

JUSTICE DENIED



The Magazine for the
Wrongly Convicted

ROLL CALL OF INNOCENT PEOPLE EXONERATED OR PARDONED IN 2003

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						Jason Williams	TX
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						Calvin Willis	LA
						Edwin Wilson	TX
						Kenneth Wyniemko	MI
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In This Issue!!

Robert Hayes' "Victimized" Daughter Says He's Innocent!

Was Michael Floyd Framed For Rape?

Ronnie Wilson - Convicted of the Prosecution Witness' Crime?

Berkshire County: How Not to Investigate Child Sexual Abuse

U.S. Businessman Anthony Marino Railroaded in Costa Rica

UPDATE! Tulia, TX Civil Rights Lawsuits Settled For \$5 Million!

Edwin Wilson's 1983 Frame-Up Tossed by Federal Judge

**Issue 24
Spring 2004**

Justice: Denied - Issue 24, Spring 2004

Table of Contents

Message From The Editor	2
An Abusive Mother Commits the Inconceivable Crime - The Robert Hays Story	3
Evidence Points at Prosecution's "Star Witness" - The Ronnie Wilson Story	4
Federal Judge Tosses Conviction of Ex-CIA Agent Framed by the CIA and Federal Prosecutors	4
Berkshire County: How Not to Investigate Child Sexual Abuse	5
Framed For Rape? - The Michael J. Floyd Story	6
Tulia Travesty Lawsuits Settled For \$5 Million	6
Rejoining Society After Serving Time for a Crime You Did Not Commit	7
Judge Orders August 2004 Evidentiary Hearing For Alan Yurko	8
Unjust Cruelty Hidden As Dual Criminality - The Anthony Marino Story	8
The Complicity of Judges In The Generation of Wrongful Convictions	10
The Exonerated	17
Innocence Projects Contact Information	19
Article Submission Guidelines and JD's Prisoner Mail Team	20
Justice: Denied's Informational Brochure	21-22
In the Next Issue of <i>Justice: Denied</i>	23

Message From The Editor

Greetings, JD members:

I want to thank all of you for your continuing support of *Justice: Denied*. Your memberships and donations are what has enabled us to continue publishing for more than five years.

I also want to thank Fred Woodworth for his very positive review of JD Issue 23 in the current issue (#101) of his magazine - *The Match*. Mr. Woodworth wrote two articles on the unreliability of fingerprint evidence reprinted in JD Vol. 2, Issue 9. For ordering information, see *The Match's* ad on page 23.

Please notice that mailing information for your stories is listed on page 20 of this issue. If you send us a SASE or a 37¢ stamp we will send information about submitting a story to JD and where to send your story depending on which state you are in. That information is also on *Justice: Denied's* website. JD's Coquille, Oregon address is **NOT** to be used for story submissions. Since we are an volunteer organization with limited resources, until further notice all stories sent to JD's Coquille address will be returned to the sender for mailing to the correct address. All other JD mail, including a change of address, new and renewed membership orders, information requests, and advertising queries, should be mailed to JD's Coquille address.

I also want to point out that it will help publicize the plight of the wrongly convicted if you spread the word to people you come in contact with that all of JD's back issues can be read on our website at: <http://justicedenied.org>.

So enjoy this issue and if you believe in the work we are doing, please encourage others to become members or donate to JD.

Clara A. Thomas Boggs
Editor in Chief and Publisher
Justice Denied -- The Magazine for the Wrongly Convicted
<http://justicedenied.org>

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



Information About Justice: Denied

A six issue membership to *Justice: Denied* magazine cost \$10 for prisoners and \$20 for all other people and organizations. (See note below) Prisoners can pay with stamps and pre-stamped envelope. A sample issue costs \$3. An information packet will be sent with requests that include a 37¢ stamp or a pre-stamped envelope (Please write INFO on the envelope). Write: Justice Denied - Info, PO Box 881, Coquille, OR 97423

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If you have a story of wrongful conviction that you want to share, please read and follow the Submission Guidelines on page 20. Cases of wrongful conviction submitted in accordance with *Justice: Denied's* guidelines will be considered for publication. Be sure and submit a case story to the person listed on page 20 for the state where the person is imprisoned or living. **CAUTION!** Story submissions sent to *Justice: Denied's* Coquille, OR address **will be** returned to you! If page 20 is missing, send a 37¢ stamp with a request for an information packet to the address listed in the first paragraph. *Justice: Denied* does not promise that it will publish any given story, because each story must pass a review process involving a number of staff members.

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This issue of *Justice: Denied* was laid out by Hans Sherrer using Serif's PagePlus 9

An Abusive Mother Commits the Inconceivable Crime - The Robert Hays Story

By Virginia Russo and Rhonda Riglesberger, JD Staff

Edited by Sheila Howard, JD Staff

A loving father of five was falsely accused of molesting his eight-year-old daughter, and received four consecutive life sentences. He has spent the last ten years in a Nevada State Prison attempting to prove his innocence. This is Robert and Jennifer's story.

In 1992, Robert Hays was charged with four counts of sexual assault and four counts of lewdness with his then eight-year-old daughter, Jennifer. Over the years, Jennifer has repeatedly refuted the allegations against her father and has publicly denounced them as false. She insists that her father never molested her and has signed several sworn affidavits to reflect this. The first of these affidavits was signed within a week of Robert's conviction. Jennifer has appeared on both the Maury Povich and Montel Williams Show earnestly seeking to help her father and desperately trying to set the record straight.

Robert's problems began approximately a year before his arrest when he left his wife and gained custody of their children. They lived in Brooklyn, New York at the time. Unfortunately, he loved his wife and the couple reconciled after only a few months. Shortly after the reunification, and after they had moved to Las Vegas, Nevada, his wife filed the false allegations against him. It is a matter of record that his wife suffered from mental illness. She further exacerbated her symptoms by using alcohol and illegal drugs. She often committed acts of prostitution to support these activities, and had more than a few illicit affairs. She admitted under oath that she had committed numerous instances of infidelity during their marriage.

Robert's trial transcripts openly reveal that his wife, K.H., was a terrible mother, dirty, unkempt, horribly neglectful, and abusive towards her young children. She left them in dirty diapers, neglected to feed them and relied on her eight-year-old daughter to care for them before she left for school in the mornings. She had severe mood swings, unexplained angry outbursts, and constantly told her children that she hated Robert. There were several episodes of violence, instances where others had stopped her from beating the children, many documented in Robert's trial transcripts.

The extremely troubled K.H. was in fact much more mentally ill and abusive towards her children than anyone could have predicted. Jennifer had a close relationship with her father, which may have created "a bone of contention" between her and her mother. Robert felt sorry for Jennifer because she had so much responsibility for her siblings, forced upon her at such a young age, more responsibility than most adults would have. He took her with him to pick out videos, as a way of rewarding her for helping out so much, and he spent time alone with Jennifer on different occasions like most fathers, time that the prosecution twisted around, as they contended during Robert's trial that

these special moments between father and daughter were opportunities for Robert to molest Jennifer.

Because they had separated the previous year and K.H. had lost her children to Robert, K.H. grew increasingly desperate and resentful. She knew that Robert was planning to divorce her and although she did not want her children, she did not want him to have them either. Robert and his wife were working different shifts and had little time to spend together. Finances would not allow the cost of a full time sitter, and their poor relationship was stretched beyond endurance. The major issues between them enveloped all their previous problems, for K.H. did not seek help for her mental illness. She continued to neglect and harm the children even though she had agreed to work on these things before they reconciled.

Whether her motivation was retaliation, resentment and jealousy, a complication of her mental illness or that she was simply a sexual predator of young children, we may never know. But K.H. began to sexually abuse their eight-year-old daughter Jennifer. In the evenings, after Robert left for work, she kept Jennifer up with her. Jennifer recalls many, many nights spent with her mother viewing pornographic magazines, watching pornographic movies on the Spice channel, and being encouraged by her mother to penetrate her vagina with "two fingers" when reenacting the sexual acts she witnessed. As a result of being heavily exposed to pornography and seeing sexual acts performed at such a young age; and because she had never felt such a strong bond with her mother, Jennifer began to habitually and invasively masturbate herself. K.H. and Jennifer continued to have their "special" time over a period of several weeks.

Jennifer has appeared on both the Maury Povich and Montel Williams Show earnestly seeking to help her father and desperately trying to set the record straight.

On June 14, 1992 K. H. called Robert's parent's home and told them that Jennifer had come to her crying, stating that "Daddy" had been having sex with her. She asked them for money and for some help to move into a new apartment. She requested new furniture later as well. Family members and friends agreed to stay quiet until after she had a chance to move out.

Robert's nightmare did not begin until June 14, 1992, when he received a phone call from K.H. She told him not to return home because their daughter Jennifer had just told her that he had been doing bad things to her, and when he attempted to question her further about them, she refused to elaborate. She hung up before he could respond. Robert repeatedly tried to call his wife back but received a busy signal. When Robert returned home the following morning, he found their apartment a mess and his wife and children gone. He called his friends and family who of course told him nothing.

In the couple's apartment, a letter was found that his wife had written to a friend stating that she had solicited someone to do away with Robert for \$100. She mentioned that she did not have enough money together to do this yet. At the end of her letter she advised her friend to burn the letter because it was "too incriminating." This same letter mentions a new boyfriend and how Robert "has no one now". She made no mention about the allegations, or even mentioned her children. She only mentioned, "how things are looking up" and that she "had a cheap babysitter." The letter was read in

court, but the DA never filed charges against her.

On June 29, 1992, fifteen days after absconding with the children, K.H. called the Child Abuse Hotline and told them that Robert was having sex with his eight-year-old daughter.

Robert heard rumors through co-workers that his wife had filed charges and that there was a warrant out for his arrest. The couple worked across the street from each other and had many common acquaintances. This prompted Robert to call the police department on July 1, 1992, to see if this was actually true, or to see if it simply was a result of his wife's vindictive gossip. If there was a warrant, he planned to turn himself in. Robert mistakenly believed that because he was innocent, he and the police could straighten this thing out. Robert's story is typical of someone unjustly accused, because at that time he wholeheartedly believed in the fairness of the justice system.

The police dispatcher told Robert that no warrant for his arrest existed at that time. The dispatcher told him that she wished to transfer his call to the detective's office. The detective testified during Robert's trial that the dispatcher said that Robert wanted to make a confession.

Robert says that he never told the dispatcher anything that even resembled a confession. The dispatcher asked him his name, where he was, and what he thought he was wanted for. He stated, "I believe I am wanted for sexually abusing my daughter, but I am innocent of the charges." The detectives informed Robert that there was in fact an open investigation. This statement would later cause great confusion as "I believe I am wanted for sexually abusing my daughter" was interpreted as a confession by the dispatcher as well as the detective who investigated the case.

Robert was asked to come down to the station for questioning, but he had no car at the time, so all agreed to meet in the parking lot where he worked. Robert, who had never been in trouble with the law before, signed his Miranda rights away. During the questioning period, Robert adamantly denied each and every allegation of which he was accused.

Robert tried to explain to the detectives what the actual situation was between him and his wife, but they didn't want to hear about their marital problems. Robert was not aware that his daughter had in fact been sexually abused, and thought these were flippant accusations brought on by his wife. The officers grew impatient and left saying, "We'll be back when we have obtained a warrant for your arrest!"

July 9, 1992, K. H. contacted the detective and told the detective that she had coached Jennifer for about two weeks to lie about her father. She swore that all of the allegations against Robert were false. A meeting was then conducted with Jennifer who gave statements of how she hated her mother and wanted to call her a "bad word".

On July 16, 1992, Robert was arrested and charged with four counts of sexual assault and four counts of lewdness with a minor child under the age of fourteen.

While Robert was in the county jail, K.H. lost custody of their five children and they were placed with the Child Protective Services for the State of Nevada. The children have not seen K.H. since the removal. They were placed in a group home pending foster placement. Later, in October of 1992, they were placed in the care of their Grandparents, where they have remained.

Robert Hayes continued on page 11

Federal Judge Tosses Conviction of Ex-CIA Agent Framed by the CIA and Federal Prosecutors

By Hans Sherrer

In 2000, *Justice: Denied* (Vol. 2, Issue 1) reported on the frame-up of Edwin Wilson by the CIA and federal prosecutors. On October 27, 2003 Edwin Wilson's 1983 conviction was vacated by a federal judge whose decision stated in part, "In the course of American justice, one would have to work hard to conceive of a more fundamentally unfair process with a consequentially unreliable result than the fabrication of false data by the government, under oath by a government official, presented knowingly by the prosecutor in the courtroom with the express approval of his superiors in Washington."

From 1955 to 1971 Edwin Wilson was employed by the CIA, mostly as an undercover agent. ¹ After he left the agency he became a free-lance dealer in information and arms. The CIA was among his clients. From 1972 to 1978 Wilson provided services to the agency almost 40 times, and through 1982 he had over 100 formal and social contacts with CIA personnel. ² During those years Wilson provided top-secret information to the CIA and other U.S. intelligence agencies about the activities of Iran, Russia, Taiwan and Libya. ³ He also provided information about international assassination teams, including an alert about a plot to assassinate President Reagan. ⁴

Wilson was on such intimate terms with top level CIA personnel that he invited them to his 2,500 acre Virginia farm for "annual picnics, hunting and horseback riding." ⁵ Wilson even stabled a registered quarterhorse at his farm that he had sold to a high-ranking CIA official. ⁶

In April 1977 the Washington Post blew Wilson's cover with a story that alleged he smuggled 500,000 explosive timers to Libya. ⁷ It is now known that story was not true. ⁸ A number of other speculative news stories about Wilson's alleged activities followed, and the CIA publicly denied involvement with Wilson at the same time it continued to rely on his services, and top officials continued to socialize with him. ⁹ Furthermore, it was known internally within the CIA that Wilson was not providing support to terrorist groups. ¹⁰

In spite of continuing to provide information to the CIA, Wilson was indicted on April 23, 1980 for allegedly shipping explosives to Libya. ¹¹ After his acquittal by a Washington D.C. jury he left the United States. He was captured in the Dominican Republic in June 1982, and transported to the U.S. ¹² A month later he was again indicted on charges related to allegedly transporting explosives to Libya. ¹³

Tried in federal court in Houston, Wilson didn't directly defend against the charges: his defense was that he was a de facto federal agent whose actions were "under the direction and authority of the CIA." ¹⁴ Therefore even if he had done what he was accused of, which he denied, he couldn't have had the requisite criminal intent necessary to be guilty of the alleged crimes. Three witnesses corroborated his close association with the CIA. ¹⁵

To rebut Wilson's defense, federal prosecutors introduced into evidence an affidavit from the CIA's third ranking official – Executive Director Charles A. Briggs. Among other things Briggs declared under penalties of perjury:

"The search [of CIA records] revealed that Mr. Edwin P. Wilson terminated his employment with the CIA on 28 February 1971, and was not re-employed thereafter in any capacity.

According to Central Intelligence Agency Records, with one exception while he was employed by Naval Intelligence in 1972, Mr. Edwin P. Wilson was not asked or requested, directly or indirectly, to perform or provide any service, directly or indirectly, for [the] CIA." ¹⁶

After deliberating for a day the jury asked that the Briggs affidavit be reread to them. An hour later they returned a guilty verdict, and Wilson was subsequently sentenced to 17 years in prison. ¹⁷

After years in prison, Wilson obtained documents through the Freedom of Information Act (FOIA) proving his prosecutors knew the Briggs affidavit was false prior to introducing it into evidence. ¹⁸ In 1997 Wilson sent U.S. District Court Judge Lynn Hughes a Department of Justice 'Duty to Disclose' memorandum he had obtained through the FOIA that said in part, "the affidavit is inaccurate." ¹⁹ Judge Hughes subsequently appointed Houston lawyer David Adler to represent Wilson. ²⁰ Adler diligently aided Wilson in the search for additional documents concealed by Wilson's prosecutors. In some cases Adler had to travel to Washington D.C. and examine classified documents inside of a vault. ²¹ Wilson and Adler's investigation resulted in the identification of at least 17 current and former federal officials who concealed their knowledge of the affidavit's falseness. ²²

"The truth comes hard to the government ..."
Federal Judge Lynn Hughes

Relying on the new evidence, Wilson filed two motions in the fall of 1999. The first motion was to vacate his conviction. One of that motion's grounds was that the government deliberately used fake evidence: Namely the perjured Briggs affidavit that the jury relied on to convict him. ²³ Another ground for vacating his conviction was the government committed a Brady violation by failing to disclose exculpatory documents listing Wilson's 100 plus contacts with government intelligence agencies after he retired from the CIA in 1971. ²⁴ The second motion was to hold the 17 officials who concealed their knowledge of the affidavit's falsity "in contempt for interfering in the administration of justice." ²⁵

Edwin Wilson continued on page 12

Evidence Points at Prosecution's "Star Witness" - The Ronnie Wilson Story

By Donna J. Strong

Edited by Barbara Jean McAtlin, JD Staff

The following account outlines numerous problems with the case against Ronnie Lee Wilson. The facts of this case show that Wilson is wholly innocent of the crime for which he was convicted. Wilson has spent over 10 years in prison (plus an additional two years in custody in Gregg County prior to trial) as the result of a judicial process fraught with serious flaws and omissions.

The crime and investigation

April 30, 1984 -- Longview, Texas: Jerry and Brenda Morgan and their son, Devin, are murdered in their home. Although the police department and the district attorney's office tried to link their killings to drug activities at trial, there is nothing to indicate that the Morgan's had any connection to drugs. Nothing of any value was stolen from the house; the only missing items were a heart-shaped necklace said to have been worn by Brenda Morgan, and the Morgan's car. The car was found thirty miles away in Tyler, Texas, the next morning. No murder weapon was found, and there were no suspect fingerprints at the scene or in the car. The only forensic evidence recovered from the scene consisted of African-American hairs found on a towel under Brenda Morgan's head (both defendants are Anglo, as were the victims), and other hair and blood samples, and fingerprints. None of the forensic evidence matched the suspects or the prosecution's alleged eyewitness, Cynthia May Kelly (now Cynthia May Cummings).

Winter 1985 -- Detective Sgt. Roy Bean of the Longview Police Department (LPD) came across Cynthia May (Kelly) Cummings and her husband at the time, Alvin Kelly. Detective Sgt. Bean arrested the couple on outstanding warrants. The investigation into the Morgan murders was still active and all detectives and police personnel were asked to pursue information about the case with all suspects. When asked about the case, Cummings volunteered information to Bean about her involvement in the murder of the couple's roommate, John Ford, which had taken place seventeen days after the Morgan had been murdered. Cummings also said she had information about the Morgan murders. Bean was convinced Cummings had been there because of her knowledge of certain details that should have been known only to someone involved in the crime. Bean turned this information over to Henry Mize and Jim Nelson, the two Longview homicide detectives in charge of the Morgan investigation. Bean said neither detective interviewed Cummings after receiving this information. Bean also said he spoke with First Assistant District Attorney Clement Dunn outside the interrogation room where Cummings sat shortly after her arrest. Bean told Dunn about Cummings' knowledge of the Morgan murders. Though Bean said he does not know whether Dunn made a deal with Cummings, he noted that shortly after Dunn interviewed her, Cummings was released from

Ronnie Wilson continued on next page

jail and went to Michigan. According to Bean, at no time did Cummings mention Ronnie Lee Wilson. Cummings and her boyfriend in Michigan, Chris Vickery, periodically contacted Bean throughout 1986 asking about immunity in the Ford case in exchange for her purported information on the Morgan case. All interviews and conversations were taped as per policy.

Nothing of note occurred in the investigation for six years. In 1990, Vickery contacted the Gregg County District Attorney's Office and told them Cummings was ready to come forward and give a statement about her "knowledge" of the crime. Her information would implicate Ronnie Lee Wilson as well as her now ex-husband Alvin Andrew Kelly. Bean, who had had the most contact with Cummings, was never called to testify in either the Wilson or Kelly trials nor was he contacted by the DA's office about the information he had for either trial. The prosecution suppressed this critical information and neither Wilson nor his defense attorney, Greg Neeley, or Kelly's defense team, knew about it until 1998. The LPD recently told representatives of the Office of the Attorney General that these suppressed tapes and files, which were specifically requested by Kelly's new appellate attorney, are missing.

Sequence of important events and conflicts

April 30, 1984 -- According to the pathologist's report, Jerry, Brenda and Devin Morgan are murdered between 6 and 9 p.m. When their bodies were found the next morning, Jerry and Brenda were still in their work clothes, there was no evidence of a dinner having been prepared or eaten, and no lights were on in their trailer house. A neighbor told police she saw an African-American male driving away from the Morgan home in their car between 7:30 and 8 p.m. (it was daylight saving time and still light out). This report was noted at trial. Also, a police official in White Oak contacted the LPD to let them know that he had received a report of two black males sighted in the Morgan's car that same evening. In Tyler, Texas, thirty miles from Longview, a Chevy Silverado pickup belonging to Kimberly Boswell is reported stolen from Saunders Street.

May 1, 1984 -- Morning: The Morgan's car is found thirty miles away in Tyler, Texas. Other than the victim's, no fingerprints are found on the car. The Morgan's car was recovered one block from where the Chevy Silverado had been stolen.

May 7, 1984 -- The stolen Chevy Silverado is located in Grand Prairie, Texas, in the possession of two African-American males, Fredrick Anthony Edney (King) and James Brown. The pick-up is processed for physical evidence by a Sgt. T. Jackson. The two were interviewed about the murders by police officials. After they were interviewed, they were released and never considered again. The evidence taken from the stolen vehicle included: linens, a man's wristwatch, assorted tools, black sunglasses, hair samples, vacuuming samples and a woman's gold flying heart necklace.

May 14, 1984 -- The coincidence of the Silverado theft just blocks from the Morgan's car recovery site is noted. Investigators decide to show the necklace that had been recovered from the stolen vehicle (which matches the description of one reported missing from the murder scene) to Brenda Morgan's relatives. Brenda Morgan's sister, Cindy McGrede Watts, and father, Robert Don McGrede, identified the necklace as Brenda's. Cindy Watts said that her

Ronnie Wilson continued on page 13

Berkshire County: How Not to Investigate Child Sexual Abuse

By Lona Manning

Edited by Carol Clairmont Weissbrod

Pittsfield is a small city "nestled within the beautiful Berkshire Hills of Western Massachusetts," which "combines old-fashioned New England tranquility and charm with contemporary living," according to the town website. The website doesn't add this important disclaimer: "Just don't be falsely accused of child abuse in Pittsfield. If you are, you may be sent to prison for life." Justice advocates say that at least three people have been wrongfully convicted in Berkshire County since 1984: a day care worker, a 64 year old school bus driver, and a father caught in a bitter divorce battle.

These cases are distinguished by persistent and leading questioning of children, a technique that has been proven to produce false accusations; by a failure to investigate the cases fully, as one would investigate any other kind of crime; and the use of inexperienced and unqualified counselors whose zeal to protect children overmatches their ability to objectively judge the evidence. The cases follow.

Bernard Baran: In 1984, 19-year-old Bernie Baran worked at a Pittsfield daycare center. The common-law husband of a woman who had a son enrolled in the daycare complained to the school officials that he objected to Baran working with Children because Baran was a homosexual. The first charges against the young daycare worker came from this couple. During the investigation of the charges, dozens of children were questioned, and five young children eventually testified against Baran. One little girl claimed that he wiped blood from her vagina with scissors and that he also stabbed her in the foot. He was sentenced to three concurrent life terms. Baran was profiled in JD Volume 1 Issue 8, <http://www.justicedenied.org/bernie.htm>. Bob Chatelle, a Boston-based advocate and writer, has set up a website about the Baran case at www.freebaran.org.

Robert Halsey was a school bus driver in the nearby town of Lanesboro. In 1993, he was removed from his elementary school bus route because he tickled a little girl on his route. The incident sparked rumors among Lanesboro's parent's, even though the little girl stated that she liked Bob the bus driver and that he had only tickled her. A year later, eight-year-old twin boys accused him of sexually assaulting them in the woods and of torturing fish, turtles, frogs and crayfish to frighten them into silence. Five children testified at trial and Halsey was sentenced to three consecutive life terms in 1994. More information about the Robert Halsey case is available at <http://members.shaw.ca/imaginarycrimes/>

Bruce Clairmont was separated from his wife of almost twenty years and going through a nasty divorce proceeding. He didn't know that she had put their son into counseling after catching him "playing doctor" with his sister. The therapist told Mrs. Clairmont that she suspected that the Clairmont children had been abused. After months of therapy sessions, both his son and daughter made accusations against him. A court-appointed clinical psychologist interviewed the family and concluded that the accusations were doubtful. Nevertheless, the case proceeded to a jury trial and Clairmont was found guilty in 1994 and sentenced to 9 to 12 years. Clairmont is now out on parole and fighting to clear his name. Clairmont's story was told by his sister in JD Volume 1 Issue 8, <http://www.justicedenied.org/bruce.htm>

An overlapping cast of characters is involved in the prosecution of these cases, including Daniel Ford, the prosecutor for the Bernard Baran case, who went on to become the judge in the trial of the bus driver, Robert Halsey; Timothy Shugrue, the prosecuting attorney in the Halsey case, who moved to private practice and represented Bruce Clairmont's ex-wife in her divorce; Joseph Collias, a detective who specialized in child abuse investigations, who worked on the Baran and Clairmont

cases; Gerard Downing, who was involved in the Baran case and was an assistant District Attorney during the Halsey trial, and who is currently serving his third term as District Attorney; and Jane Satullo (now Satullo Shiya), a counselor, who interviewed children in both the Baran and Halsey cases.

Shugrue and Collias were the founding president and vice-president of The Kids' Place, an agency that coordinates child abuse investigations in Berkshire County. Amy Moran, who counseled the Clairmont children, served on the Board of Directors. RoAnn Vecchia, who also interviewed the Clairmont children, is the forensic interviewer at Kids' Place today.

Berkshire County doesn't tape record

"No excuses -- the audio tape recorder should be to the sexual abuse investigator what the pad and pencil is to the journalist -- the essential tool that is used as automatically as one breathes in and out."

-- Lee Coleman and Patrick Clancy ¹

In the mid-eighties, a movement arose across the country to bring child abuse out of the closet. In Berkshire County, Detective Joe Collias and other concerned professionals formed a group called Citizens Against Child Abuse to raise public awareness. They also collected funds to create a child-friendly interviewing room for police investigations. The new room featured toys, brightly patterned wallpaper and child-sized furniture. Citizens Against Child Abuse proudly noted that they had purchased "state-of-the-art recording equipment." This equipment was in place in 1990, but its use was soon discontinued.

Why did Berkshire County switch from state of the art back to pencil and paper? The official reason, as given by DA Gerard Downing to the Boston Globe in 2000, is that tapes are not admissible in court -- child witnesses must testify. In other words, why bother with tapes?

But Detective Collias (now retired), recently offered the unofficial reason: We didn't do any tape recording. In the beginning we did. After that, we stopped. A lot of that stuff became too powerful for the defense attorneys."

He explained, "When we first started interviewing, we tape-recorded interviews, then the defense attorneys had it and they would be pounding these kids on ever word they said and how long the interview took. And we decided to stop tape recording with an interview. We just used note takers." (By comparison, Hampshire and Franklin counties, also in Western Massachusetts, do videotape interviews.)

When the three and four year olds who attended the Pittsfield daycare where Bernard Baran worked were interviewed and asked if Bernie had ever touched them, at least some of the interviews were taped. Some edited versions of tapes were shown to a grand jury, but the contents of the unedited tapes remains a closely guarded secret. Bernard Baran's new legal team has battled Downing's office for access to the videotaped interviews that survive (Downing claims that most have probably been erased).

Journalist David Mehegan reported in the Boston Globe in 2000 that "the videotapes of (Jane Satullo) Shiyah's individual interviews at the DA's office were not viewed for this story but it is not apparent from police notes that she led or pushed the children to incriminate Baran."

Berkshire County continued on page 15

Framed For Rape? - The Michael J. Floyd Story

By Michael J. Floyd

Edited by Barbara Jean McAtlin, JD Staff

When former Lawrence County Circuit Court Judge Linda Chezem sentenced Michael J. Floyd to prison in November 1983, it was the longest sentence ever handed down in Bedford, Indiana. Floyd, who to this day maintains his innocence, received a 110-year sentence for conspiracy, confinement and rape. Ironically, Chezem gave Floyd credit for having no prior record. This credit saved him from being sentenced to the maximum sentence of 120 years. Under Indiana law, Floyd receives one day of credit for each day of good behavior. With good behavior, the minimum actual time he will spend in prison will be 55 years.

The rape occurred in the early morning hours of July 13, 1983. The victim, Lori Quackenbush, had just finished her second shift job at Stone City Products in Bedford and walked to her car. She opened her car door and the dome light failed to come on. She reached into the back seat and Ron Deckard, who was wearing a blue toboggan, sat up and started talking to her. (Approximately one week earlier, Deckard, Floyd and Rob Smith had come to her place of work and they engaged in general conversation for about twenty minutes.) On July 13, 1983, Deckard asked Quackenbush to meet friends and to drive to State Road 446. She refused to do so because of the late hour but as she drove him past a high school he pulled a pellet gun on her and grabbed her around the neck. Holding the gun on her, Deckard told her to drive toward State Road 446 and told her that if she cooperated she would be okay. After Lori turned onto State Road 446 and had driven approximately one mile, Deckard told her to pull over.

... the blood type of the semen found on Lori's panties was type A. My blood type, as well as the victim's, is type O.

After Lori stopped the car along the roadside, Deckard handcuffed her and told her to lay facedown on the seat. He then got out of her vehicle and walked back to a trailing car and talked to someone whom Lori could not identify. Deckard then came went back to Lori's car, placed his blue toboggan over her face and put her in the trunk of her car. He drove off yelling that they were going to Kentucky. Along the way Deckard had Lori in and out of the trunk several times. He then drove to a secluded farm which had once belonged to his grandfather just south of the town of Bloomington, Indiana, .

Once they were at the farm, Deckard took Lori from the trunk and unfastened her pants. Lori testified that Deckard mumbled to someone else and then took off her pants and underwear and pushed her onto a blanket. Someone then came over to her, she heard pants unzipping and someone tried to get on top of her. Lori testified that she thought she recognized the voice that told Deckard, "Take the handcuffs off her."

At trial, Lori testified, "I thought I recognized the voice

and I said, 'Is that you, Mike?' I was meaning Mike Floyd. The other guy acted startled and said, 'Mike? Mike who? Who do you mean?' " The person on top of Lori supposedly said, "I don't know you, I've never seen you before. What is your name?" Lori told him her name and then asked her assailant his name and was told "Never mind, I don't have a name."

After the rape, Deckard helped Lori get up, then he dressed her and put her in her car. Lori testified that Deckard kissed her twice, drove her car down the hill and told her to lie down in the car and count to twenty. She didn't recognize the other car, which was being driven away, but she knew she was somewhere south of Bloomington.

Lori then drove home and woke her parents who called the sheriff. She then went to Dunn Memorial Hospital in Bedford. She was examined by Dr. Gareth Morgan. Prior to any conversation with police, Lori told her story to Morgan and his nurse. Dr. Morgan wrote it out in his own hand. Her story of the incident covered eleven pages in the doctor's handwriting. She told him that the rapist did not speak. The doctor's notes recorded, "She was told what to do during the rape by the first man with the gun." (Deckard).

The lack of consistency between Lori's first statement taken by the doctor at the hospital and her trial testimony is obvious. My public defender, Pat McSoley, did not ask the victim, Dr. Morgan, or a female witness to the rape examination, about the statement the doctor had taken. In a deposition, McSoley identified the whole statement as being a part of a discovery packet he had received prior to trial, but he did not recall this statement -- the statement that contradicted the victims' in-court identification.

An FBI report dated September 13, 1983, shows that the blood type of the semen found on Lori's panties was type A. My blood type, as well as the victim's, is type O. The report lists several other blood tests as inconclusive. Although the lab report was available in 1983, my original attorney, McSoley, testified in February of 1997, he didn't bring it to the jury's attention because he thought it was inconclusive. After talking with prosecutor Don Hickman, McSoley also thought I was a non-secretor. The FBI report clearly shows that I am a secretor. This means I am capable of having my ABO blood group typed by analysis of bodily substances other than blood. McSoley did no research on the blood grouping results from the semen test, consulted no written materials, and was not aware I had been excluded by the sample. McSoley had no experience with any cases involving ABO grouping. He did not consult with an expert or the FBI laboratory that did the analysis. He recalled Hickman telling him the results were inconclusive. Hickman testified he recognized the exclusion of me in the semen sample but had no duty to interpret the results for defense counsel. His duty was only to turn the reports over to the defense.

According to a deposition from P. Michael Conneally, an Indiana University medical geneticist, it is impossible for me to have been the source of type A sperm. An FBI report on Ron Deckard, who confessed to his participation in the

Michael J. Floyd continued on page 18

UPDATE!!

Tulia Travesty Lawsuits Settled For \$5 Million

By Hans Sherrer

The events leading up to Texas Governor Rick Perry's pardoning of 35 people on August 22, 2003, were reported in *Travesty in Tulia, Texas* (*Justice:Denied* magazine, Issue 23, Winter 2004, <http://justicedenied.org/tulia.htm>).

The prosecution of those people began with the July 23, 1999 arrest of 43 people in the Tulia, Texas area on drug related charges. Thirty-eight of the arrested people were subsequently convicted – 11 after a trial and 27 by a brokered guilty plea. The many guilty pleas by people protesting their innocence followed the sentences ranging from 12 to 434 years, that were imposed on the first eight defendants convicted after a trial.

In the years following the arrests during the July 23rd sweep, several federal civil rights lawsuits were filed against a variety of defendants by people who were arrested – but not convicted. As the Tulia cases unraveled from June 2000 to August 2003, a multitude of cities, counties and individuals became vulnerable to a lawsuit, because the Tulia drug investigation was paid for, and conducted under the auspices of The Panhandle Regional Narcotics Trafficking Task Force (Task Force). Thirty cities and counties were members of the Task Force. ¹ The city of Amarillo, 44 miles from Tulia, was the lead Task Force member and the one with the deepest pockets, so it was facing the largest potential liability.

On March 11, 2004, a global settlement of all pending lawsuits naming the city of Amarillo as a defendant was announced between the city and the total of 45 people still alive (one is deceased), who had been arrested as a result of the Tulia "investigation" conducted by Swisher County Sheriff Deputy Tom Coleman. The city of Amarillo agreed to pay \$5 million and pull-out of the Task Force on June 1, 2004, when its 2003-2004 operating grant of \$1,522,418 expires. City Attorney Marcus Norris said the city recognized the "misjustice" committed by the task force. ² Headquartered at the Amarillo Police Department, the Task Force is expected to dissolve without Amarillo's participation.

**"The city of Amarillo did not feel comfortable standing behind an agent who has been discredited numerous times..."
Amarillo city attorney Marcus Norris**

Amarillo Mayor Trent Sisemore said the city agreed to a global settlement to prevent a potentially devastating judgment, "The lawsuit had the potential to cause many cities in the Panhandle to become insolvent." ³ Additionally, defending against the lawsuits would have involved Amarillo's defense of the Tulia investigations, which the city had already admitted was flawed. As city Attorney Norris observed, "The city of Amarillo did not feel comfortable standing behind an agent who has been discredited numerous times and who is not the caliber that would be employed by the city of Amarillo." ⁴

The Tulia defendants signed contracts assigning 1/3rd of the

Tulia Update continued on next page

Rejoining Society After Serving Time for a Crime You Did Not Commit

By Robert Bennett

Edited by Rhonda Riglesberger - JD Staff

My name is Robert Bennett and I am a thirty-year-old white male American. In January of 2000, I was wrongfully convicted on a Terroristic Threats charge. (A B-Misdemeanor charge.) I could not afford an adequate defense lawyer and because of this I feel that my rights were violated by the justice system. It started one morning when I was on my way to work. A car came flying up and began tailgating me on a service road as I attempted to exit Interstate 35. The female driver came around me, honked her horn, and flashed her middle finger at me.

I blew it off and continued on my way. She pulled alongside of me at another intersection and again honked and flashed her middle finger. Growing angrier by the minute, I speeded up, passed her, and then cut her off. I realized my mistake and decided to just pull off the road to give us both time to get our heads on straight, and also because I wanted her to cool off, hoping this would allow us to continue driving without further incident.

The woman decided to follow me as I maneuvered my car to the right turn only lane where I figured that I would just park my car and wait. The angry woman intentionally maneuvered her car from the middle lane into my lane and chased me down two different streets. Unfortunately one of these streets dead-ended in an apartment complex, which then forced me to turn around and face the enraged woman head on.

She cursed at me and I cursed back at her. That is all that happened. I told her to stop following me and to go away. I drove away at that point and went on to work. The woman was not content to let the matter rest. She followed me to work and later filed charges against me. She was never in any physical danger but she told the police that I had physically threatened her. I did not unbuckle my seat belt at any time during our altercation or say anything that implied any criminal intent towards her whatsoever.

I blew off the entire situation thinking, Stupid person, and

stupid situation. I truly believed that the situation should have never happened in the first place. The police waited until Christmas Eve to arrest me. They charged me with making Terroristic Threats. The police entered my home on Christmas morning and searched it without a search warrant. They illegally seized a little black bat from under my bed and used it as evidence against me.

I was forced to post a \$6,000.00 bond, and because I bailed myself out of jail, I did not qualify for free legal counsel. I paid an attorney \$2000.00 to represent me. I wanted to take my case all the way up to the Supreme Court if necessary to clear my name, but my attorney went to the D.A. and worked out a deal.

We went to court and I told the judge that I wanted to plead not guilty. The judge told me that I had a right to face my accuser and that I had the right to go to trial. My attorney told me that he would need another \$3000.00 up front to take the case to trial. I did not have the money. I felt that my attorney had already failed me by cutting a deal with the D.A., and because I was short on money I subsequently pleaded no contest and placed my entire future in the hands of the Judge. She must have felt sorry for me because she only sentenced me to thirty days in jail. Then she mercifully cut my sentence in half.

My attorney reasoned that if I made this plea that I could later file an appeal. He hoped that I could have the charges reversed at a later date. Nothing could be further from the truth. I attempted to file an appeal, which was later rejected. It appears that I will never have the opportunity to clear my name, or to disassociate myself from this charge.

Since the time of my trial, I became involved in another situation where a woman called my home and left threats on my answering machine. I turned these tapes into the authorities, and attempted to press charges against this other woman. The police blamed the situation on me, and

by sending \$3 (stamps OK) to: Justice Denied magazine - Issue 23; PO Box 881; Coquille, OR 97423.

Sources:

City Pays For Justice, Greg Cunningham, Amarillo Globe-News, March 12, 2004.

Tulia Questions, Answers, Staff, Amarillo Globe-News, March 12, 2004.

Interview of attorney Jeff Blackburn by Hans Sherrer, March 24, 2004.

Travesty in Tulia, Texas, Hans Sherrer, Justice Denied magazine, Issue 23.

Endnotes

1 City Pays For Justice, Greg Cunningham (staff), Amarillo Globe-News, March 12, 2004.

2 Targets of Drug Bust Win \$5 Million, Betsy Blaney (staff), Ft. Worth Star-Telegram, March 12, 2004, p. 1B.

3 City Pays For Justice, Greg Cunningham (staff), Amarillo Globe-News, March 12, 2004.

4 City Pays For Justice, Greg Cunningham (staff), Amarillo Globe-News, March 12, 2004.



then re-arrested me for a non-moving violation. (This violation stemmed from an old citation for not having insurance on my vehicle. It is something that had taken place a year and a half earlier.) It did not have anything to do with the woman who left threats on my answering machine. If this story confuses you, it's because I am still trying to figure out why the police are harassing me.

I have contacted a couple of different attorneys who have suggested that I sue Travis County. Since this incident I have not been able to find a good job, so I cannot afford an attorney to represent me. I am barely surviving now, as a result of what has happened to me. I cannot do anything about my financial situation, but I continue to live in the shadow of the false charges filed against me. My hopes for a decent life are distant and unobtainable in light of what has happened to me. I wouldn't wish this on anyone.

I wonder if my life will ever right itself. It doesn't seem to get any easier as the days and years pass. In fact it grows harder and harder to face each and every morning as I wake to the reality that as a convicted person, my life will remain upside down, as if in a perpetual state of disarray. I feel that I will remain a victim of the justice system for the remainder of my life unless a miracle happens, which would somehow allow me to redeem my name, and regain my social standing in the community. I am forced to live, eat, breathe and sleep with this incident haunting me. I am forced to pretend that my life is normal. If there is someone out there who can help me write an appeal or represent me pro-bono, please contact me at the following address.

Robert Bennett
1700 Burton Dr.
Austin TX 78741
Email: RobBennett@yahoo.com

Note by Rhonda Riglesberger.

Robert Bennett is only thirty years old. His story touched me because so many of us have seen what can happen to someone who has served his or her time, and paid dues to society. It is especially touching in Robert's case because he is a poor man who could not afford adequate legal counsel. Due to lack of funds, Robert, who was innocent, pleaded no contest and thereby placed himself upon the mercy of a compassionate Texas judge who sentenced him to two weeks in the county jail. Although innocent of the charges filed against him Robert served his time and paid his dues. His problems did not end there, however, for he still lives in light of a bad situation with little or no hope of redeeming his name. Robert's plight fits in with that of thousands of other wrongfully accused victims, whose nightmares begin when they attempt to rejoin society. 

Visit the Innocents Database

http://forejustice.org/search_idb.htm

Info about more than 1,400 wrongly convicted people in 20 countries is available.

Visit the Innocents Bibliography

<http://forejustice.org/biblio/bibliography.htm>

Info about almost 200 books, movies and articles related to wrongful convictions is available.

Tulia Update continued

settlement to their lawyers. However some of the lawyers involved were working pro bono, so their payout will exceed 2/3rds of the \$5 million. A claims administrator will determine the payout to each person using a formula taking into consideration various individual factors, including whether the person was convicted and the length of their time in custody. However it is divided up, the average payout to the 45 Tulia arrestees will exceed \$74,000.

As of late Spring 2004, negotiations were continuing with the other 51 municipalities, counties and individuals named as a defendant in one or more of the suits, but the settlement amounts from those negotiations is expected to be negligible compared to the \$5 million Amarillo agreed to pay.

Note: If you missed JD Issue 23 that included *Travesty in Tulia, Texas*, the 6,000 word article that details the Tulia cases from the beginning of the investigation in January 1998 through the August 2003 pardons, it can be obtained

UPDATE!!

Judge Orders August 2004 Evidentiary Hearing For Alan Yurko

By Hans Sherrer

On March 26, 2004 Circuit Judge C. Alan Lawson ordered an evidentiary hearing in the Alan Yurko case. [See, *Triumph Over Tragedy, Justice:Denied* magazine, Issue 23, Winter 2004, <http://justicedenied.org/yurko.htm>]. After the hearing that is scheduled to begin on August 23, 2004, Judge Lawson can reverse Yurko's conviction and order a new trial, or he can let the conviction stand.

Alan Yurko was sentenced to life in prison after being convicted in February 1999 of murdering his ten week old son, Alan Jr. However dozens of medical experts in the U.S. and other countries have reached conclusions that not only contest the prosecution's contention that baby Alan died of Shaken Baby Syndrome, but they have identified that his possible cause of death was medical malpractice by his doctors.

Furthermore, it now appears that testimony during Alan Yurko's trial by Orange-Osceola County Medical Examiner Shashi Gore concerned his autopsy of a child who was not baby Alan. It appears that Gore either did not autopsy baby Alan, or he confused his autopsy with that of the radically dissimilar child he testified about at Alan Yurko's trial. After investigating a complaint filed by Francine Yurko, Alan's wife, that documented Gore's misconduct in the Yurko case, the state Medical Examiners Committee barred Gore in February 2004 from performing any autopsies until his scheduled retirement in June 2004.

Alan Yurko's contention he didn't receive a fair trial was also bolstered by the Orlando Sentinel's report on March 27, 2004, that at least one of his jurors believes he should get a new trial. The juror, Thomas Miller, told the paper that if what has been publicly reported about Gore's suspect testimony had been disclosed during the trial, "...there's no way I could have found [Yurko] guilty."

It was also reported in the Orlando Sentinel that PBS documentary maker Gary Null has begun work on a documentary about the Yurko case. Interviewed from his New York office, Mr. Null told the Sentinel, "The facts support the complete exoneration of Alan Yurko."

Courtroom observers expressed concern about Judge Lawson's impartiality due to the manner in which he denied all of Alan Yurko's motions complementary to his motion for a new trial. However the documentation filed prior to the evidentiary hearing will ensure preservation of the record for higher court review, if necessary, of issues that may be glossed over by Judge Lawson.

Justice:Denied will report further updates in the Yurko case as they occur.

Sources:

Dead Baby's Dad Closer To Retrial, Amy C. Rippel and Anthony Colarossi (staff writers), Orlando Sentinel, March 27, 2004.

Interview of Francine Yurko by Hans Sherrer,  March 29, 2004.

Unjust Cruelty Hidden As Dual Criminality – The Anthony Marino Story

By Annmarie Roberts

Edited by Clara A.T. Boggs, JD Editor in Chief

My father is Anthony Joseph Marino. He is an American citizen who is currently being held prisoner in San Jose, Costa Rica in San Sebastian prison for over three years. He has been brought to trial in the last 6 months after being held in what Costa Rica calls "preventive detention" for 2 1/2 years. It is a term that is used very often to describe detaining an individual without formally charging them of any crime. He was brought to trial in March and April of 2002. The trial judges sentenced him to 18 years for a civil crime accusing him of fraud. He is awaiting appeal and has at least two other cases against him that never were investigated by any of his lawyers. These two cases have nothing to do with my father but are being put against my father because of his uncertain position to try to defend himself.

My father is an American businessman who went to Costa Rica to invest in local businesses there. His trip seemed very routine and he would be back in the United States very soon. Very unfortunately the nightmare began shortly thereafter. The start of my father's incarceration in Costa Rica stems from an unlikely chain of events starting approximately in August of 1999. During this time a group of United States investors had filed claims against my father and his associate, George Polera for fraud. The investors who had been some of my father's clients in the United States had started an illegal pyramid investment scheme with accounts overseas and had to quickly accuse someone of taking the money to hide what they had been doing wrong. They knew while my father was in Costa Rica they could persuade (with money) influential key Costa Rican government and high-ranking officials to accept charges of fraud against him in Costa Rica even though all of his business transactions were handled out of the United States. They hired a prominent Costa Rican attorney to falsify documents that showed that they had physically come to Costa Rica to file claims against him in the country of Costa Rica.

My father spent some time after they had filed their claims against him vacationing around Costa Rica with some of my family while he awaited finalizing his business matters that had brought him to Costa Rica in the first place. During this time, my father and visiting family were followed around by police guards from the SIP in Costa Rica. These men would show up and when my father would inquire who they were, they often tried to disguise themselves as bodyguards hired by my father's associates in Costa Rica for his protection or even tour guides.

In July of 1999 the claimant's case against my father brought him to court. He appeared in court after spending one night in jail and the Pavas Penal Court ordered him to check into court every week until such time as they could investigate the matter. He proceeded to check in as ordered for three weeks. The claimants who filed against him were very unhappy with the fact that he was then free to follow up with his good clients in the States to see who had defrauded them of their money. The claimants knew that their plan to target him as their fall guy would deteri-

orate soon if they didn't get my father out of their way. They had him kidnapped by the same group of police guards that followed him around weeks prior. My father was held for over three weeks by the kidnapers who were hired by the attorney who represented the claimants against him. The attorney for the claimants sent threatening letters to my mother in the United States demanding ransom of 6 million dollars then 14 million dollars after we could not meet their demands. Finally when the kidnapers thought a bank had wire-transferred money to their account in Miami, Florida they released my father. He then fled to the Embassy for asylum from the kidnapers but the Embassy would not help him without his testimony against the kidnapers. He tried to explain that he could not testify to the same police force that had been part of the same men hired to kidnap him. He left the Embassy and was arrested as a rebel for missing his court check in times while he was kidnapped. Of course, it was the kidnapers who called the courts when they found out no money was transferred to their accounts and had my father immediately arrested.

The judges allowed phony contracts with my father's forged signature as evidence but mysteriously all the rest of his paperwork that showed his innocence was missing after being placed in the court files ...

My father has been through six Costa Rican attorneys and not one has been able to fight the control that these claimants have had over the Costa Rican justice system at any time. In fact, some of my father's attorneys there have secretly worked with the prosecution for large amounts of money to purposely botch up or slow down my father's clear evidence of innocence. He was held for the first 2 1/2 years without charges all the while my family back in the United States was receiving letters from the claimants against my father and their attorneys demanding money for his release. The letters explained that my father would be delivered back to the United States when money was sent to them. The letters also said that my father would die in prison if we didn't meet their demands. They even said that if we went to the Embassy or the State Department that we would get no help. His court appearances were controlled the whole time by the prosecution's power as they had done to him for the last 2 1/2 years. He was represented in court by Costa Rican attorneys who often spoke little English.

My father does not speak or understand Spanish and was never given a translator at his court hearings which is required by the United Nations. He was brought to trial in April of 2002 and was sentenced for 18 years. The trial was clearly run again by the prosecution paid well by the claimants. The judges allowed phony contracts with my father's forged signature as evidence but mysteriously all the rest of his paperwork that showed his innocence was missing after being placed in the court files by my father's attorneys. They even sentenced him under criminal codes even though this is a civil matter. It is not normal that a man get sentenced for 18 years for fraud by any country's standards.

My father is now 64 years old and in seriously failing health. He has diabetes, high blood pressure with severe hypertension, and an aneurysm that needs immediate attention or he will die. His lungs have been weakened by the damp moldy conditions that the prison has year round in the human wet conditions that Costa Rica's rain forest atmosphere constantly provide. We have had him in and out of hospitals for the past three years that have extorted

Anthony Marino continued

thousands of dollars from my family for medical procedures and hospital rooms that my father never used or had preformed on him. We were constantly charged for the meals of the prison guards who stood over him at the hospital while he was chained to the bed and was so weak he could not lift the chains to eat his own meals. They even removed his perfectly good prostate to keep him in the hospital for more money in the year 2000. We have tried to keep up with his bills and medical attention but every time we could not meet the hospitals or the doctors' demands for money then they would throw him back into prison.

The prison in which my father is housed San Sebastian in San Jose, Costa Rica is way under United Nations standards and has been cited by the United Nations for not meeting human standards many times in the past. The overcrowding has left inmates like my father to be forced to stand for hours and hours of time with nowhere to sit or lay down. My father has poor circulation due to his diabetes and loses the ability in his legs often because he cannot move around enough. If you are lucky you can buy a bed from another inmate for \$200-\$300 US Dollars. The filth there and the open like disease are immeasurable. The prisoners are not separated by their convictions and are not separated to individual cells. They are grouped together in quads and murderers and rapists are housed with my father. The food that is fed to the prisoners consists of rice with pieces of rancid meat full of salt or sugar to allure the smell and taste. My father being diabetic cannot eat this and we try to have food brought in for him but a lot of the times the meals are too attractive to the guards and my father never receives it and goes without eating. This is really bad on all his body because the medication that we have to pay for ourselves has to be taken with at least 3 to 5 meals a day. The prison system does not provide any necessities to the inmates. My father's medication has to be purchased by my family and brought to the prison by his attorney. The prison doctors do not maintain his health or regularly check on his health. We have to pay a private doctor money to go to the prison and see him if we want to know if he is okay. We have to pay his attorney money to go in with a cell phone if we want to talk to him. The pay phone in the prison always has a line of prisoners at it and my father cannot wait that long in the lines without feeling ill. Also, to call the United States even with a calling card is very expensive. The prison is not enclosed the windows are not covered. The rains that come in constantly fill the prison with water and it is left there until it evaporates. The prisoners have to stand in this still filthy water or lie in it until it does go away. The area where my father is forced to sleep is directly under a window and he gets poured on by rain all the time. The dampness triggers his weak lungs and they fill up with infection cutting off his ability to breathe often or to lie down at all.

My family is in financial ruins paying the Costa Rican attorneys, doctors, and hospitals thousands of dollars in the past three years to keep my father alive. When we try to get help we get turned down because the people don't believe my father is innocent or they are afraid to get involved. We continue to try to fight for his life. We regularly make phone calls to our government or to Costa Rica seeking help. All we ask for is for my father who has nine children and 16 grandchildren (one of which he has never met) to be brought back to the United States so we can spend what little time of his life he has left with him. We have all considered relocating ourselves to Costa Rica to help him but we have been threatened by the people controlling his case there that we would be kidnapped or murdered if we try to enter the country to help him. They want money and

that is what they think we have. My father cares so much for his children and my mother that he has asked us to stay in the United States for our safety although he is dying.

This whole case that has unjustly incarcerated my father in prison over the last three years should have never been handled in Costa Rica to begin with. It is all United States jurisdiction and has been the whole time. The claimants that have filed against my father in Costa Rica are American citizens and have received their money from the banks overseas but they still have not removed their claims against my father. My family had been trying through all contacts of the United States government; The State Department, The Embassy, The Justice Department, numerous senators, numerous congressman, and even two letters to two presidents and his staff to get my father brought back to the United States. They state that they cannot interfere with foreign countries justice system. There is no real reason they cannot bring him back. They accuse him of being a United States civil fraud criminal as well. There is a warrant for his arrest from the United States. The United States SEC has a judgment against my father that was done so without my father ever having a day in court in the United States to defend himself. USA TODAY even published an article on on January 9, 2001, before my father's trial, that tarnished his name. This has left a hard blow on our family to prove his innocence here in the United States to human and civil rights organizations for help because they believe that the article and the information that they get from the SEC is true. This is also why we have yet to get a publication or an unbiased news story done about what is happening to my father and our family. The people who we try to get to help us are afraid to go up against the United States officials and are afraid to get involved when there is a poor third world country involved. It's the fight over Costa Rica's greed to keep my father for money and

the United States unwillingness based on the SEC's branding of him as a criminal to bring him back.

I pray that no amount of money or pride to any person or government can determine whether someone lives or dies but the time frame for my father's life is very short. I pray for the strength of our international attorney who has dedicated his personal time at no charge to my family that he gets the aid of the United States government that he has been pleading for over a year. I ask for anyone who reads my story to see that you lose your rights when you're in a foreign government and it is very hard for you to protect yourself even if you are a United States citizen. I ask for help from anyone who can help me and my family bring our father home. We have all the evidence of correspondence with any of the contacts I have listed. We would very much like to get our story to the public without biased opinions but just to give us to set the truth straight once and for all. Our attorney can vouch for my story and dealings with the Costa Rican and United States Governments.

I pray that no father or family ever has to go through this situation and if anyone who reads this had a similar situation then I pray you get your family back together too.

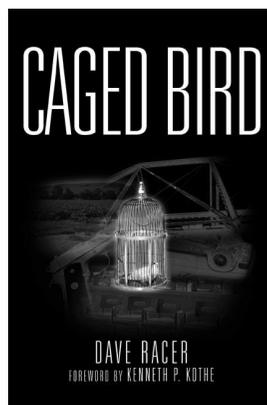
You can contact Annmarie Roberts by email at: ARoberts@lvcm.com



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From Clara Boggs' Review of Caged Bird by Dave Racer that was in Justice Denied, Vol. 2, Issue 8.

Caged Bird is a book by Dave Racer about a wrongful conviction with a life sentence for Lutheran Minister Tom Bird.

Caged Bird is, without a doubt, a fascinating book. Racer gives you dialogue, background, and a thorough understanding of the case. He presents the facts both from the investigators' and Bird's point of view. There is a sex-crazed secretary of the pastor, conspiracy to commit murder, perjured testimony and all the elements that make for a chilling read. There is also ample background on just about every aspect of the case and the people so that the reader can see the case unfold from beginning to end.

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Editors Note:

This is Part I of a serialization of an article published in the Fall of 2003 by the Northern Kentucky Law Review. It is the first extended critique published in this country of the critical role played by judges in causing wrongful at the trial level, and then sustaining them on appeal. The extensive footnotes are omitted from this reprint, but ordering information of the complete article from the NKLR for \$10 is at the end of the article.

The Complicity of Judges In The Generation of Wrongful Convictions

by Hans Sherrer

I. Introduction

Wrongful convictions do not occur in a vacuum of judicial indifference. Every wrongful conviction results from a deliberative process involving law enforcement investigators, prosecutors, and one or more trial level and appellate judges. Although prosecutors, police investigators, defense lawyers and lab technicians have all been lambasted in books and magazines for their contribution to wrongful convictions, judges have, by and large, been given a free pass. This hands-off attitude may be due to the fact that sitting in their elevated positions, judges are often thought of by lay people and portrayed by the news and other broadcast media, as impartial, apolitical men and women who possess great intelligence, wisdom, and compassion, and are concerned with ensuring that justice prevails in every case. Reality, however, is far different from that idealistic vision.

In *Courts on Trial: Myth and Reality in American Justice*, one of the few serious critiques of this country's judiciary by an insider, Judge Jerome Frank wrote, "Our courts are an immensely important part of our government. In a democracy, no portion of government should be a mystery. But what may be called "court-house government" still is mysterious to most of the laity." Judge Frank's book was in stark contrast to what he referred to as "the traditional hush-policy concerning the courts." That unspoken policy continues to obscure the inner workings of the courts.

Peering beneath the public façade that has long protected judges from serious scrutiny, reveals that from their lofty perch they are the most crucial actor in the real-life drama of an innocent person's prosecution and conviction. This theme is explored in the following seven interrelated sections: Part II: Judges are political creatures, Part III: The violence of judges, Part IV: The judicial irrelevance of innocence, Part V: The control of defense lawyers by judges, Part VI: Appellate courts cover up the errors of trial judges, Part VII: Why the judiciary is dangerous for innocent people, and Part VIII: The unaccountability of judges.

This critique of the judiciaries contribution to creating a broad group of legally disadvantaged people – those who are wrongly convicted – is offered in the spirit of increasing an understanding of the nature of their involvement in

the process. It is only by criticisms such as this that a constructive dialogue can hope to be initiated toward lessening the judiciaries enabling role in the wrongful conviction process, without which there can be no expectation of a reduction in their incidence.

II. Judges Are Political Creatures

Contrary to their carefully cultivated public image of being independent and above the frays of everyday life, judges are influenced and even controlled by powerful and largely-hidden political, financial, personal and ideological considerations. Renowned lawyer Gerry Spence clearly recognized in *From Freedom To Slavery* that judges are, first and foremost, servants of the political process:

We are told that our judges, charged with constitutional obligations, insure equal justice for all. That, too, is a myth. The function of the law is not to provide justice or to preserve freedom. The function of the law is to keep those who hold power, in power. Judges, as Francis Bacon remarked, are "the lions under the throne" . . . Our judges, with glaring exceptions loyally serve the . . . money and influence responsible for their office.

Despite never ending proclamations of their independence, members of the judiciary, all the way from a local judge in small town USA to a U. S. Supreme Court justice, are inherently involved in all manners of political intrigue and subject to a multitude of political and other pressures. The political nature of judges that affects their conduct and rulings is an extension of the fact that there is not a single judge in the United States, whether nominated or elected, whether state or federal, that is not a product of the political process as surely as every other political official whether a city mayor, a county commissioner, a state representative, a member of Congress or the President.

A high level of knowledge, understanding, compassion and independence of thought is not a necessary prerequisite for a person to become a judge.

Vincent Bullions, the former L.A. deputy D.A. most well known for prosecuting Charles Manson, clearly understands that every judge in this country is only a thinly veiled politician in a black robe:

The American people have an understandably negative view of politicians, public opinion polls show, and an equally negative view of lawyers. Conventional logic would seem to dictate that since a judge is normally both a politician and a lawyer, people would have an opinion of them lower than a grasshopper's belly. But on the contrary, the mere investiture of a twenty-five-dollar black cotton robe elevates the denigrated lawyer-politician to a position of considerable honor and respect in our society, as if the garment itself miraculously imbues the person with qualities not previously possessed. As an example, judges have, for the most part, remained off-limits to the creators of popular entertainment, being depicted on screens large and small as learned men and women of stature and solemnity as impartial as sunlight. *This depiction ignores reality.*

A high level of knowledge, understanding, compassion and independence of thought is not a necessary prerequisite for a person to become a judge. A person typically goes through the motions of being a judge while neither *doing* the grunt work and studious research required to do

a competent *or* conscientious job, nor *having* the critical thinking skills necessary to do so even if they wanted to.

However, the depth of a person's loyalty to the prevailing political ideology, which is an indicator of how they will rule once in power, is an essential attribute for an aspiring judge. Law Professor John Hasnas explains in *The Myth of the Rule of Law* that if a person's world-view is inconsistent with the prevailing political ideology, they will not knowingly be considered, nominated or otherwise endorsed to be a state or federal judge:

Consider who the judges are in this country. Typically, they are people from a solid middle-to upper-class background who performed well at an appropriately prestigious undergraduate institution. . . . To have been appointed to the bench, it is virtually certain that they were both politically moderate and well-connected, and, until recently, white males of the correct ethnic and religious pedigree. It should be clear that, culturally speaking, such a group will tend to be quite homogeneous, sharing a great many moral, spiritual, and political beliefs and values.

Although state judicial candidates are typically "merit" rated by a professional organization, such as a state bar, and federal judicial candidates by the American Bar Association, all so-called "merit" valuation processes are fraught with political considerations and an undercurrent of backroom wheeling and dealing by power brokers. The inherently political nature of the judiciary stands in stark contrast to what children are taught in school: that judges should be venerated as fountains of wisdom protecting the rights of the people and trying to do the right thing. Given that a judge's political leanings and societal position has a profound impact on his or her perspective and decision making process, it is to be expected that their rulings will be consistent with the multitude of factors making up his or her roots. As noted in *Injustice For All*:

Until laws are applied to facts, they are paper law only. Until facts are selected out of the variety each side urges, their weight is purely hypothetical. The judge brings both to earth and life. He chooses for belief particular facts; chooses that law which, he states, applies to those facts; and declares his ruling – backed by government's coercive power.

That observation emphasizes the role of a judge's belief system in how a case turns out, because it dictates every aspect of how he or she deals with it.

...when a judge actually exercises the independent judgment one would expect from such a person on a daily basis, it is not only newsworthy, but it can be suicidal for his or her career.

The existence of identifiable voting blocks among appellate judges from the Supreme Court on down that are definable by the political leanings of the judges belonging to them, is just one indicator that regardless of an issue or the relative merits of an appellant, the political inclinations of the judges is the most identifiable factor deciding how they vote. The politically less powerful party, particularly in federal court, is the least likely to be the winner of these voting contests.

That is to be expected considering the economic, educa-

Complicity of Judges continued on next page

tional, and ideological world of judges is far removed from the poor, modestly educated or otherwise politically impotent segment of society occupied by the people most often attacked by the law enforcement process. Since such people are outside the caste from which judges are drawn, it is not a political priority for them to be protected, and no judge will unduly risk using any political capital to do so. A consequence of politically impotent people being most often subject to a criminal prosecution is that they are also the most common victims of a wrongful prosecution and conviction. A prime example of that are the four lower class, politically impotent innocent men on Illinois' death row who had to be pardoned by Governor George Ryan on January 10, 2003 because judges had failed to release them.

Thus, the political nature of the state and federal judiciary significantly contributes to the immersement of innocent men and women even deeper into the quicksand-like depths of the law enforcement system without their innocence being detected. Those people are at best only peripherally related to the attainment or retainment of a judge's position, so their welfare is not a political necessity for a judge to be concerned about.

The political and ideological circumstances underlying a judge's position results in the philosophical alignment of his or her decisions with the biases and prejudices that naturally follow from them. A judge's loyalty to the roots of his or her power results in their adoption of the amoral attitude of aligning a decision to be consistent with them, and not to the letter or the spirit of the law. Thus when a judge actually exercises the independent judgment one would expect from such a person on a daily basis, it is not only newsworthy, but it can be suicidal for his or her career. In *Breaking the Law, Bending the Law*, Michael W. McConnell wrote about what can happen when a federal judge actually exercises independent judgment and makes an unorthodox decision that he or she considers in their mind and heart to be consistent with the dictates of their conscience, and not just politically correct:

Federal Judge John E. Sprizzo will never again be promoted or advanced, for he has committed an unpardonable act of courage in defense of conscience. On January 13, 1997, in the U. S. District Court in Manhattan, Judge Sprizzo acquitted an elderly bishop and a young priest of the crime of "quietly praying with rosary beads" in the driveway of an abortion clinic, in violation of a court injunction and the Federal Access to Clinic Entrances Act. His reasons? That these two offenders did not act with "bad purpose" and, even if they did, he would exercise a judicial version of jury nullification. Because their act was 'purely passive' – meaning nonviolent – and 'so minimally obstructive,' it justified 'the exercise of the prerogative of leniency.' Because the parties waived a jury trial, the judge's decision is equivalent of a jury verdict of acquittal, and cannot be appealed.

It is only because of the pervasive influence of politics and everything it encompasses in the judiciary of this country that the act of Judge Sprizzo is considered to be courageous, and not something that all judges are expected to do every day. All too often the influences on a judge's decision work to give short shrift to the men and women who appear before them, so that the guilty and the innocent are incestuously commingled and not distinguished.

Part II will be in the next issue of *Justice:Denied*. **To order** the complete 27,000 word article, send \$10 (check or m/o) with a request for - **Vol. 30, No. 4, Symposium Issue** to: Northern Kentucky Law Review; Salmon P. Chase College of Law; Nunn Hall - Room 402; Highland Heights, KY 41099. 

Robert Hays continued from page 3

On August 6, 1992, K. H. wrote a letter to Robert, then in the county jail awaiting trial, stating, "I'm sorry that I lied. I was afraid that you would take the kids and go away." She further states in the same letter, "I hope the courts can see the truth and set you free." She affirms her love for Robert and wants to be a happy family again.

August 19, 1992, K. H. contacted the detectives and told them the allegations were correct, that Robert had abused his daughter and agreed to testify at the hearing.

When the state awarded custody of the children to Robert's mother, Virginia, and Jennifer realized that she and her siblings were not going to be returned to their mother, who had threatened to kill them if Jennifer did not say bad things about her father; Jennifer tried to confide in her grandmother, to let her know that the accusations against her father were false. She attempted on several occasions to talk to her grandmother, social worker and aunt and was told they were not allowed to discuss the details of the case or the trial with her.

Jennifer also tried to recant her testimony to the district attorney, Mr. Moreo, whom she recalls, greatly intimidated her. At their last meeting before trial he stated, "You're not telling me what I want to hear. I am going to have to do what I have to do." Jennifer, afraid that she would be removed from her Grandmother's home, the only safe and stable home that she had ever lived in, went on to tell the DA what he wanted to hear.

Robert went to trial on March 3, 1993. The medical testimony regarding the sexual abuse consisted of 2 pictures and "expert" testimony from a Nurse Practitioner who worked under the (then existing) Saint's Program. Jennifer had been examined in August of 1992 and the hymen was found to be abnormal. The diameter of the hymen was found to be excessive and "consistent with abuse", a controversial method of determination, both then and now. This method has been highly criticized by the medical profession as a scientific method of determining how much sexual abuse a child has sustained, and in fact the diameter alone does not indicate abuse at all as larger measurements occur naturally within the non-abused population. It should also be noted that the measurement itself is obtained by holding a "ruler up to the bottom" of the child being examined, so at best the measurement would be a guess and is completely absent of "scientific method." No tearing or scarring was visible and the explanation given was that the tissues were "resilient and would accept varying sizes of objects." (The nurse testified inaccurately as to the elasticity of the female vagina. The elasticity is only present when a woman produces estrogen, a hormone an eight-year-old child could not possibly physically produce.) The faulty medical testimony was presented as fact, when in reality, years later, a standard for measuring this is still not agreed upon by the medical community in general.

K. H. testified at an appeal hearing where she said, "Just little by little I gave her more details". "I told her to say that her father was doing things to her, touching her, licking her, putting her mouth on his private. I put it into her head that she was -- that they would all get taken away". Referring to Jennifer, "I might have said I wish she was never born." She testified under oath that Jennifer had in fact been exposed to pornography, watched the Spice Channel, and that she encouraged her to masturbate. She described how she gave Jennifer events to remember for time frame references, and that she impressed upon her, how the well being of her siblings depended on her cooperation. She went on

to testify that her trial testimony was all a lie.

The damage that may or may not have occurred to the hymen is also consistent with the statements of Jennifer's mother and Robert's account that he did nothing sexual to his daughter.

The trial lasted three days. No experts testified for the defense, Robert had simply one character witness, a close family member, stating that he couldn't possibly have done this. It took the jury approximately four hours to reach a guilty verdict on all eight counts. Robert received four consecutive life sentences for a crime that he did not commit. He also received four concurrent sentences ranging from four to seven years each.

The weekend after Robert's trial, Jennifer took her Grandparents aside and told them the truth. They were shocked that a mother would do such a terrible thing to a child; and they immediately sought help for Jennifer. They called Jennifer's social worker who came over and met with her, with her grandmother present. (The social worker later denied that Jennifer's grandmother was present at the meeting and went on to say that Jennifer had gone back to her original story that morning.) Jennifer and her grandmother both say that the social worker lied about what was said at the meeting.

Jennifer went to Drew Christianson, Robert's defense attorney, where she filed an affidavit recanting her testimony on March 11, 1993, eight days after her father had been convicted. In this affidavit, Jennifer outlined what had actually happened to her. She clearly stated that her father never molested her and gave graphic testimony regarding the part her mother played in this.

Jennifer also met with her therapist within the week and attempted to recant her story. The therapist later provided a report, saying that Jennifer had recanted her testimony, because her father's conviction had hurt her grandparents terribly. In her professional opinion, recantations are common and do not substantiate that the abuse did not happen. Notably, in all her years of practice, she testified (in another unrelated trial) that children under the age of 11 are "incapable" of lying or fabricating a story of abuse. She further stated that children's accounts are usually of a progressive nature, gaining more detail over time, even though her notes in Jennifer's situation reflect that Jennifer gave a consistent account, the same account of the abuse she sustained numerous times. She also performed an evaluation test on Jennifer (a test that does not exist) and used the results of this test to determine that Jennifer had been sexually abused (pre-trial).

Robert was and is hopelessly entangled in web of lies and deceit that has taken away his most basic rights and freedoms. Statistics show that once a man is accused of sexual abuse, the law goes on to incriminate him, often unjustly, regardless of the fact that he might actually be innocent. Sexual crimes against children have the highest conviction rate of all felonies in this country.

Jennifer also filed an affidavit regarding her experience with Prosecutor Moreo on February 22, 2001. Now eighteen years of age, she says that both her mother and Mr. Moreo forced her into testifying untruthfully against her father.

Currently Jennifer feels overwhelmed and consumed with guilt. She feels responsible for her father's conviction and incarceration. Robert constantly assures her that it is not her fault. He tells her that she was only a child, a victim, caused by her mother's need to retaliate against him.

Robert Hayes continued on next page

Robert Hayes continued from page 11

Jennifer says, "I have to do everything possible to help my father because he is innocent." "My mother is the perpetrator of this crime, not my father!"

Meanwhile, Robert is in the Nevada State Prison in Lovelock, Nevada in protective custody. He has had difficulties given the nature of his conviction, and his refusal to admit that the allegations are true. Paroles continue to be denied, because when someone does not admit to his or her guilt, he or she cannot show that they have rehabilitated within the system. Therefore, Robert will continue to serve four consecutive life sentences. Anyone who stands convicted of sexual offenses against a child becomes a walking target within the system and faces a considerable threat from the other inmates.

Robert and Jennifer are asking for your help. Robert's address is:

Robert Hays #39760
Lovelock Correctional Center
P.O. Box 359
Lovelock, Nevada 89419

Robert's outside contact is his mother. Her address is:

Virginia Russo
3960 Sagewood Street
Las Vegas NV 89147

Note: JD's editors thoroughly researched this story and we relied heavily on the supposedly, "expert" testimony presented during Robert's trial. We researched trial transcripts, affidavits, appellate records, numerous interviews, and statements from the victim, Jennifer.



Edwin Wilson continued from page 4

On October 27, 2003, after spending four years sifting through the evidence in Wilson's case, U.S. District Court Judge Lynn Hughes' declared, "Because the government knowingly used false evidence against him and suppressed favorable evidence, his conviction will be vacated." ²⁶ Judge Hughes didn't mince words in a 24 page opinion that outlined the prosecution's failure to turn over the exculpatory documentation of Wilson's many post-retirement CIA contacts that would have proven Briggs' affidavit was perjured, "It alone lied. It alone possessed - and withheld - the information that documented the falsehoods. The government alone insisted on the affidavit rather than production of the underlying records. It alone had the underlying documents." ²⁷ Judge Hughes also recognized the deliberateness of the decision by federal prosecutors to use the false affidavit, "The government discussed among dozens of its officials and lawyers whether to correct the testimony. No correction was made - not after trial, not before sentencing, not on appeal, and not in this review." ²⁸

Judge Hughes made the astute observation that "The truth comes hard to the government." ²⁹ It is so hard that although Wilson had documentary proof in 1997 that CIA officials and federal prosecutors had fabricated Briggs' affidavit to be as favorable as possible to the government, they continued denying -- even after Judge Hughes' ruling -- that they knew of Wilson's close association with the U.S. intelligence community that literally continued up to the time of his 1982 arrest and indictment. ³⁰

Judge Hughes has not yet made a decision about Wilson's motion to hold the federal officials who concealed their

knowledge that Briggs' affidavit was false. However Wilson underestimated the number of people involved in the prosecution's scheme to present manufactured evidence against him. While Wilson's motion names 17 people, Judge Hughes "has identified about two dozen government lawyers who actively participated in the original non-disclosure to the defense, the false rebuttal testimony, and the refusal to correct it." ³¹ The conspiracy of silence engaged in by every one of those lawyers for over 20 years undercuts the claim of the naïve that the federal government cannot engage in large scale conspiracies. Three of the government lawyers who concealed the truth about the affidavit's falsity while Edwin Wilson was wrongly convicted, sentenced, and imprisoned on the 1983 conviction, later became federal judges: Stephen Trott is a senior judge of the U.S. Court of Appeals for the Ninth Circuit, D. Lowell Jensen is a senior federal judge of California's Northern District, and Stanley Sporkin is a retired federal judge for the District of Columbia. ³²

Wilson remains imprisoned on several other convictions that occurred after the ones vacated by Judge Hughes. They were also related to his alleged activities in Libya, ³³ as well as an alleged attempt to solicit the murder of a federal prosecutor that was based on the testimony of three jailhouse snitches. ³⁴ In a November 7, 2003 interview with CNN's Wolf Blitzer Wilson asserted he was not involved in the sale of explosives to Libya, "I'm denying that I sold it, that I profit by it or shipped it." ³⁵ Furthermore he denied that he solicited or attempted to have anyone killed. ³⁶ Wilson maintains that those convictions, for which he was sentenced to over 50 years in prison, are as much a fabrication by federal prosecutors as were the convictions vacated by Judge Hughes. Considerable weight must be given to Mr. Wilson's claim considering the extraordinary lengths federal prosecutors went to engage in the deceitful tactics they used to secure his 1983 conviction, and the vigor with which they continue to defend their untoward conduct more than twenty years after the fact.

An excerpt from the *Justice: Denied* article published almost four years ago about Mr. Wilson's case is still relevant as a summary of why Mr. Wilson was "double-crossed" by the federal government that succeeded in decimating his life by his wrongful convictions:

"In retrospect, it appears that Edwin Wilson was a political pawn sacrificed by high CIA officials in an effort to try to maintain the public illusion that the Reagan administration wasn't complicit in covertly providing arms to nations such as Libya, publicly branded as unfriendly to the United States. The Department of Justice is not pursuing justice in Edwin Wilson's case, but it appears to be trying to avoid the public and legal embarrassment that would result from Wilson's exoneration and the financial compensation he might be awarded for his years of being wrongly imprisoned. One's personal opinion about the nature of Wilson's conviction doesn't change the wrong perpetrated on him by the very people with whom he was, in effect, working -- the CIA and the United States government." ³⁷

To date not a single federal employee has been disciplined in any way for their conduct in the investigation and prosecution of Edwin Wilson. That blindseye that constitutes a tacit condoning of the illicit conduct by the dozens of government lawyers involved in the case stands in sharp contrast with Judge Hughes summation of what the conduct of those lawyers should have been:

"The government's preparation, presentation, and preservation of false evidence are not the process that is due from the government. As Justice Sutherland observed, while a prosecutor "may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." *Berger v. United States*, 295 U.S. 78, 88 (1935) (George Sutherland). The government has no legitimate interest in buying or presenting false evidence from outsiders - it has less than none in lying to the court itself." ³⁸

Edwin Wilson, who is 75 years old, is currently imprisoned at USP Allenwood in White Deer, PA. His projected parole release date is September 14, 2004, after serving more than 22 years in prison.

Endnotes:

- 1 United States vs. Edwin Paul Wilson, Crim. Case H-82-139 (USDC SDTX), Opinion of Conviction, October 27, 2003, at p. 2.
- 2 *Id.* at 6.
- 3 *Id.* at 7.
- 4 Ex-CIA Agent Framed by the CIA and Federal Prosecutors, Hans Sherrer, *Justice Denied* magazine, Vol. 2, Issue 1. Available at, <http://www.justicedenied.org/wilson.html> (last visited March 3, 2004).
- 5 United States vs. Edwin Paul Wilson, *supra*, at 4.
- 6 *Id.* at 4. ("Wilson even "sold" a two-year-old registered quarterhorse worth \$1,500 to a high-ranking CIA official for \$100 and stabled it at his farm.")
- 7 *Id.* at 3.
- 8 *Id.* at 2-3.
- 9 *Id.* at 3-4.
- 10 *Id.* at 4.
- 11 *Id.* at 7.
- 12 *Id.* at 7.
- 13 *Id.* at 7.
- 14 *Id.* at 8.
- 15 *Id.* at 8.
- 16 *Id.* at 8.
- 17 *Id.* at 9.
- 18 *Id.* at 11.
- 19 Federal Prosecutors Knowingly Used Perjured CIA Affidavit to Secure '82 Convictions of CIA Agent Edwin Wilson, at <http://www.solari.com/gideon/legal/background/FTWArticlewithSporkin.html>
- 20 *Id.*
- 21 *Id.* at 23.
- 22 Ex-CIA Agent Framed by the CIA and Federal Prosecutors, *supra*.
- 23 United States vs. Edwin Paul Wilson, *supra*, at 20. (In a UPI story one of the jurors stated that they relied on the Briggs affidavit to arrive at the guilty verdict.)
- 24 *Id.* at 21.
- 25 Ex-CIA Agent Framed by the CIA and Federal Prosecutors, *supra*.
- 26 United States vs. Edwin Paul Wilson, *supra*, at 1.
- 27 *Id.* at 13.
- 28 *Id.* at 1.
- 29 *Id.* at 11.
- 30 *Id.* at 16. ("The government even claimed in this review that it did not have evidence of Wilson's work with the CIA after 1971.")
- 31 *Id.* at 15.
- 32 Ex-CIA Agent Framed by the CIA and Federal Prosecutors, *supra*.
- 33 United States vs. Edwin Paul Wilson, *supra*, at 2.
- 34 CNN Wolf Blitzer Reports, November 7, 2003, Interview with Edwin Wilson at, <http://www.cnn.com/TRANSCRIPTS/0311/07/wbr.00.html>
- 35 *Id.*
- 36 *Id.*
- 37 Ex-CIA Agent Framed by the CIA and Federal Prosecutors, *supra*.
- 38 United States vs. Edwin Paul Wilson, *supra*, at p. 24.



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Back issues of *Justice: Denied* can be read, along with other information related to wrongful convictions.

Ronnie Wilson continued from page 5

sister always wore three necklaces and that the floating heart was one of them. Robert McGrede said he remembered Brenda “always” wearing the necklace.

May 15, 1984 -- Betty McGrede, Brenda Morgan’s mother, said she remembered her daughter having a necklace of the type she had looked at the day before. Cindy Watts showed Sgt. Jackson a necklace she owned that was identical to the one Brenda had. Photos were taken of Watts’ necklace. To date, Brenda’s necklace has not been found.

May 16, 1984 -- The evidence recovered from the stolen pick-up is delivered to the Southwestern Institute of Forensic Sciences. The necklace, towels and hair were not tested at that time, however, the hair samples and the necklace are being tested for DNA in conjunction with Alvin Kelly’s case. The testing may provide a link between the hairs and the driver and/or the passenger in the stolen pickup and between the necklace and Brenda Morgan.

Pre-trial background

September 1990 -- Assistant District Attorney Becky Simpson and District Attorney Investigator Russell Potts visited Cummings in Michigan to discuss her participation in the upcoming Wilson and Kelly trials. Cummings provided one informal unrecorded statement, a second written statement that was used to obtain indictments and yet a third statement that was used at the trials. Cummings’ account of the crime was the bulk of the prosecution’s case. Questionable supporting testimony will come from Alvin Kelly’s brother, Steve. Alvin Kelly was sentenced to thirty years for the Ford murder. In December 1990, Kelly is transferred from TDCJ to Gregg County and charged with the Morgan murders. Wilson, who was in the county jail at that time for bond revocation on a charge of unauthorized use of a motor vehicle, was informed he is also being charged with the Morgan murders. LPD Investigators Potts and Chuck Willeford interviewed Wilson in jail and tried to convince him to implicate Kelly before Kelly implicates him, an offer Wilson declines, telling them he was not involved. Wilson asked to speak to his lawyer and the conversation ends.

Cummings’ second written statement to prosecutors clearly conflicts with her 1985 statement to Bean and her first written statement to prosecutors. The information in the second statement was used at Kelly’s trial and he was convicted of capital murder and sentenced to death November 1991. That same statement was used in Wilson’s trial to implicate him in the crime for which he received sixty-six years on April 1992. Initially, Wilson was convicted of murder with the use a deadly weapon. Wilson’s attorney had the deadly weapon charge overturned on appeal because of incorrect directions to the jury and Cummings’ testimony that Wilson shot none of the victims. The second statement and testimony from Cummings upon which the prosecution based its case is rife with inconsistencies, irregularities, and obvious untruths, primarily concerning Wilson’s involvement.

The reopening of the Morgan case riveted the community. Wilson’s trial came on the heels of Alvin Kelly’s trial for capital murder of a child and his subsequent death sentence. Judge Alvin Koury denied the request of Wilson’s attorney for a change of venue. During Kelly’s trial, Cummings was sequestered in a state apartment with her sister under close scrutiny of state officials and was taking pre-

scription narcotics for her drug addiction. According to Cummings’ sister, state officials made promises not to prosecute Cummings for her part in the Ford or Morgan murders. Such a tacit agreement, and the numerous conflicting statements Cummings made to relatives over the years, cast significant doubt on Cummings’ “voluntary” participation and credibility. Cummings’ varying statements to prosecutors contain numerous discrepancies, inconsistencies, and untruths, but the defense was never allowed to question Cummings’ credibility. Much of the information surfaced after conviction through interviews conducted in Kelly’s state appeals phase by defense investigators Barry Higginbotham and Jimmy Lancaster. Among the more serious credibility issues are:

John Ford murder: Rickey Kelly, Alvin Kelly’s brother, signed an affidavit in 1998 that says he overheard Cummings tell his mother and his wife, prior to 1989, that she had killed John Ford. Rickey Kelly said he relayed this information to prosecutors Willeford and Potts prior to Alvin’s trial and said that they “seemed not to want to hear this information.”

Non-prosecution agreement: Cummings’ sister, Beverly Stemen, said that during a conversation with Simpson and Potts, she had asked whether or not Cummings might be prosecuted or go to jail for her involvement in the crime and was assured no action would be taken against Cummings. This was confirmed by Cummings in a subsequent conversation with her sister after Cummings’ return from Texas. In a later conversation with defense investigators, Stemen said that prosecutors told her not to worry, because, even though they were not giving Cummings immunity, they were not going to prosecute her.

Cummings involvement in the Morgan murders: In October 1997, a defense investigator interviewed Cummings’ sister, Violet Brownfield, who told him that in 1985 Cummings had said she had killed Jerry Morgan with a gun. Stemen told the investigator that Cummings had told her the same thing. She said she relayed this information to Potts and Simpson immediately afterward but they “did not seem concerned” with it and “told her that it was irrelevant.”

Wilson trial evidence problems

The addition of Ronnie Lee Wilson as an accomplice

According to Bean, Wilson’s name was never mentioned by Cummings in her 1985 statement to him nor in any subsequent conversations with him. In affidavits of conversations concerning the crime prior to Cummings’ 1990 statement, a number of relatives and acquaintances of the Cummings and Kelly verify that neither Cummings nor Kelly mentioned Wilson. Cummings and Steve Kelly could not even properly describe Wilson when questioned by defense attorneys prior to trial.

Lack of solid motive

Cummings testified that she had no idea where she, Kelly, and Wilson, were going, or the purpose of their trip to the Morgan’s. The prosecution claimed the murders were drug related and tried to portray Wilson and Kelly as “collectors” for Walter W. Shannon who was convicted in 1998 of delivery of a controlled substance. However, Shannon’s wife testified at Wilson’s trial that she and her husband thought Wilson was an informant, or “cop,” and refused to have any contact or dealings with him. Additionally, Shannon was under indictment at the time of the murders and not running any drug activities from his home

as Cummings and Steve Kelly claim. Though the killings may have been random, recent information turned over to Kelly’s appellate lawyer may back up the drug-related aspect. In an interview with officials after the case was reopened and prior to the trials, Jerry Morgan’s father said he believed that Jerry and his family were murdered because Jerry knew who had committed a 1983 murder and abduction in Kilgore and was telling everyone. His father noted that it is possible Jerry might not have had any concept of how dangerous that knowledge could be.

Alleged visit to the Morgan home on day of the murders

Cummings said she, Kelly and Wilson stopped by the Morgan’s trailer on April 30 between the hours of 3 and 4 p.m. Cummings claimed there were three cars in the driveway and people moving around inside the trailer. Cummings said Wilson went to the door, knocked and spoke calmly to a man who she said she thought was Jerry Morgan. But records show that both Brenda and Jerry were at work all day April 30. Jerry Morgan’s mother also testified that the two were at work all day; she was babysitting their son, Devin, and Jerry had picked him up after work sometime between 5:30 and 5:45. Brenda left work at 6 p.m. This testimony and the work records successfully contradict Cummings’ story.

Conflicts in account of post-murder activities

In Cummings’ statement taken in September 1990, she says Kelly told her to drive their truck and follow him and Wilson in the Morgan’s car to a wrecking yard outside Longview. She said that Kelly then told her to go home. She claims she did not see Kelly or Wilson until the following morning (May 1) when they pulled up with the Morgan’s car on a tow truck. This statement was used to indict Wilson in 1990 but was never allowed into court for the trial. In a deposition hearing eleven months later, Cummings claimed that, rather than driving to the wrecking yard, the three of them drove the Morgan’s car to Tyler, Texas, and then, after wiping it clean of fingerprints, abandoned it a block behind Mother Francis Hospital.

The wrecker/tow truck omission

The “information” about the tow truck was not revealed to the defense in either trial and it directly conflicts with Cummings’ second statement and testimony. Had the prosecution revealed this information during the trial, Wilson’s defense attorney could have tried to verify or disprove Cummings’ story about the wrecker.

Time frame inconsistencies

Cummings claimed Wilson was in her presence from the morning of April 30 through the afternoon of May 2. The first inconsistency with this claim arises when looking at her account of the time of the murders. She said she, Kelly, and Wilson arrived at the Morgan’s home at 9 p.m. However, autopsy reports indicate that the victims had no food in their stomachs; this strongly indicates they were killed before eating dinner. Also, no lights were on in the trailer when the victims were found. A sister testified that she had called the house sometime between 7:30 and 8 p.m. and became concerned when she got no answer. Three alibi witnesses at Wilson’s trial testified that he was at the Good Shepherd Hospital in Longview with his mother and stepfather between the hours of 2-5 p.m. on April 30 (when he was supposed to be in Rusk, Texas,

Ronnie Wilson continued on page 14

Ronnie Wilson continued from page 13

with the Kellys). There was also testimony that placed Wilson at his parents' home the evening and night of April 30. A new alibi witness has come forward to verify this information. Finally, on the afternoon of May 2, when Wilson was allegedly in Waco and Rusk with the Kellys, he received a speeding citation from the Longview Police Dept. at 2:42 p.m. (this was verified by an NCIC inquiry).

Suppression of prior interviews, conversations and evidence tapes

The critical evidence of tapes and records of prior contacts with Bean was suppressed by the DA's office. Defense attorney Greg Neeley tried to obtain copies but was told the materials could not be found. The 1985 materials of Cummings' prior contacts with officials may well have provided critical impeachment/exculpatory evidence.

Perjury by Cummings about contact with officials prior to trial

Cummings perjured herself by denying that she had ever spoken with officials prior to her contact with the DA's office in 1990. In 1998, Bean signed an affidavit attesting to his interviews and conversations with Cummings in 1985. These discussions were taped as per LPD directives and would have been readily available to prosecutors. ADA Dunn (the person Bean directed to Cummings in 1985) sat in the audience at Wilson's trial and said nothing during Cummings' false testimony.

Cummings' assertion no deal was made with prosecutors

Despite her self-confessed involvement in the Ford murder, and her subsequent implication of herself in the Morgan murders, Cummings is a free woman who apparently needs not to fear prosecution for her involvement in these crimes. Though it may be technically true that no formal deal was made (i.e.: no immunity officially offered), there is clear evidence that a tacit agreement to not pursue prosecution for her involvement in the cases existed. Also, Cummings clearly qualified for an "accomplice witness" designation but the trial judge declined to qualify her as such. Cummings claimed she and Wilson participated because they feared for their lives and that Wilson's sole participation was carrying stolen items from the house. Cummings herself admits helping dispose of the stolen car and wiping it for fingerprints. Assisting in an ongoing crime makes her as culpable as she claims Wilson was since she claims they were both acting under equal duress. Had she been designated as an accomplice witness, her cooperation would have protected her from future charges for her part in the Morgan murders and/or the Ford murder.

Pressure, coercion, perjury

Since the trial, a number of witnesses have said Cummings had admitted to them that she lied under oath because she was frightened. According to one witness, Cummings feared being charged with the Ford murder if she did not cooperate in the Wilson and Kelly trials. Kelly's sister, Nancy, and her husband, said Cummings expressed her fears of personal injury and retaliation in a 1998 visit and warned the Browns about "asking too many questions."

False testimony about Wilson's vehicle

At the time of the murders, Wilson drove a 1981 black and silver Chevy truck (verified by GMAC loan records). He

was in this truck when he received the traffic citation on May 1. However, Cummings testified that the only vehicle she had ever seen Wilson drive was an "old, little, white car" which she claims he was driving April 30- May 2. This story about a white car was never pursued and the information never verified. Information has recently surfaced, though, that a small white car would have been familiar to Cummings -- her former roommate, John Ford, purportedly drove an older white Ford Falcon.

The missing murder weapon

Cummings testified that Wilson was at no time in possession of a gun. She claims that Kelly had the only gun, a .22 revolver. The conflict of the number of total gunshots (7) versus the alleged murder weapon, a 6-shot revolver, is never addressed. Other than these examples, there is little known about the murder weapon. Though specific handguns were alluded to by the prosecution at trial, none were shown to be the murder weapon.

More questionable weapon testimony

At Wilson's trial, witness Sam Little, taking the place of his wife, Pat, relayed her story that Wilson told them one of the two guns he had given them had been used in the Morgan murders. Little claimed he turned the guns over to a local police chief but the chief testified that he was told the guns were not related to the Morgan murders. The chief inspected the guns and returned them to Little. At the time, the Littles were under investigation for criminal activities and were acting as informants actively gathering information on local drug activities for law enforcement authorities. They admitted their informant status was common knowledge to many people in the community, including Wilson, who was an old family friend. Also, a witness was willing to testify in Wilson's trial that Pat Little told him she lied in her deposition about the gun and was "sorry she got involved in Wilson's case."

Conflicts in gunshot testimony

Cummings testified that she saw Kelly shoot Brenda and Devin Morgan at close range. However, a forensic expert testified that there were no powder burns around the wounds on either victim. There is also no evidence that Devin was shot in the living room and then placed by his father in another room. Cummings' story was not corroborated by forensics and there is no report of the child's blood in the living room or the hallway to the other room.

Corroborating testimony problems

Steve Kelly told family members he gave untruthful testimony to convict his brother, Alvin. He said prosecutors had told him they knew he had helped get rid of John Ford's car and that they could implicate him in the murder. Steve also testified that a few days prior to the Morgan murders, he went with Wilson and Alvin to a brick home in Longview. Steve said he heard shouting and went to the backyard where he said he saw his brother kick and pistol whip Jerry Morgan. However, the coroner testified that there were no injuries on Jerry consistent with such a beating. Family members testified there were no injuries or evidence of trauma to Jerry or his wife when the two attended a family event at his mother's house the Sunday prior to the murders. Steve said at Wilson's trial that he, Wilson, and Alvin Kelly, had gone to a home in Rusk a few days before the killings and he said he remembered a lamp in the living room was on when they arrived. However, testimony at Alvin's trial established that the electricity to the house in Rusk had been terminated from April 4,

1984 until January 1985. Two neighbors testified that it did not appear that anyone lived in this house after April 4, 1984. Cummings claimed she returned to this same house and took a bath after the Morgan murders. At trial, Steve Kelly admitted lying in the statement he had given police, and after the trial he told a number of people that he lied about his brother's involvement. He told one person, "I turned state's evidence against my brother for a crime he didn't do."

Rickey Kelly impeachment information

Alvin Kelly's other brother, Rickey, signed an affidavit in 1998 saying that he had been approached by prosecutors Potts and Willeford who said they would get rid of pending criminal charges against him if he would give them information leading to his brother's conviction. Rickey said he offered information concerning Alvin's innocence but the investigators were not interested.

There are many, many inconsistencies and discrepancies in the state's case against Wilson that warrant serious review. It is not enough to simply dismiss such inconsistencies by saying the jury heard the evidence and made their decision. Juries are made up of humans who are capable of mistakes -- especially when deprived of all the evidence -- a fact demonstrated quite effectively by the number of wrongful convictions being overturned. As a society we fail ourselves when we adopt the position that factual innocence is no barrier to a sentence "properly arrived at." Eyewitness testimony -- the sole evidence in Wilson's case -- is being scrutinized more closely now than ever before in innocence cases. As noted by Rob Warden, journalist and Executive Director of the Center on Wrongful Convictions at Northwestern University, "Erroneous eyewitness testimony -- whether offered in good faith or perjured -- no doubt is the single greatest cause of wrongful convictions in the U.S. criminal justice system." On May 2, 2001, the Center presented a study in which staff members "identified and analyzed 70 cases in which 84 men and two women had been sentenced to death but legally exonerated based on strong claims of actual innocence since capital punishment was restored following the U.S. Supreme Court's 1972 decision in *Furman v. Georgia*." The full study and results can be found at: <http://www.law.nwu.edu/wrongfulconvictions/eyewitnessstudy.htm>. Ronnie Wilson can be written at:

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Berkshire County continued from page 5

Mehegen is unaware of just how misleading and incomplete summaries of interviews can be. Coleman and Clancy, quoted above, have analyzed recordings of child interviews in some notorious child abuse cases and compared the prosecution's written summaries with the actual interviews. They write that "not only are leading and suggestive methods used in the vast majority of cases, but the written summaries give no indication that this happened and instead concentrate on what the child said after such suggestive methods have influenced the child." For example, Neal Clairmont's first interview with Detective Collias lasted about forty-five minutes, which Collias summarized into one single spaced page.

Researchers at the National Institutes of Health reported the same finding in 2000. "More than half (57%) of the interviewers' utterances along with 25% of the... details provided by the children were not reported in the "verbatim" (police) notes.... Investigators systematically misattributed details to more open rather than more focused prompts," that is, investigators said that they were asking neutral, open-ended questions when in fact they were asking specific and possibly leading questions. For example, the question, "did he put his penis in your mouth?" provides a child with sexual knowledge of which he or she might previously have been ignorant.

Rush to Judgment

"All too often, investigators consider the accusation, once it has been stated during an interview with the child, to be sufficient evidence to conclude that the case is genuine. No further investigation is judged necessary."

-- Coleman and Clancy

Investigators probing the child abuse complaints in the Halsey, Baran and Clairmont cases apparently never seriously considered alternate hypotheses for why the children would be alleging abuse. "They had no reasons -- you know, those are some pretty horrific things for kids to make up," RoAnn Vecchia told Bruce Clairmont's lawyer.

The Clairmont children were pawns in a nasty divorce; the Walker twins' allegations against Halsey (that he shot a gun at turtles and frogs and set crayfish on fire) were utterly bizarre, and allegations against Baran came, not from a child, but from parents with a pronounced prejudice against homosexuals.

Detective Collias appeared to rely more on new-age intuition than old-fashioned detective work in deciding that Bruce Clairmont abused his children. Renee and Neal, two of the five Clairmont children, and the only two to be involved in making allegations against their father, were brought to the police station in the spring of 1993. It was almost two years since their father had lived with them. Neal told Collias that his father used to wash his penis and make him uncomfortable. In his report of the interview, Collias wrote: "I told him that I thought that there was much more to this and that he was holding things back." Neal continued in therapy and by July, was back to tell Detective Collias more. He claimed that when his mother was out of the house shopping, his father would sit on the edge of the bathtub and have Neal kneel on the floor and force Neal to perform oral sex. "Neal remembered that his father had him flush the toilet while this was going on," the report notes. Interviewed for this article, Collias said that he didn't measure the distance from the bathtub to the toilet to see if a child Neal's age could have reached the toilet handle while kneeling by the bathtub. According to Clairmont, he couldn't have reached it.

Renee's allegations against her father similarly progressed from touching to penetration over a period of months. Later still, the children alleged that the sex acts had continued at their father's home when they went to visit him, a home that Clairmont shared with his brother. Although this was an alleged crime scene, Collias never even visited

this home as part of his investigation, or interviewed anyone who lived there, besides the defendant. Instead, the accusations, obtained under dubious circumstances, were relied upon to send a man to prison for nine to twelve years.

Because of the heinous nature of child sexual abuse, the presumption of innocence is often given short shrift, especially in Berkshire County. After Halsey's arrest, both Jane Sattullo, the therapist, and the children's elementary school principal were quoted in the local newspaper, discussing the accusations as though they were confirmed facts. Neither of them appeared to give a moment's consideration to the presumption of innocence for Halsey. "We all feel violated," Principal Thomas Gillooly told the Berkshire Eagle.

But accusations of child abuse, like any accusation, should be investigated carefully. A child abuse investigation should include a profile of the child and the family, and should investigate the child's prior sexual knowledge. Does the child have a precocious amount of sexual knowledge for his age, and if so, why? Is it because he has been molested or could there be another explanation, such as exposure to adult conversation, or inappropriate television programs. In his cross-examination for the Clairmont trial, Collias admitted that he did not interview the Clairmont children's teachers, or school counselor, or pediatrician.

Investigators should ask, did the accused have the opportunity, the place or time, to molest the children as alleged? The Baran trial jury heard that Bernard Baran was never alone with the children, that bathroom doors were left ajar as a matter of policy, that he didn't have a key to a tool shed where he allegedly took the children, but none of this mattered to the verdict. Halsey was supposed to have molested children on his bus route. Since he clearly didn't have time for this, the prosecutor theorized in his closing argument that Halsey must have kept the children with him all afternoon on early dismissal days. But Shugrue never asked the children's mother, when she was on the stand, if she paid attention to what days school let out early.

Investigators should ask, could the child have been abused by someone else? The parents who accused Bernie Baran were admitted drug users with chaotic and violent lives. Their son, only three years old, was almost expelled from the day care because of his violent, anti-social behavior and was in foster care at the time of Baran's trial. Two of the children in this case made accusations against other adults in their lives -- but this information was not shared with Bernard Baran and his lawyers.

Interpreting children's testimony

"Today's interviews also frequently demonstrate that they 'believe the child doctrine' so popular among child protection advocates is very selective. Regardless of how suggestive an interview might be, eventual statements of abuse are believed, but statements by the child that abuse has not occurred are not believed. The child is said to be 'in denial.'"

-- Coleman and Clancy

As an example of how interviewer bias can affect perceptions, consider these two descriptions of the same child, Christopher Barton. Jason and Justin Walker accused their bus driver of molesting them. The twins named Christopher as having been sexually assaulted as well. Christopher's mother watched his forensic interview through one-way glass. When questioned, Christopher denied that anything unusual had happened on Robert Halsey's bus. "After it was over I talked to the (investigator) and they said that they didn't think we needed to worry (because it appeared their son hadn't been molested)." She recalled that the investigator agreed with her that Christopher was "the kind of kid who would have said something." But Lanesboro Chief of police Stan Misiuk described Christopher's interview this way in front of a grand jury. "Christopher was extremely evasive. He did not want to talk about Bob (Halsey) or the bus at all. He was having a hard time sitting still. He was always doing something in the interview room."

"Based on your training and experience," the prosecutor asked, "do you feel that.... Christopher (was) not forthcoming about all they knew about what happened on the bus?"

"No, (he was) not forthcoming," said the chief.

Christopher was re-questioned at play therapy sessions at school, conducted by Jane Sattullo, but continued to deny that anything had happened. He told his mother that the twins, Halsey's chief accusers, were encouraged to draw obscene pictures and swear at them to "get their anger out." His mother finally took her son out of the therapy sessions. "He was definitely affected and definitely hurt (by the therapy)." She told the investigators, "He is a very honest child. He has told you over and over that nothing happened." Certainly, if his mother had not taken steps to remove her child from the so-called therapy, the relentless, sexually explicit questioning would have continued for this child.

Supplying testimony for the children

When these cases came to trial (because every defendant asserted his innocence rather than plead guilty), judges allowed the prosecution to lead, and openly prompt their young witnesses into providing the desired testimony. When the children faltered, the prosecutor also provided an explanation for the jury, suggesting that the children were afraid or anxious. In the Baran case, children as young as three and four testified, or rather, the prosecutor testified on their behalf:

MR. FORD: Remember something coming out of Bernie's peney when he touched you with it?

GINA SMITH: Uh-huh.

MR. FORD: What?

GINA SMITH: Nothing.

MR. FORD: I thought something came out?

GINA SMITH: Nothing came out.

MR. FORD: Mommy, could you just tell Gina it's okay to tell the truth.

THE MOTHER: What do you think came out?

GINA SMITH: I don't want to.

MR. FORD: Remember some pretend worms coming out?

GINA SMITH: (Witness nods head up and down)

At 13, Neal Clairmont was old enough to tell his story in his own words when he testified before the Grand Jury. But it was all provided for him by the prosecutor. Here is Neal's grand jury testimony, in its entirety (excluding being sworn in and chit-chat about schools):

yes, yes, yes, yes, yes, yes, yes, yes, yes, yeah, yeah, yeah, yeah, yeah, yeah, yes, yes, yes, yeah, yah, yup, yeah, yes, yes, yeah, yes, yes, yeah, yes, yes, yeah, yeah, yes, yup, right, yeah, yeah, yes, no*, yup, yeah, yeah, yeah, yes, yes, yes, yes, yeah, yes, yes.

*(the question was, "did you ever go for overnight visits" (to father's after the divorce))

The prosecution contended that Robert Halsey, the bus driver, could maneuver his Chevy Suburban around some large concrete blocks that lay across Nobody's Road, and that he would take the children up to some secluded fields to assault them. Prosecutor Timothy Shugrue deftly maneuvered the children on the stand into giving the desired testimony. "Could you tell us," Shugrue asks Justin Walker, "were you able to get around those blocks?" Justin answers "Sometimes yes and sometimes no."

The answer Shugrue wanted was "yes, we could." Shugrue ignores Justin's equivocal answer and acts as though he has said, "yes we could."

Berkshire County continued on page 16

Berkshire County continued from page 15

"All right," he persists. "Tell me, when -- how you got around those blocks?"

But Justin has chosen to go with the "sometimes no" part of the equation and testify that the van couldn't get around the blocks. He adds, "Sometimes he stopped the bus there (at the blocks), and then he'd take us into the woods."

Shugrue ignores this remark as well, and asks "Did you ever drive up there?"

"Yeah," Justin replies.

"How did you drive up there?"

"With the bus."

"Did you go around the blocks?" By repeating the question, Shugrue sends Justin the message that his first answer wasn't the right one.

"Yeah," answers the witness.

Shugrue appeared at times to not hear what the children were saying at all. Both twins testified that the stuff they saw coming out of Halsey's penis was "yellow." Shugrue told the jury the kids said it was "white." The children said Halsey "moved it around," to describe the way Halsey moved his finger and his penis during anal and digital intercourse. They appeared to believe that intercourse was a swirling sort of activity. Shugrue told the jury that the children described an "in and out" motion.

Neal Clairmont's descriptions also raise the question of whether he was speaking from experience, or from what he imagined sex to be. He evidently believed that homosexual sex resembles campers trying to start a fire by rubbing sticks of kindling together.

Questionable credentials, questionable theories

"It should be obvious that if increasingly serious allegations emerge only after weeks or months of questioning of the child by family, police, social workers, or therapists, careful investigation is the only way to decide if the expanded claims are the result of the child's gradually increasing ability to say everything that happened, or are instead the result of the child's attempt to satisfy interviewers who are prodding the child to say more and more."

-- Coleman and Clancy

Psychologist Jeffrey Fishman testified for the prosecution in the Halsey and Clairmont cases. In a pre-trial hearing, Fishman explained that boys who've been sexually abused are especially likely to delay disclosing abuse, "because there's a concern that somehow they're going to be seen as damaged by having... a homosexual act, that somehow as boys they should have been more responsible and more able to protect themselves." But, added later in his testimony, when he started treating the Walker twins, "I asked them what sex was, they didn't really know what that was. So when they were talking about sexual acts, what we would consider sexual acts, they were solely describing them as intrusions upon their body." Since the Walker twins had no concept of what sex was, how could they have internalized the cultural stigma against homosexuality? Why then, would Fishman have used his stigma theory to explain why the boys delayed coming forward about Halsey's actions for a year after he stopped driving them?

"It is my understanding that Ms. (RoAnn) Vecchia, the Dept. of Social Services worker did not receive any license until 1998 and that in 1998 she obtained a license as a Social Work Associate," an attorney friend of Bruce Clairmont's pointed out in a scathing letter to the parole board.

"The requirements for this sort of license, which she didn't have at the time she was involved with Bruce's young children, appear to be either two years of college in a "human science" field or four years of college in any field."

"In other words, any of the following college graduates are permitted to ask probing questions of small children in the State of Massachusetts on the subject of possible sexual encounters with their father: 1.) Art history majors with a concentration in 20th Century Minimalist Art, 2.) Physical Education majors with a concentration in aquatics, 3.) History Majors with a concentration in Irish folklore and mythology. Sobering notion, indeed."

Vecchia, as noted above, is the forensic interviewer at The Kids' Place today, despite having the lowest level of accreditation possible in Massachusetts.

Inadequate or misleading medical information

"Of the many hundreds of cases we have studied in which hymenal notches and clefts were said to be healed tears, or pale areas were said to be scars, rarely did an investigation of the child's medical past reveal that at the time of the alleged assault the child was noted to be acutely injured."

-- Coleman and Clancy

In the Halsey case, the Walker twins were examined by a pediatrician. No photographs were presented at trial of the scarring that the pediatrician claimed to find. No evidence was presented at trial to indicate that anyone noticed, back when the boys were supposedly being assaulted, that they had been injured in such a way as to leave scars. The boys' regular doctor wasn't called to testify.

Detective Collias got mixed up on the medical evidence in the Clairmont case and told the grand jury that Neal had a "tear" on his anus. But Collias was wrong. In fact, the medical report indicated that Neal had an "anal tag," a tiny flap of excess skin which is a normally occurring variation in human anatomy and isn't considered to be an indicator of sexual abuse.

The jury was told in the Bernard Baran trial that little Peter's mother was giving him a bath one night and she noticed blood on his penis. His mother later admitted that she hadn't seen any blood. A medical examination of this boy showed no damage to his genitals.

The Kids' Place

"Those who interview children for possible abuse and investigate abuse allegations should not see themselves as advocates for children but seekers of the truth. Our society needs child advocates who offer services to abused and neglected children... however, such persons should not be part of a legal investigation."

-- Coleman and Clancy

The Berkshire County Kids' Place, a "children's advocacy center" co-founded by Shugrue and Collias, is precisely what Coleman and Clancy warn about -- an agency which combines therapeutic intervention for children with forensic investigation. The founders of the Kids Place sought to convince the public that an invisible epidemic of child abuse existed right there in Berkshire County. A fundraising pamphlet for The Kids' Place claims that "The Pittsfield Police Department last year handled 100 rape cases -- 65 were children."

However, the official crime statistics don't bear out the claim. The pamphlet is undated, but predates the Center's official opening in 1995. In 1993, 1994, and 1995, the Uniform Crime Reports for Pittsfield show that the police department handled 29, 32 and 30 reports of rape -- from complainants of all ages -- in those years. How could the police handle 65 cases of child rape and not have these cases reflected in the Uniform Crime Reports?

The pamphlet also confused the reporting rate for child abuse of all kinds (such as neglect or physical abuse) with the rate for child sexual abuse. The Kids' Place pamphlet told potential donors that 85 out of 1,000 children in Pittsfield were reported for child sexual abuse every year. It's true that 85 out of 1,000 Pittsfield children were being reported for suspected abuse every year -- twice the state average -- but this was for child abuse of all kinds. In fact, only 6 percent of substantiated child abuse reports in Pittsfield involve sexual abuse. (Neglect is by far the most common type of substantiated child abuse).

To compare actual case figures against the distorted figures in the fundraising pamphlet, between July 2000 and July 2001, an unusually busy year for the center, the investigative team interviewed 109 children. ² Criminal charges were brought on nine cases. If the pamphlet statistics were correct, the Kids' Place would see 2,905 children, not 109 that year. ³

The Kids' Place executive director did not respond to a request to explain why the distorted figures were used on the pamphlet -- was it a mistake, or do the professionals at The Kids' Place believe that hysterical exaggeration is the best way to get their point across?

District Attorney Gerard Downing told the Berkshire Eagle newspaper in 2000 that the way in which child abuse investigations are conducted in Berkshire County hasn't changed substantially since the days of the Bernard Baran case. The Kids' Place continues to combine investigation, which should be neutral, with advocacy, which is never neutral.

Bernard Baran continues to wait for complete disclosure of the child interviews that he is entitled to receive, and for which he has a court order. He and Robert Halsey remain in prison.

False accusations hurt children as well as adults. Wrongful prosecutions divert resources from protecting children. Those who claim to care about the children of Berkshire County need to face up to the errors of the past, and prevent wrongful convictions in the future.

P.S. Berkshire County District Attorney Gerard Downing died at the age of 52 on 15 December, 2003.

Special Notes

Lona Manning is a freelance writer and researcher who lives in British Columbia, Canada. Several of Manning's crime articles may be found at www.crimemagazine.com. She maintains a website about wrongful child abuse convictions at <http://members.shaw.ca/imaginarycrimes>.

Special thanks to Carol Clairmont Weissbrod for her assistance in researching this article.

#1 All excerpts from Coleman and Clancy are taken from, "Has a Child Been Molested: the Disturbing Facts About Current Methods of Investigating Child Sexual Abuse Accusations," by Lee Coleman, M.D. and Patrick Clancey, J.D., published by Berkeley Creek Productions, 1999.

#2 During the 80's and 90's, the topic of child abuse received a lot of publicity and government and charitable resources were brought to bear to combat the problem. One result is the number of reports of child abuse rose phenomenally. In Massachusetts reports of abuse doubled from 1987 to 1997. However, nationwide statistics show that the number of substantiated cases of abuse rose only slightly, meaning that investigators found that the majority of abuse reports are either without merit or lacking proof. Since 1992, substantiated cases of child sexual abuse have actually declined, which we hope means that the actual occurrence of CSA has declined.

#3 Using 2000 Census data figures which show that 34,159 residents of Berkshire County were under 19. 

The Exonerated

Stage Play written by Erik Jensen and
Jessica Blank

Featuring a rotating cast

Reviewed by Hans Sherrer

The Exonerated is a 90 minute stage play revolving around the stories of six former Death Row prisoners who were released from prison after their convictions were reversed. The play briefly tells in narrative fashion each person's story of what she or he was falsely accused of, how she or he was wrongly convicted, and his or her eventual exoneration.

The play is staged with a spartan set of 10 chairs lined up across the stage. There is a lectern in front of each chair that has a copy of the script. There is no physical movement since the actors remain seated throughout the play. The acting is in the voice inflections and accents of the performers as they recite dialogue based on court transcripts and interviews related to the cases of the five men and one woman:

- Kerry Max Cook, convicted in 1978 of murdering a woman acquaintance. He was wrongly imprisoned in Texas for 22 years.
- Robert Earl Hayes, convicted in 1991 of murdering and raping a co-worker. He was wrongly imprisoned in Florida for six years.
- Delbert Tibbs, convicted in 1974 of murdering a man and raping his companion. He was wrongly imprisoned in Florida for three years.
- Sonia Jacobs, convicted in 1976 of murdering two policemen. She was wrongly imprisoned in Florida for 16 years.
- Gary Gauger, convicted in 1993 of murdering his mother and father. He was wrongly imprisoned in Illinois for three years.
- David Keaton, convicted in 1971 of murder. He was wrongly imprisoned in Florida for two years.

Four other actors, two men and two women, wear multiple hats by reciting dialogue of judges, prosecutors, and defense lawyers in the cases, as well as several other people.

The Exonerated is touring the country as of the spring of 2004. The Moore Theater in Seattle was nearly sold out when I saw the play in January 2004. Pulling in a large audience willing to pay over \$50 a ticket requires marquee performers, and during the plays six day run in Seattle, veteran actors Brian Dennehy and Lynn Redgrave played Gary Gauger and Sonia Jacobs, respectively. An assortment of "name" performers, including Richard Dreyfus, Amanda Plummer, Gabriel Byrne, Marlo Thomas, and Vincent D'Onofrio have played parts in the play in different cities.

I was somewhat disappointed with *The Exonerated*. Perhaps reflecting that its writers are of the MTV generation – it has the feel of watching a music video as it jumps from one person to another every few minutes (or less). I suppose that is great if you have the attention span of a two year-old, but I thought it was distracting. So much so that

I found myself thinking of ways the play could have been designed to be more dramatic and less "hip." I was also taken aback by the way the play is staged "on the cheap." Go to any high school play in the country and you are likely to see significantly higher production values than are incorporated into *The Exonerated*.

The Exonerated does however, provide a reason for the snob faction of its audience to indignantly exclaim after a night at the theater - "Oh my, isn't what happened to those people just terrible!" – and the next day go on with their life as if the night before they had been bothered by a bout of indigestion.

Based on the adage that there is no such thing as bad publicity, *The Exonerated* has been good for helping to put a spotlight on several serious miscarriages of justice. However it owes that press coverage to the "name-brand" actors in the cast and not its subject matter or production values. How is that known? The release of an innocent person from prison rarely merits more than a paragraph in newspapers outside of the city or town affected. However to have Brian Dennehy portray Gary Gauger, who was released from prison eight years ago, and Lynn Redgrave portray Sonia Jacobs, who was released 12 years ago, merited almost 1-1/2 pages of coverage in The Seattle Times (Jan. 11, 2004, pgs K1, K4; and, Jan. 15, 2004, C3). That could be more coverage than the paper devoted in total to reports about the 76 people exonerated or pardoned in the U.S. in 2003 (See, The Innocents Database at, http://forejustice.org/search_idb.htm).

In spite of its deficiencies, *The Exonerated* is worth seeing at least once by anyone with a smidgen of social consciousness, but not at the \$52 dollars I paid for a ticket in the balcony. In a few years community, high school, and college theater groups, typically charging \$5-\$15 dollars a ticket for a seat that is often times only yards from the performers, will begin staging *The Exonerated*. The actors in those productions will be just as effective as the "name" performers in the off-Broadway touring version – and probably more so because they will better project to the audience that will be closer to the stage.

Waiting for a local production of *The Exonerated* is a viable option for two reasons: there is nothing about the play that makes it a must see right now (unless you want to see a big name performer read a script); and you can take your savings (up to \$80 for two people) and have your own Wrongful Conviction Movie Fest – including popcorn and drink refreshments! There are over 70 movies related to wrongful convictions that you can choose from listed in The Innocents Bibliography at: <http://forejustice.org/biblio/bibliography.htm>. Many of those movies are based on actual cases, and can typically be rented at video locations where they are available for \$3 or less, or for free from your local library. Any one of those movies could provide as much or more information than *The Exonerated* about the process by which an innocent person is wrongly convicted, what the person goes through, and how they are eventually exonerated. It is also worth keeping in mind that each of these dramatically powerful and informative movies starring "name" performers has been seen by many times more people than will see a theater performance of *The Exonerated* in a hundred years.

The following are brief summaries of nine movies related to wrongful convictions you might want to consider seeing, if you haven't already.

- *In the Blink of an Eye* tells the tragic story of Sonia Jacobs and Jesse Tafero who were wrongly convicted of the 1976 murder of two policemen and sentenced to

death. The 1996 movie stars Mimi Rogers as Sonia Jacobs, and effectively portrays the heroic efforts of her childhood friend, Micki Dickoff, a documentary film maker, who believed in her innocence and worked for years towards her exoneration.

- *Call Northside 777* tells the compelling story of Joseph Majczek, who was convicted of murdering a Chicago policeman in 1933 and sentenced to life in prison. The 1948 movie stars Jimmy Stewart as the enterprising reporter who beat the bushes for proof of Majczek's innocence after responding to a classified ad by Majczek's mother seeking help. His mother had worked for years scrubbing floors to save \$5,000 (a significant amount in the 1940s) to offer as a reward for information that would exonerate her son.
- *The Hurricane* tells the moving story of Rubin "Hurricane" Carter and his co-defendant, John Artis, who were wrongly convicted twice of murdering three people. The 1999 movie stars Denzel Washington (nominated for the Oscar's Best Actor award) and shows how important the efforts of three Canadians, including a teenager, were to the eventual exoneration of the two men.
- *Dangerous Evidence: The Lori Jackson Story*, tells the inspiring story of activist lawyer Lori Jackson's efforts to aid a US Marine Corp Battalion's only African American corporal who she believed was wrongly convicted of raping a white officer's wife. The 1999 movie stars Lynn Whitfield.
- *The Thin Blue Lie* tells of the doggedly determined effort of Philadelphia Inquirer reporter Jonathan Neumann to investigate corruption in the Philadelphia Police Department. As he discovered, their untoward actions included framing innocent people, one of whom was on death row for causing five arson related deaths. Neumann won a Pulitzer Prize for the reporting this movie is based on. The 2000 movie stars Rob Morrow, Randy Quaid and Paul Sorvino. See the review of *The Thin Blue Lie* in *Justice: Denied* Issue 23.
- *In The Name of the Father* tells the story of four Irishmen known as the Guildford Four, who were framed by the police for an IRA bombing that killed five people in a Guildford, England pub. The 1994 movie stars Daniel Day Lewis as Gerry Conlon, and Emma Thompson as Gareth Peirce, the lawyer who relentlessly searched for years to finding exonerating evidence. See the review of the movie in *Justice Denied*, Vol. 2, No. 4, that can be viewed at, <http://www.justicedenied.org/inthenameofthefather.htm>.
- *A Cry in the Dark* tells the double tragedy that befell the Chamberlain family in Australia. Lindy Chamberlain was wrongly convicted of murdering her young daughter, who was actually dragged away by a dingo during a camping trip. The 1988 movie stars Meryl Streep and Sam Neill.
- *Ten Rillington Place* tells the too impossible not to be true story of Timothy Evans. In 1949 Evans was charged with the gruesome slaying of his wife and baby after being induced by police to falsely confess to the murders. Evans was convicted, and then hanged in March 1950. However after his execution it was discovered the actual killer had continued his murder spree. Timothy Evan's execution influenced many people in the U.K. to recognize a fatal flaw with capital punishment is the

The Exonerated continued on next page

Michael J. Floyd continued from page 6

crime, but not the rape, shows he has type A blood. Deckard testified against me and accepted a 30-year plea agreement for conspiracy and confinement. He was released from prison in April 1999 after serving 15 years.

Until my trial, Deckard had seen me only three to five times over the years, and had argued with me on at least one of those occasions. Deckard said he was at my house around 6:30 on the evening of the rape. When I left for work a short time later, Deckard's car wouldn't start so I dropped him off at his house. After work that night, around 10:15 p.m., I picked him up again to help him try to get his car started. Deckard could not get the car going. We left in my car around 11:00 p.m. I drove Deckard home and returned home about 11:20 p.m. My father testified he saw my car leave around 11:00 p.m. and head north towards Deckard's house. Deckard said we went south to Bedford, drove downtown, and then went to where Lori worked.

Deckard also accused me of masterminding the rape. He said that I was wearing a maroon toboggan that he saw me throw along the highway as I drove him home. The toboggan used in the crime was blue. Deckard put the pellet gun and handcuffs into the blue toboggan and hid them in some weeds down the alley from his house. Deckard led police to the blue toboggan and its contents. He also showed them where in the weeds along the highway they could find my maroon toboggan and then led police to his grandfather's old farm. My toboggan turned up missing from my garage after Deckard had visited the evening before. The state called a special agent with the FBI laboratory to testify regarding hair analysis. He testified that hair in my toboggan could have belonged to me. Deckard's blue toboggan was not tested, but presumably it would have contained Deckard's hair and perhaps Lori's, as well.

Pat McSoley also erred by not calling my mother during the defense phase of my trial. My mother, Ruth Floyd, saw me asleep in bed at 1:17 a.m. She woke up to go to the bathroom and looked at her clock radio. She then went into my room which was right next to hers. She saw me and turned off my light and radio. On the morning of the trial, McSoley told my mom she could go on into the courtroom because he had decided against using her as a witness. Midway through Deckard's testimony, McSoley decided that my mom could help rebut some of his testimony. At

The Exonerated continued from page 17

inability to correct an innocent person's execution. The 1970 movie stars Richard Attenborough.

- *The Wrong Man* tells of the devastating effect on nightclub musician "Manny" Balestro and his wife when he was wrongly accused of robbing an insurance office in 1954. Alfred Hitchcock directed this movie that is based on an account published in Life magazine. The 1956 movie stars Henry Fonda, Vera Miles and Anthony Quayle.

After watching a half-dozen movies about wrongful convictions you should have money left over from what tickets to the touring version of *The Exonerated* would have cost. To come out even with the cost of the play's tickets, you could do the good deed of donating the left-over money to one or more of the cash strapped grassroots organizations concerned with various aspects of wrongful convictions. Then you can check out *The Exonerated* if it is locally produced in your community. 

that point, Judge Chezem refused to allow her testimony because she had inadvertently violated a separation of witness order by sitting in on previous proceedings. My mom had seen Deckard "messing around" in our garage where my toboggan was kept. According to her report to Dr. Morgan, Lori did not arrive home until 3:00 a.m.

Molad Bridgewater, an Indiana University police officer, had known Deckard for four years and was familiar with his bad reputation in the community. He also knew that Deckard was a compulsive liar. Two weeks after my arrest, while I was out on bond, I offered to take a polygraph test. McSoley took me to a regional polygraph center in Louisville, Kentucky, for testing. I passed. Three months later, by request of prosecutor Hickman, I was asked to take another test at the Bloomington Police Department. I was asked to sign a stipulation that if I passed the polygraph I could walk away, there would be no trial. However, if I failed, the polygraph results would be used against me in court. I signed. I trusted the system and I gave them all the ammunition they needed. I signed and I failed; however it was noted that when I arrived at the testing center, my attorney wasn't there and I was so upset that I broke out in hives before the test.

During my sentencing hearing, Janet Collins testified that I raped her in January 2, 1983. She and her boyfriend, Scott Davis, had identified me from a lineup. Collins testified that she and Davis were leaving the Bluebird Café in downtown Bloomington when a man with a gun forced them to drive him to a mall then to the Lake Monroe area. Once in the Lake Monroe area, he forced Davis out of the car and ordered Collins to drive on. The man who she identified as "Floyd," then told her to stop the car, ordered her to disrobe, tied a rope around her neck and hands, put a knife to her throat and raped her. After he was finished he put her in the trunk of her car which is where a Lawrence County Deputy Sheriff found her. Davis testified that I threatened to kill the couple numerous times and had a gun cocked at the back of Davis' head. Davis testified that after he was forced from the car by me he ran for help.

I was never tried or convicted in the second rape. I obtained discovery material from Monroe Circuit Court Judge Douglas R. Bridges in June 1995 by merely writing a letter. The FBI report in that case was able to type only a vaginal washing for an ABO group. That blood type was also A. Back in 1983, Pat McSoley made no effort to obtain the Monroe County case material prior to sentencing -- even though he knew a week beforehand that prosecutor Hickman was going to have a lineup and try to use the Collins case at my sentencing hearing. Bloomington Police Sgt. Barbara Webb had forwarded copies of her case file to prosecutor Hickman in Lawrence County, but this was not given to defense counsel, nor did McSoley ask Hickman what he had. Fingerprints, hair samples, and other bits of hard evidence were obtained which Webb believed would trace to the perpetrator. None matched me. McSoley was not aware that shortly after the rape, Janet Collins and Scott Davis were shown a photo spread containing a picture of me taken after my arrest in Lawrence County. Neither witness identified me as the rapist. Four months later, McSoley was at the lineup arranged by prosecutor Hickman. McSoley heard Webb tell the witnesses as the subjects moved into the room that the man they suspected in their case was present. At the sentencing hearing, McSoley did not object to the lineup identification as having been tainted by the officer's comments. He did testify at my post-conviction relief hearing that he did not know whether he could object on that ground or not, nor did he research the issue. McSoley was not aware that not only was the lineup tainted by the detectives comment, but that it was

doubly tainted by the fact that I was the only subject who had been twice placed before the witnesses in a lineup or photo spread. It was not hard for the two witnesses to identify the suspect they were told was present. He was the only man the detective put in front of them twice.

After my February 1997 Post-Conviction Relief hearing, the state gathered additional evidence to try to undercut the significance of the semen exclusionary evidence. Over objection, Lori Quackenbush's deposition was admitted into evidence in lieu of testimony at a May 1997 hearing. She testified that mid-morning, July 10, 1983, she had sexual intercourse with her boyfriend. She said the only birth control she and her boyfriend used were condoms. This use was sporadic; sometimes they used condoms, sometimes not. On July 10, 1983, to "her recollection," they did not use a condom. She could not recall her menstrual cycle on July 10, 1983. She said she had bathed between July 10th and July 12th and that when she bathed, she washed her private areas. She had also changed her underwear between those dates. This evidence came to light because former prosecutor Donald Hickman had contacted Lori. It was Hickman who asked her questions about her former boyfriend and her sexual relations with him. Lawrence Circuit Court Judge Richard McIntyre denied my request for a new trial based on Lori's new deposition.

The very evidence presented above points to the need for a presentation of the entire case to a jury for deliberation. The state's own doctor agreed the more likely donor would be the rapist rather than the boyfriend. I requested Judge McIntyre to order DNA testing, but Hickman had ordered the samples destroyed in December 1995.

Information in this story came from three records of court proceedings and can be verified by looking under Lawrence Circuit Court, Case No. 47C018307CF20, in Bedford Indiana. My last attorney was Jess Paul. He filed petitions for successive post-conviction, an appeal to the Indiana Court of Appeals and to the Indiana Supreme Court. Post-conviction relief was denied by the Lawrence Circuit Court. All appeals on the state court level have been exhausted. Jess Paul does not practice law in the federal courts. I hope to find someone willing to file a writ of habeas corpus.

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(812) 824-2437

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Phoenix, AZ 85012-2794
ARIZONA Cases
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Arizona Attorneys for Criminal Justice 3737
North Seventh Street, Suite 105
Phoenix, AZ 85014
ARIZONA Cases
No Web Site

Arkansas Innocence Project
PO Box 322
Cherry Valley, AR 72324
ARKANSAS Cases
No Web Site

California Innocence Project
California Western School of Law
225 Cedar Street
San Diego, CA 92101
CALIFORNIA Cases
<http://www.cwsl.edu/>

Center on Wrongful Convictions
Northwestern University School of Law
357 East Chicago Ave.
Chicago, IL 60611
ILLINOIS Cases
<http://www.law.northwestern.edu/depts/>

Centurion Ministries
221 Witherspoon Street
Princeton, NJ 08542
Cases Accepted Nationwide
DNA evidence of innocence not required
<http://www.centurionministries.org/>

Colorado Innocence Project
P.O. Box 2909
Denver, CO 80201-2909
COLORADO Cases
No Web Site

Duquesne U. Law School Innocence Project
900 Locust Street
Pittsburgh, PA 15282
PENNSYLVANIA and WEST VIRGINIA
Cases
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Nova Southeastern University
Shepard Broad Law Center
3305 College Avenue
Fort Lauderdale, FL 33314
FLORIDA Cases
No Web Site

Georgia Innocence Project
730 Peachtree St.
Suite 705
Atlanta, GA 30308
GEORGIA Cases
<http://www.ga-innocenceproject.org/>

Idaho Innocence Project
Attn: Prof. Craig Lewis
College of Law, University of Idaho
Moscow, Idaho 83844-2321
IDAHO Cases
No Web Site

Innocence Inst. Of Western Pennsylvania
Dept of Journalism & Mass Communication
Point Park College
201 Wood Street
Pittsburgh, PA 15222
Pennsylvania and West Virginia Cases
No Web Site

Innocence Project Indiana
Indiana University School Of Law
530 West New York Street
Indianapolis, IN 46202
INDIANA Cases
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Innocent Inmates Association of Ohio, Inc.
P.O. Box 38100
Olmsted Falls, OH 44138
Ohio Cases
<http://www.innocentinmates.org/>

Innocence Project
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New York, NY 10003
Cases Accepted **Nationwide**
Must involve DNA evidence of innocence
<http://www.innocenceproject.org>

Innocence Project For Justice
Rutgers University School Of Law
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New Orleans, LA 70113
LOUISIANA Cases
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Seattle, WA 98105-6617
ALASKA, IDAHO, MONTANA, OREGON AND WASHINGTON Cases
<http://www.law.washington.edu/ipnw/>

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Hamline University School Of Law
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St. Paul, MN 55104
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<http://www.hamline.edu/innocence/>

Innocence Project of Northwest Louisiana
David McClatchey Ph.D., Exec Dir.
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Kentucky Innocence Project
Department Of Public Advocacy
P.O. Box 555
Eddyville, KY 42038
KENTUCKY Cases
<http://dpa.ky.gov/library/advocate/advocate.htm>

Midwestern Innocence Project
5100 Rockhill Road
Kansas City, MO 64110
IOWA, KANSAS and MISSOURI Cases
No Web Site

Mothers For The Advancement Of Social Services - MASS, Inc.
P.O. Box 225067
Dallas, TX 75222-5067
TEXAS Cases
No Web Site

New England Innocence Project
Testa, Hurwitz, & Thibault
125 High Street, Oliver Street Tower
Boston, MA 02110
CT, MAINE, MA, NEW HAMPSHIRE, RHODE ISLAND and VERMONT Cases
http://www.tht.com/News/news_tht_news_innocence.htm

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NEW YORK Cases
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1117 Stanford NE
Albuquerque, NM 87131
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Golden Gate U. Law School Satellite Br
Attn: Professor S. Rutberg
536 Mission Street
San Francisco CA 94105-2968
NORTHERN CALIFORNIA Cases
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Northern California Innocence Project Santa Clara University Law School
874 Lafayette Street
Santa Clara, CA 95050
NORTHERN CALIFORNIA Cases
<http://www.ncip.scu.edu/>

North Carolina Center On Actual Innocence
Shannon Plaza Station
P.O. Box 52446
Durham, NC 27717-2446
NORTH CAROLINA Cases
<http://www.law.duke.edu/innocencecenter/>

Office Of The Public Defender
Carvel State Building
820 French Street 3rd Floor
Wilmington, DE 19801
DELAWARE Cases
No Web Site

Ohio Innocence Project
University of Cincinnati College of Law
P.O. Box 210040
Cincinnati, OH 45221-0040
OHIO Cases
<http://www.law.uc.edu/clj/index.html>

Oklahoma Indigent Defenders
DNA Forensic Testing Program
P. O. Box 926
Norman, OK 73070
OKLAHOMA Cases
<http://www.state.ok.us/~oids/>

Palmetto Innocence Project
c/o J Milling, Esq.
McNair Law Firm, PA
PO Box 11390
Columbia, SC 29211
SOUTH CAROLINA Cases
No Web Site

Rocky Mountain Innocence Center
358 South 700 East B235
Salt Lake City, UT 84102
NEVADA, UTAH and WYOMING Cases
<http://www.rmicorg.com/>

Second Look Program
Brooklyn Law School
250 Joralemon Street
Brooklyn, New York 11201
NEW YORK Cases
No Web Site

Southern California Innocence Project
California Western School Of Law
225 Cedar Street
San Diego, CA 92101-3046
SOUTHERN CALIFORNIA Cases
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300 South Capital Avenue
P.O. Box 13038
Lansing, MI 48901
MICHIGAN Cases
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Univ. of Houston Law Center Innocence Network
100 Law Center
Houston, TX 77204-6371
TEXAS Cases
<http://www.law.uh.edu/faculty/ddow2/dpage2/innocence.html>

Univ of Kentucky Innocence Project Externship
Attn: Prof. R. M. Harding
University of Kentucky College of Law
209 Law Building
Lexington, KY 40506-0048
KENTUCKY Cases
No Web Site

Wisconsin Innocence Project
Frank J. Remington Center
University of Wisconsin Law School
975 Bascom Mall
Madison, WI 53706-1399
IOWA and WISCONSIN Cases
<http://www.law.wisc.edu/fjr/innocence/>

Assoc. in Defence of the Wrongly Convicted
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Suite 318
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Take your reader into your story step by step in the order it happened. Give dates, names, times, places of events. Be clear. Write your story with a beginning, middle and end. Tell exactly what facts point to your innocence, and include crucial mistakes the defense lawyers made. Do not soft-pedal the truth: Explain if needed, but don't leave it out or it may come back to haunt you. However, don't treat your story as

a "true confession" and **only include information either in the public record or that the prosecutor already has.** Do not repeat yourself. Cover the "motive" angle: why didn't you have a motive? If the prosecutor said you had one, disclose what that was. Spare nothing. Do not complain about the system or the injustice to you: let the facts speak for you. (Raging about the system is OUR job!) At the end tell what the present status of the case is, and provide the prisoner's *complete* mailing address. Also provide *Justice: Denied* with any independent sources necessary to verify the account.

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The Magazine for the Wrongly Convicted



P.O. Box 881
Coquille, OR 97423

JUSTICE DENIED

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.

Justice: Denied Is the Toto of Wrongful Convictions

Like Toto in the Wizard of Oz, *Justice: Denied* pulls the curtain aside and reveals that the pomp and ceremony of the legal process perpetrates the hoax. It can reliably distinguish the innocent from the guilty. The one in seven felons estimated to be innocent of the crime s/he was convicted of reveals that idea is as dead wrong as the innocent people known to have been executed.

As a whistleblower of injustice, *Justice: Denied* exposes the tragic human consequences of judges, prosecutors, police investigators and lab technicians acting on the idea that what they do is 'Good enough for government work.' Their shoddy work is routinely exposed during an investigation initiated by a wrongly convicted person's family member or friend, by journalism or law school students, or by a newspaper reporter or community stranger. Those are the sorts of outsiders most wrongly convicted people owe for their exoneration, not insiders privy to the details of the innocent person's frame-up.



Dennis Mahler was released on April 3, 2003 after 20 years of false imprisonment for rapes. DNA proved he didn't commit. No one listened in 1983 when he told the judge his conviction was a travesty.

Every issue of *Justice: Denied* features several ongoing cases of wrongly convicted people, case updates, summaries of important news stories related to wrongful convictions, snapshots of recently exonerated people, and other articles concerning false convictions. More than any other publication in the world, *Justice: Denied* is a manual of how people are wrongly convicted - and how they are then exonerated.

To aid victims of a wrongful conviction, *Justice: Denied* has an *Innocence Resource Guide* listing the address of innocence projects and other contacts related to wrongful convictions. This is also available on the Internet at: <http://justicedenied.org/resource.htm>

Justice: Denied also has an *Article Submission Guide* for people interested in submitting a story of wrongful conviction. It includes the address of the magazine staff person assigned to receive articles for each state. This is also available on the Internet at: <http://justicedenied.org/submit.htm>

Sign up today so you won't miss a single issue of Justice: Denied!

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Justice: Denied is published by The Justice Institute, a 501(c)(3) non-profit organization, and donations can be tax deductible.

Justice: Denied relentlessly sheds light on the darkest injustice imaginable - the prosecution, conviction and punishment of the innocent.

As an independent publication that is not beholden to editorially pleasing any private group or public agency, *Justice: Denied* fearlessly prints stories of wrongful conviction in every issue. No one is spared exposure for their role in causing an injustice: Prosecutors, detectives, lab technicians, judges, witnesses, politicians, jurors and defense lawyers are all fair game.

Since its founding in 1998, *Justice: Denied* has provided a public voice for the estimated one and a third million innocent people buried in the depths of this country's federal and state law enforcement systems.

As the only magazine published in this country devoted to wrongful convictions, *Justice: Denied* sends out invaluable SOS messages to the free world about the plight of people as innocent of the crime they were convicted of committing as the person reading this. Everyday hundreds of people learn 'it can't happen to me' was wishful thinking. A person's innocence is irrelevant if the illusion is created they are guilty - and prosecutors are masters at doing just that.

Overturning a wrongful conviction is a monumental task. An innocent person's conviction after a several day trial can, and often times does take years of effort by dedicated people to overturn. To do so requires convincing skeptical people that a person has been wronged by the legal system. The difficulty in doing that is why *Justice: Denied's* case reviewers must be convinced of a person's innocence before their case is accepted for publication. *Justice: Denied* only shines its light on people who it is convinced beyond a reasonable doubt got the ultimate raw deal - being convicted of a crime they didn't commit.



Ellen Reasonover was a Good Samaritan who called the police to report she saw two men in a car at the scene of a murder. She was prosecuted for the murder, and came within one vote of a death sentence. Discovery of the prosecutor concealed exculpatory audio tapes and purchased perjured testimony to frame her was key to her release in August, 1999 after 16 years of false imprisonment.



Ray Krone walked out of an Arizona prison on April 8, 2002 after ten years of false imprisonment. Four of those years were spent on death row. Erroneous expert testimony led to Mr. Krone being wrongfully convicted twice for a murder he didn't commit.

How Are People Wrongly Convicted?

A number of factors contribute to the remarkable ease that vast numbers of men, women and increasingly children are victimized by a wrongful conviction. One or more of the following factors are typically present in a case of wrongful conviction:

- ✓ Overzealous prosecutors solely concerned with winning
- ✓ Shoddy police investigation
- ✓ Fabrication of evidence by the prosecutor or police
- ✓ Erroneous identification by the victim or other eyewitnesses
- ✓ False confession physically or psychologically coerced
- ✓ Inexperienced or incompetent defense lawyer
- ✓ Police perjury
- ✓ Inaccurate analysis of evidence by crime lab technicians
- ✓ Uncritical jurors that blithely accept the prosecutor's case
- ✓ Presumption of guilt hanging over a defendant's head
- ✓ Slanting of a judge's rulings to favor the prosecutor
- ✓ Lack of resources prevents a defendant from finding exonerating evidence or hiring expert witnesses
- ✓ Doctored reports by police investigators
- ✓ Pressuring of witnesses to give pro-prosecution testimony
- ✓ Smearing of a defendant by the media
- ✓ Critical evidence disappears or is destroyed before the defense can independently corroborate prosecution tests
- ✓ Prejudice against a defendant's ethnicity, religion, political or personal ideas, by the prosecutor, judge and/or jurors
- ✓ Coercion of an innocent defendant to accept a plea bargain by the prosecutor's piling on of charges that will result in a much longer sentence if s/he goes to trial and loses.
- ✓ Purchase of perjurious testimony by the prosecutor
- ✓ Manufactured evidence and/or false testimony by crime lab technicians
- ✓ Wording of an indictment to paint an innocent person in the worst light possible in the eyes of the judge and jury

The playing field is heavily tilted in favor of the prosecution when a defendant



Anthony Bragdon spent 10 years imprisoned for a rape he didn't commit. In March 2003 his conviction based on falsification of evidence by the FBI crime lab was thrown out.

isn't wealthy enough to hire the highest quality lawyers, investigators and expert witnesses to counter the prosecution's virtually unlimited resources. So the likelihood of a wrongful conviction becomes a near certainty when an innocent person who doesn't have hundreds of thousands of dollars to spend on a defense, encounters a deck stacked by such things as police perjury, falsification or destruction of evidence by the police, crime lab technicians or prosecutors; perjured testimony purchased by an unscrupulous prosecutor; a pro-prosecution judge; or prejudiced jurors. Under those conditions the wonder isn't that the innocent are convicted, but that they are ever acquitted.

JD's website is at: <http://justicedenied.org>

The Wrongly Convicted Are Becoming Visible

Justice: Denied, and its website that gets about a million hits a year, has been a leader in increasing public awareness about the prevalence of wrongful convictions. When *Justice: Denied* was founded it was one of a very few voices crying in the wilderness about the nationwide scandal of innocent people being falsely branded as criminals. That concern is now openly shared by the professors, students, lawyers and journalists involved in more than three dozen innocence projects across the country. There are also now several websites that expose different aspects of wrongful convictions, and newspapers regularly report on exonerated people.

Governor George Ryan's pardoning on January 10, 2003 of four innocent men on Illi-



Jeffrey Scott Hornoff was convicted of murdering a woman acquaintance without any physical evidence of his guilt. After 6-1/2 years imprisonment, he was released on November 6, 2002 when the actual killer confessed.

nois' death row who had been tortured into falsely confessing would have been unthinkable just a few years ago. There was extensive news coverage of those pardons and of the Governor's commutations the next day of everyone on Illinois' death row, because of the possibility there were undetected innocent people among them. Afterwards an Illinois prosecutor admitted what also would have been unthinkable a few years ago: innocent people confess to crimes they didn't commit and some of them end up on death row.

"In November of 2000 Justice Denied Magazine published an article I had written about my son Derek's case and a publisher from MedStar Television read that article which led to the production of an hour long episode of Medical Detectives which airs on The Learning Channel. That program has been seen around the world, we have received numerous messages of concern and offers of support. An article was written and published in the February issue of Playboy and a book is currently in the process of being written. All of the recognition and support would not have happened were it not for Justice Denied Magazine. The dedication of the staff is to be highly commended." Larry A. Tice, father of Derek Tice, one of the "Navy's Forgotten Four"

Justice: Denied's mission can be summed up as a crusade to make 'Innocent Until Proven Guilty' more than a hollow phrase used by judges, prosecutors and the police to cover-up that in reality the reverse is usually true: an accused person is considered to be 'Guilty Until Proven Innocent.'

Public exposure is a powerful antidote to injustice. Keep up-to-date and help right the injustice of wrongful convictions by subscribing to *Justice: Denied* today!



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- Over 100 issues 80¢ each

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In the Next Issue of *Justice: Denied*

- Robert Lee Norris - imprisoned on the basis of tests that were never performed!
- Tulia Travesty prosecutor Terry McEachern faces Texas State Bar suit for misconduct!
- Philip Romero released after 31 years of imprisonment when it is discovered the prosecution knew he was innocent before his trial!
- Ken Marsh - wrongly convicted of killing his girlfriend's son on flimsy evidence!
- Spanish government saves an innocent Brandon Mayfield from an FBI frame-up!
- Part II of *The Complicity of Judges In The Generation of Wrongful Convictions!*
- Exonerated men in California and New York awarded damages totaling over \$4 million!
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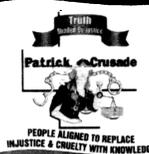
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is one of the best and most powerful new books ever written on wrongful convictions and the judicial system by a political prisoner Rev. Sherman D. Manning.

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761 Years on Death Row

96 individuals lost 761 years of their lives on death row before their exonerations. The system is clearly broken.

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- Explain how false and distorted memories are created;
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Submit Your Wrongful Conviction Story To Justice:Denied!
See Page 20 for Submission Guidelines

The following can happen when an innocent person's story is published in *J:D*:

"In November of 2000, *Justice:Denied* Magazine published an article I had written about [my son Derek's] case and a publisher from Medstar Television read that article which led to the production of an hour long episode of Medical Detectives which airs on The Learning Channel. That program has been seen around the world, we have received numerous messages of concern and offers of support. An article was written and published in the February issue of Playboy and a book is currently in the process of being written.

All the recognition and support would not have happened were it not for *Justice:Denied* magazine. The dedication of the staff is to be highly commended."

Larry A. Tice, father of Derek Tice, one of the "Navy's Forgotten Four"

This is what the distinguished Professor Richard A. Leo says about *Justice:Denied*:

"*Justice Denied* magazine is essential reading for anyone interested in the how and why the state (the police, prosecutors and courts) can and does wrongfully convict the innocent in America. *Justice Denied* magazine provides powerful analyses and gripping case histories of injustice run amok in the American criminal justice system. ...the miscarriages of justice routinely documented by *Justice Denied* should not be happening in America and need to be stopped."

Richard A. Leo, Ph.D., J.D.
Associate Professor, U. C. Irvine

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