

JUSTICE DENIED

The Magazine for the
Wrongly Convicted



Emma Blunden

Sentenced to two years imprisonment for falsely accusing four men of rape.
See page 6



Robert Lee Stinson

Awarded \$25,000 for 24 years wrongful imprisonment for rape in Wisconsin.
See page 13



Hubert Webb

One of six men acquitted of rape and murder after 15 years wrongful imprisonment in the Philippines.
See page 7



Jabbar Collins

Sues New York City for \$150 million for 16 years wrongful imprisonment for murder.
See page 14

Thomas Winslow

Awarded \$180,000 for 19-1/2 years wrongful imprisonment for rape in Nebraska.
See page 6



In This Issue

Was Michael Ustaszewski Convicted Of A Murder Committed By Another Man!

Three Texas Men Exonerated Of Rape Will Receive \$1.3 Million Compensation!

Anne Danaher Worked For 9 Years To Free Terry Harrington Of Murder Conviction!

Experiment Finds Scent Dogs Can't Reliably Detect Drugs Or Explosives!

Ronnie Milligan Released After 30 Years On Nevada's Death Row!

Man's Contempt Conviction For Smiling In Court Tossed!

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Table of Contents

Michael Ustaszewski Story — Imprisoned For A Murder Committed By Another Man.....	3
Ronnie Milligan Paroled Based On Evidence He Is Innocent After 30 Years On Nevada's Death Row.....	5
Woman Jailed For Two Years For Falsely Accusing Four Men Of Rape.....	6
Thomas Winslow Awarded \$180,000 For 20 Years Imprisonment As 'Beatrice Six' Defendant.....	6
Six Men Acquitted Of Rape and Murder After 15 Years Of Wrongful Imprisonment.....	7
Michelle D. Sprang's Second-Degree Murder Conviction Overturned By Arizona Appeals Court.....	8
Anne Danaher Worked For 9 Years To Free Terry Harrington	9
NY Rape Conviction Overturned Because Judge Barred Testimony The "Victim" Was Lying.....	10
Massachusetts Judge Acquits Man Three-Months After Finding Him Guilty	10
Alan Northrup Hit With \$111,000 In Back Child Support After 17 Years Wrongful Imprisonment	11
Three Men Exonerated Of Rape In Texas Will Receive Over \$1.3 Million.....	11
Convictions Overturned After Subway Surveillance Video Proves Couple Weren't Protesters	12
Child Pornography Conviction Tossed For Possessing Books Available on Amazon.com.....	12
Robert Lee Stinson Awarded \$25,000 By Wisconsin For 24 Years Of Wrongful Imprisonment.....	13
<i>The Fugitive's</i> Final Season Now Available On DVD.....	13
Jabbar Collins Sues New York City, 7 Assistant DAs And 4 Detectives For \$150 Million.....	14
<i>Conviction</i> Is Now Available For Purchase And Rental On DVD and Blu-Ray.....	14
Father's Indecent Act Conviction Overturned When It Is Learned His Daughter Is a Serial False Accuser.....	15
The Seattle PD Conceals Evidence Favorable To Defendants In Cases Of Alleged Domestic Violence.....	15
Publicity Leads To Tossing Of Enraged Judge's Contempt Conviction Of Man For Smiling In Court	16
Derrick Hamilton's Alibi By Police Officer He Was 82 Miles From 1991 Murder Ignored By The Courts.....	16
Scent Dogs Wrong More Than 100% Of The Time Detecting Drugs And Explosives In Experiment.....	17
<i>The Criminal Cases Review Commission: Hope for the Innocent?</i> — Review of the book.....	18
<i>JD</i> Editorial — The Wrong Path: CCRCs Are Not The Way To Correct The Conviction Of Innocent Persons.....	20
Prosecutor Misconduct Causes Overturning Of Ohio Conviction.....	20
Joseph White Dies In Accident 2-½ Years After Murder Exoneration.....	21
Patricia Wright Seeks Compassionate Medical Parole	21
<i>Justice:Denied's</i> Bookshop.....	23

Message From The Publisher

Derek Hamilton was convicted of a 1991 murder committed in New York City when he was 82 miles away in New Haven, Connecticut. His lawyer didn't subpoena his most important alibi witness — a New Haven police officer who was meeting with him at the time of the murder — and 19 years after his trial he is still trying to get a court to review the police officer's affidavit that clears him of the crime. See p. 16.

It doesn't happen often, but after a Massachusetts' judge found Paul Daley guilty of motor vehicle homicide and negligent driving, the judge reconsidered his decision and granted Daley's motion for a judgment of acquittal. See p. 10.

Technology is increasingly providing wrongly convicted people with the evidence necessary to prove their innocence. A husband and wife were able to overturn their convictions for being involved in an illegal street protest by providing a surveillance video that they were on a subway at the time of the protest. See p. 12.

Proving a false rape accusation is difficult, and even more so when a judge bars testimony casting doubt on an accuser's credibility. After Luis Gomez was convicted of rape the appeals court agreed with him that his right to present a defense was violated when the judge refused to allow the testimony of two witnesses who could establish that his accuser had a reason to fabricate her story. See p. 10.

One of the problems faced by a father who has court ordered child support at the time of his wrongful conviction, is that the obligation to make those payments continues after his imprisonment. When Alan Northrup was exonerated after 17 years of imprisonment for rape he was greeted with a \$111,000 back child support bill. See p. 11.

Hans Sherrer, Editor and Publisher
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Information About *Justice:Denied*

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

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



In August of 1977, seventy-four year old Henry Cordle was murdered in his room at the YMCA in downtown Toledo, Ohio. Partially blind and very slightly built, he had 37 wounds, some defensive, three deep stabbing wounds. There were no witnesses.

On September 10 of that year, Michael Morris, a resident of the Y who had not been seen there since the date of the murder, was arrested. Most, if not all, of the residents of the Y had been interviewed about the murder. One of those residents was an 18-year-old named Michael Ustaszewski.

Morris, having been told by the police that Ustaszewski had suggested that he (Morris) should be interviewed, implicated Ustaszewski in the crime. Morris said that while he *was* involved in the robbery, it was Ustaszewski who actually killed Cordle. On September 11, 1977 Ustaszewski was arrested.

Ustaszewski [hereafter, Michael], asserting his innocence but wanting to help, admitted that he and Morris *had* talked about committing some robberies. But, he said, they hadn't taken place. Both young men had been released from the Ohio Youth Commission earlier that year.

Michael, not wanting to tell the police that he had been working as a male prostitute on the night of the murder, got caught up in providing different stories about where he had been. When he realized he was really in trouble and told them the truth – three weeks after the weekend of the murder – he was confused about whom he had been with and when. By the time he realized that he had been with a “trick” at the Commodore Perry hotel, the police weren't interested in tracking the man down to try to confirm the story.

Both men were charged with aggravated murder and were tried separately. Carl Kuhnle was appointed to represent Michael. In late November, the state requested a continuance and released Michael on his own recognizance (ROR'd). There was no physical evidence tying him to the crime and, as above, no eyewitnesses, except for the co-defendant. This was problematic for the state.

Michael had been in jail with a man named Carl E. Griesinger, Jr. for a month or so. According to Griesinger, during this period Michael had repeatedly stated to Griesinger that he was innocent. When he was ROR'd, an officer brought Michael to the jail to collect his things. At that point, according to Griesinger, Michael awakened him and told

Michael Ustaszewski Story — Imprisoned For A Murder Committed By Another Man

By Melissa Sheridan Embser-Herbert, Ph.D., J.D.

him that he had, in fact, committed the crime. Griesinger's attorney was Paul Geller, the same man who was representing Michael Morris.

Griesinger had been arrested for the first degree felony of aggravated robbery. On November 14, 1977 – two weeks *before* Michael was ROR'd – Griesinger entered a plea of not guilty to the first degree felony. On December 7, 1977 – nine days *after* Michael was ROR'd and, allegedly, made his confession to Griesinger – Griesinger was able to change his plea to guilty for the fourth-degree felony of grand theft. At his own trial, Griesinger insisted that he had been offered nothing in exchange for the opportunity to plead guilty to a reduced charge. About two weeks later at Michael's trial, Griesinger insisted that he had been offered nothing in exchange for his testimony.

The coroner, testifying for the prosecution, stated that one of the knives owned by Michael could *not* have made some of the wounds. The defense made little of that issue and the knives were, judging by the state's paperwork, never tested for blood residue. A pair of jeans containing two small drops of what was identified as blood was taken from Michael's room at the Y. But, the technician was unable to identify whether the blood was human or animal and, thus, was also unable to type the blood. In addition, Kuhnle made no attempt to raise the question of how someone could wound a person 37 times and get only two small drops of blood on his pants. Neither did he raise the question of why someone who committed murder would keep the pants, unwashed, in his room in the same building where the murder occurred.

Michael was convicted solely on the basis of the testimony of Morris and Griesinger – the co-defendant and a jailhouse informant. Other information had certainly been inflammatory and contributed to his conviction, but none directly implicated him in the crime. For example, the lead detective, Thomas Ross, testified that Michael had told him about planning robberies. Michael was, to the jury, nothing more than a former juvenile delinquent now working as a male prostitute and showing no indication of avoiding criminal activity.

Michael appeared in court several times

while released on his own recognizance. When I asked him why he didn't run he said, “Because I didn't do it.” He really didn't believe it possible to be convicted for something you didn't do. On December 19, 1977 his jury trial began. On December 21, he was convicted of aggravated murder and sentence to life. Morris had been convicted and sentenced the life the week prior.

By his own accounts, Michael was a troubled young man. He had been handed over to the state as a small child. He “grew up” in and out of foster homes and state facilities. But, he has insisted from the day of his arrest that he had nothing to do with this crime. He was implicated by his own honesty with the police about the fact that he and Morris had talked about robberies. He never resisted and never refused to cooperate.

I know about his case because my parents had befriended Michael when he was an adolescent, several years prior to his arrest for Cordle's murder. I had already been off to college when my parents met him. My father, now deceased, attended his trial and was shocked when he was convicted on the basis of the above evidence. Below is my description, based on the trial transcripts, of Michael's exchange with the judge at the end of his trial.

After the jury was excused, Judge Ayers said, “Michael Ustaszewski, do you have anything to say why sentence of the Court should not be pronounced against you, or do you have anything to offer in mitigation of punishment?” Michael replied, “Yes, Your Honor.”

Ayers responded, “Anything that you wish to say the Court will listen to.” Michael said simply, “I'm innocent. I wasn't there. I don't know what happened, and that's it.”

The judge said, “All right. Anything else you wish to say?” Michael responded, “I believe there is some people missing, Calvin Ellis, and several other people. I don't understand, man.” The judge said, “Thank you.”

Judge Ayers then sentenced Michael to be committed to the Ohio State Penitentiary for the rest of his natural life and told him that he was also to pay the costs of the prosecution. He told Michael to be seated and Michael asked, “Can I say another thing?” The judge said, “Certainly you may.”

Michael said, “I ain't never in my life killed nobody or had anything to do with it.”

Ustaszewski cont. on p. 4

Ustaszewski cont. from p. 3

The judge advised Michael of his right to appeal and asked Kuhnle to file the notice of appeal on Michael's behalf. Ayers stated that the recognizance bond was cancelled and directed that Michael be taken into custody. Again, Michael spoke. "So that means I got to go to prison for the rest of my life for something I ain't did?" The judge: "Michael, you will be eligible for a parole hearing at the end of fifteen years." Michael: "Fifteen years? I'm innocent."

Michael was eighteen years, six months, and twenty days of age.

I recently received the Toledo police investigative file – or the parts that they were willing to provide. It is clear that several people who *should* have been called as witnesses for the defense were not. For example, information provided to the police by a resident of the Y named Percy Wright would have raised questions about the truthfulness of Morris' testimony. He was not called as a witness. Another man, Joe Soinski, and Morris had tried to sell a knife to a desk clerk. He also provided information to the police about some odd events at the Y during the night of the murder. He was not called as a witness. His parents said he had left town to join the circus. A desk clerk from the Y, Harold Beat, had been interviewed and told of an African-American man running through the lobby in the middle of the night. If that man was Morris, that too would have called into questions the truthfulness of Morris' testimony because the time of that event contradicted Morris' testimony. Beat was not called as a witness. Another man, Duane "Cotton" Russell, could have testified that he sold Michael one of his knives in September, weeks after the murder. He could not be located. A friend of Michael's, John Miller, was with him at the time of his arrest. By his own estimate, he was with Michael "about 75%" of the time. They were "boyfriends," of a sort. He, too, told police that Michael had purchased one of the knives only days before his arrest. He was not called as a witness.

Rather, the defense called *one* witness, June Kramer, a desk manager from the Y. She testified about Michael receiving his daily stipend and as to her opinion of his pleasant character. She did *not* testify about the fact that, on August 24, she had received a call from a voice she identified as belonging to an African-American man saying, "Is this the desk clerk?" Kramer said, "Yes, it is." The caller then said, "You keep your mouth shut, baby," and hung up the phone. Did the

defense attorney know about this call? If so, did he assume it wasn't important because Morris, and African-American was involved and the call would do nothing to suggest that Michael was not? If so, that was a mistake. Other aspects of Morris' testimony would suggest he would have been too frightened to make such a call.

The defense attorney did not call Michael to testify on his own behalf. Given his age and education, this might have been wise. We'll never know.

The big questions are: Was the defense attorney just horribly incompetent? Did the prosecution withhold evidence that would have thrown the co-defendant's story into question? Or, was it a little bit of both? That is, ineffective assistance of counsel *and* Brady violations (prosecutor malfeasance)?

Refusing to admit his guilt, Michael has been denied parole eight times.

In addition to the above information, during his more than 33 years of incarceration several inmates have approached Michael saying that they knew he was innocent. In one case, an inmate named Bobby Hendrix had been in group therapy with Morris and listened to Morris talk about his having killed Cordle. Another inmate, Frank Poole, had been a cellmate of Morris. His statement indicates that Morris said he wanted to come forward and let people know that Michael was innocent. Poole indicated that he wanted to talk with Michael's attorney, but, no longer having an attorney Michael contacted an attorney in Columbus. He never responded. Another inmate, Leslie Huggins, gave a statement indicating that he had known Morris before the arrest and suggesting that he knew that Michael Ustaszewski had not been involved. None of these statements resulted in further inquiry. At one point, according to Michael, he confronted Morris in the dining hall at one facility and Morris said that he intended to "come clean" regarding Michael's innocence. That has never happened. (Note: The original inmate statements are available online at www.justice-for-michael.blogspot.com. Click on "Documents" under "Labels" in the right sidebar.

Michael was represented by the Ohio Innocence Project in his application for DNA testing of the evidence. Although they lost initially, on appeal the state was told that they actually had to *try* to locate the evidence. In one more bizarre piece of the story, the special agent for the prosecutor's office was a man named Thomas Ross, the man who had been the lead detective on the original case.

His affidavit (also available as a PDF document) stated that the property room journal noted, "On January 24, 1979, per the prosecutor's office, all evidence was destroyed." The Court of Appeals affirmed Michael's conviction on February 9, 1979 – sixteen days *after* the evidence was allegedly destroyed. Because there was, allegedly, no evidence, there could be no DNA testing, the Ohio Innocence Project withdrew from representation.

My parents had stayed in touch with Michael over the years, and in October 2007 we called the prison chaplain to have him tell Michael of my father's death. I had always heard about his story, but had never met him and didn't know any details. I became intrigued with the fact that someone had served 30 years for a crime he still said he did not commit. So in early 2008 I started investigating Michael's case. I went into it with an open mind, not knowing what I would learn. After reading the trial transcripts of both Michael Ustaszewski and Michael Morris, exchanging letters with Michael (Ustaszewski), visiting with him at Marion for a total of about ten hours, and obtaining/reading the investigative file, I came to the conclusion that he is in fact innocent of the crime for which he has been convicted.

Many of the key persons are now certainly deceased. I know that this is true of the trial judge, Charles W. Ayers. For others, I have made this assumption. Harold Beat, for example, would now be around 106 years of age. But, many others seem to be living. I have tried to identify the whereabouts of as many people as possible.

Michael Ustaszewski is now 52. Refusing to admit his guilt, he has been denied parole eight times. Interestingly, the parole board's most recent denial comments that he "has done over 32 years, has decent programs and only one ticket that resulted in segregation since last hearing," provided as rationale for their decision the circumstances of the crime and his having been in trouble as a juvenile. Thus, their rationale for denial is about things that can never be changed.

Michael has exhausted all legal avenues for justice, save the identification of new evidence. Michael's only hope is for one of the many people who, no doubt, know something (new) about the errors at trial or about the actual crime to come forward. It is my hope that someone might read this and know *something* or *someone* or be able to assist in some way.

Additional details and documents are available at, www.justice-for-michael.blogspot.com.

Ustaszewski cont. on p. 5

Ronnie Milligan Paroled Based On Evidence He Is Innocent After 30 Years On Nevada's Death Row

Ronnie Milligan was convicted and sentenced to death for the 1980 murder of 77-year-old Zolihon Voinski near Valmy, Nevada.

In 1980 Milligan was 29 and recently honorably discharged from the Navy, when he decided to travel from Tennessee to California with a group of people. Milligan spent much of the trip in a drunken stupor. The group encountered Ms. Voinski in the small town of Valmy, about 200 miles northeast of Reno. Needing money someone in the group got the idea of robbing her by disabling her car by removing the coil so it wouldn't start, and then offering to drive her to an auto parts store in Winnemucca about 40 miles away.

Outside of Valmy something went very wrong because of instead of just stealing Ms. Voinski's money she was brutally murdered. She was robbed of \$20 and some travelers checks.

The group was captured the day of Ms. Voinski's murder. In 1980 Milligan and two others were tried for the murder in Winnemucca, the county seat of Humboldt County.

Milligan testified at his trial that he was in an alcoholic blackout during the entire peri-

Ustaszewski cont. from p. 4

There is also a Facebook group, "Justice for Michael Ustaszewski."

Michael can be reached at:

Michael W. Ustaszewski A150-384
Marion Correctional Institution
PO Box 57
Marion, OH 43301-0057

Michael can also be reached via the JPay system: www.jpaysystem.com.

As Michael's outside contact, I can be reached at:

Melissa Embser-Herbert
Hamline University
PO Box 162
Saint Paul, MN 55104

Or email me at, acjustproj@gmail.com



Ronnie Milligan

od of time the group was in Valmy and that he had no memory of anything about Ms. Voinski. The state's star witness was group member Ramon Houston who testified Milligan was the killer. Houston wasn't charged in the murder and he was released shortly after Milligan's trial. Milligan's two co-defendants also testified he murdered Ms. Voinski. Milligan's co-defendants weren't convicted of capital murder and were eventually released on parole.

After Milligan had spent 26 years on death row the Nevada Supreme Court ruled in another case that a different aggravating factor was required during a sentencing hearing than the one relied on to convict a person of capital murder. The Court applied the ruling retroactively. Since Milligan's capital conviction and death sentence both relied on the single aggravating factor of the robbery, he was granted a new sentencing hearing.

The lawyer appointed for the hearing, David Lockie, conducted a reinvestigation of Milligan's case.

Key new evidence was discovered, including a letter written by Houston in which he disclosed that not only did Milligan not murder Ms. Voinski, but he wasn't even with the group when she was murdered since they left him in Valmy because he was drunk and unconscious. A handwriting expert verified from samples of Houston's handwriting that he wrote the letter.

It was also discovered that when Houston was arrested he had Ms. Voinski's purse, and her blood was on him and his clothes. While none of her blood was on Milligan or his clothes. It was also discovered that the night of Houston's arrest his clothes were washed by Humboldt County sheriff deputies.

There was also the new evidence of an affidavit by one of Milligan's co-defendant's that he wasn't present when Ms. Voinski was murdered, and that the three other people arrested came up with the idea to pin the murder on him when they found out he had no memory of anything that happened on the day of the murder.

Lockie also had Dr. Donal Sweeney, an expert on blackout caused by alcohol consumption review the evidence. Dr. Sweeney

determined that in his expert opinion Milligan was probably in a blackout during the period of time that Ms. Voinski was murdered.

During Milligan's sentencing hearing in September 2010 Lockie presented the new evidence to Humboldt County District Judge Richard Wagner. Judge Wagner expressed "grave reservations" that Milligan was guilty based on the new evidence of his innocence, and he said Milligan's conviction was a miscarriage of justice. However since the hearing was only to resentence Milligan Wagner couldn't overturn his conviction. What Wagner did do was after overturning Milligan's death sentence and resentencing him to a term of life with the possibility of parole, he determined Milligan was eligible for parole and ordered the state's Parole Board to "immediately release" him from custody. Until the hearing Milligan was on death row.

However, the state Parole Board didn't comply with Judge Wagner's order. What they did do was schedule a parole hearing for Milligan in January 2011. During that hearing Milligan testified he had no memory of anything that happened on the day Ms. Voinski was murdered. There was also evidence presented that Milligan had a positive record during his 30 years on death row and that prior to his murder conviction he only had a misdemeanor arrest that didn't result in any charges. The board was also presented with Milligan release plan of living with the Brothers of the Holy Rosary in Reno and attending Truckee Meadows Community College.

On February 10, 2011 the Parole Board announced its decision that it was ordering Milligan's release on parole.

Although it is not known if he will do so, it is possible Milligan could prevail in overturning his conviction if he were to file a habeas corpus petition based on the new evidence of his actual innocence of having nothing to do with any of the events surrounding Ms. Voinski's robbery and murder. He was simply a convenient patsy taken advantage of by the actual murderer and his accomplices. Ronnie Milligan is now 60 years-old, and he spent more than half his life on death row for the murder of a woman he never even met.

Sources:

Court ruling frees former Nevada death row inmate, Las Vegas Review-Journal, Sept 24, 2010.

Nevada state board grants death row inmate parole, Las Vegas Sun, February 10, 2011

Woman Jailed For Two Years For Falsely Accusing Four Men Of Rape

Nineteen-year-old Emma Blunden accused a man of raping her on July 26, 2008 when they were both staying at a hostel in Newbury, about 40 miles east of London, England. Mabey was arrested and jailed for 17 hours before being released on bail. Several weeks later the charges were dismissed when the police investigation determined that Blunden falsely accused the man of rape to conceal from her boyfriend that they had consensual sex.

Blunden was charged with perverting the course of justice and released on bail.

On February 4 2009, while awaiting trial Blunden accused three men of gang raping



Emma Blunden

and fabricated the rape allegation in an effort to conceal her wild behavior. She was charged with perverting the course of justice for filing the false rape report.

Blunden trial was convicted by a jury in December 2010 of both counts of perverting the course of justice for falsely accusing the four men of rape.

During her sentencing hearing in late January 2011 her lawyer argued she shouldn't be jailed because she was suffering from depression and that she needed help because she had "personality defects." Judge John

her at a house in Reading, which is near Newbury and about 25 miles east of London. After an investigation the police determined that Blunden had engaged in consensual sex with the men and fabricated the rape allegation in an effort to conceal her wild behavior. She was charged with perverting the course of justice for filing the false rape report.

Reddihough sentenced Blunden to two years in prison because of the severity of her crimes. During the hearing he said:

"False allegations of rape have two particularly serious consequences: firstly the person falsely accused faces the nightmare of being arrested, kept in custody for many hours facing an allegation which he fears may not be successfully refuted and which could lead to him being wrongly convicted and sentenced to a long term of imprisonment; secondly, they have a serious effect on the administration of justice in cases of rape. ... Juries have a difficult decision to make and publicity over cases such as this only serves to increase the plight of those woman who are genuine victims of rape and makes such an offence harder to prove."

Source:

Jail for woman who falsely cried 'rape', *Newbury Weekly News*, January 17 2011.



Thomas Winslow Awarded \$180,000 For 20 Years Imprisonment As 'Beatrice Six' Defendant

Six people between 23 and 31 years-old were convicted in 1989 and 1990 of charges related to the February 1985 rape and murder of 68-year-old Helen Wilson in Beatrice, Nebraska. The media dubbed them the 'Beatrice Six.'

Five of the six confessed after intense interrogations, and they made plea deals in exchange for reduced charges and sentences. Kathy Gonzalez, James Dean, and Debra Shelden pled guilty to aiding and abetting second-degree murder in exchange for a 10 year sentence. Those three served 5-1/2 years before being released in 1994. Thomas Winslow confessed to raping Ms. Wilson and he was sentenced to 10 to 50 years in prison. Ada JoAnn Taylor confessed to smothering Ms. Wilson while Winslow and Joseph White raped her. She was sentenced to 10 to 40 years in prison.

Only Joseph White insisted on his innocence. During his trial in 1989 Dean, Taylor, and Shelden testified that the six were in Ms. Wilson's apartment during her rape and murder. Taylor testified that she smothered Ms. Wilson while White raped her. White was convicted of first-degree murder. He could have been sentenced to death, but the jury recommended a sentence of life in prison.

After losing his direct appeal, White pursued DNA testing of the crime scene bio-



Thomas Winslow
(Lincoln Journal-Star)

logical evidence. For years the State of Nebraska opposed White's efforts to test the evidence, but in 2007 the Nebraska Supreme Court ordered the DNA testing. The testing was finally conducted on some of the evidence in the summer of 2008. All of the 'Beatrice Six' were excluded. Additional testing on the remaining evidence confirmed that none of the six people convicted of the crime — five of whom confessed and pled guilty — had anything to do with Ms. Wilson's rape and murder.

White filed a motion for a new trial based on the new exculpatory DNA evidence. His motion was granted on October 15, 2008, and he was released on a personal recognizance bond later that day. Winslow was immediately scheduled for resentencing and two days later, on October 17, 2008, he was resentenced to time served and released. Taylor was released a few weeks later on November 10. The three had been imprisoned for more than 19-1/2 years.

The Beatrice Six are the largest number of defendants in one case exonerated by DNA testing in the United States. The DNA evidence proves that five of the defendants confessed to crimes they didn't commit, and that to comply with their plea bargains three of them falsely testified during White's trial. After their release the defendants said they falsely confessed and testified to avoid the death penalty. The six defendants were wrongly im-

prisoned for a total of more than 76 years.

In November 2008 Nebraska Attorney General Jon Bruning held a press conference and disclosed that the DNA evidence conclusively linked Bruce Allen Smith to Ms. Wilson's rape and murder. However, Smith died in 1992 of AIDS.

Nebraska's State Board of Pardons unanimously voted on January 26, 2009, to pardon the five defendants who confessed based on their actual innocence of Helen Wilson's rape and murder. AG Bruning said, "They are 100 percent innocent."

Nebraska did not have a wrongful conviction compensation statute, but the publicity about the exoneration of the Beatrice Six resulted in the passage of a law in 2009 that provides for the payment of up to \$500,000 to a wrongly convicted person.

On February 3, 2011 a judge approved settlement of Winslow's claim for \$180,000.

Previously White became the first person to receive compensation under Nebraska's compensation law when he settled his claim for the \$500,000 maximum.

Kathy Gonzalez settled her claim for \$350,000 on November 4, 2010.

Claims under the state law are pending by other Beatrice Six defendants, as well as federal civil rights lawsuits that name Gage County and law enforcement officers involved in the investigation of the case and the

Winslow cont. on p. 7

Six Men Acquitted Of Rape and Murder After 15 Years Of Wrongful Imprisonment

Six men were convicted in 2000 of rape and murdering a mother and her two daughters in Parañaque, Philippines in June 1991. Only the oldest daughter, 19-year-old Carmela was raped. The case was a media sensation in the Philippines and it was dubbed the Vizconde Massacre.

The six defendants, Hubert Webb, Antonio Lejano Jr., Michael Gatchalian, Miguel Rodriguez, Hospicio Fernandez, and Peter Estrada were arrested in 1995 and held in pre-trial detention for five years awaiting trial. Webb was alleged to have raped Carmela, but the others were charged with the rape as co-conspirators.

Also convicted in 2000 was police officer Gerardo Biong who was found guilty of being an accessory to the murders by allegedly causing the destruction of evidence at the crime scene.

The six murder defendants denied having any part in the crime and presented alibi defenses of being elsewhere when the murders occurred. Webb had the alibi of being in the United States living in Anaheim Hills, California (35 miles from Los Angeles) more than 7,500 miles from the Philippines at the time of the murder. Webb's alibi was supported by travel documents, visas, airline tickets, purchase receipts, and eyewitnesses. The day

Winslow cont. from p. 6

false confessions by five of the six defendants.

Credit must be given to Joseph White's attorney Doug Stratton, the Norfolk, Nebraska attorney who believed in White's innocence and continued representing him *pro bono* after his small retainer ran out in 2005. If he had not done so, the Beatrice Six would not have been exonerated.

Read Justice Denied's article in Issue 41 about the Beatrice Six at, www.justicedenied.org/issue/issue_41/beatrice_six_jd_issue_41.pdf

Source:

"Third settlement filed in Beatrice murder exoneration case," *Lincoln Journal-Star* (Lincoln, NE), February 4, 2011.

"Nebraska to pay \$500,000 to wrongfully convicted man," *Lincoln Journal-Star* (Lincoln, NE), October 1, 2011



Hubert Webb after his acquittal and his release after 15 years imprisonment.

before the murders Webb bought a Toyota that he registered with the California DMV, and on the day of the murders he bought a bicycle and had the receipt to prove it.

The defendants also presented evidence showing that the prosecution's star witness Jessica M. Alfaro, who claimed to have been present in the house at the time of the rape and murders, had a bad reputation for truthfulness and that her account of the crime was beyond belief.

The Philippines doesn't have jury trials, and the judge found that Alfaro's detailed narration of the crime and the events surrounding it were convincing, even though she didn't report that she had knowledge of the crime until four years after it occurred.

Alfaro also provided the key testimony against Biong, claiming she had seen him destroy evidence.

The six defendants convicted of murder and rape were sentenced to life in prison and Biong was sentenced to a maximum of 12 years in prison.

The defendant's convictions were affirmed on appeal based on the reasoning that Alfaro's positive identification of them trumped their alibi defense -- including Webb's substantial evidence of being in the U.S. at the time of the murder.

It was discovered post-conviction that Alfaro was a paid informant of the Philippines National Bureau of Investigation (NBI), and that she volunteered to act out the role of an eyewitness to the rape of Carmela and the three murders. Evidence was also discovered that the NBI coached and manipulated Alfaro's testimony against the seven defendants.

Webb sought and was granted court ordered post-conviction DNA testing of semen recovered from Carmela in an effort to prove his innocence. On April 27, 2010 the NBI informed the court that it had turned the semen over to the trial court as evidence at the men's trial. However, the prosecution did not offer the semen specimen into evidence and it was not listed as evidence that was in the court's custody.

Based on the new evidence the government had either failed to preserve or was concealing the semen so it couldn't be tested, and the

new evidence undermining the credibility of Alfaro's testimony, including her testimony against Biong, the seven defendants filed motions to acquit them of their convictions.

The Philippines Supreme Court *en banc* acquitted all seven defendants on December 14, 2010. Their ruling concluded:

In our criminal justice system, what is important is, not whether the court entertains doubts about the innocence of the accused since an open mind is willing to explore all possibilities, but whether it entertains a reasonable, lingering doubt as to his guilt. For, it would be a serious mistake to send an innocent man to jail where such kind of doubt hangs on to one's inner being, like a piece of meat lodged immovable between teeth.

Will the Court send the accused to spend the rest of their lives in prison on the testimony of an NBI asset who proposed to her handlers that she take the role of the witness to the Vizconde massacre that she could not produce?

WHEREFORE, the Court ... ACQUITS accused-appellants ... of the crimes of which they were charged for failure of the prosecution to prove their guilt beyond reasonable doubt. They are ordered immediately RELEASED from detention ... (*Lejano vs. Philippines* and *Philippines vs. Webb, et al.*, G.R. No. 176389 -- G.R. No. 176864. 12-14- 2010.)

The six defendants convicted of rape and murder were released later that day after 15 years of incarceration since their jailing in 1995. They were jailed pre-trial for five years before their trial in 2000. Ex-police officer Biong had been released two weeks earlier, on November 29, 2010, after completing his sentence. Since all the men were acquitted on the basis of insufficient evidence, they cannot be retried because it would be double jeopardy.

The United States' legal system has had an influence on the Philippines since the Spanish-American War in 1898. The 1987 Philippine Constitution's Bill of Rights recognizes the same rights as the Bill of Rights to the U.S. Constitution with one exception: a person charged with a crime does not have the right to a jury trial. However, it includes several provisions that significantly exceed the U.S. Constitution's Bill of Rights. Some of those provisions are in Article 3, Section 12:

(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and indepen-

Six Men cont. on p. 8

Michelle D. Sprang's Second-Degree Murder Conviction Overturned By Arizona Appeals Court

Michelle D. Sprang was convicted in 2009 of second-degree murder in the death of 49-year-old Addie Mae Lee in a Tucson, Arizona motel room in October 2006.

During the 42-year-old Sprang's sentencing hearing Pima County Superior Court Judge Deborah Bernini stated that because she had doubts about Sprang's guilt, she was sentencing her to the minimum of ten years in prison. Commenting on the guilty verdict, Judge Bernini said, "I may have been more surprised than defense counsel at the ver-

Six Men cont. from page 7

dict counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

Section 12(1) does away with the need for a *Miranda* warning because a person can only waive their right to remain silent "in writing and in the presence of counsel." In the U.S. a dispute about when and if a *Miranda* warning was given determines the admissibility of an alleged "confession." Also, in 2008 the Philippine Congress enacted the additional safeguard against false confessions of requiring that "All statements made by a person during a custodial interrogation shall be electronically recorded."

Sources:

Lejano vs. Philippines and *Philippines vs. Webb, et al.*, G.R. No. 176389 -- G.R. No. 176864. 12-14-2010.

Explanatory Note about False Confessions, Fourteenth Congress of the Republic of the Philippines, Third Regular Session, S.B. No. 3378, August 11, 2008.

dict." Sprang's attorney Eric Larsen told the court during that hearing that she was only the second client he had represented at trial who he was positive was innocent.

Sprang was arrested and charged with Lee's murder more than a year after her death. Sprang denied murdering Lee.

During Sprang's trial there was testimony that she was seen entering Lee's room at the motel in the afternoon. Sprang was later seen leaving the motel and she returned after a short period of short time. She left again after a few minutes and didn't return.

Hours after Sprang left another motel tenant heard the television on in Lee's room.

The television was off in Lee's room when her body was found the next morning wrapped in a comforter and stuffed under the bed.

The prosecution's case was based on the testimony of experts. There was expert testimony that Sprang's palmprint the size of a quarter was found on the top of the toilet lid the medical examiner testified could have been used to strike Lee on the head. There was expert testimony that minute traces of Sprang's DNA were found under several of Lee's fingernails. There was also expert testimony by the medical examiner that Lee could have been strangled by a ligature made of panties and string found in the motel room.

Attorney Larsen countered that there were innocent explanations for the evidence the prosecution relied on. Sprang didn't hold the toilet lid because her fingerprints and a large palmprint weren't on it, but the quarter-sized palmprint suggested she could have touched it when she was in the bathroom, such as while reaching for a towel; The small amount of Sprang's DNA found on Lee's fingernails could have been transferred when Lee used the same wet towel Sprang used, when Lee touched the bed linen where Sprang had lain, or when she touched Sprang's skin while engaging in sexual activities. There was no evidence Sprang made the ligature or that the panties partially used to make it were anything other than similar to ones she had.

Two witnesses testified they did not hear any yelling or sounds of a struggle coming from the motel room while Sprang was there.

Larsen argued to the jury it was physically impossible for Sprang to have murdered

Lee because Lee's television was heard hours after Sprang left. So the television was either turned off by Lee or by her murderer.

Sprang was charged with first-degree murder, and prior to close of the prosecution's case and without knowing what the evidence could prove, Judge Bernini stated she was going to give the jury a second-degree murder instruction. The jury acquitted Sprang of first-degree murder that requires premeditation, but convicted her of second-degree murder that doesn't.

Sprang appealed her conviction on the basis the judge erred by giving the jury the second-degree murder instruction that the prosecution didn't request and that Sprang objected to, because the evidence proved that Lee's murder was premeditated and thus she could only be convicted of first-degree murder.

Arizona's Court of Appeals reversed Sprang's conviction on February 14, 2011. The Court wrote in *State of Arizona v. Michelle D. Sprang*, CA-CR-2009-0172 (2-14-2011):

"Even viewing the evidence here in the light most favorable to upholding the conviction, it shows only premeditation. ... We conclude the trial court committed an error of law and, therefore, abused its discretion because no evidence warranted an instruction on second-degree murder. ... Because we conclude the trial court erred in instructing the jury on second-degree murder, we vacate Sprang's conviction and sentence."

Although the Court did not bar Sprang's retrial on second-degree murder, their ruling effectively should prevent a retrial because they ruled the evidence related to Lee's murder only supports a conviction for first-degree murder. Sprang's acquittal of that charge bars her retrial because it would be double jeopardy.

Sprang currently remains imprisoned and the State will likely appeal the overturning of her conviction to the Arizona Supreme Court.

Sources:

State of Arizona v. Michelle D. Sprang, CA-CR-2009-0172 (2-14-2011).

Appeals court overturns Tucson woman's murder conviction, Arizona Daily Star, Feb 15, 2011.

Anne Danaher Worked For 9 Years To Free Terry Harrington

By Hans Sherrer

When an exonerated person walks out of a courthouse or a prison into the glare of video camera lights and the flash of cameras, their lawyer or family members are usually by their side. Off to the side you can usually see one or two people who are happily looking on, although few people know why. Those are the people who actually did the grunt work, often laboring for years in the shadows, and without whose efforts there wouldn't be the joyous moments of the person's release that are shown on the 5 o'clock news and in the next morning's newspaper.

Anne Danaher is one of those people. In 1993 she was employed by the Iowa Department of Corrections as a prison barber. She talked with the prisoners whose hair she cut, and Terry Harrington was one of those men. Harrington was convicted in 1978 of the 1977 murder of security guard John Schweer at a car dealership in Council Bluffs, Iowa. Also convicted was his co-defendant Curtis McGhee. Both men were sentenced to life in prison.

Danaher was 37 in 1993, and she thought something didn't sound right about the case against Harrington and McGhee so she began investigating it in her spare time.

The more she learned the deeper she dug until by 2002 she had amassed 27 boxes of information and new evidence. Danaher interviewed numerous people and three of those were the prosecution's star witnesses. They all recanted their testimony to Danaher.

Kevin Hughes testified that he, Harrington and McGhee had planned to go to the dealership to steal a car. He told Danaher that was a lie and that he made-up the story to collect a \$5,000 reward.

Harrington's alibi defense was he was at a concert at Omaha, Nebraska's Peony Park with his girlfriend and another friend the night Schweer was killed in Council Bluffs, and they testified that is where he was. Two prosecution witnesses rebutted Harrington's alibi defense. They both told Danaher they lied during Harrington's trial; one because Hughes was her boyfriend at the time and he wanted her to lie to support his story, and the other said he was pressured by the prosecu-



Anne Danaher and Terry Harrington while he was imprisoned.

tors and police to lie. Danaher was also able to discover the new evidence that the prosecutors committed a Brady violation by failing to disclose to Harrington and McGhee's trial lawyers seven exculpatory police reports pointing to another suspect as the murderer. During the nine years Danaher investigated Harrington and McGhee's case she logged around 500,000 miles on her car.

Based on the new evidence Danaher discovered she was able to get Mary Kennedy, a Waterloo, Iowa lawyer, to take Harrington's case pro bono. After Harrington's post-conviction motion for a new trial was denied by the trial court and the Iowa Court of Appeals, on February 26, 2003 the Iowa Supreme Court vacated Harrington's conviction and ordered a new trial. The Court stated:

"Under the circumstances presented by the record before us, we cannot be confident that the result of Harrington's murder trial would have been the same had the exculpatory information been made available to him. We hold, therefore, that Harrington's due process right to a fair trial was violated by the State's failure to produce the police reports documenting their investigation of an alternative suspect in Schweer's murder." *Harrington v. State*, 659 N.W.2d 509 (Iowa 02/26/2003), ¶97

Harrington was released from prison on April 18, 2003 when Iowa Governor Tom Vilsack signed a reprieve and the charges against him were subsequently dismissed. McGhee was released in September 2003.

Harrington and McGhee filed separate federal civil rights lawsuit against Pottawattamie County and the prosecutors for their actions as investigators in the case prior to the men being charged. The prosecutor's defense against the lawsuit was they had prosecutorial immunity, and after the US Court of Appeals ruled the prosecutors were not immune from the allegations in the complaint of the investigative work they did prior to Harrington and McGhee's indictment. The U.S. Supreme Court accepted the case and heard arguments on November 4, 2009. On December 31, 2009 it was announced the two men and Pottawattamie County reached a settlement. Harrington was to receive \$7.03 million, and McGhee

Jr. was to receive \$4.97 million. The case was dismissed and the U.S. Supreme Court removed the case from its docket.

During a December 20, 2010 interview Danaher said, "I worked and lived and breathed this case. You can ask any of my friends or relatives. I was relentless. I just thought someone had to do this. Someone had to be his voice. He didn't have a voice in prison. Throughout this process, this journey, doors opened. It was miraculous the doors that opened. I discovered police reports had been suppressed for 22 years."

Danaher also explained that although there was no way to know if her efforts would result in Harrington's conviction being overturned, he told her that if he was he was released he would share any money he was awarded with her. In the year since Harrington's case was settled Danaher has not only not received any money, but she has been told by his lawyers that she will not receive any of the settlement money.

The pictures of Harrington's release from prison in 2003 show him surrounded by his family, but Danaher is nowhere to be seen, and whatever her motivations in helping him, she is not sharing in the compensation that neither Harrington nor his civil lawyers would have received without her relentless digging for years to find the truth of his case.

Danaher and Kennedy also worked together to discover the new evidence of concealed FBI reports that resulted in a Polk County, Iowa judge overturning David Flores' conviction and life sentence for a 1996 murder. The new evidence casts doubt on the reliability of the testimony by seven prosecution witnesses. The State's appeal of the judge's December 23, 2009 ruling is still pending. Danaher and Kennedy became involved in Flores' case after his father read an article in 2006 about their work on Harrington's case.

Sources:

- Harrington v. State*, 659 N.W.2d 509 (Iowa 02/26/2003)
- "Multi-Million Dollar Settlement Reached in Harrington Case," KMTV.com, December 31, 2009.
- "Prison Barber Helps Free Man Wrongly Convicted of Murder," Fox4kc.com, December 21, 2010.
- "Terry Harrington Owes His Liberty To Anne Danaher; His Lawyers Should Share Jackpot With Her," pattisblog.com, February 7, 2010.
- "New Trial Ordered In DM Murder Case," kcci.com, December 23, 2009.



Anne Danaher in December 2010 (WDAF-TV, Kansas City, MO)

NY Rape Conviction Overturned Because Judge Barred Testimony The “Victim” Was Lying

Luis Gomez was tried in Queens, New York in 2008 on charges of allegedly sexually abusing his underage sister-in-law while she lived with him and his wife in Florida. He was tried in New York because he kept an apartment in Queens, and she alleged he raped her in 2002 when she was at that apartment.

The prosecution's case was based on the girl's testimony, because there was no other witness or physical evidence supporting her claims. Gomez's defense was that the girl fabricated her story because she was upset with him after he and his wife sent her to live with her mother in New York in 2006.

During the trial the judge barred the jury from hearing testimony by a husband and wife that while staying at their house in

North Carolina the girl told them that she made up the story that Gomez had abused and raped her, and she only said he did because he and his wife (her sister) sent her to live with her mother in New York. The judge granted the prosecution's motion to exclude the couple's testimony as collateral because when the girl testified she described the husband as an “old family friend” and that when she stayed at their house she only talked about things like “how are you and how was school.”

The jury convicted Gomez of rape, sexual abuse, and endangering the welfare of a child. He was sentenced to 9 years in prison.

Gomez argued in his appeal that the judge violated his constitutional right to present a complete defense by not allowing his two witnesses to testify. Furthermore, appeals courts have ruled that evidence that tends to “establish a reason to fabricate” should never be excluded as collateral.

The appeals court agreed with Gomez. In overturning his conviction on December 21, 2010, the court ruled:

Here, the defendant sought to elicit testimony which would have contradicted the child's previous answers regarding what was discussed on the stopover visit in North Carolina. The testimony also would have tended to buttress the defendant's contention that the child fabricated her allegations soon after the defendant and his wife sent the child back to New York to live with her mother. Accordingly, under these circumstances, the Supreme Court improvidently exercised its discretion in precluding the witnesses from testifying. Furthermore, since the evidence against the defendant was not overwhelming and there is a reasonable possibility that this error contributed to the verdict of guilt, it cannot be deemed harmless.”

(*People of New York v Luis Gomez*, No. 2008-00977 (NY Sup Ct, App Div., 2nd Dept., 12-21-2010))

Sources:

People of New York v Luis Gomez, No. 2008-00977 (NY Sup Ct, App Div., 2nd Dept., 12-21-2010)



Massachusetts Judge Acquits Man Three- Months After Finding Him Guilty

On Christmas Eve 2009 Paul Daley was driving in Quincy, Massachusetts around midnight when he spilled his coffee and momentarily looked down. It felt like his truck struck something so he stopped and looked around. He didn't see anything in the dark and he resumed driving home.

Later that day Daley saw a news report that a man had been found dead in a snowbank beside the same road on which he had been driving when he spilled his coffee and stopped. He called the police and when they inspected his truck they saw that his right side mirror that stuck out from the side of his truck had been damaged.

Daley was arrested and charged with motor vehicle homicide, negligent driving, and felony leaving the scene of an accident.

Daley waived his right to a jury trial. During the six-day bench trial Daley, a 62-year-old retired fireman, testified that he didn't know that he had hit a person otherwise he would have tried to give assistance and summoned help. Supporting Daley's testimony was

that he immediately called the police when he found out a man had been killed on the road where he had been driving.

After a six day trial Norfolk County Superior Court Judge Kenneth Fishman found Daley not guilty on October 1, 2010, of motor vehicle homicide and negligent driving. However, Judge Fishman found Daley guilty of felony leaving the scene of an accident based on the prosecution's argument that it was a strict liability offense that didn't require them to prove Daley had knowledge that he hit a person before he continued driving home. Daley faced a sentence of from 1 to 10 years in prison.

Prior to Daley's sentencing scheduled for November 4, 2010, his lawyer filed a motion for a judgment of acquittal under Rule 25(a). The motion stated that contrary to the prosecution's arguments the judge relied on to convict Daley, the law in Massachusetts is that an essential element of felony leaving the scene of an accident is that the prosecution had to prove beyond a reasonable doubt that Daley had knowledge that he hit a person before he continued driving home.

At the sentencing hearing Judge Fishman agreed that he had erred, and Daley was not guilty of felony leaving the scene of an accident. However, Daley's motion did not file the motion under Rule 30(b) that would

allow him to grant a judgment of acquittal, so he granted his lawyer a two day extension to file the proper motion. In the interim the judge sentenced Daley to one year in prison, which was the minimum allowed under the law, and he suspended that sentence.

Daley's lawyer subsequently filed a motion for a judgment of acquittal under Rule 30(b).

During a hearing held on January 3, 2011, Judge Fishman granted the motion acquitting Daley. In his four-page ruling Judge Fishman stated that not only did the prosecution fail to prove beyond a reasonable doubt the essential element that Daley “knowingly” left the scene of the accident, but that since the prosecution didn't present sufficient evidence of his guilt at trial his retrial was barred by double-jeopardy.

After the hearing Daley's attorney, George McMahon, said Judge Fishman's ruling was “unbelievable and courageous.” He also said, “The judge said he shouldn't have found him (Daley) guilty, and he had applied the wrong law. He made a mistake, and he wasn't afraid to admit it.”

Sources:

Commonwealth v. Paul M. Daley, No. 2010-00158, Norfolk County Superior Court, Memorandum Of Decision And Order, January 3, 2011.

Judge reverses own decision in hit-and-run death, *The Patriot Ledger* (Quincy, MA), January 4, 2011.



Alan Northrop Hit With \$111,000 In Back Child Support After 17 Years Wrongful Imprisonment

In January 1993 a 36-year-old woman in the small rural town of La Center, Washington was sexually assaulted by two men. The woman was blindfolded after getting only a brief glance of her assailants, and she initially told police investigators she couldn't identify them. When shown a photo lineup of possible suspects she didn't identify anyone. Photos of Alan G. Northrop and Larry W. Davis were included in that lineup. However, the woman later identified Northrop and Davis as the men who assaulted her, and they were prosecuted based on her identification.

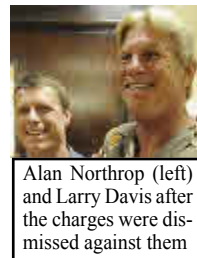
Northrop and Davis were tried separately. In May 1993, a jury convicted Davis of being an accomplice to first-degree rape,

and of first-degree kidnapping and first-degree burglary. He was sentenced to 20 years and six months in prison. In July 1993, a jury convicted Northrop of first-degree rape, kidnapping and burglary. He was sentenced to 23 years and six months in prison.

Northrop and Davis had been imprisoned for 10 years when the Innocence Project Northwest accepted their cases to pursue DNA testing of fingernail scrapings, pubic hair and other crime scene evidence that could provide new evidence of their innocence ... or their guilt. When the Clark County District Attorney's Office refused to cooperate, a lawsuit was filed in 2005 to gain access to the evidence so it could be tested. After years of litigation that lawsuit was successful and in early 2010 the evidence was DNA tested. Neither Northrop nor Davis' DNA profile was identified on any of the evidence.

The two men filed a motion for a new trial based on the new scientific evidence. The

motion was granted on April 21, 2010, and their convictions were vacated. Davis had been released in January 2010, after completing his sentence, and Northrop was released on bail following the hearing. From the time of his arrest Northrop was incarcerated for more than 17 years and Davis for almost 17 years.



Alan Northrop (left) and Larry Davis after the charges were dismissed against them

Several months later the Clark County Prosecuting Attorney's Office announced the men wouldn't be retried and the charges were dismissed on July 14, 2010. Clark County Senior Deputy Prosecutor John Fairgrieve didn't apologize to Davis and Northrop for their 17 year ordeal or even acknowledge the men were innocent, instead he told reporters the charges were only being dismissed because of a lack of evidence "in conjunction with the desire of the victim not to have to go through with another trial."

Three Men Exonerated Of Rape In Texas Will Receive Over \$1.3 Million

The Texas Supreme Court ruled on March 4, 2011 that a person exonerated of a crime is eligible for compensation for the time the person spent imprisoned on a parole violation that resulted from the crime they didn't commit. The Court's ruling is, *In re Billy James Smith*, No. 10-0048, Texas Supreme Court, March 4, 2011.

Texas' wrongful conviction compensation statute requires payment of \$80,000 for every year or part thereof that a person declared to be actually innocent was imprisoned. A claim is submitted to the Texas Comptroller of Public Accounts.

In 2006 Billy James Smith was exonerated of a rape conviction after almost 20 years imprisonment. Smith submitted a claim in 2009 for \$1,593,000 in compensation. After Smith's arrest on the rape charge his parole was violated for a previous robbery conviction. He was imprisoned for 10 months before discharge of his robbery sentence. Comptroller Susan Combs denied Smith compensation for those 10 months on the basis that he was only entitled to compensation for the time he was actually serving his sentence for the rape conviction. That resulted in a deduction of \$66,000 from Smith's claim. Under protest Smith accepted the \$1,527,000 offered by the Comptroller's



Billy James Smith after his release from prison

office. Smith then filed a writ of mandamus that challenged the reduction of his compensation because his parole violation resulted from his arrest for the rape he didn't commit.

The Texas Supreme Court's ruling of March 4 granting Smith's writ of mandamus agrees with his contention that under Texas' statute he is due compensation for the entire time he was wrongly imprisoned for the rape charge. As a result of the ruling Smith will be paid the \$66,000 deducted by the Comptroller's office. The lifetime annuity Smith is eligible for under the compensation statute will also be proportionately increased.

Two other Texas men exonerated of rape charges are expected to benefit from the ruling in Smith's case. Ronald Taylor is expected to be paid \$1.14 million, and Gregory Wallis is expected to be paid \$145,000. The lifetime annuity they are eligible for under the compensation statute will also be proportionately increased.

Sources:

In re Billy James Smith, No. 10-0048, Texas Supreme Court, March 4, 2011) at www.supreme.courts.state.tx.us/historical/2011/mar/100048.htm

"Court orders state to pay exonerated inmates \$2.7 million," *Austin American-Statesman*, March 4, 2011.

After their release both men had difficulty finding work, but Northrop was finally able to find a job at a metal fabrication shop in Vancouver, Washington that pays a couple dollars above the minimum wage. However, when Northrop was released he was informed he owed \$111,000 in child support for the time he was imprisoned. About half the money was owed to his children's mother and half to the state of Washington to reimburse it for financial assistance provided to help support the children during Northrop's incarceration.

In late 2010 the Department of Social and Health Services was contacted by the Associated Press about the money it claimed Northrop owed the state. The agency announced shortly afterwards that it had waived his obligation to repay the money. However, Northrop still owes his ex-wife over \$50,000 in back child support and his paycheck is being garnished \$100 a month towards payment of that money.

Washington does not have a compensation statute for wrongly convicted persons. Northrop, 46, and Davis, 53, may not have grounds to prevail in a federal civil rights lawsuit against the police involved in their prosecution, so both men are presently faced with getting back on their feet based on whatever they can make from their jobs.

Sources:

1993 rape charges officially dropped, *The Columbian* (Vancouver, WA), July 14, 1993.

Convictions Overturned After Subway Surveillance Video Proves Couple Weren't Protesters

Minsk is the capital and largest city in Belarus, which was formerly a part of the Soviet Union. Belarus' internal security force is still known as the KGB. Minsk was rocked by a huge demonstration protesting alleged corruption and vote-rigging in the presidential election on December 19, 2010. Almost a thousand people were arrested by heavily armed riot police. Mikhail Plyuta and his wife Zhana Buseva were two of those people. They were charged with participating in an unauthorized mass event.

Mikhail and Zhana both work as biologists with the National Academy of Sciences in Minsk. During their trial in the Leninski District Court they both testified they were erroneously grabbed by riot police while they were waiting for a bus near where the demonstration was taking place. They testified that just before their arrests they had emerged from the nearby subway and had directly walked to the bus stop.

The Court rejected their defense and found them both guilty. Mikhail was sentenced to 15 days in jail and his wife Zhana was fined 1,050,000 rubles (US\$350).

Zhana was able to gain access to the subway surveillance tapes. The video footage

showed the couple entered a suburban subway station several miles from the city center at 11:30 p.m. They emerged from a downtown subway station at 11:45 p.m. several minutes before their arrest at the bus stop near Independence Square where the demonstration was taking place.

The police arrest report stated the couple had been arrested near the House of Government on Independence Square at 10:30 p.m.

Based on the new evidence they were not part of the demonstration and were miles from Independence Square at 10:30 p.m., Mikhail and Zhana's convictions were overturned on December 30, 2010 and Mikhail was immediately released from jail. After his release Zhana said she was "partially" satisfied with the ruling and intended "to restore justice."

Six presidential candidates who opposed Alyaksandr Lukashenka, who has been president since 1994, were criminally charged with organizing and participating in the mass demonstrations on December 19. Lukashenka was reelected to his fourth term winning almost 80% of the vote.

Also arrested was Natallya Radzina, editor of Charter'97 which is the leading independent Belarus Internet news site. While reporting on the demonstrations she was injured by being beaten about the head and chest by the riot police who dispersed the demonstrators. She was arrested several hours later when the KGB raided Charter'97's office and confis-

cated equipment. She was with organizing mass demonstrations participating in them. As the Radzina remains imprisoned in a detention center in Minsk she is being investigated. That investigation will take several months after which she will either be tried or released. It is reported that the prison officials have refused to treat her injuries.



Natallya Radzina, editor of the Charter'97.org news website in Belarus.

Belarus is considered one of the world's least free countries politically and for freedom of the press. In 2010 Belarus ranked 154th in press freedom, and it has not submitted a human rights report to the United Nations for 13 years. Although officially a democratic republic, Belarus' President Lukashenka has near dictatorial powers.

The legitimacy of Belarus' December 2010 presidential election is so suspect that the heads of the Polish and German foreign affairs committees in the respective Parliaments have issued a joint declaration that the election showed a "complete lack of respect for European values and standards."

Sources:

"Couple win appeal against conviction over post-election demonstration," *Belarus News*, Naviny.by, December 31, 2010.

"Ex-candidates, campaign aides charged in mass riot case," *Belarus News*, Naviny.by, December 30, 2010.

"Charter'97 editor Natallya Radzina charged in mass riot case," *Belarus News*, Naviny.by, December 31, 2010.

"Poland and Germany issue joint declaration on Belarus," *Charter97.org*, December 31, 2010.



Child Pornography Conviction Tossed For Possessing Books Available On Amazon.com

Abuse prosecutions for alleged child pornography are as alive and well in England as in the United States.

Stephen Neal was convicted in November 2010 of "level one" child pornography charges for possessing four books that included photos of children that the prosecution at his trial described as "indecent images." The prosecution did not allege there was any evidence Neal had ever done anything improper with any child -- only that the books constituted child pornography.

However, Neal had bought all of the books from a bookshop in Walthamstow, a suburb of London, England. Furthermore, the



"The Age of Innocence" by David Hamilton

books are available on Amazon.com in England (and the United States.) The books include images by professional photographers and are considered artistic. Two of the books are "The Age of Innocence" by David Hamilton, and "Still Time" by Sally Mann. One of the 5-star reviews on Amazon.com's UK website describes "The Age of Innocence" as a "A beautiful and inspiring work of art." A 1-star review described it as "Startlingly banal and irritating." A 5-star review of "Still Time" raved, "This book has been a true inspiration to me. I had lost interest in taking photographs until flicking through this." What is missing from the reviews is the suggestion there is anything "indecent" in the books.

Even though Neal was prosecuted for pos-

sessing the books, neither the bookshop where he purchased them, or the publishers were prosecuted. Neither was Amazon.co.uk, nor any other book seller or art gallery in England prosecuted for selling the books.

The 59-year-old Neal appealed and England's Court of Appeal quashed his guilty verdict and barred his retrial. Lord Justice Richards stated when the Court's ruling was announced:

"It is, however, very unfair for a person in the position of Mr Neal to be prosecuted for possession of the photographs in these books in these circumstances. If the Crown Prosecution Service wishes to test whether the pictures in the books are indecent, the right way to deal with the matter is by way of prosecuting the publisher or retailer -- not the individual purchaser."

Sources:

"Conviction overturned for abuse images bought from bookshop," *The Register* (London), February 24, 2011.



The Fugitive's Final Season Now Available On DVD

From 1963 to 1967 large numbers of television viewers tuned in weekly to *The Fugitive* to see the latest episode of Dr. Richard Kimble's quest to find the one-armed man who either murdered his wife or knew who did so he could overturn his murder conviction and death sentence.

Kimble, played by David Janssen, was the ultimate underdog. He was a homeless, penniless, hunted man who had to spend his hours awake looking over his shoulder and sleep with one eye open to stay ahead of Lieutenant Philip Gerard who was hunting Kimble after he escaped from the train that was taking him to Indiana's death row.

The series was unusual for its time in that it was filmed on location across the country from Washington to Florida, from Maine to California, and it was one of the more highly

rated programs on network television.

Television viewers took Kimble's search for his wife's killer seriously. The 120th and final episode of *The Fugitive*, titled "Judgment," was broadcast on August 29, 1967. Four decades haven't diminished the gripping drama of that episode as Kimble finally cornered the one-armed man.

Almost 3/4ths of the U.S.'s television viewers saw *The Fugitive's* finale, and it was the highest rated program in TV history up to that time. Forty-four years later, and after more than sixty years of regular TV broadcasts, it remains the *third* highest rated episode of a television series in history: Only the final episode of *M*A*S*H* (1983) and the *Who Shot JR?* (1980) episode of *Dallas* outrank it. By audience share *The Fugitive's* final episode remains the *fifth* most viewed broadcast in U.S. television history.

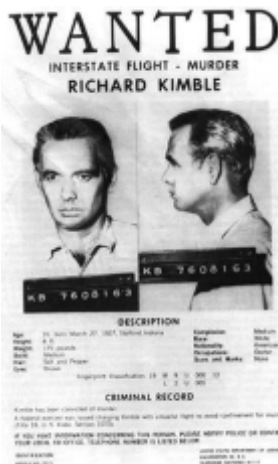
The Fugitive's unique place in television history continues to be recognized by those with a memory of the time when it

was broadcast. *The Fugitive* was so skillfully produced and popular that *TV Guide* honored it in 1993 as the Best Dramatic series of the 1960s. Best-selling author Stephen King wrote, "*The Fugitive* ... was absolutely the best series done on American television. There was nothing better than *The Fugitive* - it just turned everything on its head."



Now for the first time the final episode of the *The Fugitive* is available on DVD. *The Fugitive's* Final Season Volume Two was released on DVD on February 15, 2011. It consists of four disks with 772 minutes of episodes. The list price is \$39.98, but its discount price is about \$29 from Amazon.com and other online retailers. As of June 30, 2011 the DVD is Amazon.com's #1 seller in the television crime drama category.

Read Justice Denied's Issue 35 articles about actor David Janssen and *The Fugitive* at, www.justicedenied.org/issue/issue_35/lost_days_of_the_fugitive_jd_issue_35.pdf



Robert Lee Stinson Awarded \$25,000 For 24 Years Of Wrongful Imprisonment

Robert Lee Stinson was 21 when convicted in 1985 of first-degree murder in the 1984 death of a 63-year-old woman in Milwaukee, Wisconsin. The prosecution's key evidence was the testimony by two experts that Stinson's teeth matched bites on the victim. The experts said the woman, who was Stinson's neighbor, had been bitten by a man missing a tooth, and Stinson was missing a tooth. Stinson was sentenced to life in prison.

Stinson was able to obtain new expert dental evidence that he was missing a tooth where the bite marks indicated a tooth should have been, and he had an intact one where the perpetrator didn't. In addition, DNA tests of crime scene evidence excluded Stinson as the woman's assailant. Based on the new evidence Stinson's conviction was overturned in January 2009.

On January 30, 2009, Stinson was released on bail after 24-1/2 years of wrongful incarceration. His murder charge was dismissed on July 27, 2009.



Robert Lee Stinson hugs his sister Charlene after his release from prison on January 30, 2009. (Andy Manis - AP)

In May 2010 the same DNA tests that exonerated Stinson were matched to a man convicted of rape and murder in another case. When confronted with the test results he confessed to the murder Stinson had been convicted of committing.

Wisconsin's wrongful conviction compensation statute allows a maximum award of \$25,000. Stinson filed a claim and on December 28, 2010, it was announced that the Wisconsin Claims Board, had unanimously voted to award Stinson \$25,000. The board also stated it was recommending that the Wisconsin legislature approve an additional payment of \$90,000 to Stinson.

Stinson is now 46. He was 20 when he was arrested the morning after the murder by police canvassing the area. The police arrested him because they said he couldn't adequately explain his whereabouts the night before when his neighbor was murdered.

Sources:

Robert Lee Stinson, the Milwaukee man exonerated of a murder conviction, will get at least \$25K from Wisconsin Claims Board, *Appleton Post Crescent*, December 29, 2010.

Visit the Innocents Database

Includes details about more than 3,200 wrongly convicted people from the U.S. and other countries.

http://forejustice.org/search_idb.htm

Visit the Wrongly Convicted Bibliography

Database of hundreds of books, law review articles, movies and documentaries related to wrongful convictions.

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

Freeing The Innocent A Handbook for the Wrongfully Convicted

By Michael and Becky Pardue

Self-help manual jam packed with hands-on - 'You Too Can Do It' - advice explaining how Michael Pardue was freed in 2001 after 28 years of wrongful imprisonment. Soft-cover. Send \$15 (check, m/o or stamps) to: Justice Denied; PO Box 68911; Seattle, WA 98168. (See Order Form on p. 21). Or order with a credit card from JD's website, www.justicedenied.org

Jabbar Collins Sues New York City, 7 Assistant DAs And 4 Detectives For \$150 Million

Jabbar Collins was released on June 9, 2010 after 16 years and 3 months of incarceration for a 1994 New York City murder he didn't commit. The day before his release the Brooklyn District Attorney's Office agreed to the vacating of Collins' conviction and dismissal of his murder charge with prejudice.

On February 16, 2011 Collins filed a \$150 million federal civil rights lawsuit that named as defendants the City of New York, 7 lawyers in the District Attorney's Office, 2 detective/investigators in the District Attorney's Office, and 2 NYPD detectives.

During Collins' 1995 trial the prosecution relied on three key witnesses. Two witnesses testified they saw Collins running from the building where Rabbi Abraham Pollack was shot during a robbery as he was collecting rent in an apartment building. A third testified he was with Collins when he planned the crime. Collins was sentenced to 33-1/3 years to life.

While in prison Collins acquired his GED and became a jailhouse lawyer. He filed a number of Freedom of Information (FOIL) requests for documents from the Brooklyn DA's office and he obtained information from other sources. Collins was able to document that lead prosecutor Michael F. Vecchione wasn't truthful during the trial when he said the three witnesses had not been coerced or offered anything of value in exchange for their testimony. The three witnesses were Edwin Oliva, Adrian Diaz, and Angel Santos.

Collins discovered that Oliva testified he overheard Collins' plotting to kill Pollack, in exchange for not having his "work release" from prison terminated. Yet Vecchione told the jury during his closing argument the defenses' suggestions Oliva had received something in exchange for his testimony was "absurd" and "laughable."

Collins discovered that prosecutor Vecchione accompanied Diaz from Puerto Rico, and that in exchange for his testimony that he saw Collins' running from the crime scene, a probation violation by Diaz was eradicated.

Collins discovered that Angel Santos only agreed to testify after prosecutor Vecchione held him in jail for two weeks, threatened to



Jabbar Collins on the day of his release (Frank Franklin II - AP)

hit him on the head with a coffee table, and threatened him that he was "going to be in jail in a long time" if he didn't testify that he saw Collins' running from the crime scene.

Collins' filed a state *habeas corpus* petition based on his new evidence. After it was denied in 2007 without a hearing he filed a federal *habeas corpus* petition. U.S. District Court Judge Dora Irizarry ordered an evidentiary hearing during which the prosecutors – including Vecchione – police officers, and civilian witnesses would testify. Judge Irizarry ordered the hearing over the State's strenuous objection, stating: "What is the fear of going forward? It makes all the sense to me to have the hearing and let the parties air it out and let the chips fall where they may."

After Santos testified as the first witness, and detailed Vecchione's conduct that resulted in him testifying perjurally during Collins' trial, the Brooklyn DA's Office told Judge Irizarry they would consent to an order vacating Collins' conviction and dismissal of his indictment "with prejudice," which would prohibit a retrial. In Judge Irizarry's Final Judgment Order that she signed on June 8, 2010, she wrote that she found Santos' "trial testimony had been obtained under the duress of threats of "jail" and "physical abuse," apparent drug withdrawal, actual imprisonment as a "material witness" without any proper legal proceeding or assignment of counsel, and the threat of possible prosecution for perjury. She found that Santos had been "scared stiff." She also wrote that Collins had "well documented evidence that prosecutors withheld evidence and misled the jury."

In addition Judge Irizarry wrote, "It is really sad that the D.A.'s Office persists in standing firm and saying that they did nothing wrong here. It is, indeed, sad." She also wrote that the DA's conduct in Collins' case had been "shameful," and that what the DA's Office did to Collins and his family was "a tragedy." Judge Irizarry concluded that "based on the evidence before her, that "no reasonable juror would have been able to find" Plaintiff guilty beyond a reasonable doubt."

In response to media publicity about the prosecutor's wrongdoing in Collins' case, Brooklyn District Attorney Charles J. Hynes announced he believes Collins is guilty, that Vecchione did nothing wrong, and there would be no investigation of his conduct and that of other people in the

Brooklyn DA's Office.

Joel Rudin is the New York lawyer who worked on Collins case from 2005 until his charges were dismissed in 2010, and he is Collins lawyer for the lawsuit filed on February 16, 2011. Among the lawsuit's claims is the allegation there is "compelling evidence that prosecutors in the Office of Brooklyn District Attorney Charles J. Hynes had wrongfully withheld a key witness's recantation, had knowingly coerced and relied on false testimony and argument at trial, had knowingly suppressed exculpatory and impeachment evidence, and had acted affirmatively to cover up such misconduct for 15 years."

The lawsuit includes an exhibit detailing that since Hynes became DA in 1990 there have been at least 56 cases in which judges have found Brooklyn prosecutors failed to turn over exculpatory evidence to a defendant or otherwise engaged in misleading tactics. Not a single prosecutor in the Hynes office has been disciplined for their misconduct.

Collins' lawsuit is *Collins v City of New York, et al*, No. CV1-00766 (2-26-2011).

Sources:

Collins v City of New York, et al, No. CV11-00766 (2-26-2011), and attached exhibits.

"The Foul Politics of Prosecution," by Jeffrey Deskovic, *The Westchester Guardian*, July 1, 2010.

Conviction is now available for purchase and rental on DVD and Blu-Ray

Conviction is the big-budget Hollywood movie about the case of Kenneth Waters and his sister Betty Anne Waters' years long efforts to prove his innocence of the 1980 murder of Katharina Brow in Ayer, Massachusetts. The movie has a number of bonafide stars, including two-time Academy Award winner Hilary Swank, Sam Rockwell, Minnie Driver, Juliette Lewis, and Peter Gallagher.

Conviction was released to theaters on October 15, 2010, amid much fanfare and a national advertising campaign. It is now available for purchase and rental on DVD and Blue-Ray.

You can read information about *Conviction* and reviews by critics at, www.rottentomatoes.com/m/conviction_2010

Father's Indecent Act Conviction Overturned When It Is Learned His Daughter Is a Serial False Accuser

After his third trial AJ was convicted in October 2009 of one count of committing an indecent act with or in the presence of his minor daughter in Australia's state of Victoria. He was sentenced to 20 months in prison.

His first trial ended in a mistrial for a procedural error and his second trial ended in a mistrial when the jury was unable to reach a verdict.

The only evidence against the father, only identified in court papers as AJ to protect his privacy, was the testimony of his daughter. His minor daughter is only identified as XN in court papers to protect her privacy. AJ shared custody of his daughter with his ex-wife. When AJ's daughter testified during his trial she denied sending a text message to his girlfriend that read, "Can you tell Dad that I didn't mean for this to happen. As it never happened. Mum is making me do this. Can you tell Dad I'm so sorry."

More than a year after AJ's trial, his lawyer was notified by a lawyer in the Attorney General's Office not involved in AJ's prosecution that his trial lawyer had not been provided evidence that his daughter had falsely accused one neighbor of sexual assault, and another neighbor had been convicted in November 2008 of the rape, attempted rape and sexual penetration of his daughter.

The convicted neighbor, Mark Raymond Pollard, relied on the defense that XN was a sexually precocious girl who made up the accusations. The only evidence against him was the girl's testimony. When the girl testified during Pollard's trial his lawyer introduced a pornographic photo of an unidentifiable girl sent to Pollard by a mobile telephone that he believed was of XN. XN denied the photo was of her or that she had sent it to Pollard. She also denied sending a large number of sexually oriented text messages to Pollard that he neither solicited nor responded to.

AJ also discovered that Pollard's prosecutor did not believe XN was truthful in denying that she didn't send the text messages, but the prosecutor didn't disclose that to Pollard's lawyer or the jury.

After being provided with the pornographic photo of the girl sent to Pollard, AJ discovered that the necklace she wore was identical to a necklace his daughter wore during a court hearing.

AJ sought leave to appeal based on the prosecution's failure to disclose the exculpatory evidence that Pollard's prosecutor believed XN committed perjury during Pollard's trial when she denied sending the text messages. AJ argued the jury's verdict could have been different if it had known that evidence undermining his daughter's credibility – which was the key issue at trial.

Victoria's Court of Appeals agreed that the undisclosed evidence could have enabled AJ's lawyers to more effectively cross-examine his daughter in an effort to undermine her credibility, and it could have resulted in him being "acquitted." In its ruling setting aside, AJ's conviction the Court of Appeals relied on both Australian and international authorities supporting the general principle in countries with an accusatorial legal system, "that the prosecution must ... disclose all relevant evidence to an accused and that a failure to do so may, in some circumstances, require the quashing of a verdict of guilty."

In a January 2011 interview after his conviction was overturned, AJ said that he believed his ex-wife used their daughter to set him up for a false sex charge as revenge for him telling the police about a crime she planned to commit. AJ also said they discovered that his daughter told the police after his arrest that nothing had happened, but they weren't interested since the charges had already been filed against him.

AJ served 19 months of his 20 month sentence before he was released on bail pending the outcome of his appeal.

Read the Court's ruling in *A J v The Queen*, [2010] VSCA 331 at, www.austlii.edu.au/au/cases/vic/VSCA/2010/331.html.

Mark Raymond Pollard has filed an appeal based on the new information undermining XN's credibility discovered by AJ's lawyers.

Sources:

A J v The Queen [2010] VSCA 331 (7 December 2010)

"I was innocent but went to jail," *Herald Sun* (Melbourne, AUS), January 2, 2010.

The Seattle PD Conceals Evidence Favorable To Defendants In Cases Of Alleged Domestic Violence

The Washington Association of Criminal Defense Lawyers filed a lawsuit against the Seattle Police Department (SPD) in 2010 that alleged the SPD was withholding information from defense attorneys about its investigation and handling of cases that involved alleged domestic-violence. During discovery the Seattle City Attorney's Office turned over a document that detailed the SPD's policy of instructing "citizen volunteers in a victim-assistance program to not put in writing some information that could be used by defense attorneys."

After disclosure of the document the city agreed to settle the lawsuit for \$32,000.

However, the disclosure that the SPD as a matter of policy conceals exculpatory evidence from criminal defendants in domestic violence cases could have implications for the city beyond settlement of the lawsuit. The SPD's policy constitutes a possible violation of the civil rights of defendants.

As a result of numerous fatal police shootings and beatings of non-resisting persons by SPD officers, on March 31, 2011, the U.S. Department of Justice began an investigation of the SPD's excessive use of force and mistreatment of minorities. James Lobenz, who represented the WACDL in the lawsuit, stated when the lawsuit settlement was announced that review of the SPD's handling of domestic violence cases should be added to the U.S. DOJ's investigation.

Source:

"SPD agrees to pay \$32,000 for withholding domestic-violence advice," *The Seattle Times*, April 6, 2011.

Appropriate federal probes of the Seattle Police Department, *The Seattle Times*, April 3, 2011.

Visit Justice Denied's Website

www.justicedenied.org

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

Derrick Hamilton's Alibi By Police Officer He Was 82 Miles From 1991 Murder Ignored By The Courts

The *New York Daily News* recently published a feature story about Derrick Hamilton's case of being convicted of a 1991 murder in Brooklyn, New York that occurred when he was 82 miles away in New Haven, Connecticut.

Many of the details in the story originated from the article about Hamilton's case published in Justice Denied Issue 41: "In Connecticut At Time Of Brooklyn Murder" – The Derrick Hamilton Story" by Nicole Hamilton.

Emergency 911 was called at 11:01 am on January 4, 1991, only moments after Nathaniel Cash was shot to death on a Brooklyn sidewalk. One of the shooters came out of hiding as a crowd gathered and started spreading the rumor that Derrick Hamilton shot Cash. Hamilton was eventually charged with the murder based on one of Cash's woman friends believing the rumor was true, and lying to the police that she had witnessed Hamilton shoot Cash. She was indispensable to Hamilton's prosecution because she was the only person who testified during his trial that she saw him shoot Cash.

Hamilton had several credible alibi witnesses that he was in New Haven at the time of the murder, but his lawyer didn't call any of them to testify during his trial.



Kelly Turner
(USmile Magazine)

Hamilton's most important alibi witness was Kelly Turner, who at the time of the murder was meeting with Hamilton in New Haven. Hamilton divided his time between New York City where he booked talent for clubs

such as the Apollo Theater in Harlem, and New Haven where he was a partner in a beauty salon. Turner owned a talent booking agency in New Haven. During a party at a New Haven hotel on the evening of January 3, 1991, Turner and Hamilton arranged to meet the next morning. Hamilton was with Turner for about an hour between 11 am and noon on January 4th to discuss booking musical talent in New York City. Davette Mahan worked at the talent agency and she saw Hamilton when he was meeting with Turner.



Derrick Hamilton

Between the time of the shooting and Hamilton's 1992 trial Turner joined the New Haven Police Department. However, Hamilton's lawyer not only didn't subpoena Turner or Mahan to testify during his trial that he was in New Haven at the exact time of the murder – but his lawyer didn't even include them on his list of alibi witnesses.

Turner provided a post-conviction Affidavit to Hamilton in 1995 detailing that she picked Hamilton up between 11 am and 11:15 on January 4, and that she drove him to her office where they met from about 11:20 am until about noon. Mahan also provided an Affidavit detailing that she saw Hamilton at the talent agency office that morning.

When Justice Denied was working on Hamilton's story Kelly Turner was contacted and she verified the accuracy of the information in her Affidavit. Turner is still a New Haven police officer. The failure of Hamilton's lawyer to subpoena Turner and Mahan to testify at his trial has proven catastrophic for Hamilton. It is not new evidence because it was known to him prior to his trial, so 19 years after his conviction, no state or federal court has agreed to even consider police officer Turner's unimpeachable alibi evidence that at the time of Cash's murder Hamilton was in New Haven.

The lone "eyewitness" the jury relied on to convict Hamilton of second-degree murder has long since recanted in sworn affidavits and in testimony during post-conviction proceedings that she was not present when Cash was shot and she has no knowledge of who committed his murder. Yet, Hamilton continues serving his sentence of 25 years to life for a murder it is positively known he didn't commit.

Sources:

"In Connecticut At Time Of Brooklyn Murder – The Derrick Hamilton Story" by Nicole Hamilton, Justice Denied, Issue 41, Summer 2008, pp. 10-13 at www.justicedenied.org/issue/issue_41/derrick_hamilton_jd41.pdf

"Inmate, locked up for 20 years for Brooklyn murder, says he'll be set free if witnesses testify," *New York Daily News*, February 13, 2011.

Kelly Turner, Compassionate Hands For Those In Need, USmile Magazine, December 10, 2009.

Publicity Leads To Tossing Of Enraged Judge's Contempt Conviction Of Man For Smiling In Court

Jeffrey Blount made the mistake of smiling when he was in court January 6, 2011, on a harassment charge. Although harassment is only a minor violation, like a traffic ticket — Utica City Court Judge Gerald Popeo became so enraged at the 20-year-old Blount that he yelled "You're standing there with a grin that I would love to get off the bench and slap off your face!" Popeo then charged Blount with contempt of court, summarily found him guilty, and sentenced him to 30 days in jail, ending his tirade with "Have a good day, Mr. Blount!"

Blount's public defender Tina Hartwell promptly filed a motion in the Oneida County Court to overturn his contempt conviction. She argued that Judge Popeo didn't go through the proper procedures before finding Blount guilty of contempt of court and imposing a 30-day jail sentence. The motion was heard on Friday, January 7 by Judge Barry Donalty. He ruled that the proper avenue to challenge Blount's contempt of court conviction was in the New York Supreme Court.

The local media picked up the story and covered it over the weekend. Hartwell explained that Blount didn't do anything wrong because he smiled when he thought the judge had cracked a joke.

On Monday morning Judge Popeo ordered an unscheduled hearing, during which he vacated Blount's contempt conviction. Popeo justified his action by saying, "In my effort to address what I felt was inappropriate conduct and being upset with that conduct, I reacted with some intemperate words and did not fully and completely follow the procedure in place in order to hold a person in contempt."

Public Defender Hartwell was pleased with the judge's decision that was in response to the media and legal storm that was brewing because she was aggressively challenging what she believed was his illegal action against her client. Hartwell told reporters after the hearing, "This is what we do. This is our job. We're here to protect the people's rights, and that's what we did. It's our responsibility to follow through on these matters." After the hearing Judge Popeo's clerk told reporters he couldn't comment on the case due to ethics laws.

Contempt cont. on p. 17

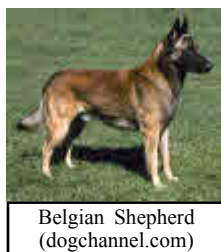
Scent Dogs Wrong 85% Of The Time Detecting Drugs And Explosives In Experiment

A double-blind experiment involving 18 drug and/or explosive detection dogs was reported in January 2011 in the journal *Animal Cognition*. The experiment didn't just discover that all 18 scent dogs were incapable of accurately detecting the presence of drugs and/or explosives, but overall the dogs were wrong *more than 100%* of the time.

All 18 dog/handler teams were trained and certified by a law enforcement agency for either drug detection, explosives detection, or both drug and explosives detection. The 18 dogs included a mixture of male and females, there were 4 different breeds plus mixes, and the dogs ranged from 2 to 10 years old.

Each of the 18 teams conducted two searches of four rooms that the dog's handlers were led to believe had hidden drugs and/or explosives depending on the dog's training. So a total of 144 searches were conducted.

However, unbeknownst to the dog handlers there were no drugs or explosives involved in the experiment. Half of the rooms did not have anything hidden in them, while the other half had "Two Slim-Jim sausages (removed from their wrappers and stored with their wrappers in an unsealed plastic bag) and a new tennis ball hidden in the bottom of a pot and placed in a metal cabinet with the doors closed." (3) Consequently, every "alert" by a dog to finding drugs or explosives would be a "false" alert. All the dogs were trained to signal an "alert" by barking and/or sitting where they



Belgian Shepherd
(dogchannel.com)

had detected drugs or explosives. One of the things the experiment was intended to measure was the effect of a handler's non-verbal cues on their dog's "alert" to finding drugs or explosives. That is known as the "Clever Hans" effect. In the early 20th century a horse named Clever Hans was believed to have amazing knowledge and mathematical abilities because he so often tapped with a hoof the correct answer to a question. However, it was eventually discovered that Hans the horse was indeed clever, because he detected subtle cues from both bystanders and his owner about the correct answer.

To measure the "Clever Hans" effect, half of the rooms had a piece of 8-1/2" x 11" red construction paper taped to the location where the drugs and/or explosives were allegedly located, while the other half of the rooms had no visible indication of their location.

The experiment was double-blind because the persons stationed in each room to observe the dog/handler teams did not know any more than the dog's handlers did about the details, so they couldn't unintentionally transmit any information to a handler or their dog.

The dogs "alerted" that they found drugs or explosives a total of 225 times during the 144 searches -- even though the handlers had been told that in each search there was only one location that contained drugs or explosives. So the false "alert" rate was in excess of 100% ($225/144 = 156\%$). The dogs identified non-existent drugs or explosives in 123 searches (85%). Although the

number of false "alerts" varied by only two between the four rooms (ranging from 55 to 57), what was significant is that in the two rooms that had a cabinet marked with the red paper (visible to the dog's handler) that supposedly identified where the drugs or explosives were, over 50% of the false alerts were at that cabinet. So indeed, each dog's handler either consciously or unconsciously telegraphed those locations to their dog.

Overall the dogs identified non-existent drugs or explosives at 39 different locations in the four rooms.

All the dogs were certified, so the experiment provides evidence there are significant deficiencies with the process used to certify dog/handler teams for detection of drugs and/or explosives.

The experiments findings are significant because they provide evidence undermining the reliability of drugs or explosive evidence in a criminal case allegedly found by a dog. The experiment suggests that in a significant number of those cases the drugs or explosives may have been planted so they could be found by a dog given cues during the search. Consequently, the experiment could prove valuable for a defense attorney in a case involving key prosecution evidence of drugs or explosives allegedly "found" by a scent dog.

The article "Handler beliefs affect scent detection dog outcomes," by the researchers who conducted the experiment can be read at, www.springerlink.com/content/j477277481125291

Source:

Handler beliefs affect scent detection dog outcomes, *Animal Cognition* (journal), January 2011.

Contempt cont. from p. 16

A person accused of civil contempt of court has the due process rights of notice of the charge against them and the opportunity to defend him or herself, although the standard for a conviction is a preponderance of the evidence. By acting quickly to overturn Blount's summary contempt conviction that violated his due process rights, Judge Popeo may have avoided being disciplined by the New York State Commission on Judicial Conduct. The *Utica Observer-Dispatch* cited three recent cases in which a judge was admonished for abusing their contempt power:

- New Hartford Town Court Judge James Van Slyke was admonished in 2006 for holding Sebastiano Pagano and his attorney, Carl Scalise, in contempt of court without first warning either man of their

conduct. Instead, when Scalise attempted to note a comment on the record, Van Slyke simply replied, "That last remark just cost you 50 dollars." And when Pagano interrupted the judge by saying he knew he was going to be found guilty, Van Slyke said, "And you're in contempt, 50 dollars."

- A Rensselaer County family court judge was censured in 2008 after she told an individual in her courtroom, "If you don't shut your mouth right now, you'll be leaving in handcuffs." She then held the man in contempt without giving him an opportunity to defend himself.
- A state Supreme Court justice in Queens County was censured in 2005 after holding a plaintiff in contempt when the man's attorney stated on the record how his client

had approached the judge in a parking lot. The judge inappropriately tried to use the threat of contempt to intimidate the attorney into not speaking on his client's behalf.



Jeffrey Blount with his public defender Tina Hartwell on January 7, 2011. (Rocco LaCucca - Utica Observer-Dispatch)

Sources:

"Judge Popeo irked by smirk," *Observer-Dispatch* (Utica, NY), January 7, 2011.

"Utica City Court judge tosses contempt order against man who 'smiled' in court," WKTV (Utica, NY), January 10, 2011.

"Judge Popeo drops contempt charge for smirking," *Observer-Dispatch* (Utica, NY), January 10, 2011.

The Criminal Cases Review Commission: Hope for the Innocent?

Edited by Dr. Michael Naughton
Palgrave Macmillan, 2010, 304 pages

Review of the book by Hans Sherrer
(Book page numbers are in brackets)

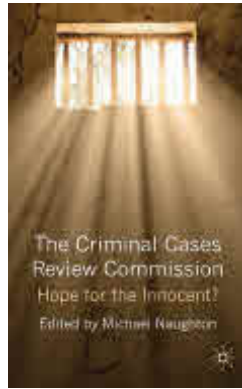
The Criminal Cases Review Commission: Hope for the Innocent? has valuable insights for anyone interested in correcting the conviction of innocent people.

The book is an anthology of 14 essays that critically examine the effectiveness of the Criminal Cases Review Commission (CCRC) for England, Wales and Northern Ireland. The essays were written by law professors, lawyers, journalists and advocates for the wrongly convicted.

The idea of an organization modeled after the CCRC has been suggested for Australia, New Zealand, Canada and the United States. So the information in the book's essays is invaluable for evaluating whether establishing such an organization is worth pursuing in those and other countries.

The CCRC was created by the Criminal Appeal Act of 1995 in response to several high profile exonerations between the late 1980s and the early 1990s of people convicted in the 1970s of Irish Republican Army (IRA) bombings in England. Publicity about those cases swayed public opinion toward believing that the then current method of reviewing cases of a possible miscarriage of justice was inadequate. Those bombing cases included the Guildford Four, the McGuire Seven, and the Birmingham Six. The Guildford Four case is depicted in the 1993 movie "In The Name of the Father," that starred Daniel Day-Lewis as Gerry Conlin and Emma Thompson as solicitor (attorney) Gareth Peirce.

Prior to creation of the CCRC, the C3 division of the British Home Secretary's Office reviewed cases of a possible miscarriage of justice and referred meritorious cases to the Court of Appeal -- Criminal Division (CADC). (The Attorney General is roughly the U.S. equivalent of the Home Secretary.) The IRA bombing cases revealed that political considerations were affecting C3's referral of possible miscarriage of justice cases to the CADC. To remedy that "apparent constitutional problem" the CCRC was created to take over the function of C3. (1)



The CCRC began operating in 1997 as an independent body to evaluate cases that involve a possible miscarriage of justice, and recommend those cases to the CADC that based on "fresh" (new) evidence have a "real possibility" of either having the conviction overturned or the sentence reduced.

There is a wealth of information in the book's essays about how the CCRC has performed in practice, in contrast with how it was expected to perform by those who advocated for it to replace C3.

The overwhelming sentiment based on the author's analysis is that the CCRC has not just failed to live up to the expectations that it would provide an effective mechanism to correct the conviction of innocent people, but that large numbers of innocent people are languishing in prison because the CCRC will not even investigate their cases, much less refer their cases to the CADC.

The CCRC's failure is so spectacular that miscarriage of justice cases referred to the CADC by the Home Office's C3 division would not today be referred to the court by the CCRC, because they wouldn't consider there is a "real possibility" of a successful outcome. Dr. Michael Naughton, the book's editor and founder and chairman of the Innocence Network UK, levels the most damaging accusation possible against the CCRC by asserting it is unlikely it would refer the Birmingham Six case to the CADC. Naughton writes: "This is because the evidence of police misconduct and incorrect forensic expert testimony that led to the quashing of their convictions in the third appeal was available at the time of the original trial and appeal, so it does not constitute the kind of 'fresh evidence' normally required by the CCRC to encourage a referral." (4) The irony of Naughton's observation is that one of the impetuses behind creation of the CCRC was a lack of public confidence in the legal system caused by publicity about the exoneration of the Birmingham Six that only happened because C3 referred their case to the CADC.

The statutory role and responsibilities of the CCRC set out in the Criminal Appeal Act 1995 are defined as:

* Reviewing suspected miscarriages of justice and referring a conviction, verdict or finding or sentence to an appropriate

court of appeal where it is felt that there is a "real possibility" that it would not be upheld.

* To investigate and report to the Court of Appeal on any matter referred to the Commission.

* To consider and report to the Secretary of State on any conviction referred to the Commission for consideration of the exercise of Her Majesty's prerogative of mercy.

The Act creating the CCRC specifically states it will be an independent organization, "the Commission shall not be considered as the servant or agent of the Crown." (55) However, it is explained in the book that the CCRC is effectively a servant of the appeals court because it evaluates cases based on the "real possibility" of success if referred to the CADC.

The degree to which the CCRC adheres to its statutory mandate can be gleaned from analyzing its success rate. From 1997 to February 2011, 314 of the 449 cases the CCRC referred to the Court of Appeals had their conviction quashed or their sentence reduced. (See, http://www.ccr.gov.uk/cases/case_44.htm) It is observed in several of the book's essays that the high success rate (70%) of referred cases is because the CCRC rigorously adheres to its statutory mandate to only refer cases that have a "real possibility" of being granted relief by the CADC.

The CCRC has contributed to quashing the conviction or reducing the sentence of an average of less than 23 cases yearly (314/14). Yet, it has conservatively been estimated that there are an average of almost 5,000 convictions annually in the United Kingdom that can be considered a miscarriage of justice (166) -- and that doesn't even take into account cases involving an unjust sentence.

That is why Kevin Kerrigan writes in his essay "Real Possibility or Fat Chance," that for "an increasing number of campaigners, lawyers and academics, the CCRC has come be seen not as a solution, but as a contributor to systemic injustice in criminal law. Initially high expectations among prisoners, families and their representatives have developed into cynical rejection of the CCRC as a maintainer of the status quo and a means of taking the political sting out of the continuing reality of wrongful convictions." (166)

The illusion that the CCRC appreciably contributes to rectifying miscarriages of justice in England is reflected by considering there were 57,000 felony convictions in 2006, and through the direct appeal process almost 300

Criminal Case cont. on page 19

Criminal Case cont. from page 18

convictions were quashed and almost 1,700 sentences were reduced. (152-153). That is a total of 3.5% of convictions (2,000/57,000). In 2006 the CCRC referred 33 cases to the CACD that resulted in a quashed conviction or a reduced sentence. So in 2006 the CCRC added 0.0165% (33/2,000) to the convictions that were quashed or sentences reduced by the direct appeal process. That situation was even worse in 2009-2010 when only 23 referrals by the CCRC were successful in the CACD.

The general ineffectiveness of the CCRC to assist in correcting miscarriage of justice cases is detailed in the essay, "After Ten Years: An Investment in Justice?" The Home Office's C3 division reviewed between 700 and 800 possible miscarriage of justice cases annually, of which around 10% were referred to the CACD. (151) So C3 referred 70 to 80 cases annually to the CACD. (151) The CCRC's budget is almost 10 times what C3's budget was (adjusted for inflation), yet during its first 14 years of operation it referred an average of 32 cases to the CACD (449/14). The math is basic: The Home Office's C3 division was more efficient than the CCRC in referring possible miscarriage of justice cases to the CACD. It is disturbing to consider, but the question that begs to be asked and seriously considered is how many more miscarriage of justice cases would have been referred to the CACD since 1997 if the CCRC had not been established, and the C3 office had not been closed? Was the CCRC not a solution, but has it in fact increased the difficulty any given innocent person has to expose the truth and have their conviction overturned?

Naughton discusses that a key flaw with the CCRC is it relies on the same standard to determine if a case is a miscarriage of justice as the CACD uses to evaluate the legality of a conviction. He calls it the "legalification process, shifting from a concern with the possible wrongful conviction of the innocent to an entirely legal notion that sees miscarriages of justice in terms of the need for convictions to be safe in law." (18) Neither the CACD nor the CCRC is *per se* concerned with the actual innocence of a convicted person -- they are primarily concerned with determining if there is "fresh" (new) evidence that legally undermines the "safety" (i.e., reliability) of the person's conviction.

The book's essays identify two very negative consequences of the CCRC replacing the Home Office's C3 division. First, the press largely lost interest in reporting on cases of people claiming innocence. Second, the grass roots organizations that had been working on cases of people claiming

innocence largely stopped doing so.

However, there has been a backlash to the CCRC's reluctance to investigate cases involving a person claiming actual innocence. Only 7 years after it began operating the Innocence Network UK was founded in 2004 at the University of Bristol. The INUK is currently comprised of more than 30 innocence projects at universities in England, Scotland and Wales. Those projects are currently investigating around 100 possible actual innocence cases.¹ So advocacy for imprisoned people claiming innocence has come full circle in the UK -- there has been a rebirth of the grassroots organizations that were displaced by the CCRC under the false assumption it would assume the torch of championing their cases.

The CCRC's general ineffectiveness is consistent with the one experience in the United States with a quasi-criminal case review commission. The North Carolina "Innocence Inquiry Commission," is a state agency that began operating in 2007.

Although the number of wrongful convictions in the U.S. is unknown, it is credibly estimated to range from 2% to 15% of convictions. North Carolina has a prisoner population of over 41,000 (41,174 on March 14, 2011). So there are likely anywhere from 820 to 6,150 innocent persons imprisoned in North Carolina. Yet, in its first four years of operation the NCIIC has assisted in overturning *one* person's conviction.²

There are differences in the respective legislation establishing the CCRC and the NCIIC, however the end result is the same: Neither one is effective at assisting in the exoneration of innocent people.³

The unvarnished picture painted by *The Criminal Cases Review Commission* and the experience in the U.S. with the NCIIC is it is a fools Nirvana to expect an organization created by the government to vigorously pursue correcting the conviction of innocent persons. The most effective advocates for the innocent are people and organizations outside the system that have no self-interest in maintaining the *status quo* or currying favor with the police, prosecutors, or judges involved in a conviction.

Naughton writes in the book's Conclusion: "It is clear from this book, however, that the CCRC is not the solution to the wrongful conviction of the innocent, and that the problem that caused the public crisis of confidence in the criminal justice system that led to the RCCJ and the CCRC remains: the flaws of the criminal justice system mean that innocent people can be

wrongly convicted and the system (still) does not contain the appropriate means of ensuring that wrongful convictions will be overturned when they occur." (228)

The Criminal Cases Review Commission: Hope for the Innocent? is a must read for any person with a serious interest in understanding what approaches may and may not work to help with overturning the conviction of innocent persons.

The book's \$95 price in the U.S. is steep, but a person can request that their local public, university or law school library purchase a copy for general circulation.

Endnotes:

1 "The Innocence Project: the court of last resort," By Sarfraz Manzoor, *The Guardian* (London), January 9, 2011. Those are all serious criminal cases, while the CCRC even involves itself with referring to the CACD cases involving a person convicted of a traffic violation.
2 North Carolina Innocence Inquiry Commission website is at, www.innocencecommission-nc.gov

3 This reviewer predicted *before* the NCIIC began operating that it would fail to assist in the exoneration of an appreciable number of innocent people. As the editor and publisher of *Justice Denied -- the magazine for the wrongly convicted*, this reviewer wrote in the editorial, "Worse Than Nothing: The North Carolina Innocence Inquiry Commission is a huge step in the wrong direction":

"The byzantine rules under which the NCIIC and the three-judge panel appointed to review a case referred by the commission operates, raises the question: Who will be successful in having erroneous charges dismissed against him or her?"

4) North Carolina has 38,000 adult prisoners (Dec 2006), so if perchance several of them a year overcome the NCIIC's procedures and succeed in having their charge(s) dismissed, they will likely be used as examples of the legal system's effectiveness, and how rarely it errors by convicting the wrong person.

...
The NCIIC is worse than nothing. It can only be hoped that no other state relies on it as a model to establish a comparable statutory scheme..."
Justice Denied, Issue 34, Fall 2006, 22-23, www.justicedenied.org/issue/issue_34/jd_issue_34.pdf

In a subsequent *Justice Denied* editorial this reviewer wrote after the NCIIC had been operating for more than a year:

"... as we prophesized in our editorial, the NCIIC is fulfilling its true function of falsely confirming "... the legal system's effectiveness, and how rarely it errors by convicting the wrong person." We repeat our call for repeal of the legislation creating the NCIIC, and we repeat that it is worse than nothing."

Justice Denied Editorial -- "There Is No Political Will In The United States To Correct Wrongful Convictions," *Justice Denied*, Issue 40, Spring 2008, 16, www.justicedenied.org/issue/issue_40/jd_issue_40.pdf

Sources:

Innocence Network UK website, www.innocencenetwork.org.uk

North Carolina Innocence Inquiry Commission website, www.innocencecommission-nc.gov
Criminal Cases Review Commission website, www.ccrcc.gov.uk/index.htm

JD Editorial

The Wrong Path: Criminal Case Review Commissions Are Not The Way To Correct The Con- viction Of Innocent Persons

Justice Denied predicted in an editorial in the fall of 2006 that the North Carolina Innocence Inquiry Commission (NCIIC) would fail to contribute to overturning the conviction of an appreciable number of innocent people, and that it was “worse than nothing” as a way to correct the conviction of innocent persons.

The NCIIC’s failure has been more spectacular than JD prophesied: In the 4½ years since it began operating in 2007 it has assisted in the overturning of one conviction, and that is in a state with more than 40,000 prisoners. If only 5% of those prisoners are innocent of their convicted crime(s) there are around 2,000 innocent men and women imprisoned at any given time in North Carolina.

Justice Denied’s 2006 editorial explained the NCIIC was doomed to failure because its design as an extension of the legal system served the political function of covering-up the enormous number of wrongful convic-

tions in North Carolina: since if only a handful of people are identified as innocent by the NCIIC it is evidence “of the legal system’s effectiveness, and how rarely it errors by convicting the wrong person.” (“Worse Than Nothing,” *JD* Issue 34, Fall 2006, 22.)

The performance of the NCIIC has been mirrored in recent years by England and Scotland’s criminal case review commissions. In the six years from 2005 through 2010 England’s CCRC assisted in overturning the conviction in 7 major felony cases — in a country with more than 80,000 prisoners.¹ In 2010 Scotland’s CCRC assisted in overturning two felony convictions.²

Seven years after England’s CCRC began operating in 1997 the Innocence Network UK was founded in response to the CCRC’s failure to effectively aid the innocent. The INUK’s more than 30 member organizations are now doing the heavy lifting in investigating cases of persons claiming innocence in England, Wales and Scotland. As detailed in *The Criminal Cases Review Commission: Hope for the Innocent?* edited by Dr. Michael Naughton, that is reviewed on page 18 of this issue, the CCRC does not typically investigate or champion the cases of people claiming innocence. Instead it preserves the political *status quo* by helping to create the appearance — just as the NCIIC does — that the legal system effectively weeds out the

guilty from the innocent so there aren’t many miscarriages of justice to be corrected.

Criminal case review commissions are a flawed concept for seriously dealing with the conviction of men and women in the U.S. for crimes they didn’t commit, because they reflect the unspoken political agenda behind their enabling legislation that doesn’t want them to succeed.³ CCRC type organizations can accomplish little in the United States while diverting valuable time and energy from helping the enormous numbers of innocent people who are imprisoned.

The NCIIC was a bad idea whose failure to aid significant numbers of innocent people was as predictable as the rising and setting of the sun. The enabling legislation for the NCIIC should be repealed and it should be disbanded. It is for people in England and Scotland to determine if the CCRC and the SCCRC respectively should be disbanded.

Endnotes:

1 The CCRC’s website is at, www.ccr.gov.uk. See also, “The Criminal Cases Review Commission has failed,” by Bob Woffinden, *The Guardian* (London), November 30, 2010.

2 The SCCRC’s website is at, www.sccrc.org.uk.

3 Norway’s CCRC legislation reflects that it has a radically different legal culture than the U.S., because in Norway trying to achieve “justice” is more important than ensuring the finality of an incorrect guilty verdict. The NCCRC can consider both new evidence and new circumstances related to evidence introduced at trial, and to ensure there is no bias against a petitioner a referred case is assigned to a new judge in a judicial district different than the one where the trial took place. The NCCRC’s website is at, www.gjenoptakelse.no/index.php?id=30

Prosecutor Misconduct Causes Overturning Of Ohio Conviction

Russell Lee Dougherty was convicted by a jury in January 2010 of domestic violence and violating a protective order in Hamilton, Ohio related to an alleged incident involving his live-in girlfriend. He was sentenced to 8 years in prison.

Dougherty’s appeal cited several grounds that he claimed warranted a new trial, including that the prosecutor committed misconduct by making numerous prejudicial statements during both the trial and his closing argument to the jury. Dougherty’s prosecutor was Butler County Assistant Prosecuting Attorney Lance Salyers. Ohio’s 12th District Court of Appeals agreed with Dougherty and unanimously overturned his conviction based on a number of Salyers’ comments that prejudiced Dougherty’s right to a fair trial. In its decision, *State v. Dougherty*, 2011-Ohio-788 (OH Ct of Appeals 12th Dist, 2-22-2011), the Court cited five specific instances of Salyers’ miscon-



duct that either individually or cumulatively warranted a new trial for Dougherty:

1. Salyers commented during closing arguments about Dougherty’s “failure to testify.” The appeals court stated, “Simply put, there was nothing subtle about the prosecutor’s comment. It was a direct and impermissible reference to (Dougherty’s) constitutional right not to testify, which colored the jury’s view of the trial.” (§40)
2. Salyers commented repeatedly during his closing argument about the “credibility” of Dougherty’s live-in girlfriend’s trial testimony.
3. Salyers made “disparaging comments” about Dougherty’s live-in girlfriend to explain differences between her trial testimony and her preliminary hearing testimony related to the July 2009 incident.
4. Salyers misled the jury when he argued “you enforce the law.” The appeals court stated, “It is well-settled that a jury’s “primary responsibility [is] to

weigh the evidence and assess the credibility of the witnesses.” (§56)

5. Salyers not only commented about a police officer’s testimony that the judge had sustained an objection to, but Salyers “completely misrepresented Officer Robinson’s testimony.” The Court stated, “Because the prosecuting attorney made reference to excluded evidence, and evidence outside the record, we find his remarks regarding Officer Robinson’s testimony were improper.” (§90)

In analyzing Salyers’s numerous improper comments the Court wrote:

[T]he fundamental question that must be asked when engaging in a prosecutorial misconduct analysis is whether the improper conduct deprived appellant of a fair trial. ... Arguably, the prosecution’s statement regarding appellant’s failure to testify could be considered so egregious on its own so as to fundamentally deny appellant a fair trial, and require reversal. (§97)

This is not a case where the misconduct was limited to a single “isolated incident.”

Dougherty cont. on p. 21

Joseph White Dies In Accident 2-1/2 Years After Murder Exoneration

Joseph White, 48, was crushed to death on March 27, 2011 in an industrial accident at the factory where he worked in Tarrant, Alabama. White's funeral was on March 30 in Holly Pond, Alabama.

White was one of six people convicted in 1989 and 1990 of charges related to the February 1985 rape and murder of 68-year-old Helen Wilson in Beatrice, Nebraska. The media dubbed them the 'Beatrice Six.'

White was the only one of the six who did not confess after intense interrogations. While the other five made plea deals in exchange for reduced charges and sentences, White went to trial with the prosecution intending to seek the death penalty if he was convicted. Three of White's co-defendants testified against him and he was convicted of rape and first-degree murder. The jury recommended a sentence of life in prison instead of a death sentence.

After losing his direct and post-conviction appeals, White pursued DNA testing of the crime scene biological evidence. For years the State of Nebraska opposed his efforts to test the evidence, but in 2007 the Nebraska Supreme Court ordered the DNA testing. The testing was finally conducted on some of the evidence in the summer of 2008 and



Joseph White
in October 2010

additional testing followed. The testing proved that neither White nor any of his five co-defendants -- who confessed and pled guilty -- had anything to do with Ms. Wilson's rape and murder.

White's motion for a new trial based on the new exculpatory DNA evidence was granted on October 15, 2008, and he was released on a personal recognizance bond later that day. He had been incarcerated for more than 19-1/2 years since his arrest. The charges against him were subsequently dismissed. The two members of the Beatrice Six still incarcerated were paroled several weeks after White's release. The six defendants were wrongly imprisoned for a total of more than 76 years.

In November 2008 Nebraska Attorney General Jon Bruning held a press conference and disclosed that the DNA evidence conclusively linked Bruce Allen Smith to Ms. Wilson's rape and murder. However, Smith died in 1992 of AIDS.

Nebraska's State Board of Pardons unanimously voted on January 26, 2009, to pardon the five defendants who confessed based on their actual innocence of Helen Wilson's rape and murder. AG Bruning said, "They are 100 percent innocent."

Nebraska did not have a wrongful conviction

compensation statute, but the publicity about the exoneration of the Beatrice Six resulted in the passage of a law in 2009 that provides for the payment of up to \$500,000 to a wrongly convicted person.

White filed a claim, and on October 1, 2010 he became the first person to be awarded compensation under Nebraska's compensation law when he settled his claim for the \$500,000 maximum. He was paid \$25,000, with payment of the \$475,000 balance scheduled to be voted on by the Nebraska legislature on March 29, 2011 as part of the annual state claims bill. White's lawyer issued a statement on March 29 that when the legislature authorizes payment of the \$475,000 it will go to White's estate.

White also filed a federal civil rights lawsuit against Gage County and several officials. That lawsuit is pending.

After White's release he returned to Alabama and lived with his family in Cullman. He was engaged to a former school sweetheart and their wedding was scheduled for May 7.

White was the first person exonerated by DNA evidence in Nebraska, and the Beatrice Six are the largest number of defendants exonerated by DNA evidence in one case in the United States.

Read Justice Denied's article in Issue 41 about the Beatrice Six
www.justicedenied.org/issue/issue_41/beatrice_six_jd_issue_41.pdf

Patricia Wright Seeks Compassionate Medical Parole

Patricia Wright's story of being convicted in 1998 of her ex-husband's 1981 murder in Los Angeles was in *Justice Denied* Issue 38. There is no physical or

forensic evidence or eyewitness tying her to the crime, she adamantly denies any involvement, and crime scene fingerprints exclude her.

Patricia has been diagnosed with terminal fourth stage breast cancer and would like to spend her limited days at home with her family. The Board of Parole Hearings, the

Dept. of Corrections, and the Los Angeles District Attorney have stated they are not opposed to Patricia's release on medical Parole.

The only obstacle is Patricia's life without parole sentence (LWOP).

The sentencing Judge, Curtis Rappe, has stated that he will consider reducing Patricia Wright's LWOP sentence if he receives a recommendation from one or all of the following: The Board of Parole Hearings, Governor Jerry Brown, or Matthew Cate-Secretary of Department of Corrections and Rehabilitation. Governor Brown is now considering whether to recommend Patricia's compassionate release, or he could also issue a conditional pardon based on her medical condition.

Patricia's story can be read online at, www.justicedenied.org/issue/issue_38/patricia_wright_jd_issue_38.pdf.

Dougherty cont. from p. 20

Instead, "the prosecutor's errors were part of a protracted series of improper arguments." Indeed, we conclude that the prosecutor's statements were a pervasive pattern of misconduct that permeated and affected the entire proceedings. (§98)

... In this case, we are unable to conclude that it is "clear beyond a reasonable doubt" the jury would have convicted appellant of the offenses as charged, as the evidence was not so overwhelming so as to proscribe this finding. More-

over, the cumulative effect of the prosecutor's improper remarks clearly deprived appellant of his constitutional right to a fair trial. (§100)

We do not reach this decision lightly ... However, given the facts, circumstances, and evidence in this case in light of the prosecution's misconduct, we have decided that a fair trial was impossible. (§101) *State v. Dougherty*, 2011-Ohio-788 (OH Ct of Appeals 12th Dist, 2-22-2011)

Sources:
State v. Dougherty, 2011-Ohio-788 (OH Ct of Appeals 12th Dist, 2-22-2011)

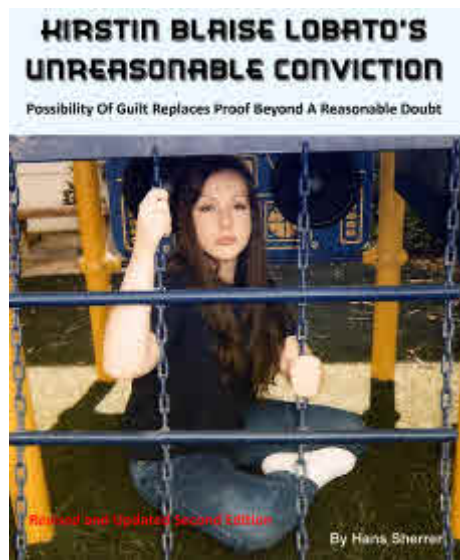
"Kirstin Blaise Lobato's Unreasonable Conviction" Updated Second Edition Now Available!

The revised and updated second edition of *Kirstin Blaise Lobato's Unreasonable Conviction* by Justice Denied's editor and publisher Hans Sherrer is now available.

The first edition was published in February 2008. The second edition includes more than 70 pages of new information, including the filing of Ms. Lobato's Nevada state *habeas corpus* petition, which is pending.

Kirstin Blaise Lobato was 18-years-old when charged with the first-degree murder of Duran Bailey in Las Vegas in July 2001. She was convicted in October 2006 of voluntary manslaughter and other charges. Her case is an example of the perfect wrongful conviction:

- She had never met Mr. Bailey.
- She didn't know anyone who knew Mr. Bailey.
- She had never been to where the murder occurred.



- At the time of the murder in Las Vegas she was 170 miles north in the small rural town of Panaca, Nevada where she lived with her parents.
- No physical, forensic, eyewitness, or confession evidence ties her to the crime.
- All the crime scene DNA, fingerprint, shoeprint and tire track evidence excludes her and her car from being at the crime scene.
- There is no evidence she was anywhere in Clark County (Las Vegas) at anytime on the day of the murder.

Ms. Lobato's prosecution for Mr. Bailey's murder is as inexplicable as if she had been randomly chosen for prosecution by her name being pulled out of a hat containing the name of everyone who lived within 200 miles of Las Vegas.

The simple fact of the matter is that there was more evidence that the men and women executed for witchcraft in Salem, Massachusetts in 1692 were guilty, than there is that Kirstin Blaise Lobato murdered Duran Bailey. Why? Because those accused witches were present at the scene of their alleged sorcery — not 170 miles away. Yet we know that the people found guilty in Salem were all innocent.

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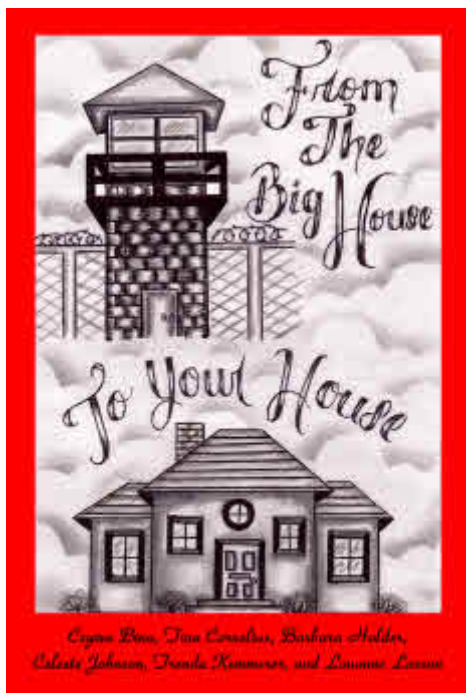
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A+ Style Manual for Legal Writing in Plain English by Research and Education Association - \$9.95 - 106 pgs. Practical manual for law students, paralegals, lawyers and anyone who prepares legal documents. Includes rules of citation, abbreviation and capitalization, footnotes and numbers, and grammar and punctuation. Aids in writing legal papers in "plain English" instead of "legalese." Less detailed than *Legal Writing in Plain English*, but more understandable for a layperson. #40

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The Criminal Law Handbook (11th ed.) (Sept. 2009) by Attorneys Paul Bergman & Sara J. Bergman-Barrett - \$39.99 - 680 pgs. Explains what goes on in a criminal case. Covers: arrest; booking; preliminary hearings; charges; bail; courts; arraignment; search and seizure; defenses; evidence; trials; plea bargains; sentencing; juveniles. Covers Supreme Court cases and changes in criminal law (through August 2009). #10

Legal Research: How to Find & Understand the Law (15th ed.) (Sept. 2009) by Attorneys Paul Bergman & Sara J. Bergman-Barrett - \$49.99 - 386 pgs. Learn how to do legal research, and use a law library to seek and understand statutes, regulations and cases. Also explains online resources. Written for a layperson. Aids in saving time by narrowing your focus and formulating legal questions such as, is the issue federal or state, civil or criminal, procedural or substantive? #93

Tested: How Twelve Wrongly Imprisoned Men Held Onto Hope by Peyton Budd - \$17.95 - 160 pgs. The authors interviewed these 12 innocent men and discovered the secrets of what sustained their hope, their faith, and their sanity behind bars. No matter how bleak the situation, it is never wrong to have hope. #135

Everyday Letters For Busy People (Rev. ed.) by Debra Hart May and Regina McAloney - \$16.95 - 288 pgs. Hundreds of sample letters for all occasions, including: Letters to government officials and agencies; Business letters; Complaint letters; Community action letters; Job-search letters; Thank-you letters. Letters can be adapted for your situation. Includes helpful tips and techniques to effectively get your message across. Includes email tips. #13

New York Times Almanac - \$12.99 - 1,024 pgs. Includes a wealth of comprehensive information about a diverse range of topics related to the U.S. and the rest of the world. Includes social, political, population, geographic information, and sports. #14

Eyewitness Testimony by Elizabeth Loftus - \$27.50 - 272 pgs. Professor Loftus is one of the world's leading authorities on the unreliability of eyewitness testimony. She explains the basics of eyewitness fallibility, such as poor viewing conditions, brief exposure and stress. She also covers more subtle factors, such as expectations, biases, and personal stereotypes that can result in a suspect's erroneous identification. Loftus also explains that experiments have repeatedly proven that eyewitness memory is chronically inaccurate. #21

Surviving Justice: America's Wrongfully Convicted and Exonerated edited by Dave Eggers & Lola Volton - \$16 - 512 pgs. Thirteen exonerates describe their experiences, the events that led to their convictions, their years in prison, and their new lives outside. The exonerates tell of the devastating effect of incarceration on them and their loved ones, and how they have been forever changed by their experience. #49

No Crueler Tyrannies: Accusation, False Witness, and Other Terrors of Our Times by Dorothy Rabinowitz - \$13 - 256 pgs. Examines some of the sex-abuse cases of the 1980s and 90s that saw dozens of innocent adults convicted of absurd charges. Included are the "sex-crime" cases in Wenatchee, Washington where 19 people were wrongly convicted of sex abuse charges. Also included is the Amtrank case in Malden, Massachusetts, where bizarre false allegations were taken seriously. #52

The Innocent Man by John Grisham - \$7.99 - 448 pgs. Best selling author John Grisham spent 2 years researching and writing this account of Ron Williamson's life, and how he was convicted of rape and murder and sentenced to death in Oklahoma in spite of being innocent. #95

In Spite of Innocence: Erroneous Convictions in Capital Cases by Michael Radelet, Hugo Adam Bedau and Constance Pritman - \$24.95 - 416 pgs. Details how over 400 Americans were wrongly convicted in cases carrying the maximum penalty of a death sentence. Expands on well-known 1987 Stanford Law Review article by Radelet and Bedau that has been cited several times in U.S. Supreme Court opinions, most recently in June 2006. #15

Actual Innocence by Barry Scheck, Peter Neufeld and Jim Dwyer - \$14.95 - 432 pgs. Latest edition. Case histories explain how people have been wrongly convicted by erroneous eyewitness identification, jailhouse informants, junk science, perjured testimony, prosecutor and police concealment of evidence, etc. Explains how new evidence, including scientific tests, has helped free wrongly convicted people. #16

Wrongly Convicted: Perspectives on Failed Justice Ed. by Sandra Westervelt and John Humphrey - \$25.95 - 301 pgs. Articles by leading authorities explain how and why wrongful convictions occur. The book is divided into four sections: the causes of wrongful convictions; the social characteristics of the wrongly convicted; case studies and personal histories; and suggestions for changes in the legal system to prevent wrongful convictions. #18

Suspect Identities: A History of Fingerprinting and Criminal Identification by Simon Cole - \$23.50 - 400 pgs. Most comprehensive book available about the history of fingerprinting and why it may not be the "gold standard" of evidence that most people believe it to be. Professor Cole is one of the world's leading critics of Court's allowing fingerprint examiners to testify as experts. A must have book by anyone with an interest in fingerprinting. #20

Dehumanization Is Not An Option by Hans Shertzer - \$10 - 106 pgs. Explains that the mistreatment of prisoners is not due to the regre actions of a few "bad apples." It is a predictable response of placing people in a position of authority over others that they see as underserving of humane treatment. This attitude of treating people barbarically is unleashed in those working in an authoritarian prison environment. #106

The I Chong: Meditations from the Joint by Tommy Chong - \$14.95 - 224 pgs. First person account of how a criminal drug case was contrived against Tommy Chong (of the comedy duo of Cheech & Chong) that resulted in him spending nine months in federal prison in 2003-2004. A straightforward account of how the federal government misuses the criminal laws to prosecute critics of political policies. Written with the heart and wit that one would expect from a professional entertainer. #86

Mistaken Identification: The Eyewitness, Psychology and the Law by Brian L. Oulter and Steven D. Penrod - \$52 - 304 pgs. Reviews research concerning the adequacy of safeguards protecting a person from being convicted due to a mistaken eyewitness identification. The presence of counsel at line-ups, cross-examination, and judges' instructions have proven ineffective at preventing a mistaken identification. Expert psychological testimony educating the jury about how memory processes work and how eyewitness testimony should be evaluated, shows much greater promise as a safeguard against mistaken identifications. #74

How to Argue & Win Every Time: At Home, At Work, In Court, Everywhere, Everyday by Gerry Spence - \$16.99 - 307 pgs. Most successful defense lawyer in American history shares his secrets to successfully convince others to see your point of view. He teaches some of these techniques to the lawyers who attend his Trial Lawyer's College in Wyoming to learn how to win. #17

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