JUSTICE DENIED

The Magazine for the Wrongly Convicted

Justice Denied Begins Its 17th Year

Sture Bergwall

Exonerated of eight murders after 23 years of imprisonment in Sweden.

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Charles Stobaugh

Acquitted By Texas Court of Appeals and released after 3 years imprisonment for the murder of his wife who may be alive.

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The State of Nevada's lawyer repeatedly lied during her oral arguments in the Nevada Supreme Court.

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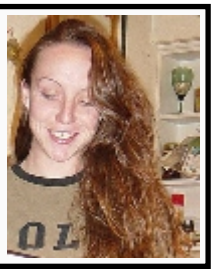

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Justice Denied begins its 17th year with this issue. When *Justice Denied's* first issue was published in February 1999 it was a 'voice in the wilderness' alerting the world to the widespread problem of the unreliability of the legal system in the U.S. and other countries to distinguish the innocent from the guilty. Today there are many dozens of organizations worldwide concerned with aiding convicted persons with a credible claim of innocence, and there are hundreds of websites dedicated to exposing individual cases or wrongful convictions in general. The pervasiveness of the problem is indicated by the fact articles about wrongful conviction issues in each of the fifty states and forty-six territories and countries are among the almost 1,300 articles *Justice Denied* has published. We thank everyone who has supported *Justice Denied*, which is a volunteer non-profit organization that depends on book sales and donations for its revenue.

Message From The Publisher

Guilt by association and manipulation of the media against a suspect are two of the factors that resulted in the prosecution and conviction of Raye Dawn Smith in Oklahoma for a criminal charge related to the mistreatment of her deceased daughter by her husband, at a time when she wasn't even present. See p. 3.

Being awarded compensation is challenging for exonerated persons in countries other than just the United States. England's Home Office has been attempting for some time to significantly raise the bar to compensation so it can only be awarded to those few persons who can prove their innocence "beyond a reasonable doubt." See p. 7.

It is an affront to the reliable functioning of the legal system when a person is convicted of a crime that didn't happened. The worst case scenario is when a person is convicted of murdering a person who in fact may be alive. That is what happened to Charles Stobaugh in Texas after his wife went missing. See p. 8.

The arrogance of judges whose sense of entitlement interferes with their obligation to be impartial is a problem around the world. During Argentina's military dictatorship from 1976 to 1983 the judiciary was an accomplice in the State's terrorism against its suspected political opponents, and judges disregarded their responsibility to protect those people's human rights. See p. 9.

A grave danger to an innocent person is when authorities pursue a conviction based on an uncorroborated confession. Sture Bergwall was erroneously convicted in Sweden of eight murders with no credible evidence except for his false confessions. See p. 10.

Hans Sherrer, Editor and Publisher
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Information About *Justice:Denied*

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

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

Convicted Of Her Husband's Crime — The Raye Dawn Smith Story

By Raye Dawn Smith's Lawyers[1]

Introduction

On July 18, 2007, 27-year-old Raye Dawn Smith was convicted of one count of enabling child abuse against her two-year-old daughter Kelsey Shelton Smith-Briggs ("Kelsey"), who died on October 11, 2005. She was sentenced to 27 years in prison.

Kelsey was born on December 28, 2002. Her mother Raye Dawn and her father, Lance Briggs, were divorced. They had a tumultuous marriage during which Lance was charged with domestic abuse, and in 2001 he pled guilty to assault and battery against Raye Dawn.[2]

Lance's mother, Kathie Briggs ("Briggs"), and Raye Dawn did not get along. After Lance was deployed with the military, in August 2004 Briggs petitioned the Lincoln County District Court and was granted grandparent visitation rights with Kelsey. Briggs immediately began making accusations to the Oklahoma Department of Human Services ("DHS") against Raye Dawn.[3] The back and forth visitation and Briggs' bad blood for Raye Dawn took its toll on Kelsey's physical well being. Raye Dawn repeatedly scheduled appointments with doctors and medical specialists when she attempted to find out what was medically wrong with Kelsey.[4]

On April 18, 2005, Raye Dawn married Michael Porter ("Porter") and they lived in Meeker, Oklahoma — about 45 miles east of Oklahoma City.[5] The closest hospital was in Shawnee, about 13 miles south.

Whenever Briggs contacted DHS Raye Dawn had to defend against her accusations. So much energy was spent dotting I's and crossing T's, completing evaluations, attending court and scheduling visitations, that the true threat: Michael Porter, slipped by undetected.

Kelsey's Life

Kelsey was a child full of life and energy.[6] She climbed on things, leaned on things and jumped off things. She tested the boundaries of her environment and learned the abilities of her body. Like any good mother, when necessary, Raye Dawn sought medical attention for her daughter.

On January 10, 2005, Raye Dawn brought Kelsey to the Unity North Hospital Emergency Room in Shawnee because Kelsey had fallen out of her crib and injured her right shoulder. Dr. Carl Griffin examined Kelsey in the ER for a possible broken collarbone. Dr. Griffin did not suspect Raye Dawn of child abuse, or that it was a non-accidental injury.

On January 14 at 6 p.m., Briggs picked up Kelsey from Raye Dawn and took her to a birthday party at Briggs' house. That night no one changed Kelsey's diaper until she was given a bath around 8:30 p.m. When what looked like "bruises" were noticed on Kelsey's buttocks she was taken to the ER by her father Lance and her stepmother. Dr. Griffin once again examined Kelsey.

Kelsey Shelton Smith-Briggs and her mom Raye Dawn Smith

Briggs notified the Meeker Police Department about the marks on Kelsey's bottom, and their investigation concluded there was no evidence of abuse. The Lincoln County District Attorney's Office declined to file charges, but DHS decided to move forward with a separate child abuse investigation — which determined there was no abuse.

On January 24, Briggs filed and received emergency guardianship of Kelsey. Briggs had sole custody of Kelsey until February 11, when Raye Dawn was allowed supervised visits with Kelsey. In March 2005 Kelsey's hair began falling out, after almost two-months under Briggs' guardianship. The doctor reported it as alopecia, which is a disease caused by poor nutrition.

On March 11, an agreement was reached under which Raye Dawn had unsupervised visits with Kelsey.

On April 14, Miste Smith, Raye Dawn's sister-in-law, took Kelsey to the zoo. Kelsey wore purple platform flip-flops, and turned her ankle while playing. Raye Dawn and Miste took Kelsey to the emergency room where she was diagnosed with a sprained ankle. The next day, Raye Dawn took Kelsey to the DHS office and reported her injury.

At Raye Dawn and Michael Porter's wedding on April 18, Kelsey was still limping on her right leg. A picture of Kelsey standing barefoot on the courthouse steps with Raye Dawn and Porter was admitted during Raye Dawn's trial. That evening, Kelsey went to stay with Briggs until April 21 at 4:00 p.m. Although Kelsey had been standing hours earlier, Briggs testified that Kelsey took four steps and refused to walk the rest of the time she had her. Briggs did not take Kelsey to the doctor during those four days.

On April 25, Raye Dawn took Kelsey to see Dr. Koons because Kelsey was not walking. Dr. Koons diagnosed Kelsey with two bilateral tibia fractures. Dr. Barrett is an orthopedic surgeon who evaluated Kelsey's injuries the next day. Dr. Barrett determined her injuries to be consistent with the account of what happened at the zoo. Dr. Barrett believed Kelsey's right leg was injured at the zoo, and the injury to her left leg likely occurred because she put all her weight on the left leg. Dr. Barrett did not believe the fractured legs were child abuse. Dr. Barrett put casts on both of Kelsey's legs.

On May 2, Briggs took Kelsey to see Dr. Sullivan in Oklahoma City concerning her legs. Based on Briggs' "story" to him and additional X-rays he took of Kelsey, Dr. Sullivan decided the leg fractures were the result of child abuse, and he removed Kelsey's casts. During Raye Dawns' trial he testified on cross-examination the fractures may have occurred on a date Kelsey was with Briggs.

On May 3, DHS took Kelsey into protective custody, and a deprived child petition was filed the same day. The petition listed an "unknown perpetrator" of Kelsey's two bilateral leg fractures.

Briggs' campaign against Raye Dawn

There was limited evidence of abuse of Kelsey and no evidence as to a perpetrator.[7] Kathie Briggs had the same privileges and restrictions as Raye Dawn. On May 17, 2005 the Meeker Police Department investigated Briggs for harassing and stalking Raye Dawn. In retaliation, Briggs reported Raye Dawn to the police for driving with an expired tag.

During the June 14 and 15 deprived hearing Lincoln County District Judge Craig Key dissolved Briggs' visitation with Kelsey, and

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ruled the abuse was by an "unknown perpetrator." He ordered Kelsey returned to Raye Dawn's home, and also ordered involvement in her case by DHS, Court Appointed Special Advocates ("CASA"), and Comprehensive Home-Based Services ("CHBS").

Angered by Judge Key's decision, Briggs began to contact the media, place stories about the Smith family in the public domain, and sponsored a candidate to run against Judge Key. This began the media circus into the life and tragic death of Kelsey Smith Briggs.[8] For example, on August 19, 2005, Raye Dawn, Porter and Kelsey were involved in a serious motor vehicle accident. The point of impact was so violent that it caused the truck to turn 180 degrees and "totaled" the vehicle. As a precaution, Raye Dawn had Kelsey examined at the hospital. The triage nurse who examined Kelsey advised Raye Dawn to follow up with Kelsey's pediatrician, which she did. In their continued harassment of Raye Dawn and in the face of direct evidence of the cause of Kelsey's injuries, the Briggs family released pictures of Kelsey after the car wreck to the news media.

Day of Kelsey's death

During the noon hour of October 11, 2005, Patti Bonner, a CHBS worker, visited Raye Dawn at her house in Meeker. Ms. Bonner observed that Kelsey had a band-aid on one finger and a sore right toe. Ms. Bonner left the home at 1:30 p.m. According to Porter's testimony, he arrived home from work around 2:45 p.m. to find Raye Dawn and Kelsey taking a nap in the bedroom. Shortly thereafter, Raye Dawn left Kelsey in bed and went to pick up Porter's daughter from school.

Porter testified during Raye Dawn's trial that while she was gone he heard a noise from the bedroom that caused him alarm, and upon walking into the bedroom he noticed Kelsey was blue. He said he picked Kelsey up and circled the living room holding her and trying to resuscitate her by asking her what was wrong. Sometime between 3:10 and 3:15 p.m. he called Gayla Smith, Raye Dawn's mother. Gayla told Porter to call 911, which he did. Porter testified he called Gayla first because he "didn't want to believe how bad it was." [P.Tr. 281.] Porter testified he laid Kelsey on the kitchen island and he tried to give her a couple of breaths, and that he put a diaper on her because he didn't want anyone to see her without one.

Volunteer firemen were dispatched at 3:16 p.m. by the Lincoln County Sheriff's Office, and they arrived at Kelsey's home at 3:27 p.m. and began performing manual CPR. An ambulance dispatched from the Prague Community Hospital arrived approximately four minutes later. They intubated Kelsey and placed her on an EKG monitor, and she arrived at the hospital at 3:59 p.m.


Kelsey Shelton Smith-Briggs

Physician's Assistant Melissa Gibson was in charge of the ER. She estimated Kelsey had been "down" for about 45 minutes when she arrived at the hospital. Therefore, Kelsey's injuries occurred around 3:15 p.m. when Raye Dawn was not home.

The ER staff continued to "code" Kelsey for 45 minutes before her death was declared at 4:45 p.m.

Raye Dawn's pastor Charles Pearcy went to the hospital to lend support. Pearcy spoke with an emotional Raye Dawn about losing her baby. They prayed together. Raye Dawn held Kelsey and rocked her. According to Pearcy, Porter provided no comfort to Raye Dawn. PA Gibson also observed that Porter did not console Raye Dawn. Porter told Pearcy he blamed himself and said, "I just hope I wasn't too rough with her." [Trial Tr.VII 1608-09] Porter was seen slamming his fist into the bed of his pickup and nervously pacing back and forth saying, "She's never going to forgive me." [Trial Tr.VII 1616-17.] Raye Dawn wanted an autopsy performed on Kelsey to find out what happened to her, while Porter objected to an autopsy.

On October 12, Dr. Yacoub from the Oklahoma City Chief Medical Examiner's office, conducted an autopsy of Kelsey. He determined her manner of death was homicide, resulting from blunt force trauma to her abdomen, and he also found trauma to her genital area. During Raye Dawn's trial Dr. Yacoub testified all of Kelsey's injures appeared recent.

On October 13, Raye Dawn and her family made Kelsey's funeral arrangements.

When OSBI questioned Porter about the case, he almost passed out. Porter told the OSBI that he had never seen Raye Dawn beat Kelsey or ever lose control with her. When asked by investigators whether Raye Dawn could beat Kelsey until she died, Porter said, "Never, never. She would never hurt her." [P.Tr. 288-89.] The agents asked this over and over again, and Porter always gave the same answer.

On October 17, six days after Kelsey's death, Porter's seven-year-old daughter, W.P., made statements about her father to her school counselor, Ms. Gibson. She said she heard Kelsey getting a spanking upstairs, and when she looked inside the doorway she found her father spanking Kelsey "real hard." [H.C. Ex. 3, " W.P. Interview."] W.P. said her dad spanked Kelsey until she threw up and it left her bottom "real red." [*Id.*] W.P. also said her dad was nice to Kelsey when people were around, but when no one was looking he would be mean to her. W.P. also told Ms. Gibson she saw her dad hit Kelsey's head up against a brick wall outside on the house.

Charges against Porter and Raye Dawn

On October 20 — nine days after Kelsey's death — Porter was charged with first-degree-murder.

Briggs, an endorsed witness by the State, and her daughters began e-mailing Porter in January 2006. Porter was sent dozens of e-mails. Briggs set up a meeting with Porter in January 2006. Subsequently, Briggs told Lincoln County D.A. Richard Smothermon the State could use Porter as a witness to prosecute Raye Dawn.

During this time, Briggs and her supporters relentlessly picketed the D.A.'s Office to pressure Smothermon into prosecuting Raye Dawn. Brigg's tactics were successful. On February 24, 2006, Raye Dawn was charged with enabling child abuse. That charge was amended on March 16, 2007, with alternative counts of enabling child abuse and child abuse.

Raye Dawn and Porter were divorced after Kelsey's death.

Six months after the first autopsy, the State had Kelsey's body exhumed for a second autopsy, which was conducted on April 25, 2006 by Dr. Dean Hawley with the Indiana University School of Medicine. Dr. Hawley determined Kelsey's body demonstrated injuries of forcible sexual assault.

On July 21, 2006, an Amended Information was filed against Porter charging him with first-degree murder or in the alternative child abuse or sexual abuse of a child. Five days

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before Porter was set to go to trial, he pled guilty to enabling child abuse in exchange for a 30-year prison sentence, and his agreement to testify against his ex-wife Raye Dawn. Porter's plea agreement allowed him to avoid a possible death sentence or life in prison if convicted after a trial, and it also allowed him to bypass the requirement to register as a sex offender upon his release.[9]

Raye Dawn's trial

Due to intense pretrial publicity Lincoln County Judge Paul Vassar granted a change of venue for Rae Dawn's trial. However it was more symbolic than substantive because he ordered it moved to Bristow — only 40 miles away — in Creek County where his brother served as judge.

Raye Dawn's trial began on July 9, 2007. Bristow is a small town of 4,500 and it's municipal building housed the small courtroom where witnesses, parties, lawyers, jurors, and the media constantly mixed with each other during the trial. Everyone, including the jurors, were able to mingle during meals because of the limited number of restaurants in town.

The prosecution's strategy at trial was to present evidence and testimony to try and establish a pattern of abuse against Kelsey that Raye Dawn had to be aware of. However, the State's "abuse theory" was not supported by the factual evidence presented because: (1) Kelsey sustained illnesses, bumps and bruises in the care of numerous individuals (Raye Dawn, Kathie, Miste and Gayla); (2) the medical evidence did not support the theory there was a pattern of abuse; and (3) the circumstances surrounding Kelsey's injuries, including the opinions of Kelsey's doctors, showed Raye Dawn's state of mind was of a mother constantly seeking medical treatment and answers for her daughter's injuries.

Porter was presented as a prosecution witness, even though D.A. Smothermon had stated on the record that he believed Porter murdered and sexually assaulted Kelsey. When Porter testified that Raye Dawn was "responsible" for Kelsey's death, and that he was only "indirectly" responsible, [P.Tr. at 252.] Smothermon again stated that he disagreed with Porter. [*Id*. 253-259] A key part of Porter's trial testimony is it supported he was home alone with Kelsey during the 30 minutes before he called Raye Dawn's mother to ask her what to do about Kelsey not breathing.

After an eight day the jury acquitted Raye Dawn of child abuse, but found her guilty of "enabling child abuse" — the same charge D.A. Smothermon allowed Porter to pled to. The jury recommended a 27-year sentence of imprisonment, which the judge imposed on September 10, 2007.

Raye Dawn appeals conviction

Raye Dawn Smith (Okla. DOC, April 1, 2011)

Ten days later, on September 20, Raye Dawn filed a motion for a new trial in the Creek County District Court. After her motion was denied on December 6, 2007 she filed her notice of intent to appeal to the Oklahoma Court of Criminal Appeal ("OCCA"). After years of legal maneuvering, on January 31, 2011 the OCCA affirmed Raye Dawn's conviction, and their ruling became final on May 1, 2011.

On April 27, 2012 Smith filed a timely writ of habeas corpus in federal court in Oklahoma City. Smith's federal petition asserts eight grounds for relief. Her brief in *Raye Dawn Smith v. Millicent Newton-Embry*, No. 5-12-cv-00473-C (USDC WDOK) was filed on September 28, 2012, and the page numbers below in brackets (p. __) refer to that brief.

Grounds 1 and 2 relate to Raye Dawn's constitutional right to due process was violated by the jury's inability to render a fair verdict.

Ground 1's assertion that a female juror identified as L.E. slept continuously throughout the trial is supported by affidavits executed by four jurors — in addition to an affidavit by L.E. herself in which she states:

> I served as a juror in the above-styled case. During the trial, I continually fell asleep and the woman next to me was told to nudge me to keep me awake. Several jurors nudged me off and on during the trial to keep me awake. Later, I discovered I was low on potassium. During the trial over the intervening weekend, my granddaughter took me to the Indian Hospital in Okeema. It was discovered that I was low on potassium, and my physician reminded my that I needed to remember to take my supplement. I have a prescription for potassium, but I never can remember to take it. I have been on potassium supplement and other medications since my open heart surgery in December 2006. (p. 34)

The Affidavit of Juror D. B. states:

> L.E., a fellow juror, slept continuously throughout the trial. I voiced concern to the judge's bailiff that L.E. was not staying awake and was not paying attention. I was told by the bailiff to nudge L.E. to keep her awake. I believe she should have been removed from the jury because she slept and did not pay attention. (p. 33)

Ground 2 asserts that because the jury was not properly sequestered during the trial and in various recesses, it was permitted to be exposed to extraneous media coverage and to conversations with the Briggs family, thereby receiving evidence outside of court. It states in part:

> There can be no doubt that Raye Dawn's trial was conducted in an atmosphere of a "Roman Holiday" for the news media. Certainly all that is implicit in the bacchanalia of a "Roman holiday" is directly out of phase with the serious and ordered decorum which is supposed to be the controlling environment of our American criminal trials. From the date of Kelsey's death on October 11, 2005, through the conclusion of Raye Dawn's sentencing, Oklahoma was saturated with publicity prejudicial to Raye Dawn. [] All of the newspapers and media coverage were critical of her, and whetted the public appetite for her conviction. [] Much that was never offered at trial, and would not have been admissible if offered, was published as fact by newspapers, the media and on the Kelsey's Purpose website. [] Briggs instituted a calculated campaign with the assistance of the media to have Raye Dawn arrested, charged and convicted, and her campaign was eminently successful. [] Despite a court imposed gag order and repeated violations [], the media onslaught by Briggs and her supporters was relentless. (pgs. 40-41)
>
> Moreover, while the court allowed for a change of venue, it declined to sequester the jury during Raye Dawn's trial, refused trial counsel's request for individual voir dire, and ultimately conducted a limited and superficial half-day voir dire despite the existing media circus. (p. 42)
>
> It would be "blinking reality" in Petitioner's [Raye Dawn's] case not to recognize the prejudice inherent in the continual association of jurors, news media and members of the Briggs family as they congregated at the front en-

Smith cont. on page 6

Smith cont. from page 5

> trance to the courthouse in the mornings, on breaks, at lunch time and at the end of the day. (pgs. 51-52)

Ground (Proposition) 5 that asserts "There Was Insufficient Evidence to Support the Verdict Reached by the Jury," states in part:

> There is absolutely no evidence in the record to prove beyond a reasonable doubt that Petitioner [Raye Dawn] permitted anyone to abuse Kelsey ... Under the above cited statute, it logically follows that for someone to enable abuse another must commit the abuse. Yet, no one has confessed and/or been convicted of abusing Kelsey. ... (pgs. 85-86)
>
> The State's strategy at trial was to present evidence and testimony that established a pattern of abuse against Kelsey that Raye Dawn had to be aware of. However, the State's "abuse theory" is not supported by the factual evidence for the following reasons: (1) Kelsey sustained illnesses, bumps and bruises in the care of numerous individuals (Raye Dawn, Kathie, Miste and Gayla); (2) the medical evidence does not support the theory that there was a pattern of abuse; and (3) the circumstances surrounding Kelsey's injuries, including the opinions of Kelsey's doctors, show that Raye Dawn's state of mind was not to enable abuse, but rather was a mother seeking medical treatment and answers for her daughter's injuries that were consistent with her doctor's explanations. (p. 86)
>
> The State primarily relied upon two injuries — the broken collarbone and the two leg fractures — to show that there was a pattern of abuse. However, the State's own witness, Dr. Griffin, testified that the collarbone is the most commonly broken bone in the human body. [] The Meeker Police Department investigated Kelsey's broken collarbone and did not file charges against Raye Dawn, ruling out abuse. [] DHS also ruled out abuse to the collarbone. [] Without more, a collarbone break from a child climbing out of her crib is not concerning at all. Such an injury is common to a child Kelsey's age. Raye Dawn's older sister, Janet Gragg, testified at trial that her child had suffered not one, but two broken collarbones. [] (pgs. 86-87)
>
> Second, the State relied on Kelsey's leg fractures as evidence of prior abuse. Trial evidence established that Kelsey was not with Raye Dawn on April 14 when she sprained her right ankle at the zoo. [] Kelsey was with her Aunt Miste. [] Miste and Ray Dawn took Kelsey to the emergency room that afternoon, and Kelsey was diagnosed with a sprained ankle. [] ... Miste testified that on April 16 she could not get Kelsey to sit down and Kelsey wanted to jump on the trampoline. [] ... On April 18, Kelsey was standing in a photo taken on the courthouse steps at Raye Dawn and Michael Porter's wedding. (p. 87)
>
> Witnesses testified at trial that Kelsey was walking on her right foot while at the shopping mall later that day (April 18). [] ... Four days later, when Briggs returned Kelsey to Raye Dawn, Kelsey was not walking. [] Briggs did not seek medical attention ... [] On April 25, Raye Dawn brought Kelsey to the doctor and she was diagnosed with bilateral tibia fractures consistent with her previous fall at the zoo, and then overcompensating on the left leg. [] ... (pgs. 87-88)
>
> ... She [Raye Dawn] was not with Kelsey during the initial sprain and was not with her during the subsequent fracture. The time line suggests that it is more likely that Kelsey was under Briggs' control when the fractures occurred. [] (pgs. 88-89)
>
> ...
>
> Additionally, if one follows the theory that Porter murdered Kelsey, which is what the evidence at trial suggested, Raye Dawn could not have known or reasonably should have known that Kelsey would be placed at risk by leaving her with Porter on October 11, 2005. Simply put, Raye Dawn could not have predicted Porter's homicidal tendencies, and no one else suspected him either. [] (p. 90)
>
> Briggs testified that she had no specific concerns about Porter. [] ... The background check performed by DHS on Michael Porter came back clean. [] (pgs. 90-91)
>
> ...
>
> In summary, the medical evidence indicates a number of reasons, aside from abuse, for the cause of Kelsey's failing health and injuries. Moreover, as evidenced in the trial transcript, Kelsey's health began to fail while Briggs had guardianship of Kelsey. ... Kelsey received injuries while with many different people on both sides of the family. ... Without a pattern of abuse, Raye Dawn cannot be guilty of enabling child abuse. (pgs. 93-94)
>
> Additionally, there is no medical evidence to support abuse by the hand of Raye Dawn or that she had knowledge of an abuser. Both the Meeker Police Department and DHS ruled out abuse as the cause of the collarbone break, and Dr. Griffin testified that it is the most commonly broken bone in the body. Second, Kelsey sprained her right ankle under the exclusive control and custody of her aunt, Miste Smith. Raye Dawn was at work. Third, the leg fractures date back to a time when Kelsey was under Briggs' control. (p. 94)
>
> In conclusion, for months, Raye Dawn was under the careful eye and watch of numerous individuals, state agencies and her all-intrusive ex-in-laws, the Briggs family. ... Raye Dawn did not abuse Kelsey and/or enable Porter's abuse of Kelsey, as no one suspected that Michael Porter, a man with two healthy children of his own, would abuse Kelsey. (p. 94)

The briefing in Smith's habeas case was completed on January 28, 2013, and she is awaiting the federal court's ruling.

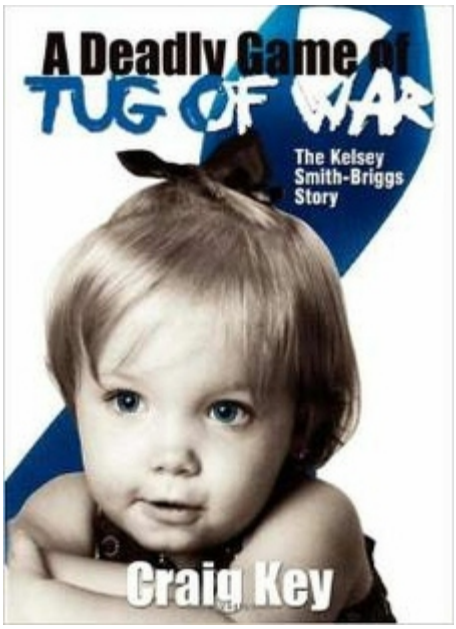
Raye Dawn's federal habeas corpus brief can be read online at, **www.justicedenied.org/cases/rayedawnsmithhabeasbrief9-28-12.pdf** .

Numerous documents related to Raye Dawn's case — including DHS reports, Arrest Charges, Witness affidavits, and other exhibits — can be read at, **www.freekelseysmom.com** .

A Facebook page about Raye Dawn's case is, **www.facebook.com/pages/Free-Innocent-Raye-Dawn-Smith-From-The LIES/370421349781** .

Websites about Raye Dawn's case are:
www.rayedawnsmith.com/

www.thetruthaboutkelsey.com/



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The Naked Truth Bound in Scorn: an Oklahoma story, by Judy Ortiz (2010), 610 pgs., is a true crime story of Raye Dawn Smith's case. The book is available from: **www.boundinscorn.com/** and, Amazon.com at: **www.amazon.com/The-Naked-Truth-Bound-Scorn/dp/1453846425/ref=as_sl_pd_tf_mfw?&linkCode=wey&tag=jodort-20**

Bashboard Bullies, by Jody Ortiz, 2011 (682 pgs. paperback, 717 pgs. Kindle ed.). This book is Judy Ortiz' follow-up to *The Naked Truth Bound in Scorn*. Available in softcover from: **www.boundinscorn.com/** , and, as Kindle E-book from Amazon.com at: **http://www.amazon.com/Bashboard-Bullies-Jody-Ortiz ebook/dp/B0080DCMNC**

Former Judge Craig Key's book about the case is, *A Deadly Game of Tug a War: The Kelsey Smith-Briggs Story*, (Morgan James Pub. Co. 2007) (145 pgs. h/c). It is available in softcover, hardcover, and Kindle E-book from Amazon.com at, **www.amazon.com/Deadly-Game-Tug-War-Craig/dp/1600373119/ref=tmm_pap_swatch_0?_encoding=UTF8&sr=&qid=**

Raye-Dawn Smith can be written at:
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Endnotes:

[1] This article is an edited version of the Statement Of The Facts (pgs. 14-28), and Proposition V (pgs. 84-94) in the "Brief In Support Of Petition For Writ Of Habeas Corpus By A Person In State Custody Pursuant To 28 U.S.C. § 2254 (filed Sept. 28, 2012), signed by Raye Dawn Smith's attorney Stephen Jones, in the case of *Raye Dawn Smith v. Millicent Newton-Embry*, No. 5-12-cv-00473-C (USDC WDOK). Mr. Jones; contact info is: Stephen Jones; Jones, Otjen & Davis; P.O. Box 472 Enid, Oklahoma 73702-0472.

[2] See, *State of Oklahoma v. Raymond Briggs*, CM-2001-143, District Court of Lincoln County, State of Oklahoma.

[3] See Craig Key, *A Deadly Game of Tug a War: The Kelsey Smith-Briggs Story*, note 4 at pp. xi, 40, 51-52 (Morgan James Pub. Co. 2007). Judge Craig Steven Key presided over the deprived child petition regarding Kelsey filed in Lincoln County, Case No. JD-2005-10. The trial court did not allow former Judge Key to testify as a fact witness on Ms. Smith's behalf during her criminal trial. The defendant offered a proffer at trial (O.R. 1105), and former Judge Key provided herein an affidavit of what his testimony would have been. See H.C. Ex.44, "Affidavit of Craig Key."

[4] See Key at pp. 43, 51-53, 64, 67, 70.

[5] See Key at p. 8.

[6] See Key at pp. 2, 41, 52.

[7] See Key at pp. 70-72.

[8] See Key at pp. 99-105.

[9] Porter was sentenced to 30 years in prison on August 3, 2007 — about two weeks after Raye Dawn was convicted. Porter acknowledged during his plea/sentencing hearing that he would have to serve at least 25-1/2 years in prison before he could be released. See, "Plea made in Kelsey's death," By Kim Morava, *Shawnee News-Star*, Aug. 03, 2007.

England Seeks To Restrict Who Is Eligible For Wrongful Conviction Compensation

England's Home Secretary Theresa May is **backing a change** to the legal standard a person must meet before qualifying for compensation after their conviction has been overturned and the charges dismissed.

Currently a person whose conviction has been overturned can qualify for compensation from the British government if they can prove "beyond reasonable doubt that there has been a miscarriage of justice." In 2013 Home Secretary May proposed changing the standard to a person qualifies "if the new or newly discovered fact shows beyond reasonable doubt that the person was innocent of the offence."

Theresa May, British Home secretary (ceasefiremagazine.co.

Proponents of the change to the wording said it was necessary to clarify who qualified for compensation. Opponents to the change argued that the new standard eliminated the presumption of innocence and created an impossibly high standard for anyone to meet who didn't have new scientific evidence of their innocence or who was convicted of a crime that didn't happen.

The changed definition is part of the Anti-Social Behaviour, Crime and Policing Bill that was passed in 2013 in the House of Commons (roughly equivalent to the House of Representatives in the U.S.). In January 2014 the Bill was rejected in the House of Lords (roughly equivalent to the Senate in the U.S.), in part due to the changed wording of who will qualify for compensation.

The Bill was returned to the House of Commons and to placate the opposition the new standard was amended to a person would have to prove: "if the new or newly discovered fact shows beyond reasonable doubt that the person did not commit the offence."

During debate in the House of Commons on February 4, 2014 opponents argued the change was merely semantics because a person would still have to prove their innocence, i.e., they "did not commit the offence."

Opponents also argued that under the proposed new standard the people would not have been compensated who were wrongly convicted in some of England's most outrageous wrongful conviction cases. John McDonnell (Hayes and Harlington, Labour) for a number of years chaired the campaign to free the **Guildford Four**. McDonnell **stated during debate** on the bill:

John McDonnell (Longtime chair of the campaign to free the Guildford Four)

> "Let us take the Birmingham Six as our example. As soon as the confessions were seen to be completely false, they were released on the basis that their prosecution was unsound. However, to gain compensation they will now have to go out and prove they "did not commit" or they were "innocent", whichever terminology is decided on."

Damian Green is the Minister for Policing and Criminal Justice, and a stanch advocate of the more restrictive wording. He didn't dispute the Birmingham Six (freed in 1991) and the Guildford Four (freed in 1989) wouldn't have been compensated under the proposed new compensation standard. However, **Green defended the change** by arguing: "In our view compensation should be paid only to applicants where it is shown beyond reasonable doubt that they did not commit the offence."

The fate of the Anti-Social Behaviour, Crime and Policing Bill and the change to the standard of who will qualify for compensation is yet to be decided. However, Home Secretary May's advocacy for the more restrictive standard mirrors the Home Office's staunch opposition to almost all compensation claims under the existing standard where an exonerated person must only prove he or she was the victim of a "miscarriage of justice."

Sources:
Clause 151 — Compensation for miscarriages of justice, Anti-Social Behaviour, Crime and Policing Bill, theyworkforyou.com (Programme) (No. 3), February 4, 2013

UK law: Renewed bid to make it difficult for those wrongfully convicted to claim compensation, *The Irish Times*, February 3, 2014

Visit Justice Denied's Facebook Page

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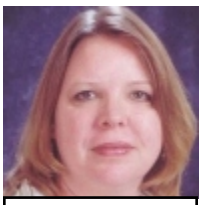
www.justicedenied.org

Charles Stobaugh Acquitted By Texas Appeals Court Of Murdering His Wife Who May Be Alive

The Texas Court of Appeals **has acquitted** Charles Stobaugh of murdering his wife Kathy Stobaugh in 2004 in Denton County, Texas. Stobaugh was convicted in 2011 and sentenced to 25-years in prison.

Charles and Katherine (Kathy) Stobaugh married in 1984 and they had two children. In 1991 they bought a 105 acre farm outside Sanger, Texas, in Denton County. In May 2004 Charles and Kathy separated, she filed for divorce, she took half the money (about $39,000) they had in a joint bank account, she moved into a rental house in Sanger, and she got a job as a kindergarten teacher. There was no court ordered visitation, and the couple's 16-year-old daughter Charee, who drove, and their 13-year-old son Tommy, freely traveled between the farm and their mom's rental house that were less than ten minutes apart. Charles and Kathy's separation was amicable. Kathy kept a key to the farm house, Charles continued to service her car by changing the oil, and the entire family spent the July 4th 2004 holiday at the home of Charles' mother, they spent Tommy's 13th birthday together, and in August 2004 they went to the Missouri State Fair together.



Kathy Stobaugh (Family)

Kathy told several friends on December 27 or 28, 2004 that Charles had agreed to the divorce, and although he wanted to sell everything and split the proceeds, he agreed with her the farm shouldn't be sold because Tommy loved it, while other community property would be sold and split down the middle.

Kathy was last seen or talked with by her family or friends on the evening of December 29, 2004. After she was reported missing on January 3, 2005 the police investigation discovered she had a "secret" boyfriend named Rocky who she had seen numerous times, that she made three phone calls to him the evening of December 28 -- the day before she was last seen in Sanger — and that she had been planning a trip to Florida. Although none of Kathy's family or friends knew about her relationship with Rocky, he was not investigated as a possible suspect. It was also discovered that a number of unknown men called Kathy's rental house when her daughter was there, and that she would take the phone in the bedroom to talk with them privately. None of those men were investigated as a possible suspect after she went missing.

No evidence of violence or a struggle was found at Kathy's rental house or the farm, and nothing suspicious was found in either her or Stobaugh's vehicle. Neither did the police investigation discover any evidence she was dead, only that she hadn't contacted her family and friends since the evening of December 29, 2004.

Kathy's disappearance was featured on *Dateline NBC* in May 2007. In the program her family said they didn't think investigators were doing enough to solve the case.

Although there was no direct evidence Kathy was dead or Stobaugh had killed her, he was indicted in November 2009 for murdering her. After Stobaugh's indictment the police discovered that Kathy's boyfriend Rocky only had an alibi up to 9 p.m. on the evening of her disappearance, but he wasn't investigated as a suspect.

During Stobaugh's trial that began in January 2011 the prosecution's case was based on circumstantial evidence and inferences that Kathy must be dead because she was last seen or talked with by her family and friends on December 29, 2004. The prosecution claimed that because of their pending divorce he had motive, and because he regularly saw her he had the opportunity to kill her. Although the prosecution introduced evidence Stobaugh had made several false and inconsistent statements, they didn't implicate him in her disappearance from Sanger.

Stobaugh's defense was the prosecution didn't present any evidence his wife was dead, no evidence he had harmed her, and no evidence he had committed any crime related to his wife. Stobaugh lawyer argued to the jury the prosecution case wasn't based on evidence, but merely the suspicion he killed her since she hadn't been seen in Sanger since December 2004. Stobaugh's lawyer also brought up Kathy's "secret lover" Rocky and the other men in her life that hadn't been investigated as suspects.

Charles Stobaugh (TX DOC)

The **jury convicted Stobaugh** of murder on February 16, 2011, and two days later the judge sentenced him to 25 years in prison.

Stobaugh appealed. On January 23, 2014 Texas' Second District Court of Appeals overturned Stobaugh's conviction on the basis the prosecution had presented insufficient evidence to support his conviction, and ordered his acquittal. In *Charles Stobaugh v. Texas*, No. 02-11-00157-CR (2nd Dist. Ct. of Appeals, 1-23-2014) **the Court ruled**:

Charles Stobaugh released from the Denton County Jail with his son Tommy (L) and daughter Charee (L). (David Minton - *Denton Record-Chronicle*)

> "... there is no body, no murder weapon, no witnesses, no blood or DNA evidence; there are no fibers, hairs, or any type of forensic evidence establishing that a murder occurred; and there is no confession or directly incriminatory statement by Charles. Although the evidence viewed in the light most favorable to the State does establish a possible motive for Charles to kill Kathy and a definite opportunity to do so, Charles's motive and opportunity to murder cannot alone establish that a murder has occurred, cannot link Charles to a murder without evidence that there was a murder, and certainly cannot establish the *mens rea* for murder. In the absence of evidence of a murder, Charles's motive for murder and opportunity to murder are meaningless. [*Id*. at 167]
>
> Because no evidence exists in the record before us that a murder has occurred, Charles's utterance of false statements or inconsistent statements does not, by itself, create an inference that a murder or any wrongful conduct has occurred. [*Id*. at 168]
>
> ... because none of the evidence established that the offense (murder) had occurred, all of the rest of the State's circumstantial evidence that "was perhaps suspicious" but did not establish the commission of the offense, was mere "suspicion linked to other suspicion." [*Id*. at 169]
>
> Having sustained Charles's first point challenging the sufficiency of the evidence to support his conviction, we reverse the trial court's judgment and render a judgment of acquittal. [*Id*. at 176] (Underlining added to original text.)

Stobaugh cont. on p. 9

"Judges think of the judiciary as something that belongs to them" — Attorney Alan Lud

From 1976 to 1983 Argentina's anti-communist military dictatorship engaged in what is known as the "Dirty War." Between 30,000 and 45,000 men and women who expressed opposition to the dictatorship were disappeared -- kidnapped in the middle of the night — never to be publicly seen again. In some cases entire families were kidnapped. The disappeared people were brutally tortured, and it is known that some of them were taken up in airplanes and thrown out alive over the Atlantic Ocean.

During the dictatorship years many hundreds of infants and very young children were kidnapped by the military and "adopted" by high military personal, politicians, and judges. Women who were pregnant when taken into custody had their baby snatched from them after it was born.

In 1977 grandmothers of kidnapped children founded **Grandmothers of Plaza de Mayo** (A companion organization founded was **Mothers of Plaza de Mayo**.) Members openly defied retaliation by the dictatorship by protesting and trying to locate kidnapped children and return them to their families. Thirty-seven years after it was founded, members wearing their trademark white head scarves continue to gather every Thursday at 3:30 p.m. and peacefully protest by marching around the Plaza de Mayo that is located directly in front of the President's residence in Buenos Aires.

During the 37 years since its founding the Grandmothers of Plaza de Mayo has been able to locate 87 kidnapped grandchildren. The task has been difficult because not only are all the kidnapped children now adults, but

Grandmothers of Plaza de Mayo protesting in Buenos Aires (www.abuelas.org.ar)

the original identify of the children was wiped clean in many cases. To overcome that obstacle, DNA testing is being used to determine the true identity of persons who are likely to have been snatched from their parents.

Alan Lud is a human rights lawyer in Buenos Aires and lead counsel for Grandmothers of Plaza de Mayo. He is also an appointed substitute judge for the Criminal Cassation Court. He was recently interviewed by the *Buenos Aires Herald*. **Part of Lud's interview** follows with the questions in **Bold**:

There are some sectors that suggest plea bargains to exchange information about the disappeared for a lesser sentence. Would the Grandmothers support this idea?

Historically, they have not. It's difficult to express how this possibility affects them. Some Grandmothers say: "I couldn't look my grandchild in his or her eyes if I had negotiated impunity for his appropriators, who might also have known what happened to his parents." ... I find the proposal difficult in this particular context.

Why?

Those who are taken to court are members of the military or the security forces. They are not ordinary people who turned up there by chance. ... They have never acknowledged the systematic plan to snatch babies. ... *There is a huge pact of silence among the repressors and they prefer not to talk in order to avoid being ousted from their circles.*

Next week, a trial against former judges for their role during the dictatorship will begin in Mendoza. Is there a need to purify the judiciary?

It's clear that the judiciary was an accomplice in state terrorism. There are few magistrates these days who were judges during the military regime but there are many who began their careers then. *We cannot expect the judiciary to purify itself, the boost for reform must come from outside*. Last year, there were attempts to reform the judiciary but they were quashed by corporativism and the Supreme Court.

The Supreme Court created three commissions of criminal judges to propose changes. Can that be enough?

No. *We cannot expect a beneficial reform from the judges. They think of their interests. They think of the judiciary as something that belongs to them, not as a state branch that has to guarantee the citizens' rights. The best reform proposals have always been quashed by judges*.


Alan Lud, human rights attorney (Buenos Aires Herald)

Click her to read the complete interview of attorney Alan Lud by Luciana Bertoia

Click her to go to the Grandmothers of Plaza de Mayo website.

Sources:

"We cannot expect judges to reform the judiciary," Interview of Alan Lud by Luciana Bertoia, *Buenos Aires Herald* (Buenos Aires, Argentina), February 9, 2014

Grandmothers of Plaza de Mayo website, www.abuelas.org.ar/english/history.htm

Stobaugh cont. from p. 8

The appeals court ordered Stobaugh released on $25,000 bond while the State decides if it will appeal their ruling to the Texas Court of Criminal Appeals. However the Court left the conditions of Stobaugh's release to be decided by the Denton County District Court. If the appeals court's ruling isn't appealed then Stobaugh's indictment will be dismissed and his retrial for murder barred by double jeopardy.

Seven days after Stobaugh's acquittal a bond hearing was held and District Court Judge Bruce McFarling — who presided over Stobaugh's trial in 2011 — **ordered his release** from the Denton County Jail on the conditions he wear a GPS tracking device, and that he not leave Denton, Tarrant or Cooke counties without permission pending either the State's appeal or dismissal of his indictment. Stobaugh was accompanied by his son Tommy and daughter Charee as he left the jail after 2 years and 50 weeks of incarceration.

Click here to read the appeals court's 176-page ruling in *Charles Stobaugh v. Texas*, No. 02-11-00157-CR (2nd Dist. Ct. of Appeals, 1-23-2014).

Source:

Charles Stobaugh v. Texas, No. 02-11-00157-CR (2nd Dist. Ct. of Appeals, 1-23-2014) (Opinion)

Charles Stobaugh v. Texas, No. 02-11-00157-cr (2nd dist. ct. of appeals, 1-23-2014) (Judgment)

Stobaugh conviction overturned, *Denton Record Chronicle* (Denton, TX), January 27, 2014

Walking free: Stobaugh released after three years in prison, *Denton Record-Chronicle* (Denton, TX), January 30, 2014

Denton County jury finds Charles Stobaugh guilty of murdering estranged wife, *The Dallas Morning News*, February 17, 2011

Sture Bergwall Released From 23 Years Imprisonment After 8 Murder Convictions Overturned

Sture Bergwall was described for almost two decades as Sweden's 'Hannibal Lecter' before reinvestigation of his cases discovered he is innocent of the eight murders he was convicted of committing. He has been released after all his convictions were overturned.

In December 1990 Bergwall held a family hostage while his accomplice forced the father to take out about $37,000 from his bank.[fn.1] Although Bergwall brandished a knife no family member was harmed during the incident. Bergwall was arrested and prosecuted for serious robbery. After his conviction the judge took into consideration that Bergwall had been diagnosed with a personality disorder, and in June 1991 he was sentenced to inpatient mental care. Bergwall was incarcerated in the secure psychiatric unit of the Säter mental hospital in Säter, Sweden.

Immediately upon his incarceration the 41-year-old Bergwall was administered large quantities of psychotropic drugs, and he would remain in a constant drugged state for the next ten years — until 2001.

Bergwall began using the name Thomas Quick at Säter and started confessing to heinous crimes that he said he committed between 1976 and 1988. Bergwall chose Thomas Quick because Quick was his mother's maiden name, and he said his first victim's name was Thomas. Bergwall told hospital and police authorities tales of stabbings, stranglings, rape, incest, and cannibalism involving more than thirty victims in Sweden, Norway, Denmark and Finland.

Bergwall was eventually tried and convicted after six separate trials of murdering eight people in Sweden — five men and three women. His first trial was in 1994, and his last was in 2001. During all of Bergwall's trials the same prosecutor presented the State's case, the same police forensic inspector testified, and the only substantive

Säter mental hospital in Säter, Sweden

Sture Bergwall after his release. (Facebook)

evidence of his guilt were his confessions, because no physical, forensic, or eyewitness evidence linked him to any of the crimes.

Bergwall's trials were national news in Sweden. The reporter for Sweden's largest circulation tabloid, *Aftonbladet*, **wrote during his first trial** comparing his appearance as "a pale and unremarkable man in jeans with a shiny bald head"—with his accused actions: "The man is a serial killer, pedophile, necrophiliac, cannibal and sadist. He is very, very sick."

None of Bergwall's convictions were appealed, so weaknesses in the prosecution's case, such as inconsistencies between his confessions and the crimes, were not reviewed before his convictions became final.

After his 2001 trial Bergwall refused to talk with anyone about his self-confessed crimes. Bergwall's silence roughly coincided with him no longer being administered psychotropic drugs.

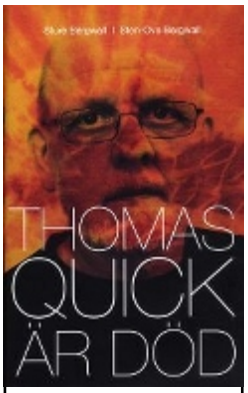
After seven years of silence, in 2008 Bergwall agreed to a visit from a Swedish filmmaker called Hannes Råstam. During their third meeting Råstam pointed out to Bergwall that in police videos of Bergwall talking about his confessed crimes he seemed drugged up and he didn't seem to know any important details himself. The next time they met Bergwall **told Råstam**, "I haven't committed any of the murders I've been convicted of, and none of the murders I've confessed to, either. That's the way it is."

In Råstam's documentary broadcast on Swedish television in December 2008 Bergwall recanted his confessions. Bergwall claimed they were a combination of being heavily medicated and his desire for attention. He explained that he obtained information about the people in his confessions from newspapers and magazines in the local library. Bergwall's recantation wasn't surprising to many people in Sweden who for years had doubted he committed the crimes he confessed to under his alias of Thomas Quick. Doubters of his guilt included the parents of some of his alleged victims. A book had even been published by one skeptic **that was called** *Thomas Quick: Mythomaniac*.

In 2009 Bergwall submitted a petition challenging his 1997 conviction. and he eventually filed petitions challenging all eight of his murder convictions. Reinvestigation of the cases resulted in disclosure that four of the "murders" may not even have been crimes — and two of the people may not even be dead. Between September 2010 and July 2013 Bergwall was acquitted or the charges were dismissed in all eight murder cases. It was official. Scandinavia's most notorious serial killer was nothing but the figment of "Thomas Quick's" drug fueled imagination.

Swedish legal expert Sven-Erik Alhem **called Bergwall's case** Sweden's "greatest miscarriage of justice in modern times."

Bergwall's first-person account of how he came to confess to more than two dozen murders he didn't commit is in *Thomas Quick is Dead*, the book he wrote with his brother Sten-Ove that was published in 2011 in Sweden.



Thomas Quick Is Dead (2011) by Sture Bergwall and Sten-Ove

Because of his known mental issues he wasn't immediately released after his exoneration pending a review of his condition.

In November 2013 the Swedish government **appointed a special investigator** to review Bergwall's case. It was announced the "investigation will not lay blame on individuals involved in the case but rather seek to understand what went wrong," and the investigator is 'tasked with going over the actions of legal and health care officials who convicted and cared for Bergwall during his court-ordered stay at a psychiatric hospital." The mother of a man Bergwall confessed to murdering told Swedish Radio **she wanted the investigation** to identify the officials responsible for the failure of justice in Bergwall's case, and "I think it is absolutely horrible that the authorities can do so much wrong and yet not have to answer for it. All the time has been devoted to Thomas Quick, instead of following the real killers."

On March 19, 2014 the administrative court in Falun **issued its ruling** that although he continues to suffer from a "personality disorder" it didn't require his confinement, and that "the forensic psychiatric care of Sture Bergwall shall continue and change from closed to open care." The 64-year-old Bergwall was released later that day after 23 years at the Säter state hospital.

Bergwall cont. on page 11

Leila M. Dekker Found Guilty Of Improper Medical Conduct After Her Acquittal In Two Criminal Prosecutions

After being acquitted in two separate criminal prosecutions, Dr. Leila Maria Dekker has been found guilty by the Western Australia State Administrative Tribunal of improper conduct for failing to stop and render medical assistance to a woman who died at the scene of a traffic accident in April 2002.

Dr. Leila Dekker graduated with **a medical degree** from the Universidade Federal Fluminense in Rio de Janeiro, Brazil and became a doctor in 1974. She speaks Portuguese, Spanish, French, and English. She immigrated to Australia and became registered as specialist in diagnostic radiology in 1996. In the spring of 2002 Dr. Dekker was living in the area of Karratha, a city of about 16,000 that is 950 miles north of Perth in Western Australia. She was working for the Kinetic Health Group in Karratha.

Dekker's life changed forever on April 27, 2002 when she went to the garbage dump outside the nearby town of Roebourne. At about 6:30 p.m. she was returning from a trip to the dump that is on Cherratta Road. Dekker was stopped where Cherratta Road makes a 90 degree turn at a T-intersection, when an oncoming vehicle on the wrong side of the road began veering toward her. (Australian's drive on the left side of the road.) To avoid a collision Dekker pulled her Toyota pickup forward into the brush across the road and the oncoming vehicle passed behind her. Although Dekker heard what sounded like a crash, she couldn't see anything because it was dark and there was no street lighting. (Sunset was an hour earlier at about 5:30 p.m.) Dekker had no flashlight, no cell phone, no medical supplies or even a first-aid kit with her, so she immediately drove to the Roebourne police station that was less than a 1/4 mile away and reported the incident. Police officers promptly went to the intersection and found the vehicle had run off the road and rolled over. The driver, Marshall Bobby, wasn't seriously injured, but his passenger Josie Tumbler was thrown from the Land Rover. She died at the scene from severe internal injuries.

When interviewed Dekker **told the police**, "as a medical doctor I know there would be a bad injury and I know it was a waste of time, so I go to police so they can get help." (JD Note: As a non-native English speaker Dekker apparently mixed her diction.) She later **made a statement** that immediately "After the near miss incident on 27 April 2002 in Roebourne, I was in a state of shock. I was terrified as I thought I had almost been killed."

Dekker was charged in the Karratha District Court with dangerous driving causing death.

During her trial in December 2005 the prosecution's opening statement and closing argument were based on the testimony of the wrecked vehicle's driver that Dekker pulled out in front of him and the evasive action he took resulted in him running off the road and rolling over. Police officers at the scene and officers who later investigated the incident, testified that tire marks left by the crashed vehicle began some distance before where it left the road. There was also police testimony about the deficient condition of the crashed vehicle's tires, steering, and brakes, that it lack of seat belts, and that its front seat could tip because it wasn't securely fastened.

Cherratta Rd. intersection where Leila Dekker barely missed an out of control vehicle that crashed. (Google Streetview)

Dekker testified in her defense she was stopped at the intersection when the oncoming vehicle was on the wrong side of the road and headed to broadside her car on the driver's side, so she pulled out to avoid a collision. Dekker's passenger, a neighbor who accompanied her to the dump, also testified that Dekker was stopped at the intersection when the oncoming vehicle going upwards of 45 m.p.h. was on the wrong side of the road and on a collision course with Dekker's Toyota.

Map of crash location on Cherratta Rd and the location of the police station less than a 1/4 mile away in Roebourne, Western Australia. (Google Earth)

After Dekker was convicted by a jury she was sentenced to pay a fine of AUS$10,000 and her driver's license was suspended for two years.

Although she immediately instructed her lawyer to file an appeal, it wasn't done. She changed lawyers several times who she also talked with about filing an appeal.

In the Roebourne Magistrates Court Dekker was separately charged with dangerous driving causing bodily harm.

During her trial in February 2008 Dekker presented the defense that she pulled into the road to avoid a collision with the oncoming vehicle. However unlike her 2005 trial in the District Court, Dekker's defense was bolstered by Robert Davey, who is considered Western Australia's foremost expert in traffic crash examination and reconstruction. Davey testified that photos taken of tire marks on the road showed that the oncoming vehicle had reached 'critical

Dekker cont. on page 12

Bergwall cont. from page 10

Bergwall's blog translated into English is, **www.sturebergwallsblogg.wordpress.com** .

Bergwall's Facebook page is, **www.facebook.com/stureragnarbergwall** .

Bergwall's Twitter page is, **www.twitter.com/StureBergwall**.

Endnote:

1. The amount was SEK245,000. The value of the Swedish Kroner was .15121 to the U.S. Dollar on Nov. 16, 1995, and .15422 to the U.S. Dollar on April 9, 2014. So the Kroner's longterm value appears to be fairly stable related to the U.S. Dollar. Nov. 16, 1995 is the oldest historical currency date available on the webpage **www.xe.com/currencytables**.

Sources:

Sture Bergwall, Wikipedia.org (Swedish webpage translated into English by Google Translate)

Swedish man once considered serial killer is FREED after it's revealed his eight murder convictions are based on false confessions, *Daily Mail* (London), March 20, 2014

Wrongly Convicted Swedish 'Hannibal Lecter' To Sue For Damages, *BusinessInsider.com*, March 21, 2014

The Serial Killer Has Second Thoughts: The Confessions of Thomas Quick, *GQ magazine*, August 2013

Swedish 'Serial killer' Released After Convictions Overturned, AFP Story, March 19, 2014, NTD.TV

Special investigator named for 'Quick' case, Radio Sweden, Nov. 26, 2013

"Thomas Quick is Dead," by Sture Bergwall and Sten-Ove (2011)

Dekker cont. from page 11

speed' and was 'out of control' some distance before the tire marks depicted on a *drawing* introduced as evidence during Dekker's District Court trial. Police Officer Troy Pillage, a major crash investigator testified in agreement with Davey's conclusion. That testimony of when the oncoming vehicle was out of control corroborated the testimony of Dekker and her passenger that she pulled into the road at the T-intersection to avoid a collision. Dekker was acquitted.

Dekker's lawyer filed a notice of appeal for her 2005 conviction on June 18, 2008 -- 2 years and 5 months after time expired for her to file an appeal. Because her notice of appeal was filed late, it was accompanied by an application for extension of time within which she could appeal. Dekker's appeal claimed her conviction was a miscarriage of justice based on new evidence discovered after her trial and favorable evidence that wasn't disclosed by the prosecution. Her new evidence consisted of affidavits of by Robert Davey, her trial counsel, and the trial prosecutor. The State's counsel conceded in its written response Davey's expert evidence was 'new evidence.'

The Western Australia Court of Appeals held a hearing on February 17, 2009 during which Dekker's lawyer offered a second ground for her appeal: Her conviction was a miscarriage of justice because the prosecution introduced insufficient evidence at trial to support her conviction beyond a reasonable doubt.

On April 3, 2009 the appeals court issued its written ruling in *Dekker v The State of Western Australia* [2009] WASCA 72. The court granted Dekker leave to file her appeal late, and quashed her conviction on the basis the prosecution failed to introduce sufficient evidence at trial to justify her conviction. Justice Miller **stated in his ruling**:

> … the prosecution case was predicated on Mr Bobby having control of his vehicle at all relevant times and having driven around the back of the appellant's vehicle. This was not what the evidence led by the prosecution established. It established that Mr Bobby's vehicle was out of control from a point near the 60 km per hour sign, when it was observed by Mr Abell on the incorrect side of the road. On the prosecution case, the appellant's vehicle was then stationary at the intersection. [¶172]
>
> It is unnecessary and inappropriate to conjecture why Mr Bobby may have lost control of his vehicle. But lose control he did, and at a time when (on the prosecution case) the appellant's vehicle was stationary at the intersection. [¶173]
>
> The prosecution case proceeded on an incorrect thesis. The evidence did not support what the prosecutor said in opening and closing. [¶174]
>
> In the present case, the evidence was insufficient to justify a conviction. [¶179]
>
> Because there would be a miscarriage of justice if an extension of time within which to appeal was not granted, I would extend time for the filing of the notice of appeal. [¶181]
>
> I would allow the appeal on ground 2 and quash the conviction of the appellant. [¶182]

The Court also ruled the prosecution wouldn't be allowed to retry Dekker, and ordered remittance of what she had paid on her $10,000 fine within 28 days.

The Court's ruling makes it clear the jury convicted Dekker of causing the accident based on the prosecution's opening statement and its closing argument, while disregarding the factual evidence of the prosecution's police witnesses that established the oncoming vehicle went out of control while Dekker's Toyota was stationary at the intersection.

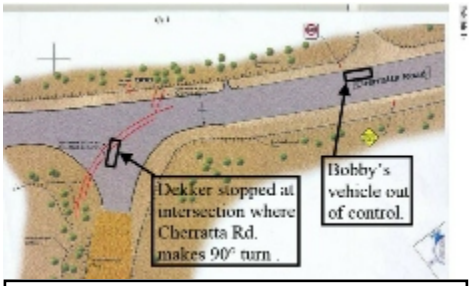
Since the court found the prosecution introduced insufficient evidence at trial, it didn't harm Dekker that the court rejected the exculpatory expert evidence by Davey was "fresh" evidence, because it "could, with reasonable diligence, have been discovered" at the time of trial by her counsel.

Thus seven years after the traffic incident Dekker had been cleared of both her criminal prosecutions.

The irony of Dekker's multiple prosecutions was the evidence by the police officers and Davey supported that the driver of the wrecked Land Rover -- Marshall Bobby -- was the person who actually should have been tried for the crimes Dekker was charged with committing. The death of Bobby's passenger Josie Tumbler was apparently caused by his reckless driving that included crashing after trying to take a sharp 90 degree corner at more than 40 m.p.h.

Dekker's criminal cases were resolved, but her ordeal wasn't over.

In July 2006 the Medical Board of Western Australia **filed a complaint** against Dekker



Prosecution Exhibit 1 (2005 trial) showing the location of where Dekker's vehicle was at the intersection when Marshall Bobby's vehicle was out of control.

with the Western Australia State Administrative Tribunal under Section 13(2) of the Medical Act 1894(WA) (Medical Act) based on her being a "Medical practioner convicted of [a criminal] offence."

After the Court of Appeals quashed her conviction the Medical Board amended their complaint with the Tribunal **to allege she** committed 'infamous or improper conduct in a professional respect' in violation of Medical Act Section 13(1)(a), as a result of her failure to stop and render assistance after the 'near miss' incident in Roebourne on April 27, 2002.

Dekker and the Medical Board participated on August 6, 2009 in a compulsory conference with a Tribunal administrative member. The conference resulted in an agreed to statement of facts and exhibits. The facts detailed that Dekker had no responsibility for the vehicle crash, and that after leaving the scene she immediately reported the incident in person to the police. Dekker argued that based on the facts of the incident she had acted responsibly, while the Medical Board argued the facts supported she violated the Medical Act. On August 8, 2009 the Administrative Tribunal **member issued** his findings that Dekker should be reprimanded and pay the Medical Board $35,000 to cover its costs of pursuing its complaint.

Dekker appealed. On November 14, 2013, more than eleven years after the accident, a four-judge panel of the Administrative Tribunal **issued its decision** in *Medical Board of Australia and Dekker* [2013] WASAT 182:

> The practitioner's conduct in failing to stop and render assistance immediately after the 'near miss' incident involving her vehicle and a second vehicle on 27 April 2002, but instead leaving the scene of the accident and reporting the incident and the possibility that the second vehicle had driven off the road to the police, would reasonably be regarded as improper by professional col-

Dekker cont. on page 13

Dekker cont. from page 12

> leagues of good repute and competency. Although the practitioner's conduct did not occur in medical practice, there is a sufficiently close link or nexus between her conduct and the profession of medicine for the conduct to be 'in a professional respect'. The practitioner is therefore guilty of 'improper conduct in a professional respect' within the meaning of s 13(1)(a) of the Medical Act.

The Administrative Tribunal rejected that Dekker's conduct was "infamous" because she immediately reported the incident to the police. The Tribunal did not consider there was no evidence Dekker could have done anything to have saved the injured woman from dying at the crash scene from her extensive internal injuries. A hearing to determine Dekker's penalty and costs was set for February 2014.

There was considerable reaction by medical practitioner's in Western Australia criticizing the ruling in Dekker's case. It set the precedent that no doctor can leave the scene of a possible injury accident — even if they have no way to meaningfully assist an injured person — without facing the possibility of jeopardizing their medical career. One criticism was by Dr Sara Bird **who commented**: "I think this is a very unreasonable decision. It is an extraordinary and an unrealistic expectation to place on doctors."

Click here to read the appeals courts ruling in *Dekker v The State of Western Australia* [2009] WASCA 72.

Click here to read the ruling in *Medical Board of Australia and Dekker* [2013] WASAT 182.

Sources:

Dekker v The State of Western Aust. [2009] WASCA 72

Medical Board of Australia and Dekker [2013] WASAT 182 (11-14-2013]

Medical Board Of Western Australia (Applicant), Leila Dekker (Respondent); SAT VR:127/2006 (6-8-2009)

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Dr Leila Maria Dekker (Health Practitioner), Australian Health Practitioner Regulation Agency, www.ahpra.gov.au (last visisted 1-10-2014)

Crash doctor decision 'unreasonable', By Paul Smith, Australian Doctor, December 3, 2013

Leila Maria Dekker (Reg. No. 10635), Western Australian Government Gazette, List of Medical Practitioners Registered 30 June 2008, State of Western Australia Governent Printer, July 31, 2002

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Western Australia State Administrative Tribunal, Public Register (2005-2014)

Utah Supreme Court Acquits Barton Bagnes For Showing His Sesame Street Diaper To Two Girls

Barton Jason Bagnes **has been acquitted** by the Utah Supreme Court of charges related to showing the Sesame Street diaper he was wearing to two girls in White City, Utah. Bagnes had been sentenced to 15 years in prison. Under the Court's ruling Bagnes' activity was unusual but it wasn't criminal.

White City is about 15 miles south of Salt Lake City. Bagnes was 31 and living with his parents when in May 2009 he was walking in a White City neighborhood sucking on a candy binky. Bagnes is a small man, 5'-3" tall and weighing 100 pounds. Two nine-year-old girl's riding their bikes saw Bagnes and greeted him. One of the girls saw the top of a diaper he was wearing, and asked him about it.

Bagnes was wearing shorts, which he partially lowered to show the girls the diaper, which had an image of the Sesame Street character Elmo on it. The diaper completely covered Bagnes' pubic area, and showed less skin than a skimpy swimsuit. The girls had found a paper airplane made from a piece of paper containing images of children and adolescents wearing diapers. Bagnes told the girls he made the airplane and they asked him for another copy of the flyer. The flyer included the address for two websites that weren't pornographic.

Elmo, the Sesame Street character shown on Barton Bagnes' diaper

One of the girls took the flyers home, where her mother found them several days later. The mother called the police to report finding the flyer.

The mother again called the police when several days later her daughter told her that she and her friend again saw Bagnes. Bagnes was arrested and charged with two counts of lewdness involving a child for showing his diaper to the girls, and one count of sexual exploitation of a minor for showing the girls the flyer depicting children and adolescents wearing diapers.

During Bagnes' trial in July 2010 the prosecution didn't introduce any evidence he exposed himself to the two girls, or any evidence the girls had looked at the two non-pornographic websites listed on Bagnes' flyer. No evidence was presented the two girls who had approached Bagnes felt afraid or threatened by him.

Barton Jason Bagnes

Bagnes testified in his defense that he had an incontinence problem since childhood and he had been ridiculed because of it. He also testified he showed children his diaper to let them know adults "do indeed wear diapers," and to help children who might be struggling with incontinence or similar problems to be open about it. He acknowledged showing part of his diaper to the two girls, but he denied completely pulling down his shorts. Since Bagnes testified the prosecution was allowed to cross-examine him about his lewdness conviction in 2000 for showing his diaper to children.

The jury convicted Bagnes of all charges.

During his sentencing hearing in September 2010 Bagnes told Judge Terry Christiansen that kids who have an incontinence problem aren't allowed to be open about it. **Bagnes acknowledged** his approach to public education about diaper wearing "clearly wasn't working," but "I couldn't think of any other way that would work."

Bagnes' lawyer Kimberly Clark argued that he should be sentenced to no more than a year in jail and undergo court ordered mental health treatment.

Judge Christiansen followed the prosecutor's recommendation and ordered Bagnes to serve a sentence of up to 15 years in prison on his sexual exploitation of a minor conviction, and up to five years on his two convictions of lewdness involving a child. He ordered the sentences to be served concurrently, for a total sentence of up to 15 years in prison.

Bagnes appealed. On February 14, 2014 the Utah Supreme Court unanimously overturned his convictions on the basis "the evidence was insufficient to sustain convictions for lewdness or sexual exploitation of a minor." In *State of Utah v. Barton Jason Bagnes*, 2014 UT 4 (UT Sup Ct., 2-14 2014) **the Court stated**:

> ¶1 Bagnes's conduct was strange, and socially inappropriate. But it did not fall to the level of criminal lewdness or sexual exploitation under the criminal defi-

Bagnes cont. on page 14

Bagnes cont. from page 13

nition of those terms as clarified below.

Regarding Bagnes' lewdness convictions **the Court stated**:

> ¶26 A diaper is one of the most opaque, bulky articles of clothing one could imagine wearing as an undergarment. If virtual exposure is the question, we cannot deem the public display of a diaper to qualify unless we are prepared to also criminalize a range of other clothing that is much less opaque and far less obscuring (such as certain swimwear, or even athletic or workout attire). The difference between the former and the latter is social acceptability—not lasciviousness in the form of virtual exposure. And the statutory definition of the crime has nothing to do with the former and only to do with the latter.
>
> ¶27 ... the flyers are insufficient to transform a mere oddity (display of an adult diaper) into a criminal act of lewdness (by virtual exposure).
>
> ¶29 Finding no evidence of lascivious, virtual exposure, we reverse Bagnes's convictions for lewdness involving a child.

Regarding Bagnes' sexual exploitation of a minor conviction **the Court stated**:

> ¶36 Our Victorian past is well behind us. We no longer live in a society where our style conventions and social mores clamor for head-to-toe cover-up. The opposite is closer to the truth. Right or wrong, our society roundly tolerates—and often encourages—ever-less sartorial coverage of the human body. Whether at the gym, the pool, the beach, or even the public square, we routinely encounter those who would flaunt or manifest their (heretofore) private parts, including their pubic regions. And depictions of these sorts of "exhibitions" are peppered across the pages of our mainstream magazines, catalogs, newspapers, etc. (in print and online).
>
> ¶37 Purveyors of this material would hardly expect to face criminal charges for child pornography or sexual exploitation. And if they were so charged, they could undoubtedly maintain strong constitutional defenses under the Free Speech and Due Process Clauses.
>
> ¶44 We reverse Bagnes's sexual exploitation conviction ... Bagnes's flyers in no way depicted any exhibition of the pubic region. The children and adolescents depicted in the flyers were wearing diapers, and the diapers did not make their pubic regions visible in any way. It completely obscured them.
>
> ¶45 ... Absent evidence of exhibition, there can be no child pornography and thus no basis for a conviction for sexual exploitation.
>
> ¶46 ... the evidence did not sustain the charges against him.
>
> ¶47 Some forms of antisocial behavior are simply beyond the reach of the criminal law. That appears to be the case here, at least insofar as the charges of lewdness and sexual exploitation are concerned.

The Court's ruling the prosecution introduced insufficient evidence bars Bagnes' retrial under double jeopardy.

Click here to read the Court's ruling in *State of Utah v. Barton Jason Bagnes*, 2014 UT 4 (UT Sup Ct., 2-14-2014).

Seann Odoms is a diaper wearing advocate from London, England whose **Facebook page** has many photos of him wearing a diaper in public. In September 2013, three years after *The Salt Lake Tribune* published its article about Bagnes' sentencing, Odoms **wrote a 900 word comment** to the article online in which he effectively accused Judge Terry Christiansen of being diaperphobic and prejudiced against adult diaper wearers for his harsh uncompassionate treatment of Bagnes. Odoms' comment states in part:

> This is terrorism!
>
> Let us look at the brass tacks here.
>
> [Judge] Christiansen knows for a fact that 1 in 8 people in the USA suffer with chronic bedwetting sometime in their school years, because he will have read the OFFICIAL statistics whilst sitting this case. .....that is; if he is literate!
>
> ...
>
> It wasn't the Law that saved gays from persecution, because, if Christiansen is an example, the Law is administered by politically-retarded bigots. Gays became accepted because, against their conservative nature, they started dressing in tight pink shorts and similar in public. It was only then that the moron majority realised that gay people are commonplace and consequently must be ok.
>
> I am doing the same in the UK, walking about in public in diapers and explaining my incontinence awareness campaign, NappyzRNormL, to anyone honest enough to ask or challenge me. It seems fine in the eyes of authority, in the form of our ever-present Police, and I have only had one aggressive approach

Seann Odoms (middle) wearing his diaper in public, with his arms around two girls he met on Kings Road in London (Seann Odoms Facebook page)

in 2 months from a member of the public; in fact I get incessant requests for photographs from tolerant and creative-minded European citizens. Maybe education in the Mormon State is more dysfunctional than ours in the UK.

...

There was no abuse or exposure per se [by Bagnes]. Do you really think the children to whom he revealed his diapers were alarmed? I would bet my annual cache of Tenaslips that they all actually laughed themselves sick. What, may I ask, is criminal about making a laughing-stock out of yourself?

Flashing? Are you serious? If all the tarts & bimbos spawned by the USA's depraved culture, habitually exposing themselves from under pathetic short skirts and cut-off pants, were similarly charged and imprisoned, the tax bill would send most of you 320 million Americans into starvation.

Forget the diaper for a minute! It is an undeniable fact that .....if Bagnes had persistently dropped his pants in front of children to reveal BOXERS or BRIEFS, he would not have faced trial and sentence at all. Therefore there is no legal "exposure" or "abuse" per se..... legal fact!

So, the only difference, the only pertinent factor in the warped, perverted mind of this Judge is ... THE DIAPER ITSELF.

Therefore this is clear proof that [Judge] Christiansen has sentenced Bagnes to 15 years imprisonment solely for wearing a

Bagnes cont. on page 15

Delaware P.D.'s Office Files Motions To Overturn Hundreds Of Tainted Drug Convictions

On February 20, 2014 the Delaware State Police **shut down** the Controlled Substances Lab inside the Delaware Medical Examiner's Office after it was discovered the lab had lax security, and drug evidence for criminal cases was missing and in some cases replaced with fake evidence. Within days the Delaware's Attorney General requested that all drug related criminal cases in the state be delayed, and Delaware Chief Medical Examiner Richard T. Callery **was suspended** pending an investigation of the lab's operation.

In early March 2014 the State Police **began a separate criminal** investigation into whether Callery misused state resources to run his private consulting business. Callery's state salary was $198,500 a year, and he charged at least $200 an hour as an expert witness — primarily for out-of-state defendants.

Delaware Chief Medical Examiner Richard T. Callery

The State Police investigation was triggered when during a trial in early February 2014 **a prosecutor recognized** the pills in evidence that were supposed to be Oxycontin were in fact blood pressure medication. The investigation discovered that lab surveillance cameras were disabled, drug evidence was missing, and there were numerous discrepancies between when police log notes showed drug evidence was submitted to the crime lab and when the lab recorded it as having been received — which allowed time for fake evidence to be substituted for drugs and logged in.

When the scandal was first reported Delaware Public Defender Brendan O'Neill **told reporters**, "I don't think this is going to end soon. This is the tip of the iceberg."

In the first wave of an expected 9,500 motions to vacate tainted drug related felony and misdemeanor convictions between 2010 and February 2014, the Public Defender's Office filed motions on April 30, 2014 to overturn 112 cases. The **motions described** the state's crime lab was "an investigative arm" of the prosecutor's office. As of mid-May 420 motions to vacate drug convictions have been filed by the Delaware Public Defender's Office.

Sources:

Drug scandal hits Medical Examiner's Office, *The News Journal* (Wilmington, Del.), February 22, 2014

Delaware medical examiner suspended in drug probe, *The News Journal* (Wilmington, Del.), Feb. 28, 2014

ME's side work under criminal investigation, *The News Journal* (Wilmington, Del.), March 12, 2014

AG disputes ties to Medical Examiner's Office, *The News Journal* (Wilmington, Del.), May 2, 2014

Attorney seeks to toss 420 drug convictions, *The News Journal* (Wilmington, Del.), May 13, 2014

Bagnes cont. from page 14

diaper. That is abuse of the U.S. Constitution and is straight out of the Al Qaeda handbook!

No doubt, if this amoral dysfunctional found his next-door neighbour was incontinent, he would use his deviously attained license to bully minorities from public office to pressure the neighbourhood into persecuting the sufferer. Well, it is his only chance to justify his position as judge and chief witchfinder-general, because he is precluded by Law from targeting "niggers, Yids and queers"; .....is that right, Christiansen?

...

Judge Christiansen appears to me to be a lot more latter-day Klansman than latter-day Saint!

Click here to read Seann Odoms' complete comment to *The Salt Lake Tribune's* article that is towards the bottom of the page.

Seann Odoms Facebook page with photos of him wearing a diaper all over London is, www.facebook.com/seann.odoms.

Sources:

State of Utah v. Barton Jason Bagnes, 2014 UT 4 (UT Sup Ct., 2-14-2014)

Utah court wipes 'Diaper Man's' record clean, *The Salt Lake Tribune*, February 14, 2014

Judge sends "Diaper Boy" to prison, *The Salt Lake Tribune*, September 20, 2010

Visit Justice Denied's Website

www.justicedenied.org

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

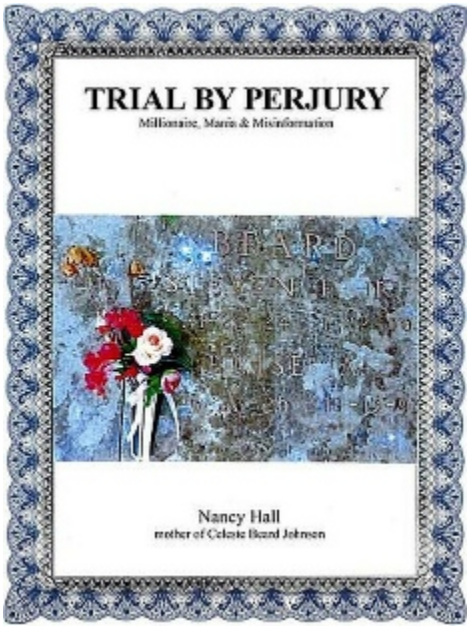
Trial By Perjury: Millionaire, Mania & Misinformation

Trial By Perjury by Nancy Hall 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 agreed to plead guilty and testify against Celeste in exchange for a reduced charge and a 10-20 year prison sentence. Celeste was convicted even though medical evidence showed Steven died of natural causes – not murder.

In *Trial By Jury* author Nancy Hall cites extensively from the case record to explain how the the prosecution was able to convince the jury that Steven Beard's death was murder and that Celeste was involved in his shooting.

Trial By Perjury is only available as an Amazon Kindle e-book for $3.99. *Trial By Perjury* is 252 pgs. **Click here to order** *Trial By Perjury* from Amazon.com.



The State Of Nevada's Lawyer Lied And Lied During Kirstin Lobato's Nevada Supreme Court Arguments

By Hans Sherrer[1]

A minimum wage convenience store clerk who lies under oath in court can be convicted of perjury and sentenced to prison. In contrast, a highly paid lawyer can fearlessly lie his or her head off when publicly appearing before the Nevada Supreme Court.

We know that because of what occurred during oral arguments before the full Nevada Supreme Court on September 9, 2014 concerning Kirstin Blaise Lobato's habeas corpus appeal (*Lobato v. State*, No. 58913). The attorney representing the State of Nevada — Clark County Assistant District Attorney Steven S. Owens — repeatedly lied[2] about issues related to Ms. Lobato's case.[3] Lying to a court to achieve a desired result has been described by the Nevada Supreme Court as "fraud on the court."[4] The Supreme Court's response to Mr. Owens' conduct has thus far been deafening silence. Owens' dishonest assertions to the Nevada Supreme Court include, but aren't limited to the following:

1) Owens lied twice that Ms. Lobato made a "confession" related to Duran Bailey's homicide in Las Vegas on July 8, 2001. (Oral Arguments (OA) at 9, 13. Oral Argument transcript is online at **http://justicedenied.org/kl/lobatoargument992014.pdf** .) The truth is that during Ms. Lobato's trial the State didn't assert during its opening statement, closing argument, or present trial testimony she made a "confession" to Bailey's homicide. It exists only in Owens' imagination. Furthermore, it is an unrebutted fact there are 40 material differences between the attempted rape of her in east Las Vegas before mid-June 2001 detailed in her Statement, and Bailey's homicide weeks later in July 2001 on the other side of town. (6 Appellant's Appendix[5] (AA) 1276; 9 AA 1875-1879)

2) Owens lied, "She was convicted by her own words at the trial, and her own words belie the argument that she is actually innocent." (OA at 7-8.) The truth is there is nothing incriminating regarding Bailey's homicide in her police Statement or comments attributed to her — none of which even include the date, location, or manner of Bailey's death from a head injury, or that she was even in Clark County on July 8, 2001. Furthermore, Ms. Lobato's habeas petition details her conviction was due to Metro Det. Thomas Thowsen's *extensive false testimony* regarding her Statement and comments, and his alleged investigations (6 AA 1266-75); and *more than 275 unrebutted* instances of prejudicial prosecutor misconduct during her trial that include fabricating non-existent evidence, factual misstatements, and false assertions about the State's evidence — *none* of which were objected to by her lawyer. (7 AA 1393, 1402, 1448, 1452, 1455, 1458)

3) Owens blatantly lied "Shortly thereafter [Bailey's homicide], Kirstin Lobato in Panaca, Nevada, started talking about a severed penis." (OA at 7) The truth is Ms. Lobato mentioned in her Statement that *prior* to June 20, 2001 she had a conversation with a woman about the Budget Suites Hotel rape attempt she fended off with her pocket knife. Also, her habeas petition includes unrebutted new evidence by *nine* alibi witnesses who were informed by her beginning in late May 2001 — and all prior to July 8 — that she used her pocket knife to fend off a would be rapist in Las Vegas. (6 AA 1190-1195) That new alibi evidence's veracity is corroborated by unrebutted new expert psychology evidence, and polygraph expert Ron Slay's new evidence that "I am certain Ms. Lobato is innocent of Mr. Bailey's murder." (6 AA 1185, quote at 1188)

4) Owens lied that Ms. Lobato's comment to her father during a conversation "I did something bad" is evidence of a guilty mind to Bailey's homicide. (OA at 8 (Owens misquoted the testimony at 3 AA 654, so the testimony is quoted.)) The truth is the comment was made during a conversation with her father in June 2001 — *weeks prior* to Bailey's homicide. (Reply Exhibit 2 at 1; 4 AA 912)

5) Owens lied, "She says today that she is actually innocent." (OA at 7) The truth is Ms. Lobato has unwaveringly asserted her innocence for more than 13 years since she was charged in 2001.

6) Owens lied, "But nothing at the crime scene is going to help them because the jury already knew that evidence there pointed away from Kirstin." (OA at 13) The truth is Ms. Lobato's unrebutted new exculpatory expert forensic crime scene evidence not presented at trial establishes among other things: 1) Bailey's killer made *all* the shoeprints imprinted in blood and they don't match Ms. Lobato; 2) Bailey's killer *could not* have worn the high-heeled open-toed platform shoes the State doesn't deny she wore during the attempted rape described in her Statement; 3) Bailey's teeth *were not* knocked out by a baseball bat, he was *not standing* when attacked, and his knife wounds *were not* inflicted by her double-edged pocket knife but by a single- edged kitchen, butcher, or hunting knife – fatally undermining the State's trial theory Ms. Lobato could be his assailant; and, 4) Bailey *was alive* when his rectum injury occurred – proving she was convicted of a non-existent violation of NRS 201.450. (6 AA 1202-1205, 1210, 1218-26, 1253, 1284-88)

7) Owens lied, "the jury listened to this stuff. This new evidence they want to put on is not new. ... It's cumulative to what the jury rejected at trial." (OA at 15) The truth is Ms. Lobato's petition details her unrebutted new forensic, alibi, and fact evidence by *more than two dozen witnesses* that was not presented to her jury, and the District Court did not make a finding that *any* of her new evidence is "cumulative' to trial evidence. (6 AA 1173-1295; 11 AA 2265-69) Furthermore, two jurors determined after reviewing Ms. Lobato's new evidence that "it could have possibly resulted in either a hung jury or Ms. Lobato's acquittal." (*State v. Lobato*, Case no. C177394 (District Court, Clark County, Nev.), "Supplemental Exhibits To Petitioner's Answer In Support Of Petition For Writ Of Habeas Corpus," 2-24-2011, Exhibits 6 and 7.)

8) Owens lied Bailey's time of death *isn't "critical."* (OA at 10) The truth is the State's theory of Ms. Lobato's guilt *depended on* convincing the jury Bailey died *before 7 a.m.* and the she was convicted based on the State's argument to the jury he died "*sometime before sunup."* (5 AA 1005)

9) Owens lied the jury *"rejected"* Ms. Lobato's alibi evidence she was in Panaca the evening of July 8 (OA at 10) The truth is the State conceded during its closing argument it is *factually true* she was in Panaca *from at least "11:30 a.m. through the night."* (5 AA 1008)

10) Owens lied about *the foundation of the State's case* in stating, "The jury did not believe Lobato's alibi witnesses … The jury could not have convicted her if they believed those alibi witnesses." (OA at 9) The truthfulness of the *13 witnesse*s whose testimony places Ms. Lobato in Panaca on July 8, 2001 from at least "11:30 a.m. through the night" was *conceded by the State* whose theory the jury relied on by the jury to convict was Bailey died "sometime before sunup." (5 AA 1005, 1008)

11) Owens lied in his assertions Ms. Lobato's unrebutted new expert forensic evidence Bailey died after 8 p.m. isn't

Lobato cont. on page 17

Lobato cont. from page 16

important. (OA at 10) The truth is the State conceded at trial she was in Panaca 165 miles from Las Vegas at that time so it is *physically impossible* she committed Bailey's homicide. (5 AA 1008)

12) Owens lied the three internationally known forensic entomologist's unrebutted new expert evidence Bailey died after sunset is a "tenuous estimation" (OA at 10) The truth is entomology is a science *more than 1,000 years old* and Bailey's time of death to a "*reasonable scientific certainty*" after sunset at 8:01 p.m. is the *highest* expert evidence standard. (6 AA 1175, 10 AA 2167)

13) Owens blatantly deceived the Supreme Court about two key cases: *People v Hamilton*, 115 A.D.3d 12, 979 N.Y.S.2d 97, 101 (2014); and, *State ex rel. Orsborn v. Fogliani,* 82 Nev. 300, 417 P.2d 148 (1966). (OA at 11-12) The truth is in *Hamilton* the New York Court of Appeals ruled that new *factual evidence* of actual innocence can be presented in a habeas petition, and in *Orsborn* the Nevada Supreme Court granted a habeas petition that was based on new *factual evidence* the defendant was convicted of a crime he didn't commit.

14) Owens lied, "We have here a couple statutory remedies that Ms. Lobato could avail herself of. One is the motion for new trial based on newly discovered evidence …" (OA at 12) The truth is that based on Nevada Supreme Court precedents Ms. Lobato's *only* statutory remedy is to present her new evidence in her habeas corpus petition. (OA at 2-3)

15) Owens lied, "We have here a couple statutory remedies that Ms. Lobato could avail herself of. ... and the other is a motion for DNA testing..." (OA at 12) The truth is Ms. Lobato's petition for post-conviction DNA testing of crime scene evidence — *including semen recovered from Bailey's rectum* — was vigorously opposed by the Clark County D.A. and denied by Judge Valorie Vega. The Nevada Supreme Court dismissed her appeal, "Because the order is not appealable." (*Lobato v. Nevada*, NSC No. 59147 ("Order Dismissing Appeal," 1/12/2012), 4.)

16) Owens lied *seven times* that Ms. Lobato's *Brady* grounds are "bare" or "bald" claims unsupported by specific factual allegations. (OA at 14) The truth is those grounds specifically detail the State failed to disclose favorable evidence concerning a *police officer* who may have evidence regarding Bailey's homicide, and that a suspect in Bailey's homicide described at trial as law abiding was committing the federal crime of *using the Social Security number of a man who died in Michigan in 1987*. (6 AA 1309-1311)

Nevada Supreme Court has the inherent power to enforce the administration of justice

As described above Steven S. Owens fabricated material assertions deceived the Nevada Supreme Court by misrepresenting the habeas record, and he grossly misrepresented relevant case law and statutes. Owens is an officer of the court so under the following rules the Supreme Court has the authority to hold him in contempt of court for his dishonest and deceptive conduct, impose sanctions, and refer him to the State Bar of Nevada for investigation and possible disciplinary action.

NSCR 39 sets forth the Supreme Court's inherent power to govern attorneys because they are "court officers and *essential aids in the administration of justice*..."

NSCR 99(2) sets forth "Nothing contained in these rules denies any court the power to maintain control over proceedings conducted before it, *such as the power of contempt* ..."

NSCR 101 sets forth "... acts or omissions by an attorney, *including contempt of a hearing panel*... which violate the rules of the supreme court or the Nevada Rules of Professional Conduct *are misconduct* and constitute grounds for discipline."

NRPC 3.3(a) sets forth "A lawyer shall not knowingly: (1) *Make a false statement of fact or law to a tribunal* ..."

NRPC 8.4 sets forth in pertinent part: "It is professional misconduct for a lawyer to: (c) *Engage in conduct involving dishonesty, fraud, deceit or misrepresentation*; (d) *Engage in conduct that is prejudicial to the administration of justice*;"

In addition, Owens unconscionable deceptions, misrepresentations, and dishonesty intended to influence the Supreme Court's decision in *Lobato v. State* violated Ms. Lobato's state and federal constitutional rights to due process of law.

NRAP 2 provides that for "good cause" the Supreme Court can "suspend any provision of these Rules in a particular case and order proceedings as it directs." NRAP 34 sets forth the procedure for oral argument. Owens' unrestrained dishonesty that denied Ms. Lobato her right to a fair hearing is "good cause" for the Court to exercise its authority to *sua sponte* strike his arguments from consideration of her appeal. order a rehearing, or decide the case on the briefs submitted by Ms. Lobato and the State.

Steven S. Owens has a history of lying about Ms. Lobato's case

Owens lengthy history of dishonesty in Ms. Lobato's case includes his false public statements to KLAS-TV (Las Vegas), the Associated Press, and the Las Vegas *Review-Journal*, and in documents filed in the Nevada Supreme Court. Those false statements are documented in a letter sent to Clark County District Attorney Steven Wolfson dated July 3, 2012, which states: "Mr. Owens' pervasive dishonesty is a gravely serious matter." (p. 11) The letter is online at, **http://justicedenied.org/kl/wolfsonletter.pdf**.

Conclusion

The foregoing is only a partial litany of Owens' gross dishonesty throughout his argument. However, it is a representative sampling of the extreme lengths he went to in his well-planned and concerted effort to tilt the scale of justice by misleading the Nevada Supreme Court and prejudice the administration of justice in Ms. Lobato's case. If the State had credible evidence Ms. Lobato committed Bailey's homicide Owens wouldn't have had to lie throughout his argument, and in fact, some of Owens' arguments repeated false assertions he made in the State's Reply Brief filed on July 6, 2012, pgs. 3-8.

Steven S. Owens' blatant lying to the Nevada Supreme Court strikes at the very heart of its legitimacy as a deliberative body. Owens may think he got away scot-free with thumbing his nose at the Supreme Court. He will unless the Court exercises the full extent of its authority in holding Owens accountable for his contemptible conduct and take the most extreme actions possible to protect Ms. Lobato's rights, and the integrity of the Court and its deliberation process.

Endnotes:

Note 1. Hans Sherrer is President of the Justice Institute that promotes awareness of wrongful conviction and conducted a post-conviction investigation of Ms. Lobato's case. Its website is **www.justicedenied.org**. He can be emailed at **hsherrer@justicedenied.org**.

Note 2. The *Oxford English Dictionary* defines a "lie (and lied), v.2,: as: "To tell a lie or lies; to utter falsehood; to speak falsely." (http://www.oed.com) This article details Steven S. Owens uttered numerous falsehoods and spoke falsely to the Nevada Supreme Court on September 9, 2014.

Note 3. This article is based on public documents filed in the Clark County, Nevada District Court and the Nevada Supreme Court, and news articles.

Note 4. Material dishonesty to achieve a desired judicial result was described as "fraud on the court" in *Mosley v. Figliuzzi*, 113 Nev. 51, 930 P. 2d 1110, 1112 n.2 (1997).

Note 5. The Appellant's Appendix was filed by Ms. Lobato in the Nevada Supreme Court and includes her trial transcripts, her *habeas corpus* petition, and other documents relevant to her appeal.

Every Man Dies Alone

by Hans Fallada
(Melville House, 2009)

Review by Hans Sherrer

Every Man Dies Alone by Hans Fallada is a **semi-historical novel** based on the real-life event of a husband and wife distributing several hundred handwritten postcards throughout Berlin from 1940 to 1942. Those postcards encouraged people to passively resist the German government by engaging in work slowdowns and to not contribute to the "winter relief fund" that was used to support the war.

Fallada (the pen name of Rudolf Ditzen) relied on his personal experience of living in Germany during the entirety of the Nazi era (1933-45) to create a portrait of wartime Germany that is so realistically grim that you can not just understand, but almost feel the emotional turmoil that caused two middle-aged working class Germans who had been loyal to the government and tried to mind their own business, to embark on their own non-violent campaign opposing Hitler and the Nazis. Fallada makes painfully clear it was a campaign that was nothing less than a suicide mission.

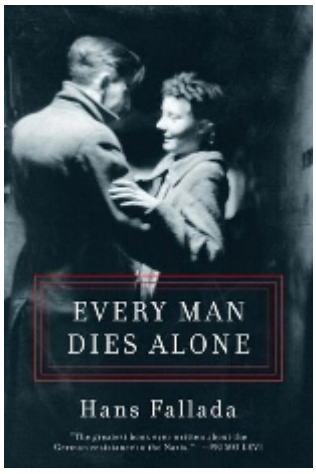
Otto and Anna Quangel were jolted out of their lethargy of simply accepting the Nazi regime as a given by the death of their son during the 1940 invasion of France.

Wanting to do something to undermine the Nazis hold on power and hasten the day when parents wouldn't have to endure their anguish, Otto came up with the idea of writing anti-Nazi messages on postcards that they would distribute by placing in public places around Berlin. The postcards would let people know they weren't alone in opposing the government's policies. Otto and Anna embarked on their postcard campaign by setting aside Sunday to work on them after which Otto would distribute them.

Otto Hermann Hampel (June 21, 1897 - April 08, 1943). Gestapo photo taken after Otto's arrest.

One can imagine the reaction of the Berlin police and the Gestapo when they learned postcards critical of the Nazi regime were being found all over Berlin: top priority was given to finding the traitors.

The magnitude of what the Quangels embarked upon is put in perspective by Fallada's evocative description of the subconscious fear Germans lived in of saying or doing something that could be considered unpatriotic, and which could be reported to the Gestapo by a neighbor, co-worker, or stranger they passed on the street. Informers were everywhere.



It is driven home in *Every Man Dies Alone* that under Nazi rule all of Germany was a prison and no one — not even police officers — were safe from instantly being treated as an inmate on the slightest suspicion of disloyalty. Being picked-up by the Gestapo for questioning was a traumatic experience, and a person held in Berlin's Gestapo headquarters could turn to jelly when threatened with being sent to the "basement" where there were no rules limiting an interrogation.

However, the German government under the Nazis followed the general form of established protocols in criminal prosecutions: when arrested the Quangels were charged with the capital crime of treason. Although the outcome of their trial was a foregone conclusion because it was presided over by Roland Freisler, the most fanatical pro-Nazi judge in Germany, it was surreal with moments of levity and high drama.

Anna's lawyer valiantly tried to introduce evidence to mitigate her sentence since she and her husband had pled guilty to treason for writing and distributing the postcards. Freisler would have nothing to do with considering the mitigating evidence, and for trying her lawyer felt the icy wind of Freisler's wrath. Anna's lawyer is the only person in *Every Man Dies Alone* involved in the machinery of the German government who acts in a way that can be described as heroic. Even though his efforts were futile to reduce her sentence from death, he took risks in trying to inject reason and sanity into the proceedings. Otto's lawyer on the other hand didn't pretend to have anything but disgust for Otto or make any effort to represent him.

Elise Hampel (October 27, 1903 - April 08, 1943). Gestapo photo taken after Elise's arrest.

A significant portion of the book is comprised of how Otto and Anna dealt with being imprisoned while awaiting execution of their sentences. Up to the end they didn't waiver in their loyalty to each other or doubt that writing and distributing the postcards was the right thing to do.

Although *Every Man Dies Alone* can be read on a number of levels: as a love story between Otto and Anna; as a story of the extremes a couple will go to in the memory of their son; it drives home with a sledge hammer that a totalitarian regime such as the Nazis depends on the good in people being co-opted by their willingness to at least acquiesce to that regime's evil actions and do nothing to undermine it. That is why the resources of the Reich were quietly directed towards crushing the Quangels so their efforts towards a peaceful Germany wouldn't inspire others.

Otto had the clarity after his arrest to observe the absurdity that the gang of criminals ruling Germany branded everyone who didn't support them as a criminal.

Stylistically *Every Man Dies Alone* is somewhat unusual, at least in its English translation. Fallada doesn't try to seduce the reader with flowery words and catchy phrases, or plot contrivances. The Quangels were uncomplicated people with limited educations and Fallada doesn't try to imbue them with qualities they didn't have. The postcards Otto wrote had short and direct messages because he wasn't used to expressing his thoughts in writing. Neither were the stool pigeons Otto and Anna had to constantly keep an eye out for complex people: they primarily wanted to be paid a reward or garner the good will of a policeman to overlook some illegality of their own.

The Quangels in real life they were Otto and Elise Hampel, and it was her younger brother who was killed in 1940 during Germany's invasion of France. Fallada was a prominent writer in Germany, and after WWII a friend provided him with the Hampel's Gestapo file, suggesting he consider writing a book based on their case.

Every Man Dies Alone was published in Germany just weeks after Fallada's death at 53 in February 1947. However, the Ham-

Fallada cont. on page 19

Fallada cont. from page 18

pel's story was not generally known outside of Germany until the book was translated and published in English in 2009, because all but a few of their postcards were turned over to the police by the people who found them. In contrast, the leaflet campaign by the White Rose — a loosely knit group of mostly young people — became known during World War II when one of their leaflets critical of the Nazi regime and that encouraged passive resistance was smuggled to England.

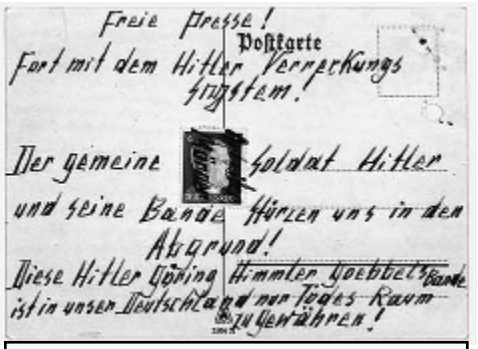
The Hampels were convicted of treason in Judge Freisler's court on January 22, 1943 and sentenced to death by beheading. One month later, on February 22, the first three of the White Rose members who were captured — Sophie Scholl, her brother Hans Scholl, and Christoph Probst — were convicted of treason in Judge Freisler's court and sentenced to death. Others involved in the White Rose were later captured, and sentenced to death or prison after their conviction in Judge Freisler's courtroom.

The Hampels were not naive about the consequences if their identity was discovered. Otto's Gestapo file records that after his arrest he told his interrogators he was "happy with the idea" of protesting against Hitler and the Nazi regime.

Plaque in Berlin where the house was that Otto and Elsi Hampel lived in. The plaque reads:

Berlin Memorial Plaque

Here was the house in which
OTTO HAMPEL
21.6.1897—8.4.1943
and
ELSIE HAMPEL
27.10.1903—8.4.1943
Lived from 1934 until their arrest.
The working class couple was executed on 8 April 1943 in Berlin.
Their rebellion against the misanthropy of the Nazi regime
was the model for Hans Fallada's novel
Everyone dies for himself alone.
(Translated from German with Google & Bing Translate.)



An actual Hampel postcard that reads:

"Free press! Away with the Hitler dying-a-wretched-death system! The low-ranking soldier Hitler and his gang are plunging us into the abyss! This Hitler Göring Himmler Goebbels gang should only be granted space to die in our Germany!"

Scrawled across the stamp are written the words, "Arbeiter Mörder": Worker murderer.

Yet in spite of knowing their likely fate if arrested, the Hampels (and the White Rose participants) chose to speak out about Germany's path of destruction under Hitler and his Nazi cohorts rather than play it safe and try and survive the war by silently going along to get along.

The obedience of all but a small fraction of people to the directives of an authority figure has been well documented in a number of controlled experiments beginning with those of Stanley Milgram at Yale University in the early 1960s. Psychologist Philip Zimbardo **observed in** *The Lucifer Effect: Understanding How Good People Turn Evil* (Random House, 2007), that what needs to be understood is why such a tiny percentage of people are able to muster the intestinal fortitude to not acquiesce by participating in something they think is wrong, or stand by without protest while others do so. The small number of Germans willing to do more than just privately criticize Hitler and the Nazis were no match for the overwhelming numbers of those who wouldn't do so.

Aleksandr Solzhenitsyn knew first-hand about persecution by a despotic government. Solzhenitsyn wrote **in his essay** *The Smatterers* that "the vertical seems a ridiculous posture" to people "*standing crookedly*."[1] The Hampels paid with their heads for standing straight when "standing crookedly" was the norm for people in Germany.

Every Man Dies Alone is an extraordinary novel. It is like a time portal to Berlin in the early 1940s and the reader is a silent observer to every event, facial expression, voice inflection, and emotion described by Fallada. However, *Every Man Dies Alone* is far more than just a compelling work of fiction; it is a homage to the courage of the Hampels and others who acted to undermine support for the Nazis, however feeble those actions might have seemed at the time, or even from the perspective of 70 years later. It also exposes the hypocrisy of the tens of millions of Germans who after the war tried to absolve themselves of guilt by claiming they didn't know how bad the Nazi regime was — when the Hampels knew and they were at the bottom rung of German society.

Endnote:

[1] Aleksandr Solzhenitsyn, "From Under The Ruble," ed. Aleksandr Solzhenitsyn, Little Brown, Boston, 1975, p. 249 (emphasis in original)

Edwin M. Borchard – Convicting The Innocent Now Available From Justice Denied

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

Yale University Law School Professor Edwin Borchard was an early pioneer in exposing the causes of wrongful convictions and the inadequacy of compensation for exonerated persons in the United States. So it is important that it be remembered his works laid the foundation for today's advocates for wrongly convicted persons, and the encouragement of public policies that may prevent wrongful convictions and ensure adequate indemnification when they occur.

This 358-page book includes Borchard's key works *European Systems Of State Indemnity For Errors of Criminal Justice*, and *Convicting The Innocent: Sixty-Five Actual Errors of Criminal Justice*. The Table of Contents is:

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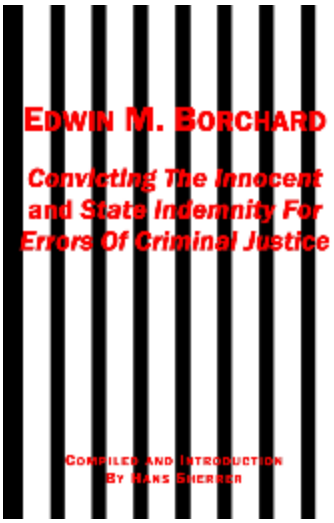

Convicting the Innocent (Chapter 4) has not lost its luster as one of the most insightful books published on the topic of wrongful convictions. Seventy-one years after its publication the multitude of causes underlying the cases of injustice it details not only continue to plague the legal system in the United States, but they are arguably more prevalent today than when the book was published, with the exception of confessions extracted by physical violence.

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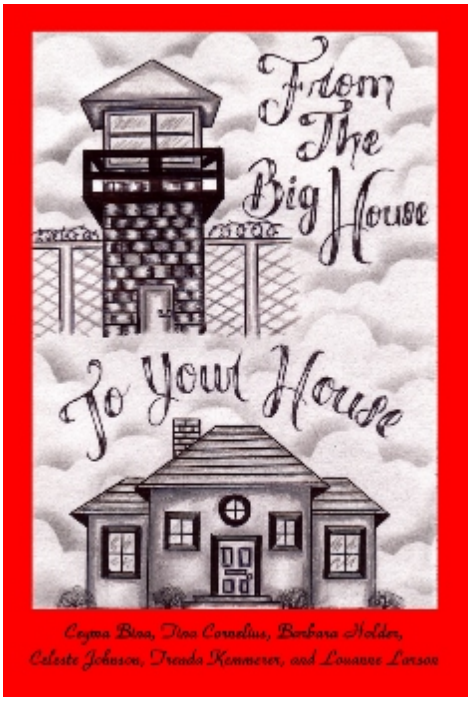

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Jim Mullen, *New York Times Magazine*, p 55, Feb. 21, 1999

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See p. 10.

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