JUSTICE DENIED

The Magazine for the Wrongly Convicted

2016 Innocents Database Exoneration Report

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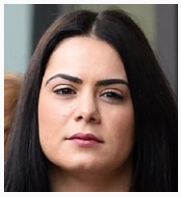

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Message From The Publisher

Everyone innocent person convicted of a crime they didn't commit is at best only a victim of imperfections in the functioning of the legal system. However, there is a special class of innocent people who are double victims: their conviction is ensured by people inside and/or outside the system who know the person is innocent. Actress Madge Meredith was one of those victims. She was convicted of a fake kidnapping staged by her former manager as a ploy to steal her house in Los Angeles' Hollywood Hills. See p. 3.

Luke Brett Moore found out the hard way a business that makes a mistake costing it a lot of money may want more than repayment. The business may seek extraction of a pound of flesh by urging the legal system to convict and imprison the person of a non-existent crime. See p. 5.

Is it a crime for a woman to defend herself when she is attacked by a former boyfriend who stalked, terrorized and threatened to kill her? After Jessica Silva was convicted of manslaughter for stabbing her ex-boyfriend when he attacked her, and her brother and father, the New South Wales Court of Criminal Appeal acquitted her on the ground she acted in self-defense. See p. 7.

An ongoing problem is a prosecutor trying to unfairly influence the outcome of a trial. While often criticized by a court for their misconduct, typically at most a new trial is ordered. The prosecutor's conduct in Charles K. Zisa's case was so extreme that his retrial was barred. See p. 9.

The 2016 Innocents Database Exoneration Report is available online or it can be purchased from Amazon.com. See p. 6.

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

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

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

Actress Madge Meredith Was Framed For Staged Kidnapping To Steal Her House

Marjorie May Massow was 20 when in 1941 she moved from Iowa to Hollywood to pursue her dream of being a movie star. She got a job working as a cashier in the 20th Century-Fox commissary in Hollywood.

She was spotted by Nickolas D. "Nick" Gianaclis, who was in the restaurant supply business. She agreed for Gianaclis to act as her professional and business manager. In 1944 she made her movie debut in the musical "Take It or Leave It," that starred Jeanne Crain. On August 28, 1944 the *Pittsburgh Press'* reviewer wrote on page 10: ""Take It or Leave It" brings to the screen a new and engaging romantic team -- Edward Ryan and Marjorie Massow. ... Red-headed and photogenic, Miss Massow bids fair to become idol of movie fans." She appeared in another movie for 20th Century-Fox before her contract was sold to RKO. She adopted the stage name Madge Meredith, and appeared in several movies, including the 1947 western "Trail Street" that co starred Randolph Scott and Robert Ryan.

Meredith's modest success enabled her to buy a house in May 1946. The house was high in the Hollywood Hills, and it had a spectacular view that stretched to the Pacific Ocean. The house and two adjoining lots cost $10,000. She paid $5,000 down, and Gianaclis loaned her the other $5,000. She took out two life insurance policies naming Gianaclis as the beneficiary to ensure the $5,000 would be paid back.

In the fall of 1946 Meredith and Gianaclis became embroiled in a dispute over her business affairs that ignited a conflict over ownership of the house. Gianaclis wanted to sell the house and split the proceeds. Meredith refused and asserted that Gianaclis' only interest in the property was a trust deed for repayment of the $5,000 loan. Their professional relationship was officially severed on December 6, 1946 when Gianaclis evicted Meredith from the house.

Madge Meredith mug shot
(LA County Sheriff's Office, July 1947)

In January 1947 Meredith sued Gianaclis. Her lawsuit asserted she was the sole owner of the Hollywood Hills house and demanded physical return of it to her. After a ten day bench trial that began on June 9, 1947, the judge ruled Meredith was the legal owner and awarded possession of the property to her. The judge **ruled that** Gianaclis "has no right, title, lien or charge, in, on to or upon said real property by reason of said mortgage or otherwise." The **judge stated** that since December 6, 1946, "by threats and other methods of intimidation, he has unlawfully kept the same to his own enjoyment and to the exclusion of the plaintiff till the present time."

Madge Meredith studio publicity photo

Meredith was 25-years-old when two weeks after the judge's ruling her world was turned upside down.

On July 2, 1947 Gianaclis reported to the Los Angeles Sheriff's that at Meredith's behest three men kidnapped and beaten him and his bodyguard, Verne V. Davis on June 30, 1947.

Meredith was arrested. She was released on $5,000 bail pending her trial.

Her prosecution was based on the testimony of Gianaclis and Davis. Her defense was the kidnapping and assault were a staged fake event she had nothing to do with, and she believed Gianaclis orchestrated it to get her out of the way so he could continue to live in the house.

After a four week trial, on December 12, 1947 Meredith was convicted by a jury of two counts of kidnapping, two counts of assault with a deadly weapon, and one count of conspiracy in Los Angles County Superior Court. Her three codefendants and alleged accomplices were also convicted of various charges.

Prior to Meredith's sentencing **she wrote** in a personal note to Los Angeles Superior Court Judge Charles W. Fricke: "It seems I am asking for my very life itself. From the bottom of my heart I do not feel that I am justly paying for a deed that I am in any way responsible for." She was sentenced on January 22, 1948 to serve five years to life in prison. Albert Tucker was sentenced to five years to life in prison; Damon Klinkenberg was sentenced to 60 days in jail; and, James Hatfield was sentenced to 30 days in jail.

Meredith was held at the Los Angeles County Jail pending the outcome of her appeal. After more than 10 months in the county jail, she was released on a $15,000 bond in October 1948.

On March 15, 1949 the California Court of Appeals **affirmed the** convictions and sentences of her and her three codefendants. The California Supreme Court declined to review her case on April 15, 1949.

Meredith was 27 when on April 25, 1949 she voluntarily surrendered to begin serving her sentence, and on May 9 she was transported to California's Tehachapi Woman's Prison. She **told reporters**, "I know in my own heart I'm innocent of any crime and some day, someone will believe the truth about what I say."

FIGHT FOR CAUSE—Two Hollywood men, Charles E. Wilson, left, and Herbert Schofield, carry on fight to free Madge Meredith, whom they believe is innocent.

Hollywood Pair Seek Clues to Clear Actress

Charles E. Wilson & Herbert Schofield (LA Times)

Many well-known people in Hollywood, including actress Zasu Pitts and film producer Charles Weinstraub, rallied in support of Meredith by circulating a petition for California Governor Earl Warren to review her case.

Pitts was instrumental in two businessmen becoming interested enough in Meredith's case to conduct their own investigation. Herbert Schofield, a retired banker, and Charles E. Wilson, a real estate man, interviewed people involved in the case, and they visited Madge many times in Tehachapi. They discovered evidence of her innocence that was provided to both the California Parole Board, and members of the California Assembly.

In March 1951 the California Parole Board recommended parole for Meredith, although normally she wouldn't be eligible for two more years.

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Meredith cont. from p. 3

Madge Meredith outside of the Tehachapi Woman's Prison after her release on July 16, 1951
(Frank Q. Brown, LA Times)

Then later that month, on March 26, 1951 the California Assembly Interim Committee on Crime and Corrections issued an official report **that concluded** that if she had been "properly defended in a court free of prejudice she undoubtedly would have been proven innocent." The report noted there was evidence "the crime itself was a hoax" and that she was "the victim of a 'frame.'" The report charged Meredith's case is "a mockery of investigation, of defense counseling, of trial procedure, and of justice itself." The report stated that if Meredith had been "properly defended in a court free of prejudice she undoubtedly would have been proven innocent." The reported detailed, "…nor are the tactics of the prosecution above reproach. That witnesses were intimidated is a matter of court record. There is shocking evidence of perjury, suppression of evidence and an almost unbelievable reluctance on the part of defense counsel to investigate the cause of defendant Meredith."

HOMELESS—Nick Giancalis, former manager of Actress Madge Meredith, walks glumly from Hollywood Hills home which the actress regained in court action. In doorway is Dep. Sheriff J. H. McEvoy, one of three officers who ordered Giancalis to go.

Nick Giancalis evicted (LA Times)

Meredith was released on her thirtieth birthday, July 16, 1951 — the day after Governor Earl Warren commuted her sentence to time served. Gov. Warren action was based on the California Assembly report that determined she had been framed, and her conviction was the result of a biased judge, a vindictive prosecutor, and an incompetent trial lawyer. Gov. Warren's **commutation stated**: "This is a bizarre case, perhaps more fantastic than any moving picture in which the defendant acted — but certainly having many of the attributes of a scenario."

Gianaclis had never vacated the Hollywood Hills house because of Meredith's legal woes. After her release she enforced the 1947 judgement and Gianaclis was evicted. He appealed the 1947 ruling upholding her ownership of the house and he requested a new trial. On August 27, 1953 the California Court of Appeals **affirmed the** trial court's ruling and dismissed Gianaclis' appeal.

Gianaclis, an immigrate from Greece in the 1930s, was later denied U.S. citizenship because the judge determined he had failed to establish good moral character by perjuring himself during Meredith's trial, and for failing to appear for his immigration hearing.

Meredith's acting career was revived after her release from prison. From 1952 to 1964 **she appeared in** several movies, and many televsion programs. She was 43 when her last acting role was for a 1964 episode of the televsion series, "The Littlest Hobo." Her last appearance on film is believed to be Kevin Costner's "Water World." She was living on the island of Hawaii where part of the movie was filmed, and she appeared as an uncredited extra.

Meredith married, and gave birth to a daughter on July 10, 1955.

Actress Zasu Pitts was one of Meredith's most loyal friends, and Meredith's case is written about extensively in Gayle D. Haffner's biography of Pitts — *Hands With A Friend: The Personal Biography of Actress Zasu Pitts* (Outskirts Press, Inc. Denver, 2011).

Madge Meredith, born Marjorie May Massow on July 15, 1921 in Iowa Falls, Iowa, is now 95 years old. She is living in Hawaii.

The three-bedroom house at 8444 Magnolia Drive in the Hollywood Hills of Los Angeles that was built in 1929, and which Meredith bought for $10,000 in 1946, now has a market value of $2,432,097 according to **Zillow.com**. That doesn't include the value of the two adjoining vacant lots that were included in her purchase price. Tax records show she no longer owns the property.

Sources:

Hollywood Cinderella, Part 1: Deranged LA Crimes, By Joan Renner, March 13, 2013

Hollywood Cinderella, Part 2: Deranged LA Crimes, By Joan Renner, March 17, 2013

People v. Klinkenberg, et al., and Marjorie May Maslow, et al, 90 Cal. App. 2d 608 (Cal. Court of Appeal, 3-15-1949) (Affirming all convictions)

Massow v. Gianaclis, 120 Cal. App. 2d 24 (Cal. Court of Appeal, 8-27-1953) (Affirming trial court's ruling that the house belonged to Marjorie Massow.)

8444 Magnolia Dr, Los Angeles, CA 90046, **Zillow.com**

"**Baker's Tune Film at Harris Has New Romantic Team**", *Pittsburgh Press*, August 28, 1944, p. 10.

Madge Meredith, **IMDB.com**

Vermont Gov. Peter Shumlin Issues 192 Marijuana Possession Pardons

On January 3, 2017 Vermont Governor Peter Shumlin **issued a pardon** to 192 people convicted prior to 2013 of misdemeanor marijuana possession.

In 2013, Gov. Shumlin signed a law decriminalizing possession in Vermont of less than one ounce of marijuana. Before the law was changed in 2013, possession of less than one ounce of marijuana was a misdemeanor crime. Under the decriminalization law an individual convicted of minor marijuana possession law can file a motion to expunge their conviction and seal their case record.

Vermont Governor Peter Shumlin
(Pat Bradley - WAMC)

A pardon in Vermont **affects a person's punishment**: it can result in the release of an imprisoned person, or termination of their probation/parole. However, a Vermont pardon has no legal effect on a person's conviction: neither authorizing expungement of the conviction or sealing of the case.

Furthermore, a misdemeanor conviction in Vermont does not affect a person's right to vote or serve on a grand or petit jury, and it does not affect a person's right to own or possess a firearm under Vermont or federal law.

Consequently, Gov. Shumlin's pardoning of the 192 people had no effect on their civil rights, and it had no legal effect on their criminal cases because their sentences are completed. The running of a criminal background check by a prospective employer, landlord, etc. to investigate any of those 192 people will result in disclosure of the same information about their conviction as before Gov. Shumlin's pardon was issued.

If those people want to eliminate possible career or housing consequences from their conviction, they could have bypassed the symbolic pardon process, and filed a file a motion to expunge their conviction and seal their case record.

Sources:

Gov. Shumlin Issues Nearly 200 Pardons for Minor Marijuana Convictions, Press Release, Office of Governor Peter Shumlin, January 3, 2017

Vermont: Restoration of Rights, Pardon, Expungement & Sealing, Collateral Consequences Resource Center, www.ccresourcecenter.org

Luke Brett Moore Acquitted Of Fraud For Withdrawing $2.18 Million Through His Bank Account

Luke Brett Moore **has been acquitted** on appeal of committing bank fraud for withdrawing more than $2.18 million* through his bank account in Goulburn, New South Wales, Australia. Goulburn is a city of 23,000 about 120 miles southwest of Sydney.

On March 11, 2010 22-year-old Luke Moore opened a "Complete Freedom" bank account at the St. George Bank in Goulburn. The account permitted Moore to receive funds lent to him in excess of his account balance, by cash withdrawal, periodical payments or direct debit. Moore's initial deposit was $441.

Moore began withdrawing money. On July 13, 2010 his withdraws exceeded the money in his account. He continued to withdraw money. The bank did not notify him he was doing anything irregular. By December 2010 Moore's account was overdrawn by $9,000. He kept withdrawing money, lots more. The bank wasn't giving him the money, it was charging him 20% per annum on the amount he had withdrawn in excess of his account balance.

As a young guy interested in fast cars, he used some of the money to buy cars that included: a vintage Aston Martin DB7 Vantage coupe; an Alfa Romeo, and a Maserati sedan. He also bought a Sea Howk power boat. He invested in expensive paintings,

Luke Brett Moore wearing 'Make Love Not War' t-shirt (Facebook)


Luke Brett Moore (Facebook)

jewelry, and rock memorabilia that included signed photographs of Bob Dylan, Usher, Guns N' Roses, and Led Zeppelin. His sports memorabilia included a signed Michael Jordan jersey.

His account was overdrawn AUS$2.189 million from 48 withdrawals when his account was closed by the bank on August 10, 2012. At that time the bank was charging Moore monthly interest on his withdrawals, and the interest for July 2012 was $36,575.

The bank notified the police of Moore's activity, and his house was raided on December 12, 2012. in August 2012. Property bought with the money was seized, as was AUS$1.127 million Moore had deposited in two bank accounts -- $733,000 in a National Australia Bank account, and $394,000 in a PayPal account.

Moore was charged with one count of dishonestly obtaining a financial advantage by deception, and one count of dealing with the proceeds of crime. He was allowed to remain free on bail pending his trial.

Moore's defense was that he hadn't done anything that wasn't allowed by the terms of his bank account, and the bank did nothing to prevent his withdrawals until it closed his account.

Luke Brett Moore's Facebook post after his acquittal (Facebook)

After a three day trial, on February 16, 2015 a jury convicted Moore of both charges. He was allowed to remain free on bond pending his sentencing. On April 17, 2015 Moore was sentenced to a maximum of 4-1/2 years and a minimum of two years and three in prison for his deception conviction, and 3 years in prison for his dealing with proceeds of crime conviction. The sentences were to be served concurrently. Moore was immediately taken into custody.

Moore appealed. He was released on bond in September 2015 after serving almost six months of his sentence.

On December 1, 2016 the New South Wales Court of Appeals unanimously quashed Moore's convictions and ordered his acquittal on the basis his convictions were a mistake: the prosecution failed to prove he did anything to deceive the bank, or that he received any funds that where the proceeds of a crime. **The Court's ruling in** *Moore v R* [2016] NSWCCA 260 (1 December 2016) states:

> 17. It is perfectly plain that there was a mistake of some kind within the Bank.
> ...
> 18. But in the present case, the Bank's mistake lay not in paying Mr. Moore, but in continuing to lend Mr. Moore large amounts of money...
> 20. But whether his conduct amounted to the crime with which he was charged is quite different from Mr. Moore's undoubted civil liability.
> 23. ... an element of the offence with which Mr Moore was charged is deception. The unusual aspect of Mr. Moore's conduct was that there was nothing covert about it. The statements issued by St. George recorded each debit, and charged a fee and interest, and stated with complete accuracy Mr. Moore's growing indebtedness.
> 24. ... Mr. Moore communicated nothing to St. George which was untrue which induced it to continue and indeed increase its lending of money to him.
> 26. ... St. George at all times knew the truth of the matter, which was that it had lent him large amounts of money none of which had been repaid.

Justice Mark Leming's ruling concluded:

> 48. The ... Bank continued to lend Mr Moore funds, and the imposition of fees and interest are consistent only with its doing so consensually.
> 49. It follows that the guilty verdict on count 1 cannot be sustained. Count 2 was wholly dependent upon count 1. If there was no dishonest obtaining of a financial advantage by deception, there was no dealing with the proceeds of crime.
> 50. ... I propose that there be a grant of leave to appeal, that the appeal be allowed, that the conviction on counts 1 and 2 be quashed, and that the appellant be acquitted in respect of those counts.

After his acquittal, Moore wrote on his Facebook page: "Not guilty," with a smiley face. Moore, now 29, is living with his mother in Goulburn, drives an $800 car, and is studying to be a criminal lawyer. **He told a reporter** for the *The Courier Mail*: "I pull more chicks now with $20 in my pocket than I did when I was splashing the bank's

Moore cont. on page 6

Moore cont. from page 5

cash. With age comes wisdom and confidence and I've learned money doesn't buy everything. I'm happier this way as I've realised my family and friends are my biggest treasures."

Moore wrote on his Facebook page, "7 years ago, when this whole epic (mis)adventure started, I never imagined I would end up with a Hollywood agent, talking about turning my story into a movie and a book. It has Certainly been a crazy ride!" He also has a Kurt Cobain quote on is Facebook page: "They laugh at me because I'm different; I laugh at them because they're all the same."

The court's ruling doesn't prevent the bank from suing Moore for money he withdrew that it didn't recover.

Endnote:
* All amounts are in Australian dollars. The AUS$2.189 million Moore withdrew was US$1,587,813 at the currency exchange rate of AUS$0.725360 per $US on August 10, 2012. See, X-Rates.com at, www.xrates.com/historical/?from=USD&amount=1&date=2012-08-10.

Sources:
Moore v R [2016] NSWCCA 260 (1 December 2016)
Man cleared of fraud wants to be a criminal lawyer, By Sol Dolor, *Australasian Lawyer*, Dec. 12, 2016
Man who withdrew $2.1 million after bank error wins fraud appeal, By Patrick Begley, *The Sydney Morning Herald*, December 1, 2016
Luke Brett Moore, Facebook

2016 Innocents Database Exoneration Report

The *2016 Innocents Database Exoneration Report* is online in PDF format at justicedenied.org.

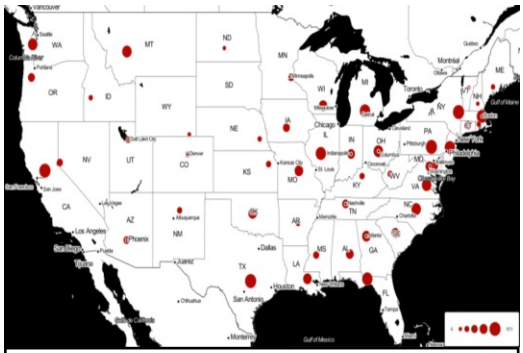
The following is in the Report's Introduction:

This is the second yearly report of information recorded in the Innocents Database through the last calendar year – 2016. The Innocents Database is an ongoing independent non-profit project begun in February 1997 that records every documentable exoneration in the United States and every other country. The Innocents Database is online at www.justicedenied.org/exonerations.htm, and it can be accessed from Justice Denied's website at www.justicedenied.org. This Report is compiled from information available in the database online.

The database includes 8,131 cases concluded through December 31, 2016: 5,224 U.S. cases and 2,907 international cases.

The Report includes 24 tables of data. Most of the 24 tables include information about U.S. cases for both the years 1989 to 2016, and pre-1989, and several include information about international cases. Those tables are:

- Table 1. Known Exonerations By Year (U.S. & Int.)
- Table 2. Number of Exonerated People By State
- Table 3. Number of Exonerated People By Jurisdiction (U.S.)
- Table 4. Number of Exonerated People By Sex/Type (U.S.)
- Table 5. Number of Exonerated People By Type of Crime (U.S.)
- Table 6. Number of Exonerated People by Race/Ethnicity (U.S.)
- Table 7. Number of Exonerated People By Primary Types of Exculpatory Evidence (U.S.)
- Table 8. Number of Exonerated People By Conviction Method (U.S.)
- Table 9. Number of Exonerated People Convicted After More Than One Trial (U.S.)
- Table 10. Number of State Prisoners Exonerated After Federal Habeas Granted (U.S.)
- Table 11. Number of Exonerated People Convicted By Primary Types of Prosecution Evidence (U.S.)
- Table 12. Number of Exonerated People By Method of Exoneration (U.S.)
- Table 13. Number of Exonerated Persons Involved In A Case With A Co-Defendant (U.S.)
- Table 14. Number of Exonerations Involving DNA Evidence By Year (U.S. & Int.)
- Table 15. Number of Exonerated People Aided By Conviction Integrity Unit (U.S.)
- Table 16. Number of Exonerated People By Years In Custody (U.S.)
- Table 17. Average Years Exonerated Person Was In Custody Before Release (U.S. & Int.)
- Table 18. Average Years Exonerated Person Was In Custody Before Release (Homicide or Sexual Assault only) (U.S. & Int.)
- Table 19. Average Years Exonerated Person Was In Custody Before Release (Non-Homicide or Sexual Assault only) (U.S. & Int.)
- Table 20. Number of Exonerated People By County (12 or more) (U.S.)
- Table 21. Number of Exonerated People By Country – International Cases
- Table 22. Number of Exonerated People By Type of Crime (International)
- Table 23. Number of Exonerated People By Method of Exoneration (International)
- Table 24. Number of Exonerated Persons Involved In A Case With A Co-Defendant (International)



Number of U.S. exonerations for each state represented by

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Jessica Silva Acquitted Of Manslaughter By Appeals Court In Stabbing Death Of Ex-Boyfriend

Jessica Silva has **successfully appealed** her manslaughter conviction for stabbing her abusive former boyfriend to death on Mother's Day 2012. The New South Wales Court of Criminal Appeal acquitted Silva on December 7, 2016.

Silva was 22 when in March 2012 she broke up with James Polkinghorne after about a four year relationship. They had a two-year-old son together, so Silva had to continue having contact with Polkinghorne, who was 28.

Polkinghorne was physically, verbally, and psychologically abusive during their relationship. Neighbors called the police several times in 2012 when they heard Polkinghorne yelling and Silva screaming. In January 2012 Silva audio recorded one of Polkinghorne's tirades during which **he said**:

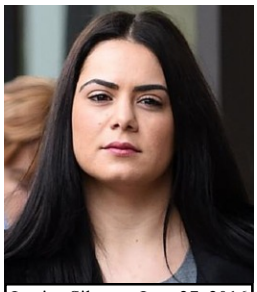
> "I'll cave your f***ing head in c***. Look at me, I'm f***ing serious. ... I'll f***ing kill you c***. This is the last chance that I'll f***ing give ya. ... If you get your f***ing brother or something, I'll cave the c***'s head in."

Silva was so afraid of Polkinghorne's erratic behavior that she sent a copy of the recording to a friend "just in case" something happens to her.

Silva had reason to fear Polkinghorne and believe his threats apart from his violence towards her: he had told Silva and a number of other people that he had murdered a man in Sydney on March 22, 2012. Polkinghorne was a suspect in the crime, so the police had wiretaps on the mobile phones of both Polkinghorne and Silva. The police believed Polkinghorne was a drug dealer, and the murder was drug related. It was about the time of the murder that Silva split-up with Polkinghorne.

Silva and her son visited Polkinghorne at his apartment in Sydney on the evening of May 12, 2012. After Silva left she returned to her parent's house in Marrickville, a south-west suburb of Sydney. Silva moved in with her parents when she split-up with Polkinghorne.

Throughout the day on May 13, 2012 Polkinghorne left vile and threatening phone messages for Silva and members of her family because he was angry she didn't want to see him. That evening Polkinghorne took a taxi to Silva's parent's house. Silva wouldn't see him and her parents didn't let him in. At 9:04 p.m. Silva's brother Miguel Silva, called the emergency police number and reported that **Polkinghorne was** "kicking stuff and going crazy" outside. Immediately after that call Miguel and Silva went outside to try and calm down Polkinghorne.



Jessica Silva on June 27, 2016 after a hearing in the NSW Court of Appeals. (AAP)

Polkinghorne attacked Silva, punching her in the face and ripping her pants. Her brother Miguel began fighting with Polkinghorne. Silva went back into the house and came out with a large kitchen knife. While Polkinghorne was straddling and beating and choking Miguel, Silva stabbed him from behind.

A passing buses surveillance video recorded that at 9:09 p.m. Polkinghorne was lying on the road. Visible in the video is Silva, her father, brother and another person.

The entire incident lasted less than five minutes.

Silva said in **her police statement** that Polkinghorne called her while he was outside the house and said: "If you don't come out I'm going to kill you. In 30 seconds I'm going to come and rip the door down if you don't come out."

Silva was charged with murder in the death of Polkinghorne. She was released on bond pending her trial.

During her trial that began in November 2014, there was testimony that a post-mortem toxicology report showed significant concentrations of amphetamine and methylamphetamine in Polkinghorne's blood. There was expert testimony that the consumption of "ice" was capable of leading a person to rage, violence, and paranoia.

Police at the scene where James Polkinghorne was stabbed to death on May 13, 2012 (The Daily Telegraph, Surry Hills, NSW)

The jury heard testimony that Polkinghorne was a large man, well-muscled, and much larger than Silva. There was also testimony that Polkinghorne physically assaulted Silva throughout their relationship, and he even hit her repeatedly while she was pregnant with their son. In late 2009 police intervened while Polkinghorne was choking Silva on a public street.

Polkinghorne's father Karl testified about his son's violence towards Silva. He even said that he kicked his son out of his house a couple weeks before his death, because he beat up Silva in the house.

There was police testimony that the wiretaps of Polkinghorne and Silva's mobile phones recorded him making numerous threats of violence against her and her family.

Miguel testified that while he was being beaten Polkinghorne said he was going to kill him. Silva did not testify.

A number of witnesses testified that Silva was hysterical and screaming during Polkinghorne's attack and immediately afterwards.

Polkinghorne's autopsy identified he had been stabbed five or six times in the back and the back of the head. That matched the evidence Silva stabbed him from behind as he was assaulting her brother while he was lying on the ground. Only one of the wounds was fatal.

The prosecution didn't dispute that Polkinghorne was physically violent, and verbally and psychologically abusive toward Silva for years, or that on the night of his death he viciously assaulted Silva and her brother without any provocation. The prosecution's contention was she didn't act in self-defense so his killing "was not lawful." The Crown's prosecutor Eric Balodis argued to the jury: "There are lawful ways to respond to domestic violence;" and, "She had other ways of dealing with Mr Polkinghorne." Prosecutor Balodis didn't explain what other option she had that night when Polkinghorne beat her, and he was beating and choking her brother to death.

After an 11 day trial, on December 3, 2014

Jessica Silva cont. on p. 8

Jessica Silva cont. on p. 7

the jury acquitted Silva of murder, but found her guilty of manslaughter. The continued her release on bond pending her sentencing.

During her sentencing hearing on March 6, 2015, Judge Clifton Hoeben talked about the years of physical, verbal, and psychological abuse she had suffered at the hands of Polkinghorne, that she had no criminal record, she was a good mother, she believed she was acting in self-defence and had shown remorse for his death. Hoeben considered the exceptional of circumstances of Silva's case in sentencing her to 18 months imprisonment, which he suspended contingent on her good behavior.

Silva's appeal was based on a single issue: the prosecution's evidence didn't support her guilt of manslaughter beyond a reasonable doubt.

On December 7, 2016 the New South Wales Court of Criminal Appeal quashed Silva's conviction by a majority 2 to 1 vote, and ordered a judgment of acquittal. In *Silva v R* [2016] NSWCCA 284, Justice Lucy McCallum **wrote in her opinion**:

> 95. My own assessment is that Ms Silva can only have perceived the deceased's attack on her that evening as urgent, life-threatening and inescapable. A blow by blow analysis of the events in the street cannot be divorced from the exchanges that preceded those events. It is difficult to describe in words the irrational, menacing rage exhibited by the deceased in his calls to Ms Silva in the period leading up to the time when he confronted her physically. Absent some act in self-defence, serious harm to Ms Silva, her brother or her father at the hands of the deceased must have seemed virtually certain.
>
> 96. The fact that, unbeknownst to her or the deceased, Ms Silva's phone was being intercepted by police means that there is, unusually, an incontrovertible record of unguarded exchanges between the two right up until that time. ... A curious feature of their exchanges is that, to Ms Silva, the most vile abuse and the most terrifying threats from the deceased had evidently become normalised, almost banal. In many calls, she listens quietly as he rages on, abusing her and blaming her for all that was wrong with the world.
>
> 97. One thing that is striking about the exchanges is the extent to which the deceased's rage escalated within the last hour or so before the physical confrontation in the street. Over hours he repeatedly verbally abused Ms Silva. The word "rage" barely captures the emotion he was expressing. In a number of calls, he exhibited a degree of anger that is beyond my experience or comprehension. He swore, he ranted, he threatened. ... It cannot be doubted that he was significantly affected by the drug Ice at that point."
>
> ...
>
> 111. In my assessment, the evidence cogently established the reasonable possibility that resort to mortal force was reasonable in the circumstances as she perceived them. On any view of the evidence of the witnesses, there must remain a doubt as to the proof of the elements the Crown had to prove."

Click here to read the appeals court's ruling in *Silva v R* [2016] NSWCCA 284. The court took Silva's manslaughter case serious enough that its ruling is over 18,000 words long, and comprises 178 paragraphs.

An odd twist to Silva's case was that her brother Miguel was charged with being an accessory after the fact to the 2012 murder that Polkinghorne was believed to have committed as the result of a drug deal gone bad. Miguel was also charged with concealing a serious indictable offence.

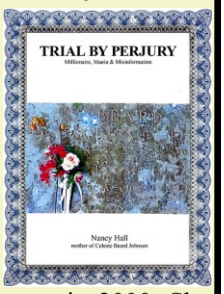
During his trial in Sydney's District Court, the prosecution alleged that Miguel fled the scene of the murder, and later drove to pick Polkinghorne up and allowed him stay at his auto repair shop in Marrickville.

On June 5, 2015 the jury found Miguel not guilty of both charges.

Sources:
Silva v R [2016] NSWCCA 284 (7 December 2016)
Jessica Silva: Manslaughter conviction quashed after stabbing death of James Polkinghorne, By Lucy Carter, ABC News, Dec. 7, 2016
Jessica Silva's brother Miguel found not guilty of concealing alleged murder carried out by her boyfriend James Polinghorn, By AAP and News Telegraph, news.com.au, June 5, 2015

Trial by Perjury:
Millionaire, Mania & Misinformation

by Nancy Hall



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

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

Database of Japanese Cases

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Charles K. Zisa's Retrial Barred By Pervasive Prosecutor Misconduct

On August 23, 2016 former Hackensack, New Jersey Police Chief Charles Kenneth Zisa's indictment for official misconduct **was dismissed**, based on pervasive prosecutor misconduct during his trial in 2012. The ruling bars Zisa's retrial after his conviction was overturned in July 2015.

In 2010 Charles Zisa, aka Ken Zisa, had been a member of the Hackensack, New Jersey Police Department for 34 years, and the Chief of Police for 15 years. He was indicted on October 19, 2010 for official misconduct related to his alleged interference in 2004 of a criminal investigation that involved the juvenile sons of Zisa's live-in girlfriend Kathleen Tiernan. Her two teenage sons were suspected of being involved in beating up another teenager.

Zisa was also indicted for official misconduct, a pattern of official misconduct, witness tampering, and insurance fraud, related to a 2008 accident when Tiernan drove a car owned by Zisa into a utility pole. Zisa arrived and transported her when the two Hackensack police officers at the scene notified him she was involved. Zisa submitted an insurance claim that asserted Tiernan lost control of the car when she swerved to avoid an animal in the roadway. Zisa's insurance company paid $11,000 to settle claim.

Tiernan was indicted for insurance fraud related to the 2008 accident.

During Zisa's trial in May 2012 the prosecution did not present any evidence that Zisa influenced the way the police handled the 2004 case involving Tiernan's sons. Evidence was introduced that the incident was resolved to the satisfaction of the teenager and his family after they received restitution.

The prosecution's case regarding the 2008 accident was primarily based on testimony of the two Hackensack police officers who claimed that Tiernan appeared intoxicated, and Zisa later asked them to suppress that information. The Bergen County Sheriff's deputy who was the first officer on the scene also testified that Zisa appeared intoxicated. The testimony of the three officers was contradicted during their cross-examination when it was brought out that none of the contemporaneous incident reports they filed about the incident made any mention that Tiernan appeared intoxicated, or even

Charles "Ken" Zisa after his conviction was overturned in July 2015 (Paul Nichols - *Bergen Dispatch*)

that they suspected the crash was attributable to her drinking.

It was also brought out on cross-examination that none of the three officers claimed that Tiernan appeared intoxicated until after they filed civil lawsuits against Zisa regarding unrelated disciplinary matters. The Sheriff's deputy denied on direct examination that he had talked with either of the Hackensack officers about his prospective trial testimony. However, he admitted during his cross-examination that wasn't true, when he testified he had numerous telephone conversations with one of the officers.

Zisa's defense was he did not interfere with the investigation of the incident in 2004 involving her girlfriend's sons, and that Tiernan was not intoxicated at the time of the car crash in 2008. Three retired Bergen County prosecutor's detectives who investigated the allegations against Zisa testified for the defense that the prosecutor directed them to destroy their handwritten investigation notes, after Zisa's lawyer filed a motion to be provided copies of those notes.

During Zisa's trial his lawyer made five motions for a mistrial based on prosecutor misconduct by Assistant Bergen County District Attorney Daniel Keitel. Bergen County Superior Court Judge Joseph Conte's only response was to repeatedly admonish Keitel, but he didn't grant the motions: he denied some of the motions, and others he said he would rule on later -- but he never did. The five motions were:

* First motion was made at the end of the prosecutor's opening statement. It was based on numerous prejudicial allegations by Keitel that were not in the indictment and about which the defense had no knowledge of, because Keitel had not disclosed to the defense any evidence regarding those claims.
* Second motion was made after the Sheriff's deputy testified. It was based on the deputy's failure to provide any evidence of a conspiracy, contrary to Keitel's assertion during his opening statement.
* Third motion was made during a 404(b) hearing held mid-trial regarding the prosecution's desire to present bad character evidence against Zisa. Zisa asserted the evidence was irrelevant and prejudicial to the alleged crimes he was being tried for. Judge Conte disallowed introduction of the evidence, but didn't grant the mistrial motion.
* Fourth motion was made during Keitel's direct examination of one of the Hackensack police officers who was at the scene of the 2008 accident. The officer had been granted immunity from prosecution for his testimony. Zisa's lawyer argued that Keitel had deliberately elicited false testimony from the officer.
* Fifth motion was made during Keitel's direct examination of the other Hackensack police officer who was at the scene of the 2008 accident. Zisa's lawyer argued that Keitel had "knowingly and intentionally" elicited testimony from the officer that Judge Conte had specifically barred from being introduced.

On May 16, 2012 the jury acquitted Zisa of all charges related to the 2004 incident, except for one count of official misconduct -- which Judge Conte acquitted Zisa of by granting a post-verdict motion based on the prosecution's failure to introduce sufficient evidence of his guilt. Related to the 2008 incident the jury convicted Zisa of two counts of official misconduct, a pattern of official misconduct, and insurance fraud. Conte granted Zisa's post-verdict motion for a judgment of acquittal for one count of official misconduct and a pattern of official misconduct.

After Judge Conte's ruling Zisa's two remaining convictions were second-degree official misconduct and insurance fraud.

Tiernan was convicted of insurance fraud by the jury.

On June 22, 2012 Judge Conte granted the motion of Tiernan's lawyer for her to sentenced under New Jersey's Pre-Trial Intervention (PTI) program to reimburse $5,500 to the insurance company within three years, with a minimum payment of $50 monthly. If she was not charged with another crime before she completed the restitution, her conviction was to be expunged. The Bergen County DA's Office did not oppose the motion or imposition of Tiernan's sentence under the PTI -- even though it may not have been legal. Keitel didn't object, although **he said** he wasn't aware that the state statute "has been changed from pre-trial intervention to post-trial intervention."

On September 20, 2012 Judge Conte sen-

Zisa cont. on page 10

Zisa cont. from page 9

tenced Zisa to the mandatory five years in prison without parole for his official misconduct conviction, a concurrent three year sentence for his insurance fraud conviction, and a $1,000 fine. Judge Conte ordered that Zisa be allowed to remain free on $50,000 bond pending the outcome of his appeal.

Kathleen Tiernan during arraignment in Dec. 2010 (The Record - Bergen County, NJ)

Zisa appealed his two convictions on insufficiency of the evidence, and also argued that Judge Conte erred by not ordering a mistrial because of Keitel's pervasive misconduct throughout Zisa's trial. He also argued that his retrial should be barred because Keitel goaded Zisa into making five mistrial motions. The State appealed Judge Conte's ruling acquitting Zisa of three of his convictions.

On July 31, 2015 the Superior Court of New Jersey, Appellate Division, **issued its ruling** in *State v. Zisa*, No. A-0653-12T4 2105 (N.J. Super. Ct., App. Div. July 31, 2015).

The appeals court affirmed Conte's rulings acquitting Zisa. The Court also ordered Zisa's acquittal of his insurance fraud conviction based on insufficient evidence of his guilt. However, the Court affirmed Zisa's official misconduct conviction, subject to a hearing on remand to determine if the prosecution deliberately tried to force a mistrial. If it did so, then the lower court would determine if the prosecution's misconduct violated Zisa's right against double jeopardy, and thus bar his retrial.

While Zisa's case was on appeal, Judge Conte retired in June 2013 and went into private legal practice. His case was reassigned to Superior Court Judge Susan J. Steele.

The same day as the appeals court ruled on July 31, 2015, Judge Steele modified Zisa's release order. She ordered his release on his own recognizance, and the return of his $50,000 bond that his attorney argued he needed to buy food, and to pay his mortgage and other living expenses.

Thirteen months later, on August 23, 2016, Judge Steele granted Zisa's motion to dismiss the only count of his indictment that he hadn't been acquitted of by the jury, the trial judge, or the appellate court -- second-degree official misconduct related to the 2008 traffic accident.

Judge Steele ruled the prosecution had no credible evidence Zisa committed the crime, and that the prosecution's extreme, deliberate and pervasive misconduct during his trial of trying to force a mistrial precluded his retrial because it would violate his right against double jeopardy. Judge Steele also ruled that Zisa's retrial was additionally barred by "fundamental fairness" due to the prosecution's pervasive misconduct and disregard of Judge Conte's rulings during his trial. (See, ***New Jersey v. Zisa***, No. 10-10-01812-i (Superior Ct. Bergen County, 8-23-2016))

Judge Steele's ruling stated:

> "Considering the State's lack of proofs and the weaknesses of its case, it is surprising this case was prosecuted to begin with. Looking to the trial itself, it is equally surprising a mistrial was not ordered at any point. The court is not charged with venturing to guess why the charges were not dismissed or why a mistrial was not called.
>
> Irrespective of the prosecutor's motivation for desiring a mistrial, such conduct simply cannot and should not be tolerated. The United States Constitution and our New Jersey Constitution protects individuals from repeated attempts to convict. "The bedrock principle is that the State, with all its resources and power, should not be allowed to make repeated attempts to convict an individual, thus compelling him to live in a continuing state of anxiety and insecurity." [] The prosecutor had a full opportunity to try this case without injecting any prejudice into the trial. Yet, that is not what happened here. Instead, he chose to taint the proceedings at the outset, with full knowledge that he was crossing the line; after all, he was not surprised when the defense moved for mistrial the first time. This court cannot fathom a single reason why the State, after sabotaging the first trial, should have another bite at the apple and put the defendant through another trial for the one count that remains. "The law cannot reward ignorance; there must be a point at which lawyers are conclusively presumed to know what is proper and what is not." [] Given the "substantial factual evidence of intent" in the record before the court, and the court finds a retrial to be an insufficient remedy as it would violate the defendant's right against double jeopardy. [] Accordingly, the remaining count of the indictment is dismissed with prejudice. [*Id*. 105-106.]

Charles "Ken" Zisa during his during arraignment in Dec. 2010 (The Record - Bergen County, NJ)

Fundamental Fairness

Moving to defendant's motion to dismiss on the basis of fundamental fairness, the court is mindful the doctrine is rarely applied.

...

... the prosecutor's conduct was woefully unprofessional. Not only did the prosecutor ignore the trial court's repeated rulings, forbidding his reliance on impermissible testimony and evidence, he was openly hostile to the court ...

Considering these factors in total, the court also grants defendant's motion to dismiss on this ground. [106, 108]

Conclusion

... the court finds the State vaulted the threshold of prosecutorial misconduct to goad defendant to seek a mistrial not once, but repeatedly, five times. But for the trial court's reluctance, a mistrial would have been granted. It is unequivocal the record is rife with repeated attempts by the State to goad defendant from the outset and by blatantly refusing to heed the admonishments of the court thereafter. Rather, the State continued in its quest to admit foreclosed testimony and evidence. *A careful scrutiny of the record shocks the conscience and can leave this court with no other conclusion*. As strikingly noted by the Appellate Division, "Lastly, we remind all concerned that 'the primary duty of a prosecutor is not to obtain convictions, but to see that justice is done.'" That was not done here and for that reason

Zisa cont. on page 11

Juan Rivera's $20 Million Compensation Will Be Divided In Divorce Court

On January 25, 2017 the Illinois Supreme Court **declined to review** a ruling by the Illinois Court of Appeal that Juan Rivera's $20 million wrongful conviction lawsuit settlement is marital property in his pending divorce.

Melissa Sanders married Rivera on October 31, 2000. At the time he was imprisoned for life in Illinois for his 1998 murder conviction in the 1992 rape and murder of 11-year-old Holly Staker in Waukegan, Illinois. Sanders had met Rivera in 1998 after she had taken an interest in the law, and volunteered to work on his case.

Sanders was a staunch advocate of Rivera's innocence. After years of legal proceedings, which included Rivera's reconviction in 1999, on December 9, 2011 the Illinois Appellate Court **overturned Rivera's conviction** on the basis his confession was unreliable and without it there was not enough evidence to support his conviction.

Justice Denied published an article about Rivera's release: "**Juan Rivera Released From 19 Year "Nightmare Of Wrongful Incarceration**"."

The Cook County State's Attorney's Office

Juan Rivera with wife Melissa Sanders-Rivera at Northwestern U. Law School January 2012. (Abel Uribe, Chicago Tribune)

decided not to retry Rivera, and their motion to dismiss the charges against him was granted on January 6, 2012. Rivera was released after more than 19 years and two months in custody.

In October 2012 Rivera filed a federal civil rights lawsuit against Lake County, the City of Waukegan, and other defendants, that alleged violations of his constitutional rights.

In 2014 Rivera was granted $213,000 compensation by the State of Illinois.

Rivera filed a petition in May 2014 to dissolve his marriage to Melissa, and she filed a counter-petition in July 2014.

While their divorce was pending, it was announced in March 2015 that Rivera's lawsuit was settled for $20 million. Lake County agreed to pay $12.5 million, and the City of Waukegan agreed to pay $7.5 million.

Rivera was to receive $11.36 million after the deduction of $8.64 for legal fees and costs to his lawyers.

In May 2015 Rivera filed a motion in his divorce case that sought to exclude Melissa from receiving any money from either the lawsuit settlement or Illinois' compensation. He argued he was convicted of crimes that occurred in 1992 -- eight years prior to his marriage.

Melissa countered the motion by making claims that included **arguing the money** "is marital property because the lawsuit accrued during the marriage."

The divorce court judge sided with Rivera and granted his motion.

Melissa appealed.

On September 30, 2016 the Illinois Appellate Court **reversed the judge's decision**, in ruling the lawsuit settlement is marital property, and Melissa has a right to a share of the settlement.

Justice Denied published an article in October 2016 about the divorce case: "**Juan Rivera's Wrongful Conviction Lawsuit Settlement Is Marital Property In Divorce**."

Rivera sought review of the ruling by the Illinois Supreme Court.

On January 25, 2017 the Supreme Court announced it **would not review** the appeals court's ruling.

Juan and Melissa-Sanders Rivera's divorce trial **is scheduled to** begin on July 18, 2017 in the Cook County Circuit Court's domestic relations division.

Sources:

$20 million wrongful conviction settlement headed for divorce court, *Chicago Tribune*, January 27, 2017

Juan Rivera's Wrongful Conviction Lawsuit Settlement Is Marital Property In Divorce, *Justice Denied*, Oct. 16, 2016

"Juan Rivera Released From 19 Year "Nightmare Of Wrongful Incarceration"", *Justice Denied*, February 7, 2012

People v. Rivera, 962 NE 2d 53 (Ill. Appellate Court, 2nd Dist., 12-9-2011)

Zisa cont. from page 10

defendant's motion is granted. The sole pending count is dismissed with prejudice." [108-109]

Click here to read *State of New Jersey v. Charles Kenneth Zisa*, No. 10-10-01812-i (Superior Ct Bergen County, 8-23-2016).

Sources:

State v. Zisa, No. A-0653-12T4 2105 N.J. Super. Unpub. LEXIS 1842 (App. Div. July 31, 2015) (Reversing insurance fraud conviction for evidence insufficiency, and affirming trial court's judgment of acquittal on counts 3, 10 & 13.)

State of New Jersey v. Charles Kenneth Zisa, No. 10-10-01812-i (Superior Ct Bergen County, 8-23 2016)

Former Hackensack chief, state assemblyman Ken Zisa sentenced to five years in prison, *NJ Advance Media*, September 20, 2012

Zisa ex-gal pal gets pre-trial intervention for insurance fraud, *Hackensack Daily Voice*, June 22, 2012

Judge dismisses remaining criminal charge against ex-Hackensack police chief Zisa, *The Record* (Bergen County, NJ), August 23, 2016

Clark County, Nevada DA Steven Wolfson Lied To Nevada Supreme Court He Doesn't Have Dishonest Cops "Liar's List"

By Hans Sherrer

Evidence has been discovered that Clark County District Attorney Steven Wolfson lied to the Nevada Supreme Court he doesn't have a "Liar's List" of dishonest cops. Wolfson denied he has a "Liar's List," as a defense to one of Kirstin Lobato's claims for a new trial in her habeas corpus appeal currently in the Supreme Court.

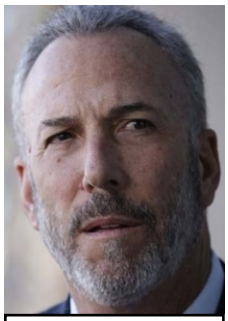
Wolfson's lie to the Supreme Court in Ms. Lobato's case was recently revealed by his admission in an unrelated lawsuit that the "Liar's List" exists.

Metro PD Officer Christopher Cooney filed a lawsuit in Clark County District Court on June 27, 2016 that claims he was defamed by being placed on the DA's *Giglio/Brady* list of dishonest cops, aka "Liar's List." The defendants in *Cooney v. Metro, et. al*, are the DA's Office, one current and two former Assistant DA's, Metro, and unnamed others.

Wolfson admits the "Liar's List" exists in the DA's Motion To Dismiss Cooney's lawsuit. The motion was filed on October 18, 2016. Wolfson's defense in seeking to dismiss Cooney's lawsuit is absolute prosecutor immunity shields the DA's Office and the three ADAs from civil liability for placing Cooney on the DA's *Giglio/Brady* list of dishonest cops. Wolfson also admits the "Liar's List" is discovery evidence for criminal defendants "involving constitutional obligations imposed by the Supreme Court."

In May 2010 Ms. Lobato filed a habeas corpus petition in the Clark County District Court that requested the overturning of her October 2006 convictions related to the homicide of homeless Duran Bailey on July 8, 2001. Ms. Lobato's alibi defense was she was at her home in Panaca, 165 miles from Las Vegas, when Bailey died in the trash enclosure for a Las Vegas bank. Metro Det. Thomas Thowsen was a key prosecution witness. Ms. Lobato's habeas petition Ground 58 states:

> Petitioner was denied effective assistance of counsel in violation of the Nevada Constitution and the Sixth Amendment to the U.S. Constitution, and prejudiced by counsel's objectively unreasonable failure to file a pre-trial motion for the prosecution to disclose if Detective Thomas Thowsen was on the Clark County District Attorney Office's "Liar's List" of law enforcement officers known to have given false and/or perjurious testimony or false sworn statements in connection with any case... because the prosecution's case hinged on the jury believing that Thowsen was telling the truth, the information was relevant and discoverable ..."



Steven Wolfson in Oct. 2013 (Jessica Ebelhar–lv, LV Review Journal)

David Roger was the Clark County DA when Ms. Lobato filed her habeas petition. Roger's defense to Ground 58 in the District Court was Ms. Lobato's "bare" assertion wasn't truthful the DA has a "Liar's List" that could have been turned over to her trial lawyer if he had requested it. Acting as Roger's representative, ADA William Kephart wrote the false assertions about the "Liar's List" presented in the State's Response to Ms. Lobato's petition. Kephart also signed the State's Response filed in the District Court on August 20, 2010.

District Court Judge Valorie Vega relied on Rogers and Kephart's dishonesty about the DA's "Liar's List," when she denied Ms. Lobato's Ground 58. Ms. Lobato appealed Judge Vega's denial of her habeas petition to the Nevada Supreme Court.

Wolfson was appointed DA in January 2012. Wolfson's defense to Ground 58 in the Supreme Court was Ms. Lobato's "bare" assertion wasn't truthful the DA has a "Liar's List" that could have been turned over to her trial lawyer if he had requested it. Acting as Wolfson's representative, ADA Steven Owens wrote the false assertions about the "Liar's List" presented in the State's Answering Brief. Owens also signed that brief filed in the Supreme Court on July 6, 2012.

Wolfson's admission on October 18 in the *Cooney* case the "Liar's List" exists, exposes that while acting on behalf of the State of Nevada, Rogers and Kephart lied to Judge Vega in the District Court, and Wolfson and Owens lied to each of the Supreme Court's justices, that the "Liar's List" doesn't exist. The DA's Office is acting in conjunction with the Nevada Attorney General's Office in opposing Ms. Lobato's petition. So Attorney General Catherine Cortez Masto colluded with the DA in lying to Judge Vega, and then to each of the Supreme Court justices about the DA's "Liar's List." On November 8, 2016 Cortez Masto was elected as a United States Senator from Nevada.

The Supreme Court can sanction the State of Nevada for Wolfson, Owens, and Masto's blatant lying about the DA's "Liar's List," by striking the State's defense to Ms. Lobato's Ground 58 under NRAP Rule 28(j). The Supreme Court could then grant Ground 58 as unopposed by the State of Nevada, and order a new trial for Ms. Lobato.

The State Bar of Nevada can sanction Rogers, Kephart and Masto for engaging in extreme dishonesty to influence the District Court's decision, and Wolfson, Owens and Masto can be sanctioned for engaging in extreme dishonesty to influence the Supreme Court's decision in Ms. Lobato's case. Nevada Rules of Professional Conduct Rule 8.4 states: "It is professional misconduct for a lawyer to:"

> "(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
> (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
> (d) Engage in conduct that is prejudicial to the administration of justice."

The discovery of evidence that Kephart lied in the District Court may have implications for him beyond possible State Bar sanctions. Kephart left the DA's Office, and he is currently a judge in the very court he lied to — the Clark County District Court.

It is not known why the DA and AG lied to conceal the "Liar's List" from Judge Vega, and then from the Supreme Court justices. What is known, is truthfully disclosing the existence of the "Liar's List" to Judge Vega and the Supreme Court justices would only hurt the State's defense against Ms. Lobato's habeas petition if Det. Thowsen had been on the list. (Thowsen is now retired.)

Without benefit of knowing Wolfson, Owens, Rogers, Kephart and Masto lied about the "Liar's List," the Supreme Court did not grant Ground 58 in its on November 23, 2016 ruling in Ms. Lobato's habeas case. Her case was sent back to the District Court for a limited evidentiary hearing and proceedings concerning her actual innocence claim. That ruling is not yet final.

Wolfson cont. on p. 13

Federal Circuit Court Rules Judge Doesn't Have Power To Expunge Valid Conviction

A U.S. District Court judge doesn't have the authority to expunge a person's legally valid conviction. That was the ruling of the U.S. Second Circuit Court of Appeals on August 11, 2016. The person involved in the case was identified as "Jane Doe" in the court's decision.

In 1997 Jane Doe joined an automobile insurance fraud scheme, and she participated in a staged car accident in Brooklyn, New York. Doe feigned being injured, and she was paid $2,500 from a injury claim.

Doe and others involved in the insurance scam were indicted by a federal grand jury for "knowingly and willfully" participating in a "scheme . . . to defraud any health care benefit program," in violation of 18 U.S.C. § 1347.

Doe was convicted by a jury in 2001.

Doe was a single mother with no prior criminal history who worked as a home health aide. She was sentenced to five years probation on March 25, 2002.

Doe completed her probation and she had no further legal problems. She found that because of her felony fraud conviction she was unable to keep a job in the health care field. Some employers disqualified her after learning of her criminal history before hiring her, and she was let go by other employers when they learned of it after she was hired.

U.S. District Court Judge John Gleeson

On October 30, 2014 Doe filed a *pro se* motion in the District Court requesting expungement of her conviction, "because of the undue hardship it has created for her in getting — and especially keeping — jobs."

The U.S. Attorney's Office opposed Doe's motion, arguing that the District Court lacked jurisdiction to expunge a valid conviction.

U.S. District Court Judge John Gleeson, who presided over Doe's trial in 2001, granted her motion on May 21, 2015. Gleeson ordered the "Government to seal all hard copy records and to delete all electronic records of Doe's conviction."

Gleeson determined he had the jurisdiction to consider Doe's motion and issued his order based on the Second Circuit's ruling in *United States v. Schnitzer*, 567 F.2d 536 (2d Cir. 1977) and the U.S. Supreme Court's ruling in *Kokkonen v. Guardian Life Insurance Company of America*, 511 U.S. 375 (1994). The appeals court ruled in *Schnitzer* that "[a] court, sitting in a criminal prosecution, has ancillary jurisdiction to issue protective orders regarding dissemination of arrest records," and that "expungement . . . usually is granted only in extreme circumstances." The Supreme Court ruled in *Kokkonen* that under certain conditions a District Court has "limited ancillary jurisdiction of collateral proceedings ..."

Gleeson found that Doe's conviction was "extreme" enough to warrant expungement of her criminal record and cited three reasons. First, her offense was in 1997, and she has not been arrested since her conviction in 2001. Second, Doe's "criminal record has had a dramatic adverse impact on her ability to work." Third, "[t]here is no specter now that she poses a heightened risk to prospective employers in the health care field."

The U.S. Attorney's Office appealed Gleeson's order.

On August 11, 2016 the Second Circuit Court of Appeals vacated Gleeson's order, and remanded the case for dismissal of Doe's motion for lack of jurisdiction by the District Court. In *Doe v. United States*, No. 15-1967-cr (2nd Cir., 08-11-2016) the Court ruled that Gleeson misapplied the two cases he relied on to grant Doe's motion: *Schnitzer* only applies to the "expungement" of arrest records — not a valid conviction; and *Kokkonen* doesn't apply to the circumstances of Doe's case.

Although they ruled the District Court was powerless to consider Doe's motion, the appeals court was sympathetic for her plight. The court noted:

> First, our holding that the District Court had no authority to expunge the records of a valid conviction in this case says nothing about Congress's ability to provide for jurisdiction in similar cases in the future. As described above, Congress has done so in other contexts. It might consider doing so again for certain offenders who, like Doe, want and deserve to have their criminal convictions expunged after a period of successful rehabilitation.
>
> Second, only a few months ago (while this appeal was pending), the Attorney General of the United States recognized and aptly described the unfortunate lifelong toll that these convictions often impose on low-level criminal offenders: ... "[T]oo often, the way that our society treats Americans who have come into contact with the criminal justice system . . . turns too many terms of incarceration into what is effectively a life sentence."

Click here to read *Doe v. United States*, No. 15-1967-cr (2nd Cir., 08-11-2016).

Sources:
Doe v. United States, No. 15-1967-cr (2nd Cir., 08-11-2016) (Reversing district court's order expunging valid conviction.)

Wolfson cont. from p. 12

The Supreme Court has the authority to act on its own initiative to correct the injustice of rewarding DA Wolfson, AG Masto, and the State of Nevada for their extreme dishonesty. The Supreme Court can revise its ruling by granting Ground 58, and order that Ms. Lobato be granted a new trial in light of the new evidence the justices were deliberately lied to in order to manipulate their decision.

The existence of the "Liar's List" was exposed in an article about the *Cooney* case in a *Las Vegas Tribune* article published on September 27, 2016, "Lawsuits Against Metro's Phony Leaders."

(Note: This article was published in the December 12, 2016 issue of the *Las Vegas Tribune* (www.lasvegastribune.net).

Massachusetts Governor Pardoned 12 People Based On Innocence ... In 1884

Regular news reports about the exoneration of a man or woman who was wrongly convicted of a crime may mislead a person to think it is a recent phenomena. It isn't.

In the four years since 2013 there have been 13 exonerations in Massachusetts. That is impressive.

However, Massachusetts Governor George D. Robinson granted full pardons and ordered the release of 12 people from custody based on evidence of their innocence in one year ... 1884. What is remarkable about those cases, other than the number of them, is their reinvestigation was initiated by a police officer, prosecutor, or the pardon board. Their pardons were supported by a police officer, district attorney, the pardon board, and in one case by the trial judge.

Those 12 people were:

Those cases demonstrate that the causes of an innocent person's conviction 130 years ago was for some of the same reasons as they are today, including mistaken eyewitness identification, witness perjury, and inadequate police investigation. A brief summary of several of those 12 cases follows.

Job Sweet was convicted on January 21, 1882 of raping a woman in Berkshire County, Massachusetts. Sweet's prosecution was based on his identification by the alleged victim. After his conviction by a jury Sweet

Massachusetts Gov. George D. Robinson (1884-1887)

was sentenced to six years in prison. While Sweet was imprisoned his accuser recanted her testimony. The Berkshire County District Attorney investigated her recantation, and after determining it was credible he recommended Sweet's pardon. On March 5, 1884 Gov. Robinson granted Sweet a full pardon and he was released from prison.

Charles McKenna was convicted on April 16, 1884 of assault in the Charlestown District of Boston, Massachusetts. McKenna's prosecution was based on his identification by the victim and several eyewitnesses. After his conviction by a jury McKenna was sentenced by Superior Court Judge Ruffin to four months in prison. District Police Officer Shaw had doubts about McKenna's guilt, and Shaw reinvestigated his case. McKenna identified that the actual perpetrator was Edward J. Kirby, who had an uncanny resemblance to McKenna. When the victim and eyewitnesses were shown Kirby, they recanted their identification of McKenna. Kirby was charged with the assault. He pled guilty before Judge Ruffin, and swore under oath that he committed the crime alone and McKenna was not present. Eyewitnesses corroborated Kirby's statement that he alone committed the assault. Based on the new evidence the Suffolk County District County recommended McKenna's pardon. On May 1, 1884 Gov. Robinson granted McKenna a full pardon and he was released from prison.

Daniel Baxter was convicted on April 3, 1882 of raping a woman in Middlesex County, Massachusetts. Baxter's conviction by a jury was based on his identification by the alleged victim. Baxter was sentenced to 10 years in prison. After a full Pardon Board hearing of the evidence, the District Attorney who tried the case determined there were serious doubts about the truthfulness of the woman's trial testimony. The Middlesex County District Attorney recommended Baxter's pardon based on serious doubts about Baxter's guilt. Baxter was released from prison after being granted a full pardon on May 21, 1884 by Gov. Robinson.

Name	Crime	Sentence	Convicted	Pardoned
Daniel Baxter	Rape	10 yrs	1882	1884
Patrick Brennan	Perjury	3 yrs	1882	1884
George Caldwell	Arson	7 yrs	1878	1884
Daniel Callahan	Larceny	1 yrs	1884	1884
Margaret Conway	Arson	3 yrs	1882	1884
Joseph Downey	Breaking & Entering	3 yrs	1882	1884
Louise Gadbois	Adultery	1 yr	1884	1884
Dennis Mant	Vagrancy	2 yrs	1883	1884
Charles McKenna	Assault	4 months	1884	1884
Franklin C. Pratt	Larceny	1 yr	1883	1884
Job Sweet	Rape	6 yrs	1882	1884
Alexander Tenney	Breaking & Entering	18 months	1883	1884

George Caldwell was convicted on February 21, 1879 of committing arson in Middlesex County, Massachusetts. After his conviction by a jury Caldwell was sentenced to seven years in prison. After a careful review of the record and hearing new evidence during a hearing, the Massachusetts Pardon Committee concluded Caldwell was likely innocent. The Pardon Committee recommended Caldwell's pardon. Gov. Robinson granted Caldwell a full pardon on July 31, 1884, and he was released from prison.

Dennis Mant was convicted on November 2, 1883 of being a tramp in Boston, Massachusetts. Mant was arrested and charged after asking for bread in Boston. Mant was convicted in the Foxbury District Municipal Court and sentenced to two years in prison. After Mant began serving his sentence, his case was investigated by the Board of Directors for Public Institutions of the city of Boston. The Board of Directors discovered that the day before Mant's arrest, the ship on which he was employed as a cook had docked in New York, and the captain left without paying Mant and his shipmates. At the time of his arrest Mant had not used any intoxicating liquor, and he listed South Carolina as his residence, where his mother and father lived. The Board of Directors recommended Mant's pardon based on the evidence he was the victim of having his wages stolen, and wasn't a tramp. On September 9, 1884 Gov. Robinson granted Dennis Mant a full pardon, and he was released from prison.

Louise Gadbois was convicted on June 23, 1884 of commiting adultery in Middlesex County, Massachusetts. Gadbois was sentenced to one year in prison. Police Officer Bean had doubts about Gadbois' guilt, and he investigated her case after she was imprisoned. Bean discovered she had been driven from her home by her husband's harsh treatment, and that he had divorced her. Consequently, she didn't commit adultery, and the district attorney and the judge had erroneously been misled that she was a woman of immoral character. The Middlesex County District Attorney recommended the pardoning of Gadbois. On October 1, 1884 Gov. Robinson granted Louise Gadbois a full pardon and she was released from prison.

Daniel Callahan was convicted on July 17, 1884 of larceny in Lowell, Massachusetts. Callahan was sentenced to one year in pris-

Pardons cont. on page 15

Rastafarian Parents Acquitted Of Failing To Send Homeschooled Children To Public School

On October 29, 2016, Charles Ijui Jah Lashley and Kim Isartes Ibre Jackman's convictions of failing to send their two homeschooled children to public school **were overturned** in Barbados. Lashley and Jackman are Rastafarians, and they had been found guilty in September 2016.

Homeschooling **is lawful** in Barbados if a parent is granted an exemption by the government to compulsory school attendance by all children from the ages of 5 to 16.

Lashley and Jackman were charged in the District 'A' Magistrates' Court with violating Section 41 Clause (b) of Barbados' Education Act, Chapter 41, on the basis there was no record their children were receiving a formal education.

The couple's homeschooled son and daughter, who are 12 and 9 respectively, have never attended public school. Lashley and Jackman never applied for — and hence were never granted — an exemption for their children's required public school attendance.

After their conviction and prior to their sentencing, the prosecution attempted to amend the charges to allege the couple had not sent their son to school "between 1st day of September, 2008 and 5th day of February, 2016," and their daughter "between the 1st day of September, 2011 and 5th of February, 2016."

Charles Ijui Jah Lashley (right rear), Kim Isartes Ibre Jackman (left rear), with their daughter (left front) and son (right front), outside the District 'A' Magistrates' Court after the acquittal of Lashley and Jackman on Oct. 31, 2016 (St. Lucia Times)

The couple's lawyer Andrew Pilgrim **responded by describing** the prosecution's amendment as "absolute garbage." Pilgrim argued, "At this stage I am flabbergasted by this application. The prosecution was creating an offence against his clients spanning an eight-year period in relation to a 12-year-old child. ... These are truly unique circumstances. These people are already found guilty . . . he is changing the dates."

Pilgrim also argued their convictions should be set-aside because the prosecution did not introduce any evidence they maliciously violated the law, and no evidence was introduced their children experienced any negative consequences from being homeschooled.

Magistrate Douglas Frederick denied the prosecution's attempt to amend the charges. On October 29, 2016 he acquitted Charles Lashley and Kim Jackman, **and ordered** dismissal of the charges. Frederick's ruling was based on the prosecution's failure to introduce evidence the parents failed to keep their children from school "due to any malice." He stated: "When we heard all the evidence, these two people did not fail to register their children in a school . . . due to any malice. There is no evidence of that. In fact, they have some philosophical belief that the system will contaminate their children, so they have withheld them from that school environment."

After the judge's ruling, **Lashley told reporters**, "Praises be to Rastarfari Jah Holy faith, for Jah continuous guidance, oversight and protection of his children." He also said that a formal application would be made for his children to be homeschooled.

The acquittal of Lashley and Jackman doesn't end their legal troubles. Based on the homeschooling of their children, the Child Care Board has filed an application for the government to seize their children and make them wards of the court.

A hearing on the application is scheduled in the High Court on December 13, 2016.

The attorney representing the children, Douglas Trotman, told reporters that in light of Lashley and Jackman's acquittal he was hopeful the High Court judge would rule in the parent's favor.

Well-known calypsonian and Rastafarian Adonijah told Barbados TODAY that he was happy with the dismissal of the criminal charge, and he was looking forward to dismissal of the Child Care Board's "ridiculous case" that was based on the children being homeschooled. **Adonijah said**, "I cannot for the life of me understand why the Child Care Board would have been seeking to separate a family where there isn't even the slightest bit of suspicion of abuse or ill treatment. The only issue is an educational one which is being worked out." The described the CCB's case as "an unjustifiable attempt to rip some innocent children from the bosoms of a loving family."

Rastafarianism **was founded** in the 1920s in Jamaica. Rastafarians believe in the Judeo-Christian God, whom they call Jah. In general, Rastafarian beliefs are based in Judaism and Christianity, with an emphasis on Old Testament laws and prophecies and the Book of Revelation. Bob Marley was one of the most well known Rastafarians, who typically wear their hair in dreadlocks.

Sources:

Barbados: Case against Rastafarians dismissed, *St. Lucia Times*, October 29, 2016

Barbados, Homeschooling-International, hslda.org

Rastafarianism, ReligionFacts.com

Pardons cont. from page 14

on. After he was imprisoned a police officer investigated Callahan's case and determined he had been misidentified. Based on the new evidence Callahan's trial judge recommended his pardon. On October 22, 1884 Daniel Callahan was granted a full pardon by Gov. Robinson, and he was released from prison.

The Innocents Database includes 8,100 cases of persons exonerated in the United States, and more than 900 of those exonerations were before 1989. The database is online at, . **www.forejustice.org/exonerations.htm.**

Sources:

Acts and Resolves Passed by the General Court of Massachusetts in the year 1885, Published by the Secretary of the Commonwealth, Wright & Potter Printing Co., Boston, 1885, p. 959-964.

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

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

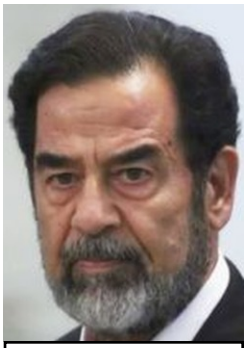
Kenya's President Commutes Sentence Of 2,747 Death Row Prisoners

On October 24, 2016 Kenya's President Uhuru Kenyatta commuted the sentence of all 2,747 persons on death row to a sentence of life imprisonment. In addition, the president issued pardons to 102 prisoners serving long sentences. President Kenyatta's office issued the **following statement**:

> President Uhuru Kenyatta has signed commutation documents commuting all death sentences into life jail terms.
>
> Following the signing of the documents at State House, Nairobi, some 2747 death row convicts will now serve life imprisonment. This includes 2655 male convicts and 92 female convicts who will be removed from the death row to serve life sentences.
>
> The last commutation of death sentences to life imprisonment was done in 2009 by the then President Mwai Kibaki.
>
> Invoking the Power of Mercy provided for under Article 133 of the Constitution, President Kenyatta today also signed a pardon warrant and released 102 long-term serving convicts.
>
> The reprieve for the 102 convicts came after a thorough vetting by the Power of Mercy Advisory Committee.
>
> The Power of Mercy is a prerogative power conferred on the President by the Constitution and entails granting pardon to reformed and rehabilitated convicted criminal offenders deserving early release from prison.
>
> Present were Attorney General Githu Muigai, Interior Cabinet Secretary Joseph Nkaissery, Power of Mercy Advisory Committee Secretary Michael Kagika Prisons Commissioner General Isaiah Osugo, and Chief of Staff and Head of Public Service Joseph Kinyua.

Kenya's President Uhuru Kenyatta (wikileaks.org)

The blanket commutation of all death sentences by Kenyatta and in 2009 by his predecessor, President Mwai Kibaki, and the pardoning of large numbers of prisoners is not unprecedented. On October 20, 2002 Iraq's President Saddam Hussein issued a **decree ordering** "a complete, comprehensive and final amnesty" for all prisoners in Iraq. The prisoners were ordered to be "freed immediately." Many thousands of prisoners were released from Abu Ghraib in Baghdad and the other prisons in Iraq. It was reported that in response to President Hussein's decree there were "Tens of thousands of people, dancing and singing their delight... Joyful relatives of prisoners waved portraits of Saddam in the air, singing their gratitude." On March 20, 2003 the United States and several allies invaded Iraq and toppled Iraq's government. President Hussein was executed on December 30, 2006, after being found guilty of crimes against humanity.



Iraq's President Saddam Hussein (biography.com)

Sources:

Death row convicts get a reprieve, Press Release, The Presidency -- Official Website of the President of Kenya, October 24, 2016

Saddam empties Iraq's jails, *The Telegraph* (London), Oct. 21, 2002

James Comey Is Most Dishonest FBI Director In U.S. History

By Hans Sherrer

Dishonesty by state and federal prosecutors and law enforcement officers was involved in a majority of the thousands of known wrongful conviction cases. With only a few exceptions, those people were steamrolled because they lacked the wealth to hire competent lawyers, private investigators and experts, or they lacked the insider/political connections that would have either outright deterred their prosecution, or prevented their prosecution after their exclusion following an honest review of the evidence. That systemic corruption is reflected in Justice Denied's logo that shows the snake of evil tilting the scales of justice.

The converse of an innocent person being unable to avoid a wrongful conviction because they lack money or insider/political connections, is a blatantly guilty person avoiding conviction for the crimes they did commit because they have the money or political connections necessary to do so.

FBI Director James Comey

There is nothing new about this. The great investigative reporter George Seldes (1890-1995) began his newspaper career in Pittsburgh in 1909. One of Seldes' early assignments as a reporter was to investigate a complaint by a female employee of a large store that she had been raped by the owner's son. Seldes obtained evidence substantiating the woman's claim. Seldes wrote a story exposing the rapist that he expected to be printed. His story wasn't published. When Seldes asked why, he was told the advertising department sent a copy of his story to the store's owner. The owner was told the story would run if he didn't increase his advertising with the paper. The owner agreed to increase his advertising, and the story was killed. That incident was a rude awakening of Seldes to the unseemly reality that insider connections could protect a criminal from getting his or her just deserts. That reality was reinforced many times during his career. Seldes describes many such incidents in his autobiographical book, "Tell The Truth And Run" (New York: Greenberg, 1953).

FBI's Investigation of Hillary Clinton's use of a private e-mail server while Secretary of State

Hillary Clinton was the U.S. Secretary of State from February 2009 to February 2013.

On July 5, 2016 FBI Director James B. Comey Jr. issued a statement regarding the FBI investigation of Clinton's use of personal e-mail systems during her time as Secretary of State.

Comey described that based on a criminal referral from The Intelligence Community Inspector General, the FBI began an investigation of Clinton's use of personal e-mail systems for government work during her time as Secretary of State. That investigation discovered that Clinton used multiple private

Comey cont. on p. 17

Comey cont. from p. 16

computer servers to store her State Department related emails that were sent and received from her private domain, and she used at least 13 devices to transmit and receive State Department related emails using her private domain. Two of the locations where those servers were located were the basement of Clinton's home in Chappaqua, New York, and in the bathroom closet of Platte River Networks located in Denver, Colorado.

Clinton was required to provide the State Department with all work related documents when she left office in 2013 and left government employment.

In 2014 Clinton returned about 30,000 of her emails that were on her private servers.

The FBI investigation found:

- 110 e-mails in 52 email chains contained Classified information at the time they were sent or received.
- Eight of those email chains contained information that was at the Top Secret/Special Access level at the time they were sent. The chains involved Clinton both sending e-mails about Top Secret matters and receiving e-mails from others about the same matters.
- 36 of those email chains contained Secret information at the time. The chains involved Clinton both sending e-mails about Secret matters and receiving e-mails from others about the same matters.
- Eight of those email chains contained Confidential information (lowest level of classification). The chains involved Clinton both sending e-mails about Confidential matters and receiving e-mails from others about the same matters.
- 2,000 additional e-mails were "up-classified" to their correct status as Confidential upon review of the emails by the agency from which they originated. (The senders of those 2,000 emails erred by failing to classify them at the time the e-mails were sent.)

So the FBI determined there were a total of 2,110 emails containing classified information among the approximately 30,000 emails Clinton turned over.

The FBI also discovered several thousand State Department related Clinton e-mails Clinton didn't turn over. Some were traced to her private servers from devices that were connected to Clinton's private e-mail domain. Others were found in the archived government e-mail accounts of people who sent or received emails to Clinton's private e-mail domain during her tenure as Secretary of State. Additional emails were recovered from forensic analysis of e-mail fragments found in the slack space of a Clinton server decommissioned in 2013. The FBI didn't find evidence any of those several thousand emails were deleted to conceal them from investigators.

The FBI determined three of the emails were classified at the time they were sent or received: one contained Secret information, and two contained Confidential information.

The FBI also determined there were likely other deleted work-related e-mails that Clinton did not return and that were not found elsewhere, and that could not be recovered because the devices they were on were either destroyed or cleaned to prevent their forensic recovery.

On March 4, 2015 the House of Representatives issued a subpoena for Clinton to produce all her emails.

After Clinton received the subpoena, 33,000 emails were deleted from her servers. Her lawyers allegedly selected the 33,000 emails withheld from disclosure as being personal concerning her yoga classes and her daughter Chelsea's wedding. The lawyers allegedly didn't read the contents, but only looked at the email's header information and search terms to determine they were personal. It is not possible to verify those emails weren't work related. Use of the Bleach-Bit computer program to delete the emails made them unreadable even by computer forensic analysis. Bleach-Bit default feature is to simply delete selected files. However, Clinton's surrogates went beyond deleting the files, by choosing to use Bleach-Bit's optional file shredding feature to completely obliterate her 33,000 emails. U.S. Congressman Trey Gowdy (R. SC) said that Clinton's use of Bleach-Bit to shred her emails made it "So even God couldn't read them."

The FBI investigation also found that Clinton used at least eight different devices -- including Blackberry mobile devices -- to send and receive emails while she was Secretary of State. A hammer was used to destroy several of those devices after Clinton was issued the subpoena to produce her emails.

Comey's conclusions about the handling of Clinton's emails

Comey commented about the 2,000 emails "up-classified" during the investigation because the email's sender failed to do so: "But even if information is not marked "classified" in an e-mail, participants who know or should know that the subject matter is classified are still obligated to protect it. ... There is evidence to support a conclusion that any reasonable person in Secretary Clinton's position, or in the position of those government employees with whom she was corresponding about these matters, should have known that an unclassified system was no place for that conversation."

Comey **stated regarding** the use of Clinton's private email domain for official government business:

> "We also assess that Secretary Clinton's use of a personal e-mail domain was both known by a large number of people and readily apparent. She also used her personal e-mail extensively while outside the United States, including sending and receiving work-related e-mails in the territory of sophisticated adversaries. Given that combination of factors, we assess it is possible that hostile actors gained access to Secretary Clinton's personal e-mail account.
>
> ...
>
> While not the focus of our investigation, we also developed evidence that the security culture of the State Department [under Clinton's leadership] in general, and with respect to use of unclassified e-mail systems in particular, was generally lacking in the kind of care for classified information found elsewhere in the government."

Comey didn't mention that Clinton allowed her lawyers -- who didn't have security clearance -- to have access to the contents of the thousands of classified emails on her private server.

Given the totality of the evidence, **Comey determined** there was substantial evidence Clinton and her colleagues "were extremely careless in their handling of very sensitive, highly classified information. ... None of these e-mails should have been on any kind of unclassified system, but their presence is especially concerning because all of these e-mails were housed on unclassified personal servers not even supported by full-time security staff, like those found at Departments and Agencies of the U.S. Government—or even with a commercial service like Gmail. ... Although we did not find clear evidence that Secretary Clinton or her colleagues intended to violate laws governing the handling of classified information,

Comey cont. on p. 18

Comey cont. from p. 17

there is evidence that they were extremely careless in their handling of very sensitive, highly classified information."

Comey recommends the DOJ not prosecute Clinton for violating 18 U.S. Code § 793(f)

On July 1, 2016 -- two days after meeting alone with former President Bill Clinton on an otherwise deserted airplane on the tarmac at Phoenix's Sky Harbor International Airport — Attorney General Loretta Lynch announced **she would abide** — sight unseen — by the recommendation of FBI Director Comey about whether to prosecute Hillary Clinton regarding her use of a private computer server and private domain names for the sending and receiving of State Department related emails.

In his July 5 statement Comey's explained his recommendation to the Department of Justice:

> "In our system, the prosecutors make the decisions about whether charges are appropriate based on evidence the FBI has helped collect. ...
>
> Although there is evidence of potential violations of the statutes regarding the handling of classified information, our judgment is that no reasonable prosecutor would bring such a case. Prosecutors necessarily weigh a number of factors before bringing charges. There are obvious considerations, like the strength of the evidence, especially regarding intent. Responsible decisions also consider the context of a person's actions, and how similar situations have been handled in the past.
>
> To be clear, this is not to suggest that in similar circumstances, a person who engaged in this activity would face no consequences. To the contrary, those individuals are often subject to security or administrative sanctions. But that is not what we are deciding now.
>
> As a result, although the Department of Justice makes final decisions on matters like this, *we are expressing to Justice our view that no charges are appropriate in this case*."

Comey testifies before Full House Committee on Oversight and Government Reform

Two days after releasing his statement, Comey testified under oath on July 7 before the Full House Committee on Oversight and Government Reform. During his questioning by Trey Gowdy (R-SC) **Comey acknowledged** that Clinton wasn't truthful in stating:

- That "she never sent or received classified information over her private e-mail."
- That none of the emails she sent or received using her private e-mail were marked as classified.
- That she only used one device to send or receive emails over her private e-mail.
- That "all work-related e-mails were returned to the State Department" upon her leaving office. (Comey stated: "We found thousands that were not returned.")
- That "neither she nor anyone else deleted work related e-mails from her personal account."
- That "her lawyers read every one of the e-mails and were overly inclusive."[2]

Comey wasn't asked about Clinton's testimony during the Benghazi hearing on October 22, 2015 that her private email system used only one server, when it is known multiple servers were used.

Comey **also stated** that false exculpatory statements by a suspect are used "Either for substantive prosecution or evidence of intent in a criminal prosecution." To which Gowdy responded: "Exactly. Intent and consciousness of guilt right? ... In your old job, you would prove intent as you just referenced by showing the jury evidence of a complex scheme that was designed for the very purpose of concealing the public record and you would be arguing in addition to concealment the destruction you and I talked about or certainly the failure to preserve, you would argue all of that under the heading of intent. You would also be arguing the pervasiveness of the scheme, when it started, when it ended, and the number of e-mails whether they were originally classified or up classified. You would argue all of that under the heading of intent. You would also probably under common scheme or plan argue the burn bags of daily calendar entries or the missing daily calendar entries as a common scheme or plan to conceal. Two days ago, director, you said a reasonable person in her position should have known a private e-mail was no place to send and receive classified information. You're right. An average person does know not to do that. This is no average person. This is a former first lady. A former United State Senator, and a former secretary of state that the president now contends is the most competent qualified person to be president since Jefferson. He didn't say that in '08. But he says it now. She affirmatively rejected efforts to give her a state.gov account. She kept these private e-mails ... and only turned them over to congress because we found out she had a private e-mail account. So you have a rogue e-mail system set up before she took the oath.. thousands of what we now know to be classified e-mails, ...and this scheme took place over a long period of time and resulted in the destruction of public records. You say she was extremely careless, but not intentionally so. ...and my real fear is this. It's what the chairman touched upon. This double tracked justice system that is rightly or wrongly perceived in this country, that if you are a private in the Army and you e-mail yourself classified information, you will be kicked out. But if you are Hillary Clinton and you seek a promotion to Commander in Chief, you will not be. So what I hope you can do today is help the average person — the reasonable person you made reference to, the reasonable person understand why she appears to be treated differently than the rest of us would be. ..." (Testimony began at 33:36 min. mark of hearing audio recording.)

Comey reiterated some of his July 5 statement **in testifying**:

> "There was a statute passed in 1917 that on its face makes it a crime for someone to engage in gross negligence. [18 U.S. Code § 793(f)] Maybe in that circumstance you don't need to prove they were doing something unlawful. ... When I look at the facts we gather here, I see evidence of great carelessness, but I do not see evidence that is sufficient to establish that Secretary Clinton or those with whom she was corresponding both talked about classified information on e-mail and knew when they did it, they were doing something that was against the law." (Testimony began at 17:37 min. mark of hearing audio recording.)

Hundreds of Clinton's classified emails were accessed by up to five foreign governments

It was reported on November 3, 2016 that the Senate Homeland Security and Government Affairs Committee found evidence that in 2013 and 2014 five foreign intelligence agencies — that included Germany, China, and South Korea — may have successfully accessed Clinton's email servers known to have contained more than 400 classified emails — and possibly many

Comey cont. on p. 19

Comey cont. from p. 18

thousands of classified emails. [4]

After disclosure of the information, House Homeland Security Committee Chairman Michael McCaul (R-TX) **stated to Fox News**: "She exposed [information] to our enemies. Our adversaries have this very sensitive information… In my opinion, quite frankly, it's treason." McCaul said that Comey told him about the likely exposure of Clinton's emails to foreign spy agencies, before that information was made public.

Federal espionage statute 18 U.S.C. § 793(f) is strict liability crime

The federal Espionage Act criminalizes the mishandling, transmission, gathering, or losing of classified government information. the Espionage Act includes several crimes that are strict liability offenses. A violation of those crimes is proven by evidence of the person's conduct in committing the illegal action: evidence of whether they intended to commit the crime is irrelevant. One of those strict liability statutes is 18 U.S. Code § 793(f) — Gathering, transmitting or losing defense information:

> Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense, (1) through *gross negligence* permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or (2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of its trust, or lost, or stolen, abstracted, or destroyed, and fails to make prompt report of such loss, theft, abstraction, or destruction to his superior officer — Shall be fined under this title or imprisoned not more than ten years, or both.

Section 793(f) plainly states that a conviction requires evidence that a person acted with "gross negligence." However, the statute does not contain any reference that the government needs to introduce any evidence of the person's mental state of intending to violate the law — only that he or she acted with "gross negligence." That is reflected in federal district court pattern jury instructions for § 793(f) that specifically states:

- First, that the defendant had been entrusted with or had lawful possession or control of;
- Second, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information relating to the national defense;
- Third, that the defendant permitted the above material to be removed from its proper place of custody or delivered to anyone in violation of the defendant's trust,

or to be lost, stolen, abstracted, or destroyed; and

- *Fourth, that the defendant did so through gross negligence*. [1]

Gross negligence is legally **defined as**, "A severe degree of negligence taken as reckless disregard. Blatant indifference to one's legal duty, other's safety, or their rights are examples." In other words, gross negligence is the opposite of being conscientious or careful.

A further explanation of what constitutes gross negligence is provided by its interpretation under the federal involuntary manslaughter law (18 U.S.C. Sec. 1112). Gross negligence is a required element the government must prove to secure a conviction. It was stated in *United States v. Pardee*, 368 F.2d 368, 374 (4th Cir. 1966): "If the resultant deaths were merely accidental or the result of a misadventure or due to simple negligence, or an honest error of judgment in performing a lawful act, the existence of gross negligence should not be found."

Congress' exclusion of the government from needing to prove a person intended to violate 18 U.S.C. § 793(f), was not accidental. Sections 793 (a) and (b) both require that the government must introduce evidence a person acted with the mental "intent or reason to believe" they were committing a crime, in to prove a violation of the law.

Congress considers a violation of the Espionage Act serious enough that under the Federal Whistleblower Protection Act a whistleblower is not exempt from prosecution for the release of classified information. Furthermore, the FWPA also doesn't bar a person from adverse employment action for unauthorized disclose of classified information. [3]

Summary of Comey's conclusion to not recommend prosecution of Hillary Clinton

FBI Director Comey's statement on July 5, 2016 brought to the forefront the fact that to secure a conviction under 18 U.S.C. § 793(f) the government is required to prove a person acted with "gross negligence" — i.e., "Blatant indifference to one's legal duty." — while there is no need for the government to present any evidence he or she intended to commit a crime.

Comey acknowledged in his Statement of July 5 there is evidence that Clinton and her colleagues "were extremely careless in their handling of very sensitive, highly classified information." During his Congressional testimony on July 7 he testified Clinton and her colleagues exhibited "great carelessness" in their handling of classified information in her emails. At a minimum "extremely careless" and "great carelessness" are comparable to "blatant indifference," and arguably much more severe. That would suggest that Comey would have no reasonable choice but to recommend prosecution given the years long disregard by Clinton and her colleagues of practicing even minimal protections of classified material -- that the Senate committee determined was likely accessed by the spy agencies of up to five foreign countries.

However, that isn't what he did. Instead, he recommended against prosecution by relying on the rationale that while there is evidence Clinton and her colleagues acted with "gross negligence" ("extremely careless') , he didn't think they intended to violate the law. Comey created that argument out of thin air, because Congress did not include a defendant's *intent* as an element of the crime -- only that they *acted* with "gross negligence." The pattern jury instructions described above make it clear there is no legal basis for his recommendation. The prosecution doesn't need to present *any* evidence of a defendant's intent (state of mind) to obtain a conviction for a violation of section 793(f), only evidence of what they did. A person's state of mind doesn't need to be mentioned at any time during a trial for an alleged violation of section 793(f), because it isn't an issue.

Thus, there is no legal validity for Comey's statement on July 5 that he had recommended against the DOJ prosecuting Clinton and her colleagues for their hundreds of alleged violations of 18 U.S.C. § 793(f).

Comey's Congressional testimony on July 7 reinforced his recitation of the facts in his July 5 Statement that the actions of Clinton and her colleagues regarding the handling of her private emails constituted "gross neg-

Comey cont. on p. 20

Comey cont. from p. 19

ligence." However, Comey's testimony set-forth compelling evidence that she had intent because she lied that "she never sent or received classified information over her private e-mail;" She lied that none of the emails she sent or received using her private e-mail were marked as classified.; She lied that she only used one device to send or receive emails over her private e-mail.; She lied that "all work-related e-mails were returned to the State Department" upon her leaving office.; She lied that "neither she nor anyone else deleted work related e-mails from her personal account."; and she lied that "her lawyers read every one of the e-mails and were overly inclusive."[2]

Furthermore, the public disclosure in early November that there is a 99% chance at least five foreign spy agencies accessed Clinton private servers and obtained hundreds of classified emails constitutes additional evidence that the actions of Clinton and her colleagues was "grossly negligent."

Consequently, there is no rational basis whatsoever for Comey's stated reasons for not recommending the prosecution of Clinton and her colleagues for violating section 793(f).

Lying to Congress and lying to the FBI are federal crimes

In addition to hundreds of violations of 18 U.S.C. § 793(f), there are other federal criminal statutes that Clinton could be charged with violating.

It is a **federal crime** under 18 U.S.C. § 1001 to make "any materially false, fictitious, or fraudulent statement or representation" to the FBI during an investigation. It isn't necessary for the person to be under oath, and the crime is committed when the person makes the untrue utterance. The government doesn't need to present any evidence the person intended to deceive. There have been many successful prosecutions for a violation of section 1001. The penalty is 5 years in prison and up to a $100,000 fine.

It is a **federal crime** under 18 U.S.C. § 1621 for a person to willfully assert to Congress "any material matter which he does not believe to be true." Also known as the perjury statute, there have been many successful prosecutions for a violation of section 1621. The penalty is 5 years in prison and up to a $100,000 fine.

Summary of Comey's conclusions regarding the prosecution of Hillary Clinton

Comey acknowledged that Clinton made "materially false, fictitious, or fraudulent statement[s] or representation[s]" to the FBI during her interview on July 2, 2016. Yet he didn't recommend to the DOJ that Clinton be prosecuted for each of her violations of 18 U.S.C. § 1001 for making false statements.

Comey acknowledged that Clinton made numerous materially false, fictitious, or fraudulent statements or representations during her sworn Congressional testimony on October 22, 2015. Yet he didn't recommend to the DOJ that Clinton be prosecuted for each of her violations of 18 U.S.C. § 1621 that committing perjury.

Comey acknowledged that Clinton and her colleagues "were extremely careless in their handling of very sensitive, highly classified information," and they exhibited "great carelessness" in their handling of that classified information. Yet he didn't recommend to the DOJ that Clinton and her colleagues be prosecuted for each of their violations of 18 U.S.C. § 793(f) for their gross negligence in handling classified information.

Consequently, it can be reasonable concluded that any competent assistant U.S. attorney would be able to successfully obtain convictions of Hillary Clinton for her cumulative total of hundreds of counts of violating 18 U.S.C. sections 1001, 1621 and 793(f). Convictions could also be obtained for many people involved in the mishandling of classified emails on Clinton's private server. Only a few of those potential defendants have been granted immunity by the DOJ.

Conclusion

There is no reasonably defensible professional explanation for Comey's conduct in failing to recommend that the DOJ pursue criminal charges against Hillary Clinton.

Endnote:

[1] Pattern Jury Instructions for Federal Criminal Cases, District of South Carolina, 2016 Online Edition, p. 117
§ 793(f)(1)
Title 18, United States Code, Section 793(f)(1) makes it a crime to allow defense information to be lost or stolen through gross negligence. For you to find the defendant guilty, the government must prove each of the following beyond a reasonable doubt:

- First, that the defendant had been entrusted with or had lawful possession or control of;
- Second, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information relating to the national defense;
- Third, that the defendant permitted the above material to be removed from its proper place of custody or delivered to anyone in violation of the defendant's trust, or to be lost, stolen, abstracted, or destroyed; and
- Fourth, that the defendant did so through gross negligence.

[2] Either in her statement given to the FBI on July 2, or her congressional testimony on October 22, 2015 during the Benghazi hearings during which she swore under oath that she didn't use her private email server to send or receive emails that were marked classified at the time.

[3] Stephen I. Vladeck, The Espionage Act and National Security Whistleblowing After Garcetti, 57 Am. U. L. Rev. 1531, 1537 (2006).

[4] 'This is treason': Clinton's email server reportedly exposed to hackers of 5 spy agencies, **RT.com**, Nov. 4, 2016

Sources:

Statement by FBI Director James B. Comey on the Investigation of Secretary Hillary Clinton's Use of a Personal E-Mail System, FBI National Press Office, July 5, 2016

Hillary clinton letter to congress by fbi director james comey - 11-28-16

Hillary clinton letter to congress by fbi director james comey - 11-6-16.pdf

BleachBit?! ... Gowdy Says Hillary Deleted Emails 'So Even God Couldn't Read Them', Interview of Trey Gowdy by reporter Martha MacCallum, FoxNews.com, August 25, 2016

BleachBit.org (Clean your system and free disk space)

Lynch to accept recommendation of FBI, career prosecutors in Clinton email probe, By Del Quentin Wilber, Los Angeles Times, July 1, 2016

Testimony by FBI Dir. James Comey before the Full House Committee on Oversight and Government Reform, Hearing Date: July 7, 2016 10:00 am 2154 Rayburn House Office Building

House Republicans: Hillary Clinton committed perjury in emails testimony, CBSNews.com, August 16, 2016

'This is treason': Clinton's email server reportedly exposed to hackers of 5 spy agencies, RT.com, Nov. 4, 2016

18 U.S. Code § 1001 - Statements or entries generally, Cornell.edu

18 U.S. Code § 1621 - Perjury generally, Cornell. edu

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

The third revised and updated edition of ***Kirstin Blaise Lobato's Unreasonable Conviction*** — *Possibility of Guilt Replaces Proof Beyond A Reasonable Doubt* is available in PDF format to be read or downloaded at no charge for personal use from **Justice Denied's** website.*

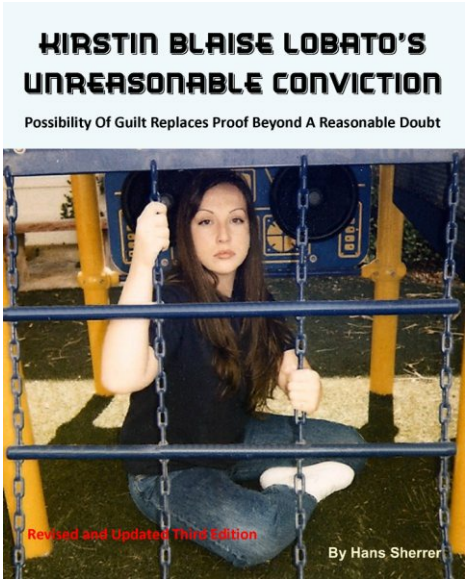
The book details how Kirstin Lobato has twice been convicted of a July 8, 2001 Las Vegas homicide when the prosecution doesn't deny it has no physical, forensic, eyewitness, confession, informant, surveillance video or documentary evidence she was in Las Vegas at any time on the day of the crime. The prosecution also concedes she was at her home 165 miles from Las Vegas at the time new forensic entomology and forensic pathology evidence conclusively 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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Justice Denied's webpage with information about the Kirstin Lobato case is **www.justicedenied.org/kbl.htm**.

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

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'thave a ton of $ to spend on groceries." Alicia

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

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

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

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.**

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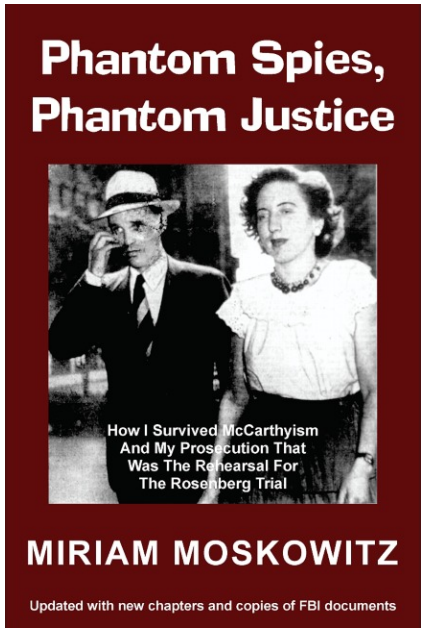
Phantom Spies, Phantom Justice

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 books subtitle is *How I Survived McCarthyism And My Prosecution That Was the Rehearsal For The Rosenberg Trial*. The Afterword written by *Justice Denied's* editor and publisher Hans Sherrer states in part:

> Miriam Moskowitz is an innocent person who was caught up in the whirlwind of anti-communist hysteria that prevailed in this country at the time of her trial in 1950. We know that because of FBI documents she obtained through the Freedom of Information Act decades after her conviction for conspiring to obstruct justice during a grand jury investigation.
>
> The prosecution's case depended on the trial testimony of FBI informant Harry Gold. He testified that in 1947 *she observed* a conversation during which he and her business partner, Abraham Brothman, allegedly discussed providing false testimony to a grand jury investigating possible Soviet espionage. She did not testify before that grand jury.
>
> The FBI documents Ms. Moskowitz obtained are proof that prior to her trial Mr. Gold told the FBI *she was not present* during that alleged conversation. Furthermore, Mr. Gold told the FBI he didn't speak candidly in front of Ms. Moskowitz because of her possible negative reaction if he said something incriminating in her presence, and he didn't like her.



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

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

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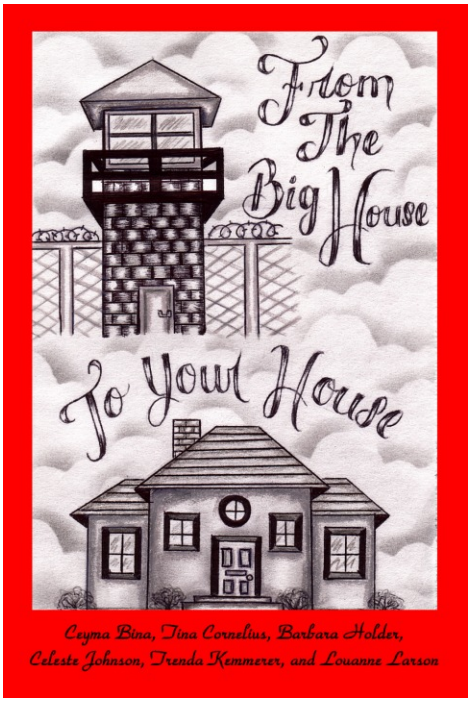

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Edwin M. Borchard – Convicting The Innocent

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

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

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

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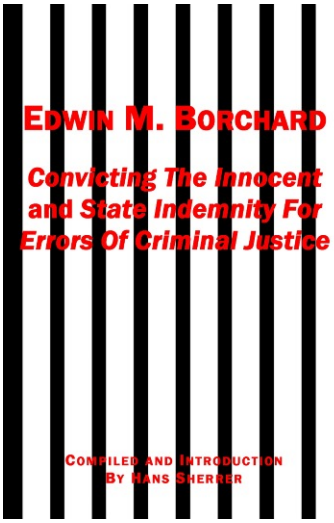

Convicting the Innocent (Chapter 4) has not lost its luster as one of the most insightful books published on the topic of wrongful convictions. Seventy-one years after its publication the multitude of causes underlying the cases of injustice it details not only continue to plague the legal system in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

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

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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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Dehumanization Is Not An Option

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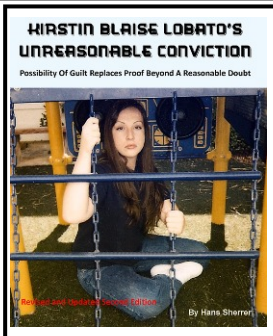

This is the story of Kirstin Lobato, who was 18 when charged in 2001 with the murder of a homeless man in Las Vegas. She was convicted of voluntary manslaughter and other charges in 2006 and she is currently serving a sentence of 13-35 years in Nevada. *Kirstin Blaise Lobato's Unreasonable Conviction*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

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

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"The federal court safety-value was abruptly dismantled in 1996 when Congress passed … the Antiterrorism and Effective Death Penalty Act. … We now regularly have to stand by in impotent silence, even though it may appear to us that an innocent person has been convicted.

Federal 9th Circuit Judge Alex Kozinski "Criminal Law 2.0," 44 *Geo. L.J.* Ann. Rev. Crim. Proc (2015) (Preface, iii):

Conviction Of Innocent People Is Longstanding Problem

The conviction of large numbers of innocent people is not a new phenomena: the rapid flow of information today only creates the illusion it is. A vivid example of that are the 12 people pardoned on the basis of their innocence by Massachusetts Governor George D. Robinson in 1884.

See p. 14

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

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