

## Ivan Henry Files Lawsuit For 27 Years Wrongful Imprisonment As A Serial Rapist

Ivan Henry has filed a lawsuit seeking money damages for his wrongful conviction as a serial rapist, and more than 27 years of incarceration until his release in June 2009.

Henry was 35 when arrested in May 1982 on charges of committing sexual offences against eight women in Vancouver, British Columbia. Henry proclaimed his innocence, and there was no physical, forensic or independent eyewitness evidence linking him to any of the crimes. The prosecution's key evidence was his identification by the victims, and in the "he said, she said" contest his jurors were faced with, they sided with the women. Henry was convicted on March 15, 1983 of three rapes, two attempted rapes, and five indecent assaults.

Henry insisted during his sentencing hearing that the women had misidentified him and he was innocent. The judge responded by saying that Henry didn't have "any redeeming qualities" as a human being, and that "Society must be permanently protected from the predatory behaviour of Henry." The judge ruled Henry was a "dangerous offender" and sentenced him to an indeterminate sentence, which meant he would die in prison unless he was granted release on parole.

Henry's *pro se* direct appeal was dismissed in 1984 on the procedural ground that he missed a filing deadline. Henry missed the deadline because he couldn't afford the \$4,300 cost of his trial transcript. All of Henry's numerous post-conviction appeals were also dismissed without a review of the merits of his case.

After Henry had languished in prison for more than two decades, the Vancouver police alerted British Columbia's Attorney General in 2006 that while conducting Project Small Man, an investigation into a series



1982 photo of Ivan Henry in a headlock by a police officer during a lineup. The lineup was made up of police officers in civilian clothes. Most were smiling, except for Ivan Henry.

of crimes, they discovered evidence that Henry may not have committed his convicted crimes. In November 2006 the Attorney General appointed Vancouver lawyer Leonard Doust as an Independent Special Prosecutor to investigate whether Henry's convictions constituted a potential miscarriage of justice.

After a 16 month investigation, in March 2008 Doust reported to the Attorney General that the new evidence provided sufficient grounds for an appeal by Henry of his convictions on the basis they constituted a miscarriage of justice. The report also recommended that the AG disclose all relevant evidence to Henry, including the results of the Project Smallman investigation, so he could prepare his appeal.

Henry's appeal was prepared by three lawyers who agreed to represent him *pro bono*. His appeal claimed that the police botched the investigation, exculpatory evidence was not disclosed, the trial judge erroneously instructed the jury, and another man could have been responsible for the crimes.

On January 13, 2009 British Columbia's Court of Appeal unanimously approved reopening Henry's case. In her oral ruling Justice Mary Saunders explained that Henry had never had an appeal of the merits of his case, and "This is an extraordinary application." The court's ruling was Henry's first victory after he had "soldiered on" for a quarter-century as a jailhouse lawyer and getting nowhere with the numerous petitions he filed related to his conviction and sentence.

Henry was released on bail in June 2009 pending the outcome of his appeal. He had been incarcerated for 27 years and 1 month.

On October 27, 2010, the appeals court unanimously acquitted Henry of all 10 sexual offences he had been convicted of against the eight women.

Henry [filed a lawsuit](#) in June 2011 seeking unspecified damages against the City of Vancouver, the provincial and federal governments, and three members of the Vancouver police department. He is seeking damages for loss of liberty, reputation and privacy while in prison, along with pain and

## Mistrial Declared After Defense Lawyer Questions Judge's "Professional Competence"

John Henry Browne lived up to his reputation as one of the most zealous defense lawyers in Washington state when a mistrial was declared on July 6, 2011 during a trial in Kitsap County as a result of his contentious sparring with the judge over what he claimed was the judge's denial of his client's constitutional rights to a fair trial.

Among Browne's many successes during his four decade legal career was helping to exonerate some of the innocent people convicted in what became known nationally as the Wenatchee Sex Ring cases. In the mid-1990s forty-three innocent people were arrested for child rape and other charges that

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Ivan Henry, with daughters Tanya Olivares (left) and Kary Henry on October 27, 2010 when he was acquitted by British Columbia's Court of Appeal (Ian Smith, Vancouver Sun)

suffering, emotional and psychological harm, and humiliation and disgrace caused by the defendant's conduct. He claims the police engaged in "high-handed, outrageous, reckless" behavior in his case.

Henry is also seeking damages for loss of usual, everyday experiences, past income and loss of

opportunity to earn income. He is also seeking an award for his daughters, who were children when he was wrongfully imprisoned and to compensate them for expenses they incurred as a result of his incarceration. [Henry's lawsuit claims](#), "As a result of his wrongful conviction and incarceration they were effectively deprived of a father and the benefits of a father's love, guidance and affection."

Read *Justice Denied's* March 2009 article [about Henry's case](#), "Ivan Henry's Case Re-opened After 25 Years Proclaiming His Innocence Of Being A Serial Rapist."

Sources:

[B.C. man](#) wrongfully convicted in rape cases seeks damages in suit: Ivan Henry also wants compensation for daughters, *Vancouver Sun*, June 29, 2011

[B.C. man launches](#) suit over wrongful rape convictions, *The Canadian Press*, June 30, 2011

[Ivan Henry's Case](#) Re-opened After 25 Years Proclaiming His Innocence Of Being A Serial Rapist, By Hans Sherrer, *Justice Denied* blog, March 21, 2009

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were fabricated by a detective with the Wenatchee, Washington Police Department.

Dominic Briceno was charged in 2009 with six drug related felonies in Kitsap County, and he hired Browne to represent him. Briceno's trial began in June 2011. Superior Court Judge Theodore Spearman denied Browne's pretrial motions and ruled in the prosecution's favor on every significant evidentiary issue that arose during the trial. Browne expounded during many of his objections so the jury would understand why he was objecting. Judge Spearman countered by ordering Browne to only utter a single word when he objected — "Objection." Spearman twice fined Browne \$500 and threatened to jail him after finding him in contempt for violating his order to confine his objections to one word.

Browne repeatedly moved for a mistrial during the trial, and the tussle between Browne and Spearman came to a head on July 5, 2011 when Kitsap County deputy prosecutor Alexis Foster objected to Browne's "ongoing speaking objections" in violation of the judge's order. Spearman agreed with the prosecutor and fined Browne another \$500. Browne [then declared](#) with the jury present that Judge Spearman was preventing him from effectively representing Briceno and that he no longer wanted "to participate in this trial."

Spearman adjourned court for the day and told Browne to tell him the next day how he wanted to proceed. The following morning Browne filed a "memorandum regarding judicial conduct." [Browne's memorandum](#) asserted that Briceno's constitutional rights were violated by Spearman's rulings throughout the trial, and that the "court's misapprehension and misapplication of the law — always in favor of the state — demonstrates the court's incompetence to preside over (the) trial." Browne also asserted that Spearman interfered with Briceno's right to a fair trial by failing "to even consider the defense argument" and those decisions "thus call the court's faithfulness to the law and professional competence into serious question." The conclusion of Browne's analysis of the case was to request that Spearman recuse himself in the interests of justice.

In court on the morning of July 6 Spearman refused to consider Browne's memorandum and request for his recusal, and he indicated



he was going to resume the trial. Browne countered by making a motion for a 10-day continuance that Spearman denied. Browne consulted with Briceno, after which Briceno told Spearman "he would like to fire his counsel." Browne reiterated that he would be refusing to participate in the case, so agreeing to remove Browne as Briceno's attorney seemed Spearman's only option, because to continue the trial with Browne plainly doing nothing to assist Briceno would mean a virtually automatic reversal of Briceno's conviction on appeal if he were convicted.

Spearman announced that he was inclined to declare a mistrial [due to Browne](#) "behaving improperly" and "obstructing justice." Deputy prosecutor Foster suggested that Spearman should find Browne in contempt and jail him.

Spearman recessed court while he considered his options. During that recess a bailiff overheard a juror [say that he](#) would like to "punch that defense attorney in the nose." After the comment was reported to Spearman, court was reconvened and he declared a mistrial on the basis that Browne's conduct had "thwarted" the administration of justice and created "incurable prejudice" in the juror's against his client.

Kitsap County Prosecutor Russ Hauge [announced after](#) Spearman's ruling, "We have no issues with Judge Spearman's performance." He also said the prosecutor's office will file a motion requesting that Browne be ordered to pay for the cost of retrying Briceno, since a retrial is only necessary because of Browne's "intentional conduct." Hauge defended Spearman, who has been a judge since 2004, describing him as "an extraordinarily well experienced lawyer."

Browne said [about Judge Spearman](#) to a KOMO-TV reporter, "It became apparent to me that during the course of this trial that he has, in my opinion, some serious cognitive deficits. He told me he wouldn't read briefs. I filed briefs and he said, 'I'm not going to read that.' He would rule on objections and say 'sustained' and then say 'overruled' for the same

objection. It got really bizarre." Browne said he will appeal the fines imposed by Judge Spearman and that he will file a complaint against him with the Washington State Commission on Judicial Conduct.

Browne was ordered by Spearman to return to Port Orchard on July 27 for a fact-finding hearing concerning Browne's conduct during the trial. However, days before the hearing was scheduled to take place [Spearman delayed it](#) until after Briceno's case was tried.

The hearing was not held and Spearman died on January 3, 2012 of complications from a brain aneurysm. Browne, who [has been described](#) as "the most hated man in the state" of Washington for his defense of high profile clients, including Ted Bundy, says that it comes with the territory: People take their freedom for granted. They don't teach civics anymore. They don't realize how delicate the system is. It is a simple equation: The more power you give to government the less power you give to individuals."

Dan Satterberg, then chief of staff for the King County Prosecutor's Office, said of Browne, "He never seems to doubt the righteousness of his case. Other attorneys will allow themselves to have a casual aside with a prosecutor that he thinks his case is weak or his client is lying. But you won't get any of that from John."

John Henry Browne's website is, <http://www.jhblawyer.com>.

*Witch Hunt: A True Story of Social Hysteria and Abused Justice* by Kathryn Lyon (Avon books 1998) is the single best source of information about the Wenatchee Sex Ring cases. Used copies are available very reasonably on [amazon.com's website](#).

### Sources:

[Seattle attorney](#) questions Kitsap judge's competence, spurs mistrial, *Kitsap Sun* (Bremerton, WA), July 8, 2011

[Mistrial after](#) juror wants to punch lawyer in nose, *Kitsap Sun* (Bremerton, WA), July 8, 2011

[Kitsap judge](#) delays Seattle lawyer's discipline hearing, *Kitsap Sun*, July 25, 2011

[For The Defense](#) — Bundy, Ng, Pang And An Eagle Scout: Attorney John Henry Browne Has Defended Them All With His Own Peculiar Style, *The Seattle Times*, March 22, 1998

