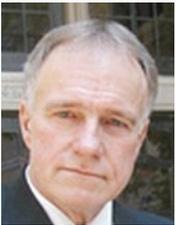


# JUSTICE DENIED

The Magazine for the  
Wrongly Convicted

**Gordon Randall  
Steidl**



Settled lawsuit for \$2.5 million for 17 years wrongful imprisonment for murder in Illinois.  
See page 16

**Susan Finkelstein**



Attempted prostitution conviction overturned for Craigslist ad for Philadelphia Phillies World Series tickets.  
See page 8



**Chiang Kuo-ching**

Family awarded \$3.43 million for his wrongful rape and murder convictions and execution in Taiwan.  
See page 15

**Christopher Burrowes**



Awarded \$15,000 for 3 years of wrongful imprisonment for sexual assault in Wisconsin.  
See page 12



**Antonio Williams**

Released after 4-1/2 years wrongful imprisonment for rape in Alabama.  
See page 18

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**Two Olympic Sprinters Acquitted Of Perjury About Motorcycle Accident!**

**Norman Chiadzna Sues For Return Of Diamonds After Conviction Overturned!**

**John Busuttil Spends \$60,000 To Overturn Speeding Conviction!**

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Fall 2012**

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**Message From The Publisher**

Steven Avery’s 1985 convictions illustrate the power of police and prosecutors to frame an innocent person for a crime based on little more than tainted testimony, suspicion and innuendo, and his 2007 convictions follow that same pattern. See p. 3.

The ongoing saga of the Beatrice Six’s multiple lawsuits against the government agencies and employees responsible for their wrongful convictions is an object lesson of how difficult it is to hold the parties responsible for such atrocities financially accountable. See p. 7.

Susan Finkelstein’s exoneration shows the level to which prosecutors will stoop to portray a legal activity as illegal so they can obtain a wrongful conviction. See p. 8.

Jailhouse snitch testimony is perhaps the single most unreliable source of evidence in a prosecutor’s bag of tricks, and Missouri’s appeals court recognized that in overturning Reginald Griffin’s 1988 murder conviction. See p. 9.

Payments to a person deemed to be actually innocent by the states that have a compensation statute runs the gamut from being fairly generous by Texas, to being anemic by Wisconsin, as demonstrated by the \$15,000 paid to Christopher Burrowes for his three years of wrongful imprisonment for sexual assault. See p. 12.

The inadequate degree of relief by state and federal appeals courts in the U.S. is demonstrated by a report on the New South Wales Court of Criminal Appeals (Australia’s largest state), which shows that the relief of a new trial or acquittal was granted in 36% of the criminal appeals heard by that court. See p. 13.

Hans Sherrer, Editor and Publisher  
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## Introduction

Michael Griesbach inadvertently makes a very good case toward the end of his book that is primarily about Steven Avery's 1985 sexual assault convictions that DNA evidence proved he was innocent of committing, that Mr. Avery is also actually innocent of his 2007 murder conviction for which he is currently serving a sentence of life in prison.

### Unreasonable Inferences The True Story of a Wrongful Conviction and Its Astonishing Aftermath

By Michael Griesbach  
(Point Beach Publishing, 2010)

Review by Hans Sherrer

Michael Griesbach was one of the prosecutors in Manitowoc County, Wisconsin who after reviewing Steven Avery's case agreed in 2003 to sign a stipulation that his 1985 convictions related to a sexual assault should be vacated. Avery was subsequently released after 18 years of wrongful imprisonment. *Unreasonable Inferences* is Griesbach's account of the Avery case based on both publicly available information and his inside knowledge. Although Griesbach is a lawyer, *Unreasonable Inferences* is a very readable book that uses a minimum of legal jargon in explaining how Avery was prosecuted, convicted, and imprisoned for the assault of a woman he had never met, and that occurred when he was miles from the crime scene.

Penny Beerntsen went for a one-hour run on a sunny day in July 1985 in a park and adjoining state forest along Lake Michigan's shore in Manitowoc County. Penny wore a watch to keep track of her time. At 3:10 p.m. she saw a scraggly man who was fully clothed and wearing a coat even though the temperature was in the mid-80s. She reached her half-way point at 3:30 p.m. and turned around. At 3:50 p.m. Penny again saw the scraggly man. After accosting her, the man beat and sexually assaulted her. Fifteen minutes after the attack began the man fled into the forest at 4:05 p.m. Where Penny was assaulted was about 1/2 mile from the nearest parking lot.

Steven Avery was a young rabble-rouser in Manitowoc County, although he had never been convicted of a violent crime. Manitowoc County's sheriff didn't like Avery, and when he learned of the attack on Penny he

## Has Steven Avery Twice Been Wrongly Convicted Of Heinous Crimes?

had the gut feeling Avery was the perpetrator. Based on his suspicion the sheriff immediately ordered Avery's arrest, even though he didn't know what Avery had been doing that day, and there was no evidence linking him to the crime.

Avery was charged with the assault after Penny selected him from a photo array of mugshots she was shown while hospitalized.

*Unreasonable Inferences* shows that before Avery's trial in December 1985 there were many large red flags he was the wrong man.

First, he didn't match key physical characteristics of Penny's assailant she described when she was first interviewed by the police. Penny had close contact with her assailant in broad daylight, and she said he was 5'-6" to 5'-7", he had brown eyes, and he was in his early 30s. In contrast Avery is 5'1", he has blue eyes, and he was 23 at the time of the attack.

Second, Penny stated repeatedly that her assailant had clean hands and smelled clean, while Avery had been pouring concrete that afternoon and he had chronically dirty and greasy hands from constantly working on automobiles and he didn't have good personal hygiene.

Third, Penny was assaulted in a sandy area, but no sand was found in any of Avery's shoes, clothes, or on the floor mat or seat of his Chevy Blazer.

Fourth, neither Avery nor his Blazer was seen anywhere in the park or the surrounding area on the day of Penny's attack.

Fifth, a dozen relative and non-relative alibi witnesses established that on the afternoon of the assault Avery had been helping pour concrete at his parent's auto salvage yard until 3:30 p.m., and that he, his wife and his five children, including twins born six days earlier, didn't leave there until 4:30 p.m. The salvage yard is 12 miles inland from where Penny was assaulted. It was not possible for Avery to have concocted his alibi. He was arrested hours after Penny's assault and he was held incommunicado for eight days from his family and friends. It was during those eight days that Avery's alibi witnesses gave police statements that matched their testimony at his trial about his

whereabouts the afternoon of the attack.

Sixth, alibi witnesses also established that when Avery and his family left the salvage yard they drove to Green Bay where they first went through the drive-thru at a Burger King, then they went through a drive-thru car wash, and the receipt for a paint purchase establishes that at 5:13 p.m. they bought some paint at a Shopko in Green Bay — 36 miles from where Penny was assaulted. The Shopko check-out clerk confirmed the paint was bought by Avery and that his family was with him.

Seventh, it was improbable that the timeline of Penny's assault from 3:50 to 4:05 p.m. allowed time for Avery to have committed it unless he was speeding significantly above the speed limit after he finished pouring concrete at the salvage yard at 3:30 p.m. It was physically impossible if one considered that Penny first saw her assailant at 3:10 p.m. when Avery's alibi witnesses established he was 12 miles away pouring concrete.

Eighth, a man believed to be Penny's attacker called her at her home two days after the assault and it wasn't Avery, because he was held incommunicado at the jail for eight days and he didn't make any calls during that time.

Yet, Penny's in-court identification of Avery was sufficient to overcome the facts supported by numerous alibi witnesses that excluded him as her assailant. After deliberating for three days Avery was convicted of sexual assault, attempted murder, and false imprisonment. He was sentenced to 49 years in prison.

In 1995 a lawyer hired by Avery's parents filed a post-conviction motion for DNA testing of loose pubic hair collected from Penny and biological material recovered from scrapings underneath her fingernails. The motion was granted. There was insufficient biological matter from the pubic hairs to test, but testing of the fingernail scrapings resulted in identification of a DNA profile that didn't match Avery or Penny.

Avery's subsequent motion for a new trial was based on the exculpatory DNA evidence, and that the prosecutor violated Avery's right to due process by failing to disclose that prior to his trial the Manitowoc County sheriff identified an alternate suspect seen by witnesses at the park who matched Penny's description of her assailant. That new trial motion was denied.

Steven Avery cont. on p. 4

## Steven Avery cont. from p. 3

Then in 2000 the Wisconsin Innocence Project (WIP) agreed to represent Avery to seek testing and retesting of the pubic hairs and the fingernail scrapings by state of the art DNA testing techniques. Over the prosecution's intense opposition the WIP's motion to test the evidence was granted. One of the pubic hairs was not only found to exclude Avery, but the DNA profile was complete enough for comparison with the profiles stored in the Wisconsin and FBI's DNA databases. That comparison resulted in a DNA hit for Gregory A. Allen who was serving a 60-year sentence in Wisconsin for a 1995 rape.

Michael Griesbach was a prosecutor in Manitowoc County when the DNA test results were reported and Allen was identified as the source. Griesbach and the District Attorney exhaustively reviewed Avery's case file and trial transcript. In light of the new DNA evidence that excluded Avery but implicated Allen, and the many inconsistencies in the trial evidence, Griesbach and the DA were convinced of Avery's innocence and signed a stipulation that his convictions should be vacated. Avery was released in 2003 after almost two decades in prison.

Griesbach's recounting of what the Manitowoc County Sheriff and the DA did in 1985 to ensure Avery was convicted is one of the most interesting parts of *Unreasonable Inferences*. One thing is certain: If the sheriff had not relied on his gut to pin Penny's assault on Avery before the crime was investigated it is likely the right man would have been charged with the crime and convicted instead of Avery. Allen matched Penny's description and the description of the witnesses the DA concealed from Avery's trial lawyer, he had a number of sex related convictions, he was identified as a suspect after Avery's arrest, and prior to Avery's trial several prosecutors in the Manitowoc County DA's Office voiced their opinion to DA Vogel that they were convinced Allen assaulted Penny.

Whether or not he intended to do so, Griesbach lays out a scenario in *Unreasonable Inferences* that Avery wasn't wrongly convicted so much as he was deliberately framed by Manitowoc County's Sheriff and DA who knew he didn't fit the facts of Penny's assault. The best that can be said of the people involved in Avery's prosecution is they based it on unreasonable inferences based on suspicions and not hard evidence he assaulted Penny.

After Avery's release he filed a \$36 million

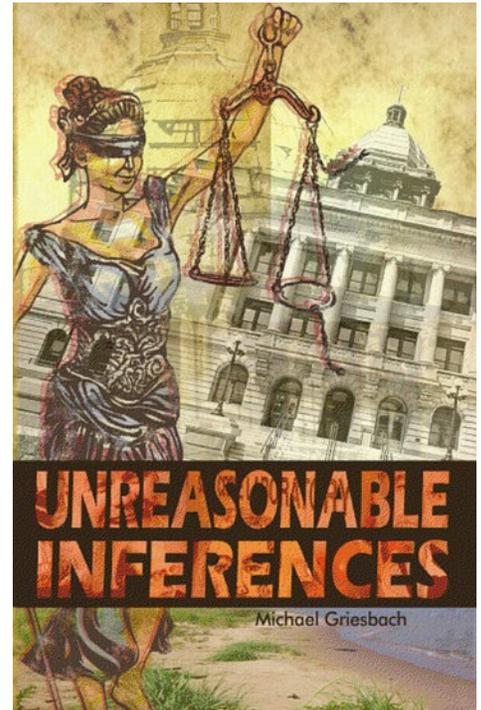
federal civil rights lawsuit against Manitowoc County, its former sheriff Thomas Kocourek, and its former District Attorney Denis Vogel. Avery was living a respectable life and he was on track to collect many millions from Manitowoc County from his lawsuit.

Then something surreal happened: Teresa Halbach – a photographer who had been to Avery's Auto Salvage at least 15 times to photograph vehicles for *Auto Trader* magazine – disappeared on October 31, 2005, a day when she was at the salvage yard photographing a car. Her SUV was found by itself on the edge of the salvage yard four days after she disappeared. Her remains were found in a fire pit during an intensive search of the salvage yard property.

The police decided Avery was the last person to have seen her alive, and he was arrested and charged with the crime.

The prosecution's case was based on a number of remarkable coincidences, and Avery's lawyers made it clear they believed he had been framed to ensure he wouldn't win his civil rights lawsuit and collect many millions in compensation from Manitowoc County. Among those coincidences are:

- Halbach's SUV was "found" by itself next to the salvage yard *four days* after she disappeared, in an area that had been thoroughly searched by the police. Avery couldn't have driven it there after the area was searched because it was sealed off by the police for eight days after her disappearance, and only the police had access to the area.
- During the police's *seventh search* of Avery's trailer on the auto salvage yard property, and *after* Halbach's SUV was found, the keys to her SUV were "found" in his bedroom by two sheriff deputies who had been deposed several weeks earlier in Avery's civil suit. Avery couldn't have put the keys there because the salvage yard was sealed off by the police for eight days after Halbach's disappearance, and only the police had access to his trailer.
- An unsealed vial of Avery's blood was found by his lawyers in a box of documents at the courthouse.
- Two tiny spots of Avery's blood were "found" on the seat cover of Halbach's SUV – yet none of Avery's skin cells or blood was found on the door handles, steering wheel or gearshift lever that would have been present if he had been in the vehicle and driven it with a bleeding hand to where it was found.



- A bullet fragment was "found" in Avery's garage after it had been thoroughly searched a number of times by the police, but there was no way to determine where it came from.

Several months after Halbach's murder Avery's 16-year-old nephew Brendan Dassey was also charged when after a number of intense interrogations he "confessed" to involvement in the crime. Dassey's "confession" included so many details that didn't jibe with the crime scene that on its face it has the earmarks of being a false confession. Among other things:

- Dassey stated that he and Avery both raped Halbach while she was "naked and bound face up on the bed." That is improbable because none of Dassey's DNA was found in the bedroom or anywhere in Avery's trailer.
- Dassey stated that Avery stabbed Halbach in the stomach in his bedroom, Dassey cut her throat, and then Avery strangled her. That didn't happen because Dassey would have bled profusely yet not a single trace of her blood was found in the bedroom or anywhere else in Avery's trailer. Furthermore, there was no sign of a struggle in the trailer.
- Dassey stated he cut some of her hair off. That is improbable because not a single hair of Halbach's was found anywhere in the bedroom or elsewhere in the trailer.
- Dassey stated that he and Avery then

Steven Avery cont. on p. 5

## Steven Avery from p. 4

carried Halbach's body to Avery's garage. That is improbable because he didn't say she was wrapped in anything and not a single trace of her blood or any of her hairs was found anywhere from inside the trailer all the way to the inside of the garage.

- Dassey stated that in the garage Avery shot Halbach about 10 times with a rifle, including several times in the left side of her head. That didn't happen because there would have been significant blood splatter, but there was none, and no bullet holes were found from bullets passing through her head and body. Also, Dassey would have bled from her wounds yet not a trace of her blood was found in Avery's garage,

Dassey recanted his confession and the prosecution didn't subpoena him to testify at Avery's trial.

When it became apparent during Avery's 2007 trial how weak the prosecution's case was and that Avery's claim of being framed had some traction, a rush examination of the two blood spots found in Halbach's car was conducted by the FBI to determine if the blood preservative EDTA was present. If it was present that would be evidence the blood was planted by the police and it came from the unsealed vial of blood found by Avery's lawyers in the court file. There was no scientific protocol to test for the presence of EDTA, so in a matter of days the FBI lab created one. The test they developed excluded the presence of EDTA. However, as an experimental test that had not been verified through replication by other laboratories or peer reviewed by any independent experts, the accuracy of the new test was unknown as was its rate of producing false positive and false negative results.

Testimony about the result of the FBI lab's experimental EDTA test would not be admissible in federal court under the *Daubert* standard, and it wouldn't be expected to be admissible in states that rely on the *Fry* standard for admissibility of expert testimony. However, Judge Patrick Willis admitted the testimony by an FBI crime lab technician that the spots tested negative for the presence of EDTA. Avery's lawyers countered with the expert testimony of a laboratory quality control auditor who questioned the accuracy of the "FBI's hastily developed testing protocol that wasn't designed to rule out the presence of EDTA in the bloodstains because the limits of the analysis machine weren't low enough to find it in such a small

amount of blood."

Although the testimony of Avery's expert was more scientifically valid than that of the FBI's technician, the gravitas of the FBI lab effectively meant the testimony by the FBI technician took the air out of Avery's defense that he had been framed for the crime by the Manitowoc County Sheriff and DA.

Avery was convicted in March 2007 of first-degree intentional homicide and illegal possession of a firearm. He was sentenced to life in prison.

Not incidentally, Avery settled his lawsuit for \$400,000 prior to his trial so he would have funds to pay the lawyers he retained to defend him against the charge he murdered Halbach.

During Dassey's trial that began in April 2007 the prosecution was allowed to introduce his confession. Dassey was convicted of first-degree intentional homicide, mutilation of a corpse, and second-degree sexual assault. He was sentenced to life in prison.



Brendan Dassey during his trial in 2007 (WFRV)

Griesbach makes it clear he believes Avery and his nephew murdered Halbach – but the case he lays out in his book strongly supports that Avery had nothing to do with the murder and that just as he and his lawyers claimed, he was framed for a second time by the Manitowoc County Sheriff's Office and the District Attorney's Office.

Judge Willis provided invaluable assistance to the prosecution by making at least two key rulings: First he barred the jury from hearing details of the role the Manitowoc County Sheriff's Department and DA had played in Avery being convicted in 1985 of a crime he didn't commit. Second, Judge Willis allowed "expert" testimony regarding the hastily developed protocol to test for the presence of EDTA in the two spots of blood on the seat of Halbach's SUV – even though there had been no peer review of real world testing of the protocol to determine its accuracy and the probability of false positives. Griesbach glosses over the key role played by the judge's invaluable assistance to the prosecutors in securing Avery's convictions in 2007, and also in 1985 when among other things the judge ruled in the prosecutions favor on 18 of the 20 pre-trial motions filed by the defense.



Steven Avery during his trial in 2007

*Unreasonable Inferences* is one of the more important books written about the conviction of an innocent man because Griesbach lays out from his perspective as a prosecutor that the system didn't fail in convicting Avery in 1985 of the sexual assault of a woman he had never met in his life, but it worked exactly as the judge, the police and the prosecutor intended it to function. *Unreasonable Inferences* also makes it clear that it wasn't the system that discovered the evidence proving Avery was innocent, but outsiders who only succeeded after overcoming the system's substantial obstacles to establishing his innocence.

Although the book's title comes from the way Avery was convicted for assaulting Penny in 1985 based on unreasonable inferences drawn from the available evidence, based on the case Griesbach lays out it is equally applicable to Avery's conviction for Halbach's murder. Only the future holds the answer to whether evidence will be discovered proving Avery and his nephew are innocent and they will be exonerated of Halbach's murder.

*Unreasonable Inferences* is highly recommended to every person interested in wrongful convictions. A person can find the book interesting and learn from it regardless of their level of interest or knowledge about wrongful convictions.

*Unreasonable Inferences* is available in softcover [from Amazon.com](http://www.amazon.com) for \$19.95. It is also available as a [Kindle e-book](#).

The book's official website is, [www.unreasonableinferences.com](http://www.unreasonableinferences.com).



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## Jeffrey Moldowan Settles For \$2.95 Million To End Lawsuits For 12 Years Wrongful Imprisonment

Moldowan and his co-defendant Michael Cristini were convicted in May 1991 of kidnapping and raping Moldowan's former girlfriend, 22-year-old Maureen Fournier in August 1990.

The men's convictions hinged on the testimony of three witnesses: Fournier testified the men kidnapped her and bit her while she was being raped; and two dentists testified as experts that marks on her body matched the bite of both men's teeth. One of those witnesses, Allan Warnick, testified that the likelihood a bite mark on Fournier was made by [someone other than](#) Moldowan, "was at least 3 million to 1." The jury rejected the alibi defense of both men that they were elsewhere at the time of the crime.

Moldowan was sentenced to 60 to 90 years in prison, and Cristini to 50 to 75 years in prison. The convictions of both men were affirmed on direct appeal.

Moldowan filed a state post-conviction petition seeking a retrial based on new evidence that the bite-mark evidence the jury relied on was unreliable. After his petition was denied by the lower courts he appealed in 2001 to the Michigan Supreme Court. In January 2002 Macomb County Prosecutor Carl Marlinga acknowledged in the State's brief that he "may have suffered 'actual prejudice'" from the unreliable expert bite-mark testimony at his trial. [Marlinga also stated](#) "the result of the trial could be different" without Warnick's bite-mark testimony. Since the State had conceded Moldowan hadn't received a fair trial, in May 2002 the state supreme court granted him a new trial.

Moldowan was released on bail in the summer of 2002 after almost 12 years in custody, pending his retrial.

While preparing for his retrial Moldowan's attorneys discovered that the prosecution had failed to disclose that an eyewitness gave a statement to a police officer that he saw four African-American males standing over Fournier's naked body the night she was attacked, and that he later overheard two of the men bragging about assaulting her. Both Moldowan and Cristini are white.

During his retrial that began in January



Jeffrey Moldowan in 1991 (MI DOC)

Moldowan presented the testimony of the eyewitness that she was assaulted by African-American men, and he also presented testimony that Fournier was a drug user who was frequently seen buying crack in the neighborhood where she was found nude. Moldowan's lawyer suggested that her physical injuries were consistent with someone who experienced a beating by dope dealers as payback for welshing on a drug debt.

The prosecution was also unable to disprove Moldowan's alibi that he was with friends at the time Fournier said she was kidnapped and assaulted.

After a six week trial the jury acquitted Moldowan after deliberating for less than two hours.

Eight months after Moldowan's acquittal, Cristini's petition for a new trial was granted in October 2003. The judge ruled that since he should be treated the same as Moldowan since they were originally tried together, and the jury convicted both men by relying on the same discredited bite mark testimony. Cristini was released on bail pending his retrial after almost 13 years in custody.

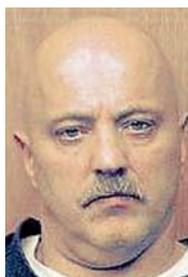
Cristini's retrial began in March 2004, and he had the rock sold alibi by his co-workers, his boss, and employment records that he was working at his pizza restaurant job when the attack on Fournier took place. To counter his alibi, the prosecution complemented Fournier's testimony with new bite mark experts to try and tie him to the attack. The defense countered with their own dental experts.

After a three week trial the jury deliberated for one hour before acquitting Cristini on April 8, 2004. Afterwards, jurors said the prosecution and defense experts canceled each other out. So they were left with weighing Fournier's testimony against the testimony and documentary proof Cristini was working at the time of the attack, and they decided he could not possibly have been involved.

2003 the prosecution's case centered on Fournier's testimony that Moldowan was one of the men who assaulted her.

Moldowan filed a federal civil rights lawsuit in 2005 against Macomb County, the Prosecutor's Office, the City of Warren, a police detective, and bite mark expert Warnick. On October 18, 2011 it was announced that the City of Warren [agreed to pay](#) Moldowan \$2.8 million to settle his lawsuit. On November 1, 2011 it was announced that Macomb County [agreed to pay](#) Moldowan \$150,000 to settle his lawsuit. So Moldowan was compensated a total of \$2.95 million by the city and the county. Moldowan had previously settled with Warnick for an undisclosed sum that is believed to be around \$200,000. Moldowan also sued Fournier, but the U.S. 6th Circuit Court of Appeals dismissed her as a defendant.

Cristini filed a federal civil rights lawsuit in 2007 against the same defendants as Moldowan, and that suit is still pending as of December 2012.



Michael Cristini in May 2011 (The Oakland Press, Pontiac, MI)

Another aspect of Moldowan and Cristini's case is that two weeks after Cristini was acquitted Macomb County Prosecutor Marlinga was indicted by a federal grand jury for alleged campaign contribution irregularities related to Marlinga's alleged acceptance of an \$8,000 bribe to use his official position to help Moldowan get a new trial. The indictment also alleged that in an unrelated case, a businessman contributed \$26,000 to Marlinga's congressional campaign in exchange for a 'sweet heart' plea agreement. Marlinga was [acquitted of all](#) charges in September 2006.

You can read about Moldowan and Cristini's case and Marlinga's prosecution in *Justice Denied's* [2005 article](#), "Prosecutor Indicted For Bribery After Two Men Exonerated Of Kidnapping And Rape." You can read about Marlinga's acquittal in *Justice Denied's* [2006 article](#), "Ex-Prosecutor Acquitted Of Taking Bribe To Support New Trial."

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[Ex-Prosecutor Acquitted](#) Of Taking Bribe To Support New Trial, *Justice Denied*, Issue 33, Summer 2006,

## Federal Appeals Court Reinstates Lawsuit By Four Of The “Beatrice Six” Defendants

On October 15, 2012 the U.S. Eighth Court of Appeals [reinstated a](#) key claim of the federal civil rights lawsuits filed by four defendant’s exonerated in 2009 of the February 1985 rape and murder of 68-year-old Helen Wilson in Beatrice, Nebraska. The four defendants whose lawsuits were dismissed, Kathy Gonzalez, JoAnn Taylor, Thomas Winslow, and James Dean, were convicted by guilty pleas in 1989 and 1990. Their lawsuits were [dismissed in](#) 2011.

Two other defendants exonerated of the crime, Joseph White and Debra Shelden, filed separate federal civil rights lawsuits.

The media dubbed the six defendants the ‘Beatrice Six.’ White was the only one of the six who did not confess after intense interrogations. While the other five made plea deals in exchange for reduced charges and sentences, White went to trial with the prosecution intending to seek the death penalty if he was convicted. Three of White’s co-defendants testified against him and he was convicted of rape and first-degree murder. The jury recommended a sentence of life in prison instead of a death sentence.

After losing his direct and post-conviction appeals, White pursued DNA testing of the crime scene biological evidence. For years the State of Nebraska opposed his efforts to test the evidence, but in 2007 the Nebraska Supreme Court ordered the DNA testing. The testing was finally conducted on some of the evidence in the summer of 2008 and additional testing followed. The testing proved that neither White nor any of his five co-defendants — who confessed and pled guilty — had anything to do with Ms. Wilson’s rape and murder.

White’s motion for a new trial based on the new exculpatory DNA evidence was granted on October 15, 2008, and he was released on a personal recognizance bond later that day. He had been incarcerated for more than 19-1/2 years since his arrest. The charges against him were subsequently dismissed. The two members of the Beatrice Six still incarcerated, Gonzalez and Winslow, were paroled several weeks after White’s release. The six defendants were wrongly imprisoned for a total of more than 76 years.

In November 2008 Nebraska Attorney General Jon Bruning held a press conference and disclosed that the DNA evidence conclusively linked Bruce Allen Smith to Ms. Wilson’s rape and murder. However, Smith died in 1992 of AIDS.

Nebraska’s State Board of Pardons unanimously voted on January 26, 2009, to pardon the five defendants who confessed based on their actual innocence of Helen Wilson’s rape and murder. AG Bruning said, [They are 100 percent innocent.](#)”

In July 2009 Gonzalez, Taylor, Winslow and Dean filed their [federal lawsuit against](#) Gage County Attorneys Office, Gage County Sheriff’s Office, Gage County and seven law enforcement officers for violating their constitutional rights by fabricating evidence, coercing them to falsely confess, and falsely prosecuting them. They alleged that they falsely confessed after prolonged interrogations during which they were threatened with the death penalty if they didn’t admit their guilt. Gonzalez was listed as the lead plaintiff.

U.S. District Court Judge Richard Kopf [wrote in his](#) 178-page ruling granting the defendant’s motion for summary judgment to dismiss the lawsuit, “After considering Gonzalez’s argument, as well as the arguments of the other plaintiffs, and viewing the evidence in the light most favorable to Gonzalez, I find as a matter of law that she is unable to prove a claim that the defendants’ behavior shocks the conscience.” Judge Kopf also ruled that the Beatrice Six were considered suspects, so the police couldn’t be faulted for focusing on them and wanting to interrogate them. He also wrote:

“In sum, while it is surely regrettable that ... the ... plaintiffs served time in prison for crimes they evidently did not commit, their constitutional rights were not violated. And, of course, the question of whether the defendants were negligent or committed some other tort under Nebraska law is not before me and I express no opinion about such matters. Nor do I approve or disapprove of the acts or omissions of the defen-

Beatrice Six defendants



JoAnn Taylor



Thomas Winslow



James Dean



Kathy Gonzalez



Joseph White



Debra Shelden

dants. I conclude only that plaintiffs’ constitutional rights were not violated and that each of the defendants has qualified immunity from suit.”

In dismissing the lawsuit and ruling that Gonzalez’s constitutional rights weren’t violated, Kopf didn’t consider the lawsuit’s claim that the police had coerced false confessions to the rape and murder, because he had earlier ruled the statute of limitations to raise that claim expired prior to when the lawsuit was filed in July 2009.

Publicity about the exoneration of the Beatrice Six resulted in Nebraska’s passage of a law in 2009 that provides for the payment of up to \$500,000 to a wrongly convicted person.

White filed a claim, and on October 1, 2010 he became the first person to be awarded compensation under Nebraska’s compensation law when he [settled his claim](#) for the \$500,000 maximum. White was paid \$25,000 prior to his death on March 27, 2011 in an industrial accident at the factory where he worked in Tarrant, Alabama. [White’s estate](#) will be paid the balance of the settlement. White, 48 at the time of his death, also filed a federal civil rights lawsuit against Gage County and several officials. That lawsuit is now being pursued by his estate, and it is pending.

On November 4, 2010, a judge approved settlement of [Gonzalez’s claim](#) for \$350,000 for her 19-1/2 years of imprisonment.

On February 3, 2011 a judge approved settlement of [Winslow’s claim](#) for \$180,000 for his 19-1/2 years of imprisonment.

Debra Shelden, the sixth Beatrice defendant, [filed a federal](#) civil rights lawsuit on July 1, 2011 that named Gage County and several officials as defendants. The [judge denied](#) a motion to dismiss the lawsuit, ruling their was evidence the defendants “abused their power in a shocking fashion.” Her lawsuit is pending.

On October 15, 2012 the U.S. Eighth Cir-

**Beatrice Six cont. on p. 8**

# Susan Finkelstein's Sex For World Series Tickets Conviction Overturned

Susan Finkelstein's March 2010 conviction of attempted prostitution related to her [Craigslist.org](http://craigslist.org) advertisement for 2009 World Series tickets has been overturned.

The Philadelphia Phillies were playing the New York Yankees in the World Series scheduled to begin on October 28. Finkelstein placed an advertisement on Craigslist on October 26, 2009 that read:

"Diehard Phillies fan – gorgeous tall buxom blonde – in desperate need of two World Series tickets. Price negotiable – I'm the creative type! Maybe we can help each other!"

Her ad was seen that same day a Bensalem Township Police Department officer monitoring Craigslist.org ads for possible prostitution advertisements. He emailed Finkelstein claiming to have World Series tickets and requested her photograph. After she sent him three topless photographs of herself the officer started up a highly sexual-

## Beatrice Six cont. from p. 7

cuit Court of Appeals [reinstated the claim](#) of Gonzalez, Taylor, Winslow and Dean that their rights to a fair criminal proceeding were violated by the reckless investigation and manufactured evidence that resulted in their convictions. The Court upheld the dismissal of their claim their guilty pleas were unconstitutionally coerced, and upheld dismissal of their claim against the county prosecutor on the basis he is entitled to absolute immunity.

White was the first person exonerated by DNA evidence in Nebraska, and the Beatrice Six are the largest number of defendants exonerated by DNA evidence in one case in the United States.

Read Justice Denied's article in [Issue 41 about the Beatrice Six](#).

### Sources:

[Judge dismisses lawsuit over](#) wrongful Beatrice convictions, *Lincoln Journal Star*, August 4, 2011

[Judge dismisses lawsuit](#) against Gage County over wrongful convictions, *Beatrice Daily Sun*, August 4, 2011

[8th Circuit says Beatrice 6 lawsuits can go forward](#), *Beatrice Daily Sun*, October 15, 2012

[Thomas Winslow v. Richard Smith](#), et al., Case Nos. 11-2882, 11-2883, 11-2884 and No: 11-2903 (8th Cir. 10-15-2012)



Susan Finkelstein  
(Rikard Larma, Metro  
Philadelphia)

ly charged email exchange with her. He told her he only wanted to sell one of the tickets and [she responded](#). "So we would be going together? How cute." They agreed to meet that night at a local bar to discuss the tickets.

When she met the officer at the bar she allegedly told him she was married but had an open relationship with her husband. She was arrested based on the officer's claim she offered to have sex in exchange for one or both of the tickets he told her he had. She was charged with Prostitution and Criminal Attempt.

During Finkelstein's two day trial in March 2010 she denied offering sex for the tickets. She was acquitted of prostitution, but found guilty of attempted prostitution. She was sentenced to one year probation, 100 hours of community service, and to pay for the costs of her prosecution.

She appealed and on December 21, 2011 her conviction was overturned and she was acquitted by a panel of Pennsylvania Superior Court judges in, [Pennsylvania v Finkelstein](#), No. 1876 EDA 2010 (Superior Court, 12-20-2011). The Court's ruling states in part:

As we commence our discussion, we acknowledge the unusual cast of the events that underlie this case. ...

Because the proof required for Attempt was the same as that of the Prostitution offense of which she was acquitted, Finkelstein's conviction of Attempt cannot stand. In any event, our cases have made clear that the conduct in which Finkelstein engaged here does not fall within the ambit of Prostitution and, consequently, cannot be the subject of an Attempt conviction.

We have recognized accordingly that "the gravamen of the offense is not the sexual activity itself but the business of engaging in such activity for hire." *Commonwealth v. Danko*, 421 A.2d 1165, 1170 (Pa. Super. 1980). Thus, neither promiscuity and its moral implications, nor the sex act itself offer grounds for arrest and conviction.

As the foregoing commentary recognizes, the legislative objective in prohibiting prostitution is not to criminalize "private illicit sexual relations," but rather to curtail the deleterious effect of an open commercial sex trade on public

health and law enforcement, as well as to avoid the exploitation of women. *Id.* at 1169. None of the evidence in this case implicates these concerns and Finkelstein's conduct did not exceed the ambit of "private illicit sexual relations." Indeed, Susan Finkelstein appears as the embodiment of "a girl not generally engaged in commercial activity [who] nevertheless consents to have intercourse on a particular occasion in exchange for a promised reward." *Id.* at 1170. Under these circumstances, we conclude the Susan Finkelstein's conviction of Attempt exceeds the lawful scope of our statutory prohibition of Prostitution and cannot be sustained.

In other words, acting like a slut doesn't make a woman a prostitute, so even accepting the prosecution's case at face value Finkelstein didn't commit a crime.

During a press conference after Finkelstein's acquittal her lawyer William Brennan [told reporters](#), "I am certainly not referring specifically to Mrs. Finkelstein – she's a lovely lady – but I stand by the proposition that it is not illegal to be a slut. And the Superior Court more eloquently said the same – private, illicit sexual activity is not criminal."

Finkelstein [said about](#) the court's ruling: "It's a good feeling, although it is bitter-sweet. The past couple of years have been costly both financially, professionally and emotionally." She has already served her sentence.

The State has the option to appeal Finkelstein's acquittal to Pennsylvania's Supreme Court, but the appeal court's ruling was based on a detailed analysis of the applicable law so the State may forego an appeal, or if they do, the chances are likely slim that it will be successful.

### Sources:

[Pennsylvania v Finkelstein](#), No. 1876 EDA 2010 (Superior Court, 12-20-2011)

[Susan Finkelstein beats sex-for-tickets rap](#), *Philadelphia Metro*, December 21, 2011

[Court overturns woman's sex-for-Phillies-tickets conviction](#), *The Intelligencer* (Philadelphia), December 21, 2011



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# Reginald Griffin's 1988 Murder Conviction Based On Jailhouse Snitch Testimony Overturned By Missouri Supreme Court

The Missouri Supreme Court vacated Reginald Griffin's 1988 murder conviction on August 2, 2011. Griffin's conviction in the 1983 murder of James Bausley was based on the testimony of two jailhouse informants whose trial testimony is now discredited.

Minutes after Bausley was fatally stabbed in the chest in the prison yard near the gymnasium at the Missouri Training Center for Men in Moberly guards confiscated a sharpened screwdriver from inmate Jeffrey Smith as he attempted to leave the area where Bausley was stabbed.

Smith was placed in administrative segregation and for possession of the screwdriver he was convicted of "unlawful use of a weapon."

A homemade knife was found about 20 feet from Bausley's body.

During the investigation of Bausley's murder inmates Paul Curtis and Wyvonne Mozee told investigators that they saw Reginald Griffin stab Bausley. Although there was no physical or forensic evidence linking Griffin to the murder or the knife, and other inmates stated Griffin was not in the area where the crime took place, Griffin was charged in 1987 with Bausley's murder.

The prosecution's case was based on the eyewitness testimony of Curtis and Mozee (who died prior to trial so his preliminary hearing testimony was read into the record), and the prosecutor's argument that the knife discovered on the roof could have been the murder weapon because it presumptively tested positive for blood on the blade. Griffin's defense was that he wasn't in the area of the murder, and an inmate testified as a defense witness that he saw someone running from Bausley's body and it wasn't Griffin. The jury convicted Griffin in 1988 of first-degree murder and he was sentenced to death.

The jury acquitted inmate Arbury Jackson who was charged with the murder for allegedly assisting Griffin.

Griffin's conviction was affirmed in 1993 by

the Missouri Supreme Court. However, the Court overturned his death sentence after he had been on death row for five years, because to secure his sentence the prosecution relied on the criminal record of a different man named Reginald Griffin. (*State v. Griffin*, 848 S.W.2d 464, 471 (Mo. banc 1993)) Griffin was later re-sentenced to life imprisonment without the possibility of parole.

More than a decade later Griffin discovered his prosecutors had failed to disclose the evidence that Smith had been found with a screwdriver in the area of Bausley's death. Griffin had also obtained significant new evidence that included Curtis recanting his trial testimony. Griffin obtained an affidavit that Curtis did not witness the stabbing and that another inmate, Doyle Franks, confessed to the murder. Griffin also obtained an affidavit from an inmate that at the time of the stabbing he was in the law library with Mozee.

In 2005 Griffin filed a writ of habeas corpus based on the prosecution's Brady violation of failing to disclose the evidence implicating Smith as the possible murderer, and the new evidence impeaching the trial testimony of Curtis and Mozee. An evidentiary hearing was held during which Franks confessed to murdering Bausley and that Griffin wasn't involved. Jackson testified during the hearing that Griffin was not in the prison yard when Bausley was murdered, and that he saw Franks and Smith both produce weapons near Bausley immediately before he was killed. Curtis testified that he didn't witness the stabbing and that he provided a false statement and testimony during Griffin's trial in exchange for obtaining a transfer to another prison.

The circuit court denied Griffin's petition.

Griffin appealed to the Missouri Supreme Court, and on August 2, 2011 the Court *en banc* granted his writ of *habeas corpus* and vacated his conviction. (*Griffin v Denny*, No SC91112 (MO Sup Ct 8-2-2011)). The Court's majority opinion states in part:

The State suppressed the fact that prison guards confiscated a sharpened screwdriver from inmate Smith just minutes after Bausley was stabbed. A prison guard reported that a sharpened screwdriver was confiscated from inmate Smith, Smith was placed in administrative segregation for possessing the sharpened screwdriver, and the State successfully prosecuted Smith for possessing the screwdriver. The State was obviously aware of the evidence yet did

not disclose it to Griffin.

Griffin has established prejudice. The present state of the evidence in this case shows that there are at least five substantial post-trial developments that raise serious doubts regarding the factual accuracy of Griffin's conviction.

There is no physical evidence connecting Griffin to the weapon found in the gymnasium. There is no physical evidence demonstrating any contact between Griffin and Bausley. Instead, Griffin's continued incarceration for Bausley's murder is premised on the recanted testimony of inmate Curtis and the impeached testimony of deceased inmate Mozee. Overlaying the entire case is the revelation that the State failed to disclose evidence that tended to implicate Smith, impeach Curtis and Mozee, and bolster the trial testimony of inmate Rogers, who maintained that the inmate fleeing the crime scene was not Griffin.

In light of these circumstances, Griffin's conviction is no longer "worthy of confidence." Because Griffin has shown that the nondisclosure of the Smith evidence was prejudicial for *Brady* purposes, he has also established the "prejudice" necessary to overcome the procedural bar to granting him habeas relief. Accordingly, Griffin's conviction for the murder of James Bausley is vacated.

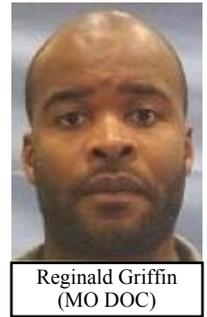
The Court ordered the 50-year-old Griffin's release within 60 days unless the State decided to retry him. However, with one of the prosecution's eyewitnesses now on record that he didn't witness the murder, the credibility of the other eyewitness impeached by new evidence he didn't witness the murder, and a confession by the actual murderer, the State has no evidence Griffin committed the crime, while all the evidence supports that he is actually innocent of Bausley's murder. However, in April 2012 the Randolph County prosecutor's office refiled the charges against Griffin and he awaits his retrial.

Sources:

[Griffin v Denny](#), No SC91112 (MO Sup Ct August 2, 2011)

[Reginald Griffin](#), Convicted Murderer, Gets Sentence Overturned -- 25 Years Later, *Riverfront Times* (St Louis, MO), August 2, 2011

[Murder Charges Reinstated](#) Against Reginald Griffin, *Moinfo.com*, April 16, 2012



## Two Olympic Sprinters and Ten Other Defendants Acquitted Of Perjury Related To Alleged Fake Motorcycle Accident

Olympic sprinters Costas Kenteris and Katerina Thanou, and ten other defendants have been acquitted by a Greek appeals court of perjury related to the sprinters alleged faking of a motorcycle accident the day before the start of the 2004 Olympics in Athens, Greece.

Kenteris won the gold medal in the 200 meters at the 2000 Sydney Olympics and Thanou, his training partner, was the silver medalist in the 100 meters at Sydney. They were among the most well-known athletes in Greece, and there were high expectations for them to win gold medals at the Athens Olympic games.

Kenteris, 31, and Thanou, 29, missed a mandatory drug test at the Olympic Village on August 12, 2004, and their whereabouts were not known until it was reported they were at Athens' KAT hospital being treated for injuries suffered in a motorcycle accident that occurred hours after they missed the drug tests.

The hospital issued a statement that Kenteris suffered from a lesion to the head and Thanou had bruises on her abdomen, right thigh, and the adductors of her right leg.

Olympic officials were not sympathetic and put pressure on them to withdraw from the Games because it was the third drug test in a month they had missed.

Kenteris and Thanou publicly denounced accusations that they had staged the accident as an excuse for missing their drug tests that they said they had not been notified about. However, six days later and before competition for their events had begun, Kenteris and Thanou announced [their withdrawal](#) from the Olympics "in the interests of the country" after a hearing before the Disciplinary Commission of the IOC. They also announced they were ending their coaching relationship with Christos Tzekos. It was reported at the time that the IOC gave them the choice of voluntarily withdrawing or being expelled.

After a preliminary police report raised questions about the motorcycle accident, Greek prosecutors initiated a full-scale investigation of the accident, and obtained

search warrants for Kenteris and Thanou's medical records and their homes, and for Tzekos' business.

On August 26 a witness who told police he saw the accident and that Kenteris and Thanou were thrown from their motorcycle, was arrested on suspicion of making a false statement.

In November 2004 perjury charges were filed against Kenteris, Thanou, Tzekos, seven state hospital doctors, and two people who said they witnessed the accident. The prosecutors alleged that Kenteris, Thanou, and Tzekos faked the motorcycle accident and lied about it to the police, that the doctors lied about treating Kenteris and Thanou for their injuries, and that the two witnesses lied about witnessing the accident.

All twelve co-defendants were scheduled to go on trial in January 2007 but it was delayed.



Costas Kenteris

Thanou qualified [in July 2008](#) as a member of Greece's 2008 Olympic squad in the 100 meters. However, on August 9, 2008 the executive board of the IOC voted to bar her from competing under rule 23.2.1 that allows preventing an athlete from competing who is thought to be guilty of improper conduct or bringing the games into disrepute.

In December 2009 the [IOC announced](#) that Thanou wouldn't be awarded the gold medal stripped from Marion Jones for her admission to using steroids during the 2000 Olympics, even though there were no allegations that Thanou cheated during the Sydney Olympic Games.

The trial finally began on January 21, 2011. The [prosecution's case](#) was based on their claim that "there is no evidence that there was an accident."

Although the defendants introduced ex-rays and blood records during the trial that showed Kenteris and Thanou were treated for injuries, all twelve were convicted of perjury on May 10, 2011. Tzekos was also convicted of importing, possessing and trading banned sports substances.

Kenteris and Thanou's 31 month prison sentences were conditionally suspended,



Katerina Thanou  
([www.thanou.gr](http://www.thanou.gr))

the doctors and witnesses were given sentences ranging from 6 to 15 months in prison that were conditionally suspended, and Tzekos' 33 month prison sentence was conditionally suspended.

The defendants appealed, and on September 6, 2011 a [Greek appeals court](#) acquitted all 12 co-defendants of perjury. The appeals court ruled there was insufficient evidence to determine beyond a reasonable doubt that the crash had not taken place, and hence that any of the 12 defendants had not told the truth.

Tzekos other convictions were affirmed, but his sentenced was reduced to 12 months in prison suspended for 3 years.

During the 1999 World Championships in Seville, Spain, Thanou set the Greek national 100 meter record that still stands: 10.83 seconds. Thanou's website is, [http://www.thanou.gr/profile\\_en.htm](http://www.thanou.gr/profile_en.htm)

During the 2002 European Championships in Munich, Germany, Kenteris set the Greek national 200 meter record that still stands: 19.85 seconds.

Thanou and Kenteris never failed a drug test, and since they were legally cleared of faking the motorcycle accident, they could possibly sue Greek national and international sporting organizations for the destruction of their careers.

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[Greek court acquits Costas Kenteris and Katerina Thanou](#) of faking crash, *The Guardian* (London, UK), September 6, 2011

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[Katerina Thanou to be denied](#) Marion Jones's Olympic gold, *The Times* (of London), December 8, 2009



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# In Memoriam: Edwin Paul Wilson 1928-2012

By Hans Sherrer

Edwin Paul Wilson [died September 10, 2012](#) at the age of 84 in Seattle, Washington. Mr. Wilson's 1983 conviction in Houston for selling explosives to Libya in 1977 without the U.S. government's permission was overturned in 2003, and he was released in 2004 after 22 years of imprisonment.

In 1999 Mr. Wilson filed a motion for a new trial based on new evidence his federal prosecutors knew at the time of his trial he wasn't guilty and they had knowingly introduced false evidence to obtain his conviction. In 2000 *Justice Denied* published the article, [Ex-CIA Agent Framed by the CIA and Federal Prosecutors](#). That article began, "The strange case of former CIA agent Edwin Wilson provides a rare proof of the legal and moral corruption pervasive throughout the U.S. Department of Justice and the shortage of compassion endemic in the federal judiciary."

Mr. Wilson's key new evidence was the CIA's third highest-ranking official provided a false affidavit during his trial at the request of the federal prosecutors. Edwin Wilson worked for the CIA until he left the agency in 1971. The affidavit introduced at trial stated that except for one instance, after Mr. Wilson left the CIA he "was not asked or requested, directly or indirectly, to perform or provide any services, directly or indirectly, for the CIA."

During his trial Mr. Wilson relied on the "CIA Defense" that after he left the agency he had an ongoing working relationship with the CIA, and that at the behest of the CIA his international companies did business deals the U.S. government thought were in the national interest but which it didn't want to be directly involved with. The affidavit by the CIA's Executive Director undermined Mr. Wilson's defense, and the jury relied



Edwin Paul Wilson  
circa 2010  
(Wilson family photo)

on it to convict him. While imprisoned Mr. Wilson used the Freedom of Information Act to obtain documents proving the affidavit was false and his prosecutors concealed that information from his lawyers, the jurors, and the trial and appellate judges. U.S. District Court Judge Lynn Hughes appointed Mr. Wilson a lawyer after he received a letter from him detailing the new evidence he discovered. That lawyer, David Adler, discovered additional evidence, and the motion for a new trial he filed in 1999 identified at least 17 federal officials who concealed their knowledge of the affidavit's falseness, including three U.S. Dept. of Justice lawyers who later became federal judges. Contrary to the affidavit, between 1971 and 1978 Wilson and the CIA worked so closely together that [there were at least](#) 80 official contacts between them.

On October 27, 2003 U.S. District Court Judge Lynn Hughes' ruled in [United States vs. Edwin Paul Wilson](#), "Because the government knowingly used false evidence against him and suppressed favorable evidence, his conviction will be vacated." Judge Hughes didn't mince words in a 24-page ruling that outlined the government's failure to turn over the exculpatory documentation proving Mr. Wilson had a continuing business relationship with the CIA: "It alone lied. It alone possessed — and withheld — the information that documented the falsehoods. The government alone insisted on the affidavit rather than production of the underlying records. It alone had the underlying documents." Judge Hughes also recognized the deliberateness of the decision by federal prosecutors to use the false affidavit: "The government discussed among dozens of its officials and lawyers whether to correct the testimony. No correction was made — not after trial, not before sentencing, not on appeal, and not in this review." Judge Hughes also made the astute observation, "The truth comes hard to the government."

After Mr. Wilson's conviction was overturned *Justice Denied* published the lengthy article, [Federal Judge Tosses Conviction of Ex-CIA Agent Framed by the CIA and Federal Prosecutors](#).

Mr. Wilson was released on September 14, 2004 after 22 years of imprisonment. He



Edwin Wilson with boxes of case documents during *Seattle Post-Intelligencer* interview in October 2006  
(Scott Eklund - *Seattle Post-Intelligencer*)

was 76 years old. He moved to Edmonds, Washington which is north of Seattle, and lived with his brother Bob. Mr. Wilson told interviewers he didn't make the sale of explosives to Libya that was the basis of his conviction, and that it was as much a fabrication of his prosecutors as their claim he hadn't covertly worked with the CIA after he left the agency.

During an interview with the *Seattle Post-Intelligencer* in 2006 [Mr. Wilson said](#), "I can't think of one thing I did that I have any guilt about. I didn't hurt anybody. I didn't get anyone killed."

Mr. Wilson filed a federal civil rights lawsuit against seven of his prosecutors and a former executive director of the CIA. On March 29, 2007 his lawsuit was dismissed on the basis all eight defendants were immune from civil liability for what they had done to Mr. Wilson.

In 2010 Mr. Wilson contacted me and asked if I would meet with him. We met at what he said was one of his favorite restaurants in Edmonds. During our extended conversation he explained he wanted me to work with him in writing his autobiography because he thought the articles I had written for *Justice Denied* were the most accurate and honest articles about his case that had appeared in print. He talked about how he became involved with the CIA and how his job evolved into working with international businesses that were fronts for CIA operatives.<sup>1</sup> After he left the CIA he continued working overseas by setting up his own companies that conducted business in the Middle East and Africa. Mr. Wilson covertly acted on behalf of the U.S. government when it didn't want to directly deal with those countries. He said that his international business allowed him to cultivate and maintain contacts with key people who provided him with valuable information that he passed on to the CIA. He puzzled about his

**Wilson cont. on p. 12**



Edwin Wilson during *Seattle Post-Intelligencer* interview in October 2006  
(Scott Eklund - *Seattle Post-Intelligencer*)

## Wilson cont. from p. 11

prosecution because before he was indicted he provided the CIA with credible information he had learned about an international plot to assassinate President Ronald Reagan.

After several more conversations I told Mr. Wilson I wouldn't be able to work with him on his book project because of the extensive amount of time it would involve. However, I encouraged him to find a writer who had the time necessary to put his amazing story on paper. Mr. Wilson's life while in the CIA and after he left was as action packed with plots and subplots as any Hollywood movie, and I told him I thought his story would make even an even better movie than it would a book.

Mr. Wilson and I had several contacts after that and he kept encouraging me to work with him on his book because he wasn't having success in finding a writer. One of the problems was his wealth of tens of millions had been confiscated by the U.S. government after his convictions. He was living in the basement of his brother's house and getting by on his meager Social Security benefits, so a writer had work on the expectation a book or movie deal would materialize at some point after work was begun on the book.

Mr. Wilson was 82 when I met him and he was a gracious and vibrant man still burning with intensity. He expressed concern he was



Edwin Wilson leaving federal courthouse during his 1983 trial (AP)

running out of time to have his book written because of heart problems. He was correct in being concerned because he died on September 10, 2012 as a result of complications from heart valve replacement surgery. He was buried at the Tahoma National Cemetery in Kent, Washington.

Edwin Wilson was born in Nampa, Idaho on May 3, 1928 and he graduated from the University of Portland in 1953 with a bachelors degree in Psychology. He served in the U.S. Marines from 1953 to 1956. He began working with the CIA when he was a marine in Korea in 1955, and after leaving the service in 1956 he worked for the CIA until 1971.

In the 14 years since *Justice Denied* was founded in 1998 I've encountered a number of interesting people, and Edwin Wilson is near the top of that list. He was 6'-4" and his presence and passion made him seem larger than life.

[Click here to read Justice Denied's 2000 article, \*Ex-CIA Agent Framed by the CIA and Federal Prosecutors\*.](#)

[Click here to read Justice Denied's 2004 article, \*Federal Judge Tosses Conviction of\*](#)

[Ex-CIA Agent Framed by the CIA and Federal Prosecutors](#).

Judge Hughes' October 27, 2003 ruling in *United States vs. Edwin Paul Wilson*, can be read [by clicking here](#).

[Click here to read](#) Edwin Paul Wilson's obituary by the Columbia Funeral Home in Seattle, Washington.

### Endnotes:

1 The CIA's *modus operandi* is to operate front companies as a cover for its agents overseas. For example, Valerie Plame's cover as a businesswoman was blown when she was outed as an international CIA operative in response to her husband Joseph C. Wilson's Op-Ed published in *The New York Times* on July 6, 2003, "What I Didn't Find in Africa." That article exposed there was no evidence Niger had sold nuclear materials to Iraq and Saddam Hussein.

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## Christopher Burrowes Awarded \$15,000 Compensation For 3 Years Wrongful Imprisonment

Christopher Burrowes has been awarded \$15,000 in compensation by the State of Wisconsin for his three years of wrongful imprisonment for sexual assault.

Burrowes was 21 when arrested in 2006 for sexually assaulting 12-year-old Denise Beck. He was acquainted with her because she visited the basketball courts where he played that were near her home. She told police she had sex with Burrowes at his Milwaukee home. Burrowes denied the accusation and refused a plea deal. Although there was no physical, forensic or eyewitness evidence supporting the girl's testimony, a jury convicted Burrowes on February 7, 2007 of first-degree sexual assault of a child. He was sentenced to three years in



Christopher Burrowes after his conviction was overturned on December 16, 2009. (WISN-TV, Milwaukee, WI)

prison and lifetime registration as a sex offender.

Shortly after Burrowes was released in late 2009 Ms. Beck, who was then 16, told police while being interviewed about another matter that she falsely accused Burrowes of having sex with her to hide that she was having sex with an uncle that she was in love with. When her mother became suspicious she was sexually active, the girl blamed Burrowes to protect her uncle.

The Milwaukee County DA reopened Burrowes case. After an investigation determined the girl's recantation was credible the DA filed a Motion to Vacate Conviction and Dismiss Charges. On December 16, 2009 Burrowes conviction was vacated. The judge also ordered that Burrowes name

be removed from Wisconsin's Sex Offender Registry.

At the time of Burrowes' release a spokesperson for the DA's Office said it was being considered whether to charge Ms. Beck with perjury, but charges against her were not filed.

Burrowes filed a claim for compensation with Wisconsin's Claims Board for \$15,000. Wisconsin's wrongful conviction compensation statute permits a maximum payment of \$5,000 per year for up to 5 years of imprisonment. So Burrowes claim was for the maximum allowed for his 3 years in custody.

The Milwaukee DA didn't oppose Burrowes claim, and on October 11, 2011 the Claims Board determined there is clear and convincing evidence of Burrowes' innocence and [approved payment of](#) \$15,000 to him.

**Burrowes cont. on page 13**

## Newman Chiadzwa Sues For Return Of 19 Pounds Of Diamonds After Conviction For Illegal Possession Overturned

Newman Chiadzwa is suing for the return of diamonds worth many tens of millions of dollars that were confiscated when he was convicted of illegally possessing the diamonds. His conviction was overturned by Zimbabwe's High Court on June 29, 2011.

Chiadzwa was a 53-year-old businessman in Mutare, Zimbabwe when in July 2009 he and his family had to go into hiding to avoid arrest by state security agents for helping a Kimberley Process certification team [uncover evidence](#) of gross human rights abuses in Zimbabwe's diamond-rich area. There were reports that in 2008 government troops tortured to death and shot more than 200 miners believed to be illegally mining diamonds. The miners were reported to have been buried in mass graves in areas controlled by the military so human rights monitors wouldn't have access to them.

The government seized from Chiadzwa's business 43,208 carats of diamonds, and in August 2009 he was charged with illegally possessing the gems. The diamonds weighed 8.61 kilograms, or almost 19 pounds. They had a retail value estimated at between \$100 and \$300 million, although their value to a wholesaler like Chiadzwa is less.

Chiadzwa was convicted on February 26, 2010 of illegally possessing the diamonds in violation of the Precious Stones Trade Act. He was sentenced to five years in prison and fined US\$132,764. He was immedi-



Newman Chiadzwa

ately taken into custody and began serving his sentence.

Chiadzwa's conviction and sentence were quashed by Zimbabwe's High Court on June 29, 2011 and he was immediately released after 16 months of imprisonment. The Attorney-General's Office did not oppose Chiadzwa's appeal that was based on his argument that he lawfully owned the diamonds so no crime was committed.

After his release Chiadzwa sought return of his confiscated diamonds from the court clerk. He discovered the clerk did not have the diamonds because they were not formally entered as exhibits, even though the prosecution presented them in court as evidence. Chiadzwa's lawyer was informed the diamonds were turned over to the Ministry of Mines after Chiadzwa's trial. An official with the Ministry [wrote in a letter](#) to Chiadzwa's attorney:

"Effectively the 8.61 kg of precious stones that you requested were never handed over to the clerk of court for exhibits but instead upon completion of the matter by the presiding officer were released into the custody of the mines officials 1 year and 4 months ago."

However, the letter didn't state the diamonds would be returned to Chiadzwa, but

suggested at some future time he might be able to make a claim to them. In response Chiadzwa filed a lawsuit in the High Court in late September 2011 seeking an order for the release of the diamonds, or if they had been disposed of for the government to pay him a proper and correct valuation of the gems. Chiadzwa [wrote in an](#) Affidavit accompanying his lawsuit:

"I am extremely concerned that despite my official communications the respondents have ignored me and I feel that my diamonds may have been unlawfully disposed or will be unlawfully disposed of to my prejudice."

Chiadzwa's lawsuit is pending. In May 2012 Chiadzwa filed a lawsuit for return of equipment seized from his homestead in 2009. That lawsuit is also pending.

### Sources:

- [Chief Chiadzwa, family flee security agents](#), *The Standard*, August 2, 2009
- [Zimbabwe government prosecutes Diamond Chief](#), *ZimEye.org*, August 13, 2009
- [Newman Chiadzwa Jailed Five Years](#), *The Herald* (Zimbabwe), March 4, 2010
- [Newman Chiadzwa set free](#), *The Herald* (Zimbabwe), July 8, 2011
- [Chiadzwa Wants His 8.6KG Diamonds Back](#), *The Herald* (Zimbabwe), September 28, 2011
- [Chiadzwa's 8kg of Diamonds Disappears Mysteriously](#), *Radio VOP* (Zimbabwe), September 27, 2011
- [Zimbabwean man sues court over lost 300-million-dollar diamonds](#), *The Zimbabwe Telegraph*, October 10, 2011

[Zimbabwe: Newman Chiadzwa Demands Seized Equipment](#), *The Herald* (Zimbabwe), May 16, 2012

## Relief Granted In 36% Of Appeals In New South Wales Are Granted

The New South Wales Judicial Commission has released a report analyzing all criminal appeals considered by New South Wales' Court of Criminal Appeal (CCA) for the seven years from 2001 through 2007. The CCA is the highest court in New South Wales, Australia's most populous state.

"Conviction appeals in New South Wales" is a 344-page [report that has a](#) wealth of information of interest to people in not only Australia, but the U.S and other countries.

The single most stunning statistic is the CCA granted relief to the defendant in almost 36% of the cases it reviewed. That is almost beyond belief for people

in the U.S. where state and federal appeals courts have rates in the low single digits of granting relief to defendants.

The rate of successful appeals was high across the board for a variety of convicted crimes: 30% of homicide convictions were set aside, 43% of sexual assault convictions were set aside, 36% of robbery and extortion convictions were set aside, and 32% of drug convictions were set aside.

In 35% of the cases the CCA ordered an acquittal based on insufficient evidence of the defendant's guilt which barred a retrial, and in 62% of the cases a retrial was ordered.

The results of the cases ordered for retrial are analyzed in the report. The retrials were ordered based on legal errors at trial that made the conviction unsafe, not a lack of evidence. Consequently



## Burrowes cont. from page 12

Burrowes, now 26, lives in Milwaukee and his daughter Christiana, who was three when she saw him being arrested in 2006, is now eight. After his conviction was overturned in 2009 [he told reporters](#), "It matters a lot for her to know that she's got a good daddy, and I'm going to be there for her and I'm not the type of guy that they tried to play me out to be."

### Sources:

- [Christopher Burrowes](#) - Ruling #6, State of Wisconsin Claims Board, October 11, 2011
- [Judge Throws Out Sexual Assault Conviction](#), WISN-TV (Milwaukee, WI), December 17, 2009

## Appeals cont. on page 14

## Christina Maycock Reimbursed \$20,733 Restitution After Fraud Conviction Overturned

Christina Carole Maycock was convicted in Gillette, Wyoming on May 27, 2010 of one count of obtaining property by false pretenses. Her conviction was overturned by the Wyoming Supreme Court on July 6, 2011, and an order was issued on October 21, 2011 that she be repaid the restitution she paid.

In 1985 Maycock went to work full-time for the Campbell County Cemetery District (District). Her employer had a group insurance policy. Beginning in December 1992 the District changed to an insurance company whose policy limited coverage to the District's employees, their spouses, and their dependent children. Maycock had divorced her husband Bill Maycock in 1971, but they continued to live as a family with their children in a home jointly owned by the couple. In her December 1992 enrollment application Maycock noted she was married and listed Bill Maycock as her spouse. He was added to the District's group plan and the District paid the full cost of his insurance coverage. In September 1999 the couple remarried.

Maycock retired in 2008 and was elected to



Christina Carole Maycock in September 2009. (Gillette News-Record)

the Cemetery District's Board of Directors. In August 2009 the Gillette Police Department received a tip that Bill Maycock had been falsely listed as Maycock's spouse on her 1992 insurance enrollment form. An investigation confirmed the Maycocks' weren't married in December 1992. [She was charged](#) on September 22, 2009 with one count of obtaining property by false pretenses for having the District pay her domestic partners insurance premiums from December 1992 to September 1999.

During Maycock's two day jury trial the prosecution entered evidence she wasn't married from December 1992 to September 1999 when the District paid Bill Maycock's insurance premiums. Maycock's defense was she filed out the insurance application the same as she had on previous application forms when the District used several different insurance companies, and so she had no intent to illegally obtain any benefits from her employer because she lived with Bill Maycock and her children as a family. The jury convicted Maycock on May 27, 2010, and she was given a suspended 2 to 5 years prison sentence, 5 years of supervised release, and ordered her to pay restitution in the amount of the insurance premiums the District paid for Bill Maycock.

Maycock appealed, and on July 6, 2011 the Wyoming Supreme Court overturned her conviction on the basis of insufficient evidence in [Christina Carole Maycock v. State of Wyoming](#), 2011 WY 104, July 6, 2011.

In their ruling the Court noted that an essential element of the crime was the prosecution had to prove the District relied on Maycock's alleged false pretense to part with its property, i.e., pay Bill Maycock's insurance premiums for almost seven years when he was Maycock's domestic partner. It was undisputed that Maycock listed him as her spouse when he legally wasn't, so the issue was if the District relied on that to pay Bill Maycock's insurance premiums. The only testimony about that was from three people who were Board members at times from 1992 to 1999. Defense testimony by the three witnesses established that:

- (1) the Board intended to finance insurance for the District's employees and their families;
- (2) the Board broadly defined "family" to include anyone living in the same household as the employee;
- (3) the Maycocks' marital status was of no consequence to the Board because Bill Maycock fit within the Board's broad definition of family for purposes of the District's insurance coverage; and,
- (4) the Board would have insured Bill Maycock even if it had known the Maycocks were not legally married.

The prosecution didn't offer any rebuttal testimony that the Board relied on Maycock's representation of Bill Maycock as her spouse or that the Board would not have paid the insurance premiums if it had known he wasn't her husband. Consequently, [the Court ruled](#), "We hold there is insufficient evidence to sustain Maycock's conviction for the crime of obtaining property by false pretenses."

The Court's ruling barred Maycock's retrial on double jeopardy grounds.

Maycock sued for return of the \$20,733 restitution she paid. On October 21, 2011 a Campbell County judge ordered [repayment of the money](#) to Maycock.

Sources:

[Christina Carole Maycock v. Wyoming](#), 2011 WY 104, July 6, 2011

[Campbell County Attorney Charges](#) Cemetery Board Members, September 23, 2009

[Money to be repaid to former Wyoming cemetery trustee](#) whose fraud conviction was overturned, *The Republic* (Columbus, IN), October 23, 2011

### Appeals cont. from page 13

it could be expected that many retrials would result in a conviction. Yet, the defendant was convicted of the original charge in only 36% of the cases remanded for a retrial. In 12% of those cases the defendant pled guilty and in 24% the defendant was convicted after a retrial. In 20% of the cases the defendant was convicted of a lesser charge. So only 56% of the defendants remanded for a retrial were convicted. The low conviction rate on retrial, and particularly the low rate of reconviction of the original charge, suggests that in almost 2/3rds of the cases remanded there was a dearth of evidence against the defendant and that may have been the reason the prejudicial error was committed at trial that resulted in the CCA granting a retrial. In other words, there may be a direct relationship between a general lack of evidence for what a defendant was charged with and the prejudicial errors being committed that result in the granting of a retrial.

One reason for the CCA's high rate of

granting appeals is it has [a broad mandate](#) for evaluation of a criminal appeal:

"The court on any appeal under section 5(1) against conviction shall allow the appeal if it is of opinion that the verdict of the jury should be set aside on the ground that it is unreasonable, or cannot be supported, having regard to the evidence, or that the judgment of the court of trial should be set aside on the ground of the wrong decision of any question of law, or that on any other ground whatsoever there was a miscarriage of justice."

The full study can be read online or downloaded [by clicking here](#). The Executive Summary of the report can be downloaded [by clicking here](#).

Sources:

[Conviction Appeals in New South Wales](#), Research Monograph 35, June 2011, NSW Judicial Commission

[Conviction Appeals in New South Wales](#), Research Monograph 35, June 2011, Executive Summary, NSW Judicial Commission

[Crooks are guilty, after all](#), *News.com.au*, October 18, 2011

## Family Of Chiang Kuo-ching Awarded \$3.43 Million For His Wrongful Conviction And Execution

Chiang Kuo-ching was executed in 1997 for the rape and murder of a 5-year-old girl near Taipei City, Taiwan. His family will be compensated \$3.43 million after he was posthumously acquitted in September 2011 based on new evidence of his factual innocence.

On September 12, 1996 a five-year-old girl named Hsieh was raped and murdered in the bathroom for a restaurant on a military base near Taipei City in Taiwan. Chiang was a 20-year-old private in Taiwan's Air Force stationed at the base. Six days after the crime he and two other servicemen were questioned as suspects. Chiang was the only one of the three who failed a polygraph test. The other two men were released, while Chiang was subjected to an interrogation that went on for 37 continuous hours until he confessed. After his interrogation ended he retracted his confession, claiming that in addition to being deprived of sleep and having bright lights continuously shown in his eyes, he was beaten. There was no eyewitness to Chiang being in the restaurant at the time of the crime, but the prosecution found a tissue in the bathroom's garbage that they claimed had his sperm on it.

Chiang protested his innocence, but the tissue and Chiang's confession was enough for him to be convicted and sentenced to death. After Chiang's appeal was denied he [was executed on](#) August 13, 1997 by first being injected to put him to sleep and then he was shot in the head.

Before his execution Chiang sent his family a letter with the names of everyone who had betrayed and tortured him.

Chiang's family continued to campaign for his innocence, and in May 2010 an extraordinary appeal was filed in Taiwan's Supreme Court to order the reopening of his case. In June 2010 his case was reopened by the Prosecutors Office in Taipei. The investigators reviewed and reexamined the physical evidence in the case that included fingerprints, a bloody palm print, and DNA from a pubic hair sample found on the girl's right thigh. They compared that evidence with the prints and DNA of service members in the air force at the time. The bloody palm print and the pubic hair's DNA matched Hsu Jung-chou, who had been sta-



Chiang Kuo-ching  
(Kuo-ching family photo)

tioned at the base in September 1996. The investigators also discovered that Jung-chou had been considered a prime suspect but investigation of the crime ended when Chiang confessed.

The investigation also found that the damning tissue evidence found in the bathroom's garbage didn't have Chiang's sperm on it: but it was mucus (snot) from him blowing his nose.

Jung-chou was released from prison in November 2010 after serving seven years for the kidnapping and sexual abuse of two girls while on parole in 2001, after his 1997 conviction of raping a six-year-old girl was commuted.

Jung-chou was arrested on January 28, 2011 and when confronted with the palm print and DNA evidence directly linking him to the crime [he confessed to](#) raping and murdering Hsieh.

On May 24, 2011 the results of the re-investigation of the crime were released, [with the conclusion](#) that Chiang did not commit the crime, while there was substantial evidence Jung-chou was the actual perpetrator. That same day Jung-chou was charged with Hsieh's murder.

Chiang's retrial was ordered on May 27, 2011 by Taiwan's Defense Ministry's District Military Court Prosecutors Office. [After a three-month](#) trial Chiang was posthumously acquitted on September 13, 2011 by a panel of three military judges.

Taiwan's President Ma Ying-jeou apologized to Chiang's family in person for their ordeal.

Taiwan's "False Imprisonment Compensation Act" limited payments to a maximum of about \$1 million (NT\$30 million) fn.1. However, due to the extraordinary circumstances and publicly of Chiang's case, Taiwan's legislature [passed a special](#) amendment to the Act that did three things:

- It removed the payment cap.
- It increased compensation to about \$166 (NT\$5,000) per day a person was falsely imprisoned, payable to the person or their family if the person was deceased.
- It increased compensation to a wrongly executed person's family to about \$166

(NT\$5,000) per day for the total life expectancy of the executed person from the day of their execution.

With the amendments Chiang's family could expect compensation of over \$3.4 million (NT\$100 million),

The Defense Ministry announced on October 27, 2011 that Chiang's family [would be paid](#) compensation of \$3.43 million (NT\$103.18 million). \$52,000 (NT\$1.57 million) of the money was compensation for the 314 days he spent in custody before his execution. \$3.38 million (NT\$101.61) was compensation for Chiang's wrongful execution, based on his age of 21 when he was executed and that the average life expectancy for Taiwanese males is 77.

The 10-year statute of limitations has expired so the men responsible for extracting Kuo-ching's false confession and his wrongful conviction and execution can't be held criminally liable. However, the Ministry of Defense is doing what it can to hold them civilly liable for the harm they caused him and his family. The Ministry of National Defense [filed an injunction](#) with the Taipei District Court to freeze the assets of Taiwan's minister of national defense in 1997, Chen Chao-min, and seven former military officials involved in Kuo-ching's case. The MND also filed a provisional lawsuit for seizure of the eight men's assets as reimbursement for the \$3.43 million paid as compensation to Kuo-ching's family. That was approved in November 2011.

In December 2011 Jung-chou was found guilty of the rape and murder of Hsieh and he was sentenced to 18 years in prison. His conviction was based on his confession to prosecutors and then in court, and that a bloody palm print found at the murder scene matched that of Jung-chou.

Footnote 1. All US\$ amounts are based on the exchange rate with the Taiwan New Dollar (NT\$) on October 27, 2011 of 30.1 NT\$ per US\$.

Sources:

[Ministry to pay executed airman's family NT\\$103m](#), *Taipei Times*, October 28, 2011

[Military court exonerates Chiang Kuo-ching](#), *Taipei Times*, September 14, 2011

[Retrial begins in wrongful execution case](#), *The China Post*, May 27, 2011

[Wrongful execution case closed](#), *Taipei Times*, May 25, 2011.

[Actual suspect in Chiang case sentenced to jail](#), *Taipei Times*, December 13, 2011.



## Gordon Randall Steidl Settles Lawsuit For 17 Years Of Wrongful Imprisonment For \$2.5 Million

Gordon Randall Steidl has settled his federal civil rights lawsuit against the Illinois State Police for \$2.5 million. Steidl was wrongly imprisoned for 17 years before his release in 2004.

Steidl and his co-defendant Herbert Whitlock were convicted by separate juries in 1987 of murdering Karen and Dyke Rhoads in 1986, and then setting their Paris, Illinois home on fire. Their convictions were primarily based on the testimony of two prosecution witnesses -- both alcoholics -- who claimed to have been present during the crime. Steidl, 35, was sentenced to death while Whitlock, 41, was sentenced to life in prison.

One of the prosecution's witnesses, Deborah Reinbolt, was charged with concealing the deaths. She pled guilty and was sentenced to two years in prison.

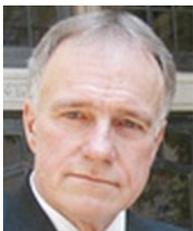
Steidl and Whitlock's convictions were affirmed on direct appeal.

Whitlock and Steidl filed state habeas petitions. Whitlock's was denied while Steidl's sentence was vacated in 1999 after 12 years on death row. He was resentenced to life in prison. Whitlock and Steidl then filed federal habeas corpus petitions. Whitlock's was denied, while Steidl's was granted in June 2003, based on his trial lawyer's failure to investigate exculpatory evidence. The federal [judge ruled](#) that Steidl's "acquittal was reasonably probable if the jury had heard all of the evidence."

Steidl was released on May 28, 2004 when a county judge granted the prosecutor's motion to dismiss his indictment.

Whitlock filed a second state habeas petition, and in 2007 the Fourth District Illinois Appellate Court ordered a new trial based on the prosecution's failure to disclose exculpatory evidence that the prosecution's two key witnesses initially implicated other suspects, and that State Police officers provided them with alcoholic drinks before they identified Steidl and Whitlock. Whitlock was released from prison on January 8, 2008 after the prosecution dropped the charges against him.

Steidl and Whitlock filed separate federal civil rights lawsuits against the Illinois State



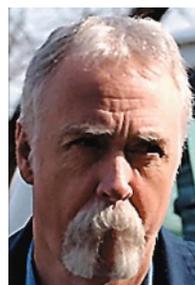
Gordon Randall Steidl after his release from prison (Jennifer Linzer)

Police, several State Patrol officers involved in investigating the murders, the city of Paris, and the former Edgar County prosecutor who prosecuted them.

It was discovered as a result of the lawsuits that a former State Police investigator was prevented from thoroughly investigating the murders. However, based on what he did investigate he concluded Steidl and Whitlock were innocent. That information wasn't provided to Steidl and Whitlock's trial attorneys.

The Illinois State Patrol agreed to [settle Steidl's lawsuit](#) against the agency and its officers for \$2.5 million on October 25, 2011. However, the settlement wasn't reported until December 2 after the Better Government Association, a Chicago-based watchdog group obtained the settlement documents through a Freedom of Information Act request. The BGA also obtained

documents that as of the settlement the State Police had spent more than \$3.7 million defending against the lawsuits by Steidl and Whitlock. Most of the \$3.7 million was spent on attorneys' fees.



Herb Whitlock after his release after 21 years of wrongful imprisonment. (Jim Avelis, *The Tribune-Star*)

Steidl's lawsuit against the city of Paris and the prosecutor remains unresolved, and Whitlock has not reached any settlement in his lawsuit.

Steidl, now 60, and Whitlock, now 66, have pending applications for a pardon by Illinois' governor based on their actual innocence that would clear their records and entitle them to compensation by the State of Illinois.

Sources:

[Illinois State Police Settle Wrongful Conviction Suit](#), *Claims Journal*, December 2, 2011

[Gordon \(Randy\) Steidl](#), Northwestern University Center on Wrongful Convictions.



## Motorcyclist Spends \$60,000 To Overturn Speeding Conviction

John Busuttill was convicted in June 2011 of riding his Suzuki motorcycle at 93 mph (149 kmh) in a 37 mph (60 kmh) speed zone in the Royal National Park in May 2010. The park is 18 miles south of Sydney, Australia. Protesting his innocence, the 29-year-old Busuttill was fined \$1,744 and his driver's license was suspended for six-months.

Busuttill appealed and the Sydney District Court quashed his conviction and sentence on October 26, 2011. His conviction was based on highway patrol officer's use of a hand-held radar gun, and the court ruled the use of the radar gun was "radically wrong."

For his appeal Busuttill subpoenaed the police records and video of the incident. During his appeal hearing the video was played that showed the radar speed detector mounted inside the patrol car clocked him going 47 mph (76 kmh). Busuttill also presented the expert evidence of an internationally accredited radar expert, Roy Zegers, that a hand-held radar gun has to be locked onto an object moving in a straight line for a minimum of three seconds before it can register an accurate speed. Busuttill then presented expert evidence by a surveyor who testified that where Busuttill's motorcy-



John Busuttill outside the courthouse where his conviction was quashed. (Edwina Pickles)

cle was clocked the straight stretch of road was 100 meters shorter than an officer had testified during his trial. The actual length of straight road wasn't enough to allow the officer 3 seconds to take a reading.

In quashing Busuttill's conviction the appeals court ruled the errors in his case were "extraordinary and fundamental." The judge also ruled that although there was no evidence the police officer acted with malice, reimbursement of Busuttill legal costs in his defense was warranted.

Busuttill estimates that he spent more than \$60,000 in legal and expert witness fees, and other expenses. After his conviction was overturned he told reporters, "It's cost a lot but it's worth it in the end."

Busuttill's investigation also discovered that on the same day he was given a ticket 22 other drivers were charged with speeding on the same stretch of road based on hand-held radar speed readings, and 10 of them had their driver's license suspended. So his case could be used as the basis for the other drivers to challenge the legality of their convictions.

**Busuttill cont. on p. 17**

## Barry Beach Granted New Trial In 1984 Murder Conviction

Barry Beach has been granted a new trial for his conviction of murdering 17-year-old Kimberly Nees in Poplar, Montana in 1979.

During the investigation of Nees' murder there were several suspects, but Beach, 17 at the time, wasn't one of them.

In January 1983 Beach was living with his father in Louisiana when he was arrested on a misdemeanor charge of contributing to the delinquency of a minor. Detectives in the area were trying to solve the abduction and murder of three young women. The detectives learned that Beach was from Poplar, Montana where Nees' murder was unsolved. After being interrogated for several days without a lawyer Beach confessed to the three Louisiana murders and Nees murder. After his interrogation Beach recanted his confessions as forced by the detectives threatening him with the electric chair if he didn't confess. Beach's interrogation wasn't audio-taped and the detectives denied they threatened him.

Before Beach could be charged with the three Louisiana murders evidence was discovered conclusively proving his confessions were false, and other men were charged with those crimes. However, Beach was charged with Nees' murder and extradited to Montana.

During Beach's 1984 trial the prosecution didn't introduce any physical, forensic or eyewitness evidence linking him to Nees murder, and there was crime scene evidence that excluded him, including a bloody palm print found on the pick-up Nees was driving that didn't match either her or Beach. His conviction was based on his alleged confession, which had a number of inconsistencies with the crime scene and details of Nees'

### Busuttil cont. from p. 16

Note: All dollar amounts are in Australian dollars, and on October 26, 2011 the exchange rate between the AU\$\$ and the US\$ was exactly even at AU\$\$1.00 equal to US\$1.00.

Sources:

[Was it 149km/h or 76km/h?](#) Biker's barrister father wins \$60,000 battle to beat speed charge, *Sydney Morning Herald*, October 26, 2011



Barry Beach during evidentiary hearing in Lewistown, Montana on August 1, 2011. (KTVQ-TV, Billings, MT)

In 1991 Beach saw a *60 Minutes*' story about Centurion Ministries successfully freeing an innocent man from Texas' death row. He wrote them a letter, and in 1998 they began reviewing his case. In 2000 they accepted his case and began an investigation to try and find new evidence. After 8 years of investigation, in 2008 lawyers working with Centurion filed a Petition for Postconviction Relief that requested a new trial based on new evidence of Beach's actual innocence. Key new evidence was by 11 witnesses who didn't testify at his trial. Several of those witnesses had evidence identifying that Nees' killers were four women. One of Beach's new witnesses told a police officer around the time of Nees' murder that he saw a number of girls in the truck Nees' was driving that night headed to the park where her body was found. Beach's trial lawyer was not told about that witnesses' statement.

After more than 3 years of legal maneuvering by the State and Beach's lawyers, an evidentiary hearing ordered by Montana's Supreme Court began on August 1, 2011 in Lewistown, Montana. During that hearing all of Beach's witnesses with new evidence testified.

District Court Judge E. Wayne Phillips filed [his written ruling](#) on November 23, 2011. (Page numbers for quotes are in brackets below.) A key issue to be decided was whether Beach's post-conviction petition could even be considered, since it had been filed long after the 5-year statute of limitations had expired. For the issues in Beach's petition to be considered he had to first satisfy that his new evidence was discovered after trial and that he had exercised diligence in finding it. He then had to satisfy that his new evidence was credible and that it would prove his actual innocence by clear and convincing evidence to any reasonable juror. If so, then Beach would satisfy that it would be a miscarriage of justice if he wasn't granted a new trial.

murder. Beach was 21 when convicted in 1984 of deliberate homicide. He was sentenced to 100 years in prison.

Beach's convictions were affirmed on direct appeal, and his state and federal habeas petitions were denied.

In 1991 Beach saw a *60 Minutes*' story about Centurion Ministries successfully freeing an innocent man from Texas' death row. He wrote them a letter, and in 1998 they began reviewing his case. In 2000 they accepted his case and began an investigation to try and find new evidence. After 8 years of investigation, in 2008 lawyers working with Centurion filed a Petition for Postconviction Relief that requested a new trial based on new evidence of Beach's actual innocence. Key new evidence was by 11 witnesses who didn't testify at his trial. Several of those witnesses had evidence identifying that Nees' killers were four women. One of Beach's new witnesses told a police officer around the time of Nees' murder that he saw a number of girls in the truck Nees' was driving that night headed to the park where her body was found. Beach's trial lawyer was not told about that witnesses' statement.



Kimberly Nees

Judge Phillips found that the evidence by Beach's witnesses was evidence the jury hadn't heard at trial, and that Centurion had exercised diligence in discovering it. He also found that all 11 of Beach's new witnesses were credible. He also found the new evidence by three of the witnesses was sufficient to establish by clear and convincing evidence that no reasonable juror would find Beach guilty beyond a reasonable doubt if they heard their testimony. One witness was told by one of the "gang of four" girls who allegedly murdered Nees, that the girl's was at the scene of Nees' murder. The other two women were co-workers of another member of the "gang of four" [who told them](#), "a bunch of girls were riding around and they went down by the river ... the girls drug her [Nees] out of the truck and they beat her." (25)

Judge Phillips said another witness sealed the sufficiency of Beach's new evidence. Steffanie Eagle Boy was 10 when on the night of Nees murder she was with her cousin on a bluff above where Nees' body was found. Judge Phillips writes about [Ms. Eagle Boy's testimony](#):

"Of all the testimony at the evidentiary hearing, Ms. Eagle Boy's is seared on the Court's conscience. (25)

She saw two vehicles enter the area and heard loud, girl voices yelling "get her"; "get the bitch"; "kick the bitch". She testified that she heard a different voice plead "don't, please". In Ms. Eagle Boy's own words: "it was something I'll never forget." "It was horrible." "I've had nightmares all my life about it." "It's something I won't forget". (25)

...  
No reasonable juror, properly instructed, could have combined that testimony with the testimony of Ms. White Eagle-Johnson, Ms. Smith and Ms. Molar and not had reasonable doubt whether Mr. Beach committed the murder. (26)

In spite of Beach's disputed confession, Judge Phillips ruled that "the totality of the evidence is clear and convincing enough to rule that Mr. Beach has certainly opened the actual innocence gateway sufficiently enough to walk through the miscarriage of justice exception toward a new trial." (29) "It is hereby Ordered that Beach's Petition for Post Conviction Relief is not time barred, the Petition is Granted, and Mr. Beach is Granted a new trial on the charge of the murder of Kim Nees."

Beach cont. on p. 18

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## Antonio Williams conviction Overturned When The Victim Recants

Antonio Williams was released on August 23, 2011 after more than 4-1/2 years imprisonment for the rape of a child he didn't commit in Birmingham, Alabama. *The Birmingham News* published [a feature article](#) about Williams' case in its Sunday paper for October 23.

In 2003 a 7-year-old girl that Williams was acquainted with through his daughter was discovered to have a sexually transmitted disease. Two years later, in 2005, Williams was arrested when the girl said he was the man who raped her several times during the years 1999 to 2002, when the girl was between 3 and 6.

Williams was indicted and during his trial in April 2007 the only evidence against him was the girl's testimony. The jury convicted the 39-year-old Williams of two counts of child rape. The next month he was sentenced to life in prison and ordered to enter the prison's sex offender program.

The girl was 15 when on April 14, 2011 she was interviewed by the police about an unrelated issue. She told them Williams had never abused or raped her. She named another man as the person who actually com-



Antonio Williams in October 2011 (Tamika Moore, *Birmingham News*)

mitted the crimes, and that he had also abused her older half-sister. When the police interviewed her half-sister she corroborated that the man had abused her.

The Jefferson County DA reopened Williams case. Williams was appointed a lawyer who filed a motion for a new trial based on the new evidence of the girl's recantation corroborated by her half-sister. During a hearing held in May 2011 the girl repeatedly stated under oath that Williams never touched her and that she only named him as her rapist because the man who actually raped threatened to harm her if she ever told anyone what he did to her. She named the actual rapist. Her testimony was corroborated by the testimony of her half-sister, who named the same man as her abuser. It was also disclosed during the hearing that the girl told her stepmother that Williams did not abuse or rape her, but the stepmother did not tell that to the police or prosecutors. After the hearing the judge set aside Williams' convictions and ordered a new trial. The judge described some of the testimony allowed against Williams' during his trial as "appalling."

Jefferson County D.A. Brandon Falls decided not to retry Williams and when the charges were dismissed on August 23, 2011, Williams was released after 4 years 6 months and 26 days of wrongful incarceration.

DA Falls told *The Birmingham News* after Williams' release that the man who the girl testified was her rapist, and who her step-sister testified sexually abused her, will not be charged with those crimes unless additional evidence is discovered. [He said](#), "We would have to make sure we had extensive corroborating, independent evidence" in addition to the girl's testimony.

[Click here to read](#) *The Birmingham News'* article, "Birmingham man, wrongly convicted of rape, is now free and starting his life over." In response to the article's description of the difficulties Williams is having in starting his life over, several dozen people contacted the newspaper with [offers to help Williams](#) with clothing, furniture and some job possibilities.

### Sources:

[Birmingham man, wrongly convicted of rape](#), is now free and starting his life over, *Birmingham News*, October 23, 2011

[Birmingham News readers come to aid](#) of man who lost everything after wrongly convicted of rape, staff writers, *Birmingham News*, October 24, 2011



## Five Men Freed Because Prosecution Failed To Disclose Star Murder Witness Was Unreliable

Five men — Levi Walker, Adam Joof, Antonio Christie, Michael Osbourne and Owen Crooks — were freed when the UK's Court of Appeals [quashed their convictions](#) as unsafe on March 8, 2012, based on the prosecutions failure to disclose evidence their star witness was unreliable.

The five men were convicted in 2008 of the



Owen Crook, Levi Walker and Michael Osbourne (top row). Antonio Christie and Adam Joof (bottom row).

2002 murder of Kevin Nunes in Staffordshire -- 160 miles northeast of London. The prosecution claimed the 20-year-old Nunes was taken to a country lane where he was shot to death during a drug feud. Their convictions were based on the testimony of an alleged eyewitness. The men were sentenced to life in prison with minimum sentences of between 25 and 28 years before being eligible for early release.

After their convictions were affirmed on appeal the men applied to The Criminal Case Review Commission to review their case. The CCRC referred the case of the five men to the Court of Appeals after their investigation uncovered misconduct by police officers involved in the murder investigation for concealing material evidence, and the failure of the prosecution to disclose evidence that the eyewitness was not reliable.

The prosecution's case was so flawed after the disclosures that the Crown Prosecution Service [told the appeals court](#) that it did "not seek to uphold the convictions" and would not retry the men.

### Beach cont. from p. 17

The State appealed Judge Phillips ruling to the Montana Supreme Court. To prevail in their appeal the State will have to overcome the judge's detailed explanation of why he found the witnesses credible and why their new evidence supports a new trial for Beach.

In December 2011 [Beach was released](#) on his own recognizance after 29 years of imprisonment. In July 2012 Judge Phillips [lifted Beach's restrictions](#) and allowed him to live on his own unsupervised.

Barry Beach's website with extensive information about his case is, <http://montanansforjustice.com>.

### Sources:

[Barry Allan Beach v. State of Montana](#), No. 1068-C, MT 15th Judicial Dist Roosevelt County, November 23, 2011 (Granting Barry Beach a new trial.)

[Judge: Witnesses credible in Barry Beach hearing](#), *Great Falls Tribune*, November 24, 2011

[Barry Beach freed on own recognizance](#) after 29 years behind bars, *Great Falls Gazette*, December 8, 2011

[Judge lifts housing restrictions on Barry Beach](#), *Billings Gazette*, July 12, 2012



### Five Men cont. on p. 19

## Romain Steven Isham Awarded \$25,000 For 20 Years Of Punishment For His Wrongful Conviction

Romain Steven Isham was awarded \$25,000 by the Wisconsin Claims Board on October 27, 2011 as compensation for 10 years of wrongful imprisonment for the sexual assault of an 8-year-old boy that he didn't commit. He also registered as a sex offender for 10 years after his release from prison.

Isham was 32 when he was prosecuted in 1990 for allegedly sexually assaulting the 8-year-old son of his live-in girlfriend in Douglas County, Wisconsin. Isham denied the accusation and there was no physical evidence he committed the crime. The prosecution's key evidence was the boy's testimony, which the jury believed in convicting Isham. After Isham was released in 2000 after serving 10 years in prison, he had to register as a sex offender.

In 2009 investigator James Ohm with the Wisconsin Department of Justice was interviewing the mother of the boy Isham had been convicted of assaulting, when the mother told Ohm that the boy had recanted his accusation years earlier. Ohm reported that information to the Douglas County DA's Office, and he was told to conduct an investigation. Ohm discovered that in 1998 the boy recanted his testimony to authorities in Sheboygan County, where he lived at that time. The authorities in Sheboygan County didn't relay the new information to the Douglas County DA. Ohm interviewed the alleged victim, Jeremy Kaseno, who was then 28. Kaseno told him that he first re-



Romain Steven Isham in October 2012 (Belami County, MN)

canted in 1993 when he was 11. He also said that he was very young when he falsely accused Isham and he got caught up in the lie and his abusive father pressured him to maintain the lie.

Based on the new evidence Isham's conviction was vacated in May 2010. During that hearing Douglas County Circuit Court Judge Kelly Thimm [said Isham's case](#) "is probably every citizen's worst nightmare, let alone a judge and a former prosecutor, to see an innocent man convicted wrongfully. Not only was an innocent person convicted but an innocent person spent a substantial time in prison and was required to register as a sex offender. Our government system failed in this case, and I apologize." With his conviction vacated Isham no longer had to register as a sex offender.

In July 2010 Isham filed a claim with the Wisconsin Claim Board for \$3,650,000 -- \$1,000 for each day he was wrongly imprisoned. However, Wisconsin's wrongful conviction compensation statute only provides for compensation of \$5,000 per year for no more than 5 years, or a total payment of \$25,000. On October 27, 2011 [the Board voted](#) to award Isham the maximum payment of \$25,000 based on its determination there was clear and convincing evidence he was innocent of his convicted crime. The Board can recommend that the state Legislature award more money in a special bill and it has done so in several wrongful conviction cases. However, it didn't make that recommendation in Isham's case, and it didn't provide any explanation for why it decided not to do so. The Board's decision can be appealed.

A Wisconsin legislator can independently file a bill to award Isham additional compensation for his 20 years of punishment, 12 of those years after authorities were notified he had committed no crime. After the Board made its announcement [Isham told reporters](#), "I'm looking for somebody to help me out. I expected to get more. I had my own job making about \$2,000 a month when I went in, and that's a quarter million. That's not counting the hardship of being raped and beaten up in prison, and then the years I was made to register as a sex offender."

[Isham describes his](#) time in prison as hell because other prisoners unrelentingly abused the convicted child molesters. He said he was regularly raped and beaten. He saw child sex offenders stabbed and set on fire, not knowing if or when he would be

next. Isham said he suffers from post-traumatic stress syndrome from his years of torment behind bars. He also said that during his 10 years as a registered sex offender he was unable to keep a steady job because as soon as an employer found out "they would tell me to get off their (expletive) property."

Isham can't afford a lawyer so he filed and handled his compensation claim.

Isham refused a plea bargain before his trial and while imprisoned he refused to participate in sex-offender treatment that would have lessened his prison time, because both required he confess to a crime he didn't commit.

Isham, now 53, lives in Duluth, Minnesota.

Sources:

[Man granted \\$25,000 compensation](#) after 20 years of punishment for crime he did not commit, *Wisconsin State Journal*, October 27, 2011

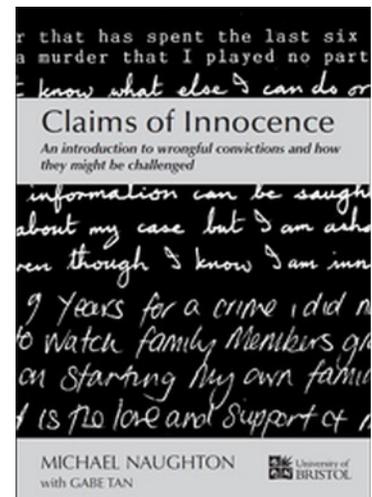
[Duluth man gets \\$25,000](#) after 10 years in Wisconsin prison on wrongful conviction, *Duluth News Tribune*, October 28, 2011

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## "Claims of Innocence" Now Available For Downloading

Claims of Innocence: An introduction to wrongful convictions and how they might be challenged, is an 80-page booklet by Michael Naughton with Gabe Tan. Published in 2010 by the University of Bristol, Claims of Innocence can now be downloaded for no charge by clicking here.

Michael Naughton is founder and director of the Innocence Network UK, and although Claims of Innocence is specific to the United Kingdom, much of its information, particularly in "Part 3: Proving your innocence," is applicable to the United States and other countries.



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## Five Men cont. from p. 18

Based on discovery of the concealed evidence, in December 2011 nine police officers [were placed under](#) criminal investigation for misconduct by the UK's Independent Police Complaints Commission (IPCC). Among the nine were four police chiefs, including the national head of ethics in policing.

Sources:

[Five men jailed for murder of Wolverhampton drug dealer Kevin Nunes have convictions overturned](#), *Birmingham Post* (Birmingham, England), March 8, 2012

[Kevin Nunes killing](#): Five cleared at appeal court, BBC News, March 8, 2012

[Police chiefs investigated for misconduct over gangland killing case](#), *The Guardian* (London), Dec. 22, 2011.

# John Button And Darryl Beamish Cleared Of Murder Four Decades After Serial Killer's Execution

By Tom Percy\*

On the morning of October 26, 1964, 33-year-old convicted murderer Eric Edgar Cooke was sitting in the death cell at Fremantle Prison near Perth, Australia. [1] He was waiting to be executed, and had spent the last two hours with Reverend George Jenkins. Unprompted, Cooke reached for the Minister's bible and took it out of his hand. Holding it fervently Cooke said, "I swear before almighty God that I killed Anderson and Brewer." It was not the first time he had said this, but given the circumstances it took on special significance. A few moments later a hood was placed over his head and he was taken the 42 steps from the cell to the gallows, and within a minute he was dead.

The Reverend Jenkins recorded Cooke's last words verbatim in a Statutory Declaration some days later. Words that were to cause a controversy in legal, historical and political circles that would not be resolved for over 40 years.

## Journalist Estelle Blackburn finds proof Cooke's confession was true

In late 1998 a journalist I hardly knew made an appointment to see me at my office in Perth. I had met Estelle Blackburn briefly on two occasions over the past decade. I knew nothing however, of the fact that she had spent the past six years researching the story of Eric Cooke generally, and specifically the case of John Button, who had been convicted in 1963 of running over his girlfriend. Neither did I know that in her pursuit of Button's case she had given up full-time work and already sold almost all of her material assets too keep the project and the book afloat.

She had apparently been referred to me by Judge Alan Fenbury. She wanted me to be involved in appealing Button's conviction, which might require about a million dollars worth of legal work. The bad news was that I would have to do it for free. Before I had her escorted from my office, she asked if before dismissing the idea out of hand I would read her book *Broken Lives*. [2] The book was about to be released and she gave me an advance copy.

Shortly after that I was scheduled to go

somewhere, and being short of reading material tossed the book in my bag thinking that I might read it as a last resort if I couldn't buy something better at the airport. I did however read the book, and the rest, as they say in the classics, is history.

After I returned, I couldn't get back to Blackburn quick enough. I told her I was "in." All we needed was a solicitor crazy enough to take on all the work that was going to be involved in resurrecting a nearly 40-year-old case from scratch. [3] I suggested that she should approach Jonathan Davies. He was about the only person I knew who might have been nearly mad enough to say yes and take the case for free. But say yes he did, and the Button case was up and running.

After we worked on Button's case for about a year, Western Australia's Attorney General gave his approval for it to go back to Court. Blackburn then suggested we should take on Darryl Beamish's case as well. We didn't know if Beamish would have anything to do with us or a proposed appeal, but Blackburn tracked him down. And then there were two cases.

## Darryl Beamish

Darryl Beamish, a deaf mute who communicates by signing, was convicted in August 1961 of willfully murdering 22-year-old Jillian Brewer on December 20, 1959. Brewer's murder in her suburban Perth home was savage and brutal.

There was no direct or forensic evidence linking Beamish with the crime. The prosecution's case was based on Beamish's alleged confession 14 months after the crime. Beamish's "confession" consisted of repeating back to his police interrogators details of the crime they told him through an interpreter. Beamish was 20 when sentenced to death, but his sentence was subsequently commuted to life imprisonment. He was released on parole in 1976 after 15 years imprisonment. [4]

## John Button

A little over three years after Brewer's murder, 17-year-old Rosemary Anderson was run down by a vehicle in Perth on February 9, 1963. She sustained shocking injuries from which she died shortly thereafter. John Button was her 19-year-old boyfriend. He had no prior record of any kind, but he was charged with being the driver of the car. The prosecution alleged that in a fit of temper he



Darryl Beamish, Estelle Blackburn and John Button (L to R) at the Western Australia supreme court celebrating Beamish's exoneration on April 1, 2005

deliberately drove the car at her in an attempt to kill her. As with Beamish, the prosecution's case was based on Button's alleged confession after many hours of intense interrogation.

Button was convicted of manslaughter in May 1963. He served 5 years of a 10-year sentence in Fremantle Prison before being released on parole in 1968.

Beamish and Button appeal after Cooke confesses

Eric Edgar Cooke was arrested for an unrelated murder four months after Button's conviction. Cooke subsequently confessed to murdering Brewer and Anderson, as well as murdering another six persons from 1959 to 1963.

Cooke's confessions to Brewer and Anderson's murders led to the convictions of both Beamish and Button being the subject of fresh evidence appeals to the Court of Criminal Appeal. The appeals were dismissed in May 1964.

The critical issue in the 1964 appeals was Cooke's confessions, and what weight, if any, should be given to them. Cooke testified during hearings for the appeals. The decision of the Court of Criminal Appeal was to the effect that Cooke's testimony was inherently unreliable.

## 2001 Button appeal

Button's appeal in 2001 was based on fresh evidence that we asserted proved that the vehicle driven by Button on the night in question was not the vehicle that struck Anderson. We also relied on Cooke's confessions, in the light of his credible confessions to a number of other highly similar hit and run crimes.

This evidence, we argued was to be "similar fact" evidence in reverse. Usually the doc-

**Button cont. on p. 21**

## Button cont. from p. 20

trine of “similar facts” allows the prosecution to call evidence to show that an accused person has committed strikingly similar crimes to the one under investigation, and to use that evidence as proof of guilt. We sought to show that Cooke had been in the habit of committing strikingly similar acts of running women down, and that this should be admissible as evidence of his guilt of running down Anderson.

Cooke’s confessions matched substantially if not completely the evidence of seven surviving victims of hit and runs, which was not known at the time Button was convicted. Those victims gave evidence at the appeal of the incidents in which they were run down, and the reports they made to the police.

Unknown to anyone at the time of Button’s trial, Cooke had stolen a blue Holden sedan on the night that Anderson was killed. There was nothing particularly unusual in this: Cooke had regularly stolen cars and abandoned them at the end of his night’s activities. But the co-incidence of him being out and about in a stolen vehicle on the very night of Anderson’s death was very significant.

The Holden stolen by Cooke crashed into a tree in Kings Park near Perth shortly after Anderson was run down. The stolen car had never been connected to the Button case before Blackburn raised this as a possibility in her book. Subsequent examination of the police records and photos of the damage to the stolen Holden taken at the time indicate it had damage consistent with the fatal injuries inflicted on Anderson.

In contrast, the Simca driven by Button was virtually undamaged.

Subsequent tests conducted by American crash reconstruction expert William “Rusty” Haight using modern crash reconstruction methods indicated that it was far more possible that the Holden (and not Button’s Simca) had been the vehicle which killed Anderson. Haight’s expertise, despite being vigorously disputed by the government was unreservedly accepted by the Court. In its decision, the Court of Criminal Appeal was glowing in its acceptance of Haight’s evidence, and perhaps above all the other grounds raised in the appeal, his evidence was the key to the appeal being allowed in February 2002.

### 2004 Beamish appeal

The essential proposition advanced in

Beamish’s 2004 appeal was that the fresh evidence, unknown and undisclosed to Beamish at the time of his trial or the 1964 appeal, demonstrated that Cooke’s confession to the murder of Brewer was almost certainly true, and that the Court of Criminal Appeal’s findings in 1964 in this regard were distinctly unsafe.

As with the Button appeal, Cooke’s modus operandi was scrutinized.

The very existence of Cooke as a multiple murderer and as a person who frequented the area where Brewer lived, was unknown to anyone at the time of Beamish’s trial. So our primary submission was that had Beamish’s jury known of Cooke and his similar crimes, their verdict would almost inevitably have been different.

Other than having a propensity to run down young women at night in stolen vehicles, Cooke was the consummate home invader who often assaulted young single women in their homes at night as they slept. A number of those women that survived were called to testify at a hearing for Beamish’s appeal. Until Blackburn began her investigation, there was no suggestion that their common assailant had been Cooke.

Upon a comparison of the details given to the police by the women at the time, and Cooke’s confessions to these crimes, a compelling picture emerged. Cooke had a remarkable memory, and at the time of his arrest he confessed in graphic detail to numerous break and entering offences, literally dozens. He could give times, dates and addresses, as well as uncanny and minute particulars that could have been known only to the perpetrator. Even though none of these allegations had been levelled at him by the police, and none had been the subject of any publicity, the details given by Cooke matched almost exactly the details of the offences in question contained in the police reports.

Again, reverse “similar fact” evidence was relied on to establish Cooke’s guilt, and to a significant extent it was the key to the success of Beamish’s appeal in April 2005.

### Government opposed the appeals of Beamish and Button

Both appeals were fiercely and bitterly contested by the government. There was less cooperation on the part of the government than in any other case I can remember. After the Button decision we had hoped that some degree of consensus might prevail, and that they might actually concede the Beamish

appeal, but such was not to be.

The government’s position was that the similar fact evidence in both cases was not admissible. It was however admitted, and the Court in Beamish’s appeal held that it would be “absurd” not to take it into account.

The government also objected to admitting Cooke’s gallows confession. The Court in Beamish’s 2004 appeal disagreed and held that Cooke’s confession was itself capable of giving rise to a reasonable doubt in the mind of a jury, and there was a significant possibility that a jury acting reasonably would have acquitted Beamish.

### Legal legacy and lessons for the future

In strictly legal terms the legacy of the two appeals is a large one. In terms of the non-legal legacy of the cases, it can now be said that a contentious portion of the social history of Western Australia has now also been set to rest.

Almost fifty years after the murders of Brewer and Anderson the gallows at Fremantle Prison is now a mere tourist curio; patronless for a very long time. The lessons of the John Button and Darryl Beamish cases indicate, if nothing else, that that’s the way it should stay.

\*\*\*\*\*

\* About the author: Tom Percy is a barrister in Perth, Australia. He worked pro bono on the cases of John Button and Darryl Beamish for a total of six years. Tom Percy and Jonathan Davies were awarded the Australian Lawyers Alliance West Australian Civil Justice Award in August 2007 for their efforts exposing injustices in the West Australian legal system. With the author’s permission, this is Justice Denied’s edited version of his August 25, 2006 talk to the Rotary Club of Perth titled, “The Button and Beamish Cases.”

### Endnotes:

1 Perth is on Australia’s western coast. It is the capital of the state of Western Australia, and perhaps most well-known internationally as the location of the 1987 America’s Cup yacht race.

2 Broken Lives by Estelle Blackburn (Hardie Grant Publishing 1998) is available in Australia, but there is no distributor in the U.S.

3 Australia’s legal practitioners are based on the British model of barristers who represent a client in court, and solicitors who handle legal matters outside the courtroom. In Western Australia however, the two roles are allowed to intermix to some degree.

4 Law Professor Peter Brett was disturbed enough by Beamish’s case that in 1966 he wrote a concise book, The Beamish Case, in which he described Beamish’s case as a “monstrous miscarriage of justice.”



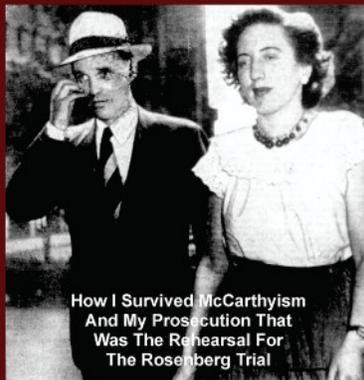
## Phantom Spies, Phantom Justice Now Available!

**P**hantom Spies, Phantom Justice by Miriam Moskowitz was published in July 2012 by Justice Denied/The Justice Institute. The book is Ms. Moskowitz' autobiography that explains how it came to be that in 1950 she was falsely accused, indicted and convicted of obstruction of justice in a grand jury that was investigating Soviet espionage. The books subtitle is *How I Survived McCarthyism And My Prosecution That Was the Rehearsal For The Rosenberg Trial*. The Afterword written by Justice Denied's editor and publisher Hans Sherrer states in part:

Miriam Moskowitz is an innocent person who was caught up in the whirlwind of anti-communist hysteria that prevailed in this country at the time of her trial in 1950. We know that because of FBI documents she obtained through the Freedom of Information Act decades after her conviction for conspiring to obstruct justice during a grand jury investigation.

The prosecution's case depended on the trial testimony of FBI informant Harry Gold. He testified that in 1947 *she observed* a conversation during which he and her business partner, Abraham Brothman, alleg-

## Phantom Spies, Phantom Justice



**MIRIAM MOSKOWITZ**

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edly discussed providing false testimony to a grand jury investigating possible Soviet espionage. She did not testify before that grand jury.

The FBI documents Ms. Moskowitz obtained are proof that prior to her trial Mr. Gold told the FBI *she was not present* during that alleged conversation. Furthermore, Mr. Gold told the FBI he didn't speak candidly

in front of Ms. Moskowitz because of her possible negative reaction if he said something incriminating in her presence, and he didn't like her.

Although Ms. Moskowitz's case had nothing directly to do with the Rosenberg trial that took place four months after her trial, they were tied together because Mr. Gold was a key witness against the Rosenbergs and the same prosecutors and judge were involved in both trials.

*Phantom Spies, Phantom Justice* is a compelling story of how an innocent 34-year-old woman found herself being publicly branded as an enemy of the United States. Ms. Moskowitz is now 96 and still seeking the justice of having her conviction overturned, although she can't get back the time she spent incarcerated because of her two-year prison sentence.

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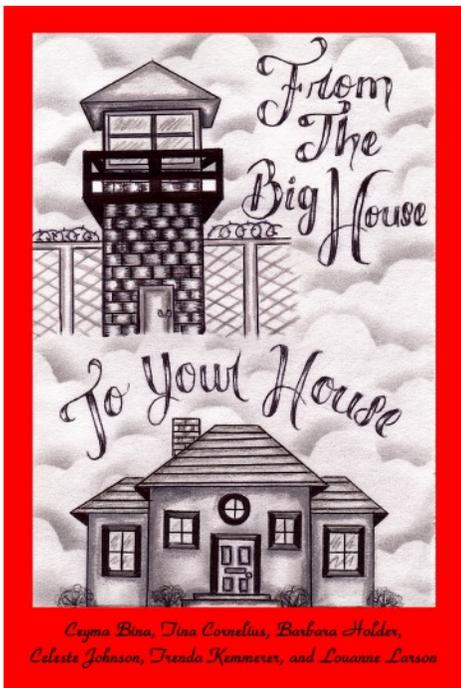
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**KIRSTIN BLAISE LOBATO'S UNREASONABLE CONVICTION**  
 Possibility Of Guilt, Replaces Proof Beyond A Reasonable Doubt

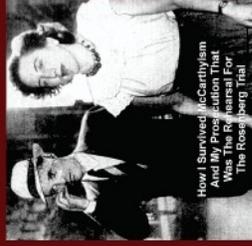


This is the story of Kirstin Lobato, who was 18 when charged in 2001 with the murder of a homeless man in Las Vegas. She was convicted of voluntary manslaughter and other charges in 2006 and she is currently serving a sentence of 13-35 years in Nevada. *Kirstin Blaise Lobato's Unreasonable Conviction* documents:

- She had never met the homeless man and had never been to where he was killed.
- No physical forensic, eyewitness or confession evidence ties her to his death.
- At the time of his death she was 170 miles north of Las Vegas in the small rural town of Panaca, Nevada where she lived with her parents.

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... may prosecute with earnestness and vigor — indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." U.S. Supreme Court in *Berger v. United States*, 295 US 78 (1935)

# JUSTICE DENIED

## The Magazine for the Wrongly Convicted

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Chiang Kuo-ching was executed in 1997 for the rape and murder of a 5-year-old girl near Taipei City, Taiwan. His family was compensated \$3.43 million after he was posthumously acquitted based on new evidence of his factual innocence. See p. 15.

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