

## Clyde Ray Spencer's \$9 Million Jury Award For False Rape Prosecution Upheld On Appeal

A \$9 million federal jury award to Clyde Ray Spencer for a police officer's fabrication of evidence he committed child rape [has been upheld](#) on appeal. Spencer was convicted in 1985 of the statutory rape of his three children in Vancouver, Washington, and he was imprisoned for more than 19 years before his release in 2004.

In 1984 Clyde Ray Spencer was a Vancouver, Washington motorcycle police officer. His first wife and their two children lived in Sacramento, California.

While his children were visiting in August 1984, Spencer's second-wife, Shirley, told him she thought they might have been abused. He contacted the Vancouver Police, the Clark County Sheriff's Office, and CPS in both Vancouver and Sacramento.

On January 2, 1985 Spencer was charged with the statutory rape of his daughter Katie after Clark County Sheriff's Office Detective Sharon Krause had interviewed her a number of times. He was released on bail.

After further "investigation" by Officer Krause, he was charged on May 3, 1985 with the statutory rape of both his natural son Matt, and his stepson, also named Matt.

On May 16, 1985 Spencer pled guilty pursuant to an *Alford* plea, instead of putting his three children through the ordeal of testifying in court. An *Alford* plea has all the legal consequences of a guilty plea, while allowing a person to claim their innocence while acknowledging there is enough evidence to convict them of the crime. While maintaining his innocence, Spencer was sentenced to two life terms, plus 171 months.

Spencer's wife Shirley divorced him in the summer of 1985.



Clyde Spencer with his son Matt and his daughter Katie (Spencer family photo)



Clyde Ray Spencer after the charges were dismissed on September 29, 2010 (Columbian)

Spencer [married his third-wife](#) Norma, in 1987. They first met in Guam in 1968 during the Vietnam War, when he was an Air Force air traffic controller and she was a civilian nurse in a U.S. Naval Hospital. They reconnected when Spencer wrote to her from prison that he still loved her and he was not guilty of molesting his children and stepson. For almost two decades Norma worked two jobs to pay for Spencer's legal appeals and reinvestigation of his case.

Based on new evidence casting doubt on the police investigation and accounts of abuse by his children, his sentence was commuted to community supervision for three years by Washington Governor Gary Locke in 2004. He was released after almost 20 years in custody. However, he was required to register as a sex offender.

Spencer subsequently filed a post-conviction personal restraint petition to withdraw his guilty (*Alford*) plea based on recantations by Spencer's natural children (His adult son Matthew Spencer signed an affidavit in February 2006 stating he was never abused and that he lied to get Krause to leave him alone after she had questioned him for months, and his adult daughter Kathryn Spencer Tetz recanted in September 2007. She said she didn't remember what she told Krause, but she said it after Krause bought her ice cream.); discovery the prosecution failed to disclose prior to his plea that medical exams of his natural children showed no evidence of abuse (his step-son wasn't examined); and, that statements in the police investigation reports were fabricated.

On October 13, 2009 the Washington Court of Appeals granted Spencer's petition and he was allowed to withdraw his guilty (*Alford*) plea.

On September 29, 2010 Spencer was rearraigned, and he pled not guilty. The Clark County District Attorney's Office's motion to dismiss was granted by the Clark County Superior Court.

In June 2011 Spencer filed a 13 count federal civil rights lawsuit under 42 USC §1983 that named Clark County, several officers, and his ex-wife Sharon as defendants.

During Spencer's 17-day his attorney Kath-

leen Zellner read to the jury more than 300 statements in the police investigator's reports that were fabricated. Zellner also presented evidence the children repeatedly told the investigators that no abuse took place, and that the medical exams of his two natural children didn't show any abuse.

On February 4, 2014 [the jury awarded](#) Spencer \$9 million. The jury found that Sharon Krause, the Clark County Sheriff's Office detective who investigated Spencer's case, "deliberately fabricated" false evidence that he raped his children, and either "knew or should have known" Clyde Spencer was innocent of the crimes he was charged with. The jury also found Krause's supervisor, Clark County Sergeant Michael Davidson, had an affair with Spencer's wife and was liable for damages in his supervisory capacity.

On February 12, 2014 the Board of Clark County Commissioners voted unanimously [not to pay](#) the judgment. The Commission was advised by Chris Horne, the county's chief civil deputy prosecutor, that since Krause was found to have fabricated evidence, she was outside the scope of her duties as a county employee and so the county wasn't financially responsible.

On August 13, 2014 U.S. District Court Judge Benjamin Settle in Tacoma, Washington granted the county's motion to overturn the judgment on the basis there was insufficient evidence presented at trial to prove Krause knew or should have known that Spencer was innocent, and that jurors were given erroneous instructions. Judge Settle ruled that if Spencer wanted to pursue his case there would be a new trial.

Spencer appealed Judge Settle's ruling to the Ninth Circuit Court of Appeals.

On March 9, 2017 the U.S. Ninth Circuit Court of Appeals heard oral arguments in Spencer's appeal. On May 18, 2017 the 9th Circuit reversed Judge Settle and ordered reinstatement of the jury's verdict. The [court ruled in](#) *Spencer v. Peters, et al*, No. 14-35689 (9th Cir. 5-18-17):

"The Fourteenth Amendment prohibits the deliberate fabrication of evidence by a state official. ...

In this 42 U.S.C. § 1983 action, Plaintiff Clyde Raymond Spencer introduced direct evidence of deliberate fabrication, specifically, evidence that Clark County Sheriff's Office Detective Sharon Krause deliberately mischaracterized witnesses' statements in her investiga-

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# New Zealand Parliament Apologizes To Men Convicted Of Consensual Homosexual Crimes

Members of New Zealand's Parliament [have apologized](#) to approximately 200 men convicted of homosexual related acts that are no longer considered a crime. Legislation that will expunge their convictions is now being considered by Parliament.

Sixteen is the age of consent in New Zealand.

New Zealand's Homosexual Law Reform Act 1986 legalized consensual sexual relations between males aged 16 and over. The 1986 law repealed the provisions of the Crimes Act 1961 under which sodomy, indecent homosexual acts, and providing a place for homosexual acts were illegal for all males. Under the 1986 law homosexual acts between someone 16 and over and someone younger than 16 remained a crime – which it continues to be.

Consensual sex between women has never been illegal in New Zealand.

Between 1961 and 1986 an estimated 200 men were solely convicted of crimes involv-



New Zealand's Justice Minister Amy Adams (www.beehive.govt.nz)

New Zealand's Justice Minister Amy Adams announced on February 9, 2017 that legislation had been crafted that would enable some men convicted of a homosexual crime to have their conviction expunged. She also said they would not receive compensation because their convictions weren't wrongful: they had been correctly convicted under the then prevailing law. Minister Adams [apologized to those men](#):

"There is no doubt that homosexual New Zealanders who were convicted and branded as criminals for consensual activity suffered tremendous hurt and stigma ... We are sorry for what those men and their families have gone through."

The Criminal Records "Expungement of Convictions for Historical Homosexual Offences" Bill [was filed](#) in New Zealand's Parliament on June 28, 2017. The bill pro-

vides for expunging the convictions of approximately 200 men who from 1961 to 1986 were solely convicted of homosexual activities involving consenting males 16 and over, that would not be considered a crime under current law. A person will have to submit an application to have their conviction reviewed by the Ministry of Justice. No hearing will be held. A relative or other interested person can request permission to represent a deceased person and submit an application on their behalf for a posthumous expungement. No compensation will be paid as a result of an expungement, and no fines paid will be reimbursed.

The purpose of the expungement is to clear the stain of the conviction from the person's name, and eliminate adverse consequences that may result from having the criminal conviction on their record.

On July 6, 2017 the New Zealand Parliament [formally apologized](#) "to those homosexual New Zealanders who were convicted for consensual adult activity, and recognize[s] the tremendous hurt and suffering those men and their families have gone through, and the continued effects the convictions have had on them."

The expungement bill has widespread support and is expected to be enacted into law by the fall of 2017.

[Click here to read New Zealand's](#) Criminal Records "Expungement of Convictions for Historical Homosexual Offences" Bill.

## Spencer cont. From p. 14

tive reports. A jury found for Plaintiff and against Defendants Krause and Sergeant Michael Davidson, Krause's supervisor. [Op. cit., 4]

"To prevail on a § 1983 claim of deliberate fabrication, a plaintiff must prove that (1) the defendant official deliberately fabricated evidence and (2) the deliberate fabrication caused the plaintiff's deprivation of liberty. [Op. cit., 14]

"Because Plaintiff introduced direct evidence of deliberate fabrication, he did not have to prove that Krause knew or should have known that he was innocent." [Op. cit., 16]

"In sum, the Constitution prohibits the deliberate fabrication of evidence whether or not the officer knows that the person is innocent. ...The district court erred by granting judgment as a matter of law to Defendants because, in this case involving direct evidence of fabrication, Plaintiff was not required to show that Krause actually or constructively knew that he was innocent." [Op. cit., 19]

REVERSED and REMANDED with instructions to reinstate the verdict. [Op. cit., 19]

On June 26, 2017 the ruling became final when the 9th Circuit denied a hearing to reconsider the ruling en banc.

Clark County's refusal to pay \$9 million to Spencer in February 2014 backfired, because with the addition of more than three years interest they will now be paying him in excess of \$10 million.

Clyde and Norma Spencer live in the Los Angeles area.

[Click here to read the court's ruling in](#) *Clyde Spencer v. Peters, et al*, No. 14 35689 (9th Cir., 5-18-17).

Sources:  
[Clyde Spencer v. Peters, et al](#), no. 14-35689 (9th cir. 5-18-17) (Reversing Dist. Ct. ruling and reinstating \$9 mil. jury award.)  
[Clyde Spencer v. Peters, et al](#), no. 14-35689 (9th cir. 6-26-17) (Denying en banc review, ruling final)  
[Jury awards \\$9 million to former local cop](#), *The Columbian* (Vancouver, WA), February 3, 2014  
[Clark County refuses to pay \\$9 million Spencer judgment](#), *The Columbian* (Vancouver, WA), February 12, 2014  
[Judges reinstate \\$9 million award to Clyde Ray Spencer](#), *The Columbian* (Vancouver, WA), May 18, 2017

New Zealand is joining a growing list of countries and states that have enacted or are in the process of enacting legislation that provides for the expungement of historical convictions for homosexual acts that are no longer considered criminal:

- United Kingdom [in 2017](#).
- Germany [in 2017](#).
- And, five Australian states.
- South Australia [in 2013](#).
- New South Wales [in 2014](#).
- Victoria [in 2015](#).
- Australian Capital Territory [in 2015](#).
- Tasmania [in 2017](#).

Sources:  
[Criminal Records](#) (Expungement of Convictions for Historical Homosexual Offences) Bill, New Zealand Legislation, filed June 28, 2017  
[Homosexual Law Reform Act 1986](#), New Zealand Legislation (last viewed 7-17-2017)  
[New Zealand Men Convicted of Gay Sex to Have Records Wiped](#), By Associated Press, NBC News, Feb. 9, 2017  
[New Zealand Parliament apologizes](#) for homosexuality convictions, By Staff, Jurist.org, July 6, 2017