a stain on Lorain County and it's continuing."

For additional information read "The Shame Of Lorain, Ohio – Nancy Smith And Joseph Allen Convicted Of Non-Existent Crimes," by Lona Manning, that was published in *Justice Denied* Issue 29, Summer 2005.

Sources:

State ex rel. DeWine v. Burge, Slip Opinion No. 2011-Ohio-235

"Fighting for their freedom: Support growing for Smith, Allen," *The Morning-Journal* (Lorain, OH), January 29, 2011.



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 70 wrongful conviction books, and JD's Video shop includes many dozens of wrongful conviction movies and documentaries.

Nancy Smith and Joseph Allen Allowed To Remain Free While Ruling Overturning Their Acquittals Is Appealed

During a hearing on February 8, 2011 Lorain County Common Pleas Court Judge James Burge surprised onlookers when he ordered that Nancy Smith and Joseph Allen will be allowed to remain free pending the judge's appeal of the Ohio Supreme Court's ruling on January 27, 2011

that overturned his June 24, 2009 acquittal of the two of 1994 convictions related to the alleged rape of children in a Head Start program. When Judge Burge acquitted Smith and Allen he stated, "I have absolutely no confidence that these verdicts are correct."

Judge Burge stands by his acquittal of Smith and Allen. He filed a motion on February 7 for the Supreme Court to reconsider its ruling. A key issue in the appeal is the Ohio Supreme Court ruled in another case on December 28, 2010 that an acquittal under Ohio Criminal Rule 29(C) is final. (See, *State v. Ross*, Slip Opinion No. 2010-Ohio-6282 (12-28-2010)). Judge Burge relied on

Rule 29(C) to acquit Smith and Allen.

Smith's lawyer announced after the hearing that if the Ohio Supreme Court doesn't reinstate the acquittals of Smith and Allen, he will be filing a motion for a new trial based on new evidence they are innocent.

For additional information about the case read "The Shame Of Lorain, Ohio – Nancy Smith And Joseph Allen Convicted Of Non-Existent Crimes," by Lona Manning, in *Justice Denied* Issue 29, Summer 2005.

Source:

Nancy Smith may seek new trial in Head Start case, *The Morning Journal* (Lorain, OH), February 9, 2011.

Arthur Tyler Remains On Death Row While Ohio Law Enforcement Protects The Real Killer

Leroy Head, has confessed on at least eleven different occasions both orally and in writing that in 1983 he alone murdered Sanders Leach in Cleveland. Head's confessions include oral and written confessions to the Cleveland police that he committed the murder by himself.

Head met Arthur Tyler the day of the murder. In exchange for testifying that Tyler

murdered Leach, Head was given the deal of life in prison with parole if he pled guilty to first-degree murder as an accomplice.

Arthur Tyler was convicted of aggravated murder based on Head's testimony. Tyler was sentenced to death and he has been on Ohio's death row for more than two decades.

Head was released on parole in June 2008. However, he could be violated and sent back to prison if he assists Tyler by recanting his trial testimony and testifying under oath that he alone murdered Leach. Head is only 47, so he could wind up spending decades behind bars before dying.

Tyler's attorney Richard Kerger wrote an article about his case that was published in *Justice Denied's* Issue 40. Kerger wrote:

"No one has ever offered a reasonable basis for Head's recantation of his many confessions, other than that the prosecutor told him that if he did not recant and point the finger at Tyler, they would seek the death penalty for him.

... Right now the State of Ohio is sealing the lips of the actual murderer – a man who can save Tyler. Tyler's writ of certiorari to the U.S. Supreme Court was denied in the spring of 2008, and he is running out of avenues for legal redress."

Tyler has supporters in the United States and other countries. Tom-Allen Wolf has written a song and produced a video about Tyler's case that you can view on the The Justice For Arthur Tyler website at, www.justiceforarthur.webs.com.

For additional information read, "Arthur Tyler Is Awaiting Execution When The Actual Murderer Is Being Protected By Ohio Law Enforcement," by Richard Kerger, Esq., *Justice Denied*, Issue 40, Spring 2008.

Patricia Wright Seeks Compassionate Medical Parole

Patricia Wright was convicted in 1998 of her ex-husband's 1981 murder in Los Angeles. There is no physical or forensic evidence or eyewitness tying her to the crime, crime scene fingerprints exclude her, and she adamantly denies any involvement.

Patricia has been diagnosed with terminal fourth stage breast cancer and would like to spend her limited days at home with her family. The Board of Parole Hearings and Dept. of Corrections has indicated they have no problem with releasing Patricia on compassionate medical parole. The obstacle is Patricia's sentence of life in prison without parole (LWOP).

Patricia's sentencing judge Curtis Rappe, has stated that he will consider reducing her LWOP sentence if he receives a recommendation from one or all of the following: The Board of Parole Hearings; Governor Jerry Brown; or Matthew Cate, the Secretary of Department of Corrections and Rehabilitation. Patricia's family has begun a campaign to obtain the support of those officials, that includes posting a petition on www.change.org.

Patricia's story was in *Justice Denied* Issue 38 — "Cold Case" Detectives Close File By Fingering The Wrong Person — The Patricia Wright Story." It can be read online at, www.justicedenied.org/issue/issue_38/patricia_wright_jd_issue_38.pdf.

JD Received Over 1 Million Hits For The First Time In January 2011

Justice Denied's webpages received over one million hits in January 2011. This was the first time the total exceeded one million in a month. That is very small potatoes compared to major general information and search websites, but it is an important milestone for a specialty website like Justice Denied that has limited resources and exists to provide information related to wrongful convictions.

Justice Denied's website was visited in January 2011 by people from 148 countries. The top ten countries were:

1. United States
2. Canada
3. United Kingdom
4. Australia
5. Germany
6. France
7. Belgium
8. Netherlands
9. Ireland
10. Poland

Jurors Support A New Trial For Kirstin Blaise Lobato

Two jurors who voted to convict Kirstin Blaise Lobato in 2006 have signed documents supporting a new trial for her. Ms. Lobato was convicted in October 2006 of charges related to the murder of Duran Bailey in Las Vegas on July 8, 2001.

Ms. Lobato's filed a 770-page petition for a writ of *habeas corpus* filed on May 5, 2010, in the Clark County, Nevada District Court that includes significant new evidence she is actually innocent of having anything to do with Mr. Bailey's murder. That new evidence includes alibi witnesses, and forensic entomology and forensic pathology evidence that at the time of Mr. Bailey's murder Ms. Lobato was 170 miles north of Las Vegas.

After reviewing a 49-page document outlining Ms. Lobato's key new evidence in 16 areas, two jurors not only agree that she deserves a new trial so that a jury can consider her new evidence, but they each signed a document supporting a new trial for her. Those jurors are Mr. Lloyd Taylor and Mr. Thomas Ciciliano, and they both agree, "I believe it is in the interest of justice that Ms. Lobato be granted a new trial."

Mr. Taylor's Affidavit dated January 26, 2011 states:

1. I was a juror in 2006 for the criminal case of the State of Nevada vs. Kirstin Blaise Lobato in the Clark County District Court.
2. Based on the evidence presented during Ms. Lobato's trial the jury voted she was guilty of voluntary manslaughter with a deadly weapon and sexual penetration of a dead body.
3. I am aware that Ms. Lobato has filed a petition for a writ of habeas corpus in the Clark County District Court, and

that she is seeking a new trial in part based on numerous claims of new evidence the jury was not aware of when it convicted her in 2006.

4. I have reviewed 16 separate claims of Ms. Lobato's new evidence that the jury did not have available in 2006 when it deliberated her case and found her guilty.

5. I believe that if the jury in 2006 had known the new evidence in Ms. Lobato's habeas corpus petition it could have influenced the jury's deliberations, and it could have possibly resulted in either a hung jury or Ms. Lobato's acquittal.

6. I believe it is in the interest of justice that Ms. Lobato be granted a new trial.

7. I am executing this AFFIDAVIT voluntarily and of my own free will. No force has been used upon me, and no threats or promises made to me by anyone. (Affidavit of Lloyd Taylor, January 26, 2011.)

Mr. Ciciliano's Statement dated January 5, 2011 states:

1. I was a juror in 2006 for the criminal case of the State of Nevada vs. Kirstin Blaise Lobato in the Clark County District Court.

2. Based on the evidence presented during Ms. Lobato's trial the jury voted she was guilty of voluntary manslaughter with a deadly weapon and sexual penetration of a dead body.

3. I am aware that Ms. Lobato is seeking a new trial based in part on numerous claims of new evidence the jury was not aware of when it convicted her in 2006.

4. I have reviewed new evidence in Ms. Lobato's case that the jury did not have available in 2006 when it deliberated and found her guilty.

5. I believe that if the jury in 2006 had known Ms. Lobato's new evidence it could have influenced the jury's deliberations, and it could have possibly resulted in either a hung jury or Ms. Lobato's acquittal.

6. I believe it is in the interest of justice

that Ms. Lobato be granted a new trial so that a jury can fairly consider all the evidence that is now available in her case after hearing both the defense and the prosecutions arguments about that evidence.

7. I am executing this STATEMENT voluntarily and of my own free will. No force has been used upon me, and no threats or promises made to me by anyone. (Statement of Thomas Ciciliano, January 5, 2011.)

The document the jurors reviewed is titled "New Evidence Kirstin Blaise Lobato Is Innocent Of Any Involvement In The Death Of Duran Bailey In Las Vegas, Nevada On July 8, 2001." It is available online at, www.justicedenied.org/kl/kb_lobato_case_summary.pdf

The documents signed by Mr. Lloyd Taylor and Mr. Thomas Ciciliano were obtained as a result of Justice Denied's continuing investigation into Ms. Lobato's case. The following webpage explains what was learned from Justice Denied's interview of jurors for Ms. Lobato's 2006 trial. See, Report About Interviews Of Jurors For Kirstin Blaise Lobato's 2006 Trial at, www.justicedenied.org/kbl_juror_interviews.html

On February 24, 2011, the documents signed by Mr. Taylor and Mr. Ciciliano were filed in the Clark County District Court as Supplemental Exhibits supporting the granting of Ms. Lobato's habeas corpus petition. The document filed is titled, "Supplemental Exhibits To Petitioner's Answer In Support Of Petition For Writ Of Habeas Corpus," and it can be read at, www.justicedenied.org/kl/lobato_supplemental_juror_exhibits_11242011.pdf

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

Scott Sister's Release Proves The Power Of One Person To Make A Difference

Mississippi Governor Haley Barbour announced on December 30, 2010, that he was indefinitely suspending the sentences of Jamie and Gladys Scott.

The sisters were convicted in 1994 of rob-

bing two men in Scott County, Mississippi of \$11 who 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 that



Jamie and Gladys Scott

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. They also have two other affidavits clearing them of the crime.

The sisters filed a pardon petition, and the outrageousness of their case attracted national attention, including articles by na-

Scott Sisters cont. on p. 15

Scott Sisters cont. from p. 14

tional columnists Bob Herbert and Leonard Pitts Jr., and their release was supported by the NAACP.

After more than three hundreds of people rallied in support of the Scott Sisters at the capital in Jackson, Mississippi on September 15, 2010, Governor Haley Barbour met with supporters who encouraged him to pardon the sisters.

Gov. Barbour explained in his Statement that he ordered suspension of the sister's sentences and their release after 16 years of imprisonment because:

"Jamie Scott requires regular dialysis, and her sister has offered to donate one of her kidneys to her. The Mississippi Department of Corrections believes the sisters no longer pose a threat to society. Their incarceration is no longer necessary for public safety or rehabilitation, and

Jamie Scott's medical condition creates a substantial cost to the State of Mississippi.

...

Gladys Scott's release is conditioned on her donating one of her kidneys to her sister, a procedure which should be scheduled with urgency. The release date for Jamie and Gladys Scott is a matter for the Department of Corrections."

Although Gov. Barbour wasn't courageous enough to deal with the political blow-back that would have occurred if he had pardoned the Scott Sisters, he couldn't ignore that it was a political liability to him for the sisters to remain imprisoned.

Jamie, 38, and Gladys, 35, were released on January 7, 2011. They relocated to Florida, where their mother and children live.

The release of the Scott sisters once again proves the power of one person's initial



Hundreds of Scott sister supporters march on Capital Street in Jackson, MS on September 15, 2010 (Vickie D King, *The Clarion-Ledger*)

efforts to be the reason why an innocent person's case attracts the attention necessary for them to finally win their release.

Nancy Lockhart is the person most responsible for the Scott

sisters release, and why they are not going to die in prison for a robbery there is no evidence they committed. Nancy put in years of lonely effort before she was finally successful in attracting the support of national organizations and figures and garnering the critical mass of public attention to their case that the governor could not ignore.

Nancy's blog about Grassroots Organizing In Support Of Wrongful Convictions is at, <http://nancylockhart.blogspot.com>

Sources:

Scott Sisters on Release From Mississippi Prison: 'We're So Grateful', Aolnews.com, January 7, 2011

"Taking \$11 fails to justify life sentences," by Leonard Pitts, Miami Herald, November 20,



Business As Usual At N.C.'s State Crime Lab After Audit Uncovers Culture Of Corruption

When the jury convicted Greg Taylor in 1993 of murdering a woman in North Carolina, it relied on the truthfulness of a state crime lab technician's testimony and the prosecutor's 17 statements during closing arguments that blood matching the victim's blood type was found in his truck. The blood in Taylor's truck was the only physical evidence linking him to the crime. Taylor was sentenced to life in prison.

Years later it was discovered during a reinvestigation of his case that the blood tests by North Carolina's State Bureau of Investigation (SBI) Crime Lab were negative for the victim's blood in Taylor's truck — in fact it wasn't blood at all — but the lab didn't inform the prosecutors of that fact and the crime lab technician testified falsely.

Based primarily on the new exclusionary biological evidence Taylor's conviction was overturned and he was released on February 17, 2010. The 47-year-old Taylor was wrongly imprisoned for almost 17 years.

After his pardon by North Carolina Governor Bev Perdue on May 21, 2010, Taylor was awarded \$750,000 compensation by the State of North Carolina.

In the wake of Taylor's exoneration North Carolina Attorney General Roy Cooper ordered an audit of the state's DNA crime lab. The audit uncovered 229 cases where the SBI withheld information or distorted blood evidence that could potentially exonerate a defendant. Eighty of those cases involved people who were still imprisoned.

After the audit's findings were disclosed in August, 2010, AG Cooper pledged to carry out meaningful reform in the SBI, and those changes would begin with the appointment of a new SBI crime lab director. That position remains vacant, and a full-fledged audit of the entire SBI crime lab system is not currently planned, even though it was recommended at the time the DNA lab's audit was ordered by AG Cooper.

Duane Deever was the only crime lab technician fired as a result of the audit. Deever was the technician in Taylor's case who left out of his report that the crime lab's tests determined the substance in Taylor's truck wasn't blood, and he was also accused of providing misleading testimony during Taylor's trial.

However, the audit uncovered evidence that Deever wasn't a "bad apple," but simply one of the worst of many in a culture of corruption permeating North Carolina's SBI DNA lab. Yet meaningful reforms have not been carried out to correct the crime lab's problems in order to prevent any number of future cases like Greg Taylor's from happening, and restore public confidence that the crime lab isn't simply functioning as a mill providing prose-

cution favorable evidence.

On January 18, 2011, a legislative panel released a series of recommendations that ranged from creating an advisory committee to review the crime lab's forensic work, to the purely cosmetic change of renaming the lab and redefining its purpose without changing how it operates.

Sources:

"Taylor, now free: 'Truth has prevailed'," WRAL.com (Raleigh, NC), February 17, 2010.

"Seathing SBI audit says 230 cases tainted by shoddy investigations," *News-Observer* (Charlotte, NC), August 27, 2010

"North Carolina Crime Labs Helped Jail Innocent People -- So Where's the Reform?," *Change.org*, January 18, 2011.

"N.C. panel recommends SBI lab changes," *The Sun News* (Myrtle Beach, SC), January 19, 2011.



Freeing The Innocent A Handbook for the Wrongfully Convicted

By Michael and Becky Pardue

Self-help manual jam packed with hands-on - 'You Too Can Do It' - advice explaining how Michael Pardue was freed in 2001 after 28 years of wrongful imprisonment. Soft-cover. Send \$15 (check, m/o or stamps) to: Justice Denied; PO Box 68911; Seattle, WA 98168. (See Order Form on p. 21). Or order with a credit card from JD's website, www.justicedenied.org

Texas Relies On Technicality To Deny Anthony Graves Compensation For 16 Years Wrongful Imprisonment

The Texas Comptroller's Office has denied Anthony Graves claim for almost \$1.4 million in compensation for the 12 years he spent on death row and the 16 years total he spent imprisoned for six murders in Somerville, Texas he didn't commit.

Graves was convicted in 1994 of murdering 45-year-old Bobbie Joyce Davis, her 16-year-old daughter Nicole, and four grandchildren, ages 4-9 in 1992.

There was no physical or forensic evidence linking Graves to the murders. His conviction and death sentence were based on the testimony of Robert Earl Carter, who was also convicted of the murders. Carter recanted his testimony before his 1998 execution and swore that Graves had nothing to do with the murders.

In 2006 the 5th U.S. Circuit Court of Appeals



Anthony Graves

overturned Graves' conviction and death sentence based on the prosecutor's misconduct of withholding exculpatory evidence and eliciting false testimony.

After a reinvestigation of the case by Special Prosecutor Kelly Siegler, Graves was released on October 27, 2010 after Siegler and Burleson-Washington County District Attorney Bill Parham both agreed he is innocent of any involvement in the murders, and the charges were dismissed.

Graves filed a claim with the comptroller's office under Texas wrongful conviction compensation statute. His attorney was notified on February 11, 2011 that the claim was denied because the judge's order does not state Graves' release was due to his "actual innocence." The comptroller's office explained that the law is very specific that a court's order releasing a claimant must state "on its face" that the release is based "on the claimant's actual innocence." When asked for comment about the controversy caused by the comptroller office's decision, spokesman R.J. Silva said "the law did not allow for special consideration

of the facts in Graves' case."

Siegler commented regarding the denial of compensation to Graves, "Who would have envisioned this kind of situation happening? I'm willing to testify to the fact that we believe he's innocent. I've signed an affidavit. I'm not sure what we are supposed to do to make it happen."

On Thursday, February 17, Texas Governor Rick Perry called Graves' case a "great miscarriage of justice," and said he would assist him through legislation or "directly with the comptroller's office."

Another option may be for Graves to seek a revised order by the judge that specifically states his release was based on his "actual innocence."

Graves was jailed for two years awaiting trial, so he was incarcerated for a total of 18 years. However, he is not eligible for compensation for the two years he was jailed prior to his trial.

Source:

State rejects compensation for wrongly convicted man, *Houston Chronicle*, February 14, 2011.

Perry pledges to help Graves, *Brenham Banner-Press*, February 17, 2011.



Charges Dismissed Against Man Tried Three Times In Vindictive Prosecution

The California Court of Appeal took the rare step of overturning Benjamin Puentes' statutory rape conviction and ordering that the charges be dismissed against him because he was subjected to "vindictive prosecution" by the Santa Clara County District Attorney.

Puentes was a juvenile hall counselor. He was charged with statutory rape of someone more than three years younger (a felony) and contributing to the delinquency of a minor (a misdemeanor) for allegedly drinking beer and then having sex at his home with a 16-year-old girl who had at one time had stayed at the juvenile hall.

Puentes first trial ended in a mistrial because the jury couldn't reach a verdict on either charge. Puentes was retried.

After Puentes second trial a mistrial was declared on the rape charge after the jury couldn't reach a verdict, but the jury con-

victed him of the misdemeanor charge of contributing to the delinquency of a minor.

The Santa Clara County District Attorney's Office made a motion to dismiss the rape charge "in furtherance of justice." The judge granted the motion.

The California Court of Appeal then overturned Puentes' misdemeanor conviction because of the judge's error instructing the jury. During a subsequent hearing the trial judge ruled the prosecution had failed to prove all the elements required to establish Puentes had contributed to the delinquency of a minor and ordered his acquittal.

Puentes thought he was a free man. He was until the DA refiled the rape charge. Puentes filed a pretrial motion to dismiss it on the ground that since it had been dismissed at the request of the DA "in furtherance of justice," it was vindictive prosecution for the DA to refile it in retaliation for Puentes' successful appeal of his misdemeanor conviction. The judge denied Puentes' motion and after his third trial he was convicted by a jury of statutory rape. He was sentenced to three years of felony probation.

Puentes appealed on his conviction. The U.S. Supreme Court ruled in 1974 that "it was not constitutionally permissible for the State to respond to [the defendant's] invocation of his statutory right to appeal by bringing a more serious charge against him prior to the trial de novo." (*Blackledge v. Perry* (1974) 417 U.S. 21, 28-29.) The Court also ruled in 1982 that an individual "certainly may not be punished for exercising a protected statutory or constitutional right." (*U.S. v. Goodwin*, 457 U.S. 368, 372 (1982).

Puentes' primary argument was that "he was subjected to vindictive prosecution" because there was no new evidence to justify refiled the rape charge after it had already been dismissed at the request of the DA. Puentes also argued the DA's refiled of the rape charge was an unconstitutional punishment of him for exercising his right to appeal that resulted in the overturning of his misdemeanor conviction.

After analyzing the course of events in Puentes' case, the Court of Appeal determined that the prosecution had not dispelled its burden to overcome the "presumption of vindictiveness" created by the refiled of the

Vindictive cont. on page 17

Conviction

Review of the movie
by Hans Sherrer

Conviction is a 2010 movie about Kenneth Waters' conviction for the 1980 murder of Katharina Brow in Ayer, Massachusetts, and Betty Anne Waters' belief in her brother's innocence that resulted in him being freed in 2001 after witnesses recanted and DNA tests proved he didn't commit the crime. *Conviction* has a number of bona fide stars, including two-time Academy Award winner Hilary Swank as Betty Anne Waters, Sam Rockwell as Kenneth Waters, and Minnie Driver, Juliette Lewis, and Peter Gallagher in supporting roles.

Conviction is Swank's third movie biopic of a woman. In 2007 she starred as teacher Erin Gruwell in *Freedom Writers*, and in 2009 she starred in *Amelia* as famed aviatrix Amelia Earhart. Swank strives for authenticity in her movies and this reviewer loved her in *Amelia*. So expectations were high for *Conviction*.

On the level of going through the motions to tell Kenneth and Betty Anne Waters story *Conviction* somewhat succeeds – but a PBS Frontline documentary would have done it more effectively.

On the level of being an entertaining movie with vivid performances *Conviction* fails miserably. Kenneth and Betty Anne are not likeable people. Kenneth is a violent thug who might have been saved from actually killing someone by being imprisoned 18 years for a murder he didn't commit. Betty

Anne isn't much better. She is a pushy and self-centered. Swank's portrayal of Betty Anne doesn't help humanize her, and you never get the sense that Swank is doing anything except posing throughout the movie. See Swank pout! See Swank get mad! See Swank look serious! See Swank talk with a fake Massachusetts accent! See Swank frown! And so on. The other actors likewise seem to be posing. They are all better actors than their performances in *Conviction*. There simply isn't a coherent vision or direction for the movie.

Even the choice of making a movie about Kenneth Waters' case seems a bit odd. Betty Anne Waters accepted her brother's word he wasn't guilty. It turns out that he was innocent, but if he had been proven guilty her years of effort would have been for naught. After all, psychopaths are so skilled at lying they can fool trained psychologists ... much less gullible relatives. It is foolish for anyone to invest years and years in working on behalf of a person convicted of a crime without a rational basis to think he or she didn't commit the crime. Yet *Conviction* attempts to idolize Betty Anne Waters precisely because she just felt in her heart that her brother wasn't guilty.

For reasons unknown the filmmakers chose not to include two important aspects of Kenneth's story, not even in scrolled text at the end of the movie. One is he died about six months after his release from prison as a result of injuries due to an accidental fall. The second is that Betty Anne is the administer of Kenneth's estate that in 2009 was awarded \$10.7 million by a federal judge as a result of a federal civil rights lawsuit against the City of Ayers and other defendants.

Conviction was a box office disappointment. It only grossed \$6.8 million in the U.S. while its production cost was \$12.5 million plus advertising and distribution expenses. *Conviction* was not nominated in any category for a Golden Globe or Academy Award.



Fortunately, there are a number of well-made movies about people working to free a wrongly convicted person. One of those is *The Wronged Man*, a 2010 Lifetime Movie Network production that stars Julia Ormond as paralegal Janet Gregory and Mahershala Ali as Calvin Willis. Gregory worked on Willis' case for about 20 years before DNA evidence proved his innocence of raping a 10-year-old girl in 1981. Gregory didn't know Willis before she began working on his case and became convinced of his innocence. She even raised the money to pay for the DNA testing that freed Willis. Ormond is compelling in her portrayal of Gregory and her decades long quest during which she kept forging ahead in spite of experiencing many disappointments. *The Wronged Man* has the feel of authenticity and character development that is lacking in *Conviction*. So if a person wants to see a recent movie about a woman working to free an innocent man, this reviewer suggests that *The Wronged Man* will be a much more satisfying experience than *Conviction*.

If a person wants to see a classic movie about a woman working to free an innocent man, you can't go wrong with *Call Northside 777*. That 1948 movie is a dramatization of the 12-year effort by Joseph Majczek's mother to find proof her son didn't murder a Chicago policeman in 1933. *Call Northside 777* stars Jimmy Stewart, Lee J. Cobb and Richard Conte.

Conviction, *The Wronged Man*, and *Call Northside 777* are available for purchase from Amazon.com and other retailers, and they can be rented from Netflix and other rental outlets.

Conviction
Directed by Tony Goldwyn
Screenplay by Pamela Gray
107 minutes
Released to theaters in October 2010
Released on DVD/Blu-ray in March 2011

Vindictive cont. from page 16

rape charge, because "the prosecutor believed that justice had been served by the misdemeanor conviction only until defendant prevailed on appeal. ... the only inference from this fact is that the prosecutor changed her mind because defendant prevailed on appeal." Consequently, the trial judge had erred in determining that the facts and the law did not support a finding of "prosecutor vindictiveness" and dismissal of the rape charge. (*People v. Benjamin Puentes*, No H034546 (6th Appellate Dist Ct, 12-20-2010))

The Court ordered the reversal of Puentes' conviction and that the trial court dismiss the rape charge.

Sources:
People v. Benjamin Puentes, No H034546 (6th Appellate Dist Ct, 12-20-2010)

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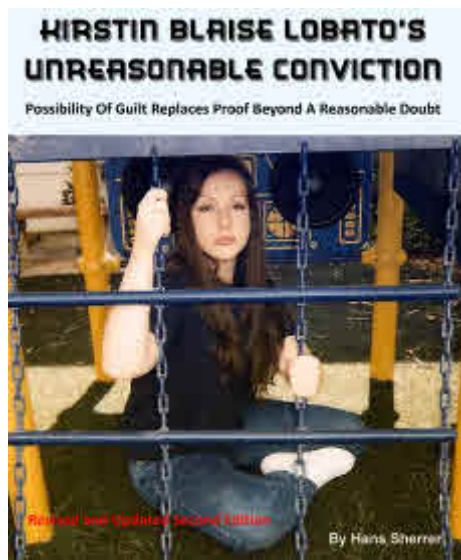
"Kirstin Blaise Lobato's Unreasonable Conviction" Updated Second Edition Now Available!

The revised and updated second edition of *Kirstin Blaise Lobato's Unreasonable Conviction* by Justice Denied's editor and publisher Hans Sherrer is now available.

The first edition was published in February 2008. The second edition includes more than 70 pages of new information, including the filing of Ms. Lobato's Nevada state *habeas corpus* petition, which is pending.

Kirstin Blaise Lobato was 18-years-old when charged with the first-degree murder of Duran Bailey in Las Vegas in July 2001. She was convicted in October 2006 of voluntary manslaughter and other charges. Her case is an example of the perfect wrongful conviction:

- She had never met Mr. Bailey.
- She didn't know anyone who knew Mr. Bailey.
- She had never been to where the murder occurred.



- At the time of the murder in Las Vegas she was 170 miles north in the small rural town of Panaca, Nevada where she lived with her parents.
- No physical, forensic, eyewitness, or confession evidence ties her to the crime.
- All the crime scene DNA, fingerprint, shoeprint and tire track evidence excludes her and her car from being at the crime scene.
- There is no evidence she was anywhere in Clark County (Las Vegas) at anytime on the day of the murder.

Ms. Lobato's prosecution for Mr. Bailey's murder is as inexplicable as if she had been randomly chosen for prosecution by her name being pulled out of a hat containing the name of everyone who lived within 200 miles of Las Vegas.

The simple fact of the matter is that there was more evidence that the men and women executed for witchcraft in Salem, Massachusetts in 1692 were guilty, than there is that Kirstin Blaise Lobato murdered Duran Bailey. Why? Because those accused witches were present at the scene of their alleged sorcery — not 170 miles away. Yet we know that the people found guilty in Salem were all innocent.

\$13

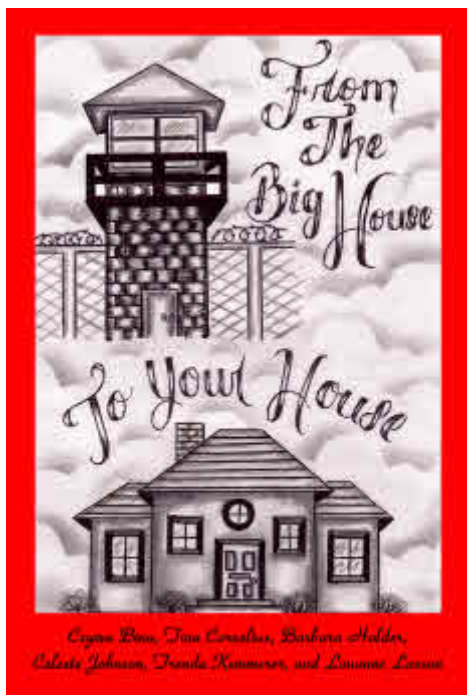
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Victims of Justice Revisited by Thomas Frisbie and Randy Garrett #519.95 - 468 pgs. Tells the story of Rolando Cruz and his two co-defendants accusation of kidnapping and murdering Jeanine Nicarzoz in 1983 from the day the crime occurred to their exoneration 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. #22

Innocent Inside: Wrongful Conviction cases by Scott Christiansen - \$20 - 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 perjury 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 - \$15.95 - 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

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Last Man Standing: The Treachery and Triumph of Gerónimo Pratt by Jack Olsen - \$20 - \$12 pgs. The story of Gerónimo Pratt's 1970 conviction and life sentence for an L.A. murder committed when he was 350 miles away from the crime scene and under FBI surveillance in Oakland, C.A. 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. #6/3

Last Words From Death Row by Norma Herrera - \$19.95 - 264p

finding the truth of a person's guilt or innocence. 1888

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 26 years of wrongful imprisonment. #01 (No Service Charge)

Edition by Elias Sherritt - \$13 - Kristin Blaise Lobato has twice been convicted in Las Vegas of murdering a homeless man and sexually assaulting his corpse in 2001. Yet, there is no forensic, physical, eyewitness or confession evidence linking her to the murder or the crime scene, and there is no evidence he was sexually assaulted by the perpetrator. This is the full story reported in *Justice Denied* Issues 26 & 34. #1000 (No Service Charge)

Improper Submissions: Records of a wrongful conviction
by Erna Armstrong - \$10 - 370 pages. The true story of how Karllyn 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 Karllyn. #28 (No Service Charge)

From The Big House To Your House (a cookbook written by six Texas state women prisoners - \$14.95 - 132 pages (No Service Charge) includes two hundred easy to prepare recipes for meals, snacks and desserts. 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. Recipes can be adjusted for your individual tastes or availability of ingredients. #136

Don't's Knot: The True Story of the West Memphis Three by Mean Leveritt - 515 - 452 pigs. 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 related youth, and the defendants' alleged ties to satanic rituals. #65

Arbitrariness: Justice: The Power of the American Prosecutor by Angela J. Davis—\$19.95—280 pgs. (Now in softcover with a lower price.) 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 ineffective and foster a climate of tolerance for misconduct. #84

Police Interrogation and American Justice by Richard A. Leo • \$22.95 • 384 pgs. (Now in softcover with a lower price!) Professor Leo is one of the world's leading authorities on false confessions. Leo shows the police have developed sophisticated interrogation methods that rely on persuasion, manipulation, deception and psychological coercion to induce an admission of guilt from a suspect. Leo argues that standard interrogation techniques produce confessions that are inherently suspect, and that false confessions are relied on to wrongly convict a person. Leo also explains that the *Miranda* warning, ineffectively, protects a suspect's right against self-incrimination. #102

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

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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

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Essentials of English Grammar by L. Sue Baugh - \$9.95 - 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

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The Criminal Law Handbook (11th ed.) (Sept. 2009) by Attorney 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

Legal Research: How to Find & Understand the Law (15th ed.) (Sept. 2009) by Attorney Paul Bergman & Sara J. Bergman-Barrett - \$49.99 - 386 pgs. Learn how to do legal research, and use a law library to seek and understand statutes, regulations and cases. Also explains online resources. Written for a layperson. Aids in saving time by narrowing your focus and formulating legal questions such as, is the issue federal or state, civil or criminal, procedural or substantive? #03

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New York Times Almanac - \$12.99 - 1,024 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 - \$27.50 - 272 pgs. Professor Loftus is one of the world's leading authorities on the unreliability of eyewitness testimony. She explains the basics of eyewitness fallibility, such as poor viewing conditions, brief exposure and stress. She also covers more subtle factors, such as expectations, biases, and personal stereotypes that can result in a suspect's erroneous identification. Loftus also explains that experiments have repeatedly proven that eyewitness memory is chronically inaccurate. #21

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

No Crueler Tyrannies: Accusation, False Witness, and Other Terms of Our Times by Dorothy Rubinstein - \$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 Amraut 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

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

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

Suspect Identities: A History of Fingerprinting and Criminal Identification by Simon Cole - \$23.50 - 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

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 underserving 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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Robert Glenn Ford was the lead detective in the case of the Norfolk Four — four young Navy men wrongly convicted of the 1998 rape and murder of an 18-year-old woman in Norfolk, Virginia. Ford was convicted in federal court in October 2010 of extortion and lying to the FBI regarding cases unrelated to the Norfolk Four case. Ford was sentenced in February 2011 to 12-1/2 years in federal prison. See p. 9.