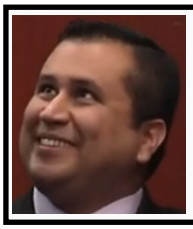
JUSTICE DENIED

The Magazine for the Wrongly Convicted



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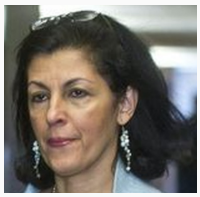

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Message From The Publisher

Prosecutors and police framing innocent people by fabricating or gaming evidence is documented in many hundreds of cases in The Innocents Database. George Zimmerman was acquitted by a jury in 2013 of murder in Trayvon Martin's death. Zimmerman recently filed a federal lawsuit seeking $100 million after discovering the prosecution framed him with the false testimony of its star witness who posed as Martin's girlfriend. See p. 3.

Thousands of people each year die following a treatment, operation, or drug prescription by a doctor or other health practitioner. Few are prosecuted because it is difficult to establish criminal responsibility. Montreal naturopath Mitra Javanmardi was convicted of manslaughter in the death of a patient in 2008 following her administering an intravenous injection of nutrients. On appeal, Canada's Supreme Court determined she committed no crime. See pg. 8.

Mobile phones have fueled the increasing presence of social media in the courtroom. After his conviction for murder, Dr. M. Robert Neulander discovered evidence one of his jurors didn't just defy the judge's instruction not to communicate about his trial on social media, but she was encouraged to find Neulander guilty. See p. 13.

In 2004 Justice Denied described the case against Kirstin Lobato for a 2001 Las Vegas murder as as a prosecution and police frame-up. Almost 14 years later her convictions were overturned and she was released from prison. Lobato has filed a federal lawsuit alleging she was framed by the Las Vegas police and detectives. See p. 15.

Judges are rarely prosecuted, but New York Judge Sylvia Ash was so brazen in obstructing a federal corruption investigation that she all but invited being charged for her role in the scheme. See p. 17.

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

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

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

George Zimmerman Sues For $100 Million After Plot Exposed That Prosecutors Used Fake Witness To Frame Him As Murderer In Trayvon Martin's Death

By Hans Sherrer

George Zimmerman has filed a $100 million lawsuit based on newly discovered evidence a fake witness was knowingly used by prosecutors to frame him for murder in Trayvon Martin's death on February 26, 2012 in Sanford, Florida. The lawsuit alleges the prosecutors, and family members and friends of Martin were involved in the conspiracy to frame Zimmerman with an imposter posing as Martin's girlfriend. He was charged with murder, but the prosecution's case was so weak that even with the fabricated evidence a jury acquitted him on July 13, 2013.

The state lawsuit was filed in the Polk County, Florida Circuit Court on December 4, 2019. Its claims allege:

* Malicious Prosecution and Abuse of Process by three State's Attorneys involved in Zimmerman's case, the Florida Dept of Law Enforcement and the State of Florida.

* Civil Conspiracy by ten of the defendants named in the lawsuit.

* Defamation by the Martin's family attorney Benjamin Crump and HarperCollins Publishers.

Events of February 26, 2012

Zimmerman was 28, married, and living in Sanford, Florida in February 2012. He was working as a forensic fraud underwriter, and taking classes at a community college on a path to becoming an attorney. His mother was born in Peru and he identifies as Hispanic. In his spare time he was a social activist and volunteered as a mentor for black teens whose parents were in prison. After a number of robberies and home invasions in the community where he lived, Zimmerman joined The Retreat at Twin Lakes neighborhood watch program.

Martin was 17 and living with his mother in Miami until mid-February 2012, when she sent him to live with his father in Sanford -- 250 miles north of Miami. While living with his mother Martin was regularly getting into

George Zimmerman in courtroom after being acquitted on July 13, 2013 (WSVN 7, Miami)

fights at his high school and suspended three times — the last time for breaking the nose of a fellow student he had punched. At the time he was sent to Sanford an expulsion hearing was scheduled after Martin tried to hit a school bus driver. Martin described himself as a gangster, his Twitter handle indicated his affiliation with a Miami street gang, he was a heavy marijuana user, and he was reportedly dealing handguns to teens.

Martin had only been in Sanford for about two weeks when at about 7 p.m. on February 26 Zimmerman saw him standing in the rain between two townhouses in The Retreat at Twin Lakes. Martin didn't live in the gated community whose residents were being victimized by crimes primarily committed by "young black males."[Note 1] Zimmerman was driving to Target, but based on his neighborhood watch training he pulled over and called the Sanford police non-emergency number to report a suspicious person. While speaking with the dispatcher, Martin was talking on his phone when he approached and circled Zimmerman's car. Zimmerman told the dispatcher Martin looked like he was "on drugs or something." (It was later found he had marijuana in his system.) Martin then walked away. Zimmerman got out of his car to provide information to the dispatcher who repeatedly asked him which way the person had gone to assist the police officer who was on his way to the scene.

Zimmerman answered "okay" when the dispatcher asked him not to follow the suspicious person. Zimmerman asked the dispatcher to tell the officer to meet him at his parked car, as he walked back to it. When he was about to get in his car and while still on the phone with the dispatcher, Martin appeared behind him and asked, "What's your problem?" Zimmerman turned around. Immediately after he answered "I don't have a problem," Martin sucker-punched him in the nose — breaking it as he had done to the student at his high school — and straddled Zimmerman when he fell to the ground with his phone still connected to the dispatcher. Martin began slamming Zimmerman's head onto the concrete sidewalk and tried to smother him as he yelled for help at least 14 times — as recorded by the 911 audio recordings.

An eyewitness who came out of his home when he heard Zimmerman's calls for help, saw Martin repeatedly smashing his fists into Zimmerman "MMA style." The witness, Jonathan Good, yelled at Martin to stop or he would call the police. Martin didn't stop beating Zimmerman, and Good went into his home and called the police.

Chocking on blood from his broken nose, disoriented from having his head slammed into the concrete and with Martin continuing to beat him, Zimmerman was able to grab his legal pistol and fired a single to stop Martin's assault. The entire episode was recorded by 911, and everything was heard by the person Martin was talking to at least up to after he began beating Zimmerman -- and possibly longer.

Police Investigation Clears Zimmerman

Martin's death was a major national news story.

After an investigation that included the 911 tape, eyewitness Good and other residents, the physical evidence of Zimmerman's broken nose and head lacerations, and Martin's bruised knuckles, on March 12, 2012 Sanford Police Chief Bill Lee announced Zimmerman had been cleared of any wrongdoing on the basis he acted in self-defense. It was not a stand your ground case because evidence showed Martin had initiated his unprovoked assault of Zimmerman.

Lawyer hired by Martin's parents campaigns to paint Zimmerman as murderer

The *day after* Zimmerman was cleared by the Sanford PD, Benjamin Crump, the attorney hired by Martin's mother Sybrina Fulton and his father Tracy Martin two days after his death, began a concerted campaign to incite public sympathy for Martin and hatred of Zimmerman to pressure the Sanford police to arrest him and the state of Florida to prosecute him. Crump's campaign was based on four prongs that Zimmerman describes as disinformation in his lawsuit: "Trayvon: 1) was only buying candy for his little brother, 2) was just trying to get home, when he was 3) was stalked by Zimmerman because of his skin color and then 4) was shot in cold blood by Zimmerman after yelling repeatedly for help. To help convince the public of his false narrative, Defendant Crump disseminated a photo of Trayvon to the media of when Trayvon was only about 10 years old and 5 feet tall, rather than providing recent photos of the 17-year-old Trayvon who stood over six feet tall." [12]

Crump's campaign to portray Martin as an

Martin cont. on p. 4

Martin cont. from p. 3

innocent black youth gunned down for no reason by a racist Zimmerman successfully convinced "the media, politicians, celebrities, and even fair-minded people into demanding the arrest of Zimmerman with no evidence, and even though he'd already been exonerated by the police investigation." [12]

Fake witness substituted for Martin's girlfriend

The electronic, eyewitness, medical, and physical evidence Zimmerman was defending himself and committed no crime in Martin's death was a stumbling block to his arrest and prosecution.

The negative publicity against Zimmerman did not affect the U.S. Department of Justice, which declined to file federal civil rights charges against him after a review of the case.

Zimmerman's lawsuit lays out in minute detail how the key to Crump's successful campaign to get the State of Florida to prosecute him was substitution of another person for Martin's 16-year-old girl-friend Brittany Diamond Eugene, who he was talking to on the phone when he attacked Zimmerman. Zimmerman asserts the substitute/fake witness Crump coached and presented to the world as Eugene, was her half-sister, 18-year-old Rachel Jeantel.

On March 20, eight days after Zimmerman was cleared, Crump held a press conference. He told reporters he had only just discovered the existence of Martin's girlfriend and that she had been talking to Martin at the time of the altercation. Crump said the discovery occurred when Martin's father checked his phone records. Crump refused to identify the girl by name because he said she was a 16-year-old minor. Crump told reporters, "we have all the evidence now!" and "arrest George Zimmerman for the murder of Trayvon Martin!" [15]

Crump had in fact known about Eugene for days. She had refused to incriminate Zimmerman from what she heard while on the phone with Martin, but Crump and other people had been incessantly pressuring her to change her mind. While Jeantel -- with no first-hand knowledge -- was convinced Zimmerman had murdered Martin.

The switch of substituting Jeantel for Eugene was completed on April 2, 2012, when police and prosecutors for the first time met with and interviewed "Eugene." Except they didn't talk with Eugene -- they talked with Jeantel, who told them she was "Diamond Eugene." Martin's mother was present and she didn't inform the authorities they were not talking with her son's girlfriend, but her half-sister Jeantel posing as her.

Zimmerman's lawsuit states: "In the interview, Defendant Jeantel lied repeatedly in order to incriminate Zimmerman. Defendant Jeantel falsely claimed to be Trayvon's girlfriend, falsely claimed that her nickname was "Diamond", and falsely claimed that she was on the phone with Trayvon in the days leading up to and much of the day and up to the minute of his death. Defendant Jeantel made numerous false statements about what she claimed to have heard while speaking with Trayvon with the goal of incriminating Zimmerman..." [19]

Zimmerman further asserts that during the interview Assistant State Attorney Bernie de la Rionda -- who was Zimmerman's lead prosecutor -- "ignored the repeated false statements by Defendant Jeantel that he both knew and should have known to be false, including those which contradicted Defendant Eugene's phone records he had already obtained, and including Defendant Jeantel's statement that she was 18, even though Defendant de la Rionda knew ... Defendant Eugene was 16 and "a minor child". Almost every time Defendant Jeantel made a statement he knew to be false, Defendant de la Rionda asked the question again and again in different ways until Defendant Jeantel's answer fit his narrative." Furthermore, de la Rionda ignored that at the conclusion of the interview Jeantel told him multiple times "I feel guilty", and when asked why, confessed to him, "I ain't know about it!" [19]

Ten days later, on April 12, 2012 de la Rionda and two other Florida State Attorneys authored and executed an affidavit of probable cause against Zimmerman that was largely based on Jeantel's interview statements incriminating him -- that she had repudiated to them.

Zimmerman's prosecution and trial

From April 2012 to Zimmerman's trial in July 2013 none of the numerous people who knew Jeantel was an imposter -- that included the prosecutors and members of Martin's and Jeantel's families -- informed Zimmerman's lawyers of the witness switch.

Zimmerman's lawsuit states the prosecutors: "engaged in a 14-month campaign of obstruction to prevent Zimmerman's defense from discovering the substitution of the real phone witness, Brittany Diamond Eugene, for the imposter and fake witness, Rachel Jeantel, by withholding evidence from Zimmerman's defense team in order to minimize the time they would have to discover what they knew, that Defendant Jeantel was an imposter and a fake witness. The obstruction campaign by Defendants de la Rionda, Guy, and Corey caused Zimmerman's defense team to spend 2/3 of their time in court demanding discovery and sanctions against the prosecution, all in an effort to prevent Zimmerman's defense from discovering that Defendant Jeantel was an imposter. The obstruction campaign by Defendants de la Rionda, Guy, and Corey included refusing to turn over alleged hospital records until being forced to admit they didn't exist, providing Trayvon's 750-page Cellebrite cell phone extraction report to Zimmerman's defense in an unreadable binary file form rather than a print out, and by denying Zimmerman's defense attorneys access to Defendant Jeantel by falsely claiming that Defendant Jeantel was only 16 (Defendant Eugene's age)..." [22-23]

By providing the cell phone report in unreadable binary file form prosecutors were able to prevent Zimmerman's defense attorneys from seeing four photo images of Eugene she had texted to Martin, that would prove Jeantel wasn't her -- because they had no physical resemblance.

Zimmerman's trial was a major international news event.

During his trial a centerpiece of the prosecution's case was Jeantel presenting herself as "Diamond Eugene" and giving sworn testimony for two days pretending to be her. Zimmerman's lawsuit states that Jeantel "lied about all events and circumstances regarding Trayvon, her relationship with Trayvon, and the circumstances leading up to his death by falsely claiming she was a phone witness to them, when she was not ..." [23]

Zimmerman's defense relied on the physical and eyewitness evidence that led Police Chief Lee to make his original finding he had acted in self-defense and committed no crime.

The jury acquitted Zimmerman of all charges on July 13, 2013.

If the witness switch had worked as intended Zimmerman would have been convicted of second-degree murder and likely sentenced to prison for life. The switch remained unknown to him for more than six years.

However, due to all the negative publicity surrounding Crump's narrative of Martin's death, the homeowners association for The Retreat at Twin Lakes where he was shot made a substantial financial payment to his

Martin cont. on p. 5

Martin cont. from p. 4

mother (Sybrina Fulton) and father (Tracy Martin) to settle their complaint.

Attempted murder of Zimmerman

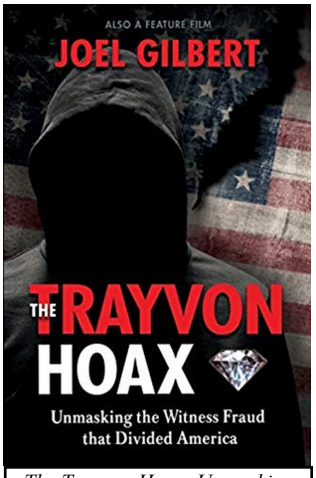
In May 2015, a man named Matthew Apperson shot at Zimmerman while he was driving his truck, and the bullet missed his head by inches. He had facial injuries from flying glass and debris. In 2016 a jury convicted Apperson of attempted second-degree murder, armed aggravated assault, and shooting into a vehicle. In October 2016 Apperson was sentenced to the mandatory 20 years in prison for shooting at another person with a firearm.

Witness switch discovered

The dam concealing the witness switch broke on September 16, 2019, when investigative journalist and filmmaker Joel Gilbert's book titled: *The Trayvon Hoax: Unmasking the Witness Fraud that Divided America* was published. The book details what Gilbert calls "the most spectacular case of identity fraud in modern American judicial history." In poring over Martin's 750-page phone record, Gilbert discovered that Jeantel had not been his girlfriend as she testified, and she was an imposter for his real girlfriend Eugene. That is the information the prosecution concealed from Zimmerman's lawyers prior to his trial by providing the phone record in an unreadable binary file form rather than a print out.

Gilbert also released his documentary about the witness switch that has the same title as the book: *The Trayvon Hoax: Unmasking the Witness Fraud that Divided America.*

The major news organizations in the U.S. could have discovered the information Gilbert did if they were interested in reporting the truth and investigated Zimmerman's case, instead of blindly pushing the narrative unsupported by any facts that he was a bloodthirsty racist who wantonly snuffed out the life of an innocent black youth. Of course, if they had been interested in informing their readers of the truth they would have reported the facts supporting that Martin was a violent lowlife thug on track for a life of crime and spending his life in and out of prison or a premature death.



The Trayvon Hoax: Unmasking the Witness Fraud that Divided America (cover)

Zimmerman gives credit to Gilbert for discovery of the evidence his prosecution was based on a hoax perpetrated by his prosecutors, Martin's family, their lawyer, and friends:

> "16. The facts pled in this Complaint, which set forth the injury suffered by Plaintiff, were only recently discovered by Plaintiff Zimmerman on or about September 16, 2019 through the publication of the book and film by Hollywood director Joel Gilbert, both entitled *The Trayvon Hoax: Unmasking the Witness Fraud the Divided America*.
> 17. September 16, 2019 was the earliest possible date that Plaintiff Zimmerman could have, and did in fact, discover the subject illegal acts and practices of the Defendants which harmed him." [6]

Crump's book published

On October 15, 2019, Crump's book, *Open Season: Legalized Genocide of Colored People*, was published by HarperCollins Publishers.

Zimmerman's lawsuit includes multiple defamation claims against Crump and HarperCollins related to the book.

He states the book has a "reckless, racially charged, inflammatory and defamatory title, ... Given Defendant Crump's widely known knowledge of, participation in and association with Plaintiff Zimmerman and the Trayvon Martin trial, the title of the book is reasonably understood to refer to Plaintiff Zimmerman. This creates the false implication that Plaintiff Zimmerman participated and participates in the "genocide of colored people."" [26]

Zimmerman further asserts: "The book itself also contains numerous false, malicious, and defamatory statements regarding Plaintiff Zimmerman." [26]

The lawsuit describes that Crump has built has career by exploiting Martin's death and Zimmerman's prosecution: "As a result of Zimmerman's trial, Defendant Crump became a nationally known as a self-styled civil rights attorney who represents clients who allege racial bias and police misconduct." [4]

Lawsuit filed

On December 4, 2019, Zimmerman filed a state lawsuit in the Polk County Circuit Court that named as defendants: Sybrina Fulton (Martin's mother); Tracy Martin (Martin's father); Brittany Diamond Eugene (Martin's girlfriend); Rachel Jeantel (Eugene's half-sister); Benjamin Crump (attorney for Fulton and Tracy Martin); Bernie de la Rionda (Zimmerman's lead prosecutor); John Guy (Zimmerman's co-prosecutor); Angela Corey (Special Prosecutor in charge of Zimmerman's case); the Florida Department of Law Enforcement; the State of Florida; and HarperCollins Publishers. The lawsuit asserts:

> "Defendants (except HarperCollins), acting individually and in concert with each other, made a concerted effort to violate Zimmerman's constitutional rights and cause him to be arrested and put on trial for murder, with the goal of imprisoning him for life by covering up their knowledge of the identity of the real girlfriend of Trayvon Martin and legitimate phone witness, Defendant Eugene, and their coaching of false testimony and support for the substitution of and lies of an imposter and fake witness, Defendant Jeantel, that she told to prosecutors." [7]

The lawsuit's claims related to the imposter witness are:

> * Malicious Prosecution and Abuse of Process by three State's Attorneys involved in Zimmerman's case (de la Rionda, Guy, and Corey), the Florida Dept of Law Enforcement, and the State of Florida.
>
> * Civil Conspiracy by all the defendants named in the lawsuit except HarperCollins.

The lawsuit's claim related to the assertion Crump's book, *Open Season: Legalized Genocide of Colored People* "contains numerous false, malicious, and defamatory statements regarding Plaintiff Zimmerman" is:

> * Defamation by Crump and HarperCollins Publishers.

Zimmerman is requesting an award of "compensatory and actual including consequential and incidental damages in excess of $ 100,000,000.00 million U.S. Dollars," and his "attorney's fees and costs." [36]

Zimmerman's lawyer is Larry Klayman. Klayman is the founder of Judicial Watch and Freedom Watch, and he is nationally known for his strong public interest advocacy in furtherance of ethics in government and individual freedoms and liberties.

Martin cont. on p. 6

Japanese Exoneree Receives $690,000 in Compensation

By Michael H. Fox

1967 was a good year for Japan. The economy was booming, and GNP was rising. Three years before, Japan hosted the summer Olympics. A proposal to host yet another Olympics -- the 1972 winter games -- was underway.

The booming economy had not entirely reached the hinterlands. In the sleepy, rural village of Fukawa, some 80 kilometers north of Tokyo, (Ibaragi prefecture) a 62 year old man was murdered in the dreadful heat of August. The homicide shocked the local area. Police went into a frenzy to solve the crime and return the area to sanity.

Likely targets?

Law enforcement received a report that two men were observed near the scene of the murder. Therefore, two criminals would have to be found. After eliminating some fifty or so suspects, the police decided to arrest 20 year old Shoji Sakurai. Sakurai had been on the police radar for stealing a belt and pair of pants.

The son of a civil servant and a mother who sold vegetables, Sakurai had problems at home and never finished high school. At the time of arrest, he had no full time job and was living idly. He admitted to the theft charge but denied the murder. Five days later, after around the clock interrogation, he confessed to the murder and named Takao Sugiyama, a friend of his brother, as accomplice. Sugiyama was also a high school dropout, and was involved with the Yakuza. Both had backgrounds that would look suspicious at trial

Coerced confessions

The primary evidence against the defendants was the confessions. Both were charged with murder as well as robbery, though it is still unclear if anything was taken from the victim's home. The added charge of robbery would allow the prosecution to ask for an indefinite term (life imprisonment). The single charge of murder would likely bring a term of 17 years.

Shoji Sakurai and Takao Sugiyama — who spent almost 30 years in prison (The Australian)

Sakurai has described his interrogation, "In a bid to obtain our confessions, investigators told each of us separately that the (other) had already confessed to the murder and that we would be hanged if we continued denying the allegations." And after agreeing to confess, "The police instructed me about how to respond to their questions in advance, and recorded my responses, in order to submit a tape of them to the court." (Japan Times, March 15, 2011)

At trial, both men retracted their confessions. It was clear the confessions differed from the facts of the actual crime: the design of the house, how it was entered, etc. None of the 43 fingerprints matched either suspect. The two confessed to strangulation of the man using their bare hands, while the medical examiner stated the victim was strangled with plastic rope. Needless to say, the two were found guilty and sentenced to life imprisonment.

Appeals, appeals

Both appealed their convictions and sentences, which the High Court affirmed. A final appeal was lodged with the Supreme Court. One, two, three, and then finally four years passed. Their legal team was becoming optimistic because-the Supreme Court had never waited so long to review a case. But in July of 1978, some 4 ½ years after the High Court ruling, and nearly 11 years after their original arrests, the Supreme Court affirmed their convictions and sentences. No opinion was issued, and the decision was a mere 12 words in length.

The many years spent waiting for the final ruling was a separate tragedy. After a sentence is handed down, the court calculates how many days were served in detention awaiting trial. The court will then give credit for time served. If a defendant has served

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Martin cont. from p. 5

Conclusion

The defendants will file answers to Zimmerman's claims, and they can be expected to seek dismissal of those claims based on procedural or other legal grounds.

One consequence of the new evidence detailed in Zimmerman's lawsuit is The Retreat at Twin Lakes homeowner's association could seek to recoup the settlement money paid to Martin's parents on the basis it was obtained through fraud.

The lawsuit, *George Zimmerman v. Sybrina Fulton, et al.* (Polk County, Fla. Circuit Ct) (filed 12-4-19), can be downloaded at, **http://www.larryklayman.com/pdf/191203-ZimmermanvFultonEtal.pdf**.

The website of Zimmerman's attorney Larry Klayman has extensive information about Zimmerman's case, **https://www.larryklayman.com/**.

Note 1: For a detailed description of the crime being experienced by the residents of The Retreat at Twin Lakes see, "The Neighborhood Zimmerman Watched," By Ian Tuttle, *National Review*, July 22, 2013. Online at, **https://www.nationalreview.com/2013/07/neighborhood-zimmerman-watched ian-tuttle/** . The article quotes a resident whose home was burglarized prior to the Martin shooting, that because of the rampant crime in the neighborhood, "Everyone felt afraid and scared. People were freaked out. We were calling police at least once a week."

Sources:

The Trayvon Hoax: Unmasking The Witness Fraud That Divided America, Joel Gilbert (Actor, Director), Independently published, 272 pgs. Book and DVD documentary available on Amazon.com.

The Trayvon Hoax website is, **https://www.thetrayvonhoax.com/**

George Zimmerman v. Sybrina Fulton, et al. (Polk County, Fla. Circuit Ct)

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

GEORGE ZIMMERMAN
Polk County, FL

Plaintiff,

v.

SYBRINA FULTON
1128 NW 206th Terrace
Miami, FL 33169

And

BENJAMIN CRUMP
122 S Calhoun St,
Tallahassee, FL 32301

And

RACHEL JEANTEL
1251 NW 202nd Street
Miami, FL 33169

And

BRITTANY DIAMOND EUGENE
4701 SW 26th Street
West Park, FL 33023

And

TRACY MARTIN
10201 SW 20th Ct
Miramar, FL 33025

And

BERNIE DE LA RIONDA
10454 Hunters Creek Ct
Jacksonville, Florida 32256

And

COMPLAINT

George Zimmerman v. Sybrina Fulton, et al. (Polk County, Fla. Circuit Ct) (filed 12-4-19), p.1

Japanese Exoneree cont. from p. 6

120 days in jail, the court might subtract 90 days from the actual sentence. For most defendants who plead guilty and whose trials finish quickly, this allowance is of no great consequence.

On the other hand, historically, those who claim innocence and challenge the charges have been subjected to very long trials. Until Japan's introduction of the mixed jury system in 2009 -- six citizens adjudicating a criminal case with three judges -- trials proceeded at a snail's pace. Hearings were usually held twice a month. That is why the men's first trial and the subsequent appeal each took three years.

Most defendants do not appeal their conviction and sentences. Those who do sometimes refrain from taking their claim to the third tier -- the Supreme Court. The reason is simple: the defendant will receive no credit for time served while the Supreme Court deliberates.

The Fukawa defendants spent 4 ½ years awaiting the decision from the Supreme Court. Neither received any reduction in time for this interminably long wait.

Conditions in Japanese detention centers are stricter than prisons. Each cell in a prison is equipped with a television. Those awaiting trials in detention are not allowed a television. Neither of the Fukawa defendants viewed a television for 11 years.

Retrial

In 2001, the pair, assisted by *pro bono* lawyers, filed for retrial. In 2005, the Code of Criminal Procedure was amended, and prosecutors were bound to submit any evidence favorable to the defense. It is somewhat startling that it took so long to pass a law which has been in place in the United States since 1962 (*Brady v Maryland*).

The new evidence was somewhat astounding. Perhaps the most egregious item was an investigative report on 8 hairs found at the scene. 3 were from the victim and the remaining five did not match either suspect. In making its decision about the retrial, the court commented that if this had been submitted at the first trial, it is likely that both suspects would have been found innocent.

There was also testimony during their retrial from a woman near the scene of the crime who described a single person who did not match either suspect. This evidence was hidden from the defense. The woman, now in her 80's, testified about the event she witnessed 33 years before.

Exoneration and Compensation

On May 24, 2011, the two were completely exonerated. Interestingly enough, the two were declared guilty for their original charges of stealing a pair of pants and a belt (Sakurai); and assault/battery (Sugiyama). Both were sentenced to time served.

After their exoneration, the two were entitled to remuneration under the criminal compensation law. The amount calculated was: 12,500 yen ($115) per day x 365 days x 29 years = 130,000,000 yen ($1,200,000). The two were charged with court costs of 1,500,000 yen ($13,000) for the first set of trials in which they were wrongfully convicted.

State Redress Lawsuit

In addition, Sakurai filed a state redress suit seeking additional compensation for the suffering caused by the state's handling of the evidence. These are very rare in Japan. On May 23, the court awarded him 76,000,000 yen ($690,000). This is the highest payout ever for a wrongful conviction. The state is expected to appeal and the actual amount received might be greatly reduced.

Sakurai remains determined. "My lawyers thought this decision was a near miracle. I thought it was plainly commonsensical. And I hope the high court thinks so, too."

Why would a higher court reduce what appears to be a well reasoned and fair decision? Judges and prosecutors in Japan are all employed by the Ministry of Justice. Control over promotions and transfers of both professions are decided administratively by the ministry. A judge ordering the state to pay out a large amount of money for prosecutorial malfeasance is somewhat akin to stabbing a colleague in the back.

In January of this year, a 75-year-old man who spent more than six years in prison before being acquitted of rape and other charges in a retrial brought a civil suit seeking redress. His accuser later admitted to fabricating testimony and the defendant was released six years into a twelve year sentence.

The man's attorneys discovered that the teenage accuser received a medical examination after filing a report. The test revealed no evidence of sexual violence. The man claims that if the police or prosecution had contacted the medical institution, the truth of the case would have come to light. It is possible the authorities knew of the test but willingly suppressed it. The man received 28 million yen ($260,000) for the time he spent in prison. In addition, he brought a civil suit seeking 140 million yen ($1.3 million) for malfeasance. The court denied his claim. (Asahi Shinbun, January 9, 2019). An appeal has been lodged.

Note about the author: Michael H. Fox is the director of the Japan Innocence and Death Penalty Information Center. Its website is: **jiadep.org**.

The Fukawa Case Chronology

Date		Incident
1967	August 30	62 year old man is murdered
	Oct 10 and 16.	Sakurai and Sugiyama (both aged 20) are arrested. Both soon confess under duress.
1970	Oct 06	District Court decision: Both sentenced to life imprisonments
1973	Dec 20	High Court affirms sentence.
1978	July 03	Supreme Court confirms sentence.
1983	Dec 23	Request for retrial submitted.
1996	Nov 11&17	Defendants are paroled (29 years after arrest).
2001	Dec 6	Second request for retrial submitted.
2005	Sep 21	Retrial granted.
2007	Dec 15	Supreme Court affirms retrial request
2010	July 9	Retrial begins
2011	May 24	Exoneration!
2015	Oct 27	Sugiyama dies.
2019	May 27	Court awards Sakurai $690,000 in damages.

Mitra Javanmardi Acquitted Of Manslaughter By Canada's Supreme Court

Montreal naturopath Mitra Javanmardi has been acquitted of manslaughter and criminal negligence causing death by Canada's Supreme Court. She was convicted in 2018 based on the death of a client in 2008 after she intravenously administered nutrients to him.

Javanmardi opened a naturopathic clinic in Quebec in 1985. Her credentials included a degree in science and a doctorate in naturopathic medicine. At the time of her patient's death she had treated between 4,000 and 5,000 patients at her clinic, and beginning in 1992 she administered nutrients by way of intravenous injection to about ten patients per week.

Roger Matern and his wife visited Javanmardi's clinic on June 12, 2008. The 84-year-old Matern had heart disease and sought treatment for breathing problems because of fluid in his lungs after heart surgery. He was dissatisfied with treatment at his medical clinic, and hoped naturopathy would improve his breathing.

After meeting with Matern for an hour, Javanmardi recommended intravenously administered benign nutrients. Matern insisted on having an immediate intravenous treatment, even though Javanmardi told him she did not normally do that on a first visit.

Matern complained of being hot and nauseous after the procedure began. Javanmardi stopped the intravenous injection and checked Matern's vital signs. They were stable, he had no fever, and there was no sign of infection.

No patient of Javanmardi's had ever been infected during an intravenous injection. She thought Matern could be having a hypoglycaemic reaction, and he consumed a spoonful of honey and orange juice at her suggestion.

Matern's wife and daughter took him home because he did not want to go to the hospital.

Later that day Javanmardi told Matern's daughter he needed to stay hydrated and that she needed to take him to the hospital if he couldn't stay hydrated.

That night Matern's daughter called an ambulance because his condition worsened.

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

At the hospital doctors noted signs of endotoxic shock. His condition worsened until he died of endotoxic shock some hours later.

After an investigation, Javanmardi was charged with criminal negligence causing death and manslaughter.

Javanmardi waived a jury trial. During her bench trial in 2015 the prosecution's case was based on allegations acts and omissions by Javanmardi in the administration of the intravenous injection was contrary to Quebec's Medical Act, and they were evidence she committed criminal negligence causing death and manslaughter.

Javanmardi's defense was she was trained and experienced to give intravenous injections, she had acted as a reasonable person would, and her conduct was not negligent.

Quebec Provincial Court Judge Louise Villemure acquitted Javanmardi of both charges on April 8, 2015. Villemure's decision was based on her satisfaction Javanmardi had the skill to administer intravenous injections, and she complied with the required protocols and had taken reasonable precautions with Matern. Regarding the charge of criminal negligence causing death, Villemure decided Javanmardi's conduct wasn't contrary to the standard of care a reasonable person would have exercised in her circumstances. Consequently, the prosecution had not proved beyond a reasonable doubt that Javanmardi had showed wanton or reckless disregard for Matern's life or safety. Regarding the manslaughter charge, Villemure concluded Matern's intravenous injection was not objectively dangerous. Javanmardi acted reasonably, because a reasonable person would not have foreseen that using proper procedures to intravenously administer a benign solution would create a risk of harm.

The prosecution appealed.

On May 31, 2018 Quebec's Court of Appeal set aside both acquittals. It concluded Villemure misstated the elements of criminal negligence causing death and manslaughter related to the facts of Javanmardi's case. The appeals court decided intravenous injection is objectively dangerous and Javanmardi's conduct was inconsistent with the actions of a reasonable person. The appeals court substituted a conviction for Javanmardi's acquittal of manslaughter and remanded her for sentencing on that charge. It also ordered a new trial on the criminal negligence charge.

Canada's Supreme Court accepted review of Javanmardi's case. She remained free pending the outcome of her appeal.

On November 14, 2019 the Canadian Supreme Court issued its majority (5-2) ruling reinstating Javanmardi's acquittals of both charges. In *R. v. Javanmardi*, 2019 SCC 54 **the Court held**:

> "The appeal should be allowed and the acquittals restored.
>
> The Court of Appeal erred in holding that an intravenous injection is objectively dangerous regardless of the circumstances in which it is administered or the training, qualifications and experience of the person who administers it. The Court of Appeal also erred in disturbing the accused's acquittals based on its conclusion that her conduct markedly departed from that of a reasonable person. These conclusions cannot be squared with the trial judge's findings of fact which the Court of Appeal replaced with its own.
>
> The fault element of both offences require that an accused's conduct be measured against the standard of a reasonable person in their circumstances.
>
> In measuring the accused's conduct against this standard in the instant case, the trial judge was obliged to consider the accused's prior training, experience and qualifications as a naturopath. The trial judge found that the accused was properly qualified to administer intravenous injections and took the necessary precautions at every stage of administering the intravenous injection, including observing sufficient protocols to prevent sepsis. All of the trial judge's factual findings, which were based on the evidence, amply support the conclusion that an intravenous injection, performed properly by a naturopath qualified to administer such injections, did not pose an objectively foreseeable risk of bodily harm in the circumstances."

Read the ruling in *R. v. Javanmardi*, 2019 SCC 54 (CAN Sup. Ct. 11-14-19) at, **https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18015/index.do**

Sources:
R. v. Javanmardi, 2019 SCC 54 (CAN Sup. Ct. 11-14-19) (Acquitting Javanmardi of manslaughter)

Steven Fennell's Murder Conviction Based On Weak Circumstantial Evidence Tossed By Appeals Court

Steven Fennell has been acquitted of murder by Australia's High Court. Fennell was convicted in 2016 in the death of his 85-year-old friend Liselotte Watson at her home on Macleay Island, Queensland, Australia in November 2012. Fennell was released after almost seven years in custody.

Macleay Island has a population of less than 3,000 people. It is in Moreton Bay, about 35 miles southeast of Brisbane, Australia's third-largest city.

Watson lived alone but she had limited mobility. Fennell was a founding member of the Macleay Island Lions Club, which did shopping and chores for elderly people. As a member, for one to two years before Watson's death he regularly visited her for 15 to 20 minutes, and he assisted her with her shopping and banking, and maintained her yard.

One of Fennell's jobs was he contracted with various businesses to deliver pamphlets. He was seen delivering a pamphlet and talking with Watson on November 11, 2012, which he told police was the last time he saw her.

Liselotte Watson's Death

On the afternoon of November 13, 2012 Watson's body was found in her bedroom where drawers had been opened and her television was lying on the floor. Police found only $290 cash in her house, although they were told by many people she kept large sums of money on hand.

Watson had been struck on the back of her head multiple times. There was blood on her pillow, bed, the floor, the wall behind the bed, and the curtain to the left of the bed. A towel on the floor and a quilt partially wrapped around her were saturated with blood. There were blood splatters on the wall, a table, a clock radio, and a tissue box. She had defensive wounds from fighting her attacker.

Neighbors last saw her outside her house mid-morning on November 12, and she didn't collect her paper delivered the morning of the 13th. A pathologist opined he "preferred" she died sometime on November 12, and that she could have been killed by an object such as a hammer.

Steven Fennell after his acquittal by Australia's High Court on Sept. 11, 2019 (Nine News, Brisbane, AUS)

More than two days before Watson's death a woman walking her dogs near the mangroves at Thompson Point on the island saw a shaving bag sitting in the mud at low tide. It contained a folder of bank documents with Watson's name on them. There were customer receipts for three withdrawals from Watson's account totaling AUS$13,000 from August 22, 2012 to September 28, 2012.

Two days after Watson was found dead, a police diver searching the water in the mangroves discovered a wallet that contained a Medicare and pension cards in Watson's name. A black purse also found was identified as Watson's by her granddaughter. About 50 feet from the wallet and purse a claw hammer was found.

Fennell's Arrest and Investigation

Fennell was arrested the next day -- November 16. After Fennell's arrest the police investigation found no direct evidence linking him to Watson's extremely bloody murder during which she struggled with her assailant:

* He was excluded as the source of DNA recovered from fabric on the shaving bag.

* A search of his house found no evidence linking him to Watson's murder.

* A physical examination and photographs of Fennell's head, face, arms, upper body and legs found no wounds or injuries.

* Forensic examination of his glasses, clothes, shoes, bike and vehicle found no blood or other evidence linking him to Watson's murder.

* No forensic or physical evidence was found in Watson's house linking him to her murder.

* Fennell said nothing incriminating in conversations heard by police from listening devices installed in his house and the motel where he stayed while his house was being searched.

* He said nothing incriminating when interrogated by the police: Steadfastly insisting Watson was his friend and he had nothing to do with her murder.

* None of the many potential witnesses interviewed by the police provided any evidence Fennell told them anything incriminating about Watson's murder.

* The examination of his bank records from July 2010 to November 2012 did not find any unusual deposits.

* Fennell was not found to have any of Watson's money.

There was a complete absence of forensic, physical, confession, or eyewitness evidence linking Fennell to Watson's murder.

Trial

Fennell's trial began in March 2016.

The prosecution argued Fennell murdered Watson to avoid detection for stealing money from her. That argument was based on three prongs of circumstantial evidence: he had 1) opportunity; 2) motive; and 3) other evidence suggested his guilt.

The prosecution claimed Fennell's motive was that to cover his gambling debts, in the four months before Watson's death he withdrew more than $24,000 from her bank account.

The prosecution argued he had the opportunity because he couldn't positively prove where he was during the time from when Watson was seen on the morning of Feb 12 until that afternoon at 3:49 p.m., when he was recorded on CCTV entering Pub Paradise on Macleay Island. Prosecutors contended Watson wasn't killed on November 13 because she was found in her night clothes and Fennell's movements that day were "reasonably well accounted for."

Although it had none of Watson's blood or DNA on it -- and none of Fennell's DNA on it -- the prosecution argued the hammer recovered in the water near the mangroves was the murder weapon. A couple testified Fennell had borrowed that hammer from them three or four years before Watson's murder.

Fennell's defense was he didn't need Watson's money to pay for his gambling, and Watson had given the bank written instructions for him to be given the money for delivery to her, due to her lack of mobility, and she regularly provided money to her daughter who lived on a nearby island. He also argued it was common knowledge on Macleay Island that Watson kept money in her house, so any number of unknown and uninvestigated people had the motive, means, and opportunity to kill her.

After a two week trial the jury found Fennell guilty on March 21, 2016. He was

Fennell cont. on p. 10

Fennell cont. from p. 9

sentenced by Judge Martin Daubney the same day. Daubney **told Fennell**: "To have killed her in such a cruel and callous way bespeaks a base wickedness which is fully deserving of the sentence I am about to impose," which was life in prison.

Appeals

Fennell's appeal was denied by Queensland's Court of Appeal in July 2017.

Australia's High Court accepted Fennell's case for review.

After its hearing on September 11, 2019, the High Court of Australia unanimously quashed Fennell's murder conviction and ordered his acquittal. He was also ordered released: he had been in custody for 6 years and 10 months since his arrest. The Court stated it would publish the reasons for its ruling at a later date.

Fennell was released later in the day on September 11. During his first **media interview** he expressed his anger about spending almost seven years in prison: "I'm pissed and it doesn't end here. I was an easy and simple target. I gambled, I knew Mrs Watson, I must have done it. If I hadn't been a wayward teenager and not a very good person earlier, I never would've been under the radar of police."

He also told the reporter: "I don't know (who killed her) but I've said all along, I don't believe anybody intended to kill Mrs Watson. I believe that it was a bungled burglary."

On November 6, 2019 the High Court released its written judgment for quashing Fennell's conviction. It was based on the prosecution's weak circumstantial evidence was insufficient evidence to prove his guilt beyond a reasonable doubt. The ruling in *Fennell v. The Queen* [2019] HCA 37 **stated in part**:

> "The Crown case concerning opportunity and motive was extremely weak. Mr Fennell's opportunity was, at best, a very small window of time which required an assumption about the time of the murder that was contradicted by other evidence. Even with that opportunity, the evidence of opportunity and motive did not put Mr Fennell in a relevantly different position from any of the numerous other people who shared the common knowledge that Mrs Watson kept large sums of money in her house. As the Crown properly accepted in this appeal, once that conclusion is reached

Liselotte Watson (family photo)

the evidence from Mr. and Mrs. Matheson linking Mr Fennell to the hammer became essential evidence that a reasonable jury would have been required to accept before convicting Mr. Fennell. To use Wigmore's metaphor, the evidence from Mr. and Mrs. Matheson became by far the most significant of the "strands in a cable" supporting the conviction. But the evidence of Mr and Mrs Matheson should have had so little weight that, at best, it was barely admissible." (The Court noted elsewhere in its ruling the Matheson's testimony linking Fennell to the hammer "was glaringly improbable." This is detailed on pp. 23-25.) [2]

The Court also observed the evidence didn't support or even suggest that Fennell needed Watson's money to pay gambling debts -- that there was no evidence existed -- or that he had increased his gambling activity in the months before her murder. The Court stated:

> "The only broad conclusions that can be drawn from the evidence are that Mr. Fennell's general gambling habits had not apparently changed and that any overall losses that Mr. Fennell suffered over the period of his gambling appeared to be sustainable." [14]

Regarding the money withdrawn from Watson's account that her bank had given to Fennell, the Court ruled:

> "Although the total of $24,000 withdrawn in those months was larger than usual, it was not extravagantly so. An exhibit summarising Mrs. Watson's bank statements from November 2007 until November 2012 showed that over those five years she withdrew $148,297, usually in amounts between $2,000 and $5,000. Ms. McKie also gave evidence that shortly before Mrs. Watson was murdered Ms. McKie had overheard Mrs. Watson in her backyard speaking to tradespeople about "doing a pergola."
> ...
> ... The withdrawals amounting to $24,000 in the three months before her death ... was not novel. Between March and May 2010, she withdrew $18,000 ... One of the withdrawals in the period from March to May 2010 was of $11,000. Mrs. Watson told various of her friends that she had lent $11,000 to a Mr. Holden and he had not repaid the money, although he eventually did.
>
> *Most fundamentally, however, the evidence pointed to a significant likelihood that each of the five withdrawals that amounted to $24,000 was authorised by Mrs Watson."* [14]

The Court concluded:

> "It was not open to the jury to be satisfied of Mr Fennell's guilt beyond reasonable doubt. The Court of Appeal should have allowed the appeal, quashed the conviction, and entered a verdict of acquittal. For the reasons above, we made orders to that effect." [28]

The High Court ruling in *Fennell v. The Queen* [2019] HCA 37 (High Court of Australia, 11-6-2019) can be read at, **http://eresources.hcourt.gov.au/downloadPdf/2019/HCA/37**.

It can be expected that Fennell will sue for *ex gratia* compensation.

JD Note about Steven Fennell's case:

Fennell's case is a text book example of the danger of the police and prosecutors relying on inductive reasoning to "solve" a crime before they have evidence the perpetrator they've identified actually committed the crime. That process often becomes one of trying to fit a round peg in a square hole. Fennell was hastily arrested, and the investigation that followed failed to find evidence implicating him in the crime. Instead of throwing in the towel and admitting they had arrested and charged the wrong man, the police and prosecutors concocted a story built around Fennell's gambling to paint him as a murderer. If Watson's murder had been thoroughly investigated the killer may have have been identified. But the police weren't looking to follow the evidence to find Watson's killer, they were looking to pin the crime on Fennell. The killer was given a free pass unless a real investigation is undertaken, which will be much more difficult with the passage of seven years since Watson's murder.

Sources:

Fennell v. The Queen [2019] HCA 37 (High Court of Australia, 11-6-2019)

I'm pissed': Steven Fennell speaks out after Macleay Island murder acquittal, By Jocelyn Garcia, *Brisbane Times*, September 12, 2019

Man convicted of murdering 85-year-old woman on Macleay Island, By AAP, Brisbane Times, September 21, 2016

Steven Fennell sentenced to life in prison for Macleay Island murder of Liselotte Watson, By Louisa Rebgetz, ABC News (Australia), March 21, 2016

Stalking Conviction Based On Accusing Neighbor Of Being Pedophile Overturned By Kansas Appeals Court

Lisa A. Smith's stalking conviction was overturned by the Kansas Court of Appeals on September 27, 2019. Smith's conviction was based on her violating an anti-stalking order by publicly accusing her neighbor of being a pedophile. The Court ruled the order was unconstitutional prior restraint of her First Amendment right to free speech.

In 2016 or early 2017 Smith accused her neighbor Jonathan Perez of sexual misconduct with Smith's child.

Smith and Perez both received temporary restraining orders in April 2017 that barred stalking by the other. After a joint trial in June 2017, the judge granted Perez a final protection from stalking (PFS) order, while denying Smith an order. The PFS order prohibitions **included**: "Defendant shall not make direct or indirect disparaging statements in public regarding plaintiff being a child molest[e]r."

Smith was entering her residence in November 2017 **when she** "turned toward her husband who was standing in their driveway and said, "come inside away from the pedophile.""

Her comment was heard by Perez and his family from their home, and it was audio recorded by their outside surveillance system.

Perez reported Smith's comment to the authorities, and she was charged with violating the PFS order. The trial judge denied Smith's motion to dismiss the case based on her arguments the PFS order violated her right to free-speech, and her prosecution for violating Kansas' stalking law was unconstitutional.

Smith waived her right to a jury trial and agreed to a bench trial based on the stipulated facts a PFS order had been issued; it prohibited Smith from making public statements Perez was a child molester; and it was in effect at the time Smith stated loud enough for Perez to hear her assertion he was a pedophile. Smith offered no additional evidence during the trial, but renewed her arguments the PFS order violated right to free-speech and her prosecution was unconstitutional.

Kansas Judicial Center - Court of Appeals

Douglas County District Court Judge Peggy Kittel found Smith was guilty of violating the order and stalking Perez. Smith was sentenced to 90 days in jail, which the judge suspended in lieu of her successfully completing 12 months probation.

Smith appealed.

On September 27, 2019 the Kansas Court of Appeal set-aside Smith's stalking conviction on the basis the PFS order was an improper prior restraint of her constitutional right to freedom of speech. The Court's ruling in *Kansas v. Smith* (2019) **stated in part**:

"SMITH'S SPEECH WARRANTS FIRST AMENDMENT PROTECTION

The State invokes the defamation category, arguing that Smith's speech is not entitled to First Amendment protection because it was "almost certainly defamatory." Yet...

1. *The State fails to show that Smith's slanderous statement is unprotected.*

2. *The State fails to show that Smith's statement was false.*

3. *The State fails to show that Smith's statement was knowingly false.*

4. *The State fails to show that Smith's statement damaged Perez' reputation.*

No facts thus make a prima facie showing that Smith's statement was defamatory ... As a result,we find that Smith's statement warrants First Amendment protection. [12]

THE PFS ORDER IS A CONTENT-BASED RESTRICTION

The State contends that it is unclear whether the PFS order is a content based restriction ...

We find it clear that the PFS order is a content-based prior restraint on speech. It is a court order forbidding a specific speaker from specific expression. It enjoins Smith from "mak[ing] direct or indirect disparaging statements in public regarding plaintiff being a child molest[e]r."

...

The PFS order restricts Smith's speech based on its content in advance of its actual expression, so it is presumptively unconstitutional. [14]

THE STATE FAILS TO SHOW THAT THE PFS ORDER SERVES A COMPELLING INTEREST

Restrictions on free speech are valid only where narrowly tailored to serve compelling public interests and where no less restrictive alternatives are available.

....

The State fails to show that it has a compelling state interest in protecting citizens from slanderous statements, generally. Instead, the legitimate governmental purpose of these [PFS] statutes is to prevent physical violence.

...

We thus find the PFS order, as applied, is an improper prior restraint of Smith's constitutional right to freedom of speech. Accordingly, we reverse the conviction and vacate Smith's sentence."[16]

Read *Kansas v. Smith*, No. 119919 (KS Ct of Appeals, Sept. 27, 2019) at, **https://law.justia.com/cases/kansas/court-of-appeals/2019/119919.html**.

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Doctor's Conviction for Breaching Medical Confidentiality Overturned by Appeals Court

Dr. Soo Shuenn Chiang's conviction for breach of a patient's medical confidentiality was overturned by Singapore's High Court on October 18, 2019.

In 2015 Chiang was the director of the Neuroscience Clinic at the National University Hospital in Singapore.

A female patient filed a complaint that Chiang had provided a memo of personal medical information to her brother without her consent. She further alleged her brother posed as her husband during a call to the hospital to request the information. The memo detailed Chiang's assessment the woman was depressed, misused alcohol, and she was at risk of self-harm from her depression. The brother used the information in the memo to get a personal protection order against his sister.

Based on the narrative described in the patient's complaint, Chiang pled guilty on March 5, 2019 to one count of breaching a patient's medical confidentiality. He was fined S$50,000 (about US$37,000) and ordered to pay court costs. Chiang didn't fight the charge because he wanted to put the episode behind him.

Nine days after he pled guilty and was sentenced, the Singapore Medical Council (SMC) announced on March 14 it would apply to the High Court for a reduction in Chiang's fine.

Shortly afterwards, the patient's brother published on social media his account of the incident. He stated he did not call the hospital, but that his sister's husband had called and requested her medical information. However, he picked up the memo instead of her husband.

SMC's investigators then interviewed and obtained statements from both the brother and the husband about the incident.

The key new information that it was the husband who called Chiang and requested his wife's medical records -- and he had the legal right to do so -- contradicted the Agreed Statement of Facts that Chiang relied on to pled guilty. It formed the basis of Chiang's appeal to overturn his conviction.

Dr. Soo Shuenn Chiang (NUH)

On October 18, 2019 Singapore's High Court reversed Soo Chiang's conviction based on insufficient evidence he illegally breached his patient's confidentiality. The Court ruled Chiang had taken reasonable, appropriate steps, and had good reason to disclose his patient's confidential information to her husband.

The Court's **ruling stated**: "As a preliminary point, a doctor may disclose a patient's confidential medical information without her consent when he reasonably regards it as necessary to protect the patient from potentially serious self-harm; disclosure is in the patient's best interests; and the patient's consent cannot reasonably be obtained. ...In such circumstances, the disclosure should be made to those closest to the patient, such as her next of kin." The Court also determined Chiang could not be held responsible for how the husband might decide to use the information in the memo, since he expected it to be delivered to the husband as he had instructed. The Court explained: "Any administrative failings of the clinic staff in handing the memorandum to the brother contrary to Dr Soo's [Chiang's] instructions would fall outside the scope of Dr Soo's duty to maintain the complainant's medical confidentiality."

Consequently, the charge against Chiang had not been proven and the Court set aside his conviction.

Beyond its analysis of his case's facts, the Court laid some responsibility on Chiang **for his conviction**: "These [new] factual elements should and likely would have been brought forth earlier had Dr. Soo [Chiang] not been so keen to put this matter behind him, regardless of the cost to him and, it seems, to the medical profession."

Sources:

High Court overturns conviction of doctor fined S$50,000 for giving out patient's details, By Staff, Channel NewsAsia, October 18, 2019

Singapore Medical Council to appeal doctor's conviction after he gave out patient's details, By Staff, Channel NewsAsia, May 21, 2019

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**.

M. Robert Neulander Granted New Trial Based On Juror Misconduct Of Texting About Case And Doing Internet Research

Dr. M. Robert Neulander was granted a new trial by the New York Court of Appeals on October 22, 2019 based on a juror's egregious misconduct. The juror's conduct included defying the judge's orders by researching the case on the Internet and sending hundreds of text messages during the trial. Neulander was convicted in 2015 of murdering his wife in 2012 and tampering with physical evidence.

In September 2012 Leslie Neulander died in the family home in Manlius, New York, a suburb of Syracuse.

Neulander was a prominent obstetrician-gynecologist in the Syracuse area. He told police his wife fell while showering, and he carried her into their bedroom where he tried to resuscitate her. 911 was called by one of the Neulander's daughters who was home.

The Onondaga County Medical Examiner who performed Leslie's autopsy ruled her death was an accident caused by her hitting her head during a fall in the shower. However, after discussing the case with Onondaga County prosecutors and other pathologists, he changed the cause of death to homicide from trauma to her head.

Neulander was charged with second-degree murder and tampering with physical evidence -- which was based on his admission he moved her from the shower.

The Neulanders had been married for 30 years. Although they were in the midst of a divorce, they were living together in the family home at the time of Leslie's death.

During Neulander's trial the prosecution's circumstantial case was based on their contention he killed his wife during a fit of rage. They presented expert testimony Leslie's injuries and blood in the hallway and bedroom were more extensive than what would have been caused by her falling in the shower and him carrying her.

Neulander's defense was he found Leslie in the shower and carried her into their bedroom where he tried to resuscitate her. He presented expert testimony his wife's injuries were caused by falling in the shower.

Dr. M. Robert Neulander during sentencing hearing on July 30, 2015 in Onondaga County Court (Syracuse Post Standard)

After a three-week trial the jury found Neulander guilty of both charges in March 2015.

The couples four children supported their father, and along with Leslie's sister, requested in writing that the judge give him a lenient sentence. His daughter Jenna, who was home at the time her mother died and called 911, **cried out** in court during the sentencing: "Daddy, I love you!" Judge Thomas J. Miller took the requests into consideration in sentencing Neulander to 20 years to life in prison on July 30, 2015.

Neulander's Conviction Clouded By Juror Misconduct

Although Neulander had been sentenced and was serving his prison sentence, his conviction was clouded by juror misconduct.

At the end of the second day of deliberations Neulander's lawyer, Edward Menkin, saw juror number 12, Johanna Lorraine, talking with a discharged alternate juror. He reported it to Judge Miller and requested that Lorraine be questioned prior to deliberations resuming the next day.

Lorraine was questioned by the Judge the next morning and she admitted talking with the discharged juror, Elisabetta DiTota. However, she said they didn't discuss the case and she hadn't discussed the case with anyone except jurors during deliberations. Later that day the jury returned with its verdict finding Neulander guilty of all charges.

After the verdict was announced DiTota contacted Neulander's lawyer and told him that contrary to the judge's repeated instruction prohibiting outside communications, Lorraine had been using the Internet and social media during the trial, and when they talked after the second day of deliberations Lorraine told her the jury was evenly divided for acquittal and conviction.

Menkin filed a motion to set-aside the jury's verdict and for a new trial based on Lorraine's misconduct.

Lorraine provided an affidavit to the prosecutors in which she denied most of DiTota's assertions, and swore she didn't discuss jury deliberations with her. She **even stated**: "At all times throughout the trial and throughout the deliberative process I followed Judge Miller's instructions."

Menkin obtained a subpoena for forensic examination of Lorraine's mobile phone. It revealed Lorraine had made over 7,000 texts during the trial that included hundreds with family and friends about the case. The exam also found Lorraine had recently deleted many messages and her phone's Internet browsing history to try and cover her tracks, but she left evidence that included visits to a local news website that had over 300 stories about the case. The examination showed Lorraine blatantly lied to the judge when she was questioned during the deliberations, and her affidavit included false and misleading statements.

One of the texts was from her father who told her: "Make sure he's guilty." A friend referred to Neulander repeatedly in texts as "scary."

Judge Miller held an evidentiary hearing concerning Lorraine's misconduct, during which she admitted the texting violated the judge's rules. Although Miller ruled Lorraine had engaged in serious misconduct and prevarication by texting hundreds of times about the case, researching the case on the Internet, deleting texts and her browsing history to try and conceal what she had done, and lying when questioned by the judge and in her affidavit, on June 27, 2016 he denied Neulander's motion for a new trial. He didn't think Lorraine's misconduct deprived Neulander of a fair trial.

Neulander appealed.

On June 29, 2018 in a 3-2 majority decision the New York Supreme Court Appellate Division overturned Neulander's conviction and ordered a new trial based on Lorraine's misconduct. The ruling **stated in part**:

> "We observe that, had this juror's misconduct been discovered during voir dire or during the trial, rather than after the verdict, the weight of authority under CPL 270.35 would have compelled her discharge on the ground that she was grossly unqualified and/or had engaged in misconduct of a substantial nature. ... Here, due to juror number 12's flagrant

Neulander cont. on p. 14

Neulander cont. from p. 13

> failure to follow the court's instructions and her concealment of that substantial misconduct, defendant, through no fault of his own, was denied the opportunity to seek her discharge during trial on the ground that she was grossly unqualified and/or had engaged in substantial misconduct. [1767]
>
> We conclude that every defendant has a right to be tried by jurors who follow the court's instructions, do not lie in sworn affidavits about their misconduct during the trial, and do not make substantial efforts to conceal and erase their misconduct when the court conducts an inquiry with respect thereto. These rights are substantial and fundamental to the fair and impartial administration of a criminal trial. Presented with the totality of the circumstances here, we thus conclude that defendant established by a preponderance of the evidence that juror number 12 engaged in substantial misconduct that "created a significant risk that a substantial right of ... defendant was prejudiced." [] As a result, the judgment must be reversed and a new trial granted." [1768]

The State appealed, arguing Neulander's misconduct wasn't serious enough to warrant a new trial, as two judges argued in their dissent.

After three years in prison, the 66-year-old Neulander was released on $1 million bail in 2018 pending the outcome of his case.

On October 22, 2019 the New York Court of Appeals unanimously affirmed the Appellate Division's ruling. In *People v. Neulander*, 71 Opn 19 (NY Ct. of App, 10-22-19) the Court's ruling stated in part:

> "We agree that, on this record, he is entitled to a new trial. "Nothing is more basic to the criminal process than the right of an accused to a trial by an impartial jury"
>
> ...
>
> Throughout the trial, one of the jurors, Juror 12, sent and received hundreds of text messages about the case. Certain text messages sent and received by Juror 12 were troublesome and inconsistent with the trial court's repeated instructions not to discuss the case with any person and to report any attempts by anyone to discuss the case with a juror. Juror 12 also accessed local media websites that were covering the trial extensively. In order to hide her misconduct, Juror 12 lied under oath to the court, deceived the People and the court by providing a false affidavit and tendering doctored text message exchanges in support of that affidavit, selectively deleted other text messages she deemed "problematic," and deleted her now-irretrievable Internet browsing history. The cumulative effect of Juror 12's extreme deception and dishonesty compels us to conclude that her "improper conduct . . . may have affected a substantial right of defendant." [2]
>
> ... The Appellate Division ... reversed the judgment and granted a new trial, with the majority observing that "every defendant has a right to be tried by jurors who follow the court's instructions, do not lie in sworn affidavits about their misconduct during the trial, and do not make substantial efforts to conceal and erase their misconduct when the court conducts an inquiry with respect thereto." [] We agree that the extensiveness and egregiousness of the disregard, deception, and dissembling occurring here leave no alternative but to reverse the judgment of conviction and remit for a new trial and compel us to affirm publicly the importance of juror honesty." [2-3]
>
> ... This is not a case of stray texts or inadvertent misstatements. ... [3]
>
> In this case, a sworn juror, when examined by the court about the breadth of her outside communications was repeatedly and deliberately untruthful about the scope of that misconduct and affirmatively sought to conceal evidence of her misconduct. That extraordinary and dishonest behavior by a juror purposefully selected to be a fair and objective arbiter of the facts in the case causes irredeemable injury to the judicial system and the public's confidence in it." [4]
>
> The People contend that even if Juror 12 engaged in misconduct, "that misconduct is significantly outweighed by the substantial proof of guilt presented at trial." However, "[t]he right to a fair trial is self-standing and proof of guilt ... can never be permitted to negate this right" [5]
>
> Accordingly, the order of the Appellate Division should be affirmed." [5]

Read the Appellate Divisions ruling in *People v. Neulander*, 162 AD 3d 1763 (NY: Appellate Div., 4th Dept. 2018) at, **https://scholar.google.com/scholar_case?case=6619941163598387058&q=People+v.+Neulander,+162+A.D.3d+1771&hl=en&as_sdt=806**.

The prosecution now has to decide if it wants to proceed with a retrial, offer Neulander a plea deal, or dismiss the charges. One interesting fact that came out of the investigation into Lorraine's misconduct was the jury was deadlocked six for acquittal and six for conviction just hours before the jurors voted to convict him. It isn't known what caused the six jurors to cave in the last hours — Did Lorraine say something to sway them? — but Neulander's lawyers know the prosecution's case wasn't a slam dunk and with a different jury the outcome could be different.

Sources:

People v. Neulander, 71 Opn 19 (NY Ct. of App, 10-22-19) (juror misconduct warrants new trial)

People v. Neulander, 162 AD 3d 1763 - NY: Appellate Div., 4th Dept. 2018,

Dr. Robert Neulander found guilty of killing his wife and tampering with evidence, By Douglass Dowty, Syracuse Post Standard, March 22, 2015

Dr. Neulander sentenced to 20 years to life in state prison for murdering wife, By Douglass Dowty, Syracuse Post Standard, July 30, 2015

The Juror Who Exchanged 7,000 Text Messages: The conviction of a Syracuse doctor for murdering his wife hangs in the balance over juror misconduct, By Christian Nolan, New York State Bar Assoc. Journal, March 2019

Kirstin Lobato's federal lawsuit claims murder frame-up by Las Vegas Detectives Thomas Thowsen and James LaRochelle

By Hans Sherrer

Kirstin Blaise Lobato has filed a federal civil rights lawsuit in Las Vegas against the Metropolitan Police Department and former-Detectives Thomas Thowsen and James LaRochelle. Her suit alleges Thowsen and LaRochelle were complying with standard Metro practices when they conspired to frame her for the July 8, 2001 homicide of Duran Bailey in Las Vegas. Thowsen and LaRochelle arrested the 18-year-old Lobato on July 20, 2001, and she was charged with first-degree murder.

Lobato served more than 15 years in prison for Bailey's homicide before her release on January 3, 2018.

Lobato was convicted in 2002 of murder, but the Nevada Supreme Court overturned her convictions in 2004. She was convicted of the lesser charge of manslaughter after her retrial in 2006.

Her 2006 convictions were overturned in December 2017 and a new trial was ordered, based on new forensic evidence establishing Bailey died at a time when the prosecution conceded she was at her home in Panaca, 170 miles from Las Vegas. The Clark County DA declined to retry her and the charges were dismissed.

Lobato's lawsuit filed in U.S. District Court in Las Vegas alleges:

> "As a result of egregious misconduct by the Defendants [Metro, Thowsen and LaRochelle], Plaintiff Kirstin Blaise Lobato was wrongfully convicted of a murder that she did not commit.
> ...
> Although Defendants knew that Plaintiff could not have committed the crime, they decided to pin the murder on her by, among other things, fabricating evidence, obtaining involuntary statements, and ignoring clear evidence of Plaintiff's innocence.
>
> ... At the time that she was wrongfully framed for the murder, Plaintiff had just completed high school and had her whole life ahead of her. Plaintiff was irreparably and immeasurably harmed when years of life were unjustly stolen from her. This lawsuit seeks a measure of redress for the wrongs done to Plaintiff, as well as to deter future misconduct."

Kirstin Blaise Lobato (middle top), Becky Lobato (step-mother, left top), Larry Lobato (father, right top), and Michelle Ravell (middle bottom) outside the Clark County Detention Center after Blaise's release on January 3, 2018 (Justin McAffee)

The following is a summary of the lawsuit's claims:

> Count 1. ... Thowsen and LaRochelle, acting as investigators, individually, jointly, and in conspiracy with one another, forced Plaintiff to incriminate herself falsely and against her will, in violation of her rights secured by the Fifth and Fourteenth Amendments. ... Upon information and belief, the misconduct described in this Count was undertaken pursuant to the policy and practices of Defendant LVMPD ...
>
> Count 2. ... Thowsen and LaRochelle, acting as investigators, individually, jointly and in conspiracy with each other, deprived Plaintiff of her constitutional right to due process and a fair trial. ... Thowsen and LaRochelle fabricated and solicited false evidence, as well as withheld exculpatory evidence from Plaintiff and from state prosecutors, among others, thereby misleading and misdirecting the criminal prosecution of Plaintiff. ... Thowsen and LaRochelle subjected Plaintiff to arbitrary governmental action that shocks the conscience in that Plaintiff was deliberately and intentionally framed for a crime of which she is totally innocent ... Thowsen and LaRochelle's misconduct described in this Count was undertaken pursuant to the policies, practices, and customs of Defendant LVMPD...
>
> Count 3. ... Defendants Thowsen and LaRochelle, acting as investigators, individually, jointly, and in conspiracy with each other, accused Plaintiff of criminal activity and exerted influence to initiate, continue, and perpetuate judicial proceedings against Plaintiff without any probable cause for doing so and in spite of the fact that they knew Plaintiff was innocent. ... Thowsen and LaRochelle's misconduct described in this Count was undertaken pursuant to the policies, practices, and customs of Defendant LVMPD...
>
> Count 4. ... Defendants Thowsen and LaRochelle each stood by without intervening to prevent the violation of Plaintiff's constitutional rights, even though they had the opportunity to do so.
>
> Count 5. ... Prior to Plaintiff's conviction, Defendants Thowsen and LaRochelle, acting in concert with other co-conspirators, known and unknown, reached an agreement among themselves to frame Plaintiff for a crime she did not commit and thereby to deprive her of her constitutional rights ...
>
> Count 6. ... Defendants Thowsen and LaRochelle, acting as investigators, individually, jointly, and in conspiracy with each other, and maliciously, instituted or continued the prosecution of Plaintiff without probable cause. As a consequence of the criminal prosecution, Plaintiff was unlawfully seized, deprived of liberty, and wrongfully convicted of a crime of which she is innocent.
>
> Count 7. ... Defendants Thowsen and LaRochelle ... procured and exerted influence to continue a criminal proceeding against Plaintiff, with an ulterior purpose other than resolving a legal dispute or resolving the guilt or innocence of Plaintiff in the murder of Duran Bailey.
>
> Count 8. ... Defendants Thowsen and LaRochelle, acting as investigators, individually, jointly, and in conspiracy with each other, engaged in extreme and outrageous conduct with the intention of, or with reckless disregard for, causing Plaintiff emotional distress, and Plaintiff suffered severe or extreme emotional distress.
>
> Count 9. ... Defendants Thowsen and LaRochelle, acting in concert with other known and unknown co-conspirators conspired and intended by concerted action to accomplish an unlawful objective for the purpose of harming Plaintiff, which resulted in damage to her.

Lobato cont. on p. 16

Lobato cont. from p. 15

> Count 10. ... Nevada law provides that LVMPD is directed to pay any tort judgment for compensatory damages for which their employees are liable within the scope of their employment activities. Defendants Thowsen and LaRochelle were employees of the Defendant LVMPD and acted within the scope of their employment at all times relevant in committing the actions and omissions described herein.

Thowsen and LaRochelle filed a response on September 13, 2019 that sought to have seven of the claims dismissed for legal or procedural reasons. The three claims they did not seek to dismiss -- and which they may be willing to negotiate a settlement or go to trial for a jury to decide -- are Count 2 (fabricating and withholding evidence, and inadequate investigation); Count 5 (conspiracy); and Count 10 (Metro's financial liability for conduct by Thowsen and LaRochelle).

Lobato is represented by the Chicago based law firm of Loevy & Loevy, which filed a response to the Motion to Dismiss on October 18. U.S. District Court Judge Richard Boulware has not yet made a ruling on the motion.

Loevy & Loevy has won over $200 million for wrongly convicted clients. Some of those awards are:

* $40 million for five co-defendants wrongly imprisoned a total of 75 years for murder & rape.
* $31 million for four co-defendants wrongly imprisoned a total of 63 years for murder & rape.
* $25 million for Thaddeus J. Jimenez, wrongly imprisoned 16 years for murder.
* $20 million for Juan A. Rivera Jr., wrongly imprisoned 20 years for murder & rape.
* $17.35 million for Jacques Rivera, wrongly imprisoned 21 years for murder.
* $16.4 million for Juan Johnson, wrongly imprisoned 11 years for murder.
* $15.5 million for Theodore W. White Jr., wrongly imprisoned 5 years for sexual assault.
* $13.2 million for David Ayers, wrongly imprisoned 11 years for murder.
* $10.25 million for Alton Logan, wrongly imprisoned 26 years for murder.
* $10 million for Eric Caine, wrongly imprisoned 25 years for murder.
* $9.3 million for James Kluppelberg, wrongly imprisoned 24 years for murder.
* $9 million for Alejandro Dominguez, wrongly imprisoned 9 years for rape.
* $6.5 million for Chaunte Ott, wrongly imprisoned 13 years for murder.
* $6.375 million for Larry Gillard, wrongly imprisoned 17 years for rape.

Lobato's case is: *Lobato v. Las Vegas Metropolitan Police Department, et. al.*, Case No. 2:19-cv-01273 (USDC Nev.) (Filed 7-23-19).

Lobato could also file a federal civil rights lawsuit against several other government entities and their agents that aided her wrongful convictions. Those include:

The Clark County Special Public Defenders Office. A key hurdle Lobato must overcome to win a federal civil rights lawsuit is to prove a government agent or agency violated one or more of her constitutional rights. That hurdle was overcome in a claim against the SPD by Judge Stefany Miley's Order overturning Lobato's convictions on the basis the SPD violated her constitutional right to effective assistance of counsel by failing to investigate Bailey's time of death in preparation for her trial. The Clark County DA's Office did not appeal that ruling. As the above list indicates she could be awarded a very substantial multi-million dollar award from Clark County because of the SPD's unconstitutional conduct.

The Clark County Coroner's Office. Lobato could argue there is evidence in the public record the Coroner may have gamed his testimony about Bailey's time of death, and that testimony assisted the DA's Office to negate Lobato's alibi and obtain her wrongful convictions. Lobato could argue that without the Coroner's possibly shady testimony her uncontested alibi evidence about when she was in Panaca would have prevented her from twice being wrongly convicted.

Lincoln County. Lincoln County Juvenile Officer Laura Johnson twice spoke with Thowsen prior to him arresting Lobato for Bailey's homicide. Johnson was the only person Thowsen talked with who claimed to have pertinent information about Lobato, before he arrested her. Lobato could argue there is evidence in the public record Johnson relayed both inflammatory uncorroborated third-hand gossip and false information to Thowsen about her, and that Johnson also discouraged him from talking to a key witness. Lobato could argue she wouldn't have been arrested for Bailey's homicide if Johnson -- while acting as the LCJO -- had not trafficked in innuendo, been truthful, and did not want Thowsen to talk to a witness who could have undermined what she told him.

The Clark County Public Defender's Office. PD Phil Kohn acted as Lobato's attorney during her preliminary hearing in August 2001. Lobato could argue there is evidence in the public record supporting that but for Kohn's performance, at least one of the felony charges could have been dismissed against her, which would have undermined the DA's case and possibly resulted in the dismissal of all charges prior to her first trial in 2002.

The Clark County District Attorney's Office. Lobato could argue there is evidence in the public record supporting malicious prosecution claims against former DA David Roger; current DA Steven Wolfson; the two ADAs who prosecuted Lobato at trial, Sandra DiGiacomo and current Clark County District Court Judge William Kephart; and the DA's Office itself for fostering an environment and permitting practices that resulted in Lobato's wrongful prosecution and convictions. Kephart also signed the DA's response that opposed the granting of Lobato's habeas corpus petition filed in May 2011. The DA's vigorous opposition to her petition resulted in her spending an additional 6 years and 8 months in prison before her convictions were overturned and she was released.

There is no shortage of Clark County (and Lincoln County) agencies and employees whose conduct directly resulted in or directly contributed to Lobato's prosecution and/or conviction for a crime that forensic evidence and uncontested alibi witnesses prove was impossible for her to have committed.

Justice Denied conducted the post-conviction investigation of Kirstin Lobato's case that discovered the new forensic entomology evidence proving Bailey died in Las Vegas at a time when it is known Lobato was in Panaca. That new evidence resulted in the dismissal of her charges and her release from prison. Detailed information about Lobato's case is on Justice Denied's website at, **http://justicedenied.org/kbl.htm**.

Kirstin Blaise Lobato's Unreasonable Conviction: Possibility Of Guilt Replaces Proof Beyond A Reasonable Doubt can be downloaded at no charge at, **http://justicedenied.org/lobatobook.html**. It is the definitive book about Lobato's case written by Justice Denied's publisher and editor Hans Sherrer.

New York Judge Sylvia Ash Charged With Obstructing Federal Investigation Of Credit Union Fraud

New York Supreme Court Judge Sylvia Ash has been indicted by a federal grand jury for obstruction of justice and conspiracy to obstruct justice. Judge Ash's charges are based on evidence she repeatedly attempted to influence and impede a federal investigation of New York State's Municipal Credit Union ("MCU").

Ash was arrested and taken into custody by U.S. marshals at New York's LaGuardia airport on October 11. Ash tried to avoid arrest by her lawyer telling federal prosecutors she was in Africa when she was actually in Miami. She was apprehended when she landed at LaGuardia.

Ash was released on a $500,000 bond. Among her release conditions is she had to surrender her passport and she is subject to 24/7 electronic monitoring of her whereabouts.

During her bail hearing Assistant U.S. Attorney Eli Mark **told the** magistrate that Ash acted as if she were "really above the law." He also said, "The defendant is not someone who should be particularly trusted by the court," stating her alleged crimes involved "lies, deception, concealment, destruction of evidence."

MCU is New York's oldest and largest credit union, and one of the oldest and largest in the United States. It has more than $2.9 billion in deposits by more than 500,000 members, and each account is federally insured for at least $250,000.

From May 2008 until August 2016 Ash was on MCU's Board of Directors, and served for a time as chairman of the board.

In January 2018 Ash was questioned by federal agents during a federal investigation into financial corruption at MCU. One of the investigation's targets was her friend Kam Wong, who was MCU's CEO and president from 2007 until June 2018.

Wong was federally indicted in May 2018 on corruption charges. He pled guilty on December 2, 2018 to embezzling $10 million from MCU. Wong **acknowledged in his** written plea agreement to "endeavoring

New York Supreme Court Judge Sylvia Ash (NyCourts.gov)

to obstruct and impede and obstructing and impeding the administration of justice with respect to the criminal investigation into this matter, and agreeing with one or more others to do the same." Wong was sentenced to 5-1/2 years in federal prison.

While Wong was MCU's CEO, Ash received tens of thousands of dollars each year in reimbursements and other benefits from MCU. Those benefits included reimbursement of airfare, hotel, food and entertainment expenses for both her and a guest to attend conferences in the U.S. and internationally. MCU also paid Ash's phone, cable, and electronic devices bills.

Although she was being paid $210,000 a year as a judge, after she resigned from the MCU Board Wong ensured that MCU continued to provide Ash with substantial financial benefits that included an Apple IPhone and other devices. MCU even paid all expenses for Ash and a guest to attend a Britney Spears concert at Planet Hollywood in Las Vegas in October 2016 — which was after Ash had resigned. MCU also paid almost two thousand dollars for a party Ash put on in Coney Island in August 2017 — also after she resigned.

During the course of the MCU investigation federal agents learned that Ash not only made false and misleading statements to them, but that she deleted texts and emails from her MCU-issued IPhone, that she tried to wipe clean after she was questioned about Wong and MCU in January 2018.

The investigation also found evidence that Ash and Wong came to an understanding **for her** "to sign a false and misleading memorandum purporting to explain and justify millions of dollars in payments that Wong had received from MCU, which was then provided by Wong to law enforcement officers."

Ash was indicted on October 4, 2019 by a federal grand jury and charged with one count of conspiracy to obstruct justice and two counts of obstruction of justice, based on the evidence she agreed to and actively sought to influence and impede the federal investigation of Wong and MCU by: 1) trying to conceal and destroy relevant evidence sought by federal grand jury subpoenas; **and 2)** "making false and misleading statements to federal law enforcement officers in interviews conducted as part of a federal criminal investigation."

Sylvia G. Ash graduated from law school in 1984 and was admitted to the New York Bar in 1985. Ash was elected to the Kings County, New York Civil Court in 2005 and she took office in 2006. In November 2010 she was elected to a 14-year-term as a Kings County Supreme Court judge.

The federal investigation found that Ash did not report on any of her annual disclosure reports to the New York State Office of Court Administration -- as required by law -- that she served on the MCU Board or any of the reimbursements, gifts, or compensation she received from MCU.

The investigation also found that while on the MCU Board Ash engaged in the gross conflict of interest of presiding over court cases and issued an opinion or order in many cases in which MCU was a party.

Ash didn't resign from the MCU Board until the New York State Commission on Judicial Conduct filed a complaint against her for violating the rules governing a judge's extra-judicial activities, because MCU was regularly engaged in "adversary proceedings" in New York courts.

Ash, 62, pled not guilty at her arraignment. She faces a maximum of 20 years in prison for each count. Since she is presumed innocent unless and until she is convicted, she was placed on paid leave from her judicial duties pending the outcome of her criminal case.

Sources:

USA v. Ash, No. 1:2019mj09341 (New York Southern District Court), Sealed indictment filed on 10/04/2019.

Brooklyn judge deleted text messages after learning of MCU corruption probe: prosecutors, By Stephen Rex Brown, New York Daily News, October 11, 2019,

Press Release, Department of Justice, U.S. Attorney's Office, Southern District of New York, Oct. 11, 2019

NY Judge Served as MCU Board Member & Presided Over Court Cases Involving the CU, By Peter Strozniak, Credit Union Times, October 15, 2019

Sylvia G. Ash, Ballotpedia.org
https://ballotpedia.org/Sylvia_G._Ash

US Supreme Court Asked To Review Dismissal Of Pro Se Federal Civil Rights Lawsuit

William Bond has filed a writ of *certiorari* with the U.S. Supreme Court concerning his *pro se* civil rights lawsuit against FBI agents and members of the U.S. Marshals Service. Bond's lawsuit claims those federal employees violated his constitutional rights by acting to chill his freedom of speech.

Pro se civil rights litigants across the country would benefit if the Supreme Court accepts Bond's case and rules in his favor.

Bond's writ filed on December 17, 2018 asserts the U.S. District Court erred dismissing his lawsuit without articulating its specific deficiencies. Consequently Bond didn't know what to correct in an amended complaint so his lawsuit could move forward. Bond asserts the judge erroneously held him to the same standard of legal understanding and competence as if he had been an attorney. Bond's writ is based on U.S. Supreme Court's rulings that *pro se* complaints must be "held to less stringent standards" than those filed by attorneys. The Fourth Circuit Court of Appeal affirmed the judge's ruling.

The question Bond requested the Supreme Court to decide is: "Whether a District Court Must Provide a Pro Se Litigant Sufficient Notice of Pleading Deficiencies."

Bond's **writ asserts** he was expected to have the legal knowledge and analytical skills of a lawyer, because "in the decision below, the Fourth Circuit, itself, undertook the very analysis that would be required of a *pro se* litigant..." Bond asserts: "The decision below also confirms that this rule requires *pro se* litigants to independently analyze and extrapolate from prior judicial rulings, thus requiring an individual with no legal training to investigate the judicial record and deduce the court's reasoning on multiple bases."

Bond's writ explains the Supreme Court's intervention is necessary because there is a split in the notice requirements of different federal circuits. Currently five federal circuits require district courts to provide justifying reasons when denying *pro se* a litigant leave to amend a complaint. While four circuits -- including the Fourth Circuit in which Bond is located -- do not require a district court to include a reason when denying a *pro se* litigant leave to amend a complaint if the judge considers the reason(s) for the denial to be apparent in the case record.

Former Seventh Circuit Court of Appeals Judge Richard Posner (uchicago.edu).

The circumstances of Bond's case may result in him garnering the vote of four Supreme Court justices that is necessary for review of his case to be granted. While he started *pro se*, he is now being represented *pro bono* by two legal heavyweights: retired Seventh Circuit Court of Appeals Judge Richard Posner, and nationally known attorney David Boies. Two other prominent lawyers are also representing Bond *pro bono*.

To emphasize the injustice inflicted on Bond, his writ asserts the district court erred as a matter of law in dismissing his complaint, and the Fourth Circuit Court of Appeal compounded that error by affirming the judge's ruling. Bond's **writ states**:

> "The Second Amended Complaint sufficiently alleges that Petitioner censored himself as a result of an objectively credible government threat. Petitioner alleged that he was twice interrogated by FBI agents and a deputy U.S. Marshal before his planned public protests and that during these interrogations Petitioner was questioned about what it would take to"make the scheduled courthouse protests go away." [] Petitioner also alleged that the government agents threatened to return and arrest him for possessing a firearm that he repeatedly told them he did not own. []
>
> In the Fourth Circuit, self-censorship satisfies standing if it was caused by a credible threat of government action that "is 'likely [to] deter a person of ordinary firmness from the exercise of First Amendment rights.'" [] Here, the alleged government acts—including threatening arrest—constitute credible threats from an objective standpoint, and thus satisfy standing.
>
> The Second Amended Complaint also sufficiently alleges "self-censorship" necessary to constitute an injury-in-fact as a result of those threats. To establish an injury-in-fact, the objective threat need only interfere with the First Amendment activity and it is not necessary to eliminate it. [] Petitioner alleged that the government threats had the effect of "diluting plaintiff's demonstration planning" and that it "chilled and curtailed the robustness" of Petitioner's First Amendment activity "as one would expect following visits from interrogating law enforcement personnel asking 'What will it take to get you to shut up?'" [] These allegations are sufficient to show both standing and an injury-in-fact under First Amendment jurisprudence."

The Solicitor General of the United States has until January 22, 2019 to file a response opposing the granting of Bond's writ.

If the Court grants Bond's writ, a schedule for briefing and oral arguments will be ordered.

Read the "Petition For A Writ Of Certiorari" in *William C. Bond v. United States of America, et. al*, No. 18-782 (USSC, 12-17-2018) at, **http://www.supremecourt.gov/DocketPDF/18/18-782/76456/20181217141343104_18%20Petition%20for%20Writ.pdf**.

The writ was distributed for Conference by the justices on April 10, 2019. On April 29 the petition was denied when it failed to receive at least four votes for its acceptance.

Sources:
Bond v. U.S., No 17-2150 (4th cir, 8-2-2018) (Opinion affirming district court order dismissing pro se lawsuit)

William C. Bond *v. United States of America, et. al*, No. 18-782 (USSC Docket)

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www.forejustice.org/exonerations.htm

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

By Hans Sherrer

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

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

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

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

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

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

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

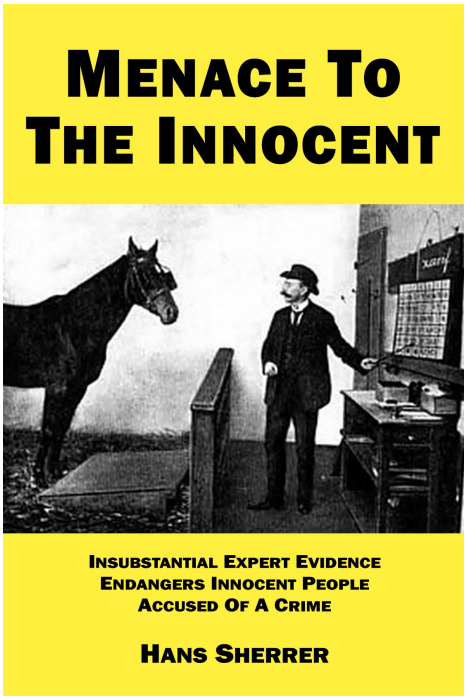
There is relatively little will-power by those within the system to correct this state of affairs. The four primary actors in the legal system's operation – judges, prosecutors, police, and defense lawyers – are integral parts of the assembly line that generates the steady flow of convictions the system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

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

****

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

The Table of Contents follows:



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

High Fence Foodie Cookbook Now Available!

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

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

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

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

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

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

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

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

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

High Fence Foodie continues the high standard of *From The Big House To Your House*!

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

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

$14.95

116 pages, softcover

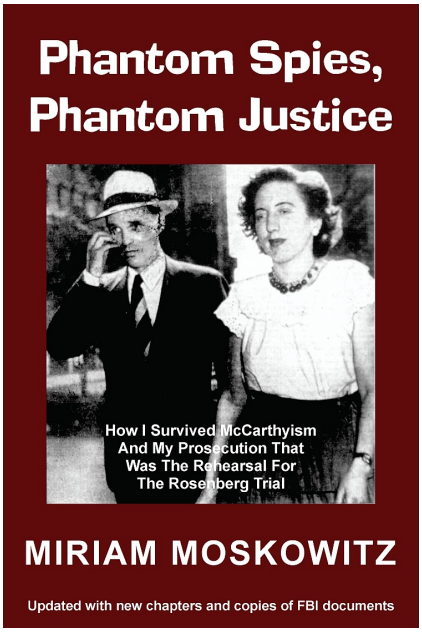
Order from Amazon.com at,

http://tinyurl.com/y8lgylwo

Phantom Spies, Phantom Justice

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

> Miriam Moskowitz is an innocent person who was caught up in the whirlwind of anti-communist hysteria that prevailed in this country at the time of her trial in 1950. We know that because of FBI documents she obtained through the Freedom of Information Act decades after her conviction for conspiring to obstruct justice during a grand jury investigation.
>
> The prosecution's case depended on the trial testimony of FBI informant Harry Gold. He testified that in 1947 *she observed* a conversation during which he and her business partner, Abraham Brothman, allegedly discussed providing false testimony to a grand jury investigating possible Soviet espionage. She did not testify before that grand jury.
>
> The FBI documents Ms. Moskowitz obtained are proof that prior to her trial Mr. Gold told the FBI *she was not present* during that alleged conversation. Furthermore, Mr. Gold told the FBI he didn't speak candidly in front of Ms. Moskowitz because of her possible negative reaction if he said something incriminating in her presence, and he didn't like her.



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

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

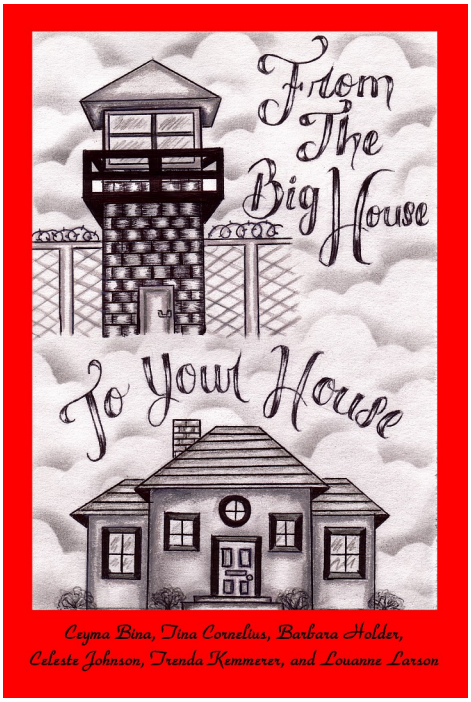
$19.95

302 pages, softcover

Order from Amazon.com at,

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

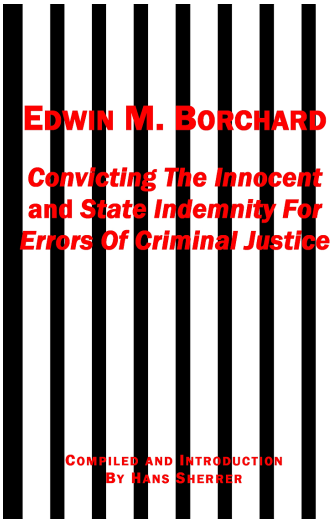
Edwin M. Borchard – Convicting The Innocent

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

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

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

Published By Justice Denied !!



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

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

$16.95

358 pages, softcover

Order from Amazon.com at,

http://tinyurl.com/ycjlhdub

Ramentastic

Creative Cooking With Ramen Noodles

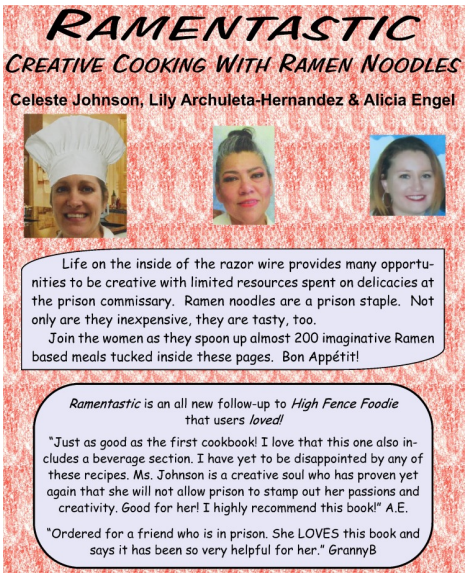
By Celeste Johnson, Lily Archuleta-Hernandez and Alicia Engel

Ramentastic: Creative Cooking With Ramen Noodles [is available on Amazon.com](https://tinyurl.com/w77thk6) at, https://tinyurl.com/w77thk6.

Ramentastic provides the cook who has only a limited source of food and supplies, recipes to make familiar tastes of home.

Ramen noodles are a staple for many people because they are a filling meal for those who need food that is fast, easy, and inexpensive to make. With over 180 recipes, this book will help you turn your Ramen noodles into fabulous feasts! We are confident that our clever recipes using these tasty noodles will wake up your taste buds!

The lunch, dinner, snack and dessert recipes can be enjoyed by anyone. Although written with the resources of prisoners in mind, the recipes can be prepared by students and other people with a limited income, or people who just want to try something different!



All the recipes have been tried and perfected under real world conditions by the three authors. Celeste Johnson and Lily Archuleta-Hernandez are prisoners in Texas, while Alicia Engel is an outside prisoner advocate.

This is the third cookbook in the "From The Big House To Your House" cookbook series. The first two are "*From The Big House To Your House*" and "*High Fence Foodie: From The Big House To Your House*."

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

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

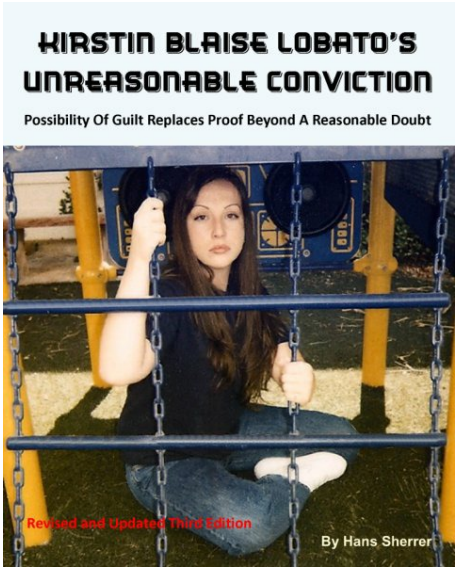
The book details how Kirstin Lobato has twice been convicted of a July 8, 2001 Las Vegas homicide when the prosecution doesn't deny it has no physical, forensic, eyewitness, confession, informant, surveillance video or documentary evidence she was in Las Vegas at any time on the day of the crime. The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

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

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

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

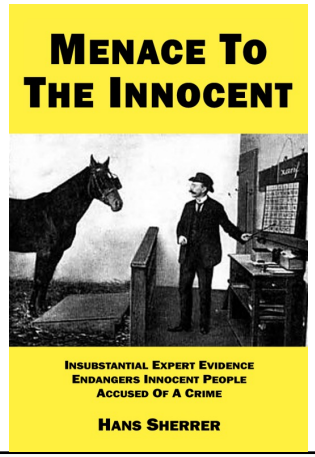
The 232-page book written by *Justice Denied's* editor and publisher Hans Sherrer is supported by 427 source endnotes. In documents filed in the Nevada Supreme Court, the Clark County District Attorney's Office and the State of Nevada don't assert there is a single factual error in the book.



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

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

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



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

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

A defendant's right to the presumption of innocence was advocated in a 1601 legal treatise by Italian Prospero Farinacci. The maxim 'Innocent until proven guilty' cannot be found in any English court case before 1800. It formally entered American law through the 1895 U.S. Supreme Court decision in *Coffin vs. U.S.,* 156 U.S. 432: "…the presumption of innocence is evidence in favor of the accused introduced by the law in his behalf…"

JUSTICE DENIED

The Magazine for the Wrongly Convicted

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

Prosecutor Frame-up Of Innocent Person Doesn't Always Work

George Zimmerman has filed a $100 million federal civil rights case based on new evidence his prosecutors used fake evidence in an effort to frame him for murder in the death of Trayvon Martin in 2012. Zimmerman was acquitted by a jury in 2013, but he only recently learned the prosecution's star witness was imposter posing as Martin's girlfriend.
See pg. 3

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.