

# JUSTICE

# DENIED

The Magazine for the  
Wrongly Convicted

**165 MEN CLEARED OF HISTORICAL HOMOSEXUAL CONVICTIONS IN ENGLAND & WALES**

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**South Korean Women**



기지촌 미군 위안부 국가배상  
항소심 판결에 대한 기자회견  
2018년 2월 8일(목) 오후 2시 판결 직후 장소: 서울법원공화관

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**Message From The Publisher**

Asia Bibi’s acquittal of blasphemy in Pakistan highlights that Muslim countries not only don’t have freedom of speech, but speech considered unacceptable can get a person killed by a mob, or sentenced to death by the “legal” system. See. p. 3.

Electronic technology is increasingly exposing the danger of blindly accepting the testimony of a woman claiming she was sexually assaulted when it is disputed by the accused. Liam Allan was acquitted of rape and sexual assault in Croydon, England after his prosecutors disclosed exculpatory text messages in which his accuser begged him for sex. See p. 4.

Korean women have been sexually exploited by foreign armies for more than eight decades. In a first, a South Korean court awarded compensation to 117 women who were pressured to work as prostitutes in government supervised sex camps next to U.S. military bases. The sex workers were also known as “comfort women.” See p. 5.

It is well known that many state and federal judges do not meaningfully distinguish themselves from the prosecution. Suffolk County, NY District Court Judge Janine Barbera-Dalli was caught red-handed helping the prosecutors by texting them advice in a drug case. See p. 9.

It can not only take years to prevail in a federal civil rights lawsuit related to a wrongful conviction, but collecting the money awarded can also be challenging. Missouri AG Josh Hawley reneged on the State’s agreement to pay half of the \$13,825,000 settlement of George Allen Jr.’s federal lawsuit for his almost 30 years of wrongful imprisonment. See p. 12.

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## Christian Asia Bibi Released From Pakistan's Death Row After Acquittal Of Blasphemy

Christian Asia Bibi's was acquitted by Pakistan's Supreme Court on October 31, 2018 of her 2010 conviction for blasphemy against Muhammad: she had offered Muslim co-workers to drink water from the same container that she drank from. The 47-year-old mother of four was released from death row a week later.

Bibi's husband and four children emigrated to England after her 2010 conviction. Nationwide protests by many thousands of Muslims following her acquittal forced Pakistan's government to bar her from leaving the country, and the government agreed not to oppose a review of her acquittal. Muslim extremists want her conviction reinstated and her execution carried out.

In June 2009 Bibi was living with her family in Lahore, Pakistan's second largest city. Bibi was working on a farm harvesting berries when she went to get water for her and her co-workers. She offered a drink to two Muslim women from the container. The women refused to drink from the same container as a Christian and demanded that she convert to Islam. An argument ensued between Bibi and the women.

Word of the confrontation spread, and several days later a mob of Muslims accused Bibi of blasphemy for insulting the Prophet Muhammad. Pakistan is about 97% Muslim, and a little more than 1% of the population is Christian.

After her arrest two guards were killed while protecting Bibi from a mob.

During her trial in November 2010 Bibi's two accusers denied arguing with her, and claimed she insulted the Prophet Muhammad without any prompting.

Bibi testified she and the women argued



Protesters in Pakistan after Asia Bibi's acquittal (Skynews)



Asia Bibi (family photo)

by hanging.

Bibi appealed.

Bibi's husband and children emigrated to England after going into hiding for their protection from death threats.

Salman Taseer, the governor of Punjab province, was shot and killed by one of his guards in 2011 for defending Bibi and criticizing misuse of the blasphemy law in her prosecution. Taseer's attacker, Mumtaz Qadri, was convicted of murder and executed. Qadri is celebrated as a Muslim martyr in Pakistan. Since his hanging millions of people have visited a shrine set-up for him near Islamabad, Pakistan's capital.

In October 2014 the Lahore High Court affirmed Bibi's conviction and death sentence.

In 2015 Pakistan's Supreme Court stayed Bibi's death sentence pending its review of her case.

Qadri's martyrdom inspired a Muslim taxi driver to stab shopkeeper Asad Shah to death in Glasgow, Scotland in 2016.

In early October 2018 two inmates were arrested for planning to strangle Bibi to death where she was imprisoned.

In anticipation of a ruling by the Supreme Court, Bibi's husband Ashiq returned from Britain with their children in mid-October. Ashiq was hopeful the court would acquit her and order her release, so he wanted to be ready for them fly out of Pakistan. Ashiq had not been allowed to see Bibi since her arrest in 2009.

On October 31, 2018 the Supreme Court overturned Bibi's conviction on the basis the prosecution failed to prove her guilt because of the conflicting trial testimony. Her accuser's testimony they weren't arguing with Bibi was contradicted by multiple

eyewitnesses. That discrepancy cast a pallor over the truthfulness of her accuser's testimony. The court ordered Bibi's release after eight years on death row.

Bibi was found guilty and sentenced to death

over her converting to Islam, but she didn't disrespect Mohammad. Several eyewitnesses testified they saw the women arguing.

In its ruling the court affirmed the legality of Pakistan's blasphemy law. It just hadn't been proven by the prosecution that Bibi committed blasphemy.

Within hours of the court's ruling Muslims throughout Pakistan began protests and rioting. Highways were blocked, many dozens of cars were set on fire or otherwise damaged, and there were widespread demands for Bibi to be publicly hanged.

The protestors also called for the death of the Supreme Court judges who made the decision to free Bibi, and for a change in the leadership of Pakistan's government.

The prevent the protests from spinning completely out of control, Pakistan's government negotiated with leaders of the protest. On November 2 the government agreed to prevent Bibi from leaving the country, agreed to hold her under guard, agreed not to oppose a request for review of her acquittal, and agreed to free everyone arrested during protests of Bibi's acquittal.

The next day Bibi's defense lawyer, Saif Mulook, in fear for his life, fled Pakistan for the Netherlands, which had granted him asylum. Mulook's arguments had convinced the Supreme Court to overturn Bibi's conviction. The government refused to provide Mulook any police protection from death threats. Mulook told reporters it was "not possible" to continue living safely in Pakistan. **He said:** "I need to stay alive as I still have to fight the legal battle for Asia Bibi."

Mulook expressed disappointment with Pakistan's Prime Minister Imran Khan for caving into the protestors after giving the impression he was willing to stand up for the rule of law. Mulook said the violent reaction by a



Saif Mulook, Asia Bibi's defense lawyer (Asianews.it)

segment of the Muslim population was predictable, but not the government's failure to enforce a ruling by the highest court in the land.

Bibi was released from prison on November

**Bibi cont. on p. 4**

# Liam Allan Acquitted Of Rape After Prosecutors Disclose Texts Of His Accuser Bragging About Sex With Him

Liam Allan was acquitted of rape and sexual assault in Croydon, England on December 14, 2017, after [the prosecution disclosed](#) exculpatory text messages it had concealed for two years. In the texts his accuser begged him for sex, praised his penis, boasted about their sex romps, and expressed rape fantasies. Croydon is a suburb of London.

In January 2016 Allan's former girlfriend reported to the police that while they were together he was abusive and forced her to have sex.

Allan was a 20-year-old criminology student at Greenwich University in London. He was charged with six counts of rape and six counts of sexual assault, which his accuser claimed he committed over 14 months.

Allan denied the charges. He said they had broken up and gotten back together, and she was unhappy when they broke up for good.



Liam Allan (Facebook)

In early December 2017 — a week before Allan's trial was scheduled to begin — his lawyer Julia Smart learned that almost two years before, the police had downloaded texts from his accuser's mobile phone. The prosecution refused to voluntarily provide the text messages. The trial judge granted Smart's formal request that the prosecution disclose the texts. They were provided to Smart on a CD on the first day of Allan's trial.

In her opening remarks to the jury, Smart told the jury that the sex between Allan and his former girlfriend was consensual, and she was attempting to frame him because she was unhappy he ended their relationship.

When Smart opened the CD after the first day of trial, she discovered there were 40,000 text messages from the accuser's phone. Smart waded through the messages all night and into the next morning. She discovered numerous text messages by Allan's accuser that undermined the truthfulness

of her testimony that he sexually forced himself on her and his behavior was abusive.

There were messages in which she talked about how happy she was with him, begged him for sex, praised his penis, boasted about their sex romps, and expressed rape fantasies.

Based on the newly discovered text message evidence, Smart argued that Allan had not committed rape and sexual assault, and his accuser fabricated the allegations. The prosecution agreed and admitted it failed to prove its case.

Before the case was submitted to the jury, Judge Peter Gower ordered Allan's acquittal. Gower said the "very highest level" of the Crown Prosecution Service should investigate the failure to disclose the exculpatory text messages. Judge Gower [also said](#): "Something has gone very, very wrong in the way this case was investigated and brought to court. There is a risk not only of this happening again, but that the trial process will not detect what has gone wrong and there will be a very serious miscarriage of justice."

Prosecutors later tried to provide cover to themselves by claiming they hadn't read any of the text messages: The investigating Scotland Yard officer was alleged to have said there weren't any messages important to the case. That excuse is undercut by the prosecutors' refusal to turn over the text messages until ordered to do so by the trial judge.

Given the proclivity of jurors to believe an accuser's rape accusations, Allan was likely only saved from being wrongly convicted by discovery of the text messages before the jury began its deliberations.

Smart told reporters after Allan's acquittal that she was representing clients in four other cases where prosecutors failed to disclose exculpatory evidence, and she had to fight in court to obtain the evidence. One of those cases is a sexual assault case in which the prosecution concealed 50,000 text messages found on the accuser's phone.

Several days after his acquittal Allan told the BBC he is planning to sue the Metropolitan Police Department for its handling of the text messages in his case.

Allan's accuser — who name wasn't pub-

## Bibi cont. from p. 3

7, and she was moved to an undisclosed location under heavy government guard. Several days later she was able to meet with her husband for the first time in nine years.

England — where Bibi's husband and children live — denied asylum for her because it would offend the country's large Muslim population, and possibly cause the type of protests that occurred in Pakistan, and trigger terrorist attacks on its embassies in Muslim countries.

Abraham Mathai, president of Indian Christian Voice, [said the position](#) of British Prime Minister Theresa May denying Bibi asylum is "deplorable and shocking." Mathai said it is "an embarrassment" that shows England is "succumbing to extremist pressure" from Muslims. Mathai also said "denying asylum to Asia Bibi" is a sign the Muslims "extreme radicalisation of the UK is now complete."

Canada granted asylum to Bibi's daughters and she was expected to join them upon her release from Pakistani custody. Canadian Prime Minister Justin Trudeau [publicly ac-](#)

[knowledged](#) that granting Bibi asylum was a "delicate domestic" issue because it could offend Canada's large Muslim population.

There are unconfirmed reports that Spain has offered Bibi asylum.

As of mid-November 2018 it is unknown where Bibi will eventually move and be able to resume her life.

Sources:

[Death Penalty Pardon](#): Why was Asia Bibi's death penalty conviction overturned, does Pakistan have capital punishment and what is blasphemy?, By Nicola Stow, *The Sun* (London), Oct. 31, 2018

[Pakistan acquits Asia Bibi](#), Christian woman facing death for blasphemy, By Zarah Khan and Munir Ahmed (The Associated Press), *GlobalNews.ca*, Oct. 31, 2018

[Pakistan's Top Court Acquits](#) First Christian Woman Sentenced to Death For 'Blaspheming' Mohammed, By Patrick Goodenough, *CNSNews.com*, Oct 31, 2018

[Asia Bibi: Protests](#) stop Christian woman leaving Pakistan three days after court overturns blasphemy charge: Hardline Islamists block motorways, set fire to cars and call for her to be publicly hanged, By Samuel Osborne, *Independent* (London), November 2, 2018

[Asia Bibi's lawyer flees Pakistan](#) fearing for his life, *AsianNews.it*, November 3, 2018,

[Asia Bibi case](#): asylum talks stalled, Pakistan, *AsiaNews.it*, November 13, 2018,



Allan cont. on p. 5

# South Korean Court Awards Compensation To Women Pressured To Work As Prostitutes At U.S. Taxpayer Funded Sex Camps

On [February 8, 2018](#) a South Korean court awarded compensation to 117 women who were pressured to work as prostitutes in government supervised sex camps next to U.S. military bases. It was the first time the South Korean government has been ordered to pay compensation to women who worked in brothels in the sex camps. The sex workers were also known as “comfort women.”

From before the Korean War began in 1951 until the late 1990s the South Korean government built and directly operated sex camps near U.S. military bases. The sex camps served the dual purpose of helping to strengthen South Korea’s alliance with the U.S. by providing readily available sexual services to military personnel; and, they were a reliable source of revenue and foreign currency for the government.

The sex camps were economically vital to South Korea’s government: during the 1960s they generated about 25% of South Korea’s Gross National Product. Even as late as the mid-1990s the sex camps were still contributing about 1% to the country’s GNP. A total of many billions of dollars

## Allan cont. from p. 4

licly disclosed under British law — can be charged with perverting the course of justice and perjury for her false accusations and testimony against him. In July 2017 Jemma Beale was convicted by a jury of perjury and obstruction of justice for falsely alleging from 2010 to 2013 that 15 men in southeast England had raped or sexually assaulted her. She [was sentenced](#) on August 24, 2017 to ten years in prison.

### Sources:

“[Rape trial collapse](#) over undisclosed sex messages: Innocent student Liam Allan cleared as judge warns over potential miscarriages of justice,” By Lizzie Dearden (Home Affairs Correspondent), *Independent* (London), December 14, 2017

[Student Liam Allan to sue](#) after rape trial collapse, *BBC*, December 18, 2017

[Jemma Beale Sentenced](#) To 10 Years In Prison After Falsely Accusing 15 Men Of Rape Or Sexual Assault, By Hans Sherrer, *Justice Denied*, August 25, 2017



were spent by soldiers in the sex camps. Of course, the source of all that money was U.S. taxpayers — who were unknowingly complicit in financially supporting the sex camps.

It is estimated that in the 1950s and 1960s more than 60% of South Korea’s prostitutes worked in the sex camps. It is also estimated that before the South Korean government ended its direct involvement, a total of more than one million women worked in the sex camps. It was big business.

The South Korean government openly encouraged and advocated for young women to engage in sex work by conducting “patriotic education” that promoted the idea it was the highest form of patriotism for a woman to trade her body for currency from U.S. soldiers. Even in junior high school girls were indoctrinated about the virtue of working as a prostitute as a form of true patriotism. Young women who lived near the sex camps were pressured by the government to work in the camps, and once there, discouraged by the government from leaving.

The women received a very small percentage of the money paid for their services.

In 1971 Black soldiers rioted in one camp



South Korean ‘comfort girl’ prostitutes with U.S. soldier

because they thought they were being discriminated against, and they destroyed some sex clubs. It was reported that to protect their property South Koreans hunted the rioting Blacks with sickles. U.S. military police and South Korean po-

lice contained the rioting. The government instructed the prostitutes they were not to discriminate against any potential customers.

In August 1977 South Korea enacted legislation to combat the prostitutes spreading sexually transmitted diseases. Women who tested positive for an STD were forced to identify the soldiers they had been with, and they were indiscriminately treated with penicillin and sent to an isolation facility until they were determined to be clean. The physical effect of the penicillin on a woman wasn’t considered before it was administered. Women certified to be clean after treatment wore a tag.

The U.S. military not only did nothing to discourage servicemen from patronizing the sex camps, but in conjunction with South Korea’s government required the prostitutes working in brothels to carry a venereal disease card. The U.S. Military Police Corps would raid prostitutes who were thought to be infected, and detain them to be dealt with by South Korean authorities.

Beginning in the late 1990s South Korea’s sex industry catering to U.S. soldiers expanded to include women brought in from other countries who were told they would be doing modeling. Many of these women were from the Philippines and Russia. Once in South Korea a woman’s passport was confiscated and she was told she couldn’t leave and would have to work as a prostitute until she earned enough money to pay back the money it cost to bring her there. The women were paid a very small percentage of their earnings so it took a long time for them to make enough to buy back their passports. The U.S. government did nothing to stop the sex trade trafficking of these women.

The sex camp industry flourished until 2014, which was when the U.S. Forces in Korea banned all military personnel from visiting any business that allowed a patron to buy drinks or juice for a woman for the

## Korean cont. on p. 6

## Korean cont. from p. 5

purposes of sexual companionship. Clubs in the sex camps operated on the hostess theme, so the directive essentially put them out of business. Military personnel in South Korea now have to procure a prostitute in the same way as anyone else in the country.

On June 25, 2014 more than one hundred surviving Korean comfort women for U.S. forces filed a lawsuit against the South Korean government to reclaim their human dignity. The lawsuit demanded compensation of 10 million South Korean won (US\$9,800) per woman. The lawsuit asserted they were supervised by U.S. military personnel and South Korean authorities, and the government not only pressured them to work as prostitutes, but colluded with the operators of the sex camps to block them from leaving.

In January 2017 a judge in the Seoul Central District Court [ruled the government](#) was only financially liable for forcing “comfort women” into isolation facilities after the prevention of infectious disease legislation was enacted on August 19, 1977. The judge awarded 5 million won (US\$4,175) each to the 57 women in the lawsuit affected by that legislation, because of psychological and physical harm it caused them. The court did not rule on the women’s claim they had been pressured by the government to work as prostitutes and forced to continue doing so.

The women appealed.

On February 8, 2017, Judge Lee Beom-gyun of Seoul High Court’s 22nd civil affairs division ruled that all 117 former sex camp prostitutes who were plaintiffs in the lawsuit were entitled to compensation. The judge ordered the South Korean government to pay 74 of the woman 7 million won (US\$6,370), and the other 43 were to be paid 3 million won (US\$2,730).

Judge Beom-gyun’s ruling was historic: it was the first time the South Korean government has officially been held responsible for prostitution in the sex camps. [His ruling](#)



South Korean sex camp ‘lucky bar’

[stated](#): “The settlements located in the vicinity of military bases were managed with the aim or intention to mobilize ‘comfort women,’ so that, by ‘raising and cementing the spirit’ of foreign soldiers, a military union, required to ensure the state security, can be upheld — and also in pursuit of economical aims, such as foreign currency acquisition.”

Judge Beom-gyun [noted that the](#) government openly “encouraged and advocated sex work by developing the required infrastructure and by conducting “patriotic education” that stated that girls who trade their bodies for currency are true patriots.”

His ruling [also stated](#): “The state also directly violated the personal inviolability and other basic rights, as, under pretext of curing of venereal diseases, it ‘suppressed’ [apprehended] and ‘deciphered the infected’ [when people were sent to isolation facilities by pointing of foreign soldiers who caught the sexually transmitted diseases]. ... Those people were forcefully sent to [medical] isolation facilities or they were indiscriminately treated with penicillin, which can potentially cause major physical side effects.”

The history of the South Korean sex camps catering to U.S. soldiers is not well known in the U.S. However, the Japanese are condemned for their employment of Korean women as prostitutes in “comfort stations” during their occupation of Korea that ended in September 1945. The U.S. military took over operation of the “comfort stations” when the U.S. replaced Japan as the occupiers of Korea. In 1946 the U.S. Army Military Government in Korea outlawed prostitution in South Korea. The primary effect of the directive was closing of the comfort stations. The prostitution ban wasn’t enforced. South Korean authorities created the sex camps near military bases to take advantage of the closing of the comfort stations.

Another little known aspect of military related prostitution in South Korea, is that during the Korean War prostitutes were forcibly transported to front fighting lines to provide services to U.S. soldiers.

Sources: [South Korean Court](#) Finds Government Promoted Prostitution with US Soldiers, By Staff, Sputniknews.com, February 13, 2018

[A Base Village](#) in South Korea, Youtube.com

[Prostitutes in South Korea](#) for the U.S. Military, Wikipedia.org

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Justice Denied’s [mobile device homepage](#) is online. The mobile friendly homepage has the narrow width recommended for smartphones and other mobile devices.

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The mobile friendly homepage was created because half of all visitors to JD’s website now use a hand-held device. The following shows the growth of hand-held devices used to access [justicedenied.org](#).

Year	Desktop	Mobile	Tablet
2008	100%		
2009	99.7%	0.3%	
2010	97%	3%	
2011	92%	8%	
2012	82%	13%	5%
2013	72%	19%	9%
2014	61%	28%	11%
2015	51%	37%	12%
2016	50%	39%	11%
2017	49%	43%	8%
2018	47%	45%	8%

Justice Denied’s mobile device homepage is [www.m.justicedenied.org](#).



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[www.forejustice.org/exonerations.htm](#)

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[www.forejustice.org/biblio/bibliography.htm](#)

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

Federal 9<sup>th</sup> Circuit Judge Alex Kozinski “Criminal Law 2.0,” 44 *Geo. L.J. Ann. Rev. Crim. Proc.* (2015) (Preface, iii)

## 165 Men Cleared Of Historical Homosexual Convictions in England and Wales

One-hundred-sixty-five men in England and Wales have had their historical conviction disregarded for a homosexual act that is no longer considered a crime.

Homosexuality was decriminalized in 1967 in England and Wales. However, a conviction is still listed in court records and appears on a person's criminal record.

The Protection of Freedoms Act (PFA) enacted in 2012 by the United Kingdom's Parliament included a provision that allows a man convicted of a homosexual act that is no longer considered a crime to apply to the UK's Home Office for their conviction to be "disregarded."

The legislation primarily relates to two crimes involving actual sexual activity: buggery (anal sex) and gross indecency (oral sex, etc.). Minor activities such as holding hands with another male in public or going to a homosexual bar are not eligible to be disregarded.

The law applies to men convicted in England, Wales, and the British military. Most of the affected men were convicted under the Sexual Offences Act 1956, and corresponding offences under earlier legislation, and equivalent military offences.

To be eligible the homosexual activity underlying the conviction must have been consensual and with a person of 16 or over, and must not be a criminal offense under the Sexual Offences Act 2003. One of the crimes that doesn't qualify under the PFA is sexual activity in a public lavatory, which remains a criminal offense regardless of the participant's sex.

After a conviction is disregarded by the Home Office it is treated in official records as if it did not occur: it no longer appears on a person's criminal record; and, it is not admissible in court proceedings.

The Home Office's website has a webpage titled: "Statistics on disregards and pardons for historical gay sexual convictions." The webpage was last updated January 2, 2018. The website lists that from October 1, 2012 to January 1, 2018, 165 men have had their conviction disregarded. The website lists the following statistics for "In scope applications":

### Disregarding Certain Criminal Convictions

#### Chapter 4 Part 5 Protection of Freedoms Act 2012

#### Application Form & Guidance Notes for Applicants

Cases accepted:

16 = Buggery  
145 = Gross Indecency  
4 = Equivalent military offences  
165 = Total

Cases rejected:

81 = Sexual activity in a public lavatory  
8 = Non-consensual sex  
7 = Other party under 16-years-old  
96 = Total

The website lists that 268 applications were rejected for reasons such as they involved inapplicable crimes or convictions that occurred in Scotland or Northern Ireland. It is reported that the Scottish and Northern Ireland administrations intend to introduce their own legislation for the disregard of a historical homosexual conviction.

Less than 2% of the estimated 16,000 men eligible to have a historical homosexual conviction disregarded have filed an application with the Home Office to do so.

The "Application Form & Guidance Notes for Applicants" to have a historical homosexual conviction in England and Wales disregarded can be downloaded at [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/118140/guidance-application.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118140/guidance-application.pdf). It costs no money to apply.

A man whose conviction is disregarded can also apply for a royal pardon. However, the Home Office's website doesn't state that a single person whose conviction was disregarded has in fact applied for a pardon.

On January 31, 2017 the United Kingdom posthumously pardoned about 49,000 males who were convicted of consensual homosexual activity that is no longer considered criminal.

Sources:

[Statistics on disregards and pardons](#) for historical gay sexual convictions, Home Office, Gov.UK, January 2, 2018.

[Disregarding Certain Criminal Convictions](#), Chapter 4 Part 5 Protection of Freedoms Act 2012, Home Office, Gov.UK (Application)

[Disregards and pardons](#) for historical gay sexual convictions, Home Office, Gov.UK

[A third of historical gay sex conviction applications rejected](#), *PoliceProfessional.com*, Jan. 8, 2018

[49,000 Men Posthumously Pardoned](#) Of Homosexual Crimes In United Kingdom, By Hans Sherer, Justice Denied, February 3, 2017



## Philip Queree's Indecent Assault Conviction For Touching Woman's Breasts During Consensual Sex Tossed On Appeal

Philip Queree was acquitted on January 4, 2018 by an appeals court in Jersey of indecent assault for touching his partner's breasts during consensual sex. The appeals court ruled the prosecution's evidence failed to prove Queree committed a crime.

Queree and the woman, identified in court documents as Miss X, met on August 18, 2016 using the Tinder mobile phone dating app.\* They both lived in Jersey, a small country of about 100,000 people that is located on the largest Channel Island between England and France. English is the predominant language in Jersey, which is allied with the United Kingdom, and its legal system is based on English law.

Two days after their first date, they had their second date. At the end of it Miss X agreed to have sex with Queree at her apartment. At some point during their lovemaking Miss X became offended by the way Queree was touching her breasts.

After Queree left the next morning, he didn't contact Miss X to meet with her again.

Miss X then had conversations with a female friend, her mom, and female co-workers about her sexual encounter with Queree. After talking with all people, Miss X went to the police and complained that Queree had grabbed her breasts during consensual sex. She said he continued to touch her after she told him he was squeezing too hard.

Queree was charged with indecent assault: a felony punishable by up to two years in prison.

The prosecution's case during Queree's bench trial in August 2017 was based on the testimony of Miss X.

She testified that she consented to have sex with Queree at her residence at the end of their second date. She said that during their lovemaking he began grabbing her breasts "really hard." She also testified: "Having my breasts grabbed to me that is not normal behavior." She said that after Queree began touching her breasts she asked him to be

Queree cont. on p. 8

## Queree cont. from p. 7



Philip Queree  
(The Sun (London))

more gentle, but she wanted to continue having sexual intercourse with him.

She said that after she took a shower she showed Queree her left breast that had a “mark” on it. Queree was getting dressed to leave, and she said she told him she “wanted to talk about it.” Instead of talking with her, Queree said “I need to go now,” and left. Miss X said she didn’t need to go to a doctor after her sexual encounter with Queree.

In his defense, Queree testified Miss X asked him to be more gentle in touching her breasts during their “vigorous sex making,” but she didn’t ask him to stop.

The prosecutor argued that Queree committed indecent assault because during sex Miss X withdrew consent for him to touch her breasts which are “sexual,” but he continued to touch them.

After Queree’s two-day trial in the “She said, He said” case, Magistrate Bridget Shaw found Queree guilty. She stated in her [written ruling](#): “Irrespective of her consent to other sexual conduct, I am sure that the touching was in circumstances of indecency and thus Queree is guilty of indecent assault.”

During Queree’s sentencing hearing on October 9, 2017 his lawyer David Steenson argued for leniency, telling Magistrate Shaw “His life has gone from being an extremely promising one, from being a doctor, to being unemployed. Queree is in a parlous financial state, as he does not have a job. He has no savings. He has, essentially, been an academic most of his life...



Magistrate Bridget Shaw  
(Jersey Evening Post). Beware any man who faces this fanatical man hating feminist in her courtroom.

little chance of getting a job in the legal field as a result of

unmoved in her opinion. He committed a crime when he was arrested during their encounter. [She said](#), “This assault.” [Shaw sentenced](#) Queree to serve 180 hours of community service; pay £2,000

(US\$2,630) towards his prosecution costs; register as a sex offender for five years because “I am concerned that you pose a risk of sexual harm to others”; and, he was barred by a restraining order from contacting Miss X for five years — although no evidence was presented he had attempted to contact her after their sexual encounter.

The 36-year-old Queree was a third-year medical student at King’s College medical school in London, but after his conviction he had to drop out. His conviction and sentence prevented him from proceeding with his medical career.

Queree appealed his conviction and sentence.

During the appeal hearing held on January 4, 2018, Steenson argued Magistrate Shaw erred in finding Queree guilty on the basis he touched Miss X’s breasts, because: “Her [Miss X’s] complaints to the defendant did not amount to a complete prohibition of touching her breasts. She was demanding he was more gentle with her not that he wouldn’t touch her breasts at all.”

After hearing the arguments, the Royal Court of Jersey issued an oral order on the 4th setting-aside Queree’s conviction and ordering dismissal of his case on the basis the prosecution introduced insufficient evidence to prove he committed indecent assault Miss X. The Court stated the assessment of the prosecution’s evidence by the “Magistrate went wrong in a material way.” The Court stated it will publish its written ruling at a later date.

Queree should be able to resume his medical career with the overturning of his conviction and the dismissal of the charge against him.

There were several interesting comments on [RT.com](#) about Queree’s case:

\* :o — “So next time you have sex make sure you have a contract signed with all her sexual parts and pressure diagram well layed out, also make sure to have your lawyer in the room and have video evidence, that’s how bad the west has gotten.”

\* LampShade — “You take your chances hooking up with Tinder girls. Most of them are damaged goods with personality disorders. The sex might be great but you could end up in all kinds of trouble.”

Magistrate Bridget Shaw’s inexplicable finding that Queree was guilty of indecent

assault for touching Miss X’s breast during vigorous sex that she wanted, is part of a pattern of her unjudicious behavior. Shaw is notorious on Jersey for making rulings inconsistent with the evidence in a case. “[Delving Into The Mind Of A Maniac Magistrate](#)”, a Jersey blog about Magistrate Bridget Shaw, [www.therightofreply.blogspot.com/2013/03/delving-into-mind-of-maniac-magistrate.html](#). One commenter states: “... its quite easy to presume that the power has gone to her head ...and she has acted like a psychopath in particular miscarriages of justice.”

\* (Jersey has non-disclosure of a sex crime victim’s name.)

Sources:  
[Medical student convicted of indecent assault](#) for grabbing woman’s breasts has conviction quashed, By Staff, Evening Times (Glasgow), January 4, 2018  
[Man on sex offenders’ register](#) for grabbing Tinder date’s breasts during sex has conviction quashed, RT.com, January 5, 2018  
[Man convicted for ‘grabbing’ Tinder date’s breasts](#) during consensual sex, RT.com, October 11, 2017  
Tinder, [www.tinder.com](#)  
“[Delving Into The Mind Of A Maniac Magistrate](#)” (Blog about Jersey Magistrate Bridget Shaw)



**Justice Denied’s Website Has Had Visitors From 228 Countries**  
Justice Denied’s website has had visitors from 228 countries through 2017. Those visitors were from more than 21,850 cities and towns. Six of the 20 cities where the most visitors were from are outside the U.S.  
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**Database of Japanese Cases**  
The Japan Innocence & Death Penalty Information Center has a database of wrongful Japanese convictions online at, [http://www.jiadep.org](#)

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# District Court Judge Janine Barbera-Dalli Caught Texting Advice To Prosecutors In New York Drug Case

Suffolk County, New York District Court Judge Janine Barbera-Dalli [has been caught](#) texting advice to prosecutors on how to charge and try the defendant in a drug case she was presiding over. Her first text on Dec. 1, 2017 was during a pre-trial hearing in the case, and the second text on Dec. 4 was on the day jury selection was scheduled to begin.

Jury selection in the trial of a man charged with heroin possession and loitering in Suffolk County was scheduled to begin December 4, 2017 in Judge Barbera-Dalli's courtroom in Central Islip. It was delayed when that morning prosecutors in the Suffolk County District Attorney's Office informed the man's lawyer that Barbera-Dalli had repeatedly given prosecutors advice in the case.

Judge Barbera-Dalli's first text, sent while she was conducting a hearing involving the defendant, was on Friday, Dec. 1 at 11:14 a.m.: "I have a trafficker on for a hearing today, right now, as a matter of fact, probable cause. [Names the apparent victim.] Is she one of ours? Why wasn't this guy charged with trafficking. ....?"

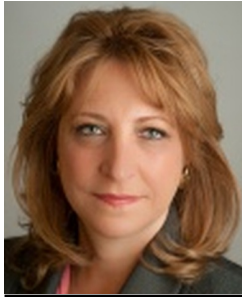
Her second text, on the day jury selection was scheduled to begin, was on Monday, Dec. 4 at 8:44 a.m.: "By the way, thinking if Legal Aid is representing [apparent victim] don't they have a conflict representing [defendant]? FYI, picking a jury on that case this afternoon."

The texts were sent to three prosecutors and a victim's advocate from the human trafficking court that Barbera-Dalli oversees.

One of the prosecutors provided the man's attorney, Juliann Ryan of the Legal Aid Society, with the texts after the December 4 text was sent. Ryan immediately made a motion for Judge Barbera-Dalli to recuse herself and copies of the texts were entered into the record. Ryan told Barbera-Dalli [her texts](#) showed "extreme bias on your honor's part."

Barbera-Dalli recused herself and the trial was postponed.

A number of people involved in the Suffolk County legal community commented to Long Island's *Newsday* newspaper, about Barbera-Dalli texting the prosecutors.



Suffolk County, New York District Court Judge Janine Barbera-Dalli (ballotpedia.org)

Christopher Brocato, president of the Suffolk County Criminal Bar Association [said about](#) Judge Barbera-Dalli texts: "I can't believe that this would even occur. To send text messages during the actual hearing is mind-boggling. How can any defendant believe she's not leaning toward the prosecution? It's outrageous."

Acting Suffolk County DA Emily Constant [was critical](#) of the texting, commenting: "the allegations involving Judge Barbera-Dalli are serious and should be reviewed by the state Commission on Judicial Conduct." However, Constant didn't comment on the fact that none of the three prosecutors who were involved informed Ryan about the text they received on December 1 — until after they had received the second text on December 4. An unanswered question is if they ever would have told Ryan about the Dec. 1 text if Barbera-Dalli hadn't sent the second text on the day of the trial.

Suffolk County District Court Administrative Judge C. Randall Hinrichs [said he would](#) review the case: "I recognize the very serious nature of the allegation concerning the judge. I will be speaking to all of the parties with information concerning what transpired and will take appropriate action after review."

Laurette Mulry, executive director of the Suffolk Legal Aid Society, said she hoped the district attorney's office would disclose [if this had](#) happened before with Barbera-Dalli or other judges: "We need to make sure this is an isolated incident. I want to make sure that past and current cases have not been affected."

**TEXT MESSAGES**  
sent by Judge Barbera-Dalli

**DEC. 1, 11:14 A.M.**

I have a trafficker on for a hearing today, right now, as a matter of fact, probable cause. [Names the apparent victim.] Is she one of ours? Why wasn't this guy charged with trafficking. . . . ?

**DEC. 4, 8:44 A.M.**

By the way, thinking if Legal Aid is representing [apparent victim] don't they have a conflict representing [defendant]? FYI, picking a jury on that case this afternoon.

SOURCE: COURT TRANSCRIPT

Text messages sent by Judge Barbera-Dalli to the three Suffolk County prosecutors (Court transcript).

Other figures in the New York legal scene expressed concern about a judge secretly acting as an arm of the prosecutors office. Ellen Yaroshefsky, executive director of Hofstra University Law School's Monroe H. Freedman Institute for the Study of Legal Ethics [said that a](#) judge "can't operate as a prosecutor . . . It's really disturbing. It undermines public respect for the judicial process."

Barbera-Dalli is 51. She was admitted to be a lawyer in New York in 1987. She was in private practice for 25 years until [she was](#) elected in Nov. 2012 to a 6-year term as a Suffolk County (10th Judicial) District Court Judge. Her salary is \$179,500 per year.

In November 2016 she unsuccessfully ran for a seat on the New York Supreme Court 10th Judicial District.

Barbera-Dalli has a judicial rating of 1.8 on a scale of 1 to 10 on [TheRobingRoom.com](#). A rating of 1 is considered "awful," while 10 is "excellent." The Robing Room is a website on which judges are judged by lawyers who practice in their courtroom and court staff who work with them. One lawyer rated her judicial temperament as "awful," with her highest rating in any category a 2.

The RobingRoom.com also permits lawyers and court staff to make comments about the judge they are rating. The following are comments by lawyers and a court staff member about Judge Barbera Dalli (these comments were all made prior to Dec. 1, 2017).

[A lawyer commented](#): "She is arbitrary and capricious, at best. I find her to be another example of power intoxication. You'll be lucky if she treats you as a human being, capable of having frustration with any court proceeding, as most defendants and litigants do. Her unpredictable temperament make her an unfit judge and not worthy of reelection."

[Another lawyer commented](#): "Always nasty for no apparent reason."

[Another lawyer commented](#): "The outcomes of discussions or cases often hinge on her mood on a particular day. She will waste time of attorneys and clients, who often wait hours to have a case heard, if she does not like someone's tone or if she seems to be having a bad day. . . . The attitude bleeds over to her clerk, who is one of the least efficient or pleasant."

[A court staff member commented](#): "She has no discussions, she tells you. Even though the parents are pressing charges she

**Barbera-Dalli cont. on p. 10**

# Edward John Chandler Cleared of flashing two women who identified him from Facebook gossip

Edward John Chandler [was cleared on](#) appeal of exposing himself to two women in Wickham, England. They identified him from gossip on Facebook. Wickham is a small village of about 4,300 people 80 miles southwest of London.

On the evening of July 28, 2016 two women had drinks at the Five Bells Pub in Wick-

## Barbera-Dalli cont. from p. 9

sides with the child. Parents don't have a chance. If your child is between the ages of 18 and 21 don't call the cops. By the looks of her kids she has no compassion." The court staff member gave Barbera-Dalli a "no rating" — she didn't even rate a 1, "awful." (That "no rating" didn't count toward Barbera-Dalli's average 1.8 rating.)

No lawyer or staff member has made a positive comment about Judge Barbera Dalli on [TheRobingRoom.com](#).

Judge Barbera-Dalli's texting to the three prosecutors and the victim's advocate can be considered to constitute numerous violations of the New York Rules Governing Judicial Conduct. Among those violations of [22 NYCRR Part 100](#) are:

Section 100.1 A judge shall uphold the integrity and independence of the judiciary.

Section 100.2 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

Section 100.3 A judge shall perform the duties of judicial office impartially and diligently.

As this is written the Suffolk County District Court website lists Judge Barbera-Dalli as fully active, and there is no notice that Administrative Judge Hinrichs has acted on her texting advice to the prosecutors.

Sources:

[Suffolk judge texted prosecutors from bench](#), could face sanctions, *Newsday* (Melville, NY), December 8, 2017

[Janine A. Barbera-Dalli](#), *Ballotpedia.org*

[Hon. Janine A. Barbera-Dalli](#), The Robing Room — where judges are judged, [www.therobingroom.com](#).

Administrative Rules of the Unified Court System & Uniform Rules of the Trial Courts Rules of the Chief Administrative Judge, [Part 100. Judicial Conduct](#).



ham. When they left they were walking through a school playground when they encountered a man who propositioned them. When they declined, he exposed himself to the women and followed one to her house. He left after she warned him she had a large and aggressive dog.

The women didn't recognize the man or immediately report the incident to the police.

What happened to the women became a matter of Facebook gossip by people in Wickham. There was chatter from the women's description of the flasher that it could be a local butcher's assistant named Edward Chandler. His picture was shared on Facebook with the two woman.

The Facebooking resulted in the incident being reported to the police. The 21-year-old Chandler was taken into custody as a suspect.

During an identity parade — a live line-up — both women identified Chandler as the flasher. He was charged with indecent exposure.

Chandler denied the charge and claimed he was mistakenly identified.

The prosecution's case during Chandler's two-day trial in early August 2017 was based on the testimony of the two victims. They both testified they didn't know who accosted them until they saw the chatter on Facebook it could be Chandler, and they saw his picture. They said they identified him during the identity parade because he had "creepy eyes" like the man they encountered in the park. They didn't recognize anything else about him.

Chandler denied he was the flasher, and his lawyer challenged the reliability of the woman's identification of him during the identity parade: On Facebook they had been exposed to rampant speculation he was the flasher and his picture. His lawyer argued the two women picked him because he was the only person in the lineup whose face they were familiar with.

The panel of magistrate's decided the "She and she said. He said" case by finding Chandler guilty.

Chandler was sentenced on August 10, 2017 to 12 months community service; 35 days rehabilitation; payment of US\$325 (£250) prosecution costs and US\$119 (£85) statutory victim services surcharge; and five years registration on the Sex Offenders Register.\*



Five Bells Pub in Wickham, England.

Chandler appealed.

His lawyer Genevieve Reed [argued his](#) accuser's identification of him was unreliable because it was influenced by the "chain of Facebook exchanges" suggesting he was the flasher, and that they saw his picture online linked to the gossip. Reed asserted: "This circumvented all of the safeguards of (the Police And Criminal Evidence Act 1984) and fundamentally undermined the identification process." She also argued that Chandler had come under scrutiny on Facebook "merely because he's a loner who wanders round the village."

The Crown Prosecution Service opposed Chandler's appeal. [The CPS argued](#) Chandler received a fair trial because: "This is a small village and inevitably there will be gossip if someone is flashing at young women. Such gossip is difficult to prevent and it's not unusual. Telling one person means the whole community knows it."

On September 27, 2017 Crown Court Judge Simon Oliver quashed Chandler's conviction on the basis of insufficient prosecution evidence. Chandler's identification by the two witnesses was unreliable because of their exposure to his picture in the Facebook exchanges during which the witnesses [where told](#), "This is who you're looking for."

After Chandler's conviction was quashed, Jeremy Wright, the Attorney General for England and Wales [commented to the media](#): "Every defendant in this country is entitled to a fair trial where a verdict is delivered based on the evidence heard in court. Our contempt of court laws are designed to prevent trial by media. However, are they able to protect against trials by social media?"

On August 10, 2017 the exchange rate was US\$1.297608 to 1 British pound. ([www.x-rates.com/historical/](#))

Sources:

[Flasher conviction quashed](#) because Facebook village gossip undermined fair trial, *The Telegraph* (London), September 28, 2017

[Man who exposed himself](#) in school playground appears in court, *Newbury Today*, August 16, 2007



# ***Menace To The Innocent: Insubstantial Expert Evidence Endangers Innocent People Accused Of A Crime***

By Hans Sherrer

**M**enace To The Innocent: Insubstantial Expert Evidence Endangers Innocent People Accused Of A Crime [is now available on Amazon.com](http://www.amazon.com) at, [www.tinyurl.com/vc5u3kqn](http://www.tinyurl.com/vc5u3kqn) .

*Menace To The Innocent* was written by Hans Sherrer, [Justice Denied's](http://www.justicedenied.com) editor and publisher. It is published by [The Justice Institute](http://www.thejusticeinstitute.com).

The following is an excerpt from the book's INTRODUCTION:

We live in an age of magic as a way of life. At least that is how a person who lived 200 years ago could be expected to think of the modern world. In actually, we live in an age of science that to the uninitiated certainly can seem magical. Almost every man-made process we have today that wasn't available 200 years ago is the result of applying scientific principles to varying degrees to achieve the end result.

The quest to solve crimes has not been immune to the application of science. However, this book demonstrates it is not unusual for science to be misapplied, disregarded, or relied on in name only to "solve" a crime and close a case by identifying a person as the culprit. The result is a crime solved by the magical masquerading as science. This situation exists because there to no reliable mechanism to ensure the system isn't gamed by the prosecution's reliance on expert "scientific" evidence that in reality is no more reliable than a confession to being a witch by a person who simply wants to stop being dunked into a pond.

There is generally no scrutiny of crimes "solved" through expert evidence because of the resources necessary to do so, and over 95% of convictions in the U.S. are by a guilty plea that precludes any critical examination of the prosecution's supposedly expert evidence. The overwhelming majority of defendants in this country have limited – if non-existent – financial resources, and public defenders who handle the overwhelming majority of criminal cases have limited budgets, and case load pressure to take the path of least resistance and plead

out every case possible.

Consequently, the legal system is structured so that the overwhelming majority of convictions that rely on the soggy foundation of suspect expert evidence – which may in fact be no more stable than quicksand – fall through the cracks into the black hole of a case closed by a plea bargain.

There is relatively little will-power by those within the system to correct this state of affairs. The four primary actors in the legal system's operation – judges, prosecutors, police, and defense lawyers – are integral parts of the assembly line that generates the steady flow of convictions the system depends on for its smooth functioning. The increasing reliance on expert evidence to secure convictions assists to grease the wheels of that system.

The depth of that reliance is demonstrated by how those primary actors exhibit a quasi form of Stockholm Syndrome by their psychological alliance with the use of expert evidence that often is insubstantial and undermines the credibility of the system they are a part of. That psychological state can be called "Expert Syndrome." The way experts are viewed and uncritically relied on masks that their contribution to a case is often no more reliable than the incantation of a witch doctor is to cure an illness or end a drought.

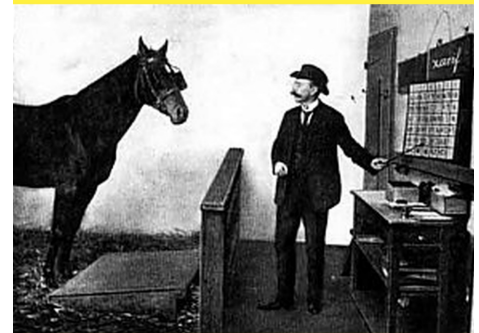
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"*Menace To the Innocent*" goes far beyond identifying the magnitude of the problem: In its last chapters it proscribes no-nonsense solutions to rectify the problem of innocent people being ravaged by prosecutors who rely on bogus expert evidence to secure their conviction. One of those solutions is to close the FBI crime lab and all local, county, and state crime labs because they are inherently, and irredeemably biased toward the prosecution. Not incidentally, those crime labs operate in a manner that would be unacceptable for a university science lab ... much less a privately operated commercial laboratory.

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- 5. Destruction of Potentially Exonerating Evidence OK With The Supreme Court

## **MENACE TO THE INNOCENT**



**INSUBSTANTIAL EXPERT EVIDENCE  
ENDANGERS INNOCENT PEOPLE  
ACCUSED OF A CRIME**

**HANS SHERRER**

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- 7. DNA Probability Estimates Elevated By Smoke And Mirrors To Certainty
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*Menace To The Innocent* can be ordered from Amazon.com at, [www.tinyurl.com/vc5u3kqn](http://www.tinyurl.com/vc5u3kqn) .



# Missouri Attorney General Josh Hawley Reneges On State's Agreement To Pay \$6.9 Million Compensation For George Allen Jr.'s Wrongful Imprisonment

Missouri Attorney General Josh Hawley has reneged [on the state's](#) agreement to pay half of the \$13,825,000 settlement in December 2017, of George Allen Jr.'s federal civil rights lawsuit for his almost 30 years of wrongful imprisonment. Allen filed his lawsuit in 2014 after his convictions were overturned for a murder and rape committed in St. Louis in 1982.

Allen was 27 when convicted in 1983 of capital murder, rape, sodomy and first-degree burglary in the death of 31-year-old Mary Bell in 1982 in St. Louis' LaSalle Park neighborhood. Allen was arrested six weeks after Bell's murder while walking in the neighborhood. He was questioned by police and gave a taped confession, that he later recanted as coerced by the police.

No physical, forensic, or eyewitness testimony linked Allen to the crime. The forensic evidence actually excluded him because his blood type didn't match that of semen recovered from Bell.

After a jury voted 10-2 for Allen's acquittal, he was retried three months later and the jury unanimously found him guilty. Allen was sentenced to 95 years in prison.

On November 2, 2012 Allen's convictions were overturned by Cole County Judge Daniel Green on the basis the prosecution violated his right to due process by failing to disclose evidence to his trial lawyer that was favorable to his defense. Five days later, on November 7, the St. Louis Circuit Attorney's Office [issued a statement](#): "We have reviewed the facts and evidence concerning this matter in order to evaluate the viability of retrying Mr. Allen, and we have determined that a successful retrial of this case would be impossible." However, the Circuit Attorney's Office appealed Judge Green's ruling vacating Allen's convictions.



Mary Bell (family photo)

Allen was released



George Allen Jr. after his release in 2012 (AP)

on bond on November 14, 2012.

On December 26, 2012 the Missouri Court of appeals affirmed the vacating of Allen's convictions.

The charges were dismissed against Allen on January 18, 2013.

On August 12, 2014 Allen filed a federal civil rights lawsuit that among its defendants named the City of St. Louis, a number of officials and officers affiliated with the St. Louis Police Department, and the State of Missouri. The police officer's were represented by the Missouri Attorney General's Office, and St. Louis was represented by its own lawyers.

Allen was 60 when he was found dead in his bedroom in St. Louis on October 16, 2016. He died from natural causes.

Allen's lawsuit continued under his estate that was administered by his sister Elfrieda and his mother Lonzetta Taylor.

On December 13, 2017 Allen's sister and mother agreed to settle all the lawsuit's claims for a total of \$13,825,000. Missouri AG Hawley agreed that payment was to be shared equally between the state and the city. Under the agreement \$5 million was to be paid in January 2018, with payments of \$2 million annually thereafter until the full amount was paid.

The \$5 million installment payment to Allen's estate was made on January 5, 2018.

After agreeing on December 13 for the state to pay half, and the \$5 million payment, AG Hawley changed his mind about the amount of the state was responsible to pay.[1]

**On February 9, 2018** Hawley filed a lawsuit in St. Louis City Circuit Court seeking declaratory relief to limit the state's liability to payment of only \$1 million of the \$13.825 million settlement. The lawsuit asserts St. Louis is liable for the remaining \$12.825 million. The lawsuit asserts the State Legal Expense Fund (LEF) puts a cap of \$1 million annually to pay civil judgments against Missouri or any affiliated agents or agencies.

The state is also seeking return of \$1.5

million of the \$2.5 million the state's LEF paid to Allen's estate in January 2018. The other \$2.5 million was paid by the City of St. Louis.

The lawsuit doesn't dispute that under the settlement Allen's estate is owed a total of \$13.825 million: the state just doesn't want to pay half.

AG Hawley's reneging on the state's agreement to pay half of the settlement has opened a can of worms. The lawsuit asserts that now the position of St. Louis is the state is liable for payment of the entire amount of the settlement — and the city isn't responsible to pay Allen's estate any money.



Missouri Attorney General Josh Hawley (Kansas City Star)

Read the lawsuit in *State of Missouri, ex rel. Attorney General Josh Hawley v. City of St. Louis*, No. 1822-CC00298 (Circuit Ct of the City of St. Louis) (Petition for Declaratory Relief, filed 2-9-2018) at, [www.courthousenews.com/wp-content/uploads/2018/02/StLouis.pdf](http://www.courthousenews.com/wp-content/uploads/2018/02/StLouis.pdf).

Hawley is running as a candidate for the Republican nomination in Missouri's 2018 U.S. Senate election.

Endnote 1. The day before AG Hawley agreed on December 13, 2017 for the state to pay half, the state and St. Louis executed a side letter agreement stipulating that the parties may "disagree about the respective responsibility of the City and the State Legal Expense Fund to pay for all or part of the settlement amounts" due under the Allen Settlement." Hawley's position is that letter supersedes his agreement *the next day* for the state to pay half.

Sources:  
[Missouri Fights St. Louis Over Wrongful Conviction Money](#), *Courthouse News Service*, February 15, 2018  
[State of Missouri, ex rel. v. City of St. Louis](#), No. 1822-CC00298 (Circuit Ct of the City of St. Louis) (Petition for Declaratory Relief, filed 2-9-2018)  
[Circuit Attorney Will Not Re-Try Man](#) After Convictions Overturned, *Fox2-TV* (St. Louis, MO), November 7, 2012  
[George Allen released by Judge Green](#), *The St. Louis American*, November 15, 2012  
[Circuit Attorney Officially Dismisses Case](#) Against George Allen, *KTVI-TV* (St. Louis), January 18, 2013  
[Man who spent decades in prison](#) before reversal of St. Louis murder conviction is remembered, *St. Louis Post-Dispatch*, Oct 27, 2016  
[Family of George Allen](#) gets \$14 million in wrongful prosecution case, *StPublicRadio.org*, February 6, 2018

## Desiree Fairouz' Conviction Overturned For Disrupting U.S. Senate Hearing

Desiree Anita Fairouz' charges resulting from her disruption of the U.S. Senate's confirmation hearing of Jeff Sessions for Attorney General [were dismissed](#) on November 6, 2017, after the prosecution notified the judge it would not retry her.

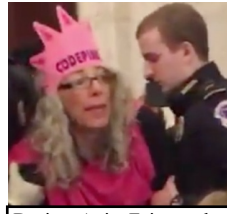
On January 10, 2017 Fairouz, aka Desiree Ali-Fairooz, laughed out loud during the U.S. Senate's confirmation hearing for Senator Jeff Sessions' nomination for U.S. Attorney General by President-elect Donald Trump. She was asked to leave the room. Instead of doing so she caused a ruckus, and she was arrested.

Fairooz, 61, is associated with the group Code Pink, and she was wearing a Code Pink hat when she was arrested.

Fairooz was charged on January 19, 2017 with two counts of misdemeanor "unlawful conduct on the capitol grounds" in Washington D.C.: Count one was for engaging in "disorderly or disruptive conduct" with the intent to disrupt congressional proceedings; and, Count two was for parading, demonstrating or picketing on the grounds of the Capitol.

She pled not guilty when she was arraigned on January 25, 2017, and she was released on bond.

During Fairouz' jury trial in the Washington D. C. Superior Court her defense was she had the right to object to her arrest for laughing out loud, so she hadn't done any-



Desiree Anita Fairouz aka Desiree Ali-Fairooz being arrested on January 10, 2017 (Ryan J. Reilly)

thing illegal. During its closing argument the prosecution told the jury her laughing during the hearing was sufficient to find her guilty — even without considering the loud disruption she caused when asked to leave and then while being arrested.

The jury convicted Fairouz on May 3, 2017. Her sentencing was scheduled for July 14.

On June 12, 2017 Fairouz filed the "Defendant's Motion for Judgement of Acquittal." The [motion argued](#): "Ms. Fairouz's brief reflexive burst of noise, be it laughter or an audible gasp, clearly cannot sustain a conviction for either of the counts in the information. So the only other basis for her conviction to anything are her statements after the U.S. Capitol Police arrested her for that laughing. Those statements merely expressed surprise at being arrested."

On July 14, 2017 Superior Court Judge Robert E. Morin granted Fairouz' motion and ordered a new trial on both counts. Morin's [Order stated](#): "The court is concerned about the government's theory" that Fairouz' laughter alone was sufficient to constitute commission of the crime. His Order also stated: "Ms. Fairouz's brief reflexive burst of noise, be it laughter or an audible gasp, clearly cannot sustain a conviction for either of the counts in the information. So the only other basis for her conviction to anything are her statements after the U.S. Capitol Police arrested her for

that laughing. Those statements merely expressed surprise at being arrested."

The U.S. Attorney's Office notified Judge Morin on September 1, 2017 that Fairouz rejected a plea offer and it intended to retry her.

Fairooz' retrial was scheduled to begin November 13, 2017.

On November 6, 2017 the prosecution filed the "Government's Notice of Nolle Prosequi" requesting dismissal of the charges against Fairouz. Judge Morin granted the motion the same day.

Two other Code Pink members tried at the same time as Fairouz — Tighe Barry and Lenny Bianchi — were convicted by the jury of two misdemeanor counts related to their disruptive conduct during Sessions' hearing. \* Barry and Bianchi were dressed as Ku Klux Klan members during the hearing. They were acquitted of one disruption count because their conduct took place before the hearing began. On July 14, 2017 Judge Morin denied their motion for acquittal, and sentenced Barry and Bianchi to ten days in jail, suspended conditional on their successful completion of six months supervised probation, and they were both fined \$100.

Endnote: \* Barry and Bianchi were convicted of Count 2: Unlawful Conduct on Capitol Grounds, and Count 3: Parading on Capitol Grounds.

Sources:

[USA v. Ali-Fairooz](#), Desiree Anita, Case No. 2017 CMD 001089 (Washington DC Superior Ct.)

[Prosecutors Drop Case Against Woman](#) Charged for Laughing at Jeff Sessions, [LawNewz.com](#), November 7, 2017

[Woman Convicted After Laughing At Jeff Sessions](#) Asks Judge To Toss Jury Verdict, [Huffingtonpost.com](#), June 22, 2017

## Nolubabalo Nomsuka To Sue For Almost Six Years Wrongful Imprisonment For Death Of Her Newborn Baby

Nolubabalo Nomsuka is planning [to sue for](#) compensation for her almost six years of wrongful imprisonment in South Africa. In November 2017 she was acquitted on appeal of murder in the death of her baby who died at birth.

In December 2011 Nomsuka was 23 and living at the Wema Hostel, near Lamontville, several miles south of Durban, South Africa. Nomsuka was in Grade 11 in school,



Nolubabalo Nomsuka (eNCA)

and she had a two-year-old daughter, Okuhle.

Nomsuka called a friend to come help when she went into labor in the eighth month of her pregnancy. Before the friend arrived she gave birth to her son. He was dead at birth or died moments afterward. When her friend and neighbors arrived they accused her of strangling her baby and called the police.

The newborns autopsy showed no signs its death was due to anything other than natural causes, and there was no sign of strangulation. Nomsuka was nevertheless charged

with murder and arrested in March 2012. She was held in custody pending her trial.

During Nomsuka's 2012 trial the medical evidence by the pathologist who conducted her newborn's autopsy established there was no sign of strangulation or a cause of death other than natural. That testimony was consistent with the autopsy report that the infant's death was not a homicide.

Nomsuka denied doing anything to cause her child's death.

In finding Nomsuka guilty the trial magistrate disregarded the autopsy report and the expert testimony of the pathologist who conducted the autopsy. Instead the judge relied on the testimony of the witnesses who

**Nomsuka cont. on p. 14**

## Equan Southall Granted New Trial Because Juror Failed To Disclose She Had Pending Assistant DA Job Application

The New York Supreme Court Appellate Division granted Equan Southall a new trial on November 28, 2017, because [a juror failed](#) to disclose before being sworn in that she had a pending job application to be an New York County Assistant District Attorney. Southall was convicted in May 2014 of second-degree murder in the death of his girlfriend.

In August 2011 Southall was arrested in the death of his girlfriend. Southall, 25, confessed to killing her, but he didn't intend to do so. He said it happened when he was extremely emotionally disturbed. He refused to plead guilty to second-degree murder degree murder that he was charged with. The prosecutor declined to offer a plea deal

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### Nomsuka cont. from p. 13

arrived after the baby's birth that they believe she strangled it.

The magistrate sentenced her to life in prison. The magistrate later reduced her sentence to 20 years on the compassionate ground that the unmarried Nomsuka had a young daughter.

In 2013, Legal Aid lawyers assisted Nomsuka in filing an appeal of her conviction and sentence. Her appeal argued the trial judge erred in finding her guilty because the prosecution's expert evidence established she had been convicted of a murder that didn't occur, since her infant died from natural causes.

In November 2017 a hearing was held on Nomsuka's appeal.

After the hearing a panel of Durban High Court judges unanimously ruled the prosecution failed to introduce sufficient evidence to prove Nomsuka's guilt beyond a reasonable doubt and ordered her acquittal. The High Court judges excoriated the trial magistrate for disregarding the un rebutted medical testimony by the experienced pathologist who conducted the baby's post-mortem examination that there was no sign of strangulation, or that the baby died from anything other than natural causes.

for first-degree manslaughter.

Samantha Dworken was a prospective juror for Southall's trial. She disclosed on her questionnaire she had worked as an intern in the U.S. Attorney's Office in New York before she went to law school. During her voir dire on April 14, 2014 Dworken [told the judge](#) she had been a lawyer for 18 months, and was currently "employed as an attorney" at "a large law firm doing corporate litigation, white collar defense and securities." Dworken also said she had "some specialized knowledge about criminal law."

Dworken said "Yes," when asked if she thought she would "be able to be a fair juror in this case."

Neither the prosecution nor Southall's lawyer sought to exclude Dworken as a juror for cause (actual or implied bias) and neither used a peremptory challenge to have her removed from the jury pool.

Two days later the 28-year-old Dworken submitted an extensive application for a job

Nomsuka, now 29, was immediately released after five years and eight months in custody. She was reunited with her now eight-year-old daughter Okuhle. She had been taken care of by Nomsuka's grandmother, because Nomsuka's parents had died before her arrest.

After her release Nomsuka [told a reporter](#): "I don't know what would have happened to my daughter had my grandmother not been there." She said of her arrest: "It is one of the most painful things I have ever experienced. There I was, mourning my son and they wanted me arrested for something I did not do." She also said that with her release she would be able to perform a traditional naming ceremony to allow her son's soul to rest in peace.

In January 2018 it was reported Nomsuka is planning to file a wrongful imprisonment lawsuit against South Africa's Department of Justice for compensation.

While in prison Nomsuka graduated from secondary school, and was half-way through her studies to get a business degree. She is planning to complete the classes necessary to get her degree.

Sources:

[KZN woman wrongly jailed](#) for nearly six years to sue, By eNCA, ENCA.com (South Africa), January 13, 2018

[My six years in jail](#), for nothing, *Sunday Tribune* (Durban, ZAF), December 24, 2017

as an Assistant District Attorney in the New York County DA's Office — the office prosecuting Southall.

Two days after that — on April 18 — Dworken and the other jurors were sworn in.

Dworken remained silent when the judge invited the jurors [to speak privately](#) if they had "some concern or problem" with serving as a juror, and whether they wanted to discuss "anything else that . . . had not already asked about."

During Southall's trial his lawyer argued that because he suffered from an extreme emotional disturbance, the evidence showed he should be convicted of manslaughter.

Dworken and the other jurors convicted Southall of second-degree murder on April 29.

Three weeks after voting to convict Southall, Dworken had her first interview with the DA's Office on May 20. Her interviewer was scheduled to be Assistant DA Craig J. Ortner — one of the two ADA's who had prosecuted Southall. Dworken told a staff person she had recently served on a jury prosecuted by Ortner, so someone else interviewed her.

After four interviews Dworken received a job offer on July 8, and began working as an Assistant DA in the trial division on September 2, 2014.

Four weeks later, during Southall's sentencing hearing on September 29, 2014, the DA's Office argued for imposition of the maximum sentence. The judge sentenced Southall to 23 years to life in prison.

Nine months after Southall's conviction and four months after his sentencing, Ortner sent a letter to the judge and Southall's lawyer that was dated January 22, 2015. The letter stated Dworken had submitted a job application with the DA's Office prior to being sworn in as a juror, and she had been hired in September 2014.

Southall's lawyer filed a motion to vacate his conviction based on the new evidence of Dworken's failure to inform the judge of her pending ADA job application before being sworn in as a juror.

An evidentiary hearing was held on Febru-

**Southall cont. on 15**

## Southall cont. from p. 14

ary 19, 2016. The New York County DA's Office vigorously opposed Southall's motion and argued Dworken did nothing wrong.

Southall's trial lawyer [Patrick Brackley testified](#):

"that he chose not to challenge the juror because after questioning her about her experience at the US Attorney's Office and her then-current position at a firm where she practiced white-collar criminal defense, counsel Brackley concluded that she would likely be "sympathetic to defense issues." However, if counsel had known that the juror had a pending job application with the DA's Office, counsel Brackley would have "inquired into it" and challenged her for cause; if that were denied, counsel would have used a peremptory challenge."

[Dworken testified](#) "it didn't occur to [her] that . . . submitting an application was something that [she] was supposed to disclose to the court." She also said she tried "to be a fair juror in this case."

ADA Ortner was not subpoenaed to testify about when he learned Dworken served as a juror while her job application was pending.

The judge denied Southall's motion in June 2016, ruling there was no evidence: Dworken lied during voir dire or on her questionnaire; that she exhibited actual bias against Southall; or, that her pending ADA job application was an extreme circumstance suggesting "implied bias" against Southall.

Southall appealed.

On November 28, 2017 the New York Supreme Court Appellate Division unanimously (5-0) reversed the trial judge's ruling and granted Southall a new trial based on Dworken's "implied bias" against him. In *People v Southall* (2017 NY Slip Op 08344) [the Court's ruling stated in part](#):

"Undoubtedly, "[f]undamental to our constitutional heritage is an accused's right to trial by an impartial jury."

...  
The presumption of innocence, the prosecutor's heavy burden of proving guilt beyond a reasonable doubt, and the other protections afforded the accused at trial, are of little value unless those who are called to decide the defendant's guilt

or innocence are free of bias."

...  
a defendant has a "constitutional right to a trial by a particular jury chosen according to law, in whose selection [the defendant] has had a voice."

...  
Here, due to the juror's concealment of material information regarding her job application, which also demonstrated a predisposition in favor of the prosecution, defendant was deprived of an impartial jury comprised of 12 jurors whom he had selected and approved through voir dire. In fact, defendant was tried by only 11 jurors whom he truly selected and approved; this violated his constitutional right to a jury of 12 of his own choice in a criminal case ... He was also deprived of exercising the various safeguards put into place by our legislature. As defense counsel testified, had the juror timely disclosed this information he would have moved to strike her for cause, and if unsuccessful would have exercised a peremptory challenge against her.

...  
While the juror did not lie when she was questioned as a prospective juror, she later concealed material information — her application to work for the office prosecuting this case — which, as an attorney with some specialized knowledge of criminal law, she should have known to disclose to the court. ... we find that the record demonstrates that the juror possessed a state of mind likely to prevent her from rendering a fair and impartial verdict.

...  
Separately, permitting a juror seeking employment with the prosecuting agency in a criminal matter to serve on the jury creates the appearance of impropriety, and erodes the public's confidence in the criminal justice system. Indeed, a number of cases make clear that a juror's recent contact or association with the prosecuting agency's office warrant a dismissal for cause

...  
In sum, the court should have granted defendant's motion to vacate his conviction, since "improper and prejudicial conduct not appearing in the record occurred during a trial resulting in the judgment," which "would have required a reversal of the judgment upon an appeal therefrom" if it had occurred on the record.

...  
Accordingly, the judgment ... should be reversed, on the law, the motion to va-

cate granted, and the matter remanded for a new trial.

The ruling is in [People v Southall](#) (2017 NY Slip Op 08344).

Southall, now 31, admits he is not innocent of any crime related to the death of his girlfriend, just that he isn't guilty of second-degree murder that the pro-prosecution stacked jury convicted him of.

At least three unanswered questions are why the DA's Office waited nine months to notify the trial judge and Southall's attorney about what Dworken did; what prompted the sudden mailing of the DA's letter in January 2015 explaining what had occurred; and, why has DA Cyrus Vance's office fought so hard to defend what Dworken did?

Dworken remains employed as an ADA in the trial division of the New York County DA's Office.

### Sources:

[People v Southall](#) (2017 NY Slip Op 08344)

[Manhattan murder conviction nixed](#) after juror applied for prosecutor job two days after trial questioning, *New York Daily News*, November 28, 2017



# Tammy Louise Lysaght Cleared Of 2010 Assault Of Her Daughter After Ex-Boyfriend Confesses

The conviction of Tammy Louise Lysaght for the aggravated assault of her 16-month-old daughter in 2010 in Perth, Australia [was quashed](#) on February 7, 2018. Lysaght had appealed her 2011 conviction based on the confession of her then live-in boyfriend, Robert Edward Dacey, in a Facebook post in 2016 and then to police, that he committed the crime. Dacey pled guilty to aggravated assault in March 2017 and was sentenced to 20 months in prison.

On November 30, 2010 the 20-year-old Lysaght called an ambulance when she noticed her youngest daughter, Leticia Marie Haskett, had swollen eyelids. She was taken to the Princess Margaret Hospital for Children in Perth. Dr. Winterton examined Leticia and determined she had a fractured skull and femur and extensive bruising to her buttocks. He concluded she had been physically assaulted, most likely with a linear shaped object on her left hip, her right head, and her left buttock. Winterton's report was provided to the Department of Child Protection and the police.

Tammy Lysaght was interviewed twice by the police, denying she caused Leticia's injuries.

Her male live-in boyfriend Robert Dacey also denied inflicting the injuries, when questioned by the police.

Lysaght was charged in January 2011 with aggravated assault.

She insisted to her lawyer, Dean Richard Love, that she was innocent. Love advised her to plead guilty, telling her that if she went to trial and lost she would be imprisoned for years, and she would have her children taken away. DCP personnel also advised her to plead guilty, because by accepting responsibility she would not lose all access to her children.

Around the first of July Dacey admitted to Lysaght that he beat Leticia, but he threatened to kill her and her family members if she told the police.

Lysaght pled guilty on July 25, 2011. She was sentenced to a one-year prison term suspended for one year and to pay \$62.50 in costs. Contrary to what Love told her, as a

result of her conviction the State took away custody of her two children. The two children she later had were also taken from her soon after birth. Her children were placed with two relatives. She was only permitted to see her four children four times a year for three hours at a time.

Lysaght split-up with Dacey and in 2012 she moved to Sydney — almost 2,500 miles east of Perth.

In 2016 Dacey admitted in a Facebook post that he assaulted Leticia in 2010. Based on his admission the police in Perth reopened Lysaght's case. The police learned from interviewing people who knew Dacey, that beginning in late 2010 he told many people that it was he and not Lysaght who injured Leticia. When police confronted Dacey with the evidence of their investigation, he admitted to assaulting Leticia.

When the police interviewed Lysaght in September 2016 she told them Dacey confessed to her about three weeks before her sentencing that he caused Leticia's injuries. She said she remained silent because Dacey threatened to kill her, her kids, and other family members if she reported him to the police.

In January 2017 Dacey was charged with aggravated unlawful assault. In March 2017 he pled guilty and was sentenced to 20 months in prison.

On November 29, 2017 Lysaght filed a petition for leave to appeal her conviction based on the new evidence that her conviction was a miscarriage of justice because Dacey had been convicted of the same acts she had been convicted of committing. She argued her new evidence overcame the procedural bar that her appeal was filed almost six years late.

The police whose investigation resulted in Dacey's conviction, recommended that her petition not be opposed.

After a hearing on January 24, 2018, Supreme Court Justice Lindy Jenkins orally granted Lysaght leave to appeal and quashed her conviction. She said she would issue her written opinion later.

On February 7, 2018 Justice Jenkins released her written ruling in *Lysaght v. Youlden* [2018] WASC 38. Jenkins ruling [stated in part](#):

6. The appeal is over six years out of time. ...
7. I do not find that the appellant has



Princess Margaret Hospital for Children in Perth (Dept of Health website)

explained satisfactorily her delay in instituting this appeal. However, the respondent concedes that there will be a miscarriage of justice if an extension of time within which to appeal is not allowed. ... Given the unusual circumstances, I will grant an extension of time within which to appeal.

24 In relation to why she did not give that information to the police [that Dacey admitted to her he injured Leticia], the appellant says in her statement ...:

35. I never came forward to Police with this information because Rob threatened to kill me and my kids if I did. He also made threats to go after my family.

36. I was fearful for my safety and my family so I didn't tell Police that Rob was responsible for assaulting [the victim].

37. I was involved in numerous domestic violence incidents with Rob but never reported it because I was too scared.

38. I went to court through instruction from my lawyer. I pled guilty against my wishes, to the assault on [the victim].

25. Despite ending the relationship, the appellant did not provide information to the police that exonerated her and implicated Mr Dacey. It seems that did not occur until September 2016.

27. On 11 January 2017... Mr Dacey was charged with aggravated assault occasioning bodily harm on the victim. This was the same assault and harm to which the appellant had pleaded guilty in July 2011. Mr Dacey entered a plea of guilty to this charge and on 10 March 2017 he was sentenced to 20 months' imprisonment for the offence.

31. The respondent concedes that a miscarriage of justice has occurred in this case for five reasons: ...

32. In these circumstances, the respondent concedes that it would be contrary to the proper administration of justice for the respondent to attempt to maintain the appellant's conviction in circum-

**Lysaght cont. on p. 17**



## Lysaght cont. from p. 16

stances where the respondent accepts that in truth Mr Dacey was solely responsible for the offence.

33. After taking into account all of these matters, I conclude that there has been a miscarriage of justice. ... Mr Dacey has been convicted of his own admission of the assault on the victim, to which the appellant pleaded guilty. In law two people cannot be guilty of the same offence when the allegation is that only one person did the acts which constitute the offence and when there is no allegation or evidence which could establish that a second person was a party to the offence. This is the situation in this case. It now being accepted by the prosecution that Mr Dacey is the sole offender, it would be a miscarriage of justice for the appellant's conviction to remain.

34 For these reasons, I would grant an extension of time within which to appeal, grant leave to appeal on the sole ground of the appeal, grant leave to rely upon the affidavits filed by the parties which I have identified and set aside the conviction and the sentence.

Although she was sympathetic to Lysaght's conundrum at the time of her prosecution, Justice Jenkins agreed with the State [respondent] in denying Lysaght's application to be reimbursed the cost of her appeal: it was her guilty plea to a crime she knew she didn't commit that resulted in her submitting her appeal:

41. The respondent submits that this is not a case where the appellant has been shown to be innocent simply because on the admitted facts she could not as a matter of law have committed the offence. Neither, it says, is this a case where her plea was entered due to any misconduct or negligence on the part of the investigator or the prosecution. It says that it was beyond question that an offence had been committed. The identity of the perpetrator was the only issue. In those circumstances, the appellant pleaded guilty despite the fact that she knew in truth that she had not inflicted the injuries upon the victim. ... By pleading guilty, she ensured that her only remedy would be to apply to set aside the conviction if the truth ever became known. Consequently, her plea amounted to conduct which was unreasonable and resulted in the institution of the appeal.

44. ...When the appellant pleaded guilty to the offence she knew that she had not committed it and she knew the identity

of the offender. She did not tell the police or the court of these facts and deliberately led them to believe that she was responsible. ... It does not seem to me that this is a situation in which the system has failed the appellant or a situation in which the respondent failed the appellant.

45. The appellant's lawyer may have failed her. If he did, the appellant may have remedies against him. ...

46. I appreciate that people who are accused of crimes can have personal problems which may cause them to plead guilty to a charge of which they may not be guilty. ... However, it is a different thing entirely for a court to visit the costs of their earlier and regretted decision on a respondent or on the State.

47. For these reasons, the application for costs is dismissed.

**Justice Jenkins' ruling was in *Lysaght -v- Youlden* [2018] WASC 38 (WA Supreme Court, 2-7-2018).**

Justice Jenkins' recognition the police and prosecution weren't responsible for Lysaght's conviction is important because her guilty plea can be expected to preclude her from being successful in obtaining *ex gratia* compensation from Western Australia's government. Lysaght suing her ex-lawyer Love would also likely be futile: his advise for her to plead guilty to minimize her punishment is what lawyers do every day, and Lysaght can only blame herself for not telling him the exculpatory evidence that Dacey confessed to her.

The best that the now 28-year-old Lysaght may hope for is regaining custody of her four children. The basis for the State to take away her custody was her admission she assaulted her daughter, which it is now known wasn't true. However, the State may argue she is unfit for allowing the environment to exist that resulted in the assault of her daughter.

Before and after he represented Lysaght, her lawyer Dean Love was disciplined by the Legal Practice Board of Western Australia (equivalent of a state bar association in U.S.) four times related to four different situations unrelated to her case: In 2010, 2011, 2012, and July 2014 he was sanctioned after being found guilty of Unsatisfactory Professional Conduct. The hammer was dropped on Love for a fifth situation that resulted in his disbarment: On October 28, 2014 the Western Australia Supreme Court unanimously ordered his name be

stricken from the roll of legal practitioners, for: "(1) ... intentionally causing the publication of a webpage that was likely to mislead and deceive persons using it. The website was misleading in that it caused a person using it to believe they were submitting an application for legal aid to the Legal Aid Commission of Western Australia, when in fact the website would cause an email to be sent to the practitioner, who would then submit an application to Legal Aid on that person's behalf ..." [Legal Profession Complaints Committee -v- Love [2014] WASC 389 (28 October 2014)]

Sources:

[Lysaght -v- Youlden](#) [2018] WASC 38 (WA Supreme Court, 2-7-2018) (Quashing conviction based on new evidence crime was committed by Robert Dacey.)

[Innocent Perth mother's conviction](#) against baby quashed, By Heather McNeill, *WAToday.com.au*, February 8, 2018

[Mother wins appeal](#) over baby bashing conviction, *Perth Now* (Perth, West Australia, Australia), January 25, 2018

[Perth mother's child assault conviction](#) overturned, By Elle Farcic (Staff), *The West Australian*, January 25, 2018

['I'm innocent':](#) Perth mother's desperate fight to get her kids back, By Heather McNeill, *WAToday.com.au*, January 23, 2018

[Legal Practice Board of Western Australia](#) REGISTER OF DISCIPLINARY ACTION

**Actions involving Richard Dean Love, DOB 4 Jan. 1972**

[Particulars of Disciplinary Action:](#) Unsatisfactory Professional Conduct

Date of Disciplinary Action Decision: 23 December 2010

Reference: *Legal Profession Complaints Committee v Love* [2011] WASAT 13

(1. " DEAN RICHARD LOVE (the practitioner) between on or about 23 July 2007 and on or about 8 April 2008 engaged in unsatisfactory professional conduct in the course of acting on behalf of Mr D J T (the client) with respect to family law matters (the retainer) in that he did not treat the client fairly, in good faith and protect the client's interests ..."

2. The practitioner pay a fine to the Legal Practice Board in the sum of \$7,000.

3. Refund fees of \$1,000 to the client by providing a cheque in that sum to the applicant, made payable to the client within 28 days.

4. The practitioner pay the applicant's costs fixed in the sum of \$2,000.")

Particulars of Disciplinary Action: Unsatisfactory Professional Conduct, Date of Disciplinary Action Decision: 10 March 2011, Reference: VR 19 of 2011

Particulars of Disciplinary Action: Unsatisfactory Professional Conduct, Date of Disciplinary Action Decision: 27 February 2012, Reference: VR 34 of 2012

Particulars of Disciplinary Action: Unsatisfactory Professional Conduct, Date of Disciplinary Action Decision: 4 July 2014, Reference: VR 159 of 2013

[Particulars of Disciplinary Action: Struck Off the Roll of Practitioners](#), Date of Disciplinary Action Decision: 28 October 2014, Reference: *Legal Profession Complaints Committee v Love* [2014] WASC 389



# Tara Lenich Disbarred After Pleading Guilty To Using Illegal Wiretaps To Spy On Lover And Co Worker When She Was Prosecutor

Tara Frances Lenich [was disbarred](#) as an attorney in New York on December 29, 2017. Lenich's disbarment was based on her guilty plea in April 2017 to two federal charges of illegal interception of electronic communications while she was an assistant district attorney in the Kings County (Brooklyn) District Attorney's Office. The victims of Lenich's wiretap crimes were her boyfriend and a female co-worker Lenich thought he was involved with.

Tara Lenich was admitted as a lawyer in New York in 2004. In 2005 she was hired as a King's County assistant district attorney. In October 2014 Lenich was assigned as deputy chief of the DA's Violent Criminal Enterprises Bureau. The VCEB specializes tactics like wiretaps to conduct surveillance of criminal gangs and drug organizations.

While in that position Lenich became romantically involved with NYPD Detective Jarrett Lemieux. While she was involved with Lemieux, she believed he also took up with ADA Stephanie Rosenfeld. Lenich and Rosenfeld were co-workers.

Lenich was arrested in her office on Monday, November 28, 2016. Over the Thanksgiving weekend the DA's Office discovered that for more than a year during 2015 and 2016 she engaged in an elaborate scheme to surveil Lemieux and Rosenfeld.

Lenich had forged wiretap warrants for Lemieux and Rosenfeld's cell phones by cutting the signature of judges from legitimate documents and pasting them on wiretap applications. She also gave false grand jury subpoenas to Lemieux and Rosenfeld's phone providers so she could obtain their text messages. She concealed her personal surveillance operation by lying to fellow prosecutors: she told them her investigation was confidential and only she had access to the wiretaps.

After Lenich's arrest she admitted what she had done. She was immediately fired by the DA's office. Federal authorities took over her case because it was a conflict of interest for the King's County DA to bring state



Tara F. Lenich (Brooklyn DA, Youtube)

charges.

Co-workers described Lenich as a model prosecutor.

The DA's Office announced it would comprehensively review its protocols and procedures to ensure that Lenich's abuse of her authority would never happen again.

On March 23, 2017 a federal grand jury in the Eastern District of New York (Brooklyn) indicted Lenich for two counts of illegal interception of communications under 18 USC §§ 2511(1)(a) and (4)(a).

During her arraignment on March 27 Lenich pled not guilty, and she was released on \$500,000 bond.

A week later Lenich pled guilty to both counts during a hearing on April 3, 2017. She admitted she knew what she was doing was illegal.

Her sentencing was scheduled for December 12, 2017. It was later rescheduled for February 2, 2018. Federal prosecutors want Lenich to be sentenced to between eight and 14 months in federal prison.

An attorney licensed in New York who is convicted of any state or federal felony that corresponds to a felony in New York, is required to file within 30 days a record of that conviction with the appellate division of the New York supreme court. A felony conviction subjects a lawyer to automatic disbarment.

Lenich did not file the required notice she had pled guilty on April 3, 2017 to two federal felony crimes that are essentially similar to New York's felony eavesdropping law.

The Grievance Committee for three different New York judicial districts filed a joint motion to disbar Lenich as required by her felony convictions. On October 23, 2017 Lenich filed a letter that she did not oppose the motion.

On December 29, 2017 the New York Appellate Division, Second Department granted the motion striking Lenich as a lawyer. The Court's [ruling stated](#):

"During the respondent's plea allocution, she admitted that she was guilty of

both counts of an indictment filed March 23, 2017, in that, between approximately 2015 and 2016, while working as an Assistant District Attorney for the Office of the Kings County District Attorney, she, inter alia, misappropriated that office's equipment and facilities in order to illegally intercept and record the oral and electronic communications transmitted to and from two cellular telephones, and that she did illegally intercept, eavesdrop on, and record such communications."

ORDERED that ... Tara Frances Lenich, is disbarred, effective April 3, 2017, and her name is stricken from the roll of attorneys and counselors-at-law ..."

**Read the court's ruling in *In the Matter of Tara F. Lenich*, 2017 NY Slip Op 09280 (NY Appellate Div., 2nd Dept., Dec. 29, 2017), at [www.law.justia.com/cases/new-york/appellate-division-second-department/2017/2017-09875.html](http://www.law.justia.com/cases/new-york/appellate-division-second-department/2017/2017-09875.html).**

The irony of Lenich wrecking her career is her notion Lemieux and Rosenfeld were romantically involved was a fantasy. It only existed in her mind.

Lenich faces additional fallout from her illegal surveillance of Rosenfeld. On December 14, 2017 Rosenfeld, 37, filed a lawsuit in federal court. The lawsuit alleges Lenich's federal crimes and the resulting scuttlebutt in legal circles she was involved in a love triangle with Lemieux and Lenich resulted in her being forced to resign in May 2017 from her job as an assistance district attorney. Rosenfeld's lawsuit is *Rosenfeld v. Lenich*, No. 1:17-cv-07299-NGG-PK (EDNY).

Sources:

[In the Matter of Tara F. Lenich](#), admitted as Tara Frances Lenich, an attorney and counselor-at-law. Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts, petitioner; Tara F. Lenich, respondent. (Attorney Registration No. 4196960), 2017 NY Slip Op 09280 (NY Appellate Div., 2nd Dept., Dec. 29, 2017) (Ruling disbaring Tara Lenich.)

[Brooklyn Prosecutor Accused of Using Illegal Wiretap](#) to Spy on Love Interest, By Alan Feuer and Eli Rosenberg, New York Times, Nov. 28, 2016

[Ex-Brooklyn prosecutor hit with lawsuit](#) for 'humiliating' co-worker with secret wiretap, By Andrew Keshner, New York Daily News, December 15, 2017

[USA v. Lenich](#), No. 1:2017-cr-00154-WFK (EDNY) (Two count indictment of Tara Lenich)

*Rosenfeld v. Lenich*, No. 1:17-cv-07299-NGG-PK (EDNY) (COMPLAINT against Tara Lenich filed 12-14-2017)



# John C. Riesbeck Cleared Of Rape On Appeal Because His Jury Was Stacked With Radical Feminists

John C. Riesbeck's convictions related to an alleged rape in 2010 [were vacated on](#) January 23, 2018 by The United States Court of Appeals for the Armed Forces. To ensure Riesbeck's conviction the Coast Guard deliberately stacked his jury with female sexual assault victim advocates. [The Court ruled:](#) "Yet the error in this case is both so obvious and so egregious that it adversely affected not only Appellant's right to a fair trial by an impartial panel, but also the essential fairness and integrity of the military justice system." The evidence against Riesbeck was weak and inconsistent, and the charges against him were dismissed with prejudice. It ended his eight year ordeal that included four appeals court rulings.

Riesbeck's is the first known case of a person's convictions being overturned because the jury selection process was polluted by the idea that "political correctness" should be a factor in determining who is in the jury pool. The Coast Guard stacked Riesbeck's jury pool to ensure he was tried by a majority of female jurors predisposed by behavior, attitude, and training to find him guilty regardless of the weakness of the prosecution's evidence.

John Riesbeck was a Coast Guard Boatswain's Mate Second Class (E-5) on the USCGC Midgett (WHEC-726), when in September 2010 the ship made a port call in Puerto Vallarta, Mexico.[1] Riesbeck and other crew members stayed at a hotel in separate rooms. Seaman S. was a female crew member staying at the hotel.[2] She spent time at the hotel swimming pool and drinking alcohol with Riesbeck and other crew members. At some point Riesbeck and S. went back to his hotel room and had sexual intercourse. Their encounter was not permitted by Coast Guard policy barring relationships between people stationed aboard the same vessel.

Seven months later — in April 2011 — during evening colors S. told a new crew member that he would have to relinquish his chosen role to her. Riesbeck who had a superior rank to S., intervened and told the new crew member he would retain his role.

After the incident S. reported to the Coast Guard Investigative Service (CGIS) on April 18, 2011 that Riesbeck had raped her in September 2010. S. said that after consuming a large quantity of alcohol she went with Riesbeck to his hotel room where he raped her while she screamed loudly for 15 to 20 minutes during his assault. She said she fled from his room when she was able to do so.

When questioned Riesbeck admitted he and S. had engaged in consensual sex. He denied she screamed or did anything to dissuade him while they had sex.

The CGIS' investigating officer recommended the case be dismissed for lack of evidence.

However, a Coast Guard admiral overrode the recommendation of the CGIS, and ordered Riesbeck's general court martial for forcible rape; making false official statements; and communicating indecent language.

The trial judge denied a motion for funding for Riesbeck's lawyer and a paralegal to make an trip to Puerto Vallarta to investigate the alleged crime scene. They wanted to check the thickness of the hotel room walls since the complainant allegedly screamed for fifteen to twenty minutes; the route to the hotel room from the swimming pool; the location of hotel video cameras; and traffic through the halls. In denying the motion [the judge stated:](#) "I'm not convinced that the failure to allow for this investigatory trip would result in a fundamentally unfair trial."

Riesbeck's general court martial took place in Seattle, Washington from June 12-16, 2012.

Riesbeck's jury was to be comprised of seven "jurors", and ten Coast Guard officers and enlisted personnel were selected for the jury pool: seven women and three men. During *voir dire* five of the women responded affirmatively they had served or were currently serving as a sexual assault victim advocate. The other two women responded they had been trained as a sexual assault victim advocate.

There was a recess after the *voir dire* was taken. When they returned to assert challenges to individual jurors, [Riesbeck's lawyer](#) noted that the jury pool of three men, and seven women who had all either served, were serving, or had been trained as a sexual assault victim advocate — was "unusu-



USCGC Midgett - WHEC-726 (Coast Guard photo)

al," and that if Riesbeck was convicted his appellate counsel might want to "gather further evidence" and perhaps request a new trial. However, Riesbeck's lawyer did not formally object or ask to stay the proceedings due to the pool of prospective jurors, but proceeded with his challenges and jury selection.

Four women who had served or were serving as a sexual assault victim advocate, one woman who had been trained as a sexual assault victim advocate, and two of the men were seated as jurors.

The next day Riesbeck's lawyer placed in the record "newly discovered evidence" provided to him that for the jury the Convening Authority had "decided essentially that the predominate criteria is gender", and his lawyer stated that doing so violated Article 25 of the Uniform Code of Military Justice. He made a motion to strike all the female jury members, and requested a hearing to call witnesses to determine why there were so many women on the panel: women comprise 16% of Coast Guard personnel, while his jury pool was 70% female. Riesbeck's lawyer admitted that the day before he accepted the jury panel as selected, but he had reconsidered that in light of the new evidence.

The military judge denied the motion to strike the female jurors as untimely because it wasn't made the day before during jury selection, and his request for a hearing was refused.

Riesbeck's trial proceeded.

The prosecution's case was based on S.'s testimony that after drinking heavily at the hotel swimming pool she went to Riesbeck's hotel room where he raped her while she screamed for 15 to 20 minutes. She was vague on many details. The prosecution presented no hotel surveillance video tape, hotel staff or guest, family member, friend, or Coast Guard personnel who could corroborate what she said happened, or who she had even told she had been raped.

**Riesbeck cont. on p. 20**

## Riesbeck cont. from p. 19

The prosecution did present the testimony of Boatswain's Mate Second Class Petty Officer H. He testified that because of Coast Guard policy he waited until he departed being stationed on the Midgett to become a paramour of S.'. He said they decided to cool it in April 2011. H, testified S. never told him that Riesbeck had raped her.

The trial judge overruled an objection of Riesbeck's lawyer and allowed the prosecution to admit an entry from S.'s journal that she wrote months after the alleged rape: his lawyer unsuccessfully argued the entry was inconsistent with her testimony and **she had** "three putative motives to lie ... the relationship with Petty Officer H, the "run-in" with Riesbeck in April 2011, and the possibility of being in trouble with CGIS [for violating the Coast Guard's non-sexual relationship policy for shipmates.]"

In his defense Riesbeck presented the hotel guest who was in the room next to his at the time of the alleged rape, and the guest testified he heard no screaming. He also said he thought he would have heard screaming. That contradicted the complainant's testimony she screamed loudly for 15 to 20 minutes during Riesbeck's violate assault. The hotel guest also testified that he was entering his room when he saw Riesbeck and Seaman S. wearing swimming suits as they entered Riesbeck's hotel room.

Riesbeck testified in his defense that he and S. drank alcohol at the pool and then went to his room and had consensual sex.

On June 16, 2012 Riesbeck was convicted by a non-unanimous jury verdict, with all five women voting to convict. (Only a two-thirds majority is required to convict in a non-death penalty case court martial.)

Riesbeck was sentenced to confinement for three months, reduction to E-2, and a bad-conduct discharge.

He appealed.

On Aug. 5, 2014 the Coast Guard Court of Criminal Appeals (CGCCA) affirmed Riesbeck's convictions. The **Court ruled**:

- The judge properly denied the funds for Riesbeck's lawyer to investigate the alleged crime scene because it wasn't "essential to a fair trial";
- That even if the judge erred by admitting the complainant's journal entry, it was a harmless error;

- That Riesbeck's lawyer waived objecting to the inordinate number of women in the jury pool by failing to make a timely objection; and,

- That his lawyer's failure to timely object to the jury pool wasn't ineffective assistance of counsel.

Riesbeck appealed to the United States Court of Appeals for the Armed Forces (USCAAF), which on December 11, 2014 **ruled the appeals court erred** because his lawyer did not waive objecting to the jury pool composition because of an exception in the Rules for Courts-Martial (RCM), and also, "improper member selection can constitute unlawful command influence, an issue that cannot be waived." The Court remanded to the CGCCA to determine: "Was Appellant Deprived Of A Fair Trial By An Impartial Panel?"

Post-trial evidentiary hearings were held on March 17 and May 14, 2015. Testimony established that the original roster of personnel for Riesbeck's jury pool was less than 20% female — consistent with the Coast Guard being 16% female — but by the time of his trial it had been increased to 70%. There was also testimony that final approval of the composition of Riesbeck's jury pool was made by then Vice Admiral Paul Zukunft, the Commander, Coast Guard Pacific Area. On March 14, 2012 Zukunft signed an order adding enlisted members and removing some officers: the enlisted members added were women who had been sex assault victim advocates. Only the day before Riesbeck's trial began, Zukunft signed another order removing another officer and adding another enlisted member who was a sex assault victim advocate.

On November 30, 2016 the Coast Guard CCA again affirmed Riesbeck's convictions. They found that none of the shenanigans by numerous Coast Guard officers to make female sexual assault victim advocates a majority of Riesbeck's jury deprived him of a fair trial.

On April 28, 2017 the USCAAF granted review of the CGCCA's ruling to determine if Riesbeck's panel was properly selected and whether he was denied a fair trial.

On January 23, 2018 the USCAAF issued its unanimous (5-0) ruling vacating Riesbeck's convictions, and ordering dismissal of his charges that were based on weak inconsistent evidence. The Court didn't sugar-coat that Riesbeck was effectively railroaded by the "politically correct" actions of top level Coast Guard officers and



the trial judge to ensure his jury was heavily stacked with women, and then by the Coast Guard Court of Criminal Appeals that looked the other way in affirming his convictions. The Court's ruling in *U.S. v. Riesbeck, \_ M.J. \_*, No. 17-0208/CG (USCAAF., Jan. 23, 2018) **stated in part**:

*"The salient facts paint a clear picture of court stacking based on gender in an atmosphere of external pressure to achieve specific results in sexual assault cases. Against that backdrop, purposefully selecting a panel that is seventy percent female, most of whom are victim advocates, from a roster of officers that was only twenty percent female and a pool of enlisted that was only thirteen percent female, smacks of a panel that was "hand-picked" by or for the Government. [16]*

...  
In this case, the Government has not met the burden to show, beyond a reasonable doubt, that Appellant received a fair trial from an impartial panel. [17]

*The very panel that tried, convicted, and sentenced Appellant was the same panel "hand-picked" by those charged with selecting Appellant's court-martial panel. The Government's case was weak ... The Government's case was so weak, in fact, that the Article 32 Investigating Officer recommended the dismissal of the Article 120, UCMJ, charges against Appellant. In addition, the military judge failed to conduct even a rudimentary investigation into Appellant's claims of improper member selection, completely abdicating his responsibility to cleanse Appellant's courtmartial of the unlawful command influence. ... And the CCA, rather than correct the obvious error, did not embrace its proper and frankly necessary role in the context of member selection and unlawful command influence, but rather rationalized the error away as a*

**Riesbeck cont. on p. 20**

## Riesbeck cont. from p. 20

benign effort to seek inclusiveness.” [17-18]

*Yet the error in this case is both so obvious and so egregious that it adversely affected not only Appellant's right to a fair trial by an impartial panel, but also the essential fairness and integrity of the military justice system.* We thus decline to authorize a rehearing, and order that the charges and specifications be dismissed with prejudice. *Due to the patent and intolerable efforts to manipulate the member selection process, contra every requirement of the law, [] the failures of the military judge, the DuBay military judge, and the CGCCA, to investigate, recognize, or ameliorate the clear court stacking in this case, and the actual prejudice to the Appellant of being tried by a panel cherry-picked for the Government, dismissal with prejudice is the only remedy that can “eradicate the unlawful command influence and ensure the public perception of fairness in the military justice system.”* [18]

The decision of the United States Coast Guard Court of Criminal Appeals is reversed. The charges and specifications are dismissed with prejudice. The record of trial is returned to the Judge Advocate General of the Coast Guard. [18-19] (Emphasis added to original.)

The decision in *U.S. v. Riesbeck*, \_\_ M.J. \_\_, No. 17-0208/CG (CAAF., Jan. 23, 2018) can be read at, [www.armfor.uscourts.gov/newcaaf/opinions/2017OctTerm/170208.pdf](http://www.armfor.uscourts.gov/newcaaf/opinions/2017OctTerm/170208.pdf).

### A Summary of John Riesbeck's case

- September 2010 — Riesbeck and S. are staying at a hotel in Puerto Vallarta, Mexico where after drinking at the hotel pool they go to his room where they have sex.
- April 2011 — After Riesbeck publicly reprimanded S., she reported to the Coast Guard Investigative Service (CGIS) that he raped her seven months earlier in Puerto Vallarta.
- CGIS recommended the case be dismissed for lack of evidence.
- A Coast Guard admiral overrode the CGIS' recommendation and ordered Riesbeck's general court martial for forcible rape and other charges.
- June 13, 2012 — Riesbeck's lawyer challenged the composition of his seven person jury comprised of five women who

## New York Appeals Court Rules Man Can Be Financially Punished During Divorce For Conviction

A New York appeals court [has ruled](#) that James E. Gansman's share of marital property during his divorce must be reduced because his family was negatively impacted by his conviction for insider trading that he insists he was innocent of committing.

Gansman married his wife Linda in 1989. They had two sons, one born in 1996 and the other born in 2001.

After their older son was born the Gan-

had either acted as, or were trained as a sexual assault victim advocate, and two men.

- June 16, 2012 — Convicted by five women jurors in non-unanimous verdict. (Two-third vote only required for conviction.)
- August 5, 2014 — Convictions affirmed by Coast Guard Court of Criminal Appeals (CGCCA).
- December 11, 2014 — Remanded by the United States Court of Appeals for the Armed Forces (USCAAF) to the CGCCA to determine if Riesbeck was deprived of a fair trial by the jury panel.
- Nov. 30, 2016 — Convictions affirmed again by CGCCA that found no wrongdoing in jury selection process.
- April 28, 2017 — Review granted by USCAAF to determine if Riesbeck's panel was properly selected and whether he was denied a fair trial.
- January 23, 2018 — Convictions vacated and charges dismissed with prejudice by United States Court of Appeals for the Armed Forces.

The following is a commentary published on [redstate.com](http://redstate.com) after Riesbeck's charges were dismissed that encapsulates the injustice perpetrated on him, and that the current “me too” climate undermines accurately determining if a man has committed a sex related crime:

“We have entered into an age where the “believe women” nonsense has reached hurricane force. The underlying implication of this is that women always tell the truth and men are liars and predators. This is like the “occult child abuse” scare in the 80s where victims have to



James Gansman  
(Robert Miller)

smans' purchased and moved into a cooperative apartment on Park Avenue in Manhattan.

Linda left her job at JP Morgan Chase in 2000 to be a stay-at-home mom. At the time she was making about \$700,000 per year (\$200k salary and \$500k annual bonuses).

Gansman was an attorney and partner at Ernst & Young earning \$1.25 million a year

## Gansman cont. on p. 22

be believed in order to validate their victimhood.

I don't know how one goes about making [Riesbeck] whole. He's served time in confinement. He had his career destroyed. He's probably been forced to be registered as a sex offender for the past five years. In a just world, everyone who touched this case—the admiral, his staff judge advocate, the trial judge, a couple of appellate panels, the prosecutors, and the court-martial members—would be called to judicial account for their actions.”

### Endnotes:

- [1] The USCGC Midgett (WHEC-726) is 378 feet long, has a crew of 24 officers and 160 enlisted personnel, and is home ported in Seattle, Washington.
- [2] In court documents the complainant was only identified as Seaman S.

### Sources:

[United States v. Riesbeck](#), \_\_ M.J. \_\_, no. 17-0208/CG (USCAAF., Jan. 23, 2018) (reversing convictions because 7 member jury was stacked with four women who were rape victim rights advocates.)

[United States v. Riesbeck](#), CGCMG 0291, No. 1374 (CGCCA, Nov. 30, 2016) (Unpublished) (Affirming convictions and sentence.)

[United States v. Riesbeck](#), No. 1374 (CGCCA, Aug. 5, 2014) (Unpublished) (Affirming convictions and sentence on basis Riesbeck didn't timely object to jury composition.)

**Opinion Analysis:** An error “both so obvious and so egregious that it adversely affected not only Appellant's right to a fair trial by an impartial panel, but also the essential fairness and integrity of the military justice system,” in *United States v. Riesbeck*, *CAAFlog*, January 24, 2018

[Riesbeck headed back to CAAF](#), *CAAFlog*, May 2, 2017  
[CGCCA Finds Appellant Waived Challenge](#) to Panel Make-up, *CAAFlog*, September 4, 2014

[CAAF reverses the CGCCA's finding of waiver](#) in *Riesbeck*, *CAAFlog*, December 15, 2014

[Disgusted Court Reverses](#) an Obama Administration Inspired Miscarriage of Justice, *RedState.com*, January 29, 2018



## Gransman cont. from p. 21

when he resigned in October 2007.

In 2005 he had begun an affair with Donna B. Murdoch. She was a broker and they met on the AshleyMadison.com website.

He resigned because the the Securities and Exchange Commission was investigating allegations he gave Murdoch tips about potential mergers and acquisitions involving clients at Ernst & Young. It was alleged she made more than \$230,000 of illegal trading profit from the insider tips.

James Gansman and Donna Murdoch were indicted in 2008 by a federal grand jury in Manhattan.[1]

Murdoch pled guilty in December 2008 to securities fraud and other charges, and she agreed to be a witness against Gansman.

During his jury trial Gansman insisted he was innocent. His defense was two-fold:

First, he didn't have any intent to violate the law because he had shared material non-public information [with Murdoch only](#) "as part of a relationship of trust and confidence, in which they had a history and practice of sharing work and personal confidences." Consequently, Gansman "reasonably expected that Murdoch would keep any confidences he shared with her confidential [] and would not use those confidences to buy or sell securities."

Second, [that Murdoch](#) "stole his BlackBerry and used the information to engage in insider trading."

Gansman was convicted in May 2009 in federal court of six counts of securities fraud. In February 2010 he was sentenced to one year and one day in federal prison, and six months of supervised release. He began serving his sentence in May 2010, and he was released in March 2011.

As a convicted felon the New York State Bar stripped him of his law license.

Murdoch was sentenced in July 2011 to two years probation and six months of home confinement.

In September 2011 the U.S. Second Circuit Court of Appeals affirmed Gansman's convictions. It ruled the trial judge erred by not giving the proper 'lack of criminal intent' jury instruction. However, the court ruled it was a harmless error and Gansman wasn't

entitled to a new trial because the modified instruction the judge gave was legally sufficient.

Linda filed for divorce on January 26, 2010 — just before Gansman's sentencing.

Linda returned to work at JP Morgan in February of 2010, and by 2013 she was making about \$500,000 per year (\$300k salary and \$200k in annual bonuses).

After his release from prison Gansman went to work for Sherwood Partners, and by 2013 he was making \$226,000.

The Gansman's divorce proceeded to trial because they were unable to resolve their differences about the division of the marital property, her financial responsibility for legal fees owed for his defense, and child support.

After the trial the judge made the following key rulings:

- 1) Linda should receive 75% of the estimated \$4.75 million value of the apartment: Gansman wasn't entitled to a 50%-50% split because of his "adulterous and criminal behavior."
- 2) Linda was entitled to a 50% credit (i.e., Gansman was 100% responsible) for all legal fees owed as a result of the investigation, prosecution and imprisonment of Gansman, because she wasn't involved as a party.
- 3) Linda was to be paid \$1,884.17 per month in child support for their youngest child, since she was the custodial parent. (Their oldest son had been in Gansman's custody until he was legally emancipated.)

Gansman appealed.

On November 14, 2017 the New York Supreme Court's Appellate Division affirmed the trial judge's rulings that Linda was not responsible for any bills related to Gansman's investigation and prosecution, and she was entitled to \$1,884.17 per month in child support.

The Court also affirmed the trial judge's ruling that because of Gansman's behavior he wasn't entitled to 50% of the profits from selling the apartment. However, they did increase his share to 40% from 25% because the trial judge had improperly taken into account his adulterous behavior — when only his criminal conduct should have been considered. [The Court's ruling stated](#): "The husband's adulterous conduct is not sufficiently egregious and shocking to

the conscience to justify making an unequal distribution of the marital home. However, we hold that the impact of the husband's criminal conduct on the family may be considered in making an unequal distribution."

Neither the trial court nor the appeals court took into consideration that Gansman was the family's sole financial support for ten years from 2000 to 2010, or that since his release from prison Linda earns more than double what he makes.

Under the Court's ruling Gansman's marital property penalty will be \$475,000 for the trouble he caused his wife by being criminally prosecuted for crimes he still insists he is innocent of committing. He is now 56.

**The ruling is in [Linda G. v. James G.](#), 2017 NY Slip Op 07968, New York Supreme Court, Appellate Division, First Department (November 14, 2017).**

Endnote: [1] James Gansman and Donna Murdoch also had civil charges filed in May 2008 against them by the SEC. Gansman was assessed a total penalty of \$250,000, and Murdoch was assessed a total penalty of \$404,053.52. However, because of her inability to pay, the SEC waived payment of her penalty.

Sources:

[Linda G. v. James G.](#), 2017 NY Slip Op 07968 (NY Supreme Court, Appellate Division, First Department, November 14, 2017) (Ruling about division of property and support payment)

[Hubby whose cheating wasn't 'shocking'](#) wins bigger cut of Park Ave. pad, *New York Post*, November 14, 2017

[U.S. v. Donna Murdoch and James Gansman](#), No. 10-0731-cr (2nd Cir., 9-9-2011) (Affirming Gansman's conviction)

[Former Ernst & Young Partner](#) Sentenced to Prison in Manhattan Federal Court for Insider Trading Scheme, Press Release, U.S. Attorney's Office — Southern District of New York, February 8, 2010

[Former Ernst & Young Partner and Former](#) Stockbroker Settle SEC Insider Trading Charges, U.S. Securities and Exchange Commission Litigation Release No. 21629, August 18, 2010 (Re: *Securities and Exchange Commission v. James E. Gansman et al.*, Civil Action No. 08-CV-4918 (S.D.N.Y.) (PKC))



## Fred Steese Pardoned For 1992 Murder In North Las Vegas

Frederick Lee Steese [was granted a](#) full and unconditional pardon on November 8, 2017 by an 8 to 1 vote of the Nevada Board of Pardons Commissioners. It was their first pardon in at least 21 years of a convicted murderer.

Fred Steese was convicted on March 1, 1995 of first-degree murder with a deadly weapon, robbery, burglary, and grand larceny auto related to the murder of Gerard Soules in North Las Vegas on the evening of June 3, 1992. The 56-year-old Soules had been repeatedly stabbed, and his trailer had been ransacked and items stolen.

On June 6 the police identified Steese as a friend of Soules.

On June 10 the police obtained a phone number in Indiana where Steese could be reached. Steese told the police he had been living in Las Vegas with Soules until he left on June 4 or June 5. He said they were on friendly terms. Steese was told that Soules had been murdered.

Immediately after talking to the police Steese called his friend Rick Rock and told him Soules had been stabbed more than 100 times. Rock suggested Steese [return to](#) Las Vegas to “straighten this out.”

Steese was arrested on June 18 for speeding near Alamo — 95 miles north of Las Vegas.

The 29-year-old Steese was taken into custody that day by the North Las Vegas police. During his audio recorded interrogation Steese waived his Miranda rights to remain silent and to consult with a lawyer. He described himself as a hobo who was hitchhiking in May when Soules picked him up, and they developed a sexual relationship. After initially denying killing Soules, he soon admitted it in a very detailed taped confession. He said he intended to rob Soules while he was asleep, but he awoke and was killed during the ensuing fight. When asked how many times he stabbed Soules, [Steese replied](#): “I don’t know. Maybe 100.” He said Soules was nude and after killing him he covered his face.

Steese said he took Soules’ television, VCR, and camera from the trailer and put them into Soules’ pickup and fled. He said after the stolen truck got stuck in a wash



Fred Steese (Lisa Rasmussen)

near Lake Mead, he unsuccessfully used dog cages to try and free it. He then hitchhiked back to Las Vegas, and jumped a train to Cheyenne, Wyoming. He left when he met a man who invited him to stay with his grandparents in New Plymouth, Idaho. After spending about a week in Idaho, he made his way to Elkhart, Indiana where he called Rock, who provided his phone number to the police.

Among the many details in his confession not released to the public were the number of times Soules was stabbed; that he was nude and his face was covered; that his TV, VCR and camera had been stolen; that his truck had gotten stuck near Lake Mead; and dog cages were used to try and free the truck.

Based on his confession Steese was charged with first-degree murder and other crimes.

Clark County Asst. District Attorney William Kephart was assigned as the prosecutor in Steese’s case, and prior to trial he was joined by Doug Herndon (both are now Clark County District Court judges).

In October 1992 Steese filed a motion to dismiss based on the alleged misconduct by the prosecutor of attempting to dissuade a defense witness from testifying during Steese trial. The motion was denied.

Steese [filed a motion](#) to suppress his confession as involuntary on the basis of the circumstances of his questioning and a “psychiatrist’s report which stated that he was of low-normal intelligence and that he suffered from schizoid personality disorder.” The prosecution introduced evidence by the interrogating officers that he didn’t exhibit signs of intoxication or drug withdrawal, there were regular breaks during

Steese’s interrogation, he didn’t express weariness, and he was provided with coffee, cigarettes, and snacks from a vending machine. Steese’s motion was denied.

Key prosecution evidence during Steese’s trial was his confession; the testimony of one of Soules’ neighbors that he saw him with Soules on the night of June 3; and, the testimony of a jailhouse informant that Steese bragged about the murder (the informant denied receiving anything in exchange for testifying).

Steese’s alibi defense during his trial was he was in Idaho at the time of Soules’ murder. Four witnesses ultimately testified they saw Steese in Idaho in early June 1992 — although they couldn’t identify the exact date: One initially testified he wasn’t there, but the next day changed his testimony, and another said the person in Idaho identified himself as “Robert.” The State argued the witness may have actually seen Steese’s brother — Robert Steese.

Steese also introduced documents to prove he was in Idaho at the time of the murder. They included employment and social services applications — however, they contained errors that included the misspelling of Steese’s name. The prosecution challenged the authenticity of the documents, and they consulted handwriting experts who testified they were likely forged.

Steese testified that after he left Las Vegas on the train he was thrown off by railroad security, after they asked for his name and wrote it down.

After the jury convicted Steese of all charges, he agreed to a sentence of two consecutive terms of life in prison without the possibility of parole in exchange for the prosecution not seeking the death penalty for his murder conviction. He was sentenced to an additional 50 years in prison for his other convictions.

Steese filed several motions for a new trial based on allegations of prosecutorial misconduct that included intimidation of defense witnesses and suppression of evidence. The motions were denied.

Steese’s appeal of his conviction and sentence was denied in May 1998 by the Nevada Supreme Court. The Court [ruled the](#) “State’s case against Steese was strong.”

Steese claimed in his appeal the prosecution failed to disclose phone records of when he

**Steese cont. on p. 24**

## Steese cont. from p. 23

was in Nampa, Idaho. The Supreme Court rejected his claim by noting the records would not have helped his defense because they only establish he was there two days *after* Soules' murder — which was corroborated by an Affidavit by his Steese's friend Rock. The Court also ruled that since Steese knew of the phone calls his defense team could have independently obtained the phone records.

The Supreme Court also rejected Steese's claim that Rock had been dissuaded by the prosecution from speaking with Steese's attorney — who he had in fact talked with, [and that the](#) prosecution had "somehow persuaded two witnesses ... to alter their testimony on the eve of trial."

The Court also rejected Steese's claim his confession was uncorroborated — noting that it was consistent with the facts of the crime and included many details that hadn't been publicly disclosed.

The Court also rejected Steese's claim that the eyewitness identification of him was invalid — ruling that it was up to the jury to decide on the witnesses credibility and Steese had the opportunity to cross-examine him.

The Court also rejected Steese's numerous claims of prosecutor misconduct against Kephart and Herndon [in ruling](#), "we conclude that the activity at issue here did not go beyond the bounds of necessary pretrial investigation and preparation."

Steese filed a habeas corpus petition in 1999 that asserted numerous claims including ineffective assistance of his trial lawyers. The State opposed his petition. The judge declined to appoint him a lawyer, and denied the petition without holding a hearing.

Steese appealed. In January 2003 the Nevada Supreme Court affirmed the denial of all but one of his claims: that he wasn't properly informed about the terms of his sentencing stipulation.

After holding an evidentiary hearing District Court Judge Lee Gates ruled in September 2003 the only sentencing offer made to Steese was the one he accepted, and so his habeas claim was denied.

In 2004 Steese filed another habeas petition based on claims that were in his 1999 petition. Judge Gates denied the petition in May 2004 on the basis it was time barred, a

second petition, and its claims had previously been denied.

The Nevada Supreme Court denied Steese's appeal of Judge Gates' order in November 2004.

Steese filed a third habeas petition in April 2009. To overcome procedural hurdles preventing his petition from being considered, it included new evidence supporting his actual innocence: A December 2008 Affidavit by his brother Robert Steese stated he had never been in Idaho and had never met the alibi witnesses.

In June 2009 Judge Elissa Cadish denied Steese's petition without holding an evidentiary hearing on the basis there was no good reason why Steese couldn't have presented his new evidence sooner, and he hadn't shown there was any violation of his constitutional rights by the prosecution.

Steese appealed. In November 2010 the Nevada Supreme Court reversed Judge Cadish's ruling [and ordered an](#) evidentiary hearing, stating: "Here, appellant's petition raises several claims of constitutional error, and he presents new evidence that, if reliable, may erode confidence in the trial's outcome. Appellant is therefore entitled to an evidentiary hearing on his actual-innocence claims."

Judge Cadish granted the request of Steese's lawyers that the DA's Office turn over its case documents. They included letters the DA's Office had written on behalf of the jailhouse informant — which suggested he didn't truthfully testify he wasn't receiving anything for his testimony against Steese. It was also discovered the prosecutors had two Union Pacific Railroad Police reports for a person named Fred Lee Burke, Jr. who was caught illegally on a train or in the railroad yard in Cheyenne, Wyoming on May 31, 1992, and one for Frederick Lee Burke on May 29 in Salt Lake City. Fred Burke was a known alias used by Steese. A National Crime Information Center report was also discovered showing that Robert Steese's name had been run through the system in Texas on May 25, June 1, and June 4, 1992 — which suggested he had been stopped or otherwise questioned by police on those days.

From June 2011 to January 2012 evidentiary hearings were on three days. During the first hearing Robert Steese and five other witnesses testified he was in Texas the first week in June 1992, and he didn't hobo on trains.

During [a hearing on](#) October 18, 2012 related to Steese's actual innocence claim, his attorney argued he "could not have committed the crime because he was in another state when the murder happened." At the end of the hearing Judge Cadish ruled that based on Steese's new evidence, "it's more likely than not no reasonable juror would have found the Def. guilty beyond a reasonable doubt with that evidence." [1] That ruling allowed Cadish to consider Steese's habeas petition.

The DA's Office and Steese's lawyers then entered into negotiations for a possible plea agreement. The advantage for Steese to make a deal is it would ensure his release from prison — while if he went ahead with his habeas and lost he could expect to die in prison.

On December 12, 2012 an Amended Information, Guilty Plea Agreement, & Memorandum of Agreement Regarding Plea and Stipulated Sentence was filed in open court. Steese was present and arraigned. He pled guilty to second-degree murder with use of a deadly weapon pursuant to the U. S. Supreme Court's *Alford* decision. Under *Alford* a defendant protests his guilt, but admits the government has enough evidence to prove his guilt beyond a reasonable doubt to a judge or jury. Judge Cadish accepted Steese's guilty plea and ordered a pre-sentence report.

Steese was sentenced on February 13, 2013 to consecutive eight-year sentences for second-degree murder, and for the use of a deadly weapon. He was given credit for time served of 7,545 days in Department of Corrections custody. He was released because he had been imprisoned for more than the 16 years of his new sentence.

Steese had buyer's remorse. Exactly a year after his sentencing he filed a Motion To Withdraw Guilty Plea.

On June 10, 2015 Judge Cadish denied Steese's motion. She ruled that the Nevada Supreme Court case Steese cited in support of his motion — *Harris v. State* (2014) — undermined his argument because under that ruling he could only challenge his guilty plea in a habeas corpus petition. Steese was ineligible to do so because he had completed serving his sentence, and a habeas petition can only be filed by a person in custody. Steese did not appeal Cadish's ruling.

**Steese cont. on p. 25**



## Steese cont. from p. 24

Unable to challenge his legal status as a convicted murderer, Steese last option was to attempt to regain his civil rights through an executive pardon.

Nevada's pardon law does not include any provision for the granting of a pardon based on actual innocence.

A pardon in Nevada has no effect on a person's criminal conviction, or its effect on their inability to secure employment in many professions, or to travel to countries that bar the entry of felons — which includes Canada. A Nevada pardon is helpful by restoring a convicted person's civil rights, which can include the right to own and possess a firearm.

Steese filed an application with the Nevada Board of Pardons Commissioners for a Conditional Pardon without the right to bear arms. The BPC has nine members: the seven Nevada Supreme Court justices, the governor, and the attorney general.

Parole and Probation Chief Natalie Wood recommended granting Steese a Conditional Pardon without the right to bear arms.

The Clark County DA's Office opposed Steese's application.

During the Commissioners' hearing on November 8, 2017, the Board voted 8 to 1 to grant Steese a full and unconditional pardon. Although Steese remains a felon, the pardon restores his civil rights to:

- 1) Vote.
- 2) Serve on a jury.
- 3) Hold elective office.
- 4) Own or possess a firearm. (Felons with a pardon restoring their gun rights are exempt by federal law from prosecution for being a felon in possession of a firearm.)

The lone no vote was by Attorney General Adam Laxalt, who is running for governor. [Laxalt told the](#) *Las Vegas Review-Journal* he relied on a report from the Clark County District Attorney's Office: "The district attorney, Steve Wolfson, felt that this pardon was absolutely unwarranted." Laxalt added that he reviewed the DA's file on Steese and knew his criminal history of felony charges in multiple states: "I was frankly stunned that the board voted, prior to me, unanimously to pardon. I just wasn't sure if I was missing something that was not in the file."

Judge Cadish and Soules's sister, Kathy Nasrey, supported Steese's pardon applica-

tion.

Steese is 54 and currently working as a long-haul truck driver. After the hearing [he told the](#) *Review-Journal* "I make pretty good money right now." He said he sleeps in the truck to save money to buy his own rig and get his teeth fixed.

Steese is on his own. He cannot pursue compensation through a federal civil rights lawsuit because he remains convicted of Soules' murder.

Endnote:

[1] Judge Cadish's 18-page written Order Regarding Actual Innocence was filed on January 9, 2013.

Sources:

[Steese v. State](#), 114 Nev. 479, 960 P.2d 321 (1998) (Conviction affirmed on direct appeal)

[Steese v. State](#), No. 54344 (Nev. Sup. Ct., 11-5-2010) (Remanding for an evidentiary hearing)

[State v. Steese](#), No. 92C108694 (Clark County Dist Ct., 1-9-2013) (Order Regarding Actual Innocence)

[Nevada Board of Pardons Commissioners](#), Quick-Glance Sheet — November 8 & 9, 2017 Pardons Board Meeting — Community Cases

[Nevada board pardons man who spent 21 years in prison](#) for murder, By David Ferrara, *Las Vegas Review-Journal*, November 10, 2017

[State v. Frederick L. Steese](#), No. 92C108694 (Clark County Dist Ct) (Argument RE: Actual Innocence, 10-11-2012)

*State v. Frederick L. Steese*, No. 92C108694 (Clark County District Court) (Docket last viewed 11-13 2017)

[Harris v. State](#), 130 Nev. Adv. Op. 47 (2014)

[Nevada Pardons Wrongfully Convicted Man](#) Featured in Our Story, By Megan Rose, *ProPublica*, November 9, 2017

[Kafka in Vegas](#): Fred Steese served more than 20 years in prison for the murder of a Vegas showman even though evidence in the prosecution's files proved he didn't do it, By Megan Rose, *ProPublica*, May 26, 2017



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

## 129,610 Cases Now In Innocents Database

The Innocents Database now includes 129,610 cases: 27,303 from the U.S., and 102,307 from 119 other countries. The database includes 26,389 U.S. cases from 2018 to 1989, when the first DNA exoneration occurred.

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- 1,153 innocent people convicted of a sexual assault related crime.
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- 124,314 innocent people were convicted of a crime that never occurred.
- 233 innocent people were posthumously exonerated by a court or a pardon.
- 90 people were convicted of a crime when they were in another city, state or country from where the crime occurred.

- 2,068 innocent people had 1 or more co-defendants. The most innocent co-defendants in any one case was 36, and 25 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 120 countries are in the database.
- 27,303 cases involve a person convicted in the United States.
- 102,307 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.

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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](mailto:innocents@forejustice.org).



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

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

The book details how Kirstin Lobato has twice been convicted of a July 8, 2001 Las Vegas homicide when the prosecution doesn't deny it has no physical, forensic, eyewitness, confession, informant, surveillance video or documentary evidence she was in Las Vegas at any time on the day of the crime. The prosecution also concedes she was at her home 165 miles from Las Vegas at the time new forensic entomology and forensic pathology evidence conclusively proves the man died between 8 p.m. and 10 p.m. The book also details that in 2001 the 18-year-old Ms. Lobato was prosecuted

even though the Las Vegas Metropolitan Police Department and the Clark County District Attorney's Office obtained evidence three days after her arrest she is innocent.

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

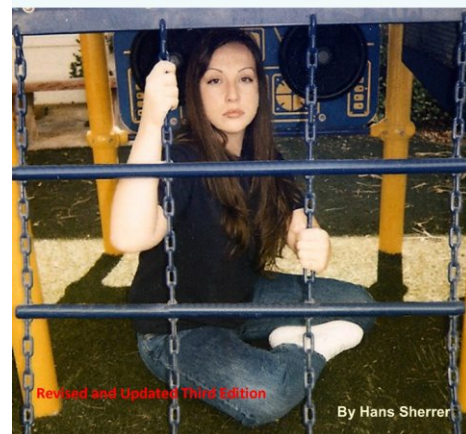
\* An updated Timeline of Ms. Lobato's case from 2001 to the present, that begins on p. 10.

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

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

### KIRSTIN BLAISE LOBATO'S UNREASONABLE CONVICTION

Possibility Of Guilt Replaces Proof Beyond A Reasonable Doubt



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

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

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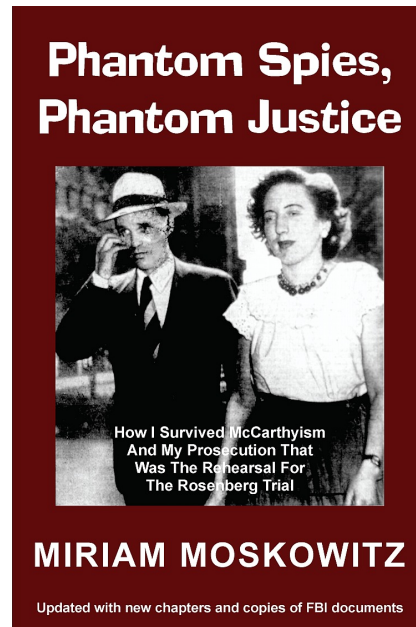
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## Phantom Spies, Phantom Justice

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

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

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



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

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

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

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

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

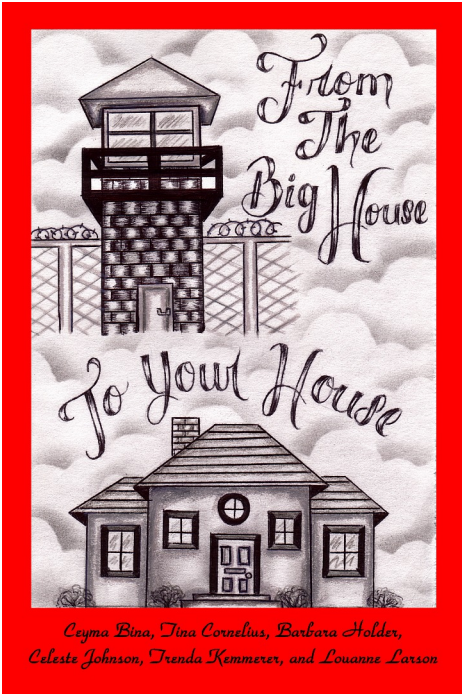
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## Edwin M. Borchard – Convicting The Innocent

**E**dwin 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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COMPILED AND INTRODUCTION BY HANS SHERRER

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

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**Dehumanization Is Not An Option**

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By Hans Sherrer

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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.

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## MENACE TO THE INNOCENT

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First known use of a "miscarriage" of justice was in 1648. First known use of the phrase "miscarriage of justice" in an article was in 1862. The U.S. Supreme Court first used the phrase "miscarriage of justice" in an 1891 patent case (*Waterman v. Mackenzie*, 138 US 252, 1891). The U.S. Supreme Court's first use of "miscarriage of justice" in a criminal case was in 1916 (*ex parte United States*, 242 US 27, 1916).

# JUSTICE DENIED

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### **165 Men In England And Wales Have Homosexual Convictions Disregarded**

One-hundred-sixty-five men in England and Wales convicted since 1967 of committing a homosexual act that is no longer considered a crime have had their convictions disregarded. Most of the affected men were convicted under the Sexual Offences Act 1956. Those men can also apply for a royal pardon.

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### **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.