

JUSTICE DENIED

The Magazine for the
Wrongly Convicted



Dr. Glenn Larkin

Dies at the age of 77 after more than a decade of providing pro bono expert aid for the wrongly convicted.
See page 14



Govinda Mainali

Acquitted of murder and released after 15 years of wrongful imprisonment in Japan.
See page 10



Marcus Lyons

Awarded \$5 million for 20 years wrongful incarceration for rape in Illinois.
See page 5



Edmond Arapi

Awarded \$27,878 for wrongful incarceration for murder conviction in Italy.
See page 6



Billy Frederick Allen

TX Supreme Court orders State to pay compensation of more than \$2 million for 26 years of wrongful imprisonment for murder.
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Prosecutors Are Allowed To Run Wild By Judges And State Bar Associations!

The AEDPA Helps Keep Innocent People Imprisoned!

**Issue 54
Summer 2013**

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Message From The Publisher

The fallibility of “expert” fingerprint testimony was once again exposed when Lana Canen was exonerated of felony murder when a reexamination of the fingerprint evidence that clinched her conviction revealed the jury was misled because it was not her fingerprint that was found at the crime scene. See p. 12.

The dishonorable conduct by prosecutors in this country that is a cause of many innocent persons being convicted is the predictable consequence of no meaningful oversight of their behavior by the courts or state bar associations. That lack of oversight can also result in a prosecutor known to be of suspect integrity seeking a “promotion” to a judgeship. See p. 17.

Innocent persons languishing in prison must not only often depend on a *pro bono* lawyer, but also on an expert willing to donate their time working on that person’s case. The recently deceased Dr. Glenn Larkin was a forensic pathologist who for more than a decade volunteered his expertise in many cases of injustice. See p. 14.

Clinton Treadway found out the hard way that the devil is in the details, when after seven years in prison he was exonerated by the discovery his name had been misspelled in a police report. That new evidence proved he was the victim of the very crime he had been convicted of committing. See p. 13.

Not only is compensation nonexistent or anemic for most persons exonerated of a crime, but Monika de Montgazon found out after being cleared of murdering her father that she owed the State money because she had to repay the cost of the expert evidence that exonerated her. See p. 18.

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

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

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



In April 1984 I began a short lived business relationship with famed and controversial race car driver, promoter and inventor Mickey Thompson. Almost four years later Mickey and his wife Trudy were tragically murdered on March 16, 1988 outside their home in Bradbury, east of Los Angeles.

Almost nineteen years later I was convicted on January 4, 2007 of ordering Mickey and Trudy's murders, even though no physical, forensic, eyewitness or confession evidence connected me to the crime. I was sentenced to two life sentences, with no chance of parole. I now live in a concrete and steel small box.

The killing of the Thompsons' and my trial, conviction, sentencing were media events that generated at least 22 national TV specials across all networks. Coverage included CBS' *48 Hours*, NBC's *Unsolved Mysteries*, ABC's *Hard Copy*, Fox's *Million Dollar Mysteries*, ABC's *Good Morning America*, *Sports Illustrated*, *Time*, *People*, *Car and Driver*, *Los Angeles Magazine*, and *Hot Rod*, plus thousands of electronic and print clips, both local and national. A book about the case is scheduled for release in November 2013.

I had been cleared of all charges in December 1988, after the police conducted around 600 interviews during their investigation of the murders. The prosecution has never disclosed the reports or transcripts for around 450 of those interviews.



Michael Goodwin before his prosecution.

Mickey's sister, Colleen Campbell, has powerful political connections in Orange County, California. She was on the Republican National Committee, was four times Chair of the California Peace Officers Training and Procedures Committee, and much more. For example, she spoke to the U.S. Senate Judiciary Committee in 2009.

In December 2001 – 13-1/2 years after Mickey and his wife were murdered – I filed a multi-million dollar lawsuit in Orange County against Ms. Campbell that alleged she had stolen more than a million dollars from my federally protected pension and my business. Three days later I was charged in Orange County with the first-degree murders of Mickey and his wife, even though

The Tragic Murders Of Mickey and Trudy Thompson – The Michael Goodwin Story

By Michael Goodwin

the crimes were committed in Los Angeles County. Campbell's ex-personal lawyer, business associate, political ally and close friend Anthony Rackauckas was the Orange County District Attorney who filed the charges against me. In fact Rackauckas had been Ms. Campbell's attorney in handling Mickey Thompson's estate.

Three years later I was freed in 2004 by the California Court of Appeals that ruled, "there was no evidence to justify charging Goodwin in Orange County to start with." The court's ruling resulted in a banner headline in the *Orange County Register*, "Goodwin Going Home."

The same day I was released after 30 months in the Orange County Jail I was charged with the murders in Los Angeles County.

The evidence on which I was charged in Los Angeles was not only less evidence than when I was previously cleared in a 1988 Los Angeles Sheriff's Department report, but it was less evidence than upon which the Los Angeles District Attorney had previously and repeatedly rejected my prosecution due to a lack of evidence. The last "new" witness identified was on February 15, 1989, so every trial witness was known for at least 17-1/2 years before my trial started in 2006.

I was excluded by DNA tests conducted prior to my trial of Trudy's nail clippings that identified the DNA profile of an unknown person. But the DNA of a hair found at the crime scene was not tested, and the LA Sheriff's Department didn't check the lead of a suspicious car even though they had its license plate number.

Los Angeles Sheriff's Detective Michael Griggs was the first lead detective in the Thompson murder investigation. In 1988 Griggs was ordered by his superiors to stop investigating the primary suspect who had been identified as having links to the Thompson murders. The suspect was identified by two witnesses as having been near the crime scene on the morning of the murders, and two other witnesses reported he

confessed to the crime. This suspect failed three lie detector tests. He had no ties to me.

Although there was no evidence linking me to the crimes Griggs was ordered to pursue me as the prime suspect.

Colleen Campbell and her husband posted a one million dollar reward in 1998 for information leading to the conviction of anyone involved in the Thompson murders.

Every witness who testified at my preliminary hearing or trial about issues that helped the D.A. convict me radically changed their story from initial statements that were either neutral or tended to support my innocence, or they told a new story that they didn't tell the police when they were interviewed after the murders in 1988.



Trudy and Mickey Thompson

One to the things that hampered my defense was the LA County District Attorney didn't disclose more than 250 pieces of evidence, plus more than 300 police reports and witness statements for confirmed interviews with witnesses.

For the first nine years of the investigation after the murders, the first two lead investigators both focused on me and could find nothing to link me to the murders.

Detective Mark Lillienfeld was assigned as a lead investigator in 1997. He immediately announced with no new or supporting evidence, and with the most recent L.A.S.D. report clearing me, "Goodwin did it."

Twenty-six witnesses changed their stories after Det. Lillienfeld spoke with them — and after the million dollar reward was posted. Some of those witnesses even contradicted their earlier statements they had given that supported my innocence.

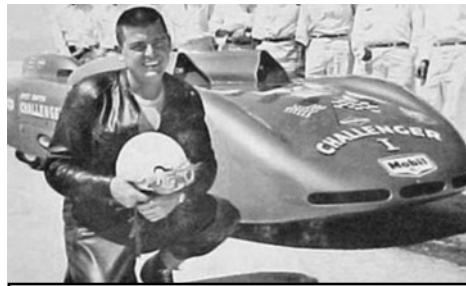
Among Det. Lillienfeld's tactics to try and implicate me in Mickey and Trudy's murders was he 'reversed' the order of their deaths with Trudy being killed first to make it appear Mickey was made to suffer so there would be a 'revenge' motive in his death. He also created phantom black killers on bicycles when every crime scene witness had reported a white shooter (No crime scene witness reported blacks or bikes at the crime scene.). To do that he relied on six witnesses who 'spoke out' against me for the first time

Goodwin cont. on p. 4

Goodwin cont. on p. 5

thirteen years after the crime and only after the \$1 million reward was offered. The non-inculpatory audio taped statements those six witnesses testified to giving prior to the offering of the reward and before being interviewed by Det. Lillenfeld have disappeared. Those witnesses said that a few days prior to the crime they saw me 2-½ miles from the crime scene, where another witness saw black bike riders that morning. However, initially suppressed and newly discovered evidence proves both that I was not where the witnesses claimed to have seen me, and that the black riders seen near that location were not the killers. Det. Lillenfeld's speculations about the crime were worthy of the plot in a fictional pulp novel.

I am told that I was the first person in the U.S. history to be convicted of "ordering a hit", when the killers were never identified or found. We don't even know what race they were, for sure. No forensic, physical or confession evidence connected me to the crime. It was stipulated I was not at or near the scene of the crime. There was no murder weapon, DNA evidence, tape recordings, letters, documents, phone records or photographs tying me to whoever shot the Mickey and Trudy or to doing anything to help, assist or further their deaths. Although there



Mickey Thomson with Challenger One in which he went over 406 mph in 1960 at the Bonneville Salt Flats.

was absolutely no evidence introduced during my trial I was connected to a conspiracy or that there even was a conspiracy, the judge gave a conspiracy jury instruction. And evidence that wasn't disclosed by the DA proves the *allegations* supporting my guilt are fraudulent and knowingly perpetrated by the DA.

In summary, the ultimate issue that allowed my wrongful conviction was the DA's failure to disclose the 250+ pieces of material favorable material evidence, in addition to the more than 300 police reports and witness statements for confirmed interviews with witnesses. The concealment of that evidence prevented meaningful cross examination and impeachment of the testimony of the prosecution witnesses. Thus, there was no true 'adversarial testing' of the prosecution's case as is anticipated and guaranteed

by the California and U.S. Constitutions. Consequently, I was convicted of a crime I didn't commit and when there is no reliable evidence supporting my guilt.

My 472-page direct appeal brief was filed in November 2012 in the California Court of Appeals, which is considering my appeal. The brief raises 17 prejudicial trial errors that require a new trial, including extensive and outrageous police and prosecutor misconduct that deprived me a fair trial. My brief can be read or downloaded at, http://occoppytech.com/images/B197574_AOB_Goodwin.pdf

Commentary on this case and links to many fine articles on my case and on other similar cases can be found on a blog site run by my friends and supporters at, www.friendsofmichaelgoodwin.blogspot.com

I can be written at,
Michael Goodwin - F69095
CSP - 3C05-106L
P.O. Box 3471
Corcoran, CA 93212-3471

Prisoners can be transferred at any time. To verify my current location search for "Michael Goodwin" on the California DOC's inmate locator at, www.inmatelocator.cdcr.ca.gov/default.aspx

Declarations of Gail Harper

Gail Harper, Esq. is Michael Goodwin's court appointed appellate lawyer, and prior to filing his 472-page appeal brief she filed several requests for an extension of time supported by her declaration detailing aspects of the case.

Declaration of Gail Harper, May 3, 2012

9) I have reviewed the approximately 300-page record of the Orange County proceedings that took place before the Orange County prosecution was stopped by the Court of Appeal, Fourth District, for lack of jurisdiction and the LADA picked up the case. This review was necessary because the two prosecutions involved the same Los Angeles County investigators, one of whom at the very least repeatedly made admittedly false statements and likely perjured himself regarding a critical and non-existent "fact" purportedly linking Mr. Goodwin to the Thompson murders in order to obtain search and arrest warrants, and to have Mr. Goodwin bound over for trial.

10) This is the most difficult and complex appeal I have ever worked on. ... patterns of judicial error and prosecutorial misconduct have emerged that must be addressed in addition to the issues I have previously described to this Court. The prosecutorial misconduct in this case was pervasive. ... There are also numerous evidentiary errors, resulting in exclusion of crucial defense evidence, and admission of inadmissible and prejudicial prosecution evidence.

Declaration of Gail Harper, June 5, 2012

6) ... One difficulty with this case is that the murders occurred in 1988, and since that time two distinct groups of investigators took radically different approaches. The second group was heavily influenced by a politically connected family member, and extensive misconduct occurred. ... Another difficulty is that two jurisdictions were involved, Orange County and Los Angeles County. Orange County attempted unsuccessfully to prosecute Mr. Goodwin, and that attempt gives rise to multiple complex issues regarding prosecutorial misconduct and fundamental issues of due process I have never before encountered. ... The case also presents multiple issues of prosecutorial misconduct, erroneous evidentiary rulings and instructional errors. Ultimately, the case, which has all the additional complexities of a prosecution based on conspiracy, raises issues related to insufficiency of the evidence in an extraordinarily convoluted factual context.

7) ... There were multiple changes of testimony by several of the witnesses over years of prior proceedings ...

8) The record is more than 13,000 pages in length, plus voluminous exhibits. A total of 48 witnesses testified during a 35-day jury trial. There were 67 motions, oppositions and replies to motions, some of them extremely complex, with accompanying exhibits.

(Declarations filed in *California vs. Michael Frank Goodwin*, No. 2 Crim. B197574, The Court Of Appeal Of The State Of California Second Appellate District, Division Eight)



Marcus Lyons Awarded \$5 Million For Wrongful Rape Conviction

Marcus Lyons has settled his lawsuit against the Village of Woodridge, Illinois and three of its police officers for \$5 million. Lyons sued the city after he was exonerated in 2007 of a 1987 sexual assault. Woodridge is a suburb of Chicago.

Rebecca Auten, a 29-year-old Caucasian woman living in the same apartment complex as Lyons, reported on November 30, 1987 that she was raped by a man she described to police as a black male between 25 and 30 years old with a large belly and hips. She also said that she burned her assailant's coat with a cigarette. A police artist made a composite sketch that two people who lived in Auten's apartment building said resembled Lyons, who lived in an adjacent building. Lyons was the only black man living in the apartment complex.

Lyons was 29, but dissimilar to Auten's attacker because he was very slim with a 32-inch waist. He was a seven-year veteran of the U.S. Navy and a reservist. He had no criminal record, he was engaged to be married, he was taking courses at College of DuPage, and he was employed at Bell Labs as a computer operator.

Two days after the rape was reported Lyons was taken into custody. Lyons' apartment was searched and none of his coats had a burn mark.

The victim selected Lyons from a photo line-up in which he stood out because five of the photos were of police mug shots while Lyons' photo was his employee ID photo from Bell Labs. The woman later selected Lyons from a live line-up, in which he stood out because he was the only person who had been in the photo line-up. Based on Auten's identification Lyons was charged with sexual assault and unlawful restraint her.

Lyons insisted on his innocence. He cooperated with police by taking a polygraph test and he gave blood and saliva samples.

There was no physical evidence linking Lyons to the crime, so during his trial in June 1988 the prosecution's case hinged on the victim's identification of him in court as her perpetrator. Lyons' defense that he was misidentified was undermined by the inconsistent statements he gave to the police about his whereabouts at the time of the



Marcus Lyons at a press conference announcing the settlement of his lawsuit for \$5 million on June 7, 2012 (Alex Garcia, *Chicago Tribune*)

he did not file his appeal. Howard's license to practice law was later suspended for his negligent handling of his clients' cases and appeals.

After serving 3-1/3 years of his sentence Lyons was paroled in March 1991.

Two weeks after his release from prison Lyons went to the DuPage County Courthouse with an 8' x 6" cross and dressed in his Navy uniform. When police approached him he nailed one of his feet to the cross. He was convicted of three misdemeanors related to the incident, which he explained he did because he "needed someone to listen" to his claims of innocence.

In spite of the stigma of registering as a convicted sex offender, Lyons found a job at a private sewage treatment plant where he worked for more than a decade.

In 2006 an attorney Lyons hired filed a petition for DNA testing of the assailant's semen on Auten's bra — which was the only evidence remaining from the crime. The petition was granted, and in January 2007 the state crime lab reported that Lyons' DNA was excluded as the source of the semen, which originated from an unknown male. Lyons paid [more than](#) \$10,000 out of his pocket to hire his attorney and to pay for the DNA that cleared him.

Lyons attorney then filed a petition for post-conviction relief based on the new evidence of his actual innocence. On September 18, 2007 Lyons conviction was vacated by a DuPage County judge, and the charges were dismissed after the State's Attorney's office declined to retry him for a lack of evidence. Lyons had served 19 years and 10 months of his sentence — 3-1/3 years in jail and prison and 16-1/2 years as a registered sex offender. DuPage County State's Attorney Joseph Birkett — the same prosecutor who had tried his case in 1988 — [stated](#): "As far as I'm concerned, Marcus Lyons deserves to have his record cleared."

crime. The jury convicted him, and he was sentenced to 6 years in prison and required to register as a sex offender after his release.

[Lyons hired](#) attorney George C. Howard Jr. to handle his appeal, but

It was then publicly disclosed that the identity of Auten's assailant had been discovered by matching his DNA to that identified on her bra.

After Lyons was exonerated the *Daily Herald* newspaper interviewed jurors from his trial [who said](#) that when deliberating didn't have any doubt of his guilt based on the prosecution's case.

A year later, on September 4, 2008, [Lyons filed](#) a civil rights lawsuit in federal court alleging that Woodridge police officers violated his constitutional rights by manipulating a police line-up, coaching witnesses, and fabricating evidence to falsely implicate him in Auten's rape.

Illinois Governor Rob Blagojevich on December 19, 2008 pardoned Lyons on the basis of his actual innocence. Lyons filed a wrongful imprisonment claim with the State of Illinois and was paid about \$85,000 in compensation. His record was also expunged of his felony convictions.

Lyons filed a federal civil rights lawsuit on April 30, 2009 [alleging that](#) four DuPage County deputies violated his rights by their participation in the case that resulted in his wrongful conviction. On January 29, 2010 Lyons voluntarily dismissed that lawsuit.

On June 7, 2012 — 24-1/2 years after he was arrested — it was announced that Lyons [settled his lawsuit](#) against the Village of Woodridge and its officers for \$5 million.

Lyons, now 54, is one of the few, and possibly the only person exonerated by DNA evidence who out of his own pocket paid all the legal expenses, and paid for all the scientific tests necessary to clear him of his convicted crimes.

Sources:

[Lyons v. Village of Woodridge et al.](#), No. 1:2008cv05063, Illinois Northern District Court, September 4, 2008 (3 police officers)

[Lyons v. DuPage County et al.](#), No. 1:2009cv02649, Illinois Northern District Court, April 30, 2009 (4 sheriff deputies)

[Marcus Lyons will never give up the fight](#) to clear his name, By Christy Gutowski (staff), *Daily Herald*, June 14, 2010

[Suit says Woodridge police set up man](#) for false conviction in 1987 rape, By Gerry Smith, *Chicago Tribune*, September 6, 2008

[Man wrongly imprisoned in 1987 rape](#) in Woodridge settles lawsuit for \$5 million, By Joseph Ruzich, *Chicago Tribune*, June 7, 2012

[Man gets \\$5 million from Village of Woodridge](#) for wrongful imprisonment, *Woodridge Reporter*, June 7, 2012



Edmond Arapi Awarded \$27,878 For Wrongful Imprisonment After False Murder Conviction

Castillo Marcello was stabbed to death in Genoa, Italy on October 26, 2004. Twenty-eight-year-old Edmond Arapi was implicated in the crime by a distant relative. In 2006 an Italian court relied on that evidence to convict Arapi *in absentia* of murder and sentenced him to 16 years in prison.

Arapi was arrested in June 2009 on a European Arrest Warrant as he passed through customs at Gatwick Airport in London. Arapi and his family lived in Leek, England, and they were returning from a vacation in his native Albania.

When informed he had been arrested for his 2006 conviction of a murder committed in Genoa in 2004, Arapi insisted on his innocence and told the authorities he hadn't traveled outside the United Kingdom in 2004 and that he had never been in Genoa.

Unbeknownst to Arapi he had not only been convicted during a trial during which he was represented by an Italian public defender, but his conviction had been upheld on appeal.

Five weeks after Arapi's arrest a judge ordering his release on electronic monitoring pending resolution of Italy's extradition request.

Fair Trials International (FTI) is an international human rights organization based in London. While Arapi was awaiting extradition to Italy to begin serving his sentence, FTI began investigating his case. FTI discovered that in October 2004 Arapi worked at the Cafe Davide in Leek, England and he wasn't allowed to travel outside the country because of his immigration status. Arapi was 19 when he immigrated to the United Kingdom in 2000, and FTI discovered he had not traveled outside the United Kingdom between 2000 and 2006. When arrested in 2009 it was only the second time he had traveled outside the U.K. since 2000. FTI also discovered documents proving that on the day of the murder Arapi was more than 1,000 miles from Genoa: he was working at his job in Leek and attending classes to gain a chef's qualification.¹ Leek is about 160 miles northeast of London.

After a hearing during which a judge heard Arapi's exculpatory evidence and expert



Edmond Arapi in June 2010 (Dominic Lipinski / Press Association)

testimony about the Italian procedures he would have to pursue to obtain a new trial, Arapi's extradition was ordered on April 9, 2010. Arapi appealed to England's High Court. While that appeal was pending the FTI attempted to persuade Italian authorities to withdraw their arrest warrant, it worked with lawyers in Albania to learn the identity of the actual perpetrator, and it contacted the media and politicians in England to make the public aware of Arapi's plight.

The FTI's coordinated campaign worked. During the appeal hearing on June 15, 2010, a year after Arapi's arrest, Italian authorities formally requested that the British High Court withdraw the arrest warrant supporting their extradition request. The withdrawal was based on the exclusion of Arapi's fingerprints as matching the assailant's fingerprints recovered from the crime scene, and another man with a similar name and from the same region in Albania as Arapi was suspected of being the actual murderer. [During the hearing](#) the representative of the Italian prosecutor's Office answered "Yes," when asked by Lord Justice Pitchford: "Got the wrong man?"

The European arrest warrant (EAW) system has been heavily criticized, and Lord Pitchford didn't spare his dissatisfaction with its use in Arapi's case when [he stated](#) during the hearing:

"However one looks at it, the EAW was followed by a letter from the Office of Public Prosecutions of the court in Genoa saying in effect Mr Arapi's DNA was, so to speak, 'all over the crime scene'. That was subsequently withdrawn, but not in time to save Mr Arapi five weeks in custody followed by release on stringent bail terms, including the wearing of an electronic tag he has on him at this moment."

After the hearing Arapi was still wearing his electronic monitor when he [told reporters](#), "I am so happy now but this has been a nightmare for me that words cannot describe."

Fair Trials International's chief executive, Jago Russell, told reporters that the year of facing extradition [had been a](#) "nightmare"

for Arapi. He also said, "His case is clear evidence that countries requesting extradition sometimes get it wrong. Italian and British authorities have taken a common sense approach to this case. We hope European countries will now work together to reform the EU's fast-track extradition system to prevent similar cases of injustice in future."

Arapi's conviction was subsequently overturned by a court in Genoa.

With the assistance of FTI Arapi filed a compensation claim in Italy for the five weeks he was jailed after his arrest and the eleven months he spent on electronic monitoring after his release. [His case was](#) considered to be precedent setting in that it would determine if an innocent person jailed and released on stringent bail conditions while another country sought their extradition, was entitled to compensation the same as if that person had been wrongly convicted and imprisoned in the country that sought extradition.

A hearing was held in Genoa in March 2012. On July 9, 2012 it was announced that Arapi, 31, had been awarded \$27,878 (£18,000) to compensate him for the five weeks he was jailed and the distress caused to him and his family.²

[After the award](#) was announced Russell told reporters: "No amount of money can really compensate Edmond, his wife and three children for their year-long ordeal and its long-term financial and emotional impact. This decision, should, though, act as a warning to judges and prosecutors across Europe who have been using Europe's tick-box extradition regime without thinking and in completely inappropriate cases."

Fair Trials International's website is at, www.fairtrials.net.

Endnotes:

1. Google maps show the driving distance is 1,661 kilometers from Leek, UK to Genoa, Italy, which is the equivalent of 1,032 miles.
2. Arapi was awarded £18,000, and the exchange rate on July 9, 2012 was £1.5488 to the U.S. dollar. So Arapi's compensation was \$27,878.

Sources:

[Edmond Arapi wins payout](#) from Italian court for wrongful murder conviction, *Guardian* (London), July 9, 2012

[Italian court to decide whether to compensate](#) wrongly imprisoned man, *Guardian* (London), March 28, 2012

[Italy abandons extradition bid](#) after admitting it had got the wrong man, *Guardian* (London), June 15, 2010

Fair Trials International, Edmond Arapi — Italy at, www.fairtrials.net



Texas Supreme Court Rules Billy Frederick Allen Is Entitled To \$2 Million Compensation

The Texas Supreme Court has ruled that Billy Frederick Allen is entitled to compensation for his 26 years of wrongful imprisonment for two Dallas County murders. Under Texas' wrongful conviction compensation statute Billy Allen is now eligible for \$80,000 for each year of his incarceration plus a lifetime annuity.

In 1983 Allen was charged with murdering a man and a woman in their University Park, Texas home in 1983. There was no physical, forensic or eyewitness evidence linking Allen to the crime, and he wasn't found with any of the victim's possessions that had been stolen from their house. The State's two key pieces of evidence were a palm print of Allen's on the roof of the car owned by one of the victims, and a detective testified that one of the victims told him his killer was "Billy Allen" before he died.

During Allen's 1984 jury trial his defense regarding the palm print was that he had sold some scraps of gold to the man one or two days before his murder. Allen's wife testified that as he stood next to the man's car she saw Allen lean on its roof while the man was inside counting the money he was going to pay Allen. The State's fingerprint expert testified the palm print could have been made on the car two days before the murder. Allen's lawyer didn't investigate before trial if there were any other men named Billy Allen who could be considered suspects in the crime, but instead he tried to create doubt during the detective's cross-examination that he may have misunderstood what the victim said.

After Allen's conviction he was sentenced to two concurrent 99-year sentences.

Allen discovered post-conviction that the day of the murder a man named Billy Wayne Allen had been considered a suspect, that he lived in the area of the murder, and he had a record of drug and robbery convictions.

Allen also discovered post-conviction that one of the paramedics in the ambulance clearly heard the victim say his attacker was "Billy Wayne Allen."

Allen filed a writ of habeas corpus in 2004 that made a claim of actual innocence based



Billy Frederick Allen at his lawyers office on January 31, 2012 (Tony Gutierrez, AP)

was told the name "Billy Allen" by the victim, admitted that before Allen's arrest three men named Billy Allen were considered as suspects in the case. The detective testified Billy Wayne Allen was one of those three men, but he didn't investigate him or the other man because Billy Frederick Allen's palm print was found on the roof of the victim's car.

The judge found that the new evidence identifying Billy Wayne Allen as the murderer's name was credible, and that it was unlikely a jury would have convicted Allen based only on the palm print evidence that had an innocent coincidental explanation for being on the victim's car. The judge granted Allen's habeas petition and ordered a new trial. The State appealed.

In February 2009 the Texas Court of Criminal Appeals affirmed the granting of Allen's writ of habeas corpus based on his counsel's ineffective assistance of counsel for failing to investigate for other possible suspects named Billy Allen. The Court ruled in *Ex parte Allen*, Nos. AP-75580, AP-75581, 2009 WL 282739 (Tex. Crim. App. 2-4-2009):

"In short, it is unlikely that the State would have been able to gain applicant's conviction based on the palm print alone. In light of this state of the evidence, it is not surprising that the habeas court found that the newly discovered evidence "of innocence [was] so strong that [it could not] have confidence in the outcome of the trial." We agree; and because it was the trial counsel's deficient performance that prevented such evidence from being presented to the jury in the first place, we hold that such deficient performance prejudiced applicant's defense."

Allen was released on bail after 26 years of imprisonment, and in January 2011 the Dallas County DA's motion to dismiss the charges [was granted](#).

Allen then filed a claim under Texas'

on ineffective assistance of his trial counsel for failing to conduct an adequate pre-trial investigation

regarding the identity of "Billy Allen." The judge held an evidentiary hearing during which the detective who testified he

wrongful conviction compensation law. His claim was denied by the State Comptroller on the rationale his charges were dismissed due to the ineffectiveness of his trial counsel, and he had not been found "actually innocent" as required by the statute.

Allen filed for a writ of mandamus with the Texas Supreme Court. The State argued the compensation statute only applied to people proven "actually innocent" by clear and convincing "new evidence," which normally would only apply to a case involving DNA evidence. Allen argued the statute's wording also intended the awarding of compensation to any defendant who had been proven "actually innocent" by a probability of the evidence, which is the standard a defendant has to meet to be granted a new trial for ineffective assistance of counsel. ([Click here to see a video](#) of the oral arguments on January 12, 2012 before the Texas Supreme Court.)

On May 18, 2012 the Court ruled in agreement with Allen, that the overturning of a conviction on an "actual innocence" claim based on ineffective assistance of counsel is legally the same under the compensation statute as having a conviction overturned on the basis of "actual innocence" based on new evidence. The Court's ruling opens the door to other people in Texas to apply for compensation who have had their charges dismissed after being awarded a new trial based on their "actual innocence" being proven by ineffective assistance of counsel. The Court's ruling is *In Re Billy Allen*, No. 10-0886 (TX Sup Ct, 5-18-2012).

The ruling makes Allen eligible for more than \$2 million in compensation plus a lifetime annuity.

Sources:

In Re Billy Allen, No. 10-0886 (TX Sup Ct, 5-18-2012)

In Re Billy Allen, No. 10-0886 (TX Sup Ct), Video of oral arguments to the court

Ex parte Allen, Nos. AP-75580, AP-75581, 2009 WL 282739 (Tex. Crim. App. 2-4-2009) (unpublished opinion)

State v Billy Frederick Allen, No. F8386548, 195th Judicial Court of Dallas County, Texas, January Term, 2011, Motion to dismiss charges granted by the court



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Robert Wilcoxson Awarded \$545,591 For 11 Years Wrongful Imprisonment

Robert Wilcoxson has been awarded \$545,591 for almost 11 years of imprisonment in North Carolina for a murder he didn't commit.

Wilcoxson and Kenneth Kagonyera were among six men charged with being involved in the murder of Walter Bowman during an attempted robbery at his home in Fairview, North Carolina on September 18, 2000. The three intruders wore bandanas to conceal their faces and gloves. Three bandanas and four gloves were found near the crime scene. A tip to Crime Stoppers five days after the murder led to the men as suspects, although there was no physical evidence tying any of them to the crime and the witnesses to the crime didn't identify them. However, after intense police interrogations during which they were threatened with life in prison or a death sentence if they didn't cooperate, Kagonyera and three other men made statements implicating themselves and Wilcoxson in the crime.

In March 2001 the North Carolina State Bureau of Investigation (SBI) compared the DNA of all six suspects with DNA recovered from the bandanas and gloves. They were all excluded as the source of the DNA. However, that exculpatory evidence was not disclosed to the lawyers for any of the six suspects.

Although he had recanted his confession and insisted on his innocence, to avoid a possible sentence of life in prison or death if convicted of first-degree murder, Kagonyera pled guilty to second-degree murder in December 2001. During his sentencing hearing in September 2002 Kagonyera's motion to withdraw his guilty plea was denied and he was sentenced to 144 to 182 months in prison.

Faced with having to overcome at trial the statements of his four codefendants and three jailhouse informants who claimed to have heard comments implicating him in the crime, Wilcoxson pled guilty in August 2002 to second-degree murder and he was sentenced to 150 to 189 months in prison. Three of the other defendants also pled guilty to second-degree murder, while the charges were dropped against the sixth defendant.



Robert Wilcoxson hugged by his father after his conviction was overturned on September 22, 2011. (CatholicLane.com)

After Wilcoxson and Kagonyera had pled guilty a federal prison inmate — Robert Earle Rutherford — confessed in 2003 to a federal agent that he was involved in Bowman's murder and he named two accomplices — Lacy Pickens and Bradford F. Summey. None of the three were among the six people charged. Rutherford and his two alleged accomplices were the first people brought to the attention of the police after their names were provided by a Crime Stoppers tip two days after Bowman's murder. However, they were not investigated and their DNA profiles weren't compared to the DNA recovered from the bandanas and gloves.

At some point after he pled guilty Kagonyera became aware the SBI had conducted DNA testing of the bandanas and gloves.

In the spring of 2003 Kagonyera began his efforts to prove his innocence by submitting an application to the North Carolina Center on Actual Innocence (his application was denied in 2004), and writing a letter to the Buncombe County Clerk's Office requesting copies of the SBI's DNA test results in his case. He was referred to his appellate counsel and told there was a charge for copies.

In June 2003 Kagonyera filed a *pro se* motion for DNA testing of "ski masks, bandanas, and gloves" recovered from the crime scene. A judge denied the motion 12 days after it was filed, ruling that Kagonyera "pleaded guilty and admitted that he was in fact guilty of these charges."

In June 2005 Kagonyera wrote the Buncombe County Sheriff's Office requesting a copy of the SBI's lab results in his case. The

Sheriff's Office responded by telling him to contact the District Attorney.

Kagonyera then wrote the DA's Office in late June 2005 requesting the SBI's DNA report. After the DA's Office didn't respond to Kagonyera's letter, in July 2005 he submitted a request to the DA's Office for the report under North Carolina's Freedom of Information Act. The DA's Office didn't respond to Kagonyera's FOIA request.

In August 2005 Kagonyera wrote the Clerk of the Buncombe County Superior Court requesting a copy of the SBI's DNA report. The Clerk's Office responded by telling him that he needed to contact the District Attorney's Office.

Having hit a dead end at every effort to obtain the SBI's DNA report or to have new DNA testing ordered, in April 2006 Kagonyera filed an affidavit with the Buncombe County Clerk's Office that he and others in his case made false statements implicating themselves in Bowman's murder. Then in September 2006 Kagonyera filed a motion with the Buncombe County Clerk to compel the District Attorney's Office "to release results of DNA Testing of hair and blood samples by defendant." Kagonyera's motion was not responded to by the DA's Office, or ever addressed or ruled on by the court.

Then, unbeknownst to Kagonyera, in 2007 DNA obtained from one of the recovered bandanas was run through the FBI's DNA database and it matched the DNA of Summey.

In February 2008 Kagonyera filed a handwritten Motion For Appropriate Relief based on his claim of actual innocence, that he had falsely pled guilty, and that Rutherford had admitted he and two other men were involved in Bowman's murder. Kagonyera was appointed a lawyer. In its response the DA falsely stated to the Court that one of Rutherford's alleged accomplices — Lacy Pickens — was in the Buncombe County jail on the day of Bowman's murder. Also, the DA failed to include in its response that in 2001 all five defendants were excluded as the source of any crime scene DNA before they pled guilty, and that the SBI's 2001 DNA tests resulted in a hit in 2007 between one of the bandanas and Rutherford's alleged accomplice Summey.

In July 2008 the judge ordered the SBI to compare the DNA of Rutherford, Pickens and Summey to DNA recovered from the

Wilcoxson cont. on p. 9

Wilcoxson cont. from p. 8

bandanas and gloves found at the crime scene, and for the Buncombe County DA to provide any orders to the judge necessary for the collection of their DNA. Contrary to the judge's order the DA did not obtain the DNA of Rutherford and Summey, and the DA made no effort to obtain an existing DNA sample of Pickens, who was killed in 2006. Neither did the SBI compare the three men's DNA with the evidence as the judge had ordered.

In August 2008 Kagonyera submitted a handwritten claim of factual innocence to the North Carolina Innocence Inquiry Commission (NCIIC). His case was accepted in March 2010. Wilcoxson submitted a claim to the NCIIC in November 2010. His case was accepted in February 2011, and it was consolidated with Kagonyera's case and the investigation that had already been done. At the time Wilcoxson submitted his claim only he and Kagonyera remained in prison, since the other three men who pled guilty to Bowman's murder had already been released from prison.

The subsequent investigation discovered that since 2001 the DA's Office had concealed that the SBI's DNA tests excluded the five convicted defendants, while corroborating Rutherford's confession by matching Summey's DNA to one of the bandanas.

False confessions expert Steven A. Drizin provided the NCIIC with a [detailed Report](#) that stated in part:

"After reviewing the statements of Isbell, Williams, Wilcoxson, Mills, and Kagonyera, and other documents related to the police investigation and comparing their statements with Rutherford's statement, it is my opinion that the statements of the five convicted defendants are highly unreliable. They are internally inconsistent, are inconsistent with each other, are uncorroborated, did not lead police to the discovery of any new evidence related to the murder, and are further undermined by newly discovered evidence, including DNA evidence which corroborates Rutherford's confession." Opinions Regarding Reliability of Statements of Kenneth Kagonyera, Robert Wilcoxson, Teddy Isbell, and Larry Jerome Williams Jr., By [Steven A. Drizin](#), April 6, 2011, p. 1-2.

Since Kagonyera and Wilcoxson had pled guilty the members of the NCIIC were required to unanimously vote that there is "credible, verifiable evidence of innocence

that has not been previously presented at trial or considered at a hearing granted through postconviction relief." N.C.G.S. § 15A-01460; and that, "there is sufficient evidence of factual innocence to merit judicial review." N.C.G.S. § 15A-1468(c).

During the NCIIC's hearing that began on April 28, 2011 both Wilcoxson and Kagonyera testified they falsely confessed and pled guilty to second-degree murder because they had been threatened by their prosecutors with a sentence of life in prison or the death penalty if convicted of first-degree murder after a trial. After the hearing the NCIIC unanimously voted on April 29, 2011 to refer the case for a special session of the Buncombe County Superior Court to consider the new evidence in Kagonyera and Wilcoxson's case. [Read their written ruling](#) here.

After a seven day hearing during which the Buncombe County DA's Office [vigorously argued](#) that Wilcoxson and Kagonyera "were and are in fact guilty," on September 22, 2011 the three-judge panel issued [their ruling](#) that stated in part:

"The unanimous decision of the three-judge panel of Superior Court Judges is that the defendants, Kenneth Manzi Kagonyera and Robert Wilcoxson III, the convicted persons, have proved by clear and convincing evidence that they are innocent of the murder of Walter Bowman on September 18, 2000." *State v Kagonyera and Wilcoxson*, No. 00-CRS-65086, 65088 (Buncombe County, Gen. Ct of Justice, 9-22-2011).

Wilcoxson and Kagonyera were released from custody that same day.

Wilcoxson filed a claim for compensation under North Carolina's law that provides for \$50,000 per year of wrongful incarceration. Wilcoxson, now 32 and living in Michigan, [was awarded](#) \$545,591 by the North Carolina Industrial Commission for his almost 11 years of wrongful incarceration.

Kagonyera, 31, has a compensation claim pending. His claim is clouded by the fact he was concurrently serving a sentence for unrelated crimes with his sentence for Bowman's murder — so he would have been



Kenneth Kagonyera leaving the Buncombe County Detention Facility with his grandmother Alice McLean (left) and his mother Charlene Holmes. (CatholicLane.com)

imprisoned even without having been wrongly convicted of Bowman's murder.

Wilcoxson was only exonerated because he rode on the coattails of Kagonyera's persistent efforts over many years to es-

tablish his innocence, so it is ironic that Wilcoxson received full compensation while Kagonyera may not receive any compensation or limited compensation for their ordeal.

The same evidence proving Wilcoxson and Kagonyera's actual innocence also clears their three co-defendants — Damian Mills, Larry Williams Jr., and Teddy Isbell — of involvement in Bowman's murder. They could make claims to the NCIIC since the NCIIC isn't limited to considering the cases of imprisoned persons — an applicant must only be a living person convicted of a felony in North Carolina who is claiming complete factual innocence. ([NCIIC Rules and Procedures](#), Article 2(A))

Although there is no statute of limitations on murder and there is compelling evidence Rutherford and Summey (and the deceased Pickens) may have been involved in Bowman's murder, there is no indication the Buncombe County DA has any intention of pursuing their prosecution. Rutherford (Fed. Id. No. 16668-058) was released from federal prison on May 8, 2012, while Summey was released from state prison in North Carolina in September 2011 after completing a four-year sentence for robbery.

Background information about Kagonyera and Wilcoxson's case is in the N.C. Innocence Inquiry Commission's Brief, that can be read [by clicking here](#).

Sources:

[State v Kagonyera and Wilcoxson](#), No. 00-CRS-65086, 65088 (Gen. Ct of Justice, 9-22-2011)

[State v Kagonyera and Wilcoxson](#), No. 00-CRS-65086, 65088 (NCIIC Opinion, 4-29-2011)

[North Carolina Innocence Inquiry Commission Brief](#) for State v. Kenneth Kagonyera, Buncombe County 00CRS065086; and, State v. Robert Wilcoxson, Buncombe County 00CRS65088.

[Opinions Regarding Reliability of Statements](#) of Kenneth Kagonyera, Robert Wilcoxson, Teddy Isbell, and Larry Jerome Williams Jr., April 6, 2011, p. 1-2.

[More than \\$500,000 awarded](#) for wrongful Buncombe County conviction, *Citizen-Times* (Asheville, NC), April 27, 2012



Govinda Mainali's Conviction Of 1997 Tokyo Murder Set-aside Based On New DNA Evidence

Govinda Prasad Mainali was acquitted by Tokyo's High Court that heard his appeal in one of Japan's most sensational homicide cases of recent times. Mainali was convicted in December 2000 of the March 1997 murder of Yasuko Watanabe.

Watanabe was a 39-year-old college graduate who by day worked as a respected economist for the Tokyo Electric Power Company, while by night she moonlighted as a street prostitute. She was last seen around 11:30 p.m. on March 8, 1997, and her body was found on March 19 in an apartment she used for some of her sexual liaisons. It was later estimated she was strangled about midnight on March 8. The press [portrayed her](#) as a "Robin Hood" of hookers because she charged well-heeled Japanese businessmen as much as \$500, while she charged foreigners doing low paid jobs as little as \$30.

Mainali was a 29-year-old Nepalese working as a waiter in Japan when he was arrested on March 23, 1997 for over-staying his work visa. He lived with other Nepalese workers in an apartment in the same building where Watanabe's body was found. When questioned he told the police that he had paid her twice for sex that took place in her apartment. He told them the last time was on February 28, which was 19 days before her body was discovered.



Yasuko Watanabe

Mainali told the police he used a condom, and his DNA was compared with the DNA of semen recovered from a condom found in the apartment's bathroom. The DNA matched Mainali. His DNA also matched a pubic hair found in her apartment, but which wasn't near her body.

In Japan a suspect can be held incommunicado and interrogated without access to a lawyer for up to 23 days. That is one reason why suspects confess at extraordinarily high rates in Japan, which is reported to have a 99.8% conviction rate for indicted defendants. Throughout his lengthy interrogation period [Mainali claims](#) he was beaten, kicked, and the police tormented him by repeatedly shouting at him that he killed Watanabe. Yet

Mainali didn't crack under the strain of being physically and psychologically abused for an extended period of time. He unwaveringly insisted he was innocent and he didn't make an incriminating statement.

Nevertheless, Mainali was charged with murdering Watanabe and held in custody for more than three years until his trial in the Tokyo District Court in April 2000. The prosecution's circumstantial case was based on his admission to twice being in her apartment to have sex with her, and the positive DNA tests of the semen in the condom and the pubic hair.

Mainali's alibi defense was that on March 8 he got off work at 10 p.m., took the 1-1/2 hour train trip to the neighborhood where he lived, and arrived home between 11:30 and midnight. His housemates confirmed he was there at 1 a.m., and could have been there earlier. No evidence was found in Mainali's apartment or on his clothes tying him to Watanabe's murder.

Mainali's pro bono lawyers presented expert evidence that it takes about 20 days for the head and tail of sperm to separate. They also presented expert evidence that the head and tail of Mainali's sperm in the condom had separated. His lawyers argued that the expert evidence supported that Mainali's sperm had been deposited in the condom about 20 days or more days before it was recovered by the police on March 19, 1997. They argued that evidence corroborated Mainali's statement that he used the condom when he had sex with Watanabe on February 28, 1997 -- 19 days before the discovery of her body and the condom.

Mainali was acquitted based on the court finding that the evidence didn't link Mainali to Watanabe's murder — it only established that at some point in time he had been in her apartment and had sex with her.

Double jeopardy is barred by Article 39 of the Constitution of Japan. However, the prosecution can appeal an acquittal because a higher court's review is considered to be a separate trial. Only an acquittal by the Supreme Court is considered final.

The prosecution appealed Mainali's acquittal. The prosecution submitted the new evidence of an expert opinion that it is possible contamination could have hastened deterioration of the sperm in the condom. On De-



Govinda Mainali after his acquittal
(Prakash Mathema - AFP)

cember 22, 2000 the High Court summarily reversed Mainali's acquittal, and sentenced him to life in prison. When the High Court's verdict was announced [Mainali cried out](#), "God! Please help me. I didn't do it. I didn't."

One of Mainali's *pro bono* lawyers, Katsuhiko Tsukuda, [was quoted after](#) the High Court's ruling, "The system is rotten. The criminal courts are comatose. They do what the prosecutors tell them." Another of Mainali's lawyers said of the ruling, "Even though we don't have faith in the judges, I was shocked by this."

Mainali's case wasn't just heavily reported on in Japan and Nepal, but it attracted media attention around the world. Articles were published in the *Los Angeles Times*, the *Washington Post*, *The Guardian* (London), and other newspapers.

Reporter and writer Shinichi Sano wrote a book about the case that was published in 2001 — *Tokyo Electric Power Co. Office Lady Murder Case*. Sano [told a reporter](#), "With this case, the Japanese legal system has committed suicide. The ruling was influenced by the unconsciously held racial prejudice of the Japanese against a foreigner from an Asian country to which Japan provides large sums of economic aid. Just as the confused behaviour of Watanabe exposed the dark side of Japanese society, so the unfair treatment of Mainali has exposed the dark sides of the Japanese legal system."

In researching his book Sano traveled to Nepal and interviewed men Mainali lived and worked with in Tokyo. They told Sano that after his arrest they were deported, and several said they told the police that Mainali was with them on the night of Watanabe's murder. With the deportation of those witnesses Mainali was unable to present their alibi evidence during his trial.

Japanese supporters of Mainali paid his wife's expenses to travel to Japan in 2002, and she visited him for the first time since he left Nepal in 1993.

In 2003 Japan's Supreme Court affirmed Mainali's conviction and sentence. Mainali filed an appeal for a retrial in 2005, which was denied.

On July 21, 2011 *The Daily Yomiuri* — Japan's largest daily newspaper — reported

Mainali cont. on page 11

Mainali cont. from page 10

that the prosecution had [secretly conducted](#) DNA testing of semen recovered from Watanabe's vagina that excluded Mainali as the source. Five days later, on July 26, Mainali filed a petition for a retrial with the Tokyo High Court based on the fact the prosecution had never disclosed that semen had been recovered, and that the DNA tests excluded Mainali as the man who raped and murdered her.

The [Justice for Govinda](#) Innocence Advocacy Group and other supporters petitioned the Tokyo High Public Prosecutors Office on August 4, 2011 to stop opposing a new trial for Mainali and support his release.

Five weeks after Mainali filed his new trial petition the prosecutors disclosed on September 2, 2011 that there were 42 items of physical evidence recovered from the crime scene that had not been DNA tested. Among the untested evidence was a pubic hair found on Watanabe's body. Then six days later the prosecution disclosed that Mainali's trial lawyers had not been provided the exculpatory evidence that his blood type-B did not match the type-O blood type of saliva found on Watanabe's breast. The High Court ordered that the saliva, the pubic hair, and other evidence be DNA tested. Those tests revealed that the semen, the saliva, the pubic hair, and a bloodstain on Watanabe's coat all had DNA from the same unknown male dubbed as Mr. X.

With their expenses paid by supporters of Mainali, his wife, Radha, and his two daughters, Mithila, 20, and Alisha, 18, arrived in Yokohama on June 6, 2012 to visit him in prison, and await the High Court's decision that was expected the next day. Radha [told reporters](#), "I'd really like to take my husband back to Nepal this time. These 15 years have been very tough. But when I talked with my husband, we agreed to take things as they come tomorrow."

In Japan a request for a new trial is governed by the Supreme Court's 1975 decision in the *Shiratori* case, that a new trial should be granted if reasonable doubt exists over a guilty verdict after a comprehensive examination of [old](#) and [new](#) evidence.

On June 7, 2012 the High Court [set aside Mainali's](#) conviction and ordered his retrial based on the new DNA evidence that Mr. X was Watanabe's assailant. Presiding High Court Judge Shoji Ogawa stated:

"Suspicion has arisen that another person might have murdered the woman



Govinda Mainali's wife Radha (center), his daughter Alisha, 19 (left), and his daughter Mithila, 20 (right), in front of the Tokyo High Court after he was granted a retrial on June 7, 2012

and it is assumed a guilty ruling would not have been handed down if the results of this analysis had been presented in the trial. ... Reasonable doubt has arisen over the conviction, which said it was difficult to assume a third person entered the room with the woman, and the [DNA] test results are clear evidence indicating a not guilty verdict should be handed down [to Mainali]."

Mainali was released from prison about 3 p.m. that same day and transferred to a detention facility, since he had overstayed his visa and thus was in Japan illegally.

Japan deported Mainali on June 16, 2012 and he was flown to Kathmandu, Nepal after spending 15 years and 3 months in custody and being separated from family for more than 18 years.

On October 30, 2012 the Tokyo High Court held a retrial of Mainali *in absentia* that lasted 30 minutes. [The prosecution admitted](#) DNA samples of tissue found under the victim's fingernails, semen found in and on the victim, and hair strands on the victim and elsewhere at the crime scene, matched a person other than Mainali and that he was not guilty of the crime.

On November 7, 2012 the Tokyo High Court [announced its ruling](#) that Mainali was not guilty.

During a press conference in Kathmandu after his acquittal Mainali [told reporters](#): "I was forced to undergo 15 years of horrible and torturous time in jail despite being innocent. I prayed to God and asked: what mistake have I committed? God was the only witness of my pleas. Had a DNA test not been conducted, I would have been languishing in jail and probably would have died there."

Mainali's exoneration was abnormal in Japan, which has a 99.8% conviction rate. The Innocents Database only lists [20 exoneration](#) [tutions](#) in Japan since 1945.

The overwhelming majority of convictions are obtained by a defendant's confession. A suspect in Japan can be detained for up to 23 days without charge, there are no rules on the length of an interrogation which are not fully recorded, and lawyers are not permitted to be present during an interrogation. When initially arrested Mainali was denied access to a lawyer, and he was beaten, kicked and pinned against the wall by police officers during interrogations.

After Mainali's acquittal Amnesty International [issued a Statement](#):

"Mainali's acquittal shines a spotlight not only on the injustice he has suffered but on a system which unless reformed will perpetuate violations of international fair trial standards. It is simply not acceptable that the police can act with *carte blanche* powers during interrogations, with suspects routinely tortured or otherwise ill-treated and denied access to lawyers. It is long overdue that the Japanese government ends such abuses if it is to have a justice system worthy of the name. Vital reforms are needed to bring the process into line with international human rights law."

Japan does not have an equivalent of the United State's *Brady* rules that can require a new trial if the prosecution fails to disclose material exculpatory or impeachment evidence to a defendant. In 2005 Japan's Supreme Prosecutor's Office revised its Code of Criminal Procedure to require prosecutors to present a defendant's lawyers with a list of evidence gathered. However, the revised code carries no penalties for violations so it is not a deterrent to prosecutors who withhold evidence.

With his acquittal Mainali can now file a petition for compensation from the Japanese government for his wrongful imprisonment.

It is reported that Mainali is [writing a book](#) about his ordeal with the Japanese legal system, including that he was physically beaten by prison guards, and that the police used forceful interrogation methods after his arrest.

Sources:

Court grants retrial for Mainali, *The Daily Yomiuri*, June 7, 2012

[Govinda Prasad Mainali is innocent](#), yet prosecutors refuse to offer an apology, *The Japan Daily Press*, October 30, 2012

[Nepal man cleared of Japan murder](#) after 15 years in jail, BBC New, November 7, 2012

[Japan: End abusive detention system](#) after murder conviction quashed, Amnesty International, November 7, 2012

[Nepal man cleared after 15 years in Japan jail](#), New York *Daily News*, November 7, 2012



Lana Canen Exonerated After Fingerprint Testimony Exposed As False

Lana Canen was released from prison after 8 years of wrongful imprisonment for the robbery and murder of 94-year-old Helen Sailor in her Elkhart, Indiana apartment in the early morning of November 29, 2002. Sailor's family had dropped her off at her apartment just hours earlier after she spent Thanksgiving day and evening with them.

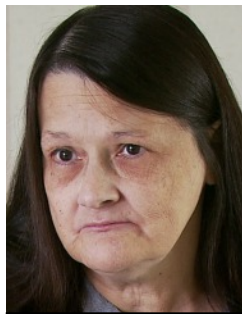
The police received information in August 2003 that Andrew Royer may have been involved in the crime. When interviewed on September 3, 2003 [Royer admitted](#) "he was responsible for Sailor's death and he provided details that had not been released to the public. Royer told the police that he strangled Sailor with a rope, cleaned her apartment with towels, and that he took jewelry and money." Royer was charged with murder.

Canen was arrested exactly a year later, on September 3, 2004. She was charged with murder based on Royer's revised statement he and Canen broke into Sailor's apartment to get money. She insisted she had nothing to do with the crime.

Three days before Canen and Royer's joint trial began on August 8, 2005 the prosecution amended their charges from murder to felony murder. Royer's statement implicating Canen was excluded as evidence. So during the trial the only evidence linking Canen to the crime was the testimony of Elkhart County Sheriff Department Detective Dennis Chapman that a fingerprint on a prescription container in Sailor's apartment matched the little finger on Canen's left hand. The jury heard evidence concerning Royer's confession to committing the murder.

On August 10, 2005 the jury convicted Canen and Royer of felony murder based on the prosecution's argument she was Royer's accomplice in robbing Sailor and that Royer killed her during the robbery.

During the sentencing hearing on September 2, Royer didn't speak, but Canen [told Sailor's family](#), "You have my deepest



Lana Canen the day of her release (WSB-TV)

sympathies. When I first heard of Mrs. Sailor's murder, I prayed for your family. I still do. I'm going to prison for a crime I did not do and had no part in. I am a victim of the system." Both the 45-year-old Canen and Royer were sentenced to 55 years in prison.

Several years after Canen's conviction was affirmed on direct appeal she filed a post-conviction petition and was assigned lawyer Cara Wieneke. Wieneke conducted a post-conviction investigation that included sending the fingerprint evidence to Kathleen Bright-Birnbaum, an expert fingerprint examiner [who operates](#) Desert Forensics in Tucson, Arizona. Bright-Birnbaum determined the fingerprint on the pill container didn't match Canen's fingerprint.

During an evidentiary hearing on August 16, 2012, Det. Chapman testified that when he rechecked the fingerprints before the hearing he discovered they didn't match. After the hearing Elkhart County Prosecutor Curtis Hill issued a written statement in which [he acknowledged](#), "I no longer consider Detective Chapman's testimony at trial to be credible. As it is reasonable to believe that the jury relied upon Detective Chapman's testimony in considering the evidence against her, it is clearly in the best interest of justice that the murder conviction against Lana Canen be vacated ..."

Canen was granted a new trial by Elkhart County Circuit Court Judge Terry Shewmaker on October 12, 2012.

In a motion unopposed by the prosecution, Canen's indictment was dismissed and she was released on November 2, 2012. The 53-year-old Canen had been wrongly incarcerated for 8 years and 2 months after her arrest on September 3, 2004.

Canen's attorney Wieneke told a reporter with *The Elkhart Truth* that she investigated the fingerprint evidence because Canen insisted she was innocent. [Wieneke said](#), "I think a lot of people think that many clients claim their innocence but there really aren't that many that do, and so when she continued to maintain her innocence throughout and even when I met with her, it made me think maybe there's something there." Although relieved to be released, [Canen told](#)

WSBT-TV about being convicted and imprisoned for more than eight years, "I feel like the system failed me."

It was reported that Chapman was disciplined for his erroneous fingerprint examination and trial testimony, but he wasn't fired and as of Canen's release from custody he continued working at the Elkhart County Sheriff's Department.

Royer remains imprisoned because his post-conviction petition [was denied](#) in December 2011 on the basis there is credible evidence supporting the truthfulness of his confession.

Sources:

[Two given terms](#), *The Elkhart Truth*, September 2, 2005

[Royer v. State](#), No. 20A04-1106-PC-325 (Ind. Ct. of Appeals, 12-20-2011)

[Elkhart woman's conviction vacated](#), *The Elkhart Truth*, October 25, 2012

[Elkhart woman formerly convicted](#) of murder released from prison, *The Elkhart Truth*, November 3, 2012

[Attorney re-evaluated evidence](#) in Elkhart murder case, *The Elkhart Truth*, November 3, 2012

Desert Forensics, www.desertforensics.com



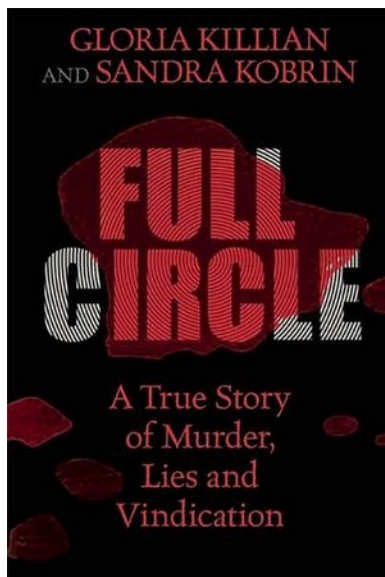
Fifth Annual Freedom March for the Wrongfully Convicted

The 5th Annual Freedom March for the wrongfully convicted was held in Pittsburgh, Pennsylvania on Monday, June 3, 2013. The event began at 1 p.m. on the steps of the City County Building at 414 Grant Street in downtown Pittsburgh. Speakers included Terrell Johnson, Erica Johnson, MaryAnn Lubas and others. Terrell Johnson was released in October 2012 after 17 years of imprisonment in Pennsylvania for a murder he didn't commit.

The 2013 Freedom March flyer is at, www.justicedenied.org/images/2013freedommarch.pdf.

The 2013 Freedom March press release can be read at, www.justicedenied.org/images/2013freedommarchpressrelease.pdf





Full Circle: A True Story of Murder, Lies, and Vindication Is Now Available

Full Circle: A True Story of Murder, Lies, and Vindication, by Gloria Killian and Sandra Kobrin ([New Horizon Press](#), 2012) is now available.

Full Circle tells the story of how Gloria Killian was wrongly incarcerated for more than 19 years for a murder in Sacramento, California she had nothing to do with.

It began as a simple robbery in December 1981. A man dressed as a phone repairman knocked at the door of coin collector Ed Davies. Once inside, the stranger pulled a gun on Ed and his wife, Grace, handcuffed and hogtied the couple and opened the door for his partner. After filling six suitcases with silver and gold coins, they fatally shot Davies in the head twice and his wife once, then fled. Hours later, with a bullet lodged in her head, Grace crawled out to the sidewalk where a neighbor found her.

Eventually, the killers were found and convicted of murder. After their sentencing, one told the prosecutor that a third year law student named Gloria Killian had masterminded the robbery. The prosecutor went after her with zeal, and she was tried, convicted and sent to jail, all the while proclaiming she knew nothing of the crime. While in jail, she began advocating for the humane treatment and release of women in prison.

Ten years later, one of the defense attorneys discovered exculpatory evidence, hidden documents, prosecutorial misconduct and perjury. Then Killian's fight for freedom began, which culminated with the Ninth

Clinton Treadway Imprisoned For 7 Years Because His Name Was Misspelled In A Police Report

Clinton Treadway has been released from prison after more than 7 years of imprisonment for check forgery and grand theft that was actually committed by persons who stole his identification.

In 2005 Treadway was living in Dundee, Florida when he reported to the police that his identification had been stolen. After he reported the theft his identification was used to cash stolen checks at four banks in Polk County.

When questioned the 21-year-old Treadway told the police his identification had been stolen and he had reported it. When the police checked they didn't find that Treadway had reported the theft of his ID.

None of the bank tellers identified Treadway as the person who cashed the checks when they were shown his photo by police investigators. When shown the bank surveillance photos, all of Treadway's co-workers at his two jobs told the police that the person in the photos was not Treadway. That wasn't surprising because Treadway had dark hair, a slender face and didn't wear any earrings, while the photos showed the signer of the checks was a blond man with a heavy face and wearing earrings.

However, Treadway was charged in June 2005 with four counts of forgery and four counts of grand theft based on the use of his ID to cash the checks, and that he had lied his identification had been stolen. He was arrested on June 11, 2005 and he was held in custody since he couldn't make bail.

Circuit Court of Appeals overturning her conviction in March 2002, [describing the](#) prosecution's star witness as a "thoroughly discredited" perjurer. She was released five months later when the prosecution conceded it had no case and dropped the charges against her.

Full Circle documents a relentless, exciting and gripping true story that shows how a life can be ruined in a split second. *Full Circle* also makes the terrifying point that what happened to Killian can happen to anyone.

Full Circle can be purchased from bookstores or online at [Amazon.com](#), [BarnesandNoble](#), and [Powells.com](#).



Although there was no positive identification by a witness Treadway cashed the checks and a defense expert testified the signatures on the cashed checks didn't match Treadway's handwriting, a jury convicted him of all eight counts on January 12, 2006. In February 2006 Treadway was sentenced to 10 years in prison and 30 years of probation.

After languishing in prison for more than six years [a relative received](#) a victim notification form in the mail sent to "Clinton Treadway," concerning an identity theft ring investigation by The Office of the Statewide Prosecutor. Realizing that Treadway's name had been misspelled when he reported the theft of his identification in 2005, his relatives hired a lawyer. The lawyer's investigator discovered that not only had Treadway's name been misspelled by the police as "Treadway" when he made his report, but his identification had likely been stolen by a female co-worker and that one of the suspected members of the theft ring resembled the man in the bank surveillance photos.

Based on the new evidence Treadway was the victim of identity theft and wasn't the man who cashed the stolen checks, his [lawyer filed a](#) Motion For Post-Conviction Relief. The motion was granted on July 3, 2012 and the judge ordered a new trial. The State's Attorney filed a *nolle prosequi* on July 3. After serving 7 years and 25 days of his 10 year sentence, the 28-year-old Treadway [was released](#) on July 5, 2012.

Assistant State Attorney Victoria Avalon [told a reporter](#) the charges were dropped because Treadway was entitled to a new trial and there was reasonable doubt of his guilt.

On August 1, 2012 Florida State Senator Paula Dockery (R-Lakeland) [filed a special](#) claims bill (SB46) that if passed by the legislature and signed by Florida's governor would [award Treadway](#) \$350,000 in compensation, and college tuition and fees. Then, Dockery [withdrew the bill](#) on August 22 prior to it being formally introduced.

Sources:

Polk County Court Clerk, [Clinton Treadway records](#)
[Clinton Treadway Set Free](#) By New Evidence, Serving a 10-Year Prison Sentence, *The Ledger* (Lakeland, FL), July 3, 2012
[Wrongfully jailed man seeks funds](#), *NewsChief.com*, August 3, 2012
[SB 46](#): Relief of Clinton Treadway by the State of Florida - Withdrawn prior to Introduction on 8-22-2012
[A bill to be entitled](#): An act for the relief of Clinton Treadway, Florida Senate - 2013, SB 46, August 1, 2012

Glenn Michael Larkin, M.D. (1935-2013)

A Personal Memoriam By Hans Sherrer

Glenn Michael Larkin, M.D. and I worked together on several cases of injustice over a number of years and we communicated with each other innumerable times. I always called him Dr. Larkin, so I will continue doing so in this personal memoriam.

Dr. Larkin was born in New York City's Queens borough on July 22, 1935. He graduated in 1958 from Brandeis University in Waltham Massachusetts with a B.A. degree. In 1966 he graduated with a medical degree from Université Catholique de Louvain in Louvain, Belgium. Dr. Larkin expanded his medical expertise when in 1977 he was board certified as a forensic pathologist.

Dr. Larkin's first job in the medical field was in July 1966 when he began working as a Research Associate at Wrightsville Beach Biomarine Medical Research Laboratory in Wrightsville Beach, North Carolina. In February 1967 Dr. Larkin began his first job as a treating doctor, working as an Emergency Room Physician at Babies Hospital in Wilmington, North Carolina.

Dr. Larkin was 34 when in January 1969 he began two years of service as a doctor in the United States Army during the Vietnam War. He was honorably discharged on January 7, 1971 as a Major MC USAR.

After his discharge, from January 1971 to July 1973 Dr. Larkin was a resident in pathology at Baptist Memorial Hospital in Memphis Tennessee.

From 1973 to 1985 Dr. Larkin worked at a number of positions in North Carolina, Louisiana, and Pennsylvania. He was a consultant forensic pathologist for ten counties in western Pennsylvania and the Western Federal District of Pennsylvania from July 1979 to April 1982. During that time, from March 1981 to January 1982, he also served as the Chief Forensic Pathologist and Chief Deputy Coroner in the Allegheny County Coroner's Office in Pittsburgh, Pennsylvania. Then from April 1982 to August 1984 he was a consultant forensic pathologist for ten parishes in southwest Louisiana and the Western Federal District of Louisiana.

Dr. Cyril H. Wecht was one of the most respected forensic pathologists in the United



Glenn Michael Larkin,
M.D.

States, and from August 1979 to 1990 Dr. Larkin was a forensic pathology consultant with Cyril H. Wecht and Associates in Pittsburgh, Pennsylvania.

Dr. Larkin was recognized as a leading expert at determining time of death. He wrote eleven chapters that included one titled "Time of Death," for the book *The Forensic Sciences*, which was published in 1997 (Matthew Bender Co., New York) and edited by Dr. Wecht.

During the last twenty-five years of Dr. Larkin's active medical career – from September 1985 to November 2010 – he was in private practice in consultative forensic pathology in Charlotte, North Carolina and West Palm Beach, Florida.

During Dr. Larkin's career he testified as a forensic pathology expert for either the prosecution-plaintiff or the defense in over 100 criminal and 30 civil cases in state and federal courts in North Carolina, Pennsylvania, Louisiana, Wyoming and Florida. He also contributed affidavits or reports supporting capital and non-capital appeals in various state and federal district courts and courts of appeal, and state supreme courts.

It was after Dr. Larkin started working full-time as a consulting forensic pathologist that he began his *pro bono* work of assisting in cases of a person possibly wrongly convicted.

In 1998 a call was sent out over the Internet using the methods then available (particularly user groups) requesting articles about persons with a credible claim of being wrongly convicted, for possible publication in a new magazine called *Justice Denied -- the magazine for the wrongly convicted*. Many articles were submitted. The lead article in *Justice Denied's* first issue in February 1999 was "Jeffrey Stewart Dicks: Death Row Inmate in Kingsport, Sullivan County, Tennessee," by *Glenn M. Larkin MD*. Since 1999 *Justice Denied* has published almost 1,300 articles, but Dr. Larkin holds the honor of authoring the first article in its first issue. That article can be read at www.justicedenied.org/v1issue1.htm#Jeff%20Dicks. Jeffrey Dicks died in prison in May 1999 before he could be exonerated.

Dr. Larkin also wrote two other articles for *Justice Denied*: "Frank Milano: Victim Of

'Hit and Run' Justice" in Issue 6, which can be read at,

www.justicedenied.org/v1issue6.htm#Frank%20Milano%20-; and "Mary Sue – Suicide or Murder? The Case of Tony Walker" in Issue 12, which can be read at, www.justicedenied.org/tony.htm.

Dr. Larkin worked most extensively with Justice Denied during its post-conviction investigation of Kirstin Blaise Lobato's Las Vegas, Nevada homicide case. That was because her conviction hinged on the medical examiner's time of death testimony that wasn't countered or even challenged by Ms. Lobato's lawyers during her 2006 trial. After the Nevada Supreme Court affirmed Ms. Lobato's conviction in May 2009 Dr. Larkin agreed to review the medical evidence in her case *pro bono*. He provided a 25-page report that included his conclusion the victim died within two hours of his body's discovery – a time when the prosecution conceded during Ms. Lobato's trial she was at her home 165 miles from Las Vegas. Dr. Larkin's new forensic pathology evidence completely undermined the credibility of the medical examiner's testimony the jury relied on to convict Ms. Lobato. Dr. Larkin's report was included as an exhibit to Ms. Lobato's state habeas corpus petition filed in May 2010. Ms. Lobato's appeal of the district court's denial of her petition is now pending in the Nevada Supreme Court. By January 2011 Dr. Larkin's health was clearly failing, and Ms. Lobato filed a motion for him to be deposed so the State would have the opportunity to cross-examine him about his report. The State opposed the motion which the district court denied, so he wasn't deposed.

Dr. Larkin also provided key new time of death forensic pathology evidence in the case of Larry Swearingen – who is on Texas' death row – that established the victim died during a period of time when Mr. Swearingen was in the Montgomery County Jail. Dr. Larkin's new evidence of Mr. Swearingen's actual innocence contributed to staving off his execution, but he remains imprisoned. Dr. Larkin didn't pull his punches when expressing his opinion, and he said about Swearingen's case: "No rational and intellectually honest person can look at the evidence and conclude Larry Swearingen is guilty of this horrible crime." ("Room For Doubt," *Houston Chronicle*, Jan. 22, 2009)

Dr. Larkin didn't limit using his expertise on cases in the U.S. He took a keen interest in Justice Denied's efforts to assist Guje Borjesson in acquiring evidence establishing her daughter Annie Borjesson was the

Larkin cont. on page 15

Larkin cont. from page 14

victim of foul play in Prestwick on Scotland's southwest coast. After Annie's body was found on the beach next to a sea wall in 2005, the local police conducted no meaningful investigation before determining she committed suicide by drowning. In June 2010 I forwarded to Dr. Larkin the autopsy report, documents, research, and funeral home photographs Annie's mother Guje Borjesson had sent to Justice Denied. After reviewing the information Dr. Larkin told me the autopsy report was inadequate and not performed to recognized professional standards in the U.S., and that the autopsy photos could help fill in the holes. He also noted that a specie of diatom associated with *fresh water* was recovered from Annie's bone marrow – when she was found on a *salt water* beach. To proceed further Dr. Larkin needed the autopsy photos, but the Scottish authorities refused to turn them over to Guje Borjesson, so the case hit a dead end for his involvement. However, Dr. Larkin often mentioned to me the absurdity of the Scottish authority's determination Annie Borjesson committed suicide by drowning when there was no credible evidence she had drowned in the bay and washed ashore to where she was found with her belongings conveniently next to her.

In June 2011 Dr. Larkin had three heart attacks, and he had to be resuscitated back to life after one of them. He was then residing at Liberty Nursing & Rehabilitation Center in Charlotte, North Carolina. He told me he instructed the staff that he wanted nature to run its course so he did not want to be resuscitated again. At the time he told me he didn't expect to live more than another month or two. Ironically, he had his heart attacks just before he was scheduled to be transported to Texas to testify as a forensic pathology expert in a state prisoner's federal habeas corpus hearing. Dr. Larkin told me that when the federal judge learned of his heart attacks the judge accepted his conclusions as submitted based on Dr. Larkin's lifelong reputation and credibility as a forensic pathology expert.

I could tell from our regular phone conversations that Dr. Larkin's health was in a gradual downward spiral. In addition to heart disease he suffered from diabetes that had resulted in the amputation of both his legs. Although his mind was still sharp, after his heart attacks Dr. Larkin had so little stamina that a fifteen minute phone conversation could exhaust him. On his good days he would tell me he wanted to recover enough to resume working on cases again,

and to travel to Seattle. It seemed to raise his spirits to think he had something positive to look forward to, however unrealistic.

I sent him books related to wrongful conviction cases and *Justice Denied* issues, which we would talk about after he read them. He expressed three pet peeves about the legal system: the generally poor representation of defendants that results in unnecessary wrongful convictions and botched appeals, the general lack of impartiality by judges and their lack of scientific understanding; and the common attitude of prosecutors at trial and on appeal to "win at all costs" even when there is compelling evidence of a defendant's innocence, or at a minimum grave doubt about their guilt. Dr. Larkin wrote regarding the situation in the United States:

"With the Criminal Justice System not providing even the minimal degree of Justice, more and more people are being unjustly incarcerated, and abused while under the "protection" of the state. Education – meaning the dissemination of information – is the major way to correct individual miscarriages of justice as well as a global correction. This is a moral issue, as well as a legal and pragmatic one." (Glenn Larkin, M.D. forensic pathologist, North Carolina, available at, www.patrickcrusade.org/member_familly_photos.htm)

Amazingly, Dr. Larkin hung on for far longer than he expected after his heart attacks in June 2011. He continued living at Liberty Nursing in Charlotte through 2012 and into 2013. In the fall of 2012 there was about a month when Dr. Larkin didn't answer the phone in his room. I repeatedly called and talked with office and nursing personnel who assured me he was alive and his room phone was working. I asked if his phone number changed and they said it hadn't. Finally I was able to have a call patched through to Dr. Larkin and he told me that he had been moved to a different room and his phone number *had* changed!

In January 2013 Dr. Larkin told me he had outlived his savings, which meant from that point forward he was dependent on the care Liberty Nursing would provide under Medicare. His stamina continued to decline, and with it his ability to engage in serious discussions, but every time I called he would ask how the Kirstin Lobato case was going, and express some degree of disgust that she and other innocent persons were imprisoned.

Dr. Larkin told me his oldest son Glenn Jr. lived in Michigan and his youngest son Scott

lived in Missouri, but he never mentioned that any family members lived near Charlotte. He would occasionally tell me that he either had a visitor that day or was expecting one, so apparently he was visited by people he knew from his many years in the Charlotte area

Dr. Larkin died at the Liberty Nursing & Rehabilitation Center at 3:30 p.m. on April 22, 2013. He was 77.

The T. H. Robertson Funeral Service in Charlotte handled Dr. Larkin's cremation, and there was no memorial service.

I am fortunate to have known Dr. Larkin. I consider Dr. Larkin to have been a great man measured by his willingness to try and aid people with a credible claim of innocence or who had experienced some other egregious injustice, and his fearlessness in following where the evidence led and expressing his expert opinion.

In recognition of the untold thousands of hours he spent *pro bono* using his professional expertise to analyze cases of possible injustice, Justice Denied is making Dr. Glenn Michael Larkin the latest inductee into its Wrongful Conviction Hall of Honor.

Note: Hans Sherrer is the editor and publisher of *Justice Denied*.



Visit the Innocents Database

Includes details about more than 3,200 wrongly convicted people from the U.S. and other countries.

http://forejustice.org/search_idb.htm

Visit the Wrongly Convicted Bibliography

Database of hundreds of books, law review articles, movies and documentaries related to wrongful convictions.

<http://forejustice.org/biblio/bibliography.htm>

Visit Justice Denied's Website

www.justicedenied.org

Back issues of *Justice: Denied* can be read, there are links to wrongful conviction websites, and other information related to wrongful convictions is available. JD's online Bookshop includes more than 70 wrongful conviction books, and JD's Videoshop includes many dozens of wrongful conviction movies and documentaries.

Lawless America Video Explains How The AEDPA Keeps Innocent Persons Imprisoned

Lawless America was a project started by Bill Windsor to videotape “testimony” by persons in the United States about different aspects of this country’s dysfunctional legal system. In June 2012 Mr. Windsor began traveling to one or more cities in every state collecting his video taped testimony. He was in Seattle on September 6, 2012 and *Justice Denied’s* editor and publisher Hans Sherrer was taped talking about wrongful convictions in general, and in particular the negative effect of the Anti-terrorism and Death Penalty Act of 1996 (“AEDPA”) on innocent persons filing a federal habeas corpus petition. A six-minute excerpt of Hans Sherrer’s presentation about the AEDPA has been posted by Lawless America on Youtube.com, which can be viewed at, www.youtube.com/watch?v=GdGTyOuiAv4.

The text of the videotaped presentation follows:

My name is Hans Sherrer. I am the editor and publisher of *Justice Denied – the magazine for the wrongly convicted*, which for almost 14 years has been the only regularly published magazine in the United States devoted solely to issues related to wrongful convictions.

I have been associated with *Justice Denied* since 1998. I have personally reviewed many hundreds of cases of persons with compelling evidence they were convicted and remain imprisoned in spite of being actually innocent of their convicted crimes.

There are estimates that as many as 15% of imprisoned persons are actually innocent. An important cause of that grave problem is federal court’s act on the basis innocence is irrelevant.

In his book *Dead Wrong*, lawyer and law professor Michael Mello pointed out to lay readers what is well known in legal circles: “In federal court, innocence is irrelevant. The Supreme Court says so, and the lower courts listen – as they’re required to do.”

The Supreme Court has ruled in *Herrera v. Collins* and other cases the Constitution only guarantees procedural formalities are to be followed, it does not guarantee the outcome of those procedures will be cor-



rect. The Supreme Court has made crystal clear the Constitution doesn’t assure a defendant’s innocence is any more relevant to the outcome of their case than their sex, age, or city of birth.

A federal habeas corpus petition is the last resort for both an innocent state and federal prisoner to have their wrongful conviction overturned.

The shock to a person who first learns of the irrelevance of their innocence *after* being wrongly convicted *and* then losing on appeal, is compounded when the person files a federal habeas petition. It may be common for people to think a federal court will intervene to protect an innocent person when no one else will. But such a thought is far more of a romantic fantasy than a belief grounded in reality. That fantasy is fed by movies such as *The Hurricane*, in which Rubin “Hurricane” Carter’s federal habeas petition was granted in 1985, and he was released after almost 20 years imprisonment for a triple murder he did not commit. What is not revealed is that under today’s rules the federal habeas petitions of Hurricane Carter and his co-defendant John Artis would not have been granted. Instead of being free men they might still be caged in a New Jersey prison. But people see and believe the Hollywood myth instead of the reality facing innocent people squarely in the face.

The reason Hurricane Carter’s federal habeas petition wouldn’t have been granted today, was enactment in 1996 of The Anti-Terrorism and Effective Death Penalty Act. The AEDPA was hastily enacted after the Oklahoma City Bombing. The AEDPA imposes a general one-year time limit to file a federal habeas petition after a state or federal prisoner’s conviction has been affirmed on direct appeal. State prisoners must also exhaust all their claims in State court before raising them in a federal habeas petition – which Hurricane Carter did not do. There are also serious restrictions placed on the filing of a second or successive petition.

Extreme restrictions are placed on a federal judge’s ability to invoke what is called the “miscarriage of justice” exception to allow consideration of a federal habeas petition that is filed after the one-year deadline, or a second or successive petition. A petitioner has to overcome the hurdle of what is called “due diligence” in discovering their “new

evidence” that establishes their conviction is a “miscarriage of justice.” If there is a reasonable likelihood the new evidence could have been discovered by a petitioner before expiration of the one-year filing deadline, they didn’t exercise “due diligence” and the evidence is not allowed to be considered.

There are untold thousands of innocent men and women languishing in state and federal prisons because of the extraordinary harsh and unfair restrictions imposed by the AEDPA. Those restrictions don’t recognize the reality that imprisoned persons are limited by the circumstance of their confinement from discovering new evidence as quickly as required by the AEDPA’s one-year time limit. And even for an innocent prisoners supporters on the outside, new evidence isn’t discovered all at once, but it can take years to discover through an investigation that gradually peels away the many layers of a case.

Congress can immediately help alleviate the dilemma innocent persons face by taking the simple action of abolishing the one-year time limit on an original or first federal habeas petition filed by state and federal prisoners. So it impacts all innocent prisoners, that new law should be made retroactive for every person imprisoned at the time it is enacted. It also needs to be specifically spelled out that the “due diligence” requirement does not apply to an original or first petition no matter when it is filed.

Even if it takes ten years for a prisoner to obtain new evidence of their innocence, a federal court should be able review that evidence the same as if their habeas petition was filed within the one-year deadline that now exists.

Abolishing the one-year time limit will help untie the hands of federal judges who today are hamstrung by the AEDPA from doing what they know is the right thing for a person that they believe is actually innocent.

Thank you.



Lawless America has posted over 700 videos of testimony by persons around the country. Lawless America’s website is, www.lawlessamerica.com.



Justice Denied Editorial

State And Federal Prosecutors Are Allowed To Run Wild By The Courts And State Bar Associations

Anyone who has read *Justice Denied* for any length of time is aware that the conviction of an innocent person in the United States is rarely the result of a mistake by the prosecution. The overwhelming majority of cases in which a person has been exonerated involved prosecutors who deliberately concealed exculpatory evidence and/or remained silent while one or more witnesses provided perjurious or misleading testimony. Prosecutors are required by the federal constitution to disclose to a defendant all potentially favorable and impeachment evidence under *Brady v. Maryland*, 373 US 83 (1963) and its progeny. It is black letter law in this country under *Mooney v. Holohan*, 294 U.S. 103 (1935) and its progeny that the federal constitutional prohibits a prosecutor from “knowingly” using perjurious testimony.

When the illicit conduct of prosecutors who

obtain a conviction by concealing evidence and/or presenting perjurious testimony is exposed, the most that can normally be expected from state and federal judges is to overturn the conviction and give the offending prosecutors the opportunity to retry the very defendant that they had framed. Sometimes in overturning a conviction the judges will scold the prosecutors as naughty, but that is no deterrent for the prosecutors to engage in similar illicit conduct during a retrial of that case, and in other cases they are involved in. Likewise, it is almost as often that one sees a pig fly as it is for a state bar association to seriously discipline a prosecutor for the “unethical” conduct that contributed to the conviction of an innocent person. In addition prosecutors are absolutely immune from civil liability for any of their conduct in prosecuting a person they know is innocent, even if it results in that person’s execution. To top it off, prosecutors are effectively immune from criminal prosecution no matter how many laws they violate in the course of prosecuting an innocent person — even if their criminal conduct results in the execution of an innocent person. As the Roman poet Juvenal asked: *Quis custodiet ipsos custodes?* (“Who will guard the guards themselves?”) In this country the answer is no one.

Consequently, state and federal prosecutors

know they are generally able to run wild in framing an innocent person with no expectation of any negative legal, professional, financial, or criminal consequences.

This is not a new situation. In 1999 *Justice Denied* published two articles about the lawlessness of state and federal prosecutors in the United States: [Prosecutorial Lawlessness is its Real Name](#) (Issue 6) and, [Prosecutors are Masters at the Art of Framing People](#) (Issue 9).

Houston lawyer John T. Floyd and paralegal Billy Sinclair lay bare in their recent article, [The Ethical Implications Of A Brady Violation](#), that what is euphemistically called “prosecutorial misconduct” is so rampant in this country that it “is fast becoming a norm in our criminal justice system.” Their article is well worth taking the time to read at www.johntfloyd.com.

An exception *Justice Denied* takes to their article is the subtitle that refers to prosecutors who engage in “wrongful conduct” as “rogue prosecutors,” when they are the norm. Prosecutors who scrupulously follow the law and protect a defendant’s rights that are necessary to ensure a fair trial are the rarity.



The following was a Commentary published in the [Las Vegas Tribune](#) on May 29, 2013. It is *Justice Denied*’s position that when a prosecutor of questionable integrity seeks a judicial position, persons interested in improving the quality of “justice” in the courtroom have a moral responsibility to expose that prosecutor’s conduct that may tend to disqualify him or her from holding a judicial position of public trust and responsibility.

Sandra DiGiacomo Hasn’t Exhibited The Integrity Necessary To Be A Judge

By Hans Sherrer*

A judge makes decisions that directly affect the life and property of the persons who appear before him or her. The U.S. Supreme Court has ruled a judge cannot be sued by anyone harmed by a judge’s negligent or malicious acts. Consequently, a judgeship is a

position of public trust that requires a particularly high degree of integrity.

Sandra DiGiacomo is a candidate for Henderson Municipal Court Judge Department 1. I submit that while employed as a prosecutor in the Clark County District Attorney’s Office Ms. DiGiacomo has not exhibited the integrity necessary to be a judge.

The record of Ms. DiGiacomo’s conduct as one of the prosecutors in a case now before the Nevada Supreme Court illustrates how she misused her public position to conceal the truth from the judge, the jury, and defense lawyers involved, and when the truth was exposed she tried to cover-up the magnitude of her dishonest conduct. That case is *Kirstin Blaise Lobato v. Nevada*, N.S.C. Case no. 58913.

During Ms. Lobato’s trial in 2006 the following exchange took place during Ms. DiGiacomo’s examination of Metro Crime Lab DNA technician Kristina Paulette:

“MS. DIGIACOMO:

Q. Now, directing your attention to this case, were you asked to do any DNA analysis?

A. [By Ms. Paulette] Yes, I was.

Q. What was that?

A. I was asked to examine a pubic hair combing from the sexual assault kit.

Q. And that was taken from a person by the name of Duran Bailey?

A. Yes.

Q. Okay. Were you asked to test anything else within the kit itself?

A. No, I was not.” [Trans. XI-145, 9-25-2006]

Ms. Paulette proceeded to testify Ms. Lobato was excluded as the source of DNA recovered from the pubic hair.

Seven days later Ms. Paulette testified as a defense witness when Ms. Lobato’s lawyers discovered that additional DNA testing had in fact been conducted. That testing excluded Ms. Lobato as the source of DNA on two cigarette butts recovered from the crime scene. The following exchange took place between defense lawyer Shari Greenberger and Ms. Paulette:

“Q. When you previously testified, do you recall the prosecution asking you whether you tested anything within the sexual assault kit itself besides the pubic hair?

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A. [By Ms. Paulette] Yes, I do.
Q. Do you recall your answer?
A. Yes.
Q. What was it?
A. I only tested the pubic hair combing.
Q. Do you also recall testifying that you weren't asked to retest any other items?
A. Yes." [Trans. XVI-52, 10-2-2006]

When asked "Who submitted that request?" Ms. Paulette stated, "Ms. DiGiacomo." [Trans. XVI-37, 10-2-2006]

Ms. Paulette also testified the testing of the cigarette butts began eight days before she had previously testified she had not been asked to do additional testing.

Ms. DiGiacomo objected 16 times during Ms. Paulette's testimony as a defense witness. She even objected to introduction of Ms. Paulette's Report about the DNA testing she had denied being asked to conduct when questioned by Ms. DiGiacomo a week earlier.

It is a matter of public record Ms. Paulette lied when she testified that she hadn't been "asked to test anything else" in response to Ms. DiGiacomo's question, and that Ms. DiGiacomo knew she was lying because she was the person who requested the testing. Yet she remained silent. It wasn't an isolated incident or lapse in character because Ms. Lobato's appeal now before the Nevada Supreme Court documents more than 100 other instances of Ms. DiGiacomo's efforts to mislead the jury. [N.S.C. No. 58913, 9 App. 1825-1835]

Ms. Paulette got her comeuppance when she was fired in May 2011 for lying to a Metro Crime Lab supervisor about DNA testing in a case unrelated to Ms. Lobato's. Ms. DiGiacomo did not experience any negative repercussions for bringing forth Ms. Paulette's false testimony during Ms. Lobato's trial, and then trying to mask it from the jury when it was exposed as false. One can only hope the voters of Henderson don't make the mistake of rewarding Ms. DiGiacomo's apparent lack of integrity by electing her to be a judge, which will allow her to act without fear of being sued by anyone she harms.

* Hans Sherrer is the editor and publisher of *Justice Denied: the magazine for the wrongly convicted* that has reported on the Kirstin Lobato case. [Justice Denied](#) is based in Seattle, Washington.



Woman Exonerated Of Murder Must Reimburse The State For Money Paid To Experts

Monika de Montgazon has been ordered to repay more than \$42,000 that the German government paid to experts who provided new evidence that exonerated her of murdering her 76-year-old father.

In 2003 Montgazon was a 47-year-old nurse caring for her 76-year-old invalid father in the duplex they shared in Buckow, Germany with her partner. Buckow is about 10 miles south of Berlin. In September 2003 her father was killed as the result of a fire that gutted the duplex.

Investigators determined the fire was deliberately set and alcohol was likely used as an accelerant. Montgazon was the beneficiary of an insurance policy and she was arrested weeks after the fire and charged with murder, arson, and insurance fraud. She was jailed without bail while awaiting trial.

She protested her innocence, but she was convicted of all charges in January 2005. Because it was considered a murder for greed the judge showed no mercy and sentenced her to life in prison.



Duplex where Monika de Montgazon's father was killed in a fire (Sebastian Höhn)

During her appeal her court appointed lawyer retained five fire experts, one of whom was a chemistry professor, to examine the evidence. They all determined that no accelerant was used to fuel the fire, and that it was probably caused by Montgazon's father smoking a cigarette in bed that he dropped either accidentally or after falling asleep.

Based on the new evidence Montgazon's conviction was overturned, and she was acquitted after a retrial in March 2006. She was then released after almost 2-1/2 years (889 days) in custody.

After her release no one would hire her as a nurse, so she found a job operating a disco.

Montgazon filed a lawsuit for compensation, and after years of litigation in February 2012 the Court of Appeal in Berlin ruled she was entitled to compensation of \$14.50* (€11 euros) for each of the 889 days she was



Monika de Montgazon

incarcerated. That compensation totaled \$12,915 (€9,779 euros).

The five experts who provided the new evidence that resulted in Montgazon's exoneration were paid between \$132 and \$165 (€100 and €125 euros) per hour. However, the appeals court ruled her experts should only have been paid \$110 (€84 euros) per hour, and one of the experts shouldn't have been paid for his time related to her retrial because he only testified for one minute. The Court also ruled the five experts spending 65 hours on her retrial was excessive and they should have been reimbursed less for their travel expenses when they testified. Consequently, under the court's ruling Montgazon must repay to the government \$42,263 (€32,000 euros) that was paid to the experts.

When the court's ruling became public Montgazon told reporters, "The verdict is a slap in the face for me."

After deducting the compensation awarded, Montgazon owed the government \$29,348 for her almost 2-1/2 years of wrongful incarceration.

Ulrich Schellenberg, chief of the Berlin Bar Association, criticized the ruling denying Montgazon's appeal costs as being based on academic and abstract reasoning, instead of the specific circumstances of her case that hinged on expert analysis of the evidence. He asked, "How is someone sentenced to life in prison and fighting for their freedom supposed to negotiate a rate in line with market prices with experts?" He also criticized the Court's anemic compensation award, explaining to reporters, "We have in this country no sensible compensation scheme that covers such cases."

Montgazon, now 56, appealed the Court of Appeals' ruling to Germany's Federal Constitutional Court (the equivalent of the U.S. Supreme Court), and that appeal is pending.

* All U.S. dollars are at the exchange rate of 1.3207 euros to the dollar on February 1, 2012.

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[Sie musste für ihren Freispruch zahlen](#), *BZ News*, April 11, 2012 (translated to English with Foxlingo.com)



Libyan Likely Framed By U.S. & U.K. For Lockerbie Bombing Dies After Compassionate Release

Pan-Am Flight 103 crashed in Lockerbie, Scotland on December 21, 1988. All 259 people on the Boeing 747 died, plus 11 on the ground, for a total death toll of 270. The New York bound plane had 180 U.S. citizens onboard, and the FBI took over control of the investigation within hours of the crash.

It was determined that a bomb explosion in the forward cargo hold caused a 20" hole in the fuselage that resulted in the break-off of the plane's nose section. Among the wreckage was a thumbnail size piece of a circuit board from a Toshiba radio-cassette recorder. Small Semtex bombs were concealed in the same model of recorder seized two months earlier in a West German raid on a Palestinian militant group: the Popular Front for the Liberation of Palestine - General Command (PFLP-GC).

Remains were recovered of the suitcase in which the bomb was concealed. Also found was clothing believed to have been in the suitcase. An item of clothing was traced to a shop in Malta co-managed by Tony Gauci. He eventually identified the clothes' purchaser as Libyan national Abdelbaset Ali Mohmed al-Megrahi. The investigation then focused on Megrahi, who was the head of security for Libyan Arab Airlines. In November 1991 the U.S. and England indicted Megrahi and another Libyan, Al Amin Khalifa Fhimah, for 270 counts of murder. Fhimah was station manager for Libyan Arab Airlines at Malta's Luqa Airport, which is where the bomb-laden suitcase was alleged to have been put on a flight for transfer to Flight 103, that originated in Frankfurt, West Germany.

Libya's leader Colonel Muammar al-Gaddafi refused to extradite Megrahi and Fhimah. In 1993 Edinburgh University law professor Robert Black travelled to Libya and convinced Ghaddafi that the men could be fairly tried in a neutral country under Scottish law – since that is where the crime occurred. The U.S. and the U.K. rejected the proposal, and in 1995 both men were placed on the FBI's Ten Most Wanted List. After five years of opposition, in 1998 the U.S. and the U.K. agreed to the trial arrangement. On April 5, 1999 Megrahi and Fhimah arrived at Camp Zeist in the Netherlands, where their trial was to take place under intense security.

Their trial began on May 3, 2000. Both men vigorously protested their innocence. No material evidence was introduced linking



Abdelbaset al-Megrahi in 2001

either man to the planning of the bombing, the handling of the explosives, or the planting of the bomb. However, key evidence tying Megrahi to the bombing that didn't implicate Fhimah, was the testimony of merchant Gauci.

Almost nine months after the trial began, on January 31, 2001 the jury of three Scottish judges acquitted Fhimah of all charges, while Megrahi was convicted of the 270 murders. Scotland doesn't have the death penalty, so Megrahi was sentenced to life in prison and transported to a Scottish prison to serve his sentence. He would have to serve at least 27 years before he was eligible for parole.

Megrahi's conviction was affirmed by Scotland's Court of Appeals in March 2002. However, many people familiar with his case believed the evidence didn't support his guilt. The *BBC* reported that Dr Hans Köchler, a United Nations observer at the trial, didn't think the trial had been fair, and that Megrahi's conviction was a "spectacular miscarriage of justice."

In September 2003 Megrahi applied to the Scottish Criminal Cases Review Commission (SCCRC) to review his case. The SCCRC spent \$2 million during almost four years of investigation that uncovered significant new exculpatory evidence.

On June 28, 2007 the SCCRC referred Megrahi's case to the Court of Appeals for review as a possible "miscarriage of justice." The SCCRC's petition to the appeals court was more than 800 pages in length. Among the petition's key claims are Megrahi's lawyers were not provided:

- CIA documents related to the Swiss made Mebo timer that allegedly detonated the bomb.
- Information that the FBI offered the owner of Mebo Telecommunications, Edwin Bollier, \$4 million and a new identity in the United States if he would "write in a police statement" that the timer fragment allegedly found at the Lockerbie crash site was part of a Mebo MST-13 timer that his firm had supplied to Libya. (Bollier turned down the offer.)
- Information that key prosecution witness Tony Gauci's identification of Megrahi was not reliable.

After Megrahi's petition was filed with the appeals court, his lawyers learned the CIA offered Gauci several million dollars for his testimony identifying Megrahi. Sources have since said that Gauci and his brother Paul, who co-managed the shop, were paid between \$3 and \$4 million each.

Megrahi's lawyers learned in June 2008 that the British government was informed in 1996 that Abolghasem Mesbahi, an Iranian defector, told German intelligence that his former Iranian PFLP-GC bosses in Tehran ordered Flight 103's bombing – and Libyan terrorists had nothing to do with it. Mesbahi's credibility has been established by several terror cases being solved from information he provided. Until Gauci's ID of Megrahi the PFLP-GC was the prime suspect for the bombing.

Megrahi's lawyers also learned that in 1996 the British government was provided documents by another country – believed to also be Germany – that Mebo timers were provided to the East German Stasi (secret police) that had ties to a PFLP-GC cell in West Germany – where Flight 103 originated.

Additional evidence implicating the PFLP-GC is that two days after Flight 103's bombing the Iranian government deposited \$11 million in a PFLP-GC bank account. Also, Abu Talb is an Egyptian PFLP-GC member convicted of bombings in Copenhagen and Amsterdam. He is currently serving a life prison sentence in Sweden. Talb was in Malta in the fall of 1988. When the FBI first contact Gauci he was shown a photo of Talb. Gauci said Talb looked "similar" to the man who bought the clothes.

The picture painted by the evidence Megrahi's lawyers have obtained since his conviction is the Iran backed PFLP-GC was likely responsible for the bombing, and even if the clothes believed to be in the bomber's suitcase were bought at Gauci's Malta shop, they were bought by a person other than Megrahi.

In September 2008 the 56-year-old Megrahi was diagnosed with terminal prostate cancer. His lawyers filed an application for his release pending the outcome of his appeal. A hearing was held in November 2008, after which he was denied bail. The court ruled, "While the disease from which the appellant suffers is incurable ... he is not at present suffering material pain or disability. The full services of the National Health Service are available to him."

Beginning in the mid-1980s Libya was an international pariah subjected to U.N. economic

Megrahi cont. on page 20

Megrahi cont. from page 19

sanctions because of its status as an international sponsor of terrorism. Libya denied any responsibility for the bombing of Flight 103, but after Megrahi's conviction was affirmed in 2002, Libya proposed paying \$10 million to the family of each person killed. Libya said the payments would be a humanitarian act of good will. After Libya began making payments the U.N. canceled its economic sanctions in 2003. The U.S. resumed full diplomatic relations with Libya in 2006. In spite of mounting evidence Libya and Megrahi had nothing to do with the bombing of Flight 103, in October 2008 Libya made final payments totaling \$1.5 billion for distribution to the families. Weeks after Libya made the payments, President Bush signed an executive order on October 31, 2008, establishing Libyan immunity from terrorism-related lawsuits in the U.S. and dismissing all pending cases. Libya's oil reserves worth trillions of dollars are the 9th largest in the world, and U.S. companies were able to resume investment in the country.

The United Kingdom and Libya signed a prisoner exchange treaty in April 2009. Libya's government applied for Megrahi's transfer, but under the treaty he was required to drop his appeal and accept his conviction as final before he could be transferred.

The Court of Appeals began its hearing into Megrahi's appeal on April 27, 2009. Megrahi's advancing cancer prevented him from being present in the courtroom, but he watched the four week hearing via closed-circuit television from his prison.

While the appeals court was deliberating one of the judges had heart surgery in early July, so a decision wasn't expected until after he resumed working in late Fall 2009.

On July 24 Megrahi filed a bail application for his release to Libya pending the outcome of his appeal. His application was based on the compassionate grounds of his worsening medical condition. Megrahi's conditional release was supported by many Scottish legal professionals and lay persons, and even some family members of Flight 103 victims.

Then on August 15, 2009 Megrahi dropped his appeal, and days later it was announced by Scottish officials he was being released to return to Libya on August 20 based on compassionate medical grounds. Conditioning Megrahi's immediate release on dropping his appeal eliminated the embarrassment that his exoneration would have caused the British and U.S. governments.

There was speculation from the time of

Megrahi release that the British government was involved, but it was officially denied. However in February 2011 the British press reported that documents obtained through the Freedom of Information law proved the British government was heavily involved in assisting Libya to secure Megrahi's release.

After Megrahi was indicted he told a reporter in February 1992: "I want to send this message to the British people, the American people and the international community. One day I will be found not guilty. I am sorry for the people of Lockerbie and one day you will see that." Megrahi prediction will not come true unless he is posthumously exonerated because he died in Tripoli on May 20, 2012. He was 60.

Conclusion

The bombing of Pan-Am Flight 103 has been a major news story in the England and Scotland for more than twenty years, and at least 26 books about the event have been published in the United Kingdom. In contrast, the press in the United States has not treated the plane's bombing as a major event, even with disclosure of evidence that the U.S. government not only bribed key witnesses to secure Megrahi's conviction and put blame on Libya, but deliberately deflected the investigation away from the Iranian backed terrorist group that most likely caused the bombing.

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Tony Gauci Never Positively Identified Abdelbaset Megrahi

The testimony of Malta shopkeeper Tony Gauci was a lynchpin of Abdelbaset Ali Mohamed Al Megrahi's prosecution for the December 1988 bombing of Pan-Am Flight 103 over Lockerbie, Scotland.

Several items of clothing were found at the crash site that were believed to have been in the same suitcase as the bomb that caused the crash. The clothes were traced to Gauci's shop in Malta. When first questioned by the FBI Gauci described the clothings' pur-

chaser as about 50-years-old and six feet tall. Megrahi was 5'-8" and 36 when the clothes were purchased.

Gauci was shown a photo spread in February 1991 that included Megrahi's 1986 passport photo and the photo of other men in their 30s. Gauci did not identify any of the men as the purchaser of the clothes.

After being encouraged to allow for the difference in appearance between a man of 50 and one in his 30s, Gauci selected Megrahi as "similar to the man who bought the clothing." The Lockerbie investigation then focused on Libya and Megrahi, while Iranian and Syrian backed suspects were ignored.

Eight years later Gauci viewed an identity parade after Megrahi was transported to Camp Zeist in the Netherlands for trial. Megrahi stood out because he was 47 and the only Libyan in the line-up, while four men were in their 30s and another man was 5'-3". Gauci said that Megrahi is "not exactly the man I saw in the shop."

During Megrahi's trial Gauci testified that Megrahi "resembles him." (The clothes buyer.) Although Gauci did not positively state Megrahi was the man who bought the clothes, Megrahi's jury of Scottish judges accepted Gauci's quasi-identification as sufficient to find Megrahi guilty.

Gauci has provided investigators with 19 statements, he viewed a photo spread and an identity parade, and when he testified he saw Megrahi in the courtroom. However, he has never positively identified Megrahi as the person who bought the clothes in this shop.

Lord Advocate Peter Fraser was the man responsible for Megrahi's indictment by England in November 1991. Fraser relied on Gauci's ambiguous identification of Megrahi as one of the reasons to indict him. Fraser had no role in Megrahi's trial. In October 2005 Fraser told *The Times* (of London): "Gauci was not quite the full shilling. I think even his family would say (that he) was an apple short of a picnic. He was quite a tricky guy."

Information has surfaced since Megrahi's trial that the CIA offered Gauci at least \$2 million to testify favorably for the prosecution, and that he was actually paid between \$3 and \$4 million by the U.S. government for his testimony suggesting Megrahi could have been the buyer of the clothes.

Sources:

Fresh doubts on Lockerbie conviction, *The Guardian*, October 3, 2007.
The Maltese Shopkeeper, *Canadian Free Press*, September 22, 2008.
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Edwin M. Borchard – Convicting The Innocent Now Available From Jus- tice Denied

Edwin M. Borchard – Convicting The Innocent and State Indemnity For Errors Of Criminal Justice has [been published](#) by The Justice Institute/Justice Denied.

Yale University Law School Professor Edwin Borchard was an early pioneer in exposing the causes of wrongful convictions and the inadequacy of compensation for exonerated persons in the United States. This 358-page book includes Borchard's key works *European Systems Of State Indemnity For Errors Of Criminal Justice*, and *Convicting The Innocent: Sixty-Five Actual Errors Of Criminal Justice*. The Table of Contents is:

Introduction

Chapter 1. Edwin M. Borchard: Pioneer In Analyzing Wrongful Convictions And Advocate For Compensation

Chapter 2. Edwin Borchard, Law Expert, Dead

Chapter 3. European Systems Of State Indemnity For Errors Of Criminal Justice

Chapter 4. Convicting The Innocent: Sixty-Five Actual Errors Of Criminal Justice

A webpage with information about the book and how to order a single copy for \$16.95, or multiple copies at a discount is at, www.justicedenied.org/edwinborchard.html

Or order the book with the order form on page 23. The book's Introduction follows:

Introduction

Edwin Montefiore Borchard was honored in 2007 by *Justice Denied—the magazine for the wrongly convicted*, as an inaugural member of its Wrongful Conviction Hall of Honor that publicly recognizes the extraordinary contribution deserving people in the United States and other countries have made to rectifying, alleviating, or publicizing wrongful convictions. Justice Denied's 2007 article about Borchard is included herein as Chapter 1.

Borchard's interest in wrongful convictions and compensation for persons exonerated of their convicted crimes resulted in him authoring in 1913, *European Systems Of State Indemnity For Errors of Criminal Justice*, included herein as Chapter 3, and in 1932,

EDWIN M. BORCHARD **Convicting The Innocent** **and State Indemnity For** **Errors Of Criminal Justice**

COMPILED AND INTRODUCTION
BY HANS SHERRER

Convicting The Innocent: Sixty-Five Actual Errors Of Criminal Justice, included herein as Chapter 4.

Convicting the Innocent has not lost its luster as one of the most insightful books published on the topic of wrongful convictions. Seventy-one years after its publication the multitude of causes underlying the cases of injustice it details not only continue to plague the legal system in the United States, but they are arguably more prevalent today than when the book was published, with the exception of confessions extracted by physical violence.

One hundred years after Borchard's article about indemnifying wrongly convicted persons, one can surmise he would be pleased the federal government and the majority of states have enacted legislation financially compensating persons deemed to meet the applicable statute's definition of a wronged person. However, it seems likely Borchard would be dismayed that only one state – Texas, which provides a lump sum payment of \$80,000 per year of wrongful imprisonment and a generous lifetime annuity – has a system that fairly determines an exonerated person's eligibility and then adequately compensates that person. As Borchard explains in his 1913 article (Chapter 3), many European countries were more advanced in providing indemnification 100 years and more ago, than is the norm in the United States in 2013. That is still true, except it doesn't just apply to European countries, because in the "U.S. policy and legislation to

ensure the right to compensation for wrongful conviction is among the poorest in the world." A significant portion of Borchard's article concerns the history of indemnifying wrongful convictions, which puts the current concerns about state and federal indemnification in the perspective that it is an issue that has been debated for centuries.

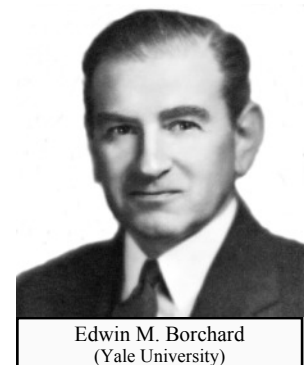
Of topical importance in a post-9/11 world is that during World War II, Borchard used his position and legal skills to oppose the federal government's policies that disregarded individual rights in the name of promoting national security. Some of his efforts defending the rights of people victimized by those policies are explained in Chapter 1.

Borchard was a professor at the Yale Law School for 33 years (1917-1950). Although he had a deep interest in issues related to wrongful convictions and individual rights, during his lifetime he was most well-known as one of the United States' leading international law experts.

Edwin Borchard's national notoriety was such that when he died on July 22, 1951 at the age of 66, the New York Times published an 18 paragraph, 740 word Obituary. Borchard's New York Times Obituary is included herein as Chapter 2.

Borchard was the first consistent voice in this country for innocent people enmeshed in the legal system. So it is important that it be remembered his works laid the foundation for today's advocates for wrongly convicted persons, and the encouragement of public policies that may prevent wrongful convictions and ensure adequate indemnification when they occur.

Given the legal system's inertia and resistance to meaningful reforms, it may well be that Borchard's analysis of the causes of wrongful convictions and the general inadequacy of indemnification for exonerated persons will be as relevant many decades from now as it is today.



Edwin M. Borchard
(Yale University)



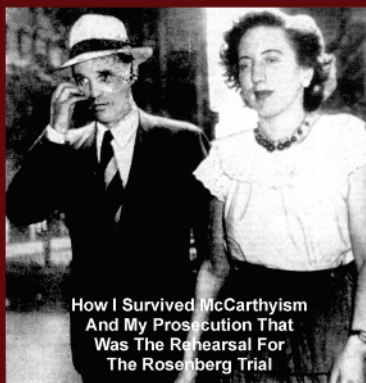
Phantom Spies, Phantom Justice Now Available!

Phantom 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

Updated with new chapters and copies of FBI documents

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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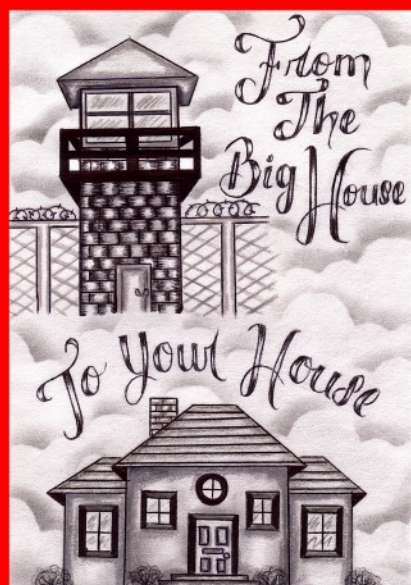
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COMPILED AND INTRODUCTION
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Lana Canen Exonerated
When Fingerprint Testimony Was
Exposed As False

Lana Canen was convicted in 2005 of felony murder based on testimony her fingerprint was found in the victim's apartment. Her conviction was overturned and she was released based on new evidence the fingerprint testimony was faulty. See p. 12.

"With the criminal justice system not providing even the minimal degree of justice, more and more people are being unjustly incarcerated, and abused while under the "protection" of the state. Education – meaning the dissemination of information – is the major way to correct individual miscarriages of justice as well as a global correction. This is a moral issue, as well as a legal and pragmatic one."

(Glenn Larkin, M.D. forensic pathologist,
North Carolina)

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