

# JUSTICE DENIED

The Magazine for the  
Wrongly Convicted

**Jonathan Fleming**



Exonerated after 25 years of imprisonment for murder in New York.  
See page 6

**Paul Cleary**



Acquitted of child abuse charges allegedly committed more than 30 years ago in England.  
See page 13

**Nguyen Thanh Chan**



Exonerated after 10 years of imprisonment for murder in Vietnam.  
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**Gyrone Buckley**



Awarded \$460,000 for 11-1/2 years of wrongful imprisonment for a drug frame-up in Arkansas.  
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**Derrick Hamilton**



New York Ct. Of Appeals rules he is entitled to actual innocence hearing after more than 20 years imprisonment for murder.  
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Message From The Publisher

Derek Hamilton's two decades of trying to get a court to consider his alibi evidence he was in New Haven, Connecticut at the time a murder occurred in Brooklyn in 1991 finally paid off in January 2014. The N.Y. Ct. Of Appeals issued its precedent setting ruling he is entitled to a hearing after which his conviction can be overturned and the charges dismissed if the judge determines his actual innocence is proven by clear and convincing new evidence. See p. 11.

False rape accusations have sent innumerable innocent men to prison in the U.S. and other countries. Perjury by an accuser can be difficult to prove, but two successful prosecutions were of Natasha Foster in Northern Ireland (See p. 10), and Sara Ylen in Michigan. See p. 15.

New evidence proving a convicted person's innocence can be discovered by a variety of people that includes friends, family members, investigators, and interested strangers. The evidence proving Nguyen Thanh Chan's innocence of murder in Vietnam was discovered by his wife after years of effort. See p. 8.

Among the most egregious wrongful convictions are those when no crime was committed. The Oregon Ct. Of Appeal acquitted Aaron Frank Cadger of his conviction of a jail escape that didn't happen. See. P. 12.

Countries can have different standards of what conduct is criminal. An example is Italy's Supreme Court acquitted a 64-year-old man of sexually abusing an 11-year-old girl in ruling no crime occurred because the two were in love and her mother approved. See. P. 5.

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

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## Introduction

**M**y name is Claude Francis Garrett. On February 24, 1992 in a small suburb of Nashville, Tennessee, an accidental house fire tragically claimed the life of my fiancée Lorie Lee Lance.

I was charged with deliberately starting the fire, and I was convicted of first-degree felony murder by a jury in 1993 and sentenced to life in prison. After my conviction was affirmed on direct appeal, my post-conviction petition was granted by the Tennessee Court of Appeals in 2001 based on the prosecution's withholding of exculpatory evidence.<sup>1</sup> I was retried in 2003, and again convicted of first-degree felony murder by a jury and sentenced to life in prison. After my conviction was affirmed on direct appeal, my post-conviction petition was denied by the Court of Appeals in 2012<sup>2</sup> in spite of new scientific evidence the testimony of the State's fire investigator was based on what is now known to be "junk science." In 2013 the Tennessee Supreme Court declined to review that ruling, and I filed a federal habeas corpus petition that is currently pending.

### The Fire

The evening of February 23, 1992 Lorie and I went to a small bar called Daisy Mae's that was a couple miles from the rental house we lived in. While there we drank and played pool with Lorie's step-father Sammy Jones and his son Rodney Jones. We stayed there until closing time and went straight home.

We sat around with the television on and both of us dozed off. We got up and went to bed. I still do not know what it was that woke me, but I woke up and saw light flickering on the living room wall. Our bedroom is directly beside the living room. I got out of bed and went to the door and saw fire to the left side of the living room. I immediately yelled for Lorie to get up and she got up and came up behind me. I took her hand and started toward the front door which was straight down the hall from our bedroom door.

I turned around when I got through the door and started screaming for Lorie and jumping up and down waving my arms but she wouldn't come through the door. It looked like she was turning toward the rear of the house, so I ran around to the side of the house where our bedroom window is and picked up a lawn chair and broke the window and started screaming for her. I got no response so I ran to the next window which is to the spare bedroom, and I broke this window and screamed for her again, but I got no response. Around that time a neigh-

## Convicted Of A Murder That Didn't Happened -- The Claude F. Garrett Story

By Claude Francis Garrett

bor from across the street and his son were on the scene following me around the house. I then went to the bathroom window. The window had been covered with plywood for about a year prior to the fire because it was broken when the house was rented. I picked up a nearby ax and started chopping on the plywood, which I gave to a neighbor kid when I took off toward the water faucet.

Around this time, I heard the fire trucks coming and I took off and jumped onto the running board of the first truck. I yelled at the fireman that my girlfriend was in the house.

After finding Lorie they carried her out and laid her on the front porch where the medics attempted to revive her. It wasn't long until they carried her to the ambulance in front of the house.

"Mr. Garrett has twice been wrongfully convicted through the application of what the National Research Council termed, "junk science."  
Stuart W. Bayne, Fire Investigator

A neighbor saw that I was burned and offered me a ride to the hospital. After I arrived at the hospital emergency room, Dr. Robert Roth came into the waiting room and told Lorie's family and me that she didn't make it. It was later determined she died from smoke inhalation. Dr. Roth took me to a room for treatment. Dr. Roth removed a large portion of the burned skin from the back of my left hand, and it was wrapped heavily with bandages. While I was there a detective asked if I would provide a blood sample and I told him yes.

### The Investigation

After being treated I went outside to the hospital parking lot where a detective came up to me and said I needed to go downtown to give my statement. I asked the detective if I was under arrest and he said no. While at the police station I gave a statement even though I told the detectives I had been drinking, smoking pot and had been given a pain pill in the emergency room. I gave the detectives the pants and shirt I had on. I also consented to a hand swab which wasn't done, yet Detective David Miller testified falsely

during both of my trials that I refused.

Lorie and I heated with a kerosene heater in the kitchen where we had a 5-gallon can of kerosene. When kerosene was smelled by the firemen they assumed it was used to start the fire. The fire marshal was called to investigate. He collected samples for testing. He even went under the house and collected a soil sample from directly under the living room. Every sample was tested by the Tennessee Bureau of Investigation Crime Lab, and they were all found to be negative for the presence of any accelerant.

The labs' tests of my clothes were negative for the presence of accelerant. My blood alcohol level was found to be .11, and Lorie's was .06, which supported my statement and that of other witnesses we had been drinking that night.

Twelve hours after the fire marshal had the living room cleaned out and the floor washed down with a booster hose, an ATF agent arrived at the house to help determine the cause and origin of the fire. The ATF agent was James F. Cooper.

After Cooper opined the fire was caused by arson, the police began a homicide investigation with me as the sole suspect.

Lorie and I had set May 7, 1992 as our wedding date, and everyone questioned who saw us on the day and evening before the fire told police investigators we were not arguing or fighting. Other than her fire related injuries Lorie had no marks or wounds on her.

### My Prosecution

I was indicted by the Davidson County Grand Jury on May 19, 1992 for the first degree murder of Lorie during the perpetration of or attempt to perpetrate arson. The prosecution's theory during both trials without offering a motive of any kind, was that I somehow placed and locked Lorie inside the small utility room, poured kerosene around the living room, started the fire, and then left the house, with Lorie dying from smoke inhalation. My defense during both trial was the fire was accidental in origin.

Agent Cooper was the prosecution's star witness. He testified in both trials that he saw burn patterns on the living room floor which he considered could only occur from an accelerated fire, yet he testified he didn't take a single sample from the so-called pour pattern area for testing by the lab. Instead,

Garrett cont. on page 4

## Garrett cont. from page 3

he only collected one sample of burned debris from the scene -- which was a sample of the living room baseboard that he said tested positive for kerosene. During a hearing prior to my second trial concerning Cooper's qualifications to testify as an expert, he testified he did not consider himself an expert in the field of fire science, which he defined as "the study of fire behavior." The trial judge nevertheless ruled he was qualified to testify as an expert fire investigator.

The fireman who allegedly opened the utility room door and found Lorie testified in the first trial that he had to do something to get the door to open, which suggested it was locked. After my 1993 felony murder conviction was affirmed on direct appeal, I obtained an 11-page police report with this fireman's statement wherein he said the door was not locked. The Court of Appeals granted me a new trial based on the prosecution's failure to disclose that favorable evidence to my lawyer.

During my retrial in 2003 fire investigator Stuart W. Bayne was retained as a defense expert. Bayne has investigated more than 800 fires and has been expert prosecution or defense witness in more than 50 trials. Bayne testified the burns Lorie and I had could only have come from the same location in the house at the same time because they were in virtually the identical part of our bodies. Bayne testified it is not possible Lorie received her burns while inside the utility room because the fire did not reach inside that room. He also testified the fire

was accidentally started by a cigarette dropped in the love seat right under the double front living room windows.

The jury chose to believe Cooper's testimony the fire was caused by arson, so I was again convicted of felony murder.

### State Post-conviction Petition

My direct appeal was denied, and in 2007 I filed a state *pro se* petition for post-conviction relief that among its claims asserted I was actually innocent based on new scientific evidence, and my lawyer provided ineffective assistance of counsel. In 2010 I was appointed counsel and an evidentiary hearing was held in August 2010.

During that hearing internationally known fire scientist John J. Lentini testified as a defense witness that he is a member of the National Fire and Protection Association ("NFPA") Technical Committee, which is responsible for the maintenance of NFPA 921, Guide for Fire and Explosion Investigations. Lentini testified NFPA 921 is based on the "scientific method" and it represents the standard for conducting a fire investigation. Based on his knowledge, experience and the guidelines set forth in NFPA 921 Lentini testified "it was pretty clear that the fire originated in the living room, [and] it was pretty clear that it went to flashover" Lentini explained:

"When fires achieve flashover, they light the floor on fire. A lot of time — in fact, early in my career that was considered to be a suspicious thing because fires burn up and the floor shouldn't burn, but it is now pretty well accepted that when a

Davidson County Assistant District Attorney John C. Zimmermann was publicly censured on May 28, 2002 by the Tennessee Board of Professional Responsibility for intentionally violating Claude Garrett's constitutional rights by concealing the 11-page police report containing evidence the laundry room door was not locked. The Board found the aggravating factors that Zimmermann was an experienced attorney and he had two prior disciplinary sanctions. Other ethical misconduct complaints have been filed against Zimmermann.

room becomes fully involved [in flames] one of the things that is going to burn is the floor and you, typically, get irregular burns on the floor."<sup>3</sup>

Lentini discussed "mythologies" of arson investigation that many arson investigators previously embraced but which have been discredited by the scientific community. When he was asked whether he had identified any "mythology" in my case Lentini responded:

"The only mythology is the belief on the part of the investigator that he can, by looking at the floor, determine the difference between charring done by radiation and charring caused by a flammable liquid."<sup>4</sup>

Consequently, Cooper's testimony that he could tell an accelerant had been used to start the fire solely by *looking* at the floor, was one of the "mythologies" of arson investigation that have been discredited by the scientific community.

Bayne testified that my trial lawyer failed to follow his recommendations on cross-examining Cooper -- including asking him about NFPA 921 and advancements in fire investigation techniques -- and to ask questions of Bayne and other witnesses with first-hand knowledge of issues that would lay the foundation necessary for Bayne to be questioned about those issues.

The judge effectively disregarded the substance of Lentini and Bayne's testimony in denying my petition. That enabled the judge to rule Lentini's new scientific testimony was not relevant specifically to my case, and my trial lawyer wasn't ineffective because Bayne provided some testimony about the defense's theory the fire was accidental, so the jury was

### Affidavit of Fire Investigator Stuart W. Bayne

Bayne provided a six-page Affidavit concerning Claude Garrett's case that he summarized on page six:

10) The following is a summary of the above.

- I know that Mr. Garrett is innocent of the charges of Arson and Murder.
- I can prove that Mr. Garrett is innocent of the charges of Arson and Murder.
- I base this statement on the Scientific Method (a.k.a., a systematic approach) to the evaluation of the evidence.
- My conclusions are based on technically defensible expert opinions.
- Mr. Garrett has been wrongfully convicted through the application of what

the National Research Council termed, "junk science" in the publication, "Strengthening Forensic Science in the United States, A Path Forward" (National Academies Press, 2009). Mr. Garrett was convicted in 1993 by the application of "junk science" and by a prosecutor, who was found by the Court of Criminal Appeals of Tennessee at Nashville to have withheld exculpatory evidence [citation omitted] As a result, Mr. Garrett received a new trial in 2003 and was convicted a second time by the application of "junk science" and by a defense attorney who provided inadequate counsel (who stated so, under oath, on August 30, 2010).

*Affidavit of Stuart W. Bayne, July 19, 2011 (Tennessee v. Garrett, No. 92-B-961 (Crim. Ct. Davidson Cty, Div. IV)*

## Garrett cont. on page 5

# Love Trumps Law As Italy's Supreme Court Annuls Sexual Abuse Conviction

Italy's Supreme Court [has annulled](#) the sexual abuse conviction of a 60-year-old man found in bed with an 11-year-old girl on the ground they had a "romantic relationship." The man was identified by his initials P.L.

The girl's family was poor and lived in the southern Italian town of Catanzaro. P.L. worked with the Social Services Department in Catanzaro, and he met the girl through his work with her family. Although P.L. was married, he began a relationship with the girl. When he was able to get away they would go to his seaside villa in Roccelletta, about nine miles south of Catanzaro.

The police received information about the relationship and began wiretapping his telephone. In 2010 they raided P.L.'s villa and found him in bed with the girl and both were

naked.

P.L. was charged with sexual abuse of a minor. In Italy the age of consent is 14, but it rises to 16 where one of the partners is in a position of authority or care over the younger party.

During P.L.'s trial it came out that the girl was the aggressor and he tried at length to dissuade her before they became intimate. The girl's mother encouraged her daughter's involvement with P.L., and [repeatedly told her](#) she couldn't tell anyone, "because this is a secret that we have to carry to the grave."

The girl testified she was in love with P.L., and the man reciprocated her feelings. He was convicted and sentenced to five years in prison.

P.L.'s conviction was affirmed by the appeals court. He then appealed to Italy's (Supreme Court)(Court of Cassation), which [annulled his conviction](#) and sentence in December 2013 on the basis the appeals court failed to consider the couple were in a



Court of Appeals building in Catanzaro, Italy.

"romantic relationship" and "loved" each other, which mitigated P.L.'s sexual relations with the girl. The Supreme Court remanded the case back to the Court of Appeal of Catanzaro for a new trial.

Note: The Italian web pages were translated with Google Translate.

Source:

[Judges see 'romance' in child sex case](#), *BBC News*, December 11, 2013

Sixty-year-old in bed with a 11-year old, [Supreme Court annuls conviction](#): it is love,

[www.tgcom24.mediaset.it](#), December 7, 2013



## Garrett cont. from page 4

aware of that in finding me guilty.

My appeal of the judge's ruling to the Court of Appeals was denied on September 5, 2012, and on February 25, 2013 the Tennessee Supreme Court declined to review that ruling.

### Federal Habeas Corpus Petition

With my state court appeals exhausted, I filed my *pro se* federal *habeas corpus* petition on March 5, 2013 -- less than two weeks after the Tennessee Supreme Court's ruling. At the same time I made a motion for appointment of counsel, which was granted. On June 5, 2013 my appointed federal public defender filed an amended petition detailing seven grounds for relief, and which states in part:

"Mr. Garrett respectfully moves the Court to declare unconstitutional and invalid his conviction for first degree felony murder following a jury trial in Davidson County. Scientific evidence demonstrates that Mr. Garrett is actually innocent and has been wrongfully imprisoned for 20 years. ...

The State's "expert" witness told the jury that he could tell the difference between arson and accidental fire by identifying a "pour pattern." As a matter of scientific fact, however, nobody can tell that difference, and, accordingly, the testimony of ATF Agent James Cooper amounted to "junk science" that has

since been discredited.

Because of errors by the court, the state, and defense counsel, the jury heard a "battle of the experts." One expert used only intuition and junk science, the other used actual science. The jury believed the junk science and convicted an innocent man."

*Claude F. Garrett v. Colson*, No. 3:13-cv-00190 (USDC MD Tenn.) (Amended habeas petition filed 6-5-2013.)

On June 20, 2014 -- *more than a year after my amended petition was filed* -- Chief U.S. District Court Judge William J. Haynes, Jr. issued an Order for the filing of a response to its claims.

### Conclusion

My case can be summarized as a zealous prosecutor who relied on the "junk science" testimony of an equally zealous so-called expert, and who was inadvertently aided by the ineffectiveness of my trial lawyer. I did not intentionally start the fire at our home causing Lorie's death, and there is no credible evidence I did. I have been imprisoned for 21 years for a crime that didn't even happen -- because Lorie's death was the tragic consequence of the fire that was accidental.

I can be written at:

Claude F. Garrett 225779  
Riverbend Max. SI  
7475 Cockrill Bend Blvd.  
Nashville, TN 37209

### Endnotes:

1. *Garrett v. State*, No. M1999-00786 CCA-R3-PC, 2001 WL 280145 (Tenn. Crim. App. March 22, 2001).
2. *Garrett v. State*, No. M2011-00333 CCA-R3-PC (Tenn. Crim. App., Sept. 5, 2012)
3. *Id.*
4. *Id.*

Justice Denied notes:

Claude Garrett's amended federal habeas petition can be read on Justice Denied's website at,

[www.justicedenied.org/cases/claudegarrett/amendedpetition06052013.pdf](http://www.justicedenied.org/cases/claudegarrett/amendedpetition06052013.pdf)

John Lentini's company is Scientific Fire Analysis, and his website is,

[www.firescientist.com](http://www.firescientist.com)

Stuart W. Bayne's company is The Fire P.I., and his website is, [www.thefirepi.com](http://www.thefirepi.com)

The public censure of Davidson County Assistant District Attorney John C. Zimmermann on May 28, 2002 by the Tennessee Board of Professional Responsibility for intentionally violating Claude Garrett's constitutional rights by intentionally concealing exculpatory evidence can be read at,

[www.tbpr.org/NewsAndPublications/Releases/Pdfs/009723-20020529.pdf](http://www.tbpr.org/NewsAndPublications/Releases/Pdfs/009723-20020529.pdf)



# Jonathan Fleming Released After 25 Years For NY Murder Committed When He Was At Disney World

Jonathan Fleming [has been released](#) after almost 25 years of imprisonment for a New York murder committed when he was 1,100 miles away in Florida.

On August 15, 1989 Fleming was vacationing with his family at Walt Disney World in Orlando, Florida. Fleming was 1,100 miles from his home in Brooklyn, where an acquaintance was shot to death on the street on August 15.

The investigation of the shooting found that Fleming's car was used by the shooter, and after the 27-year-old Fleming returned to Brooklyn he was arrested and charged with the murder.

During his trial in July 1990 Fleming introduced plane tickets, photos, videos, postcards, and the testimony of family members to support his alibi defense that on the day of the murder he was at Disney World to celebrate his son's 9th birthday. Fleming's uncle testified he picked him up at the airport on August 16 -- the day after the shooting. His lawyer argued to the jury the prosecution didn't introduce any evidence he knew his car was going to be used in the shooting.

The prosecution key evidence was the testimony of their star witness, Jacqueline Belardo, that she saw Fleming shoot the victim. To overcome Fleming's alibi the prosecution argued to the jury his family members couldn't be believed about when he was in Orlando because they would say anything to help him, and he could have created a false alibi by possibly flying from Orlando to New York, committing the murder, and then flying back to Orlando. Inexplicably and contrary to Fleming's alibi defense, his lawyer stipulated it was possible Fleming could have been in Brooklyn at the time of the shooting.

After the jury found Fleming guilty Belardo recanted. She claimed she perjured herself in a deal with the prosecution to drop the charges against her in an unrelated arrest. Fleming filed a motion for a new trial, which his trial judge denied in ruling Belardo's recantation wasn't credible because the prosecution denied she had any pending charges before she testified.

Four months after Fleming's trial the judge sentenced him to 25 years to life in prison.



Jonathan Fleming leaving the courthouse after his release on April 9, 2014 (AP)

In 1993 Fleming's conviction was affirmed on direct appeal. The appeals court's [ruling stated](#):

Prior to trial, the defendant moved to dismiss the indictment arguing that he had been denied the effective assistance of counsel on the ground

that counsel ignored his express desire to testify before the Grand Jury and waived the defendant's right to so testify without consulting him.

...  
The defendant's remaining contentions, including those raised in his supplemental *pro se* brief, are either unpreserved for appellate review or without merit.

In 2001 New York's appeals court affirmed the trial court's denial of Fleming's post-conviction petition with a [one-sentence order](#): "The appellant has failed to establish that he was denied the effective assistance of appellate counsel."

Fleming had languished in prison for more than two decades when with money from a civil suit, one of his sons hired two private investigators. The investigators obtained affidavits from several prosecution witnesses, including the key witness who reaffirmed she falsely identified Fleming during his trial in exchange for the dropping of charges against her. Based on the new evidence two attorneys took Fleming's case *pro bono*: Anthony Mayol, and Taylor Koss, who was a former assistant Brooklyn DA.

In response to public outcry about a number of embarrassing exonerations in recent years, the Brooklyn DA's Office set-up the Conviction Integrity Unit in 2011 to investigate cases of possible wrongful conviction. Fleming's lawyers submitted a request to the CIU detailing the new evidence supporting that his case be reinvestigated.

The CIU reopened Fleming's case in June 2013, and two exculpatory documents supporting his alibi defense were discovered in the DA's files that had not been disclosed to Fleming's trial lawyer. The first document was a receipt proving that just hours before the murder took place Fleming paid a phone bill at the Orlando Quality Inn where he was staying. The phone receipt hadn't been disclosed to Fleming's lawyer even though he specifically requested it before trial. The second document was an Orlando police report that several hotel employees remem-

bered Fleming was there on the day of the murder. A third document that wasn't disclosed by the DA's office supported the claim by Belardo she lied in exchange for having charges dropped: A command log from the 90th Police Precinct showed she had been arrested prior to Fleming's trial.

In November 2013 Fleming's investigators and a member of the CIU flew to South Carolina and interviewed the man suspected of driving Fleming's car at the time of the shooting. The man not only [provided an affidavit](#) that Fleming wasn't involved, but he identified who actually shot the victim.

Longtime Brooklyn DA Charles Hynes was defeated in the Nov. 2013 election by Ken Thompson, who criticized the DA Office's handling of possibly tainted criminal cases.

The evidence that wasn't disclosed to Fleming prior to his trial constituted serious *Brady* violations warranting the granting of a new trial that could only reasonably expect to result in his acquittal and release. Under those circumstances the Brooklyn DA's Office filed a motion on April 9, 2014 to dismiss Fleming's murder indictment. After the motion was granted Fleming was released later that day after almost 25 years of incarceration.

Fleming [told reporters](#) after his release, "I have no faith in the system because it shouldn't have taken this long for me to get out. The evidence was there all along that could have freed me 24 and a half years ago. If the documents were turned over 24 years ago, I would've gotten released then." He said in prison he met other apparently innocent men who were trying to get out, and "I learned that the system is—I don't have no trust in it whatsoever."

Fleming's mother, Patricia Fleming, 71, testified at his trial that she was with him in Orlando at the time of the murder in Brooklyn. After his release [she told](#) reporters, "I knew he didn't do it, because I was there. When they gave my son 25 to life, I thought I would die in that courtroom. I never did give up, because I knew he was innocent."

Sources:

[People v. Fleming](#), 196 AD 2d 551 (NY Appellate Div., 2nd Dept. 1993)

[People v. Fleming](#), 280 AD 2d 682 (NY Appellate Div., 2nd Dept. 2001)

[Brooklyn DA Moves to Free Man](#) after Long-Buried Evidence Surfaces, *ProPublica*, April 7, 2014

[Wrongfully Convicted, Jonathan Fleming Is Freed After 24 Years](#), *Newsweek*, April 11, 2014

[Wrongly convicted Brooklyn man](#) released after 24 years in prison opens up about ordeal as he celebrates freedom, *New York Daily News*, April 13, 2014.

[1989 NYC murder conviction overturned](#), man released after 25 years in prison, *Christian Science Monitor*, April 9, 2014.

## Gyronne Buckley Awarded \$460,000 For 11-1/2 Years Imprisonment For Drug Frame-Up

Gyronne Buckley [has been awarded](#) \$460,000 by the Arkansas State Claims Commission for 11-1/2 years of imprisonment for a drug conviction that was the result of a frame-up by Arkansas' South Central Drug Task Force.

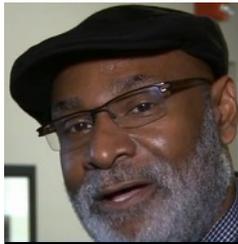
Buckley was convicted on May 27, 1999 in Clark County, Arkansas of two counts of delivery of a controlled substance -- crack cocaine. Key evidence against him was provided by police informant Corey Livsey, who testified he bought \$40 worth of crack cocaine from Buckley on January 12 and 13, 1999. In exchange for his testimony shoplifting charges were dropped against Livsey. Another key witness was Keith Ray, an agent with the South Central Arkansas Drug Task Force, testified he provided the money to Livsey and inventoried the cocaine he bought from Buckley.

Buckley testified in his defense, denying he sold crack to Livsey, and that on January 13 he never even saw Livsey.

The jury convicted Buckley after a two day trial. The judge sentenced him to two terms of life in prison, and ordered they be served *consecutively* -- even though Buckley had no prior arrest or drug offense conviction.

In 2000 the Arkansas Supreme Court affirmed Buckley's convictions, but vacated his sentences and remanded him for resentencing. Buckley's trial judge then resentedenced him to 56 years in prison (two *consecutive* 28-year prison terms).

Buckley filed post-conviction petitions and the existence of a videotaped pre-trial interview of Livsey was disclosed by a police officer's testimony during an evidentiary hearing in August 2005. The Clark County DA and the Arkansas Attorney General refused to turn over the videotape to Buckley's attorney, who was unsuccessful in getting either the Clark County Circuit Court or the Arkansas Supreme Court to order disclosure of the videotape. In 2008 Buckley filed a federal writ of habeas corpus, and filed a "Motion for Production of Physical Evidence." In February 2009 -- almost four years after Buckley learned of the videotape's existence -- the federal judge ordered Arkansas' Attorney General to provide Buckley with a copy of Livsey's



Gyronne Buckley on December 13, 2013 when his claim was heard by the Arkansas Claims Commission (KTHV-TV, Little Rock, AR)

videotaped interview.

Buckley's lawyers learned from viewing the tape that Livsey did not know many of the details he subsequently testified about during Buckley's trial, and that Agent Ray extensively coached

Livsey about what he 'got wrong.' The videotape not only impeached the credibility of Livsey's testimony, but it supported that his "handler" -- Agent Ray -- had not only coached Livsey to commit perjury, but he also committed perjury during his testimony.

Based on the new videotape evidence Buckley's lawyers sought to add to his federal habeas claims, which was opposed by Arkansas' AG on the ground Buckley needed to first exhaust his new claims in state court. In February 2010 the federal judge ordered abeyance of Buckley's federal habeas so the Arkansas Supreme Court could consider his new claims. In his order [the federal judge](#) "found that Buckley had identified some thirty-eight specific points during the taped interview which would have afforded trial counsel additional opportunities to impeach Livsey on cross-examination at trial."

After Buckley returned to state court a special prosecutor was appointed to replace the Attorney General's Office as the state's lawyer. The special prosecutor conceded Buckley's factual claim was accurate that the prosecution had violated his right to due process by failing to disclose the exculpatory videotape to his trial lawyer. On November 1, 2010 the charges were dismissed and Buckley was released after 11-1/2 years of wrongful imprisonment.

Prior to his release he had been denied executive clemency first by Arkansas Governor Huckabee and then by Governor Beebe, even though he had three favorable recommendations by the Arkansas Post Prison Transfer Board.

Buckley filed a claim for compensation with the Arkansas State Claims Commission. The Commission held a hearing on December 13, 2013 during which the State Attorney General's Office opposed Buckley's claim on the basis the violations of his constitutional rights didn't justify compensation. The AG's argument ignored that in August 2006 the Claims Commission [unanimously found](#) the State liable to pay Rod-

ney Bragg \$200,000 for five years of incarceration. Bragg was exonerated in 2000 after being convicted of delivery of a controlled substance in 1996 and sentenced to 40 years in prison, based on his frame-up by Agent Keith Ray. Ray used the same tactics to frame Bragg that he used several years later to frame Buckley.

On December 17 the Claims Commission announced its unanimous 5-0 decision awarding Buckley \$460,000. The [Claims Commission's ruled](#): "In the current claim there was irrefutable evidence that a videotaped interview with an informant was never disclosed to (Buckley's) legal counsel before (his) trial and conviction occurred. The existence of the tape was, likewise, never disclosed to the prosecuting attorney."

Brenda Wade, Administrative Analyst with the Arkansas State Claims Commission, told Justice Denied on December 20 the Commission's five members unanimously voted to grant Gyronne Buckley's claim because it was "pretty cut and dried" his wrongful conviction qualified him for compensation from the State of Arkansas. Wade said the Commission's ruling will be publicly available on its website about the middle of January 2014.

Before his exoneration the Arkansas Supreme Court made six separate rulings in his case from 2000 to 2010. Buckley's path to exoneration was so tortuous that University of Arkansas Professor of Law J. Thomas Sullivan [wrote an article](#) for the *Arkansas Law Review* describing it in detail that is titled, "Brady-Based Prosecutorial Misconduct Claims, Buckley, and the Arkansas Coram Nobis Remedy," (561 *Arkansas Law Review* 64). Professor Sullivan intimately knows the details of Buckley's case because he began working *pro bono* on his case in 2005, and he was instrumental in his exoneration and the Claims Commission's compensation award.

The Arkansas State Claims Commission's website is at, [www.claimscommission.ar.gov](http://www.claimscommission.ar.gov).

Source: [Man awarded \\$460,000](#) in wrongful conviction claim, *Arkansas News*, December 17, 2013

[Man wants \\$400,000 from the state](#) after wrongful drug conviction, *KTHV Television* (Little Rock, AR), Dec. 13, 2013

[Arkansas State Claims Commission](#) website

[Arkansas State Claims Commission](#), Docket for Dec. 12 & 13, 2013

"[Brady-Based Prosecutorial Misconduct Claims](#), Buckley, and the Arkansas Coram Nobis Remedy," (561 *Arkansas Law Review* 64)

[Buckley v. State](#), 20 SW 3d 331 (Ark. Sup. Ct 2000)



## Man Freed After 10 Years Imprisonment When Wife Tracks Down Actual Killer

Nguyen Thanh Chan's 2004 murder and robbery convictions have [been voided](#) by Vietnam's Supreme People's Court after his wife tracked down the man who actually committed the crimes.



Nguyen Thanh Chan after his release on Nov. 4, 2013.

Chan was 42 when arrested on September 28, 2003 for the murder of a 31-year-old woman on August 15 in the village of Nghia Trung in Vietnam's Bac Giang district. Her assailant stole jewelry and money from her home.

Chan was convicted on March 26, 2004 [based on that his](#) "left foot nearly fit the footprints left at the scene," he "showed dubious signs on the day of the incident," and his confession, which he retracted as coerced by police beating him and threatening him with a knife.

Chan was sentenced to death, but his sentence was commuted to life in prison because of his father's contributions in the revolution that united North and South Vietnam.

After Chan's conviction his wife, Thi Chien, campaigned for his innocence and investigated his case on her own. In addition to trying to help her husband Chien had

to deal with supporting and raising the couple's four children, and the social stigma of Chan's convicted crimes.

On July 5, 2013 she filed a petition with the authorities that included information identifying the actual murderer was 25-year-old Ly Nguyen Chung who lived in the same village as Chan and the victim. The police investigated Chien's information and questioned Chung's step-mother and brother, who both provided a statement he had blood on his shirt the day of the crime and they believed he was the actual killer. After Chung eluded police for almost four months, he was arrested on October 25, 2013. Chung confessed to the crime during his police interrogation, saying his motive was to rob the victim. On October 29, 2013 Chung was charged with murder and robbery. Because Chung was 14 at the time of the crimes he was to be prosecuted as a juvenile.

Based on the new evidence of his innocence Chan was released from prison on November 4, 2013, pending his retrial. Now 52, he returned that same day to his village and was



Nguyen Thanh Chan was greeted by a large crowd when he returned to his village on November 4, 2013 after more than 10 years of incarceration.

greeted by a large crowd.

Chan [told reporters](#) after his release: "I feel as if I am born again. During the past 10 years in prison, I always hoped that I would be vindicated one day."



Ly Nguyen Chung in detention after his arrest on October 25, 2013.

On November 6, 2013 a retrial by the Council of the Supreme People's Court voided Chan's convictions and sentence. Chan has the right to sue the District Court, the Circuit Court of Appeals, and request compensation from the Supreme People's Court that can include damages from property infringement, damages caused by the actual income loss or reduction, and damages for losses due to compromised mental and physical health.

After the Court announced its ruling Vietnam's President Truong Tan Sang requested [an investigation](#) to determine if there were violations of the law by individuals and organizations involved in procuring Chan's false confession. Colonel Nguyen Van Chuc, Office Manager and Spokesman of Bac Giang Province's Police [told reporters](#), "It is illegal for any investigator to carry out coercive methods in retrieving testimony."

Source:

[Wife gets her husband's murder conviction overturned](#) ten years after he was jailed by tracking down the real killer, *Daily Mail* (London), November 5, 2013

[Murder convict released after 10 years](#) on new testimony, *Talkvietnam.com*, November 5, 2013

[Suspected coercive testimony in Bac Giang](#), *Talkvietnam.com*, November 8, 2013.



## Appeals Court Clears Two Men Of Selling Substandard Toast At A Bakery

Shaikh Alimoddin and Shaikh Jalaloodin [have been acquitted](#) by an appeals court in India of selling substandard toast.

On January 6, 1995 a health inspector bought toast at the bakery owned by Alimoddin in Jalgaon, India. Jalgaon is a city of almost 400,000 people about 250 miles northwest of Mumbai.

The health inspector sent the toast to a laboratory, which issued a report that the toast was "substandard." After the health inspector received the report on February 14, 1995, Alimoddin and Jalaloodin -- his employee

who sold the toast -- were arrested and charged with a criminal health code violation.

Eleven years later, Alimoddin and Jalaloodin were tried in 2006. They were convicted based on the laboratory report the toast was of substandard quality. They were each sentenced to six months of rigorous imprisonment.

Alimoddin and Jalaloodin appealed, but their convictions were affirmed in 2011 by the Sessions Court. They appealed that ruling. In early March 2014 the High Court of Bombay [set-aside Alimoddin and Jalaloodin's convictions](#), and acquitted them. The Court's ruling was primarily based on their determination the prosecution presented insufficient reliable evidence of Alimoddin and Jalaloodin's guilt beyond a reasonable doubt. The Court found that the laboratory report relied on by the prosecution was not



Indian Toast (oneworldplate.com)

sufficient evidence because the lab's test of the "toast" was unreliable. The Court noted that the toast should have been stored in an air tight jar or container for transport to the lab, when it was kept in a plastic bag that subjected it to contamination. The High Court also noted the prejudicial procedural irregularity that the two defendants were not provided a copy of the lab report at the time the law required its disclosure to them.

Sources:

[Bombay High Court acquits](#) a bakery owner and employee 14-years after being charged of selling substandard toast, *Daily News & Analysis* (Mumbai, India), March 9, 2014

[High Court of Bombay](#), Official website



# Vermont Supreme Court Acquits Tyler Smith Waters For Texting His Former Partner

Tyler Smith Waters has been acquitted by the Vermont Supreme Court of his conviction of violating an abuse-prevention order. The Court ruled sending text messages to his former partner was not harassment.

In 2007 Waters had a child with a woman he had lived with for several years in Brattleboro, Vermont. When they split-up she obtained an abuse-prevention order in October 2009 that barred Waters from having unauthorized physical contact with her, but it specifically allowed that he “may have contact by telephone only.” The order placed no limit on the frequency, timing or subject matter of his contact with the woman by telephone. She made no allegation Water abused their two-year-old child, and the order authorized him to have telephone contact with his child on Friday evenings, and provided for weekly contact between Waters and his child.

Waters abided by the order. He only contacted his former partner by telephone and she did not seek to have the order modified.

In December 2009 the woman complained to police that during the previous month Waters called her about once a day, and he sent her about one text message a day.

Waters was charged with violating the protection order based on the prosecutor’s contention his telephone calls and text messages constituted harassment that violated the order.

During Waters’ trial in 2011 the prosecution introduced evidence that during a 37-day period of time Waters called his child’s mother about 30 times and he sent her 37 text messages. Typical of Waters’ [texts were](#): “Hi. Getting in. It’s after work. Call me. Not sure what phone you got. I love you two. Wish to end no-contact soon. Let’s be more normal. No more courts and such. What you think?”; and, “Have not any better friend than u. All alone all the time. Wish wuz with u 2. Call me if you need. Till Fri.”

Waters’ former partner testified the texts were unwelcome and she did not think he was supposed to communicate with her. She

also [described his](#) calls and texts “as irritating rather than annoying.”

After the prosecution rested its case Waters’ lawyer made a motion for a judgment of acquittal arguing that no evidence had been introduced Waters violated the protection order. His lawyer argued the order specifically allowed telephone contact without limit, [and Waters](#) “did not threaten harm to any person or property in any of the texts, and none of the texts contained language that was profane, threatening, intimidating, or violent.” In denying the motion Windham County Superior Court Judge David Suintag ruled a reasonable person could be “tormented” by Waters’ behavior.

Waters did not testify and his lawyer rested without presenting a defense.

The judge instructed the jury that to [harass a person](#) “means to intentionally engage in a course of conduct directed at that person which would cause a reasonable person to be annoyed, irritated, tormented, or alarmed.” Waters’ lawyer did not object to the judge’s instruction. The jury submitted a question to the judge during its deliberations requesting the legal definition of “tormented” and “annoyed.” The judge replied the jury was to apply “common definitions.”

The jury convicted Waters, and the judge sentenced him to two years in prison.

Waters appealed, arguing the judge’s jury instruction on harassment was overly broad, and the evidence of harassment was insufficient to convict Waters of violating the abuse-prevention order.

On November 15, 2013 the Vermont Supreme Court ruled in a majority opinion the trial judge prejudicially erred denying Waters’ motion for acquittal because his conduct was not “harassment” in violation of the abuse-prevention order.

The [Court observed](#) that if the protection order had barred all contact of any kind between Waters and his former partner and their child “this would have been an open-and-shut case.” Since it didn’t, the case hinged on what constitutes “harassment” in violation of the law. The Court determined that the applicable definition under Vermont law is:

¶ 24. “Harassing” means actions directed at a specific person, or a member of the person’s family, which would cause

a reasonable person to fear unlawful sexual conduct, unlawful restraint, bodily injury, or death, including but not limited to verbal threats, written, telephonic, or other electronically communicated threats, vandalism, or physical contact without consent. (13 V.S.A. § 1061(4))

The Court [also determined](#) that although Waters’ trial lawyer didn’t object to the ‘harassment’ jury instruction, “that the error is sufficiently clear to amount to plain error” because the jury was misled to think Waters could be convicted if it found his conduct merely “annoying” or “irritating.”

Having determined what constitutes harassment and that the jury instruction was prejudicial to Waters’ right to a fair trial, [the Court concluded](#):

¶ 34. But we cannot say that the communications amounted to threats. The State relies primarily on the frequency of defendant’s communications to support its charge. In the face of an order permitting telephone contact without restriction as to frequency, timing, or subject matter, the frequency of defendant’s texts by itself cannot support an inference that the conduct was threatening. [In this day and age, one text per day, on average, is not a shocking number](#), especially given the lack of clear evidence that complainant asked defendant to stop texting her before he sent many of those texts. As of spring 2011, 18-29 year-old cell-phone owners send and receive text messages at an average rate of 87.7 messages a day, and 95% of this age group use the text messaging feature on their phones. Aaron Smith, Pew Inst., Americans and Text Messaging 3 (2011).

¶ 35. Given that we conclude that a jury instructed about the definition of “harassment” in the RFA opinion in a way that is consistent with this opinion could not convict defendant of violating the abuse-prevention order on the basis of the evidence presented below, convicting defendant of a felony on the basis of an overly broad instruction would undermine the fairness of the judicial process.

Defendant’s conviction is reversed and the matter is remanded for entry of a judgment of acquittal.

[Click her to read](#) the ruling in *State of Vermont v. Tyler Smith Waters*, 2013 VT 109 (VT Sup Ct., 11-15-2013).

Waters completed serving his sentence be-

**Smith cont. on page 10**



Windham County Courthouse in Newfane, Vermont.

## “Compulsive Liar” Jailed For Falsely Accusing Ex-Boyfriend Of Rape

Natasha Foster, a 23-year-old “compulsive liar” who falsely accused a former boyfriend of rape after he ended their on-off relationship by text, [was sentenced](#) in Antrim, Northern Ireland to three months in jail.

Foster, who admitted a charge of perverting the course of public justice, is the third woman in Northern Ireland to be sentenced for making similar claims. In 2010 Newtownabbey woman Lindsay Gorman was jailed for nine months, while in January 2013 a Dromore woman, Belinda Poots Sneddon, was given a two-year suspended jail term plus a £1,000 fine.

Antrim Crown Court Judge Desmond Marrinan [told Foster that](#) when people like her “act in this wicked way and cry rape falsely” it not only increased the plight of women who have been victims of this distasteful crime, it may also create doubt in the minds

of the public and may also affect the minds of a jury whose job it is to decide on such cases. He added that such false claims also posed significant and potential issues as they might also be seen as an attack on, and damage the criminal justice system itself.

Judge Marrinan said it was a difficult case when it came to deciding what was a fair, just and proportionate sentence. However, while a sentence of six months, if not longer, would be justified, given the mitigating factors, such as her genuine remorse, and the fact she was now a young mother, he would reduce the sentence to three months.

Judge Marrinan said that in November 2011, Foster, who had a new boyfriend, still harbored the hope of a reconciliation with her former lover, “Mr X.” He had called at her home to collect some belongings, during which ‘something happened’, but a short time later Mr X sent a text message indicating he was not going to resume the relationship.

While the judge said while this may well be described as a “somewhat ungallant act,” it

did not warrant or justify what Foster did next, which was to inform her new boyfriend, and later the police, that Mr X had raped her.

Judge Marrinan said defence lawyer Michael Smith had described Foster as a ‘woman scorned’, he saw her behavior as a mixture of impulsivity, anger and hurt and a sense of rejection, which resulted in Mr X being arrested and spending nearly 12 hours in custody. However, two days later Foster went to police and confessed that any sex was consensual.

Foster began serving her sentence after the sentencing hearing on November 25, 2013. She will serve half of her three month term in custody, after which she will serve the same period on supervised parole.

Source: [‘Wicked’ Natasha Foster](#) to spend Christmas in jail for ‘crying rape’, *Belfast Telegraph*, Nov. 25, 2013



Natasha Foster  
(Belfast Telegraph)

## Compensation Ordered For Man Wrongly Convicted Of Attempted Culpable Homicide

India’s High Court in Kerala has ordered that Muraleedharan R U be provided with compensation for his wrongful conviction of attempted culpable homicide.

In 2004 Muraleedharan was an employee of the Changaramkari temple in Mararikulam, on India’s southwest coast. On September 27, 2004 he got into a fight with a neighbor who used Muraleedharan’s motorcycle registration number to file a false motor accident claim. Police arrested both men, charging Muraleedharan with an attempt to commit culpable homicide, and his neighbor

with voluntarily causing hurt by a dangerous weapon.

Although the charges were dropped against the neighbor, Muraleedharan was tried and convicted of his charge after a bench trial. He was sentenced to three years imprisonment and a fine of Rs10,000 (\$160 in 2013) by the trial court.

Muraleedharan appealed on the basis the evidence didn’t support he had attempted to commit culpable homicide, and he was charged [because he was](#) “targeted by the police for opposing the insurance racket” his neighbor was involved in. The appeals court ordered the Inspector General’s Office to investigate Muraleedharan’s claims.

The Inspector General’s post-conviction report detailed that Muraleedharan’s neighbor filed two false accident cases with different police offices to claim insurance for an injury he allegedly suffered after his motorcycle hit a bicycle on February 17, 2003. He submitted different medical certificates issued by doctors with the Alappuzha medical college hospital to support his insurance claims. One of those claims involved using the registration number of Muraleedharan’s motorcycle. The IG’s report identified several police officers involved in the insurance scam and recommended action against



Kerala High Court building  
in Kochi, Kerala, India

them. When police officials were notified they responded that the three officers involved directly in the inquiry had retired. The IG’s report also detailed that no action was taken on Muraleedharan’s insurance fraud claims by the trial court, the medical superintendent at the Cherthala hospital where the men were treated, the district police chief, the DSP, and the director-general of police. The IG’s report further documented that Muraleedharan shouldn’t have been charged with an attempt to commit culpable homicide because his neighbor’s injury from their altercation was not life-threatening.

Based on the IG’s report Muraleedharan’s conviction was quashed in July 2011.

Muraleedharan then filed a claim for compensation for his wrongful imprisonment. After it was denied by the lower court, in November 2013 the High Court in Kerala [ordered the](#) chief secretary and director general of police in Charamangalam, Alappuzha to file affidavits on the compensation to be paid Muraleedharan.

Sources: [HC orders compensation](#) for man wrongly convicted, *Times of India*, November 15, 2013

### Smith cont. from page 9

fore the Court issued its ruling and his appeal lawyer, Vermont Defender General Matthew Valerio, [told the Brattleboro Reformer](#), “we don’t know where he is now.”

Sources:

[State of Vermont](#) v. Tyler Smith Waters, 2013 VT 109 (VT Sup Ct., 11-15-2013)

[Texts, harassment at issue in local case](#), *Brattleboro Reformer*, November 19, 2013



# Derrick Hamilton Entitled To Actual Innocence Hearing Rules New York Appeals Court

New York's Appeals Court [ruled on January 15, 2014](#) that Derrick Hamilton is entitled to a hearing to determine if his new evidence proves his actual innocence of a 1991 murder in Brooklyn. The state court ruling establishes the precedent that an imprisoned or paroled person in New York claiming actual innocence can have their new evidence reviewed to determine if it proves their innocence by clear and convincing evidence.

Hamilton was convicted in 1993 of the shooting death of Nathaniel Cash on a Brooklyn sidewalk at 11 a.m. on January 4, 1991. As a crowd gathered around Cash's body a man who was later identified as one of the shooters came out of hiding and started spreading the rumor that Derrick Hamilton shot Cash. Hamilton was charged with the murder based on Jewel Smith -- one of Cash's woman friends -- believing the rumor was true, and lying to the police that she witnessed Hamilton shooting Cash.

During Hamilton's trial Smith was the only witness who testified to seeing him shoot Cash.



New Haven police officer Kelly Turner (USmile magazine)

Hamilton's alibi defense was that at the time of the shooting in Brooklyn he was more than 80 miles away in New Haven, Connecticut. Although Hamilton had several credible alibi witnesses, his lawyer didn't subpoena them of them to testify during his trial.

The jury convicted Hamilton of second-degree murder, and he was sentenced to 25 years to life in prison.

After Hamilton's conviction was affirmed by the court of appeals, he filed numerous post-conviction motions for a new trial based on new evidence and ineffective assistance of counsel.

Hamilton's most important new evidence was a 1995 affidavit by New Haven police officer Kelly Turner. Her affidavit details that in 1991 she owned a talent booking agency in New Haven, and that she was with Hamilton in New Haven from about 11 am until about noon on January 4, 1991 to

discuss booking musical talent in New York City. Davette Mahan worked at the talent agency, and she provided an Affidavit that she saw Hamilton at the talent agency office in New Haven the morning of January 4, 1991.



Derrick Hamilton after his release in December 2011 (Jesse A. Ward, NY Daily News)

Hamilton's efforts to be granted a new trial based on his new evidence were thwarted by the rulings of New York courts that the new evidence by Turner and Mahan couldn't be considered because his trial lawyer didn't list either of them on Hamilton's alibi witness list.

In late 2007 Hamilton contacted Justice Denied. In the course of investigating his case Justice Denied contacted New Haven Police Officer Kelly Turner and she verified the accuracy of the information in her Affidavit. She also told Justice Denied that if subpoenaed for a hearing she would testify under oath to her Affidavit's contents.

*Justice Denied* published a feature article about Hamilton's case in its Summer 2008 issue: [In Connecticut At Time Of Brooklyn Murder](#) – The Derrick Hamilton Story.”

*Justice Denied's* Editor and Publisher Hans Sherrer provided an Affidavit to Hamilton in June 2009 that stated in part:

9. The affiant believes that Jewel Smith's post-trial recantation of her trial "eyewitness" testimony upon which the jury relied to convict Derrick Hamilton, is 100% consistent with other evidence Derrick Hamilton has accumulated post-conviction that she did not witness the crime.

10. The affiant believes the evidence Derrick Hamilton has accumulated post-trial credibly establishes that he was in New Haven, Connecticut at the time Nathaniel Cash was murdered in New York. Most compelling is the affidavit of current New Haven Police Officer Kelly Turner that she was meeting with Derrick Hamilton in New Haven at the time the murder occurred in New York.

11. The affiant believes the accumulated evidence the jury did not have available to assess Derrick Hamilton's guilt beyond a reasonable doubt supports that he is actually innocent of Nathaniel Cash's murder.

Hamilton filed a state habeas corpus petition in July 7, 2009, that claimed his new

alibi evidence established his actual innocence and his trial lawyer provided ineffective assistance of counsel.

*Justice Denied* published a follow-up article about Hamilton's case in its Summer 2011 issue: "[Derrick Hamilton's Alibi](#) By Police Officer He Was 82 Miles From 1991 Murder Ignored By The Courts”.

Hamilton's petition was denied by the trial court in July 2011, and he appealed.

On December 7, 2011 Hamilton was released on parole after more than 20 years of incarceration from the date of his arrest. He was 46. During his parole hearing Commissioner Christina Hernandez [said to Hamilton](#), "If, in fact, you're incarcerated for something that you did not commit, I hope that you're successful in your appeal."

Hamilton told the *New York Daily News* [after his release](#): "It's just the most remarkable feeling ever and I'm overwhelmed with joy. It's like 1,000 pounds got off your back and you can breathe again." He added, "The fight goes on."

After almost two decades of having his arguments rejected by every court that heard them, on January 15, 2013 the appellate division of the Supreme Court of New York issued its precedent setting ruling in *People v. Hamilton*, 115 A.D.3d 12, 979 N.Y.S.2d 97. The Court's ruling [stated in part](#):

"A freestanding claim of actual innocence is rooted in several different concepts, including the constitutional rights to substantive and procedural due process, and the constitutional right not to be subjected to cruel and unusual punishment." [Op. Cit. 4]....

"...we hold that a "freestanding" claim of actual innocence is cognizable in New York, and that a defendant who establishes his or her actual innocence by clear and convincing evidence is entitled to relief under the statute." [Op. Cit. 1]

and,  
 "Here, the defendant has made a prima facie showing based upon evidence of a credible alibi and manipulation of the witnesses, and the fact that the witness against him has recanted. Accordingly, there should be a hearing on his claim of actual innocence.

At the hearing, all reliable evidence ... should be admitted. If the defendant establishes his actual innocence by clear and convincing evidence, the indictment should be dismissed..." [Op. Cit. 7-8]

**Hamilton cont. on p. 12**

## Aaron Frank Cadger Acquitted By Oregon Court Of Appeals Of Non-existent Jail Escape

Aaron Frank Cadger [was acquitted](#) by the Oregon Court of Appeals of escaping from a correctional facility the appeals court ruled didn't happen.

In September 2010 Cadger, 20, was serving a 60-day sentence at the Douglas County Jail in Roseburg, Oregon for a probation violation. Cadger was assigned to an "outside inmate worker program," and one day he and several other inmates were picked up at the jail by a civilian supervisor who transported them to the Douglas County fairgrounds. Cadger was given the job of shoveling manure from a parking lot in an area that was outside the fence surrounding the fairgrounds. That morning Cadger's girlfriend arrived at the fairgrounds and they talked for a while where he was working.

During Cadger's lunch break he went to the restroom and rendezvoused with his girlfriend and they left in her car.

A warrant was issued for Cadger's arrest and he was apprehended in California. After his extradition to Douglas County he was charged with escaping "from a correctional facility" (ORS 162.155) which is a second degree felony.

The prosecution presented evidence during



Aaron Frank Cadger  
(Douglas County Jail  
(Roseburg, OR))

Cadger's trial that he left the fairgrounds without permission while on the work detail. After the prosecution rested Cadger's lawyer made a motion for a judgment of acquittal on the basis the fairgrounds isn't a "correctional facility" as required by the escape statute.

The prosecution countered with the argument that Cadger was "constructively confined" in the Douglas County jail at the time he physically left the fairgrounds. After the judge denied Cadger's motion, Cadger rested his defense without presenting any witnesses. The jury convicted Cadger and he appealed.

On October 16, 2013 the Oregon Court of Appeals issued [their unanimous ruling](#) in *State of Oregon v. Aaron Frank Cadger*, No. A147651 (OR Ct of Appeals, 10-16-2013) reversing Cadger's conviction on the basis the judge erred denying his motion for a judgment of acquittal. Judge Lynn R. Nakamoto wrote in the Court's opinion:

We agree with defendant and resolve this case in conformance with *Gruver*. In that case, we held that the defendant -- a county jail inmate who was transported and left to work at the local animal shelter under the supervision of a civilian manager -- could not be con-

victed of escape because he was not "under the direct supervision of a law enforcement official" when he absconded from his work site. *Gruver*, 258 Or App at 555. *Gruver* was based on facts substantially similar to those in the present case ... [Op. Cit., 3]

... Like the defendant in *Gruver*, defendant in the present case was authorized to leave the jail, for work at the fairgrounds, and he did not "abscond while under the direct supervision of a law enforcement official." [Op. Cit., 4]

... Thus, as in *Gruver*, defendant was not constructively confined in the county jail, but was instead on a "form of temporary release" at the time of his departure. Accordingly, the trial court erred when it denied defendant's motion for judgment of acquittal, ... [Op. Cit., 5]

Cadger's case is an example that the devil is in the details and his lawyer had a better understanding of what constitutes a correctional facility than the prosecution did when it charged him with a crime he didn't commit.

The Oregon Court of Appeals ruling in *State of Oregon v. Aaron Frank Cadger*, No. A147651 (OR Ct of Appeals, 10-16-2013) [can be read by clicking here](#).

Source:  
[State of Oregon v. Aaron Frank Cadger](#), No. A147651 (OR Ct of Appeals, 10-16-2013)  
[Court overturns Roseburg inmate's escape conviction](#), *KPIC* (Roseburg, OR), October 17, 2013



## Hamilton cont. from p. 11

The Court also reversed the lower court's denial of Hamilton's ineffective assistance of counsel claim, ruling:

"The failure of the defendant's trial counsel to name all the alibi witnesses in the notice of alibi could constitute ineffective assistance of counsel. Accordingly, at the hearing, the defendant should also be afforded an opportunity to prove, by a preponderance of the evidence, that trial counsel's representation was ineffective. Although the remedy for ineffective assistance of counsel generally is to grant a new trial, if the defendant prevails on his claim of actual innocence, a new trial would not be necessary." [Op. Cit. 8]

The date of Hamilton's hearing hasn't been set. The hearing should be interesting since

the State no longer has any evidence he committed Cash's murder in Brooklyn which occurred at a time his unrebutted new alibi evidence establishes he was 82 miles away in New Haven. Consequently, if the trial court judge conscientiously applies the appeals court's directive it can be expected the hearing will result in the overturning of Hamilton's conviction and the dismissal of his indictment.

The appeals court's ruling in Hamilton's case paves the way for all imprisoned or paroled persons in New York to have their claim of actual innocence considered on its merits, without them having to endure his arduous 20 year quest for justice.

[Click here to read](#) *People v. Hamilton*, 115 A.D.3d 12, 979 N.Y.S.2d 97 (1-15-14).

[Click here to read](#) "In Connecticut At Time Of Brooklyn Murder – The Derrick Hamil-

ton Story," *Justice Denied* magazine, Summer 2008, pp. 10-13.

[Click here to read](#) "Derrick Hamilton's Alibi By Police Officer He Was 82 Miles From 1991 Murder Ignored By The Courts," By Hans Sherrer, *Justice Denied* magazine, Summer 2011, p. 16.

Source:  
[People v. Hamilton](#), 115 A.D.3d 12, 979 N.Y.S.2d 97 (1-15-14)

[Derrick Hamilton's Alibi By Police Officer He Was 82 Miles From 1991 Murder Ignored By The Courts](#), *Justice Denied* magazine, Issue 47, Summer 2011, p. 16

[Brooklyn Appellate Court makes unprecedented ruling](#), *Brooklyn Daily Eagle*, January 16, 2014

[Man released from prison](#) after 20 years can prove innocence in landmark ruling, *New York Daily News*, January 16, 2014

[Brooklyn man is freed from prison](#) after 20 years, *New York Daily News*, December 14, 2011

Derrick Hamilton #93A5631, New York Department of Corrections, [inmate information page](#)



## Judge Complains To Jury Paul Cleary's Acquittal Will Distress Prosecution Witnesses

The lack of objectivity and pro-prosecution bias of judges is common in countries around the world. There are times when a judge simply cannot resist the temptation to overtly express their sympathy with the prosecution. One of those times occurred on December 10, 2013 after a jury in Liverpool, England acquitted Paul Cleary of allegedly abusing two children more than 30 years ago.

Paul Cleary emigrated to Canada in 1989 from Liverpool, England. He settled in Toronto where he had a family with two children and worked as an electrician.

Two women reported to police in 2010 that in 1978 when they were children, Cleary -- then 26 -- asked them to do handstands and invited them to guess what color his underwear was before making them put their hands inside his trousers. The women did not allege he sexually touched them.

Cleary, 61, was charged in England with indecent assault and indecency with a child. Cleary publicly declared the accusations the women had waited more than 30 years to make were complete fabrications. [He was extradited](#) to England from Canada in July 2013 to stand trial, after he refused to voluntarily return. He was released on bail to live in the Liverpool area pending his trial.

During Cleary's trial that began on December 2, 2013, the prosecution's case was based on the testimony of the two women -- now in their 40s -- who didn't deny waiting more than 30 years after the alleged incidents occurred to contact the police. The mother of one of the women testified her daughter told her when she was seven that she had been abused, but the mother didn't deny she never contacted the police or told anyone about the alleged abuse. The mother knew Cleary when he lived near Liverpool and before he was married, and during her cross-examination Cleary's lawyer suggested her testimony was the result of her jealousy of Cleary's marriage and his wife.

Cleary [testified in his defense](#) "that he had never been alone with the girls when the offences were said to have taken place and that for many of those occasions he would actually have been at work at the time, though he could not prove this because his



Paul Cleary leaving Liverpool Crown Court during his trial (Liverpool Echo)

paperwork was thrown away when he emigrated."

Cleary also testified he had seen the girls and their families after the time of the alleged abuse and he wasn't aware of a problem, and that he saw one of the girls in 2005 when she in her mid-30s, and she said nothing.

Cleary's lawyer Eric Lamb [asked him](#): "Did you ever assault them sexually?" Cleary replied: "Absolutely not."

When cross-examined Cleary testified he had never seen the girls doing handstands and that "It's a total fabrication" he asked them to do so. He also [unwaveringly stated](#) "Absolutely," when asked "Each and every allegation they have made is a complete and utter fabrication?"

On December 10 the jury deliberated less than three hours before acquitting Cleary of all twenty-two counts against him. After the jury's verdict was announced Judge David Aubrey [told the jurors](#):

"It's quite apparent there are a number of members of the public gallery who are members of the family left distressed as a result of the verdicts of the jury.

"Of course this court respects and anticipates if they are distressed the two prosecution witnesses in this case will be extremely distressed when they are made aware of the verdicts in this case. It is absolutely essential that both of them are informed of the decision with sensitivity and any help either of them require or need is given to them."

Judge Aubrey's comments sympathizing with the two women not only ignored the jury found their testimony wasn't credible, but his comments ignored that Cleary's life had been decimated by the women's unproven accusations that resulted in his arrest, public humiliation, forcible removal to England thousands of miles from his home in Canada, and the enormous financial and emotional burden placed on his family.

Commentator Raymond Peytors was so appalled at Judge Aubrey's comments that [he wrote on theopinionsite.org](#):

Perhaps it would have been better if the judge had turned to the defendant and said something along the lines of: "You

leave the court an innocent man and questions should be asked as to why this case was brought in the first place..oh, and we are really sorry that it has completely ruined your life in Canada, possibly cost you your job and may have destroyed your family by us allowing this case to proceed."

Neither the police nor the prosecutors made any public comment about Cleary's acquittal after the government had spent an enormous amount of money and resources on his prosecution that hinged on what the juror's determined was the unreliable testimony of the two complainants.

It is not known if the women will be investigated for filing false abuse reports against Cleary and committing perjury during his trial.

Source:

[CPS and police remain silent](#) after man cleared of historic abuse, [www.theopinionsite.org](#), Dec. 27, 2013

[Dad-of-two extradited from Canada](#) cleared of historic child abuse charges, [Liverpool Echo](#), December 10, 2013

[Merseyside man goes on trial](#) for allegedly abusing girls more than 30 years ago, [Liverpool Echo](#), December 2, 2013

[Child abuse suspect Paul Cleary](#) flown from Canada to face charges, [Liverpool Echo](#), July 12, 2013

[Alleged paedophile Paul Cleary](#) denies any wrongdoing, [Liverpool Echo](#), December 9, 2013

### Visit Justice Denied's Website

[www.justicedenied.org](http://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.

### Visit Justice Denied's Facebook Page

Justice Denied's Facebook page is regularly updated with information related to wrongful convictions. Justice Denied's homepage has a link to the Facebook page.

[www.justicedenied.org](http://www.justicedenied.org)

## “An Unreal Dream: The Michael Morton Story” Documentary

The CNN cable network broadcast “An Unreal Dream: The Michael Morton Story” for the first time on December 5, 2013. Directed by Al Reinert, [the two-hour documentary](#) portrayed the harrowing true tale of Michael Morton who was freed in 2011 after spending 25 years in prison for the murder of his wife Christine. Morton was sentenced to life without parole, and said upon his release, that if he had been sentenced to death he likely would have been executed.

Michael Morton’s story demonstrates systemic flaws in the legal system and the serious consequences of when the wrong person is prosecuted. Christine Morton’s killer went on to kill again—a crime that remained unsolved until the DNA evidence in Morton’s case was tested, linking the real killer to both cases.

Since his release Michael has reunited with his now-adult son Eric—who grew up believing his father had killed his mother.



Michael and Christine Morton with son Eric in 1986 (KVUE)

Morton has been an advocate in the Texas legislature for protections against wrongful conviction, and Governor Rick Perry signed the Michael Morton Act into law in 2013.

Ken Anderson was the prosecuting attorney in Michael Morton’s case, and he later became a judge. The Texas State Bar [filed ethical charges](#) against Anderson alleging he deliberately failed to comply with a court order by not disclosing evidence favorable to Morton, and falsely telling the trial judge during a pretrial hearing on Feb. 6, 1987 he had no such evidence. The charges against Anderson were resolved when [he pled guilty](#) on November 8, 2013 to contempt of court. Ninth Judicial District Judge Kelly Moore sentenced Anderson to serve ten days in jail, and he was fined \$500, ordered

to perform 500 hours of community service, and disbarred from practicing law in Texas.

Anderson’s disbarment was subject to review by the Texas Supreme Court, and if approved, he would have had to wait at least five years before applying for reinstatement of his Texas law license.

Anderson short-circuited the disciplinary process and avoided serving his jail sentence, paying his fine, and performing 500 hours of community service when on November 19, 2013 the Texas Supreme Court accepted his motion to resign as a Texas attorney in lieu of his adjudged punishment. The Court’s order stated in part: “The Court further concludes that acceptance of the resignation of Ken Anderson is in the best interest of the public and the profession.”

“An Unreal Dream’s” website is, [www.anunrealdream.com](http://www.anunrealdream.com).

Sources:

“An Unreal Dream: The Michael Morton Story,” *CNN cable network*, CNN.com

[Anderson gets 10 days in jail](#), disbarment pending. By Brad Stutzman, *Austin Statesman*, November 8, 2013

[In The Matter Of Ken Anderson](#), No. 13-9155 (Sup. Ct. of Texas, 11-19-2013)



## Innocents Database Webpage Now Includes Detailed Statistical Information

The [Innocents Database](#) linked to from [Justice Denied’s](#) website is the world largest database of persons exonerated of their convicted crime.

The database’s webpage was updated on May 29, 2014 to include detailed statistical information about the 4,732 cases in the database that include 2,762 U.S. cases, and 1,970 cases from 112 other countries. The information includes charts showing the number of exonerated people convicted of various crimes over different periods of time, and how long the average period of incarceration was before a person’s exoneration. The [Innocents Database](#) includes:

- 891 people exonerated in the U.S. and other countries before 1989.
- 784 people exonerated in the U.S. of a homicide related crime since 1988 were incarcerated for an average of 12-1/4 years.
- 475 people exonerated in the U.S. of a

sexual assault related crime since 1988 were incarcerated for an average of 11 years.

- 2,088 people exonerated in the U.S. of all types of crimes since 1988 were incarcerated for an average of 9-1/2 years.

- 490 people exonerated outside the U.S. of a homicide related crime since 1988 were incarcerated for an average of 8-1/3 years.

- 233 people exonerated outside the U.S. of a sexual assault related crime since 1988 were incarcerated for an average of 3-1/3 years.

- 1,753 people exonerated outside the U.S. of all types of crimes since 1988 were incarcerated for an average of 5-2/3 years.

One fact readily apparent from the information now available on the Innocents Database webpage is the United States is less efficient at exonerating a person than are other countries. Overall countries other than the U.S. incarcerate a person for a shorter period of time before their exoneration.

[Click here](#) to go to the Innocents Database at, [www.forejustice.org/search\\_idb.htm](http://www.forejustice.org/search_idb.htm).

The source of cases in the Innocents Database includes, but isn’t limited to, court decisions; newspaper and magazine articles; books; convictions overturned by the Court of Appeals after the case was referred to the Court by the Criminal Case Review Commission for England, Wales and Northern Ireland; convictions overturned by Scotland’s Court of Appeals after the case was referred to the Court by the Scottish Criminal Case Review Commission; convictions overturned after the case was referred by the Norwegian Criminal Case Review Commission for post-conviction court review; and cases in the National Registry of Exonerations.



### Visit the Innocents Database

Includes details about more than 4,700 wrongly convicted people from the U.S. and other countries.

[www.forejustice.org/search\\_idb.htm](http://www.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.

[www.forejustice.org/biblio/bibliography.htm](http://www.forejustice.org/biblio/bibliography.htm)

## Sara Ylen Convicted Of Filing False Rape Report And Tampering With Evidence

Sara R. Ylen's years of lying about numerous non-existent sexual assaults in two states resulted in her conviction on December 5, 2013 in Port Huron, Michigan of filing a false rape report in 2012 and tampering with evidence.

Ylen gained national notoriety in September 2012 when evidence of her history of making repeated unsubstantiated sexual assault accusations resulted in the overturning of James Grissom's 2003 conviction for raping her in broad daylight in the parking lot of a grocery store in Fort Gratiot, Michigan. Grissom was released on November 19, 2012 after almost ten years of incarceration. In retrospect the strange circumstances of Grissom's prosecution should have raised alarm bells. Ylen didn't report the alleged rape to the police, her doctor, or her husband until more than a year after she said it occurred in May 2001; she told police she believed that in June 2002 her assailant was driving a black Jeep Cherokee that pulled up behind her at a stoplight (Grissom didn't own or drive a black Jeep Cherokee); in October 2002 she identified Grissom as her assailant from his police mug shot, but when he participated in a live line-up she selected another man as her rapist; she told police she discarded the clothing she was wearing at the time of the assault; there was no physical or medical evidence she was raped; and during Grissom's trial her testimony was the only evidence a rape occurred and that he was the perpetrator.

Grissom was convicted in Port Huron on August 27, 2003 of sexual assaulting Ylen and he was sentenced to 15 to 35 years in prison. Grissom's conviction was affirmed on his direct appeal. Grissom filed a petition seeking a new trial based on evidence he discovered in 2006 impeaching the credibility of Ylen's trial testimony. The trial court denied Grissom's petition which the Michigan Court of Appeals affirmed. In July 2012 the Michigan Supreme Court issued its precedent setting ruling in [People v. Grissom](#), No. 140147 (Mich: Supreme Court 2012):

We hold that impeachment evidence may be grounds for a new trial if it satisfies the four-part test set forth in *People v. Cress*. We further hold that a material, exculpatory connection must exist between the newly discovered evidence and significantly important evidence presented at trial. It may be of a general character and need not contra-



Sara Ylen, May 2013  
(Sanilac County  
Sheriff's Department)

The Court remanded the case back to the trial court, which considered Grissom's new impeachment evidence and vacated his conviction in September 2012. The St. Clair County DA agreed to drop the charges which were dismissed on November 19, 2012 and Grissom was released later that day.

The statute of limitations barred Ylen's possible perjury prosecution for her testimony in Grissom's case. However, she set herself up to be prosecuted when on September 18, 2012 she reported being raped several days before by two men who invaded her home in Lexington, Michigan, about twenty miles north of Port Huron. The officer who interviewed the 37-year-old Ylen was "troubled" because there was no record at the Port Huron Hospital that she visited it after the rape as she claimed, and her account of the assault had a degree of details he had never before heard from a rape victim. The officer arranged for her to be examined by the Sanilac County Medical Examiner who didn't find evidence she had been raped. However, he did find that what appeared to be bruises and lacerations on her face was in fact make-up that he was able to wipe off. The ME later found a discarded makeup compact in the exam room.

Ylen was charged in June 2013 with filing a false rape report and tampering with evidence. The tampering with evidence charge was based on her application of make-up to make it appear she had been assaulted.

Ylen's trial began on December 3, 2013 in Port Huron. Key prosecution evidence was the police officer's testimony her account of the alleged rape "troubled" him, and the doctor's testimony there was no medical evidence she had been raped and what appeared to be injuries on her face was in fact make-up. Ylen did not testify. During closing arguments prosecutor Suzette Samuels [told the jury](#) Ylen's police statement reads "like a cheap novel."

The jury deliberated for 30 minutes before finding Ylen guilty of both charges. St. Clair County Judge Daniel Kelly revoked Ylen's bond and ordered the mother of two boys jailed while awaiting sentencing on January 17, 2013.

dict specific testimony at trial. Also, the evidence must make a different result probable on retrial.

Grissom attended Ylen's three day trial. He [told reporters](#): "Strange. The last time I was coming down to this courtroom I had handcuffs on. I figured I had to be here, just to see what she gets away with and what she don't."

Over a period of years Ylen made reports to the police falsely accusing at least nine males of sexual assaulting or kidnapping her, including her father and her brother in California.

Ylen's legal problems aren't limited to lying about non-existent sexual assaults. During her divorce in 2011 after 18 years of marriage [her husband stated](#) in a court document the marriage "broke down due to the wife's complex lies and deceit involving fictitious rapes, kidnappings, pregnancies and illnesses — all attempts to control others by complaining of physical symptoms." Ylen [was charged](#) in May 2013 with two counts of financial fraud and two counts of false pretense, and one count each of using a computer to commit a crime and health care fraud by making a false statement. The financial fraud charges are based on Ylen's receipt of over \$20,000 from people sympathetic to her claim of having cancer. In addition to receipt of the money, there is evidence Ylen falsely claimed she had been a patient at Cancer Treatment Centers of America in Zion, Illinois and the University of Michigan Cancer Center in Ann Arbor, that she falsely received more than \$100,000 in hospice care over two years, and that she forged documents with the University of Michigan Medical Center letterhead. Ylen's trial is scheduled to begin on February 4, 2014 in Sanilac County, Michigan.



James Grissom after Sara Ylen's conviction of filing a false rape report  
(The Times-Herald)

### Sources:

[Sara Ylen guilty on all counts](#): Jury finds she filed a false felony report, tampered with evidence, *The Times Herald* (Port Huron, MI), December 6, 2013

[Sara Ylen's assault report 'troubled' investigator](#): First day in St. Clair County court on charges of false report, *The Times Herald* (Port Huron, MI), December 3, 2013

[Jury quickly convicts woman in false rape trial](#), *MSNnews.com*, December 5, 2013

[Woman who 'faked cancer'](#) is convicted of falsely accusing TWO men of rape as it's revealed a third man she accused spent 10 Years in prison before sex attack conviction was overturned, *The Daily Mail* (London), December 6, 2013

[Alleged cancer scam surfaced during divorce](#): Divorce court records reveal falsified medical information, *Sanilac County News*, May 22, 2013

[Cancer, rape fraud case bowls over Mich. community](#), *News.yahoo.com*, May 17, 2013

[People v. Grissom](#), No. 140147 (Mich: Supreme Court 2012)



# Oregon Court Of Appeals Acquits Teen Of Negligent Homicide In Traffic Death

Sierra Nicole Rigel [has been acquitted](#) of negligent homicide and third-degree assault by the Oregon Court of Appeals. Rigel's convictions were related to a traffic accident that resulted in the death of a motorcyclist in 2010.

In the fall of 2010 Rigel was 17 and a senior with a 4.0 GPA at Brookings-Harbor High School in Brookings, Oregon. Brookings is a town of about 6,000 people on the Oregon coast about five miles north of the California border, and 320 miles southwest of Portland. The only vehicle access to Brookings is Highway 101, which is a two lane coastal highway with limited vehicle turnouts that runs parallel with the Pacific Ocean.

After school on the afternoon of September 15, 2010 Rigel drove a friend to Gold Beach, which is 28 miles north of Brookings. At about 5:30 p.m. on her way back to Brookings, the 2003 Ford Excursion Rigel she was driving crossed the center line and struck a motorcycle traveling in the opposite direction operated by Danny Michael Nudo. Nudo was thrown from his motorcycle and killed when he struck a roadside sign post. After the collision near Milepost 341 on Highway 101, Rigel's vehicle ran off the road and struck a tree. Rigel was transported to Curry General Hospital in an ambulance. Milepost 341 is about 9 miles south of Gold Beach.

Police officers at the scene found skid marks from Rigel's vehicle. At the time of the accident the weather was dry and clear, and she was wearing her seat belt and driving the speed limit of 55 m.p.h.

Rigel told an officer at the scene and again at the hospital where she was taken, that while driving she suddenly became very drowsy and knew she needed to pull off the highway as soon as possible. There was no vehicle turnout and no emergency lane on the two-lane highway where the accident occurred. She also told the officer that other times when she was driving she had gotten drowsy and was able to pull off the highway to take a short nap.

Rigel was charged as a minor in juvenile court with negligent homicide and third-degree assault. She pled not guilty.

During her bench (judge only) trial before Curry County Circuit Court Judge Cynthia L. Beaman, the prosecution's case was Rigel acted recklessly and was criminally negligent for failing to pull off the highway prior to hitting the motorcyclist. The prosecution stipulated Rigel had not been drinking, had not taken any drugs, and was not using a cell phone at the time of the accident. There was evidence she had slept about six hours during the 24 hours prior to the accident.

Rigel's defense was that by looking for a vehicle turnout upon becoming drowsy a minute or so before the accident, she did not act recklessly and exercised the care a reasonable person would take in that situation. Her defense was supported by the unrebutted testimony of human factors expert, Dennis Wylie. Wylie is an internationally recognized human factors expert concerning driver error; inattention and improper lookout; driver fatigue; sleep debt; and other driver related issues. Wylie, whose office is in Santa Barbara, California, directed the largest study of driver fatigue and alertness conducted in North America. [During Rigel's trial:](#)

"Wylie testified that people are not good at recognizing when they are fatigued and that a driver can go from not being aware of tiredness, to being aware of tiredness, to a light state of sleep where the driver is not responding to stimuli, all within 60 seconds. Wylie testified that driver drowsiness is not uncommon and that "the driver is not always aware that the driver is being overcome by fatigue, and by the time they realize it, it could be too late." Wylie also testified that it is very common for people to drive after only five or six hours of sleep." *State of Oregon v. S.N.R.*, No. A148495 (Ore. Ct. of Appeals, 1-29-2014), Op.Cit. 5.

Judge Beaman found Rigel guilty of both charges, and in announcing her reasons she wholly sided with the prosecution's arguments: Rigel acted recklessly because she did not to pull off the highway before the collision occurred, and so she was criminally negligent.

Since Rigel was prosecuted as a juvenile she couldn't be sentenced to adult prison. During Rigel's sentencing hearing on May 2, 2011 her lawyer Chris Keusink [told Judge Beaman](#): "What has happened, has happened. It can't be brought back." To mitigate her sentence Keusink explained Rigel was a member of the National Honor Society, president of Brookings' student branch of Rotary, on a committee for fundraising for a children's hospital, a member of a group which raises funds to feed the



Sierra Nicole Rigel was a Valedictorian of the Brookings-Harbor High School graduating class escorted around the track by phys. ed. teacher Bev Rose on June 11, 2011 (The Pilot - Jeff Hatch)

less fortunate, a 4.0-plus student, and she was taking advanced placement classes for college. He also said Rigel had performed more than 300 hours of community service.

Judge Beaman placed little to no weight on Rigel's exemplary background, volunteer activities, and character, in sentencing her to 5 years probation as a ward of the court (not to exceed her 23rd birthday), banning her from driving for life, ordering her to perform 100 hours of community service, fining her \$214, and ordering her to pay restitution.

The month after her conviction Rigel graduated on June 11 from Brookings-Harbor High School as a Valedictorian of her senior class. [During her speech](#) "Rigel talked about remembering her school experience since kindergarten and how far she has gotten in life. She concluded that "we will all remember this last day together as one.""

In October 2011 Brookings' paper, the *Curry Coastal Pilot*, ran an article -- "Two similar fatal accidents, two very different outcomes. Why?" -- that detailed Rigel had been prosecuted by Curry County District Attorney Everett Dial when in a similar case a 76-year-old man wasn't prosecuted after he fell asleep on Highway 101 and his car's collision with an oncoming car killed the driver. In declining to prosecute that elderly man [DA Dial described](#) the driver's death as the result of "an unfortunate and tragic accident."

Rigel appealed to the Oregon Court of Appeals arguing the prosecution introduced insufficient evidence to prove beyond a reasonable doubt she committed either of her convicted offenses.

On January 29, 2014 the Oregon Court of Appeal reversed Rigel's convictions. In [State of Oregon v. S.N.R.](#), No. A148495 (Ore. Ct. of App., 1-29-2014) the court ruled Rigel "did not act recklessly" or with "criminally negligence," because as soon as

**Rigel cont. on page 17**

## Symieon Robinson Pierre Exonerated Of Convictions For His Dog Biting Police Officers

Symieon Robinson-Pierre's 2012 convictions of owning a dog that bit four police officers in London [have been overturned](#) by the UK's Court of Appeal.

On March 22, 2012 a warrant was served on Robinson-Pierre at his row house in east London. The police didn't knock before breaking down the front door and entering the house. After the officers entered Robinson-Pierre's pit bull terrier named "Poison" attacked one of the officers. As the officers fled the house the dog followed them outside and over a period of minutes attacked four officers. Poison was killed when he was shot four times with a shotgun. The five officers bitten by Poison suffered varying degrees of injuries on their hands and legs. The most seriously injured officer required surgery and he was off work for 85 days.

Although nothing was found during the search of Robinson-Pierre's house, he was arrested at the scene for Poison's attack on the officers. [He told the police](#), "It's not the dog's fault. You should have knocked. I would have let you in."

Robinson-Pierre, 25, was indicted for four counts of being the owner of a dog which caused injury while dangerously out of control in a public place, in violation of the UK's Dangerous Dogs Act of 1991. He was not charged for the attack on the first officer because it took place inside his house.

The later part of the incident was recorded by a local resident on his mobile phone video camera. The video was uploaded to the Internet and can be [viewed on YouTube](#).

During Robinson-Pierre's trial in August 2012 the prosecution played the video of Poison's attack to buttress the testimony of the police officers who were bitten.

At the close of the prosecution's case Robinson-Pierre submitted there was no case for him to answer on two grounds: The first



Symieon Robinson-Pierre's dog Poison attacking police officer on March 22, 2012.

count involved an officer bitten in his yard so it didn't occur in a "public place"; and, the police, not he, allowed Poison outside, so he wasn't responsible for the injuries to the officers. The judge agreed the first count involved an officer bitten on Robinson Pierre's property and directed the jury to return a verdict of not guilty on that count. However, the judge ruled the offense Robinson-Pierre was charged with was a "strict

**Pierre cont. on p. 18**

### Rigel cont. from page 16

she felt drowsy she knew she needed to pull off the highway at the first opportunity to rest. In arriving at its decision the appeals court found the trial judge erroneously relied on the false transcription of Rigel's statement at the hospital as -- "I knew I should have pulled off" -- that was in the past tense and implied she knew she erred not pulling off the highway. When in fact the audio of Rigel's statement showed she actually said "I knew I shouldn't put it off," which was in the present tense and indicated she immediately began looking for the next turn-off after she was hit with drowsiness. [Op.Cit. at 7] The Court referred to Rigel as "youth" [in stating](#):

"The only reasonable inference that can be drawn from youth's uncontroverted statements, as correctly transcribed, and from the evidence concerning the highway, is that she did not feel tired until after she had passed the last pull out on the southbound side of highway 101 before milepost 341. [Id. at 12]

... it appears that the juvenile court did not find the testimony of youth's expert to be pertinent to its ruling; the court did not mention it when ruling. We note that the expert's testimony confirms that a driver can go from a state of not feeling tired to a state of sleep in as little as one minute and that drivers are not always

aware that they are being overcome by fatigue. [Id. at 13]

...

As discussed above, only two minutes passed between the time youth became aware of her tiredness and the accident. The expert's testimony confirms that drivers who fail to pull over *immediately* upon realizing they are tired are not for that reason alone deviating from a widely shared, reasonable norm. ... and, youth did not disregard the risk of falling asleep because she immediately began looking for an appropriate place to pull over once she started to feel tired ..." [Id. at 14]

...

Therefore, youth did not act recklessly, and the juvenile court erred in taking jurisdiction of youth based on its conclusion that youth's acts, if committed by an adult, would have constituted criminally negligent homicide and assault in the third degree.

Reversed. [Id. at 15]

The Court's ruling bars Rigel's retrial.

Rigel's appeal lawyer, George Kelly, [commented](#) after the appeals court's ruling, "I'm pleased with the decision, and I happen to think it was the right one." When contacted by Justice Denied, Kelly declined to com-

ment on specifics of the case because he hadn't been given permission to do so by the Rigel family.

[Click here to read](#) the appeals court's ruling in *State of Oregon v. S.N.R.*, No. A148495 (Ore. Ct. of Appeals, 1-29-2014), that includes an extended discussion of what constitutes criminal negligence and third-degree assault under Oregon law.



Dennis Wylie  
(Drivingfatigue.com)

Dennis Wylie Associates website is, [www.drivingfatigue.com](http://www.drivingfatigue.com).

Source:

[State of Oregon v. S.N.R.](#), No. A148495 (Ore. Ct. of Appeals, 1-29-2014)

[Court says sleep-driving strikes quickly](#): Teen driver who killed motorcyclist gets case overturned, *The Oregonian* (Portland, OR), January 29, 2014

[Two similar fatal accidents](#), two very different outcomes. Why?, *Curry Coastal Pilot* (Brookings, Ore.), October 28, 2011 10

[Judge: No license for teen driver](#) who hit, killed motorcyclist, *Curry Coastal Pilot*, May 4, 2011

[BHHS graduation 2011](#): Students receive diplomas Saturday, *Curry Coastal Pilot*, June 15, 2011

[Brookings-Harbor High School](#), Brookings, Oregon



# Who Is Responsible For Annie Borjesson's Death?

By Hans Sherrer

The repeated failure of Scottish police to thoroughly investigate suspicious deaths has resulted in the [circulation of a petition](#) calling on the Scottish Parliament to urge the Scottish Government to introduce the right to a mandatory public inquiry with full disclosure of evidence in deaths determined to be self-inflicted or accidental, following suspicious death investigations. [Sign the petition by clicking here.](#)

Annie Borjesson's death is one of the cases that inspired the petition. Annie was a 30-year-old Swedish citizen whose body was found on the morning of December 4, 2005 lying on the salt water beach near the seawall in Prestwick, Scotland. She was last seen on the afternoon of December 3 at the Prestwick airport. Annie was lying on her back with her coat and two bags close to her body. The bay is shallow enough that a person can walk out hundreds of yards during low tide before reaching the water line. The police considered Annie's death a suicide by drowning without conducting a meaningful investiga-



Annie Borjesson  
(annierockstar.com)

tion of the suspicious circumstances under which her body was found and her known movements in the 24-hours before her body's discovery. The pathologists who conducted [Annie's autopsy](#) determined "death here was due to drowning." However, the pathologists didn't estimate her time of death or make a determination her death was a homicide, accidental, or suicide. Neither did they collect any of the water they found in her stomach for testing to determine if was fresh or salt water. Lab tests of Annie's blood and urine found she had an alcohol level of less than .02 and no other drugs were in her system.

The website about Annie's case, [www.annierockstar.com](http://www.annierockstar.com) details the evidence about Annie's death and her known movements in Edinburgh and Prestwick in the last 24 hours she was alive.

After more than three years of effort to try and convince the Scottish police to investi-



Annie Borjesson caught on CCTV at Prestwick Airport at 3.15pm the day before her body was found on the nearby beach

gate Annie's death, her mother Guje and her friend Maria Jansson who live in Sweden, contacted Justice Denied in 2009. Although normally Justice Denied deals with cases of possible wrongful conviction, it was glaringly apparent the snap judgment by the Scottish police that Annie committed suicide by drowning was based on the same disregard of the evidence that results in the prosecution of innocent persons in Scotland, the U.S. and countries around the world.

Justice Denied contacted forensic pathologist Dr. Glenn Larkin, who in June 2010

**Borjesson cont. on p. 19**

## Pierre cont. from p. 17

liability" offense, so it didn't matter who let his dog out: the prosecution only had to prove his "dog was dangerously out of control" in a public place. Based on that ruling Robinson-Pierre did not present any evidence in his defense.

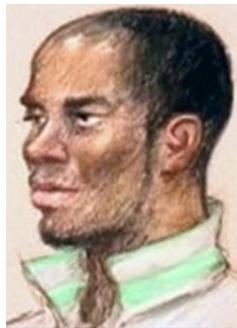
The jury convicted Robinson-Pierre of three counts on August 6. During his sentencing hearing on January 17, 2013 the prosecutor argued for a long term of imprisonment, [telling the judge](#), "If you need a useful image in mind of the aftermath of the event, imagine the sickbay after the Battle of Trafalgar and that will give you an idea - carnage." The judge sentenced him on Robinson-Pierre to three concurrent terms of 22 months imprisonment, and disqualified from owning a dog for 5 years.

Robinson-Pierre filed leave to appeal on the ground the judge erred in ruling the charges were a "strict liability" offense, and instructing the jury the prosecution only had to prove his dog was dangerously out of control in a public place. [He argued](#), "the Dangerous Dogs Act 1991 does not permit the conviction of an owner or person in charge of a dog who did not by his act or

omission cause the dog to be in a public place or cause the dog to become dangerously out of control." and it was an uncontested fact his dog only escaped from confinement in his private dwelling by reason of the deliberate act of the police.

On December 20, 2013 the UK's Court of Appeal issued its ruling in [Robinson-Pierre v R](#) [2013] EWCA Crim 2396 (20 December 2013). In unanimously overturning his conviction the Court stated:

"It seems to us that had the jury been directed to consider whether any act or omission of the appellant had made a more than minimal contribution to the presence of the dog in a public place, dangerously out of control, it is likely they would have concluded that he did ... However, the learned judge, having reached his conclusion as to the nature of the offence, did not direct the jury to consider the issue; on the contrary, he



Symieon Robinson-Pierre during his sentencing on January 13, 2013 (drawing by Julia Quenzler).

told them that if they were sure the dog was dangerously out of control in a public place any act or omission of the appellant was irrelevant to the question whether he was guilty of the offence. In these circumstances the appellant elected not to give evidence. ... We cannot in these circumstances be sure that the verdicts of the jury were safe.

For these reasons we allow the appeal against conviction." [¶46-47]

Robinson-Pierre was out of custody at the time of the Court's ruling. He was continuously in custody from his arrest on March 22, 2012 to his sentencing in January 2013, so he was released on parole in February 2013 after 11 months of incarceration.

Source:

[Robinson-Pierre v R](#) [2013] EWCA Crim 2396 (20 December 2013)

[Pit bull owner has conviction overturned](#) after blaming police for his dog's attack, *London Evening Standard*, December 20, 2013

[Pit bull owner whose dog savaged](#) five police officers leaving scene 'like the Battle of Trafalgar' jailed for nearly two years, *Daily Mail* (London), January 17, 2013

[Graphic Footage of Pit Bull dog](#) attacking Policemen, *Youtube.com*

## Borjesson cont. on p. 18

agreed to review Annie's autopsy report and toxicology test results, documents, funeral home photographs, and photos of where Annie's body was found. Dr. Larkin reported the autopsy report was inadequate and not performed to recognized professional standards in the U.S. To proceed further Dr. Larkin needed the autopsy photos to try and fill in holes in the autopsy report, but the Scottish authorities refused to turn them over to Guje Borjesson, so the case hit a dead end for his involvement. However, he noted a specie of diatom associated with fresh water was recovered from Annie's bone marrow – when she was found on a salt water beach, and a drowned person is face down – when Annie was found face-up.

It is absurd for the police to have closed Annie's case by declaring she committed suicide by drowning when there was a lack of credible evidence she drowned in the shallow bay and washed ashore to where she was found on her back with her coat and two bags conveniently near her. Annie may have been drowned, but the available evidence is it



Annie Borjesson's body was found just over the sea wall from where Guje Borjesson is standing. (Maria Janssen)

likely would have been in fresh water, and her assailant(s) then transported her to the beach with her belongings. That is also suggested by two autopsy report findings: First, "Lividity is noted in the lower back, the buttocks and upper back," when it isn't reasonable Annie would have lividity on her back if she drowned in the bay. Second, "there is a pale area on the left side of the nose which is in line with the pale depression noted in the forehead. This may very well be a post mortem impression as a result of the body lying on or against some article." Annie's body was not found lying on or against any article on the beach -- so the "pale area"

and "pale depression" reasonably could only have been caused if she died elsewhere.

[Click here to sign the petition](#) to the Scottish Parliament in support of a mandatory public inquiry with the release of all evidence in deaths determined to be self-inflicted or accidental under suspicious circumstances

Kenneth Roy's six-part article about the unsolved case of Annie Borgesson's death is in the December 4, 2013 issue of *Scottish Review*. [Click here to read](#) "The Mysterious Life and Death of Annie Borjesson."

The Annie Borjesson website is, [www.annierockstar.com](http://www.annierockstar.com).

The complete petition to Scotland's Parliament can be read by [clicking here](#).

Source:

[The Mysterious Life and Death of Annie Borjesson](#): A Special Edition, *Scottish Review*, December 4, 2013

[Annie Borjesson, Autopsy Report](#), December 2006

[Annie Borjesson website](#)



## Freedom March For The Wrongfully Convicted In Washington, Pennsylvania On March 14, 2014

A Freedom March For The Wrongfully Convicted was held in Washington, Pennsylvania on Friday, March 14, 2014. It began at noon at the Washington County Courthouse, 1 South Main St., in Washington, about 25 miles south of Pittsburgh. The website, [www.freedommarchusa.org](http://www.freedommarchusa.org), had information about the march and a map of its location.

Among the persons at the march and who spoke at the rally was Jeffrey Deskovic, who was wrongly convicted and imprisoned for 16 years for a rape and murder in New York that he didn't commit.

The Freedom March's organizer was Mary-Ann Lubas, and her email is [mlubas2@yahoo.com](mailto:mlubas2@yahoo.com). She became involved in publicizing the problem of wrongful convictions after her son Michael DeLoe was convicted of a crime that never happened. His website is [justiceformike.net](http://justiceformike.net).

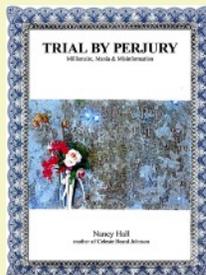
A flyer with information about the march that can be printed out can be read [by clicking here](#).



### *Trial by Perjury: Millionaire, Mania & Misinformation*

by Nancy Hall

This \$3.99 [Amazon Kindle e-book](#) book is about how Celeste Beard Johnson was convicted in 2003 of capital murder in the death of her then husband Steven F. Beard, who died of natural causes in 2000. She was sentenced to life in prison.

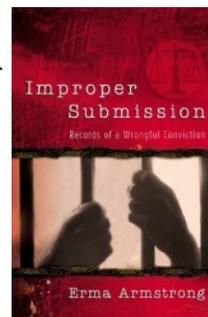


While in bed at home in Oct. 1999, Steven was shot in his stomach with a shotgun. Tracey Tarlton, a woman who became infatuated with Celeste after they met in February 1999, admitted the shooting and she was charged with Injury to an Elderly Person. Steven recovered and was discharged from the hospital on January 18, 2000. The next day he was readmitted with a yeast infection and he complained of chest pains. Exams showed he had severe heart disease and other medical problems. He died four days later. Tarlton and Celeste were charged with murdering Steven. Tarlton pled guilty and agreed to testify against Celeste in exchange for a 10-20 year prison sentence. Celeste was convicted even though medical evidence showed Steven died of natural causes – not murder. Order for the Amazon Kindle for only \$3.99 from [Amazon.com](http://Amazon.com). (252 pgs)

### *Improper Submissions: Records of a Wrongful Conviction*

By Erma Armstrong

This is the story of Karlyn Eklof, a young woman delivered into the hands of a psychotic killer. She witnessed him commit a murder and she is currently serving two life sentences in Oregon for that crime. *Improper Submissions* documents:



- The way the killer's psychotic bragging was used by the prosecution against Karlyn.
- The way exculpatory and witness impeachment evidence was hidden from the defense.
- The way erroneous assertions by the prosecution were used by the media, judges reviewing the case, and even by her own lawyers to avoid looking at the record that reveals her innocence.

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## Phantom Spies, Phantom Justice Now Available for Kindle!

*Phantom Spies, Phantom Justice* by Miriam Moskowitz is published 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, allegedly 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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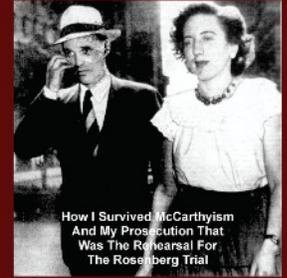
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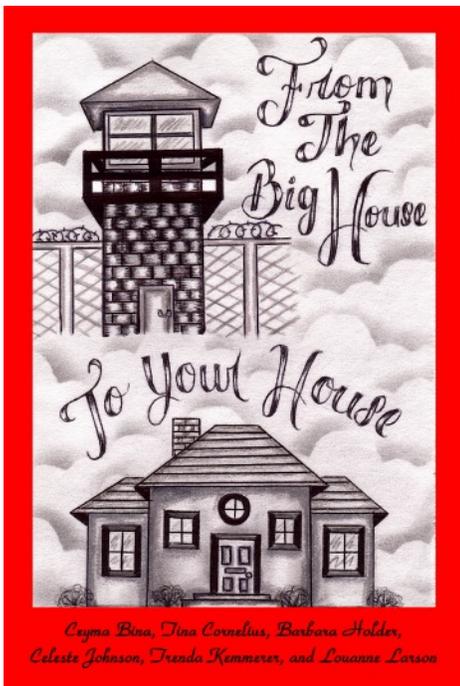
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MIRIAM MOSKOWITZ

Updated with new chapters and copies of FBI documents

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## FROM THE BIG HOUSE TO YOUR HOUSE

Cooking in prison

With

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

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

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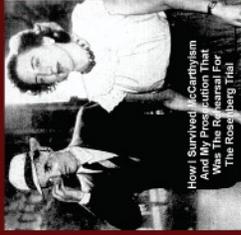
This is the story of Kirstin Lobato, who was 18 when charged in 2001 with the murder of a homeless man in Las Vegas. She was convicted of voluntary manslaughter and other charges in 2006 and she is currently serving a sentence of 13-35 years in Nevada. *Kirstin Blaise Lobato's Unreasonable Conviction*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

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### **NY Ct of Appeals Rules Convictions Can Be Challenged Based On New Evidence Of Actual Innocence**

In January 2014 the NY Court of Appeals issued its precedent setting ruling that after more than 20 years of imprisonment Derek Hamilton can present his new alibi evidence that he was in New Haven, Connecticut at the time of a 1991 murder in Brooklyn.

See p. 11.

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