

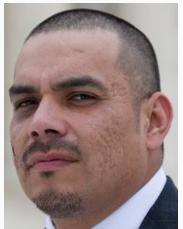
JUSTICE

DENIED

The Magazine for the
Wrongly Convicted

Clayvin Herrera

U.S Supreme Court
reverses off-season
hunting conviction
across state lines.
See page 3

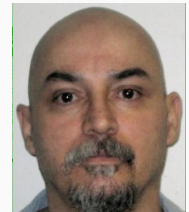


Grover Reed



Granted new post-con-
viction proceeding be-
cause judge was a
prosecutor at time of
his trial and death
sentence. In Florida
See page 10

Jose Echavarria



Granted new trial in
Nevada based on
risk of judicial bias.
See page 15

Tasker Spruill

Murder conviction reinstated
by appeals court – after trial
court overturned it because
prosecution concealed excul-
patory evidence about jail-
house informant.

See page 11



In This Issue

Federal Court Is Death Zone For Federal Defendants And State Prisoners!

Alan Wright Granted New Trial Because His Lawyer Did Nothing In His Defense!

Man Acquitted On Appeal Of Statutory Rape Of His Wife He Thought Was 18!

Equan Southall Granted New Trial Because Juror Had Pending Prosecutor Job App!

U.S. Supreme Court Reaffirms Dual State And Federal Prosecutions Are OK!

Rodolfo Delgado Suspended 2 Hrs After Being Sworn In As Judge!

**Issue 76
Summer 2019**

Table of Contents

Clayvin Herrera Has Off-Season Hunting Conviction Reversed By U.S. Supreme Court.....	3
Rodolfo Delgado Suspended Two Hours After Being Sworn In As Texas Appeals Court Judge	4
Federal Court Is Death Zone For Federal Defendants, And State Prisoners Filing Habeas Petitions.....	5
Alan Wright Granted New Trial Because His Lawyer Did Nothing In His Defense.....	7
Man Acquitted On Appeal Of Statutory Rape Of His Wife He Thought Was 18.....	9
Grover Reed Granted New Post-Conviction Proceeding Because Judge Was Prosecutor At Time Of His Trial.....	10
Tasker Spruill's Murder Conviction Reinstated By Appeals Court -- Resumes Serving Life Sentence.....	11
U.S. Supreme Court Rejects Constitutional Challenge To Dual Prosecutions By State And Federal Governments.....	13
9th Circuit Court Grants New Trial For Murderer Jose Echavarria Based On Risk Of Judicial Bias.....	15
Equan Southall Granted New Trial Because Juror Failed To Disclose She Had Pending Assistant DA Job Application....	17
Menace To The Innocent: Insubstantial Expert Evidence Endangers Innocent People Accused Of A Crime.....	19
Phantom Spies, Phantom Justice.....	20
High Fence Foodie Cookbook.....	20
From The Big House To Your House: Cooking in prison.....	21
Edwin M. Borchard – Convicting The Innocent.....	21
3rd Revised and Updated Edition of “Kirstin Blaise Lobato’s Unreasonable Conviction” Online.....	22
Justice Denied’s Mobile Device Homepage Is Online.....	22

Message From The Publisher

The idea that federal court is a bastion of justice is unsupported by the rate of defendants who are convicted – i.e., unless all but an infinitesimal percentage of defendants are guilty. The conviction rate in U.S. District Court is over 99.6% and in U.S. Magistrate Courts it is over 99.9%. With a combined conviction rate of over 99.8%, *less than 2* out of every 1,000 federal defendants who have their case adjudicated is acquitted. Federal courts are also a death zone to state prisoners who file a federal habeas petition: in 2017 one state prisoner was exonerated after their federal habeas petition was granted, out of the thousands of federal habeas petitions filed each year by state prisoners. See p. 5.

The U.S. Supreme Court only occasionally reverses a criminal conviction. Clayvin Herrera was one of those rare beneficiaries when the Supreme Court reversed his conviction for off-season hunting in Wyoming’s Bighorn National Forest. See p. 3.

The domination of federal programs and mandates affecting the states makes it is easy to forget the 50 states and the federal government are separate legal entities. The U.S. Supreme Court reaffirmed that principle when it declined to end its 171-year old “separate sovereigns” precedent that a person can be tried for different federal and state crimes based on the same incident. See p. 13.

A judge’s bias is a very real problem that plagues defendants in state and federal courts. The federal 9th Circuit acknowledged the risk of judicial bias is sufficient to warrant a new trial, when it reversed Jose Echavarria’s conviction and ordered a new trial based on the trial judge’s relationship with the murder victim and the FBI that investigated the case. See. P. 15.

Hans Sherrer, Editor and Publisher
www.justicedenied.org – email: hsherrer@justicedenied.org

Information About *Justice:Denied*

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

DO NOT SEND JUSTICE:DENIED ANY LEGAL WORK!
Justice:Denied does not and cannot give legal advice.

If you have an account of a wrongful conviction that you want to share, send a first-class stamp or a pre-stamped envelope with a request for an information packet to, Justice Denied, PO Box 66291, Seattle, WA 98166. Cases of wrongful conviction submitted in accordance with *Justice:Denied*’s guidelines will be reviewed for their suitability to be published. *Justice:Denied* reserves the right to edit all submitted accounts for any reason.

Justice:Denied is published four times yearly. *Justice:Denied* is a trade name of The Justice Institute, a 501(c)(3) non-profit organization. If you want to financially support the important work of publicizing wrongful convictions, tax deductible contributions can be made to:

**The Justice Institute
 PO Box 66291
 Seattle, WA 98166**

Credit card contributions can be made on *Justice:Denied*’s website,
www.justicedenied.org/donate.htm

Please note: Justice Denied protects the privacy of its donors. Justice Denied will not disclose its donors to any third party without presentation of a valid legal process.

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



Clayvin Herrera Has Off-Season Hunting Conviction Reversed By U.S. Supreme Court

The U.S. Supreme Court reversed Clayvin Herrera's off-season hunting convictions on May 20, 2019. Herrera is a member of the Crow Tribe and he was convicted in Wyoming of hunting in the Bighorn National Forest when it was closed to hunting. Herrera argued he can hunt in the forest at anytime under an 1868 treaty between the Crow and the U.S. government.

Herrera lives on the Crow reservation in Montana that borders the Bighorn National Forest in Wyoming.

In January 2014 Herrera and other Crow members were hunting when they crossed into Wyoming while pursuing a group of elk. They shot three bull elk and returned to Montana with the meat.

A Wyoming game warden saw photos Herrera posted on a hunting website, including one of him crouched in the snow behind an elk he shot, and another with its antlers balanced on his shoulders. The warden was able to identify from the background in the photos that they were taken in the Bighorn National Forest about a mile inside Wyoming.

Herrera was criminally charged by Wyoming authorities for hunting elk off-season or without a state hunting license, and being an accessory to others doing the same thing.

Herrera asserted pre-trial that he had a protected right to hunt at any time in the Bighorn National Forest under the 1868 treaty between the Crow Tribe and the U.S. government. Circuit Court Judge Shelley A. Cundiff rejected Herrera's argument, and ruled the Crow Tribe's unrestricted hunting rights under the treaty ended when Wyoming became a state.

During Herrera's trial in April 2016, Cundiff barred him from presenting the treaty defense. The defense Herrera was allowed to present was he didn't know he had crossed into Wyoming. That wasn't convincing to the jury that convicted him of both counts. The judge gave Herrera a suspended jail sentence, one year of probation, imposed an \$7,500 fine, and ordered a 3-year suspension of his hunting privileges in Wyoming.



Clayvin Herrera outside the U.S. Supreme Court building on Jan. 8, 2019.

Herrera appealed.

In April 2017 the Wyoming Fourth Judicial District Court affirmed Herrera's convictions, and ruled the trial judge did not err that the 1868 treaty does not preempt Wyoming's law criminalizing off season hunting.

Herrera filed a writ of *certiorari* with the U.S. Supreme Court in October 2017 that sought to resolve whether the Crow Tribe's hunting rights in the Big Horn National Forest under the 1868 treaty were subordinated by Wyoming's statehood.

Herrera's argument the Crow's treaty hunting rights remain in effect was strengthened by the U.S. government supporting his position against the State of Wyoming.

On June 28, 2018 the Supreme Court agreed to hear Herrera's case, and oral arguments were held on January 8, 2019.

The Court sided with Herrera and set-aside his convictions in a majority 5-4 opinion issued on May 20, 2019: the Crow Tribe's hunting rights were conditionally protected by the 1868 treaty, and not automatically abrogated by Wyoming's statehood. His case was remanded back to the trial court. [The Court's ruling](#) first outlined the treaty's history:

"The Crow Tribe first inhabited modern-day Montana more than three centuries ago. The Tribe was nomadic, and its members hunted game for subsistence. The Bighorn Mountains of southern Montana and northern Wyoming "historically made up both the geographic and the spiritual heart" of the Tribe's territory.

In 1825, the Tribe signed a treaty of friendship with the United States. In 1851, the Federal Government and tribal representatives entered into the Treaty of Fort Laramie ... The Treaty of Fort Laramie specified that "the tribes did not 'surrender the privilege of hunting, fishing, or passing over' any of the lands in dispute" by entering the treaty.

After prospectors struck gold in Idaho and western Montana, a new wave of settlement prompted Congress to initiate further negotiations. Federal negotiators, including Commissioner of Indian

Affairs Nathaniel G. Taylor, met with Crow Tribe leaders for this purpose in 1867. He told the assembled tribal leaders that the United States wished to "set apart a tract of [Crow Tribe] country as a home" for the Tribe "forever" and to buy the rest of the Tribe's land. Taylor emphasized that the Tribe would have "the right to hunt upon" the land it ceded to the Federal Government "as long as the game lasts."

The following spring, the Crow Tribe and the United States entered into the treaty at issue in this case: the 1868 Treaty. ... Article IV of the 1868 Treaty memorialized Commissioner Taylor's pledge to preserve the Tribe's right to hunt off reservation, stating: "The Indians . . . shall have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and as long as peace subsists among the whites and Indians on the borders of the hunting districts."

... In 1890, Congress formally admitted Wyoming "into the Union..." in an Act that did not mention Indian treaty rights. ... President Grover Cleveland set apart an area in Wyoming as a public land reservation and declared the land "reserved from entry or settlement." This area, made up of lands ceded by the Crow Tribe in 1868, became known as the Bighorn National Forest.

The Court then analyzed the Crow Tribe's 1868 treaty in light of the Supreme Court's 1999 ruling in *Minnesota v. Mille Lacs Band of Chippewa Indians*:

"[B]ecause treaty rights are reconcilable with state sovereignty over natural resources," the *Mille Lacs* Court concluded, there is no reason to find statehood itself sufficient "to extinguish Indian treaty rights to hunt, fish, and gather on land within state boundaries."

... Just as in *Mille Lacs*, there is no suggestion in the text of the 1868 Treaty with the Crow Tribe that the parties intended the hunting right to expire at statehood.

Applying *Mille Lacs*, this is not a hard case. The Wyoming Statehood Act did not abrogate the Crow Tribe's hunting right, nor did the 1868 Treaty expire of its own accord at that time.

Considering the terms of the 1868 Treaty as they would have been understood by the Crow Tribe, we conclude that the creation of Bighorn National Forest did not remove the forest lands, in their

Herrera cont. on p. 4

Herrera cont. from p. 3

entirety, from the scope of the treaty.

Finally, we note two ways in which our decision is limited. First, we hold that Bighorn National Forest is not categorically occupied, not that all areas within the forest are unoccupied. On remand, the State may argue that the specific site where Herrera hunted elk was used in such a way that it was “occupied” within the meaning of the 1868 Treaty.

Second ... On remand, the State may press its arguments as to why the application of state conservation regulations to Crow Tribe members exercising the 1868 Treaty right is necessary for conservation. We do not pass on the viability of those arguments today.

The judgment of the Wyoming District Court of the Fourth Judicial District, Sheridan County, is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.”

The Supreme Court’s ruling in *Herrera v. Wyoming*, No. 17-532 (USSC, 5-20-2019) can be downloaded at, www.supremecourt.gov/opinions/18pdf/17-532_q86b.pdf.

The Supreme Court’s majority ruling was comprised of the four “liberal” judges and “conservative” Neil Gorsuch. The primary argument of the four dissenters was that under a 1995 ruling by the U.S. 10th Circuit Court of Appeals, the Crow tribe’s hunting rights under the 1868 treaty are no longer in force. That 1995 ruling was not reviewed by the Supreme Court — which it effectively belatedly did in *Herrera v. Wyoming*.

Sources:

Herrera v. Wyoming, No. 17-532 (USSC, 5-20-2019), https://www.supremecourt.gov/opinions/18pdf/17-532_q86b.pdf

Supreme Court hears case involving Crow tribe hunting rights, By Jessica Gresko (Associated Press), Great Falls Tribune, January 8, 2019



Visit Justice Denied’s Facebook Page

Justice Denied’s Facebook page is regularly updated with information related to wrongful convictions. Justice Denied’s homepage has a link to the Facebook page.

www.justicedenied.org

Rodolfo Delgado Suspended Two Hours After Being Sworn In As Texas Appeals Court Judge Because Of Federal Bribery Charges

Rodolfo “Rudy” Delgado was suspended on January 3, 2019 by the Texas State Commission on Judicial Conduct two hours [after he was](#) sworn in as a Thirteenth Court of Appeals judge. Delgado’s suspension is based on his indictment on February 5, 2018 of federal bribery, Travel Act violations, conspiracy, and obstruction of justice.

Delgado was indicted on three counts of bribery, three counts of violating the federal Travel Act, and one count each of conspiracy and obstruction of justice. The Travel Act charges are based on his use of a telephone to engage in bribery. Each federal bribery count carries a maximum of 10 years in prison, and each Travel Act count carries a maximum of 5 years in prison.

Delgado was released on \$100,000 bond after his arrest by the FBI.

At the time of his indictment Rudy Delgado was a 93rd Judicial District Court Judge in Hidalgo County. Weeks after his indictment Delgado [was suspended](#) on March 1, 2018 by the Commission on Judicial Conduct. Delgado [resigned on](#) April 30, 2018.

After his resignation Delgado continued his campaign for election as an appeals court judge. In spite of widespread publicity about his indictment and pending federal trial, Delgado was elected in November 2018 by garnering 50.4% of the vote to his opponents 49.6%.

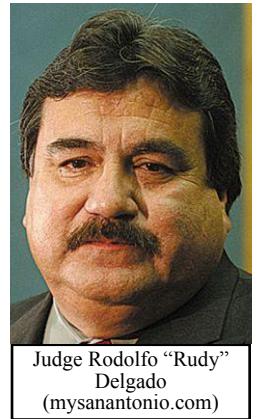
The 64-year-old Delgado was sworn in on January 3, 2019, and hours later he was suspended without pay pending the outcome of his federal criminal case.

Delgado’s indictment is based on allegations he accepted bribes to affect his judicial rulings numerous times between November 2016 and January 2018. The charges are based on wiretapped phone conversations, text messages by Delgado, audio and video recordings of a bribery transaction, and statements by an attorney who paid Delgado the bribes.

One alleged bribe occurred in December 2016, when an attorney paid Delgado \$260

cash in exchange for releasing a client on a personal bond.

In November 2017 the same attorney allegedly paid Delgado \$260 in cash to release another client from the Hidalgo County Jail on a personal bond.



Judge Rodolfo “Rudy” Delgado
(mysanantonio.com)

Federal authorities had learned in 2016 from an informant that Delgado was allegedly taking bribes from the attorney. The FBI obtained warrants and began recording telephone calls between Delgado and the lawyer and their surreptitious meetings.

After gathering the evidence, the lawyer was questioned by the FBI and agreed to wear audio and video recording devices during a planned meeting with Delgado. During the meeting on January 17, 2018 at a restaurant, the attorney is recorded giving Delgado \$5,500 in cash in exchange for the release of a client on bond.

The conspiracy and obstruction of justice charges are based on Delgado sending a text message to the attorney after he learned he was under federal investigation. The text message attempted to characterize the \$5,500 as a contribution to Delgado’s appeals court campaign, and that he didn’t know there was cash in the envelope, but thought it was a check.

Delgado’s federal trial is scheduled for February 25, 2019 in Houston.

This isn’t Delgado’s first serious brush with the law since he was first elected as a judge in 2004.

In 2005 Delgado [was indicted](#) on Texas state felony charges of evading arrest and misuse of official information. He was suspended in February 2005 by the Commission on Judicial Conduct from his position as the presiding judge of the 93rd Judicial District Court. The charges were based on a 2002 traffic stop for erratic driving Edinburg, Texas. The officer determined Delgado was intoxicated and he was arrested and charged with DWI. In June 2007 Delgado’s suspension was lifted after the indictment was dismissed. During the 28 months he was suspended Delgado was paid his \$12,200 per month salary: a total of \$341,000.

Delgado cont. on p. 5

Federal Court Is Death Zone For Federal Defendants, And State Prisoners Filing Habeas Petitions

By Hans Sherrer

Federal courts are inhospitable to an almost unimaginable degree to federal defendants. They are likewise inhospitable to state prisoners filing a federal habeas petition. Their unfriendliness is so pervasive they have been described by *Justice Denied* as the Death Zone for state prisoners.[1] However, they are likewise a Death Zone for federal defendants.

Federal courts function as conviction factories. The rejected units are the relative handful of defendants who are acquitted after a trial or are exonerated after their conviction.

In 2017, 12 convicted federal defendants are known to have been exonerated as recorded in the Innocents Database.[2] That is less than one out of 10,000 defendants, based on the average of more than 135,000 people convicted annually in federal court for the last ten years.

None of those 12 exonerations was based on the granting of a federal defendant's post-conviction habeas petition.[3]

In 2017, one -- ONE! -- state prisoner was exonerated after their federal habeas petition was granted. That is out of the thousands of federal habeas petitions filed each year by state prisoners.

Several federal judges have publicly stated habeas corpus is effectively dead for state prisoners in federal court due to the procedural hurdles imposed by the 1996 Anti-Terrorism and Effective Death Penalty Act

(AEDPA).[4] However, the obituary for federal *habeas corpus* is as applicable for federal prisoners as it is for state prisoners.

The situation is just as bad for federal defendants in the trial court.

The federal civilian trial court system has two branches: U.S. District Court that handles felony cases, and some or all misdemeanor and petty offense cases in certain judicial districts; and U.S. Magistrate Court that in some judicial districts handle misdemeanor and petty offense cases (Max. penalty of 1 year or less in prison). There are 94 federal judicial districts, and many have a district court in multiple cities: for example, the Central District of California has courthouses in Los Angeles, Riverside, and Santa Ana.[5]

In 2016, a total of 118,506 defendants had their case adjudicated in federal court: 66,924 in U.S. District Court, and 51,582 in U.S. Magistrate Court.[6]

The following is a breakdown of prosecutions in U.S. District Court and Magistrate Court.

U.S. District Court

In 2016, 99.6% of district court defendants were convicted whose case was adjudicated: 1 out of every 264 defendants acquitted. 97.2% of the convictions were based on a guilty plea. The high rate of guilty pleas may in part be fueled by the conviction of 88.4% of defendants who dared to take their case to trial.

Only 254 of the 2,195 defendants who went to trial in 2016 were acquitted (365 bench trials and 1,830 jury trials). The almost 9 out of 10 defendants who went to trial and lost may have paid dearly with a significantly more severe sentence than if they had agreed to a plea bargain.

The following table lists the district court conviction rate for 2016 to 2012, and 2006 and 1996:

(Columns left to right)

Year
Pct. of Dist. Ct. defendants convicted
Pct. of convictions by guilty plea
Pct. of convictions after a trial

2016	99.6%	97.2%	88.4%
2015	99.7%	97.2%	89.6%
2014	99.6%	98.2%	87.2%
2013	99.6%	97.0%	87.6%
2012	99.5%	96.9%	86.4%
2006	99.3%	95.4%	86.7%

1996 98.3% 91.9% 83.3%

The conviction rate of district court defendants is hovering around 99.6%. In 2006 and 1996 it was lower, but still impressive at 99.3% and 98.3% respectively. The percentage of defendants convicted after a guilty plea has noticeably increased since 1996.

Although overall federal district courts generate convictions at a remarkable rate, the district court in 21 of the 94 federal judicial districts had a *100% conviction rate* in 2016. Not a single defendant was acquitted in:

California, Northern district, 377 convictions (365 guilty pleas, 12 trials)

Georgia, Southern district, 274 convictions (269 guilty pleas, 5 trials)

Hawaii, 138 convictions (131 guilty pleas, 7 trials)

Idaho, 294 convictions (288 guilty pleas, 6 trials)

Illinois, Central district, 342 convictions (331 guilty pleas, 11 trials)

Illinois, Southern district, 348 convictions (342 guilty pleas, 6 trials)

Indiana, Southern district, 356 convictions (346 guilty pleas, 10 trials)

Kentucky, Western district, 190 convictions, (182 guilty pleas, 8 trials)

Louisiana, Western district, 228 convictions (216 guilty pleas, 12 trials)

Maine, 202 convictions, (195 guilty pleas, 7 trials)

Maryland, 651 convictions, (632 guilty pleas, 19 trials)

Michigan, Western district, 344 convictions, (331 guilty pleas, 13 trials)Missouri, Eastern district, 867 convictions (848 guilty pleas, 18 trials)

New Hampshire, 188 convictions (184 guilty pleas, 4 trials)

New Jersey, 604 convictions (356 guilty pleas, 48 trials)

New York, Western district, 467 convictions (452 guilty pleas, 15 trials)

Northern Mariana Islands, 21 convictions (19 guilty pleas, 2 trials)

Oklahoma, Eastern district, 107 convictions (102 guilty pleas, 5 trials)

Vermont, 187 convictions (186 guilty pleas, 1 trial)

Washington, Western district, 379 convictions (364 guilty pleas, 15 trial)

Habeas cont. on p. 6

Delgado cont. from p. 4

Sources:

[Suspended Delgado to remain on appeals court](#), By Cristina M. Garcia, *The Brownsville Herald*, January 3, 2019

[State Commission on Judicial Conduct suspends Rio Grande Valley judge](#), By Aaron Nelsen, *MySanAntonio.com*, March 2, 2018,

[Hidalgo County Judge resigns in wake of bribery charges](#), By Mark Lisher, *Texas Monitor*, May 1, 2018

[Indicted in '05](#), Valley judge still awaits trial — and keeps drawing \$146,418 annually, By Jesse Bogan (San Antonio Express-News), *Houston Chronicle*, February 11, 2007



Habeas cont. from p. 5

Wisconsin, Western district, 124 convictions (120 guilty pleas, 4 trials)

Seven of those judicial districts comprise six entire states and one territory with no acquittals in a district court.

The district courts in those 21 judicial districts generated 5,821 convictions with 0 acquittals: 5,601 convictions by a guilty plea and 210 after a trial (24 bench trials and 186 jury trials).

The district courts in two of those judicial districts are a virtual no-man's land for a defendant:

* Western Washington (Seattle and Tacoma district courts) had zero acquittals for three years in a row (2014 to 2016): 1,405 convictions and 0 acquittals.

* Southern Illinois (East St. Louis, Benton and Cairo district courts) had zero acquittals for four years in a row (2013 to 2016): 1,627 convictions and 0 acquittals. In 2012 there were two acquittals and 422 convictions.

District courts in 24 other federal judicial districts had one defendant acquitted in 2016. Those 24 districts generated 13,682 felony convictions with 24 acquittals.

So in 2016 almost half of the district courts in 94 judicial districts had zero or one acquittal of a defendant.

Overall, district courts had 66,670 convictions and 254 acquittals for a rate of 263 convictions for every acquittal.

U.S. Magistrate Courts

In 2016, 99.9% of all magistrate court defendants were convicted whose case was adjudicated: with 1 out of every 1,842 defendants acquitted. 99.9% of the convictions were based on a guilty plea.

Only 28 of the 685 defendants who went to trial in 2016 were acquitted (673 bench trials and 12 jury trials). Thus a magistrate court defendant who went to trial had about a 1 in 57 chance of an acquittal.

The following table lists the magistrate court conviction rate for 2016 to 2012, and 2006 and 1996:

(Columns left to right)

Year

Pct. of Magistrate Ct. defendants convicted

Pct. of convictions by guilty plea Pct. of convictions after a trial

2016	99.9%	99.9%	96.1%
2015	99.9%	99.9%	96.6%
2014	99.9%	99.9%	95.7%
2013	99.9%	99.9%	94.2%
2012	99.9%	99.9%	95.6%
2006	99.7%	99.7%	89.0%
1996	98.9%	98.9%	84.8%

The conviction rate of magistrate court defendants is hovering at 99.9%. While the overall conviction rate in 2016 was 1% higher than in 1996, there was a significant increase from 84.8% to 96.1% in the percentage of defendants convicted after a trial.

The U.S. Magistrate Courts in 84 judicial districts had a 100% conviction rate in 2016, while the remaining 10 districts had a total of 28 acquittals.

The most acquittals were in Eastern Virginia which had eight acquittals compared with 1,386 convictions, and Eastern California which also had eight acquittals compared with 97 convictions.

Overall, magistrate courts had 51,554 convictions and 28 acquittals for a rate of 1,841 convictions for every acquittal. If the anomaly of the eight acquittals in Eastern California is excluded, nationally there were 2,573 convictions for every acquittal.

U.S. Magistrate Courts have a conviction rate that rivals that of a local municipal court that operates as a cash register for the local government by automatically finding everyone guilty who was given a ticket.

U.S. District Courts and Magistrate Courts combined

In 2016, 99.8% of all federal defendants were convicted whose case was adjudicated. 97.9% of the convictions were based on a guilty plea.

There was a 99.8% conviction rate of all federal defendants in 2016 -- with approximately 1 out of every 420 defendants acquitted. The following table lists the conviction rate for 2016 to 2012, and 2006 and 1996:

(Columns left to right)

Year

Total % of federal defendants convicted

**Pct. of convictions by guilty plea
Pct. of convictions after a trial**

2016	99.8%	97.9%	90.2%
2015	99.8%	97.9%	91.5%
2014	99.8%	98.1%	89.1%

2013	99.8%	98.0%	88.4%
2012	99.7%	97.8%	88.8%
2006	99.4%	95.9%	86.8%
1996	98.3%	92.0%	83.2%

The conviction rate of federal defendants is hovering at 99.8%.

In 2016, 18 federal judicial districts had zero acquittals in either the district court or the magistrate court.

The five federal judicial districts with the most convictions were:

Texas, Southern: 25,547 convictions, 10 acquittals. (99.961% conviction rate)

Texas, Western: 21,200 convictions, 8 acquittals. (99.963% conviction rate)

Arizona: 16,977 convictions, 5 acquittals. (99.971% conviction rate)

New Mexico: 5,467 convictions, 1 acquittal. (99.982% conviction rate)

California, Southern: 3,754 convictions, 5 acquittals. (99.87% conviction rate)

Seven federal judicial districts had less than a 98.5% conviction rate in 2016:

Virgin Islands: 68 convictions, 7 acquittals (90.67%)

South Dakota: 491 convictions, 13 acquittals (97.42%)

Alabama, Middle: 137 convictions, 3 acquittals. (97.86%)

Mississippi, Southern: 292 convictions, 5 acquittals (98.32%)

Illinois, Northern: 655 convictions, 11 acquittals (98.35%)

Florida, Northern: 251 convictions, 4 acquittals (98.43%)

Tennessee, Middle: 196 convictions, 3 acquittals (98.49%)

The Virgin Islands was an anomaly, but it was no bed of roses for defendants with more than 9 out of 10 convicted. South Dakota had the second lowest conviction rate, with the low low rate of almost 49 out of every 50 defendants convicted.

Conclusion

It is difficult to explain the extraordinarily few acquittals in federal court without recognizing that is how the system is intended to function. With few exceptions federal judges act on the premise the U.S. Attorney's Office only charges guilty people, so innocent until proven guilty has effectively

Habeas cont. on p. 7

Alan Wright Granted New Trial Because His Lawyer Did Nothing In His Defense

Alan Wright's robbery and burglary convictions [have been set-aside](#) by a New York County Supreme Court justice and he was granted a new trial, because during his March 2018 trial his lawyer did "absolutely nothing" in his defense. The granting of a new trial to Wright is notable not just because his lawyer did nothing to defend him, but there was significant evidence against him.

Wright was charged with the first-degree robbery and second-degree burglary of an up-town Manhattan laundromat on May 7, 2017.

Wright refused to pled guilty and insisted on a jury trial.



New York Supreme Court Justice Thomas Farber (Marc A Bermann for NY Daily News)

His case was assigned to Justice Thomas A. Farber. On the eve of his trial Wright requested that Farber remove his lawyer and replace him with another one. Wright's previous request for a new lawyer had been granted, but Farber denied Wright's request because he couldn't provide an understandable reason to be assigned a third lawyer.

The prosecution's case was based on eyewitness testimony and high quality video from multiple surveillance cameras inside and outside the laundromat that showed the entire robbery, and surveillance video from a hotel across the street.

Wright is seen on video entering the hotel

wearing a distinctive camouflage jacket with gray sweat pants and equally distinctive sneakers—one of which had a dangling strap. The 55-year-old Wright was a regular visitor to the hotel and he was known to the man working the desk, who testified it was Wright who entered.

A short time later a man wearing those exact same clothes and sneakers is seen on video lingering outside the laundromat. The man was wearing a ski mask. The man entered the laundromat with his hand in his pocket simulating that he had a pistol. He terrorized the lone male employee and a female customer. He forced both to the ground and then herded them into a storage area. He then rummaged through the cash register and left with cash and the employee's Metrocard. The man kept one hand in his pocket during almost the entire incident to give the impression he had a gun, but it was not visible in the video.

Wright cont. on p. 8

Habeas cont. from p. 6

been relegated to being considered an anachronistic notion. With the judge presuming a defendant is guilty there is no inhibition to greasing the skids for their conviction -- and only God can help a defendant who dares go to trial and loses, because they will get no sympathy from the judge at sentencing.

Further Reading

Previous *Justice Denied* articles related to the extraordinarily high conviction rate in federal courts and their reluctance to grant federal or state habeas petitions are:

"99.8% Conviction Rate In U.S. Federal Courts Can Make Japanese Prosecutors Jealous," By Hans Sherrer, *Justice Denied*, Issue 67, http://justicedenied.org/issue/issue_67/federal_courts_id67.pdf

"Federal Court Is The Death Zone For Innocent State Prisoners," By Hans Sherrer, *Justice Denied*, Issue 68, online at, http://justicedenied.org/issue/issue_68/death_zone_id68.pdf

"Three Felonies A Day: How the Feds Target the Innocent" is a 2009 book by lawyer Harvey Silverglate that explains business and professional people are at risk everyday for engaging in what they think is legal conduct, but that a federal prosecutor can not only characterize as criminal, but secure

a grand jury indictment and prosecute them for committing under one or more current federal laws or criminalized regulations. (The situation is worse today than it was in 2009 when the book was published.) It is available on Amazon.com at <https://tinurl.com/vagtf25a>.

Endnotes:

[1] "Federal Court Is The Death Zone For Innocent State Prisoners," By Hans Sherrer, *Justice Denied*, February 16, 2017, online at, <http://justicedenied.org/wordpress/archives/3511>

[2] The Innocents Database documents more than 27,300 exonerations in the U.S. It is online at, <http://forejustice.org/exonerations.htm>.

[3] A federal prisoner's post-conviction petition to challenge their conviction and/or sentence is known as a 2255 petition. It is authorized by 28 USC 2255, while a state prisoner's federal post-conviction petition is filed under 28 USC 2254.

The 12 exonerations of a defendant convicted in federal court were based on:

5 = Trial judge granted motion for a new trial based on insufficient evidence of guilt presented at trial. Charges dismissed.

2 = Trial judge granted prosecution motion to vacate conviction and dismiss indictment based on credible new evidence corroborating the defendants claim Baltimore PD Officers planted the drugs seized from their car, thus there was insufficient evidence to prove the defendant's guilt beyond a reasonable doubt.

4 = Appeals court reversed conviction based on insufficient evidence of guilt presented at trial.

1 = Appeals court reversed conviction based on abatement and ordered dismissal of charges.

[4] Three of those federal judges are:

1) 11th U.S. Circuit Court of Appeals Judge James C. Hill. See, "Federal Appeals Court Judge Declares Habeas Corpus Is "Dead In This Country"," Justice De-

nied, June 7, 2011

<http://justicedenied.org/wordpress/archives/1216>)

2) 9th U.S. Circuit Court of Appeals Judge Stephen Reinhardt. See his article, "The demise of habeas corpus and the rise of qualified immunity," 113 Mich. Law Rev. 1219 (2015)

<http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1217&context=mlr>

3) 9th U.S. Circuit Court of Appeals Judge Alex Kozinski (Kozinski retired on December 18, 2017). See his article, "Criminal Law 2.0," 44 Geo. L.J. Ann. Rev. Crim. Proc. (2015), Preface. http://georgetownlawjournal.org/files/2015/06/Kozinski_Preface.pdf

[5] The U.S. armed forces (and Coast Guard) has a separate trial court and appeals court system for alleged violations of the Uniform Code of Military Justice. However, rulings of the United States Court of Appeals for the Armed Forces are subject to direct review by the U.S. Supreme Court.

In 2017, one person was exonerated after their conviction under the military justice system. The Coast Guard Court of Appeals ordered a new trial for the defendant in a sexual assault case, and he was acquitted after a retrial based on new exculpatory evidence.

[6] 2016 is the latest fiscal year for which statistics are available from the "US Attorneys' Annual Statistical Report." Reports are available online for 1955 to 2016 excluding 1976 that is missing, <https://www.justice.gov/usao/resources/annual-statistical-reports>

Sources:

United States Attorneys' Annual Statistical Report, Fiscal Year 2016 (Esp. Tables 2 and 2B) <https://www.justice.gov/usao/resources/annual-statistical-reports>

United States Attorneys' Annual Statistical Report, Fiscal Year 1955 to 2016, (excluding 1976 that is unavailable online) <https://www.justice.gov/usao/resources/annual-statistical-reports>



Wright cont. from p. 7

Wright was arrested six days after the robbery when the hotel desk clerk saw him in the neighborhood and he called the police. The laundromat worker's Metrocard was found in Wright's pocket. The prosecution showed video of the worker using his Metrocard on the days prior to the robbery to establish it was in his possession. The prosecution also showed the jury video of Wright using the man's Metrocard to board a city bus after the robbery.

During the trial Wright's lawyer repeated the prosecutor's questions during his cross-examination of the witnesses -- so the jury heard their testimony twice. After the prosecution rested, he waived presenting a defense. During his summation to the jury he read the notes he took when the prosecution presented its case. He did not argue for Wright's acquittal, or even that the jury had the authority to convict him of reduced charges if they thought the prosecution hadn't proved he committed first-degree robbery and second-degree burglary.

Based on the evidence Wright committed the robbery and burglary the jury found him guilty of both charges on March 26, 2018. However, even though Wright's lawyer hadn't argued there was no evidence he actually had a gun, the jury followed the judge's jury instruction that a first-degree robbery conviction required proof he had a gun, and found him guilty of the reduced charge of second-degree robbery.

After his conviction Wright was assigned a new lawyer who filed a post-verdict motion to set-aside the jury's verdict based on ineffective assistance of counsel.

On September 17, 2018 Farber summarily granted Wright's motion. **He ruled** "that because defense counsel's ineffectiveness is apparent from a simple reading of the record, there is no reason to grant a hearing. There is nothing outside of the record that a hearing would elucidate."

Farber's ruling was significant because he granted Wright's motion based on New York's standard of whether he received "meaningful representation," and not the federal ineffective assistance of counsel standard under *Strickland v. Washington* (1984). *Strickland* requires that a lawyer's conduct must first be found "deficient," and then that the defendant was "prejudiced" by that deficiency because without it there is a "reasonable probability" the outcome

would have been different.

Unlike *Strickland's* IAC standard that mandates finding both "deficiency" and "prejudice," New York's ineffective of assistance of counsel standard includes a flexible "prejudice" component that is viewed in the context of whether a defendant received "meaningful representation." **Farber noted**: "This standard thus focuses on 'the fairness of the process as a whole rather than its impact on the outcome of the case.'" The question is whether "the representation of a defendant by his assigned lawyer was so inadequate and ineffective as to deprive him of a fair trial."

Farber ruled Wright wasn't prejudiced by his lawyer's conduct, **because**: "The evidence was, to say the least, overwhelming. ... I am convinced that this was the best verdict that any lawyer, no matter how talented, could have achieved for this defendant. In short, defendant suffered no prejudice from his trial counsel's horrendous representation."

Farber then **summarized the** inaction of Wright's lawyer and its significance: "Faced with a case where there was little, if any, chance of acquittal, trial counsel took the path of least resistance. He did absolutely nothing for his client... So the question that is before me is whether, under New York law, a lawyer who does absolutely nothing can be considered to have given 'meaningful representation' when his client suffers no prejudice. I conclude that even though defendant suffered no prejudice, a lawyer who provides essentially no representation cannot be held to have provided 'meaningful representation' under New York law."

Farber concluded his ruling **by stating**:

"counsel's representation was ... effectively, no representation at all. Trial counsel conceded every legal point the People made, marshaled the evidence against his client and repeated almost verbatim the trial testimony. ... He did not argue that the available evidence showed that defendant did not have a real gun."

We work in an adversarial system. When a lawyer abdicates his responsibility to zealously defend his client, it is not just his client who suffers, but the whole system. ... When trial counsel sat down after his summation, I felt as if I had betrayed the jurors. The jurors looked bewildered. Indeed the entire courtroom looked bewildered. I don't

think anyone had seen anything quite like this.

This is not to suggest that effective trial counsel need follow any particular type of script. ... An attorney need not make frivolous arguments, but he or she must be an advocate for the defendant, not another prosecutor.

Had I not sat through this trial and observed every painful minute, I would be reluctant to grant a motion like this without a hearing. I would have wanted, at least, to give the People an opportunity to show that counsel's performance was the result of some strategy or tactic. But unless counsel's strategy was to make the jury feel sorry for his client based on the abysmal quality of his representation, there could be no conceivable strategic reason why a defense lawyer would act like this.

Based on the foregoing, I find that defendant received ineffective assistance of counsel. Defendant's motion pursuant to CPL §330.30(1) is granted. The conviction is vacated and a new trial is ordered."

People v Wright, 2018 NY Slip Op 28288 (Sup. Ct., NY County, Sept. 17, 2018) can be downloaded at, <https://law.justia.com/cases/new-york/other-courts/2018/2018-ny-slip-op-28288.html>

The New York County DA's Office has not appealed Farber's ruling. The case is: Alan Wright, Defendant, New York Supreme Court - Criminal Term, Case # 01934-2017.

Additional source:

Alan Wright, Defendant, New York Supreme Court - Criminal Term, Case # 01934-2017



Justice Denied's Article Index

www.justicedenied.org

There are links to all *Justice Denied* articles published since Issue 1 in 1999 in the Justice Denied Article Index. There are more than 1,500 articles in the Index concerning cases or issues in every state in the U.S., and more than 50 countries.

Man Acquitted On Appeal Of Statutory Rape Of His Wife He Thought Was 18

Eliud Waweru Wambui was acquitted by Kenya's Court of Appeal of the statutory rape of his wife in 2009. Eighteen is the age of consent in Kenya. Wambui was convicted in 2011 on the assumption his wife was 17 when she conceived their child. The appeals court ruled the prosecution failed to introduce sufficient evidence his wife was under 18 when they had consensual sex. To avoid prosecutions such as Wambui's who it described as being "more sinned against than sinning," the appeals court called for serious consideration to lower Kenya's age of consent to 16 as other countries have done.

Eliud Wambui was arrested in November 2010 on a charge of defilement (statutory rape) of an under 18-year-old girl in Thika, Kenya. The alleged victim was his wife he married in November 2009.

The complaint was filed by the father of Wambui's wife. She was almost six months pregnant when her father found out she was pregnant. He became angry and threw her out of the house. She went to live with Wambui and they were married. Her father filed the complaint after Wambui refused to pay him compensation of about \$800 US dollars (Kshs 80,000).

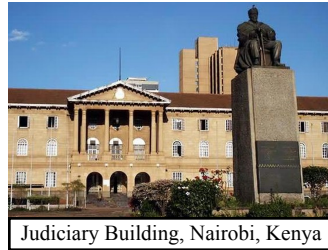
When the police contacted Wambui's wife she refused to provide any evidence against him. But she relented and provided a statement after being threatened by the police and jailed for three days.

During Wambui's bench trial in 2011 the prosecution's case was based on his wife's testimony she born on October 3, 1991, and she was 17 when she became pregnant in May 2009. Based on her testimony she was 18 when they were married on November 14, 2009. To corroborate her testimony the prosecution presented a photostat of her alleged birth certificate, but not a certified birth certificate. Both her father and mother testified she was born in 1991, but they didn't provide an exact date.

Wambui's defense was he reasonably believed she was over 18.

After his conviction in the Chief Magistrate's Court at Thika, Wambui was sentenced to the mandatory fifteen years in prison.

He appealed, primarily arguing the prosecution failed to prove the essential element of



Judiciary Building, Nairobi, Kenya

her. On June 25, 2014 the High Court at Nairobi ruled his appeal was without merit and dismissed it.

Wambui appealed to the Court of Appeal. He claimed the High Court erred as a matter of law and fact by failing to analyze the evidence and "notice that essential ingredients/elements of the offence as charged were not proved."

Wambui claimed the High Court erred by failing to properly consider:

- * The photostat of the alleged birth certificate the prosecution relied on was fraudulent because it was dated October 1, 1991 — two days BEFORE her alleged birth on October 3, 1991 described in the document.
- * The charges against him "were borne out of malice and ill-will due to the fact" he didn't pay his wife's father the compensation he demanded.
- * He reasonably believed his wife to be was 18, she had consented to have sex with him, and she had the capacity to agree to marry him.

On March 22, 2019 a three-judge panel of the Court of Appeal at Nairobi quashed Wambui's defilement conviction on the basis the prosecution failed to introduce evidence sufficient to prove the essential element that Wambui had knowledge his wife was less than 18 when they became sexually intimate — the prosecution hadn't even proved her actual age.

Regarding the girl's alleged birth certificate the appeals court's [ruling stated](#):

"A Photostat copy of the alleged birth certificate was produced, which copy was not certified as required by section 66 of the Evidence Act ... was not a document that could be relied on in proof of the complainant's age. Further, the document itself purported to have been issued before the birth of the complainant, evidence of which it purported to be, was a logical impossibility. Therefore, the document as was, was of no probative value."

The appeals court [stated regarding](#) Wam-

defilement that he knew his wife was under 18 when he became sexually intimate with

bui's reasonable belief his wife was over 18:

"Further, it stood to reason that a person was more likely to be deceived into believing that a child was over the age of 18 years if the said child was in the age bracket of 16 to 18 years old, and that the closer to 18 years the child was, the more likely the deception, and the more likely the belief that he or she was over the age of 18 years."

The Court concluded [by arguing for](#) a reduction in Kenya's 18-year-old age of consent, and reducing the harshness of a sentence in a case involving a girl close to the age of consent, because Kenya's statutory rape law is behind international norms:

"We need to add as we dispose of this appeal that the Act does cry out for a serious re-examination in a sober, pragmatic manner. Many other jurisdictions criminalize only sexual conduct with children of a younger age than 16 years. We think it is rather unrealistic to assume that teenagers and maturing adults ... do not engage in, and often seek sexual activity with their eyes fully open. They may not have attained the age of maturity but they may well have reached the age of discretion and are able to make intelligent and informed decisions about their lives and their bodies. ..." "Where to draw the line for what is elsewhere referred to as statutory rape is a matter that calls for serious and open discussion. In England, for instance, only sex with persons less than the age of 16, which is the age of consent, is criminalized and even then the sentences are much less stiff at a maximum of 2 years for children between 14 to 16 years of age. The same goes for a great many other jurisdictions. ... Our prisons are teeming with young men serving lengthy sentences for having had sexual intercourse with adolescent girls whose consent has been held to be immaterial because they were under 18 years. The wisdom and justice of this unfolding tragedy calls for serious interrogation."

The Court of Appeals quashed Wambui's conviction based on the totality of his case, and set aside his sentence. The Court ordered that Wambui be released from prison forthwith.

Download the Court of Appeals ruling in *Eliud Waweru Wambui v Republic*, Criminal Appeal 102 of 2016 (Court of Appeal at Nairobi, 3-22-2019) at, <http://kenyalaw.org/caselaw/cases/view/170043/index.html>.



Grover Reed Granted New Post-Conviction Proceeding Because Judge Was Florida State Attorney At Time Of His Trial And Death Sentence

The Florida Supreme Court has reversed the denial of Grover B. Reed's post-conviction petition, and ordered that his petition be considered by a new judge. The Court ruled the judge who denied Reed's petition should have recused herself because she worked in the Duval County State Attorney's Office on capital cases at the time of Reed's conviction and death sentence.

Grover Reed was convicted in late 1986 of first-degree murder in Duval County. He was sentenced to death in January 1987. Reed's conviction and sentence became final in 1990 when they were affirmed by the Florida Supreme Court.

Reed then engaged in extensive post-conviction litigation of his conviction and death sentence, most recently with the filing of a post-conviction petition on January 12, 2017. That petition was based on two 2016 cases involving the capital case of Timothy Hurst:

* The U.S. Supreme Court in *Hurst v. Florida* (2016) [ruled for](#) the first time that Florida's death sentencing scheme is unconstitutional to the extent it fails to require the jury, rather than the judge, to find the facts necessary to impose the death sentence, and the jury's advisory recommendation for death is "not enough."

* After the U.S. Supreme Court remanded Hurst's case, the Florida Supreme Court [ruled in](#) *Hurst v. State* (2016): "we hold that the Supreme Court's decision in *Hurst v. Florida* requires that all the critical findings necessary before the trial court may consider imposing a sentence of death must be found unanimously by the jury." The Florida Supreme Court remanded Hurst's case for a new sentencing hearing.

Reed's petition argued that based on the *Hurst* rulings he was entitled to a new sentencing hearing because his jury didn't unanimously make all the necessary findings.

When Reed's petition was filed and during



Grover B. Reed (Florida Dept. of Corrections)

the briefing, was case was assigned to Circuit Court Judge Mark Mahon in Duval County.

Then, without any notice being provided to Reed, his case was reassigned to Circuit Court Judge Linda McCallum.

McCallum summarily denied Reed's petition. Reed's receipt of her denial was his first notice she was his new judge.

Reed immediately filed a motion to disqualify McCallum. Reed's [motion asserted](#):

"Judge McCallum was employed by the Duval County State Attorney's Office from 1986 until her appointment as a county judge in 1994. During her tenure with the State Attorney's Office, Judge McCallum handled capital prosecutions and was part of the team of capital attorneys. In at least one case during that time, she represented the State at a capital trial and penalty phase that resulted in a death sentence. Thomas Moore, the defendant in that case, is currently still on death row.

Mr. Reed was tried and convicted in late 1986. A death sentence was imposed in January of 1987. Postconviction proceedings involving capital prosecutors from the State Attorney's Office were ongoing in the early 1990's. Throughout this time period Judge McCallum was employed by the State Attorney's Office, handling capital prosecutions, and working with the attorneys who prosecuted Mr. Reed and represented the State in collateral proceedings. As part of the capital team during her tenure with the State Attorney's Office, each capital prosecutor including Judge McCallum had input in the decision making in each other's cases.

... While Mr. Reed's [successive post-conviction] motion sought specifically to vacate his death sentence, a finding that he was entitled to collateral relief would mean that in the capital cases that Judge McCallum prosecuted between 1986 and 1994 that resulted in the imposition of a death sentence, relief would likely have to also be granted. A ruling in Mr. Reed's case would impact the death sentences that Judge McCallum successfully sought and which have yet to be carried out. As a result, Judge

McCallum's ruling on Mr. Reed's motion would impact the death sentences that she was successful in obtaining and which are still intact and have yet to be carried out."

One argument in Reed's motion was Judge McCallum was required to recuse herself because she had a personal interest in preserving Reed's 1987 death sentence because to grant him a new sentencing hearing could result in the cavalcade of a new sentencing hearing in every pending death penalty case she handled as a prosecutor with the State's Attorney's Office.

In March 2017 McCallum denied Reed's motion to disqualify her as legally insufficient. She [acknowledged she](#) "was an Assistant State Attorney working on capital cases at the time of his postconviction proceedings," but she concluded Reed's allegations were "speculative."

McCallum appealed McCallum's ruling to the Florida Supreme Court.

On November 15, 2018 the Supreme Court unanimously reversed McCallum's ruling denying her disqualification. The Court remanded Reed's case for a hearing of his post-conviction petition before a different judge. The Court's [ruling stated](#):

"While Judge McCallum was not the assigned prosecutor on Reed's case, she was actively prosecuting capital cases during the time period when Reed's prosecution was ongoing. It was alleged that she was a part of the team of capital prosecutors and that, "as part of the capital team during her tenure with the State Attorney's Office, each capital prosecutor including Judge McCallum had input in the decision making in each other's cases." Considering the unique aspects of death penalty cases, including the very decision to seek the death penalty, we conclude that, in these narrow circumstances, Reed's motion was legally sufficient to require Judge McCallum to recuse herself from Reed's case. Thus, Judge McCallum should have granted Reed's motion to disqualify and should not preside over further proceedings pertaining to Reed's case, should there be future proceedings.

CONCLUSION

For the reasons explained above, we reverse the postconviction court's order denying Reed's motion to disqualify and remand for reassignment to another judge for evaluation of Reed's claims."

Reed cont. on p. 11

Tasker Spruill's Murder Conviction Reinstated By Appeals Court -- Resumes Serving Life Sentence

Tasker Spruill's conviction and life sentence for a 1993 murder in Brooklyn, New York was reinstated by a New York appeals court on September 12, 2018. A lower court overturned Spruill's 1998 second-degree murder conviction in March 2017, and ordered a new trial based on the prosecution's non-disclosure of evidence. The appeals court ordered Spruill **was to be** notified to promptly "surrender himself to the court in order that execution of the judgment may resume."

On Friday, Sept. 14, Spruill appeared in court and a judge ordered **he be immediately taken** into custody to continue serving his prison sentence.

In October 1993 Tracey Thomas was shot to death in Brooklyn as he sat in his car outside



Tasker Spruill during hearing when he was ordered to resume serving his 25 years to life prison sentence (NY Post)

was charged with Thomas' murder.

He was arrested four years later in Baltimore. He unsuccessfully tried to evade arrest by giving the officers a fake name.

The prosecution's case during Spruill's 1998 trial was based on the testimony of two eyewitnesses that they saw him shoot Thomas. The witnesses were Marilyn Connor and Shawn Newton. A third eyewitness had been shot to death in 1994.

After the jury convicted Spruill of second-degree murder, he was sentenced to 25 years to life in prison.

Spruill's convictions were affirmed on direct appeal in 2002 and his post-conviction petition was denied by the state court. Spruill filed a federal habeas corpus petition in 2004 that alleged the prosecutor made improper comments during closing argument and the trial judge erred admitting consciousness of guilt evidence. His petition **was denied** in 2005.

In 2016 Spruill filed a motion for a new trial based **on his** allegation the prosecution committed *Brady* violations by failing "to disclose certain material favorable to the defense." Spruill **alleged the** prosecution "abused a secret material witness" order to obtain Connor's testimony, and that Newton's testimony at trial was coerced."

In 2016 Brooklyn Supreme Court Judge Michael Gerstein held an evidentiary hearing regarding Newton's testimony.

In March 2017 Gerstein issued his ruling granting Spruill's motion. Gerstein ruled:

* The prosecution committed a *Brady* violation by failing to disclose evidence Newton met multiple times with the prosecutors. (The evidence was trial court "Damiani orders.")

* The prosecution committed a *Brady*

a game room operated by Spruill. Spruill's nickname was "Pike."

A warrant was issued for Spruill's arrest, but he fled before it could be executed.

Spruill, who had two prior felony convictions for illegal possession of a firearm,

violation by failing to disclose a DOC record that Newton attempted suicide in his cell around the time period he was supposed to meet with the prosecutors.

* The prosecution committed a *Brady* violation by failing to disclose it obtained a material witness order to secure Connor's testimony.

Gerstein ruled "it was both "reasonably probable" and "reasonably possible" that the undisclosed items would have changed the outcome of the proceedings."

Gerstein **also ruled** "the prosecutor had engaged in prosecutorial misconduct by failing to correct Newton's testimony concerning the number of times that he had met with the prosecutor prior to trial, and by referring to that testimony during his summation."

The State appealed Gerstein's ruling.

On July 27, 2017 Spruill **was released** on \$200,000 bail pending the outcome of the State's appeal. He had been in custody for about 20 years.

On September 12, 2018 the New York Supreme Court Appellate Division, Second Department unanimously reversed all of Gerstein's rulings and ordered reinstatement of Spruill's conviction and sentence. The Court **stated in** *People v Spruill*, 2018 NY Slip Op 06041:

"Here, the Supreme Court should have denied that branch of the defendant's motion which was to vacate the judgment of conviction on the ground that the prosecution committed *Brady* violations. The nondisclosure of the DOCCS record reflecting Newton's apparent suicide attempt did not constitute a *Brady* violation, inasmuch as the information contained in that record was not favorable to the defense. ... the *DOCCS record attributed the apparent suicide attempt to Newton's fear of the defendant* and was therefore not favorable to the defense. [emphasis added]

In any event, the DOCCS record was not within the control of the prosecutor ... Thus, the record is not imputable to the People, and the prosecutor had no obligation to locate and produce the record to the defense.

Furthermore, that the prosecutor had obtained a material witness order to secure Connor's testimony did not constitute *Brady* material because that

Reed cont. from p. 10

Grover B. Reed V. State of Florida, No. SC17-896 (Fla. Sup. Ct., 11-15-2018) can be read or downloaded at, <http://www.floridasupremecourt.org/decisions/2018/sc17-896.pdf>.

The Supreme Court's ruling was unusual not just for booting Judge McCallum from Reed's case, but it identified her by name, and not just once, but 19 times. Normally, even when castigating a trial judge, an appellate court hides the judge's identity by referring to them as "the court" or "the judge," etc.

An interesting aspect of McCallum's 24-year judicial career is she has never faced an opponent, even though Florida has judicial elections. She was appointed a Duval County Court judge in 1994 and then in 2001 she was appointed to be a Circuit Court judge, but when she has been up for re-election she has been automatically re-elected because she had no opposition.

Sources:

Grover B. Reed V. State of Florida, No. SC17-896 (Fla. Sup. Ct., 11-15-2018)
<http://www.floridasupremecourt.org/decisions/2018/sc17-896.pdf>

Hurst v. Florida, 136 S. Ct. 616 (2016)
<https://www.leagle.com/decision/insco20160112f20>

Hurst v. State, 202 So. 3d 40 (Fla. 2016)
<https://www.leagle.com/decision/inflo20161014110>



Spruill cont. from p. 11

information was not exculpatory. To the contrary, the record indicates that *Connor's absence was due to her fear of testifying against the defendant*. During the trial, the prosecutor had informed the court, among other things, that one day after the shooting, *an individual told Connor's sister that Connor would be killed if she returned to the area*. In any event, the defendant was not prejudiced by the failure of the prosecutor to disclose that he had obtained a material witness order for Connor, as the jury was aware that Connor did not want to testify. [emphasis added]

We next turn to the nondisclosure of the Damiani orders, which are orders of the Supreme Court, Kings County, pursuant to which custody of an inmate, with the inmate's consent, is delivered to the police department to be interviewed by the District Attorney's Office. ... The defendant did not make a specific request for the production of such orders. Therefore, the orders would be material only if there is a reasonable probability that, had they been disclosed, the outcome of the proceedings would have been different. However, contrary to the Supreme Court's determination, the orders did not satisfy the materiality standard. ... At the CPL 440 hearing, the prosecutor testified that Newton never told him that he did not want to meet, nor did Newton direct the prosecutor to stop bringing him to court. Moreover, a New York City Correction Officer ... testified at the hearing that if an inmate refused to go to court or to be taken by an outside agency, the inmate could not be forced to leave the facility unless the court issued a force order. The prosecutor testified that he did not attempt to obtain a force order to compel Newton to appear in court.

Furthermore, the evidence of the defendant's guilt was strong. ... The defendant was identified as the shooter by two eyewitnesses who were familiar with the defendant. Additionally, the shooting occurred on the street outside the defendant's game room. There was also substantial evidence demonstrating the defendant's consciousness of guilt. The police witnesses testified concerning their extensive efforts to locate the defendant after the shooting, and that they were unable to locate him until approximately four years later when he was apprehended in Baltimore. At that time, the defendant provided the detective with a false name. Further, Newton testified about an implied threat he re-

ceived from a fellow inmate concerning his testimony in this case, and there was evidence that the defendant, who was known as Pike, once had a Pike tattoo on his arm that had been altered by the time of trial. Given the strong evidence of the defendant's guilt, there is no reasonable probability that the disclosure of the Damiani orders ... would have affected the outcome of the trial.

The Supreme Court also should have denied that branch of the defendant's motion which was to vacate the judgment [due to] ... that Newton was subject to duress by the prosecutor. ... Here, the defendant failed to show that Newton's testimony was the product of duress based on his postsuicide attempt productions to meet with the prosecutor.

... While Newton was reluctant to testify at the defendant's trial, the prosecutor's hearing testimony revealed that Newton told the prosecutor that he was aware that a third eyewitness to the shooting, his friend Greg Pearson, had been shot and killed in 1994 prior to the defendant's trial in 1998. ... The Assistant District Attorney who served as coprosecutor on the defendant's case also testified at the hearing that Newton was reluctant to testify because he was afraid of the defendant and the defendant's family and friends, who Newton "felt would cause harm to his family."

Lastly, vacatur of the judgment was not warranted based on the prosecutor's failure to correct Newton's trial testimony that he had met with the prosecutor approximately 20 times prior to trial, and the prosecutor's reference to such testimony during summation. Prosecutors, in their role as public officers, are required to correct the knowingly false or mistaken material testimony of a prosecution witness... However, while the prosecutor should have corrected Newton's testimony and should not have referenced such testimony during summation, the subject testimony was not material. In any event, there is no reasonable possibility that the failure to correct Newton's inaccurate testimony concerning the number of times he met with the prosecutor contributed to the defendant's conviction.

Accordingly, those branches of the defendant's motion which were pursuant to CPL 440.10(1)(b), (f), and (h) to vacate the judgment should have been denied."

"ORDERED that the order is reversed, on the law, and those branches of the defendant's motion ... to vacate the judgment rendered September 16, 1998,

are denied, the judgment is reinstated, and the matter is remitted to the Supreme Court, Kings County, which, upon at least two days' notice to the defendant and his attorney, shall promptly direct the defendant to surrender himself to the court in order that execution of the judgment may resume."

The appeals court's ruling in *People v Spruill*, 2018 NY Slip Op 06041 (NY Supreme Court Appellate Division, Second Department, September 12, 2018) can be read and downloaded at,

<https://law.justia.com/cases/new-york/appellate-division-second-department/2018/2017-04490.html>.

Spruill, 54, appeared in court on September 14 and Judge Gerstein ordered **he be taken** into custody to resume serving his 25 years to life sentence. Spruill was handcuffed in the courtroom to be transferred to custody of the DOC.

Spruill will presumably appeal to the New York Court of Appeals, however he can be expected to have difficulty establishing the Appellate Division erred in its carefully reasoned ruling reinstating his convictions.

Sources:

People v Spruill, 2018 NY Slip Op 06041 (NY Supreme Court Appellate Division, Second Department, September 12, 2018),

<https://law.justia.com/cases/new-york/appellate-division-second-department/2018/2017-04490.html>

Spruill v. Phillips, 04 CV 1382 (NG) (MDG). (E.D.N.Y. 7-25-2005) (Denying fed. habeas corpus petition.), <https://casetext.com/case/spruill-v-phillips>

Brooklyn man who had murder conviction overturned after 20 years behind bars walks free. By Christina Carrega, NY Daily News, July 27, 2017.

Exonerated man sent back to prison. By Emily Saul, *New York Post*, September 14, 2018.



Visit Justice Denied's Website

www.justicedenied.org

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

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

By Hans Sherrer

On June 17, 2019 the U.S. Supreme Court reaffirmed its 171-year-old precedent that the “separate sovereigns” doctrine permits prosecution of a person in both state and federal court for the same alleged action. The ruling was in *Terance Gamble v. United States*, 587 U.S. ____ (2019).

Gamble unsuccessfully argued his separate state and federal convictions for being a felon in possession of a firearm violates his Fifth Amendment right against “double jeopardy.”

The case was a significant and unusual criminal constitutional case because it directly involved reevaluation of a juxtaposition of a State’s rights with those of the federal government that has remained undisturbed for almost two centuries.

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 were tried in state court for using excessive force. Their defense was King was resisting arrest so they needed to use force to take him into custody. Three officers 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



U.S. Supreme Court Bldg. in Washington D.C.

were acquitted, and two were found guilty and sentenced to federal prison.[1]

Gamble wanted the Supreme Court to end the 171-year-old “separate sovereigns” doctrine that allowed King’s assailants to be tried for different federal and state crimes based on the same incident.

There is no known case of a provably innocent person who was acquitted in state court and then convicted in federal court for the same alleged action. Or vice-versa.

Terance Gamble’s case

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 27 when 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.”

Separate sovereigns exception to double-jeopardy

In 1847 the U.S. Supreme Court first recognized 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.

Gamble’s motion to dismiss denied and Supreme Court agrees to review case

U.S. District Court Judge Kristi DuBose denied Gamble’s motion in June 2016 on the basis of Supreme Court’s 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 overrules *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 re-

Dual Prosecutions cont. on p. 14

Dual Prosecutions cont. from p. 13

lease date is Feb. 16, 2020.

In July 2017 the Eleventh Circuit U.S. Court of Appeals [affirmed](#) Judge DuBose's ruling.

Gamble filed a petition for a writ of certiorari with the U.S. Supreme Court in October 2017 that [presented the following](#) Question for the Supreme Court's consideration: "Whether the Court should overrule the "separate sovereigns" exception to the Double Jeopardy Clause."

On June 28, 2018 the Court granted Gamble's petition to review his case.

Supreme Court's ruling

The Supreme Court decided against Gamble in a 7-2 majority ruling on June 17, 2019. The Court's ruling in *Gamble v. United States*, 587 U.S. ____ (2019) stated in part:

"We have long held that a crime under one sovereign's laws is not "the same offence" as a crime under the laws of another sovereign. Under this "dual-sovereignty" doctrine, a State may prosecute a defendant under state law even if the Federal Government has prosecuted him for the same conduct under a federal statute.

Or the reverse may happen, as it did here.[1]

... Although the dual-sovereignty rule is often dubbed an "exception" to the double jeopardy right, it is not an exception at all. On the contrary, it follows from the text that defines that right in the first place. "[T]he language of the Clause . . . protects individuals from being twice put in jeopardy 'for the same offence,' not for the same conduct or actions," ... As originally understood, then, an "offence" is defined by a law, and each law is defined by a sovereign. So where there are two sovereigns, there are two laws, and two "offences." [3-4]

... The [Fifth Amendment's] Double Jeopardy Clause's text does more than honor the formal difference between two distinct criminal codes. It honors the substantive differences between the interests that two sovereigns can have in punishing the same act. [5-6]

... But from the very dawn of the common law in medieval England until the adoption of the Fifth Amendment in 1791, there is not one reported decision barring a prosecution based on a prior trial under foreign law. We repeat: Gamble has not cited and we have

not found a single pre-Fifth Amendment case in which a foreign acquittal or conviction barred a second trial in a British or American court. Given this void, Gamble faces a considerable challenge in convincing us that the Fifth Amendment was originally understood to establish such a bar. [12]

... Summing up the import of the preratification cases on which Gamble's argument rests, we have the following: (1) not a single reported case in which a foreign acquittal or conviction barred a later prosecution for the same act in either Britain or America; (2) not a single reported decision in which a foreign judgment was held to be binding in a civil case in a court of law; ... This is the flimsy foundation in case law for Gamble's argument that when the Fifth Amendment was ratified, it was well understood that a foreign criminal judgment would bar retrial for the same act." [19-20]

... This is not the quantum of support for Gamble's claim about early American common law that might withstand his burden under *stare decisis*. And once we look beyond the Nation's earliest years, the body of state-court decisions appears even less helpful to Gamble's position. [25]

... If historical claims form the chorus of Gamble's argument, his refrain is "incorporation." In Gamble's telling, the recognition of the Double Jeopardy Clause's incorporation against the States ... washed away any theoretical foundation for the dual-sovereignty rule. .. But this incorporation-changes-everything argument trades on a false analogy. [29]

Incorporation meant that the States were now required to abide by this Court's interpretation of the Double Jeopardy Clause. But that interpretation has long included the dual-sovereignty doctrine, and there is no logical reason why incorporation should change it. After all, the doctrine rests on the fact that only same-sovereign successive prosecutions are prosecutions for the "same offense," and that is just as true after incorporation as before. [30]

The judgment of the Court of Appeals for the Eleventh Circuit is affirmed. [31]

Gamble v. United States, 587 U.S. ____ (2019) can be read or downloaded at, www.supremecourt.gov/opinions/18pdf/17-646_d18e.pdf.

Gamble did not argue in his briefs or oral argument that the "dual-sovereignty" doctrine endangers innocent people.

Justice Denied's July 2018 article about

Gamble's case, "U.S. Supreme Court Accepts Constitutional Challenge To Dual Prosecutions By State And Federal Governments," can be read or downloaded at, www.justicedenied.org/wordpress/archives/4399.

Endnotes:

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

Sources:

Gamble v. United States, 587 U.S. ____ (2019), https://www.supremecourt.gov/opinions/18pdf/17-646_d18e.pdf

Terance Martez Gamble v. United States of America, No. 17-646, U.S. Sup. Ct. Docket, <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/17-646.html>

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.), src.bna.com/ybb

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], http://www.supremecourt.gov/DocketPDF/17/17-646/28031/20180116184058367_17-646%20Gamble.pdf

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], http://www.supremecourt.gov/DocketPDF/17/17-646/22354/20171204102150370_Gamble%20v.%20United%20States%20amicus%20FINAL.pdf

US v. Gamble, Dist. Court, Crim No. 16-00090-KD-B (WO) (USDC SD Ala., 6-20-2016), https://scholar.google.is/scholar_case?case=10012492599408507776&q=Terance+Gamble+&hl=en&as_sdt=2006

US v. Gamble, Court of Appeals, No. 16-16760, (11th Cir, 7-28-2017), https://scholar.google.is/scholar_case?case=3954932914492673993&q=Terance+Gamble+&hl=en&as_sdt=2006 or, <http://tinyurl.com/ybo12zsb>

Fox v. Ohio, 46 US 410, 12 L. Ed. 213 (1847)), https://scholar.google.is/scholar_case?case=18259084524733106686&q=Fox+v.+Ohio&hl=en&as_sdt=2006

Puerto Rico v. Sanchez Valle, 136 S. Ct. 1863 (2016), https://scholar.google.is/scholar_case?case=17852741462944161644&q=Commonwealth+of+Puerto+Rico+v.+Sanchez-Valle&hl=en&as_sdt=2006 Or, <http://tinyurl.com/y8vurkn8>

Abbate v. U.S., 359 US 187 (1959), https://scholar.google.is/scholar_case?case=12269421894149076691&q=Abbate+v.+United+States,+359+US+187&hl=en&as_sdt=2006



Visit Justice Denied's Wordpress Page

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

9th Circuit Court Grants New Trial For Murderer Jose Echavarria Based On Risk Of Judicial Bias

Jose Lorrente Echavarria's federal habeas corpus petition filed in 1998 was granted by a three-judge panel of the U.S. 9th Circuit Court of Appeals on July 25, 2018. The Court ordered he be retried or released.

Echavarria was convicted in 1991 of murder and sentenced to death for killing FBI Special Agent John Bailey during a botched bank robbery in Las Vegas in 1990. In an odd twist, the judge in Echavarria's case had years earlier been investigated by Bailey in an alleged corruption case that resulted in no charges.

The judge denied Echavarria's pre-trial motion to suppress his signed confession. The appeals court ruled the judge should have recused himself. He had a "risk of bias" because the FBI agent Echavarria shot to death had previously investigated the judge. The Court did not dispute the overwhelming evidence Echavarria committed the crime that was unrelated to his confession, or that the judge did nothing to suggest he was biased.

If the ruling holds up, innocent defendants may find a way to use a trial judge's "risk of bias" to attack their conviction on appeal or in a habeas petition.

The Crime

On June 25, 1990 Jose Echavarria entered a Las Vegas branch of the Security Pacific Bank disguised as a woman and he had a cast or sling on his arm. He had been watching the bank and knew it didn't have a security guard. Echavarria went up to a bank teller and pointed a gun at her. She screamed and jumped back from the counter. Echavarria abandoned the robbery attempt and started walking towards the bank's exit door.

Bailey was in the bank on FBI business. He heard a commotion and was told the man leaving the bank had pulled a gun on a teller. He yelled at Echavarria: "Halt. This is the FBI." Echavarria turned and looked at Bailey but resumed walking to the exit. Bailey filed a warning shot that shattered the bank's glass front door. Echavarria stopped and he complied with Bailey's order to drop his gun.

Bailey frisked Echavarria and retrieved his wallet. Bailey put Echavarria in a chair and told someone to



Jose Lorrente Echavarria (Nev. DOC)

Echavarria grabbed his gun and fired three shots at Bailey as he was lying on the floor.

Echavarria ran from the bank to his blue Firebird where getaway driver Carlos Alfredo Gurry was waiting, and they fled the scene.

Bailey was taken to a hospital where he died from his gunshot wounds.

The Investigation

A check run on the VIN of a motorcycle in the handicap parking space outside the bank revealed Echavarria was the owner. A DMV check of its license plate revealed it belonged to a different motorcycle. Police quickly contacted the plate's owner and he identified Gurry as the person he had seen lurking around his motorcycle on two mornings before the botched bank robbery.

Fingerprints lifted from the stolen plate were matched to Carlos Gurry.

The wallet Bailey retrieved had information that led the police to the apartment shared by Echavarria and Gurry. Echavarria's motorcycle license plate and a screwdriver were found on the walkway in front of their apartment.

In a dumpster outside the apartment police found a Security Pacific Bank Visa credit card application with both Echavarria's and Gurry's fingerprints on it, and a business card with C. Williams Costume Shop written on the back.

Clerks at the costume shop told police they remembered two Hispanic men who came into the store a few days before the attempted robbery and were interested in wigs and arm casts.

Later that afternoon Gurry was arrested when he arrived at the apartment. He told the FBI and LV Metro police officers different stories about what he had done that day. He finally stated he saw Echavarria about noon when he gathered some clothes and left in his Firebird, and that his behavior frightened him.



Carlos Alfredo Gurry (Nev. DOC)

Early the next morning Echavarria

call the FBI office. He also asked a bank employee to retrieve his handcuffs from his car. When the employee returned with the cuffs Echavarria jumped out of his chair and collided with Bailey. They scuffled and Bailey fell to the ground.

arrived in Juarez, Mexico -- 735 miles from Las Vegas -- and went to the home of his former girlfriend, Maria Garcia. Echavarria was able to convince her to give him six hundred dollars. He left and contacted her brother, Jorge Garcia, who bought an airline ticket for Echavarria and took him to the airport.

The FBI had learned that Echavarria had lived in Juarez before entering the U.S. The morning after the shooting the FBI contacted the police in Juarez and requested assistance locating and arresting Echavarria. The Juarez police assigned twenty-eight agents to finding Echavarria.

Jorge dropped Echavarria off at the airport that night. As Echavarria had requested, Jorge buried two guns and abandoned his Firebird along the highway.

Echavarria was arrested at the airport by Juarez police at about 8:30 p.m.

Echavarria signed a written statement the next morning -- June 27 -- confessing to the murder of Agent Bailey.

Later that day the Juarez police turned Echavarria over to the FBI at the U.S.-Mexico border.

The FBI intensively investigated the case, interviewing witnesses at the bank; interviewing people at Echavarria and Gurry's apartment; developing bank surveillance camera film; and they went to Mexico and interviewed Maria and Jorge.

Jorge led them to the Echavarria's abandoned car and the two guns he buried. Echavarria's fingerprints matched those found in the car, and an FBI forensic geologist matched glass fragments recovered from the car to glass from the shattered bank front door. An FBI ballistics expert matched the .38 caliber bullets removed Bailey's body to Echavarria's pistol.

The Trial

Ten days later Echavarria and Gurry were each indicted on five counts: first-degree murder with the use of a deadly weapon, burglary, attempted robbery, escape, and conspiracy.

Gurry challenged his indictment on several grounds. After a Clark County District Court judge dismissed it, he was indicted by a second grand jury on the same charges.

Their case was assigned to Clark County District Court Judge Jack Lehman.

Echavarria cont. on p. 16

Echavarria cont. from p. 15

Before becoming a judge in 1987, Lehman was Chairman of the Colorado River Commission.

In 1986 Lehman was investigated by Bailey for possible corruption, fraud and perjury related to the CRC's sale in 1984 of 120 acres of state-owned in Laughlin, Nevada for a fraction of its actual value. The land sale was approved by the CRC's five commissioners. In late 1987 the U.S. Attorney's Office for Nevada reviewed Bailey's investigation and declined to prosecute Lehman, deeming any possible prosecution a state matter. In 1988 the case documents were provided to the Nevada AG's Office and other Nevada officials. No state charges were filed.

The Clark County District Attorney's Office provided Echavarria and Gurry's lawyers with information about Bailey's investigation of Lehman.

Gurry's lawyer, David Wall, later stated in a sworn declaration that during a pre-trial conference call in September 1990 Judge Lehman specifically talked to him and the prosecutor about the FBI investigation when he was a member of the CRC. Wall's [declaration states](#):

"Judge Lehman asked if either party wanted to move to have him recuse himself. Neither I nor the prosecution asked that Judge Lehman recuse himself."

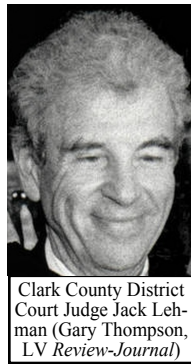
Echavarria filed a pre-trial motion to suppress his confession on the grounds he only did so after being physically tortured and abused by Juarez police officers.

After a two-day evidentiary hearing Lehman ruled Echavarria's confession was voluntary.

Echavarria and Gurry's joint trial began on March 15, 1991. Lehman had dismissed Gurry's escape charge because only Echavarria was accused of being arrested by Bailey.

With witnesses and physical evidence linking them to preparation for the crime, and eyewitnesses and physical evidence linking them to the crime, plus Echavarria's confession, the jury found both men guilty of all their charges — Echavarria as the shooter and Gurry as the getaway car driver.

The prosecution sought the death penalty for both, but the jury found mitigating circumstances in favor of Gurry and he was sentenced to life in prison with the possibility of parole for Bailey's murder. The jury found three aggravating circumstances relating to the murder committed by Echavarria and he was sentenced to death. Both were also sen-



Clark County District Court Judge Jack Lehman (Gary Thompson, LV Review-Journal)

tenced to additional prison time for their other convictions.

Their motions for a new trial were denied.

Direct Appeal

Neither Echavarria nor Gurry argued in their Nevada Supreme Court appeals the prosecution's evidence wasn't sufficient to support their convictions. They raised technical points of law.

On September 3, 1992 the Nevada Supreme Court affirmed the convictions and sentences for both men. Their convictions became final in January 1994.

The Court specifically ruled Lehman properly admitted Echavarria's confession into evidence, [stating](#): "The conclusion by the district court that the confession was not coerced is supported by substantial evidence and we will not disturb it on appeal." (Underlining added.)

Echavarria had also made a claim of judicial bias against Lehman for allegedly being hostile to his lawyer during the trial. The Court did not specifically mention that claim in its ruling, and dealt with it [by stating](#): "We have carefully examined appellants' numerous other assignments of error and determine that they lack merit."

Post-Conviction Habeas Petitions

In 1995 Echavarria filed a state habeas petition that was denied by Lehman, and the Nevada Supreme Court's dismissal of his appeal became final in December 1997.

In April 1998 Echavarria filed a timely *pro se* federal habeas petition, and in May 1998 he was appointed a federal public defender. When his federal petition was stayed and his case was remanded to state court, he filed a second in which he claimed "actual judicial bias" and "compensatory bias" by Lehman and that he gave a "tortured confession." That petition was denied by Lehman, as was Echavarria's third state habeas petition. The Nevada Supreme Court affirmed the denials of both petitions, [stating](#):

"Although it appears that Echavarria did not learn of Agent Bailey's investigation until well after trial, the incidents he identifies as evidence of judicial bias were largely raised on direct appeal and rejected summarily by this court."

The Court ruled his judicial bias claim

based on alleged new evidence was "not so significant as to persuade us to abandon the doctrine of the law of the case."

The United States Supreme Court declined to review the NSC's ruling.

Echavarria then returned to federal court and filed a second amended habeas petition.

In 2015 his petition [was granted](#) by District Court Judge Miranda Du based on the "risk of judicial bias" by Lehman:

"... this Court concludes that under the circumstances in this case — including the relationship between the trial judge, the FBI, and the murder victim, the nature of the FBI's investigation, and the involvement of the FBI in the case — it was constitutionally intolerable for the trial judge to preside over the case. *This Court does not here determine that in fact the trial judge was influenced by his relationship with the murder victim or the FBI, or, in other words, that he harbored actual or subjective bias.*"

"... an average judge in this judge's position might be tempted to avoid rulings unfavorable to the FBI, or to the prosecution of the FBI agent's alleged murderer, in order to appease the FBI and avoid any further investigation. Either of these inclinations would have tended to lend bias and tip the scales against Echavarria."

"Echavarria's federal constitutional right to due process of law was violated. "[W]hen a defendant's right to have his case tried by an impartial judge is compromised, there is structural error that requires automatic reversal."

In ordering the State to either retry or release Echavarria, Judge Du did not dispute there was overwhelming evidence of Echavarria's guilt presented during his 1991 trial — even if Lehman had ruled his confession was inadmissible. That is supported by the fact that Gurry didn't confess and he was convicted based on less eyewitness and physical evidence than was presented against Echavarria.

Judge Du engaged in mind reading to decide their was a "risk" Lehman might have been biased.

The government appealed.

On July 25, 2018 a three-judge panel of the 9th Circuit Court of Appeals unanimously affirmed Judge Du's ruling. The [Court's decision](#) was based on its analysis of Leh-

Echavarria cont. on p. 17

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

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

In August 2011 Southall was arrested in the death of his girlfriend, Camila Guzman. Southall, 25, confessed to killing her, but he didn't intend to do so. He said it happened when he was extremely emotionally disturbed. He refused to plead guilty to second-



Camila Guzman (DNAInfo)

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

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

degree murder degree murder that he was charged with. The prosecutor declined to offer a plea deal for first-degree manslaughter.

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

Two days later the 28-year-old Dworken submitted an extensive application for a job as an Assistant District Attorney in the New York County DA's Office — the office prosecuting Southall.

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

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

During Southall's trial his lawyer argued

Southall cont. on p. 18

Echavarria cont. from p. 16

man's ruling that Echavarria's confession was admissible evidence, because there was no other ruling he made that identifiably may have harmed his defense:

"Judge Lehman was well aware of the FBI's efforts to ensure Echavarria's conviction. The average judge in his position would have understood the risk entailed in making rulings favorable to Echavarria. As detailed above, the FBI marshaled agents and resources from multiple offices and enlisted the assistance of the Mexican police. (27-28)

"FBI agents testified at the suppression hearing in state court. At the conclusion of that hearing, Judge Lehman was required to choose between the FBI agents' account of the interrogation and Echavarria's. In all, twenty employees of the FBI testified during proceedings before Judge Lehman, many of them stressing the fact that Agent Bailey was an FBI agent." (28)

The risk of bias in this case deprived Echavarria of the fair tribunal to which he was constitutionally entitled. We therefore affirm the district court's grant of habeas relief. Because we affirm the district court on this ground, we do not reach the other questions presented in this appeal. (30)

In ordering the State to either retry or release Echavarria, the panel, like Judge Du, did not dispute there was overwhelming evidence of Echavarria's guilt presented during his 1991 trial — even if Lehman had ruled his confession was inadmissible.

Like Judge Du, the panel engaged in mind reading to decide their was a "risk" Lehman might have been biased.

The government may seek *en banc* review of the panel's ruling by the full 9th Circuit, and if that is unsuccessful, that it will file a writ of *certiorari* with the U.S. Supreme Court.

One issue the government could argue for review is District Court Judge Du *sua sponte* injected the "risk of judicial bias" as a claim into Echavarria's habeas petition -- after she specifically ruled against his actual claim of "actual" or "subjective" bias. Having found no bias, Judge Du on her own expanded his claim to include the possibility of a "risk" of bias and granted his petition on that basis. The Nevada Supreme Court did not rule on the "risk of judicial bias" because that claim wasn't in his habeas corpus petition presented and denied in the Clark County District Court. The appeals court panel then affirmed Judge Du's ruling by treating "risk of judicial bias" as if it was an actual claim in Echavarria's petition. Under the AEDPA a federal court can only rule on issues that have previously been considered and denied by a state court. Since "risk of judicial bias" wasn't a claim ruled on by the Nev. Supreme Court, Judge Du (and then the panel), should have remanded Echavarria's petition so the claim could first be considered by the state court.

If the panel's ruling is not overturned, *innocent* defendants may have circumstances in their case where they can raise a claim of a

judge's "risk of bias" in their direct appeal or in a habeas petition.

The Ninth Circuit's ruling in *Echavarria v. Filson*, Nos. 15-99001, 17-15560 (9th Cir., 7-25-2018) can be read or downloaded at, <http://tinyurl.com/yakh8lx7>.

Lehman ended his 21 year career as a judge in 2008. He died on September 14, 2017. He was 89. He gained much notoriety for setting-up in 1992 one of the first drug courts in the United States. The program gave a person charged with a low-level drug offense the opportunity to have their charges dismissed if they successfully completed a treatment program and weren't charged with another crime for a period of time.

Gurry is currently imprisoned at Southern Desert Correctional Center. He has been denied parole five times.

Echavarria is currently awaiting his retrial.

Echavarria and Gurry are both natives of Cuba. It is known from the record that Gurry was having problems with possibly not being in the country legally at the time of his arrest. Echavarria may have entered the U.S. from Mexico, where he lived in Juarez.

Sources:

Echavarria v. Filson, Nos. 15-99001, 17-15560 (9th Cir., 7-25-2018)

Echavarria v. Baker, Case No. 3:98-cv-00202-MMD-VPC. (Dist. Court, D. Nevada, 1-16-2015)

Echavarria v. State, 839 P. 2d 589 (Nev. Sup Ct, 9-3-1992)

Innocents Database of Exonerated Persons, <http://forejustice.org/exonerations.htm>



Southall cont. from p. 17

that because he suffered from an extreme emotional disturbance, the evidence showed he should be convicted of manslaughter.

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

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

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

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

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

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

An evidentiary hearing was held on February 19, 2016. The New York County DA's Office vigorously opposed Southall's motion and argued Dworken did nothing wrong.

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

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

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

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

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

Southall appealed.

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

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

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

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

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

...

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

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

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

...
Accordingly, the judgment ... should be reversed, on the law, the motion to vacate granted, and the matter remanded for a new trial.

The ruling in *People v Southall* (2017 NY Slip Op 08344) can be read or downloaded at, http://www.nycourts.gov/reporter/3dseries/2017/2017_08344.htm.


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

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

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

Sources:

People v Southall (2017 NY Slip Op 08344)

[Manhattan murder conviction nixed](#) after juror applied for prosecutor job two days after trial questioning. By Stephen Brown (*NY Daily News*), Nov 28, 2017. 

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](http://www.amazon.com) at, www.tinyurl.com/vc5u3kqn.

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

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

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

The quest to solve crimes has not been immune to the application of science. However, this book demonstrates it is not unusual for science to be misapplied, disregarded, or relied on in name only to "solve" a crime and close a case by identifying a person as the culprit. The result is a crime solved by the magical masquerading as science. This situation exists because there is 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:

Author's Note

Introduction

1. The Innocent Are Endangered By Insubstantial Expert Evidence

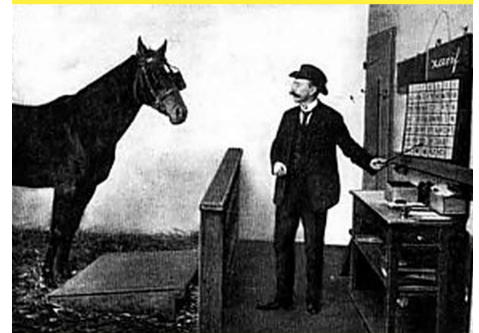
2. Shoddy Work Is The Norm For Crime Labs

3. Roll Call Of Suspect Crime Labs And Expert Prosecution Witnesses

4. Doctored Tests And Testimony Undermine The Presumption Of Innocence

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

MENACE TO THE INNOCENT



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

HANS SHERRER

6. Fingerprint Analysis: Voodoo Palmed Off As Science
7. DNA Probability Estimates Elevated By Smoke And Mirrors To Certainty
8. False Positives – DNA Testings Dark Side
9. A Random Match Probability And False Positive Probability Are Divergent
10. Wrongful Convictions Are Cemented with False Positive DNA Testimony
11. Bite Marks, Hair Analysis, And Other Skeptical Forms Of Evidence
12. Ill-Founded Expert Testimony Is A Godsend To Prosecutors
13. Minimal Crime Lab Performance Standards Breed Slothful Conduct
14. The Subjectivity Of Forensic Evidence
15. Prosecutor's Fallacy Skews Considering A Defendant's Possible Innocence
16. Are Prosecution Experts Criminals?
17. Double-Blind Testing Can Detect Inaccurate Crime Lab Tests
18. Methodic Doubt Can Overcome Pathological Science In The Courtroom
19. Crime Labs Are A 20th Century Invention That Contribute To Shortshifting Reasonable Doubt
20. Conclusion
- Works Cited
- Index
- Endnotes

Menace To The Innocent can be ordered from Amazon.com at, www.tinyurl.com/vc5u3kqn.



High Fence Foodie Cookbook Now Available!

High Fence Foodie is [a new cookbook](#) by Texas prisoner Celeste Johnson that was recently published by The Justice Institute.

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

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

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

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

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

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

"I am a college student making a limited income and these recipes are great and fulfilling for people like me who don't have a ton of \$ to spend on groceries." Alicia

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

High Fence Foodie continues the high stan-



dard 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/y8lqylwo>

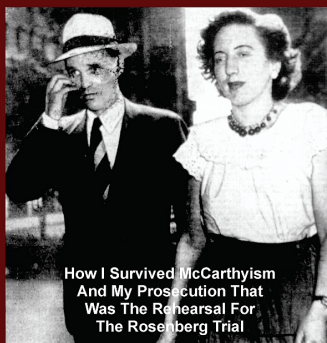
Phantom Spies, Phantom Justice

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

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

The prosecution's case depended on the trial testimony of FBI informant Harry Gold. He testified that in

Phantom Spies, Phantom Justice



MIRIAM MOSKOWITZ

Updated with new chapters and copies of FBI documents

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,

<http://tinyurl.com/ycodcbor>

Published By Justice Denied !!

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,

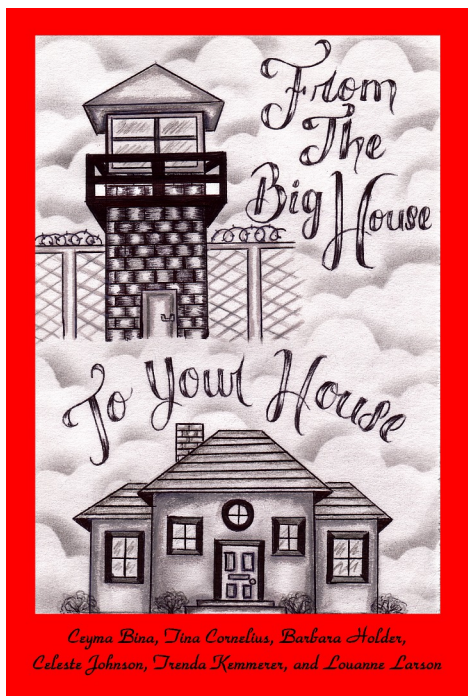
Texas. They met and bonded in the G-3 dorm housing only prisoners with a sentence in excess of 50 years. While there isn't much freedom to be found when incarcerated, using the commissary to cook what YOU want offers a wonderful avenue for creativity and enjoyment! They hope these recipes will ignite 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!

\$14.95

132 pages, softcover

Order from Amazon.com at,

<http://tinyurl.com/yd5dmeea>



Published by Justice Denied

Edwin M. Borchard – Convicting The Innocent

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

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

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

Introduction

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

Chapter 2. Edwin Borchard, Law Expert, Dead

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

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

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

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

\$16.95

358 pages, softcover

Order from Amazon.com at,

<http://tinyurl.com/ycjlhdub>

Published By Justice Denied !!

EDWIN M. BORCHARD

**Convicting The Innocent
and State Indemnity For
Errors Of Criminal Justice**

COMPILED AND INTRODUCTION
BY HANS SHERRER

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.

Justice Denied Back Issues

Email request for information about availability of Justice Denied Issues 30 to 43 in hardcopy to:
info@justicedenied.org

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

Dehumanization Is Not An Option

An Inquiry Into Law Enforcement and Prison Behavior

By Hans Sherrer

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

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

Softcover. \$12

Buy from Amazon.com at,
<http://tinyurl.com/yb7hd4v8>

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.

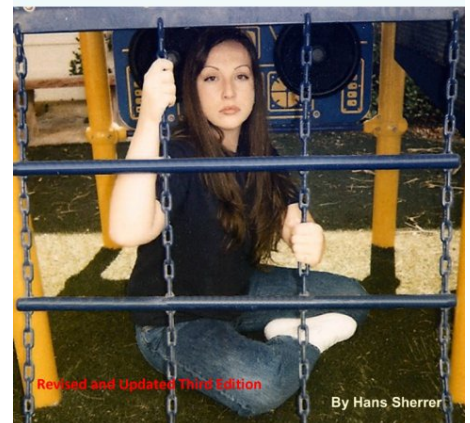
The 3rd revised edition has 57 pages of new information, that includes:

- * 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.

KIRSTIN BLAISE LOBATO'S UNREASONABLE CONVICTION

Possibility Of Guilt Replaces Proof Beyond A Reasonable Doubt



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

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
HANS SHERRER

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 19

Visit Justice Denied website

www.justicedenied.org

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*.

JUSTICE DENIED

Justice Denied
P.O. Box 66291
Seattle, WA 98166

Federal Court Is Death Zone For Federal Defendants And State Prisoners

Federal judges are inhospitable to an almost unimaginable degree to federal defendants, and state prisoners filing a federal habeas petition. Their unfriendliness is so pervasive they can be described as the Death Zone for state prisoners and federal defendants.

See pg. 5

The Magazine for the Wrongly Convicted

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

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