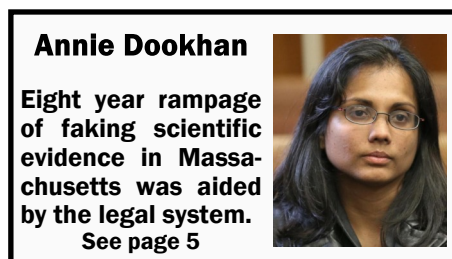
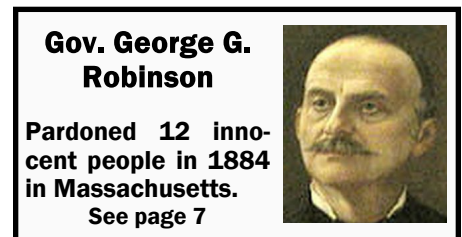
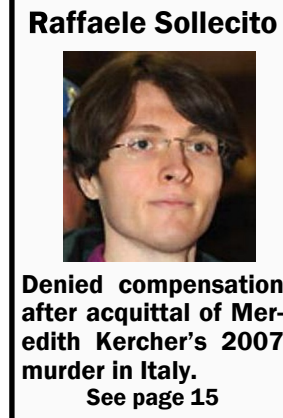
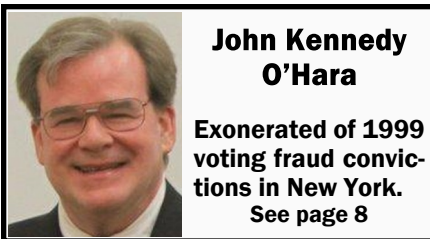


JUSTICE

DENIED

The Magazine for the
Wrongly Convicted



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Spring 2017**

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Message From The Publisher

“Garbage In, Garbage Out” is why crime lab technician Annie Dookhan’s eight-year rampage of mishandling and falsifying evidence in *at least* 21,587 cases is far and away the the biggest scandal in the history of reporting on wrongful convictions. Dookhan was involved in over 40,000 cases during her tenure at the Hinton State Laboratory, so she may actually been involved in more than the 21,587 convictions overturned by the Massachusetts Supreme Judicial Court on April 19, 2017. How was Dookhan able to be one of the most prolific serial criminals in U.S. history? She had a lot of help. She was helped by her superiors and colleagues in the crime lab who turned a blind eye to her processing upwards of *five times* the caseload of her coworkers. She was helped by prosecutors who relied on the “Drug Certificates” she provided to secure tens of thousands convictions without ever suggesting there was something amiss in her prolificity. She was helped by the public defenders and retained lawyers who represented those tens of thousands of defendants without a single one of them ever publicly questioning Dookhan’s alleged “scientific” evidence. She was helped by every judge in the seven affected counties who never questioned how it was possible Dookhan could conduct the testing in case after case in which the defendant pled guilty based on her certification of the prosecution’s evidence. Even though Dookhan’s almost decade long crime spree was only made possible with the complicity of hundreds of people intimately involved in all levels of Massachusetts’ legal system – not a single one of her cohorts has been disciplined, or even charged with aiding and abetting her illegal activity. She is the fall “gal” for an unconscionably corrupt legal system: She provided the “Garbage In” of fake evidence, and her *de facto* accomplices dutifully provided the “Garbage Out” of a false conviction. See pages 3 and 5.

Hans Sherrer, Editor and Publisher
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21,587 People Exonerated In Massachusetts Due To Fraudulent Crime Lab Testing

By Hans Sherrer

The Massachusetts Supreme Judicial Court [vacated](#) 21,587 drug related convictions on April 19, 2017. The Court also ordered dismissal of the cases. It was by far the most exonerations on a single day in United States history.

The prosecution of all the cases relied on a “drug certificate” signed by Annie Dookhan, a chemist at the Hinton State Laboratory in Boston, Massachusetts. It is now known Dookhan’s certification an illegal drug was involved in those cases was unreliable evidence: She engaged in extensive criminal activity and professional misconduct in the handling and processing of evidence in the crime lab for many years before her sabotage was discovered in June 2011.

The 21,587 cases were in seven Massachusetts counties: Suffolk; Essex; Plymouth; Bristol; Norfolk; Middlesex; and, Cape & Islands.

Dookhan was 26 when she was hired in 2003 as a Chemist I at the Hinton forensic drug laboratory. She was promoted to Chemist II in 2005. Her primary job was to test evidence samples in criminal cases to determine if it was an illegal substance. From the time she began work her productivity was the highest in the lab.

After Dookhan had worked in the lab for eight years, an evidence officer discovered in June 2011 that she had not properly signed out 90 drug samples. Several days later three lab supervisors met to discuss that the evidence log book didn’t show the drug samples had been signed out to her ... or anyone else. The next day Dookhan was confronted about the evidence log, and a new situation: In the hours since the three supervisors had met, the initials of an evidence officer had been inserted in the log book next to the drug samples. The evidence officer denied initialing the log book and Dookhan denied knowledge of the discrepancy.

The lab initiated an internal investigation. Dookhan admitted she had forged the evidence officer’s initials and post-dated entries in the log book. She was suspended from performing lab work on new cases. However, she remained on the lab’s payroll,



Annie Dookhan after her arrest in Sept. 2012
(David L. Ryan, Boston Globe, 2012)

and her superiors allowed her to testify in court about cases she was involved in up to the time of her suspension. Prosecutors and defendants in those cases were not informed Dookhan had been suspended from performing laboratory tests because of her dishonesty.

In February 2012 Dookhan ceased testifying in court when the district attorneys in the seven counties that used the services of the Hinton drug lab were notified Dookhan had been suspended eight months earlier. The DA’s could no longer subpoena her as an expert witness because they would be legally obligated to provide a defendant’s lawyer with the evidence of her dishonest conduct. She was placed on paid administrative leave, and resigned a month later in March 2012.

As a cost-cutting move, in July 2012 control of the Hinton drug lab was transferred from the Massachusetts Department of Public Health to the Office of Public Safety and Security. The Massachusetts State Police initiated an investigation into Dookhan’s practices before she was suspended from performing lab work.

The State Police discovered during their interview of Dookhan on August 28, 2012, something she had not told her lab supervisors: she admitted “dry labbing” evidence samples. “Dry labbing” describes a technician visually identifying samples without performing a chemical test. Dookhan also admitted that when she had evidence samples from different cases that appeared similar, she would select a sample from a case for testing to verify it was the drug she believed it was. She then assumed all the untested samples were the same drug -- and reported on the “drug certificate” for those cases the sample had tested positive for that drug. She also admitted to fabricating evidence in drug cases by adding cocaine to samples that didn’t have cocaine present.

Furthermore, Dookhan admitted to the State Police that she had been engaging in substantial lab practices for a number of years. That she had been doing so from around the time she began working at the lab was suggested by the fact that starting [during her first year](#) of employment, “She reported test results on samples at rates consistently much

higher than any other chemist in the lab.”

The State Police discovered that Dookhan regularly reported testing over 500 samples per month. That was five times the typical workload of a laboratory drug chemist. Yet, Dookhan’s supervisors and colleagues told the State Patrol they never saw her using a microscope, and she frequently misidentified samples. The disregard of the numerous red flags there was something amiss with Dookhan’s work suggested a “See no evil, speak no evil” culture in the drug lab. All was OK as long as she generated results that made the lab look productive and assisted prosecutors secure convictions.

The discovery by State Police investigators that Dookhan took the shortcut of failing to conduct any test in innumerable cases in which she reported a positive drug test result, explained how she was able to be the most productive drug technician in the crime lab for eight years.

The State Police investigation also discovered that when she testified during at least 14 criminal trials, Dookhan burned her expert credentials by lying that she had a Master’s degree in Chemistry from the University of Massachusetts at Boston (UMass). She not only didn’t have a Master’s degree in Chemistry, but she not had never enrolled in any master’s level classes at UMass. Dookhan’s perjury about her education was relied on by judges to admit her as an expert witness, and it established the veracity of the drug certificate of her testing admitted into evidence. It was found that she also falsely stated in her resume that she had a UMass Master’s degree in Chemistry. The Hinton lab didn’t check Dookhan’s educational qualifications when she was hired as a chemist in 2003.

Dookhan’s dishonest embellishment of her qualifications and experience went beyond falsely claiming she had a Masters degree in Chemistry: She fabricated job titles for herself that included she had been a “special agent of operations” for the FBI and other federal agencies, and that she had been an “on-call terrorism supervisor.”

The *Boston Globe* reported that Norfolk County prosecutors ignored multiple warnings that Dookhan was a chronic liar. Almost two years before she was suspended her husband, Surrendranath Dookhan, sent multiple text messages warning about her dishonesty. One of the [text messages stated](#): “This is Annie’s Husband do not believe her, she’s a liar, she’s always lying.” (Annie

Dookhan cont. on page 4

Dookhan cont. from page 3

Sadiyya Khan adopted her husband's last name when they married in 2004.)

Disregarding the warnings by Dookhan's husband that she was a pathological liar was emblematic of the professional affection prosecutors had for her: They loved her because she was so reliable in providing "scientific" evidence to support a conviction. Prosecutors were so happy with her assistance that they congratulated her in emails and took her out for cocktails as a reward for her work. One district attorney [called Dookhan](#) a member of the prosecutor's "dream team."

Dookhan even provided "fake" evidence to order.

The *Boston Globe* [reported that in](#) May 2010 Norfolk Assistant District Attorney George Papachristos "told her he needed a marijuana sample to weigh at least 50 pounds so that he could charge the owners with drug trafficking. 'Any help would be greatly appreciated!'" he wrote, punctuating each sentence with a long string of exclamation points. "Thank you!" Two hours later, Dookhan responded: "OK . . . definitely Trafficking, over 80 lbs." Papachristos thanked her profusely." Papachristos resigned in October 2012 after his very friendly relationship with Dookhan was reported by the *Boston Globe*.

The Hinton lab's quality controls were so deficient at detecting fraud, that an audit of Dookhan's work in 2010 failed to find anything out of the ordinary, except that she was exceptionally efficient at processing case evidence.

Dookhan was arrested on September 28, 2012. She charged with two counts of obstruction of justice and one count of falsifying her academic records. She was released on \$10,000 bail.

After her arrest Dookhan was indicted for crimes that included: evidence tampering, obstruction of justice, perjury, and falsely claiming to hold a graduate degree.

Dookhan agreed to plead guilty to 27 counts of tampering with evidence in exchange for the dropping of all other charges. She didn't state why she acted as she did, but some of her communications suggested she didn't like drug users and dealers and wanted them off the street. She was apparently oblivious to the harm her crusade was causing innocent people to suffer.

On November 22, 2013 she was sentenced to three to five years imprisonment and two years probation by Judge Carol S. Ball in Suffolk Superior Court. [Ball said](#) in sentencing Dookhan, "Innocent persons were incarcerated, guilty persons have been released to further endanger the public, millions and millions of public dollars are being expended to deal with the chaos Ms. Dookhan created, and the integrity of the criminal justice system has been shaken to the core." Dookhan's bail was revoked and she was taken into custody to begin serving her sentence.

Dookhan was paroled in April 2016 after less than 2-1/2 years in prison.

As Judge Ball had alluded to, there was significant legal fallout from Dookhan's conduct.

More than 21,000 defendants had been convicted based on the prosecution's reliance on the evidence of a Dookhan "drug certificate."

A number of defendants filed a petition to withdraw their guilty plea when the prosecution's case was primarily based on the evidence of a Dookhan "drug certificate." They pled guilty under the pressure of Dookhan's purported incriminating evidence that made their acquittal after a trial nearly impossible. [They asserted](#) their guilty plea "was involuntarily induced by government misconduct that since has been discovered."

In 2014 the Massachusetts Supreme Judicial Court (SJC) [ruled that](#) "where the defendant proffers a drug certificate from the defendant's case signed by Dookhan on the line labeled 'Assistant Analyst,' the defendant is entitled to a conclusive presumption that egregious government misconduct occurred in the defendant's case."

The SJC had to then grapple with the issue of whether the tens of thousands of affected defendants would be dealt with on a case by case basis to determine if a defendant was prejudiced, or if the court would issue a global ruling affecting all of the defendants.

The district attorneys of the seven counties had mailed a written notice to defendants whose case Dookhan's had worked on. The notice explained they could explore with a lawyer the possibility of withdrawing their plea or moving for a new trial based on her misconduct.

The Dookhan court cases had effectively

been consolidated by the SJC into *Kevin Bridgeman & Others v. District Attorney for the Suffolk District & Others*, No. SJ-2014-0005 (Mass. Supreme Judicial Ct.).

In a January 2017 ruling in the *Bridgeman* case [the SJC reviewed](#) the effectiveness of the notice sent by the district attorneys. The Court determined "the notice sent by the district attorneys was wholly inadequate to provide the relevant Dookhan defendants with the information necessary to knowingly and voluntarily decide whether they should explore with counsel the possibility of withdrawing their plea or moving for a new trial."

However, the Court rejected the defendant's remedy of a global order dismissing all Dookhan related cases. Instead the court ordered that the district attorneys file three letters with the Clerk of the Supreme Judicial Court within 90 days. The second of those letters [was to identify](#) all cases in their jurisdiction affected by Dookhan that "the District Attorney would move to vacate and dismiss with prejudice."

Those letters were filed by April 18, 2017. They identified a total of 21,587 convictions that the district attorneys in the seven counties thought warranted being vacated and the case dismissed. That was a little more than half of the more than 40,300 cases Dookhan "worked" on during her eight years as a chemist in the Hinton laboratory.

On April 19, 2017 Supreme Judicial Court Justice Frank M. Gaziano issued a Declaratory Judgment Order vacating the convictions in those 21,587 cases, and ordering their dismissal with prejudice. [The Order stated:](#)

"... it is ORDERED that the convictions of G. L. c. 94C offenses that have been identified by the district attorneys in their respective second letters, as reproduced in Attachment A to this order, be and hereby are VACATED AND DISMISSED WITH PREJUDICE, and any outstanding warrants associated with those convictions are recalled."

The Order effectively acquitted those 21,587 defendants because their cases can never be reprosecuted.

The April 19 Order attempted to shield the identity of the 21,587 exonerated people by impounding from public disclosure the district attorney's letters identifying them. However, only a day after the Order was

Dookhan cont. on page 5

Dookhan cont. from page 4

issued, a letter was submitted to Justice Gaziano by Attorney Miriam Conrad [that stated](#):

"I am the Federal Public Defender for the Districts of Massachusetts, New Hampshire, and Rhode Island. My office represents indigent defendants charged with crimes in federal court. I write to request a copy of the list of defendants against whom charges were ordered dismissed by the Court on April 19, 2017, as well as any other lists the Court deems appropriate for my office to receive."

Justice Gaziano has not yet responded to Conrad's request.

No information has been publicly disclosed about how many years the 21,587 defendants cumulatively spent wrongly imprisoned and/or on probation or parole.

[Click here to read the SJC's January 18, 2017 ruling in Kevin Bridgeman & Others v. District Attorney for the Suffolk District & Others](#), 476 Mass. 298 (1-18-2017)

Investigation of Hinton Lab by the Massachusetts OIG

On November 5, 2012 Governor Patrick requested that the Massachusetts Office of the Inspector General ("OIG") investigate the Hinton Lab, that he had ordered shut down from drug testing on August 30, 2012. The OIG's report was released on March 4, 2014. [Key conclusions](#) were:

- Dookhan was the sole bad actor at the Drug Lab.
- Management failures of lab directors contributed to Dookhan's ability to commit her acts of malfeasance.
- Department of Public Health ("DPH") Commissioner John Auerbach and his staff failed to respond appropriately to the report of Dookhan's breach of protocol.
- The Drug Lab lacked formal and uniform protocols with respect to many of its basic operations, including training, chain of custody and testing methods.
- The training of chemists at the Drug Lab was wholly inadequate.
- The Drug Lab failed to provide potentially exculpatory evidence to the parties in criminal cases by not disclosing information about additional, inconsistent testing results.
- The Drug Lab failed to uniformly and consistently use a valid statistical ap-

proach to estimate the weight of drugs in certain drug trafficking cases.

- The quality control system in place at the Drug Lab was ineffective in detecting malfeasance, incompetence and inaccurate results.
- The security at the Drug Lab was insufficient in that management failed to appreciate the vulnerability of the drug safe, and did not do enough to protect its contents.
- There were no mechanisms in place to document discrepancies in chain-of-custody protocols or inconsistent testing results.

The report made a number of recommendations that it suggested could improve the quality control of drug handling and testing.

[Click here to read the OIG's March 4, 2014 report](#) on the Investigation of the Drug Laboratory at the William A. Hinton State Laboratory Institute 2002–2012.

The Massachusetts legislature has appropriated \$30 million for expenses related to the Dookhan scandal. However, wrongful imprisonment compensation lawsuits could significantly increase that amount.

Sources:

[Kevin Bridgeman & Others v. District Attorney for the Suffolk District & Others](#), 476 Mass. 298 (1-18-2017)
[Supreme Judicial Court Dismisses](#) Over 21,000 Cases Affected by the Breach at the Hinton State Laboratory Institute, Press Release, Massachusetts Court System, April 20, 2017

[Kevin Bridgeman et al v. Dist Attorney for the Suffolk Dist. et al](#), No. sj-2017-m0008 (Mass. Supreme Judicial Court) - Special-Master-Report

[Bridgeman v. Dist. Att. for the Suffolk Dist.](#), 471 Mass. 465, 30 N.E.3d 806 (Mass. Supreme Judicial Ct., 5-18-2015)

[Kevin Bridgeman & Others v. District Attorney for the Suffolk District & Others](#), No. SJ-2014-0005 (Mass. Supreme Judicial Ct.) Docket (Entry 204: Declaratory Judgment ordering dismissal of 21,587 cases; and, Entry 208: Letter from Federal Public Defender Atty. Miriam Conrad requesting district attorneys letters identifying the 21,587 people whose convictions were vacated and their cases dismissed.)

["Bail set at \\$10,000 after arraignment](#) of Annie Dookhan, chemist in state drug lab scandal," *The Boston Globe*, September 28, 2012.

[Annie Dookhan, former state chemist](#) who mishandled drug evidence, sentenced to 3 to 5 years in prison, *Boston Globe*, November 22, 2013

[Commonwealth v. Scott](#), 467 Mass. 336 (Mass. Supreme Judicial Court 2014)

[Investigation of the Drug Laboratory](#) at the William A. Hinton State Laboratory Institute 2002–2012, Massachusetts' Office of the Inspector General, March 4, 2014

[Husband of Former Mass. Chemist](#) Reportedly Tried to Warn Prosecutor, NECN, Sept. 28, 2012

[Corrupt crime lab chemist](#) faces light sentence after ruining countless lives with falsified evidence, *PoliceStateUSA.com*, November 25, 2013

Annie Dookhan's Eight Year Rampage Of Faking Scientific Evidence To Convict Innocent People Was Aided By The Legal System

Justice Denied Editorial

Annie Dookhan's saga of sabotaging more than twenty-one thousand criminal cases in Massachusetts during the eight years she "worked" as a chemist in the Hinton State Laboratory is chronicled in [Justice Denied's article](#), "21,587 People Exonerated In Massachusetts Due To Fraudulent Crime Lab Testing" (May 6, 2017).

From her hiring in 2003 to her suspension in June 2011, Dookhan provided critical prosecution evidence by falsely certifying a suspected substance was an illegal drug. She was praised for her productivity and assistance to prosecutors during the years she was fabricating evidence by taking short-cuts and faking tests.

21,587 convictions in seven Massachusetts counties that depended on Dookhan's "drug certification" [were vacated](#) and the charges dismissed, on April 19, 2017 by the Massachusetts Supreme Judicial Court.

Justice Denied's article is the only known reporting about the Dookhan saga that makes the obvious observation she did not act alone: she was a cog in the law enforcement machine who was directly and indirectly assisted in her nefarious and illegal activities by hundreds, and possibly more than a thousand people. The success of her almost decade long subterfuge required willful blindness by a very large number of people intimately involved in Massachusetts' legal system: judges; prosecutors; defense lawyers; lab supervisors and technicians; and others.

It was only someone outside the legal system -- her husband -- who tried to alert authorities about Dookhan's dishonesty. However, his whistleblower warnings to the Norfolk County DA were ignored.

Given how deeply imbedded she was in the legal system, it isn't surprising that Dookhan's criminal career was only accidentally derailed: A lone person in the Hin-

Dookhan Editorial on p. 6

Innocents Database Was Started 20 Years Ago, On February 1, 1997

By Hans Sherrer

The first entries were made in the [Innocents Database](#) on February 1, 1997. Today, twenty years later, it is the only database in the world that strives to include every identifiable exoneration in the United States, as well as internationally. The database is accessible from [Justice Denied's homepage](#).

The Innocents Database began as an idea to compile into a useful form the information about wrongful conviction cases included in the *Stanford Law Review* article, "Miscarriages of Justice in Potentially Capital Cases," by Hugo Adam Bedau and Michael L. Radelet (1987).^[n.1]

More than eight thousand cases have been added to the database over the past twenty years from sources that include court records, magazine articles, newspaper stories, and books.

The database originally had 61 columns of possible data for each record. It has expanded to 232 columns so that as many unique aspects as possible can be tracked for each case. The database currently has millions of bytes of data.

The Innocents Database was first made available online sorted by name, and then also sorted by location and date of exoneration. In 2015 the accessibility and usefulness of the database to the public and researchers was enhanced when a sortable and searchable version [of the database](#) was made available online. In seconds information in the database can be sorted on any combination of over 100 columns to cull the specific data a user wants to know. Want to know how many people were exonerated in California in 2011 who falsely confessed? No problem. Want to know how many women were exonerated nationally in 2009. You can have the answer in seconds.

The [Innocents Database](#) includes 8,165 cases: 5,243 from the U.S., and 2,922 from 116 other countries. The database includes 4,325 U.S. cases from 2017 to 1989, when the first DNA exoneration occurred. The database includes:

- 592 innocent people sentenced to death.
- 1,020 innocent people sentenced to life in prison.
- 2,166 innocent people convicted of a homicide related crime.
- 1,067 innocent people convicted of a sexual assault related crime.
- 785 innocent people were convicted after a false confession by him or herself or a co-defendant.
- 3,041 innocent people were convicted of a crime that never occurred.
- 225 innocent people were posthumously exonerated by a court or a pardon.

- 74 innocent people were convicted of a crime when they were in another city, state or country from where the crime occurred.
- 1,851 innocent people had 1 or more co-defendants. The most innocent co-defendants in any one case was 29, and 20 cases had 10 or more co-defendants.
- 12% of wrongly convicted persons are women.
- The average for all exonerated persons is 7-1/8 years imprisonment before their release.
- 31 is the average age when a person is wrongly imprisoned.
- Cases of innocent people convicted in 117 countries are in the database.
- 5,242 cases involve a person convicted in the United States.
- 2,922 cases involve a person convicted in a country other than the U.S.

There are cases from more than one-third of the 3,142 counties and independent cities in the U.S. [Click here to see a map](#) showing all counties in the U.S. with a known wrongful conviction and the number of cases.

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

Note 1. The case information in "Miscarriages of Justice in Potentially Capital Cases" was included in the 1992 book, *In Spite of Innocence: Erroneous Convictions in Capital Cases*, by Radelet, Bedau, and Constance E. Putnam (Northeastern University Press, Boston, 1992).



Dookhan Editorial from p. 5

ton lab inadvertently noticed her slip-up of failing to provide initials in the evidence log book when she took out evidence without authorization in June 2011. If not for Dookhan's careless oversight, it is possible that to this day no one would be the wiser that she was engaging in her dirty work of framing ungodly numbers of innocent people.

Dookhan was the front person ... the "fall guy" for the consequences of what occurred during the eight years that scads of professional people believed on blind faith that she was a miracle worker at performing scientific tests for the Hinton Lab. She couldn't have done what she did without:

* The active assistance of her lab superiors and co-workers who didn't seriously question how she was able to perform tests at a superhuman rate;

* The support of prosecutors delighted that she reliably provided the evidence they needed to convict defendants;

* The lack of curiosity by a single judge about how a lone lab technician could provide evidence to convict an average of *11 people every court day* for year after year after year; and,

* The failure of a lawyer for a single one of the 21,587 exonerated defendants to question Dookhan's qualifications -- not even enough curiosity to do something as simple as checking her educational background and professional training to qualify as the expert who provided the evidence upon which their client's conviction was based. If only one defendant's lawyer had been competent enough to check Dookhan's background shortly after she was hired in 2003, her dishonesty would have been exposed and she would have been unceremoniously fired by the Hinton lab before she had the opportunity to reek havoc on the life of tens of thousands of people.

Dookhan was only able to do what she did because people in the Hinton lab, the seven prosecutors offices, the judges in the seven counties, and the public defenders and retained lawyers for the defendants, cooperated with her scam by effectively looking the other way in their assumption she was a super woman chemist -- and not a fraud.

Annie Dookhan took full advantage of the legal system's bureaucratic structure. The type of disinterested uncurious drones involved in the legal system's bureaucracy remains unchanged by the Dookhan scandal. It was an embarrassing episode that was a speed bump in business as usual.

The most important takeaway from Dookhan's eight-year rampage is there is very little to prevent innocent people from being preyed on by an unscrupulous person in a position of authority in any layer of the legal system.



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 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.

The 12 pardoned people, 10 men and 2 women, were: Daniel Baxter; Patrick Brennan; George Caldwell; Daniel Callahan; Margaret Conway; Joseph Downey; Louise Gadbois; Dennis Mant; Charles McKenna; Franklin C. Pratt; Job Sweet; and, Alexander Tenney.

A brief summary of several of those 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 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.



Massachusetts Governor George D. Robinson (1884-1887)

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

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

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.

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 committing 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.

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	2 yr	1884	1884
Margaret Conway	Arson	3 yrs	1882	1884
Joseph Downey	B & E	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	1881	1884
Alexander Tenney	B & E	18 months	1883	1884

Pardons cont. on p. 8

John Kennedy O'Hara's Voting Fraud Convictions Overturned After 18 Year Fight

On January 12, 2017 John Kennedy O'Hara's 1999 voting fraud related convictions [were overturned](#) in Kings County, New York.

John O'Hara was an attorney in Brooklyn who in the early-to-mid-1990s was an active political opponent of Kings County District Attorney Charles Hynes. In the 1990s O'Hara ran five times against Hynes allies — twice for City Council and three times for Assembly — and he backed candidates who tried to unseat Hynes as DA.

In 1996 Hynes' office obtained a seven-count indictment against the 35-year-old O'Hara: five counts of illegal voting; and one count each of offering a false instrument for filing and false voter registration.

O'Hara's prosecution was based on his voter registration on November 2, 1992 that

Pardons cont. from page 7

oned. 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 prison. 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 4,276 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.



John Kennedy O'Hara in courtroom when his conviction was overturned on January 12, 2017 (Jesse Ward, NY Daily News)

because it was uninhabitable. O'Hara used that address to vote five times from November 1992 to November 1993.

After a jury trial O'Hara was convicted on July May 13, 1997. He was sentenced to five years of probation, payment of a \$20,000 fine, and performing 1,500 hours of community service.

O'Hara appealed his conviction.

On November 10, 1997 the Appellate Division of the Supreme Court of New York ordered the 36-year-old O'Hara's immediate disbarment and his name was struck from the roll of attorneys and counselors-at-law.

On August 31, 1998 O'Hara's convictions were reversed and a new trial was ordered by the Appellate Division of the New York Supreme Court, Second Department. The Court's [ruling noted that](#) the "The trial court, over defense counsel's objections, granted the People's request for a missing witness charge with respect to Ms. Magaly Lucas, ... former girlfriend of the defendant." The prosecution contended that O'Hara didn't subpoena Lucas although he knew where she was and she had material evidence. The appeals court ruled the [judge prejudicially erred](#) by granting the "missing witness" charge, because there was no evidence O'Hara knew where his ex-girlfriend was, and "There was no evidence ... that Lucas had any knowledge concerning whether the defendant falsely used the 47th Street address to vote during the period of November 1992 to November 1993."

O'Hara's retrial in May 1999 ended in a mistrial after the jury couldn't reach a verdict.

O'Hara's third trial was in July 1999. The jury convicted him of all seven felonies. Kings County Supreme Court Judge Abraham Gerges sentenced O'Hara to three

years probation, 1,500 hours of community service, a fine of \$6,000, restitution of \$9,192, and payment of a \$5,000 civil penalty to the New York City Campaign Finance Board. (In 2002 the \$5,000 civil penalty was vacated in *People v. O'Hara*, 297 A.D.2d 768.)

years probation, 1,500 hours of community service, a fine of \$6,000, restitution of \$9,192, and payment of a \$5,000 civil penalty to the New York City Campaign Finance Board. (In 2002 the \$5,000 civil penalty was vacated in *People v. O'Hara*, 297 A.D.2d 768.)

In 2000 the Supreme Court Appellate Division affirmed O'Hara's convictions and sentence. O'Hara was granted leave to appeal that ruling.

On June 14, 2001 the New York Court of Appeals affirmed O'Hara's convictions in a majority 5 to 2 ruling. A dissenter argued that the address O'Hara used qualified as his residence under New York's civil Election Law, and noted that O'Hara was the only person known to have ever been convicted of violating New York's voter registration law.

O'Hara then filed a post-conviction motion based on ineffective assistance of counsel, which Judge Gerges denied in 2002. After that ruling [was affirmed](#) on appeal, O'Hara filed a federal habeas petition that was denied.

In 2005 O'Hara filed a selective prosecution motion that Judge Gerges denied.

O'Hara subsequently filed a motion for reinstatement as an attorney. Following a hearing concerning his motion, an investigating subcommittee of the Committee on Character and Fitness for the New York Supreme Court Appellate Division, Second Department, [issued its](#) Report on June 1, 2009. The Report expressed the opinion that O'Hara's prosecution was politically motivated: "Mr. O'Hara, accurately it appears, claims that the [Hynes's political] machine was gunning for him and pounced on his change of residency calling it election fraud." The Report concluded: "Although the committee has grave doubts that Mr. O'Hara did anything that justified his criminal prosecution, even if Mr. O'Hara was guilty of the offense for which he was convicted, we believe that Mr. O'Hara now has the requisite character and fitness to be reinstated as a member of the bar." (*In the Matter of John Kennedy O'Hara*, No. 1997-06257, slip op. (2d Dept., Committee on Character and Fitness, June 1, 2009, 2 and 6))

Based on the committee's report, O'Hara was reinstated to the New York bar on October 6, 2009. After his reinstatement [O'Hara told the](#) *Brooklyn Paper*, "Starting over at

O'Hara cont. on p. 9

O'Hara cont. from p. 8

48 feels great. Great, great, it feels great."

In January 2014 Kenneth Thompson took office as the new Kings County DA after defeating Hynes in the November 2013 general election. Hynes had been DA since 1990.

On January 6, 2015 O'Hara's attorney Joel B. Rudin [filed a](#) Notice of Motion to vacate O'Hara's judgement of conviction. The motion detailed that O'Hara's convicted conduct wasn't considered a violation under New York's civil law, and that since the denial of his 2005 selective prosecution motion new evidence had been discovered that numerous "prominent figures," particularly in Brooklyn, had committed similar acts but they hadn't been prosecuted by DA Hynes. The motion included evidence that Hynes himself violated the law because around the time of O'Hara's indictment, Hynes' "permanent" home address for his voting registration was a municipal office building. Rudin emphasized the importance of that new evidence because in 2005 Judge Gerges expressed approval of O'Hara's prosecution because of his "prominence in the community, his notoriety or his public status."

The motion also cited a June 2014 New York City Department of Investigation report, "Findings Regarding Misconduct by Former Kings County District Attorney Charles J. Hynes, Justice Barry Kamins and Others."

Upon taking office, Thompson invigorated the Kings County Conviction Integrity Unit (CIU) that Hynes established in 2011. Under Hynes the CIU had not contributed to the exoneration of a single person in three years.

The CIU began investigating O'Hara's case. The CIU interviewed the landlord of the apartment O'Hara listed as the address for his 1992 voter registration. During his trial she provided key prosecution testimony the apartment was uninhabitable, but she told Thompson's investigators it was not only fit to live in, but it had been renovated recently before he starting residing there. The landlord's recantation of her trial testimony undermined the credibility of the evidence the jury relied on to convict O'Hara.

Thompson was 50 when he died from cancer in October 2016. During Thompson's two years and nine months as DA, 21 wrongly convicted people were exonerated



Kings County DA Kenneth Thompson
(Kings County DA website)

On January 12, 2017 a Supreme Court judge set-aside O'Hara's convictions. He was the 22nd innocent person whose conviction Thompson was responsible for overturning.

While celebrating his exoneration with a chicken quesadilla and a beer, [O'Hara told](#) a *Brooklyn Paper* reporter: "I feel great after 20 years. Three trials, a dozen appeals — it's over!" He acknowledged the important role the *Brooklyn Paper* played in publishing stories that keep his case in the public eye, "Without the *Brooklyn Paper*, I wouldn't have been exonerated today."

O'Hara's lawyer Dennis Kelly [told the](#) *Brooklyn Paper* that Thompson kept his promise to investigate O'Hara's case when he was elected: "[Thompson] saw that it was a political hit ... that Hynes gave to John for somehow crossing the establishment of the Democratic Party that Hynes ran. We were in his office right after he was elected and he said, 'Yes John, we're going to get justice for you.'" Kelly also said O'Hara [will file a](#) lawsuit over his more than two decade ordeal: "It was a political witch-hunt [by Hynes] that caused this prosecution of John and we're going to hold them accountable in the very near future. A civil rights, malicious prosecution case will be filed shortly."

O'Hara is the only person known to have been convicted in New York state court of illegally registering and voting. In 1873 Susan B. Anthony was convicted in federal court in New York of violating the federal voting Enforcement Act (1870). Her crime was illegally voting as a woman for a member of Congress on November 5, 1872.

The Kings County DA's CIU is the largest in the country. Its structure and operation is a model for other prosecutor's offices to emulate. The CIU's website is, www.brooklynda.org/conviction-review-unit.

after a CIU investigation, and the charges against them were dismissed.

Based on the new evidence provided by the landlord, acting Kings County District Attorney Eric Gonzalez did not oppose O'Hara's motion.

The book cover features a red background with a silhouette of a person behind bars. The title 'Improper Submission' is in white, with the subtitle 'Records of a Wrongful Conviction' below it. The author's name 'Erma Armstrong' is at the bottom.

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

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

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Rodney Roberts Can Proceed With Federal Lawsuit Against Police & Prosecutor For Frame-up

On August 12, 2016 U.S. District Court Judge Kevin McNulty in Newark, New Jersey ruled that Rodney R. Roberts [could proceed](#) with his federal civil rights lawsuit related to his wrongful conviction for kidnapping. Roberts was incarcerated for almost 17 years based on evidence fabricated by the police and the prosecution. Roberts was released in 2014 after a thirteen year legal odyssey during which adverse post-conviction rulings by his trial Judge Eugene Codey were overturned three times by the appeals court.

On the dark rainy night of May 8, 1996 17-year-old Sheronda Atwell was walking alone in East Orange, New Jersey. A man came up behind Atwell and dragged her into an empty lot where he raped her. He ejaculated inside her.

Atwell went to a nearby residence where the police were called. Atwell was taken for a medical examination. Her rape kit of evidence that was collected included a vagina swab.

East Orange borders Newark, and the Newark police investigated the crime. Atwell didn't clearly see her assailant's face, but she described him as a black male who was 20 years old, 5'7" and about 185 pounds.

Rodney Roberts was arrested for theft on May 25, 1996 in Newark. Roberts was 29. At the time he was on parole for a 1986 sexual assault conviction, and he was held without bail.

On June 12, 1996 Roberts pled guilty to the theft charge, and he was then charged with a violation of his parole for his 1986 conviction.

Because of Roberts' decade-old sexual assault conviction, Newark Police Department Detective Derrick Eutsey suspected Roberts in Atwell's rape. Eutsey represented to the Essex County Prosecutor's Office that Atwell had positively identified Roberts from a photo array that included a 1986 mug shot photo of Roberts when he was 19-years-old. Eutsey claimed that Atwell signed and dated the back of the photo.

Eutsey's claim was the basis for the Essex County Prosecutor's Office to charge Roberts with the aggravated sexual assault and kidnapping of Atwell. (When Roberts later



Rodney R. Roberts after his release (John O'Boyle, The Star-Ledger)

requested to be provided with the photo, the prosecution failed to produce it and claimed it "lost" the photo.) Roberts was unrepresented when he pled not guilty during his arraignment on June 26, 1996. He was scheduled to have an appearance on the case three weeks later, on July 16, 1996. On the day of that hearing public defender Charles Martone informed Roberts that he had been assigned to represent him. Martone explained the victim had positively identified him, and that the prosecution was offering a plea deal that if Roberts pled guilty to kidnapping and a seven year prison sentence -- with early release on parole -- the sexual assault charge would be dropped, and he would be sentenced to concurrent three year prison terms for both the theft conviction and the parole violation. Roberts would be facing decades in prison if he was convicted after a trial, so he agreed to go along with Martone and accept the plea deal. However, during his plea hearing before Essex County Superior Court Judge Eugene Codey, Roberts stated on the record that he didn't know his alleged victim and he didn't commit the crime.

Judge Codey sentenced Roberts on October 17, 1996 to seven years in prison.

Roberts was denied parole in 1998 and again in 2000, because he refused to admit his guilt, and his unconvicted charge of rape, and his 1986 sexual assault conviction were considered to make him a high risk for recidivism.

On January 12, 2001 Roberts filed a *pro se* petition for post-conviction relief (PCR) asserting his innocence and to withdraw his guilty plea. Roberts claimed Martone provided ineffective assistance of counsel by advising him to plead guilty and that the dismissed sexual assault charge would not be used to penalize him in future proceedings. Judge Codey summarily denied Roberts' motion on January 18, 2001 -- only six days after Roberts had filed it.

In 2002 Roberts requested DNA testing of Atwell's rape kit, but the Attorney General's Office informed him there was no evidence to test.

On June 24, 2003 Roberts was again denied parole. He appealed that decision arguing

the parole board improperly considered his dismissed sexual assault charge. The appeal board denied his appeal, stating the parole board "must consider the information provided by the Department of Corrections."

In May 2004 Roberts completed his prison term.

However, instead of being released, the New Jersey Attorney General filed a petition for Roberts indeterminate civil commitment under the New Jersey Sexually Violent Predator Act. Pending his civil commitment hearing, on June 1, 2004 Roberts was transferred to the Special Treatment Unit for sex offenders at the Adult Diagnostic and Treatment Center in Avenel, New Jersey.

John Douard with the New Jersey Office of the Public Defender was assigned to represent Roberts. Douard interviewed Atwell, who told him that she never made a photo identification of her assailant, she never signed or dated the back of a photo of Roberts (or anyone else), and she did not even know that a person had been arrested and convicted for her assault.

During the commitment hearing that began on December 9, 2004, Douard learned a rape kit had been prepared from Atwell's medical examination after her assault, and that an analysis of that evidence conducted on July 18, 1996 -- two days after Roberts pled guilty -- noted the presence of sperm. The analyst requested blood and saliva samples from Roberts to compare with DNA testing of the rape kit. However, the analyst's request was ignored and the comparison of Roberts' DNA with testing of the rape kit for male DNA evidence was never performed.

Douard wrote a letter to the Essex County Assistant Prosecutor Robert D. Laurino requesting comparison of Roberts' DNA with DNA recoverable from the rape kit.

Roberts' submitted a cheek swab, but his DNA was only compared with the DNA of a vaginal slide in the rape kit -- not the actual swabs or a control saliva sample from Atwell. Laurino had informed the lab that everything the Newark P.D. had was sent to the lab for testing. The lab's report dated August 29, 2005 concluded that all the DNA on the vaginal slide was female -- so it excluded the presence of Roberts' DNA.

During that period of time, Atwell informed Essex County prosecutor investigator Michele R. Bolan that she gave birth to a son in February 1997 -- nine months after her

Roberts cont. on page 11

Roberts cont. from page 10

rape — and she requested a paternity test to determine if Roberts was the father. Bolan discussed the situation with Laurino, who refused to authorize the paternity test.

On September 27, 2005 Douard obtained an affidavit from Atwell in which she stated she had never identified her attacker to the police, and she did not know anyone had been arrested. (Two years later, on June 22, 2007 Atwell recertified the truth of her 2005 statement.)

Roberts filed a *pro se* PCR petition on February 15, 2006, and sought to withdraw his guilty plea. Judge Codey summarily denied the motion on the basis it was identical to the motion denied in 2001 and that it was time-barred.

Roberts appealed.

The Superior Court Appellate Division (SCAD) reversed Codey's ruling and remanded the case back to Codey. The appeals court ordered that Roberts be assigned counsel for consideration of the issues of his motion's timeliness and if it was procedurally barred. (See, *State v. Roberts*, 2007 WL 1468631, *1 (N.J. Super. Ct. App. Div. May 22, 2007))

On remand, Assistant Public Defender Stefan J. Van Jura was assigned to represent Roberts. The prosecution's brief filed on July 23, 2007 [asserted that](#) DNA testing on August 29, 2005 of Atwell's swabs and rape kit "did not provide conclusive results." Essex County Assistant Prosecutor Clara Rodriguez repeated those claims during the oral arguments before Judge Codey. Van Jura did not challenge the truthfulness of the prosecution's statements, even though Roberts was excluded as a contributor of DNA on the slide that only contained female DNA. Van Jura also didn't challenge Rodriguez' misrepresentation of the truth because the slide was only evidence in the rape kit DNA tested.

On July 30, 2007 Judge Codey denied Roberts' PCR petition. He dismissed the evidentiary value of Atwell's 2005 and 2007 [statements as being](#) "riddled with inconsistencies," and he found them "inherently suspect and untrustworthy" because Atwell claimed that after she was unable to identify her assailant in her hospital room, no one had ever contacted her again. Codey also ruled that Martone provided adequate counsel because he obtained a "very favorable plea bargain" for Roberts.

Roberts appealed. On July 17, 2009 the

SCAD reversed Codey's ruling and remanded the case back to him for an evidentiary hearing regarding two issues: First, to resolve the conflict between Atwell's 2005 and 2007 statements she never identified her assailant and the prosecution's claim she positively identified Roberts in 1996; and, Second, to determine what advice Martone gave Roberts regarding his guilty plea. (See, *State v. Roberts*, 2009 WL 2059583, *6_7 (N.J. Super. Ct. App. Div. Jul. 17, 2009))

Van Jura represented Roberts during the evidentiary hearing on October 27, 2009. Atwell testified that she never identified anyone as her assailant and did not sign the back of a photograph of Roberts. Roberts testified Martone persuaded him to plead guilty by telling him that he had spoken to Atwell and she positively identified Roberts. Roberts also testified his DNA was not found on the slide that was tested. Martone testified he never talked with Atwell. Investigator Bolan testified that in 2005 Assistant Prosecutor Laurino told her not to pursue a paternity test. At the conclusion of the hearing Judge Codey ordered Assistant Prosecutor Rodriguez to locate the missing biological evidence and also ordered a paternity test for Atwell's son.

The paternity test determined Roberts was not the father of Atwell's son.

Judge Codey denied Robert's PCR petition on May 19, 2010. He ruled the fact Robert's was not the father of Atwell's son did not exclude him as her rapist; that Martone was credible in denying he told Roberts that Atwell told him she ID Roberts; and that Atwell's testimony was "riddled with inconsistencies." [Codey stated](#): "It is obvious to even the most casual observer that this application by [Roberts] is a blatant attempt to withdraw a voluntarily entered plea, whose sentence has already been served, solely to enhance his efforts to have his status as a Sexually Violent Predator reconsidered."

Roberts appealed.

On March 8, 2013 the SCAD for the third time reversed a ruling by Codey in Roberts' case. The appeals court decided that Van Jura erred in not presenting Douard or investigator Price who could have bolstered the credibility of Atwell's statements, that he erred in not arguing that the [2005 DNA results](#) "on its face, excluded defendant's DNA," and that he should have called an expert to explain the significance of the DNA evidence. The court remanded the case to the Superior Court for another evidentiary hearing. (See, *State v. Roberts*,

2013 WL 844573 (N.J. Super. Ct. App. Div. Mar. 8, 2013))

Roberts was assigned a new lawyer — Michael Pastacaldi.

The case also was assigned to a new judge -- Sherry Hutchins-Henderson -- who ordered Rodriguez to locate Atwell's rape kit. Four years had passed since Rodriguez failed to produce the rape kit after being ordered to do so by Judge Codey. (Codey retired on Sept. 1, 2011 after 20 years as a judge.)

On June 17, 2013 Rodriguez reported that the entire original rape kit had been located, and Judge Hutchins-Henderson ordered DNA testing of the rape kit. On October 24, 2013, the forensic unit reported Roberts was excluded as the source of the sperm on Atwell's vagina swab.

Based on the new exculpatory DNA evidence, Roberts' guilty plea was vacated on November 21, 2013, and a new trial was ordered. The Essex County Prosecutor's Office opted not to retry Roberts, and their motion to dismiss the charges was granted on February 20, 2014 by Judge Hutchins-Henderson.

The New Jersey Attorney General's Office agreed to the setting aside of the finding that Roberts was a sexual predator. On March 10, 2014, the petition for Roberts' civil commitment was dismissed, and [he was released](#) from the STU on March 12, 2014. Roberts had been wrongly in custody for 17 years, 9 months, and 16 days (6,501 days) -- 7 years for his prison sentence and the balance for his civil commitment.

After his release Roberts [told reporters](#) about his ordeal trying to prove his innocence, "It was like being in the middle of a storm shouting and nobody hears you."

On September 24, 2015 [Roberts filed](#) a federal civil rights lawsuit (42 USC 1983) in Newark seeking \$72 million in damages as compensation. The complaint named as defendants: Essex County; City of Newark; Newark PD; Eutsey; Essex County Prosecutor's Office (ECPO); Laurino; Bolan; Martone; and, Van Jura.

On August 12, 2016 U.S. District Court Judge Kevin McNulty ruled on the defendant's motions to dismiss the claims against them, and determined the following claims could proceed to trial: Fabrication of evidence, negligence, and due process violations by Laurino and Bolan; Laurino's

Roberts cont. on page 12

99.8% Conviction Rate In U.S. Federal Courts Can Make Japanese Prosecutors Jealous

The presumption of innocence is often touted in the United States as the fundamental principle shielding an accused person from being unjustly convicted of a crime. The basis of that claim is that to overcome the presumption of innocence the government is required to present substantial evidence that proves beyond a reasonable doubt the defendant's guilt of every essential element of his or her accused crime(s).

There is, however, a sharp disconnect between the reality of how the legal system actually works, and the theory that the presumption of innocence provides a protective shield to a defendant.

A defendant who goes to trial forces the prosecution to present the evidence proving its case to a jury or a judge. However, that process is short-circuited by a defendant who enters a plea of guilty.[1] For judges the gold standard of evidence is a public confession of guilt. Consequently, a guilty plea effectively relieves the government of having to present independent evidence a defendant is actually guilty.

The Sixth Amendment to the U.S. Constitution guarantees a defendant has the right to a jury trial.[2] That looks good on paper and makes for a good sound bite in a 4th of July speech. However, in 2015 *only 1.6%* of federal court defendants whose case was adjudicated had a jury trial. and 0.8% of defendants waived their right to a jury trial and elected to be tried by a judge.[3] Conse-

Roberts cont. from page 11

supervisor liability; Vicarious liability against the ECPO and City of Newark; and legal malpractice by Martone. Eutsey's motion to dismiss the claims against him was still pending.

Sources:

[Man Exonerated by DNA](#) Test Moves Forward With Civil Suit, *New Jersey Law Journal*, August 15, 2016

[Rodney R. Roberts v. County of Essex, et al.](#) Case No. 2:15-cv-07061-KM-JBC (USDC Dist of NJ) (Ruling on summary judgment motion by the defendants — denying dismissal by some defendants)

[Newark man set free after serving 17 years](#) for a rape he says he did not commit, By Thomas Zambito, NJ.com, April 8, 2014

[Detained 17 years for kidnapping he didn't commit](#), man sues for \$72M, *The Star-Ledger* (Newark, NJ), October 06, 2015



Federal Court House with 'Abandon hope all ye who enter here' inscribed above entrance.

quently about 1 of every 63 defendants in federal court is convicted by a jury -- and 1 out of 42 is convicted after a trial of any kind. State courts aren't appreciably different, since about 4% of state court defendants are convicted after a jury or bench trial.

Whether tried by a jury or a judge, it is a shaky roll of the dice for a defendant to go to trial in federal court. Only 258 of the 3,024 defendants who went to trial in 2015 were acquitted. Thus a federal defendant who decides to go to trial has about a 1 in 12 chance of an acquittal.

The 41 out of 42 (97.6%) of federal defendants in 2015 whose case was adjudicated without a trial, were convicted by a plea of guilty -- a public confession. The federal judge or magistrate were minor participants with the U.S. Attorney's Office relying on the defendant's mouth to obtain those convictions.

Between guilty pleas and trials, the conviction rate was 99.8% in U.S. federal courts in 2015: 126,802 convictions and 258 acquittals. That wasn't an anomaly. In 2014 the conviction rate was 99.76% and in 2013 it was 99.75%.

There is nothing new about the high conviction rate in federal courts, although it has been consistently rising since 1973. The conviction rate has been above 99% since 2003, above 98% since 1995, above 97% since 1985, above 96% since 1982, above 95% since 1975, and above 94% every years since 1955.[4] As the conviction rate has increased, the number of acquittals has precipitously declined. The 2,371 defendants acquitted in federal court in 1973 was *more than* the 2,362 defendants acquitted in the *six years* from 2010 to 2015. That was the case even though in 1973 40,493 defendants were convicted, compared with the 850,365 defendants convicted from 2010 to 2015. Even more graphically, in 1973 there were 17 convictions for every defendant acquitted in federal court, while in 2015 *there were 493 convictions for every acquittal*. So a federal defendant is now about

2,900% more likely to be convicted than in the early 1970s.

Although overall federal courts generate convictions at a remarkable rate, there were twenty federal judicial districts that had a 100% conviction rate in 2015. Not a single defendant was acquitted in:

- Colorado: 466 convictions, 0 acquittals.
- Delaware: 88 convictions, 0 acquittals.
- District of Columbia: 262 convictions, 0 acquittals.
- Illinois, Central: 346 convictions, 0 acquittals.
- Illinois, Northern: 898 convictions, 0 acquittals.
- Illinois, Southern: 412 convictions, 0 acquittals.
- Indiana, Northern: 266 convictions, 0 acquittals.
- Indiana, Southern: 386 convictions, 0 acquittals.
- New Hampshire, 154 convictions, 0 acquittals.
- North Carolina, Eastern: 529 convictions, 0 acquittals.
- North Carolina, Western: 791 convictions, 0 acquittals.
- Pennsylvania, Middle: 392 convictions, 0 acquittals.
- Pennsylvania, Western: 495 convictions, 0 acquittals.
- Tennessee, Eastern: 722 convictions, 0 acquittals.
- Texas, Eastern: 1,071 convictions, 0 acquittals.
- Vermont: 201 convictions, 0 acquittals.
- Washington, Western: 518 convictions, 0 acquittals.
- West Virginia, Southern: 301 convictions, 0 acquittals.
- Wisconsin, Eastern: 336 convictions, 0 acquittals.
- Wisconsin, Western: 98 convictions, 0 acquittals.

It is particularly notable that in 2015 there were *zero* federal court acquittals in Illinois -- the fifth most populous state with 12.9 million people.[5]

Twenty-eight other federal judicial districts had one defendant acquitted in 2015:

- Alabama, Middle: 162 convictions, 1 acquittal.
- Alaska: 183 convictions, 1 acquittal.
- Arkansas, Western: 262 convictions, 1 acquittal.
- California, Northern: 470 convictions, 1 acquittal.
- Georgia, Southern: 445 convictions, 1 acquittal.
- Guam: 100 convictions, 1 acquittal.

Japanese cont. on page 13

Japanese cont. from page 12

- Iowa, Northern: 359 convictions, 1 acquittal.
- Iowa, Southern: 329 convictions, 1 acquittal.
- Kentucky, Western: 238 convictions, 1 acquittal.
- Louisiana, Eastern: 412 convictions, 1 acquittal.
- Louisiana, Middle: 171 convictions, 1 acquittal.
- Louisiana, Western: 353 convictions, 1 acquittal.
- Maine: 188 convictions, 1 acquittal.
- Massachusetts: 456 convictions, 1 acquittal.
- Mississippi, Southern: 306 convictions, 1 acquittal.
- Missouri, Eastern: 464 convictions, 1 acquittal.
- Missouri, Western: 891 convictions, 1 acquittal.
- Nevada: 671 convictions, 1 acquittal.
- New York, Eastern: 648 convictions, 1 acquittal.
- North Carolina, Middle: 526 convictions, 1 acquittal.
- North Dakota: 457 convictions, 1 acquittal.
- Northern Mariana Islands: 20 convictions, 1 acquittal.
- Ohio, Northern: 738 convictions, 1 acquittal.
- Oklahoma, Eastern: 99 convictions, 1 acquittal.
- Oregon: 640 convictions, 1 acquittal.
- South Carolina: 737 convictions, 1 acquittal.
- Utah: 650 convictions, 1 acquittal.
- West Virginia, Northern: 424 convictions, 1 acquittal.

So more than half of the 94 federal judicial districts had zero to one acquittal in 2015.

The five federal judicial districts with the most convictions were:

- Texas, Southern: 28,359 convictions, 7 acquittals. (99.9753% conviction rate)
- Arizona: 22,195 convictions, 10 acquittals. (99.9752% conviction rate)
- Texas, Western: 18,897 convictions, 11 acquittals.
- New Mexico: 4,869 convictions, 6 acquittals.
- California, Southern: 4,309 convictions, 12 acquittals.

Six federal judicial districts had less than a 99% conviction rate in 2015:

- Hawaii: 497 convictions, 12 acquittals. (97.6% conviction rate)
- Rhode Island: 130 convictions, 3 acquittals.

(97.7% conviction rate)

- Washington, Eastern District: 487 convictions, 8 acquittals.
- Montana: 451 convictions, 6 acquittals.
- Alabama, Southern: 329 convictions, 4 acquittals.
- Georgia, Northern: 677 convictions, 7 acquittals.

Statistically, the two best places to be prosecuted in federal court are Hawaii and Rhode Island. Those are the only two federal judicial districts with conviction rates less than 98% — 97.6% and 97.7% respectively.

The worst place to be prosecuted? Hard to say, but making a blind pick would be reasonable since deciding to go to trial can legitimately be considered either suicidal or the sign of a severely deranged mind in almost every other federal district. Of the federal courts that actually had an acquittal, the Southern District of Texas stands out with more than 4,051 convictions for every acquittal — a 99.9753% conviction rate.

Not only is a defendant who goes to trial very likely to be convicted, but once convicted there is a very low probability a wrongly convicted federal defendant can win exoneration. In 2015 there were only 31 known exonerations of a federal defendant, similar to 2014 when there were 29.[6] Likewise, of the thousands of federal habeas corpus petitions filed each year by state prisoners seeking to overturn their conviction, in 2015 only eight were exonerated by a state court after their federal petition was granted. That was slightly abnormal, because in 2014 three were exonerated, in 2013 four were exonerated, and in 2012 and 2011 two were exonerated each year. [7] So in five years 19 state prisoners in the U.S. were exonerated with the assistance of the federal courts.

Federal courts were not defendant friendly in 1955, or 1973, but now the odds are so heavily stacked against a defendant that it would be appropriate if every federal courthouse had Dante's admonition inscribed above its entrance: "Abandon hope all ye who enter here."

That is only a slight exaggeration since the statistics clearly show that a federal criminal court today functions as little more than a processing facility to transform hapless defendants into convicts.

The conviction culture that prevails in federal courts is resulting in the majority of U.S. District Court and magistrate judges going for a year and more without a single defendant being acquitted in their courtroom. So it is not only the prosecutors in the

U.S. Attorney's Office who have a conviction mentality, but it can also infect federal judges who experience a parade of defendants convicted by a plea bargain or after a trial. The acquittal of a federal defendant is becoming rare enough that it is almost as newsworthy as a confirmed story of a man biting a dog. For all but a handful of federal defendants the presumption of guilt is the operative principle underlying their prosecution, with the presumption of innocence an illusory catch phrase.

Ironically, the legal system in Japan is often criticized because of that country's conviction rate of more than 99%. A part of that criticism is prosecutors in Japan inordinately rely on a defendant's confession to obtain a conviction. [8] Yet, Japanese prosecutors don't have anything on federal prosecutors in the U.S. who have a 99.8% conviction rate, and as monopsonists, are able in almost 98% of cases to extract a confession of guilt to obtain a conviction.

Endnotes:

[1] An Alford plea is a face saving way to pled guilty, because it is legally considered indistinguishable from an outright guilty plea. A defendant entering an *Alford* plea admits the prosecution likely has enough evidence to convict.

[2] All federal defendants are entitled to a jury trial except those charged with a "petty offense" under 18 U.S.C. § 19, for which the maximum penalty for an individual is a \$5,000 fine.

[3] Federal Court statistics in this article are from U.S. Attorneys' Statistical Reports that are available for the years 1955 to 2015 (excluding 1976) at, <https://www.justice.gov/usao/resources/annual-statistical-reports>. (last viewed 5-17-2016)

In 2015, 2,032 of 127,060 federal court defendants whose case was adjudicated were tried by a jury and 992 were tried by a judge. In U.S. District Court of 69,791 defendants, 2,014 were tried by a jury, 206 were tried by a judge, and the remainder pled guilty. In U.S. Magistrate Court of 57,269 defendants, 18 were tried by a jury, 786 were tried by a magistrate, and the remainder pled guilty. An additional 9,133 defendants had the charges dismissed without an adjudication — 4,052 in U.S. District Court and 5,081 in U.S. Magistrates Court. [4] 1955 is the earliest year the U.S. Attorneys' Statistical Report is available online at, <https://www.justice.gov/usao/resources/annual-statistical-reports>. (last viewed 5-17-2016)

[5] U.S. Census Bureau at, <https://www.census.gov/quickfacts/table/PST04521/5/17>

[6] Innocents database, <http://forejustice.org/idb1989us.html> (Viewed 5-17-2016)

[7] *Id.*
[8] Forced to confess: Suspects in Japanese police cells are far too vulnerable to abuse, *The Economist*, Dec. 5, 2015. Available online at, <http://www.economist.com/news/leaders/21679472-suspects-japanese-police-cells-are-far-too-vulnerable-abuse-forced-confess> (Viewed 5-17-2016)

Sources:

[United States Attorneys' Annual Statistical Report, Fiscal Year 2015](#) (Esp. Tables 2 and 2B)

[United States Attorneys' Annual Statistical Report, Fiscal Year 1955 to 2014](#), (excluding 1976 that is unavailable online)

[Forced to confess](#): Suspects in Japanese police cells are far too vulnerable to abuse, *The Economist*, Dec. 5, 2015



49,000 Men Posthumously Pardoned Of Homosexual Crimes In United Kingdom

The United Kingdom has [posthumously pardoned](#) about 49,000 males who were convicted of consensual homosexual activity that is no longer considered criminal. The pardons were included in the Policing and Crime Act 2017 that received Royal Assent on January 31, 2017. People still alive who were convicted of the affected crimes can apply for a pardon.

The pardons were for males convicted of two crimes that have been partially decriminalized in the United Kingdom (England, Wales and Northern Ireland, with the exception of Scotland). Those crimes were:

- Buggery (sodomy/anal sex) was criminalized in 1533. The maximum penalty was death until 1861, when it was reduced to a maximum of life imprisonment.
- Gross Indecency was made a crime in the United Kingdom in 1885. It criminalized sexual activity other than sodomy between two males. The maximum penalty was two years in prison with or without hard labor.

The two crimes were decriminalized for private homosexual activity between consent-



Oscar Wilde
(dailymail.co.uk)

heterosexual and homosexual activity.

The movement for mass pardons arose after homosexual Alan Turing was granted a posthumous royal pardon by Queen Elizabeth II in 2013, for his conviction in 1952 for gross indecency with a 19-year-old male. Turing underwent “organo-therapy” – chemical castration – as an alternative to a prison sentence. He died in 1954 from what was ruled to be self-administered cyanide poisoning. Turing was an English mathematician, computer scientist, and cryptanalyst whose work breaking coded German military messages is credited with shortening World War Two.

The pardoning provision of the Policing and Crime Act 2017 is known as “Turing’s Law.”

Playwright Oscar Wilde was among the

ing males over the age of 21 in England and Wales in 1967, in Northern Ireland in 1982 (and in Scotland in 1980). The age of consent for lawful homosexual activity was reduced to 18 in 1994. In 2000 it was reduced to 16 to equalize the age of consent for

males posthumously pardoned on January 31st. Wilde was convicted in 1895 of gross indecency with a male, and sentenced to two years in prison at hard labor. Wilde died destitute in Paris in 1900.

The buggery pardons also apply to women because it was a non-gender specific crime. However, it isn’t known if any women were actually convicted of buggery.

The pardons don’t apply to convictions in Scotland, so the Scottish Parliament will have to separately deal with historic homosexual related prosecutions.

A summary of the UK’s Policing and Crime Act 2017 is online at www.gov.uk/government/collections/policing-and-crime-bill.

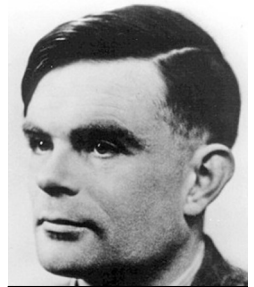
Sources:

[49,000 gay and bisexual men](#) convicted of ancient sex crimes - including Oscar Wilde - to be posthumously pardoned under new ‘Turing’s Law’, *Daily Mail* (London), January 31, 2017

[Sexual Offences Act 1967](#), Wikipedia.org

[Alan Turing](#), Wikipedia.org

[Policing and Crime Act](#), www.Gov.UK, January 31, 2017



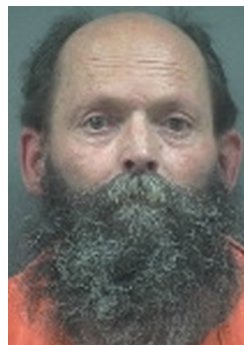
Alan Turing
(dailymail.co.uk)

James Richard Greene’s Conviction Tossed For Driving Motorized Wheelchair While Drunk

James Richard Greene [was acquitted by](#) the Oregon Court of Appeals on December 29, 2016, of driving under the influence of intoxicants while he was operating his motorized wheelchair.

On October 16, 2012 James Greene turned his motorized wheelchair from a sidewalk onto a marked crosswalk in Lincoln County, Oregon. The 56-year-old Greene then drove his wheelchair into the side of a moving truck. Greene was injured and received medical care. The officer who arrived at the scene determined Greene was intoxicated, and he was arrested.

Greene was charged with driving under the influence of intoxicants. His prosecution was based on the Lincoln County District Attorney considering a motorized wheel-



James Richard Greene
(Lincoln County, Oregon
Sheriff’s Office)

chair to be a “vehicle” under Oregon’s DUII statute. Thus when Greene was operating his wheelchair on the street he was driving a vehicle.

After a two day trial Greene was convicted by a jury in June 2013. Greene made a motion for a judgment of acquittal. He didn’t contest the evidence established he was intoxicated. His motion was based on the argument his wheelchair isn’t a vehicle under Oregon’s DUII law, so the prosecution failed to prove he was *driving* while intoxicated. The judge denied Greene’s motion, siding with the prosecution’s argument that a motorized wheelchair is a “vehicle” when on a street.

The judge sentenced Greene to pay a \$1,500 fine and suspended his driver’s license for three years.

Greene appealed. His lawyer argued that ORS 801.385 specifically defines “pedestrian” for purposes of the vehicle code, as “any person afoot or confined in a wheelchair.”

On December 29, 2016 the Oregon Court of Appeals unanimously reversed Greene’s conviction and ordered his acquittal. The Court determined that when a wheelchair is in an area of a street intended for pedestrians -- such as a crosswalk -- the operator is a pedestrian and not subject to Oregon’s DUII law. It was undisputed by the prosecution that Greene’s wheelchair was in a pedestrian crosswalk when he collided with the truck. [The Court ruled in](#) *State of Oregon v. James Richard Greene*, 283 Or. App. 120 (2016):

“Here, the evidence viewed in the light most favorable to the state establishes that defendant left a sidewalk in his motorized wheelchair and travelled in a crosswalk. Accordingly, defendant was a pedestrian and not a driver of a vehicle for purposes of the DUII statutes.

Greene cont. on page 15

Raffaele Sollecito Denied Compensation For Wrongful Imprisonment In Meredith Kercher's Murder

Raffaele Sollecito [has been denied](#) compensation for his wrongful imprisonment in the murder of Meredith Kercher on November 2, 2007 in Perugia, Italy. On February 11, 2017 the a court in Florence ruled that Sollecito was not entitled to compensation.

Sollecito was the boyfriend of 20-year-old American college student Amanda Knox when they were arrested for Kercher's murder.

No credible uncontested evidence was found at the crime scene linking either Sollecito or Knox to Kercher's murder in her bedroom of the house she shared with Knox and two other women. Their prosecution was largely based on incriminating admissions that Knox made when questioned by the police, which she recanted as coerced. Sollecito made inconsistent statements to the police that he also claimed were coerced.

In contrast to the lack of direct, eyewitness, or forensic evidence implicating Sollecito or Knox, forensic testing of evidence recovered from Kercher's room identified the DNA and fingerprints of 20-year-old Rudy Guede. In October 2008 Guede was con-



Raffaele Sollecito in 2015

victed of murder and sexual assault. He was sentenced to 30 years in prison. His conviction was affirmed on appeal, but his sentence was reduced to 16 years because he expressed remorse for Kercher's murder.

In December 2009 Sollecito and Knox were both convicted of murder. Sollecito was sentenced to 25 years in prison and Knox to 26 years. They were also ordered to pay total restitution of 5 million euros (\$7.4 million) to Kercher's family.

Extensive publicity about the case made Knox — who the media dubbed “Foxy Knoxy” — one of the most recognized people in the world. Almost two dozen books were written about Kercher's murder.

Sollecito and Knox spent 47 months in custody before their acquittals by an appellate court and their release from prison on October 3, 2011. Knox immediately left Italy for her home in Seattle, Washington.

On March 26, 2013 Italy's Supreme Court reversed the acquittal of Sollecito and Knox, and ordered their retrial.

Sollecito and Knox were again convicted on January 30, 2014. Sollecito was sentenced to 28-1/2 years in prison, and Knox to 25 years. Knox refused to voluntarily return to Italy to resume serving her sentence. Sollecito was arrested near Italy's border with Austria.

On March 27, 2015 Italy's Supreme Court acquitted Sollecito and Knox, and ordered the case closed.

In January 2016 Sollecito filed a claim for compensation from the Italian government. [He sought the](#) maximum he could be awarded, which was €516,000 (US\$560,293*).

Sollecito [stated during](#) a BBC interview that he and his family needed the compensation to “clear up my debts” of about €400,000 (US\$434,000) incurred as a result of his prosecution.

On January 27, 2017 a hearing was held on Sollecito's claim.

On February 11, 2017 a court in Florence denied Sollecito's claim. The court acknowledged Sollecito's acquittal by the Supreme

Court supported he had been wrongly imprisoned. However, the court ruled that Sollecito wasn't entitled to compensation because his conduct contributed to his conviction. The [court stated that](#) Sollecito made “contradictory or even frankly untrue” statements when Kercher's murder was being investigated, which constituted “intent or gross negligence” on his part.



Amanda Knox during her trial in 2009

Sollecito's lawyer, Giulia Bongiorno, was disappointed that the court's ruling failed to consider his conflicting statements to the police were given under duress. She said that error will be the basis of an appeal to the Supreme Court.

If the rationale for denying Sollecito compensation holds up on appeal, then Knox's pretrial police statements will prevent her from successfully seeking compensation.

Previous *Justice Denied* articles about the case of Sollecito and Knox are:

[Amanda Knox And Raffaele Sollecito Acquitted Of Murder And Sexual Assault By Appeals Court](#), By Hans Sherrer, *Justice Denied*, October 4, 2011.

[Amanda Knox Owes Her Freedom To Italy's Legal System](#), By Hans Sherrer, *Justice Denied*, Jan. 31, 2012

* The exchange rate was 1.085841 Euro per U.S. dollar on January 1, 2016.



Greene cont. from page 14

Hence, the trial court erred in denying defendant's motion for a judgment of acquittal.”

Although it didn't apply to Greene, the Court's ruling noted that a person can be charged with DUI when operating a wheelchair in a bike lane, because Oregon law specifically authorizes the prosecution of a drunken bike rider.

[Click here to read State of Oregon v. James Richard Greene](#), 283 Or App 120 (Ore. Ct. of Appeals, 12-29-2016).

Greene's \$1,500 fine will be reimbursed, however he has completed his three year driving prohibition.

Source: [State of Oregon v. James Richard Greene](#), 283 Or. App. 120 (Ore. Ct. of Appeals, 12-29-2016)

[Man in motorized wheelchair gets DUI conviction thrown out](#), *The Oregonian*, December 29, 2016



Visit the Innocents Database

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U.S. Ninth Circuit “So called Judges” Prove To The World They Are Agenda Driven Political Hacks

By Hans Sherrer

Every federal and state judge in the United States is a politician. A 2003 law review article [explained that](#), “Contrary to their carefully cultivated public image of being independent and above the frays of everyday life, judges are influenced and even controlled by powerful and largely-hidden political, financial, personal and ideological considerations.”[1]

Furthermore, judges are not only politicians, they are also lawyers. That is an unholy combination because public opinion polls consistently show that both lawyers and politicians have extremely low ratings by the public for honesty and integrity. Only 4% of people polled by Gallup in 2015 considered lawyers to have very high honesty and integrity, and only 3% of people consider politicians to have very high honesty and integrity.

Wearing a black robe doesn't magically imbue a politician who is a lawyer with admirable ethical qualities he or she doesn't possess. It is well-known that power corrupts and absolute power corrupts absolutely. So it is reasonable to think a judge's lack of honesty and integrity is magnified by the dictator-like power the judge wields over the life, liberty and property of the person or persons involved in a case. A huge majority of the public knows judges don't deserve veneration. A 2013 Gallup poll found that 9 out of 10 people -- 90%! -- do not think judges are very honest and ethical.

It doesn't make any difference whether a judge owes his position to the appointment process used for all federal judges and judges in some states, or the popular election process used to select judges in some states. [2] The appointment process is openly political because the political party in power wields inordinate influence over who is seated, and the elective process is inherently political because only a candidate who receives the endorsement of the state bar, police and prosecutor organizations, and the support of political party operatives can expect to be elected.

To even suggest that judges are unbiased, impartial arbiters is so contrary to what is observable in the real world that it is laugh-

The White House
Office of the Press Secretary

For Immediate Release

January 27, 2017

EXECUTIVE ORDER: PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES

EXECUTIVE ORDER

Protecting the Nation from Foreign Terrorist Entry into the United States

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 et seq., and section 301 of title 3, United States Code, and to protect the American people from terrorist attacks by foreign nationals admitted to the United States, it is hereby ordered as follows:

Executive Order 13769, The White House, Jan. 27, 2017

able on its face. It is as much a myth there are objective, unbiased judges as it is there are little green Martians, or Santa Claus delivers presents in a reindeer drawn sled. There is actually more evidence the Tooth Fairy exists than that there are unbiased judges, because children who put a tooth under their pillow do wake-up to find their tooth gone and money in its place. Judges not only play favorites, their biases generally aren't very well concealed, if at all.

That the ruling of a judge is affected by their personal biases is true for every member of a court from U.S. Supreme Court justices down to municipal court judges. The scale of justice is not evenly balanced, but it is weighted by the relevant biases of the judge or judges involved in a case.

For example, it is common practice for people to predict the outcome of a case in the U.S. Supreme Court, and other federal and state courts, based on the known political and ideological biases of the justices/judges involved. That is why during a presidential campaign in particular, the candidates put so much emphasis on the importance of their election so that a person that it is hoped will be sympathetic to the candidate's political ideology can be nominated and confirmed to the Court. We are seeing that now in the pending nomination of U.S. Circuit Judge Neil Gorsuch to the U.S. Supreme Court.

However, only occasionally does the obvious political bias of a judge or several judges become national news.

One such instance was U.S. Supreme Court Justice Ruth Bader Ginsburg repeatedly made headlines for her [derogatory comments](#) about Donald Trump and his policies during the 2016 presidential campaign. The

centerpiece of Trump's campaign was his advocacy of enforcement of U.S. immigration laws and construction of a wall along the border with Mexico to inhibit illegal entry into the United States. Ginsburg made her comments knowing Trump could be elected president and the Supreme Court would be dealing with any number of legal issues related to his administration, as it does for every administration. If Ginsburg doesn't recuse herself from every case involving the Trump administration — and particularly any immigration case — it could provoke a Constitutional crisis since it can be expected she would vote against the administration irrespective of the legal issues.

Another instance, and along the same lines as Justice Ginsburg's comments, has been the judicial response to President Donald Trump's Executive Order 13769: Protecting The Nation From Foreign Terrorist Entry Into The United States,” [issued on January 27, 2017](#). In summary, the 2,866 word Executive Order put in place a 90-day pause in travel from seven countries that former President Barack Obama's administration identified as hotbeds of what President Trump refers to as radical Islamic terrorism. During that pause the Secretaries of State and Homeland Security and the Director of National Intelligence are to evaluate the United States' visa, admission, and refugee programs because “the United States must ensure that those admitted to this country do not bear hostile attitudes toward it and its founding principles.”

The Executive Order cited among the authorities for its issuance, 8 USC § 1182(f), which was enacted in 1952 [and states](#):

Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

On February 3, 2017 U.S. District Court Judge James Robart granted a motion by the states of Washington and Minnesota for an emergency temporary restraining order barring enforcement of Executive Order 13769. Judge Robart granted the order on the basis Washington and Minnesota would likely succeed on the merits of their claims of irreparable harm if the TRO was not

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Ninth Circuit cont. from p. 16

issued, without citing a single fact or legal opinion supporting that conclusion, and he disregarded President Trump's authority under 8 USC § 1182(f).

The government appealed Judge Robart's ruling to the Ninth Circuit Court of Appeals. During the oral arguments on February 7, 2017, not a single question was asked by any of the three judges related to the legal basis of the Executive Order under 8 USC § 1182(f). On February 9 the three judge panel unanimously affirmed Judge Robart's ruling, without addressing or even citing a single time President Trump's legal authority to issue the Executive Order under 8 USC § 1182(f). The Court defended its action by asserting the Executive Order violated the due process rights of non-citizens outside the U.S. who want to enter the U.S.; that since the seven affected countries are predominantly Muslim it religiously discriminates against them; and that the states of Washington and Minnesota had standing to seek the restraining order because they might be injured by non-citizens from the seven affected countries not being able to visit state universities. The three judges [made it plain](#) their decision was politically motivated by noting "the massive attention this case has garnered," before ruling the public interest didn't plainly favor enforcement of the Executive Order because, "the public also has an interest in free flow of travel, in avoiding separation of families, and in freedom from discrimination." None of those reasons has anything to do with ensuring the national security of the United States that is the stated purpose of EO 13769.

The ruling of Judge Robart was predictable because he was nominated by Senator Patty Murray, who is a supporter of minimal enforcement of immigration laws, and the ruling by the three judge panel was likewise predictable because the questions the judges asked during oral arguments exposed they are card carrying members of the intelligentsia in the U.S. from which federal judges are drawn that predominantly favors minimal-enforcement of immigration laws -- regardless of their alleged political party affiliation.

President Trump responded to Robart's ruling [by tweeting](#): "The opinion of this so-called judge, which essentially takes law-enforcement away from our country, is ridiculous and will be overturned!"

Trump's reference to Robart being a "so-called judge" was understandable given that Robart's ruling did not even reference the law upon which the Executive Order was



President Donald J. Trump
(Whitehouse.gov)

based.

Trump's response to the Ninth Circuit's ruling was to publicly describe it as politically motivated [and to tweet](#): "LAWFARE: "Remarkably, in the entire opinion, the panel did not bother even to cite this (the) statute. "A disgraceful decision!" Trump [told reporters](#)

the ruling was a "political decision." That was a restrained comment because the day before the ruling Trump [told a meeting](#) of the Major County Sheriffs' Association and Major Cities Chiefs Association that "a bad high school student" would understand the Presidential authority under 8 USC § 1182(f) to issue Executive Order 13769.

Again, Trump's reference to the ruling being "a disgraceful decision" and "political" was understandable given that the three-judge panel of Judges Michelle Friedland, William Canby Jr., and Richard Clifton did not even reference the statute upon which the Executive Order was based -- that "a bad high school student" would understand required termination of Judge Robart's order.

Trump's comments were consistent with the self-identification of the four judges involved in their rulings as ideologues for a minimal or non-existent U.S. border who completely disregarded the relevant statute to further their political agenda. Can they not be considered in the same category as any other political hack?

Linda Klein, the president of the American Bar Association, responded to Trump's Tweet about Judge Robart's ruling [by stating during](#) an ABA meeting in Miami:

"Let me tell you what the most important border is: It's our Constitution and the rule of law it embodies. We as lawyers are called upon to protect it. Make no mistake: Personal attacks on judges are attacks on our Constitution. There are no 'so-called' judges in America. There are simply judges, fair and impartial. And we must keep it that way. Let us be clear: The independence of the judiciary is not up for negotiation. As lawyers, we are trained to be thinkers and leaders. ... So lawyers, let's lead. Let's lead by promoting and protecting the rule of law."

Political correctness that owes no allegiance

to the truth, dictated the indefensible assertion by the head of the ABA that the legal system is comprised of "fair and impartial" judges. The mass of people in the general public who have had the unfortunate experience of appearing before a judge to contest a traffic ticket know that is preposterous. Klein may actually agree with President Trump's reasonable observation the rulings on his Executive Order were by judges who substituted their political agenda of minimal or non-existent enforcement of U.S. border protections, instead of enforcing the legal authority vested in the President under 8 USC § 1182(f) to protect the people of the United States.

The arrogant disregard of the law and braggadocious substitution of their political ideological bias that Judges Robart, Friedland, Canby Jr., and Clifton put on display for the whole world to see, is an everyday reality for people asserting their innocence [in this country](#).

Since the U.S. District Court in Seattle and then the Ninth Circuit disregarded federal law and precedents in ruling against the U.S. government in *State of Washington v. Donald J. Trump* (2017), it is to be expected that state and federal courts disregard applicable laws and precedents in ruling against powerless persons with compelling evidence their conviction is faulty.

The response of one unidentified Ninth Circuit judge to the ruling by Judges Robart, Friedland, Canby Jr., and Clifton was to *sua sponte* request that the Ninth Circuit vote whether to reconsider the three judge's ruling *en banc* -- i.e., by a panel of 11 of the circuits judges. On February 10, 2017 the federal government and the states of Washington and Minnesota were "instructed to file simultaneous briefs setting forth their respective positions on whether this matter should be reconsidered en banc." [3]

So it may turn out that either Ninth Circuit judges, or U.S. Supreme Court justices, will be shamed into ruling on the law and not their personal biases in *Washington v. Trump*.

[Click here to read](#) the three-judge panel's ruling in *State of Washington v. Donald J. Trump*, No. 17-35105 (9th Cir., 2-9-17).

Endnotes:

[1] Sherrer, Hans, "The Complicity Of Judges In The Generation Of Wrongful Convictions," *Northern Kentucky Law Review*, Vol. 30, No. 4, 539 (2003).

[2] Many state judges are appointed by the governor in a state that has an election process, after the retirement of an elected judge prior to the expiration of their term. This is a technique that allows a governor to try to pack a court with judges of the same political persuasion as

Ninth Circuit cont. on p. 18

Kirstin Lobato Attacked By Mass Murderer At Woman's Prison

The *Las Vegas Tribune's* [lead article on the front page](#) of its February 22, 2017 issue is, "Kirstin Lobato Attacked By Serial Killer At Woman's Prison." The article was written by Hans Sherrer, *Justice Denied's* editor and publisher. The article can be read on the *LV Tribune's* website at, [LasVegasTribune.net](#).

The article details that on the night of February 10, 2017 serial killer Valerie Moore attacked Kirstin Blaise Lobato with a deadly weapon at the Florence McClure Women's Correctional Center (FMWCC) in North Las Vegas. Lobato was able to defend herself from being seriously injured until guards arrived to subdue Moore. Moore has been convicted of 13 murders, and she is serving life in prison without the possibility of parole. Moore is believed to be the most prolific female mass murderer imprisoned in the United States, and one of

Ninth Circuit cont. from p. 17

the governor, because regardless of whether elected or appointed, sitting judges are overwhelmingly retained in an election.

[3] *State of Washington v. Donald J. Trump*, No. 17-35105 (9th Cir.) (Order, 2-10-2017)

Sources:

[ABA President Rails Against Trump](#) Tweets Attacking Judge Who Blocked Ban, By Celia Ampel, Law.com, February 6, 2017

["The Complicity Of Judges In The Generation Of Wrongful Convictions,"](#) by Hans Sherrer, *Northern Kentucky Law Review*, Vol. 30, No. 4, 539

[Executive Order 13769](#): Protecting The Nation From Foreign Terrorist Entry Into The United States, www.whitehouse.gov, January 27, 2017

[State of Washington v. Donald J. Trump](#), No. C17-0141JLR (USDC West. Dist. 2-3-17) (Granting nationwide temporary restraining order of Exec. Order 13769)

[State of Washington v. Donald J. Trump](#), No. 17-35105 (9th Cir., 2-9-17) (Denying govts. appeal of Judge James Robart's grant of a temporary restraining order.)

[Donald Trump Is Right About Justice Ruth Bader Ginsburg](#), The Editorial Board, *The New York Times*, July 13, 2016

[Donald Trump Tweet regarding Judge Robart's ruling](#) on February 4, 2017, twitter.com/realdonaldtrump

[Donald Trump Tweet regarding Ninth Circuit Court's ruling](#) on February 10, 2017, twitter.com/realdonaldtrump

[Trump Calls Ruling a 'Political Decision'](#), By The Associated Press, ABCNews.go.com, February 9, 2017

[Trump's Message to the Courts](#): Even 'A Bad High School Student' Would Understand the Law in Question, By Susan Jones, CNSNews.com, February 8, 2017

"Nevada Supreme Court 'Politicians' Sold Out To The DA in Kirstin Lobato Ruling," *Las Vegas Tribune*, November 30, 2016



Kirstin Lobato attacked by serial killer at women's prison



My Point
Las Vegas Tribune's front page for Feb. 22, 2017 issue.

the most prolific in American history.

Lobato has unwaveringly insisted on her innocence of her 2006 convictions of voluntary manslaughter and other charges related to the death of a homeless man in Las Vegas in 2001. She was sentenced to 13 to 35 years in prison.

[Justice Denied's](#) post-conviction investigation of [Lobato's case](#) discovered new scientific and medical evidence proving she was 165 miles from Las Vegas at the time of the crime. In December 2016 the Supreme Court sent her case back to the District Court for an evidentiary hearing regarding ineffective assistance of counsel by the Clark County Special Public Defenders Office during her trial, and to resolve her habeas corpus claim of being actually innocent.

Information about Ms. Lobato's case and the new evidence of her actual innocence detailed in her habeas corpus petition is on Justice Denied's Kirstin Blaise Lobato's case webpage at, [www.justicedenied.org/kbl.htm](#).

Sources:

["Kirstin Lobato Attacked By Serial Killer At Woman's Prison,"](#) By Hans Sherrer, *Las Vegas Tribune*, February 22, 2017

Kirstin Blaise Lobato's case on Justice Denied website, [www.justicedenied.org/kbl.htm](#)

The following is the *LV Tribune* article .

Kirstin Lobato Attacked By Serial Killer At Woman's Prison

By Hans Sherrer
Justice Denied (justicedenied.org)
Special for the *Las Vegas Tribune*

Serial killer Valerie Moore attacked Kirstin Blaise Lobato with a deadly weapon on February 10, 2017 at the Florence McClure Women's Correctional Center (FMWCC) in North Las Vegas.

The *Las Vegas Tribune* [has published](#) many articles concerning the legal saga of Kirstin Lobato. For more than ten years her case has been batted back and forth between the Clark County District Court and the Nevada Supreme Court.

In 2006 Lobato was sentenced to 13 to 35 years in prison for her convictions of voluntary manslaughter and other charges related to the death of a homeless man in Las Vegas in 2001. Lobato has unwaveringly insisted on her innocence, and new scientific and medical evidence has been discovered proving she was 165 miles from Las Vegas at the time of the crime. In December 2016 the Supreme Court sent her case back to the District Court for an evidentiary hearing regarding ineffective assistance of counsel by the Clark County Special Public Defenders Office during her trial, and to resolve her habeas corpus claim of being actually innocent.

Lobato's case has garnered international attention, and the Innocence Project in New York recently agreed to represent Lobato *pro bono* in her habeas corpus case. The Innocence Project has been involved in exonerating more than a hundred innocent people nationally.

On the evening of February 10th Moore launched an unprovoked vicious attack on Lobato with one of the most dangerous weapons readily available to her: a sock full of batteries that Moore was able to sling to increase its destructive power.

Moore beat Lobato on the head and upper body before Lobato was able to neutralize Moore by putting her in a choke-hold. Moore chewed on Lobato's arm in an effort to free herself. When guards arrived, they pepper sprayed both Moore and Lobato, and subdued Moore.

Lobato suffered an injury to her head, and wounds to her arm from Moore biting her.

Guards put Moore and Lobato in disciplinary segregation pending an investigation.

The Nevada Department of Corrections in Carson City did not provide any comment when contacted by Justice Denied about Moore's assault of Lobato, and attempts to contact FMWCC Warden Dwight Neven for comment about Moore's assault were unsuccessful.

The NDOC Office of the Inspector General investigates crimes committed in a prison. When they were contacted by Justice De-

Lobato cont. on p. 19

Lobato cont. from p. 18

nied, Perla Hernandez said the IG's office had not been notified by FMWCC about Moore's assault. Hernandez took details of the incident and said she would forward them to the appropriate person in the IG's office for investigation.

The Clark County District Attorney's Office did not comment when contacted by phone, and has not responded to an email from Justice Denied inquiring if the DA's Office will be involved in the investigation and prosecution of Moore's pre-meditated criminal acts in assaulting Lobato. Assault with a deadly weapon and attempted murder are among the crimes Moore could be charged with.

The attack on Lobato raises questions about the Nevada DOC's prisoner classification and confinement policy. The DOC appears to be disregarding that Moore, 57, has a thirty-year history of engaging in fits of uncontrolled violent and deadly behavior. Moore is a serial killer responsible for the deaths of 13 people.

Moore is currently serving 12 life sentences without the possibility of parole plus 15 years. She was convicted in January 2007 of 12 counts of first-degree murder and one count of first-degree arson for setting the October 31, 2006 fire at the Mizpah Hotel in Reno. Moore lived at the Mizpah, that was primarily an inexpensive residential hotel where rooms rented for \$150 a week. On Halloween night Moore [argued with](#) a male tenant and threatened him, "You will be gotten." Two hours later Moore started a mattress on fire outside the man's door. A tenant in the hotel [said Moore](#) "just flipped."

The Mizpah had no fire sprinkler system, and the 84-year-old three-story building was quickly engulfed in flames. People trapped in their rooms jumped from upper floor windows. Twelve people died, all from smoke inhalation, and 31 were injured.

At the time she started the fire Moore was on parole for her 1987 conviction of second-degree murder with a deadly weapon. Moore was one of three women involved in the February 27, 1987 murder of Kathleen Kennedy in Reno. Kennedy's death resulted from an argument about money and rebuffing Moore's sexual advances. Moore struck Kennedy in the head with a rock and stomped on her. A codefendant testified that [Moore said](#) about Kennedy when she was near death, "You might as well kill the bitch."

Moore was convicted by a jury in September 1987 and sentenced to life in prison with the possibility of parole.

While imprisoned Moore was implicated in a heroin smuggling ring at the Southern Nevada Women's Prison (now known as the FMWCC). A prison guard was arrested in September 2003 for trying to smuggle heroin hidden in her bra to Moore. The guard, Constance Edwards, was paid \$50 to \$200 per trip by Moore's ex-cellmate, Karen Matthews, to smuggle the drugs to Moore. Edwards also smuggled other items to Moore that weren't available in the commissary. At the time of her arrest Edwards had been smuggling drugs and other goods to Moore for about a year.

Moore was disciplined for her role in the heroin smuggling operation, but it didn't interfere with her release on parole in June 2005.

Sixteen months after Moore's parole she started the deadly fire in a fit of rage. To avoid the death penalty [she pled guilty](#) to the 12 murders she committed at the Mizpah. Her sentence bars her from ever being released back into society.

Around eight months ago the NDOC moved Moore into a cell with Lobato.

Confidential sources report that at least once a week Moore "goes crazy" and runs screaming and yelling through the pod she is housed in. It is reported that Lobato has been seen trying to calm Moore down during her intense manic episodes. It is also reported that Moore is not in counseling or on any medication to control her mental instability.

Evidence is readily available to prison authorities that Moore is mentally unstable and an unpredictable threat to the safety of women prisoners at FMWCC. The investigation of Moore's assault on Lobato could be expanded to include an investigation of the culpability of prison officials in failing to fulfill their important responsibility to protect Lobato and the other women at FMWCC, from Moore.

Author note: Hans Sherrer is President of the Justice Institute aka Justice Denied that conducted a post-conviction investigation of Kirstin Lobato's case. The Justice Institute is based in Seattle, Washington and promotes awareness of wrongful convictions, and maintains the world's largest database of exonerated persons. Its website is, www.justicedenied.org.

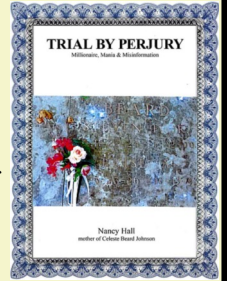


Trial by Perjury: Millionaire, Mania & Misinformation

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

The Japan Innocence & Death Penalty Information Center has a database of wrongful Japanese convictions online at, <http://www.jiadep.org>

Visit Justice Denied's Wordpress Page

Justice Denied's Wordpress page has the latest articles and information. See, www.justicedenied.org/wordpress

Justice Denied's Website Has Had Visitors From 225 Countries

Justice Denied's website has had visitors from 225 countries through 2016. Those visitors were from more than 21,700 cities and towns. Six of the 20 cities where the most visitors were from are outside the U.S.

www.justicedenied.org

8,540 Cases Now In Innocents Database

The Innocents Database now includes 8,164 cases: 5,242 from the U.S., and 2,922 from 116 other countries. The database includes 4,323 U.S. cases from 2017 to 1989, when the first DNA exoneration occurred.

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

- 592 innocent people sentenced to death.
- 1,050 innocent people sentenced to life in prison.
- 2,215 innocent people convicted of a homicide related crime.
- 1,087 innocent people convicted of a sexual assault related crime.
- 802 innocent people were convicted after a false confession by him or herself or a co-defendant.
- 3,346 innocent people were convicted of a crime that never occurred.
- 228 innocent people were posthumously exonerated by a court or a pardon.
- 85 people were convicted of a crime when they were in another city, state or country from where the crime occurred.
- 1,925 innocent people had 1 or more

co-defendants. The most innocent co-defendants in any one case was 29, and 22 cases had 10 or more co-defendants.

- 12% of wrongly convicted persons are women.
- The average for all exonerated persons is 7-1/8 years imprisonment before their release.
- 31 is the average age when a person is wrongly imprisoned.
- Cases of innocent people convicted in 117 countries are in the database.
- 5,530 cases involve a person convicted in the United States.
- 3,010 cases involve a person convicted in a country other than the U.S.

[Click here to go to the Innocents Database at www.forejustice.org/exonerations.htm.](http://www.forejustice.org/exonerations.htm)

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

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

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

The database can now be sorted on a Com-

pensation column to find such information as: the compensation awarded to persons for any year or state, or the compensation awarded in a particular type of case, such as those involving DNA or a false confession, etc.

The Innocents Database is an ongoing project that began more than 20 years ago, and now contains millions of bytes of data related to exonerations. The accessibility and usefulness of that data to the public and researchers is improved by the ability to search and sort for specific information.

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



Visit the Innocents Database

Includes details about more than 8,100 wrongly convicted people from the U.S. and other countries.

www.forejustice.org/search_idb.htm

Visit Justice Denied's Facebook Page

Justice Denied's Facebook page has information related to wrongful convictions. Justice Denied's homepage has a link to the Facebook page,

www.justicedenied.org

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:

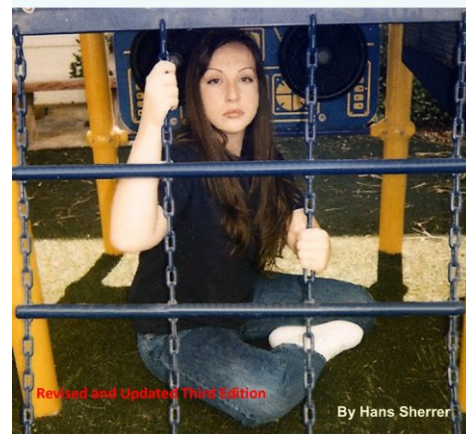
* An updated Timeline of Ms. Lobato's case from 2001 to the present, that begins on p. 10.

* 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.

KIRSTIN BLAISE LOBATO'S UNREASONABLE CONVICTION

Possibility Of Guilt Replaces Proof Beyond A Reasonable Doubt



[Click here to download at no charge](http://www.justicedenied.org/kbl.htm) *Kirstin Blaise Lobato's Unreasonable Conviction* in PDF format from www.justicedenied.org/kbl.htm.

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

* 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't have a ton of \$ to spend on groceries." Alicia

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

High Fence Foodie continues the high standard of *From The Big House To Your House*! Celeste hopes her recipes will ignite a read-



er'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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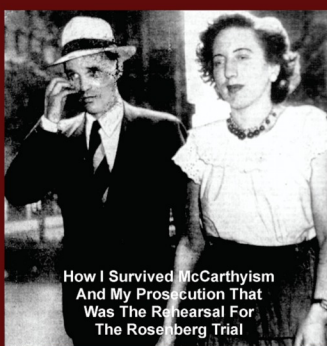
Phantom Spies, Phantom Justice

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

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

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

Phantom Spies, Phantom Justice



MIRIAM MOSKOWITZ

Updated with new chapters and copies of FBI documents

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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Cooking in prison

With

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

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

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

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

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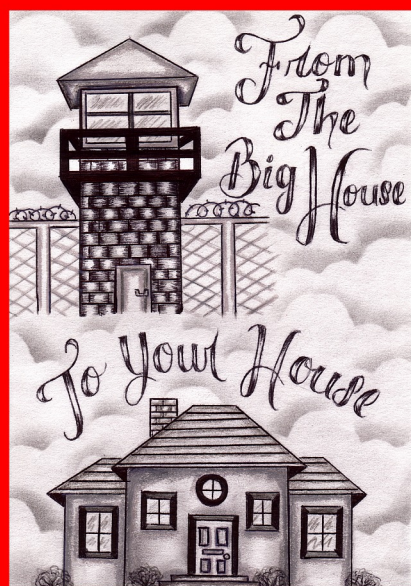
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Ceyma Bina, Tina Cornelius, Barbara Holder,
Celeste Johnson, Trenda Kemmerer, and Louanne Larson

Published by Justice Denied

Edwin M. Borchard – Convicting The Innocent

Edwin M. Borchard – *Convicting The Innocent and State Indemnity For Errors Of Criminal Justice* has [been published](#) by The Justice Institute/Justice Denied.

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

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

Introduction

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

Chapter 2. Edwin Borchard, Law Expert, Dead

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

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

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

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

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**Convicting The Innocent
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COMPILED AND INTRODUCTION
BY HANS SHERRER

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

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Justice:Denied Disclaimer

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

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Citizens United for Alternatives to the Death Penalty

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www.cuadp.org

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

Dehumanization Is Not An Option

An Inquiry Into Law Enforcement and Prison Behavior

By Hans Sherrer

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

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KIRSTIN BLAISE LOBATO'S UNREASONABLE CONVICTION

Possibility of Guilt Replaces Proof Beyond A Reasonable Doubt



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

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

Paperback, 176 pages, \$13

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

"This Court has never held that the Constitution forbids the execution of a convicted defendant who has had a full and fair trial but is later able to convince a habeas court that he is "actually" innocent. Quite to the contrary, we have repeatedly left that question unresolved, while expressing considerable doubt that any claim based on alleged "actual innocence" is constitutionally cognizable."

U.S. Sup. Ct. Justice Antonin Scalia dissenting.
In Re Davis, 130 S.Ct. 1, 3 (2009)

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21,587 Convictions Tossed Because Of Fake Lab Testing

On April 19, 2017 the Massachusetts Supreme Judicial Court ordered the vacating of 21,587 convictions and the dismissal of the charges due to criminal and fraudulent activity by crime lab technician Annie Dookhan in handling evidence, conducting "tests," and issuing the "Drug Certificates" upon which the convictions were based.

See p. 3

The Magazine for the Wrongly Convicted

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

Justice:Denied provides a public voice for innocent people victimized by that tragic reality.