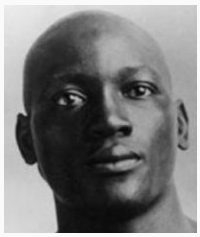
JUSTICE DENIED

The Magazine for the Wrongly Convicted



Jack Johnson

World champion boxer posthumously pardoned 105 years after his Mann Act conviction for taking his white girlfriend across state lines.

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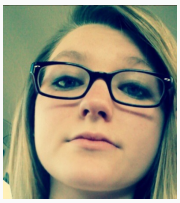
Mary Zolkowski



Convicted of filing false rape report in Michigan and sentenced to 45 days in jail.

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Dual Prosecutions

U.S. agrees to review constitutionality of prosecution in federal and state courts of charges based on the same conduct.

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Message From The Publisher

The adage "Justice delayed is justice denied" is particularly apropos when someone's wrongful conviction is only recognized after their death. The presidential pardon of Jack Johnson 105 years after his race based prosecution and conviction of violating the federal Mann Act is a well-deserved posthumous pardon. See p. 3.

The use of technology ahead of its adoption by a government agency can result in an unwarranted prosecution and conviction. That is what happened to Meow Ludo Meow-Meow when he implanted the chip from his Transport New South Wales' Opal Card into his left hand without permission to do so. See p. 5.

An increasing number of countries and states are providing for the pardoning, setting-aside, or expungement of historic convictions for homosexual acts between consenting adults no longer considered to be a crime. Queensland, Australia has joined that group. See p. 10.

The filing of false rape/sexual assault reports is a serious problem that typically results in no negative consequences for the women who do so. An exception to that was the conviction of Mary Zolkowski for filing a false rape report in Michigan, and her sentence of 45 days in jail. See p. 14.

The purpose of the federal Hyde Amendment enacted in 1997 was to discourage federal prosecutor misconduct by awarding reimbursement to a defendant who was victimized by a prosecution that was "vexatious, frivolous, or in bad faith." However, the difficulty in being granted reimbursement under the Hyde Amendment was discovered by Gerald Bove after his acquittal of racketeering and attempted extortion. See p. 8.

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

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

Boxer Jack Johnson Posthumously Pardoned 105 Years After Conviction For Crossing State Line With White Woman

Jack Johnson aka John Arthur Johnson, has been granted a posthumous presidential pardon for his 1913 federal conviction for violating the Mann Act — also known as the White-Slave Traffic Act.

Johnson was the world heavyweight boxing champion from Dec. 1908 to April 1915.

His prosecution was based on him crossing state lines for immoral purposes: Johnson was black and he was accompanied by a white woman. Johnson fled the U.S. while he was free on bond during the appeal of his conviction and sentence of a year and a day in federal prison.

He spent seven years abroad before voluntarily returning to the U.S. in 1920. He completed his sentence by serving 10 months in federal prison. He was 68 when he died in a car crash in 1946.

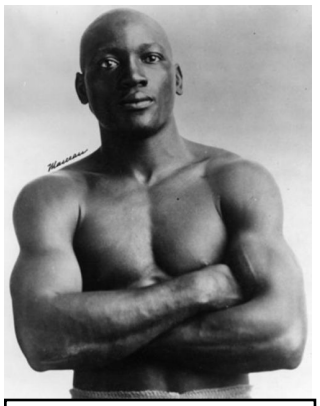
President Donald Trump pardoned Johnson after learning about his case from actor Sylvester Stallone. Stallone has said Johnson was the inspiration for the Apollo Creed character in his *Rocky* movies.

Johnson is only the third person granted a posthumous presidential pardon in U.S. history. Both President George W. Bush and President Barack Obama refused to pardon Johnson at the request of congressmen and senators. Trump said during the pardon ceremony:

"I am taking this very righteous step, I believe, to correct a wrong that occurred in our history, and to honor a truly legendary boxing champion, legendary athlete, and a person that, when people got to know him, they really liked him and they really thought he was treated unfairly as a human being and unfairly as a champion."

Click here to watch a Youtube video of the pardoning ceremony on May 24, 2018. Johnson's great-great niece Linda Haywood was present, as were Stallone, and representatives of the boxing world.

Senator John McCain advocated for many years that Johnson should be pardoned. He issued a statement after Trump signed Johnson's pardon:



Jack Johnson before Jess Willard fight in Havana in April 1915.

"I applaud President Trump for issuing a posthumous pardon of boxing legend Jack Johnson, whose reputation was ruined by a racially charged conviction over a century ago. For years, Congress has overwhelmingly supported legislation calling on multiple U.S. presidents to right this historical wrong and restore this great athlete's legacy. President Trump's action today finally closes a shameful chapter in our nation's history and marks a milestone that the American people can and should be proud of."

Justice Denied supported the pardoning of Jack Johnson since March 2009 when it published a 2,300 word article detailing the injustice of his prosecution, conviction, and imprisonment.

A revision and update of that article was published by *Justice Denied* in June 2016. That article follows:

Presidential Pardon Elusive For Boxing Great Jack Johnson

By Hans Sherrer
Justice Denied
Issue 63 (Spring 2016), pp 12-14

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

Jack Johnson and Joe Choynski in jail in Galveston, Texas in February 1901.

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

Although the 6'-2" and 200 pound Johnson was a leading contender to challenge for the world heavyweight boxing championship title, no promoter would sponsor the fight in the United States because he was black. So a fight was arranged in Sydney, Australia for December 26, 1908, between Johnson and reigning champion Tommy Burns. Burns was induced to agree to the fight by being guaranteed the then unheard of purse of $30,000, which in 2016 would be the equivalent of more than $18 million.[1] The 30-year-old Johnson dominated Burns and the fight was stopped in the fourteenth round. Writer Jack London traveled to Australia to watch the fight and afterwards he wrote, "The Fight! – there was no fight!"

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

James J. Jeffries retired in 1905 as the undefeated heavyweight champion.[2] His record for the quickest KO in a heavyweight championship fight still stands: In April 1900 he knocked Jack Finnegan down twice before knocking him out only 55 seconds after the fight began. With no white man able to defeat Johnson, the 35-year-old Jeffries came out of retirement to fight Johnson in 1910. Jeffries was induced to risk his unblemished record for a guaranteed purse of $100,000, a huge sum at a time when a skilled factory worker made about $2 for a ten-hour workday. Adjusted for inflation Jeffries' purse was the equivalent of over $55 million today.[3]

The fight held in Reno, Nevada on July 4 was billed as the "Battle of the Century." Johnson was faster and had more stamina than the older Jeffries, and after Jeffries was knocked him down for the first time in his career in the 15th round, his corner threw in the towel at the count of seven to avoid a knock-out. Johnson's decisive victory over Jeffries triggered wild celebrating in the streets by blacks across the United States. In more than twenty-five states and fifty cities, racial fighting occurred that resulted in the deaths of at least 23 blacks and 2 whites. Many hundreds more were injured.

Johnson cont. on p. 4

Johnson cont. from p. 3

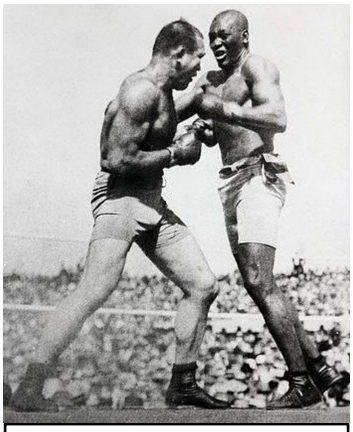
Mann Act used to hound Johnson

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

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

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

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



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

Johnson was convicted in May 1913, and sentenced to 1 year and 1 day in Federal prison. He was also fined $1,000. After Johnson's sentencing the prosecutor defended the government's demand for prison time and not just a fine for Johnson, because he was "the foremost example of the evil in permitting the intermarriage of whites and blacks." United States District Judge George Carpenter also defended his sentencing of Johnson to prison, saying, "The defendant is one of the best-known men of his race and his example has been far-reaching."

Johnson flees U.S. after Mann Act conviction

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

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

Johnson continued prizefighting while in self-exile. After seven years as heavyweight champion, on April 5, 1915 he lost his title in Havana, Cuba when Jess Willard knocked him out in the 26th round. Johnson was 37. He never regained the heavyweight title he lost to Willard.

Johnson imprisoned after returning to U.S.

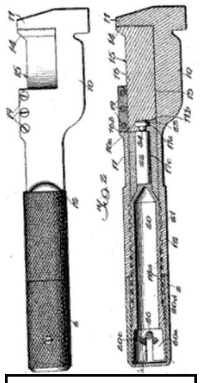
After another five years of prize-fighting overseas, and even financing the founding of a Harlem nighclub that later became the world-famous Cotton Club, Johnson returned to the United States in July 1920. The 42-year-old Johnson surrendered to federal authorities, and was sent to the United States Penitentiary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

Johnson invents new wrench in prison

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

Johnson's life after prison

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



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

Johnson continued prizefighting after his release from prison, but he was denied a boxing license in many states because of his felony conviction. During World War II Johnson participated in exhibition boxing matches to promote the sale of war bonds. He was 68 when he died in a 1946 automobile accident that occurred after he left a Raleigh, North Carolina diner in a rage after he was refused service because he was black.

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

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

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

Johnson cont. on p. 5

Bio-Hacker Meow-Meow's Convictions Set-Aside And Charges Dismissed For Using Public Transportation Chip Implanted In His Hand

A bio-engineer whose legal name is Meow-Ludo Disco Gamma Meow-Meow, has had his convictions related to his novel use of a public transportation smartcard set-aside and the charges dismissed on appeal. Meow-Meow had the chip from his Transport New South Wales' Opal Card implanted into his left hand. After his convictions in March 2018 he was fined AUS$220 and ordered to pay AUS$1,000 court costs.

Meow Ludo Meow-Meow after his convictions were overturned on June 18, 2018 (Peter Rae - AAP)

Meow-Meow lives in Sydney, New South Wales, Australia. His Facebook page states he is the Chief Strategy Officer of VivoKey, a biotechnology company based in Seattle, Washington. VivoKey's website states it is a platform for digital identity, authentication, cryptography, and payment applications secured with implantable subdermal NFC devices. Meow-Meow is also founder of Biofoundry based in Sydney.

Public transportation riders in NSW can use an Opal Card that is a smartcard waved in front of a detection device to pay for an electronic ticket. The Opal Card functions as a quasi debit card, with users adding money to their account as needed to purchase tickets. In June 2017 a media story reported that Meow-Meow removed the electronic chip from his Opal Card and had it implanted in his left hand for convenience, and so he wouldn't have to keep track of it.

He had the chip encased in bio-compatible plastic and in April 2017 it was surgically implanted just beneath the skin on the side of his left hand. The 32-year-old told Australia's *ABC News*, "It gives me an ability

Meow-Meow cont. on p. 6

Johnson cont. from p. 4

Representatives adopted a similar Resolution, and March 31, 2001 was declared Jack Johnson Day in the State of Texas.

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

Petition to posthumously pardon Johnson filed in 2004

Ward's book inspired filmmaker Ken Burns to make a documentary about Johnson's life, which was first shown on the Public Broadcasting System in January 2005. While working on the documentary Burns became convinced that Johnson's 1913 Mann Act conviction was based on racial hatred and not a violation of the law. Burns joined with a coalition of civil rights activists, sports figures, lawyers, and politicians who supported the filing on July 13, 2004, of a petition with the U.S. Department of Justice that sought a posthumous presidential pardon of Johnson. The petition argued that Johnson "should be pardoned because his conviction was the result solely of "contrived charges" reflecting attitudes and mores that America has long since outgrown. America no longer questions the right and ability of racial minorities to compete equally in athletic endeavors. And America no longer prosecutes and punishes women and men who choose to marry or date persons of other races, religions or national origins."[4]

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

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

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

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

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

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

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

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

In March 2013 Senator McCain and Representative King tried again by respectively introducing resolutions in the Senate and the House of Representatives calling for the pardoning of Johnson. Democratic Senator Harry Reid joined McCain in supporting the resolution.[6] The resolution passed in the Senate, but not the House, and President Obama did not act to pardon Johnson.

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

Endnotes:

1. $30,000 in 1908 was the equivalent of $18,400,000 in 2016 using the economic power method of calculating inflation, according to the Measuringworth website, http://www.measuringworth.com/uscompare

2. The boxer's Jeffries fought in title fights weren't chumps. At the time of his 11 title fights the cumulative record of his opponents was 229-32-39.

3. $100,000 in 1910 was the equivalent of $55,200,000 in 2016 using the economic power method of calculating inflation, according to the Measuringworth website, http://www.measuringworth.com/uscompare

4. "Petition for the Posthumous Pardon of the Former Heavyweight Boxing Champion Jack Johnson,"

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

6. Like Bush, Obama rebuffs pardon for boxing great Jack Johnson, *McClatchy Newspapers*, March 11, 2013

7. Reid, McCain again seek pardon of boxer Jack Johnson, *Reno Gazette Journal*, February 26, 2015

Sources:

"Jack Johnson," Enshrinee, International Boxing Hall of Fame website.
"Pardon sought for 1908 black boxing champ," *The Seattle Times*, July 14, 2004.
"Petition for the Posthumous Pardon of the Former Heavyweight Boxing Champion Jack Johnson," Filed with U.S. Department of Justice, July 13, 2004.

Meow-Meow cont. from p. 5

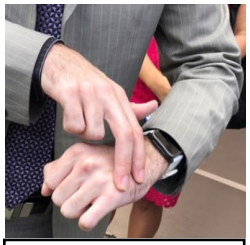
that not everyone else has, so if someone stole my wallet I could still get home." He said he is able to wave the implanted Opal chip to be detected just like people using a card to board a ferry, bus, or train. His Opal Card account was charged the same as if he had waved a card instead of his hand.

Meow-Meow said the implant **is not radical**, because "Putting technology into the body is not unusual." He said there are implants like pacemakers for heart conditions and intrauterine devices (IUDs) for birth control. He said, "While one [implant] might be for birth control, which we've decided is pretty OK, this one is to make catching public transport easier."

He said he has two other near-field communication NFC implants in his hand and arm, including one that he stores documents on. Meow-Meow couldn't be written off as a nut-case: he dressed smartly and was well-spoken.

Transport NSW authorities reacted to the story about Meow-Meow's innovation by threatening to deactivate his Opal Card account. A transport **spokesperson told** the meadia: "Customers that are caught tampering with their Opal Card may have their card cancelled." The spokesperson said that under Opal's terms of use transit officers can confiscate a misused card. In Meow-Meow's case that would be impossible since his Opal Card's chip is implanted in his body.

TNSW didn't deactivate Meow-Meow's Opal Card. Instead they waylaid him. In August 2017 he was descended upon by a transportation officer in the Sydney suburb of Newtown when he was seen waving his hand to buy a train ticket. After he did not provide a physical Opal Card he was cited for two misdemeanors: attempting to travel without a valid ticket (i.e., one purchased with an Opal Card); and, not producing a ticket to a transport officer upon request. At the time he had $14.07 in his Opal Card account, which was sufficient to pay for his ticket.



Meow-Meow indicates with his fingers where the Opal chip is implanted in his left hand (BuzzFeed News)

His prosecution was based the Opal Card's terms of use, which says users cannot "misuse, deface, alter, tamper with, or deliberately damage or destroy the Opal Card." The terms of use don't recognize that what

Meow-Meow holding standard Transport NSW Opal Card (ABC News - Nick Dole)

makes the Opal Card unique is its electronic chip, without which it is just a piece of plastic.

Perhaps inspired by Meow-Meow's case, two days before his trial was scheduled to begin, Transport NSW published new "terms and conditions for the use of a smartcard." The new regs included the radical change of allowing people to purchase electronic ferry and light rail tickets using "Approved Payment Devices," that include credit cards, smartphones, and watches.[1] An official told **the media** the revised regulations weren't intended to replace the Opal system, but to make it more convenient for people to pay for public transportation.

Meow-Meow's trial was in the Newtown Local Court on March 14, 2018. His lawyer, Nicholas Broadbent, argued Meow-Meow had not defrauded Transport NSW; he had no intention to do so; and he complied with the spirit of the law by using the Opal chip to pay for his transportation. **Broadbent told** Magistrate Margaret Quinn that: "He describes himself occasionally as a cyborg — that is, a person who implants or has components of machinery on his person." Broadbent acknowledged it may seem "strange" to some people to "implant in oneself the chip from an Opal Card," but he explained one goal of bio-hacking is to reduce a users interface with machines. He argued Meow-Meow's motive for installing the chip was to "make his life easier" and he was "in effect ahead of where the law is."

The prosecutor, Andrew Wozniak, **argued that** having a valid ticket means holding an Opal Card as it is issued by the state government, and "Whatever was in the defendant's hand, it certainly wasn't a card."

Quinn was not receptive to Broadbent's arguments, and found him guilty of both charges. She sentenced him to pay a fine of $220 fine and ordered to pay $1,000 in court costs. (The fine was in Australian dollars. In US$ the fine was $173 and court costs were $788.)

Outside the courtroom Meow-Meow told reporters his prosecution wasn't justified because people can use a credit card to purchase an electronic ticket on their smartphone. **He said**: "I feel like this is another one of the times where legislation isn't written correctly, it ends up punishing people who aren't really doing the wrong thing." His conviction didn't faze him from planing to expand his use of body implants. He told reporters that by the end of 2018 he plans to upgrade the chip in his hand to also function as a credit card for everyday purchases.

Meow-Meow appealed, arguing his actions didn't constitute a crime and his convictions should be quashed.

On June 17, 2018 New South Wales District Court Judge Dina Yehia quashed Meow-Meow's convictions and ordered dismissal of the charges. Judge Yehia described **the case** as "highly unusual … involving a unique set of circumstances." She said he did pay his train fare and made no attempt to avoid paying on his Opal Card account; he didn't have any previous convictions; and there was no harm to Transport New South Wales so given the prosecution's evidence the objective seriousness of his alleged offence could be at "the very bottom" of what could even be considered a crime. Although Yehia's ordered return of the fine, she did not rescind the order for Meow-Meow's payment of court costs.

With erasure of his criminal conviction and dismissal of the charges Meow-Meow **wrote on his** Facebook page that he won a "moral victory."

Meow-Meow's case may have some positive effect: NSW Transport Minister Andrew Constance told ABC News that as part of it standard review of transport policies, the next policy update may take into account innovative forms of using the Opal Card's chip technology.

Meow-Ludo Meow-Meow's Facebook page is **www.facebook.com/meowludo** .

The website for Biofoundry is **http://foundry.bio** . Biofoundry describes itself as "Australia's first community lab for citizen scientists. Among Biofoundry's projects are: Lab-grown meat; Synthetic palm oil; and, Analogue Insulin (an Insulin substitute).

Endnote 1: "Passenger Transport (General) Regulation 2017, Clause 76(1)(b) Valid smartcards":

"These terms and conditions for the use of a smartcard repeal any previous terms and conditions for the use of a smartcard published by Transport for NSW and take effect on and from 12 March 2018."

"Transport for NSW accepts 2 kinds of smartcards, being:

1. Opal Card; and
2. Approved Payment Devices."

Meow-Meow cont. on p. 7

Robert du Purton's Evidence That Expert's Trial Testimony Was Unreliable, Not Enough To Grant Coram Nobis Petition

The denial of Robert du Purton's writ of *coram nobis* challenging his 2001 federal conspiracy and fraud convictions **was affirmed by** the U.S. Second Circuit Court of Appeal on June 4, 2018. Du Purton unsuccessfully argued that new evidence undermines the reliability of key expert testimony the jury relied on to convict him. Du Purton was sentenced to 51 months in prison and ordered to pay $1,873,819.50 in restitution.

The appeals court's ruling was the latest episode in du Purton's more than 18-year legal saga.

In 2000 Robert du Purton was the owner of four coin-selling companies in Islandia, New York.[1] (Islandia is on Long Island about 50 miles east of New York City.) His office was raided in late February 2000 by federal authorities executing a search warrant. A week later he was arrested, and released the same day on a $250,000 secured bond.

One Suffolk Square in Islandia, New York where the offices of Robert du Purton's coin-selling companies were located. (Google Streetview, Sept. 2017)

A month later, on April 5, 2000, the 40-year-old du Purton was indicted for mail fraud, conspiracy to commit mail fraud, and conspiracy to commit wire fraud.

The charges were based on the government's allegation he defrauded purchasers of collectable coins by fraudulently misrepresenting the condition, value, and marketability of the coins.

The key issued during du Purton's trial was the grade and value of the coins he sold. To prove he committed fraud the government introduced into evidence 702 coins purchased by customers that he had graded and valued.

The prosecution retained two men considered experts to examine the coins. Grading coins is a subjective art, not a science. One expert was Richard Montgomery, who at the time was the president of the Professional Coin Grading Service. Du Purton did not object to Montgomery's opinion testimony that du Purton had overgraded a little more than half of the coins. However, du Purton did object to admittance of the testimony of Anthony Swiatek, who operated a coin business and had written three books about the coin business. Swiatek testified, over the objection of du Purton's lawyer, about his opinion of the value of the coins. The judge overruled the objection that Swiatek's testimony was too speculative.

Du Purton's defense was that he had not knowingly sold over-graded and over priced coins.

After a ten week trial, on May 17, 2001 du Purton was convicted by the jury of all charges.

He was subsequently sentenced to 51 months in federal prison to be followed by three years of supervised release. He was also ordered to pay a special assessment of $2,300 and restitution of $1,873,819.50. The restitution was based on Swiatek's testimony about the value of the 702 coins purchased from du Purton.

Du Purton was allowed to remain free on bond pending the outcome of his appeal. His appeal challenged the sufficiency of the evidence on the basis grading and appraising coins has subjective factors, and the prosecution's evidence didn't prove beyond a reasonable doubt that he didn't honestly grade and value the coins he sold.

In May 2004 his conviction and sentence were affirmed by the appeals court. However, in 2005 the U.S. Supreme Court granted du Purton's writ of *certiorari*. Based on *U.S. v. Booker* (2005) the Supreme Court remanded his case for further consideration of his 51 month prison sentence by the trial judge.

The trial judge affirmed du Purton's sentence, which he began serving on October 28, 2005. Du Purton was released from federal prison on May 8, 2008. He then began serving his three years of supervised released.

After du Purton's conviction the government retained Swiatek to appraise 26,612 coins that it had seized from du Purton in 2000. Swiatek appraised the coins as worth from $430,000 to $460,000.

The government sought forfeiture of the 26,612 coins, and in February 2009 a final order of forfeiture was entered.

In December 2010 du Purton's coins were auctioned for a total of $1,827,176.

Du Purton first learned in April 2014 that the public sale netted four times what Swiatek had appraised the coins as worth.

The most sacred doctrine in criminal law is finality of a defendant's conviction after their direct and post-conviction appeals have been unsuccessful, and their sentence has been completed. At that point the defendant's case is sealed tighter than the tomb of an Egyptian king buried in a pyramid. The only way to get around finality is by way of a *coram nobis* petition. *Coram nobis* is an extraordinary remedy of last resort that can be pursued if a defendant is able to overcome a number of difficult hurdles, one of which is new evidence proving their conviction was "irregular and invalid." The standard for granting a *coram nobis* petition is so high that they are rarely granted in federal (and state) court. Only *one person* was exonerated in the United States by the granting of a *coram nobis* petition in the *ten years* from 2008 to 2017.

Du Purton believed the auctioning of the coins for $1.8 million proved what he had

Purton cont. on p. 8

Meow-Meow cont. from p. 6

Online at, **https://www.opal.com.au/en/asset/301345a5-471f-4303-86d4-38153ae618ff/opal_terms_of_use_march_2018.pdf** .

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Opal card implanted into Sydney man Meow-Meow could be deactivated by NSW authorities, By Nick Dole, ABC.net.au, June 27, 2017

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Credit card payments for trips expanded across ferries, light rail, By Matt O'Sullivan, The Sydney Morning Herald, March 12, 2018

"Passenger Transport (General) Regulation 2017, Clause 76(1)(b) Valid smartcards"

Meow-Ludo Meow-Meow, Facebook.com

VivoKey, **https://vivokey.com**

Gerald Bove's Acquittal Not Enough For Attorney's Fees Reimbursement Under Federal Hyde Amendment

Gerald E. Bove was acquitted by a federal court jury in 2014 of one count of conspiracy to commit racketeering and one count of attempted extortion. In 2016 the trial judge denied Bove's application under the Hyde Amendment for reimbursement of his attorney's fees and other expenses he incurred in successfully defending against the charges. Bove appealed. On April 26, 2018, the U.S. Second Circuit Court of Appeal affirmed **the denial** of Bove's application in ruling he didn't meet the Hyde Amendment's high standard to recover attorney's fees and costs.

At the time of his trial Gerald Bove was the former Business Representative of Operating Engineers Local 17, based in Hamburg, N.Y. His federal prosecution under the Hobbs Act was based on the government's allegation that from 1997 to 2007 he conspired with other union officials **to extort** "property from various construction firms throughout Western New York."

Bove and three other union member codefendants were acquitted of all charges on March 7, 2014. One defendant, Mark N. Kirsch, President and Business Manager of Operating Engineers Local 17 was convicted of all charges: conspiracy to commit racketeering, conspiracy to commit extortion, and attempted extortion. In August 2016 Kirsch was sentenced to 36 months in federal prison.

In 1997 the Hyde Amendment was enacted to discourage misconduct by federal prosecutors. It allows a federal judge to award attorney's fees and court costs to **a criminal defendant** who retained a private lawyer, "where the court finds that the position of the United States was vexatious, frivolous, or in bad faith."[1] Reimbursement of fees and costs to a defendant come out of the budget of the federal agency involved, typically the United States Attorney's Office.

The Hyde Amendment didn't open the floodgates for reimbursement of the legal expenses of a defendant who was acquitted or had their conviction overturned on appeal. Federal court's have so restrictively interpreted it that only a handful of defendants have been reimbursed their legal expenses and costs in the 20 years since it took effect. Court's have acted on the basis **the Hyde Amendment** "places a daunting obstacle before defendants who seek to obtain attorney fees and costs from the government following a successful defense of criminal charges."

Bove believed he meet the high standard under the Hyde Amendment, and filed an application for reimbursement of his attorney and other costs.

Bove's application was denied by his trial judge on November 7, 2016. He appealed.

On April 26, 2018 the U.S. Second Circuit Court of Appeal unanimously affirmed the district court's denial of Bove's application.

Bove cont. on p. 9

Purton cont. from p. 7

contended in 2001, that Swiatek's trial testimony about the value of the coins he sold was speculative and unreliable. He retained a lawyer and began retrieving documents to support a *coram nobis* petition seeking to reverse his conviction and sentence.

His *coram nobis* petition was filed in February 2015. It argued his conviction should be set-aside because the jury relied on Swiatek's testimony, whose methodology was subjective and "grossly unreliable" in light of the public auction.

In December 2016 U.S. District Court Judge Arthur Spatt issued his ruling denying du Purton's petition. Spatt dismissed du Purton's argument about the importance of the public auction sale price of the coins. **Spatt stated**: "The jury could have convicted the Petitioner without Swiatek's conclusions. Thus, the Petitioner's *coram nobis* petition is denied in its entirety." However, that conclusion was contradictory to what Spatt stated in his summary of the trial: "*The key issue at the trial was the grade and value of the Petitioner's coins*." Spatt's ruling disregarded that Swiatek provided the prosecution's only testimony concerning the key issue of the value of du Purton's coins. [*Du Purton v. U.S.*, 224 F.Supp.3d 187 (USDC E.D. NY, 12-16-2016)]

Du Purton appealed.

On June 4, 2018 a three-judge panel of the U.S. Second Circuit Court of Appeal unanimously affirmed Judge Spatt's ruling. The Court's ruling in *Robert du Purton v. USA*, No. 17-151 (2nd Cir., 6-4-2018) stated:

> "In *United States v. Morgan*, 346 U.S. 502 (1954), the Supreme Court, describing the writ of *coram nobis* as an "extraordinary remedy" that allows "[c]ontinuation of litigation after final judgment and exhaustion or waiver of any statutory right of review," ... "under circumstances compelling such action to achieve justice."
>
> ...
>
> In *Foont v. United States*, 93 F.3d 76 (2d Cir. 1996), we stated that a writ of *coram nobis* is available where "errors . . . of the most fundamental character have rendered the proceeding itself irregular and invalid." ... We added that, "[c]laims of new evidence . . . without constitutional or jurisdictional error in the underlying proceeding, cannot support a coram nobis claim."
>
> Du Purton's petition does not satisfy the standard for *coram nobis* relief. He argues that auction results from the sale of the Inventory Coins show that Swiatek's trial testimony regarding valuation was "factually and objectively inaccurate." ... Du Purton's argument is nothing more than speculation. ... the issue he raises as to Swiatek's method of valuation does not show circumstances compelling grant of the writ to achieve justice."
>
> We find that du Purton has failed to show a defect in the evidence at his trial, and accordingly we AFFIRM the order of the district court."

Du Purton can seek reconsideration of the panel's decision. If that is unsuccessful, he could file a writ of *certiorari* with the U.S. Supreme Court. Both have extremely long odds of success.

Even if the June 4 ruling proves to be the final word in du Purton's case, he did receive one significant benefit from the 2010 auction of the 26,612 coins: Enough money was received to pay-off the large majority of his court ordered restitution.

Endnote 1. Robert du Purton's four companies were: Numisgroup Intl. Corp.; Numismatic Asset Strategies, Inc.; Galerie Des Numismatique, Ltd.; and, Meridian Numismatics, Inc.

Sources:

Robert du Purton v. United States of America, No. 17-151 (2nd Cir., 6-4-2018) (Affirming District Court's denial of corum nobis petition that was based on new evidence expert's trial testimony was inaccurate.)

Robert du Purton v. United States of America, 224 F.Supp.3d 187, No. 15-CV-1026 (ADS) (USDC E.D. NY, 12-16-2016) (Denying writ of corum nobis petition that was based on new evidence expert's trial testimony was inaccurate.)

United States v. Numisgroup Intern. Corp., 128 F. Supp. 2d 136 (E.D.N.Y. 2000)

U.S.A. v. Numisgroup Intern. Corp., 368 F. 3d 880 (2nd Cir., 5-21-2004) (Affirming conviction and sentence)

Bove cont. from p. 8

The Court ruled the district court judge did not abuse his discretion in ruling Bove failed to prove his prosecution was "vexatious, frivolous, or in bad faith." The Court's ruling in *USA v. Gerald E. Bove*, No. 16-384-cr (2nd Cir., 4-26-2018). stated:

> Bove argues that the government's case against him was "frivolous and vexatious" because the prosecution's theory of the Hobbs Act was "contrary to clear law and [the District Court's] rulings in the same case."
>
> The government's unsuccessful prosecution of Bove relied on a novel theory of the Hobbs Act ... A person can [] violate the Hobbs Act under this theory by using extortion to "replac[e] non union workers with union workers," even when the labor at issue is not "unwanted, superfluous," or "fictitious." The government's position cannot have been vexatious. Vexatiousness requires some wrongful, harassing purpose; nothing in the record suggests to us that prosecutors adopted the theory for the purpose of vexing or harassing Bove.
>
> Nor was the theory so baseless as to make the government's position frivolous. No precedent had expressly adopted the government's theory. But no precedent in our Circuit definitely foreclosed the theory either. .. An arguable theory is not a frivolous theory.
>
> ...
>
> Bove also argues that the government's position was in "bad faith" because the prosecution's evidence was insufficient. The government's "only" evidence against him, he says, was the grand jury testimony of witness Phillip Hale that contradicted Hale's earlier statements to investigators. According to Bove, the government thus knew or should have known that testimony was "not credible."
>
> We held in *United States v. Schneider* that a prosecution is not vexatious, frivolous, or in bad faith simply because a witness whose testimony directly inculpates the defendant is arguably not credible.
>
> ...
>
> Bove further argues that the government's position was in "bad faith" and "vexatious" because of several alleged instances of prosecutorial misconduct. ... We conclude that the District Court did not "abuse its discretion" by rejecting Bove's assertions of prosecutorial misconduct.
>
> In summary, we hold as follows:
>
> (1) the standard of review applicable to a denial of a Hyde Amendment application is "abuse of discretion"; and
>
> (2) the District Court did not abuse its discretion by denying Bove's application and concluding that the position of the United States was not vexatious, frivolous, or in bad faith...
>
> We therefore AFFIRM the District Court's Decision and Order of November 7, 2016.

The Court made clear that the prosecution's failure to introduce evidence sufficient to prove Bove's guilt was irrelevant to the judge's evaluation of his Hyde Amendment reimbursement application. The prosecution's failure to introduce any credible evidence of a defendant's guilt doesn't establish their prosecution was "vexatious, frivolous, or in bad faith."

The appeals court's ruling in Bove's case illustrates why the Hyde Amendment has completely failed as an impediment to shady federal prosecutions: the government is free to prosecute a defendant without any credible evidence of their guilt knowing that defendant has no recourse to recover the money they spend on lawyers and other legal expenses to successfully defend against bogus charges.

Endnote 1. The "Hyde Amendment" was enacted by Congress in the Act of Nov. 26, 1997, Pub.L. No. 105-119, tit. VI, § 617, 111 Stat. 2440, 2519 (1997), reprinted in 18 U.S.C. § 3006A, Note (2006). The Note titled "Award of Attorney's Fees and Litigation Expenses to Defense" provided that:

> "the court, in any criminal case (other than a case in which the defendant is represented by assigned counsel paid for by the public) pending on or after the date of the enactment of this Act [Nov. 26, 1997], may award to a prevailing party, other than the United States, a reasonable attorney's fee and other litigation expenses, where the court finds that the position of the United States was vexatious, frivolous, or in bad faith, unless the court finds that special circumstances make such an award unjust."

Sources:

USA v. Gerald E. Bove, No. 16-384-cr (2nd Cir., 4-26-2018)

Hyde & Seeking Attorney's Fees in Cases of Prosecutorial Misconduct, Patterson Belknap Webb & Tyler LLP, May 2 2018

"**Local 17 President and Business Manager Convicted of Racketeering Conspiracy**, Conspiracy to Commit Extortion and Attempted Extortion, Press Release," *Department of Justice, U.S. Attorney's Office*, Western District of New York, March 7, 2014

Former Local 17 leader gets prison for role in reign of violence, *Buffalo News*, August 31, 2016

The "Hyde Amendment" was enacted by Congress in the Act of Nov. 26, 1997, Pub.L. No. 105-119, Tit. VI, § 617, 111 Stat. 2440, 2519 (1997), reprinted in 18 U.S.C. § 3006A, Note (2006)

United v. Isaiah, 434 F.3d 513, 519 (6th Cir.2006)

Men In Queensland, Australia Can Apply For Expungement Of Historic Conviction For Consensual Homosexual Activity

Men in Queensland, Australia can submit an application to expunge their conviction for a consensual homosexual act with an adult that is no longer considered a crime. At least 464 men are believed to be eligible to submit an application.

Consensual adult male homosexual activity ceased to be a criminal offense in Queensland on January 19, 1991 with passage of the *Criminal Code and Another Act Amendment Act 1990*. Revision of the criminal statues was based on political acknowledgement that under the changing mores of society the private and voluntary acts of adults is not a matter of concern for the legal system. The repealed laws included the felony of committing or attempting to commit the unnatural act of carnal knowledge (i.e., anal intercourse); and the misdemeanor of a public or private act of "gross indecency." Gross indecency included sexual activity other than anal intercourse, such as oral sex.

Repealing the laws did not affect the conviction of men successfully prosecuted prior to 1991: it just prevented future prosecutions.

In 2015 the Queensland Government expressed support in-principle for expungement of the criminal record for men convicted of homosexual activity decriminalized in 1991. The Queensland Law Reform Commission (QLRC) was tasked with examining the issue of implementing an expungement process.

The QLRC issued its Report on November 29, 2016: "*Expunging criminal convictions for historical gay sex offences*" (No. 74). The Report recommended legislation that allowed for submission of an application to expunge a historical Criminal Code offense from a person's criminal history in certain circumstances.

A Bill was drafted that implemented the QLRC's recommendations, and added certain historical 'public morality' offenses -- such as behaving in an indecent or offensive manner in a public place -- that were in effect before January 1991. The Bill also made two significant changes to evaluation of an expungement application:

1) The decision maker has to be satisfied the other person involved in the act or omission was an adult; and,
2) The decision maker does not have to be satisfied the act or omission was committed in a place the public had access to, but is required to be satisfied the act or omission is no longer considered an offense in Queensland.

Queensland, Australia Coat of Arms

The "Criminal Law (Historical Homosexual Convictions Expungement) Act 2017" was introduced in Queensland's Parliament on May 11, 2017.

Queensland's Attorney General Yvette D'Ath made a statement supporting the Expungement Act:

> "Forcing the repeated disclosure of those convictions and charges to potential employers, public administrators and others has caused people inconvenience and embarrassment and, worst of all, has forced them to continually relive the trauma associated with their arrest, charge and conviction. This has inhibited people from pursuing employment opportunities, volunteering in their communities and fully participating in civic life right up until today."

Parliament passed the expungement legislation on October 23, 2017, with consideration of applications to begin on June 30, 2018.

After its passage, D'Ath told reporters: "Once a conviction is expunged a person does not need to disclose the offence nor be discriminated against for non-disclosure in their employment or profession."

Queensland is in the northeast corner of Australia. (Google Maps)

Under the legislation all applications for expungement of a conviction from relevant public records must be submitted to the Director-General of Queensland's Department of Justice. If an eligible person is deceased, a relative or close personal friend can submit an application on the person's behalf. Applications are evaluated on a case by case basis. The Attorney-General decides whether an application is granted or denied.

The DG's office can be contacted for information about the expungement process by email: **mailbox@justice.qld.gov.au**; or by regular mail:

Office of the Director General
Department of Justice
GPO Box 149
Brisbane QLD 4001

The Director-General's website is: **http://www.justice.qld.gov.au/corporate/business-areas/office of-ddirector-general** .

The Department of Justice and Attorney General's website is at: **http://www.justice.qld.gov.au** .


Attorney General Yvette D'Ath (Brisbane Times)

The Criminal Law (Historical Homosexual Convictions Expungement) Act 2017, Act No. 37 of 2017, can be read at: **https://www.legislation.qld.gov.au/view/html/asmade/act-2017-037**

The Criminal Law (Historical Homosexual Convictions Expungement) Bill 2017, Explanatory Notes (This explains the history of the expungement legislation.), can be read at, **http://tinyurl.com/y7zzabb8** .

Queensland is in northeastern Australia. It has a population of 4.9 million and a land area almost identical to Alaska, the U.S.'s largest state. Brisbane, 575 miles north of Sydney, is the most populous city with a metro population of 2.4 million.

Sources:

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Queensland gay sex convictions finally set aside, By Stuart Layt, Brisbane Times, June 14, 2018

Criminal Law (Historical Homosexual Convictions Expungement) Bill 2017 (QLD), TimeBase.com, May 12, 2017

Ezzard Ellis' Habeas Corpus Denied Because Lawyer's Unknown Racial Insensitivity Doesn't Constitute Ineffective Assistance Of Counsel

The denial of Ezzard Charles Ellis' habeas corpus petition by a U.S. District Court judge was affirmed by the Ninth Circuit Court of Appeals. Ellis is black and he claimed he was provided ineffective assistance of counsel solely on the basis he learned many years after his convictions and life sentence for murder, that his lawyer was racially insensitive. Ellis did not claim his lawyer failed to adequately defend him. Ellis claimed his lawyer's racial views constituted an "actual conflict of interest" that by itself warranted him being granted a new trial. Perhaps more significant than the Court's ruling was the concurring opinion endorsed by all three judges (See last paragraph.).

Ezzard Ellis and another man were arrested and charged in November 1989 with murder, attempted murder, and the robbery of two men who were in their car ordering at a McDonald's drive-through window in San Bernardino County, California. Ellis was 19.

Ellis' prosecution was based on his identification by multiple eyewitnesses, including a McDonald's employee who knew Ellis from going to school with him.

Attorney Donald Ames was appointed to represent Ellis.

Ames defense for Ellis was he had been misidentified by the eyewitnesses.

Ellis' first two jury trials were declared as mistrials because subpoenaed witnesses were unavailable. His third and fourth trials ended in mistrials because the jury was unable to reach a unanimous verdict. Ellis' fifth jury trial concluded in June 1991 with his conviction of all charges. He was sentenced to life in prison without the possibility of parole.

Ellis' appeals were unsuccessful, and his convictions and sentence became final in May 1996.

Twelve years after his conviction, in the spring of 2003 a friend of Ellis' sent him a newspaper article that described Ames as "deceptive, untrustworthy, and disloyal to his capital clients." (The article quoted from the dissent to the Ninth Circuit's decision denying a rehearing *en banc* in *Anderson v. Calderon*, 276 F.3d 483, 484 (9th Cir. 2001). Ames was the defense lawyer in that murder case.)

Ellis also learned of another 2001 Ninth Circuit case in which Ames defended a black defendant who after his murder conviction and sentence of death learned about Ames' sentiment toward blacks. In that case the defendant's habeas petition included a claim that Ames' attitude about blacks created an actual conflict of interest in defending him. The California state courts denied the defendant's claims. He filed a federal habeas corpus petition that was denied in the district court. The defendant appealed, but his claim Ames' view of blacks created a conflict of interest warranting a new trial was denied by the Ninth Circuit. Under *Strickland v. Washington* (1984), to establish ineffective assistance of counsel a petitioner must show their lawyer's performance "fell below an objective standard of reasonableness," and that absent that deficient performance there is a reasonable probability the outcome of their trial would have been different. In *Mayfield v. Woodford*, 270 F.3d 915, 925 (9th Cir. 2001) the Court ruled: "Mayfield has not demonstrated that Ames performed poorly because of the alleged conflicts. Accordingly, we decline to grant a COA on Mayfield's claim that Ames' alleged conflicts of interest caused him to provide ineffective assistance of counsel."

The information was completely new to Ellis because during the almost two years that Ames represented him, Ames did nothing indicating to Ellis that he had any racial animosity towards him or blacks in general.

Ellis obtained counsel who in addition to the affidavits used in the *Mayfield* case, secured affidavits from two of Ames' daughters, several of Ames' former employees, and a San Bernardino Superior Court clerk. The affidavits related derogatory comments Ames had made about blacks. However, Ames didn't single out blacks. The lawyers also learned that Ames likewise made unflattering comments about his white daughters, Japanese, and Hispanics.

Ellis filed a state habeas corpus petition based on his claim that Ames provided ineffective assistance of counsel because his "racial prejudice against AfricanAmericans" created an actual conflict of interest that required his conviction being vacated and the granting of a new trial. After the state courts denied his petition, Ellis filed a federal habeas corpus petition that made the same ineffective assistance of counsel claim. After about ten years of procedural maneuvering during which the U.S. Ninth Circuit Court twice remanded Ellis' case back to the federal district court, in July 2016 the judge denied Ellis' claim on its merits.

Ellis appealed.

On July 7, 2018 a three-judge panel of the Ninth Circuit affirmed the district court's ruling denying Ellis' petition. **The Court's Per Curiam Opinion** in *Ellis v. Harrison*, No. 16-56188 (9th Cir., 6-7-18) stated in part:

> "Before Ellis's conviction was final, we decided a case concerning "an appointed lawyer who calls [the defendant] to his face a 'stupid nigger son of a bitch' and who threatens to provide substandard performance for him if he chooses to exercise his right to go to trial." *Frazer v. United States*, 18 F.3d 778, 783 (9th Cir. 1994). We held that these facts "would render so defective the relationship inherent in the right to trial counsel guaranteed by the Sixth Amendment that [the defendant] would be entitled to a new trial with a different attorney,"
>
> ...
>
> *Frazer*'s rule of prejudice per se relied in part on the outburst itself. The [attorney's] ... statement "completely destroy[ed] and negate[d] the channels of open communication needed for the [attorney-client] relationship to function as contemplated in the Constitution."
>
> "In order to demonstrate that Ames's racist views prejudiced him, Ellis must show either that he knew of these views during a critical phase of the proceedings, leading to a complete breakdown in communication as in *Frazer*, or that Ames's racism otherwise adversely affected his performance as counsel. Ellis concedes that he was unaware of Ames's racism until several years after his conviction was final. ... Ellis fails to identify any acts or omissions by Ames that "fell below an objective standard of reasonableness." ... We are therefore bound under *Mayfield* to reject his claim."

In addition to the written Per Curiam Opinion, Vietnamese born Judge Jacqueline Nguyen wrote a concurring opinion that was joined by the other two judges: Japanese-American A. Wallace Tashima and Michael Daly Hawkins. Nguyen expressed extreme personal dissatisfaction with Ames comments about non-whites (Nguyen disregarded that Ames also disparaged white females, e.g., his daughters) -- even though the Court's opinion acknowledged that Ames

Ellis cont. on p. 12

Simone Swenson's Indictment Reinstated By Appeals Court And Trial Judge Replaced For Comment About Incompetent Women in Law

By Hans Sherrer

Simone Swenson's federal indictment for mail and wire fraud was reinstated by the U.S. Fifth Circuit Court of Appeals on July 3, 2018. The appeals court ruled the prosecution's repeated delays in producing discovery evidence was not sufficient justification for the trial judge to dismiss Swenson's indictment with prejudice.

In the summer of 2015 Swenson was 40, and the owner and operator of Sans Pareil Center for Children and Family Services in Houston, Texas. Her company was licensed to operate as a child placement agency. Swenson catered to families that wanted to participate in a private (non-CPS) child adoption program.[1]

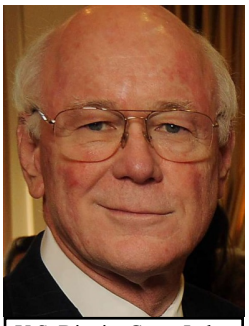
Swenson was indicted by a federal grand jury on July 29, 2015 for two counts each of mail fraud and wire fraud, and the government gave notice of criminal forfeiture. The maximum sentence for each count is 20 years in prison and a $250,000 fine. Her indictment alleged that on multiple occasions she matched two prospective families with the same birth mother as a means to obtain adoption fees from both families. She would then avoid contact with the families, and "she would find a way, through lies and misrepresentations, to get out of the double matches" without returning the fees. The indictment alleged that Swenson illegally collected $111,000 from the scheme.

A bench warrant was issued for Swenson and she was arrested. She was released on a $10,000 appearance bond after her arraignment on August 3, 2015.

U.S. District Court Judge Lynn N. Hughes was assigned to her case. Hughes gained national notoriety in 2003 when he granted ex-CIA operative Edwin Wilson's habeas corpus petition. Wilson was released after 22 years of wrongful imprisonment for allegedly transporting explosives to Libya. (At the end of this article is information about *Justice Denied's* three articles concerning Wilson.)

Swenson retained a lawyer, and her trial was scheduled for Feb. 9, 2016. Her lawyer was granted a continuance to prepare for trial. Swenson ran out of money and her lawyer withdrew from her case. She was then appointed a federal public defender.

Swenson's public defender obtained three more continuances based on not being provided all requested documents from the U.S. Attorney's Office. After the last continuance her trial was scheduled for February 7, 2017.



U.S. District Court Judge Lynn N. Hughes

Before the pretrial conference Swenson's PD expressed concerns to Assistant U.S. Attorney Tina Ansari, who was assigned the case, and Judge Hughes, that she still wasn't being provided all discovery documents.

During a pretrial hearing on Jan. 23 -- two weeks before trial -- Swenson's PD **told Judge Hughes** "that the prosecution was allowing the victimized families and witnesses to decide whether evidence was relevant." To which Hughes responded: "the prosecution was abdicating its duty to determine whether exculpating evidence existed." Ansari insisted she wasn't "hiding anything" and said: "I am very open. I give everything to defense counsel as soon as I get it, Your Honor. I make copies for everyone."

Hughes ordered the prosecution to subpoena *all* emails between the victimized families and Swenson and turn them over to her lawyer. The prosecutor offered to obtain

Swenson cont. on p. 13

Ellis cont. from p. 11

conveyed absolutely no inkling to Ellis of his personal opinion during the years he was Ellis' lawyer, and there is compelling evidence Ames' opinion had no effect on his representation: It was no small feat that Ames was successful in preventing Ellis' conviction until after *five trials*, and Ellis was not sentenced to death. Nguyen also disregarded that the newspaper clipping sent to Ellis in 2003 about Ames' suspect treatment of his murder clients was regarding the capital case of a *white defendant* -- Stephen Wayne Anderson. Stephen Anderson was executed in 2002, so Ames apparently didn't do as good of a job for that white client as he did for his black client Ellis. The available evidence suggests the nowdeceased Ames was more color-blind in carrying out his professional duties than Judge Nguyen who wrote in her concurring opinion: "If we were writing on a blank slate, I would vote to grant relief. ... Had we not been bound by *Mayfield*, I would have granted Ellis's petition." Nguyen, along with Tashima and Hawkins, are openly advocating for the expansion of affirmative action to include the granting of a habeas corpus petition filed by a black defendant based merely on an allegation of secret racism by their lawyer. They want the shackles of the current color-blind habeas law removed so a black can be awarded a new trial without the cumbersome need to present actual evidence their white lawyer was involved in an egregious act or omission that resulted in an unfair trial.

Stephen Wayne Anderson was a white client of attorney Donald Ames. Stephen Anderson was executed in 2002 at California's San Quentin State Prison for his 1981 conviction of murdering 81-year-old Elizabeth Lyman in her home and the robbery of money he found.

Sources:

Ellis v. Harrison, No. 16-56188 (9th Cir., June 7, 2018) (Ames provided constitutionally effective assistance of counsel under *Strickland v. Washington* (1984).)

Anderson v. Calderon, 276 F. 3d 483 (9th Cir., 12-21-2001) (Ames provided constitutionally effective assistance of counsel to Stephen Wayne Anderson during both guilt and punishment phases of his capital trial.) [REINHARDT, Circuit Judge, with whom Circuit Judges PREGERSON, HAWKINS, TASHIMA, W. FLETCHER, and PAEZ join dissenting: "In our Mayfield *en banc* decision, we not only held (for the second time) that Ames had acted incompetently in a capital case, but also related facts that made it clear that Ames had been deceptive, untrustworthy, and disloyal to his capital clients. Specifically, in Mayfield, we reported that there were "six declarations indicating that Ames was racially prejudiced" and that two of those declarations "related racial epithets that Ames used in reference to minority clients." *Id*. at 924"]

Wade v. Calderon, 29 F.3d 1312 (9th Cir.1994) (Ames provided constitutionally ineffective assistance of counsel to Melvin Meffery Wade during the punishment phase of his capital trial.)

Mayfield v. Woodford, 270 F.3d 915 (9th Cir.) (en banc) (Ames provided constitutionally ineffective assistance of counsel to Demetrie Ladon Mayfield during the punishment phase of his capital trial.) ("We hold that the performance of Mayfield's counsel at the penalty phase was deficient and that Mayfield suffered prejudice as a result.)

People v. Mayfield, 852 P. 2d 331 (Cal. Supreme Court 1993) (Ames provided constitutionally effective assistance of counsel to Demetrie Ladon Mayfield during both guilt and punishment phases of his capital trial.)

16-56188 ***Ezzard Ellis v. C. Harrison***, Oral Arguments, March 7, 2018

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search warrants for the emails.

The next day another pretrial hearing was held during which the search warrants were signed. **Hughes** "made clear to the government that it should immediately comply with its constitutional and rule-based discovery obligations."

Several days later the prosecution dumped a large cache of previously undisclosed discovery documents on Swenson's PD.

Then four days before trial Swenson's PD learned as a result of her own investigation that she hadn't been provided a report created by the Montgomery County Sheriff's Office. When contacted by the PD, the prosecutor turned over that report and a number of others that hadn't been previously disclosed.

Swenson's PD filed a Motion to Dismiss her indictment on the basis the undisclosed reports were a *Brady* violation because they were exculpatory evidence and refuted an FBI report the prosecution relied on to prosecute her.

A day before trial a hearing was held regarding the Motion to Dismiss. Before it began the government delivered to Swenson's lawyer another large file of previously undisclosed documents.

Judge Hughes excoriated AUSA Ansari for how disclosure of evidence in the case **had been handled**: "You're supposed to know what you're doing. You're supposed to be the one thinking of stuff." Hughes then said offhandedly: "It was lot simpler when you guys wore dark suits, white shirts and navy ties. . . . We didn't let girls do it in the old days." During a discussion about the prosecution's newly produced evidence, Hughes asked: "What else is out there that you misplaced or didn't think was relevant so you didn't check it at all?"

Ansari told Hughes she was not intentionally withholding any information. Even though discovery evidence had been dribbled to Swenson, Ansari said: "I have been an open book. I never try to keep anything back."

Hughes was unimpressed. He addressed the Motion To Dismiss **by saying**: "the government has had this case for three years. That should be more than enough." He noted the 79 docket entries and said: "So, I could continue the case for the purpose of allowing the government to prepare its case and to share the information it has. ... A continuance, however, would be too much delay. This is not a particularly complicated case, and there is no reason to extend it farther. The case will be dismissed."

When queried by Swenson's PD, Hughes clarified the dismissal was with prejudice, stating: "to crank it up and take another three years is unacceptable."

The government appealed.

The Fifth U.S. Circuit Court of Appeals **reversed Hughes' ruling** on July 3, 2018. In *USA v. Simone Swenson*, No. 17-20131 (5th Cir., 7-3-2018) the Court rejected Hughes' determination that Swenson's indictment had to be dismissed because the "integrity of the prosecution ha[d] been destroyed" due to its multitude of errors that included "missed pretrial discovery deadlines," and the withholding of "some relevant documents until the eve of trial."

The Court rejected that the prosecution committed any Brady violations because: "Even without a continuance, Swenson probably could have used the evidence effectively at trial. Thus, there was no suppression and no Brady violation." The Court added that Hughes erred dismissing the charges because: "...even if Swenson could show a Brady violation, the usual remedy is a new trial, not dismissal with prejudice." (p. 10)

The Court also rejected that the prosecution's conduct of repeated discovery violations warranted the sanction of dismissal of the charges: "The district court failed to impose the least severe sanction, and the government's violations of the discovery deadlines do not warrant dismissing the indictment with prejudice." (p. 11)

The Court also rejected that the prosecution committed misconduct by its multiple discovery violations: "Reviewing the record, we found nothing to suggest that the prosecution intentionally withheld the documents or acted in bad faith. ... the government's mistakes here did not reach an abhorrent level." The Court noted: "... it does not appear that the district court attributed ill intent to the prosecution. If anything, it seems the district court attributed the government's mistakes to the prosecutor's sex." (p. 12)

The Court concluded: "We REVERSE and REMAND the judgment dismissing the indictment, and we direct the Chief Judge of the Southern District of Texas to reassign this case to a different district judge." (pp. 13-14)

Hughes was ordered removed from the case because of his comment during the hearing on February 6, 2017 that the appeals court judges wrote was "beneath the dignity of a federal judge.": "It was lot simpler when you guys wore dark suits, white shirts and navy ties. . . . We didn't let girls do it in the old days." (p. 6)[2] Hughes has been a U.S. District Ct. judge since 1985.

The appeals court's ruling in Swenson's case illustrates that federal prosecutors are typically allowed to engage in extensive shenanigans concerning the disclosure of exculpatory evidence with no consequences.

The district judge assigned to Swenson's case on remand will set a new trial date.

Judge Lynn Hughes granted Edwin Wilson's habeas corpus petition in 2003 based on the prosecution's failure to disclose exculpatory evidence that he had not illegally transported explosives to Libya. Wilson was released after 22 years of wrongful imprisonment. *Justice Denied* published three articles about Edwin Wilson. The first while his petition was pending, the second after it was granted, and the third about his death in 2012:

"Ex-CIA Agent Framed by the CIA and Federal Prosecutors," Justice Denied, Issue 13, Sept. 2000, online at, **http://justicedenied.org/wilson.html**.

"Federal Judge Tosses Conviction of Ex-CIA Agent Framed by the CIA and Federal Prosecutors," Justice Denied, Issue 24, June 2004, online at, **http://justicedenied.org/issue/issue_24/edwin_wilson.htm**.

"In Memoriam: Edwin Paul Wilson 1928-2012," By Hans Sherrer, Justice Denied, Issue 52, Nov. 2012, online at, **http://justicedenied.org/issue/issue_52/in_memoriam_wilson_jd52.pdf**.

Endnotes:

1. Sans Pareil had a State foster care license until August 2012 when it was revoked after State regulators discovered money intended for foster families was used to pay Swenson's mortgage payments and visits to a nail salon.

2. Footnote 3 of the appeals court's ruling states regarding Hughes' comments: "At oral argument, Swenson's counsel contended that the record is ambiguous and perhaps the district court was speaking not to the prosecutors, but to other women present at the hearing. Regardless, such comments are demeaning, inappropriate, and beneath the dignity of a federal judge."

Sources:

USA v. Simone Swenson, No. 17-20131 (5th Cir., 7-2-2018) (Reversing dismissal of indictment and order case remanded to different judge.)

Houston Woman Arrested for Adoption Fraud, Press Release, U.S. Attorney's Office, Southern Dist. of Texas, July 31, 2015

Mary Zolkowski Convicted of Filing False Rape Report And Sentenced To 45 Days In Jail

Mary T. Zolkowski has been sentenced to 45 days in jail after pleading guilty to filing a false rape report in Bay County, Michigan. Zolkowski filed a police report that she had been raped on February 22, 2017, but she told stories claiming the rape occurred in three different places: a college parking lot; a Walmart parking lot; and in an apartment.

The man she identified as her assailant told police they had consensual sex at a Saginaw apartment, and he provided his phone that had text messages from Zolkowski.

In May 2017 Mary Zolkowski admitted to police she lied about being raped.

Zolkowski was charged on July 31, 2017 with one count of False Report Of A Felony. She was freed on her own recognizance after her arraignment in Bay County District Court.

She pled guilty on March 27, 2018 to filing a false felony report.

The 22-year-old Zolkowski was sentenced to 45 days in jail with no credit for time served, on June 18, 2018. She was also sentenced to two years probation upon her release, and ordered to undergo a mental health assessment. Bay County Circuit Judge Joseph Heeran told her that she would serve an additional 220 days in jail if she violates her probation.

Zolkowski is currently serving her sentence at the Bay County Jail.

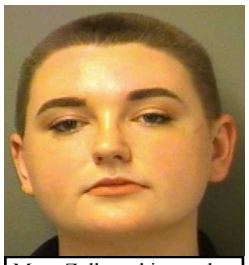
Following is Justice Denied's August 16, 2017 article about Zolkowski's case that provides background information:

Mary Zolkowski Charged With A Filing False Rape Report After Claiming She Was Raped In Three Places On Same Day

Mary T. Zolkowski has been charged with falsely reporting a felony after admitting she fabricated her claim a man raped her in Saginaw Township, Michigan.

In February 2017 20-year-old Mary Zolkowski was a student at Delta College, a two-year college near Bay City, Michigan.

On the evening of February 22, 2017 her



Mary Zolkowski mugshot (Bay County, Mich. Sheriff's Office)

mother called the Delta College Public Safety Office and told an officer that Zolkowski had been raped. Zolkowski talked to the officer on the phone and said she was raped in a campus parking lot at 5:50 p.m. while walking to her vehicle. She said a man grabbed her from behind, and then grabbed her face and throat and proceeded to rape her without wearing a condom. She said she only saw her assailant's hands. She said that after raping her the man got into the passenger seat of a car and fled after raping her. She couldn't describe anything about the vehicle.

She told the officer she did not want a physical exam and did not want to talk to police investigators about the rape.

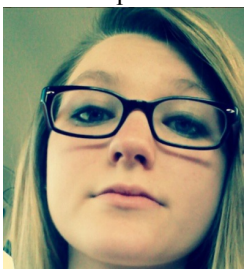
The next day Zolkowski met with the college's Public Safety director and the Title XI coordinator. She told them she had dropped courses due to the incident. Although she said her neck and back were sore, neither the director or coordinator noticed any bruising. She told them she didn't want a police investigation of the rape.

The subsequent investigation discovered that contrary to what she told the director and coordinator, she had dropped the courses prior to February 22.

A woman's softball team was practicing near the parking lot at the time of the alleged rape, and police investigators were told that none of the staff or players noticed anything out of the ordinary.

Examination of Zolkowski's car failed to turn up any evidence of a rape.

When Zolkowski was interviewed on March 17, almost a month after the alleged incident, she told investigators a different story. She claimed to have actually been raped on February 22 at an apartment in Saginaw Township, about ten miles south of Delta College. She said she had been intoxicated and didn't give consent for sex, and that afterwards the man drove her to Delta College where her car was parked. She said she didn't want the man prosecuted for rape.



Mary T. Zolkowski (Instagram)

Police interviewed the man Zolkowski named as her assailant. He said he had been with Zolkowski on February 22, but they had never gone to Delta College. He also showed police investigators text messages from Zolkowski in which she claimed to have been raped by a stranger at Walmart after they had separated that day. He also showed police texts from her that she didn't want him to cooperate with the police. He also told them that Zolkowski was trying to get a refund from Delta for the classes she had dropped.

After the man was interviewed by the police Zolkowski filed a report with the Saginaw Township Police Department alleging that he shoved her to the floor in the apartment and raped her on February 22.

On May 12 Zolkowski was interviewed for a third time by police investigators. She admitted that she had willingly had intercourse with the man at the apartment in Saginaw.

Zolkowski was charged on July 31, 2017 with one count of False Report Of A Felony based on her admission she fabricated her claim of being raped at the apartment on February 22. She was arraigned on August 14, 2017 in Bay County District Court. She was freed on her own recognizance pending further proceedings.

She was not charged with fabricating being raped on February 22 in the Delta College parking lot, or the same day at Walmart, because she didn't file a police report about those alleged incidents.

Zolkowski is presumed innocent of filing a false felony report unless and until she is convicted.

Zolkowski's case is 1710440FY1 in the Bay County, Michigan District Court.

Filing a false felony report is a felony under Mich. Penal Code 750.411a, with a maximum penalty of four years in prison and a $2,000 fine.

Sources:

Woman who lied about being raped on college campus gets jail, By Cole Waterman, *Bay City News*, June 19, 2018

Woman pleads guilty to lying about being raped on Delta College campus, By Cole Waterman, *Bay City News*, March 27, 2018

Woman charged with falsely reporting she was raped at Delta College, By Cole Waterman, *Mlive.com*, August 15, 2017

State of Michigan v. Mary Zolkowski, No. 1710440FY1 (Bay County, Michigan District Court)

Robert Murat-Hinton's Findings Of Guilty In Two Jail Disciplinary Hearings Annulled By Court On Appeal

Robert C. Murat-Hinton has had two findings of guilt in administrative proceedings while he was jailed in Warren County, New York annulled on judicial appeal.

In 2013 Robert Murat-Hinton was convicted of second-degree assault and sentenced to three years in prison. He was subsequently released on parole.

He was arrested in mid-2017 on a probation violation. He was booked into the Warren County Correctional Facility (WCCF).

Soon after his arrest Murat-Hinton was charged in a misbehavior report with "insolence" and "failure to obey." A disciplinary hearing was held and he was found guilty of both charges. That determination was affirmed on administrative appeal. On September 1, 2017 he filed a pro se judicial appeal in the Warren County Supreme Court under CPLR article 78.

That appeal was based on two arguments:

1) He was improperly denied the right to have Correction Officer Polk who authored the misbehavior report — testify at the hearing.

2) He was improperly denied the right to review certain videotape footage of the incident underlying the misbehavior report.

While that appeal was pending, Murat-Hinton was charged in a misbehavior report with "insolence" and "offenses against public order." A disciplinary hearing was held and he was found guilty of both charges. That determination was affirmed on administrative appeal. On January 29, 2018 he filed a pro se judicial appeal in the Warren County Supreme Court.

Warren County Municipal Center

That appeal was based on two arguments:

1) He was improperly denied the right to be present during the testimony of C.O. D'Ambrosio — who authored the misbehavior report, and C.O. Hill who witnessed the conduct underlying the report. Both officers gave testimony to the Hearing Officer by telephone.

2) He was denied the right to call witnesses in his defense, specifically, two inmates.

While both appeals were pending Murat-Hinton was sentenced to complete serving his 3 year prison term. He was transferred to the New York DOC on March 6, 2018.

On March 26, 2018 Judge Robert J. Muller **issued his ruling** in Murat-Hinton's first appeal. He annulled his finding of guilt for two reasons: 1) His regulatory rights were violated because the Hearing Officer made no effort to contact C.O. Polk and ascertain his willingness to testify; and, 2) His regulatory right to reply to the evidence against him was denied because he wasn't allowed to view video evidence that played a significant role in the Hearing Officer's determination. Muller did not order expungement of the record of the disciplinary proceeding.

On July 5, 2018 Muller's **ruling was filed** in Murat-Hinton's second appeal. He annulled his finding of guilt on the basis his constitutional right to call witnesses in his defense was violated, because "The record is devoid of any proof whatsoever that the Hearing Officer made a good faith effort to secure the testimony of inmates Fish and Marr." Muller's ruling issued on June 27 ordered expungement of the record of the disciplinary proceeding and refund of the $20.00 hearing fee.

Murat-Hinton, 32, is currently incarcerated at Marcy C.F., His first parole hearing date is scheduled for August 2018.

Sources:

Matter of Murat-Hinton v Farmer, 2018 NY Slip Op 50978(U) Decided on June 27, 2018 Supreme Court, Warren County, Judge Muller (Publication date 7-5-2018)

Matter of Murat-Hinton v Lieutenant Wayne Farmer, No.220 2018 NY Slip Op 50388(U) Decided on March 26, 2018 Supreme Court, Warren County, Judge Muller (Publication date 4-10-2018)

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U.S. Supreme Court Accepts Constitutional Challenge To Dual Prosecutions By State And Federal Governments

By Hans Sherrer

The U.S. Supreme Court agreed on June 28, 2018 to review the "separate sovereigns" exception that permits prosecution of a person in both state and federal court for the same alleged crime. The review involves the case of Terance Martez Gamble. He argued in his petition for a writ of certiorari that his separate state and federal convictions for being a felon in possession of a firearm violates his Fifth Amendment right against "double jeopardy."

Gamble's case has so far flown under the radar of constitutional activists. That can't be expected to last for long because it is a significant and unusual criminal constitutional case. It directly involves reevaluation of a juxtaposition of a State's rights with those of the federal government that has remained undisturbed for 171 years.

The Rodney King case in Los Angeles is perhaps the most well-known dual state federal prosecution. King was a black taxi driver whose tasering and beating by several LAPD officers during his arrest on March 3, 1991 was videotaped by a man from his nearby balcony. The videotape was sent to KTLA-TV in Los Angeles, and it was shown by media throughout the world.

Four officers -- whose defense was King was resisting arrest -- were tried in state court for excess force: three were acquitted on April 29, 1992 and the jury couldn't reach a verdict on the fourth. Hours after the acquittals what became known as the 1992 Los Angeles Riot started. During the next six days 63 people were killed, 2,373 injured, and more than 12,000 arrested. Local and state police were so overwhelmed that the California Army National Guard, the U.S. Army, and the U.S. Marine Corps had to provide manpower to quell the rioting.

The four LAPD officers were then federally indicted and tried for violating King's civil rights based on the same evidence relied on to unsuccessfully prosecute them in state court. On April 16, 1993 two of the officers were acquitted, and two were found guilty and sentenced to federal prison.[1]

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Dual Prosecutions cont. from p. 15

Gamble wants the Supreme Court to end the 171-year-old "separate sovereigns" exception to double-jeopardy that allowed King's assailants to be tried for different federal and state crimes based on the same incident.

Terance Gamble was convicted in 2008 of felony second-degree robbery in Mobile County, Alabama. As a convicted felon federal and state laws bar him for life from possessing a firearm.

In November 2015 Gamble was stopped by a police officer in Mobile for having a faulty tail light. The officer smelled marijuana and a search of Gamble's car discovered two baggies of marijuana, a digital scale, and a 9mm handgun.

Alabama prosecuted Gamble for being a felon in possession of a pistol. He was convicted on May 27, 2016, and sentenced to one year in prison.

While his state case was pending, a federal grand jury indicted Gamble on April 28, 2016 for being a felon in possession of a firearm based on the gun discovered during the traffic stop.

Gamble filed a motion to dismiss his federal indictment, arguing it violated his "Fifth Amendment [right] against being placed twice in jeopardy for the same crime." Gamble relied on the U.S. Supreme Court's 2016 ruling in *Puerto Rico v. Sanchez Valle* that the double jeopardy clause bars a person from being prosecuted for the same conduct by both the U.S. and Puerto Rico, because the U.S. and Puerto Rico are not separate sovereign entities. (See, *Puerto Rico v. Sanchez Valle*, 136 S. Ct. 1863 (2016).)

In 1847 the U.S. Supreme Court first recognized that a prosecution by a state government and the federal government for the same conduct doesn't violate the Fifth Amendment's double jeopardy prohibition because the individual States and the United States are separate sovereign governments. In the 1847 case the Court affirmed a woman's conviction by the State of Ohio for passing a counterfeit U.S. silver dollar, ruling her prosecution was "clearly within the rightful power and jurisdiction of the State." (See, *Fox v. Ohio*, 46 US 410, 432 (1847))

The U.S. Supreme Court has rejected numerous times that a person's prosecution for the same conduct under separate state and federal laws criminalizing equivalent conduct doesn't violate the Fifth Amendment's prohibition against double jeopardy. (See, e.g., *U.S. v. Lanza*, 260 US 377 (1922); *Abbate v. U.S.*, 359 US 187 (1959); and, *Heath v. Alabama*, 474 U.S. 82 (1985).) In its *Abbate* ruling the Court stated in regards to the *Lanza* case that involved separate state and federal illegal liquor prosecutions: "The Court held that the prior state conviction did not bar the federal prosecution. It pointed out that the State could constitutionally make Lanza's acts criminal under its original powers reserved by the Tenth Amendment, and the Federal Government could constitutionally prohibit the acts under the Eighteenth Amendment." (p. 193)

Allowing dual state and federal prosecutions is known as the separate-sovereigns exception to double-jeopardy.

U.S District Court Judge Kristi DuBose denied Gamble's motion in June 2016 on the basis of Supreme Court precedent that for purposes of criminal prosecutions the state and federal governments are separate-sovereigns. **Her Order stated**: "Accordingly, unless and until the Supreme Court overturns Abbate, Gamble's Double Jeopardy claim must likewise fail."

Facing a near certain conviction if he went to trial with a possible 10 year prison sentence, Gamble agreed to enter a conditional guilty plea that preserved his right to appeal Judge DuBose's denial of his double-jeopardy claim. Gamble was sentenced to 46 months in federal prison to be followed by three-years of supervised release, and a $100 assessment. His federal prison sentence was to run concurrent with his state sentence, so he would serve a total 46 month prison sentence.

Gamble completed his state prison sentence on May 14, 2017. He was transferred to federal custody to finish serving his 46 month prison sentence. His scheduled release date is Feb. 16, 2020.

In July 2017 the Eleventh Circuit U.S. Court of Appeals affirmed Judge DuBose's ruling. The Court's **opinion stated**:

> "The district court did not err by determining that double jeopardy did not prohibit the federal government from prosecuting Gamble for the same conduct for which he had been prosecuted and sentenced for by the State of Alabama, because based on Supreme Court precedent, dual sovereignty allows a state government and the federal government to prosecute an individual for the same crime, when the States rely on authority originally belonging to them before admission to the Union and preserved to them by the Tenth Amendment. Accordingly, we affirm."

Gamble filed a petition for a writ of certiorari with the U.S. Supreme Court on October 24, 2017. His petition emphasized the concurring opinion of Justice Ginsburg in the *Sanchez-Valle* case in which **she wrote**: "The double jeopardy proscription is intended to shield individuals from the harassment of multiple prosecutions for the same misconduct. [] Current "separate sovereigns" doctrine hardly serves that objective. ... The matter warrants attention in a future case in which a defendant faces successive prosecutions by parts of the whole USA." (p. 1877)

Justice Thomas joined Ginsburg's concurrence in *Sanchez-Valle*, but he wrote a separate concurring opinion clarifying that he agreed with her LAST SENTENCE. Thomas ***specifically noted***: "I cannot join the portions of the opinion concerning the application of the Double Jeopardy Clause to successive prosecutions *involving Indian tribes*." (p. 1877, underlining added) In other words, Thomas thinks the separate sovereigns exceptions should apply to the States under the Tenth Amendment as described in the majority opinion, but not to "Indian tribes."

Gamble's **petition presented** the following Question for the Supreme Court's consideration: "Whether the Court should overrule the "separate sovereigns" exception to the Double Jeopardy Clause."

His petition was **based on three** primary arguments:

First, since the early 1800s the U.S. Supreme Court has ruled exactly opposite of what it should have regarding the separate sovereigns exception to double jeopardy. Gamble argued that historically under English common law "The rule "that an acquittal or conviction by a court of competent jurisdiction abroad"—i.e., by a separate sovereign—"is a bar to a prosecution for the same offense in England..." (7)

Second, that the "separate sovereigns" exception violates the principles of federalism. Under federalism the states are vassels of a political system controlled by the federal government.[2] Gamble argues, "The separate-sovereigns exception turns federalism on its head."

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Dual Prosecutions cont. from p. 16

Third, that stare decisis doesn't apply to the precedent established by *Fox v. Ohio* in 1847 and affirmed in an unbroken series of cases for 171 years, because legal standards and norms have changed. Gamble argued: "The dramatic expansion of federal criminal law in the years since the separate-sovereigns exception is exactly the kind of seismic shift that calls for reevaluation of doctrines, like the separate-sovereigns exception, premised on the old regime."

The Acting Solicitor General and Acting Assistant Attorney General of the U.S. submitted a brief in opposition to Gamble's writ. **That brief argued** in general regarding Gamble's main contentions:

Regarding Gamble's first argument:

"As this Court recently reaffirmed in *Sanchez Valle* [] the Double Jeopardy Clause does not prohibit successive prosecutions by separate sovereigns for offenses that consist of the same elements, because transgressions against the laws of separate sovereigns do not constitute the "same offence," within the meaning of the Double Jeopardy Clause. ... The Court explained the roots of the principle more than 150 years ago."" (p. 5)

...

"Petitioner contends [] that these cases were all wrongly decided because, he asserts, they conflict with the plain text and original meaning of the Double Jeopardy Clause. In so claiming, petitioner largely relies [] on English law. But this Court has already considered and rejected that line of argument. In *Bartkus*, this Court described as "dubious" such authorities and stated that they were not "relevant to discussion of our problem." [] Given our unique constitutional scheme, a doctrine rooted in the powers and obligations of separate State and federal sovereigns will necessarily reflect the "American experience, including our structure of federalism which had no counterpart in England." ... "We have here two sovereignties, deriving power from different sources, capable of dealing with the same subject-matter within the same territory." [] As even critics of the dual sovereignty doctrine have recognized, that was not true in England." (p. 8)

Regarding Gamble's second argument:

"This doctrine [of dual-sovereignty by the States and federal government] follows from "the basic structure of our federal system." [] "The Framers split the atom of sovereignty. It was the genius of their idea that our citizens would have two political capacities, one state and one federal, each protected from incursion by the other." [] Consistent with the constitutional design, the Double Jeopardy Clause does not prohibit prosecutions by both a State and the federal government for the same conduct: "[w]hen a defendant in a single act" breaks the laws of two sovereigns, "he has committed two distinct 'offences'" and can be prosecuted for both. [] Each sovereign is entitled to "exercis[e] its own sovereignty" to "determin[e] what shall be an offense against its peace and dignity" and prosecute the offender "without interference by the other." (p. 6)

"Under petitioner's interpretation of the Double Jeopardy Clause, one sovereign's efforts (successful or not) to enforce its own laws would vitiate the other sovereign's similar law-enforcement prerogatives. But that cannot be squared with the Constitution's bedrock structure of governance. ... As this Court has recognized, "undesirable consequences would follow" if prosecution by any one State could bar prosecution by the federal government. ... Similarly, if a federal prosecution could bar prosecution by a State, the result would be a significant interference with the States' historical police powers." (p. 7)

"The dual-sovereignty doctrine thus "finds weighty support in the historical understanding and political realities of the States' role in the federal system and in the words of the Double Jeopardy Clause itself." ... As Justice Holmes stated nearly a century ago, the dual sovereignty doctrine is "too plain to need more than statement." *Westfall v. United States*, 274 U.S. 256, 258 (1927)." (p. 7)

Regarding Gamble's third argument:

"Petitioner also contends [] that the "dramatic expansion of federal criminal law" is a "seismic shift that calls for reevaluation of [] the separate sovereigns exception." But the very point of the dual sovereignty doctrine is to allow each sovereign to enforce its laws within their respective constitutional spheres, without undue interference from the other. An increase in federal criminal enforcement would mean that now more opportunities exist for the federal government's actions to impair the "historic right" and obligation of each State to define offenses and punish offenders within their jurisdictions. [] If the federal government could prevent a State from vindicating its criminal laws, the Founders' desire to guard against a "centralized government" and the attendant "exercise of arbitrary power" would be frustrated, not safeguarded. [] [P]etitioners' rule would "marked[ly]" alter the distribution of crime-fighting authority, as the States "have the principal responsibility for defining and prosecuting crimes." (pp. 10-11)

...

"In any event, it is not clear whether a significant increase in the rate of federal prosecution has actually occurred in areas of overlap with state authority. [] Under the so-called "Petite Policy," [] the Department of Justice will generally decline to authorize a successive federal prosecution unless it is justified by a substantial Federal interest that was "demonstrably unvindicated" by the prior state prosecution. [] And in exercising their discretion, sentencing courts can take into account the results of any proceedings before another sovereign. [] For example, the district court here decided to have [] [Gamble's] federal sentence for possessing a firearm as a felon run concurrently with his state sentence for being a prohibited person in possession of a firearm ..." (pp. 11-12)

The Solicitor General's brief in opposition to Gamble's writ can be read at, **http://www.supremecourt.gov/DocketPDF/17/17646/28031/20180116184058367_17646%20Gamble.pdf**.

An *amicus curiae* brief in support of Gamble's writ was jointly filed by two organizations: the Constitutional Accountability Center based in Washington D.C., which actively promotes a radical far left political agenda for legal and social issues; and, the Cato Institute based in Washington D.C., which **describes itself** as "a nonpartisan public-policy research foundation dedicated to advancing individual liberty, free markets, and limited government." Interestingly, their brief completely disregarded, as did Gamble's petition, the key issue that the foundation of the "separate sovereigns" exception resides in the system established by the U.S. Constitution and the Tenth Amendment to the Bill of Rights that the States have an "inherent sovereignty" separate and distinct from the federal government.[3]

Four of the nine Supreme Court justices must vote in favor of granting a petition for a case to be reviewed by the Court. On June 28, 2018 the Court granted Gamble's petition to review his case. The Court doesn't disclose its vote on petitions. However, since overturning the almost two centuries old "separate sovereigns" exception will

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serve to expand federal power by undercutting State sovereignty, it can be expected that the four liberal justice on the Court voted to grant the petition. It doesn't seem likely that Justice Thomas voted to do so because he is on record as supporting the exception in principle, but only questioning if "Indian tribes" warrant being covered under it -- which is not an issue in Gamble's petition.

No briefing schedule has been posted on the Supreme Court's website, or when oral arguments will be held.

Endnotes:

1. For background information see, Rodney King, Wikipedia.org.

2: Wikipedia defines Federalism thusly: "Federalism is the mixed or compound mode of government, combining a general government (the central or 'federal' government) with regional governments (provincial, state, cantonal, territorial or other sub-unit governments) in a single political system."

3. The Supreme Court's majority opinion in *Sanchez Valle* recognized that: "Because States rely on "authority originally belonging to them before admission to the Union and preserved to them by the Tenth Amendment," state prosecutions have their roots in an "inherent sovereignty" unconnected to the U.S. Congress." 136 S. Ct. at 1866.

Sources:

Terance Martez Gamble v. United States of America, No. 17-646, U.S. Sup. Ct. Docket

Terance Martez Gamble v. United States of America, No. 17-646, U.S. Supreme Court, On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit (QUESTION PRESENTED: Whether the Court should overrule the "separate sovereigns" exception to the Double Jeopardy Clause.)

Terance Martez Gamble v. United States of America, No. 17-646, U.S. Supreme Court, BRIEF FOR THE UNITED STATES IN OPPOSITION [to writ of certiorari]

Terance Martez Gamble v. United States of America, No. 17-646, U.S. Supreme Court, BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AND CATO INSTITUTE AS AMICI CURIAE IN SUPPORT OF PETITIONER [writ of certiorari]

US v. Gamble, Dist. Court, Crim No. 16-00090-KD-B (WO) (USDC SD Ala., 6-20-2016)

US v. Gamble, Court of Appeals, No. 16-16760, (11th Cir, 7-28-2017)

Fox v. Ohio, 46 US 410, 12 L. Ed. 213 (1847))

Puerto Rico v. Sanchez Valle, 136 S. Ct. 1863 (2016)

Abbate v. U.S., 359 US 187 (1959)

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

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

Judge Rules PACER Fees Can Be Used For Programs Unrelated To Providing Federal Court Information

By Hans Sherrer

On March 31, 2018 U.S. District Court Judge Ellen Huvelle ruled that PACER fees charged to the public for electronically accessing federal court information can be used for data processing programs unrelated to PACER. PACER has collected substantially more in fees than it costs to operate the electronic system, and for many years the surplus has been spent on unrelated state and federal programs. Judge Huvelle's ruling was a resounding victory for the government. Unless it is overturned on appeal Pacer users will not be refunded excessive fees they've been charged, and they will continue to be charged fees disproportionate to the cost of operating the PACER system.

PACER is an acronym for "Public Access to Court Electronic Records." PACER is unknown by the general public, but it is important to any organization, such as Justice Denied, that regularly accesses federal court records. The high charge for electronically accessing federal court records, and the persistent surplus resulting from those high charges, has been an issue for decades.

The current lawsuit is of particular interest to Justice Denied because PACER is used on a regular basis. However, it is judiciously used because PACER is structured to *maximize* charges to the unwary. An uninformed person can easily rack up $50 to $100 in charges with a few mouse clicks. For example, *every person or case search* is charged for regardless of whether it returns a goose egg, or 10 pages of cases that may or may not include the one being sought. If a case docket is viewed to find information, such when a defendant was sentenced and what their sentence was, the user is charged for the number of pages PACER provides -- which in a long or complicated case can exceed 40 pages -- even if the information sought is on only a few lines of one page. There are strategies to try and limit the charges, but they don't always work to do so.

Opening PACER's quarterly statement of charges can be a traumatic experience that isn't for the faint of heart. The door needs to be closed, the window down, and no one within earshot!

PACER's charges and policies are deleterious to its use except when specific information is sought concerning a specific known case. PACER allegedly exists to provide information -- but in many situations a user is charged more to find the information being looked for, than the cost to download the actual information.

U.S. District Court Judge Ellen Huvelle

The concept of PACER is fantastic and the information it provides is extremely useful. However, since its inception PACER's policy makers appear to have operated on the assumption its target clientele is major New York and Washington D.C. law firms rolling in dough from high buck clients: they will pay their PACER billing without any concern for how much it is. That may be the situation for them, but not the myriad of PACER users who don't have $500-$1,000 an hour clients.

PACER originated in 1988

PACER originated in September 1988 when the Judicial Conference "authorized an experimental *program of electronic access for the public to court information...*"

In March 1990 the Judicial Conference approved an Electronic Public Access ("EPA) rate schedule for accessing court data in district and bankruptcy courts. The initial charges were a yearly subscription fee of $60 *per court* for commercial users or $30 *per court* for non-profits, and a charge of *$1 per minute* for commercial users or *50 cents per minute* for non-profits. Those charges made the PACER system more of a novelty than a practical service, because at the time digital access was through a telephone dial-up connection that was extremely slow. Only large law firms could afford to use the system on a regular basis.

The PACER system of today was effectively created by the Judiciary Appropriations Act of 1991, in which Congress authorized that the Judicial Conference "shall prescribe reasonable fees ... for collection by the courts under those sections for access to information available through automatic data processing equipment. ... All fees hereafter collected by the Judiciary ... as a charge for services rendered shall be deposited as offsetting collections to the Judiciary Automation Fund ... to reimburse expenses incurred in providing these services."

The Judicial Conference continued with its initial public fee schedule. PACER's manager was the Administrative Office of the

Pacer cont. on p. 19

Pacer cont. from p. 18

United States Courts ("AO").

Federal court records available under the PACER fee system expanded in 1993 when federal Court of Appeals records were added, in 1994 when Court of Federal Claims records were added, and in 1997 Multidistrict Litigation records were added.

Revenue from PACER exceeded the costs of providing the service.

In 1995 the rate was reduced to 75 cents per minute for commercial users, and in 1996 it was reduced to 60 cents per minute "to avoid an ongoing surplus."

In 1996 House and Senate Appropriations Committees issued separate reports stating it was expected any PACER fee surplus would be used to enhance the quality of service and the availability of public access to court information.

Soon after that the Judicial Conference began planning for implementation of an Electronic Case Filing ("ECF") system using surplus PACER fees.

A PACER web interface was created in 1997. Users were charged 7 cents per page of information accessed through the federal judiciary Internet website.

In 2001 a cap was adopted to charge for a maximum of 30 pages for any document accessed via the Internet.

In 2002 the Senate Governmental Affairs Committee issued a report encouraging "the Judicial Conference to move from a fee structure in which electronic docketing systems are supported primarily by user fees to a fee structure in which this information is freely available to the greatest extent possible." The report noted that "Pursuant to existing law, *users of PACER are charged fees that are higher than the marginal cost of disseminating the information*."

The E-Government Act of 2002 amended the language authorizing the charging of PACER fees from "shall hereafter", with "may, only to the extent necessary." The change in language paved the way for a reduction in PACER fees ... but it didn't happen. Instead, in 2004 it was increased from 7 cents per page to 8 cents per page.

PACER fees resulted in a 2006 surplus of $32.2 million The judiciary decided to find new ways to spend the surplus instead of reducing fees.

In 2007 the federal judiciary began using PACER fees to pay for courtroom technology "that would otherwise have to be funded with appropriated funds" from Congress.

The judiciary's 2008 budget request to Congress proposed using millions in PACER revenue for a Jury Management System ("JMS") Web Page, and a Violent Crime Control Act Notification ("VCCA").

The 2009 judiciary budget request assumed the use of $68 million in PACER fees for "the courts' Salaries and Expenses account, thereby reducing our need for appropriated funds." It also included many millions for continuation of the JMS and VCCA programs, and also a study for the State of Mississippi.

In February 2009 Senator Joseph Lieberman sent a letter to the Judicial Conference "inquiring whether the judiciary was complying with the E-Government Act," because the "goal ... was to increase free public access to [court] records." Lieberman also noted that PACER fees were "still well higher than the cost of dissemination," and asked "how PACER fees are determined, and whether the Judicial Conference is only charging 'to the extent necessary' for records using the PACER system." The Judicial Conference responded by claiming PACER revenue was "used only to fund public access initiatives."

Senator Lieberman was unsatisfied. In March 2010 he wrote a letter to the Senate Appropriations Committee questioning whether PACER revenue was being used for programs "unrelated to providing public access via PACER and against the requirement of the E-Government Act."

Senator Lieberman's concerns were not only ignored, but the Judicial Conference thumbed its nose at him.

In 2011, the Judicial Conference acknowledged that PACER revenue was exceeding the money spent on all programs (including those Lieberman questioned the legality of). With PACER taking in more than it was spending it would logically be expected user fees would be reduced. That isn't what happened. The Judicial Conference "again amended the PACER fee schedule, raising the per-page cost from 8 to 10 cents."[1]

From 2010 to 2016 PACER's revenue was almost a billion dollars: with $145.4 million in 2016.

PACER lawsuit

On April 21, 2016, three nonprofit organizations: National Veterans Legal Services Program; National Consumer Law Center; and Alliance for Justice, on behalf of themselves and a nationwide class of similarly-situated PACER users, filed suit against the United States claiming PACER fees "exceeded the amount that could be lawfully charged, under the E-Government Act of 2002" and seeking "the return or refund of the excessive PACER fees."

The government's motion to dismiss was denied in December 2016.

The plaintiff's position was the statute "prohibits the AO from charging more in PACER fees than is necessary to recoup the total marginal cost of operating PACER."

The government's position was of PACER fees can be used for more than to cover its operating cost, and they can be used "to fund the dissemination of information through electronic means."

On March 31, 2018 Judge Huvelle, in the District of Columbia District Court, ruled the government did not have to return or refund any PACER fees because "the statute does clearly state that the judiciary has the authority to use its PACER fees for services that may not directly benefit a particular PACER user."

Judge Huvelle ruled PACER fees can be used for programs unrelated to PACER, and one she noted was PACER fees could continue to be used to subsidize electronic court filing. However, she did rule PACER fees had improperly been used to fund four programs: a State of Mississippi study to provide public electronic access to state documents, crime victim notification; providing flat screens for jurors; and most expenditures for enhancing courtroom technology.

Judge Huvelle's ruling was a blow to PACER users paying fees that are double or more than the cost of operating the PACER system. Unless her ruling is overturned on appeal, PACER will continue to be the cash cow it has been for decades funding programs unrelated to accessing federal court records.

Judge Huvelle's opinion in*National Veterans Legal Services Program et al., v. United States Of America*, Civil Action No. 16-745 (ESH) (USDC Dist of Col.) (Memorandum Opinion, 3-31-2018) can be read at, **http://www.courthousenews.com/wp-content/uploads/2018/04/veterans-pacer.pdf**.

NOTE: [1] The JC gratuitously increased the fee waiver amount from $10 to $15 per quarter. A user had to rack up $15 in fees in a quarter before they were charged -- for all the fees, including the initial $15.

Sources:

PACER Fees Shouldn't Fund Most Court Tech, Judge Rules, By Britain Eakin, *Courthousenews.com*, April 2, 2018

***National Veterans Legal Services Program et al.**, v. United States Of America*, Civil Action No. 16-745 (ESH) (USDC Dist of Col.) (Memorandum Opinion, 3-31-2018)

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

By Hans Sherrer

Menace To The Innocent: Insubstantial Expert Evidence Endangers Innocent People Accused Of A Crime **is now available on Amazon.com** at, **www.tinyurl.com/yc5u3kqn** .

Menace To The Innocent was written by Hans Sherrer, **Justice Denied's** editor and publisher. It is published by **The Justice Institute**.

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.

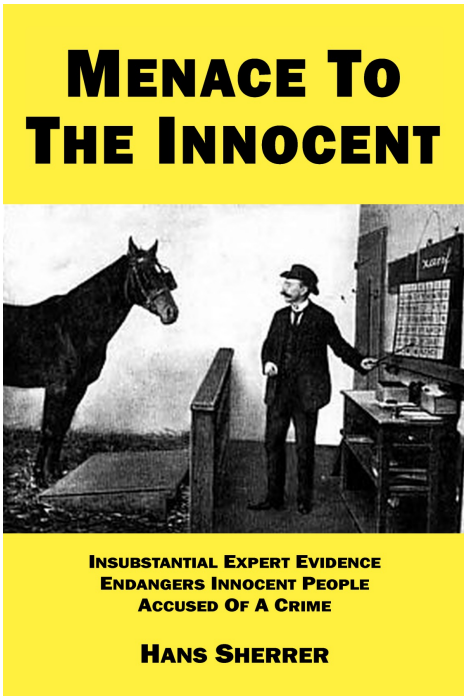
There is relatively little will-power by those within the system to correct this state of affairs. The four primary actors in the legal system's operation – judges, prosecutors, police, and defense lawyers – are integral parts of the assembly line that generates the steady flow of convictions the system 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.

****

"*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.

The Table of Contents follows:



****

Menace To The Innocent can be ordered from Amazon.com at, **www.tinyurl.com/yc5u3kqn** .

High Fence Foodie Cookbook Now Available!

High Fence Foodie is **a new cookbook** by Texas prisoner Celeste Johnson that was recently published by The Justice Institute.

High Fence Foodie has more than two hundred easy to prepare recipes for meals, soups, snacks, desserts, and beverages. These recipes can be made from basic items a prisoner can purchase from their unit's commissary, or people on the outside can purchase from a convenience or grocery store. They are written by Celeste Johnson, a woman imprisoned in Texas who loves to cook and try out new combinations of the simple food ingredients available to her.

High Fence Foodie's all new recipes are a follow-up to the more than 200 recipes in *From The Big House To Your House* that was written by Celeste Johnson and five fellow prisoners at the Mountain View Unit, a woman's prison in Gatesville, Texas.

From The Big House To Your House received rave reviews on Amazon.com, with 75% of reviewers giving it 4 or 5 stars! Some of the comments are:

"A lot of the recipes are very imaginative, and fun to make. Well worth the money." J.C.

"I loved the food and was inspired by the can-do attitude of the ladies involved with this project." Dan

"My daughter got this for her husband for father's day. He loves using it!!" J.H.

"I am a college student making a limited income and these recipes are great and fulfilling for people like me who don'thave a ton of $ to spend on groceries." Alicia

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

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

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

$14.95

116 pages, softcover

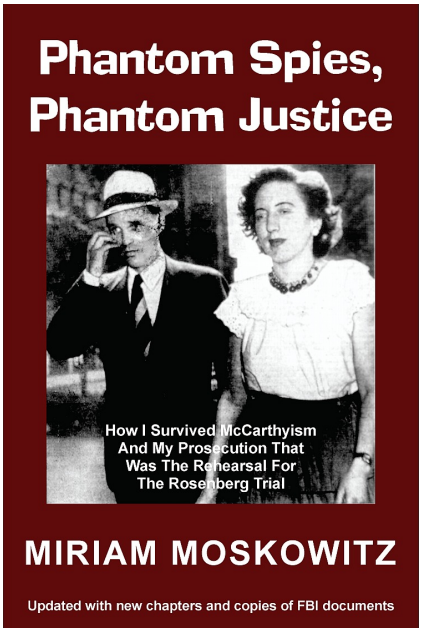
Order from Amazon.com at,

http://tinyurl.com/y8lgylwo

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.

$19.95

302 pages, softcover

Order from Amazon.com at,

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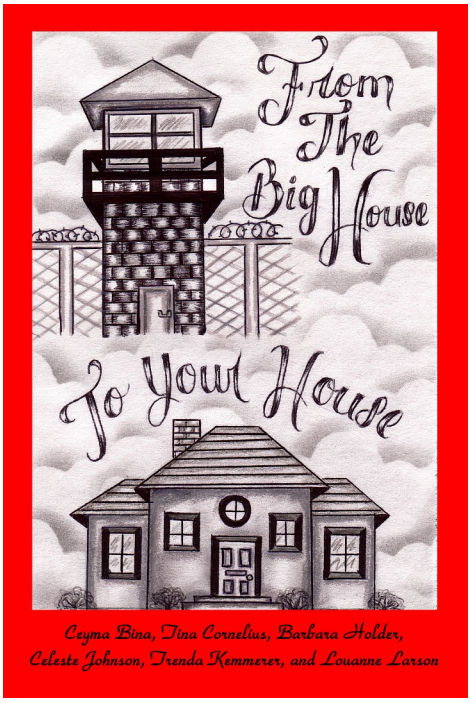

FROM THE BIG HOUSE TO YOUR HOUSE

Cooking in prison

With

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

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

From The Big House To Your House is the result of the cooking experiences of six women while confined at the Mountain View Unit, a woman's prison in Gatesville, Texas. They met and bonded in the G-3 dorm housing only prisoners with a sentence in excess of 50 years. While there isn't much freedom to be found when incarcerated, using the commissary to cook what YOU want offers a wonderful avenue for creativity and enjoyment! They hope these recipes will ignite your taste buds as well as spark your imagination to explore unlimited creations of your own! They encourage you to make substitutions to your individual tastes and/or availability of ingredients. They are confident you will enjoy the liberty found in creating a home-felt comfort whether you are in the Big House, or Your House!

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Published by Justice Denied

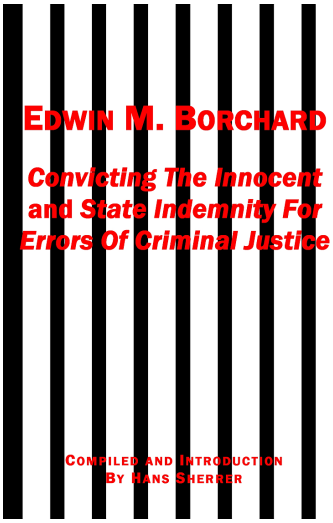
Edwin M. Borchard – Convicting The Innocent

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

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

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

Published By Justice Denied !!



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

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

$16.95

358 pages, softcover

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Justice:Denied Disclaimer

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

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

Dehumanization Is Not An Option

An Inquiry Into Law Enforcement and Prison Behavior

By Hans Sherrer

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

- *Quiet Rage*: The Stanford Prison Experiment
- Obedience To Authority Is Endemic
- Dehumanization Paves The Path To Mistreatment

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Justice Denied's Mobile Device Homepage Is Online!

Justice Denied's **mobile device homepage** is online. The mobile friendly homepage has the narrow width recommended for smartphones and other mobile devices.

Justice Denied's homepage detects when it is accessed by a mobile device, and the user is automatically redirected to the mobile homepage. There is also a link to the mobile homepage in the upper right-hand corner of **Justice Denied's homepage**.

The mobile friendly homepage was created because more than 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%
2019	45%	47%	8%

Justice Denied's mobile device homepage is **www.m.justicedenied.org**.

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

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

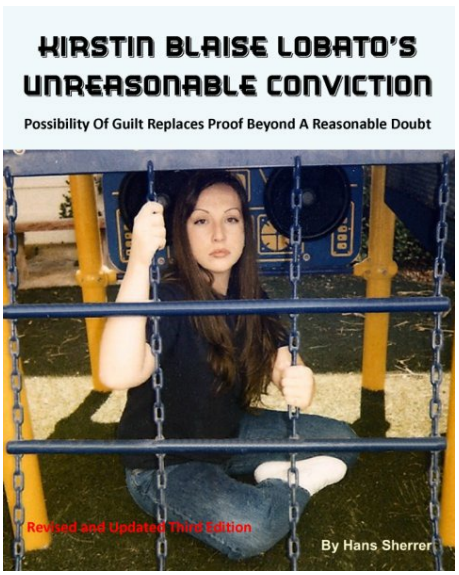
The book details how Kirstin Lobato has twice been convicted of a July 8, 2001 Las Vegas homicide when the prosecution doesn't deny it has no physical, forensic, eyewitness, confession, informant, surveillance video or documentary evidence she was in Las Vegas at any time on the day of the crime. The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

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

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

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

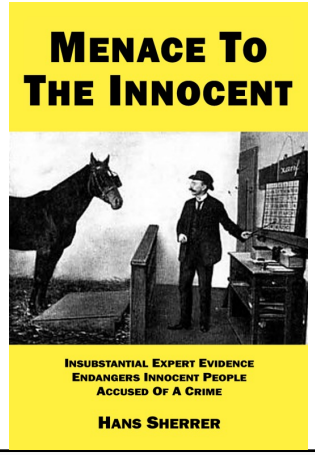
The 232-page book written by *Justice Denied's* editor and publisher Hans Sherrer is supported by 427 source endnotes. In documents filed in the Nevada Supreme Court, the Clark County District Attorney's Office and the State of Nevada don't assert there is a single factual error in the book.



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

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

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



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

By Hans Sherrer, *Justice Denied's* Editor & Publisher
Read about the book with order information from Amazon.com on page 20

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

Juries were first known to be instructed to acquit unless the prosecution proved the defendant's guilt beyond a "reasonable doubt" in the Old Bailey (London's criminal court) in the mid-1780s. "Reasonable doubt" was not used as a standard of proof in the U.S. until the 1800s. Proof of guilt beyond a "reasonable doubt" was recognized by the U.S. Supreme Court as constitutionally required in 1970 in *In re Winship*.

Boxer Jack Johnson Pardoned

Jack Johnson was granted a Presidential Pardon 105 years after he was convicted of violating the federal Mann Act for going across a state line with his white girlfriend. Johnson was the World Heavyweight Boxing Champion from 1908 to 1915. He fled the U.S. after his conviction in 1913 to avoid serving his federal prison sentence of 1 year and 1 day. Johnson served his sentence after returning to the U.S. In 1920.

See pg. 3

JUSTICE DENIED

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.

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