

JUSTICE

DENIED

The Magazine for the
Wrongly Convicted

\$369 MILLION COMPENSATION AWARDED IN 2014 & 2015

SEE P. 15

Kengo Iwamoto

Acquitted on appeal in Japan after discovery rape conviction was based on prosecution's false DNA testimony.
See page 8



Jeremy Nichols

Acquitted by New Mexico Supreme Court of 2010 conviction of permitting neglect in death of infant son.
See page 9



Jordan Johnson

Awarded \$245,000 for botched investigation that resulted in false rape prosecution in Montana.
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Jack Johnson

Presidential pardon sought for 1912 Mann Act conviction based on having a white girlfriend.
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Hong Kong Appeals Court Acquits Man Of Vehicle Tampering For Closing Car Door!

More Than 6,400 Cases Now In The Innocents Database!

**Issue 63
Spring 2016**

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Message From The Publisher

The irrationality underlying innumerable convictions of innocent persons is no more apparent than in the case of Mark Kirk. Convicted in 1997 of arson and murder for allegedly starting a fire with Captain Morgan’s Spice Rum – Kirk remains imprisoned even though it is scientifically known that the rum is non-flammable because it is 65% water. See. p. 3.

Obtaining compensation is an arduous process that can take years after a person is exonerated. In 2014 and 2015 a total of \$369,573,562 was awarded to 73 people for their 872 years of wrongful imprisonment. See p. 15.

The byzantine web of procedural court rules that must be followed is made even more difficult to navigate by the electronic filing of documents mandated by an increasing number of courts. In the brave new electronic world a document submitted days before a filing deadline may not be considered as filed. The U.S. 2nd Circuit Court of Appeals has ruled an appeal was untimely even though it was electronically submitted *four days* before the filing deadline – because the court clerk didn’t docket it before the filing deadline. See p. 6.

More than half-a-century before Muhammad Ali was wrongly convicted of draft evasion, World Heavyweight Champion Jack Johnson learned the hard way about the misuse of the law for political purposes. Johnson defied the mores of his day by having a white girlfriend, and he paid for it by being convicted in 1912 of a Mann Act violation for transporting her across state lines. So far, no president has had the cajones to pardon Johnson for his trumped up conviction. See p. 12.

Hans Sherrer, Editor and Publisher
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Fire, Death, Coerced Confession, and a Wrongful Conviction: The Mark Kirk Story

By Michael H. Fox

"In the event of a fatal fire, the survivors will likely be charged with arson."
Gerald Hurst¹

Introduction

Ask 100 defense attorneys in the U.S to cite the major problem with criminal defense and you will get a variety of answers. There is a strong belief that the burden of proof, not only in theory-but in fact, is on the prosecution. And where there is not strong evidence of guilt, the defendant will likely walk free. The O.J. Simpson case did much to bolster this view.

Mark Kirk's case in Delaware vividly exposes that an innocent person can easily be convicted by prosecutors who disregard facts and common sense while relying on a coerced confession and junk science.

The Mark Kirk Case: Is something rotten in the state of Delaware?

On December 4, 1996, 35-year-old Mark Kirk and his girlfriend Darlene entertained some guests at their New Castle, Delaware apartment. New Castle is a few miles south of Wilmington, and about 40 miles south of Philadelphia, Pennsylvania.

Mark had moved in with Darlene and her two sons just two weeks before. The four had been drinking since early in the day. When Darlene began flirting with one of the guests, Mark became enraged. A vicious argument erupted and the guests left.²

Mark and Darlene continued to argue, and eventually agreed to a truce until the next day. In the early morning hours, while all were asleep, smoke began billowing from the kitchen. All four occupants managed to escape the apartment unharmed. The family in the apartment above were not so fortunate. A cruel act of fate, a father, and his two children ages 17 and 8, died in the blaze.

Kirk was told to appear at the police station the next day. He was interrogated by Fire Marshall Willard Preston. After many hours of pressure, Kirk admitted on video to deliberately starting the fire by pouring Captain Morgan's Spiced Rum onto one of

the stove's electric burners. He was arrested and charged with three counts of murder.

Junk Science

There is one serious problem with this confession. Captain Morgan's Spiced Rum is entirely non-flammable. It is only 35% alcohol (70 proof). The remaining 65% is water, flavors, and other ingredients which retard burning. It is not like Bacardi 151, which is 75.5% alcohol, and labeled "Danger: Flammable."

So how did the fire start? Several days before the blaze, a grease fire occurred on the same stove. Mark, just newly moved in, cleaned the electric coil, and then lifted up the stove top. He was shocked to see a pool of grease. Keeping the house clean and safe was not part of Darlene's agenda. The occupants agreed not to use the problematic burner until the apartment complex maintenance man was available for repair. A stroke of vicious irony, the maintenance man was the father who perished in the above apartment.

Grease fires usually occur when a stove is hot. So how, did the fire start in the middle of the night? The partiers, smoking without lighters, were using the stove to light cigarettes. It is quite likely that the stove was left on before the angry couple turned off the lights and went to sleep.

While awaiting trial, a guard at the jail, a part time firefighter who was called to the scene, offered Kirk an opinion. "I have never seen a fire spread so fast. It is hard to believe the building was constructed properly. A normal apartment should be better able to withstand a fire from a stove."³

Kirk begged the guard to testify but he refused. "I have to think about my family."⁴

Further Evidence: Grease and Fire

Ten months after the fire, at the request of the prosecution, a technician examined the stove. The stove was made by Roper for Sears but the prosecution erred and requested Whirlpool to make the examination. The technician reported that there was no malfunction.⁵

This finding was unsurprising. In fact few fires ever occur from stove dysfunction. The technician testified that "The Consumer Product Safety Commission has established *inadvertent* (my emphasis) fires from the use of cooking appliances is now the leading cause of fires in the United

States."⁶ He also added that "the typical inadvertent cause is usually related to fat, grease or oil", a fact reiterated time and time again by the National Fire Protection Association.⁷

A perusal of archives from Delaware's largest newspaper, *The News Journal*, strongly confirms this fact. A simple web search turned up a shocking amount of articles caused by grease fires.⁸ In fact, a fire in the exact same apartment complex in the year 2000 was ruled an accident!⁹

Death Aware in Delaware

Ineffective assistance of counsel occurs in different varieties. The most heinous is when an innocent defendant is deemed guilty by counsel without even a perfunctory investigation. When attorneys believe a client is guilty, the triers of fact will certainly think the same. Before trial, one of Kirk's attorneys openly admitted his client's guilt. He commented to the press, "Kirk never intended to burn the building, but was trying to destroy the alcohol that fueled the couple's problems."¹⁰

Apparently, Kirk's lawyer's only goal was to spare their client from Delaware's well used needle. A sentence of life, with or without parole, was the goal. Unknown to the public, Delaware is still one of the nation's leading per capita execution states. In fact, the second smallest state in the nation ranks as number three in gross per capita executions, just behind Oklahoma and Texas. With three executions alone in 1996, the year Kirk was arrested, the attorneys fear was not unfounded.¹¹

At trial, the prosecution announced that it would seek death. In order to save their client, Kirk's attorneys opted for a bench trial – that is a trial by a judge without a jury. They convinced Kirk to waive his right to a jury trial. Juries are easy to inflame, convention goes, especially with victim impact statements. Better to leave the verdict to an impassive judge.

Needless to say, how could the prosecution prove the impossible? What evidence could possibly prove how an inflammable liquid could be used to start a fire? The problem was easily solved. The state furnished a filmed burn test showing Captain Morgan's Spiced Rum erupting into a pyrotechnic flame when pooled upon a hot electric burner. Kirk's attorneys presented their own burn test in which the rum failed to ignite. In the end, the judge ruled that the two tests

Kirk cont. on p. 4

Kirk cont. from p. 3

canceled each other out, and the confession carried weight.

The defense strategy worked. Kirk was spared the death penalty and sentenced to three consecutive life terms plus 23 years.

Could Kirk's attorneys have done more for their client? In fact, they could not have done any less. The obvious action would have been to contact the manufacturer of Captain Morgan's Spiced Rum and subpoena information about the product's flammability. But neither attorney bothered to do the obvious.

Kirk Case. Pro se: the only way?

Delaware has a two tier criminal court system: the superior court, and the supreme court. After his direct appeal was rejected, Kirk asked the court for new PCR counsel. Despite the fact that this was originally a capital case, the court refused. A situation without rhyme or reason, Kirk was forced to become his own lawyer. His PCR appeals were rejected.

The Expert's Test

Ten years into his incarceration, Kirk wrote John Lentini, Ph.d, author of "Scientific Protocols for Fire Investigation"¹² and considered the leading expert in the field. Lentini travels the country and lectures to all sort of audiences. He has spoken at the Innocence Network Conference and is sought after from both sides of the bench. Above all, he enjoys speaking in front of prosecutors, whom he refers to as "the gate keepers of our criminal justice system."¹³

In 2006, Lentini conducted three tests to check the flammability of Captain Morgan's Spiced Rum. Despite his best effort, the rum would not ignite.¹⁴ The tests were filmed by Lentini, and the video was posted on Youtube.com by Justice Denied on December 5, 2006. The video can be viewed online at,

<https://www.youtube.com/watch?v=zDqGhdxBCeQ>.

With this new evidence, Kirk again requested that the state appoint PCR counsel. The request was turned down. Once again, he submitted this new evidence pro se. It should have been a slam dunk, the Lentini tests unequivocally prove that the state's burn test was an utter fabrication. Needless to say, his PCR appeals were rejected. The courts found the new evidence



John Lentini in controlled experiment to determine the flammability of Captain Morgan's Spiced Rum.

to be "untimely" and "cumulative".¹⁵

Needing assistance with a writ of habeas corpus, Kirk contacted the Federal Public Defender in Philadelphia, enclosing copies of the Lentini tests. They also refused the case. Once again he was forced to file for habeas relief pro se. Once again, his appeals were denied.

Poetic Justice?

Kirk did have several pyrrhic victories. In 2003, with a change to the definition of the state's felony murder rule, he made a timely pro se appeal which resulted in re-sentencing. He was re-sentenced to 46 years, a fair decrease from his first sentence of three life terms plus 23 years.

The Lentini tests did bring an unexpected result. Fifteen days after Kirk submitted this new evidence, J. Willard Preston, the fire marshall who both interrogated Kirk and fabricated the state's burn test, abruptly resigned on April 6, 2007. Fire commission members were startled. "The sudden resignation was a shock." Preston gave no reason for the resignation.¹⁶

A second instant of poetic justice would soon follow. On November 12, 2008, Donald Roberts, one of Kirk's two prosecutors, was arrested. He was charged with drunk driving and public intoxication. He continued to drink and drive and was arrested again on December 4th. In addition to DUI, this time, he was also charged with breaking and entering. He plead guilty, and later resigned his position as prosecutor.¹⁷

Death would be better

As mentioned above, Kirk's attorneys only goal was to spare their client from the needle. This they achieved, but ironically, a sentence of death would have been better. Had Kirk received the death penalty, his case would have attracted attention. Death

sentences play prominently in the media. Attorneys would have been appointed for all his appeals, and with the Lentini evidence, his sentence would certainly have been reversed.

And nobody understood this better than the prosecution. On the last day of his original trial, after the state asked for death, a special evening session was convened. Kirk, back at the jail, and already changed out of his court clothes was suddenly called back to court. After demanding death, the prosecution requested a sentence of life imprisonment.

Interestingly enough, this episode was not transcribed, and no record exists. District Attorney Roberts complained that "Kirk is cunning enough to beat the system. We want to keep him inside. We therefore ask that he be sentenced to life without parole."¹⁸

Redux: The Question of 'Why'?

The Kirk case is nothing less than a complete frame-up. The fire marshall, a law school graduate with 19 years experience in that office, and whom we can assume to be a competent authority, even an expert in fire analysis, knew from the get-go that Captain Morgan's Spiced Rum was inflammable. Needless to say, he pressed ahead with investigation, knowing this defendant to be innocent. And his sudden resignation and flight from the state after the submission of the Lentini tests certifies this malfeasance.

Why would the authorities want to frame Kirk? Two reasons come to mind. If indeed the apartment was not built according to code, somewhere, someone, would be guilty of fraud. Indeed more than someone, perhaps a large part of the building industry in this small state could come under the microscope. And it is not hard to imagine that one of the actors would be the fire marshall's office. Conspiracy theories aside, the potential for a statewide scandal is quite palpable.

A second likely reason for the Kirk arrest was to divert the investigation away from Darlene, Kirk's girlfriend. Upon arriving at the police station for questioning the day after the disaster, Kirk was surprised to learn that the police knew Darlene by name, and were convivial toward her. Either they knew her previously, or were advised in advance that she was not to be interrogated.¹⁹

So the police motives come into focus. As mentioned above, this story begins with a grease fire. The investigation certainly

Kirk cont. on p. 5

Kirk cont. from p. 4

discovered that the grease build up inside the stove was unsafe. As mentioned above, Darlene was not one to put too much time into housekeeping.

Still, one has a legal duty to keep one's home safe and free from hazard. Ignoring the danger of grease build up and endangering others is a crime. A strong case could be made for negligent homicide or manslaughter. But Darlene was spared from prosecution, and Mark Kirk became the public enemy.

Mass Indifference of the Mass Media

One would think that with scientific evidence of wrongful conviction, the mass media would take interest in Kirk's case. I have sent enquiries to every major American news show. These include *Dateline NBC*; *American Justice*; *20/20*; *Primetime: What Would You Do?*; etc. Not one has shown an iota of interest.

In fact, when I broached the case to Ofra Bikel at the 2012 Innocence Network Conference, she replied, "I don't like fires or burned bodies. I like DNA."²⁰ Though I mentioned that burned bodies would not play a part in this case, she nevertheless spurned my request.

And not only the media. I have contacted the Delaware offices of the NACDL, the International Association for Arson Investigators (IAAI), the ACLU, and even C.U.R.E (Citizens United for the Rehabilitation of Errants) seeking advice and support. I have received none. Kirk has written to various Innocence Projects and has never received a reply. It appears that something is rotten in the state of Delaware.

An Unusual Friendship

I learned of the Mark Kirk case through the 2004 article "Convicted of Starting a Deadly Fire with an Unburnable Substance" in the *Justice Denied: The Magazine for the Wrongfully Convicted*.²¹ I wrote Mark, enclosed a donation, and requested that in lieu of thanks, he send a letter to Boku.

Effective Assistance of Counsel: NOT

Though Mark proclaimed his innocence, and suggested many things to support his own defense, his attorneys never bothered to explore the totality of the evidence, and defended perfunctorily. Their strategy was to save their client from the needle, and in

this they succeeded. As shown above, a sentence of death would have been better.

Despite having evidence of actual innocence, the Federal Public Defender in Philadelphia ignored Mark Kirk's pleas. And even with proof of innocence, pro se submissions are frequently trash canned in the chambers of justice.

Mark Kirk: What Next?

With present appeals exhausted, Kirk's only chance for freedom maybe a commutation from the governor of Delaware.

Kirk had a hearing commutation in June of 2015, after serving 19 years, and with an exemplary record behind bars.

Having seen the many successes of prisoners who have launched petitions on change.org, I began a petition ahead of Mark's commutation hearing. I fully expected that Change.org would further the campaign. They are very active in supporting the criminally accused, and gathering 50,000-100,000 signatures is not unusual. Such grassroots support has helped many prisoners earn freedom. Certainly a nationwide/worldwide petition drive would greatly help Mark's cause, and bring with it the tide of freedom.

Despite my best efforts, [Change.Org](http://www.change.org) did not choose to promote this appeal. So far, only a handful of people have signed the petition.²²

Other subsequent actions I have undertaken have not brought any fruit. I contacted the manufacturer of Captain Morgan's through their website seeking a statement on the flammability of the product. The company by law is required to have a Material Safety Data Sheet which describes among other things, "the potential hazards associated with a particular material or product."²³ I requested this sheet and any other information on the product's flammability. The company never responded.

On November 17, 2013 I filed a report with the Food and Drug Administration requesting an investigation into the flammability of Captain Morgan's Spiced Rum. A court of law found that this product was flammable and responsible for three deaths. That said, the FDA should require a warning on the label, much like that found on products like Bacardi's 151 proof rum. I received no response from the FDA.²⁴

It is quite clear that the company knows of this incident and is trying to keep it under

lids. I went to the Captain Morgan's Rum Wikipedia page and made careful insertions about the Delaware incident, reference to my FDA request, and gently mentioned that the product should be treated with caution pending investigation. My additions were quickly deleted. I re-inserted them, only to have them again deleted, and over and over again. The page is obviously the creation of the company, strictly against Wikipedia rules.

Prayer for Relief

It is true that those who strive to correct miscarriages of justice are always overworked, often exhausted, and badly remunerated. Nevertheless, the Mark Kirk's of the world need our assistance. He is one of the innumerable innocent people whose case is ignored by the courts, the media, and the innocence projects.

About the author

Michael H. Fox is a long time member of NACDL and its sole member in Japan. He is director of the Japan Innocence and Death Penalty Information Center (jiadep.org) and two other wrongful conviction websites: the Worldwide Women's Criminal Justice Network (wcjn.org), and the Network for Innocent Arson Defendants (niad.info). He was deported from India in 1981, at age 24, for reasons still unknown. Seaside walks and meditation help him maintain sanity. He lives and teaches in Japan.

Endnotes:

¹ Gerald Hurst, 1937-2014, a leading arson investigator, offered evidence in many cases. He opined that the case against executed death row inmate Cameron Todd Willingham was "junk science." https://en.wikipedia.org/wiki/Gerald_Hurst

² Information and documentation about this case is available at http://www.niad.info/Mark_Kirk.html

³ Mark Kirk. Convicted of starting a deadly fire with an unburnable substance: The Mark Kirk Story. *Justice Denied* (Seattle: 2004)

http://www.niad.info/Mark_Kirk_Story.html

⁴ Ibid

⁵ Testimony of Marvin McDowell. Trial Transcripts, October 10, 1997.

⁶ Ibid.

⁷ "67% of home structure fires involving cooking equipment begin with the ignition of cooking materials. . . especially fat, grease, cooking oil and related substances." Marty Ahrens. NFPA No. USS11. November, 2013.

⁸ <http://www.niad.info/grease-fires.html>

⁹ http://www.niad.info/Beaver_Brook.html

¹⁰ Murder, arson trial under way. The News Journal. October 9, 1997, (<http://www.niad.info/reportage/Oct9.html>)

¹¹ <http://www.deathpenaltyinfo.org/state-execution-rates?scid=8&did=477>

¹² Lentini, John. (2013) Scientific Protocols for Fire Investigation. CRC Press: Boca Raton, FL.

¹³ Personal Communication, John Lentini, Innocence Network Conference, Cincinnati, Ohio, April 8, 2012

¹⁴ See the tests, http://www.niad.info/Lentini_Tests.html

¹⁵ *State v. Kirk*, No. 9612002650 (Del. Superior Ct 2007); *Kirk v. State*, No. 293, 2007 (Del. Supreme Ct 2007)

Kirk cont. on p. 6

Murphy's Law In Action — Appeal Electronically Submitted Four Days Early Was Untimely Because It Wasn't Filed By Clerk

Filing a notice of appeal on time is critically important because dismissal of an appeal can be expected if it is filed even 5 minutes late. The proliferation of electronic filing of documents in federal and state courts has increased the diligence necessary to ensure compliance with a filing deadline — because electronically submitting an appeal with proof of the date and time of its submission may not constitute filing of the appeal. Luther Franklin learned that the hard way. On October 30, 2015 the U.S. Second Circuit Court of Appeals ruled his appeal electronically submitted four days before the filing deadline was untimely because it wasn't docketed by the court clerk.

Franklin is a retired Lieutenant Colonel in the United States Army Reserve. He filed a complaint in the United States District Court for the Eastern District of New York on February 5, 2013, seeking correction of his military records, a retroactive promotion, and back pay.

On August 28, 2014, the District Court's memorandum and order was filed that granted the government's motion to dismiss Franklin's complaint for lack of subject matter jurisdiction.

Franklin had 60 days to file a notice of appeal to the U.S. Second Circuit Court of Appeals.

Kirk cont. from p. 5

¹⁶ "State fire marshal Willard Preston resigns." The News Journal. April 6, 2007 <http://www.niad.info/Willard.html>

¹⁷ http://www.niad.info/Donald_Roberts.html

¹⁸ Personal communication, Mark Kirk, Sept. 17, 2015.

¹⁹ Personal communication, Mark Kirk, March 6, 2006

²⁰ Personal communication, Ofra Bikel. Innocence Network Conference, Cincinnati. April 8, 2011

²¹ Issue 26, November 2004, online at, http://justicedenied.org/issue/issue_26/mark_kirk_jd_issue26.html

²² <https://www.change.org/p/jack-markell-captain-morgan-s-spiced-rum-is-non-flammable-please-free-mark-kirk>

²³ https://en.wikipedia.org/wiki/Safety_data_sheet

²⁴ <http://www.niad.info/FDSA.html>

Twelve years ago *Justice Denied* published an article about Mark's Kirk case in Issue 26 (Fall 2004), pgs. 8, 10, "Convicted of Starting Deadly Fire with Unburnable Substance — The Mark Kirk Story." It is online at, http://justicedenied.org/issue/issue_26/mark_kirk_jd_issue26.html

The District Court requires an attorney to electronically file all documents -- including appeals. The court's ECF ("Electronic Case Filing") [Manual states](#): "All documents must be filed electronically — Electronic Filing is Mandatory — See Administrative Order No. 2004-08."

Four days before the October 27, 2014 deadline, attorney Gary Port uploaded Franklin's notice of appeal and other necessary documents to the federal judiciary's computerized case management CM/ECF system on October 23, and he paid the required \$505 filing fee by accessing www.pay.gov, the federal government website for making payments to government agencies. Port received an email that same day from www.pay.gov transmitting a receipt for his payment.

On October 28 Port learned the Eastern District Court's docket did not reflect the notice of appeal he submitted on October 23. Port's office [contacted the court clerk's office](#), which "assured that the initial receipt of October 23, 2014 would stand as proof that we did timely file, but due to issues with the ECF system [the notice of appeal] did not get properly docketed."

Port later [related in a declaration](#) that "the [C]lerk's [O]ffice specifically instructed my office to refile the documents, and pay the fee again." Port followed the Clerk's instructions and again electronically filed the notice of appeal. The District Court docket reflected it was filed on October 28.

On January 5, 2015, the government filed a motion to dismiss Franklin's appeal as untimely. Franklin opposed the government's motion by principally arguing his notice of appeal was timely filed on October 23, 2014, when he electronically submitted it and he paid the required fee, even though it did not appear on the District Court's docket until he refilled it on October 28 and again paid the fee.

On October 30, 2015 the Second Circuit issued its ruling dismissing Franklin's "untimely" appeal. [The Court stated](#) in *Franklin v. McHugh*, No. 14-4096-cv (2nd Cir., 10-30-2015):

"The timely filing of a notice of appeal in a civil case is a prerequisite to the appellate court's jurisdiction. As the Supreme Court observed in *Bowles* in 2007, "[T]ime limits for filing a notice of appeal have been treated as jurisdictional in American law for well over a century." 551 U.S. 10 at 209 n.2. Like other jurisdictional requirements, the timely

filing mandate is not subject to judicially created equitable exceptions."

... In the Eastern District, electronic filing has been mandatory in counseled civil cases since 2004.

... Here, although Franklin's counsel undoubtedly intended to file a notice of appeal electronically on October 23, 2014, his efforts fell short of the mark. His account of his attempt to file electronically a notice of appeal on October 23 suggests strongly that counsel simply overlooked the last step of the process: he appears to have followed the electronic filing process through the fee paying stage only, stopping upon receiving the receipt for payment. He does not represent that he proceeded past that point or that he received the critical Notice of Electronic Filing screen; and he appears to have failed at the time to notice the shortcoming.

We thus conclude that a notice of appeal is not "filed" for purposes of 28 U.S.C. § 2107 and Federal Rule of Appellate Procedure 4 until counsel completes the CM/ECF filing process in compliance with the applicable local district court rules ... Because Franklin did not timely complete the filing process, the Secretary's motion to dismiss the appeal as untimely is granted, and the appeal is dismissed for want of jurisdiction."

Even though the Clerk's Office conceded there were "issues with the ECF system" on October 23 when Franklin's appeal was submitted, the Second Circuit disregarded that and placed the entire blame on his attorney for the dire consequences of the electronic problems. The Court's ruling emphasizes the importance of every attorney developing the habit to double check to make sure that an electronic submission has been properly processed.

Franklin's case was civil, but the principle underlying the Court's ruling applies to the electronic filing of a document in a criminal case.

[Click here to read](#) the ruling in *Franklin v. McHugh*, No. 14-4096-cv (2nd Cir., 10-30-2015).

Source: [Franklin v. McHugh](#), No. 14-4096-cv (2nd Cir., 10-30-2015) (Untimely Filed Notice of Appeal Not Properly Filed Under CM/ECF System on Oct. 23, 2014) [cm/ECF User's Guide](#) (U.S. District Court Eastern District of New York)

Jordan Johnson Awarded \$245,000 By Montana For Botched Rape Investigation

Jordan Johnson was the quarterback of the University of Montana Grizzlies when he was accused of raping a female university student on February 4, 2012.

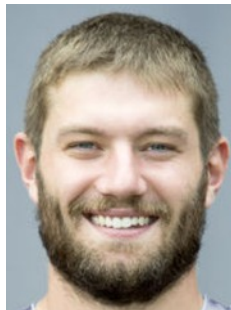
The woman reported to the police in March 2012, that more than a month earlier she and Johnson were watching a movie at her home, when they had sexual intercourse without her consent.

When interviewed by police Johnson admitted that he and the woman had sex, but he told them it was consensual.

Johnson was charged with sexual assault in July 2012.

Johnson's trial in March 2013 was "she said, he said" about the incident. The prosecution's case was based on the woman's testimony that Johnson didn't stop when she wanted him to. She admitted they had an ongoing sexual relationship, but she said [she told him](#), "No not tonight." Johnson testified in his defense that she didn't let him know she didn't want to have sex that night. He [told the jury](#), "If somebody says no, you stop. You respect that."

After 2-1/2 hours of deliberations the seven-



Jordan Johnson in 2011 when he was the quarterback for the University of Montana Grizzlies (University of Montana)

was aware of whether the sex was non-consensual. It's a sad case all the way around, with so many people affected. But you've just got to go with what the law says."

The university expelled Johnson in late 2012 after the University's Court determined he was guilty of raping the woman. Johnson appealed that decision. After his acquittal in his criminal case that determination was overturned in separate decisions by Montana's Commissioner of Higher Education, and the University of Montana's Dean of Students. Johnson was reinstated as a student.

Johnson filed a complaint for money damages against the State of Montana. He alleged that the handling of the case by the university violated his due process and civil rights, that he was subjected to sexual discrimination, and that potential evidence was destroyed by the deletion of files related to

woman, five-man jury acquitted Johnson. After the trial one of the jurors [told reporters](#), "You just can't convict somebody if you're not 100 percent, or reasonably sure. We were kind of hung up on the fact that we just couldn't do a conviction because we weren't sure whether Mr. Johnson

Johnson from the computer of the person who was the UM's Dean of Students at the time of the alleged incident in February 2012.

On February 16, 2016 it was announced that the State of Montana [had agreed to pay](#) Johnson \$245,000 to settle his complaint.

The handling of alleged sexual assaults at universities and colleges across the country is a controversial issue. [In April 2011](#), the U.S. Department of Education and its Office for Civil Rights told institutions of higher learning to use a "preponderance of the evidence" standard – a lower standard of proof – to evaluate cases of sexual violence instead of the "clear and convincing" standard that had been relied on for many years. The lower standard of evidence made it much easier to find male students "guilty" of sex related offenses.

Best-selling author Jon Krakauer's book, *Missoula: Rape and the Justice System in a College Town*, was published in May 2015. The [book covers cases](#) of alleged sexual assaults at the University of Montana from January 2008 to May 2012, including Johnson's case.

Sources:

[Jordan Johnson found not guilty of rape](#), *Missoulian* (Missoula, Mt), March 1, 2013

[Montana to pay former Griz QB Jordan Johnson \\$245K in settlement](#), *Missoulian*, February 16, 2016

[Higher education commissioner](#), dean of students reinstated expelled UM quarterback, *Missoulian*, April 25, 2015



6,403 Cases Now In Innocents Database

The [Innocents Database](#) now includes 6,403 cases: 3,954 from the U.S., and 2,449 from 114 other countries. The database includes 3,035 U.S. cases from 2016 to 1989, when the first DNA exoneration occurred.

The [Innocents Database](#) is the world's largest database of exonerated persons, and it includes all identifiable exonerations in the United States, as well as internationally. The Innocents Database includes:

- 586 innocent people sentenced to death.
- 972 innocent people sentenced to life in prison.
- 2,081 innocent people convicted of a homicide related crime.
- 1,005 innocent people convicted of a sexual assault related crime.
- 773 innocent people were convicted after a false confession by him or herself or a co-defendant.

- 1,780 innocent people were convicted of a crime that never occurred.
- 219 innocent people were posthumously exonerated by a court or a pardon.
- 71 innocent people were convicted of a crime when they were in another city, state or country from where the crime occurred.
- 1,729 innocent people had 1 or more co-defendants. The most innocent co-defendants in any one case was 29, and fifteen cases had 12 or more co-defendants.
- 12% of wrongly convicted persons are women.
- The average for all exonerated persons is 7-1/4 years imprisonment.
- 31 is the average age when a person is wrongly imprisoned.
- Cases of innocent people convicted in 115 countries are in the database.
- 3,954 cases involve a person convicted in the United States.
- 2,449 cases involve a person convicted in a country other than the U.S.

[Click here to go to the Innocents Database homepage.](#)

All the cases are supported by public sources for research. Those sources include court rulings, newspaper and magazine articles, and books. The database is linked to from [Justice Denied's](#) website.

User defined searches, and user defined sorts of any combination of more than 100 columns of data can be made for:

- [U. S. cases from 1989 to 2016](#);
- [U. S. cases prior to 1989](#);
- and, [International cases up to 2016](#)

The Innocents Database is an ongoing project that began more than 19 years ago, and now contains almost two million bytes of data. The accessibility and usefulness of that data to the public and researchers is improved by the ability to search and sort for specific information.

Email a question, correction, or suggested addition to the Innocents Database to: innocents@forejustice.org.



Kengo Iwamoto's Rape Conviction Tossed Based On False DNA Trial Testimony

Kengo Iwamoto [has been acquitted](#) of rape by the Fukuoka High Court in Japan based on new evidence the prosecution presented false DNA evidence at his trial.

Iwamoto was 19 when he was charged with raping a 17-year-old girl in October 2012 in Kagoshima, Japan. Kagoshima is on the southwestern tip of Kyushu island, about 600 air miles southwest of Tokyo.

Iwamoto's prosecution was based on his identification by the victim that was supported by DNA evidence linking him to the girl. Iwamoto did not confess under intense interrogation by the police.

During his 2014 trial in the Kagoshima District Court, the girl testified Iwamoto was her assailant, although there were unexplained inconsistencies in her identification of him. The prosecution also presented the expert evidence of a technician from the laboratory that did DNA testing on semen and saliva recovered from the girl after she reported the rape. The [technician testified](#)



Kengo Iwamoto (KYODO)

Iwamoto's defense was the young woman misidentified him and she gave contradictory testimony, and the DNA test of the saliva may not have been reliable.

After his conviction the 21-year-old Iwamoto was sentenced to four years in prison.

While his appeal was pending Iwamoto requested additional DNA testing of the semen and saliva. A different laboratory discovered that not only was there enough semen to test for DNA, but the test determined that Iwamoto's DNA didn't match that of the man who deposited the semen. The laboratory also tested the saliva, and discovered that Iwamoto's DNA did not match the male who was the source of the saliva.

In January 2016 the Fukuoka High Court

the quantify of semen recovered from the victim was "too small for analysis," however, there was a positive match between Iwamoto's DNA and foreign DNA in saliva found on her breast.

granted Iwamoto's appeal and ordered his acquittal based on the new exclusionary DNA evidence, and the unreliability of the prosecution's expert DNA trial testimony. The court's [ruling noted](#) that the laboratory staff who worked on Iwamoto's case before his trial either had "extremely poor" analysis skills, or sought to "hide" an outcome that contradicted the police and prosecutor's position that Iwamoto was the woman's assailant.

On January 27, 2016 Iwamoto's acquittal became final when the Fukuoka High Public Prosecutor's Office announced that although it didn't fully agree with the High Court's ruling, it "cannot find reasons to appeal."

After his acquittal Iwamoto told reporters that he was overjoyed to be free after almost two years in prison. [He also said](#) that "In order to prevent false charges, all cases should be made visible. Investigators should not trust everything victims say and should have doubts when they notice contradictions."

Sources:

[Kagoshima man freed after wrongful rape conviction](#); police DNA tests called into question, *The Japan Times*, January 27, 2016



Australian Appeals Court Acquits Uncle Of Incest For Sex With Adult Niece

The Queensland Court of Appeals [has acquitted](#) an uncle of his 2008 incest convictions for having sex with his 17-year-old niece.

On July 24, 2008 an uncle in Queensland, Australia pled guilty to three counts of incest with his 17-year-old niece. She was considered an adult of legal age to consent to sexual relations and marry.

He was sentenced to three concurrent 2 year prison terms suspended after 6 months. The man, only identified as M. C. H. in court documents, served his sentence.

On July 15, 2015 he received legal advice that he should challenge his convictions because he pled guilty to non-existent crimes. He was informed that at the time there was no legal prohibition from an uncle and niece of legal age from marrying, and incest did not apply to "carnal knowledge



Queensland Court of Appeals in judicial building, Brisbane, Queensland, Australia (2012, Wikipedia.org)

Queensland's Director of Public Prosecutions [conceded that he](#) "could not have been lawfully convicted of the offences of incest, therefore, the convictions cannot stand and it would be a miscarriage of justice to let them remain."

On March 15, 2016 the court of appeal quashed H.'s convictions and ordered his acquittal on the basis that under the Australian Marriage Act of 1961, at the time of the alleged incidents it was not illegal for an uncle to marry or have sexual relations with a niece of legal age, therefore no crime had been committed. The Court's ruling in *R v*

between persons who are entitled to be lawfully married."

On October 22, 2015 the court of appeal granted H.'s application to extend the time for him to appeal.

After reviewing H.'s appeal, the

MCH [2016] QCA 61 [stated in part](#):

At the time of the alleged offence, s 222(1) of the Code relevantly provided: "This section does not apply to carnal knowledge between persons who are entitled to be lawfully married."

The relationship between an uncle and a niece was not then within the defined categories of "prohibited relationship" under s 23B(2) of the Marriage Act 1961. As a consequence, ... the appellant and the niece were, at the time of the alleged offences, "persons entitled to be lawfully married".

It follows that the appellant could not have been charged under s 222 of the Code.

The appeal is allowed. The verdicts of guilty entered on 24 July 2008 are set aside. On each count, a verdict of acquittal is entered.

Sources:

[R v MCH](#) [2016] QCA 61 (15 March 2016)

[Old man's incest conviction quashed](#), 9news.com.au (Sydney, AUS), March 22, 2016



Jeremy Nichols Acquitted By NM Supreme Court Of Permitting Neglect In Death Of Infant Son

On November 19, 2015 the New Mexico Supreme Court [overturned the conviction](#) of Jeremy Nichols and acquitted him based on the prosecution's failure to introduce any evidence he was guilty of permitting neglect that resulted in great bodily harm or the death of his six-month-old son Kaden Nichols.

Nichols' wife Alycia Nichols gave birth to Kaden and his twin brother Bryce in September 2005. Due to medical complications from the boys being born six weeks premature, Kaden was hospitalized for six weeks, and Bryce for eight weeks, in the neonatal intensive care unit (NICU) at Presbyterian Hospital in Albuquerque.

Kaden and Bryce were seen by doctors a number of times related to various health problems during the months following their discharge from NICU.

On the morning of March 16, 2006 Nichols watched the boys when Alycia left about 9 a.m. to run some errands. Nichols feed the babies cereal, and while Bryce ate, Kaden would not eat and blew food out of his mouth. Nichols later said it appeared Kaden was hungry but just could not swallow the food. When Alycia returned home, Bryce was napping but Kaden was fussy and Nichols was holding him. Nichols and Alycia fed the babies about noon, and she left at 12:45 for a hair appointment.

Nichols put on a movie and sat with Kaden on the couch. Kaden was going "in and out" between being content and being fussy. Nichols thought Kaden might be hungry so he tried to feed him with a bottle, but he drank very little.

After finishing with her hair appointment, Alycia called Nichols to ask if she needed to go to the store. She heard crying in the background, and Nichols told her the boys were acting fussy and asked her to come straight home.

When she arrived about 3:15 p.m. Kaden's legs seemed "ashy" and he appeared lethargic. She took his temperature, that was about 95, and she gave him a "baby Tylenol." A few minutes later Nichols and Alycia retook Kaden's temperature and it was 95.7. Alycia called her aunt, a pediatric



Jeremy Nichols during his trial in 2010

nurse, for advice. While on the phone Alycia said that Kaden's breathing was becoming light and his legs were getting more discolored. Her aunt advised calling 911. Nichols began giving infant CPR to Kaden and Alycia called 911 at 3:39 p.m. When paramedics arrived eight minutes later Kaden was unconscious and not breathing on his own. The paramedics transported Kaden to the Lovelace West Mesa Medical Center. Kaden never regained consciousness and at 4:47 p.m. he was pronounced dead.

Kaden's autopsy determined his cause of death was loss of blood associated with blunt abdominal trauma and a lacerated liver.

Bryce was also transported to Lovelace Medical Center on March 16. Bryce's "vitals were fine" and his temperature and his elevated heart rate was attributed to the commotion. CT films taken that day revealed fluid around his liver indicating a mild liver injury.

Albuquerque Police Department detectives were assigned to conduct an investigation because Kaden's death was considered possibly suspicious. Nichols, Alycia, and medical personnel who attended to Kaden and Bryce were interviewed. On March 17, 2006, the day after Kaden died, Nichols was arrested and charged with multiple counts of first-degree felony child abuse.

After 46 days in custody Nichols was released on \$80,000 bail. More than four years later, his trial began in April 2010. During his three week trial the prosecution's case was based on their contention Nichols placed Kaden in a situation that endangered his life and caused his death and caused him great bodily harm.

On May 5, 2010 the [jury acquitted Nichols](#) of four charges related to him causing or permitting Kaden's fatal injuries or that Nichols caused endangerment by medical neglect. The jury convicted Nichols of the sole charge of negligently [permitting](#) endangerment to Kaden by medical neglect resulting in his death or great bodily harm. That charge was based on the prosecution's theory Nichols did not inflict any injury, but he did not provide or obtain necessary

medical care for Kaden. Nichols remained free on bond pending his sentencing.

The judge [sentenced Nichols](#) on July 13, 2010 to 18 years imprisonment. However, the judge ruled that Nichols wasn't a flight risk or a danger to the community, so he allowed him to remain free on \$200,000 bail pending the outcome of his appeal.

On December 20, 2013 the New Mexico Court of Appeals [affirmed Nichols conviction](#) and sentence.

The New Mexico Supreme Court granted review of Nichols conviction. Nichols argued the prosecution introduced insufficient evidence to prove beyond a reasonable doubt that he did not provide or obtain necessary medical care for his son.

On November 19, 2005 -- almost ten years after he was charged -- the Supreme Court issued its unanimous ruling reversing Nichols conviction on the basis there was insufficient evidence for the jury to find him guilty. In *State v. Nichols*, No. S-1-SC-34549 (NM Sup. Ct. 11/19/2015) [the Court stated](#):

Our review of the record demonstrates that the State did not prove, and indeed presented no evidence to prove, an essential element in the crime—that Jeremy's alleged endangerment by medical neglect actually caused Kaden's death. The State also failed to prove that Jeremy acted "with reckless disregard." For those reasons, his conviction must be reversed and the charges vacated.

... In this case, the State was required to put forth substantial evidence that Jeremy's neglect "resulted in" Kaden's death or great bodily harm, meaning that medical neglect was at least a significant cause of his death or great bodily injury. ... But the State never offered any such evidence.

... Clearly, a suggestion that "maybe" or "perhaps" something would or would not have happened, even if based on evidence, is not probative of anything.

... We cannot write an opinion saying that an infant's fussiness and lack of appetite are of such moment that a parent's failure to call 911 might put him in jail for felony child abuse. ... Based on this record, we cannot say with any degree of confidence what evidence would have put Jeremy on notice of Kaden's critical need of medical care, in light of the jury's finding that Jeremy did not

Nichols cont. on page 10

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 September 9, 2015 acquitted Mauz of his disorderly conduct conviction. The Court’s ruling in *Commonwealth of Pennsylvania vs. Gary Alan Mauz*, 122 A.3d 1039, 2015 PA Super 191 (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 catchall 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**.”

...

Nichols cont. from page 9

inflict the injuries that resulted in Kaden’s death.

... the jury found that Jeremy was “wholly indifferent” and “reckless” for not seeking medical care, a verdict altogether unsupported by substantial evidence in the record. We cannot sustain any verdict on that basis.

We reverse Jeremy Nichols’ child abuse conviction under Section 30-6-1 and order that the charge be dismissed with prejudice.

Nichols cannot be retried since the supreme court found there was insufficient evidence and ordered dismissal of the charge.

After the court’s ruling Nichols’ attorney Raymond Maestas [issued a statement](#) to the press: “Jeremy Nichols is an innocent person, who was wrongfully accused by the Albuquerque Police Department, the Office of the Medical Investigator, and the District Attor-

ney’s Office in a rush to judgment fueled by emotion rather than actual evidence – the very agencies whose job it is to do a full and fair investigation. He is and always was a great father, and everyone the police interviewed during their investigation said so.”

After Nichols was charged his wife Alycia divorced him and remarried. Nichols and Alycia’s son Bryce is reported to be a healthy youngster.

[Click here to read](#) the New Mexico Supreme Court’s ruling in *State v. Nichols*, No. S-1-SC-34549 (NM Sup. Ct. 11-19-2015).

Source: [State v. Nichols](#), No. S-1-SC-34549 (NM Sup. Ct. 11-19-2015)

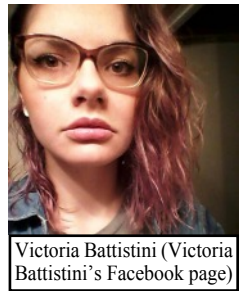
[After 9 years](#), dad is exonerated in death of twin son, Albuquerque Journal ((Albuquerque, NM) November 23, 2015

[Verdict Reached In Nichols Case](#), KOAT-TV (Albuquerque, NM), May 5, 2010

[Nichols Gets 18 Years in Child Abuse Case](#), Albuquerque Journal, July 14, 2010

[State v. Nichols](#), No. 30,783 (NM Ct. of Appeals, 12-20-2015)

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.



Victoria Battistini (Victoria Battistini’s Facebook page)

... 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*, 122 A.3d 1039, 2015 PA Super 191 (Superior Court of Penn., 6-23-2014).

Source:

[Commonwealth of Pennsylvania vs. Gary Alan Mauz](#), 122 A.3d 1039, 2015 PA Super 191 (Superior Court of Pennsylvania, 6-23-2014)

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

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Appeals Court Tosses Conviction For Closing Vehicle Door

On October 26, 2015 Hong Kong's [highest court acquitted](#) Law Yat-ting of tampering with a motor vehicle.

On February 21, 2014 Yat-ting was walking in the Tsuen Wan section of Hong Kong when he saw a parked van that had its front passenger door open. Yat-ting closed the door.

The van's driver was standing nearby when he saw the door being closed. He went and looked through a window in the van and saw that his mobile phone that had been on the front seat was missing. He went after the person he saw — Yat-ting — who was walking away. The driver stopped Yat-ting about 30 feet from the van and accused of stealing his mobile phone. The police were summoned and Yat-ting was arrested for theft.

Yat-ting, the owner of a handset accessory shop in Hong Kong, protested that he only closed the open door and didn't take the mobile phone. The theft charge was dropped when the police didn't find the phone on him. However, he was charged with tampering with a motor vehicle for closing the van's door.

Yat-ting represented himself during his bench trial in the Tsuen Wan Magistrates' Court on May 22, 2014. Yat-ting's defense was he did nothing but close the door, but he didn't argue his action didn't meet the definition of vehicle "tampering" under the law. The judge solely relied on the driver's testimony that Yat-ting was the person who closed the van's door in finding him guilty of tampering with the van. On June 5 Yat-ting was sentenced to serve six weeks in jail, but he was granted bail pending appeal.

Although he was appointed counsel for his appeal, his legal aid lawyer did not argue that closing the van's door wasn't vehicle "tampering" under the law. Yat-ting's conviction and sentence were affirmed by Hong Kong's Court of First Instance on December 17, 2014.

Yat-ting's bail was revoked and he served

his six week jail sentence.

Professor Eric Cheung Tat-ming, director of the Clinical Legal Education Programme at the University of Hong Kong, agreed to [represent Yat-ting pro-bono](#) in submitting a petition for leave to appeal to Hong Kong's highest criminal court — the Court of Final Appeal. The petition was filed on April 22, 2015, and accepted on July 3, 2015, to resolve the sole issue of whether the mere act of Yat-ting closing the door of the van constituted illegal "tampering" with a motor vehicle.

The Department of Justice didn't oppose Yat-ting's appeal, and the Court of Final Appeal found there was no need to hold an oral hearing. On October 26, 2015 the Court unanimously quashed Yat-ting's conviction on the basis his act of closing the vehicle's door did not constitute criminal "tampering." [The Court stated](#) in its precedent setting ruling:

"The section does not use the words "interferes", "meddles" or "touches" but instead uses "tamperers,... tampering within section 49 means an act constituting either interference or meddling with part of a vehicle so as to cause alteration or harm to it, or the making of an unauthorised change to it. [¶12]

... His act of closing the door could simply have been an act of helpfulness towards the vehicle owner. In any event, there is no evidence of any alteration or harm to the door or any other part of the vehicle, or any change in it, as a result of the appellant's interaction with the vehicle. In the circumstances, therefore, the evidence could not support the offence charged and the appellant's conviction was wrongful and should be quashed." [¶21]

The [Court stated](#) about Yat-ting's case:

"It is an example, unfortunately, of how in an adversarial system, particularly where an individual is initially unrepresented at trial, there are cases in which a material point of law is not raised in the courts below. Fortunately, ... a wrongly convicted appellant has been able to overturn that conviction on a new point of law raised for the first time in this court. That he had, in the meantime, to serve a sentence of six weeks' imprisonment for the offence of which he was convicted is naturally most regrettable but this could have been mitigated by a more timely appeal coupled with an application for bail." [¶1]



Tsuen Wan district of Hong Kong

The [appeals court ordered](#) "that the respondent pay the appellant the sum of HK\$10,000 for the costs incurred in the courts below and the sum of HK\$4,235 for disbursements incurred by the appellant for the leave application and appeal before this Court." HK\$14,235 is the equivalent of about US\$1,835 (10-27-15 exchange rate).

Although a legal issue is generally considered "waived" if it is not raised in a lower court, the [Court of Final Appeal acknowledged](#) that in Yat-ting's case it was necessary to consider his new legal argument in order to correct the injustice that he was "wrongly convicted" of a crime that didn't occur: "This submission that the facts disclosed by the evidence did not, in law, amount to an act of tampering within section 49 of the Ordinance is, as already mentioned, not one which was advanced in either court below. It is a new point pursued for the first time in this Court. However, it is a pure point of law and no facts need be investigated in order to resolve the point on appeal. Accordingly, albeit that the Court will only do so rarely, this is an appropriate case in which to entertain the fresh point of law on appeal." [¶22]

[Click here to read](#) the ruling of the Court of Final Appeal in *HKSAR v. Law Yat Ting*, FACC3/2015 (Court of Final Appeal, 10-26-2015).

Source: [HKSAR v. Law Yat Ting](#), FACC3/2015 (The Court of Final Appeal, 10-26-2015) (Quashing conviction)

[Top court closes door on case of van 'tampering'.](#) By Kenneth Lau, The Standard, October 27, 2015

[Law school students help wrongfully jailed man win his appeal.](#) ejnsight.com, October 27, 2015



Presidential Pardon Elusive For Boxing Great Jack Johnson

By Hans Sherrer

Prizefighter John Arthur “Jack” Johnson was knocked-out by Joe Choynski in the third round of their boxing match in Galveston, Texas on February 25, 1901. After the fight both men were arrested by Texas Rangers for violating Texas’ state law barring mixed-race boxing matches: Johnson was black and Choynski was white. Johnson and Choynski then spent the next 23 days in the same Galveston jail cell waiting to find out if they would be indicted. When the grand jury failed to indict them they were released and told to get out of town.

Two years later the 24-year-old Johnson defeated “Denver” Ed Martin in Los Angeles to win the unofficial Negro heavyweight boxing championship.

Although the 6'-2" and 200 pound Johnson was a leading contender to challenge for the world heavyweight boxing championship title, no promoter would sponsor the fight in the United States because he was black. So a fight was arranged in Sydney, Australia for December 26, 1908, between Johnson and reigning champion Tommy Burns. Burns was induced to agree to the fight by being guaranteed the then unheard of purse of \$30,000, which in 2007 would be the equivalent of more than \$4 million. [1] Johnson dominated Burns and the fight was stopped in the fourteenth round. Writer Jack London traveled to Australia to watch the fight and afterwards he wrote, “The Fight! – there was no fight!”

Johnson’s victory that broke boxing’s color barrier of separate black and white champions enraged white racists across the U.S. so much, that the search began for what newspapers called the “Great White Hope” to return the world championship to a white man. The search was fruitless as Johnson beat all who challenged him.

James J. Jeffries retired in 1905 as the undefeated heavyweight champion. [2] His record for the quickest KO in a heavyweight championship fight still stands: In April 1900 he knocked Jack Finnegan down twice before knocking him out only 55



Jack Johnson before Jess Willard fight in Havana in April 1915

seconds after the fight began. With no white man able to defeat Johnson, the 35-year-old Jeffries came out of retirement to fight Johnson in 1910. Jeffries was induced to risk his unblemished record for a guaranteed purse of \$100,000, a huge sum at a time when a skilled factory worker made about \$2 for a ten-hour workday. Adjusted for inflation Jeffries’ purse was the equivalent of almost \$13 million today. [3]

The fight held in Reno, Nevada on July 4 was billed as the “Battle of the Century.” Johnson was faster and had more stamina than the older Jeffries, and after Jeffries was knocked him down for the first time in his career in the 15th round, his corner threw in the towel at the count of seven to avoid a knock-out. The enmity of whites for Johnson was only made worse when his decisive victory over Jeffries triggered wild celebrating in the streets by blacks across the United States. Whites reacted violently to these celebrations, and in more than twenty-five states and fifty cities racial fighting occurred that resulted in the deaths of at least 23 blacks and 2 whites. Many hundreds more were injured. The police were able to prevent several attempted lynchings of blacks by white mobs.

Mann Act used to hound Johnson

In 1910 the public’s furor was whipped up by sensational news stories that white women were being abducted in Europe and forced into prostitution in the United States. Although the accounts were of dubious truthfulness, Congress reacted by enacting the White-Slave Traffic Act (“Mann Act”), which outlawed transporting a women across state lines or into or out of the country “for the purpose of prostitution or debauchery, or for any other immoral purpose.”

Johnson wasn’t just considered the most hated black man in America because he savagely beat whites in the ring, but also because he often was seen cavorting in public with white women.

Johnson’s behavior with white women resulted in him being harassed by the police and arrested a number of times for petty offenses. Johnson said in disgust at one point, “Next thing, somebody’ll arrest me for being a brunette in a blond town.” (37) Johnson committed the ultimate flaunt of acceptable public behavior of the day by marrying a white woman in early 1911. His wife suffered from severe depression and she committed suicide in September 1911.

Unable to find a white man able to beat Johnson in the boxing ring, his foes turned to using Johnson’s self-proclaimed lust for white women as a way to destroy him in the courtroom. On October 18, 1912, Johnson was arrested for violating the Mann Act by allegedly transporting Lucille Cameron, a white woman acquaintance, across state lines for an “immoral purpose.” The charges were dropped because Cameron, who married Johnson in December 1912, refused to provide any evidence against him. Although the indictment was dismissed, it was the first time the Mann Act was invoked to criminalize consensual sexual relations.

In 1913 Johnson was again charged with violating the Mann Act, this time for allegedly transporting a very pretty young white woman, Belle Schreiber, across state lines for the “immoral purpose” of having “sexual intercourse with her ... against the peace and dignity of the United States.” The indictment was somewhat unusual because it repeatedly described Schreiber as Johnson’s wife. Although it wasn’t true that they were married (he was married to Cameron), Johnson’s indictment on the basis they were married suggested that federal authorities considered marital relations between an interracial couple that traveled from one state to another to be a violation of the Mann Act. That supposition was supported by the government’s opening argument at Johnson’s trial during which his sexual involvement with white women was described as “debauchery” and a “crime against nature.” Schreiber was the government’s star witness. It is believed she cooperated with authorities because she was upset with Johnson for marrying Cameron.

Johnson was convicted in May 1913, and sentenced to 1 year and 1 day in Federal prison. He was also fined \$1,000. After Johnson’s sentencing the prosecutor defended the government’s demand for prison time and not just a fine for Johnson, because he was “the foremost example of the evil in permitting the intermarriage of whites and blacks.” (34) United States District Judge

Johnson cont. on p. 13



Jack Johnson and Joe Choynski in Galveston, Texas Jail after their mixed-race prize fight on February 25, 1901. (PBS.org)

Johnson cont. from p. 12

George Carpenter also defended his sentencing of Johnson to prison, saying, "The defendant is one of the best-known men of his race and his example has been far-reaching." (35)

Johnson flees U.S. after Mann Act conviction

In spite of his public comments, Judge Carpenter released Johnson on bail pending the outcome of his appeal. Johnson responded by fleeing to Canada in June 1913, and then traveling to various European and South American countries.

While Johnson was on the lam the federal Seventh Circuit Court of Appeals rejected the argument of his lawyers that the Mann Act didn't criminalize a woman crossing state lines to have voluntary sexual relations. The court ruled the statute encompassed all sorts of "sexual immorality, and that fornication and adultery are species of that genus." *Johnson v. United States*, 215 F. 679, 683 (7th Cir. 1914).

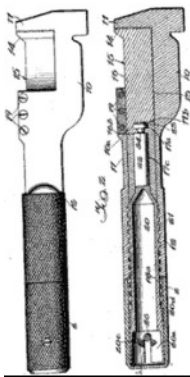
Johnson continued prizefighting while in self-exile. After seven years as heavyweight champion, on April 5, 1915 he lost his title in Havana, Cuba when Jess Willard knocked him out in the 26th round. Johnson never regained the heavyweight title he lost to Willard.

Johnson imprisoned after returning to U.S.

After another five years of prize-fighting overseas, and even financing the founding of a Harlem nightclub that later became the world-famous Cotton Club, Johnson returned to the United States in July 1920. The 42-year-old Johnson surrendered to federal authorities, and was sent to the United States Penitentiary at Leavenworth, Kansas to serve his sentence. He was released on July 9, 1921 after almost a year of imprisonment.

Johnson invents new wrench in prison

While imprisoned Johnson saw the need for a new type of wrench. Johnson designed a new wrench and after his release he applied for a patent from the U.S. Patent Office. On April 18, 1922 the U.S. Patent Office issued patent 1,413,121 for Johnson's



View A of Jack Johnson's new wrench that was granted U.S. Patent 1,413,121 on April 18, 1922

invention.

Johnson's life after prison

Cameron divorced Johnson in 1924 on the basis of infidelity, and the next year he married another white woman. She was Johnson's third wife, all white.

Johnson continued prizefighting after his release from prison, but he was denied a boxing license in many states because of his felony conviction. During World War II Johnson participated in exhibition boxing matches to promote the sale of war bonds. He was 67 when he died in a 1946 automobile accident that occurred after he left a Raleigh, North Carolina diner in a rage after he was refused service because he was black.

Johnson was inducted into the Boxing Hall of Fame in 1954, and he is an inductee of both the International Boxing Hall of Fame and the World Boxing Hall of Fame.

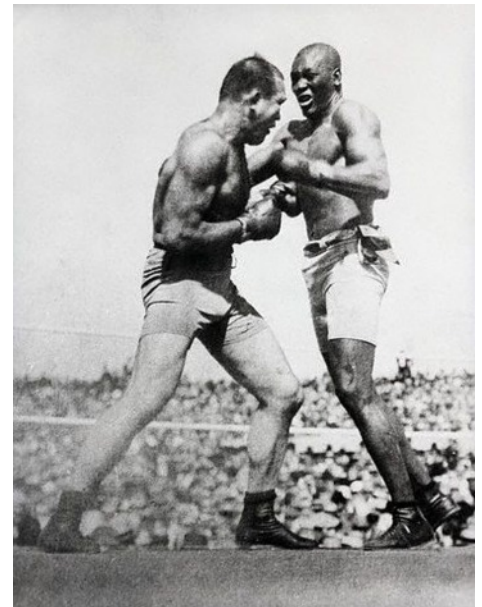
Johnson life story was the basis of the 1967 play *The Great White Hope*, that in 1970 was made into a movie by the same title that starred James Earl Jones as Johnson.

In the spring of 2001, the one-hundredth year after Johnson's arrest in Galveston, the Texas State Senate passed a Resolution declaring his prosecution and conviction of violating the Mann Act was a "contrived charge" resulting from political and racial tensions of his time. The Texas House of Representatives adopted a similar Resolution, and March 31, 2001 was declared Jack Johnson Day in the State of Texas.

National interest in Johnson's life was revived by publication in 2004 of the biography, *Unforgivable Blackness: The Rise and Fall of Jack Johnson* by Geoffrey C. Ward.

Petition to posthumously pardon Johnson filed in 2004

Ward's book inspired filmmaker Ken Burns to make a documentary about Johnson's life, which was first shown on the Public Broadcasting System in January 2005. While working on the documentary Burns became convinced that Johnson's 1913 Mann Act conviction was based on racial hatred and not a violation of the law. Burns joined with a coalition of civil rights activists, sports figures, lawyers, and politicians who supported the filing on July 13, 2004, of a petition with the U.S. Department of Justice that sought a posthumous presidential pardon of Johnson. The petition argued that Johnson "should be pardoned because his



James J. Jeffries and Jack Johnson fighting in Reno, Nevada on July 4, 1910

conviction was the result solely of "contrived charges" reflecting attitudes and mores that America has long since outgrown. America no longer questions the right and ability of racial minorities to compete equally in athletic endeavors. And America no longer prosecutes and punishes women and men who choose to marry or date persons of other races, religions or national origins." [4]

At the press conference announcing the petition's filing, one of its supporters, Senator John McCain (R-AZ) said, "A gross and grave injustice was done to Jack Johnson where a law was perverted to send this decent American to jail. Pardoning Jack Johnson will serve as a historic testament of America's resolve to live up to its noble ideals of justice and equality." [5]

On October 5, 2004 the United States Senate unanimously passed a Resolution in support of granting a posthumous presidential pardon to Johnson, but the House of Representatives didn't follow suit. The three sponsors of the Senate Resolution were McCain, Orrin Hatch and Edward Kennedy.

In September 2007 Representative Peter King (R-NY) sponsored a U.S. House of Representatives Resolution supporting the granting of a posthumous pardon to Johnson. With 40 co-sponsors it was passed by a voice vote on September 26, 2008. The resolution stated in part:

(1) John Arthur "Jack" Johnson paved the way for African American athletes to participate and succeed in racially integrated professional sports in the United States;

Johnson cont. on p. 14

Johnson cont. from p. 13

(2) Jack Johnson was wronged by a racially motivated conviction prompted by his success in the boxing ring and his relationships with White women;

(3) the criminal conviction of Jack Johnson unjustly ruined his career and destroyed his reputation; and

(4) the President should grant a posthumous pardon to Jack Johnson to expunge from the annals of American criminal justice a racially motivated abuse of the prosecutorial authority of the Federal Government, and to recognize Jack Johnson's athletic and cultural contributions to society.

The U.S. Senate did not pass a pardon Resolution as it did in 2004, so a joint House and Senate Resolution was not forwarded to President Bush prior to him leaving office in January 2009.

In March 2013 Senator McCain and Representative King tried again by respectively introducing resolutions in the Senate and the House of Representatives calling for the

pardoning of Johnson. Democratic Senator Harry Reid joined McCain in supporting the resolution. [6] The resolution passed in the Senate, but not the House, and President Obama did not act to pardon Johnson.

Then again, in February 2015 Senators McCain and Reid and Representative King introduced resolutions in the Senate and House in support of Johnson's pardon.[7] As of late June 2016 those resolutions have not passed, and President Obama has not acted.

Endnotes:

1. \$30,000 in 1908 was the equivalent of \$4,036,830 in 2007 using the nominal GDP per capita method of calculating inflation, according to the Measuringworth website, <http://www.measuringworth.com/uscompare> (last visited on September 30, 2008).
2. The boxer's Jeffries fought in title fights weren't chumps. At the time of his 11 title fights the cumulative record of his opponents was 229-32-39.
3. \$100,000 in 1910 was the equivalent of \$12,636,879.40 in 2007 using the nominal GDP per capita method of calculating inflation, according to the Measuringworth website, <http://www.measuringworth.com/uscompare> (last visited on September 30, 2008).
4. "Petition for the Posthumous Pardon of the Former Heavyweight Boxing Champion Jack Johnson,"
5. Pardon sought for 1908 black boxing champ, *The Seattle Times*, July 14, 2004
6. Like Bush, Obama rebuffs pardon for boxing great

Jack Johnson, *McClatchy Newspapers*, March 11, 2013
7. Reid, McCain again seek pardon of boxer Jack Johnson, *Reno Gazette Journal*, February 26, 2015

Sources:

"[Jack Johnson](#)," Enshrinee, International Boxing Hall of Fame website.

"Pardon sought for 1908 black boxing champ," *The Seattle Times*, July 14, 2004.

"Petition for the Posthumous Pardon of the Former Heavyweight Boxing Champion Jack Johnson," Filed with U.S. Department of Justice, July 13, 2004.



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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.

3rd Revised and Updated Edition of "Kirstin Blaise Lobato's Unreasonable Conviction" Now Online!

The third revised and updated edition of [Kirstin Blaise Lobato's Unreasonable Conviction](#) — *Possibility of Guilt Replaces Proof Beyond A Reasonable Doubt*, has just been published! The book is available in PDF format to be read or downloaded at no charge for personal use from [Justice Denied's](#) website.*

More than 61,000 copies of the second edition of *Kirstin Blaise Lobato's Unreasonable Conviction* were downloaded from Justice Denied's website until it was replaced on Feb. 10 with the third edition.

The book details how Kirstin Lobato has twice been convicted of a July 8, 2001 Las Vegas homicide when the prosecution doesn't deny it has no physical, forensic, eyewitness, confession, informant, surveillance video or documentary evidence she was in Las Vegas at any time on the day of the crime. The prosecution also concedes she was at her home 165 miles from Las Vegas at the time new forensic entomology and forensic pathology evidence conclusive-

ly proves the man died between 8 p.m. and 10 p.m. The book also details that in 2001 the 18-year-old Ms. Lobato was prosecuted even though the Las Vegas Metropolitan Police Department and the Clark County District Attorney's Office obtained evidence three days after her arrest she is innocent.

The 3rd revised edition has 57 pages of new information, that includes:

- * An updated Timeline of Ms. Lobato's case from 2001 to the present, that begins on p. 10.
- * Six new sub-chapters in the Appendix that begin on page 150. Those include a Power Point presentation of Ms. Lobato's case and the new evidence in her habeas corpus petition currently under review by the Nevada Supreme Court. Ms. Lobato's petition includes new evidence her jury didn't hear by more than two dozen expert, alibi, and third-party culprit witnesses that supports her actual innocence.

The 232-page book written by *Justice Denied's* editor and publisher Hans Sherrer is supported by 427 source endnotes. In documents filed in the Nevada Supreme Court, the Clark County District Attorney's Office and the State of Nevada don't assert there is a single factual error in the book.

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KIRSTIN BLAISE LOBATO'S UNREASONABLE CONVICTION

Possibility Of Guilt Replaces Proof Beyond A Reasonable Doubt



Kirstin Blaise Lobato's Unreasonable Conviction in PDF format from www.justicedenied.org/kbl.htm.

Justice Denied's webpage with information about the Kirstin Lobato case is www.justicedenied.org/kbl.htm.

Kirstin Lobato's website with extensive information about her case is www.justice4kirstin.com.

* The book can be printed at no charge for non-commercial use only.



\$369 Million Compensation Awarded In 2014 And 2015 To Wrongly Convicted In U.S.

By Hans Sherrer

More than \$369 million was awarded in 2014 and 2015 to people who were wrongly convicted and imprisoned in the U.S.

In 2014 \$236,202,782 was awarded to 38 people who were imprisoned for 452 years. In 2015 \$133,370,780 was awarded to 38 people who were imprisoned for a total of 484 years. A summary of the awards is in the chart below. The complete chart is online at, www.justicedenied.org/2014and2015compensation.htm. The information in the chart is from data in the Innocents Database, available online at, www.justicedenied.org/innocentsdatabases.htm. (Note: The word "award" is being used to include settlements, and jury, judge and administrative awards of compensation.)

There were a total of 79 compensation awards in 2014 and 2015: Three people were awarded compensation by a different jurisdiction in 2014 and 2015. There were compensation awards from two jurisdictions in 2014 to two people, and in 2015 to one person. So 73 people were awarded a total of \$369,573,562 for their 872 years of wrongful imprisonment. The average award was \$423,823 per year for 11.9 years of wrongful imprisonment.

Sixty-nine men and four women were awarded compensation. The men were awarded a total of \$364,776,562 for 833 years of wrongful imprisonment, for an average of \$437,907 per year. The four women were awarded a total of \$4,797,000 for 39 years of wrongful imprisonment, for an average of \$123,000 per year. Although the women were awarded about 28% of the yearly amount awarded to men, their crimes were very serious: two were convicted of murder, one was convicted of aiding and abetting murder, and one was convicted of conspiracy to commit robbery.

The individual awards for each year of wrongful imprisonment covered a wide range depending on the state and county/city where the person's conviction occurred. The lowest award was \$2,778 per year for Jimmy Bass' 18 years of imprisonment in Mississippi for assault and robbery: a total of \$50,000. The highest award was *937 times greater* -- \$2.6 million per year for Jeffrey Deskovic's 16 years of wrongful imprisonment for rape and murder in New York: a total of \$41,650,000.

Nine people were awarded \$1 million or more for each year of their wrongful imprisonment. Six people were awarded less than \$10,000 per year, and 17 were awarded \$50,000 or less per year.

Eleven awards were for a total of \$10 million or more. Twenty-eight awards were for \$5 million or more, 49 were for \$1 million or more, 19 were for between \$100,000 and \$1 million, 11 were for less than \$100,000, and seven were for less than \$50,000.

The most awards, 32, were in New York. Eight were in Illinois; six in Ohio; six in California; five in North Carolina; and, five in Mississippi. The 13 compensation awards by New York City was more than any entire state other than New York.

Fifty of the compensation awards involved a homicide related conviction -- 63% of the 79 awards. A total of \$303,788,698 was awarded in the homicide cases for 689 years of wrongful imprisonment. The average award was \$6,075,774 for an average of 14.06 years of wrongful imprisonment: an average of \$441,875 per year.

Fourteen of the awards involved a sexual assault related conviction -- 18% of the awards. A total of \$53,060,517 was awarded in the sexual assault cases for 114.33 years of wrongful imprisonment. The average award was \$3,790,037 for an average of 8.17 years of wrongful imprisonment: an average of \$463,897 per year.

Fifteen of the awards were to persons convicted of a variety of other offenses -- 19% of the awards. A total of \$12,724,348 was awarded in non-homicide, non-sexual assault cases for 68.5 years of wrongful imprisonment. The average award was \$848,290 for an average of 4.6 years of wrongful imprisonment: an average of \$184,400 per year.

The average time from an exoneration to a state compensation award was 4-½ years, while the average time for a successful federal lawsuit was 5-¼ years. Overall, a person was awarded compensation 4-¾ years after being exonerated.

Eight people had to wait more than ten years after their exoneration for a compensation award, with Israel Vasquez' 17 year wait after his 1997 exoneration of murder in New York the longest.

Eighteen of the 73 people falsely confessed, and two more were convicted based on the false confession of a co-defendant. So 27% the compensation awards were to a person convicted as the result of a false confession.

The leading reasons for an exoneration resulting in compensation were:

- DNA evidence: 31 cases – 39% of awards.
- Prosecution concealed exculpatory evidence (Brady violation): 11 cases – 14%.
- Prosecution presented insufficient evidence of guilt: 10 cases – 13%.
- Video or electronic evidence: 7 cases – 9%.
- Witness recanted testimony: 6 cases – 8%.

The 79 awards resulted from four different legal avenues:

- 42 U.S.C. §1983 federal civil rights lawsuit: 41 awards totaling \$314,157,500. Avg. award \$7,662,378.
- Claim under a state's wrongful imprisonment compensation statute: 32 awards totaling \$52,240,596. Avg. award \$1,632,519.
- Claim under the federal wrongful imprisonment compensation statute: 3 awards totaling \$553,000. Avg. award \$184,333.
- Malicious prosecution lawsuit under state law: 3 awards totaling \$2,622,466. Avg. award \$874,155.

The following are several general observations that can be gleaned from the compensation awards for 2014 and 2015:

- The odds are significantly higher that compensation will be awarded for a homicide or sexual assault related conviction, than for any other types of crimes.
- The average award per year of wrongful imprisonment was similar for sexual assault and homicide related exonerations.
- Men are awarded significantly more than women.
- Exonerations attributable to DNA and prosecution related errors result in more compensation awards than all other types of exonerations combined.
- Federal civil rights lawsuits overall result in significantly higher awards than state compensation schemes.

While \$369 million in compensation to 76 people is significant, it needs to be kept in mind that undoubtedly more compensation than that was actually awarded in 2014 and 2015, but the compensation to those 76 people is what is documented in the [Innocents Database](http://www.innocentsdatabase.org) as of the date of this report: June 8, 2016.



Visit the Innocents Database

Includes details about more than 6,400 wrongly convicted people from the U.S. and other countries.

www.forejustice.org/search_idb.htm

Compensation Awarded To The Wrongly Convicted In 2015

Name	Compensation	Paid By	State	Convicted	Exonerated	Years	Avg. Yearly	Compensated	Exonerated By	Crime	Sentence
Obie Anthony	8,000,000	City of Los Angeles	CA	1994	2011	17	470,588	2015	Witness recantation	Murder	Life w/o parole
Darryl Austin	3,850,000	City of New York	NY	1988	2014	13	296,154	2015	Brady violation	Murder & Drugs	18 yrs to life
Devon Ayers	3,890,000	State of New York	NY	1996	2013	18	216,111	2015	Cell phone evidence	Murder	25 yrs to life
Brian Banks	142,200	State of California	CA	2002	2012	4.1	34,683	2015	Victim recantation	Rape & kidnapping	6 years
Jimmy Bass	50,000	State of Mississippi	MS	1988	2010	18	2,778	2015	Witness recantation	Assault & Robbery	50 years
Jeanie Becerra	10,000	City of Topeka	KS	2014	2014	0.02	500,000	2015	Video evidence	Disobeying police	No sentence
Kareem Bellamy	2,750,000	State of New York	NY	1994	2011	14	196,429	2015	3rd party culprit evidence	Murder	25 yrs to life
Dewey Bozella	7,575,000	Dutchess County	NY	1983	2009	26	291,346	2015	Brady violation	Murder	25 yrs to life
Michael Cosme	3,890,000	State of New York	NY	1996	2013	18	216,111	2015	Cell phone evidence	Murder	25 yrs to life
Sedrick Courtney	8,000,000	City of Tulsa	OK	1996	2012	15	533,333	2015	DNA	Robbery	30 years
Ronald Fleming	6,250,000	City of New York	NY	1990	2014	24.67	253,344	2015	Brady violation	Murder	25 yrs to life
Donald E. Gates	16,650,000	Dist. of Columbia	DC	1982	2009	27	616,667	2015	DNA	Murder & Rape	20 yrs to life
Willie Gavin	25,000	State of Wisconsin	WI	1997	2014	5.25	4,762	2015	Victim recantation	Child sexual assault	8 years
Eric Glisson	3,890,000	State of New York	NY	1997	2012	17.67	220,147	2015	Cell phone evidence	Murder	25 yrs to life
Albert Graves	221,253	State of Ohio	OH	2008	2012	4	55,313	2015	Insufficient evidence	Drugs	11 years
Robert Hill	7,150,000	City of New York	NY	1987	2014	27	264,815	2015	Witness perjury	Murder & Robbery	18 yrs to life
Teddy L. Isbell	240,000	Buncombe County	NC	2003	2015	3.5	68,571	2015	DNA and other evidence	Robbery conspiracy	3 years
Alvena Jennette	6,000,000	City of New York	NY	1988	2014	20	300,000	2015	Brady violation	Murder & Drugs	18 yrs to life
Billy Wayne Julian	3,000,000	Town of Frankton & Madison County	IN	2003	2010	2	1,500,000	2015	Brady violation	Arson	15 years
Kenneth Kagonyera	5,125,000	Buncombe County	NC	2001	2011	11	465,909	2015	DNA and other evidence	2nd degree Murder	182 months
Roger Logan	2,975,000	State of New York	NY	1999	2014	17	175,000	2015	Brady violation	Murder	25 yrs to life
Derrick Luckett	20,000	State of Mississippi	MS	2006	2007	1.5	13,333	2015	Insufficient evidence	Embezzlement	10 years
Susan Mellen	597,200	State of California	CA	1998	2014	17	35,129	2015	Unreliable eyewitness	Murder	Life
Damian M. Mills	512,500	Buncombe County	NC	2001	2015	9	56,944	2015	DNA and other evidence	2nd degree Murder	10 to 15 yrs
Arthur Morris	40,000	City of Topeka	KS	2014	2014	0.02	2,000,000	2015	Video evidence	Assault	No sentence
Matthew Norwood	50,000	State of Mississippi	MS	1995	2007	12	4,167	2015	Witness misidentification	Carjacking	15 years
Kirk L. Odom	9,200,000	Dist. of Columbia	DC	1981	2012	22	418,182	2015	DNA	Rape & Robbery	20 to 66 yrs
Carlos Perez	3,890,000	State of New York	NY	1996	2013	18	216,111	2015	Cell phone evidence	Murder	25 yrs to life
Michael Poventud	2,750,000	City of New York	NY	1997	2006	9	305,556	2015	Brady violation	Attempted murder	10 to 20 yrs
Juan Rivera	12,500,000	Lake County	IL	1992	2012	20	625,000	2015	Insufficient evidence	Murder & Rape	Life
Juan Rivera	7,500,000	City of Waukegan	IL	1992	2012	20	375,000	2015	Insufficient evidence	Murder & Rape	Life
Ronald Ross	229,000	State of California	CA	2006	2013	6.5	35,231	2015	Eyewitness recanted	Attempted murder	25 yrs to life
Rodney D. Sands	39,998	State of Mississippi	MS	2009	2011	5	8,000	2015	Insufficient evidence	Manslaughter	60 years
Bennie Starks	990,000	City of Waukegan	IL	1986	2006	20	49,500	2015	DNA	Sexual assault	60 years
Terry R. Swalley	72,532	State of Ohio	OH	2010	2011	1.26	57,565	2015	Insufficient evidence	Drug possession	2 years
Frank S. Tipton	141,097	State of Mississippi	MS	2007	2010	2.82	50,034	2015	Insufficient evidence	Extortion	1 year
Larry J. Williams	750,000	Buncombe County	NC	2002	2015	9	83,333	2015	DNA and other evidence	2nd degree Murder	10 to 15 yrs
Cathy Watkins	3,890,000	State of New York	NY	1997	2012	17.67	220,147	2015	Cell phone evidence	Murder	25 yrs to life
Robert Wilcoxson	515,000	Buncombe County	NC	2002	2011	11	46,818	2015	DNA and other evidence	2nd degree Murder	15 yrs 9 mths
Totals	\$ 133,370,780					484	275,559				

Compensation Awarded To The Wrongly Convicted In 2014

Name	Compensation	Paid By	State	Convicted	Exonerated	Years	Avg. Yearly	Compensated	Exonerated By	Crime	Sentence
David Ayers	13,200,000	City of Cleveland	OH	2000	2011	11	1,200,000	2014	DNA	Murder & Robbery	Life w/ parole
Jonathan Barr	10,000,000	State of Illinois	IL	1995	2011	19	526,316	2014	DNA	Murder & Rape	85 years
Fernando Bermudez	4,750,000	State of New York	NY	1992	2009	18.5	256,757	2014	Eyewitness recanted	Murder	23 yrs to life
Scott A. Chessman	82,000	State of Ohio	OH	2009	2010	1.2	68,333	2014	No crime committed	Failure to register as sex offender	3 years
Sedrick Courtney	175,000	State of Oklahoma	OK	1996	2012	15	11,667	2014	DNA	Robbery	30 years
Jabbar Collins	3,000,000	State of New York	NY	1995	2010	15.5	193,548	2014	Brady violation	Murder	35 yrs to life
Jabbar Collins	10,000,000	City of New York	NY	1995	2010	15.5	645,161	2014	Brady violation	Murder	35 yrs to life
Caramad Conley	3,500,000	City of San Francisco	CA	1994	2011	19	184,211	2014	Brady violation	Murder	Life w/ parole
Michael A. Crooker	172,465.75	U. S. Government	US	2006	2010	3.45	50,000	2014	No crime committed	Felon w/firearm	21 yrs 10 mths
Jeffrey Deskovic	41,650,000	Putnam County	NY	1991	2006	16	2,500,000	2014	DNA	Rape and Murder	15 yrs to life
Jose Luis Diaz	305,300	State of California	CA	1984	2012	8.4	36,345	2014	Perpetrator identified	Sexual Assault	15 years
Shawn Drumgold	5,000,000	City of Boston	MA	1989	2003	14	357,143	2014	Brady violation	Murder	Life w/ parole
Mario Fortunato	300,000	State of New York	NY	2008	2010	1.83	163,934	2014	Insufficient evidence	Murder	25 yrs to life
Donald E. Gates	1,350,000	U. S. Government	US	1982	2009	27	50,000	2014	DNA	Murder & Rape	20 yrs to life
Daniel Gristwood	7,300,000	State of New York	NY	1996	2005	9	811,111	2014	Perpetrator confessed	Attempted Murder	12 to 25 yrs
James Harden	10,000,000	State of Illinois	IL	1995	2011	19	526,316	2014	DNA	Murder & Rape	80 years
Dennis Halstead	18,000,000	Nassau County	NY	1986	2005	18	1,000,000	2014	DNA	Murder & Rape	33 yrs to life
Anton McCray	7,125,000	City of New York	NY	1989	2002	6.5	1,096,154	2014	DNA	Rape & Robbery	5 to 10 yrs
Martin Nnodimele	450,000	State of New York	NY	2008	2012	3.8	118,421	2014	Police misconduct	Robbery	10 years
Kirk L. Odom	1,100,000	U. S. Government	US	1981	2012	22	50,000	2014	DNA	Rape & Robbery	20 to 66 yrs
Christopher Parish	4,900,000	City of Elkhart	IN	1996	2006	10	490,000	2014	DNA	Robbery	30 years
David Ranta	6,400,000	City of New York	NY	1991	2013	22.67	282,311	2014	Police misconduct	Murder & Robbery	37 years
John Restivo	18,000,000	Nassau County	NY	1986	2005	18	1,000,000	2014	DNA	Murder & Rape	33 yrs to life
Kevin Richardson	7,125,000	City of New York	NY	1989	2002	6.5	1,096,154	2014	DNA	Rape & Robbery	5 to 10 yrs
Yusef Salaam	7,125,000	City of New York	NY	1989	2002	6.5	1,096,154	2014	DNA	Rape & Robbery	5 to 15 yrs
Raymond Santana	7,125,000	City of New York	NY	1989	2002	6.5	1,096,154	2014	DNA	Rape & Robbery	5 to 10 yrs
Shainnie Sharp	4,000,000	State of Illinois	IL	1994	2011	7	571,429	2014	DNA	Murder and Rape	20 years
Debra K. Shelden	300,000	State of Nebraska	NE	1990	2009	4	75,000	2014	DNA	Aiding & abetting 2nd-degree Murder	10 years
Forest Shomberg	20,000	State of Wisconsin	WI	1993	1999	6	3,333	2014	Witness misidentification	Sexual Assault	12 years
Thomas Siller	650,000	City of Cleveland	OH	2001	2011	6.5	100,000	2014	DNA	Murder	30 yrs to life
Martin Tankleff	3,370,000	State of New York	NY	1990	2008	17	198,235	2014	New third-party culprit evidence	Murder	50 yrs to life
Robert Taylor	10,000,000	State of Illinois	IL	1995	2011	19	526,316	2014	DNA	Murder & Rape	80 years
Jackob Trakhtenberg	503,000	Deborah McKelvy	MI	2006	2013	6.5	77,385	2014	Ineffective counsel	Child sex abuse	15 years
Israel Vasquez	4,900,000	City of New York	NY	1995	1997	12	408,333	2014	Insufficient evidence	Murder	25 yrs to life
Israel Vasquez	1,800,000	State of New York	NY	1995	1997	12	150,000	2014	Insufficient evidence	Murder	25 yrs to life
Robert Lee Veal	6,000,000	State of Illinois	IL	1995	2011	11	545,455	2014	DNA	Murder and Rape	20 years
Maxwell Verkuilen	25,017	State of Wisconsin	WI	2004	2007	3.08	8,114	2014	Ineffective counsel	Sexual Assault	7 years
Kharey Wise	12,250,000	City of New York	NY	1989	2002	13	942,308	2014	DNA	Rape & Robbery	5 to 15 years
Antonio Yarbough	3,600,000	State of New York	NY	1994	2014	22	163,636	2014	DNA	First-degree murder	75 years
Walter Zimmer	650,000	City of Cleveland	OH	2001	2011	6.5	100,000	2014	DNA	Manslaughter	10 years
Totals	236,202,782					452	522,573				

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.

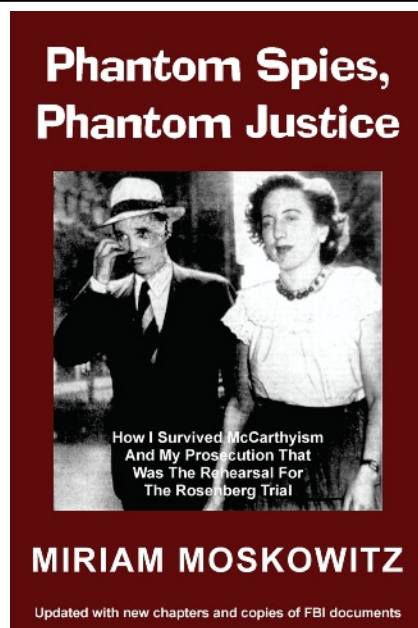
[Click here to buy High Fence Foodie from Amazon.com.](#)

Phantom Spies, Phantom Justice

Phantom Spies, Phantom Justice by Miriam Moskowitz was published in July 2012 by Justice Denied/The Justice Institute. The book is Ms. Moskowitz' autobiography that explains how it came to be that in 1950 she was falsely accused, indicted and convicted of obstruction of justice in a grand jury that was investigating Soviet espionage. The book's subtitle is *How I Survived McCarthyism And My Prosecution That Was the Rehearsal For The Rosenberg Trial*. The Afterword written by Justice Denied's editor and publisher Hans Sherrer states in part:

Miriam Moskowitz is an innocent person who was caught up in the whirlwind of anti-communist hysteria that prevailed in this country at the time of her trial in 1950. We know that because of FBI documents she obtained through the Freedom of Information Act decades after her conviction for conspiring to obstruct justice during a grand jury investigation.

The prosecution's case depended on the trial testimony of FBI informant Harry Gold. He testified that in 1947 *she observed* a conversation during which he and her business



partner, Abraham Brothman, allegedly discussed providing false testimony to a grand jury investigating possible Soviet espionage. She did not testify before that grand jury.

The FBI documents Ms. Moskowitz obtained are proof that prior to her trial Mr. Gold told the FBI *she was not present* during that alleged conversation. Furthermore, Mr. Gold told the FBI he didn't speak candidly in front of Ms. Moskowitz because of

her possible negative reaction if he said something incriminating in her presence, and he didn't like her.

Although Ms. Moskowitz's case had nothing directly to do with the Rosenberg trial that took place four months after her trial, they were tied together because Mr. Gold was a key witness against the Rosenbergs and the same prosecutors and judge were involved in both trials.

Phantom Spies, Phantom Justice is a compelling story of how an innocent 34-year-old woman found herself being publicly branded as an enemy of the United States. Ms. Moskowitz is now 96 and still seeking the justice of having her conviction overturned, although she can't get back the time she spent incarcerated because of her two-year prison sentence.

\$19.95

(postage paid to U.S. mailing address)
(Canadian orders add \$5 per book)
302 pages, softcover

Use the order form on pages 20 to order with a check or money order. Or order with a credit card from Justice Denied's website:

<http://justicedenied.org/phantomspies.html>

Or order from: www.Amazon.com

Published By Justice Denied !!

FROM THE BIG HOUSE TO YOUR HOUSE

Cooking in prison

With

Ceyma Bina, Tina Cornelius,
Barbara Holder, Celeste Johnson,
Trenda 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 sentence 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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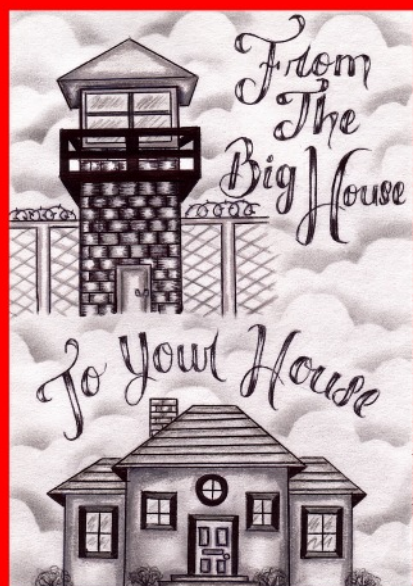
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Or order from: www.Amazon.com



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

Published by Justice Denied

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 20 to order with a check or money order. Or order with a credit card from Justice Denied's website:

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EDWIN M. BORCHARD

**Convicting The Innocent
and State Indemnity For
Errors Of Criminal Justice**

COMPILED AND INTRODUCTION
BY HANS SHERRER

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Innocence Projects

contact information available at,
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Coalition For Prisoner Rights is a monthly newsletter providing info, analysis and alternatives for the imprisoned & interested outsiders. Free to prisoners and family. Individuals \$12/yr, Org. \$25/yr. Write: CPR, Box 1911, Santa Fe, NM 87504

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Almost 100 books available related to different aspects of wrongful convictions. There are also reference and legal self-help books available.

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Justice:Denied Disclaimer

Justice:Denied provides a forum for people who can make a credible claim of innocence, but who are not yet exonerated, to publicize their plight. *Justice:Denied* strives to provide sufficient information so that the reader can make a general assessment about a person's claim of innocence. However unless specifically stated, *Justice: Denied* does not take a position concerning a person's claim of innocence.

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Citizens United for Alternatives to the Death Penalty

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Prison Legal News is a monthly magazine reporting on prisoner rights and prison conditions of confinement issues. Send \$3 for sample issue or request an info packet. Write: PLN, PO Box 1151,1013 Lucerne Ave., Lake Worth, FL 33460.

Dehumanization Is Not An Option

An Inquiry Into Law Enforcement and Prison Behavior

By Hans Sherrer

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

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

- She had never met the homeless man and had never been to where he was killed.
- No physical forensic, eyewitness or confession evidence ties her to his death.
- At the time of his death she was 170 miles north of Las Vegas in the small rural town of Panaca, Nevada where she lived with her parents.

Paperback, 176 pages, \$13
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AVAILABLE!**

See page 18
for details!



High Fence Foodie: From The Big House To Your House

More than 200 easy to make recipes with ingredients available from a commissary or grocery store.

Read about the book with order information on page 18.

Mark Kirk Is Imprisoned For An Arson That Didn't Happen

Mark Kirk was convicted in 1997 of arson and murder for allegedly starting a fire with Captain Morgan's Spice Rum on his apartment's kitchen stove that resulted in the death of three people. The problem is it is scientifically known he didn't start the fire because the non-flammable rum is 65% water. Yet he remains imprisoned.

See p. 3.

Visit Justice Denied website

www.justicedenied.org

Read back issues, there are links to wrongful conviction websites and JD's Blog and Facebook pages, and other information related to wrongful convictions is available. JD's online BookShop includes almost 100 wrongful conviction books, and JD's VideoShop includes dozens of wrongful conviction movies and documentaries.

"It's common knowledge that the United States has a criminal justice problem: You don't get to be the world's biggest jailer with the world's longest sentences out of an excess of respect for fair trial rights."

"No country has a monopoly on fair trials," By Rebecca Shaeffer, *The Washington Post*, Jan. 22, 2016

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Wrongly Convicted**

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

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