

JUSTICE DENIED



The Magazine for the
Wrongly Convicted

THE “WAR ON TERROR” IS A GRAVE MENACE TO THE INNOCENT



Brandon Mayfield
Attorney and Devoted
Family Man Falsely
Branded as a Terrorist
See page 11



Sami Omar Al-Hussayen
Graduate Student and
Devoted Father Falsely
Branded as a Terrorist
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Abderazak Besseghir
Widower and Father of a
Young Daughter Falsely
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James Yee
Army Chaplain
and Father of a
Young Daughter
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Autumn Cruz/Union-Tribune

Issue 25
Summer 2004

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Message From The Editor

Greetings, JD readers,

Welcome to a new edition of *Justice:Denied* magazine.

I am again stressing that we must continue to qualify for non-profit status. Your memberships, donations and sponsorships help a great deal. To assist in covering the cost of producing *Justice:Denied*, we also offer the opportunity to promote your product or service that may be of interest to our readers. From our website at, <http://justicedenied.org/jdpromo.pdf>, you can view and print out our promotions brochure. If you prefer, you can request that the brochure be mailed to you. Write:

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Again, let me inform you that to encourage memberships to *Justice:Denied* we are only making back issues available to be read on our website. If your budget cannot afford the magazine in print, let us know, and you will be sent instructions to access the files online, keeping it to yourself, of course.

Thank you for your continued faith in us, as we struggle to help innocent people get out of wrongful convictions and explain how they occur.

Blessings to all, on behalf of the entire JD Staff,

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.



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PO Box 881

Coquille, OR 97423

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

Convicted on the Basis of Scientific Tests Which Were Never Performed - The Robert Lee Norris Story

By Robert Lee Norris

Edited by Natalie Smith Parra, JD Editor

On October 15, 1992, a 16 year-old white female raised the claim of rape and kidnapping against me. Her name is Sheila Knutty.

Sheila was a troubled youth, involved in substantial gang activity and on probation. She was under threat of being locked up until she turned 21 years-old as a result of her passion for older black men, her unruly behavior and her contempt for authority.

Sheila's was a common face in the black community. Nightly she would sneak out of her house and walk several miles to a high crime, drug-infested community park on the north east side of Canton, Ohio with her girlfriend Heather.

Drugs and alcohol were always the common denominator in whether or not Sheila climbed between the sheets and she wasn't overly discriminatory as to whom or how many men she slept with, just as long as she could get high. This, of course, seemed, at least for a good portion of my summer of 1992, a worthy exchange, as Sheila was good looking and had a good figure. Her aggressive attitude combined with her looks made it easy for her to pass herself off as being 18 years old and by doing so she had access to many opportunities that, had her real age been known, would surely not have occurred.

I was one of those opportunities. I had money and Sheila was a repeat visitor to wherever I called her from. It can be said that Sheila and I maintained a prostitute-trick relationship. I enjoyed the sex; she was obviously there for the money.

Nonetheless, Sheila was merely one of many women I was seeing, though of all of them, my relationship with her possessed no candy coating; We both knew exactly what it was: sex on call and neither of us had any problem with that.

I called Sheila and asked her if she wanted to spend the night and she said, "Yes, come and get me," and told me where to pick her up. Kimberly and I went from Massillon to Canton to pick her up. We met her as agreed at the 76 gas station on the corner of Harrison Ave. and Route 30 in Canton at approximately 6:50 p.m. on October 15, 1992. Kimberly and I were roommates at the time. Kimberly was raising two small children.

The three of us returned to Kimberly's residence at approximately 7:20 p.m., and upon our arrival, Sheila almost immediately said that she had to go to the projects and insisted on walking there. I argued, "Then why in the f*** did you want me to come and get you?" She simply walked out the door at approximately 7:30 p.m.

Several minutes later Gary Taylor, who also lived in the house with us, arrived. We brought in a six-pack of beer. Kimberly and I were on the couch and he asked if I wanted a beer and since I don't drink I refused, as did Kimberly. Gary drank two beers and then went upstairs, took a shower and went to bed. Sheila was not there when he arrived and he didn't see her in the house until the following morning.

Kimberly and I had sexual relations over the next several hours. At approximately midnight Sheila began knocking on the back door. She was drunk and staggering. She had been dropped off by several men, one named Beef, the other Mad Dog. They were known dope boys who were referred to as

Detroit Boys, some of the many men who came to Canton and Massillon from Detroit to sell crack cocaine.

Because Sheila was my responsibility I asked Kim if we could use her bed and she said yes. Sheila and I went upstairs. Sheila said that she absolutely had to be home by 7:00 a.m., so I set the alarm for what I thought was 6:10 a.m. After Sheila and I went upstairs, I didn't see Kimberly for the rest of the night. Sheila and I undressed and went to bed. She wore only a pair of black string panties and we began touching. However, on slipping my hand beneath her panties I quickly discovered that she was a mess, not having bothered to clean herself after having sex with Lord only knows who. I yelled, "You nasty bitch." I wiped my hand on the top sheet and then went to the bathroom to wash.

"... the semen detected in the vaginal pool and panties of Sheila had originated from an ABO blood type O (secretor) with a PGM subtype of 1+2+ ... according to the State of Montana Department of Justice forensic scientist Kenneth Konzak and his September 21, 1983 genetic test report on my saliva and blood, I was an ABO blood type O (non-secretor) with a PGM subtype of 2-1."

The state of Ohio offered that Sheila and I had arrived at the house at approximately 7:30 p.m. and that I took her to an upstairs bedroom where we began smoking crack while she posed in her underwear. The state said I forced Sheila to smoke crack by putting one of my hands over her mouth and the other over her nose. It is important to note that no drugs of any kind were detected in anyone's blood or urine. The state alleged that I tied up Sheila with yarn, and that Kimberly and I repeatedly raped Sheila for 12 hours. The medical testimony did not support the occurrence of such a sexual episode, finding instead that there was no redness or swelling in the vaginal area. The examining physician at Aultman Hospital in Canton refused to indicate in his diagnosis that Sheila was a rape victim.

A big problem with the state's case is that Gary Taylor didn't see Sheila between 7:30 and 8:00 p.m. the evening before and in the grand jury testimony Sheila stated that she didn't see Gary until breakfast the following morning. Gary also said there was no noise the entire night, no indication of anyone going in or coming out of the residence to buy crack cocaine, and furthermore, that neither he nor Kimberly knew anyone who used cocaine. He also told the police that in the morning, "Some blond girl came down the steps with Bobby and Kim followed." Gary said that he said hello and Sheila returned the greeting. He said that Sheila ate some toast and drank some coffee, and that Sheila, Kimberly and I left in Kimberly's car at about 7:25 a.m.

Sheila asked Kim to drop her off at a girlfriend's house because she was in trouble for not waking up in time to get back to Canton by 7:00 a.m. We dropped her off at the residence of Alisha Muldonaldo and Alisha's mother, Bambi. Based on Sheila's trial testimony she went into the residence, ate, called her boyfriend and then made an allegation of being raped. Sheila would not allow Bambi to take her to

Massillon City Hospital for examination nor would she permit her to take her to Doctor's Hospital, but insisted on being taken all the way back to Canton's Aultman Hospital.

The problem is that in America police detectives often have first dibs in such circumstances. An unruly youngster on probation often spends time face down in a detective's crotch in alleys. An attractive young blue-eyed blond who sleeps with black men is a golden opportunity for an unscrupulous police detective.

I'm not so naïve. I played the game and know first hand that, but for prostitutes skirting arrest in the front seat of a police car, a lot of cops would be jackin' to playboy. Sheila then was the property of Canton City police detective Lester Baroni. She was his snitch, his part-time sex object, but most of all she was his bait. He'd send her into dope houses and high crime black areas of the city to gather intelligence in exchange for her warrants being allegedly repeatedly slid to the bottom of the pile. This is what the police do. A white female who sleeps with black men is trash in the eyes of law enforcement, so the cops use these girls to gather evidence and intelligence, because, after all, they deserve what they get.

Baroni's middle name was corruption. He was a mob-boy, as is detective Armondo and was determined to put me away for life. To do this he used Sheila to gain my trust and that was easy. He sent her on a mission to have sex with me and then scream rape. The problem is; however, Sheila wasn't the brightest candle in the universe. She didn't know that the presence of semen alone was not enough and she didn't know that scientific tests would be taken to establish the actual source of the semen. She also didn't know that I wouldn't cop a plea for a shorter sentence when in fact I am innocent.

I was arrested on November 2, 1992 and indicted by a grand jury charging kidnap and rape on November 12, 1992. I was in custody with a female co-defendant, Kimberly Southall, for the alleged kidnap and rape of Sheila Knutty. The nightmare had begun.

In January of 1993, detective Baroni collected hair, saliva and blood samples from me at the Stark County jail for comparison testing to the semen collected from the vaginal pool and panties of Sheila Knutty. On January 21 and January 27 of 1993 respectively, the criminologist Michele M. Mitchell of the Canton-Stark County Crime Laboratory, a police laboratory, allegedly tested those biological samples. Those tests revealed that Sheila was an ABO blood type O (secretor) with a PGM subtype of 1+. The tests revealed that I am an ABO blood type O (secretor) with a PGM subtype of 1+2+ and that the semen detected in the vaginal pool and panties of Sheila had originated from an ABO blood type O (secretor) with a PGM subtype of 1+2+. The semen matched despite the fact that I had not had sexual intercourse with Sheila at any time in October 1992. More importantly, I knew that, according to the State of Montana Department of Justice forensic scientist Kenneth Konzak and his September 21, 1983 genetic test report on my saliva and blood, I was an ABO blood type O (non-secretor) with a PGM subtype of 2-1.

As a PGM 2-1 I would be automatically excluded from a vaginal pool semen mixture of PGM 1+ and 2+. With this knowledge I requested that the state prosecutors Maureen Walsh and Kristine Rohrer of the Stark County Prosecuting Attorney's Office in Canton Ohio, pursuant to the provisions of *Brady v. Maryland*, disclose all exculpatory or impeachment evidence and, specifically, to produce and disclose all exculpatory scientific and medical test results in this case.

Walsh and Rohrer repeatedly denied the existence of any exculpatory or impeachment evidence. I kept silent about the existence of the Montana report because I simply did not trust my lawyers. I had retained three different lawyers to represent Kimberly and me, and in each case the lawyers

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KEN MARSH WAS WRONGLY CONVICTED!

On August 4, 2004, San Diego District Attorney Bonnie Dumanis announced that she agreed Ken Marsh's habeas corpus petition for a new trial should be granted. Dumanis made the decision based on an independent evaluation of the medical evidence by a Florida forensic pathologist who was "unable to conclude beyond a reasonable doubt or to a reasonable degree of medical certainty that [Phillip Buell] was a victim of child abuse." After 21 years of imprisonment, Ken Marsh's conviction was reversed on August 10th, and he was released on his own recognizance. He is required to be retried within 60 days, so on August 17th a new trial date of Sept. 30, 2004 was set. However since the DA's own expert concedes there is no reasonable basis to conclude that Ken Marsh was involved in the death of Phillip, it seems more likely that the charges will be dropped than that a new trial will occur.

This issue of *Justice:Denied* that included the following story about Ken Marsh's case was days from being sent to the printer when his lawyer, Tracy Emblem, notified us of this dramatic turn of events. The habeas petition had been filed in October 2002, and until the announcement by DA Dumanis, the prosecution had opposed Ken Marsh's pursuit of a new trial. We are running Ken Marsh's story unchanged for two reasons. First, it illustrates that the stories appearing in *Justice:Denied* cannot casually be dismissed as contrived. Second, the prosecution's reliance on 'junk science' and false testimony by its expert(s) to deceive the jury into convicting Ken Marsh in 1983, continues to happen to innocent people all across this country. All you have to do is substitute the names of the people involved, the city, and the specific facts of the case. Ken Marsh is symbolic of the tortuous suffering those people go through for no reason other than, like him, being in the wrong place at the wrong time.

Toddler's Accidental Death Ends With Babysitter's Murder Conviction - The Ken Marsh Story

By Brenda Buell Warter

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

My two-year-old son, Phillip Buell, died in 1983. The day of his death, he fell from the top of a four to five foot high sofa and hit his head on a speaker with an ashtray on top of it. He then struck the back of his head on a fireplace hearth. As a result of Phillip's accidental fall and death, my boyfriend, Ken Marsh, who was babysitting Phillip at the time, was charged with murder. In 1983, Ken was convicted of Phillip's murder. Ken has always maintained his innocence. I have kept up my fight to clear his name because I know that, had I had been home with Phillip by myself that day, it would have been me who would have been charged with murder.

Homicide Detective Armijo of the San Diego Police Department believed Phillip's death to be an accident, but the case was prosecuted as a murder and child abuse crime at the urging of Children's Hospital doctors. Detective Armijo has since come forward with a signed declaration to help free Ken, saying that he believes that in his thirty years with the S.D.P.D., this is the one case that bothers him because he feels that an innocent man went to prison.

The medical staff that treated Phillip at Children's Hospital on the day of his death ruled his death a homicide. In fact, when I arrived at Children's Hospital before he died, the doctors immediately told me, prior to an autopsy, that Phillip had been murdered. Ken was arrested before a medical examiner's report on the cause of death and a death certificate were issued. The Children's Hospital doctors testified at Ken's trial that Phillip could not have suffered traumatic brain swelling and bleeding as a result of the fall, and that he could not have died from a short fall. (There are now helmet laws designed to protect children from a variety of short falls.)

Dr. Ruth Stern, Phillip's pediatrician, had previously diagnosed him with a bleeding disorder. On the day of the accident, Dr. Stern called the emergency room crew to tell them Phillip had a blood dyscrasia and infectious mononucleosis. But Dr. David Chadwick of Children's Hospital summarized Phillip's death and omitted all evidence of the coagulopathy. All the other doctors relied on Chadwick's summary for their diagnosis and did not review other, contradictory, medical records. In a meeting with the doctors at Children's Hospital, I begged them to consider Phillip's illness. They told me to

separate myself from him and to let go of the illness because it had nothing to do with Phillip's death. Furthermore, Ken's attorney presented NO expert medical testimony in his behalf and did not get a second autopsy.

Ken was convicted of Second Degree Murder in November of 1983. He has spent the last 21 in prison because the jury did not hear any evidence of Phillip's pre-existing medical condition. The autopsy was performed by Dr. Roger Williams, a Children's Hospital doctor who had been a treating physician during Phillip's emergency care, when the autopsy should have been done by an independent doctor. I have since discovered that Williams was not qualified to render an opinion where causation of death is questionable because he was not, and is still not, a board-certified forensic pathologist. Everywhere they touched Phillip he bruised. At trial, they had my baby's autopsy photos blown up on a wall; these larger-than-life photos of this bruising were presented to the jury. That is not how I wanted my baby remembered.

No testing was ever completed for a bleeding abnormality even though Phillip's prior medical history indicated he had been bleeding internally two months prior to this accident. A review of the records would have shown them that he was being seen frequently for vomiting, bruising, distended stomach, and clotting symptoms.

From the moment of Phillip's birth he had medical problems. The amniotic sack broke eighteen hours prior to delivery; he remained in the birth canal for a long period of time. The doctors had to use forceps to deliver him and his head and face were mangled from them at birth. He had broken blood vessels in each eye, jaundice, chlamydia pneumonia and a huge fontanel (commonly known as a "soft spot") that never totally grew together.

In January 1983, a few days after I had taken him to Kaiser Hospital for vomiting, constipation and a hyper-extended stomach, Phillip started losing a lot of blood. After several visits to Kaiser, I had to take Phillip to Kaiser's emergency room because he was in shock. I was screaming malpractice

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Phillip Buell

Framed to Take the Fall for the Police Protected Murderer? - The Charles Troupe Story

By Charles Troupe

Edited by Natalie Smith Parra, JD Editor

On October 18, 1994, Tina Kirkpatrick was found murdered. Prior to this Tina and I had dated for a while. The relationship ended but we remained friends. After our relationship ended Tina became involved intimately with Gill Bybee and he started her using crack cocaine and forced her into prostitution to support both of their habits. He also physically abused her. Tina also knew William Allen and he got her involved in various paper hanging scams that eventually got both of them arrested. Allen was the leader of these scams and the police got Tina to make a statement agreeing to testify against him. The trial was scheduled to start a few months after her death. Without Tina's testimony the case was dismissed and Allen was released.

Tina and Bybee lived in a house with Allen for a time before her murder. On October 16th, Tina called me from Bybee's house in Cleveland and asked me to pick her up because she had just had a fight with Bybee. I picked her up at Bybee's house and dropped her off on E. 131st around 7:00 p.m. I called Bybee about a half an hour after dropping Tina off and told him that I had given her \$100.00 and dropped her off at E. 131st. The following morning at 2:00 a.m. Bybee called me and asked about Tina. Then he said, "She's probably somewhere dead." That remark sounded odd. Later, Tina's body was found dead on a lot on Allen's street. The official report says that Tina died on October 18, 1994 at 12:36 p.m. According to the coroner, Mr. Summers, Tina's body had been in that field for close to 30 hours.

The original coroner's report said that Tina died of blunt trauma and that before her death she had recently had sex. The DNA tests said that she had had sex with two people. I submitted to a DNA test and it came back negative. Bybee had to be court ordered to take the DNA test and his came back positive. None of the fibers taken from the victim's body matched anything in my home, car or clothing. There was no reason to believe that I committed this crime. The victim's mother even thought that Bybee had killed her daughter because he was always beating her. The autopsy also listed acute intoxication by heroin as a cause of death. They tested and found heroin in the stomach but they did not test the mucous membranes of the nose. Why wasn't this done?

The ... Coroner's report said that Tina died of blunt trauma and that before her death she had recently had sex. ... I submitted to a DNA test and it came back negative.

During this time, Phil Evans was arrested for dealing drugs. In an attempt to release pressure from himself, Evans told FBI Agent James Harnett that I had 4 kilograms of cocaine that belonged to him. Agent Harnett contacted me and demanded that I return the drugs. When I denied having any knowledge of the drugs Agent Harnett became hostile and began to threaten me. Agent Harnett told me that he didn't care where he got the four kilos, that he didn't care what it took, that he was going to get me, and that he would call back in 48 hours and I better have the drugs. This scared me because I did not have and never had the drugs. I waited for the agent to call back. When Agent Harnett called back I was ready with a recorder because of the threats and accusations

Charles Troupe continued on page 19

“I feel like a million bucks!”

Romeo Phillion Was Released From 31 Years of Wrongful Imprisonment After Discovery The Prosecution Concealed Proof Of His Innocence For Decades

By Hans Sherrer

For 37 years Romeo Phillion has steadfastly maintained that on the afternoon of Leopold Roy's 1967 murder in Ottawa, he was having his car repaired 150 miles away. Romeo was convicted of the murder in 1972 and sentenced to life in prison. Discovery of prosecution reports proving the police verified his alibi in 1968 led to Romeo's release after 31 years of wrongful imprisonment.

On the afternoon of August 9, 1967, Romeo Phillion was at a gas station in Trenton, Ontario having his car repaired. On the same afternoon firefighter Leopold Roy was stabbed to death in Ottawa, Ontario, 150 miles from Trenton. Romeo was questioned during Roy's murder investigation. He explained to the police he was in Trenton on the afternoon Roy was killed. After giving his statement Romeo wasn't contacted by the police again about the murder.

Years later, in 1972, Romeo and another man were arrested in connection with a robbery. The police brought up that he had been questioned about Roy's murder, and Romeo told them he would confess to the murder if they let his alleged robbery accomplice go. The police agreed. However after Romeo confessed and was arrested for the murder, he immediately claimed it was a ruse to get his friend released -- because he couldn't have committed the murder since he was hours away from Ottawa when it occurred. His lack of involvement was also supported by his alleged confession that was riddled with factual errors, and which was similar to publicly available information.

Romeo's alibi fell on deaf ears, and in 1972 he was tried, convicted and sentenced to life in prison for Leopold Roy's murder. There was no physical or circumstantial evidence tying Romeo to the crime, and there were no witnesses. The prosecution's evidence against Romeo consisted of his recanted confession.

Romeo's conviction was upheld on appeal and he languished in prison year after year. Eligible for parole in 1992 after serving 20 years, Romeo refused to apply because he wouldn't be considered for release without admitting to Roy's murder.

The first break in Romeo's case came after 22 years of imprisonment. As a boy Romeo had been sexually assaulted by staff members at St. Joseph's Training School east of Ottawa. Romeo was a plaintiff in a suit against the school, and he received a settlement in 1994. Romeo used the money to hire a lawyer to work on finding a way to overturn his conviction. Simonne Snowden, Romeo's sister, also actively entered the battle to free her brother. Although their efforts seemed to be for naught, people in Ontario knew they were beating the bushes for new evidence of Romeo's innocence.

In 1998 the second break in Romeo's case occurred when he received a large manila envelope in the mail that had no return address. Inside was a mother lode beyond Romeo's wildest hopes: Included were the police and prosecution documents about his case that were concealed from his lawyer before Romeo's trial and during his appeals. The

most important document was a police report written on April 12, 1968 by Ottawa police investigator David McCombie clearing Romeo of the murder. Romeo's alibi of being in Trenton had been confirmed to police investigators by workers at the gas station where his car was repaired. Romeo also traded his car's radio for gas when he left the station. McCombie's report stated that because Romeo's presence in Trenton had been confirmed, "We do not believe that Romeo Phillion is responsible for this murder."¹ There was also evidence that four prosecution witnesses perjured themselves about when they saw Romeo in Ottawa.

Aided by lawyer James Lockyer, associated with Canada's Association in Defence of the Wrongly Convicted, Romeo filed an application in May 2003 with Federal Justice Minister Martin Cauchon requesting that his conviction be set aside, and that he be granted a new trial based on the concealed evidence of his innocence.

McCombie's report stated that because Romeo's presence in Trenton had been confirmed, "We do not believe that Romeo Phillion is responsible for this murder." There was also evidence that four prosecution witnesses perjured themselves about when they saw Romeo in Ottawa.

On July 21, 2003, Ontario Superior Court Justice David Watt ordered Romeo released on \$50,000 bond. The justice's decision was unprecedented in Canadian legal history. It was the first time a prisoner challenging a conviction on grounds of being wrongly convicted was granted bail pending review of their case, which can take up to nine years. After lengthy arguments, Justice Watt rejected the prosecutor's vigorous opposition to Romeo's release. He said, "The applicant's continued detention fails to accord with the principal fundamentals of justice."² Attorney Lockyer said after the hearing, "There is no provision in the Criminal Code for someone to get bail specifically, but we decided to have a go at it and Mr. Justice Watt agreed."³

Romeo's sister Simonne and a friend posted his \$50,000 bail after the hearing, and a condition of his release was he had to live at her home near Toronto.

After 31 years of imprisonment, 64-year-old Romeo was escorted out of the courthouse by dozens of family members, friends and his lawyers. Outside the courthouse Romeo told reporters, "This is one step at a time. I've got more steps to go but I'll be a winner at the end. I'll be a winner. No doubt about it."⁴ Asked about his bogus confession to have his friend released, Romeo said "It was all a joke. A bad joke. It cost me my life."⁵ He also told reporters, "Without my innocence I would have been gone by now. My innocence kept me going and I knew in the end that things would come out, the truth would come out."⁶

Given the incontrovertible proof of Romeo's innocence, the credibility of the Canadian legal system will be cast in doubt if his conviction isn't set aside after completion of the Justice Minister's review. Particularly considering Romeo's prosecutors have already acknowledged there "may be a reasonable basis to conclude" a miscarriage of justice occurred in his case, and it was the prosecution that

concealed proof of his innocence for decades. As of August 2004, more than a year after Romeo's release, the Justice Minister's review was still ongoing.



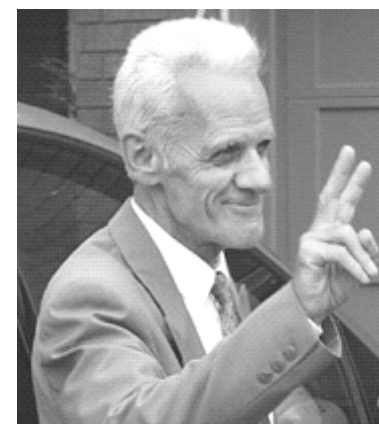
“I feel like a million bucks!”

A smiling Romeo Phillion tells reporters and well wishers on the courthouse steps after he breathed the air as a free man for the first time in 31 years.

The identity of Romeo's Guardian Angel who sent him the concealed prosecution documents is unknown. Without knowing the contents of the concealed documents, Romeo's trial lawyer was unable to overcome what attorney Lockyer referred to as the presumption he was guilty, "Everyone fell into a trap of presupposing guilt on the part of Romeo and then, in a sense, subconsciously creating a case that fitted his guilt."⁷ In regards to the prosecutor's deliberate concealment of the exonerating documents from Romeo before his trial and during his appeal, Lockyer said, "The question that needs to be answered is why he did not disclose materials of obvious relevance to the defence."⁸

Joyce Milgaard, whose son David was exonerated in 1992 of the rape and murder of a Saskatoon nurse after 23 years of wrongful imprisonment, said after Romeo's release, "We're breaking down the doors. There's finally a light coming on to those who are wrongly convicted."⁹

Romeo Phillion waving as he arrives at his sister's house near Toronto.



After working for years to free her innocent brother, Simonne Snowden described her feelings on his first day of freedom in 31 years, "Relief. Relief. It's like I can go to sleep now."¹⁰

Endnotes:

1 Justice Reporter, Kirk Makin (staff), Globe and Mail, Toronto, Ontario, May 15, 2003, p. A3.

2 A Free Man ... For Now, Bob Klager, Ottawa Sun, July 22, 2003

3 Convicted murderer Phillion released on bail pending federal review of case, Marlene Habib, Canadian Press, July 21, 2003, canada.com

4 Phillion Savours Taste of Freedom, David Rider, CanWest News Service, July 22, 2003, canada.com

5 Convicted murderer Phillion released on bail pending federal review of case, *supra*.

6 *Id.*

7 Man convicted 31 years ago says he's innocent, CTV.ca News Staff, May 16, 2003.

8 Report Casts Further Doubt on Guilt of Convicted Man, Kirk Makin (staff), The Globe and Mail, Toronto, May 15, 2003, p. A3.

9 Convicted murderer Phillion released on bail pending federal review of case, *supra*.

10 *Id.*

Other source:

Phillion case 'world record' for injustice: Lockyer, Toronto, CBC Ottawa, May 16, 2003



Junk Forensics in San Diego - The Cheri Lynn Dale Story

By Charles Caldwell

Edited by Laurie Solomon, JD Editor

The date was Jan 24, 1990. Cheri Lynn Dale and her mother Connielou Caldwell had just left traffic court in San Marcos, CA. Cheri asked her mother to please stop by a house in Carlsbad CA. She had bought a small red telephone shaped like a Porsche as a birthday gift for her brother Fred Caldwell. The phone had ended up at Lisa Stanton's house at 2441 Torrejon Place. Lisa reluctantly handed the phone to Cheri through a slightly opened front door.

Cheri returned to the car almost in tears as the gift was missing a wheel and the plug was gone. When the two arrived home, Cheri showed me the damaged present and I assured her I could fix it. My name is Charles Caldwell. I am Cheri's stepfather.

After supper, we all watched TV till bedtime. The next morning Connielou quietly fixed breakfast trying not to wake Cheri. Connielou, Grandma and myself all ate, talking as little as possible, as our dining room and living room are connected. Cheri was asleep on the hide-a-bed.

As Connielou was leaving for work at 6:30 a.m., a friend of Cheri's, Jason DeVoid, inquired if she was home. He was asked to please not wake her as she needed her sleep. I left for work at 7:45 a.m. while Grandma was doing dishes. When I departed, Grandma, Fred and Cheri were left at home. Fred woke up before Cheri and walked through to the kitchen, seeing Cheri still asleep on the couch.

At 9:30 a.m. Connielou called home to remind Cheri they were going shopping. Grandma said she would remind Cheri. At 11:45 Connielou picked-up Cheri at home at 1234 N. Coast Hwy 101, in Leucadia, and off they went to Escondido shopping. Prior to leaving the house, Cheri presented the birthday gift to Fred.

Shortly before 5 p.m. I arrived home from work. As I turned on the 5 p.m. news previews, I see an old friend at a murder scene. It was Richard Castenada, now a Detective for the Carlsbad PD. I brought it to Fred's attention that Richard was on the news.

My wife and Cheri arrived home at the same time the news report aired. Connielou walked in first, approaching the TV and exclaiming, "That's the house where Cheri and I were yesterday!"

Between 8 and 9 a.m., Susan Taylor had been bludgeoned to death. She had been a guest at the Torrejon residence at that time. The house had been under surveillance for some time by a narcotic's team. It was well known to the neighbors to be a drug house and hangout for trouble-makers.

When Cheri saw the news report about an hour later on a rerun, she made a hasty departure to see if any of her friends had any details on what had happened at Lisa's house.

On Saturday, 1-27-90, two days after the murder, Cheri was driven to LA with 4 other women to be a model for a skin care seminar. She wore jeans and a tank top. There were no bruises or scratches on her body according to Delores En-

tzminger and Joan Hall who were with her and her mother.

On 3-7-90, Cheri was interviewed at the scene of a drug bust by officers Sutt and Presley. I didn't see Cheri for some time after that. She had been staying with friends. The next jolt I recall is when she came walking in one evening in June of 91 with her new husband, Jeff Hilner. We were all shocked; Jeff was a drug dealer and town bully. She exclaimed to her mother that she couldn't get rid of him so she married him hoping he would change.

He had cut the tires and broken the windows of many of Cheri's friends' cars, anytime she was hiding from him. Jeff had mental problems. After he had nearly killed Cheri, we sent her to Texas to stay with her sister.

Jeff called her in Texas begging her to come back. He became violent when she refused and swore he would hurt her "real bad." The conversation was taped by Cheri's brother in law; David Davis, a Bear County Texas Deputy Sheriff. Jeff's next move was to call my wife and inform her that he was on his way to burn our house down. I was very concerned, for I had knowledge that he had previously set two house fires. Sure enough, here he came spinning his wheels and yelling "I'm gonna burn your house down!" By now I had all I could take from this man, so I met him in the front yard and he decided to leave. Thank the lord we saw no more of Jeff until Cheri's trial.

Three relevant actions occurred on Jan. 7, 1992. First, Jeff gave a voluntary interview to Detective Robert Wick of the Carlsbad PD in which he implicated Cheri in the Susan Taylor murder. Second, Detective Wick searched a residence in Leucadia where Jeff told him Cheri had stashed a bag of bloody clothes. Neither of these things could be proven simply because they were not true. The third and probably most regrettable action taken by Detective Wick; he reported to Detective Presley in a police supplement that evidence item #15 which was a rope of blond hair found in Susan Taylor's left hand, was missing from the evidence room. Remember this date.

***...we obtained the missing forensic tests and the missing pages of others ...
Now we had proof of erroneous and/or tampered with forensic conclusions.***

On 6-11-92, Wick, DDA Thomas Manning and officer Presley flew to San Antonio, Texas to interview Cheri. They interrogated her for 5 hours. Fingerprints, teeth impressions, and hair samples were collected.

On 6-26-92, Cheri's hair was compared to the hair from the clutched fist of the victim by Rosemarie Neth of the San Diego County Sheriff's Crime Lab. Detective Wick would later misrepresent Ms. Neth's conclusion in Cheri's arrest warrant.

On 9-29-92, the missing hair sample was found in Det. Wick's undercover car by his boss Sgt. Spencer. This is the same hair sample that furnished probable cause to arrest Cheri. Remember; the hair was reported lost almost 8 months prior. Then it was sworn to have been compared to Cheri's three mo. before it was found. You think that's odd? Check this out;

On 12-16-92, the same comparison test was done again by the same Lab. Now item #14 & #15 both contain a scissor cut lock of blond hair. #14 was bits of hair found by the

Tulia Travesty Updates

By Hans Sherrer

Tulia Defendants Settle For Additional \$1 Million - \$6 Million Total

Twenty-nine Texas Panhandle counties and cities have agreed to pay \$1 million to settle a federal civil rights lawsuit for their role in the 1999 arrest of nearly four dozen innocent people in Swisher County. [See, *Travesty in Tulia*, Justice:Denied, Issue 23, p. 3] The lawsuit's defendants were all members of the Panhandle Regional Narcotics Trafficking Task Force that oversaw the Swisher County undercover drug sting operation. The \$1 million settlement consists of payments by 26 counties and 3 cities that range from \$5,000 to \$80,000. The city of Amarillo had earlier agreed to settle its liability as a defendant in the lawsuit for \$5 million. [See, *Tulia Travesty Lawsuits Settled For \$5 Million*, Justice:Denied, Issue 24, p. 6]

The total settlement of \$6 million resolves all claims against task force members by the 46 people arrested as a result of the Tulia drug sting. The lawsuit was dismissed in an order dated April 30, 2004 by U.S. District Court Judge Mary Robinson in Amarillo.

Source: Federal Civil Rights Suit in Tulia Case Dismissed, Greg Cunningham, Amarillo Globe-News, May 19, 2004.

Perjury Trial of Discredited Tulia Undercover Agent Delayed

Former Swisher County sheriff deputy Tom Coleman was indicted on three counts of perjury in April 2003. The alleged perjury occurred in his testimony during a special evidentiary hearing in March 2003 related to his credibility as a witness in accusing 46 Tulia residents of dealing drugs. Coleman's trial was scheduled to begin on May 24, 2004. It was delayed, however, when the judge granted a continuance without setting a new trial date.

The trial could further be delayed by prosecutor Rod Hobson's motion for a change of venue filed on May 3rd. Prosecutor Hobson wants the trial moved from Tulia because he thinks finding a fair and impartial jury there is not possible. In the motion he cited the "extensive publicity" about the drug busts in July 1999 and their aftermath, including Governor Rick Perry's pardoning of 35 defendants in August 2003, and the settlement of civil suits in the spring of 2004 for \$6 million.

As this issue of *Justice:Denied* goes to press in late-August, a decision has neither been made on the change of venue motion, nor on a new trial date.

Source: Coleman Files For Change of Venue, Staff, Amarillo Globe-News, May 15, 2004.

Tulia Prosecutor Sued By Texas State Bar

On May 26, 2004 the State Bar of Texas filed a disciplinary petition with the Texas Supreme Court against former Swisher County District Attorney Terry McEachern. The petition alleges McEachern committed "serious" misconduct during the prosecution of almost four dozen innocent people arrested as a result of a Swisher County undercover drug sting in Tulia from January 1998 to July 1999.

Tulia Updates continued on next page

Cheri Lynn Dale continued on page 17

Tulia Updates continued

There are three prongs to McEachern's alleged misconduct:

- ✓ He failed provide discovery evidence to the Tulia defendants related to Swisher County sheriff deputy Tom Coleman. That evidence included information concerning Coleman's indictment in 1997 for the theft of \$6,700 in services from Cochran County, Texas merchants, and his abuse of official capacity by personally using a county credit card, while he worked as a Cochran County sheriff deputy.
- ✓ He knowingly allowed Coleman to lie under oath during hearings and trials of the Tulia drug defendants by testifying that he had never been arrested.
- ✓ He deliberately misrepresented Coleman's background in court to make him appear to be a credible witness.¹

Coleman was indicted on three counts of perjurious testimony during a March 2003 evidentiary hearing in Tulia that was ordered by the Texas Court of Criminal Appeals to determine his credibility as a witness. As of August 2004 he is awaiting trial on those charges.

The State Bar's investigation of a grievance against McEachern became public knowledge in August 2003. The petition was filed after McEachern and the State Bar were unable to agree on the degree of his misconduct or a punishment.

A judge from outside the Panhandle region will be appointed by the Supreme Court to preside over the civil trial. The State Bar must prove its case against McEachern by a preponderance of the evidence. If McEachern loses, he would face a punishment ranging from a reprimand to disbarment.

Dawn Miller, the State Bar's chief disciplinary counsel, said, "We do consider it a very serious case."²

Amarillo defense attorney Jeff Blackburn was instrumental in attracting the national attention necessary to correct the travesty of justice in Tulia that prosecutor McEachern was a party to. Blackburn commented on the impending disciplinary trial: "Prosecutors are charged under our laws with seeking justice, not just convictions. One of the problems in Tulia was that this law was broken and that the prosecution just got caught up in the desire to convict."³

McEachern has already experienced negative fall-out from his handling of the Tulia cases. In March 2004 he lost his re-election bid after 14 years as the district attorney for Swisher, Hale and Castro counties. He received about half as many votes as the leading candidate.⁴ His June 2003 aggravated drunk driving conviction in New Mexico may have also contributed to voter disenchantment with him. On November 27, 2002 McEachern was stopped by police in Ruidoso, New Mexico on suspicion of driving while intoxicated. He was arrested after failing a series of field sobriety tests, and he refused to take a breath test before or after his arrest.⁵

McEachern's civil trial is expected to be held before the end of 2004.

Endnotes:

1 State Bar Files Petition Against McEachern, Greg Cunningham (staff), Amarillo Globe-News, May 27, 2004.

2 State Bar Files Against McEachern, Greg Cunningham (staff), Amarillo Globe-News, April 9, 2004.

3 Id.

4 McEachern Misses Runoff, Jessica Raynor (staff), Amarillo Globe-News, March 10, 2004.

5 Hale-Swisher district attorney guilty in DWI, John Reynolds (Morris News Service), Amarillo Globe-News, June 11, 2003.



Who is the "South Hill Rapist"? The Kevin Coe Story

By Kevin Coe

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

In the summer of 1979, a series of rapes were committed on the south side of Spokane, Washington. A year and a half later this crime wave was still raging on. Early on the Spokane media had tagged the attacker the "Jogging Rapist," because the one common element in nearly every one of the rapes was that the attacker had been dressed in a jogging outfit. However, since all of the attacks had happened on Spokane's south side, the rapist was renamed the "South Hill Rapist." The moniker stuck.

The media whipped the public into quite a furor over the South Hill Rapist. Candlelight vigils were held in Spokane parks. Mace and handgun sales went through the roof. Land office business was done in T-shirts sporting various drawings and slogans referring to the South Hill Rapist, and vigilante groups had sprung up everywhere. It was generally thought that the police were doing nothing about the dreaded South Hill Rapist.

By early 1981, South Hill Rapist-mania had reached the boiling point and beyond. Paranoia was widespread. Innocent men, jogging harmlessly, were sprayed with mace by fearful women. The news was full of stories about bizarre incidents related to alarm over the the South Hill Rapist. Into this dangerous brew was tossed the caustic and asinine remark of one Captain Richard Olberding of the Spokane Police Department. Oberding ungrammatically and irresponsibly commented that Spokane women should "just lay back and enjoy it" if victimized by the South Hill Rapist. Keystone Kop Olberding's astounding gaffe took an already highly agitated situation to new heights of public insanity. With the beleaguered chief inspector's career on the ropes, Spokane's 18-month runaway rape spree was about to be magically 'solved.'

I was a pro-growth advocate -- as was my father, Gordon Coe, the managing editor of the *Spokane Chronicle*. Upon my return to Spokane in the late 1970s, my father and I started *Spokane Metro Growth* as a private booster unit to promote the Spokane-Coeur d'Alene metropolitan area.

As an activist for 'a bigger and better' Spokane, I had become increasingly concerned with the staggering news coverage the South Hill Rapist's spree was receiving. For someone who was trying to promote Spokane as a terrific place to raise a family, an ongoing series of rapes was not helpful. Gordon Coe's *Chronicle* had covered the South Hill Rapist story in a responsible and low-key manner, yet the rest of the Spokane media, both print and electronic, was handling the case in a very sensational way.

In January 1981, *The Spokesman-Review*, the area's morning paper, published a report by its South Hill Rapist task force, which theorized that the attacker rode buses seeking his prey. I decided to do some investigative work on my own. For a time, I followed buses on Spokane's south side and watched for any suspicious activity. I intended to furnish the results of my search to *Secret Witness*, an organization that paid cash rewards for clues which led to convictions for major crimes. *Secret Witness* used Gordon Coe's *Chronicle* office phone number as one method for receiving clues. But, it was better, my father and I agreed, if I sent any clues I discovered to the *Secret Witness* mailing address.

The theory *The Spokesman-Review* had published proved to be a dud. Soon it was obvious to me that it would be almost impossible for the South Hill Rapist to operate in the way the newspaper had suggested. I dropped my search for clues. Before I did though, I was stopped by a patrol car one night in mid-January on the lower south side. The patrol officer had observed me parked on a bus line (I was waiting for a bus to follow) and found my behavior curious. The cop asked to see my driver's license and asked me what I was doing. When I told him, the cop responded curtly, "Stay out of police business." No doubt, an incident report on this matter was filed. No doubt that report would have come across the desk of Captain Olberding. It's likely that Olberding made note of the name Coe; ten years earlier, Olberding had brought a lawsuit against *The Spokesman-Review*, sister publication of the *Chronicle*, and had lost. He harbored a great hatred for the local media. Olberding, who was in overall charge of the South Hill Rapist investigating unit, had made his crude "enjoy it" remark in the first week of February 1981. Two weeks later, totally out of nowhere, I became the Spokane Police Department's prime suspect in the baffling South Hill Rapist case. The framing, smearing, and railroading of an innocent man had begun.

I was charged with six counts of rape, even though I did not at all resemble the attacker described in the original police reports filed by the South Hill Rapist's victims.

The police placed an electronic "bug" on the underside of my car. For two weeks a surveillance team shadowed me everywhere. The cops saw me commit no crimes. The investigation was coming up empty. This likely would have resulted in my being dropped as a suspect were it not for an unrelated matter that happened less than a week into the surveillance effort.

On March 1, 1981, in my capacity as a realtor, I previewed the luxury home of Fire Chief Al O'Connor. As I toured the property, I heard angry voices arguing. A woman was screaming at O'Connor, accusing him of seeing another woman. Because of the fracas, I decided to simply leave my realtor card and call back in a few days. While exiting the home, I caught a glimpse of the raving women. Two days later, driving down the freeway, I was stunned to hear on the radio that Al O'Connor had died. At dinner that evening, I chatted with my parents about O'Connor's death. My mother, Ruth, said it was "...amazing that Linda O'Connor had again lost a husband under peculiar circumstances."

Ruth then related how, a decade or so earlier, Linda O'Connor had been married to a prominent physician who died abruptly. "Many people thought it was murder," Ruth related. "But, Linda Lipp, her name then, was never charged." I considered this for a couple of days, then wrote prosecutor, Don Brockett, a letter offering testimony regarding what I had seen and heard while inspecting the O'Connor home if Linda O'Connor was charged with homicide. Brockett would have received my letter sometime from March 6 to March 9. For some reason, Brockett had no intention of charging Al O'Connor's widow with murder even though an autopsy revealed the presence of seven drugs in the fire chief's body.

Months later at a coroner's inquest, a split jury went along with Brockett and no murder charges were brought against Linda O'Connor. Eventually, however, she pleaded guilty to misdemeanor charges of abusing prescription drugs. Coroner Lois Shanks, an avid Brockett-hater, was livid about the outcome of the inquest. She denounced Brockett vigorously, as did members of Al O'Connor's family.

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At two police lineups, I was identified by five of the twenty-two South Hill Rapist's victims the police were able to assemble to view the farce. From these lineups, and a photo lineup viewed by one victim, I was charged with six counts of rape, even though I did not at all resemble the attacker described in the original police reports filed by the South Hill Rapist's victims.

The best criminal case lawyers in Spokane were at the public defender's office. Then I went with public defenders to defend me in what I assumed would be an easy victory since the wrong man had been arrested and the evidence would prove this obvious fact.

I sought a way to prove my innocence scientifically. I asked Bill Beeman, the public defender's office investigator assigned to my case, to look into this possibility. In mid-May, Beeman happened upon a major break which should have closed the case and resulted in my exoneration. Beeman had been given a hot tip from an old friend, a criminologist at the Eastern Washington State Crime Lab: There was no sperm motility in any of the rape-kit semen specimens taken in the forty-three South Hill Rapist assaults.

I knew from a 1978 semen test that my sperm motility was not zero. Roger Gigler, my lead lawyer, wanted a new test done. In mid-June the results of a test done by Spokane Valley General Hospital came back. My sperm motility was a normal 80%. A pre-trial hearing should have been held, replete with expert testimony, and the charges against me should have been dropped. Yet, through fantastic bungling or a darker reason, there was no such pre-trial hearing. At trial there was no expert testimony given on sperm motility, and, in fact, my lawyers did not even put the sperm-motility test results into evidence. In July 1981, I was acquitted on two counts and convicted on four counts. In August 1981, four days after my sentencing, Don Brockett ordered the destruction of all physical evidence in my case even though he was fully aware of the sperm-motility discrepancy and the fact that I was interested in re-testing the rape-kit specimens.

In November 1981, Don Brockett, acting on phony information from a massage parlor prostitute who had criminal charges pending, ordered a sting operation to entrap my mother, Ruth Coe, in a murder for hire scheme. The targets of the supposed "hit man" -- an undercover cop -- were Brockett and the judge from my trial. Ruth Coe was emotionally distraught from seeing her innocent son sent to prison and she was very vulnerable to the police entrapment. In May 1982, a judge convicted Ruth of solicitation of murder, an idea concocted by Brockett and the Spokane Police Department, not Ruth. She had been booked for a flight to Honolulu and a long vacation on the day the police phoned with their assassination scheme. The setup of Ruth Coe attracted the attention of a crackpot and little known novelist who announced he would write a book on the Coe cases. In late 1983, his idiotic and libelous book on the suppositious cases was published. The work was made into an even more idiotic and libelous TV movie, aired by CBS in 1991. The book flopped nationally but sold well in Washington State. This ruined my chance for a fair re-trial as jurors brought with them a cemented *parti pris* (prejudice) of my 'guilt'.

I became aware of PGM testing, a forensic method that had been used in California for years, in January 1982. I was eager to subpoena the rape-kits and prove my innocence via PGM. In March 1982, I fired my Spokane public defender and hired two of Seattle's top private lawyers, David Allen and Richard Hansen. I stressed that I wanted PGM tests done. Allen and Hansen were attracted to the case because police hypnosis used on all but one of the rape victims. The new lawyers implored me to hold off on

PGM and let them proceed on the hypnosis issue which they felt was a sure winner. "We'll have you out of prison in no time," Hansen assured me.

Two and a quarter years later, due to hypnosis and Don Brockett's refusal to provide police reports to the defense, the Washington Supreme Court reversed my convictions. In December 1984, during the pre-retrial phase, I insisted that Allen and Hansen subpoena the rape-kits. They did so. Several days later, the prosecution (minus Brockett, who had been removed from the case by court order), sheepishly told the retrial judge how, at Brockett's direction, the kits had been destroyed over three years earlier. One kit remained, but the sample was too small to test.

There would be no proving me innocent by PGM or DNA, then a nascent technology. In February 1985, I was reconvicted on three of the four counts, a second jury rendering a guilty verdict with no inculpatory evidence presented to it, only massive negative publicity, and having no idea that my sperm motility did not match the rape kits. The Washington Supreme Court overturned two of those convictions in January 1988, and affirmed one. I petitioned for a Writ of Habeas Corpus with destruction of the rape kits as the lead issue. The Seattle Federal District Court and the Ninth Circuit Court denied the Writ; then, in March 1994, the United States Supreme Court refused to hear my claim.

Not long ago, while watching an episode of the old television program, *Quincy*, I discovered that sperm motility is identifier evidence as the medical examiner saves an innocent man accused of rape. I need a lawyer interested in justice and who recognizes the huge lawsuit potential here) to file a personal restraint petition to free me based on the sperm motility proof of innocence. I possess the evidence that clears me and perforce results in my release from custody. Civil rights litigation must then be pursued vigorously. I am an innocent man who has spent 23 years incarcerated when no proof of guilt was adduced in court and existing proof of my innocence was never adduced in court.

Thank you for considering my story. I can be contacted at.

Kevin Coe #279538
Washington State Penitentiary Unit 5-C-30
1313 N 13th Avenue
Walla Walla, WA 99362

JD Staff Note: The victim in the lone conviction remaining against Kevin said the rapist resembled the actor Erik Estrada, who played on the CHiPs TV series -- black hair and Spanish or Italian looking. Kevin is fair skinned and has light brown hair. A JD investigator found many unsettling things out about this case, including that the Spokane prosecutor's office destroyed the rape kits that could have conclusively proven Kevin's innocence.



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Five Wrongly Convicted Men Awarded Over \$6 Million

by Michael Rigby

Two wrongfully convicted New York men who spent 14 years behind bars for the murder and robbery of a Brooklyn cab driver will split a \$3.3 million settlement; the state's largest ever in a wrongful conviction case. Charles Shepherd, 40, and Anthony Faison, 36, were convicted in 1987 largely on the testimony of a lone witness. [See, *Innocent Man Writes His Way Out of Prison After 62,000 Letters*, Justice:Denied, Vol. 2, Issue 9, p. 17-18]

Over a two year period, private investigator Michael Race tracked down the witness, an alleged crack addict who had received part of a \$1,000 police reward for her testimony. She recanted. Another man, Arlet Cheston, was linked to the crime after fingerprints found at the scene were matched with his. In May of 2001, the Brooklyn District Attorney's Office agreed Shepherd and Faison were innocent.

The two men subsequently sued the state under the Unjust Conviction and Imprisonment Act. Passed in 1984, this statute permits suits against the state and damage awards if defendants can prove their innocence through clear and convincing evidence.

Still, the state aggressively contested their innocence claims before finally settling during the trial in January, 2003. Attorneys for the men, Ronald L. Kuby and Daniel M. Perez, said the state should have settled early on. "The state treats these cases like lawyers for the sleaziest insurance companies treat their cases," said Kuby.

Vincent H. Jenkins received the largest individual award ever in New York -- \$2 million. Jenkins spent 17 years in prison for a 1982 rape which DNA evidence later proved he could not have committed. Jenkins, 60, was released in 1999.

On April 29, 2003, then California Governor Gray Davis signed legislation awarding two wrongfully convicted prisoners \$100 per day for every day they were in prison. Ricky Daye, who spent 10 years in Folsom Prison, and Leonard McSherry, who served nearly 13 years, will receive \$389,000 and \$481,000, respectively.

Daye, 45, was convicted in 1984 for the rape of a San Diego woman. He was exonerated by DNA testing in 1994. Under California law at the time, Daye could have received \$10,000 for his time behind bars, but he chose instead to sue San Diego authorities in federal court. "\$10,000 for 10 years is trivial," said his attorney, Dwight Ritter. Daye's federal lawsuit failed, however. A federal judge refused to allow him to present evidence of his 10 years in prison to the jury. Instead, they heard only that he had spent two days in county jail. No damages were awarded.

After legislation was enacted in 2000 to provide \$100 a day for those wrongfully imprisoned, Daye was allowed to make a claim against the state. Still, nearly two more years passed before Daye's award was approved.

Ritter said that it was good that the state had awarded Daye some compensation, but it would have been better if he had been allowed to present all of his evidence in federal court. "I believe 12 California citizens would have likely rendered him considerably more compensation," Ritter said.

McSherry, the other man awarded money, had been convicted of kidnapping and raping a 6-year old girl from Long

Compensation Awarded continued on pg. 15

A Rageful Mother Cruelly Wins Child Custody Dispute With Her Estranged Husband - The Robert E. Shafer Story

By Robert E. Shafer

Edited by Laurie Solomon, JD Editor

My name is Robert Shafer, and I was sentenced to a Texas State Prison in May 2001 for 122 years for crimes I did not commit. I have been convicted on one count of indecency with a child, two counts of sexual assault of a child and one count of aggravated sexual assault of a child.

I refused the State's offer of 5, then 10 years when charges were first filed, because I am innocent; I believed in the justice system, and that the truth would be told.

I was one month from completing unsupervised probation for a D.U.I. (the one time I had been in trouble with the law, with no re-offenses) when my stepdaughter, Jessica Csonka, filed sexual assault charges against me.

I met my now ex-wife, Heather Csonka, and her 4 year old daughter Jessica, in Washington State in 1985. Heather claimed she was fleeing a husband in Galveston, Texas that had abused and raped her. Heather and I married in 1987 when Jessica was 6 years old. She had had no contact with her biological father so I became the "only father she ever knew" and she stuck to me like glue. Heather and I had a daughter and son during the first two years of our marriage. We had a loving and open home with the normal ups and downs in our marriage. Heather was a loving and good mother.

We moved to Galveston, Texas in 1989. Heather was working for the Women's Resource and Crisis Center where her mother also worked. Eventually Heather went to work for The Aids Coalition of Coastal Texas (ACCT). I worked Monday through Friday for Galveston Railroad and from 1996-1998 I also worked weekends for Sterling Combustion. We worked our schedules around the care of our children.

In 1998, Heather began staying out until the wee hours and spent a lot of weekends out of town on "business." I felt she was seeing someone else and we separated. I went to Washington State to set up household and be near my family. I kept in continual phone contact with all three children. Jessica even asked me to send her summer job applications so she could work when they came to visit. Heather and I sometimes argued about the children, or when she was "broke" and needed money. She said our son was having behavioral problems in school and blamed it on me because I was not nearby. She told me she was leaving for a month to participate in a benefit for ACCT. Her sister, Katrina, would be staying with the children while she was gone. I didn't like what I was hearing, missed my children very much and wanted to repair my marriage, so I returned to Texas in November 1998 unannounced.

My children were elated, but Jessica was in shock and Heather was very angry and asked me why I had returned. When I told her, "to be with them", she threw a fit and told me to take the two younger children with me and go back to Washington. Then she became angrier and told me that I would not take our daughter. Then in a rage she said I would not take either child from her, and that she would have me killed or put away if I tried. I told her I would not take the kids from her; instead I would get an apartment nearby (which I did) and help her with them. I offered to keep them

on weekends or whenever she needed me to. Jessica would join us at times, telling me she liked this arrangement with separate households. Jessica was always by my side and never had a problem with going places with me alone. It's when I moved back to Texas that the problems began.

During visits with my son he was often upset and finally told me that he wanted to move in with me. He claimed that their home was chaotic, that Jessica was partying a lot and that he had caught her in his mother's bed with a naked man. He maintained that his mother did nothing about Jessica's behavior. He also said his mother was dating a doctor that had turned his world upside down. He asked me when we would move to Washington. I told him when I had enough money we would leave. It was after these conversations that Jessica told me that "I would not take her sister and brother from her mother and she knew how to stop me."

Jessica told me that "I would not take her sister and brother from her mother and she knew how to stop me."

In January 1, 1999 I was offered a company expense job working in Arizona. Before I was to leave I made my usual good night call to the children. Heather got on the phone very angry and told me to use my visitation times to contact them and to give them their privacy. When I asked her over and over why she was so angry, she finally said, "You raped my daughter, Jessica." I was then served a Protective Order and it would be the last time I would be able to make contact with my children. I decided to take the company expense job in AZ, and it was only after I left that she filed charges. She testified at trial that she hated me and would never have to deal with me again. At one point Jessica told her grandmother and aunt (Heather's family) that I was doing things to her. Heather and her mother both worked at Women's Crisis Center. Why did they not report it then? Heather claimed at trial she had NO idea of what process was on these things.

In March 1999, while I was in Arizona, I learned that I had warrants for my arrest in LaMarque, Texas. I returned to find out what was happening. This is when I learned that I had been charged with sexual assault against a minor, my stepdaughter Jessica. The officer told me to turn myself in and let the courts settle the matter, as these things sometimes "get out of hand."

I then spent 7 months in the Galveston County Jail. My friend, Gene Williamson, said that he had talked to Heather and she was bragging and laughing about how I would be put away for a very long time. My friends offered to bail me out and I returned to work in Arizona in October 1999.

In May 2001, when I returned to Texas for trial, Judge Norma Venso was not there. She appointed my attorney, Robert Coltzer, and she was the judge I went before in 1999. Now a retired visiting judge, Allen Lerner, had replaced her. Twenty-four of 28 charges were dropped immediately.

My lawyer was in ill health, often asked me to repeat

testimony to him and was unable to read his own notes. He never questioned my witnesses or Jessica in depth. At one point Mr. Coltzer made an objection. The Judge asked him what he was objecting to and Mr. Coltzer answered, "I'm just objecting." With this the Judge looked over at the Prosecutor and smiled.

Ms. Joy Blackmon, a physician's assistant for ABC Center/Women's Crisis Center (where Heather worked at one time) examined Jessica on January 28, 1999. At this time Ms. Blackmon observed two healed superficial tears to the hymen and an asymmetrical fold in Jessica's anal tissue. Ms. Blackmon said none of these findings were "particularly indicative of sexual abuse." Ms. Blackmon considered the anal fissure she observed to be "acute or new" although Jessica later testified that she was 14 years old when I had anally assaulted her. Jessica did admit at trial that she had sexual relations prior to the exam.

Dr. James Lukefahr never established when or whether Jessica had consensual sex or was sexually assaulted. He said that the discovered tissue tears could have happened from the hymen being breached, that it was undoubtedly was quite painful when it happened, that the tears probably caused excessive bleeding in one so young that would be quite obvious.

This 4-day trial brought a guilty verdict and I was taken to Galveston County Jail to wait for sentencing. Judge Norma Venso came to see me. When I asked her why she was not at trial, she said, "I am wondering, too, as I was out of town." She then said she was assigning me the best court appointed appeals attorney they had: Mr. Thomas McQuage.

My girlfriend in Arizona, Gail Boatman, called my mother in Washington to tell her of the results of trial. My oldest daughter, Amanda Shafer, (also in Washington) later called Gail asking what had happened to her Dad. When told of the charges and the testimony of Jessica, she began to cry, saying she did not understand why Jessica wanted to do this to her Dad. She told Gail that she and Jessica had corresponded from December 1995 until October 1996 and that she still had 14 of the letters. Because of the distance and infrequent contact that Amanda and I had, I had chosen not to tell her of Jessica's allegations. These letters were then presented to Mr. McQuage, and a Motion for New Trial based on New Evidence was made in June 2001.

The 14 letters seem to provide a timeline of accusations. Her testimony was that he "raped" her occasionally at age 13 (this is when she lost her virginity to a boyfriend in her bedroom closet). Jessica had come to me at age 13/14 telling me about the "bedroom closet" sex. She was afraid that she was pregnant. I bought her a test kit that came up negative. This happened another 4-5 times until she asked me to take her for birth control pills. I then told Jessica her mother was going to have to deal with it. I pleaded with her to please stop her active sex life behind closed doors. Jessica would tell me her hopes, dreams and fears. When I asked her why she did not go to her mother, she said, "We know how she is, you are more understanding." At trial she claimed that these conversations were when I would rape her. My son

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The Innocent Are Menaced By the “War on Terror”

The innocent are in greater danger today than at any time since the “Red scare” from the late 1940s through the 1950s. During that time being labeled as a “communist” eased the path to a person’s wrongful conviction and ostracization from society. What is described today as the “War on Terror” has created a similar situation by inflaming passions against anyone labeled as a “terrorist.” Once saddled with that label, the normal protections of a person against an unwarranted criminal accusation are reduced, since no one wants to be perceived as “soft” on terrorism. However Aristotle sagely observed over 2,000 years ago in his *Politics*, “Even the best of men in authority are liable to be corrupted by passion. We may conclude then that the law is reason without passion.” The ultimate expression of passion without reason is a lynch mob. Errors in judgment by police, prosecutors and judges inevitably follows the quasi lynch mob mentality triggered by allegations of a person’s involvement in terrorism. That passion driven attitude makes it all too easy for an innocent person to be ensnared in the nightmarish web of a criminal prosecution. Mere utterance of the word terrorism in connection with a person’s alleged activities and their presumption of innocence evaporates like a morning mist. Unless cooler heads prevail, a wrongful conviction will predictably result. In the following five stories of an innocent person tagged as a terrorist, four were miraculously saved by “cooler” heads, while one is condemned to die in the highest security prison in the United States. Not surprisingly, they are all Muslims, which is the faith of the terrorists we are told we should mortally fear.

One has to believe that in coming years people will look back in horror at the illicit treatment of people during the “War on Terror” as a product of the same sort of mass induced psychosis that reigned in this country during the “Red scare”. It is another lesson that regardless of what political “leaders” and the media attempt to influence people to believe, the only place the bogeyman we are afraid may be alive, is in the imagination of the person staring back at us in the mirror. Hans Sherrer

Innocent Muslim Student Prosecuted as a Terrorist and Jailed for 17 Months

by Hans Sherrer

We are taught from our earliest days that the United States is a free country that respects freedom of speech, religion and association. So it might seem difficult to imagine what it would be like living in a country where you could be prosecuted for being a religious minority expressing opinions disliked by people in powerful government positions.

Thanks to the events of September 11, 2001, it doesn’t take much thought for Americans to imagine such a country, because the United States is now one of them. A little publicized provision of the Patriot Act of 2001 allows for the prosecution of a person who offers “expert advice or assistance” in the promotion of terrorism.¹ That conduct is now considered “material support” for terrorism. However what sort of behavior constitutes “expert advice or assistance” is an open-ended question that is left for federal prosecutors to answer in each particular case.² Could it, e.g., be considered a crime to design or maintain a website that expresses political or religious ideas that could be characterized by prosecutors as supporting terrorism?

In February 2003 Sami Omar Al-Hussayen found out how federal prosecutors in Boise, Idaho answer that question. The native of Saudi Arabia had a student visa to study as a computer science graduate student at the University of Idaho in Moscow, Idaho. His wife and three children also had visas to live in the U.S. while he was a student. In his spare time Al-Hussayen, a Muslim, designed and maintained several websites as a volunteer for a charitable Islamic outreach group, the Islamic Assembly of North America (IANA). Al-Hussayen’s disapproval of radical Islamics was well known in Moscow, where after the events of September 11, 2001 he organized a blood drive, a candlelight vigil, and publicly condemned the events as an affront to Islam.³ In an open letter he wrote, “No cause could ever be assisted by such immoral acts.”⁴

On February 23, 2003 Al-Hussayen was arrested at his Moscow apartment. He was subsequently indicted on three counts related to knowingly and intentionally providing “material support” in the furtherance of the terrorist acts of “murder,

maiming, kidnapping, and the destruction of property.”⁵ The alleged “material support” he provided to further terrorism was using his computer expertise to design and maintain several IANA websites.⁶ He was also indicted on four counts of immigration violations related to the time he volunteered designing and maintaining the IANA websites, when his student visa did not permit him to work in this country.⁷ He was also indicted on seven counts of making false statements related to his volunteer activities to help the IANA.

A federal magistrate ruled Al-Hussayen wasn’t a flight risk and ordered his release on bond pending his trial. However the U.S. Citizenship and Immigration Services (USCIS, formerly the INS) put a deportation hold on him and he wasn’t released. On April 25, 2003 an immigration judge ordered Al-Hussayen’s deportation after the conclusion of his criminal case and the serving of any sentence.⁸ Al-Hussayen appealed that ruling. However his wife and three sons returned to Saudi Arabia in January 2004 when faced with deportation.⁹

Al-Hussayen’s trial began on April 15, 2004 in Boise, Idaho. Federal prosecutors told the jury their case against Al-Hussayen was the result of a two year investigation that was one of the most intense terrorism related probes in the wake of September 11, 2001.¹⁰ The prosecution’s strategy was to portray Al-Hussayen as a front man who used his computer expertise to assist, recruit, and fund an international terrorist network. In an attempt to prove that contention, prosecutors introduced thousands of pages of documents – including emails, phone logs, web pages and religious writings - and dozens of witnesses testified. However none of the testimony linked Al-Hussayen or the IANA websites to terrorism, and the documents showed most of the content on the websites was copied, or cut and pasted from news sources. The only prosecution documents that may have been suspect were “four fatwas, or religious edicts, by religious clerics” on another website, and which were merely linked to an IANA website.¹¹ The government also attempted to convince the jury that the unpaid time Al-Hussayen spent helping the non-profit IANA was a violation of his student visa because it actually constituted engaging in a business, and thus he didn’t tell the government the truth when he said he wasn’t working in this country.

After presenting their case for almost six weeks, the government rested their case in late May. The defense then presented a single witness: Frank Anderson, a former CIA Near East division chief with 27 years experience in the Middle East.¹² Anderson testified that the two websites attributed to Al-Hussayen had nothing to do with terrorism

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Baggage Handler Set-Up As Terrorist By In-Laws

By Hans Sherrer

Abderazak Besseghir was cleared by the French police of charges he was an international terrorist when his in-laws and three accomplices were arrested for framing him. On June 16, 2004, his mother and father in-law, and their three accomplices were convicted for actions related to the frame-up.

Abderazak Besseghir, a 27 year-old French citizen of Algerian descent, worked as a baggage handler at Paris’ Charles de Gaulle airport. Acting on an anonymous tip, on December 28, 2002 police searched his car parked near the Air France terminal. Hidden inside the spare tire in the trunk, police found a bag with “an automatic pistol, a machine gun, five cakes of plastic explosive, two detonators, and a slow burning fuse.”¹ Also in the bag was “a religious tract written in Arabic, a pro-Palestinian document and an agenda with notes on flights to America.”² Besseghir was arrested for his suspected involvement in international terrorism.

Besseghir’s father, two brothers and a family friend were also arrested for questioning. However the police soon discovered that Besseghir and his family didn’t fit the profile for terrorists. Besseghir was a Muslim, but they were quiet middle class people without police records or ties to any Islamic radicals. It was also learned that Besseghir had passed a rigorous background check before being hired by Europe Handling and given clearance to work in secure airport areas. Investigators also learned that a lab analysis was unable to match the fingerprints of Besseghir or the other four arrested men to those found on any of the items in the bag.³

Besseghir’s family members and friend were released after three days in custody since the police were unable to find any ties between them and a radical group or the weapons found in the car. Besseghir wasn’t as fortunate. Since the weapons and incriminating documents were found in his car, he was charged on January 1, 2003 with “association of evildoers in relation with a terrorist enterprise” and violating French weapons laws.

However, Besseghir proclaimed his innocence. He told police he had been set-up and he had never seen or handled any of the items found in his car’s trunk. That claim was supported by the fingerprint analysis. A police investigator was quoted as saying, “He behaves as if this affair has nothing to do with him.”⁴

Although charges were filed against him, the absence of any evidence proving Besseghir knew about the bag in his car’s trunk contributed to police investigators looking seriously at his claim of being set-up. He didn’t know who was behind it, but Besseghir suggested it could be his in-laws, Hamed and Fatia Bechiri. He told police that his wife Louisa had died in a fire in September 2002, and his in-laws wanted him out of the way so they could get custody of his daughter.⁵

Police identified and found the person who provided the tip about the cache in Besseghir’s trunk. He was Marcel Le Hir, a former French Legionnaire. Investigators discovered that Le Hir was friends with Besseghir’s in-laws, and on January 10th he admitted that he and another person had planted the bag of items in Besseghir’s car. Le Hir also told police it was part of a plot by Besseghir’s in-laws to frame him as a

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“That’s Not My Fingerprint, Your Honor”

Lawyer Saved By The Spanish National
Police From FBI Terrorist Frame-up

By Hans Sherrer

It is easy to think – “It won’t happen to me” – when one hears of a person wrongly accused or convicted of a heinous crime. However, the lack of critical judicial examination of police agency arrest and search warrant affidavits creates an environment where any one of us at any time can have our life shattered by being falsely implicated in a capital crime. That is the cautionary message of Brandon Mayfield’s saga of how he was wrongly fingered by the FBI as an international terrorist involved in murderous bombings in a country he has never visited.

Attorney Brandon Mayfield was arrested by the FBI on the morning of May 6, 2004 at his office in a Portland, Oregon suburb. He was arrested for his suspected involvement in the March 11, 2004 bombing of four commuter trains in Madrid, Spain that killed 191 people and injured over 2,000 others.²

FBI Affidavit Tagged Mayfield As A Terrorist

A federal judge signed the material witness warrant authorizing Mayfield’s arrest based on a supporting affidavit by FBI agent Richard K. Werder. The affidavit’s lynchpin was the allegation that senior FBI fingerprint examiner Terry Green identified “in excess of 15 points of identification during his comparison” of Mayfield’s prints on file with the Army and the FBI, and a “photograph image” of a print recovered from a plastic bag containing several detonators found in a stolen van near where three of the bombed trains departed.³ The affidavit further alleges that the fingerprint identification was verified by an FBI fingerprint supervisor, and a retired FBI fingerprint examiner with 30 years of experience on contract with the lab’s Latent Fingerprint Section.⁴ In addition the affidavit states: “... the FBI lab stands by their conclusion of a 100 percent positive identification.”⁵ and, that after an April 21, 2004 meeting between agent Green and the Forensic Science Division of the Spanish National Police (SNP), “it was believed the SNP felt satisfied with the FBI laboratory’s identification [of Mayfield]...”⁶

After Mayfield’s arrest, his wife Mona told reporters, “I think it’s crazy. We haven’t been outside the country for 10 years. They found only a part of one fingerprint. It could be anybody.”⁷ Her words in defense of her husband were soon to prove prophetic.

Werder’s affidavit asserts Mayfield was initially targeted as a suspect in the bombing when his print was identified by FBI’s Automated Fingerprint Identification System (AFIS) as one of several possible matches with one of the prints recovered from the plastic bag by the SNP. The affidavit further states FBI examiner Green then manually matched the print of the fourth AFIS match to the Madrid print as belonging to Mayfield, and then the other two examiners referred to in the affidavit verified that match.

Yet in spite of the certainty of the affidavit’s language tying Mayfield to the Spanish bombing, on May 24th the



Brandon Mayfield in May 2004 after his release from being falsely imprisoned as an international terrorist.

FBI suddenly reversed itself by acknowledging his print didn’t match one on the plastic bag, a federal judge dismissed the material witness warrant, and Mayfield was released from federal custody.⁸

Spanish National Police Knew Mayfield Was Innocent

That reversal wasn’t surprising to the SNP. That agency’s fingerprint analysts reported to the FBI on April 13th – 23 days before Mr. Mayfield’s arrest – that their comparison of his fingerprint with the one on the plastic bag was “conclusively negative.”⁹ Corroborating that conclusion was the Spanish government had no record that Mayfield had ever traveled to that country.

The FBI discounted the SNP’s assessment to the degree that when the FBI lab’s Ted Green traveled to Spain in late April to meet with SNP officials to discuss the bureau’s identification of Mayfield, he didn’t bother to examine the original print on the bag.¹⁰ However Spanish officials not only “refused to validate” the FBI’s identification of Mayfield, but they continued their investigation as if his prints weren’t on the bag.¹¹

So the SNP’s disagreement with the FBI’s Mayfield match was grossly misrepresented by the assertion in agent Werder’s affidavit, “...the SNP felt satisfied with the FBI laboratory’s identification.”¹² That disagreement became public knowledge when SNP officials announced on May 20th that they had linked two prints on the bag to an Algerian with a police record and a Spanish residency permit.¹³ The next day a federal judge in Portland ordered Mayfield’s conditional release from custody and three days later the warrant against him was dismissed.¹⁴ Seven days later, on May 31st, a Spanish high court judge issued an international arrest warrant for the Algerian charging him with 190 counts of murder.¹⁵

After Mayfield’s exoneration on May 24th, the FBI claimed the error was caused by its crime lab’s reliance on a “substandard” image of the Madrid print.¹⁶ However that claim was contradicted by former Scotland Yard fingerprint examiner Allan Bayle, an internationally recognized expert with more than a quarter century of experience who was retained by Mr. Mayfield’s public defenders. Mr. Bayle determined the clarity of the Madrid fingerprint photo is good, and that they are so dissimilar from Mayfield’s that they shouldn’t have been declared a match by a competent examiner.¹⁷ He said of the FBI’s analysis, “It’s flawed on all levels,” and he described it as “horrendous.”¹⁸

Federal prosecutors went beyond the FBI’s assertion that the image was “substandard” by claiming in a document related to his release, “Using the additional information acquired this weekend in Spain, the FBI lab has now determined that the latent print previously identified as a fingerprint of Mayfield to be of no value for identification purposes.”¹⁹ However that statement is contradicted by both Mr. Bayle’s assessment and the SNP’s May 20th announcement of a suspect. So in trying to cover their tracks, both the FBI and federal

Brandon Mayfield continued on next page

Defending Mohammad: Justice on Trial

by Robert E. Precht

Cornell University Press, 2003, 183 pgs, \$22.95

Review by Hans Sherrer

Eight years before the events of September 11, 2001, was the World Trade Center explosion on February 26, 1993. Within days of the explosion, four men alleged to have been involved were charged with conspiring “to commit offenses against the United States.”¹ Public defender Robert Precht was appointed to represent one of those men – Mohammad Salameh. *Defending Mohammad* is Precht’s first-hand account of defending Salameh against the government’s accusation that he was a heinous terrorist. Precht’s bird’s-eye view of the events covered in the book provides a different perspective than what was reported by the press.

How different is emphasized by Precht’s exclamation to the jury in his closing argument – “He is an innocent man!” In contrast, a reliance on news accounts could lead one to believe Mohammad was the Antichrist. The great value of Precht’s book however, is to not only explain why Mohammad is innocent, but how the trial judge, the federal prosecutors, and the media effectively worked as partners to influence the jury to find him guilty in spite of strong evidence supporting his innocence.

After emigrating to the U.S. from Jordan in 1981, Mohammad lived in Jersey City, New Jersey. Precht doesn’t deny that Mohammad knew Ramzi Yousef – who at the time of Mohammad’s trial was alleged to have been involved in the explosion, although he wasn’t indicted until over a year later. Mohammad met Yousef through their Muslim ties, after he entered the U.S. two months before the WTC catastrophe. Neither does Precht deny that due to his naiveté and sense of good will towards a fellow Muslim, that Mohammad may have unwittingly done some things to help Yousef. However Precht explains in *Defending Mohammad* that he did not knowingly provide any assistance to the people who planned the explosion, and he played no role in the explosion itself.

Yet the government tagged Mohammad as the driver of a yellow van that they surmised transported the explosive device, which they claimed was a fertilizer bomb. However the prosecution’s case against Mohammad was circumstantial, since there was no eyewitness or physical evidence placing him at, or even near the WTC at the time of, or just prior to the explosion.

The prosecution claimed that three days before the explosion, Mohammad rented the yellow van from Ryder for a week, and that he drove it to the WTC on the morning of February 26th. However a day before the explosion Mohammad personally reported to the police that the van was stolen outside a store in Jersey City. He correctly reported his name and address, the Ryder unit number, its color, that it had Alabama license plates, and where he rented it.

The prosecution also claimed that a Jersey City gas station attendant, Willie Moosh, had identified Mohammad from a photograph as driving the van eight hours before the explosion. Moosh’s testimony however, provided some levity to the seriousness of the trial and cast a long shadow on the substance of the government’s case against Mohammad. This is how Precht described the courtroom scene:

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Muslim Army Chaplain Falsely Imprisoned As Terrorist

By Hans Sherrer

James Yee is an American of Chinese descent who graduated from West Point in 1990. Shortly afterwards he converted to Islam from Christianity. Yee wanted to become a Muslim Army chaplain, but that required a doctorate in divinity studies. So in 1993 he went on reserve status to complete the programs necessary to become a military chaplain. Yee moved to Damascus and studied under Syria's grand mucti (supreme religious leader). While there he learned Arabic and married a Syrian woman.

Yee returned to the U.S. in 1999 after completing his Islamic studies, and obtained the certification necessary to become a military chaplain. Yee then returned to active Army duty and was assigned as a Muslim chaplain at Fort Lewis, Washington.

After the events of September 11, 2001, Yee, an Army Captain, spent much of his time explaining Islam to both the public and military personnel.

In November 2002 Yee was assigned as the chaplain for the Muslims detained at the Guantanamo Bay, Cuba military prison - also known as Camp Delta. He soon began clashing with his superiors over what he considered mistreatment of the Muslim prisoners. Among his complaints was the prisoners were in an atmosphere of "unrelieved tension and boredom." ¹ Yee's complaining successfully resulted in "recordings of the ritual calls to prayer broadcast through the" prison, and ensuring the prisoner's "food was prepared according to Islamic dietary guidelines." ²

The military's response to Yee's concerns about prisoner treatment was a form of 'shoot the messenger' - it began investigating him. Yee's every move was watched. On September 10, 2003 he flew from Guantanamo Bay to the Jacksonville, Florida naval air station. Customs Service agents inspecting his luggage allegedly found diagrams of cells at the Guantanamo Bay prison, and the names of detainees and their interrogators. Yee was arrested on the spot "for suspicion of espionage and aiding captured Taliban and al-Qaida fighters" ³ Newspaper headlines and news broadcasts across the country trumpeted Yee's arrest for espionage and aiding international terrorists. Those are capital offenses - so at the time of his arrest Yee was potentially facing charges that could result in his execution. Yee was immediately transported to the maximum-security Naval brig (prison) in Charleston, South Carolina and put in solitary confinement. The private lawyer hired to defend Yee, Eugene Fidell of Seattle, said, "It's shocking an officer is in a maximum-security prison." ⁴

On October 10th Yee was charged with two counts of failing to obey a lawful order: "taking classified information home," and "wrongly transporting classified information." ⁵ Those are relatively minor charges that could result in a maximum of a year in prison and a bad conduct discharge.

After the Army's intensive six week investigation of Yee following his arrest, four more charges were filed against him on November 24, 2003: making a false official statement; failure to obey an order or regulation; adultery; and conduct unbecoming an officer. ⁶ After the last of the six charges against him were filed, Yee was released from maximum security, after spending 76 days in solitary confinement.

The six charges were relatively minor infractions compared with the alleged espionage and treasonous aiding of the enemy that precipitated his arrest. Kevin Barry, a retired Coast Guard captain and military judge commented, "All this suggests they really don't have much on him."

James Yee continued on age 21

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prosecutors have issued suspect statements about the circumstances of why Mayfield was targeted.

Fingerprint Analysis Is A Pseudoscientific Art

Thus an obvious question is: How can fingerprint analysis be so unreliable that three FBI experts and an independent analyst could mistake the print of a mild mannered family man with an expired passport who has never been to Spain, for that of an international terrorist? The answer lies in understanding the foundation of fingerprint theory rests on three assumptions - two that are scientifically unproven and one that has been empirically disproven.

The first assumption - that fingerprints are unique - has been accepted on blind faith by courts in the U. S. since 1910. ²⁰ Fingerprint uniqueness has not been scientifically proven, and it may be unprovable. It was noted e.g., in a 2001 book co-edited by renowned forensic scientist Henry C. Lee, "From a statistical viewpoint, the scientific foundation for fingerprint individuality is incredibly weak." ²¹

The second assumption - that a person's fingerprints have unique identifiers that can infallibly be measured - has likewise not been scientifically proven. Differing methods of identifying a person by their physical characteristics were developed during the 19th century. However no scientific basis established the accuracy of any of them. The British Home Office, e.g., rejected the use of fingerprints for identification purposes in 1894, because "there was no reason to resort to an unproven technology like fingerprints." ²² Fingerprinting eventually enjoyed widespread adoption because they are easy to obtain, classify, catalog, retrieve and compare. Thus the adoption of fingerprint patterns as an identification method was driven by bureaucrats who embraced it as meeting their work requirements - and who had no concern for the scientifically unsubstantiated idea they can be measured to unfailingly identify a person. Expediency continues to be a justification for fingerprinting. Proponents argue that its common use for 100 years justifies continuing to do so.

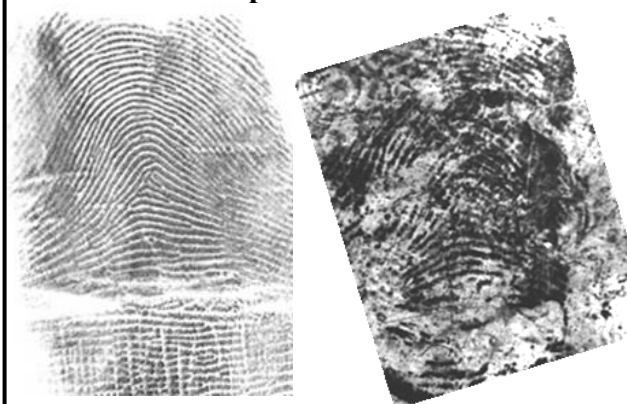
The third assumption - that fingerprint examiners have the skill to infallibly determine if print samples from different sources originated from the same person - has been empirically disproven. The many people falsely implicated in a crime by an erroneous fingerprint ID is consistent with proficiency tests over the past several decades that have resulted in failure rates by experienced examiners of over 50%. That lack of expertise is predictable considering fingerprint analysis is an artful technique that depends on a human interpreter's subjective evaluation. In 1892 Francis Galton, one of the fathers of fingerprinting, was honest enough to write, "A complex pattern [like fingerprints] is capable of suggesting various readings, as the figuring on a wallpaper may suggest a variety of forms and faces to those who have such fancies." ²³ One hundred and ten years later Scotland's Justice Minister echoed Galton's assessment by acknowledging fingerprinting "was not an exact science." ²⁴ That observation was in response to the August 2002 reversal of David Asbury's murder conviction when fingerprint evidence used against him was discredited.

The FBI is disingenuous by claiming fingerprinting is scientific, while acknowledging its lab's dependence on subjective fingerprint examination techniques. The agency claims reliance on "human experience" and intuition rather than a rigorous process results in a more accurate analysis. ²⁵ Yet the essence of the scientific process is the predictable independent duplicability of test results. ²⁶ In Madrid as in Washington D.C., 2+2=4 and 6x7=42. However until the SNP went public with the disagreement over Mayfield's print, the FBI insisted on the scientific impossibility that Mayfield's fingerprint could be matched in the U.S. while not matching in Spain. The Mayfield's case demonstrates what is to be expected of a subjective art, the conclusion of fingerprint examiners can and does markedly differ. Critics of fingerprinting are unaffected by the public's erroneous perception that it is a science, and it is with good reason that for more than a century they have

favorably compared it with pseudo-sciences such as tarot card reading, palmistry and graphology. ²⁷

Since the three assumptions underlying fingerprinting are unproven or in error, the practice of comparing a suspect's print with a crime scene (latent) print is vulnerable to honest and deliberate misinterpretation, and outright fakery. While a malevolent examiner can falsify evidence to implicate an innocent person in a heinous crime, an erroneous ID can be made by a conscientious examiner doing his job in the way he is trained. This has been borne out both in theory and practice by events on three continents during the last century.

Compare The Prints



Brandon Mayfield's left index fingerprint from his arrest when he was 17 years old.

Note: Mayfield's fingerprint and the Madrid fingerprint were published in The Seattle Times, June 7, 2004.

This is a copy of the latent print found on the plastic bag in a van near where three of the bombed trains in Madrid, Spain departed on March 11, 2004. The print is rotated 17 degrees to match the orientation of the other fingerprint.

A 100 Year Tradition of Fingerprint Fakery

In 1913 handwriting expert Theodore Kytka discovered a process of transferring an innocent person's fingerprint to an incriminating object. ²⁸ Prior to that, French criminologist Alphonse Bertillon faked "two different fingerprints which ostensibly showed sixteen matching points of similarity." ²⁹ Keep in mind that the FBI claimed to have matched "in excess of 15 points" of Mayfield's print to the one on the plastic bag. In 1920 chirographer Milton Carlson demonstrated a technique for transferring a person's fingerprint to an incriminating object if a photo of the person's print was available. ³⁰ Mr. Carlson wrote that it was easier to forge a person's fingerprint than their handwriting, since "to complete a perfect forgery of a finger-print in the exact form is as easy to make as any steel ruler, surveyor's tape, or a wheel within a wheel." ³¹ In 1923, former Secret Service agent E.O. Brown developed a fingerprint forgery method so foolproof that he successfully planted a fake print of the Berkeley, California police chief at the scene of a burglary. ³² In 1924, *Finger-Prints Can Be Forged* was published, and co-author Albert Wehde, a photographer and engraver, explained how a crime scene (latent) print can be faked to implicate an innocent person in a crime. ³³

Fingerprint examiners were so fearful of the danger to the practice posed by investigators and critics such as Wehde, that at the 1927 national meeting of the International Association for Identification (IAI), the Ethics Committee issued a recommendation, "that every possible effort should be made to checkmate these activities insofar as they may prejudice the public against latent fingerprints found at the scene of crime as competent evidence in a criminal trial..." ³⁴

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However such public relations efforts were needed not only to counteract publicity about the development of fingerprint forgery techniques, but to illuminate the fact that they were actively being used by police agencies to frame suspects. Two years prior to the IAI's 1927 meeting, the FBI identified the forgery of an alleged crime scene fingerprint by a law enforcement officer.³⁵ Two years later, at the IAI's national meeting in 1929, it was reported that law enforcement fingerprint forgery schemes had been uncovered in Kansas, New Mexico and Minnesota.³⁶ During the next 30 years the FBI exposed in a total of 13 states, an average of one police agency fingerprint forgery scheme every two years.³⁷

The most extensive known police agency forgery scheme was uncovered in 1992 when it was discovered that New York State Crime Lab personnel were forging fingerprint evidence.³⁸ The subsequent investigation found that at least five crime lab employees were involved in the forgery ring that faked fingerprint evidence in at least 40 cases, including homicide cases, over eight years.³⁹ Their forgery techniques included lifting a print from an inked fingerprint card on file and transferring it to crime scene evidence, and photocopying an inked print and labeling it as a latent crime scene print.⁴⁰

Two of the forgery ring's five state police officers convicted of perjury, evidence tampering and official misconduct, were latent fingerprint examiners certified by the IAI.⁴¹ The ring's members admitted they manufactured fingerprint evidence because it was so easy to do, and get away with doing. Investigators wrote in the official report to New York's governor, "In their confessions, the troopers themselves acknowledged that they chose to fabricate fingerprint evidence because they knew it would go unquestioned, because it was so thoroughly trusted."⁴² The forgery ring was able to operate for nearly a decade because there was no effective oversight of evidence processed by the crime lab or suspicion of a technician's expert testimony, by lab supervisors, judges, prosecutors, defense attorneys, or news reporters. The report to the governor noted, "This indifference, in itself, strongly suggests that the individuals fabricating evidence on a routine basis had no fear of discovery and, except with a noted exception, apparently took few steps to cover their tracks."⁴³

As common as fingerprint forgery is known to have occurred in the past, the falsification of fingerprint evidence has been exponentially eased by the computerization of fingerprint images by police agencies, including the FBI. In a November 2003 article, *Wired* magazine explored how easily a digitized image such as a photograph can be altered to be indistinguishable as a fake, using off the shelf software.⁴⁴ It is also known that the fingerprints in the FBI's computer database are degraded in quality from a photograph of the same print, which contributes to the ease of falsifying a match.⁴⁵

Fingerprint Identification Is So Inexact That Honest Errors Occur

The ease with which fingerprint evidence can be deliberately falsified by crime lab personnel is compounded by what could be honest fingerprint identification errors. Possibly honest errors are known to have led to the conviction of a number of innocent people.⁴⁶ One of those was John Stoppelli, who was in New York where he lived, 3,000 miles from the scene of a crime in Oakland, California where his print was allegedly found.⁴⁷ Stoppelli was granted a pardon by President Truman after he had served two years of a six year sentence.⁴⁸ Another man, Roger Caldwell, was convicted of a double murder in Duluth, Minnesota based on fingerprint testimony linking him to the crime, when he was almost 1,000 miles away in Golden, Colorado.⁴⁹ In reversing his conviction in 1982 after he had been imprisoned for five years of a life sentence, the Minnesota Supreme Court stated, "The fingerprint expert's testimony was damning – and it was

false."⁵⁰ The similarity Brandon Mayfield's misidentification shares with those cases is he was far from where his alleged print was found. He was over 5,000 miles from Madrid at the time the FBI alleged he was handling the plastic bag.

In light of what has been learned in the intervening century, R. Austin's Freeman's 1907 detective novel – *The Red Thumb Print* – has proven to be prophetic. Its plot revolved around the perfect forgery of a thumb print found in blood at the scene of a crime, that if taken at face value would have sent an innocent man to prison. It is now known that Mr. Freeman's story was a cautionary tale about ascribing too much value to seemingly incontestable fingerprint evidence.

The FBI Threw Caution To The Wind In Going After Mayfield

In Brandon Mayfield's case the FBI threw caution to the wind. The degree to which the Bureau went to try to tag him as a participant in the Madrid bombings is indicated by the contentions in FBI agent Werder's affidavit. To establish that Mayfield could have personally handled the bag in Madrid, the affidavit states, "Since no record of travel or travel documents have been found in the name of BRANDON BIERI MAYFIELD, it is believed that MAYFIELD may have traveled under a false or fictitious name, with false or fictitious documents."⁵¹ To infer Mayfield's possible allegiance to militant Islamic groups such as the one suspected of masterminding the Madrid bombings, the affidavit alleges: that he had represented a Portland man in a child custody case who was later convicted of conspiring to help al-Qaida and the Taliban in Afghanistan; that he regularly attended a Mosque in the Portland area that was his place of worship; that he advertised his legal practice in a business publication described as a "Muslim yellow page directory"; and that one phone call in September 2002 was made from Mayfield's home telephone to the phone of a man in Ashland, Oregon who at the time was the U.S. director of a Saudi Arabian based Islamic Foundation, that among other things "was involved in prison ministry throughout the United States, attempting to educate prisoners about the religion of Islam... This included distributing reading material to prisoners."⁵²

Glaring by its omission, is any allegation in Werder's affidavit that Mayfield had been observed or was otherwise known by anyone, whether a government agent or informant, of being involved in any illegal activity whatsoever, much less the four March 2004 bombings in Madrid, Spain. Quite to the contrary, the affidavit paints the picture of a devotedly religious family man, who as a sole practitioner lawyer represents people in civil cases such as child custody disputes and advertises his business to reach potential clients, and who may have talked once with a man involved in providing religious (Muslim) educational materials to prisoners in this country.

Mayfield Was Targeted Because He is a Muslim

If Mayfield had been a practicing Christian, or Jew, or some faith other than Muslim, then actions attributable to his belief in that religion set forth in an arrest/search warrant affidavit would not only have failed to provide ancillary support for his arrest, but would have highlighted the incongruity between his lifestyle and the FBI lab's "conclusion of a 100 percent positive identification" his fingerprint matched the incriminatory one on the plastic bag in Spain.⁵³

Muslims are suspected of executing the Madrid bombing, so Brandon Mayfield's Muslim religious beliefs, practices, and associations were necessarily included in FBI agent Werder's affidavit to provide a tangible basis of support for the FBI's allegation that he was involved. That may also explain why of the 20 people initially identified by the FBI's computer program (AFIS) as possibly matching the Madrid print, Mayfield was the only one investigated.⁵⁴ The other 19 may have automatically been excluded as non-Muslims. Consistent

with that is after Mayfield was arrested an FBI agent told him his Muslim friends wouldn't be able to help him.

The importance of the affidavit's emphasis on Mayfield's religious affiliation is indicated by his lack of involvement in any criminal activity. This is supported by the assertion of Oregon's United States Attorney Karin Immergut: "He was not on our radar screen in this district. His name was unknown to us."⁵⁴

Brandon Mayfield's arrest as a material witness depended on a federal judge being convinced by FBI agent Werder's affidavit to sign the warrant. To be convincing, the affidavit relied on the reader's predisposition to be prejudiced against Muslims. Hence the government proceeded on the assumption that the judge the warrant was presented to, in this case U.S. District Court Judge Robert Jones, would share that prejudice and overlook the affidavit's inconsistencies and insubstantiality.

After his release, Mayfield expressed his opinion that his religious orientation was why the FBI selected him, "I believe I was singled out and discriminated against, I feel, as a Muslim."⁵⁵ The FBI, however, couldn't have done anything without willingly being backed up by federal prosecutors and federal Judge Jones.

Federal Judge Robert Jones Failed To Perform His Constitutional Gatekeeper Responsibility

Thus while it is easy to blame the FBI and the US Attorneys Office in Portland for proceeding without caution – Judge Jones must shoulder ultimate responsibility for failing to perform his constitutional gatekeeper function to shield the rights of an American from over-zealous government agencies and employees. After all, the affidavit states, "MAYFIELD's passport expired on October 20, 2003 and he is not on record for renewal."⁵⁶ It additionally states, "Checks through the National Tracking System going back one year do not show any airline travel or border crossings by BRANDON MAYFIELD..."⁵⁷ The affidavit then surmised that since there was no record of his international travel, "it is believed that MAYFIELD may have traveled under a false or fictitious name, with false or fictitious documents."⁵⁸ However a number of obvious facts undermine that supposition. The FBI's intense seven week investigation of Mayfield from March 21st to May 6th didn't uncover any proof of any kind he had traveled out of the country at any time during the previous several months, or that his whereabouts were unaccounted for during any several day period of time it would have taken him to stealthily travel to Spain, participate in the bombing's execution, and then return to the U.S. without a single client, associate, friend or family member noticing his prolonged and unusual absence.

The affidavit's attempt to paint Mayfield as guilty by portraying unremarkable actions and associations related to his Muslim faith as sinister, coupled with its attempt to gloss over the lack of any evidence he had ever traveled to Spain, combined with the concealment that the SNP's comparison of his print to the one on the plastic bag was "conclusively negative," points directly to the FBI's deliberate attempt to frame Brandon Mayfield as involved in the Madrid bombing. The apparent purpose of FBI agent Werder's affidavit wasn't to set out a series of facts demonstrating Mayfield's terrorist involvement, but to fool the gullible into believing it could be true when there wasn't any actual evidence supporting the allegation.

The evidence in the public domain indicates that Judge Jones didn't seriously question the affidavit's inconsistencies from May 6th when federal prosecutors requested he authorize Mayfield's arrest, to May 24th when he ordered Mayfield's release from federal custody. So the most charitable description of Judge Jones' actions is he allowed himself to be duped into rubber stamping the government's request to have Mayfield arrested, when a cursory examination of the affida-

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vit offered to justify Mayfield’s arrest as a material witness would have revealed significant, if not fatal flaws undermining the allegation he was an international terrorist. Although it fell on deaf ears, Mayfield had plainly spoken the truth at his first court hearing when he told Judge Jones, “That’s not my fingerprint, your honor”⁵⁹

Mayfield Was Saved By The Spanish National Police

With a compliant federal judge giving a free hand to the FBI and federal prosecutors, it was sheer luck that Brandon Mayfield was saved from possible prosecution for a capital crime by the Spanish National Police crime lab’s independent analysis of his print. He was also fortunate that the SNP refused to cave into the FBI’s intense pressure to back up their identification of Mayfield. Carlos Corrales, commissioner of the SNP’s science division, said the FBI “called us constantly. They kept pressing us.”⁶⁰ Mr. Corrales was perplexed by the FBI’s desire to pin the bombing on Mayfield, saying “It seemed as though they had something against him, and they wanted to involve us.”⁶¹ It was also fortuitous for Mayfield that the SNP’s exclusion of him as a suspect attracted international media attention that U.S. officials couldn’t conveniently sweep under the rug.

As Mayfield’s attorney, federal public defender Steven Wax commented, “But for the unusual circumstance of another national police agency conducting its own independent investigation, Mr. Mayfield would still be incarcerated.”⁶² Mayfield’s other attorney, federal defender Chris Schatz, openly wondered how many people didn’t have a White Knight to save them from a police crime lab’s false fingerprint ID, “Who knows how many people are sitting in state and federal prisons that have just never come to light because there is no independent agency like the Spanish National Police.”⁶³

The answer to “how many” people have not been as lucky as Brandon Mayfield is unknown. However it is known that many innocent people have been victimized by a fingerprint misidentification during the past century, and that a number of inescapable human and scientific reasons underlie such errors. So prudence and a sense of fair play dictates the fingerprint ID of every suspect should receive the same intensity of independent scrutiny that prevented Brandon Mayfield’s possible wrongful conviction as a terrorist.

The day of his release, Brandon Mayfield shared what he believed was the meaning of his experience for all Americans, “You can’t trade your freedom for security. Because if you do, you’re going to lose both.”⁶⁴

Endnotes:

- 1 Transcripts Detail Objections, Early Signs of Flaws, Les Zaitz, The Oregonian, May 26, 2004.
- 2 FBI Admits Fingerprint Error, Clearing Portland Attorney, David Heath and Hal Bernton (staff), Seattle Times, May 25, 2004.
- 3 Affidavit of Rickard K. Werder, May 6, 2004, In Re: Federal Grand Jury 03-01, No. 04-MC-9071 (USDC WD OR), ¶ 7.
- 4 Id. at ¶ 7.
- 5 Id. at ¶ 8.
- 6 Id. at ¶ 8.
- 7 US Lawyer Held Over Madrid Bomb Link, Alec Russell, The Telegraph, London, UK, May 8, 2004.
- 8 FBI Admits Fingerprint Error, *supra*.
- 9 Spain and U.S. at Odds on Mistaken Terror Arrest, Sarah Kershaw (staff), New York Times, National Section, June 5, 2004. (Spain continued to insist Mayfield’s prints were a negative match, and three weeks before Mayfield’s arrest expressed “serious doubts” to the FBI that his prints matched those on the bag, Spanish Investigators Question Fingerprint Analysis, KATU 2 News, Portland, OR, May 8, 2004.)
- 10 Spain and U.S. at Odds on Mistaken Terror Arrest, *supra*.
- 11 Id.
- 12 Affidavit of Rickard K. Werder, *supra* at ¶ 8.
- 13 Spanish Investigators Question Fingerprint Analysis, *supra*.
- 14 FBI Admits Fingerprint Error, *supra*.
- 15 Madrid Bombing Warrant, New York Times, International Europe section, June 1, 2004.
- 16 FBI’s Handling of Fingerprint Case Criticized, David Heath (staff), Seattle Times, June 1, 2004.
- 17 Id.
- 18 Id.
- 19 FBI Apologizes to Mayfield, Noelle Crombie and Les Zaitz (staff), The Oregonian, May 25, 2004.
- 20 Suspect Identities: A History of Fingerprinting and Criminal Identification, Simon A. Cole, Harvard University Press, 2001, at 177-180. (Discusses the 1910 Jennings case in Illinois. It was the first case in this country in which a conviction dependent on fingerprint testimony tying a defendant to a crime was upheld, and Mr. Jennings was subsequently hanged.)

Brandon Mayfield endnotes cont. on page 19

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“Then came the crucial moment. The prosecutor wanted to prove that it was Salameh and [co-defendant] Abouhalima whom Moosh had seen that night. Given that the witness had recognized their photographs in the FBI interview, the prosecutor had good reason to be optimistic. He asked Moosh to look around the courtroom and see if he recognized the man who drove the Lincoln. The atmosphere of the courtroom suddenly seemed to change. As Richard Bernstein of the New York Times described it, the trial took on the air of a television quiz show when everyone in the audience knows the right answer and waits in suspense for the contestant to respond.

Moosh left the stand and ventured toward the defense table. He peered at the defendants. Then he looked beyond us to the press benches in the back of the courtroom and looked over the reporters covering the trial.

“Look all over,” the prosecutor urged.

“Objection!” Abouhalima’s counsel screamed.

Moosh spun his head in the direction of the objection and looked at the redheaded defendant. He skimmed the defense table again. He glanced at the jury. He looked at me. Then he turned toward the jury box. He appeared to fixate on it. Resolute now, he strode up to the left side of the box and stopped six feet from the startled jurors.

Moosh stared at Juror No. 6, a man with blond hair sitting in the front row. He took one step toward him. Another juror, sitting right behind him, began to wave his arms frantically. Moosh raised his arm and pointed: “It was a person such as this.”

“The record should reflect that he was pointing at Juror No. 6,” Judge Duffy said.

Showing remarkable composure, the prosecutor told Moosh to return to the stand and resumed his questioning as if nothing had gone wrong. He asked Moosh to identify the yellow van’s driver [allegedly Mohammad]. Again Moosh left the stand and repeated his movements of a few minutes ago. He looked at the defendants. He looked at me. He looked out at the spectators. Then, like a heat-seeking missile, he darted toward the jury box.

“It was a person like this one,” Moosh said, pointing to a man with a beard.

“Indicating Juror No. 5,” Judge Duffy said.

The government asked for a sidebar conference, and the lawyers for both sides gathered around the judge. The defense argued unsuccessfully that the damage Moosh’s identification had inflicted on the government’s case warranted a mistrial.²

Since Mr. Moosh had obviously not seen Mohammad [or co-defendant Abouhalima] before his appearance in court, one question raised by his testimony is whether the prosecutors misrepresented the circumstances of his alleged identification of Mohammad from a picture during his pretrial interview by the FBI. Particularly because it is known that Moosh identified two other men from FBI photos who were known to have had nothing to do with the WTC explosion.

The government’s only evidence that Mohammad had ever been to the WTC was a parking ticket dated February 16, 1993 – 10 days before the explosion – that a New York City

police crime lab technician claimed had Mohammad’s fingerprint on one side and was blank on the other side.³ The ticket was among thousands collected by WTC ticket booth attendants prior to the explosion that were examined by investigators. However the parking ticket was fishy for several reasons:

- It was magically “discovered” after the trial had begun and holes in the government’s case against Mohammad had been exposed.

- Since a parking ticket must be pulled from the ticket dispensing machine, it would have a person’s thumb-print on one side and their index (or another) fingerprint on the other side.

- When the parking fee was paid and the ticket handed to the parking booth attendant, the attendant would need to grab both sides of the ticket to hold it. That would smudge or otherwise obscure the prints of the person paying, by imprinting on both sides of the ticket, the attendant’s prints on top of the payers. However the fingerprint technician’s testimony was that Mohammad’s fingerprint only was clearly visible on *one* side of the ticket that was blank on the other side.

Precht writes that he considered raising the possibility that the incriminating fingerprint evidence was manufactured on a random ticket by the crime lab. But he explains that he didn’t think any of the jurors would believe New York’s crime lab would do that. However that claim is puzzling because just the year before – in 1992 – it was reported in the press that for the previous eight years technicians with the New York State Police Crime Lab had routinely been forging fingerprint evidence in serious felony cases and perjuringly testifying about it.⁴ Innocent defendants in murder cases were among the more than 40 cases in which forged fingerprints were planted on incriminating evidence. Additionally, the jurors were New Yorkers who had been exposed to decades of news reports about endemic New York police corruption. See e.g., Peter Maas’ book *Serpico* and the movie by the same title that starred Al Pacino. So it is troubling that Precht suggested he didn’t think the jurors wouldn’t believe a New York City crime lab technician would forge fingerprint evidence or commit perjury testifying about it in court.

In addition, a federal judge ruled in 1991 (two years before Mohammad’s trial) that the fingerprint testimony in a California bank robbery case was too unreliable to be considered as evidence and barred its use.⁵

So Precht had powerful ammunition on which to base a serious challenge to the alleged “parking ticket” fingerprint evidence, which was almost certainly fabricated. However instead of vigorously defending Mohammad by doing that, he timidly let the government introduce the evidently forged fingerprint evidence and sat on his hands as the prosecution claimed it substantiated their theory that Mohammad made a pre-explosion reconnaissance visit to the WTC.

Precht also explains the contrived nature of the government’s only evidence supporting its theory the yellow van rented by Mohammad was in the WTC’s parking garage before the explosion. Two days before he testified, a Secret Service agent told prosecutors that he saw a yellow van in the WTC’s parking garage on the morning of the explosion.⁶ The agent had made no mention of seeing a yellow van during any of his interviews with FBI investigators. His memory became clear for the first time during rehearsals of his testimony with prosecutors. How many letters comprise perjury – seven? However as a star government witness, the Secret Service agent had no fear of prosecution.

So the core of the government’s case tying Mohammad to

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participation in the WTC explosion consisted of three key pieces of alleged “evidence.”

- A gas station attendant who identified “Juror No. 5” as driving the yellow van eight hours before the explosion – not Mohammad.
- A parking ticket dated 10 days before the explosion that was testified to as having the naturally occurring impossibility of Mohammad’s fingerprint imprinted on one side while being blank on the other side.
- A Secret Service agent who conveniently recollected after meeting with prosecutors two days before he testified, that he saw a yellow van in the WTC’s parking garage the morning of the explosion.

How many letters does it take to spell “prosecution frame-up”?

Ten days after the jury began deliberations, Mohammad and his three co-defendants were found guilty on March 4, 1994. Each was subsequently sentenced to 240 years in prison. Mohammad’s conviction was affirmed on appeal.

Several notable events occurred after Mohammad’s conviction. After being arrested in the Philippines in 1995, Ramzi Yousef and a co-defendant, Eyad Ismoil, were convicted in December 1997 for their alleged role in the 1993 WTC explosion. Mohammad’s judge, U.S. District Court Judge Kevin Duffy presided over their trial, and several of Mohammad’s prosecutors were involved. During that trial the prosecution abandoned its claim that Mohammad had driven the van to the WTC on the morning of February 26, 1993, and asserted that Ismoil was the driver.⁷ Both Yousef and Ismoil were convicted. Yousef was sentenced to life and Ismoil to over 200 years. So three years after Mohammad’s conviction, the government officially discredited its claim that he was a participant in the explosion – which confirmed the appearance during his trial that the prosecution had ineptly contrived his participation out of whole cloth.

Another interesting development in 1997 was the Office of Inspector General’s report into irregularities in the operation of the FBI’s crime lab. It concluded that the testimony during Mohammad’s trial by FBI lab technician David Williams that a fertilizer bomb caused the 1993 WTC explosion, was “either downright false or completely unsupported by scientific evidence.”⁸ So over 11 years after the WTC explosion, it is not publicly known what caused it.

However whatever type of explosive device was used, it was reported on the front page of the New York Times on October 28, 1993, that FBI informant Emad Salem was an ‘agent provocateur’ involved in the planning of the explosion. He also purchased supplies that could be used to construct an explosive device. Although the FBI did not intervene to prevent the explosion, the Bureau did protect Salem from indictment as a co-conspirator. Precht writes in the book that he knew about Salem’s involvement with the FBI, but he didn’t call him as a witness because he didn’t think it would have helped Mohammad if the jurors’ attention was focused on the fact that the federal government had prior knowledge, and yet allowed the WTC explosion to occur. That is puzzling, because even though the government had a mole that provided intimate details of the planning and execution of the explosion, the prosecution’s case against Mohammad was as flimsy as a flag flapping in the breeze. If Mohammad had actually been a player, the case against him would have been as solid as Gibraltar.

Precht’s book is maddening because he passively defended Mohammad when what he needed was a lawyer with fire in his or her belly to fight tooth and nail for his acquittal.

Precht’s performance gave critical observers plenty of reasons to suspect during the trial that he had been bought off by the government.⁹ That may be going too far, but *Defending Mohammad* certainly presents the picture that Precht was the wrong person to represent Mohammad.

However glaringly Precht glosses over possible deficiencies in his representation of Mohammad, it is an important book for what he does say. Precht should be applauded for his candidness, and his willingness to put himself “out there” where he is subjected to criticism within and without the legal profession.

His portrait of Judge Duffy as a “pompous” ass who was primarily concerned with preserving the appearance of impartiality while he was actively aiding the prosecution obtain the conviction of Mohammad and his co-defendants rings true. Judge Duffy’s bias has continued after the trial, since he hasn’t lifted a finger to aid Mohammad after the government’s revelation in Yousef’s 1997 trial that it doesn’t believe he was involved in executing the explosion. Of course to their infamy, neither have the federal prosecutors who orchestrated the facilely contrived scenario at Mohammad’s trial that he was involved in the explosion.

Being assigned to represent a defendant in a case attracting international attention was a blessing and a curse for Precht. He writes: “Salameh was the ultimate underdog, and I was determined to ensure that he received a fair trial before an impartial jury. Unfortunately, the key court actors – judge, prosecutors, and defense lawyers – failed to meet this challenge.”¹⁰ *Defending Mohammad* is a somber warning that when a person is accused of terrorism, the judgment of everyone involved tends to become clouded by runaway passions and conflicting loyalties. In that environment it is difficult under the best of circumstances for jurors to determine if the prosecution has proved its case against an accused beyond a reasonable doubt. That is particularly true when there are multiple defendants and a person – such as Mohammad – can be victimized by misplaced patriotic fervor and found guilty not because of what he did or didn’t do – but for having been in the wrong place at the wrong time and associating with one or more people who may have been guilty of something. As Precht found to his dismay, the same dynamics affected the affirmation of Mohammad’s convictions on appeal: The appellate judges were unable to look beyond the heinousness of the crimes Mohammad was convicted of to seriously consider whether the government had legitimately met their legal burden of proving his guilt beyond a reasonable doubt.

Precht makes a compelling case that Mohammad Salameh is innocent of having any criminal role in the planning or execution of the 1993 WTC explosion. Yet in spite of his evident innocence, he is prisoner 34338-054 at the highest security prison in the United States – the Federal Bureau of Prison’s Florence ADX. Mohammad is scheduled for release on January 22, 2095, when he will be 127 years old.¹¹ Robert Precht is no longer a practicing lawyer. He is currently Assistant Dean of Public Service at the University of Michigan Law School.

Endnotes:

- 1 *Defending Mohammad* at 34.
- 2 *Id.* at 95-96.
- 3 *Id.* at 90-91.
- 4 *Suspect Identities: A History of Fingerprinting and Criminal Identification*, Simon A. Cole, Harvard University Press, 2001, at 274, 279-280. Referring to The NY State Police Evidence Tampering Investigation, Nelson E. Roth, Confidential report to the governor of New York (Ithaca, Jan. 20, 1997).
- 5 *U.S. v. Parks*, (C.D. CA), CR-91-358-JSL, cited in *Suspect Identities*, *supra* at 272-273. (Judge Letts excluded the fingerprint testimony under the much less stringent Frye standard of admissibility under FREv 702.)
- 6 *Defending Mohammad* at 72.
- 7 *Id.* at 166-167.
- 8 *Id.* at 166.
- 9 *Id.* at 152.
- 10 *Id.* at ix-x.
- 11 Information obtained from the Federal Bureau of Prison’s website on August 15, 2004.

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terrorist. That same day Besseghir was released after being jailed for ten days, and he was reunited with his daughter.



Abderazak Besseghir and his daughter after his release from custody.

(Photo credit: SCANPIX/EPA)

Le Hir, his accomplice, and Besseghir’s mother and father-in-law were arrested. A warrant was issued for a fifth person, his wife’s uncle, who was believed to have fled to Algeria.

On June 16, 2004, Besseghir’s mother and father-in-law and their three accomplices were convicted for actions related to the frame-up. All five plotters were sentenced to a five month prison term, and ordered to pay Besseghir a total of \$18,000 in damages.⁶

Fortunately for Abderazak Besseghir, French police continued their investigation after he was arrested and charged, and his prosecutor was willing to admit he was the wrong guy when presented with proof of his innocence. Since the finding of the bag’s contents in his car was likely sufficient to support his conviction without discovery of the set-up plot, Besseghir owes his freedom to the conscientious French law enforcement authorities who saved him from a wrongful conviction as a terrorist and a sentence of years in prison.

Endnotes:

- 1 Terrorism suspect ‘framed by in-laws’, Jon Henley (staff), *The Guardian*, London, UK, January 11, 2003.
- 2 Airport Weapons Stash: Terror or Family Feud, Joe Kovacs, *WorldNetDaily.com*, January 2, 2003.
- 3 Terrorism suspect ‘framed by in-laws’, Jon Henley (staff), *The Guardian*, London, UK, January 11, 2003.
- 4 Airport Weapons Stash: Terror or Family Feud, Joe Kovacs, *WorldNetDaily.com*, January 2, 2003.
- 5 Terror Scare ‘Family ‘Feud’, Staff, *WorldNetDaily.com*, January 10, 2003.
- 6 In-laws framed baggage handler, *World Digest*, Bobigny, France, *The Seattle Times*, June 17, 2004.

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Beach. In 2001, DNA testing cleared him of the crime.

Another California man, Kevin Greene, was cleared in 1996 after spending 16 years in prison for the murder of his pregnant wife. He was awarded \$620,000 in 1999 under special legislation.

New York and California are two of only 15 states that pay damages to wrongfully convicted defendants. Additionally, most states cap awards; New York does not. However, the Court of Claims does not allow for punitive damages and cases are heard only by a judge, no jury.

Remuneration for wrongful convictions does not come easily. Even in New York, which is believed to have the most generous legislative compensatory scheme, awards are rare. Of the 201 wrongfully convicted persons who have brought suit in the Court of Claims since 1985, only 12 were awarded compensation by the court, with awards ranging from \$40,000 to \$1.9 million. Another 15 reached settlements ranging from \$6,750 to \$2 million. The remainder received nothing.

Sources: *The Legal Intelligencer* (reprinted from *American Lawyer Media*), *San Francisco Chronicle*, *National Law Journal*.

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<http://prisonlegalnews.org>.

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and did not foster terrorist activities. One of the websites promoted the Islamic religion and the other analyzed political events. He further testified the websites could be characterized as expressing religious and political ideas – but not terrorist sentiments.¹³ Anderson also testified that religious extremists are not influenced to become “jihadists” by reading articles on the Internet.¹⁴

The jury began deliberating on June 1st. After deliberating for seven days, the jury declared it had reached a decision on five counts and was hopelessly deadlocked on the remaining nine counts. They found Al-Hussayen not guilty of the three terrorism related charges and two of the visa charges, which negated one of the undecided charges, and the judge declared a mistrial on the remaining eight undecided charges.¹⁵

After the trial one of the jurors, John Steger, said in an interview that the only inflammatory evidence the government presented, the four fatwas or religious edicts, “was protected free speech.”¹⁶ Steger also said, “There was nothing we could see as black-and-white evidence” link-

ing Al-Hussayen to terrorist activities. Another juror, Donna Palmer, said, “By the time we got to the end, there was no link” of Al-Hussayen to terrorism.¹⁷ She also said, “It was reasonable doubt ... there just wasn’t the evidence. A lot of times, I was wondering where this was going.”¹⁸ Ms. Palmer also observed that the prosecution was incoherent, and “just bounced from issue to issue to issue.”¹⁹

In regards to the undecided visa and false statement charges, the jurors were about evenly split. Juror Palmer said the problem was the language and definition of U.S. visa requirements is vague. What is volunteering? What is engaging in a business? At what point does volunteering become a business? It is all left up to the interpretation of immigration officials in each particular case. As Palmer explained, “We can’t find him guilty on interpretations. There needs to be something concrete to follow here and there wasn’t.”²⁰

The defense’s sole witness, Frank Anderson, noted, “I take satisfaction in the verdict. But I am embarrassed and ashamed that our government has kept a decent and innocent man in jail for a very long time.”²¹

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opened the door numerous times, but never found me raping Jessica. She said that I had stopped and then had again started raping her every day starting at the age of 16. (This is a time that it appears from the letters that she was very sexually active with ‘boyfriends’).

These quotes were used for Discovery of New Evidence.

On January 8, 1996. Jessica, 14 years of age, wrote Amanda the following: “Well, anyway if you want to know I’m not a virgin, I’ve had sex 1 and don’t plan to do it again until I really, really, really love the guy a lot. Well, I can tell you this the FIRST time is so awful!!”

Jessica’s use of the numeral “1” was intended to signify she had experienced sex only one time.

In February 1996, Jessica wrote: “...and you wanted to know about me and my first time, well my only time. It hurt like hell!!!! And it hurts a lot emotionally especially if you’re not ready for it. I was devastated for two full weeks. I did nothing but sleep and me and the guy Bryan haven’t talked since it happened.”

On May 4 1996 Jessica described her new boyfriend John. She wrote: “I wish I could have saved my virginity though because now I think about it I would have wanted it to go to John.”

In July 1997, Jessica added: “Next year I’ll be going to the prom with Todd, he’s my current boyfriend, and I really think we’re gonna last awhile. What’s weird is, do you remember when I told you I lost my virginity 2 years ago? Well, Todd is the guy’s stepbrother. Todd knows it. (Todd) He hates his stepbrother Bryan.”

In stark contrast to the oblique, but damaging references at my trial to Jessica’s loss of her virginity, Jessica’s letters describe a very different set of circumstances explaining the same event in her life; that Jessica had lost her virginity in her first and only experience at age 13 to her young boyfriend, Bryan.

Jessica protested during Motion for New Trial that she considered ‘virginity’ to be a reference only to consensual sex. Jessica and her mother clearly intended to convey an entirely different meaning to the jury when they used that term at trial.

Jessica testified that she never really liked Amanda and it

was just something to do. Jessica had 11 diaries that never mentioned her “sexual assaults” so why would she tell Bob’s daughter Amanda?

After the first trial Jessica refused to make a victim’s statement. Bob’s wife Heather, did say “It’s too bad that you will never see your son graduate from college, get married or be part of his life.” Never any thing about the “abuse” he imposed on her daughter Jessica.

Judge Lerner took the new evidence into consideration, wanting to look it over before making a decision. The decision came in late August when they woke me up early in the morning to take me to the prison in Huntsville, Texas. My cell-mate called Gail to tell her the news. She then called Mr. McQuage to question him about what had happened. His return call stated that he knew nothing of this decision and that he had gone to the courthouse to find out why. He found Judge Lerner had affirmed my conviction and filed the paper work away without notifying Mr. McQuage or myself. Mr. McQuage filed the necessary appeals, but each time the Court of Criminal Appeals has affirmed my conviction. The State of Texas claimed that I should have had this new evidence prior to trial, that I was only whining about my conviction, and that the new evidence was only being presented to “impeach” Jessica’s testimony.

My Habeas Corpus petition was recently denied based on “trial testimony.” I am now awaiting a decision on my federal appeal.

Sincerely,
Robert E. Shafer

I can be contacted at:
Mr. Robert E. Shafer 1053332
Polunsky Unit
3872 FM 350 South
Livingston, TX 77351

My outside contacts are:
Belinda Lee (sister)
P.O. Box 216
Omak, WA 98841

Julie Carpenter
P.O. Box 270
Alief, TX 77411

Copies of Jessica’s letters, transcripts, and attorney notes are available through Julie Carpenter.

Al-Hussayen’s Ph.D. advisor at the University of Idaho, Professor John Dickinson, visited him several times prior to the trial and attended the trial. He said he kept waiting for the prosecution to produce any evidence that Hussayen had done something illegal, but he observed that their entire case was built around “twisting facts to appear suspicious and incriminating.”²²

University of Idaho law professor Elizabeth Brandt commented on the lack of “smoking gun” evidence that would have proved Al-Hussayen guilty: “Half of me hoped that there would be a smoking gun that would justify the prosecution. I just thought, ‘There’s got to be something.’ Otherwise it was a witch-hunt. That’s what it looked like to me.”²³

The comments of the jurors, Professors Dickinson and Brandt, and former CIA division chief Frank Anderson indicates that in the absence of any actual evidence that Al-Hussayen was guilty of any crime, the prosecution’s intention was to present the jury with a large number of documents and witnesses in the hope the sheer volume of the alleged “evidence” would convince the jurors he must be guilty of something. After all, why would the government intensely investigate a person for two years and then prosecute him if he hadn’t committed a crime? Professor Brandt may have hit the nail on the head by characterizing Al-Hussayen’s prosecution as a “witch-hunt.”

The government had the option of re-trying Al-Hussayen on the eight charges the jury didn’t agree to a verdict on. However on June 30th the U.S. Attorney for Idaho, Tom Moss, announced an agreement had been reached with Al-Hussayen: In exchange for him dropping his appeal of the April 25, 2003 deportation order, the government would drop the eight undecided counts.

Although the agreement allowed Al-Hussayen to be released from 17 months of imprisonment and return to Saudi Arabia so he could be reunited with his family, it casts a cloud on his ability to ever re-enter the U.S. On July 21, 2004, Al-Hussayen was taken from the Canyon County, Idaho jail and put on a plane bound for Saudi Arabia.²⁴



Sami Omar Al-Hussayen reunited with his three sons at the airport in Riyadh, Saudi Arabia.

One bright spot is that Al-Hussayen’s Ph.D. advisor, Professor Dickinson, expressed his willingness to work with Hussayen after his return to Saudi Arabia, so he can complete his graduate studies and be awarded his doctorate in computer science from the University of Idaho. Al-Hussayen will be teaching at a Riyadh technical university while he finishes his graduate studies.²⁵

After announcement of the deal allowing Al-Hussayen to return to Saudi Arabia, *The Idaho Statesman* published an editorial about his case on July 1, 2004. It expressed the opinion that while his release after 17 months of captivity, and the reuniting of his family were reasons for rejoicing, “Everything else connected with this case is an outrage.”²⁶

Al-Hussayen continued on page 19

Cheri Lynn Dale continued from page 6

dead girl's arm, but the best part is Cheri's hair sample is now about 4" shorter than it had been in the previous test. It had lost the approximately the same length as the scissor cut locks of blond hair now appearing in the present test of #14 and #15. According to the arrest warrant written by Detective Wick, the results of the 6-26-92 test and the 12-16-92 test showed that Cheri's hair and the hair in the dead girl's hand were "Similar in all respects". This conclusion was an outright lie.

The game that the prosecution was playing is starting to become painfully obvious. Later on, a grand jury and a trial jury was not made aware of the false forensic conclusions contained in Cheri's arrest warrant.

On 8-2-93, the DQA portion of the DNA of Cheri's hair and the victim's comparison test was reported to the Carlsbad PD by Cellmark Diagnostics, Maryland. Paula Yates swore to the Grand Jury that Cheri "Cannot be excluded as the source of the DNA found in the hair in the victim's left hand."

On 8-23-93, Cheri was arrested in Texas by Detective Wick and DDA Manning.

On 9-12-93, Cheri is released by Judge Gus Strauss to fly to San Diego at her own expense to face Manning & Wick in court.

On 9-15-93, Cheri was incarcerated in San Diego.

On 2-22-94, After countless delays, Cheri appears before Judge Charles Rogers. Her appointed attorney Steven Wadler filed a complaint charging Manning and Wick with Perjury, Falsified Evidence, and Outrageous Governmental Misconduct. After discovering the false forensic information in the arrest warrant, Judge Rogers released Cheri on her own recognizance.

On 4-18-94, Paula Yates the senior molecular biologist at Cellmark Diagnostics swore to the grand jury that Cheri's hair could not be excluded as the source of the DNA obtained from the hair from the victim's hand. After Cheri's arrest and indictment however, the same expert retracted that conclusion saying "Dale is excluded as the possible source of the DNA" But it was too late, the baseless arrest and indictment already occurred.

On 8-12-94, Steven Wadler was removed from Cheri's case.

On 12-12-94, Cheri's new appointed lawyer Michael Berg *dropped* the motion to dismiss Cheri case that Wadler had raised along with the Perjury and other charges. He did this without his client's foreknowledge or consultation. As neither I nor any of my family had any confidence in Mr. Berg's ability, we began contacting other sources for help. Mr. Berg became aware of this and informed us that it was too close to trial and that Judge Gill would not permit a change of attorneys at this time.

On 3-23-95, trial starts. The trial was a disaster. Cheri's alibi was never presented nor were any character witnesses called. Among Mr. Berg's choice comments in his closing argument was a quote from Adolph Hitler, a reference to Richard Nixon as a crook, and the brilliant remark "If Cheri didn't kill Susan, who did?"

On 4-25-95, a guilty verdict was reached. David Berman was then appointed to represent Cheri in a motion for a new trial. He did a great job but unlike DDA Manning, he

played by the rules and lost.

On 1-11-96, the motion for a new trial started. Now DDA. Manning is defending Cheri's ex-attorney Michael Berg, and bragging on what a wonderful job he did defending her at trial.

On 1-1-19-96, Judge David Gill of San Diego Superior Court decided that neither Cheri nor any of her family possessed any credibility but Berg and Manning's honesty was beyond reproach. New trial denied.

On 5-8-96, Russell Babcock was retained as Cheri's appellate attorney.

On 9-9-97, the first oral argument was denied.

On 4-25-98, through the efforts of Ken Culver of the San Diego Sheriff's Internal Affairs Division, we obtained the missing forensic tests and the missing pages of others. The tests were on:

- 3-3-90, Charles Merritt, Criminologist, SD Crime Lab (revealing his false test conclusion that led to all of the other hair tests)
- 6-26-92, Rose Neth, SD Crime Lab (pg. 3 where she states "No conclusion could be reached" contrary to what Detective Wick swore in the arrest warrant.)
- 12-16-92, Rose Neth SD Crime Lab (pg. 2 where we learn there were scissor cut locks of blond hair in evidence that should not have been scissor cut locks.
- 5-20-94, Paula Yates, Cellmark Lab Test conclusion that was contrary to her conclusions in the arrest warrant and at the grand jury. (Note: Yates was flown to trial and Mr. Berg failed to expose her role in Cheri's arrest and indictment using her first misleading conclusion.)

Now we had proof of erroneous and/or tampered with forensic test conclusions and that Cheri's Texas interview was also tampered with. We learned last year that her interview is not the first to be tampered with in this way, and it was discovered that DDA Peter Longanbach had instructed his secretary to "shuffle the defendant's interview to confuse the defense."

Whoever was in custody of Cheri's transcribed interview, shuffled 34 pages within the text then numbered them as though they were in order, then supplied the transcript to the defense and the court in it's corrupted state. In at least one place, it turned Cheri's answer from "no" to "yeah" and placed her at the scene of the crime as though she were listening to the victim. But it did a good job confusing the defense because not even our investigator ever figured out why he kept "getting lost" when trying to compare the text to the videotape. Also, pages containing exonerating statements were excised from the transcript. Judge Gill however, chose not to compare the videotape to the transcript for some reason.

The prosecution also misquoted Cheri when they claimed she said:

- ✓ "I went to Lisa's house on the day of the murder, 1-25-90."
- ✓ "That picture of the hair in the victim's hand sure looks like my hair."
- ✓ "I saw blood on the ceiling."
- ✓ "I could hear Susan on the phone as I approached the front door."
- ✓ "I don't know anyone with blond hair."
- ✓ "I went down the hallway and saw the blood."

- ✓ "I left a bag of bloody clothes at Charles Vary's house."
- ✓ "I lied about the voice sounding like Richard Am-parano."
- ✓ "I lied because Jeff entered the room (in my first interview)."
- ✓ "She had already been hit and bit before I got there" (The "BIT" in this statement is a product of creative enhancement by the prosecution. The audio on this tape was so bad only a portion was audible. Detectives Sutt and Presley were the original interviewers and neither heard Cheri say "bit."

These are but a few of the damning statements officer Wick and DDA Manning claimed to a jury that Cheri made. None are true. None were challenged by attorney Berg.

In reading Taylor's autopsy report, I find evidence that Susan had been sexually assaulted at the time of the murder. As per Mary Pierson, DNA expert, the presence of Acid Phosphatase in the victim's mouth, anus and vagina were found, in direct contrast to what Coroner Dr. Eisele's swore at the grand jury and at trial.

All of Cheri's appeals have been turned down so far, because all the appeal court does is review court procedure. The records however are wrong, because DDA Manning and arresting officer Robert Wick lied at trial and Mr. Berg refused to expose them.

In our San Diego justice system, even after seeing proof of prosecutorial wrong-doing by our Prosecuting Attorney, this wrong-doing is totally disregarded. Justice isn't nearly as important as closing a case, especially one that has the smell of official corruption.

Instead of hearing Cheri's side of the story at trial that she was sober, with family members, at traffic court, giving Fred a birthday gift, shopping etc; the prosecutor presented a wild story that was not even challenged by the "defense" lawyer. Even at the Motion for a New Trial when physical proof was provided to Judge Gill; the traffic court receipt, the purchases from shopping with cancelled check, Connelou's timecard showing the day she took off work to drive Cheri to traffic court; red telephone that Cheri gave to Fred on the day of the murder. And the testimony of the investigator who said there was "no doubt" that the red telephone was at 2441 Torrejon on 1-24-90 - still judge Gill bought the prosecutor's story that was based on Cheri Dale saying "I went to Lisa Stanton's house on 1-25-90 and overheard an argument." - a complete lie by the prosecutor. Cheri was never asked when the date or the day was that she had gone there, and at the MNT she had sworn that it was a completely different day that she had overheard an argument there.

I see no relief for Cheri in any type of appeal under these conditions. There must be something we can do. You see, I know Cheri is innocent. I'm an old man and have been through a lot but I have never felt so helpless and let down by my government.

Cheri's address is:
Cheri Dale W60748
CCWF C510-17-3L
Box 1508
Chowchilla, CA 93610-1508

My address is:
Charles Caldwell
1234 N. Coast Hwy 101
Leucadia CA 92024



Robert Lee Norris continued from page 3

secretly and repeatedly sought to convince Kimberly to change her statement to the police and to become a state's witness against me. Kimberly simply would not lie even to save herself. She was released on a \$100,000 signature bond on February 3, 1999. She and I were compelled, because of being plagued with ineffective assistance of counsel coupled with the court's refusal to appoint us a private investigator, to pursue the evidence for our defense ourselves.

The police knew this to be true and within hours of Kimberly's release from the county jail she received a telephone call from a man named Gerald Harris who claimed that he had spoken to Sheila Knutty and had recorded some exculpatory statements that he wanted to turn over to Kimberly if she would meet with him.

Unknowingly, Kimberly met with him and was then forced at knifepoint to a secluded area where she was raped and robbed. After the attack she went directly to the Massillon City Hospital and was examined. Semen was collected from her.

Kimberly simply would not lie even to save herself.

A few hours later the police caught up with Harris and he admitted having sex with Kimberly. He still had the knife in his coat; the police did not take it. He told the police that Kimberly had given him the money and dropped him off at a friend's address.

The Massillon City Prosecutor refused to file any charges against Harris so Kimberly, along with the outraged Stark County NAACP President, went to the clerk's office and swore out independent felony complaints alleging rape, kidnapping, aggravated robbery and felonious assault. Harris was still never arrested and weeks later, even after Harris made a series of threats against Kimberly, the Massillon City Prosecutor said that he could not find sufficient probable cause to arrest Harris and that he would not pursue the charges alleged on the felony complaints because Kimberly could not be a rape victim and a defendant in a rape case at the same time.

Days later Kimberly attempted suicide and was hospitalized at the Massillon City Hospital. It is important to note that before these incidents, Kimberly had never had so much as a traffic ticket in her life and the effect of the totality of these worsening circumstances were more than she could stand.

On July 19, 1993 a jury trial commenced. The state's case consisted of: the examining physician from Aultman Hospital, Massillon Police Detective Schnell, Sheila Knutty, Patricia Knutty (Sheila's mother), and Michele M. Mitchell, Criminologist of Canton-Stark County Crime Laboratory.

The defense was unable to call a single witness because we were not advised of the trial date until the actual day of trial. We were at a hearing on July 19, 1993 and at the close of the hearing, without notice the trial commenced over our strenuous objection.

The examining physician testified that he had never seen so much motile semen, though he couldn't explain why he didn't diagnose Sheila as an alleged rape victim in his medical reports. Detective Schnell testified that there was not sufficient probable cause to arrest Kimberly and myself or for that matter to even get a search warrant. He explained that probable cause means a reasonable basis to believe that a crime had in fact occurred. He said that probable cause did not exist based on Sheila's conflicting accounts of the incident and the fact that she had identified four different houses in which the alleged rape took place. Sheila herself testified that she "doesn't always tell the truth," and admitted that she was on probation. She admitted that she was not permitted to leave Canton Ohio, wasn't permitted to drive a car or to associate with anyone not approved by her probation officer. She additionally said that she would have

been in serious trouble for staying out all night and then surprisingly said that she had told her mother, who didn't believe her story about being raped to "Get the f*** out of the hospital."

Sheila testified that she had enlisted the help of her girlfriend and her girlfriend's mother to lie to her mother so that she could get out of the house to meet me that night. She said that she was supposed to pick up a new car and keep it at her residence until the following day when she was supposed to give that car to my daughter.

Sheila explained that a tiny scratch on her chest came from a pair of scissors allegedly used in the attack, but she could not explain a large grapefruit sized bruise on the inside of her right thigh four inches above the knee. She said that she was forced to smoke crack cocaine, but was unable to detail the effect of doing so. She said that her legs were tied together with yarn during the course of the attack; yet there were no injuries or marks anywhere on her legs, ankles or anywhere else.

Patricia Knutty testified that Sheila was an unruly child and that she had previously run away from home resulting in her photo being placed in local stores. She was caught and placed in a detention home where she concocted a story that she was pregnant and had been abducted in order to gain her release from there. Both Sheila's mother and Sheila openly admitted that Sheila lies to get out of trouble.

The state's case was a mess because the prosecution had to rely on the scientific testimony to link Kimberly and myself to this alleged crime. On Thursday July 22, 1993 the criminologist was called to the stand and testified that she performed a variety of scientific tests, and that I was the source of semen and injury complained of. The criminologist testified that she performed Lewis antigen and electrophoresis testing which yielded the PGM subtype results listed above; however, newly discovered evidence including an affidavit from Robert Budgate, the laboratory director, dated 11-24-99 irrefutably demonstrates that the laboratory never possessed any electrophoresis or Lewis antigen test machinery at anytime from 1980 through and including 1999. In fact, Ohio University didn't even offer electrophoresis and Lewis antigen training in its four year Bachelor of Science Degree.

When confronted with the Montana report that the prosecution stipulated to, therein showing me to be an ABO blood type O, non secretor, with a PGM subtype 2-1 and therefore excluded as a suspect in this case, the trial was halted. It was, however, resumed on Saturday July 24, 1993. At the Saturday trial the criminologist testified that the PGM 2-1 that the Montana report had listed me as, was a "type" and that despite the fact that PGM subtypes are listed in plus and minus the Montana report should not be read as a 2 minus 1, but rather as a 2 dash 1.

The criminologist then revealed that she had performed a first test that indicated that I was a non-secretor but she had never turned that test result over to the defense because "80 percent of these people are secretors; therefore, we listed Mr. Norris as an ABO blood type and a secretor."

The United States Court of Appeals for the Sixth Circuit ruled in 1998, *Norris v. Schotten*, 146 F. 3d 314, that while the criminologist never had a second saliva sample on which to perform the alleged second test and that the criminologist never performed Lewis antigen testing and that despite the fact that the criminologist's testimony could be impeached in various ways, there appears to be no Constitutional error.

A Federal District Court, in Akron Ohio, ruled on April 5, 2001, in *Southall v. Cooper*, that the new evidence establishes that the electrophoresis testing never in fact occurred and yet the convictions of Kimberly and I remain for the want of justice.

The refusal of the court's thus far to give us relief on our wrongful convictions is compounded by the failure of the

Ohio Parole Board to abide by the law and release me after completion of my sentence.

In 1995, two federal courts in a habeas corpus proceeding dropped each of my rape counts and sentenced me to a single prison term for the remaining count alleging kidnapping. The court said I was sentenced for "Fifteen to 25 years or until paroled, pardoned or released according to law" for the kidnapping charge.

The kidnapping charge however is an aggravated felony of the *second degree*, possessing a *maximum* penalty of fifteen years. I was denied parole on July 3, 2003, even though I had fully discharged that maximum penalty months before the July 3, 2003 parole hearing. However, the parole board simply refused to open that file. Instead, the parole board stated that I was being held on the basis of a July 9, 1998 *nunc pro tunc* resentencing order, which had never been signed by any judge and never recorded by the Stark County Clerk of Courts. Simply stated, the order isn't worth the paper it's printed on.

...the criminologist was called to the stand and testified that she performed a variety of scientific tests, and that I was the source of semen and injury complained of. The criminologist testified that she performed Lewis antigen and electrophoresis testing ... an affidavit from Robert Budgate, the laboratory director, dated 11-24-99 irrefutably demonstrates that the laboratory never possessed any electrophoresis or Lewis antigen test machinery at anytime from 1980 through and including 1999.

I was placed in segregation on August 25, 2003 and seven weeks later transferred to Richland Correctional Institution, where I have been raising "a million dollars worth of hell!" Kimberly Southall, my co-defendant was released on parole on October 1, 2003. She was wrongly imprisoned for more than 10 years.

On May 3, 2004 I filed a state petition for a writ of habeas corpus in the Richland County Common Pleas Court before Judge DeWeese, challenging my continued and unconstitutional confinement. The judge rejected the multiple unappealed federal judgments, finding clearly to the contrary that my sentence was and is 45 to 75 years.

I appealed immediately to the Richland County Fifth Appellate Court. In that action I requested that the federal court declare with certainty its judgments and its *res judicata* effect on the state courts. In addition, I sought a stay of the state court proceedings, which was denied by Judge F. Boggins of the Fifth Appellate Court and then I sought a stay of the state court in the federal court proceedings.

The Ohio Attorney General's Office all of a sudden abandoned all reference to and dependency on the non-journalized and unsigned *nunc pro tunc* resentencing order.

It is important to note that in the federal action, The Assistant United States Attorney General has simply failed to file *any* answer or response in that action and the U.S. District Court clerk entered their default on June 23, 2004.

I filed a formalized Motion for Default Judgment on July 1, 2004 and as of now ain't nobody saying nothing about nothing. Imagine that?

Robert Lee Norris continued on next page

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If it weren't enough that I am actually innocent and that I have over sixteen months ago discharged the maximum authorized penalty for kidnapping as charged in my indictment and I still remain in prison being transferred from one facility to the next as prison officials seek to avoid personal liability.

They have already been served with certified copies of my indictment, arraignment transcript and jury verdict, but even the Ohio Adult Parole Authority recognized that it doesn't end with freedom when it comes to me. Instead, the parole board said, "Some people fight and end up spending the rest of their lives in prison."

I told them I'd rather die for a principle than live without one. They then sent me another eight years in the mail.

All in all, Kimberly's out, and that's all that truly matters. Justice has continued to elude me, but God willing, they will eventually straighten their hand after all these years.

Thank you, and I can be contacted at:

Robert Lee Norris #281-431
Richland Correctional Institution
PO Box 8107
Marion, OH 44901

Robert is writing a book about his case. He is in need of a publisher and asks that anyone who can assist him to please contact him.

web site: www.innocentinmates.org
e-mail: rleenorris@innocentinmates.org



Brandon Mayfield continued from page 14

21 Advances in Fingerprint Technology, Second Edition, Ed. By Henry C. Lee and R.E. Gaenslen, CRC Press, 2001, p. 383. (emphasis added).
22 Suspect Identities, *supra* at 81.
23 Fingerprint, Francis Galton, London, Macmillan and Co., 1892, pp. 65-66.
24 Wallace Defends Fingerprint Remark, BBC News, September 18, 2002, http://news.bbc.co.uk/2/hi/uk_news/scotland/2265693.stm (last visited June 6, 2004).
25 Spain and U.S. at Odds on Mistaken Terror Arrest, *supra*.
26 See e.g., Scientific Methods, McGraw-Hill Encyclopedia of Science & Technology, 1997, Vol. 16, p.119-120 (Among the requirements of the scientific method are: "testable consequences;" "repetition of the test;" and "reliability and accuracy.").
27 Suspect Identities, *supra* at 202-203 ("pseudo-science").
28 Id. at 275.
29 Id. at 201.
30 Id. at 275.
31 Id. at 275.
32 Id. at 275.
33 Id. at 188, 276-278.
34 Id. at 277-278.
35 Id. at 278.
36 Id. at 278.
37 Id. at 278-279.
38 Id. at 274.
39 Id. at 274-280.
40 Id., quote at 280.
41 Id. at 274.
42 Id., quote at 280.
43 Id., quote at 279-280.
44 These Are Definitely Not Scully's Breasts: Inside One Man's Crusade To Save Gillian Anderson and the rest of the world from the plague of fake celebrity porn, by David Kushner, Wired Magazine, November 2003, pp. 142-145.
45 This degradation occurs from a combination of the scanning process used to digitize them and the 12.9 to 1 compression ratio used when they are convert into the WSQ file format used by the FBI to store fingerprints in its database.
46 See e.g., The Innocents Database, http://forejustice.org/search_idb.htm, which lists a number of people whose wrongful conviction was contributed to by an erroneous fingerprint ID.
47 Never Plead Guilty: The Story of Jake Ehrlich, John Wesley Noble and Bernard Averbuch, Farrar, Straus and Cudahy, N.Y., 1955, pp. 295-298.
48 Id. at 295-298.
49 Minnesota v. Roger Sipe Caldwell, Nos. 49437, 51505, Supreme Court of Minnesota, 322 N.W. 2d 574, 1982.MN.268, ¶¶ 54-5 <<http://www.versuslaw.com>>.
50 Id. ¶ 75.
51 Affidavit of Rickard K. Werder, *supra* at ¶ 23. (See also, Spain Bombing Glance, Associated Press, Seattle Post-Intelligencer, May 24, 2004.)
52 Id. at ¶¶ 13, 16, 18, 19 and 20. (See also, Spain Bombing Glance, *supra*).
53 Id. at ¶ 8.
54 FBI Case Oregon Lawyer, Les Zaitz, The Oregonian, May 30, 2004 (The FBI's AFIS returned 20 possible matches).
55 Madrid Bombings Case Thrown Out Aaisnt Oregon Attorney, CNN.com, May 25, 2004. <http://www.cnn.com/2004/US/West/05/24/spain.bombings.lawyer.ap/>
56 Affidavit of Rickard K. Werder, *supra* at ¶ 21.
57 Id. at ¶ 21.
58 Id. at ¶ 23.
59 Transcripts Detail Objections, Early Signs of Flaws, Les Zaitz, The Oregonian, May 26, 2004.
60 Spain and U.S. at Odds on Mistaken Terror Arrest, *supra*.
61 Id.
62 FBI Apologizes to Mayfield, *supra*.
63 Brandon Mayfield Opens Investigations Into His Arrest, Andrew Kramer (staff), KATU 2 News, Portland, OR, May 25, 2004.
64 'Sneak and peek' searches dogged family, Joseph Rose (staff), The Oregonian, May 25, 2004. Mayfield's comment is reminiscent of an observation credited to Benjamin Franklin, "They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety."



Charles Troupe continued from page 4

the agent had made. I asked the agent why he was threatening me and saying he would do anything to get me. On tape Agent Harnett said that he knew he had threatened me and that he was sorry. He said that he was mad and sorry that he had continued to try to coerce me to give him drugs I didn't have. Not knowing that I was recording the conversation of the agent threatening to set me up "no matter what," Agent Harnett started to amass a group of false witnesses.

Allen, whose DNA matched the DNA recovered from Tina's body, stated in writing that he didn't believe I had anything to do with Tina's death. Then he made a deal with the FBI to testify against me. His statement changed at that time to a claim that I asked for his help. Both of these statements are a matter of record and can be checked. In the sworn statement of Allen, he says that his attorney informed him that the prosecution knew he had not been involved with Tina Kirkpatrick's murder, but they had received information saying that he helped with the disposal of the body. He would not be indicted for the murder. Allen also says that his attorney told him that according to the prosecution, Charles Troupe was trying to frame him for the murder. Mr. Allen also says that he was offered a low degree felony if he would make a statement and testify at the Troupe trial. In response to this offer, Allen requested a proffer letter to the deal and was told that the defense would use it to discredit his testimony. Allen's attorney advised him to make a statement "...with the assurance that the prosecution would honor their word." Allen has sworn out a criminal complaint charging Prosecutor Dever with suborning perjury and Patrick McCarthy with perjury.

Another witness, a felon, made the statement that I was upset with Tina over an incident that happened in Las Vegas. The statement claims I said I was going to get her because she made a statement against me to the Las Vegas police. But Tina did not have anything to do with the Las Vegas incident and, according to the Las Vegas Police Department, she was never questioned or charged. This Las Vegas officer testified on the stand to this and said that he didn't trust the FBI.

On or about October 30, 1998, I was arrested for the murder of Tina Kirkpatrick. I claimed to having been set up. On reviewing the evidence, the prosecutor Mr. Dever, asked my attorney, "Who is pushing this case?" Mr. Dever told my attorney that he knew that I didn't commit this murder, but that William Allen, the man making the false statement, told him he had committed the crime. The prosecutor asked who was doing this and I told him the FBI. Two days later the prosecutor did a 180 degree turn, and after talking to Agent Harnett, now believed I did this.

The detective, Mike Burger, who worked on the case, claimed that he threw away his notes about the case. He did this before trial. This is ridiculous. Why would he throw away the notes of a murder investigation? The Cuyahoga County Coroner was called to the stand. His story changed; he now said that the cause of death was a heroin overdose. When he was cross-examined he admitted that the FBI asked him to change the cause of death to help them with their case. He said he did so even though he knew it was wrong.

There was still a witness that could clear me. Ms. Rosheena Battista knows Mr. Allen and he had told her that he killed Tina. Ms. Battista told my sister Charlen Peavy that when Allen realized what he had said to Ms. Battista he tried to kill her also. She told Ms. Peavy that she was afraid for her life. She was put on the list of witnesses, but she did not testify. It may sound farfetched to people who haven't experienced being prosecution, but it is my understanding that the FBI called her, and in a very persuasive manner, told her not to to testify.

This whole outrageous incident is not an isolated one. At

Al-Hussayen continued from page 16

That is an apropos description of what Sami Omar Al-Hussayen and his family was subjected to. Particularly since it is now apparent that if he wasn't a talented and compassionate Muslim, the federal government wouldn't have selected him for investigation and prosecution.

Al-Hussayen was fortunate that as a Saudi Arabian national, that country's government paid for him to have first class legal representation. It was only his lawyers' ability to expose to the jurors that the government had trumped up the charges against him that saved Al-Hussayen from being wrongly convicted as a terrorist and condemned to spend decades in prison.



Endnotes

- 1 18 U.S.C. 2339A(a) ("material support"), and (b) ("expert advice or assistance.")
- 2 A federal judge in Los Angeles found this provision of the Patriot Act to be unconstitutionally vague, and as this article is written the government's appeal of that ruling is being considered by the 9th Circuit Court of Appeals.
- 3 Acquittal in Internet Terrorism Case is a Defeat for Patriot Act, Richard B Schmitt (staff), Los Angeles Times, June 11, 2004, Nation Section.
- 4 Feds Drop Final Charges Against Al-Hussayen, Gregory Hahn (staff), The Idaho Statesman, July 1, 2004.
- 5 Saudi Student's Trial Opens in Idaho, Susan Schmidt (staff), Washington Post, April 15, 2004, p. A5.
- 6 Id.
- 7 Id.
- 8 Feds Drop Final Charges Against Al-Hussayen, Gregory Hahn (staff), The Idaho Statesman, July 1, 2004.
- 9 Feds Will Decide Soon On Al-Hussayen Retrial, Patrick Orr (staff), The Idaho Statesman, June 24, 2004.
- 10 Saudi Student's Trial Opens in Idaho, *supra*.
- 11 Acquittal in Internet Terrorism Case is a Defeat for Patriot Act, *supra*.
- 12 Id.
- 13 Al-Hussayen Defense Rests, Case To Jury Next Week, Scott Logan, KBCI-TV, May 26, 2004.
- 14 Acquittal in Internet Terrorism Case is a Defeat for Patriot Act, *supra*.
- 15 Six Weeks of Testimony Fail To Sway Jury On Terror Charges, Staff, The Idaho Statesman, June 11, 2004.
- 16 Id.
- 17 Id.
- 18 Id.
- 19 Id.
- 20 Id.
- 21 Acquittal in Internet Terrorism Case is a Defeat for Patriot Act, *supra*.
- 22 John Dickinson: Visits with Al-Hussayen Open Eyes to the Twisting of Facts, Staff, The Idaho Statesman, June 25, 2004.
- 23 Al-Hussayen trial raises varied issues, concerns, Staff, The Idaho Statesman, June 11, 2004.
- 24 Al-Hussayen Deported To Saudi Arabia, The Idaho Statesman, July 21, 2004.
- 25 Al-Hussayen Goes Home To Saudi Arabia, The Idaho Statesman, July 24, 2004.
- 26 Our View: Al-Hussayen Learns Lesson About Justice, Editorial, The Idaho Statesman, July 1, 2004.

this time there is an investigation underway by the media. There are at least four other cases that have been manipulated by the FBI and Prosecutor Steve Dever. The tape that I recorded of Agent Harnett threatening me was put into evidence and the prosecutor convinced my attorney not to play it. This tape should have been played and would have resulted in a dismissal of my case. Most of the testimony at my trial were vague and conflicting and contained outright lies. All of this information is a matter of public record.

Besides convicting me of a crime I didn't commit I've been harassed and threatened by those who swore to uphold the law and protect citizens against this type of official crime.

Thank you for taking the time to read about my case. You can write me at:

Charles Troupe 368-807
LCI
2075 S. Avon Belden Rd.
Grafton, OH 44040

My mother is my outside contact:

Janice Troupe
3971 Suffolk Rd.
South Euclid, OH 44121



In the next issue of *Justice:Denied:*
Bad Lawyering: How Defense Attorneys Help
Convict The Innocent by Sheila Martin Berry
Published in the Northern Kentucky Law Review

Ken Marsh continued from page 4

because I believed that Kaiser's Dr. Cashmore had misdiagnosed Phillip a few days earlier. After this episode, Cashmore filed a suspected child abuse report about Phillip. At the time Cashmore threw up a child abuse flag, Phillip's pediatrician was part of the child abuse committee at Kaiser and her husband was a physician at Children's Hospital. From that point on, unknown to me, no matter what I took Phillip in for, the staff wrote only accusations of child abuse in his chart. The staff's notes included: "New bruises -- mother has no explanation." and "Mother bringing him in for bruising, vomiting, etc." Of course I had no explanations for the new bruises -- that was why I was taking him in regularly!

After putting our family through hell, the child abuse charge was dropped in March 1983 -- about three weeks before Phillip fell off the couch.

Dr. Stern, a Kaiser Hospital physician and member of the child abuse committee at Children's, had taken the case to the child protection committee at Children's Hospital; by the day Phillip died, the Children's Hospital doctors were well aware of his case. They did nothing to help answer his internal bleeding issue. At trial, Stern herself testified, "I wish they could have told us where the bleeding had gone." At this point, Phillip was a two-and-a-half-year-old boy with five inches of medical records who had been under medical supervision for at least a year prior to his death. For at least a year, he was seeing the same physician at Kaiser Hospital on a regular basis for abnormal bruising, vomiting, constipation, hair loss, petechiae and purpura (discolored spots on his body).

All my cries for help for my son went unheard by those I was supposed to trust.

What Went Wrong In Ken Marsh's Case

Phillip fell at 11 a.m. Ken immediately called 911. The records indicate that Phillip was going through a post-traumatic seizure -- he had a pulse but he had low blood pressure and he had stopped breathing. The forensic evidence immediately gathered by the police establishes that there was very little blood from Phillip's cuts to the back of his head. He was sent by ambulance to Alvarado Hospital -- a local hospital that offers no neurology care. When Phillip left Alvarado Hospital he was stable. In the ambulance a pronounced period of bradycardia (an abnormally slow heart rate) is documented even after an injection of Mannitol and prior to a blood transfusion. During the transport from Alvarado to Children's, the Children's resident physician gave Phillip eight grams of Mannitol. Soon after, health care workers reported seeing bruising and swelling appear before their eyes. Around 1:30 p.m., Phillip was taken to Sharp Hospital next to Children's Hospital where he was given a CAT scan. Phillip didn't arrive at Children's Hospital until at least two-and-a-half hours after he had suffered a "closed" head injury. During this time period, exaggerated by transport and without any medical intervention whatsoever, the swelling in Phillip's brain increased. Even after the Mannitol therapy, he was not seen by a neurologist for two hours.

Around 1:40 p.m., Dr. Kenneth Ott from Children's hospital inserted an ICP monitor to relieve the pressure in Phillip's head. The medical records appear to establish that the entire emergency room staff witnessed this procedure. Everyone was concerned about the swelling that was appearing right before their eyes. Earlier, physicians at Kaiser had diagnosed Phillip with a ruptured spleen; a ruptured spleen was ruled out at autopsy. I believe that several of the doctors on the "child abuse" panel run by Chadwick and Williams were treating Phillip the day he died and later testified that Phillip's head injuries could not have occurred from a short fall.

Dr. Stern, Phillip's Kaiser pediatrician, was a member of Dr. Chadwick's child abuse council. She told the Alvarado Hospi-

tal emergency room physician that Phillip had previously had mononucleosis and a bleeding disorder. Dr. Michael Innis, a hematologist, has reviewed the medical records and has provided a declaration that Phillip was extremely ill when he fell and had an existing clotting weakness induced by disease.

From 1981 until 1986, the district attorney and coroner's office implemented a policy to allow Children's Hospital pathologists perform autopsies in child cases they considered questionable.

I vehemently objected to Dr. Williams performing the autopsy as I felt there would be a conflict of interest in determining the cause of Phillip's death. Williams had treated Phillip when he was first admitted to Children's. I felt he would not be objective given the fact that on the day Phillip fell, Dr. Chadwick and the Children's Hospital doctors proclaimed he was murdered by Ken Marsh. From that point on, Chadwick had committee meetings discussing Phillip's death. On May 17, 1983, Chadwick erroneously summarized Phillip's existing medical records omitting almost all mention of Phillip's disease and coagulopathy symptoms. There was no mention of Phillip's reaction to the Mannitol given to him by the Children's resident physician.

No testing was ever completed for a bleeding abnormality even though Phillip's prior medical history indicated he had been bleeding internally two months prior to this accident.

On May 18, 1983, Dr. Chadwick held a meeting that Drs. Williams and Stern, and District Attorney Jay Coulter attended. At this meeting, Chadwick presented his false summary of Phillip's medical records. The day following the meeting, Chadwick, Williams, Stern and Lohner met to discuss Phillip's case. That same day Williams issued his autopsy report.

After Phillip's death, the police investigation determined his death was accidental. Detective Armijo has provided a declaration that he believes that Ken Marsh is innocent. Yet on June 30, 1983, Ken Marsh was charged with Phillip's murder. Two weeks later, on July 15, 1983, the coroner's report was issued that ruled Phillip's death a homicide. On July 21, 1983, Phillip's final death certificate was issued.

Furthermore, on Phillip's pending death certificate, 9608, an International Death Classification Code is handwritten on it. This code is "poisoning by other specified antibiotics" (toxic reaction categories). Dr. Thomas Schweller, a neurologist and pediatrician, has reviewed Phillip's medical records as well as the Children's transport record. He has provided a declaration that Phillip was improperly given Mannitol that exacerbated his cerebral bleed and brain swelling.

DA Coulter prosecuted Ken Marsh under the theory that the "medical" findings in the wake of Phillip's death outweighed the police investigation. However in arriving at his opinion on causation, Dr. Williams did not look at the pre-existing illness and symptoms that Phillip suffered and that were well-documented in the Kaiser medical records. The autopsy report does not mention *any* pre-existing conditions. Williams had taken blood and tissue samples during the autopsy related to what became a murder case, but they were destroyed before being tested. Williams' conduct was consistent with him not being a board-certified forensic pathologist, and at Ken's trial he falsely testified about his forensic qualifications.

The reason for DA Coulter's disregard of the many irregularities related to the Children's Hospital's handling of Phillip's case was explained in a subsequent newspaper article, *Children's Hospital Links to Coroner's Office Questioned* (Weintraub, *Los Angeles Times*, Aug. 19, 1985), Coulter was quoted as saying he had "... nothing but complete trust in the honesty and integrity" of the Children's Hospital pathologists. He further said, "I'd rather be in a community where doctors are going to pound on my door

and say 'Damnit, get up and prosecute this sucker,' rather than what might exist in other communities where a case turns up and the prosecutor goes from doctor to doctor and they all say, "'The facts in this case aren't clear.'"

Yet that attitude ignores that in 1985, Carol Phinney was prosecuted in the same irregular manner as Ken with false evidence. She was acquitted. John and Michelle Ferraro and Linda and Harvey Thomas were also found to be wrongly accused by Dr. Chadwick of child abuse deaths.

Some national authorities have estimated that erroneous diagnoses of child abuse occurs in five to ten percent of cases. (See, *Critics Say Crusader Sees Abuse Where There Isn't Any*, Dalton, *San Diego Union-Tribune*, Dec. 11, 1991.)

In 1985, the San Diego County Board of Supervisors acknowledged the problems with the coroner's office and asked for a review by the National Association of Medical Examiners (N.A.M.E.). Dr. Boyd Stephens, the San Francisco Medical Examiner, conducted the review. His report documents that there were four lawsuits under litigation -- three directly related to autopsy issues, and three claims that had not yet reached the courts that allege failure to properly perform autopsies, and/or failure to properly determine cause of death.

The DA's office is in a unique position to guard against flawed and wrongful prosecutions because it possesses information unknown to most defense counsel and the general public. Yet to prosecute Ken DA Coulter ignored the police investigation and relied on what it knew was a flawed autopsy report by an unqualified doctor who misstated his qualifications during Ken's trial.

Ken was also severely handicapped by being represented by a court appointed attorney who did not adequately investigate Phillip's cause of death. Also, it was his first child abuse/murder case and he was unfamiliar with the area of law involved in defending Ken. I have collected several newspaper articles where the medical examiner's office backed down when other doctors conducted an outside independent review of the case. If Ken's lawyer had pursued an independent medical review of the issues surrounding Phillip's death, I don't think Ken would even have been prosecuted.

The Marsh and Buell families were victims of the very system that is supposed to provide justice. Government agencies could have reviewed the Marsh case in 1985 when they knew there were others wrongfully prosecuted. However by opting to remain silent, they left Ken Marsh sitting in prison. This silence is immoral and unforgivable.

Over the years I have written hundreds of letters to medical and legal professionals urging them to review this case. I have located a phenomenal appellate attorney, Tracy Emblem, who has dedicated thousands of pro bono hours working on Ken's case.

We have received assistance from the California Western School of Law and several medical experts who reviewed Phillip's medical records. One of those experts is Dr. Gregory Reiber, Director of Autopsy at the University of California's Davis Medical School. He has reviewed the medical records and Phillip's autopsy photos and report. He has personally performed approximately 5000 autopsies in this state. He has testified over 300 times, predominantly as a prosecution witness. He is an expert in child death cases who appears frequently at the California Attorney General's symposiums and training; he has also served on trauma death committees. He says Phillip's death was accidental: Phillip suffered a rotational fall with a whiplash injury when he fell from a couch onto a raised brick hearth breaking an ashtray and cutting himself during the fall.

Finally, I have the answers - and proof - I have needed to

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Ken Marsh continued from page 20

understand why Phillip died as he did and just what was wrong with him before he died. I am joined by friends, family, and legal and medical professionals all over the country who believe that Ken has been wrongfully convicted.

A few words from attorney Tracy Emblem

Ken Marsh was convicted of child-abuse murder -- a crime he did not commit. Phillip was neither abused nor murdered. The investigating police officers believed Phillip's death was the product of an accidental fall. Phillip's family knew little Phillip was not murdered by Ken Marsh and, to this day, have continuously protested his conviction. Ken has maintained his absolute innocence while remaining in prison buried alive and forgotten for the past 21 years.

No one ever saw Ken Marsh do anything to Phillip. Ken had no motive to harm Phillip. No one ever heard Ken say that he had done anything to Phillip. In fact, according to everyone, Ken had a loving and gentle history with Phillip. He just happened to be the person at home when Phillip fell off a sofa and hit his head on the fireplace.

So, who said Ken Marsh killed little Phillip? It was the doctors at Children's Hospital and they did it the very day he was admitted.

Prior to his death, Phillip was a sickly child with a documented medical record of disease highly relevant to the cause of his death. His infectious mononucleosis and bleeding disorder inhibited his body's ability to coagulate blood. A short fall to a hard surface would provoke an intracranial bleeding. Then, in an act that proved fatal, the doctors attending Phillip gave him a large intravenous injection of Mannitol that immediately brought on a massive intracranial bleed leading to his tragic death. Mannitol provokes bleeding -- the exact opposite of what Phillip needed. The doctors who pronounced Phillip's demise to be murder, to the exclusion

of all other possible causes, never mentioned a word of the above. They gave the diagnosis popular at the time -- if an infant is injured, the parents or parent surrogates are to blame. Science and medicine were not consulted that day.

Now, qualified doctors have reviewed this sorry record. These doctors are working for no compensation in the cause of innocence, as are the lawyers, to rectify the wrongs of their own profession. In October 2002, in conjunction with the California Innocence Project at the California Western School of Law in San Diego, I filed a 185 page Petition For Writ of Habeas Corpus with the California Court of Appeal. The Petition includes the declarations of seven experts covering various aspects of Ken's case - but all of which support his innocence. The petition documents why no competent physician could rationally find (then or now) that Phillip's death was caused by Kenneth Marsh. Phillip hit his head on a fireplace causing an intracranial bleed. His existing disease inhibited his body's natural coagulation defense to stop the bleeding. Phillip's limited natural defense was totally compromised by the doctors' administration of Mannitol. Unmentioned at any previous proceeding in this case is a numeric code entry scratched in the margin of Phillip's death certificate. This cryptic entry shows that one of the causes of Phillip's death was toxic poisoning -- the administration of Mannitol by Children's Hospital. This is but the tip of an iceberg of cruel malfeasance in this case perpetrated on the petitioner and on Phillip's family by those in a position of trust, causing an immeasurable injustice.

Some words from Ken Marsh

I was convicted of a crime that didn't happen, and sentenced to life in prison. I was only twenty-eight years old at the time. How can this happen? And, how did it happen to me? The more I hear, and the more I read, I see it happens more often than you might think.

I loved Phillip dearly. Before his death, we would take Phillip to the doctor for treatment of his frequent illnesses.

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It indicates the Army has decided to lowball this.”⁷

Muslims and Chinese-American's across the country rallied in support of Yee. His treatment as an Army officer imprisoned in a solitary confinement was compared with the mistreatment of Wen Ho Lee after his false arrest for allegedly passing US nuclear secrets to China. Samia El-Moslimany of the Seattle chapter of Council on American-Islamic Relations said at a November 2003 rally in support of Yee, “Captain Yee has already been tried and convicted in the media before there were even charges brought against him. He was basically branded as a spy and traitor to his country. We think this is happening because he's a Muslim and Chinese-American.”⁸ Yee's wife, Huda Suboh spoke through a translator, “the only news in the paper about my husband is coming from the government. James wants me to tell you all that he is innocent. He is going to fight the charges with all his energy.”⁹ A spokesman for Justice for New Americans said, “there is no evidence that Yee ever gave anything to a foreign government.”¹⁰

On March 20, 2004, the case against Yee that had begun with allegations he had committed capital offenses, including “spying, mutiny, sedition and aiding the enemy,” completely collapsed: the Army dropped all six charges against him.¹¹ Yee's lawyer, Eugene Fidell said, “Captain Yee has won.”¹²

Yee was assigned to Fort Lewis, and on April 5th he returned to his home in Olympia (near Fort Lewis) and was reunited with his wife and four year-old daughter. The 36 year-old Yee told people gathered at Seattle-Tacoma International Airport, “It's a great day to be back in Washington state, and to be back with my family.”¹³ Somewhat ironically, he said of his ordeals impact on his daughter, “Every time she sees me on TV or in the news, she says, ‘Everybody loves my daddy.’”¹⁴

However in a classic example of the ‘sore losers syndrome,’ after dropping the criminal charges, the Army decided to publicly smear Yee by administratively charging and finding him guilty of adultery and having adult images stored in his computer. Yee appealed the finding, and in mid-April, General James T. Hill, commander of the U.S. Southern Command ruled in Yee's favor. Yee's lawyer Eugene Fidell, said Yee's clearing of all criminal and administrative charges was a “bittersweet victory. It wouldn't have killed them to admit a mistake. The Army has to be big enough to admit a mistake. In that regard, today was disappointing.”¹⁵

After Yee's exoneration, two members of the Senate Armed Services Committee, Senators Carl Levin (D-MI) and Edward Kennedy (D-MA), request in an April 23rd letter to Secretary of Defense Donald Rumsfeld that he initiate an official investigation of Captain Yee's treatment. The two senators wrote, “The manner in which Chaplain Yee was detained and prosecuted raises serious questions about the fair and effective administration of military justice. We urge you to give this issue your immediate attention.”¹⁶ In a June 4th letter to Secretary Rumsfeld, four members of Congress joined in calling for an official investigation into Yee's treatment.¹⁷

At a June 25th event to raise money to help pay his legal fees, James Yee said, I'm not here tonight to talk about my case, but to thank those who stand in support of civil liberties.”¹⁸ At the same event, Wayne Lum observed that “James Yee would not have been targeted if it were not for this heightened hysteria against Muslims. This case was calculated. It was a coldly calculated targeting of an innocent person.”¹⁹

On August 2nd James Yee released a letter of resignation from the Army effective in January 2005. He wrote, “In 2003, I was unfairly accused of grave offenses under the

Whenever he became ill we were afraid that the hospital was too far away. With that in mind, Brenda and I moved closer to the hospital that cared for him. We arranged to work different schedules so someone we trusted was always with him. We chose to do this and neither of us resented it. Little did we know that whomever might have been babysitting Phillip on the day of his death would have been accused and convicted of killing him when he fell.

Phillip's family knew I hadn't hurt him. She begged the coroner to find out why Phillip was so sick prior to his death. The police also knew it wasn't true, but the doctors who so carelessly cared for Phillip insisted I was responsible for his death.

What happened on that fatal day was an accident that turned my life into a living nightmare. It was a tragedy that may have been avoided had the doctors paid attention before and after his fall. Had they had done that, Phillip might still be alive.

I am hoping that out of our suffering others may be saved. We always say that there must be a reason behind all of this, so we just pray that in the end it will have been for a better system of Justice for All. I am innocent.

Information about my case is on the Free Ken Marsh website: <http://freekenmarsh.com/traverse.html>



Note by Justice: Denied:

On August 10, 2004 Ken Marsh's conviction was reversed after his habeas petition for a new trial was granted. He was immediately released from prison on his own recognizance pending the District Attorney's decision of whether to pursue a retrial.

After Ken Marsh's habeas petition was filed in Oct. 2002, two important studies were published, one in 2003 and the other in 2004, that document for the first time that many injuries to children that for years have been *automatically assumed* by doctors as originating from child mistreatment, can actually be caused by a naturally occurring fall. The citations for those two studies are, *Perimacular Retinal Folds From Childhood Head Trauma: Case report with critical appraisal of current literature*, Patrick Lantz, S. Stanton, and C. Weaver, BMJ, 2004;328:754-756; and, *Evidence Based Medicine and Shaken Baby Syndrome. Part 1: literature review, 1966-1998*, Mark Donohoe, Am. J. Forensic Med. Pathol. 2003;24:239-42. In its editorial of March 27, 2004, The prestigious British Medical Journal took the bold position that doubts about the scientific basis of SBS -- “We need to reconsider the diagnostic criteria, if not the existence of shaken baby syndrome” - extend to the diagnosis of child abuse in general, “...lack of case definitions or proper controls can be leveled at the whole literature on child abuse.” [See, *The Evidence Base For Shaken Baby Syndrome: We need to question the diagnostic criteria*, editorial staff, British Medical Journal, Vol. 328, March 27, 2004, 719-720.]

Uniform Code of Military Justice and unjustifiably placed in solitary confinement for 76 days. Those unfounded allegations -- which were leaked to the media -- irreparably injured my personal and professional reputation and destroyed my prospects for a career in the United States Army.”²⁰

The irony of the Army's systematic destruction of James Yee's career is that two days before his arrest, his commander at Guantanamo Bay gave him the highest possible performance rating.²¹ It is also ironic that seven months after Yee's arrest that was precipitated by his whistleblowing about prisoner mistreatment at Guantanamo Bay, news reports informed the entire world of the U.S. military's mistreatment of prisoners there and in Iraq. As this is written in August 2004, new revelations of prisoner mistreatment at the Guantanamo Bay prison continue to be reported.

Endnotes:

- 1 Chaplain clashed with officials over Guantanamo detainees, John Mintz (The Washington Post), The Seattle Times, October 24, 2003.
- 2 Muslim Army Chaplain Detained in Terror War, Paisley Dodds (AP), The Seattle Times, September 21, 2003.
- 3 Arrest for Suspicion of Espionage a Shock to Those Who Knew Chaplain at Fort Lewis, Ray Rivera and Cheryl Phillips (staff), Seattle Times, September 23, 2003
- 4 Chaplain clashed with officials over Guantanamo detainees, supra.
- 5 Muslim Army Chaplain at Guantanamo Charged with Disobeying Orders, Matt Kelley (AP), The Seattle Times, October 10, 2003.
- 6 Army Adds Charges Against Guantanamo Chaplain, CNN.com, November 25, 2003.
- 7 Muslim Chaplain Charged With Disobeying His Orders, Seattle Times news services, The Seattle Times, October 11, 2003.
- 8 Muslim Chaplain's Backers Press For His Release, Janet I. Tu (staff), The Seattle Times, November 21, 2003.
- 9 Id.
- 10 Id.
- 11 Military Drops All Charges Against Chaplain, Ray Rivera and Ralph Thomas (staff), The Seattle Times, March 20, 2004.
- 12 Id.
- 13 Back Home, Army Chaplain thanks Supporters, Ray Rivera (staff), The Seattle Times, April 6, 2004.
- 14 Id.
- 15 Army Reverses Reprimand, Clearing Chaplain's Record, Ray Rivera (staff), The Seattle Times, April 15, 2004.
- 16 Pentagon Urged to Investigate Treatment of Muslim Chaplain, Ray Rivera (staff), The Seattle Times, April 28, 2004.
- 17 Army's Treatment of Chaplain in Question, AP, The Seattle Times, June 11, 2004.
- 18 Fund-raiser held for Fort Lewis Army Chaplain, Madison J. Gray (AP), Seattle Times, June 27, 2004.
- 19 Id.
- 20 Muslim Chaplain James Yee to Leave Army, Ray Rivera, Seattle Times, Aug 3, 2004.
- 21 Id.



Editors Note:

This is Part II 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

PART II of a 5 part serialization

A. Federal Judges

All federal judgeships at the district court, appellate court and Supreme Court level are lifetime political appointments for as long as a person exhibits “good behavior,” which in today’s climate translates into politically acceptable behavior. Men and women appointed to the federal bench attain their positions through political patronage, inside connections and behind the scenes maneuvering. Consequently, as a product of the political process, a federal judge is as political a person as any in this country. The lifetime tenure accorded them does not breed judicial independence because they are invisibly tethered to the pole of their roots and their peer group, as well as possible ruination by public disclosure of the skeletons in their closet if they get too far out of line.

The largely overlooked truth that the best of federal judges are first and foremost political actors pretending to be above the political fray is clearly explained in *Injustice For All*, “The robe, in fact, is most usually an item of barter in the political swap-meet: either purchased openly with legal tender, awarded as payoff for personal or political debts, or acknowledged as an IOU toward future favors. ‘Political rewards, personal friendships, party service, and even prior judicial experience have been the major qualifications’ for appointment to the United States Supreme Court.” Prominent New York defense attorney Martin Erdman echoed that assessment when he said, “I would like to [be a judge], but the only way you can get it is to be in politics or buy it – and I don’t even know the going price.” Those observations are consistent with the insistence on seating federal and state judges that adhere to the core beliefs of the dominant political party. A prime example is that during Ronald Reagan’s presidency, 97% of all new federal judges were Republicans. In the face of such evidence, only the intellectually dishonest or the unconscious can maintain a straight face while denying the political partisanship of federal judges.

A classic example of the political scheming involved in the seating of a federal judge that goes on undetected by the public’s radar, is starkly revealed in the personal diaries of the late Supreme Court Justice Thurgood Marshall. He candidly recorded how before becoming a federal circuit court judge in 1961, he was an FBI mole inside the NAACP while employed as one of the organizations attorneys and

publicly criticizing the agency. As a transparently duplicitous act, Justice Marshall continued to publicly criticize the FBI *after* his appointment to the federal judiciary.

Another example is the backroom cronyism underlying Justice William O. Douglas’ seating on the Supreme Court in 1939 as detailed in a 2003 biography, *Wild Bill: The Legend and Life of William O. Douglas*. William O. Douglas was so well connected that without any prior judicial experience, at the age of 40 he went from being the presidentially appointed Chairman of the Security and Exchange Commission to filling Justice Brandeis’ vacated seat on the Court.

The circumstances of the appointments of Justices Marshall and Douglas to the Supreme Court are just two indicators that there is every reason to think a story waits to be discovered and told about the behind the scenes political shenanigans every federal judge in the United States is involved in, both prior to and after they take office. Particularly since each federal judicial nominee must pass the scrutiny of an FBI investigation that compiles every known scrap of information about their life.

Former L.A. Deputy D.A. Vincent Bugliosi scratched the surface of several such stories about current Supreme Court Justices in *The Betrayal of America: How the Supreme Court Undermined the Constitution and Chose Our President*. In that book, he analyzed some of the political considerations influencing the decision of the five members of the Supreme Court that voted in favor of George Bush’s position in *Bush v. Gore*. The value of Mr. Bugliosi’s analysis is to demonstrate that the decisions of Supreme Court justices are as likely to be the result of deep-rooted personal and political prejudices and influences as are those of every federal and state judge in this country.

However, Mr. Bugliosi does not play favorites, since he recognizes appointing ideologically supportive judges is considered to be a political spoil for *whoever* holds the reigns of power at a given time:

As to the political aspect of judges, the appointment of judgeships by governors (or the president in federal courts) has always been part and parcel of the political spoils or patronage system. For example, 97 percent of President Reagan’s appointments to the federal bench were Republicans. Thus, in the overwhelming majority of cases there is an umbilical cord between the appointment and politics. Either the appointee has personally labored long and hard in the political vineyards, or he is a favored friend of one who has (oftentimes a generous financial supporter of the party in power). As Roy Mersky, professor at the University of Texas Law School, says: “To be appointed a judge, to a great extent is a result of one’s political activity.

It is difficult to overstate the corruption involved in a federal judicial appointment, and the process predictably results in the instilling of shady, untoward and marginally, or even wholly, unqualified people at all echelons of the federal judicial system. The relative cushiness of a federal judgeship is one of the job’s prime attractions to the type of people that seek it. It has prestige, passable pay to live an upper middle class lifestyle, excellent medical, holiday, vacation and retirement benefits, and an easy work schedule with “much less pressure than is found in practice.” However, as appealing as those conditions may seem, they serve to filter out bright, ambitious, highly motivated men and women with razor sharp minds whose services are most in demand and who have the highest incomes, since becoming a federal judge would involve a dramatic reduction in their compensation and standard of living.

The near anonymity in which federal judges function tends to exacerbate their ability to rely on overtly political con-

siderations when making decisions. A recent poll showed two-thirds of Americans cannot name a single Supreme Court Justice, and Diogenes might have a hard time finding anyone other than someone in the legal profession who could name a single federal circuit court judge.

Mr. Bugliosi makes it clear that federal judges are not special people possessing wisdom or divinity, but can more likely be described as black-robed, second tier lawyers with extraordinary political connections. Becoming a judge does not magically bestow admirable qualities on a person where they were lacking beforehand. So the very process by which a person becomes ensconced as a judge ensures that he or she will be unlikely to rise above their own self-interest and make decisions that fundamentally conflict with their political, ideological and economic background or interests.

Thus, the men and women selected for federal judgeships are as politically partisan and biased in their attitudes as are state judges. However, unlike state judges, once seated a federal judge is virtually assured of being in office until he or she either dies or retires, whichever occurs first. The one avenue for removing a federal judge involves the same process required for removal of a President, impeachment by the House of Representatives and conviction after a trial by the Senate. It has been used so rarely that for all practical purposes it is a non-factor as a consideration, or a threat, for ending a federal judge’s career before he or she does so either by choice or by nature following its course. Since 1791, only seven federal judges have been convicted by the Senate, and only three since 1936.

Federal judges are only slightly less immune to being reprimanded for egregious conduct, than they are to being removed from office. In *Judges Escape Ethical Punishment*, reporter Anne Gearan revealed that out of 766 ethics complaints filed against a federal judge in 2001, only one resulted in any punishment. That judge suffered the mild punishment of a private censure, although neither the judge’s name nor details of the conduct were released to the public. That is confirmation of law professor Paul Rice’s observation that judges cover each other’s back by ignoring everything possible because they never know when they might be on the hot seat, or as he put it, “We don’t like burning brothers in the bond, because you don’t know whose ox is going to be gored in the future.”

It has also been recognized that the wanton conduct of federal judges is just one indicator that while the breadth of their power is greater than state judges, their character and susceptibility to the allure of financial influences is not. As noted in *Injustice For All*, a federal judge is,

all too often a person ‘whose ignorance, intolerance and impatience are such as to sicken anyone who stops to think about them ... [the federal judiciary is overloaded with] bias, intolerance, cowardice, impatience, and sometimes graft ... [t]hat some judges are arbitrary and even sadistic ... is notoriously a matter of record.’

He neglected to include the small-minded judges who can use their position to express their prejudice towards blacks, Hispanics, Arabs, Asians and other racial or religious groups.

Lord Acton’s oft repeated admonition that “power tends to corrupt, and absolute power corrupts absolutely,” needs no more proof that it is grounded in reality than the conduct of federal judges nationwide. The permanence of federal judgeships and the sort of person chosen a judge creates a perfect environment for enabling the basest attitudes of a person so empowered to be exercised. The most dramatic and recent example of what is the norm behind the scenes was the

Complicity of Judges continued on next page

Complicity of Judges continued from pg 22

decision of five Supreme Court judges in *Bush v. Gore*, which was an expression of their preference for George Bush to be President. Such unconscionable conduct is a predictable consequence of empowering generally unprincipled mortals with the ability to exercise power that has no effective check or balance. The pervasiveness of such conduct is cause for concern by people of all political persuasions, since there is a constant cycle of reversing political fortunes.

It is reasonable to think Vincent Bugliosi's carefully reasoned conclusion that the five Supreme Court Justices who voted with the majority in *Bush v. Gore* are sophisticated criminals of the worst sort who used their privileged position to commit a grave crime, could in different circumstances be said of all federal judges. The most disturbing aspect of this situation, as Mr. Bugliosi notes, is that "Though the five Justices clearly are criminals, no one is treating them this way." The same blind-eye is being given to federal judges across the country engaging in untoward conduct that negatively affects "ordinary" Americans. Given the short-shrift justice the Supreme Court majority accorded the defendant of a contrary political persuasion in a case effectively determining the outcome of a presidential election, one can just imagine the dismissive attitude those judges hold towards politically powerless defendants.

B. State Judges

The pervasive influence of political considerations on the decisions of trial and appellate judges is not limited to the federal judiciary, but dominates the decisions of state judges as well. As would be expected, the same dynamics interact to corrupt the rulings of appointed state judges that affect federal judges. However, rather than short circuiting that process, the alternate methods of electing state judges are at best merely deceptive window dressing that conceals the power behind the judicial throne, and at worst, compounds the flaws inherent in appointing judges. Given the number of judges that run unopposed and the number of incumbents re-elected, the voting process functions more to confirm state judges than to elect them.

The corruption of state judges, whether appointed or elected, has been widely exposed in recent years. In a 1999 PBS Frontline program, *Justice For Sale*, it was reported how the favoritism of Pennsylvania, Louisiana and Texas judges is bought like cattle at an auction. The same is true of every other state's judicial elections. A judge's position on a case can reliably be predicted by an awareness of the nature and source of their campaign contributions, in conjunction with their political ideology. It was also suggested in a September 2, 2002 cover article in *The Nation*, *State Judges For Sale*, that the corruption rife in state judiciaries can be expected to worsen after a June 2002 decision by the Supreme Court that opens the door for judicial candidates to publicly take politically partisan positions. In *Republican Party of Minnesota v. White*, a five-to-four majority ruled that it is an infringement of a judicial candidates free speech rights for a State to restrict the candidate from announcing his or her views on disputed legal or political issues. The Supreme Court's decision will have less of an impact than *The Nation's* article presupposes, because it merely permits judicial candidates to publicly express their position on issues that they have previously openly expressed privately.

The open bazaar-like atmosphere of buying judicial favoritism is as much an element of a non-partisan as a partisan election, since a judge's preferences are as important to political and monied interests in the former form of election process as the latter. For example, the cost of winning a seat on the Oregon Court of Appeals in that state's non-partisan election process was estimated to be over \$500,000 in 2002.

That was for an election in which slightly more than one and a quarter million people voted, or about forty cents was spent *per* voter by *both* of the candidates, for what on the surface appears to be a relatively obscure position in a small state. That highlights how coveted it is to possess influence with appellate judges who set precedents applicable to lower courts.

There is nothing new about the blatant politicization of the judiciary, which is now becoming more evident to the public. For example, in the 1993 booklet, *Justice For Sale*, it was disclosed that business interests began a concerted effort in 1971 to gain and maintain control of the judicial system in the U.S. to serve their own ends. The manifesto of that effort was a memorandum written for the U.S. Chamber of Commerce by Virginia attorney and future Supreme Court Justice, Lewis Powell. Tactics such as those are indicative of how much effort is expended in an effort to ensure that state and federal judges do not function independently. The lack of judicial independence throughout the country is so apparent that the Brennan Center for Justice at the NYU School of Law maintains an ever-expanding website that lists hundreds of news stories, studies and reports on the subject.

A general lack of public awareness, however, does not detract from the impact of judges representing those people and organizations to which they are politically, ideologically and financially beholden. A judge need only pay lip service to voters and other people in society that lack the muscle to curry special favor with the judge. Judge Samuel Rosenman observed with no hint of cynicism, but simply as a statement of the cold hard facts:

The idea that the voters themselves select their judges is something of a farce. The real electors are a few political leaders who do the nominating. ... Political leaders nominate practically anybody whom they choose ... the voters, as a whole, know little more about the candidates than what their campaign pictures may reveal. For example ... [a poll] showed that not more than one per cent of the voters in New York City could remember the name of the man they had just elected Chief Judge of the Court of Appeals – our highest judicial post. In Buffalo, not a single voter could remember his name.

The fact that most state judges are elected in near anonymity by voters who do not know who they are, compounds the effects of the corrupting nature of the campaign process that ensures their lack of impartiality. Thus, the circumstances under which state judges are elected or nominated and confirmed, creates a situation in which the people who become state and federal judges serve their own interests and those who are responsible to, and not those of society at large.

An awareness of the sort of people that typically become judges can help one's understanding of the corruption pervading the judicial process. As noted in *Injustice For All*:

Most judges ... are ex-prosecutors, ex-cops, ex-officials who worked on the hard side of government, or ex-party workers. Most of them were hacks – small-time lawyers with big-time friends – and some were crooks the week before they went on the bench ... Most of those men have no respect for the individual and no interest in his character or his future. And many of them are outright bigots, too.

In the same book another commentator had a similar lament, "Let us face this sad fact: that in many – far too many – instances, the benches of our courts in the United States are occupied by mediocrity's – men of small talent, undistinguished in performance, technically deficient and inept." One astute observer of the situation in Oregon, which has a non-partisan election process, recognized,

"Our system of judicial selection is nothing more than an "old boys network" of insiders and lawyers." The same could be said of judges and the judicial selection process in virtually every state in the country.

C. Legislative Influences

One indication that judges have a strong tendency to go with the flow of outside pressures is when they succumb to the influence of periodic media and politically inspired hysteria campaigns to get tough on the "bad" people who commit crimes. These campaigns and the judicial pressure they exert can be local as well as national. Furthermore, they typically have no basis in fact, but are opportunistic devices to boost the poll number of politicians and the ratings or readership of television or print media, respectively.

Representative of this process was a U. S. News & World Report cover story published on January 17, 1994 and entitled, *Violence in America*. The article encouraged judicial action to stem the growing tide of violent crime in America. However, the article and others like it made a grossly false call to action because, at the time it was written, violent crime had not risen in 20 years and had, in fact, been in general decline since the early 1970's. As a result of the media-generated hysteria campaign, Congress was able to enact the Violent Crime Control and Law Enforcement Act of 1994, without even deliberating the statute's merits.

The Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA) is another example of legislation developed and enacted through the hysteria process. It was enacted on the basis of a false public hysteria whipped up by media proclamations of a non-existent wave of terrorism in the United States, and an unfounded belief inculcated in the general public and politicians that criminals were filing large numbers of frivolous federal habeas corpus petitions challenging the legality of their convictions or sentences. The AEDPA places a general one year time limitation on the filing of a federal habeas corpus petition by a convicted person after the exhaustion of their direct appeal, and in federal cases it gives the trial judge both the power to grant or deny that petition, and the power to determine whether the denial can be appealed. A glimpse into the inequities built into the AEDPA is provided by considering that even though the judge that presided over a person's wrongful conviction is the judge most likely to be biased towards upholding the conviction, and thus the judge most incapable of making an impartial determination about evidence supporting the person's innocence, the merits of a federal defendant's 28 U.S.C. § 2255 petition filed under the AEDPA is reviewed by the one judge in the world who should *not* do so: the trial judge.

The AEDPA's limitations on filing a federal habeas corpus petition is an example of how legislation enacted on the basis of an emotional response to media and political rhetoric that has no basis in fact, can compound the wrongful conviction of an innocent person by impairing their ability to pursue, or outright denying, one of the few potential avenues available to correct the error. It is also cause for concern that the federal judiciary did not maintain an arm's length distance from the debate underlying the AEDPA's restrictive provisions, since they were a reflection of Supreme Court Chief Justice William Rehnquist's longstanding support for restrictions on the filing and consideration of habeas corpus petitions. However, there is no apparent concern by politicians, judges and prosecutors that an innocent defendant is likely to be harmed by an ill-advised law that results from a public hysteria campaign, imposes procedural bars to their vindication and empowers the judge most biased against him or her to rule on the merits of a legal challenge to their conviction.

Part III 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.

Article Submission Guidelines

PLEASE READ CAREFULLY!

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

2. NO COMMUNICATION WITH JUSTICE: DENIED IS PROTECTED BY ATTORNEY-CLIENT PRIVILEGE! Only tell *Justice:Denied* what you want the entire world to know!

3. Justice:Denied is ONLY concerned with publishing accounts of the wrongly convicted. PERIOD. As a volunteer organization with limited resources, mail unrelated to wrongful convictions *can not be answered*.

4. Anyone may submit a case account of a wrongful conviction for consideration by Justice: Denied. However, only accounts following the *Justice:Denied's* guidelines can be considered. Your account should be **no more than 3,000 words** in length. Short accounts are more likely to attract people to your story. A typed account is nice, but it is *not* necessary. If you hand write your account, make sure it is legible and that there are at least ½" margins to the edge of the paper. If *Justice: Denied* needs more information, it will be requested. *Justice:Denied* reserves the right to edit all material submitted. It will help to read an issue of the magazine for examples of how a case account should be written. A sample copy is available for \$3.

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.

Please provide the name and email address and/or phone number of an outside person *Justice:Denied* can contact to clarify any questions. This can speed acceptance of your case. All accounts submitted to *Justice: Denied* must pass a review process. **If *Justice:Denied's* case reviewers are not convinced beyond a reasonable doubt of your innocence your case will not be published.** Accounts are published on a first-come, first-served basis. If your account is accepted, all *Justice:Denied* will do is publish it, and hope it attracts the attention of the media, activists, and/or legal aid that can help you win exoneration.

There is a waiting list for accounts to be published. Your chances of getting a story published are greatly improved if you follow our guidelines and provide as many *essential* details as possible when you first contact *Justice: Denied*.

5. Mail or email your account to the Prisoner Mail Team Member for your state listed in the following list. To ensure your story is considered, please do not send it to anyone else listed unless specifically requested to do so by a *Justice:Denied* staff member.

Justice:Denied is committed to ending injustices and the entire *Justice:Denied* staff stands with you if you are innocent, or if you are the Champion of an innocent person.

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If you have Internet access, please check JD's website to see if the Mail Team person has changed for your state: <http://justicedenied.org/submits.htm>

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***Justice:Denied* Disclaimer**

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

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 compassionate 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 Maher 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.

"Justice: Denied - The Magazine for the Wrongly Convicted, provides a magnificent profiling of the stories of the wrongly convicted. It masterfully brings the wrongs done in this country in the name of justice to stark awareness."
Professor Elizabeth Loftus, author of many books, including *Witness for the Defense and Eyewitness Testimony*.

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>

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Cut along the dotted line and mail this two-sided black and white version of Justice: Denied's Informational Brochure to someone you think might be interested in receiving Justice Denied magazine! Send a 37¢ stamp or pre-stamped envelope for Justice Denied's complete information pack! Send \$3 for a sample issue. Write: Justice Denied - info

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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 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
- ✓ Smeared 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 Illinois'



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.

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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- *Bad Lawyering: How Defense Attorneys Help Convict The Innocent*
- Washington state judges routinely conceal Due Process rights from defendants!
- Legal system OK by Michigan study that downplays wrongful convictions in the U.S.!
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Notice of Correction

Justice:Denied is making a correction to the following statement made on page 11 of Issue 23 concerning the case of Alan Yurko: "... Dr. Matthew Seibel (evaluating physician from the Child Protection System, who perjured himself)." The statement is being corrected to read, "... Dr. Matthew Seibel (the evaluating physician from the Child Protection System appears to have made untruthful or inaccurate statements during Alan Yurko's trial. Those statements are documented in a complaint Francine Yurko filed with the Florida Department of Health.)"

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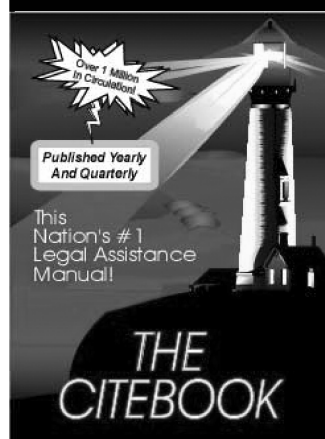
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All the recognition and support would not have happened were it not for *Justice:Denied* magazine. The dedication of the staff is to be highly commended."

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."

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Jeff Blackburn, Amarillo, Texas
Attorney for the Tulia, Texas wrongly convicted defendants.