JUSTICE DENIED

The Magazine for the Wrongly Convicted

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It is horrific for an innocent person to be convicted of a crime he or she didn't commit. However, Colin Norris' case goes far beyond that horror because the foreman of the jury that convicted him of four murders and one attempted murder is convinced that new evidence proves his innocence of crimes didn't even occur. See p. 3.

The prosecutor in Steven A. Cole's case so obsessed with "winning at all costs" that he convinced the jury that Cole had the burden to prove his innocence of child sexual assault, and that he was guilty even though he had a vasectomy that made it impossible for him to be the source sperm linked to the crime. One of judges who overturned Cole's conviction stated he was the victim of an "American horror story that even Stephen King could not have written. … the evidence in this case established Steven Cole's innocence, not his guilt." See p. 5.

Barry Bonds' ordeal of enduring a twelve year effort by federal authorities to have him convicted of committing some crime – *any crime* – ended with his acquittal by a federal appeals court on April 22, 2015 of obstruction of justice. See p. 13.

The 1,317 exonerations in 2014 publicly acknowledged by the Chief Justice of China's Supreme Court dwarfs the 224 known exonerations in 2014 in the United States. See p. 7.

It is well known that jurors typically presume a defendant is guilty, and that attitude led to Aaron S. Lowden being convicted of drug trafficking based on nothing more than the prosecution's suspicion he might be guilty. See p. 12.

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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Colin Norris Is Innocent Of Being Serial Killer Says Jury Foreman

By Hans Sherrer

The foreman of the jury that convicted Colin Norris in 2008 of four murders and one attempted murder in Leeds, West Yorkshire, England, **says that** new forensic evidence proves he is not only innocent and he wants him freed from his life sentence, but that no murders were even committed.

In 2002 Norris was a 26-year-old male nurse working at the Leeds General Infirmary (LGI) and St James's Hospital. Both hospitals are located in Leeds, England. In December 2002 Norris commented to a colleague at the LGI that 86-year-old patient Ethel Hall wasn't looking very well, and he didn't think she would survive the night.

A test of Hall's blood taken before her death suggested a high level of insulin in her system. The West Yorkshire Police were notified. They suspected foul play by Norris after learning about his comment, and they investigated if other patients he provided care for had an unusal hypoglycemia (low blood sugar) condition.

Police investigators found that two elderly female patients of Norris' had died at LGI, and one at St. James Hospital after falling into hypoglycemic comas. Those patients were 80, 88, and 79 respectively. Also, a 90-year-old woman at LGI recovered from a hypoglycemic coma during the time he tended to her. None of those four women were diabetic.

Norris denied any involvement in the death of the four women and the woman who recovered at LGI. The police investigation produced no direct evidence of his involvement, and no witness who saw him do anything unusual.

However, based on Norris' comment that preceded Hall's death and the circumstantial evidence that he had the opportunity to interfere with the care of the five women, Norris was charged with four counts of murder and one count of attempted murder.

England's media branded Norris as a serial killer and dubbed him as "The Angel of Death," during its sensational reporting before and during his trial that began in October in 2007.

Colin Norris outside the courthouse before his conviction (BBC)

The prosecution argued that Norris didn't like elderly patients, his schedule gave him the opportunity to interfere with the care of the five patients without being observed, and it was too convenient to be believed that it was merely coincidental that he was a nurse for the five woman.

Norris **testified in his defense** that he didn't dislike elderly people, his comment about Hall was in bad taste because "nurses develop a black sense of humour," and that his reason for becoming a nurse was "the fact that you get to deal with people and get to make a difference in their lives."

With no physical, forensic, eyewitness or confession evidence that Norris had committed any crime, the jury relied on the prosecution's circumstantial case to convict Norris in March 2008. He was sentenced to life in prison with a minimum term of 30 years before he is eligible for parole.

As a result of Norris' prosecution hospitals in England implemented additional security measures **that included** wider use of CCTV, card entry to parts of the hospital, and a permanent police presence.

Norris' insistence on his innocence attracted the attention of investigative reporter Mark Daly. On October 4, 2011 the result of Daly's investigation **was broadcast** in an episode of BBC One's Panorama television program (roughly equivalent to *20/20*, *48 Hours*, and *Dateline* in the U.S.) titled — "A Jury in the Dark."

"A Jury in the Dark" presented new exculpatory medical evidence by Dr. Vincent Marks, a world renowned insulin expert, and co-author **of** **the book** *Insulin Murders: True Life Cases* (RSM Press, 2007). Dr. Marks reviewed the medical evidence in Norris' case and undertook a forensic analysis of all the new international medical studies carried out since 2008. Dr. Marks' research disproved a key part of the prosecution case – that a cluster of hypoglycemic comas in non-diabetics was rare. **Dr. Marks stated**: "I was surprised at how very common it is in this particular group of elderly, sick people. In one very detailed survey, of thousands of patients, it was up to 10%. In others it was 5% and so I thought, well, you know, it's not that rare after all." When asked if it would be unusual for a cluster of four or five patients to have hypoglycemic comas in a period of a year **he replied**: "Well, it wouldn't be unusual if you were looking through a hospital that had several thousand people over the age of 70 who are sick and so on, over the course of a year – not at all." **Dr. Marks also commented** that all the patients involved in Norris' case were in poor health and "at very high risk of developing spontaneous hypoglycemia" because they had risk factors such as malnutrition, infection and multi-organ failure. He opined that using the cases presented in Norris trial as evidence of insulin administration is unsafe.

"A Jury in the Dark" also presented evidence that upwards of 40,000 insulin tests a year in the United Kingdom produce erroneous results, and the test of Hall that resulted in the investigation of Norris could have shown elevated insulin when it was actually not abnormal.

After revelation of the new evidence Norris submitted an application to the U.K.'s Criminal Case Review Commission, which confirmed in May 2013 it was investigating his case.

On December 15, 2014 BBC One's Panorama program **broadcast a follow-up** episode about Norris' case titled: *The Innocent Serial Killer?* The episode included an interview with juror number eight on Norris' jury who voiced **his opinion** about the new evidence that, "If that was available at the time I think the case would have been thrown out." When asked if he would have convicted Norris today, he said, "Based on the new evidence, no."

Paul Moffitt, foreman of Colin Norris' jury (BBC)

Paul Moffitt was the foreman of Norris' jury. On January 28, 2015 the BBC reported that Moffitt came forward after watching *The Innocent Serial Killer?*, and he **said during an interview**, "the [new] evidence shows that a murder wasn't committed at all, never mind four or one attempted murder, that's what it shows to me. If this case was presented with this new evidence today, I don't even know how it could possibly get to court in the first place." He also said, "I'd like to see Colin Norris freed. That's why I came forward, put my name forward, I just felt it would be my duty to do that." He had a personal message for Norris, "Justice will come your way."

Click here to view "A Jury In The Dark"

Norris cont. on p. 4

Wash. Appeals Court Rules Gerald Yanac Didn't Rob Bank Asking Teller For Money

The Washington Court of Appeals **acquitted** Gerald Lewis Yanac on February 18, 2015 of first-degree robbery for being given money by a bank teller he asked for "money."

On August 15, 2012 Yanac went into a Key Bank in Port Orchard, Washington, a city of about 12,000 that is 13 miles due west of Seattle. Yanac placed a plastic bag on the counter at the teller's station and stated, "Money." Unsure of what Yanac wanted, the bank teller inquired "Money?", and he responded "Money." Yanac didn't brandish any kind of weapon or threaten the teller.

After the teller put one and five dollar bills into the plastic bag Yanac left the bank. The bank notified the police it had been robbed. Two hours later Yanac was arrested in Port Orchard driving a stolen truck. He had $405 in his pocket, and the bank reported that he was given $505.

Yanac was charged with theft of a motor stolen vehicle, first-degree robbery, and first-degree theft.

Key Bank on Bay Street
in Port Orchard, Washington (Google Streetview)

Gerald Lewis Yanac
(Kitsap County Sheriff)

Yanac waived a jury trial. Relying on stipulated facts, the judge convicted Yanac of theft of a motor vehicle and first-degree robbery, but he dismissed the first-degree theft charge.

In his findings of fact the judge determined **that Yanac** had "leaned into [the bank teller]'s personal space" with the plastic bag; that the bank teller was "nervous and intimidated" by Yanac's request for money; the bank teller felt "she needed to comply to avoid harm to herself or others; and that it was also bank policy to comply with demands for money for the same reasons." Based on those findings, the judge concluded that Yanac's request for money "impliedly threatened the immediate use of force," which the prosecution needed to prove for Yanac to be found guilty of first-degree robbery.

The judge sentenced Yanac to 12 years in prison for robbing the bank and 5 years for stealing the truck.

Yanac appealed his first-degree robbery conviction, arguing it should be reversed because the prosecution introduced insufficient evidence to prove his request for money involved an implied threat of immediate force.

On February 18, 2015 the Washington Court of Appeals reversed Yanac's robbery conviction in *State of Wash. v. Gerald Lewis Yanac*, No. 45228-6-II (Wa Ct. of Appeals, Div. II, 2-18-2015). The Court's ruling **states in part**:

> A defendant commits "robbery" when he unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone.
> …
> The trial court characterized the three words that Yanac spoke as "demands" for money. In addition, the trial court relied on the fact that the bank teller "felt she needed to comply to avoid harm to herself or others." To the extent the trial court relied on the bank teller's subjective reaction to Yanac's conduct, this was error.
>
> On these facts, there was no suggestion inferred either from Yanac's conduct or his words that he threatened to use immediate force against the bank teller in order to enforce his demands for money. We conclude that insufficient evidence supports this element of robbery.
>
> Yanac is entitled to dismissal with prejudice of his first degree robbery conviction.

The Court's ruling recognizes that if the teller had not given Yanac any money he could have been expected to simply leave the bank empty-handed.

Yanac's acquittal bars his retrial for robbery. However, because he didn't appeal his stolen vehicle conviction he will not be released until he finishes that sentence.

Click here to read the ruling in *State of Wash. v. Gerald Lewis Yanac*, No. d2 45228-6-ii (Wa Ct. of Appeals, Div. II, 2-18-2015) (vacating robbery conviction)

Source:
State of Wash. v. Gerald Lewis Yanac, No. d2 45228-6-ii (Wa Ct. of Appeals, Div. II, 2-18-2015) (vacating robbery conviction)

Norris cont. from p. 3

broadcast on Oct. 4, 2011 on BBC One's Panorama program. (30 minute video).

Click here to view "A Jury In The Dark" broadcast on December 15, 2014 on BBC One's Panorama program. (30 minute video).

The Justice For Colin Norris website is at **www.colinnorris.org**.

The Case of Colin Norris is a 62-page booklet that can be **downloaded by clicking here**.

Click here for the Free Colin Norris Facebook page.

Source:
The Innocent Serial Killer?, *Panorama program*, *BBC One*, December 15, 2014

Colin Norris: Juror's doubt over serial killer verdict, *BBC News*, January 28, 2015

'I believe convicted Scots serial killer Colin Norris is INNOCENT': Head juror speaks out on Angel of Death, *Daily Record*, January 28, 2015

Free Colin Norris (Community page), Facebook.com

Nurse guilty of killing patients, BBC News, March 3, 2008

Colin Norris, Wikipedia.org (last visited Feb. 5, 2015)

A Jury In The Dark (an Innocent Man) FREE COLIN NORRIS NOW, BBC (on Youtube.com)

Insulin Murders, by Vincent Marks and Caroline Richmond (ISBN 13: 978-1-85315-760-8)

A Jury Blinded by Science

The Case of Colin Norris

Colin Norris Support Group

Steven A. Cole Exonerated Of Child Sexual Assault In "American Horror Story"

By Hans Sherrer

Steven A. Cole's convictions related to the possible sexual assault of a young child **were overturned** by the Illinois Court of Appeals on May 7, 2015. In a concurring opinion one of the justices noted, "the evidence in this case established Steven Cole's innocence, not his guilt," and he was the victim of an "American horror story that even Stephen King could not have written."

In January 2009 Cole and his wife Janet Cole lived in Peoria, Illinois. Their friend Karissa Miles considered them as second parents to her. Miles and her 20-month-old daughter lived in Peoria with a roommate, Jonathan Duncan. Miles' daughter is identified in court documents by her initials M.A.

Cole and Janet regularly babysat M.A., and on January 7 they watched her at their home while Miles was at work from 2:30 p.m. to 9 p.m. M.A. was sleeping and didn't seem to be in any distress when the Coles picked Miles up at work and took her and M.A. home.

Duncan was home when Miles arrived with M.A. Duncan later went to work and Miles went to bed after she had six to eight beers. About 7 a.m. Miles awoke and noticed M.A. was pulling on her diaper. Miles noticed blood in the diaper when she changed it, and there seemed to be a tear in her vagina. Miles did not call 911. What she did was call Duncan at work and ask him to return home. She also texted him there would be questions about M.A. and it would be better if they answered them together.

Miles and Duncan took M.A. to a hospital emergency room, where she was admitted and underwent surgery. M.A. was in the hospital for four days.

The police went to Miles home the day M.A. was taken to the hospital, and took photographs and collected a number of diapers, including from the trash. They later went to the Coles' home and collected two diapers.

When questioned by the police Miles said she did not know what caused her daughter's injuries or when they occurred. Duncan also told the police he didn't know what caused the injuries.

Steven A. Cole
(Ill. Dept. of Corrections)

Duncan was a CNA attending nursing school. Although he was a mandatory child abuse reporter, he did not notify the Department of Child and Family Services of M.A.'s injuries.

The Illinois State Police Crime Lab's tests of M.A.'s oral, vaginal and anal swabs were negative for semen or sperm. However, one of the diapers recovered from the trash at Miles' home contained a baby wipe, and blood was found on both the diaper and the wipe. A sperm cell was found on the wipe, and five areas of the diaper tested positive for semen, but they tested negative for sperm. The crime lab could not identify a DNA profile from any of the six areas that tested positive on the wipe and the diaper.

Miles' statement to the police did not identify that Cole had been in Miles' home for days prior to M.A. being taken to the hospital. So it wasn't possible it was his sperm on the discarded diaper. In addition, Cole had a vasectomy prior to when M.A. was taken to the hospital, and follow-up tests showed it was successful — which meant he couldn't excrete sperm.

The Coles denied in their police statements to ever abusing or witnessing abuse of M.A.

Cole was indicted in March 2009 with predatory criminal sexual assault of a child, aggravated battery of a child, and aggravated criminal sexual abuse. Janet was charged with obstruction of justice.

During Cole's trial three years later, in 2012, the prosecution didn't present any physical, forensic, eyewitness or confession evidence linking him to M.A.'s injuries.

Dr. Channing Petrak, the medical director of the Pediatric Resource Center in Peoria, examined M.A. in the emergency room and recommended immediate surgery. Petrak testified that in her opinion, the injury was not accidental, and because there were no signs of healing it was recent and could have occurred as soon as two hours before M.A. arrived at the emergency room. That was many hours after Miles picked her up from the Coles.

Dr. Amy Stanfill testified as a defense expert medical witness by way of her deposition played for the jury. She performed the surgery on M.A. and sutured the tears, and testified her injury could have been accidental or non-accidental. Stanfill testified the injury was recent because there were no signs of healing.

Dr. James Kenny, a board certified urologist and associate professor at the University of Illinois also testified as a defense expert witness. He explained the vasectomy procedure and stated the one Cole had was successful, which generally means three consecutive samples of ejaculate are negative for sperm. He also testified that in 2011 Cole had testicle tenderness and as a part of his treatment he underwent a semen analysis to determine if there was a potential to output sperm. A series of three monthly tests were negative for sperm in his semen. Kenny testified that in his expert medical opinion Cole could not emit sperm and could not have done so in January 2009, and that the sperm cell found on the baby wipe could not have been emitted by Cole.

The prosecution's closing arguments for Cole's guilt focused on the repulsive nature of M.A.'s injuries, **referring to** the crimes he was charged with as "disgusting," and stating "We like to think those things don't happen, especially not in Peoria, right?" The prosecution also invited the jury to find Cole guilty by disregarding the unrebutted expert evidence that he couldn't emit sperm because of his successful vasectomy.

The jury found the 59-year-old Cole guilty of all three offenses. The judge later sentenced Cole to 25 years in prison.

Cole appealed.

The Illinois Court of Appeal on May 7, 2015 unanimously reversed Cole's convictions on the basis of the prosecution's misconduct of shifting and minimizing the burden of proof during the State's closing arguments, and that the prosecution introduced insufficient evidence to prove Cole's guilt beyond a reasonable doubt. The Court's ruling in *People v. Steven Cole*, 2015 IL App (3d) 120992-U (5-7-2015) **states in part**:

> The State criticized the defense's medical expert and presented the following argument:
>
> "The last line in his report was the Defendant cannot produce sperm. ... Can you really trust fully his opinion? And if

Cole cont. on page 6

Cole cont. from page 5

you can't, if you can't trust it, if you can't think I am sure, I am positive that he, the Defendant, could not have spit out that sperm that was in the diaper, if you can't be positive, then you have to go back to the other evidence. ... The other evidence is the Defendant is guilty."

We consider that the State's comments constituted an attempt to shift and diminish the burden of proof. First, the State improperly argued that the jury must be "positive that he, the Defendant, could not have spit out that sperm" and that if it was not positive about that fact, it had to go back to the other evidence that "Defendant is guilty." These comments suggest that it was Cole's burden to prove that he could not emit sperm. It was not Cole's burden to prove his innocence and it was improper of the State to suggest the burden was Cole's.

Secondly, the State's comments improperly suggested that the jury could disregard the testimony of Kenny, Cole's expert witness. ... he could not emit sperm and could not have emitted the single sperm found on the baby wipe. The State failed to produce an expert to dispute Kenny's conclusion, ... it may not urge that the jury is free to disregard expert testimony that is unrebutted. ... Kenny explicitly stated that it was his opinion to a reasonable degree of medical certainty that Cole could not emit sperm. ... it was error for the State to attempt to rebut his opinion in closing argument without presenting contrary evidence during trial.

Thirdly, the State's comments ... served to diminish the burden of proof. The State's burden was to prove beyond a reasonable doubt that Cole assaulted M.A. By arguing that it was more likely Cole committed the offense than the"mystery person," the State improperly evoked the preponderance of the evidence standard.

Because Cole's trial lawyer failed to object to the prosecution's arguments the appeals court evaluated them to determine if they violated his right to due process under the plain error doctrine. The **Court ruled**, "We find the errors substantially prejudiced Cole and denied him a fair trial."

Regarding Cole's assertion the evidence was not sufficient, the Court stated:

A conviction cannot be based on guess, speculation or conjecture, but must be based on evidence presented. Unrebutted expert medical testimony cannot be disregarded by the finder of fact. Expert medical testimony and evidence by their nature are too complicated to be refuted by non-medical testimony.

...

Based on our review of the record, we find the evidence so unsatisfactory that it creates a reasonable doubt of Steven's guilt. The State did not present any physical evidence tying the sperm or semen to Steven. ... The State did not present any expert testimony to counter Kenny's medical expert opinion that Steven did not emit the sperm. The jury was not free to reject the uncontradicted medical testimony presented by Kenny, the sole medical expert to testify at the trial [regarding the sperm].

...

Other than the fact that M.A. was undisputedly at the Coles' house, the State did not present evidence linking Steven to the offense any more than the other adults who had access to M.A. in the injury time frame.

We find the State's evidence was not enough to sustain Cole's conviction.

For the foregoing reasons, the judgment of the circuit court of Peoria County is reversed and Cole's sentence is vacated.

Justice Daniel L. Schmidt wrote an impassioned special concurring opinion that **explained his** dismay that Cole was prosecuted, and convicted, because "the evidence in this case established Steven Cole's innocence, not his guilt." Schmidt wrote in part:

"While there is no doubt that we have the best legal system on earth, it is not perfect. Sometimes it fails, as it did here. Quite frankly, I believe that such a failure is more likely to happen when one is charged with such a heinous crime as the one involved here. The nature of the crime itself is bound to put blood in the eyes of good men and women.

When a reviewing court reverses a criminal conviction, it is common to hear phrases such as, "Well, those judges reversed this on a technicality," "The defendant got away with the crime," or "Some critical evidence must have been suppressed." No such excuses apply here. No evidence was suppressed. In my view, the evidence in this case established Steven Cole's innocence, not his guilt.

This is the type of charge that will ruin a defendant's life, acquittal or no acquittal. After spending untold hours examining every piece of evidence in this case, I am left baffled as to why the State even accused defendant of this crime. At trial, the jury was led down the primrose path as the result of a confluence of errors by the trial judge, prosecutors, and defense counsel. As a result of this perfect storm of errors, an innocent man stands convicted of an unspeakably heinous offense.

Steven and Janet Cole, through no fault of their own, have become characters in an American horror story that even Stephen King could not have written. I could go through the trial line-by-line and point out all of the defects, but that does not seem practical and Steven Cole has sat in prison long enough.

Schmidt related a number of egregious errors during the trial by the judge, the prosecutor, and Cole's attorney that contributed to Cole's conviction. **Schmidt then wrote**:

Of course, there was no evidence as to whether any of Karissa's male friends had been over that night because there was no [police] investigation into it.

During closing argument, defense counsel appropriately argued that "the only person that's got more to lose than Steve Cole is Karissa." ... Karissa [Miles] *did* have everything to lose.

...

I cannot understand the State's Attorney's office charging Steven and Janet in light of the total lack of evidence to suggest that they actually committed this crime. Even had Steven been found not guilty, as he should have been, his life would have been ruined by the charge.

So why did the State charge Steven Cole? Because Karissa, with every motive in the world to lie to protect herself, said that nothing happened to M.A. after she brought her home from the Coles' house.

I also understand that the jury was unaware of evidence produced at sentencing. ... It is normally the case that if you want to dirty a fellow up, find an ex-wife and she will often oblige. In this case, Steven Cole's ex-wives both wrote to the trial judge that there is no way this man could be guilty of this crime.

...

I cannot understand how this man found himself charged, let alone sitting in a penitentiary convicted of this horrific crime.

I suggest that the law-abiding citizens of Illinois, or anywhere else, have no inter-

Cole cont. on page 7

1,317 Exonerations In China In 2014

There were 1,317 exonerations in China by courts nationwide in 2014.

On March 12, 2015 Zhou Qiang, Chief Justice of China's Supreme People's Court (SPC), delivered a report on the state of the nation's courts during the 12th National People's Congress in Beijing.

Zhou reported there were 1,317 exonerations nationwide, and reasserted his commitment to stopping wrongful convictions. Regarding the exonerations Zhou told legislators, "We deeply reproach ourselves for letting wrongful convictions happen. Courts of all levels should learn a serious lesson from these cases.

As an example of Zhou discussed the case of an 18-year-old man named Huugjilt, who was convicted in a 1996 rape-murder case and executed. Huugjilt was posthumously acquitted after a retrial in December 2014. His acquittal was based on the new evidence that a serial rapist and murderer confessed to the crime, and was convicted and sentenced to death in February 2014.

Zhou said the Supreme People's Court will improve the mechanism to effectively prevent and correct wrongful convictions.

Zhou also reported on weaknesses in China's court system, and denounced that problems with judges that include incompetence, lack of conscience, and disregard for professional ethics. He stated, "Some judges lack conscience and integrity, violate professional ethics and bend the law to serve personal interests, in exchange of favor and money." Zhou stated that in 2014 about 1,937 judges and court staff were punished for violating law and regulations, including 863 punished for abuse of power, and 138 of them were criminally prosecuted.

Zhou Qiang, Chief Justice of China's Supreme People's Court in Beijing on March 12, 2015 (Xie Huanchi, Xinhua)

Zhou stated the SPC will boost transparency in the legal system to enhance public scrutiny, impose zero tolerance for judicial corruption, and the court will begin to blacklist officials who interfere in judicial activities. Zhou told the legislators, "Judicial reforms have entered deep water. We must be courageous in breaking down the barriers of vested interests, including those within our own system. We are ready to crack a hard nut and make sacrifices if necessary."

Procurator-General Cao Jianming (equivalent of the U.S. Attorney General) also delivered his report to the People's Congress on March 12. He stressed that preventing wrongful convictions is a bottom line that prosecutors must always strive toward achieving.

He reported the Supreme People's Procuratorate (SPP) will perfect the protocol for prosecutors to supervise police investigations and expand the channels for suspects in custody and inmates to appeal. To minimize prosecutor bias in reviewing appeals, Cao said the SPP is researching implementation of a system in which appeals from suspects in custody and convicted persons will be handled by prosecutors in a jurisdiction different than the one in which they were arrested or prosecuted.

Cao stated that law enforcement officers whose actions lead to wrongful conviction and death of suspects, such as obtaining a confession through breach of duty, will face serious prosecution.

Cao Jianming, Procurator-General of China's Supreme People's Procuratorate in Beijing on March 12, 2015 (Xie Huanchi, Xinhua)

He also said that prosecutors will be expected to strictly follow the protocol of collecting, examining and using the evidence in a case. He said prosecutors should both work to stop a case from going to court and work to correct a conviction, that is "tainted" by unclear facts, lack of evidence or unlawful procedure. Cao said the SPP will blacklist and punish prosecutors who abuse their power.

Sources:

Chief Justice Expresses Self-Reproach for Wrongful Convictions, By Wang Wei, CRJEnglish.com, March 12, 2015

Chief Justice Denounces Corruption, Lack of Professionalism at Court, By Wang Wei, CRJEnglish.com, March 12, 2015

Cole cont. from page 6

> est in wrongful convictions. ... prosecutors have a special place in the system and must be sure that they "should" charge someone with a crime, not just "can" they do it.
>
> In my 12 years on the appellate court, I have never seen anything like this case. I hope In ever do again.

Cole's retrial is barred by double jeopardy. He has been released according to the Illinois Department of Corrections website that doesn't list him in custody.

Perhaps the worst aspect of Cole's case is no crime may have occurred: Dr. Stanfill testified at trial it is possible M.A.'s injuries were accidental.

Future defendants subjected to a prosecution as baseless as Coles' will not be able to cite the appeals court's strenuous ruling reversing his convictions, because the ruling in his case was released as an "unpublished" opinion and is not precedential in Illinois.

Click here to read the ruling and Justice Daniel L. Schmidt's concurring opinion in *People v. Steven Cole*, 2015 IL App (3d) 120992-U (5-7-2015).

Source:

People v. Steven Cole, 2015 IL App (3d) 120992-U (5-7-2015) (Reversing conviction on basis of insufficient evidence, which barred Cole's retrial.)

Appellate court tosses South Peoria man's 2012 conviction for sexually assaulting a child, *Star Journal* (Peoria, Ill.), May 19, 2015

Peorian gets 25 years in child sex assault, *Star Journal* (Peoria, Ill.), November 21, 2012

Peorian guilty in child sex assault, *Star Journal* (Peoria, Ill.), September 7, 2012

Frances Mentch Acquitted By Ohio Court Of Appeals Of Pulling Hair After Public Meeting

On Christmas Eve 2014 the Ohio Court of Appeals **vacated the** assault conviction of Frances S. Mentch for allegedly pulling a library official's hair after a September 2013 library board meeting in Cuyahoga County, Ohio.

Mentch is a Social and Behavioral Sciences Librarian for the Michael Schwartz Library at Cleveland State University. Mentch lives in a suburb on Cleveland's eastside.

Beginning in 1952 the historic William E. Telling Mansion in South Euclid housed the Cuyahoga County Library branch for the towns of South Euclid and Lyndhurst. Telling was a prosperous dairyman and ice cream manufacturer. His **motto for success** was: "Just work and work and work some more; do the work of two and draw the pay of one." Telling was born in 1869 on the property where he built his mansion. He lived there until his death in 1938. The mansion, which is listed on the National Register of Historic Places, was bought by the library system in 1951.

In early 2013 Mentch and other concerned citizens formed an advocacy group to protest the Cuyahoga County Library Board's plan to close the Telling Mansion branch and sell the property to an investor for $755,000 — about half of its appraised value. The group called the library a "prized possession" of the library district, and protested everything from the selling price, to the planned location for a new branch that was a mile from schools and on a secondary road not served by public transportation. The group also protested the $12 million budgeted for construction of the new branch, was more than double the cost of completely renovating Telling Mansion. In May 2013 the group filed a lawsuit challenging the sale, which was dismissed by a Cuyahoga County Common Pleas Court judge.

The group also set up a website, www.savethemansionlibrary.org, and a Facebook page, www.facebook.com/MansionLibrary.

After a contentious public hearing on September 24, 2013 during which fifteen people spoke against selling Telling Mansion, the library board met in closed-door executive session and voted to approve the sale.

Frances Mentch (Cleveland State U. library)

The controversy didn't end with adjournment of the meeting. Cuyahoga County Library Executive Director Sari Feldman accused Mentch of pulling her hair after the vote was announced. Mentch was charged with one count of first-degree misdemeanor assault.

Mentch pled not guilty and requested a jury trial. Her **lawyer filed** a pretrial "motion to dismiss defective complaint," on the basis that neither the complaint nor the bill of particulars identified the necessary *mens rea* (criminal intent) element of the assault offense. Parma Municipal Court Judge Timothy P. Gilligan denied the motion.

On March 4, 2014 a jury found Mentch guilty of assault. Immediately after the verdict, Judge Gilligan sentenced Mentch to the maximum sentence of 6 months in jail with 150 days suspended. In pronouncing Mentch's sentence Judge Gilligan cited her lack of remorse during pre-trial hearings and during her trial, and that she declined to accept a plea bargain that included no jail time. Judge Gilligan ordered that Mentch be taken immediately into custody, after he denied her motion to stay execution of her sentence pending the outcome of her appeal.

After Mentch began serving her jail sentence Judge Gillian increased her sentence outside the courtroom by making an entry imposing "24 months of probation," and requiring Mentch to report for six months of the probationary period.

Mentch appealed. She argued Judge Gilligan erred denying her motion to dismiss the charge; that the prosecution introduced insufficient proving each element of assault beyond a reasonable doubt; and the judge erred sentencing her to 24 months probation after the sentencing hearing and that he failed to do so in open court. The Ohio Court of Appeals vacated her conviction in its ruling released on December 24, 2014. In *City of Parma v. Frances S. Mentch*, No. 101222 (Eighth Appellate Dist. Ct. of Appeals, 12/24/2014), the **Court stated**:

> "The primary purpose of the charging instrument in a criminal prosecution is to inform the accused of the nature of the offense with which he or she is charged."
> ...
> Mentch argues that the complaint filed in this case was fatally flawed because it failed to include all the essential elements of the crime charged. Specifically, Mentch argues that the complaint failed to set forth the mens rea element — a material element to the offense charged. We agree.
> ...
> Based on the complaint filed, Mentch was not provided with sufficient notice of the offense being charged. Indeed, the complaint at issue omitted an essential element of the offense — the mens rea of knowingly. Under such circumstances, we find that the trial court should have granted Mentch's motion to dismiss the complaint.
> ...
> Accordingly, because the complaint omits and fails to charge the culpable mental state of knowingly — an essential element of the crime of assault — it is fatally defective and fails to charge an offense. Mentch's conviction for assault is void and must be reversed.

The Court didn't consider the other issues of Mentch's appeal because they were moot.

At the time of appeals court's ruling Mentch had served her 30-day jail sentence and completed almost nine months of probation.

Telling Mansion (Cuyahoga County Library branch in South Euclid, Ohio) (Lynn Ischay, The Plain Dealer)

The Court's ruling establishes Mentch was convicted and jailed without even being charged with a crime under Ohio law. Mentch can file a claim under Ohio's wrongful conviction compensation statute that authorizes up to $40,330 per year of incarceration (or amount determined by state auditor), in addition to lost wages, costs, and attorney's fees.

Click here to read the appeals court's ruling in *City of Parma v. Frances S. Mentch*, No. 101222 (Eighth Appellate Dist. Ct. of Appeals, 12/24/2014).

Source:

City of Parma v. Frances S. Mentch, No. 101222 (Eighth Appellate Dist. Ct. of Appeals, 12/24/2014)

Assault conviction reversed for Telling Mansion library advocate accused of pulling hair, *Plain Dealer* (Cleveland, OH), December 25, 2014

Jury finds Telling Mansion library advocate guilty of misdemeanor assault, *Plain Dealer* (Cleveland, OH), March 4, 2014

Ask Your Personal Librarian, Michael Schwartz Library, Cleveland State University

Wisconsin Awards Maxwell J. Verkuilen $15,417 Compensation For 3 Years Wrongful Imprisonment For Sexual Assault

Maxwell J. Verkuilen has been awarded $15,416.76 compensation by the State of Wisconsin for three years and one month of wrongful imprisonment for sexual assault. The award came more seven years after his exoneration in August 2007.

On June 10, 2002 the 25-year-old Verkuilen was at a bar with friends in Appleton, Wisconsin. Erin Schubert introduced herself to him at the bar, and she asked him for a ride when he left in the early morning of June 11. The two went to the house where he rented a room from his sister and her husband. After Verkuilen and Schubert watched television for a while they went upstairs to his bedroom where they engaged in sexual intercourse and then slept. The next morning Schubert declined an invitation from Verkuilen's sister to stay for breakfast and she gave him her phone number. Schubert didn't indicate to Verkuilen's sister or her husband that anything was out of the ordinary.

Sometime after arriving home in nearby Kaukauna, Schubert notified the police and accused Verkuilen of sexually assaulting her in his bedroom.

Verkuilen was arrested on June 12 and two days later he was charged with two counts of 3rd degree sexual assault. Because of his arrest, his probation for a previous misdemeanor conviction was revoked and converted to nine months in jail.

A private attorney was hired by Verkuilen's father. However, after his father's sudden death Verkuilen requested a public defender, and in January 2003 he was assigned attorney Joseph M. Norby.

During Verkuilen's trial in Outagamie County Circuit Court, the prosecution's case was based on Schubert's testimony and the expert testimony of Jean Coopman — a registered nurse and Sexual Assault Nurse Examiner (SANE) — who examined Schubert after she made her complaint. Coopman testified Schubert had "injuries" consistent with non-consensual sex.

Verkuilen's defense was based on his testimony that he and Schubert had consensual sex after she asked him for a ride from the bar

Maxwell J. Verkuilen (Facebook.com)

and she willingly went upstairs to his bedroom. He also testified she spent the night with him and left in the morning after giving him her phone number.

The jury convicted Verkuilen of both counts on August 27, 2003. Norby withdrew as Verkuilen's lawyer in October 2003. On February 23, 2004 Verkuilen was sentenced to serve four years imprisonment to be followed by six years probation.* The same day his lawyer filed a notice of intent to pursue post-conviction relief.

On January 19, 2005 Verkuilen filed a timely post-conviction motion for a new trial that included nine issues: One of those issues was his lawyer Norby provided ineffective assistance of counsel for reasons that included: He failed to investigate and present expert medical evidence to rebut Coopman's testimony about "the ultimate issue the jury was to determine—whether the sexual encounter was consensual, or forced."; and he failed to call as witnesses Verkuilen's friends who were present at the bar where Schubert introduced herself, and his sister and brother-in-law who were home when the assault allegedly took place.

Verkuilen was granted an evidentiary hearing. During the hearing he presented expert medical testimony from Maureen Van Dinter, a nurse practitioner whose teaching duties at the University of Wisconsin School of Medicine include instruction about the proper method for performing sexual assault examinations. Van Dinter testified about major inconsistencies related to her review of the case file and Coopman and Schubert's testimony. One inconsistency was Schubert testified she had significant vaginal bleeding when she didn't report that on her pre-exam form, Coopman did not document any bleeding, and there was no blood on her vaginal swab.

Van Dinter also testified about alternate explanations for some of Schubert's "injuries," that they could have resulted from consensual sex, and there was no way to determine to any degree of scientific certainty they were due to nonconsensual sex.

After the hearing, the trial court denied Verkuilen's petition on June 16, 2006.

Verkuilen appealed to the Wisconsin Court of Appeals. Verkuilen asserted that Norby did not even bother to "crack open a book" to prepare his case.

On January 27, 2007 the Court of Appeals reversed Verkuilen's conviction based on ineffective assistance of his trial counsel. The Court stated in *State v. Verkuilen*, 299 Wis. 2d 782, 728 N.W.2d 373 (Wis. Ct of Appeals, 3rd Dist., 1-23-2007):

> ... the failure to call an expert to rebut Coopman effectively stripped Verkuilen of any defense. Coopman essentially rendered impossible Verkuilen's claim the sex was consensual. An expert witness such as Van Dinter, who could testify there might be another explanation for the injuries ... would have at least offered the jury an alternate scientific or medical basis for acquittal. Counsel's failure to find such an expert essentially conceded the case before Verkuilen ever took the stand. [¶16]
>
> This is not a case of mere witness credibility, ... Rather, we have a case where an expert's testimony, unchallenged by the defense, essentially allowed the State to scientifically "prove" its complaining witness was telling the truth. This is deficient performance.[¶17]
>
> ... the failure to rebut Coopman's testimony, in light of the knowledge that she would testify the sex was nonconsensual, was enough of an error to undermine our confidence in the result. Accordingly, we must reverse for a new trial, and we do so on that ground. [¶18]

Two weeks after the appeals court's ruling Verkuilen was released on $5,000 bond on February 5, 2007. He had been in custody for 4-2/3 years after his arrest on June 12, 2002.

After the case was remanded to the Outagamie County Circuit Court for a retrial, Verkuilen's motion was granted requiring Schubert to sign releases for her medical and mental health records prior to the date of the alleged offenses. However, Schubert refused to sign the releases, and on August 15, 2007 the judge signed an order barring her testimony during a retrial. The DA's Office then filed a motion to dismiss the charges which was granted on August 20, 2007.

On November 5, 2008 Verkuilen filed a legal malpractice lawsuit against his trial attorney Norby.

The case went to trial, and the jury heard testimony from two expert medical witnesses rebutting Coopman's trial testimo-

Verkuilen cont. on page 10

High Fence Foodie Cookbook Now Available !!!

High Fence Foodie is **a new cookbook** by Texas prisoner Celeste Johnson that was recently published by The Justice Institute.

High Fence Foodie has more than two hundred easy to prepare recipes for meals, soups, snacks, desserts, and beverages. These recipes can be made from basic items a prisoner can purchase from their unit's commissary, or people on the outside can purchase from a convenience or grocery store. They are written by Celeste Johnson, a woman imprisoned in Texas who loves to cook and try out new combinations of the simple food ingredients available to her.

Click here for more information about the book's contents and to order it from Justice Denied with no shipping charge.

Click here to buy ***High Fence Foodie*** **from Amazon.com.**

High Fence Foodie's all new recipes are a follow-up to the more than 200 recipes in *From The Big House To Your House* that was written by Celeste Johnson and five fellow prisoners at the Mountain View Unit, a woman's prison in Gatesville, Texas.

From The Big House To Your House received rave reviews on Amazon.com, with 75% of reviewers giving it 4 or 5 stars! Some of the comments are:

"A lot of the recipes are very imaginative, and fun to make. Well worth the money." J.C.

"I loved the food and was inspired by the can-do attitude of the ladies involved with this project." Dan

"My daughter got this for her husband for father's day. He loves using it!!" J.H.

"I am a college student making a limited income and these recipes are great and fulfilling for people like me who don'thave a ton of $ to spend on groceries." Alicia

"I sent this to my daughter. She absolutely loves this little cookbook!" D. G.

High Fence Foodie continues the high standard of *From The Big House To Your House*!

Celeste hopes her recipes will ignite a reader's taste buds as well as spark their imagination to explore unlimited creations of their own! She encourages substitutions to a reader's individual tastes or availability of ingredients. She is confident users of her recipes will enjoy creating a home-felt comfort whether behind the High Fence, or at Your House!

Celeste Johnson does not financially profit from sales of *High Fence Foodie*. All profits from the book's sale are donated to **The Justice Institute** Justice Denied to contribute to its work on behalf of wrongly convicted persons.

Verkuilen cont. from page 9

ny. One of these witnesses was a SANE nurse who examined Schubert three days after the alleged assault and found no evidence of sexual assault. The jury also heard testimony from the persons with Verkuilen at the bar where Schubert introduced herself, and his brother-in-law and his sister who were both present in the residence when the alleged assault took place and who spoke with Schubert on the morning after the alleged assault. The jury heard no testimony the DA dismissed the charges after Schubert refused to release her medical and mental health records.

On February 3, 2010, the civil jury returned a special verdict finding by a preponderance of the evidence that Verkuilen was not guilty of sexually assaulting Schubert, and that Norby was guilty of legal malpractice. The jury awarded Verkuilen $700,000. On March 10, 2010 Outagamie County Circuit Court Judge Philip M. Kirk signed **an Order** reducing the judgment to $456,191.50.

Norby did not have malpractice insurance, and after the judgment he declared bankruptcy. Verkuilen's civil judgment was extinguished in 2010 without any payment by Norby.**

Verkuilen then **filed a claim** for $450,000 in compensation with the Wisconsin Claims Board. § 775.05 Wisconsin Stats. authorizes a convicted innocent person to be compensated in an "amount which will equitably compensate the petitioner, not to exceed $25,000 and at a rate of compensation not greater than $5,000 per year for the imprisonment." The legislature can authorize the payment of money exceeding those amounts.

Verkuilen based the amount of his claim on the judgment in the civil case. He asserted the Public Defender's Office should not have allowed Norby to represent him without malpractice insurance. Verkuilen also claimed he lost work earnings of almost $50,000 yearly, he had difficulty finding employment and housing after his release, he owed money borrowed to pay legal expenses, **and that** "his wrongful imprisonment was a traumatic experience and destroyed his relationships with several friends and family members."

The Outagamie County DA opposed the amount and the basis of Verkuilen's claim, **arguing he didn't** satisfy the statute's requirement of proving "he was innocent of the crime by clear and convincing evidence and that he did not, by his act or failure to act, contribute to the conviction and imprisonment."

On December 9 2014 the Board held a hearing concerning Verkuilen's claim. **It ruled** "that equitable principles justify an award in the amount of $15,416.76 to compensate Mr. Verkuilen for his three-year and one month imprisonment. In addition, the Board concludes that the compensation should include $9,600 for Mr. Verkuilen's post-conviction legal fees challenging his original conviction." The total amount was $25,016.76.

Verkuilen, now 37, received no compensation for the 1 year and 8 months he was incarcerated from his arrest to his sentencing.

Endnotes:
* Verkuilen was sentenced to three years imprisonment and six years extended supervision on the first count, concurrent with four years' initial confinement and six years' extended supervision on the second count.
** Joseph M. Norby continues to practice law in Appleton, and he is listed as a member in "Good Standing" by the Wisconsin Bar Association (website last visited January 5, 2015).

Source:
State v. Verkuilen, 299 Wis. 2d 782, 728 N.W.2d 373 (Wis. Ct of Appeals, 3rd Dist., 1-23-2007)

Maxwell Verkuilen, By Board Granting Compensation, Wisconsin State Claims Board, December 9, 2014

Ex-prisoner gets $25,000 for wrongful imprisonment, MacroInsider.com, December 31, 2014

Man found not guilty by reason of mental defect, fdlreporter.com, August 6, 2014

State v. Verkuilen, Docket for Appeal Number 2005AP001652 - CR, Wisconsin Court of Appeals District 3 (last visited 1-5-2015)

Daniel Gristwood Dies 4 Months After New York Pays $7.3 Mil. For 9 Years Wrongful Imprisonment

Daniel G. Gristwood **died from lung cancer** on January 3, 2015. Four months earlier the State of New York paid him $7.3 million for nine years of wrongful imprisonment for a brutal assault on his wife.

In January 1996 Gristwood, 29, his wife Christina, 26, and their five children from almost 10 years of marriage lived in Clay, New York, about 10 miles north of Syracuse.

When Daniel arrived home from work about 2:30 a.m.on January 12 he found his wife upstairs covered in blood. She was alive but unconscious.

Daniel was immediately taken to the North Syracuse Police Barracks and began to be interrogated by detectives. Gristwood confessed to hitting his wife with a hammer after 16 hours of interrogation in a six- by eight-foot windowless room, with no food or sleep for 34 hours, without consulting with a lawyer, and after being threatened he would never be able to see his five young children again unless he cooperated. Gristwood immediately recanted his confession as coerced.

Christina survived the attack, but she suffered severe brain damage and was paralyzed on one side. She had no memory of the assault.

Gristwood was indicted for attempted murder. The prosecution's case during his trial was primarily based on his confession. The jury rejected his alibi defense that he was drinking with friends at a tavern after he got off work at 11:45 p.m. on July 11. After his conviction on August 20, 1996, Gristwood was given the maximum sentence of 12-1/2 to 25 years in prison. During his sentencing hearing Gristwood **told the judge**: "I didn't do this, and I miss my wife."

Gristwood **wrote in a letter** while in prison: "I've lost everything in my life – my wife, my children, my job, my freedom, everything. Why am I being railroaded like this?"

Gristwood's direct appeal was denied, and he had languished in prison for seven years when a miracle happened.

The actual assailant, Mastho Lebai Davis attempted beginning in March 2003 to have his confession to the attack on Christina taken seriously. He first confessed in open court before a judge, and when the authorities did nothing, he went to the Syracuse Police Department and confessed to officers that seven years earlier he had attacked a woman with a hammer. Gristwood's lawyer investigated Davis' confession. He filed a petition for a new trial on June 16, 2004 after he discovered evidence corroborating Davis' admission that he attacked Christina while she slept in the Gristwoods' apartment in 1996.

Daniel Gristwood after his release from prison (Dennis Nett, syracuse.com)

In August 2005 Judge John Brunetti — who had presided over Gristwood's trial and sentenced him to prison — vacated Gristwood's conviction and ordered a new trial **in ruling** there was "unassailable facts" supporting Davis' confession that he alone committed the crime. Gristwood was released on bond on August 30, 2005 after more than nine years and seven months of incarceration from the time of his arrest the day after the assault on his wife.

The State did not appeal Judge Brunetti's ruling, and the Onondaga County DA's motion to dismiss Gristwood's attempted murder indictment was granted on July 20, 2006.

The statute of limitations had expired so Davis couldn't be prosecuted for assaulting Christina.

Gristwood subsequently filed a lawsuit with the N.Y. Court of Claims to recover monetary damages for his wrongful imprisonment.

A bench trial to determine if the State was liable was held in 2011. During that trial psychologist Dr. Allison D. Redlich **testified as an expert** in the area of police-induced false confessions, that "based upon her review of the circumstances present in this matter ... [that Gristwood's statement] at approximately 7:00 p.m. on the evening of January 12, 1996 was not voluntarily made."

Christina and Daniel Gristwood in the 1980s after the birth of their child, Joseph

On April 1, 2011 Judge Nicholas V. Midey, Jr. **issued his ruling**, "... that claimant has satisfied, by clear and convincing evidence, all of the requirements set forth in Court of Claims Act § 8-b(5), and is therefore entitled to a judgment against the State for unjust conviction and imprisonment, to which the State must respond in damages. A trial limited to the issue of damages will be scheduled as soon as practicable."

A trial to determine the damages was held in January 2012. On April 4, 2013 **Judge Midey ruled** Gristwood was entitled to total compensation of $5,485,394. The award included non-pecuniary damages of $2.7 million for loss of liberty, mental anguish and loss of family relationships while incarcerated; and $1.92 million for continuing pain and suffering that included post-incarceration psychological injuries. The award also included pecuniary damages of $865,394 that was comprised of $100,000.00 to cover the cost of treatment for continuing psychological issues; $332,400 to cover lost wages, including fringe benefits, while incarcerated; and, $432,994 to cover post-imprisonment impairment of earning capacity. Judge Midey also ordered that 9% interest per annum was to accrue on the judgment from the date of the determination of liability on April 1, 2011.

The State appealed both the finding of liability and the award of damages. On July 11, 2014 the New York Court of Appeals upheld the State's liability and the total damages awarded to Gristwood. The appeals court's **ruling stated**: "At the time of the crime, claimant lived with his wife and five young children. Claimant established that his conviction and incarceration had a catastrophic impact on his personal and family life during the period of incarceration and continuing thereafter." The State paid Gristwood approximately $7.3 million in two checks that were delivered to his lawyer on September 5, 2014 — $5,485,394 plus $1.8 million in interest from April 1, 2011. Gristwood received about $4.4 million after his lawyer's were paid $2.9 million in legal fees. At the time he told *The Post-Standard* (Syracuse, NY) that he was going to put 90% of the money he received into trusts for his five children.

Gristwood cont. on page 12

Gristwood cont. from page 11

Less than four months later Gristwood died of lung cancer on January 3, 2015. He was 48.

Christina Gristwood, who suffered a brain injury in the 1996 assault and divorced him while he was in prison, **died on** April 2, 2014. She was 44.

Mastho Lebai Davis (Florida DOC)

Christina did live to see her assailant Mastho L. Davis **convicted in** June 2010 of raping a 75 year-old woman, assaulting her, and burglarizing her home in St. Augustine, Florida in March 2007. During Davis' trial there was testimony that after sexually assaulting his elderly victim he humiliated her even further by pouring cooking oil over her head, and she thought he was going to set her on fire. The jury deliberated for 90 minutes before convicting Davis.

During Davis' sentencing hearing in August 2010 the prosecutor described him as an assailant of "pure evil," and mentioned in arguing for the maximum sentence that Davis had confessed to the assault on Christina Gristwood that left her disabled for life. In his statement before being sentenced Davis described himself as a "good guy," and said he had walked from New York to Florida. The judge sentenced the 39-year-old Davis to life in prison for rape, life in prison for burglarizing her house, and 30 years in prison for assaulting her. Davis has to serve a minimum mandatory term of 25 years on the rape count before being eligible for parole because the jury found that he qualified as a dangerous felony sexual offender, and his life sentences for rape and burglary are to be served consecutively.

Source:

Oswego County man dies four months after state pays him $7.5 million for wrongful conviction, *The Post-Standard* (Syracuse, NY), January 05, 2015

An 'open and shut case' vs. an innocent man: Daniel Gristwood was imprisoned 9 years for beating his wife, but N.Y. state police had it wrong, *The Post-Standard*, October 9, 2011

Confession was judged voluntary by 13 people, *The Post-Standard*, October 16, 2011, p. E-1, 4

New York finally pays wrongly convicted man: $7.3 million for nine years in prison, *The Post-Standard,* September 11, 2014

Judge orders state to pay $5.5 million to wrongly convicted Oswego County man, *The Post-Standard*, May 1, 2013

Daniel G. Gristwood v. State of New York (Claim No. 114040), 646 CA 13-01679 (July 2014)

Christina Gristwood, victim of vicious hammer attack in Clay home 18 years ago, dies, *The Post-Standard*, April 11, 2014

Gristwood v. The State of New York, No. 2011-009-109, Claim No. 114040 (April 1, 2011 ruling finding the State's liability for damages.)

Davis gets life: Sentenced for 2007 rape, burglary of 75-year-old woman, *The St. Augustine Record*, August 4, 2010

Aaron S. Lowden's Conviction Based On Suspicion He Was Involved In Drug Trafficking Tossed By Maine's Highest Court

Maine's Supreme Judicial Court has acquitted Aaron S. Lowden of aggravated trafficking of a scheduled drug (methamphetamine) because the prosecution introduced no evidence during his trial that he committed the crime.

In January 2014 Lowden was 41 and renting a room on the second floor of in a house at 25 Bigelow Road in Lebanon, Maine. His landlady called the York County Sheriff's Office on January 14th and said she smelled something unusual coming from the basement of the house where Lowden had made several trips that day.

The deputy who responded was invited by Lowden to come into the basement. Lowden showed the officer a glass container partially filled with liquid he was heating on a Coleman stove. The officer suspected Lowden was manufacturing methamphetamine. The deputy "turned off the Coleman stove; evacuated the home; and contacted the fire department, the rescue unit, and the Maine Drug Enforcement Agency (MDEA)."

A thorough search of the house was conducted. Although a few chemicals were found, they were incomplete to manufacture methamphetamine, and no methamphetamine was found in the house. A copy of "Uncle Fester's Synthetic Manual" was found in Lowden's bedroom. [Endnote 1]

Lowden was arrested, and six days later he was released on $500 bail.

Maine's police laboratory determined methamphetamine wasn't the liquid in the glass container seized from the basement, and no illegal drugs or traces of drugs were among the items seized from his room and the basement.

Lowden was indicted on drug charges on June 5, 2012 of aggravated trafficking in a scheduled drug — namely methamphetamine.

During Lowden's jury trial that began on April 22, 2013 the prosecution's case was based on their argument the evidence of his possession of some chemicals, the stove, glass containers, and "Uncle Fester's Synthetic Manual," constituted proof of his intent to traffic in methamphetamine. Lowden's defense was that none of the prosecution's evidence supported he engaged in drug trafficking as required by the statute, and speculation of what he might have been intending to do wasn't evidence.

Aaron S. Lowden Mug Shot (York County Sheriff's Office)

Lowden's lawyer made a post-verdict motion for a judgment of acquittal "on the grounds that no reasonable jury could have concluded, based on the evidence presented at trial, that he unlawfully trafficked in methamphetamine." The judge denied the motion, and sentenced Lowden to 7 years imprisonment.

Lowden appealed on the basis his trial judge erred in denying his motion for a judgment of acquittal.

On February 25, 2014 the Maine Supreme Judicial Court set-aside Lowden's conviction and ordered his acquittal. In *State of Maine v. Aaron S. Lowden*, 2014 ME 20 (ME Sup. Jud. Ct., 2-25-2014) the Court ruled:

> "No methamphetamine was found, Lowden lacked some of the chemicals necessary to create it, and the state did not present evidence — direct or circumstantial — from which a jury could have rationally inferred that Lowden successfully manufactured or possessed methamphetamine.
>
> Therefore, we must vacate his conviction for aggravated trafficking of scheduled drugs.
>
> ...the evidence does not support the trafficking conviction, we must remand for the entry of a judgment of acquittal."

With his retrial for his acquitted charge barred by double-jeopardy, Lowden was released later in the day on February 25.

Endnote:

1. Testimony at trial described "Uncle Fester's Synthetic Manual" as a "how to" cookbook for the manufacture of illicit drugs.

Source:

State of Maine v. Aaron S. Lowden, 2014 ME 20 (ME Sup. Jud. Ct., 2-25-2014)

At the time of his arrest Aaron S. Lowden was renting a room on the second floor of this house at 25 Bigelow Road, Lebanon, Maine. (Google Streetview, Sept. 2012)

Barry Bonds Acquitted By Federal Appeals Court After 12 Year Legal Ordeal

Barry Lamar Bonds **was acquitted** of his 2011 obstruction of justice conviction by the U.S. Ninth Circuit Court of Appeals on April 22, 2015. The appeals court ruled the prosecution introduced insufficient evidence during Bonds' 2011 trial that he obstructed justice by his testimony to a federal grand jury in 2003.

During his twelve year legal ordeal that began in 2003, Bonds, a former major league baseball player, spent many millions of dollars defending himself. It is estimated the government spent over $5 million prosecuting him.

Bonds said in a statement after his acquittal: "Today's news is something that I have long hoped for. I am humbled and truly thankful for the outcome as well as the opportunity our judicial system affords to all individuals to seek justice. ... I am excited about what the future holds for me as I embark on the next chapter."

The opinions of the judges concurring with Bonds' acquittal echoed *Justice Denied's* assessment of his case in **its March 2011 article**, "The Persecution of Barry Bonds."

The federal government's targeting of Bonds began in 2003 when a federal grand jury was convened in San Francisco to investigate the sale of performance enhancing drugs ("PEDs") to athletes in order to determine whether the proceeds of the sales were being laundered to avoid the payment of federal taxes. The U.S. Attorney's Office believed that one of the athletes involved was Bonds.

Bonds was 39 when he was subpoenaed to testify before the grand jury, which he did on December 4, 2003. Bonds was granted immunity from prosecution for his testimony that was truthful. Bonds testified he didn't knowingly receive or use any substance containing human growth hormone, steroids, or any substance that required injection.

Four years later, in November 2007, a federal grand jury indicted Bonds on four counts of making false statements and one count of obstructing justice related to his grand jury testimony in 2003.

The 2007 baseball season was Bonds' last, because he did not play again after his indictment. He is Major League Baseball's single season and career leader in home runs.

Barry Bonds arrives at the federal courthouse in San Francisco on first day of his trial, March 21, 2011 (Sanchez,AP)

After more than three years of legal maneuvering, Bonds' trial began on March 21, 2011 in U.S. District Court in San Francisco.

The prosecution contended that Bonds trial wasn't about whether he possibly possessed or used steroids — but about whether he testified truthfully to the grand jury and obstructed justice.

The circumstantial case against Bonds for the four perjury charges was based on the allegation by the prosecution he wasn't truthful in testifying he didn't use PEDs, and that his former personal trainer Greg Anderson didn't provide him with PEDs. The government asserted that Anderson provided a number of athletes, including Bonds, with PEDs.

The alleged obstruction of justice violation, under Title 18 U.S.C. § 1503(a), was based on a rambling answer Bonds gave to a question by the U.S. Attorney, although he gave a definite denial immediately afterwards when he was specifically asked if he had used PEDs. Bonds' rambling answer was identified as "Statement C."

Anderson had been jailed on three occasions for a total of more than a year after being found in contempt for refusing to testify about Bonds during grand jury proceedings. When Anderson was called as a prosecution witness on the first day of trial testimony he refused to testify about Bonds. The judge found Anderson in contempt and ordered him jailed for the duration of Bonds' trial.

With Anderson jailed for contempt, and no government witness testifying from their personal knowledge that Anderson provided PEDs to Bonds, the prosecutions' circumstantial case was largely based on testimony a person's body gets bigger when they use PEDs and that Bonds got bigger as he neared the end of his career, "bad character" testimony that his behavior changed after he allegedly began using PEDs, and that his former personal trainer Greg Anderson provided PEDs to other people.

A star prosecution witness was Bonds' former girlfriend Kimberly Bell. Bell had an axe to grind because after their acrimonious breakup in 2003 she claimed that he reneged on his promise to buy her a house. The judge allowed Bell **to provide salacious** testimony about Bonds "bad" conduct during their relationship that included he was mean to her at times while they were together from 1994 to 2003, and that "his testicles were smaller and an unusual, different shape" before 2000. However, during her cross-examination she admitted there was no reduction in Bonds' sexual prowess. Bonds was known throughout his career that began in 1986 as one of the surliest players in baseball, so he was "mean" to people many years before his his alleged PEDs use.

The prosecution also introduced testimony by a San Francisco Giants equipment manager that in 2002 Bonds started wearing a hat that was size 7-3/8 to replace his previous size 7-1/4. The meaning of that is suspect because Bonds set the major league record for home runs in 2001 and he won his first of seven National League Most Valuable Player awards twelve years earlier in 1990.

The prosecutions' strategy was successful of presenting a case based on suspicion, innuendo, suspect witness testimony, and salacious "bad character" testimony as a substitute for actual evidence of criminal wrongdoing. On April 13, 2011 the jury convicted Bonds of obstruction of justice for his Statement C, but not of any of the false statement charges. One false statement count was dismissed at the governments request at the close of evidence and the jury deadlocked on the remaining three counts. The government declined to retry Bonds and those three counts were dismissed in August 2011.

The trial judge denied Bonds' post-verdict motion for acquittal on the obstruction count.

Bonds was sentenced to 30 days home confinement, two years supervised release, 250 hours of community service, and payment of a $4,000 fine. He completed his sentence.

One of Bonds' arguments in his appeal was the prosecution introduced insufficient evidence to prove his rambling Statement C constitutes obstruction of justice. In 2013 the majority of a three-judge panel in the U.S. Ninth Circuit Court of Appeals **affirmed his conviction** in *USA v. Bonds*, 730 F. 3d 890 (9th Cir. 2013).

The Ninth Circuit granted Bonds' petition for an *en banc* rehearing of the panel's ruling. On April 22, 2015, by a majority 10 to 1 vote, Bonds' conviction was reversed on the basis the prosecution introduced insuffi-

Bonds cont. on p. 14

Bonds cont. from p. 13

cient evidence that Statement C was material. The two paragraph unsigned *per curiam* (unsigned) ruling in *USA v. Barry Bonds*, No. 11-10669 (9th cir, 4-22-2015) **states:**

> During a grand jury proceeding, defendant gave a rambling, non-responsive answer to a simple question. Because there is insufficient evidence that Statement C was material, defendant's conviction for obstruction of justice in violation of 18 U.S.C. § 1503 is not supported by the record. Whatever section 1503's scope may be in other circumstances, defendant's conviction here must be reversed.
>
> A reversal for insufficient evidence implicates defendant's right under the Double Jeopardy Clause. ... His conviction and sentence must therefore be vacated, and he may not be tried again on that count.

There were four concurring opinions filed. The primary opinion written by Circuit Judge Alex Kozinski **states in part**:

> The jury, however, found only one statement obstructive [in response to the question].
>
> Q: Did Greg[, your trainer,] ever give you anything that required a syringe to inject yourself with?
>
> ...
>
> A: That's what keeps our friendship. You know, I am sorry, but that—you know, that—I was a celebrity child, not just in baseball by my own instincts. I became a celebrity child with a famous father. I just don't get into other people's business because of my father's situation, you see.
>
> ...
>
> ... section 1503's coverage is vast. By its literal terms, it applies to all stages of the criminal and civil justice process, not just to conduct in the courtroom but also to trial preparation, discovery and pretrial motions.
>
> ...
>
> B. Because the statute sweeps so broadly, due process calls for prudential limitations on the government's power to prosecute under it. Such a limitation already exists in our case law interpreting section 1503: the requirement of materiality. ... the government must prove beyond a reasonable doubt that the charged conduct was capable of influencing a decision making person or entity—for example, by causing it to cease its investigation, pursue different avenues of inquiry or reach a different outcome.
>
> ...
>
> We start with the self-evident proposition that [Bond's] Statement C, standing alone, did not have the capacity to divert the government from its investigation or influence the grand jury's decision whether to indict anyone.
>
> ...
>
> The statement says absolutely nothing pertinent to the subject of the grand jury's investigation.
>
> ...
>
> Statement C communicates nothing of value or detriment to the investigation.
>
> ...
>
> On careful review of the record, we find insufficient evidence to render Statement C material.

Greg Anderson (Barry Bonds former personal trainer) (Bates for News)

Circuit Judge William Fletcher's concurring opinion agreed with reversing Bond's conviction, but on the radical basis that he was erroneously prosecuted for obstruction. Judge Fletcher wrote at length that the legislative history of the federal obstruction of justice statute establishes it was intended to only apply to obstruction by bribery or attempted bribery — which wasn't even alleged in Bonds' case. Judge Fletcher **is deeply concerned** about the breadth of activities criminalized by the government's view of the obstruction statute:

> In the government's view, any truthful answer given in the course of civil or criminal litigation, if intended to influence, obstruct, or impede the administration of justice, violates the omnibus clause. At oral argument, the government made terrifyingly clear the result of its reading of the statute. The government contended that the obstruction statute criminalizes a truthful but intentionally evasive or misleading answer to an interrogatory in civil litigation. *The government also contended that the statute criminalizes a truthful but intentionally evasive or misleading answer during appellate oral argument*:
>
> ...
>
> When asked how many San Francisco lawyers it planned to throw in jail, the government declined to specify.
>
> ...
>
> An appellate attorney who answers during oral argument, "I was not the trial attorney," sometimes knows what happened at trial but gives that answer in the hope that the judge will not pursue the matter. This attorney, too, may be a criminal.

Circuit Judge Stephen Reinhardt's concurring opinion agreed with reversing Bond's conviction, and asserted that the legislative history of the federal obstruction of justice statute supports that it only applies to out of court conduct, with perjury and contempt of court adequately covering in court conduct. **Judge Reinhardt wrote**:

> The problems created by the misuse of § 1503 by overeager prosecutors to punish witnesses for what they say in court are all too evident from the facts of this case. It is time for them to cease using that section as a substitute for vigorous cross-examination or for the criminal statutes that properly apply to in-court testimony.
>
> In short, *this case involves nothing more than an irrelevant, rambling statement made by a witness during the course of a grand jury investigation*. Statement C was not material and could not possibly have interfered with the due administration of justice. ... Bonds's conviction for obstruction of justice cannot stand and he may not be retried on the same charge.

The lone dissenter, Circuit Judge Johnnie Rawlinson primarily, **argued that** since the jury was correctly instructed about the elements of what constitutes obstruction of justice, and they found Bonds guilty, then the appellate court should defer to their judgment. He asserted that overturning the jury's verdict was impermissibly second-guessing of the jury and was contrary to the precedents in the 9th circuit and other federal circuits that establish Bonds' rambling Statement C constitutes obstruction of justice.

The government's last hopes are to request reconsideration of the ruling by all 29 Ninth Circuit judges, which has never been granted, or to seek U.S. Supreme Court review of the Ninth Circuit's reversal of Bonds' conviction. That could backfire because the Supreme Court could decide to use Bonds' case to clarify the reach of the obstruction of justice statute. That could include excluding its application to a situation where a witness gives a vague rambling answer to a question that is later clarified with a direct answer -- which is what Bonds did. That is an important issue to resolve because when interviewed after his acquittal, one of **Bonds' jurors said** there was confusion during their deliberation about whether he could be convicted for obstruction because

Bonds cont. on p. 15

Charles Placa Spends $10k To Be Exonerated For Getting Beach Access Key For His Disabled Daughter

Charles Placa has **been acquitted** after appealing his conviction of disorderly conduct while obtaining a key to unlock the handicap gate for access to the beach in Bradley Beach, New Jersey.

Placa is a consulting engineer who lives in Milford, Ohio with his wife Connie and daughter Laureen, who has cerebral palsy and uses a wheelchair. In July 2013 the Placa family traveled to Bradley Beach for a vacation, as they had every other year for about twenty years. Bradley Beach is on the Atlantic Ocean, about 70 driving miles south of New York City.

On July 29 Placa found the gate to the handicapped ramp to the beach locked. Placa talked to a beach-badge checker who pointed to the beach hut where the key was located. Placa went to the hut and opened the door that was marked "Employees Only." Inside the 72 year-old cashier was startled and told him he needed to go to the window. He did and she gave him the handicap gate key. After he left the cashier called the Bradley Beach Police Department and reported the hut had been broken into. When the police arrived she told them she thought Placa was going to rob her and that he cursed at her when he came into the hut.

Charles Placa after his acquittal (Andrew Ford, Asbury Park Press)

The police arrested and handcuffed the 58-year-old Placa on the beach in front of his wife and daughter. His daughter became so hysterical that she fell out of her wheelchair, and had to be helped back in it by a lifeguard. Placa was charged with criminal mischief, disorderly conduct and defiant trespass.

Placa's case garnered publicity because it highlighted problems with handicap beach access, and Hamilton, New Jersey attorney Kelly Anderson Smith agreed to handle his case *pro bono*.

Even though Placa lived in Ohio and a trial would require him to travel the 630 miles to Bradley Beach, he refused to plea bargain, insisting he did nothing wrong.

Placa's bench trial was held on April 24, 2014. The prosecution's case was based on the cashier's testimony she was frightened when Placa came into the hut unexpectedly. **She testified**, "I was petrified. I had money in there. I thought he was coming in to rob me. … He said to me, 'Where is the (expletive) key for the ramp?'" On cross-examination she acknowledged Placa did not ask for any of the money that was kept in the hut.

Placa testified he entered the hut after a beach-badge checker pointed to it as where he could get the handicap gate key, but that he did not curse at the woman inside. **He stated**, "The only thing I told Vivian was I was disappointed what a parent has to go through to get his daughter on the beach." He also said she yelled at him to get out and go to the window, which he did, and he obtained the key. He said his daughter was very upset seeing him arrested and handcuffed by a police officer.

At the conclusion of the trial Judge Richard Thompson gave the attorneys three weeks to submit written summations and that he would then reach a verdict.

The boardwalk in Bradley Beach, New Jersey

Four months later, on August 20, 2014, Judge Thompson acquitted Placa of criminal mischief and defiant trespass, but found him guilty of disorderly conduct. He fined Placa $106.

After his conviction Placa **told a reporter**, "I guess it was expected, based on the arrogance at the beach when they arrested me and the attitude of the beach staff in not wanting me to get on the beach. I guess you could have scripted this."

Placa appealed. Since he was tried in Municipal Court his appeal was heard in the Monmouth County Superior Court.

On December 12, 2014 Judge Francis Vernoia rejected the prosecution's argument Placa entered the beach hut in a hostile way, and acquitted him **in ruling**, "The court finds that when Mr. Placa entered the booth, he did nothing more than ask for the key to the access ramp."

After his acquittal Placa **told reporters**, "It's not about the money, It's about satisfaction. My daughter definitely didn't do anything wrong, and I know I didn't."

Laureen Placa **said of the incident**, "I was terrified. I didn't know what happened to my dad. This was the first time I ever saw my dad get arrested. I was in panic. I fell out of the beach chair. It was nuts."
Although Smith handled his case *pro bono*, Placa estimated he spent about $10,000 traveling four times from Ohio to New Jersey for court appearances, and his appeal.

Source:
Overturned conviction for man who wanted beach access, *Asbury Park Press*, December 14, 2014

Man who wanted beach access for disabled daughter found guilty, *Asbury Park Press*, August 20, 2014

A troubled day at the beach for family, *Asbury Park Press*, April 25, 2014

Bonds cont. from p. 14

he directly answered the question later in his testimony.

Prosecutions based on guilt by association and the type of shaky "evidence" that resulted in Bonds' conviction occur with variations every day all across the United States. It is not known why the U.S. Attorney's Office went after Bonds with such a vengeance, but he is just one of the innumerable innocent people victimized by what is more properly described as a persecution than a legitimate prosecution.

Click here to read the complete ruling in *USA v. Barry Bonds*, No. 11-10669 (9th cir, 4-22-2015) (The *per curiam* decision, the four concurring opinions,and the dissenting opinion.)

Sources:
USA v. Barry Bonds, No. 11-10669 (9th cir, 4-22-2015) (vacating conviction based on insufficient evidence)

USA v. Bonds, 730 F. 3d 890 (9th Circuit 2013) (Affirming conviction)

The Persecution of Barry Bonds, By Hans Sherrer, *Justice Denied*, March 28, 2011

Barry Bonds' obstruction conviction thrown out by appeals court, AP story, *USA Today*, April 22, 2015

Benjamin Earl Garfield Acquitted By Washington Court of Appeals Of Possessing Stolen Rifle

Benjamin Earl Garfield **was acquitted** by the Washington Court of Appeals on January 20, 2015 of possessing a stolen firearm.

In 2010 or 2011 Garfield bought a .30-06 rifle from a Hispanic man at a Quik Stop in Quincy, Washington. The man told Garfield he needed to sell the rifle for gas money to drive to Mexico. Garfield paid the man about $130 for the rifle.

Garfield later pawned the rifle at the Olde World Trading Company in Moses Lake. After retrieving the rifle, on September 11, 2012 he pawned it for $75 at the Olde World Trading Company in Ephrata. Quincy, Moses Lake, and Ephrata are all in Grant County where Garfield lived.

As required by Washington State law the pawnshop in Ephrata provided the rifle's serial number and description to the local police department to check if it was stolen. The Ephrata Police Department identified the rifle had been reported stolen in November 2008.

Garfield denied knowing the rifle was stolen when he was questioned by a Ephrata PD detective. He told the detective the circumstances of how he had bought the rifle, and that he had previously pawned it in Moses Lake.

Garfield was charged in October 2012 with possessing a stolen firearm.

During his trial the prosecution had not direct evidence Garfield knew the rifle was stolen, so their was case was based on arguing he was guilty because of his inability to identify exactly when he bought the rifle and some inconsistencies in his statement. Garfield's court appointed **lawyer explained** during his closing statement, "that the events occurred years before and his misremembering of details is not evidence that he knew the gun was stolen."

The jury convicted Garfield on February 14, 2013. The judge allowed Garfield to be released on bail pending the outcome of his appeal.

An essential element the prosecution had to prove beyond a reasonable doubt was that

Entrance to the Olde World Trading Company in Ephrata, Washington (Google Streetview)

Garfield knew the rifle was stolen. Garfield **argued in his appeal** his conviction should be reversed because "... a jury could not reasonably infer that he had actual or constructive knowledge that the rifle was stolen for numerous reasons: (1) the Lecocqs reported the theft several years before he pawned the rifle; (2) the State presented no evidence that Garfield was familiar with the location of the theft; (3) the price at which he purchased the rifle was not unreasonably low; and (4) the State introduced no direct evidence of "guilty knowledge" on his part."

On January 20, 2015 the Washington Court of Appeals reversed Garfield's conviction in ***State of Washington v. Benjamin E. Garfield***, No. 31502-9-III (Wash. Ct. of Appeals, 1-20-2015). The Court's ruling stated in part:

> Mere possession of stolen property is not enough to justify a conviction. ... If a defendant possesses recently stolen property, usually from a few hours to a few months, slight corroborative evidence of other inculpatory circumstances tending to show guilt will allow a trier of fact to infer that the defendant had constructive knowledge of the theft.
> ...
> Three years and 10 months elapsed between the theft and Garfield pawning the rifle.
> ...
> He [Garfield] gave his correct name and other personal information to a pawnshop and never hid the gun. He did not mar the serial number on the firearm. The State presented no history of Garfield handling stolen property.
> ...
> The State did not present evidence of the proximity between the Quik Stop station and the Lecocq home, other than both are in the same county. The State presented no testimony of Benjamin Garfield having familiarity with the location of the Lecocq home, or that Garfield purchased the [] rifle at a price below its value.
> ...
> To our knowledge, Benjamin Garfield broke no laws when he purchased the rifle from a private individual. ... Washington State did not require, at either the time Garfield purchased the rifle or at the time of his arrest, that the firearm purchase be registered with a state or federal authority.
> ...
> In essence, the State posits that anyone who purchases a firearm other than at a flea market, at a garage sale, from a friend, or from a "reputable business," can be convicted of possession of a stolen firearm, if the firearm was stolen prior to his coming into possession of it. Case law does not support this proposition. ... If the reviewing court finds insufficient evidence to prove the elements of the crime charged, reversal is required. We dismiss the charge of possession of stolen property filed against Benjamin Garfield.

Double jeopardy bars Garfield being retried, because the appeals court found the prosecution introduced insufficient evidence of his guilt.

Click here to read the appeals court's ruling in *State of Washington v. Benjamin E. Garfield*, No. 31502-9-III (Wash. Ct. of Appeals, 1-20-2015).

Source:

State of Washington v. Benjamin E. Garfield, No. 31502-9-III (Wash. Ct. of Appeals, 1-20-2015) (Reversing conviction due to insufficient evidence and ordering dismissal of the charges.)

Stolen-gun conviction overturned, *The Wenatchee World* (Wenatchee, Wash.), January 21, 2015

State of Washington v. Benjamin E. Garfield, No. 12-1-00538-1 (Grant County, Washington Superior Court)

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Federal Judge Denies Miriam Moskowitz' *Coram Nobis* Petition

On December 4, 2014 U.S. District Court Judge Alvin Hellerstein in Manhattan **denied 98-year-old Miriam Moskowitz'** *coram nobis* petition requesting that her 1950 conviction for conspiracy to obstruct justice be vacated.

In November 1950 Ms. Moskowitz was convicted in federal court of conspiring with her business partner Abraham Brothman and their former employee Harry Gold to present false testimony to a 1947 grand jury investigating Soviet espionage. Brothman was likewise convicted of conspiracy, while Gold was an unindicted co-conspirator. Gold testified during Ms. Moskowitz and Brothman's trial that she knew about and actively participated in furthering the conspiracy to mislead the grand jury. Ms. Moskowitz and Brothman both exercised their right not to testify in their defense.

In 1999 Ms. Moskowitz received the last of numerous FBI reports related to her case that were provided to her in response to her Freedom of Information Act requests. Included in those documents were two qualified statements attributed to Gold that suggested he had some discussions with Brothman about the conspiracy when Ms. Moskowitz wasn't present.

A *coram nobis* petition was filed on Ms. Moskowitz' behalf in the U.S. District Court for the Southern District of New York on August 12, 2014. The petition was based on Gold's two qualified statements that it asserted was evidence that if known by the jury would have resulted in her acquittal.

After the petition was filed *Justice Denied's* editor and publisher, Hans Sherrer wrote an almost 6,000 word article that analyzed its assertions. **The article** was titled: *Miriam Moskowitz' Coram Nobis Petition Is A Fraud On The Court And A Half-Baked Publicity Stunt*. The article details that almost a year before her petition was filed, Mr. Sherrer informed Ms. Moskowitz' in writing the specific reasons why there was no legitimate legal or factual basis supporting the overturning of her conviction by way of a *coram nobis* petition. The article also explains that Ms. Moskowitz' exploitation by a dishonest lawyer and an unscrupulous filmmaker resulted in the filing of a fraudulent petition that was a gross misuse of the legal system, and amounted to nothing more than an half-baked publicity stunt to provide

Miriam Moskowitz, 98, outside the federal courthouse in Manhattan on December 4, 2014 after her *coram nobis* petition was denied (Daily Mail)

film footage for a documentary being made about her life.

The government's **response to her** petition stated: "Moskowitz's petition attempts to manufacture an inconsistency with respect to just one of those conversations [involving Brothman and Gold] while ignoring the rest [that also involved Moskowitz]. Her claims, even if taken at face value, are insufficient to establish an error under today's law, let alone the law when she was convicted in 1950." (Govts. Opposition, filed 10/1/2014, p. 1-2)

After hearing arguments on December 4, 2014, Judge Hellerstein orally **denied the petition** for several reasons that included: Ms. Moskowitz had waited too long to file her petition after learning of Gold's alleged statements to the FBI; and if the jury had known of the statements attributed to Gold in the FBI reports it would not have changed the outcome of her trial. Those are the exact reasons Mr. Sherrer stated to Ms. Moskowitz in his letter in October 2013 why a *coram nobis* petition wasn't a legitimate option because it wouldn't be granted.

Judge Hellerstein **issued his** 10-page written order on December 9, 2014 that detailed his reasons for denying Ms. Moskowitz' petition. The order stated in part:

> "Petitioner has failed to demonstrate that her conviction should be overturned. First, Gold's statements to the FBI are not "irreconcilable" with the testimony he gave at Moskowitz's trial, as Petitioner alleges.
> …
> Even if, *arguendo,* the Government erred in withholding Gold's statements from the defense, it did not make any difference to the outcome of Moskowitz's trial.
>
> Moskowitz has also not provided adequate explanation to excuse her failure to seek an appropriate remedy earlier.
>
> Finally, Petitioner has also failed to satisfy the third prong of the test for *coram nobis* relief: that she "continues to suffer legal consequences from [her] conviction that may be remedied by granting of the writ."
> …
>
> **Conclusion**
>
> Moskowitz has failed to show that the Government erred in withholding Gold's statements to the FBI. She has also failed to show that the extraordinary remedy of a writ of error *coram nobis* would be appropriate even if the Government had so erred. Accordingly, Moskowitz's Petition is denied.

Miriam Moskowitz, 34, after her arrest in 1950 in New York City.

Ms. Moskowitz does have the valid option of filing an application for a presidential pardon based on the compassionate ground of her age, and that she has lived a law abiding life since her release from prison in 1952. It would be an extreme long shot, but it is the sort of pardon the current president might grant in January 2017 on his way out of office – just as President Gerald Ford granted a pardon to Iva Toguri D'Aquino **in January 1977**.

Click here to read Judge Hellerstein's Order in *Moskowitz v. USA*, No. 1:14-cv-06389-AKH (USDC SDNY).

Source:

Moskowitz v. USA, No. 1:14-cv-06389-AKH (USDC SDNY), Order and Opinion Denying Coram Nobis, Dec. 9, 2014

Judge refuses to overturn 98-year-old's espionage conviction, *New York Post*, December 4, 2014

Miriam Moskowitz' Coram Nobis Petition *Is A Fraud On The Court And A Half-Baked Publicity Stunt*, By Hans Sherrer, *JusticeDenied.com*, Nov. 27, 2014

Moskowitz v. USA, No. 1:14-cv-06389-AKH (USDC SDNY), Government's Memorandum Of Law In Opposition To Miriam Moskowitz's Petition For A Writ Of Error *Coram Nobis*, Oct. 1, 2014

Iva Toguri Is Innocent!, By Hans Sherrer, *Justice Denied magazine*, Issue 28 (Spring 2005)

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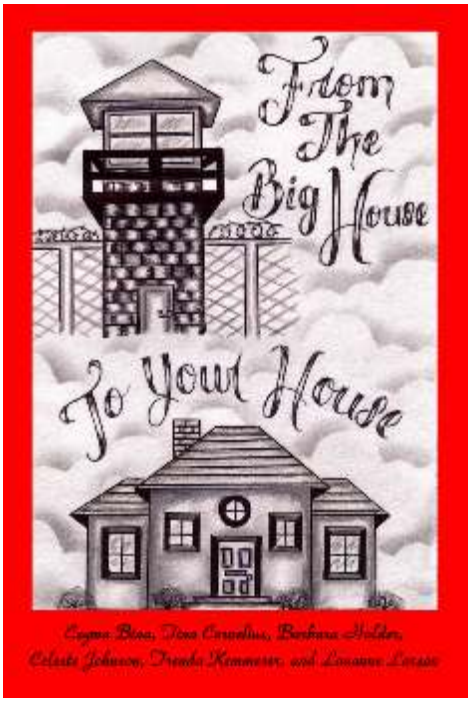

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Cooking in prison

With

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

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Edwin M. Borchard – Convicting The Innocent

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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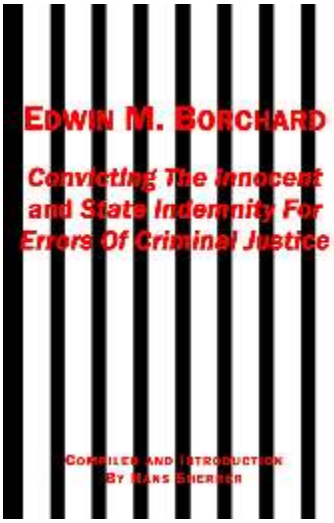

Convicting the Innocent (Chapter 4) has not lost its luster as one of the most insightful books published on the topic of wrongful convictions. Seventy-one years after its publication the multitude of causes underlying the cases of injustice it details not only continue to plague the legal system in 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.

Compensating exonerated persons is as topical a subject as it was one hundred years after Borchard's article about indemnifying wrongly convicted persons. Borchard article (Chapter 3) makes it clear that many European countries were more advanced in providing indemnification 100 years and more ago, than is the norm in the United States in 2015.

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Dehumanization Is Not An Option
An Inquiry Into Law Enforcement and Prison Behavior

By Hans Sherrer

This compilation of essays and reviews explains that the dehumanization characteristic of institutionalized law enforcement processes is as predictable as it is inevitable. The beginning point of thinking about alternatives to the dehumanizing aspects of law enforcement systems is understanding their causes. The essays include:

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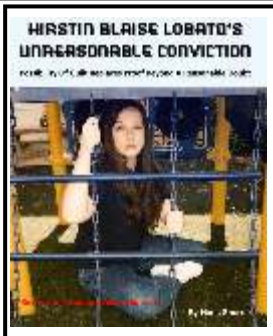

This is the story of Kirstin Lobato, who was 18 when charged in 2001 with the murder of a homeless man in Las Vegas. She was convicted of voluntary manslaughter and other charges in 2006 and she is currently serving a sentence of 13-35 years in Nevada. *Kirstin Blaise Lobato's Unreasonable Conviction*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

- She had never met the homeless man and had never been to where he was killed.
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- At the time of his death she was 170 miles north of Las Vegas in the small rural town of Panaca, Nevada where she lived with her parents.

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"... any participant in our habeas regime would have to agree that it resembles a twisted labyrinth of deliberately crafted legal obstacles that make it as difficult for habeas petitioners to succeed in pursuing the Writ as it would be for a Supreme Court Justice to strike out Babe Ruth, Joe DiMaggio, and Mickey Mantle in succession-even with the Chief Justice calling balls and strikes."

Federal Ninth Circuit Judge Stephen Reinhardt in "Demise Of Habeas Corpus And The Rise Of Qualified Immunity," 113 MichLawRev. 1219.

China Leads In Exonerations

China leads the world in known exonerations. That is in sharp contrast with the common western view that China has a third-world legal system. The Chief Justice of China's Supreme Court reported during the 12th National People's Congress in Beijing there were 1,317 exonerations nationwide in 2014. That is in contrast with the 224 known exonerations in the U.S. listed in the Innocents Database.

See p. 7.

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The Magazine for the Wrongly Convicted

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The scales of justice are tipped against innocent people all across the country - from Maine to Hawaii and from Alaska to Florida.

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