

JUSTICE

DENIED

The Magazine for the
Wrongly Convicted



Roseanne Beckett

Awarded \$2.88 million compensation for 10 years wrongful imprisonment for attempted murder in Australia.

See page 6

David Hicks



Australian acquitted by the U. S. Court of Military Commission Review of materially supporting terrorism in Afghanistan.

See page 13

Derral Wayne Hodgkins

Released from death row after murder acquitted by Florida Supreme Court.

See page 7



Charles Julius Guiteau

Wrongly convicted and executed in 1882 for the murder of President James A. Garfield, who actually died from negligent medical treatment of his minor gunshot wounds.

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Chris Bateman

Exonerated of drunk driving by pub's CCTV video in England.

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Message From The Publisher

The blind spot of federal and state legal systems to not provide a procedure to correct historical criminal prosecution errors is highlighted by the conviction of Charles Julius Guiteau in 1882 for the murder of President James A. Garfield. Guiteau did inflict two relatively minor non-fatal gunshot wounds in his failed assassination attempt. However, Garfield’s death 79 days later was due to the medical negligence of his doctors. Yet, Guiteau has wrongly been vilified for more than 130 years as Garfield’s assassin. See p. 3.

Prosecutors in the United States are not the only ones who fight the award of compensation to an exonerated person. Roseanne Beckett had to wage a 9-½ year effort before she was awarded compensation for 10 years of wrongful imprisonment for attempted murder in Australia. See p. 6.

Electronic evidence of varying sorts is proving increasingly important in exonerating a person. CCTV evidence was able to exonerate both Chris Bateman (See p. 8), and Wassillie L. Gregory (See p. 10).

The [Innocents Database](#) that can now be sorted and searched online, is the premier Internet tool for researching cases of persons who have been exonerated. See p. 5.

The most extreme miscarriage of justice is when a person is wrongly convicted of murder and sentenced to death. After reviewing the evidence in Derral Wayne Hodgkins’ case the Florida Supreme Court acquitted him and he was released from death row. See p. 7.

Hans Sherrer, Editor and Publisher
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Charles Julius Guiteau Did Not Assassinate President James Garfield

By Hans Sherrer

For more than 130 years books, magazine articles, and even encyclopedias have described Charles Julius Guiteau as President James A. Garfield's assassin. They are wrong. Guiteau did not kill Garfield.

Guiteau did use a pistol to twice shoot Garfield on July 2, 1881 at the Baltimore and Potomac train station in Washington D.C. Those wounds, however, were not life threatening. The first bullet grazed Garfield's arm without striking a bone. The second bullet that struck him in the back did not strike any vital organs, although it did break two ribs. That bullet came to rest behind Garfield's pancreas.

Guiteau utterly failed in his attempt to shoot Garfield to death.

Compelling evidence is presented in *Destiny of the Republic* (Doubleday, 2011) by Candice Millard, that corrects the major historical error that Guiteau murdered Garfield.

[*Destiny of the Republic*](#) sets forth in detail that Garfield's physicians failed to protect the non-fatal wound in his back from infection, and then to protect him from its catastrophic effects. Garfield's death was a homicide — but it was the negligence of his physicians that directly led to his death. Guiteau's failure simply provided the opportunity for Garfield's physicians to fatally interfere with his recovery by their negligent care for him.

Methods to protect wounds from infection discovered in 1865

By the 1860s it had been known for centuries by doctors from observation and experience that an infection could develop in an open wound.

Relying on Louis Pasteur's germ research, English physician Joseph Lister discovered in 1865 that an infection and pus didn't develop in a boy's open wound treated with carbolic acid, and that was protected with a clean bandage sterilized in antiseptic. In 1867 Lister [published his findings](#) in a series of six articles in the British journal *The Lancet*.

As a result of Lister's work, for more than ten years prior to Garfield's shooting it had



Charles Julius Guiteau
(Sept. 8, 1841 - June 30, 1882) (Biography.com)

sterilized instruments and clean bandages by doctors with clean hands and clothing.

Lister's discoveries were known in the U.S. and a minority of doctors adopted the anti-septic practices of their European and English counterparts.

Lister's work even inspired St. Louis chemist Joseph Lawrence to develop in 1879 [a solution for use](#) as both a general germicide and a surgical antiseptic. To honor Lister he named his creation *Listerine*. First marketed to doctors in 1881 — the year of Garfield's shooting — *Listerine* began to be marketed in diluted form to dentists for oral care in 1895. In 1914 *Listerine* became the first over-the-counter mouthwash sold in the United States.

Garfield's doctors were skeptics of anti-septic treatment of open wounds

Influential doctors in the U.S. pooh-pooed the idea an infection was caused by microscopic germs — because they couldn't be seen with the naked eye. Dr. Willard Bliss and his colleagues who "treated" Garfield were among the skeptics.

If Garfield's doctors had simply used consistent sanitary practices that included dressing his back wound with clean bandages and allowed it to heal in a sanitary environment, it is expected he would have been up and about in a matter of days. Instead he was allowed to lie on filthy bedding, his wound that was repeatedly probed by doctors with dirty hands and unclean instruments was covered with unsterile bandages, and he was "cared" for in a dingy, moldy, rat infested building. (Immediately after the shooting Garfield was laid on a dirty mattress in the train station, and then, until his last several weeks Garfield was cared for at the White House, which at that time was in extreme disrepair.)

Although Bliss and his colleagues didn't know the bullet that entered Garfield's back was lodged behind his pancreas, the bullet

been accepted by the medical profession in Europe and England that to minimize the possibility a lifethreatening infection would develop from germs, it was essential to treat a knife or gunshot wound in a clean environment with

sterilized instruments and clean bandages by doctors with clean hands and clothing. wasn't causing any medical problems. Quite unnecessarily and to the extreme detriment of Garfield's recovery, Bliss and other doctors repeatedly and unsuccessfully probed to find the bullet. It was located during Garfield's autopsy.

Due to his doctor's grossly negligent mistreatment Garfield developed gruesome infections and ailments that are described in *Destiny of the Republic*. His doctors were so close-minded that they didn't reconsider their opposition to providing sanitary care, even as Garfield's condition worsened as he wallowed in filth. He died on September 19, 1881 — 79 days after he was shot.

After Garfield's death Bliss responded to criticism of his methods by claiming he had at times used carbolic acid in treating Garfield. However, it wasn't an integral part of his treatment.

Guiteau's apprehension, trial, and execution

Guiteau was apprehended at the train station immediately after shooting Garfield at close range, and he readily admitted he fired the pistol.

While Guiteau was jailed and before Garfield died, one of his guards, Army Sergeant John A. Mason, made a failed attempt on September 11, 1881 to kill him. The bullet Mason fired into Guiteau's cell grazed his head. Mason was convicted of attempted murder by a military court-martial and sentenced to a dishonorable discharge, loss of all pay and benefits, and confinement at hard labor for eight years. In 1882 the U.S. Supreme Court [denied Mason's writ](#) of *habeas corpus*.

After Garfield died, Guiteau's [federal indictment](#) for murder stated he inflicted Garfield's "mortal wound," and he "feloniously, wilfully and of malice aforethought, did kill and murder" him.

Guiteau's trial began on November 14, 1881 in the United States District Court for the District of Columbia. It was the most sensational civilian trial up to that time in American history. (The accused conspirators in Abraham Lincoln's murder were tried by military tribunal.)

Guiteau's lawyers presented an insanity defense. During his trial Guiteau continuously exhibited bizarre behavior that included frequently cursing and insulting the judge, witnesses as they testified, the prosecutors, and even his own lawyers. He also passed

Guiteau cont. on page 4

Guiteau cont. from page 3

notes to random spectators in the courtroom in which he solicited legal advice. In his defense to justify wanting to kill Garfield, Guiteau testified in the form of reciting lengthy poems.

The jury rejected his insanity defense in convicting him on January 5, 1882 of first-degree murder. The judge sentenced Guiteau to death.

Two issues in Guiteau's appeal were the district court in the District of Columbia didn't have jurisdiction to try him for murder because Garfield died in New Jersey; and, the judge erred by not giving a jury instruction on diminished responsibility for a mental disorder short of insanity. In its [decision on](#) May 22, 1882, the appeals court ruled the district court had jurisdiction because the shooting that caused Garfield's death occurred in the District of Columbia, and he wasn't entitled to a diminished responsibility instruction. The U.S. Supreme Court declined to consider Guiteau's writ of *habeas corpus* that was based on his argument the district court in D.C. lacked jurisdiction.

On June 30, 1882 Guiteau was hanged. He was 40.

Guiteau's execution sealed the historical lie repeated untold times that he murdered Garfield.

Events related to Guiteau's shooting of President Garfield

Up to his late 30s Guiteau had worked in obscurity as a lawyer, bill collector, and as a theologian. As a result of his interest in politics he wrote a speech in support of Republican Ulysses S. Grant's 1880 presidential campaign. After Garfield won the Republican nomination Guiteau revised the speech primarily by substituting Garfield's name for Grant, and he printed and distributed several hundred copies. The speech asserted that if Democrat Winfield S. Hancock was elected president there would be a second civil war. Guiteau also gave at least one speech to a small crowd in support of Garfield.

Garfield comfortably defeated his Democratic opponent Winfield S. Hancock, 214 electoral votes to 155, although the popular vote was fairly close.

Guiteau thought his work on Garfield's behalf was critical to his victory.

On New Year's Eve 1880 Guiteau, who was

destitute, wrote Garfield asking for a diplomatic appointment. Then, after Garfield's inauguration in March 1881 Guiteau applied for posts as minister in Austria and consul general to Paris. He traversed between the White House and the State Department promoting his appointment. [He wrote](#) Secretary of State James Blaine many letters, arguing that Garfield was elected because of the "rebel war claim idea" in Guiteau's speech. He asserted that because of his role in the campaign he deserved an appointment as "a personal tribute."

Guiteau wrote a letter to Garfield on May 10 about the Paris consulship, and on May 14 Secretary Blaine [told Guiteau](#) at the State Department: "Never bother me again about the Paris consulship so long as you live."

The rebuffed Guiteau sought to kill Garfield as revenge for what he thought was being slighted.[Note 1]

On June 15 Guiteau bought a snub-nosed, forty-five caliber revolver for \$10 with borrowed money. On June 16 [Guiteau wrote](#) an "Address to the American People" that argued Garfield's assassination was necessary because of "the basest ingratitude to the Stalwarts" and that Garfield would wreck the Republican Party.



James A. Garfield
(1831-1881)
(Library of Congress)

He wrote that killing Garfield was "not murder; it is a political necessity." Guiteau's "Address" didn't become known until later.

Guiteau then began stalking Garfield. His stalking culminated in his failed attempt to kill Garfield on July 2, 1881.

The reason for Guiteau's erratic, odd, and self-destructive behavior is not known. It is speculated he may have had syphilis, which can cause physiological mental impairment, or he may have been a psychopath with an excessively exaggerated sense of self-importance. Or he may have been insane as is concluded in the article *Was Charles Guiteau Insane?*, [which states](#): "His overwhelming insanity is now widely regarded as the true motivation for the attack on Garfield. As he was about to be executed on June 30, 1882, Charles Guiteau cried out, "I saved my party and my land, Glory Hallelujah!" Even in his last moments, Guiteau displayed that he was indeed insane."



The attack on the president's life and the arrest of the assassin (Library of Congress)

Yes Guiteau was a strange and violent person.

Yes Guiteau wanted to kill President Garfield.

Yes Guiteau shot Garfield in an attempt to kill him.

But no, the non-life threatening wounds he inflicted did not kill Garfield.

Guiteau's jury did not know that Garfield's death was due to the negligent conduct of Dr. Bliss and his colleagues for deliberately allowing Garfield to reside in unsanitary conditions, and avoiding the use of sanitary medical practices that would have prevented his back wound from becoming infected.

So unbeknownst to Guiteau's jurors they convicted him, and he was subsequently executed, for a murder that he not only didn't commit, but that didn't even happen. The jury didn't even have the option to convict Guiteau of attempting to murder Garfield — the much less serious crime he actually committed.

There is no evidence Garfield's doctors responsible for his death intended for him to die. Consequently, given what is known today they couldn't have legitimately been prosecuted for murder, which requires criminal intent. However, they could have been prosecuted for manslaughter that only requires negligent conduct. The only question is whether the conduct of individual doctors could be considered voluntary or involuntary manslaughter, depending on the degree of their knowledge and involvement in his case.

Can Guiteau be exonerated?

Although it is now known that Guiteau was convicted of something he didn't do, there is no provision in federal law to allow a court to posthumously vacate a deceased

Guiteau cont. on page 5

Guiteau cont. from page 4

person's provably wrongful conviction. A *habeas corpus* petition to vacate a conviction can only be filed by a living person in custody, and a *coram nobis* petition can only be filed by a living person whose sentence is completed. Guiteau's case highlights the deficiency of federal (and state) law to provide a mechanism for a conviction to be posthumously vacated judicially based on compelling evidence not known by the jury or another trier of fact at the time of a person's conviction.

It isn't exactly analogous to Guiteau's case, but it is instructive to consider the failed effort begun in 1990 by a descendant of Dr. Samuel A. Mudd to obtain an order overturning Mudd's 1865 conviction by a military tribunal for conspiracy to murder President Abraham Lincoln. Dr. Mudd's conspiracy conviction was based on the aid he provided to John Wilkes Booth by performing surgery on his injured leg after he shot Lincoln. Sentenced to life in prison, Mudd was granted a full presidential pardon in 1869 in recognition of his efforts to assist medical officers during an epidemic of yellow fever. In 2002 — 12 years after the case was filed in 1990 — the United States Court of Appeals, District of Columbia Circuit ruled against Mudd's descendant for two reasons: First, he did not assert a relevant personal interest in correcting Mudd's record of conviction; and, second he (and if alive, Mudd himself would have) lacked standing to pursue overturning Mudd's conviction under the statute he relied on, because Mudd was not a member of the armed forces. (The appeals court's ruling is, [Mudd, et al v. White](#), 309 F. 3d 819 (Ct of Appeals, DC Cir., 2002)).

The one avenue available to symbolically — but not judicially — clear Guiteau's name would be a posthumous presidential pardon, such as was granted Dr. Mudd. Regardless of the legitimacy of a president to pardon Guiteau on the basis of his actual innocence, an application would be extraordinarily controversial and face significant and possibly insurmountable political hurdles. Particularly considering that granting it would fly in the face of the collective weight of Guiteau being publicly identified as Garfield's murderer for more than 130 years.

The difficulties an application for Guiteau's pardon would encounter is indicated by a pending pardon request that evokes little controversy, and which is [supported by prominent](#) U.S. Senators Harry Reid and

John McCain. Presidents George W. Bush and Barack Obama [have declined](#) to posthumously pardon former World Heavyweight Boxing Champion Jack Johnson for his 1913 Mann Act conviction for traveling across state lines with his white girlfriend. Johnson fled the country after his conviction, but years later he returned to the U.S. and eventually served 366 days in prison. The Mann Act was enacted to punish interstate trafficking of women for prostitution. The flamboyant Johnson's conviction by an all-white jury has the appearance of having been based on racial prejudice, and not substantial evidence that traveling with his white girlfriend violated federal law. Even so, Johnson has not been pardoned. Background information about Johnson's case is in [Justice Denied's article](#), *Pardon Sought For Boxer Jack Johnson*.

While alive Guiteau experienced the egregious error of being convicted and executed for a murder he didn't commit, and after his death his name continues to live in infamy. Unless a mechanism is enacted to posthumously correct such errors, the historical record will continue to officially show Garfield's death was from the hand of a lone assassin.

The ongoing public discussion about whether an innocent person has been executed is affirmatively answered in the case of Guiteau. The only question is how many more have been executed. Particularly because Guiteau was executed after his conviction of a crime that didn't even occur.

Endnote 1. Guiteau's reaction was consistent with his history. In 1875 while living with his sister, Frances, and her family he raised an axe as if he wanted to strike her when she chided him for his laziness. She asked her doctor to examine her brother. Guiteau fled after the doctor concluded Guiteau was insane and recommended that he be placed in an asylum. Guiteau also permanently ended his relationship with his brother, John, after John impressed upon the deadbeat Guiteau the importance of paying his debts.

Source: [Destiny of the Republic](#) by Candice Millard (Doubleday, 2011)

[The United States v. Charles J. Guiteau](#), 1 Mackey 498, 12 DC 498 (D.C. Cir. 1882) (Denying appeal in case no. 14,056, 5-22-1882)

[Mudd, et al v. White](#), 309 F. 3d 819 (Ct of Appeals, DC Cir., 2002)

[Ex parte Mason](#), 105 US 696 (1882)

[Was Charles Guiteau Insane?](#), By Mike McIntyre, *SURG*, Vol 2, No 2 (2009)

[The Trial of Charles Guiteau: An Account](#), by Douglas O. Linder (2007)

[The Life and Trial of Guiteau the Assassin](#), By John Clark Ridpath (Jones Brothers & Company, Cincinnati, 1882)

[Harry Reid, John McCain push for boxer pardon](#), By Natalie Villacorta, *Politico*, February 13, 2014

[Like Bush, Obama rebuffs pardon for boxing great Jack Johnson](#), By Anita Kumar, *McClatchy Newspapers*, March 11, 2013

[Joseph Lister, 1st Baron Lister](#), Wikipedia.org (last visited 5-10-2015)

[Listerine](#), Wikipedia.org (last visited 5-10-2015)

[Pardon Sought For Boxer Jack Johnson](#), By Hans Sherrer, *Justice Denied*, March 21, 2009



Innocents Database Is Now Searchable and Sortable

The [Innocents Database](#) linked to from [Justice Denied's](#) website is the world largest database of wrongly convicted people. After more than a year of work the Innocents Database is now available in three online versions that allow both user defined searches, and user defined sorts of any combination of more than 100 columns of data. The three versions are:

- [U. S. cases from 1989 to 2015](#)
- [U. S. cases prior to 1989](#)
- [International cases up to 2015](#)

The sortable versions can be accessed from the Innocents Database's homepage at, [www.forejustice.org/innocentsdatabase.htm](#).

For example, with the sortable version a user can quickly find out how many men, women, or both, have been exonerated in California since 1989 -- or before 1989. Or a user can find out how many people exonerated in New York (or the entire U.S.) falsely confessed. Similar sorts can be performed on all the international cases or for individual countries.

The Innocents Database is an ongoing project that began almost 19 years ago, and now contains almost two million bytes of data. The sortable versions improve the accessibility and usefulness of that information to the public and researchers.

Javascript MUST be enabled in your browser for the sorting function to work, and a user may find the sortable versions unsuitable for a small screen device (e.g., mobile phone), or a slow Internet connection (e.g., dial-up).



Roseanne Beckett Awarded \$2.88 Million For 10 Years Wrongful Imprisonment

Roseanne Beckett was awarded AUS\$2.31 million on August 24, 2015 by Justice Ian Harrison in New South Wales, Australia, for spending ten years in prison after she was wrongly convicted of soliciting the murder of her husband. On November 10, 2015 Justice Harrison ruled that Beckett would also be paid AUS\$1,781,367 in interest, for a total award of AUS\$4,091,717. Beckett's award converts to US\$2,882,614¹ Justice Harrison also ruled that New South Wales must pay Beckett's legal expenses. Beckett's 9-½ year effort to be compensated ended on November 23, 2015 when NSW Attorney General Gabrielle Upton announced that Justice Harrison's rulings would not be appealed.

Beckett was released in 2001 after completion of her sentence, and exonerated in 2005 with the dismissal of all charges based on new evidence she was framed by a police officer who was a friend of her husband.

In 1989 Roseanne Catt was living in Taree, New South Wales with her husband, Barry Catt. Taree is a coastal town of 18,000 people about 190 miles north of Sydney. The NSW Department of Family and Community Services (FACS) informed Roseanne they had evidence Barry and other townspeople had been molesting his four children — Roseanne's stepchildren — for years prior to their marriage in 1987.



Det. Peter Thomas (Scott Hornby)

Roseanne agreed to support the children and help FACS prosecute her husband. She also separated from Barry.

In 1983 Roseanne had a fire at her delicatessen business in Taree on Christmas Day. It was investigated as a possible arson by Detective Peter Thomas. Roseanne lodged complaints about Thomas' behavior of making improper sexual advances and innuendoes towards her during his investigation.

Detective Thomas was a good friend and drinking buddy of Barry — Roseanne's husband.

Shortly after agreeing to



Roseanne Beckett celebrates after being awarded \$2.3 million on August 24, 2015. (Daily Telegraph)

help FACS, Roseanne was arrested by Thomas. She was charged with three counts of soliciting others to murder Barry, two counts of wounding him, one count of endangering his life with Lithium, assault occasioning actual bodily harm, perjury, and possession of an unlicensed pistol. One of solicitation charges alleged that she offered a stranger at a local club \$10,000 to break her husband's arms and legs, and then kill him. That man, James Morris, signed his statement accusing Roseanne shortly after the police began investigating him for running a prostitution ring involving young girls in Taree. After Morris signed his statement against Roseanne, the police ceased investigating his prostitution ring. Morris was a prosecution witness during her trial.

Roseanne's jury trial resulted with her conviction of eight counts on September 11, 1991. She was sentenced in October 1991 to 12 years 3 months imprisonment.

Her direct appeal was denied in 1993.

She was released in 2001 after serving 10 years of her sentence. After her release, she remarried and became known as Roseanne Beckett.

In 2001, Roseanne petitioned for a review of her convictions based on new evidence, and the Attorney General referred her application to the New South Wales Court of Criminal Appeal. On July 12, 2002 the Court of Appeal found there was sufficient new evidence to conduct an Inquiry into her trial and appeal.

The 18-month Inquiry by Judge Thomas Davidson discovered significant new evidence, including testimony by witness Peter Caesar that Thomas told him: "It's common knowledge that I planted a gun on the bitch."

Among Judge Davidson findings was that Thomas "descended into malice and abuse of power," because there was significant evidence Thomas gave and procured false

evidence, that he planted a gun on Roseanne, and that he conspired with Barry Catt and others to have Roseanne falsely charged — and then convicted — after she agreed to help FACS expose the pedophile ring that included her then husband Barry.

In 2004 Judge Davidson's findings of fact were forwarded for review by the Court of Criminal Appeal. In August 2005, the appeals court acquitted her of one count, and granted her a retrial on the remaining counts that it quashed. On September 22, 2005 the New South Wales Director of Public Prosecutions announced Catt would not be retried, and the charges were subsequently dismissed. (The DPP in Australia is the equivalent of a state attorney general in the U.S.)

In April 2006 Roseanne filed an application for *ex gratia* compensation for her wrongful convictions and imprisonment. Her petition was denied.

In August 2008, she filed a lawsuit against the government of New South Wales claiming damages for malicious prosecution on the basis the government was vicariously liable for the conduct of the police officers who instigated her prosecution.



Roseanne Catt before her conviction in 1991. (Andrew Darby)

In 2011 the trial judge granted the government's motion that Roseanne would have to prove her innocence to prevail on her malicious prosecution claim. Roseanne appealed, and in May 2012 the Court of Appeal affirmed the lower court's ruling.

Roseanne application for leave to appeal to Australia's High Court was granted. On May 5, 2013 the High Court reversed the appeals court. The High Court's precedent setting ruling established that a plaintiff is not required to prove his or her innocence in an action for damages for malicious prosecution in a case in which the prosecution terminated it favorably for the plaintiff.

Roseanne's suit was remanded back to the trial court. On August 24, 2015 Justice Ian Harrison awarded Beckett AUSS \$2,310,350 plus interest, plus her legal costs. In Justice Harrison's judgment of more than 900 paragraphs, he harshly criticized the conduct of Detective Thomas, who he said came to see



Roseanne Catt and Barry Catt at their wedding in 1987.

Roseanne cont. on p. 7

Roseanne cont. from p. 6

Roseanne “as his nemesis.” Justice Harrison [described that](#) Roseanne’s sexual misconduct complaints against Thomas in 1983 were the basis of his vendetta against her: “...she incurred his not inconsiderable resentment by complaining about him. This was the cauldron out of which the later monumental events would develop.”

Justice Harrison’s ruling was 26 years to the day from when the police raided Roseanne’s home and she was arrested on August 24, 1989.

After notified of the award, Roseanne [told reporters](#) that the New South Wales Department of Public Prosecution was staffed by “monsters” who “dragged me through hell, court after court, costing the taxpayer.” She also said “the DPP is fatally flawed, it is broke, ineffectual” Asked about Thomas, [she said that](#) “He took that 10 years away from me. No amount of money can bring that 10 years back.” She also said, “Peter Thomas ran this case right up until he died last year. The public have a right to know how their money is being wasted. Thomas paid not a cent because he had the Crown at his fingertips and that is so wrong.”

[Click here to read Justice Harrison’s ruling](#) in *Beckett v State of New South Wales* [2015] NSWSC 1017.

Endnote 1: Using .7045 conversion rate of AU\$\$ to US\$ on Nov. 10, 2015.

Source:

No retrial for Roseanne Catt, by Jenny Dennis, The Illawarra Mercury, October 6, 2005

[Police made me lie against Catt](#), Crown witness tells, Sydney Morning Herald, February 12, 2007

[Beckett v The State of New South Wales](#) [2013] HCA 17 (May 8, 2013) (Reversing appeals court ruling that Beckett had to prove she was innocent to sue for malicious prosecution.)

[Beckett v State of New South Wales](#) [2015] NSWSC 1017 (Awarding AU\$\$2.3 mil. compensation)

[A gross miscarriage of justice](#), by Bernie Matthews, onlineopinion.com.au, May 7, 2007

[Roseanne Beckett awarded \\$2.3 million](#) for wrongful conviction over soliciting murder of husband, By Amy Dale and AAP, The Daily Telegraph, August 24, 2015

[A NSW woman framed](#) for attempting to murder her husband just won \$2.3 million in compensation, By Simon Thomsen, Business Insider (Australia), Aug 24, 2015

[Beckett v The State of New South Wales](#) [2012] NSW-CA 114 (Ruling Beckett had to prove she was innocent to sue for malicious prosecution)

[Roseanne Beckett wins \\$4m in damages](#) for 10 years of wrongful imprisonment, *The Guardian* (London, UK), November 10, 2015

[NSW drops \\$4m malicious prosecution](#) battle against Roseanne Beckett, *The Guardian* (London, UK), November 22, 2015

Derral Wayne Hodgkins Released From Death Row After Murder Acquittal By Florida Supreme Court

Derral Wayne Hodgkins [was released](#) from Florida’s Death Row on October 12, 2015, after his acquittal by the Florida Supreme Court of the 2006 murder of his longtime friend Teresa Lodge.

Lodge was murdered in her apartment in Land O’Lakes, Florida, sometime from the afternoon of September 27, 2006 to the early morning of September 28. The 46-year-old Lodge was found when she didn’t show up for work and the police were called to enter her apartment. There were no leads in her murder for more than a year.

On November 1, 2007 the Florida Department of Law Enforcement Crime Lab reported that DNA consistent with Hodgkins’ profile was detected under fingernails on her left hand (Lodge was left handed).

When questioned by police, Hodgkins told the officers that he had known Lodge for more than 20 years, and that they dated before his conviction for raping a 12-year-old girl in Hillsborough County in 1987. Hodgkins pled guilty to that crime. While imprisoned he and Lodge corresponded, and when he was released from prison in 2004, she told him she was dealing cocaine and as a convicted felon on probation she didn’t want him to get in trouble if she was arrested for it. Hodgkins said they remained close friends, occasionally having sexual intercourse, and that whenever Lodge hugged him she scratched his back with her fingernails. He said she hugged him when they saw each other several days before her murder.

With no evidence to link Hodgkins to Lodge’s murder except for the DNA, he was arrested and charged on November 18, 2007 with premeditated first-degree murder.

After awaiting trial for more than three years in the Pasco County Jail, Hodgkins’ trial that began in January 2011 ended in a mistrial. His retrial began in August 2011. The prosecution didn’t present evidence that blood was found in the DNA sample, that Hodgkins’ blood was on Lodge or in her apartment, and none of the 18 fingerprints lifted from the crime scene belonged to Hodgkins. Furthermore, a beer bottle found in her apartment with her blood on it was the



Derral Wayne Hodgkins
(Florida DOC)

likely murder weapon, but it didn’t have Hodgkins’ fingerprints or DNA on it. After the prosecution closed its case that was based on the circumstantial DNA evidence, the trial judge denied the motion by Hodgkins’ lawyers

for a judgment of acquittal because the prosecution failed to present sufficient evidence to prove his guilt beyond a reasonable doubt: and specifically, no evidence was presented disproving that the DNA underneath Lodge’s fingernails was from her hugging Hodgkins several days before her death.

On August 29, 2011 the jury found Hodgkins’ guilty of first-degree murder. During the sentencing hearing the jury was told about his rape conviction, and recommended he be sentenced to death. The trial judge sentenced him to death on May 1, 2013. Hodgkins was on probation from his prior rape conviction at the time of his arrest, so he was also sentenced to nine years in prison for violating his probation.

A key issue in Hodgkins appeal was the insufficiency of the prosecution’s evidence to prove is guilt.

On June 18, 2015 the Florida Supreme Court vacated Hodgkins’ conviction in a majority six to one ruling [that stated](#):

“In this circumstantial case, the State simply has not pointed to legally sufficient evidence establishing a nexus between Hodgkins’ DNA and any criminal conduct on his part. Furthermore, we find that the State’s evidence is wholly consistent with Hodgkins’ hypothesis of innocence that someone else killed Lodge. Preliminarily, we conclude that the timeframe within which Lodge could have been killed was far too lengthy to reasonably infer that only Hodgkins made contact with Lodge. ... Lodge was murdered between approximately 2:30 p.m. that Wednesday and 5:30 a.m. the following day—a fifteen-hour window. ... We, therefore, conclude that the evidence before us is insufficient to sustain Derral Hodgkins’ first-degree murder conviction. Accordingly, we reverse and vacate the conviction and sentence of death, and remand with directions that a judgment of acquittal be entered.”

Hodgkins cont. on page 8

Chris Bateman Exonerated Of Drunk Driving By Pub's CCTV Video

Chris Bateman's driving while intoxicated conviction [has been overturned](#) on appeal based on the new evidence of CCTV video recorded at the pub in Sunderland, England where he was arrested. Sunderland is almost 300 miles north of London.

Bateman stopped at two pubs on the early evening of June 26, 2014. He had one beer at both pubs. Just before 10 p.m. he drove to the residence of his ex-partner to talk to her. During their conversation he started to



Chris Bateman in January 2015 (Sunderland Echo)

shout at her. She told him to come back later when he had calmed down. Bateman got into his Volkswagen Passat and drove to the nearby Buffs Club, on Old Mill Road in Sunderland's Southwick borough.

Bateman's partner called the police. She told them about the incident, that she could smell alcohol on his breath, and that he was going to Buffs.

Police officers went to Buffs and arrested Bateman for suspicion of assault. The police record showed Bateman was arrested at 10:30 p.m. He was taken to the police station where at 11:45 p.m. he was given a breathalyzer test that found 97 microgrammes of alcohol in 100ml of breath. The legal limit is 35 microgrammes. That is the blood alcohol equivalent of 0.22, with the legal limit 0.08.

Bateman was charged with driving while intoxicated based on his admission he had driven to Buffs from his former girlfriend's house, but he was not charged with assault.

Bateman refused to pled guilty, and his bench trial before a magistrate was held on November 7, 2014.

The prosecution's case was circumstantial because there was no witness to him driving drunk. The prosecution asserted Bateman had to have been intoxicated when he drove to Buffs because he was there for less than 30 minutes before his arrest, and he still had almost three times the legal limit of alcohol in his system when breathalyzed more than an hour later.

Bateman's defense was the police report was wrong. He testified that he wasn't intoxicated when he drove to Buffs about 10 p.m., because he only had one beer at each of the two pubs he visited during the two hours before arriving at his former partner's residence. He also said he had a number of beers during the hour-and-a-half hours he was at Buffs before the police arrived at 11:30 p.m. -- not 10:30. An employee at Buffs supported Bateman's account by testifying the police came to the club about 11:30.

The magistrate accepted the police officer's testimony about arriving at 10:30 p.m., and convicted him of driving to the club while intoxicated.

Bateman was sentenced on January 6, 2015

to a two year driving ban, ordered to perform 130 hours of community service, and to pay prosecution costs of £120 and a £60 victim surcharge. His driving ban [was stayed](#) pending the outcome of his appeal. However, Bateman, a self-employed taxi driver, had his taxi license revoked.

Bateman's appeal presented the new evidence of CCTV video from Buffs that showed he arrived at 10:05 p.m., and he consumed at least eight beers before the police arrived at 11:30 p.m. The video discredited the police trial testimony about the time of his arrest, while it corroborated the testimony of Bateman and the Buffs employee about when the police arrived, and that he became intoxicated after arriving at Buffs. On May 6, 2015 the Newcastle Crown Court quashed Bateman's conviction as a miscarriage of justice, and ordered return of the payments he had made.

Afterwards the 49-year-old Bateman, a taxi driver for 28 years, [told reporters](#): "My life has been on hold for 11 months. My taxi licence was revoked and the DVLA required me to send my licence away. Now my driving licence is being returned, my taxi badges are being returned, my community order has been canceled and my fine is being returned."



Chris Bateman by his taxi in January 2015 (Sunderland Echo)

Source: [Taxi driver gets drink-drive conviction quashed](#) after CCTV proves off-duty drinking defence, *Sunderland Echo*, May 7, 2015

[Sunderland taxi driver fights](#) to clear his name after drink-drive conviction, *Sunderland Echo*, January 8, 2015

[Drink-driving Sunderland taxi driver](#) allowed to keep his licence, *Sunderland Echo*, January 7, 2015

Hodgkins cont. from page 7

On September 24, 2015 the Supreme Court denied the State of Florida's Motion for Rehearing. On October 12, 2015 the Supreme Court issued a Mandate to the Pasco County Circuit Court commanding it to act in accordance with the Court's opinion of June 18, 2015. [Hodgkins, 55, was released](#) from death row to the street on October 12, 2015. A judgment of acquittal was entered by the Pasco County Circuit Court on October 20, 2015. Hodgkins' probation violation and sentence based on his murder conviction was also vacated. The constitutional prohibition against double-jeopardy bars Hodgkins' retrial.

After Hodgkins' acquittal by the Supreme Court his 34-year-old son, Wayne Hodgkins, [told reporters](#) that he believed "from the get-go" that his father was innocent. He said about Lodge and his father, "They just got too much history and they (were) just too loving with each other." Wayne said he knew Lodge as "Aunt Teresa," and that after his father was released from prison he and his father spent time with Lodge, they went fishing with her, and watched movies together.

[Click here to read](#) the Florida Supreme Court's ruling in *Derral Wayne Hodgkins v. State of Florida*, No. SC13-1004 (FL Sup. Ct., 6-18-2015).

Source: [Derral Wayne Hodgkins v. State of Florida](#), No. SC13-1004 (Flor. Sup. Ct., 6-18-2015) (Reversing conviction based on insufficient evidence to support guilt beyond a reasonable doubt.)

[Pasco man released from death row](#) after murder conviction overturned, By Erin Maloney, Bay New 9 (St. Petersburg, FL.), October 13, 2015

[Supreme Court vacates death sentence](#) of Pasco man convicted in Land O'Lakes murder, By Molly Moorhead, Tampa Bay Times, June 18, 2015

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Federal Appeals Court Declares Lawrence Owens' Murder Conviction Is "Nonsense"

The U.S. Seventh Circuit Court of Appeals [has overturned](#) Lawrence Owens murder conviction in Cook County, Illinois on the basis the judge's reason for finding him guilty in 2000 after a bench trial is "nonsense", because it was based on evidence the judge made up out of thin air.

After dark on the evening of September 22, 1999, 17-year-old Ramon Nelson was riding his bike away from a liquor store in Markham, Illinois when he was struck on the head by a wooden stick that could have been a baseball bat. Markham is in Cook County about 20 miles south of Chicago. There was some light from street lamps and nearby buildings.

After hitting Nelson the assailant fled. Nelson was unconscious when he was transported to a hospital. Without regaining consciousness he died the next day as the result of his fractured skull.

In Nelson's coat pockets police found 40 small plastic bags of crack cocaine. The cocaine appeared packaged for individual sale.

Police obtained statements from two persons who claimed to have seen the murder. Maurice Johnnie and William Evans identified Owens from a photo array of six men, and then from a five-man line-up after Owens' arrest. Owens was the only person in both the photo array and the line-up.

When interrogated by the police Owens insisted he did not assault Nelson.

The police investigation discovered no evidence tying Owens to the murder other than the eyewitness evidence, which was relied on to charge him with first-degree murder.

Owens' waived his right to a jury trial. During his bench trial on November 8, 2000 there were significant discrepancies between the testimony of Johnnie and Evans. Evans testified there were two assailants while Johnnie said there was only one, and Evans testified Nelson spoke with his assailants before the assault, while Johnnie testified he didn't. Also, during Evans' testimony he twice pointed to someone else in the photo



Lawrence Owens
(Ill. DOC)

array as the assailant — even though Owens was sitting in the courtroom at the defense table.

Evans testified during cross-examination that he had a prior drug conviction for which he was on probation, and he was in custody on another drug charge. He admitted he agreed to testify in exchange for the State recommending probation on his pending drug charge, and continuation of probation on his previous drug conviction.

The prosecution presented no physical or forensic evidence tying Owens to the crime, and no evidence that Owens was involved with drugs or knew Nelson.

Owens' lawyer did not present any evidence in his defense, instead relying on his closing argument the prosecution introduced insufficient evidence to prove Owens guilty beyond a reasonable doubt.

Judge Joseph M. Macellaio found the 27-year-old Owens guilty of first-degree murder, and sentenced him to 25 years in prison.

Owens conviction was affirmed on direct appeal.

In 2003 he filed a state post-conviction petition that raised a number of issues he asserted warranted a new trial. His petition included an Affidavit in which [Owens asserted](#) "he was actually innocent of Nelson's murder and that he repeatedly informed his attorney, Frank Rago of that fact. According to Owens, he told Rago that he had an alibi for the night Nelson was murdered and that he had two witnesses who could corroborate that alibi. ... But, Owens says, Rago failed to investigate or interview his alibi witnesses and "forb[ade] [Owens] to testify [sic] in [his] own defense." Owens' petition included affidavits from the two alibi witnesses detailing he was with them at the home of one of the witnesses the evening of the murder.



Judge Joseph M. Macellaio

While his state petition was still pending, Owens filed a federal habeas corpus petition in December 2008. The State moved to dismiss Owens' federal petition based on his failure to exhaust his state court remedies.

Owens countered that through no fault of his own his state petition had been languishing undecided for five years. Owens' federal petition was not dismissed and the State was ordered to answer it, although no action was taken to make a ruling on it until the state proceedings had been concluded.

In 2010 the trial court denied Owens' petition, the Illinois Court of Appeal affirmed that ruling, and in September 2011 the Illinois Supreme Court refused to hear his appeal.

The way was cleared for consideration of Owens' federal petition. An evidentiary hearing was held in March 2013 during which Owens' alibi witness and other persons testified. Owens' petition was denied on February 11, 2014 by U.S. District Court Judge Thomas M. Durkin.

The U.S. Seventh Circuit Court of Appeals allowed Owens to appeal Judge Durkin's ruling on the [single issue of whether](#) "the state trial judge who convicted him based his decision on evidence that did not exist, thus denying him due process of law in violation of the Fourteenth Amendment."

On March 23, 2015 a three-judge panel of the U.S. Seventh Circuit Court of Appeals reversed Judge Durkin's ruling and granted Owens' petition. In *Lawrence Owens v Stephen Duncan*, No 14-1419 (7th cir. 3-23-2015), the opinion authored by Circuit Judge Richard A. Posner [stated in part](#):

"Owens was the only person in the lineup who also was in the photo array, thereby diminishing the probative value of the second identification. ... There were [] discrepancies between the two witnesses' testimony.

No evidence was presented that Owens had known Nelson, used or sold illegal drugs, or had any gang affiliation.

For at the end of the parties' closing arguments the judge said: "I think all of the witnesses skirted the real issue. The issue to me was you have a seventeen year old youth on a bike who is a drug dealer [Nelson], who Larry Owens knew he was a drug dealer. Larry Owens wanted to knock him off. I think the State's evidence has proved that fact. Finding of guilty of murder."

That was all the judge said in explanation of his verdict, and it was nonsense. No evidence had been presented that Owens knew that Nelson was a drug dealer or that he wanted to kill him ... or even knew him—a kid on a bike.

Owens cont. on page 10

Wassillie L. Gregory Exonerated By CCTV Video Of Harassing Police Officer In Bethel, Alaska

Wassillie L. Gregory's July 2014 harassment conviction in Bethel, Alaska [was vacated](#) and the charge dismissed on May 10, 2015. Gregory's exoneration was based on new surveillance video evidence that shows he committed no crime. Bethel is a city of about 6,000 people 400 miles west of Anchorage, and it is only accessible by air or water.

Being intoxicated in public is not a crime in Alaska. However, police officers are allowed to [provide assistance](#) to people intoxicated in public and who appear a danger to themselves and others.

Owens cont. from page 9

... he [the judge] thought that Owens' knowledge that Nelson was a drug dealer was the fact that dispelled reasonable doubt of Owens' guilt.

...

But there was no factual basis of any sort, in the trial record or elsewhere, for the judge's finding that Owens knew Nelson, let alone knew or cared that he was a drug dealer. The judge made it up.

...

Nonetheless, to repeat, we can assume that if the evidence of Owens' guilt had been overwhelming, the judge's conjecture that Owens knew Nelson and knew him to be a drug dealer and that Owens was ... himself involved in the drug trade ... could be disregarded as goofy but harmless. But evidence of Owens' guilt was not overwhelming.

Given that the entire case pivoted on two shaky eyewitness identifications, Owens might well have been acquitted had the judge not mistakenly believed that Owens had known Nelson to be a drug dealer and killed him because of it.

The Supreme Court has made clear ... that a judge or a jury may not convict a person on the basis of a belief that has no evidentiary basis whatsoever. Just imagine that the judge in our case had said "I know there's no evidence of guilt, but I also know that prosecutors in the City of Markham never prosecute an innocent person."

And so we reverse the judgment denying

At 9:18 a.m. on July 12, 2014 Gregory was walking past the Alaska Commercial Company's ([ACC](#)) Value Center store in downtown Bethel. Police Officer Andrew Reid pulled his police car over next to Gregory who appeared to be intoxicated. During the incident that ensued after Reid got out of his vehicle, Gregory was arrested and charged with disorderly conduct, resisting arrest, and misdemeanor harassment.

An off-duty Alaska State Trooper and a probation officer stopped to help Reid during the incident.

Reid's arrest report describes Gregory — an Alaska Native — as an "Indian" male who was "clearly intoxicated," and that he was verbally combative. Gregory had no weapon.

Two days after the incident, and without

Owens relief and give the state 120 days in which to decide whether to retry him. If it does not decide within that period to retry him, he must be released from prison.

On March 30 Judge Posner denied the State's Motion to Stay Issuance of Mandate pending final disposition of a petition for a writ of *certiorari* to the United States Supreme Court that the State said it intends to file.

On July 29, 2015 Judge Durkin ordered that Owens be released from custody no later than August 4, 2015, since the State had not decided whether to retry Owens. Illinois DOC records after August 4 show Owens was released after more than 15 years in custody.

On November 13, 2015 the U.S. Supreme Court granted the State's writ of *certiorari* to review the Seventh Circuit's ruling in Owens' case.

[Click here to read](#) the Seventh Circuit's ruling in *Lawrence Owens v Stephen Duncan*, No 14-1419 (7th cir. 3-23-2015).

Source:

[Lawrence Owens v Stephen Duncan](#), No 14-1419 (7th cir. 3-23-2015) (granting state prisoner's federal habeas and ordering new trial)

[Appeals court judge overturns](#) "nonsense" murder conviction, By Tina Sfondeles, *Chicago Sun-Times*, March 24, 2015

[Lawrence Owens v. Marc Hodge](#), No. 08 C 7159 (USDC ND IL, Eastern Div.) (2-11-14, District court Memorandum Opinion and Order denying federal habeas petition.)

[Stephen Duncan v. Lawrence Owens](#), No. 15A475 (U.S.S.C.) (Docket)



The Alaska Commercial Company store in Bethel. Gregory was assaulted by the road at the far end of the parking lot.

consulting with an attorney, the 48-year-old Gregory pled guilty in Bethel District Court to 2nd degree misdemeanor harassment (offensive physical contact) in exchange for the DA dropping the disorderly conduct and resisting arrest charges. He was sentenced to two years probation and released after two days in custody.

However, the events on the morning of July 12 were not as cut and dried as Gregory's guilty plea suggested.

Gregory couldn't appear in court the next day, July 13, because he was still in the hospital where he was taken after his arrest. He was diagnosed with a broken collarbone and cuts and bruises.

On the day of Gregory's arrest an eyewitness to the incident [reported to](#) Bethel Police Chief Andre Achee, Interim City Manager Greg Moyer, and to Mayor Joe Klejka, that she had witnessed a man offering no resistance to the police officer who brutally assaulted and then arrested him. She filed a complaint of police brutality with the police department. The officer was Reid and the person being attacked was Gregory.

The witness was Dr. Linda B. Green, [an associate professor](#) of anthropology at the University of Arizona in Tucson. She was doing research in the Bethel area. After Green received no response from the police or the city she went to the local media. What Green witnessed was reported throughout Alaska, and an Associated Press story about her allegation of police brutality in Gregory's case [was reported](#) in other states.

Green said that after the police car pulled up next to Gregory, the officer spoke to him briefly before he (Reid) jumped out of his vehicle, grabbed Gregory's arm, and flipped him face down onto the pavement. [She said](#) the officer was much larger than Gregory, "So he picks the man up horizontally from his backpack and his waistband about three feet in the air and slams him down, puts his knee back on his back, again tries to twist those arms around, unable to do so – three more times he picks that man

Gregory cont. on p. 11

Gregory cont. from p. 10



CCTV video showing Bethel Police Officer Andrew Reid grabbing Wassillie Gregory as he was backing away from the officer. (www.kyuk.org/35836/)



CCTV video showing Officer Andrew Reid body slamming Wassillie Gregory to the pavement. (www.kyuk.org/35836/)



CCTV video showing Officer Andrew Reid with his knee in Wassillie Gregory's back and pulling his arms back. (www.kyuk.org/35836/)

up and slams him down into the ground.” [Green also said](#), “I was horrified. And I was standing there yelling, stop! Stop! Because it was just so horrific to see this type of action taking place.”

Green’s eyewitness account was sharply at odds with Officer Reid’s affidavit in which [he wrote that](#), he “kindly tried to assist Gregory into my cruiser for protective custody when he pulled away ...” Reid also stated he transported Gregory to the hospital where he was medically cleared with only a minor cut on his face.

The news about Gregory’s mistreatment caused outrage in Bethel and accusations of police brutality against native Americans. During a public meeting in August 2014 Gregory’s [sister told](#) the Bethel City Council, “People treat their animals better than what he did to my brother. People should be outraged.”

On April 2, 2015 KYUK-TV in Bethel broadcast a news report that included showing the Alaska Commercial Company’s surveillance video of its parking lot when Gregory was arrested. The video clearly shows Gregory was backing away from Officer Reid when Reid grabbed him and threw him to the ground. Gregory did not resist and seems unconscious as the video shows Reid body slamming Gregory at least nine times into the parking lot. Officer Reid’s assault of Gregory went on for more than three minutes. The video shows several civilian witnesses to the events, and neither the probation officer or Alaska State Trooper who were present attempted to stop Reid. The video can be viewed on KYUK-TV’s web site at www.kyuk.org/35836.

The video corroborates Green’s eyewitness account of what happened.

The manner in which the video came to light provides evidence supporting that there was a concerted conspiracy involving numerous employees of the Bethel Police

Department to conceal from Gregory, the public, and the Bethel DA’s Office the truth of what happened during Gregory’s arrest.

After Gregory’s arrest the Bethel Police Chief Achee requested that the Alaska Commercial Company provide its parking lot CCTV video for July 12, 2014. The store manager provided the hard drive with the surveillance video on August 29, 2014.

When KYUK discovered the video had been provided to the police department, it submitted a public records request on March 13, 2015 for the video. The Bethel PD denied KYUK’s request for the video, and confirmed in writing that a copy was not provided to the District Attorney in Bethel. About the same time Gregory’s attorney Sean Brown requested a copy of the video from the police department. He was not provided a copy of the video.

The ACC had to request return of the hard drive, and when they received it from the Bethel PD it was discovered the video had been erased while in police custody. ACC found a person who was able to recover the erased video from the hard drive.

ACC then provided a copy of the video to Gregory’s attorney, who then shared it with KYUK.

A petition was then filed by Brown to vacate Gregory’s conviction based on the new video evidence he was assaulted by Officer Reid, and not vice-a-versa as depicted in the police arrest report. The petition asserted that Gregory only pled guilty because immediately after the incident he had no memory of what occurred.

On May 10, 2015 Gregory’s harassment conviction was vacated, his probation was terminated, and the charge dismissed by a Bethel District Court judge.

Officer Reid was fired from the Bethel PD in March 2015 for a matter unrelated to the incident involving Gregory.

It is not known at this time if state and/or federal criminal charges will be filed against Reid, Police Chief Achee, the two law enforcement officers who declined to intercede on Gregory’s behalf, and the Bethel PD personnel involved in concealing the contents of the ACC surveillance video and attempting to destroy the evidence from the hard drive.

Wassillie Gregory, a commercial salmon fisherman, continues to live in Bethel.

Gregory owes his exoneration to Dr. Linda Green. The video evidence showing Officer Reid’s assault of Gregory would never have seen the light of day if she had not gone to the news media after the Bethel Police Department and City of Bethel tried to cover-up the incident.



Dr. Linda B. Green is Associate Professor of Anthropology and Director, Latin American Studies, at the University of Arizona in Tucson, Arizona. (Univ. of Arizona web site)

[Click here to view the surveillance video](#) of Gregory’s arrest that is on a KYUK-TV web page.

Source: [Surveillance Video Aids in Dismissal](#) of Bethel Man’s Harassment Conviction, *Alaska Native News*, May 13, 2015

[Video shows Bethel police officer](#) slamming man to the ground, By Lisa Demer (Staff reporter), *Alaska Dispatch News*, April 2, 2015

[Surveillance Video Shows](#) Former Bethel Police Officer Slamming Man to Ground, By Daysha Eaton, KYUK-AM/FM/TV (Bethel, Alaska), April 2, 2015

[Allegations of Police Brutality in Bethel](#), By Daysha Eaton, KYUK (Bethel, Alaska), August 8, 2014

[Bethel Police Department](#) issues press release regarding officer conduct, In a press release dated 4/2/15, the Bethel Police Department released the following information regarding Officer Andrew Reid and Wassillie Gregory, *The Delta Discovery* (Bethel, Alaska), April 8, 2015

[Linda B. Green](#), Associate Professor of Anthropology and Director, Latin American Studies, University of Arizona, Tucson, Arizona

Taquala Monique Howse Acquitted By Iowa Appeals Court Of Her Stun Gun Being Dangerous Weapon

The Iowa Court of Appeals [acquitted](#) Taquala Monique Howse on March 11, 2015 of carrying a dangerous weapon for having a small stun gun in her purse.

On June 23, 2013 Waterloo, Iowa Police Officer Kyle Jurgensen responded to a call that a suspected shoplifter had been detained at the local Walmart store. The detained person was 23-year-old Taquala Monique Howse.

Howse was arrested, handcuffed, escorted to a squad car, and searched. Jurgensen found a “small hand-held stun gun” in Howse’s purse, which she stated she had purchased. [She stated](#) she “carried it to clubs and whatnot.” When asked if she had a permit to carry the stun gun she said “no.”



Sabre pink hand-held stun gun sold by Walmart

Howse was charged with misdemeanor fifth-degree theft, and the aggravated misdemeanor of carrying a concealed dangerous weapon.

Howse pled guilty to the theft (shoplifting) charge, and she was sentenced to make restitution to Walmart.

She pled not guilty to carrying a dangerous weapon. During Howse’s bench trial in Black Hawk County District Court, Jurgensen testified he didn’t test the device he found in Howse’s purse to see if it worked. Police Officer Greg Erie testified that he was a taser instructor with the Waterloo Police Department. He said he distinguished a taser from a stun gun, [stating](#) “a taser will immobilize a person” while he described “a stun gun as a “compliance tool” that will make a shocked person “jump back.” Erie “also testified he did not “have any background with this one,” did not know how many volts this device emitted, and “couldn’t get [this device] to work.””

There was no testimony during the trial that Walmart sells a variety of hand-held stun guns to the general public for less than \$30, including ones that are small enough to fit on a person’s keychain and others that look



Taquala Monique Howse (Myspace.com)

like a tube of lipstick.

Although the prosecution didn’t introduce any evidence the stun gun in Howse’s possession actually worked or how it might affect a person if it did work, Howse was convicted on December 5, 2013 of carrying a dangerous weapon.

Howse appealed her conviction, [arguing that](#) “as a matter of law or fact the stun gun found in her purse does not qualify as a “dangerous weapon” under Iowa law, and therefore “her conviction is not supported by substantial evidence.”

On March 11, 2015 the Iowa Court of Appeals reversed Howse’s conviction after determining it wasn’t supported by substantial evidence. In [Iowa v. Howse](#), No. 13-1997, the appeals court’s ruling stated in part:

Section 702.7 thus provides three paths by which a weapon may be deemed dangerous: (1) a device which is “designed primarily for use in inflicting death or injury upon a human being or animal, ...; ... and (3) devices listed that are statutorily determined to be dangerous weapons per se, one of which is “any portable device or weapon directing an electric current, impulse, wave, or beam that produces a high-voltage pulse designed to immobilize a person.”

Officer Jurgensen did not test the stun gun, and Officer Erie specifically stated he had no background with this particular small stun gun and he “couldn’t get it to work.” Without some evidence of the capabilities of this particular stun gun, there is not substantial evidence to support a finding that it was “designed primarily for use in inflicting . . . injury”

... we do conclude that to qualify under the *per se* dangerous weapons listing, there must be some evidence the device “produces a high-voltage pulse designed to immobilize a person.” Here, the State’s witnesses’ testimony related to stun guns in general not this specific device. Nothing in this record establishes, even



Lipstick tube stun gun sold by Walmart

in general terms, the voltage of the device at issue—high, low, or in-between, and if it had sufficient voltage to immobilize a person.

We conclude there is not substantial evidence in this record to sustain the conviction. We therefore reverse.



Keychain stun gun sold by Walmart

[Click here to read the ruling in](#) *State of Iowa v. Taquala Monique Howse*, No. 13-1997 (Iowa Ct. of Appeals, 3-11-2015).

Although exonerating Howse of criminal wrongdoing, the Court’s ruling leaves open that every person in Iowa who carries a small stun gun for self-protection without a permit potentially faces criminal prosecution if a police officer discovers the person is carrying it.

Source: [State of Iowa v. Taquala Monique Howse](#), No. 13-1997 (Iowa Ct. of Appeals, 3-11-2015) (Vacating conviction on the basis of insufficient evidence.) [Waterloo woman's weapons conviction](#) for stun gun overturned, By AP, WCF Courier, March 11, 2015

Improper Submission
Records of a Wrongly Convicted
Erma Armstrong

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

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

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David Mathew Hicks Exonerated Of 2007 Ma- terial Support Of Ter- rorism Conviction

David Mathew Hicks was acquitted on February 18, 2015 by the United States Court of Military Commission Review of his 2007 conviction of materially supporting terrorism in Afghanistan. The Court ruled he had been convicted of conduct that wasn't a crime when it occurred.

Hicks is an Australian citizen who was 24 when he traveled to Pakistan in 1999. In mid-2000 he joined Lashkar-e Tayyiba (LET). Hicks received two months of military training at a LET camp in Pakistan, and then joined [an attack](#) on "Indian forces by firing a machine gun at an Indian Army bunker."

In January 2001 Hicks traveled to Afghanistan with LET's assistance to attend al Qaeda training camps. He received basic military and guerrilla warfare training at al Qaeda's al Farouq camp, which is near Kandahar, Afghanistan. Hicks met Usama bin Laden at the al Farouq camp. In June and August 2001 Hicks received military training at Tarnak Farm in Afghanistan and surveillance training in Kabul, Afghanistan. Hicks was in Pakistan visiting a friend on September 11, 2001, and they watched television coverage of the attacks on the United States on that day.

In September 2001 Hicks returned to Afghanistan and he joined a group of al Qaeda and Taliban fighters near the Kandahar Airport. He was armed with an AK-47 assault rifle.

In November 2001 he brought his AK-47 to Konduz, Afghanistan where he went to the front lines outside the city to join the ongoing fighting against the Northern Alliance (The official name of the Northern Alliance was the United Islamic Front for the Salvation of Afghanistan, and it received aid from Iran, Russia, Turkey, India, Tajikistan, the U.S., and other countries.) Hicks fled when the al Qaeda and Taliban positions were overrun. He sold his AK-47 to raise money to pay for a taxi in an attempt to flee to Pakistan.

In early December 2001 the Northern Alliance captured Hicks in Baghlan, Afghanistan. The Northern Alliance sold prisoners to the U.S. Hicks [was sold for](#) \$5,000 and he was transferred to U.S. control on De-



David Hicks in November 2013 when he appealed his conviction (Reuters)

ember 15, 2001.

Eleven days later, on December 26, the U.S. designated LET as a Foreign Terrorist Organization.

Hicks was eventually transferred to Guantanamo Bay, Cuba where he was incarcerated as an unlawful enemy combatant. There was no allegation that Hicks ever fired on or caused harm to any American.

In 2004 Hicks executed an Affidavit alleging he was sexually abused, routinely deprived of sleep, beaten, kept in solitary confinement almost 24 hours a day, and administered unidentified medication. He also stated he saw other detainees savaged by dogs.

In 2006 the Military Commissions Act (MCA) was enacted, and several violations of it were filed against Hicks.

After more than five years incarceration at Guantanamo Bay, the U.S. agreed to dismiss the most serious charges against Hicks in exchange for his [Alford plea](#) to one count of "providing material support "from in or about December 2000 through in or about December 2001, . . . to an international terrorist organization engaged in hostilities against the United States, namely al Qaeda... in violation of 10 U.S.C. § 950v(b)(25)." Conditions demanded by the U.S. included: Hicks' 5 years at Guantanamo Bay could not be credited to reduce his sentence, he must not speak to the media for one year after completion of his sentence, he must not take legal action against the United States for his treatment and incarceration, and he must withdraw allegations he was illegally abused and treated while under U.S. custody.

On March 30, 2007 Hicks' Alford plea was accepted by the military tribunal, although he insisted he did nothing wrong. Hicks became the first person convicted by the U.S. military tribunal at Guantanamo Bay.

On May 1, 2007 Hicks was sentenced to seven years confinement, with all but 9

months suspended. On May 20 he was transferred to Australia to complete his sentence.

Hicks did not appeal his conviction and sentence.

More than six years after his arrest in Afghanistan, the 32-year-old Hicks was released from custody on December 29, 2007. A year later his control order barring media contact expired. He told the media that he was innocent and only took a plea deal out of duress to get out of Guantanamo Bay and physical and psychological mistreatment by the U.S.

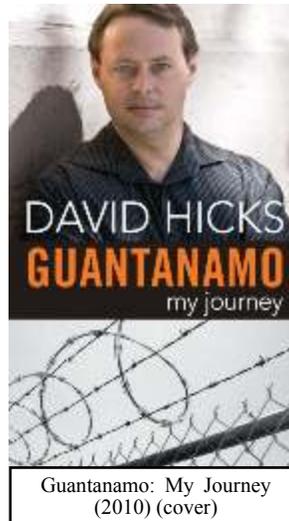
In 2010 Hicks' autobiography "*Guantanamo: My Journey*," was published in Australia.

After a trial Salim Hamdan had been convicted under the same material support of terrorism statute that Hicks had been convicted of violating. Hamdan appealed. On October 16, 2012 the United States Court of Appeals ruled in [the case of](#) *Salim Hamdan v. United States*, 696 F. 3d 1238 (Ct of Appeals, Dist. of Columbia Circuit, 10-16-2012), that the material support of terrorism charge that Hamdan had been convicted of could not be applied retroactively to his conduct that allegedly occurred prior to enactment of the MCA in 2006.

Based on the *Hamdan* case Hicks appealed his conviction on November 5, 2013.

After Hicks filed his appeal, on July 14, 2014 the D.C. Circuit Court of Appeals vacated the material support of terrorism conviction of Ali Hamza Ahmad Suliman Al Bahlul. In *Al Bahlul v. United States*, 767 F.3d 1 (D.C. Cir. 2014) (en banc). [The Court ruled](#) the statute couldn't be retroactively applied to Al Bahlul's alleged conduct prior to 2006.

Briefing continued in Hicks' case, with the U.S. arguing he waived his right to appeal, and so his appeal should be dismissed. However, in its brief filed on January 16, 2015 the U.S. [conceded that](#) if his appeal is allowed and, "If the Court so reaches the merits, then it should decline to affirm Hicks's material-support conviction under *Buhlul*."



Guantanamo: My Journey (2010) (cover)

Hicks cont. on page 14

Hicks cont. from page 13

On February 18, 2015 the U.S. Court of Military Commission Review issued its decision in *David M. Hicks v. USA*, No. 13-004 (U.S. Ct. Mil. Comm. Review, 2-18-2015). The Court first ruled that irrespective of the arguments related to Hicks' possible waiver of his right to appeal, the Court had *de novo* power to [review his appeal](#) because "this Court enjoys broad authority under 10 U.S.C. § 950f(d) to "affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved." Then after considering the merits of Hicks' appeal, the Court cited the *Bahlul* case in ruling, "The findings of guilty are set aside and dismissed, and appellant's sentence is vacated."

David Hicks, now 39, [told the Guardian newspaper](#) after he learned of the court's ruling:

"Obviously it feels good that I'm an innocent man. I don't believe it should be surprising to anyone considering the circumstances over the years. ... the American and Australian authorities were aware of my innocence from day one, It is just unfortunate that because of politics, I was subjected to five and a half years of physical and psychological torture that I will now live with always."

[Click here to read the ruling](#) in *David M. Hicks v. USA*, No. 13-004 (U.S. Ct. Mil. Comm. Review, 2-18-2015).

Hicks' autobiography "Guantanamo: My Journey" is not available from Amazon.com in the United States. However, the electronic Kindle version is available from Amazon's Australian website [by clicking here](#).

Source:

[David M. Hicks v. USA](#), No. 13-004 (U.S. Ct. Mil. Comm. Review, 2-18-2015)

[David Hicks](#), Wikipedia.org (last visited 2-18-2015)

[Hicks to appeal](#), then sue over conviction, By Phillip Coorey and Natalie O'Brien, *The Age*, October 17, 2012

[U.S. Acknowledges Conviction of David Hicks](#), Guantanamo Detainee, Should Not Stand, By Raymond Bonner (Special to ProPublica), ProPublica.org, Jan. 28, 2015

[David Hicks](#): It feels good to be an innocent man, By Daniel Hurst, Michael Safi and agencies, *The Guardian* (Australia), February 19, 2015

[Al Bahlul v. United States](#), 767 F.3d 1 (D.C. Cir. 2014) (en banc)

Gary Alan Mauz Exonerated Of Disorderly Conduct For Calling Neighbor A "Whore"

On June 23, 2015 a three-judge panel of the Pennsylvania Superior Court [overturned the disorderly](#) conduct conviction of Gary Alan Mauz for calling his neighbor a "whore," and making other derogatory comments to her. The appeals court [noted that](#), "We find Appellant's comments reprehensible but not criminal."

At about 10 p.m. on April 24, 2013 Victoria Battistini was in the backyard of her home in Warrington, Pennsylvania when she saw from a street light that her neighbor Mauz was standing at the front door of his home. Battistini had a fenced backyard and Mauz' house was diagonal from her house.

Battistini heard Mauz directing comments toward her that included, her "fat mom humps [her] dog," and "whore." The two were separated by Battistini's backyard fence and they were not physically close to each other.

The next day Battistini called the police, reporting that Mauz' comments made her feel "uncomfortable and scared." The officer that responded cited Mauz for misdemeanor disorderly conduct on the basis he used obscene language towards Battistini, and he had created a hazardous or physically offensive condition for her.

Mauz had a bench trial during which the prosecution's only witnesses were Battistini and the investigating officer. Mauz was found guilty on June 20, 2014 of disorderly conduct for making a hazardous or physically offensive condition under 18 Pa.C.S.A. § 5503(a)(4). He was fined \$50 and ordered to pay court costs.

Mauz appealed, arguing the State introduced insufficient evidence to sustain his disorderly conduct conviction.

The Pennsylvania Superior Court's [unanimous ruling](#) on June 23, 2015 acquitted Mauz of his disorderly conduct conviction. The Court's ruling in *Commonwealth of Pennsylvania vs. Gary Alan Mauz*, No. 2068 EDA 2014 (Superior Court of Pennsylvania, 6-23-2014) [states in part](#):

Appellant argues the Commonwealth produced insufficient evidence to sustain a conviction under § 5503(a)(4).

...

"The offense of disorderly conduct is not

intended as a catch-all for every act which annoys or disturbs people; it is not to be used as a dragnet for all the irritations which breed in the ferment of a community." ... "It has a specific purpose; it has a definite objective, it is intended to preserve the **public** peace."



Victoria Battistini (Victoria Battistini's Facebook page)

... We concluded the defendant's action did not jeopardize "the public peace." In making statements that were "briefly irritating", the defendant did not commit disorderly conduct.

... we believe the evidence is insufficient to establish that Appellant acted with the intent to cause **public** annoyance, inconvenience or alarm.

Furthermore, we do not believe Appellant recklessly created a risk of a hazardous or physically offensive condition under § 5503(a)(4). ... Here, Appellant made a few brief, offensive remarks to Battistini and then retreated into his home. The two were separated by a fence, and the record fails to reflect that anyone else heard Appellant's statements.

We also do not believe Appellant's conduct created a physically offensive condition ... Appellant [] did not invade Battistini's physical privacy, as the encounter occurred when she was present in her yard and visible to Appellant from his own yard.

... For all of the foregoing reasons, we conclude the record ... does not contain sufficient evidence to support Appellant's conviction under § 5503(a)(4). We therefore vacate the judgment of sentence. (Note: The words in bold are in the judge's opinion)

Mauz' retrial is barred by double jeopardy.

[Click here to read the ruling](#) exonerating Gary Mauz in *Commonwealth of Pennsylvania vs. Gary Alan Mauz*, No. 2068 EDA 2014 (Superior Court of Pennsylvania, 6-23-2014).

Source:

[Commonwealth of Pennsylvania vs. Gary Alan Mauz](#), No. 2068 EDA 2014 (Superior Court of Pennsylvania, 6-23-2014)

[Pennsylvania judge vacates](#) disorderly conduct conviction of man who called neighbor a 'whore', By Joel Landau, *New York Daily News*, June 24, 2015

Dateline Purgatory: Examining the Case that Sentenced Darlie Routier to Death

By Kathy Cruz

TCU Press (April 2015)
224 pages, Paperback, \$22.95 list
ISBN 978-0-87565-610-6

Justice Denied published an article about the Texas death row case of Darlie Routier in its [first issue](#) in February 1999 -- "Darlie Routier: On Death Row Innocent of Murder" -- and has published a number of articles related to her case since then.

Dateline Purgatory: Examining the Case that Sentenced Darlie Routier to Death, is a new book about Darlie Routier's case written by journalist Kathy Cruz. *Dateline Purgatory* is being published in April 2015 by the Texas Christian University Press.

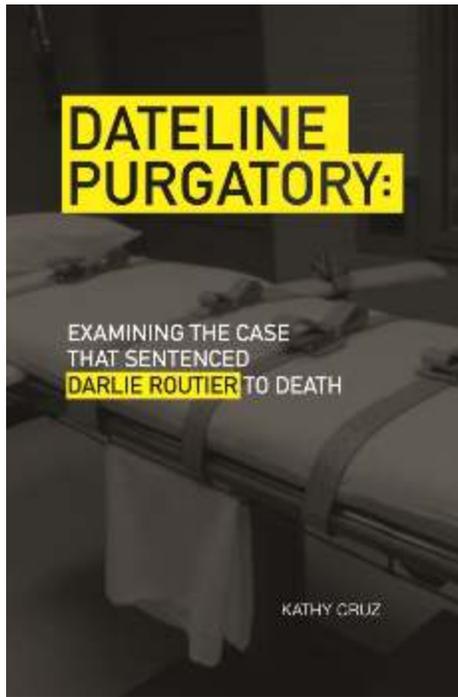
The brutal murders of young Devon and Damon Routier in the early morning hours of June 6, 1996, put their mother Darlie Routier at the heart of one of the most notorious murder cases in modern Texas history—despite her own throat having been slashed to within two millimeters of her carotid artery.

The actions of a small-town police department and those within Dallas County's ruthless justice system created a perfect storm that swept up the young mother and landed her on death row. There she has remained, in a nine-foot-by-six-foot cell, despite claims of her innocence by those who know her, findings about the alarming fallibility of bloodstain analysis, and her husband's admission that at the time of the murders he was soliciting help to stage a home burglary to commit insurance fraud.

In *Dateline Purgatory* Cruz enlists current-day legal experts to weigh in on the shock-



Darlie Lynn Routier in hospital after the attack on June 6, 1996



ing transgressions that resulted in one of the U.S.'s most controversial death penalty convictions.

[Click here to order *Dateline Purgatory*](#) in paperback from Amazon.com.

Comments about *Dateline: Purgatory*

Michael Morton, exonerated of murder in Texas and author, *Getting Life: An Innocent Man's 25-Year Journey from Prison to Peace*:

"*Dateline: Purgatory* will make you feel. Then, it will make you think. And hopefully, after that, you will want to act. I did, because once an execution is carried out, there's no correcting it."

Jeff Blackburn, founder and chief counsel, Innocence Project of Texas:

"Everybody knows the Texas criminal justice system doesn't work, but few know why and how. Kathy Cruz does, and *Dateline: Purgatory* proves it. This richly detailed and well-narrated book affords a view of the Texas system rarely seen by the outside world. It shows how ambitious prosecutors, compliant judges, and naïve jurors can make for a lethal combination. It also shows the terrible human cost involved when justice becomes what it is in Texas: a team sport in a rigged game. Anyone who wants to understand the true nature of Texas injustice should read this book. Ms. Cruz has done the world a favor by writing it."

Skip Hollandsworth, executive editor, *Texas Monthly*:

"I thought I knew all that there was to know about Darlie Routier – the woman at the center of the most talked about murder case in modern Texas history. Then I started reading *Dateline: Purgatory*. Kathy Cruz's book is not only a masterful piece of investigative reporting, it's a beautifully written narrative, filled with characters that seem to come straight out of fiction. Almost twenty years after Darlie's two sons were murdered, the twists and turns in this saga still remain utterly riveting. I promise you that after reading *Dateline: Purgatory*, you will not be able to stop wondering what really happened to Darlie and her family."

Mike Cochran, author, *Texas vs. Davis: The Only Complete Account of the Bizarre Thomas Cullen Davis Murder Case*:

"With relentless research that rivals her provocative writing, veteran journalist Kathy Cruz makes a powerful argument for reopening the case of the Texas homemaker at the heart of one of the nation's most unsettling death penalty convictions. The reasons why we all should be suspicious of how this conviction was won, along with details of how Cruz's destiny crossed with that of Darlie Routier, make for a riveting read."



Darlie Lynn Routier in prison

[Click here to go to *Dateline Purgatory's*](#) webpage on the TCU Press website.

Kathy Cruz is a former reporter for *The Dallas Morning News*, now working as a staff writer at the *Hood County News* in Granbury, Texas. She has won numerous Journalist of the Year honors from Texas press associations, as well as many other awards from regional, state and national press associations. She is the co-author of *You Might Want to Carry a Gun: Community Newspapers Expose Big Problems in Small Towns*. Cruz is the recipient of five awards for excellence in legal reporting, including a Texas Gavel Award and four Stephen Philbin Awards from the Dallas Bar Association – two of which were grand prizes.

Extensive information about Darlie Routier's case is on the website www.fordarlieroutier.org.

Kirstin Lobato Is Fortunate The Nevada Supreme Court Is Taking Its Time Reviewing Her Case

By Hans Sherrer¹

The Nevada Supreme Court's ruling in Kirstin Blaise Lobato's case has been awaited for more than a year since oral arguments on September 9, 2014. The Court is considering Ms. Lobato's appeal of former Clark County District Court Judge Valorie Vega's denial of her habeas corpus petition. As explained below, the length of time she has been waiting for a decision can be beneficial for her.

Ms. Lobato was convicted in October 2006 of charges related to the death of homeless Duran Bailey in a Las Vegas banks' trash enclosure on July 8, 2001. She was sentenced to serve 13 to 35 years in prison. Ms. Lobato asserts she is actually innocent and was at her home 165 miles from Las Vegas when Bailey died.

The Anti-Terrorism and Effective Death Penalty Act (AEDPA) enacted in 1996 increased the requirements for the granting of a federal post-conviction appeal by a state prisoner challenging his or her conviction and/or sentence. The AEDPA's restrictive provisions include: a one-year time limit for the filing of a timely federal habeas petition; a federal court must grant deference to the state court's ruling on the merits of an issue; and to grant relief a federal court must rely on "clearly established Federal law, as determined by the Supreme Court."

The effect of the AEDPA was so profound that by 2010, when Ms. Lobato filed her habeas petition, only about 1 out of 400 federal habeas petitions were granted that were filed by a state prisoner not on death row. Consequently, it was known that if Ms. Lobato's habeas petition wasn't granted in state court, the odds were overwhelmingly against her if she should have to continue to federal court.

A cursory reading of her [habeas petition filed](#) on May 5, 2010 illustrates that it includes a bevy of alleged constitutional violations that she asserts warrant a new trial, or the outright dismissal of her charges.

After her petition was denied by Judge Vega, Ms. Lobato appealed to the Nevada Supreme Court on August 2, 2011. More than four years later her case is still pending before the Supreme Court, which has indicated it is giv-



Kirstin Lobato after her release on bail while awaiting her retrial.

ing her case a degree of attention normally only given to a death penalty case. As an appellate court the Supreme Court is only reviewing alleged errors of law by Judge Vega, and there are many legal issues involved in Ms. Lobato's appeal. Several of those relate to whether Judge Vega applied the proper law in denying Ms. Lobato's [habeas Claim 23](#) that new evidence not heard by her jury proves her factual innocence.

The briefing by Ms. Lobato and the Clark County DA's Office (as the State of Nevada's legal representative) of the issues in her appeal was a protracted process that wasn't completed until December 27, 2012.

Ms. Lobato subsequently filed two Notices of Supplemental Authorities (State and federal cases with new rulings that she asserted were favorable to issues raised in her habeas appeal.). The [first Notice](#) filed in February 2014 concerned her habeas grounds 1 to 23, and 78. The [second Notice](#) filed in March 2014 concerned her habeas grounds 38, 40 and 77. The Court responded by taking the extraordinary step of ordering supplemental briefing on how those new cases affected legal issues in her habeas petition. Neither Ms. Lobato nor the State had requested supplemental briefing.

The Court also took the initiative of ordering that her case be decided *en banc* (by all seven justices) and not the three-judge panel that had been assigned in 2011. In April 2014 the Court also ordered oral arguments. The Court took those actions even though *neither* Ms. Lobato nor the State of Nevada had requested either oral arguments, *or* that her case be decided *en banc*. The oral arguments were held in Carson City on September 9, 2014.

On September 28, 2015 Ms. Lobato filed a [Third Notice](#) of Supplemental Authorities concerning the State's reliance on inadmissible "expert" testimony by four officers of the law detailed in her habeas ground 43, and one police officer detailed in ground 47.

The 50 months that have passed since Ms.



Nevada Supreme Court

Lobato filed her appeal is unusually long in Nevada. In August and September 2015 the Nevada Supreme Court disposed of five non-death penalty case appeals in an average of 19 months -- with the shortest 13 months and the longest 28 months. [2]

The attention that the Court has devoted to Ms. Lobato's case gives no indication of how the Court may eventually rule, but its actions have clearly shown it is giving very serious consideration to her appeal.

Ms. Lobato's best hope is an order by the Nevada Supreme Court for a new trial (or dismissal of her charges), particularly compared to the alternative of proceeding to federal court.

In the five years since she filed her petition, the U.S. Supreme Court has issued a number of decisions interpreting the AEDPA that further restrict the ability of a federal court to grant a state prisoner's federal habeas petition -- even when the federal court may believe the state court violated the prisoner's constitutional rights. The odds are likely better that a blindfolded quarterback will throw a Hail Mary pass for a touchdown than they are that a state prisoner not on death row will prevail in a federal habeas petition.

Several federal judges are so disturbed about the effect of the AEDPA and the Supreme Court's rulings that they are speaking out about the inexorable trend that federal courts are being transformed into a rubber-stamp for unjust -- and even unconstitutional -- rulings by state courts.

U.S. Ninth Circuit Court of Appeals Judge Stephen Reinhardt [wrote wrote in an article](#) published in May 2015:

"The collapse of habeas corpus as a remedy for even the most glaring of constitutional violations ranks among the greater wrongs of our legal era. Once hailed as the Great Writ, and still feted with all the standard rhetorical flourishes, habeas corpus has been transformed over the past two decades from a vital guarantor of liberty into an instrument for ratifying the power of state courts to disregard the protections of the Constitution.

... 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

Lobato cont. on p. 17

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.

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

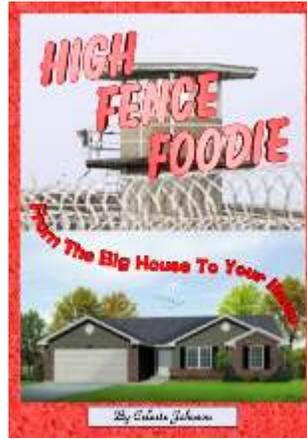
"My daughter got this for her husband for father's day. He loves using it!!" J.H.

"I am a college student making a limited income and these recipes are great and fulfilling for people like me who don't have 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.

[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.](#)

[Order with a check or money order by using the form on page 19.](#)

Lobato cont. from p. 16

in succession—even with the Chief Justice calling balls and strikes." (1219-20)

U.S. Ninth Circuit Court of Appeals Judge Alex Kozinski [wrote wrote in an article](#) published in June 2015:

"The federal court safety-value was abruptly dismantled in 1996 when Congress passed and President Clinton signed the Antiterrorism and Effective Death Penalty Act. ...

We now regularly have to stand by in impotent silence, even though it may appear to us that an innocent person has been convicted.

AEDPA is a cruel, unjust and unnecessary law that effectively removes federal judges as safeguards against miscarriages of justice. It has resulted and continues to result in much human suffering." (xli-xlii)

Judges Reinhardt and Kozinski make it all too clear that today federal habeas relief is more a dream than reality for all but a handful of state prisoners — and those are typically on death row.

Consequently, the heightened level of scrutiny the Nevada Supreme Court is giving to

Ms. Lobato's appeal is to be welcomed as the best shot she has of prevailing in her effort to be granted a new trial, and her ultimate acquittal or dismissal of the charges against her.

[Click here to read](#) Judge Stephen Reinhardt's article, "The demise of habeas corpus and the rise of qualified immunity," 113 *Mich. Law Rev.* 1219 (2015).

[Click here to read](#) Judge Alex Kozinski's article, "Criminal Law 2.0," 44 *Geo. L.J. Ann. Rev. Crim. Proc.* (2015), Preface.

Endnotes:

1. Hans Sherrer is President of the Justice Institute based in Seattle, Wash. that conducted a post-conviction investigation of Ms. Lobato's case. Its website is, [www.justicedenied.org](#).
2. The cases are *Cassinelli (Dominic) vs. State*, 1-28-2014 to 8-27-2015, 19 months; *State vs. Smith (Terrance)*, 7-21-2014 to 9-3-2015, 13 months; *Stevenson (Joseph) vs. State*, 04/09/2013 to 8-13-2015, 28 months; *State vs. Harris (Mariann)*, 1-31-2014 to 7-30 2015, (en banc), 18 months; *Merlino (Carrie) vs. State*, 3-25-2014 to 9-10-2015, 17 months. Total of 95 months / 5 = 19 months average.

Source:

[Ms. Lobato's Reply Brief](#) filed in the Nevada Supreme Court.

Visit the Innocents Database

Includes details about more than 5,900 wrongly convicted people from the U.S. and other countries.

www.forejustice.org/search_idb.htm

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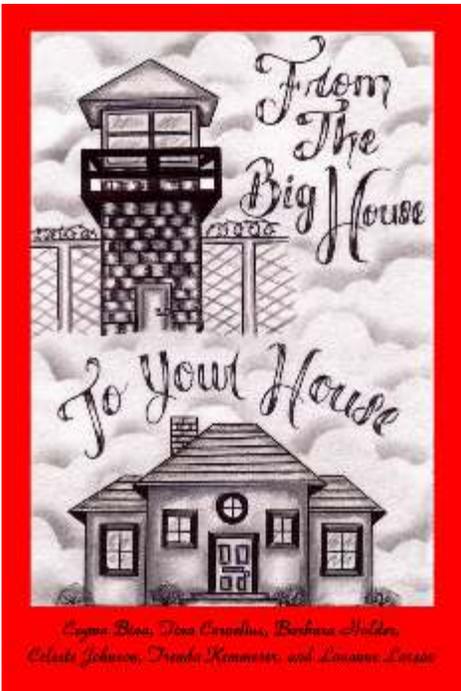
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Back issues of *Justice: Denied* can be read, there are links to wrongful conviction websites, and other information related to wrongful convictions is available. JD's online Bookshop includes more than 70 wrongful conviction books, and JD's Videoshop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

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FROM THE BIG HOUSE TO YOUR HOUSE

Cooking in prison

With

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

From The Big House To Your House has two hundred easy to prepare recipes for meals, snacks and desserts. Written by six women imprisoned in Texas, the recipes can be made from basic items a prisoner can purchase from their commissary, or people on the outside can purchase from a convenience or grocery store.

From The Big House To Your House is the result of the cooking experiences of six women while confined at the Mountain View Unit, a woman's prison in Gatesville, Texas. They met and bonded in the G-3 dorm housing only prisoners with a sen-

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

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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:

Introduction

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

Chapter 2. Edwin Borchard, Law Expert, Dead

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

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

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.

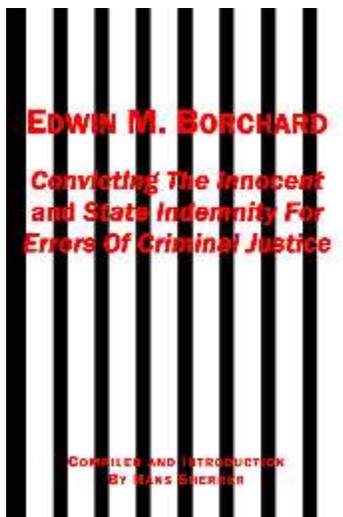
Compensating exonerated persons is as topical a subject as it was one hundred years after Borchard's article about indemnifying wrongly convicted persons. Borchard article (Chapter 3) makes it clear that many European countries were more advanced in providing indemnification 100 years and more ago, than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

\$16.95 (postage paid to U.S. mailing address) (Canadian orders add \$5 per book) 358 pages, softcover. Use the order form on pages 19 to order with a check or money order. Or order with a credit card from Justice Denied's website:

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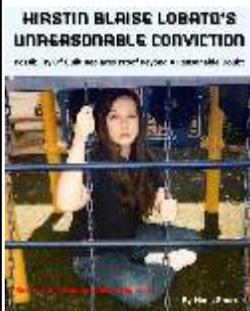
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Charles Julius Guiteau Is Innocent Of Murder

Charles Julius Guiteau was convicted of murder and executed for the death of President James A. Garfield in September 1881. Guiteau did inflict two gunshot wounds on Garfield, but they were minor and he would have been expected to quickly recover if not for the medical negligence of his doctors who failed to use basic sanitary practices in treating his wounds.

See p. 3.

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“After all, to err is human ...

Despite our aspirations ... we judges can hardly claim to escape that fact of life. Certainly far greater minds than ours haven't managed to evade its grasp. See, e.g., Atom Energy Hope Is Spiked by Einstein, ... (“The idea that man might some day utilize the atom's energy brought the only emphatic denial from [Einstein.]”); Lord May ... quoting Lord Kelvin (1895), (“Heavier than air flying machines are not possible.”).

Judge Neil Gorsuch in *USA v. Iqbal Makkar*, No. 14-5147 (10th Cir., 11-23-2015)

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