

JUSTICE DENIED

The Magazine for the
Wrongly Convicted



Raymond Towler

Awarded \$2.59 million
for 28 years wrongful
imprisonment for rape
in Ohio.

See page 13



Aaron Farmer

Awarded \$277k
for 2 years wrong-
ful imprisonment
for rape in New
Zealand.

See page 6



Dr. Waney Squier

She thinks more
than 50% of people
convicted Of SBS
could be innocent.

See page 8



Jeffrey Deskovic

Settled lawsuit for
\$6.5 million for 16
years of wrongful im-
prisonment in New
York for murder.

See page 5

Joseph Eastridge



Joseph "Nick" Sousa



Eastridge awarded \$1.14
million for 29 years wrongful
imprisonment and Sousa
awarded \$750k for 19 years
wrongful imprisonment for a
Washington D.C. murder.

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**Issue 48
Fall 2011**

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Message From The Publisher

Dr. Waney Squier is one of the leading critics of the diagnostic techniques used to identify Shaken Baby Syndrome in England, the U.S., and other countries. She thinks that more than 50% of the defendants convicted of SBS in England could be innocent. See p. 8.

Derek Tice has been exonerated of any involvement in the July 1997 rape and murder of Michelle Moore-Bosko in Norfolk, Virginia. His convictions were overturned in September 2009, and his indictment was dismissed in August 2011. Tice was one of four defendants wrongly convicted of the crime who became known as the Norfolk Four. *JD's* first story about the Norfolk Four was in November 2000, and they have all been released from prison. See p. 6.

Four men in Fiji found out the hard way their innocence didn't matter to a prosecutor and pathologist who fabricated the evidence relied on to convicted them of manslaughter, when the deceased man actually killed himself by jumping from a moving truck. See p. 11.

Oswind David was released after 4-½ years in prison when it was discovered he had been convicted by a jury of an assault charge that had been dismissed months before his trial. See p. 13.

The U.S. Supreme Court has been trying to limit the scope of federal habeas corpus review available to state prisoners, and that includes when an evidentiary hearing can be conducted by a federal judge. See p. 16.

Judges around the work think of the courtroom as their own private domain. In Australia the contempt conviction was overturned of a man chewing gum who a judge summarily convicted and sentenced to 30 days in custody for blowing a bubble. See p. 16.

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.



William A. Reuben wrote in 1955, "It is a safe bet that historians will agree that the summer of 1950 was the most hysterical period in the history of the United States. And one of the most shameful."¹

Introduction

Miriam Moskowitz was convicted in 1950 of conspiracy to obstruct justice and sentenced to two years in federal prison. Her autobiography was published in 2010 when she was 94. It is apparent in *Phantom Spies, Phantom Justice: How I Survived McCarthyism* (2010) that she was convicted of a crime she didn't commit. The following is an account based on her book that explains how she was convicted by an FBI informant's lies that remained hidden by the federal government for more than forty years. Book page numbers are enclosed in parenthesis ().

Communist hysteria in the 1940s and 50s

It is difficult today to comprehend the hysteria in the United States during the late 1940s and 1950s caused by the media's reporting of alleged communist infiltration of the government and military, and educational and cultural institutions. Anyone who is not well past middle-age only knows about that era second-hand from books, movies, television programs, or being told about it by a person who lived through it.

Loyalty oaths were instituted in government, academia, and some industries. Those oaths required a person to pledge their allegiance to the U.S. and that they weren't a communist. Careers were derailed or wrecked by the mere suspicion or allegation of a person's communist ties or sympathies, or their refusal to identify friends or co-workers who might. Even attendance at a communist meeting years earlier could have serious consequences without a denunciation of communism. Membership in the Communist Party for even a short time in the 1930s or during WWII when the U.S. and Russia were allies was like a mark of Cain.

Perhaps most well known today was the blacklisting of people from working in the movie industry in the U.S. after they refused to answer questions about either their communist ties or name people who did, when they testified before the House Committee on Un-American Activities. Other people were prosecuted for contempt of Congress when they refused to provide possibly incriminating testimony.

Miriam Moskowitz Convicted By FBI Informant's Lies Concealed By Federal Prosecutors

By Hans Sherrer

Today the events of that era are referred to by some people as the communist witch hunts, and others as McCarthyism -- in recognition of Wisconsin Senator Joseph McCarthy who whipped people across the country into an anti-communist frenzy with his claims that the U.S. government and the military was infiltrated with communists. McCarthy's chief legal counsel was Roy M. Cohn. Before working with McCarthy, Cohn was an Assistant U.S. Attorney involved in several high-profile trials of Americans alleged to have aided the Soviet Union after it ceased to be an ally after WWII ended.

One of the people still alive who experienced first-hand the effects of McCarthyism is Miriam Moskowitz. *Phantom Spies, Phantom Justice: How I Survived McCarthyism* is Ms. Moskowitz's autobiographical account of the circumstances of her prosecution and conviction in 1950 of conspiracy to obstruct justice, and the effect it had on her life.² She was sentenced to the maximum of two years in federal prison and fined \$10,000. Her co-defendant was Abraham Brothman, a chemical engineer who was also convicted of the conspiracy to obstruct justice charge as well as a separate perjury charge, for which he was sentenced to a total of seven years in prison and fined \$15,000.

Their judge was Irving R. Kaufman, their prosecutors were Irving Saypol and Roy Cohn, and the key government witnesses were Harry Gold and Elizabeth Bentley. Those were the same people involved in the trial — four months after Ms. Moskowitz and Brothman's trial — of Julius and Ethel Rosenberg for espionage for allegedly passing atomic bomb secrets to the Russians.³ However, the trials were tied together because as Cohn is quoted as saying after the trials, "... the Brothman-Moscowitz [sic] case was a dry run of the upcoming Rosenberg trial. We were able to see how Gold and Bentley fared on the stand, and we were able to see how we fared, Saypol and I."⁴

Ms. Moskowitz and Brothman had no connection to the Rosenberg's, and their charg-

es were minor compared to the Rosenberg's espionage charges that carried a maximum sentence of death.

In the mid-to-late 1940s Ms. Moskowitz and Brothman were partners in a chemical engineering consulting company in New York City. Harry Gold was a laboratory chemist who worked with Brothman over a period of years. Unbeknownst to Ms. Moskowitz and Brothman, Gold was a Soviet agent who began working as a double-agent for the FBI after they discovered his pro-Soviet activities.

Bentley was a member of the Communist Party and for years beginning in 1938 she was involved in promoting tourism and shipping between the U.S. and Russia while spying for the Soviet Union. She became an informant for the FBI in 1945.

The prosecution's case against Brothman was he allegedly provided Gold with documents about "secret" chemical processes for use by the Soviets, that he provided Bentley with "industrial information material" for transmittal to the Soviet Union, and that he lied about what he did when testifying before a grand jury in 1947. (23)

Ms. Moskowitz didn't testify before a grand jury, so her prosecution was based on the allegation she simply witnessed a single conversation in 1947 between Gold and Brothman during which Gold alleged they discussed presenting false testimony to the grand jury. Bentley didn't provide any testimony against Ms. Moskowitz. Considering the lack of evidence she "did" anything illegal the prosecution's case was actually 'guilt by her association' with Brothman.

Ms. Moskowitz describes the 8-day trial in November 1950 at length in *Phantom Spies, Phantom Justice*. The long and short of it is Judge Kaufman's pro-prosecution bias became more and more evident as the trial progressed. Kaufman even stepped in to ask witnesses questions when the prosecutors weren't eliciting testimony that sufficiently incriminated Brothman — and by association Ms. Moskowitz — and Kaufman even pursued lines of questioning not raised by the prosecutors.

Judge Kaufman also thwarted Ms. Moskowitz and Brothman's lawyer William Kleinman from introducing exculpatory testimony and documents. However, Klein-



Miriam Moskowitz and Abraham Brothman Being Transported in Police Wagon (Leon Hoffman Bettmann-CORBIS)

Moskowitz cont. on p. 4

Moskowitz cont. from p. 3

man was able to establish during his cross-examination of Gold that the documents Brothman allegedly provided Gold were publicly available from sources that included professional journals, books at the New York Public Library, and even the U.S. Patent Office: so no “secret” documents were allegedly involved. Bentley didn’t provide specific details of any “material” Brothman allegedly provided to her.

Neither Brothman nor Ms. Moskowitz testified.

In spite of the skimpy evidence, the conviction of Ms. Moskowitz and Brothman was all but a foregone conclusion given the way Judge Kaufman conducted the trial, and the anti-communist atmosphere at the time that was fueled by the Rosenberg’s upcoming trial for allegedly providing atomic bomb secrets from the Manhattan Project to the Soviets.



Miriam Moskowitz, 94, at a book signing in 2010.

After Ms. Moskowitz’s conviction she met Ethel Rosenberg for the first time while they were both jailed at the Women’s House of Detention in New York City. Her portrait of Ethel is she was a warm person who cared about the women she was jailed with. A week after Ethel’s sentencing she was transported to Sing Sing prison where she and her husband were executed in 1953.

Ms. Moskowitz describes in detail the time she spent at the House of Detention until her appeal was denied, and then at the Federal Reformatory for Women in Alderson, West Virginia where she finished serving her sentence. At the time that was the only female federal prison in the United States. One of the women imprisoned at the FRW with Ms. Moskowitz was Iva Toguri — prosecuted for allegedly being the infamous Tokyo Rose and convicted in 1949 of one count of treason.⁵

Brothman’s perjury conviction and five-year sentence was overturned on appeal, so he only served his two-year sentence for conspiracy to obstruct justice.

The latter part of *Phantom Spies, Phantom Justice* has brief biographical sketches of the key people involved in Ms. Moskowitz and Brothman’s prosecution. The passage of six decades since the 1950 trial has not diminished Ms. Moskowitz’s strong feelings about what she believes was the gross injustice committed against her and Brothman. She asserts she wasn’t present when

Gold testified that he and Brothman discussed Brothman’s upcoming grand jury appearance — so she is not only actually innocent of her convicted crime of conspiracy to obstruct justice — but Gold committed perjury during his testimony about her. Supporting Ms. Moskowitz’s claim is Gold’s trial testimony contradicted that he told the FBI in June 1950 that he “discussed nothing in front” of her. (223) He reiterated that in an FBI Report dated July 27, 1950 that states, “Gold recalls telling Brothman practically nothing in Moskowitz’s presence ...” (237) Similarly, since Gold didn’t testify Brothman ever showed him anything other than what were in fact publicly available documents regarding chemical processes, Brothman had no reason to even contemplate, much less discuss lying to the grand jury. So one can conclude Brothman was actually innocent and his conspiracy to obstruct justice conviction was likewise based on perjury by Gold.

Gold was under indictment for espionage and facing a possible death sentence when he testified during Ms. Moskowitz and Brothman’s trial, and the Rosenberg’s trial four months later. Gold’s reward for cooperating and providing testimony essential to support the prosecution in those cases and other cases was to be sentenced in 1951 to 30 years in prison.

Moskowitz answer to those who may ask why she waited until she was 94 to publish a book about her experiences is:

“My book was first proposed by a loyal friend and dear departed old union buddy, Milt Ost, shortly after I was released from prison.

...

The appearance of a number of historically revisionist references to the Brothman/Moskowitz case finally convinced me it needed to be done. It was not only the factual distortions those books presented, it was also that some of them credited me with opinions I never expressed and interviews I never gave. ... Clearly, it was time for me to set straight a small but significant bit of American history.” (282)

Phantom Spies, Phantom Justice is an exceptionally well-written and compelling page-turner. It is a must read for anyone seeking to understand the human carnage that was left in the wake of the prosecutors,

the judges, the witnesses, and the journalists who played a role in fueling the dark period in American history known as McCarthyism. The book is an important first-person addition to the historical record of that era, and for anyone doubting its accuracy the details Ms. Moskowitz provides throughout the book are supported by 16 pages of endnotes. *Phantom Spies, Phantom Justice* is also recommended as a very personal memoir of how Miriam Moskowitz survived the hysteria of McCarthyism and lived for 60 years with the emotional scars indelibly etched on her from those experiences.

Phantom Spies, Phantom Justice is available in softcover from Amazon.com and other online and retail locations.

Phantom Spies, Phantom Justice: How I Survived McCarthyism, By Miriam Moskowitz, Bunim & Bannigan (2010), 310 pages, pb.

Endnotes:

1. William A. Reuben, *The Atom Bomb Hoax*, Action Books, New York, N.Y., 1955.
2. Ms. Moskowitz and Brothman’s trial began 11-8-1950, they were convicted on 11-22-1950, and they were sentenced on 11-28-1950.
3. One key prosecution witness in the Rosenberg’s case who was different was Ethel’s brother David Greenglass.
4. Sidney Zion, *The Autobiography of Roy Cohn*, Lyle Stuart, Inc., Secaucus, NJ, 1986, 66.
5. Hans Sherrer, “Iva Toguri Is Innocent,” *Justice Denied*, Issue 28, Spring 2005, 22.

Other source:

The Judiciary: Guilty, *Time* magazine, December 4, 1950



Innocence Network UK Now Publishing Quarterly Newsletter “Inquiry”

The Innocence Network UK began publishing its quarterly newsletter “Inquiry” with the Summer 2011 issue. The have since published the Fall 2011 issue. The current and back issues of “Inquiry” can be read online and downloaded in PDF format from the INUK’s website, www.innocencenetwork.org.uk

The Fall 2011 issue includes a review of *The Criminal Cases Review Commission: Hope for the Innocent?*, Edited by Dr. Michael Naughton (Palgrave MacMillan (2010).

The review is by Hans Sherrer, *Justice Denied*’s Editor and Publisher. The review begins on page 11.



Jeffrey Deskovic Settles Wrongful Conviction Lawsuit For \$6.5 Million

Angela Correa was a 15-year-old high school student in Peekskill, New York when she was found beaten, raped and strangled to death in November 1989.

Jeffrey Deskovic was one of Angela's classmates. Detectives identified him as a suspect because he was late to school the day after Angela disappeared and he seemed overly distraught when he cried at her funeral.

Deskovic, 16, was questioned by detectives eight times between December 1989 and late January 1990, when he agreed to take a polygraph examination. No lawyer or parent was present during the eight hour interrogation session, during which he was denied food or water, and a detective falsely told him he failed the polygraph exam that he had actually passed. The interrogation wasn't audio or video taped, and Deskovic was charged with Angela's rape and murder based on a detective's claim that he confessed.

Semen was recovered from Angela, and it was tested for a comparison with Deskovic's DNA by the relatively primitive testing technique available at that time. Even though the DNA test excluded Deskovic as the person who had sex with Angela, and he claimed he was innocent, Westchester County's District Attorney didn't drop the charges.

During Deskovic's trial in January 1991, the prosecution argued the semen came from Angela having consensual sex with another person prior to her death, and that Deskovic killed her in a jealous rage. Based on the detective's testimony that Deskovic confessed, he was convicted by a jury of 2nd degree murder and inexplicably of 1st degree rape -- even though the prosecution conceded it wasn't his semen recovered from Angela. The 17-year-old Deskovic was sentenced to 15 years to life in prison.

Deskovic sought to have the semen tested by the more sophisticated DNA tests that were developed after his trial, but the DA was able to block the testing. The DA also refused Deskovic's request, first made in 1997, to compare the DNA profile from the 1990 test with the DNA profiles in the FBI National DNA Database (CODIS).

It wasn't until a new Westchester County DA took office in January 2006 that Deskovic was able to have the semen tested by



Jeffrey Deskovic
(Seth Harrison,
The Journal News)

in prison for strangling his girlfriend's sister.

Deskovic filed a motion for a new trial based on the new evidence, and it was granted on September 20, 2006. Deskovic was immediately released on bail after almost 16 years in prison. His indictment was dismissed on November 2, 2006, on the basis of his actual innocence.

Cunningham subsequently confessed to raping and murdering Angela.

After his release Deskovic filed a federal civil-rights lawsuit against Westchester County, two county medical examiners, the lead prosecutor in the case, the city of Peekskill, several Peekskill police officers, Putnam County and the Putnam deputy sheriff who conducted the Deskovic's polygraph test.

Deskovic agreed to settle his claims against Westchester County and their employees for \$6.5 million, and the settlement was approved by the county Board of Legislators on April 11, 2011. Deskovic's claims against some of the defendants have been dismissed, but his claim against the city of Peekskill is still pending.

Under the settlement Deskovic will receive \$4 million in 2011, and the remaining \$2.5 million in 2012. His mother Linda McGarr was a plaintiff in the lawsuit, and she will receive \$250,000.

Deskovic is now 37. He lives in New York City and is completing his master's degree at John Jay College of Criminal Justice.

The unsung heroine in Deskovic's case is Claudia Whitman of Portland, Maine. Whitman heads the non-profit National Death Row Assistance Network (www.ndran.org).

While imprisoned Deskovic wrote every lawyer and advocacy group he believed might be able to help him, including the Innocence Project in New York, which turned down his case in 1994.

After reading a report Whitman wrote in 2000 titled, "Reasonable Doubts: Is the US

state of the art tests. After the DNA profile recovered from the semen again excluded Deskovic, it was uploaded to the New York State DNA database of convicted felons. In September 2006 the profile was matched to Steven Cunningham, who was

Executing Innocent People?", Deskovic wrote her a letter explaining he had been wrongly convicted of murdering a classmate.

Whitman took an interest in Deskovic's case, and obtained the DNA test results. She sent them to a former FBI forensic specialist who confirmed the DNA recovered from Angela excluded him. Believing Deskovic was innocent, Whitman read the trial transcripts and court documents. Based on what she learned she wrote a summary of his case and began contacting lawyers and organizations she thought might be able to help him. Finally, after Westchester County's new DA took office in January 2006 and was not opposed to retesting the semen, Whitman's efforts succeeded in convincing the Innocence Project in New York to become involved in his case.

At the time Deskovic was released in September 2006, Whitman had never met him. However, it was only because of her perseverance that Deskovic was freed. Innocence Project spokesman Eric Ferrero said after Deskovic's release, "Without Whitman's encouragement, Deskovic would still be in prison. Whitman is among a handful of amateur investigators who devote a large part of their lives to helping out the low-profile cases everyone else has forgotten. Folks like Claudia are looking at the cases nobody has heard of yet." (See the Exonerations page on the National Death Row Assistance Network website (www.ndran.org)).

Source:

"Westchester OKs \$6.5M settlement for Deskovic in wrongful murder conviction," *Lohud.com*, April 13, 2011.

"\$6.5 Million Settlement in Wrongful Conviction," *The New York Times*, April 12, 2011

"Exonerated after 16 Years in Prison," National Death Row Assistance Network website, www.ndran.org.



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. 19). Or order with a credit card from JD's website, www.justicedenied.org

"I congratulate you on your marvelous book *Freeing the Innocent*."

P. Wilson, Professor of Criminology, Bond University

Aaron Farmer Awarded \$277,000 For 2 Years Wrongful Imprisonment

In September 2003 a 21-year-old woman reported to the police in Christchurch, New Zealand that as she was walking along a road a man on a motorcycle stopped, dragged her into the bushes and raped her. She described her assailant as having a large scar on his face and that during the attack she burned his cheek with a cigarette.

Aaron Lance Farmer was an avid motorcyclist, and the police included his picture in a photo-array they showed the victim. Farmer didn't have either a scar on his face or a cigarette burn, but the woman nevertheless selected him as her assailant.

During Farmer's trial in April 2005 the victim identified him in court as the man who raped her. Farmer testified that he was in another part of town at the time she said the rape occurred. A cervical swab and fingernail scrapings were DNA tested in 2003 but the results were inconclusive.



Aaron Farmer

Faced with a he-said, she-said situation, the jury convicted Farmer.

The 35-year-old Farmer was sentenced to eight years in prison.

In June 2007 the New Zealand Court of Appeal overturned Farmer conviction based on his lawyer's failure to subpoena an alibi witness to testify. After 2 years and 2 months of imprisonment, Farmer was released on bail pending his retrial.

During the prosecution's preparation for Farmer's retrial new DNA tests of the evidence recovered from the victim were performed using more sensitive techniques than were available in 2003. The test results conclusively excluded Farmer as the perpetrator. Based on that new evidence the prosecution dismissed the rape charge in April 2008.

Farmer filed a claim for compensation with New Zealand's Ministry of Justice. Under government guidelines compensation for a wrongful conviction starts at about \$80,000

(NZL\$100,000) per year, but it can be increased based on individual aggravating circumstances. On April 14, 2011 the Ministry announced it was awarding Farmer compensation of \$276,869 (NZL\$351,575) for his 26 months of wrongful imprisonment.

After the compensation award was announced, Farmer's mother, Beverley Farmer, vented her dissatisfaction with how her son, who is autistic, had been treated from the time he was first questioned by the police. She told reporters:

"Money doesn't solve the problem when it should never have happened, which means the police, the court and the lawyer didn't do their jobs." She said she would never trust the police or justice system again, and that the police "don't tell the truth unless it suits them, and they will make it fit. I will never get past being angry."

Sources:

"True rape culprit may never be found -- lawyer," New Zealand Press Association, April 15, 2011

Derek Tice Exonerated Of Norfolk Four Rape And Murder Convictions

Derek Tice was one of four young Navy men convicted of charges related to the July 1997 rape and murder of Michelle Moore-Bosko in Norfolk, Virginia. Their convictions were based on their confessions that they all recanted as false, claiming that Norfolk Detective Robert Glenn Ford coerced them during intense interrogations.

There was no physical, forensic or eyewitness evidence tying any of the four men to the crime, but they were convicted on the basis of Detective Ford's testimony they confessed.

The four men — Derek Tice, Danial Williams, Eric C. Wilson, and Joseph J. Dick Jr. — became known as the Norfolk Four. When their case gained notoriety and was independently investigated, their claims of being coerced into giving false confessions was substantiated.

False confession expert Professor Richard Leo co-wrote *The Wrong Men* about the Norfolk Four case.

All of the Norfolk Four have been released. Eric Wilson was released in 2005 after 8-1/2 years in prison when he completed his sen-

tence. The other three were sentenced to life in prison, and they were released on August 6, 2009 when Virginia Governor Tim Kaine conditionally pardoned them. Tice, Williams, and Dick were wrongly imprisoned for more than 11 years.

In September 2009, a month after Tice was released, U.S. District Court Judge Richard L. Williams granted his writ of *habeas corpus* and overturned Tice's rape and murder convictions. Judge Williams ruled that Tice's trial lawyers were ineffective for failing to file a motion to suppress Tice's confession, because the prosecution's case was so weak that without his confession it is probable the jury would have acquitted him. The State of Virginia appealed the ruling.

On April 20, 2011 the federal 4th Circuit Court of Appeals unanimously affirmed Judge Williams' ruling. On August 4, 2011, a Norfolk Circuit Court judge dismissed the indictment against Tice.

Detective Ford is now serving a 12-1/2 year sentence in federal prison for his October 2010 convictions for extortion and lying to the FBI in cases unrelated to the Norfolk Four's case. An Affidavit filed in support of



Derek Tice on August 6, 2009, the day of his release.

Danial Williams' pending *habeas corpus* petition states that Detective Ford commented to a witness that he thinks the Norfolk Four are innocent. The Affidavit states:

"Detective Ford has stated that he believes that the Norfolk Four are innocent of the rape and murder for which they have been convicted."

The Norfolk Four's case has come full circle: Ford is imprisoned while the four innocent men are free who were convicted and imprisoned based on his false testimony they confessed.

Justice Denied's November 2000 article about the Norfolk was the first national exposure in the Norfolk Four case. That article is credited with resulting in production by Medstar of the documentary "Eight Men Out" that was broadcast for the first time on June 7, 2001, on The Learning Channel's series *Medical Detectives*. An article in *Playboy* magazine followed and eventually the four men were able to get first-class pro bono counsel and coverage of their case in *The New York Times* and other national media.

Sources:

Derek Tice v Johnson, No. 08-cv-69 (USDC EDVA, 09-14-2009) - Memorandum Opinion.pdf.

Tice v. Johnson, No. 09-8245 (4th Cir. 04/20/2011)

Norfolk Four website,

<http://www.norfolkfour.com>

Larry Ruffin Exonerated Posthumously Of 1979 Mississippi Murder

Larry Ruffin and two co-defendants, Phillip Bivens and Bobby Ray Dixon, were convicted of Eva Gail Patterson's 1979 rape and murder in Hattiesburg, Mississippi.

The lone eyewitness, Patterson's four-year-old son initially told the police there was one assailant and he didn't identify Ruffin, Bivens, or Dixon.

The three men were charged with capital murder and faced the death penalty. Bivens and Dixon confessed to the crime and pled guilty in exchange for life sentences. They also testified against Ruffin during his trial in 1980. After Dixon testified that Ruffin raped Patterson and Bivens slit her throat, he recanted that testimony telling the jurors he had never seen Patterson in his life and all three men were innocent.

Ruffin was also sentenced to life in prison. He died in 2002 from a heart attack after he was accidentally electrocuted. He was 43.

The New Orleans Innocence Project accepted the case of the three men, and pursued DNA

testing of the victim's rape kit. In June 2010 the DNA testing excluded all three men. However, those tests implicated another man – Andrew Harris – who was serving a life sentence for a 1981 rape in Hattiesburg, where Patterson had been raped and murdered.

Dixon and Bivens filed motions to vacate their convictions based on the new evidence. Dixon was dying of lung cancer and he was released on compassionate parole on August 20, 2010. On September 16, 2010 Forrest County, Mississippi Circuit Judge Robert Helfrich vacated Dixon and Bivens' convictions and Bivens was released on bail.

The 53-year-old, Dixon died on November 7, 2010, less than three months after his release.

In December 2010 a Forrest County grand jury formally dismissed the charges against Dixon and Bivens, 59.

Judge Helfrich signed an Order on February 18, 2011 that stated: "Larry Ruffin is officially exonerated and declared innocent of the crime of capital murder for which he was convicted in 1980 in Forrest County. That conviction is



null and void."

Ruffin's daughter Nikki Ruffin Smith was less than a year old when her father was arrested. She said after his exoneration, "It's wonderful. It can't bring him back, but justice is served. So is the truth."

Ruffin is the second person in the United States posthumously exonerated based on DNA evidence. Timothy Cole died in 1999, and he was exonerated in Texas in 2009 of a 1985 rape.

Bivens and the estates of Ruffin and Dixon are eligible under Mississippi's wrongful conviction compensation law for a maximum of \$500,000.

The same Forrest County grand jury that dismissed the charges against Bivens and Dixon indicted Harris for capital murder in Patterson's death. Harris is currently awaiting trial.

Sources:

Ex-inmate cleared after his death, *Clarion-Ledger* (Jackson, MS), 2-21-2011
Bobby Ray Dixon – Rest in Peace, Say It Ain't So Already, November 9, 2010.



Arab Sheik Cleared Of Assault In Swiss Bar Sued For Defamation

Sheik Falah bin Zayed bin Sultan Al Nahyan was convicted in 2008 of inflicting "bodily harm with the use of a dangerous object" for whipping Silvano Orsi with his belt buckle in the bar of the La Reserve hotel in Geneva, Switzerland. Nahyan was fined 540,000 Swiss francs (\$532,000), with all but 10,000 francs suspended for three years based on his good conduct.

Orsi, 35 from Rochester, New York, was in the bar talking with a friend when Nahyan sent an expensive bottle of champagne over to him. Orsi declined the champagne. He didn't know Nahyan, 33, who is a brother of the ruler of the United Arab Emirates. About fifteen minutes later Nahyan came over, sat on Orsi's lap, and tried to kiss and fondle him. When Orsi pushed him off, Nahyan became angry. He threw Orsi to the floor, punched and stomped him, and smashed his glasses. Nahyan then removed his belt and whipped Orsi with the metal buckle. While he was beating Orsi witnesses said that Nahyan yelled, "no stupid American or Italian is going to tell me what to do!"

Nahyan appealed his conviction. In March 2009 a Geneva appeals court overturned his conviction on the ground Nahyan's belt wasn't a "dangerous object" under Swiss law. On June 9, 2009 Switzerland's Supreme Court upheld the lower court's ruling. The European Human Rights court in Strasbourg declined to hear Orsi's appeal of the Swiss court's ruling.

Orsi suffered a herniated disc, nerve damage to his right leg, and he was diagnosed with post-traumatic stress from the assault.

In September 2010 Orsi filed a civil lawsuit in Switzerland against the Le Reserve hotel where the attack occurred and Nahyan.

On March 16, 2011 Orsi filed a \$7 million defamation suit in U.S. District Court in Boston against Nahyan. The lawsuit claims Orsi was slandered by Nahyan's false testimony and in statements he and his associates have made to news organizations that portray him as being anti-Islamic, homophobic, and a generally violent person. Orsi alleges that Nahyan's slander has resulted in his inability to get employment and resulted in further mental anguish as



well as a great loss to his professional reputation and his professional standing in the community. The lawsuit is, *Orsi v. H.H. Sheik Falah bin Zayed bin Sultan Al-Nahyan*, 1:11-cv-10451-NG (USDC Boston), March 16, 2011.

Orsi is currently a law student at Boston University. His lawsuit is assigned to U.S. District Court Judge Nancy Gertner. In 2007 Judge Gertner awarded a total of \$101.7 million in compensation for the FBI's frame-up of Louis Greco, Henry Tameleo, Peter Limone, and Joseph Salvati for a 1965 Boston murder they were not involved in. The four men were wrongly imprisoned for a total of 107 years. Tameleo and Greco died in prison before evidence of the FBI's cover-up was discovered in December 2000.

Sources:

UAE president's brother beat man with belt over 'gay insult', *The Independent*, July 2, 2008
"Boston man sues UAE sheik for defamation," *Wall Street Journal*, March 17, 2010
"FBI's Legacy of Shame," *Justice Denied* magazine, Issue 27, Winter 2005,
"US ordered to pay \$101.7m in false murder convictions," *The Boston Globe*, July 27, 2007



Dr. Waney Squier Thinks More Than 50% Of People Convicted Of SBS Could Be Innocent

Neuropathologist Dr. Waney Squier is the most experienced paediatric neuropathologist in England. A member of the staff of the John Radcliffe Hospital in Oxford, she has researched the brains of babies for 30 years and is an internationally recognized expert in brain development about which she has written more than 100 medical papers.

The concept of Shaken Baby Syndrome (SBS) was introduced in 1946 by pediatric radiologist Dr. John Caffey. SBS is identified by a set of three signs — swelling of the brain, bleeding between the skull and the brain, and bleeding in the retina — found in a deceased baby with little or no external evidence of head trauma, or in a live baby exhibiting a variety of unusual behaviors or symptoms such as lethargy, vomiting, seizures, altered breathing, and dilated pupils. The validity of SBS is almost universally accepted by experts in the U.S. and England.

Dr. Squier accepted the validity of SBS and testified during a number of trials as a prosecution witness that the existence of the triad of signs supported that the baby had been injured or died as a result of abusive treatment. Lorraine Harris' trial in 2000 for manslaughter in the death of her four-month-old baby son Patrick was one of the trials during which Dr. Squier testified the triad of SBS signs were present. Harris was convicted and sentenced to three years in prison.

After Harris' conviction Dr. Squier learned that the research of British neuropathologist Dr. Jennian Geddes resulted in the discovery that injuries associated with the SBS triad can occur naturally, including that bleeding is triggered in some babies from a lack of oxygen. Dr. Geddes suggested that there should be physical evidence that a baby suffered physical trauma before determining that abuse (SBS) occurred.

During a recent interview Dr. Squier said that when she reviewed Dr. Geddes' research, "A light went on in my head. I became concerned that the whole basis for shaking was poor."

Dr. Squier came to the same conclusion as Dr. Geddes after conducting her own investigation. One consequence was she prepared a report for Harris that explained why her trial testimony had been erroneous, includ-



Neuropathologist
Dr. Waney Squier
(Les Wilson)

July 21, 2005.

The police in England didn't take Dr. Squier's re-evaluation of SBS sitting down — because with her standing in the medical community it could have a cascade effect on other neuropathologists. With convictions in the 250 or more SBS cases prosecuted in England annually dependent on testimony about the presence of the triad of SBS signs — the police began a campaign to destroy Dr. Squier's credibility as a witness. First, the Metropolitan Police (London PD) filed a complaint with the Human Tissue Authority raising concern about her handling of post-mortem tissue. Then in June 2010 a complaint based on the same issue was filed with the General Medical Council by the National Policing Improvement Agency and Scotland Yard.

The complaints are pending, but the police campaign to professionally discredit Dr. Squier has placed a cloud over her credibility and impacted demand for her as an expert witness in cases of alleged baby abuse. In recent years she has only testified in about 5 cases a year, whereas before she was testifying in upwards of 30 cases per year.

The police war on experts who challenge the establishment view that the triad of signs establishes SBS may extend to the U.S. During a September, 2010 conference on shaken babies in Atlanta, Georgia one of the speakers was Detective Inspector Colin Welsh, lead investigator at Scotland Yard's child abuse investigation division. DI Welsh told the audience that expert opinions contrary to the prosecution's theory of SBS should be excluded on the basis they could confuse the jury and the judge, and that to discredit a defense expert, they should be investigated to discover "everything — qualifications, employment history, testimony, research papers presented by these experts, go to their bodies to see if we can turn up anything." D.I. Welsh's comments were documented by one of the conference attendees, Seattle, Washington lawyer Heather Kirkwood, who has executed an affidavit of what he said. Kirkwood said after the conference:

ing that the absence of any physical injury supported that Harris' baby died from natural causes. Based on the new evidence in Dr. Squier's report that the jury had not had available, England's Court of Appeals quashed Harris' conviction on

"Now that we know we got it wrong, we need to get it right. Instead, many prominent advocates of shaken baby theory have resorted to attacking researchers such as Dr. Squier, who is one of the world's leading experts on the infant brain. Families and children deserve better. To get it right, we need open, honest debate, not cover-ups or attacks on those identifying the problems and seeking solutions."

After Dr. Squier learned about the comments made at the Atlanta conference she said in an interview with the BBC:

"And it appears to me that there has been an attempt to remove from the courts all of those people who are willing to challenge the mainstream hypothesis, even if those opinions are sincerely held and are based on a lot of day-to-day experience and are based on a thorough grounding in the current evidence available in the scientific literature."

The 63-year-old Dr. Squier hasn't wilted under the pressure, instead she has become even more vocal in expressing her opinion that the long held view of identifying SBS is wrong and has resulted in the prosecution and conviction of large numbers of innocent adults wrongly accused of abusing a baby who actually died from natural causes. During an April 2011 interview with the London *Daily Mail* Dr. Squier said:

"I now believe that half or even more of those who have been brought to trial in the past for SBS have been wrongly convicted. It is a frightening thought.

...
I am determined not to be silenced and if I can't speak out in court, I shall do it in scientific papers. It cannot be fair to gag one body of opinion. The whole thing is a nightmare, not least because instead of researching vital things about babies, I have to spend time trying to clear my name.

The experience has made me feel like a whistleblower — on the one hand challenging all those who prefer the comfort of old mainstream opinion, and on the other struggling for my professional life."

Dr. Squier knows first-hand the tragic impact that erroneous expert testimony can have on the life of an innocent person. Although she was instrumental in the overturning of Lorraine Harris' conviction that her testimony had helped secure, she recognizes "it was a hollow victory because her life had been completely devastated." Har-

SBS cont. on page 9

SC Supreme Court Acquits Roger Bostick's Of Murder After 10 Years Imprisonment

Roger Bostick was convicted in 2001 of murdering 69-year-old Sarah Polite in her Pineland, South Carolina home in March 1999. The prosecution also alleged the 46-year-old Bostick set her house on fire with gasoline after the murder, but he wasn't convicted of arson.

Prosecutors alleged his motive was robbery. Polite was the treasurer and secretary of her church and she typically brought money home from the church on Sunday, which she deposited at the church's bank on Monday. She was murdered on a Sunday after church.

Bostick was targeted by police when two days after the murder several items belonging to Polite were found in a burn pile at the home of his mother, who lived near Polite.

Bostick cooperated with the police, providing a DNA sample, and clothing and shoes they asked to inspect. Even though none of Bostick's DNA or fingerprints was linked to the crime, none of the church's money was found in his possession, and he didn't make an incriminating statement, he was charged in March 1999 with Polite's murder.

After the prosecution presented its case during his trial in September 2001, the judge denied Bostick's motion for a directed verdict



Roger Bostick

of not guilty based on the lack of evidence he had any involvement in Polite's murder.

Bostick's third-party culprit defense was that Rudy Polite, the victim's adult son, was her likely murderer. Rudy wasn't seriously investigated even though a witness testified she saw him entering his mother's house shortly before the fire was reported, and that when her body was carried out of the house and placed on the ground, he "looked at his mother, he started to smoke a cigarette and 'didn't express any emotion or feeling.'"

Another witness testified that a few hours before the fire she heard Rudy and his mother arguing and she was so angry that she threw her keys at Rudy.

Testifying in his own defense Bostick told, "the jury he drank at a cookout before the fire and returned to his mother's house to take a nap before the fire engine sirens woke him up."

Bostick made a motion for a directed verdict of not guilty after he finished presenting his evidence, which the judge denied.

The jury convicted Bostick and he was sentenced to 30 years in prison. Bostick told his daughter in the courtroom, "Don't worry, I'll get a appeal, don't worry."

However, Bostick's lawyer did not file a notice of appeal or advise him about filing an appeal. With his direct appeal right waived, in March 2002 Bostick filed a *pro se* petition for post-conviction relief (PCR) that claimed his lawyer was ineffective for failing to either file an appeal or advise him about his appeal rights. After the judge denied his petition in August 2004 and the South Carolina Supreme Court denied *certiorari* in January 2007, Bostick filed a federal *habeas corpus* petition on the ground his lawyer was ineffective for not consulting with him about appealing his conviction. The federal District Court judge summarily denied Bostick's petition as procedurally defaulted. The Fourth Circuit Court of Appeals issued a certificate of appealability.

The appeals court ruled on December 17, 2009 that Bostick's petition wasn't procedurally defaulted, and it further ruled "we find that the performance of Bostick's trial counsel was constitutionally deficient because counsel did not consult with Bostick about an appeal following his conviction. ... We remand this case to the district court

with instructions that it issue the writ of *habeas corpus* and that it order Bostick released from prison unless the state grants him a direct appeal within a reasonable time." (*Roger Bostick v. FNU Stevenson*, No. 08-6331 (4th Cir, 12-17-2009))

The State agreed to allow Bostick a direct appeal. It had taken Bostick seven years of effort against the State of Carolina's intense opposition to even have a chance to have his conviction overturned.

On April 11, 2011 the South Carolina Supreme Court unanimously reversed Bostick's conviction and ordered the circuit court to issue a directed verdict of not guilty, which bars his retrial. (*State v Bostick*, No 26961 (SC Supreme Court, 4-11-2011)) The Court's opinion stated:

"Analyzing the evidence presented by the State in the light most favorable to it, we believe the State's evidence here raised only a suspicion of guilt by Bostick. No direct evidence linked Bostick to the crime scene or the items found in the burn pile. Moreover, there was no testimony tending to establish that Bostick had control over the burn pile. ... In addition, the weapon used to beat Polite in the head was never introduced into evidence. Finally, no evidence was introduced concerning Bostick's knowledge that Polite may have had money in the briefcase or if indeed any money was in the briefcase on that particular Sunday. The evidence presented by the State raised, at most, a mere suspicion that Bostick committed this crime. Under settled principles, the trial court should grant a directed verdict motion when the evidence presented merely raises a suspicion of guilt. Therefore, we find the circuit court erred in failing to direct a verdict in favor of Bostick.

South Carolina's Attorney General has 15 days to file a motion for reconsideration. If it doesn't contest the ruling Bostick, now 58, could be released within days after expiration of the deadline.

The failure of Bostick's lawyer to file a notice of appeal in 2001 compounded the tragicness of his situation of being convicted of a murder without any evidence he committed the crime, because his conviction would have been reversed years ago, and he would have been released after a year or two of wrongful imprisonment and not ten.

Source:

State v Bostick, No 26961 (SC Supreme Court, 4-11-2011)
Roger Bostick v. FNU Stevenson, No. 08-6331 (4th Cir, 12-17-2009)

SBS cont. from page 8

ris wasn't allowed to go to her son Patrick's funeral; a baby she gave birth to as she was starting her sentence was taken away for adoption; and while she was in prison her partner left her and both of her parents died. In addition Harris was denied compensation under England's wrongful conviction compensation scheme.

Sources:

R. v. Lorraine Harris, Raymond Rock, Alan Cherry and Michael Faulder [2005] EWCA Crim 1980
Baby death case mum loses compensation fight, *Yorkshire Post*, July 16, 2008

At least half of all parents tried over shaken baby syndrome have been wrongly convicted, expert warns, *Daily Mail* (London), May 1, 2011

Met accused of 'campaign' against shaken baby witnesses, BBC News, February 8, 2011

"The Whiplash Shaken Infant Syndrome: Manual Shaking by the Extremities With Whiplash-Induced Intracranial and Intraocular Bleedings, Linked With Residual Permanent Brain Damage and Mental Retardation," *Pediatrics*, Vol. 54 No. 4 October 1974, pp. 396-403

Two Men Wrongly Imprisoned For A Total Of 49 Years Settle For \$1.89 Million Compensation

Joseph Eastridge, Joseph "Nick" Sousa, and Michael Diamen were convicted of first-degree murder in the death of Johnnie Battle outside a Washington D.C. bar in 1974. All three were sentenced to serve 20 years to life in federal prison.



Joseph "Nick" Sousa

Sousa and Diamen were paroled in 1995 after more than 19 years imprisonment. Eastridge remained imprisoned.

Centurion Ministries began investigating the men's case in 1989. In 2000 the three men each filed *habeas corpus* petition seeking to vacate their convictions based on the trial court's limitations on their right to introduce evidence; the prosecutor's use of race-based peremptory challenges; the failure of the prosecution to release exculpatory evidence; and ineffective assistance of counsel.

While his *habeas* petition was pending Diamen was arrested in August 2002, on a charge of possession of a firearm by a felon. In December 2002 he had a fatal heart attack in prison.

In 2004 an evidentiary ruling was held during which a number of witnesses testified favorably for Eastridge, Sousa, and Diamen.

Eastridge was paroled in early 2005 after more than 29 years imprisonment.

Centurion Ministries continued investigating the case, and in April 2005 Eastridge and Sousa filed a supplemental *habeas* petition based on newly discovered exculpatory evidence the prosecution failed to disclose prior to trial.

In May 2005 U.S. District Judge Rosemary M. Collyer granted the *habeas* petition as to Eastridge and Sousa. She ruled that (1) "[b]ased on the full record, no reasonable juror would now find Petitioners guilty beyond a reasonable doubt" and (2) in addition to "their 'actual innocence' of the crime charged," the petitioners "c[ould] prove violations of their constitutional rights at trial." (*Eastridge v. United States*, 372 F.Supp.2d 26, 29 (D.D.C.2005)) (Eastridge I).

Judge Collyer did not grant *habeas* relief to Diamen, ruling that "[p]resumably, the same analysis would apply" but he had died during the proceeding and, "[a]s a result, the habeas record and briefs do not focus on him." (*Eastridge I*, 372 F.Supp.2d at 29 n. 3.)

Eastridge and Sousa's convictions were vacated on July 15, 2005.

The 16 years Centurion Ministries worked on the case before Eastridge and Sousa were exonerated was longer than they have worked on any other case.

Federal law provides for payment of \$50,000 in damages for each year a person was incarcerated after an unjust conviction. The payment increases to \$100,000 per year if the person was sentenced to death.

In April 2008, Eastridge, Sousa, and Diamen's estate filed a motion for a "certificate of innocence" that is necessary to file a compensation claim in the Court of Federal Claims for unjust conviction and imprisonment pursuant to 28 U.S.C. §1495. In March 2009 Judge Collyer concluded the petition should be granted as to Eastridge and Sousa because they had "demonstrated that they were actually innocent of the crimes for which they were convicted," (*Eastridge v. United States*, 602 F.Supp.2d 66, 73 (D.D.C.2009) (Eastridge II).) However, Judge Collyer refused to issue a "certificate of innocence" for Diamen because his conviction had not been vacated.



Michael Diamen (Centurion Ministries)

Diamen's estate appealed the denial of a "certificate of innocence." On May 18, 2010 the federal appeals court affirmed the denial, agreeing with Judge Collyer that §1495 requires that a conviction be set aside before a person is eligible for filing a damages claim. The appeals court further ruled that the statute does not provide for the filing of a claim by a deceased person's estate — even if his or her conviction had been set aside.

Eastridge and Sousa filed claims in January 2010, with Eastridge seeking almost \$1.5 million for more than 29 years of wrongful imprisonment and Sousa seeking almost \$1 million for nearly 20 years of wrongful imprisonment. Although Judge Collyer had declared the men were "actually innocent," the U.S. Department of Justice vigorously



Joseph Eastridge (Centurion Ministries)

opposed the claims. On April 6, 2011 it was announced that Eastridge agreed to settle his claim for \$1.14 million and Sousa agreed to \$750,000. It had been 35 years since their convictions in 1976.

Sources:

Ruling Clears Long-Jailed Men in 1970s D.C. Slaying, *The Washington Post*, May 28, 2005.

Two Men Wrongfully Convicted in D.C. Murder Settle Suit, *The Blog of Legal Times*, April 06, 2011.

Eastridge v. United States, 372 F.Supp.2d 26, 29 (D.D.C.2005))

Eastridge v. United States, 602 F.Supp.2d 66, 73 (D.D.C.2009)

Diamen v. United States, No. 09-5177, (DC Appeals, May 18, 2010)

International Justice Conference In Perth, Western Australia

The inaugural International Justice Conference will be held in Perth, Western Australia from March 8 to 11, 2012 at the Burswood Entertainment Complex. The conference is sponsored by Justice WA, a Perth based organization dedicated to helping free victims of injustice.

The conference is bringing together a compelling line-up of activists, forensic experts, lawyers, and victims of gross injustices in a bid to highlight the shortcomings of the justice system in Australia, New Zealand, Canada, England, the U.S. and other countries, and in doing so, help contribute to the freeing of a greater number of persons victimized by a miscarriage of justice.

The conference website has details about the conference and the speakers, which include Rubin "Hurricane" Carter. You can also register or request additional information from the website at, www.internationaljusticeconference.com

The conference spokesperson is Estelle Blackburn. Ms. Blackburn's award winning book *Broken Lives* was based on six years of research into the cases of John Button and Darryl Beamish, and it was instrumental in clearing them of heinous crimes that were actually committed by serial killer Eric Edgar Cooke.



Rubin "Hurricane" Carter with Denzel Washington who was nominated for the Best Actor Oscar for his portrayal of Carter in "The Hurricane" (1999)

Appeals Court Acquits Four Men Framed For Murder By Prosecutor And Pathologist

Introduction

The win at all costs mentality infects prosecutors around the world, even in the South Pacific country of Fiji. English is a primary language in Fiji, a former British colony whose adversarial legal system like that in the United States, has its roots in British Common Law. In overturning the murder convictions of four innocent men in the following case, the Fiji Court of Appeal candidly described how the prosecutor and forensic pathologist colluded to frame the men with fake evidence.

Tahir Ali, Zafir Ali, Taimur Ali, and Chandlesh Ganesh were convicted on July 7, 2010 of jointly murdering 26-year-old James Shankaran Nair in Nausori, Fiji on January 4, 2010. Nausori is about 15 miles from Fiji's capital of Suva.

On the night of Nair's death the four men, and a fifth person, 16-year-old Zakariyah Ali, were riding in a Ford Ranger crew-cab pick-up searching at about 2:30 am for the person who about 30 minutes earlier burglarized Tahir's house and stole items belonging to his daughter visiting from the U.S. The burglary was immediately reported to the police, who were at the house when the men left to search for a person on foot who could be the burglar. Tahir's daughter traveled to Fiji for her sister's wedding, and the celebration at the family's compound was on January 1 and 2. The celebration was open to neighbors and one of those who attended was Nair.

The men saw Nair walking on the side of the road and they stopped and talked with him. Citizen arrests are legal in Fiji, so the men told Nair they were going to take him to the nearby police station for questioning. Nair agreed to go willingly, and since there was no room in the pick-up's cab, he alone got into the pick-up bed.

Shortly after one of the men noticed Nair was no longer in the truck's bed they came to an intersection where they saw a police car. The men told the police officers about Nair and the area where they thought he must have jumped out of the pick-up as it was moving. The police searched in the dark but they didn't see Nair.

After daylight a driver saw Nair's body lying alongside the road in a concrete culvert. The police arrested the five men that morning about 8:30 am.

The five men gave similar statements to the police describing the events of the previous evening.

The pathologist's autopsy report dated February 24, 2010 stated that Nair died as a result of a severed aorta, which resulted in his chest cavity filling with more than 3/4 of a gallon of blood. That was consistent with him jumping off the back of the moving pick-up in the dark and landing awkwardly in the concrete culvert instead of the soft earth around it.

Although the police investigation found no wrongdoing by any of the men, all except for 16-year-old Zakariyah were charged with manslaughter based on the prosecutors' assertion they were negligent for insisting that Nair ride in the back of the pick-up from which he apparently jumped.

Five days before the trial began on June 10, 2010 the prosecutor, Ms. Jojana Cokanasiga, filed an amended information charging the defendants with murder. Then the day before the trial started the prosecutor signed a stipulation: "16. It is agreed that the cause of death ... was ruptured aorta as a consequence of a motor vehicle accident".

Zakariyah was the prosecution's first witness. He wasn't granted immunity and testified about the same information that was in his police statement. Zakariyah's testimony established that Nair alone got into the back of the pick-up after the defendants stopped and talked with him as he walked along the road, but it did not implicate them in the commission of any crime.

There were several trial recesses, and then on June 24 the pathologist who conducted Nair's autopsy testified that Nair died from being struck by a blunt object, and not a burst aorta as he described in the autopsy report. To support the pathologist's testimony the prosecutor introduced into evidence the pathologist's second Post Mortem Report dated June 21 that revised Nair's cause of death to being beaten to death with blows to his head from one or more blunt objects. The pathologist's testimony was the first that the defendants -- and the judge -- knew they were being prosecuted based on the pathologist's revised opinion that Nair was beaten to death.

The pathologist's testimony and second

Post-Mortem Report was the only evidence supporting the prosecution's amended charge of murder.



Suva City, Fiji

The defendant's defense was a restatement of their statements when questioned by the police: They saw Nair by the road, they stopped and talked with him, he alone got in the pickup's bed so they could take him to the police station, and he disappeared while the truck was moving.

The four defendants were convicted of murder based on the pathologist's testimony and the prosecutor's argument that one or more of the defendants beat Nair to death for which they jointly shared responsibility. Although none of the defendants had a criminal record, they were sentenced on July 9, 2010 to life in prison with a minimum of serving 11 years before they could apply for parole.

The defendant's appeal explained the irregularities between the pathologist's original autopsy report and his second Post Mortem Report, the irregularity that the prosecutor's amended charge of murder was unsupported until the pathologist's testimony and second Report was introduced into evidence after the trial had started, and that the evidence didn't support a conviction of either murder or the original manslaughter charge.

On April 1, 2011 the Fiji Court of Appeal unanimously overturned the defendant's murder convictions based on insufficient evidence a crime had occurred because credible evidence established Nair alone was responsible for his death. Justice William Marshall's lengthy opinion in *Ali v State* [2011] FJCA 28; AAU0041.2010 (1 April 2011) states in part:

60. In these circumstances James Nair intended to take the serious risk involved in jumping [from the moving truck]. The five were behaving lawfully and their agreed purpose was wholly within the law [to transport Nair to the police station]. ... Therefore the five did not act recklessly causing the death of James Nair.

....
67. The assigned prosecutor must have realised that there was no evidence on the required elements for manslaughter. But instead of proceeding the matter to a transparent and inevitable acquittal, she decided to approach the pathologist Dr

Fiji cont. on page 11

Fiji cont. from page 10

Ponnu Swamy Goundar. ... That she knew before the trial that Dr Goundar was prepared to wholly change his evidence on cause of death, and rule out that James Nair jumped from a moving vehicle leading to his death, and make it his evidence that James Nair had been beaten to death with blows to the head from one or more blunt instruments is quite clear.

100. ... Zakariyah's prosecution evidence was that the vehicle was in motion and travelling at 50-65 m.p.h. when James Nair jumped.

109. There is no evidence at all that the Ford Ranger became stationary at any point in Bau Road. If it was in motion then the five remained in the cab and could not have gone to the culvert where according to Dr Ponnu Swamy Goundar hypothesis one or more of them bashed James Nair on the head with a blunt object.

110. ... There is no evidence of any kind against any of the four accused or Zakariyah for that matter that any one of them was involved in a joint enterprise to murder James Nair.

118. In this case we are looking at a system in this case that has broken down and has no integrity. There is an obvious connection between the unconscionable behaviour of the prosecutor discussed

above and the claim that the results of the autopsy were wrong. ... the prosecutor goes to see the pathologist. The pathologist then changes his factual evidence of the findings on the autopsy in very material matters. These new matters are used to support an amended charge of murder rather than manslaughter.

121. Then as the prosecution case is about to end, the prosecutor mounts an ambush. The extent of the ambush is still concealed because even at this late stage the prosecutor does not serve a statement of evidence from the pathologist, who only reveals the facts allegedly justifying his change of evidence as true once he is in the witness box before the assessors.

126. I conclude that the new evidence of Dr Ponnu Swamy Goundar was and is completely lacking in credibility and weight.

143. But in any event the prosecutor in this case intended to mislead the Court and the defence.

145. ... [The four defendant's] arrest and taking of James Nair for interrogation were lawful and the evidence is that James Nair decided at grave risk to himself to jump to escape police interrogation and other consequences ... The four accused



must have been acquitted and released and should have succeeded on costs given the prosecutor's behaviour. Instead there was a miscarriage of justice with four convictions for murder, and sentences of

life imprisonment with a recommendation of serving 11 years before being eligible to be considered for parole. By the time this judgment is delivered the four accused will have spent nearly 9 months in jail as convicted murderers. The damage to their reputation as gainfully employed persons of good character in their community and in the wider community is very substantial.

The men were released after 9 months of imprisonment for a non-existent murder. Sixty-year-old Tahir Ali told *The Fiji Times* several days after his release: "I am still trying to come to terms with whatever happened and I have to start my shattered life from scratch after whatever happened. The wrongful conviction and sentencing has put my life behind quite a bit, I have lost out financially and it will not be easy for things to bounce back."

Source:

Four face kill charges, *The Fiji Times*, January 7, 2010. Life in jail for 4 murderers, *The Fiji Times*, July 9, 2010 *Ali v State* [2011] FJCA 28; AAU0041.2010 (1 April 2011)

'I've lost out', *The Fiji Times*, April 10, 2011



Contempt Conviction For Blowing Bubble In Court Tossed On Appeal

A courtroom might not be the wisest place to chew gum and blow a bubble, since a judge might overreact as Mirza Zukanovic found out the hard way.

In June 2010 the 20-year-old Zukanovic was chewing gum while sitting in a magistrate's courtroom in Moorabbin -- which is about 10 miles south of Melbourne, Australia. Magistrate Rodney Crisp saw him blow a bubble and became so angry that he immediately accused Zukanovic of committing a deliberate and gross contempt in the face of the court. The magistrate then summarily convicted Zukanovic of contempt and sentenced him to 30 days in jail. Zukanovic was taken to jail from the courtroom to begin serving his sentence.

After Zukanovic's lawyer was able to have



Mirza Zukanovic (AAP -JulianSmith)

him released on bail after he was jailed for 12 hours, he filed an appeal of the contempt conviction. Zukanovic's lawyer argued in the appeal, "I think the magistrate, in the vernacular, lost it," by charging and finding Zukanovic guilty beyond a reasonable doubt without giving him the chance to consult with a lawyer, enter a plea, or present evidence in his defense.

Supreme Court Justice Jack Forrest announced the Court's decision on April 20, 2011 that Zukanovic had been denied "procedural fairness" when the magistrate summarily charged, convicted and sentenced him of contempt. Justice Forrest said, "It is fundamental to the administration of justice that where a court's authority is challenged the judicial officer can take steps, including the laying of a charge of contempt to preserve the authority of the court, firmness must be accompanied by

fairness." Since Zukanovic had been denied due process by not having the opportunity to seek legal advice on the charge, to plead guilty or not guilty, or call evidence in his own defense, his conviction was quashed.

Sources:

Court bubble blower Mirza Zukanovic case quashed, *Herald Sun* (Melbourne, AUS), April 20, 2011



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

Oswind David Released After 4-1/2 Years Imprisonment For A Non- Existent Assault Charge

Oswind David was indicted in March 2006 on two counts of first-degree assault with a box cutter and several other charges that resulted from an altercation

with family members in 2005 outside a relatives' Brooklyn home in New York City. A judge later dismissed the first-degree assault charges based on insufficiency of the evidence.

However, the Brooklyn Assistant District Attorney who presented the charges to the grand jury proceeded with David's prosecution for the dismissed first-degree assault charges without encountering any opposition by David's public defender or the trial

judge — who was different than the judge who had dismissed the charges. In December 2006 a jury acquitted David of all the charges except for first-degree assault charges. He was sentenced to 18 years in prison.



Oswind David on May 25, 2011 after his release from prison (WABC-TV, NYC)

After David's direct appeal was denied, lawyer Rita Dave agreed to handle his post-conviction appeal *pro bono*. She was unaware that David had been convicted of first-degree assault charges that had been dismissed until the spring of 2011 when she read a brief by the Brooklyn DA's Office that noted the "mistake" on page 19. Dave investigated and discovered that David had indeed been prosecuted and convicted for non-existent first-degree assault charges.

Dave filed a motion to set aside David's convictions and for his immediate release on bail. The Brooklyn DA's Office opposed the motion on the basis that first-degree assault automatically includes second-degree assault, and those charges weren't dismissed. However, the DA's argument ignored that the jury acquitted David of second-degree assault.

When interviewed by WABC-TV, Dave said about the case, "It was just a bunch of errors that were compounded. This was just a complete utter mess-up, on every level."

A New York Appellate judge agreed that you can't keep someone in prison on charges that don't legally exist, and on May 24, 2011 ordered David's release on a \$75,000 bond. Relatives put up the bond money and David, now 31, was released from Sing Sing prison the next day after 4-1/2 years imprisonment.

The Brooklyn DA's Office announced it will appeal the order releasing David and oppose setting aside his convictions.

Oswind's brother Osbert is a Marine just back from two overseas tours. He helped post the \$75,000 bond and he said his family is ready to fight the DA's legal efforts to send his brother back to prison, "If they DA wants to fight, let's fight."

Sources:
Injustice is undone, *New York Post*, May 25, 2011,
Investigation: Charged dismissed, but still in jail,
WABC-TV, New York, May 24, 2011

Raymond Towler Awarded \$2.59 Million For 28 Years Wrongful Imprisonment

Raymond Towler was tried in September 1981 for the May 1981 rape, assault, and kidnapping of an 11-year-old girl in a Cleveland, Ohio park, and the assault and kidnapping of her 12-year-old male cousin who was forced to lie on the ground at gunpoint while the rape took place.

A composite sketch was made of the perpetrator from the victim's description.

About three weeks after the crime Towler was stopped for running a red light near the park where the crime occurred. The park ranger who stopped Towler noticed he resembled the composite sketch of the young victim's assailant, so Towler was arrested and his photo was taken at the police station.

Several days later both victim's identified Towler from a photo array, and he was also identified by two other people who had been in the park and saw the perpetrator. Towler was charged based on those identifications.

There was no physical evidence tying him to the crime, so during his September 1981 trial the prosecution's case was based on the victim's testimony he was their assailant and the testimony by the two witnesses he was the man they saw in the park that day.

Towler testified he was home at the time the assault took place, and his alibi was corroborated by several witnesses.

The jury believed the victims and the two other witnesses. He was convicted of all the charges.

The 24-year-old Towler protested his innocence when he was sentenced to life in prison for the crimes against the girl, and an additional 12 to 40 years for his assault and



Raymond Towler on May 5, 2010 when was released. (Gus Chan, Cleveland Plain Dealer)

kidnapping of her cousin.

In 2004 the Ohio Innocence Project accepted Towler's case and filed an application for DNA testing under Ohio's new law authorizing post-conviction DNA testing. The testing was granted and some clothing worn by the two victims was sent to a lab. No semen was detected so there was nothing to test for the presence of DNA.

Towler's case was revived in 2008 after the *Columbus Dispatch* published a series of article that featured the cases of 30 prisoners whose innocence could possibly be proven by DNA testing. The Ohio Innocence Project subsequently filed a new request for DNA testing by more sophisticated techniques than were available in 2004. The testing was eventually approved by a judge, and on May 3, 2010 it was learned that Towler was excluded as the source of the perpetrator's DNA recovered from the girl's underwear. Two days later Towler's convictions were overturned, the charges were dismissed with prejudice, and his convictions were ordered expunged from his record. The 52-year-old Towler walked out of the courtroom as a free man after almost 29 years of incarceration from the time of his arrest in June 1981.

Towler filed a claim under Ohio's wrongful conviction compensation law, and on April 25, 2011 it was announced that he was awarded \$2.59 million by the State Controlling Board. His attorneys were awarded \$78,000 in legal fees.

Sources:
Raymond Towler, freed after 29 years in prison, wants a new life and a good pizza, *Cleveland Plain Dealer*, May 5, 2010
Ohioan gets \$2.59 million for serving 30 years in wrongful conviction, *The Columbus Dispatch*, April 26, 2011

Amanda Knox And Raffaele Sollecito Acquitted Of Murder And Sexual Assault By Appeals Court

By Hans Sherrer

Amanda Knox and her co-defendant and former boyfriend Raffaele Sollecito were acquitted by an appellate court on October 3, 2011 of the November 2007 murder and sexual assault of Meredith Kercher in Perugia, Italy. They were released 90 minutes later. After the two were convicted in December 2009 she was sentenced to 26 years in prison and Sollecito to 25 years.

Knox was a 20-year-old student at the University of Washington when in September 2007 she traveled from her hometown of Seattle, Washington to Italy where she planned to spend her junior year studying at the University for Foreigners in Perugia.

She and three other young women shared a house in Perugia. One of her housemates was Meredith Kercher, 21, from England.

Kercher's body that had been beaten and stabbed multiple times was found in her blood-soaked bedroom on November 2, 2007. Knox called the police after she returned home from spending the night at Sollecito's apartment when she saw blood in the bathroom and Kercher's bedroom door was locked. Over the next four days she was interrogated without a lawyer present for a total of 50 hours. During a marathon interrogation session she made statement that she was in the house with Sollecito when Kercher was killed by Patrick Lumumba, the owner of a local bar where Knox worked. Based on that statement Knox, Sollecito, and Lumumba were arrested on suspicion of murdering Kercher.

Knox was an attractive young woman, and after her arrest the media in Italy and England dubbed her "Foxy Knoxy," and the case became an international sensation that was reported in newspapers, magazine cover stories, and innumerable television news programs in the U.S., England, Italy and other countries. The intense media coverage made Knox the most recognized person in Italy, and probably one of the most recognizable non-public figures in the world.

Two weeks after Lumumba's arrest he was released because he had the iron-clad alibi of being at his bar when Kercher was murdered. That added fuel to the media bonfire since the only evidence against him was Knox's statement.

Forensic testing of the evidence in Kercher's room only identified the DNA and fingerprints of one man -- 20-year-old Rudy Guede. The DNA evidence placing Guede at the scene included his semen recovered from Kercher. An arrest warrant was issued and he was tracked down in Germany where he had fled immediately after Kercher's murder. He was extradited to Italy. When questioned Guede admitted having sex with Kercher which he said was consensual and that he was present when she was murdered by a man he didn't know who entered through her bedroom window. He didn't identify Knox and Sollecito as being present. Guede was indicted for the murder and sexual assault of Kercher.

In October 2008 Guede was convicted of murdering and sexually assaulting Kercher. He was sentenced to 30 years in prison.

Days after Guede's convictions Knox and Sollecito were indicted for the murder and sexual assault of Kercher. Knox was also charged with *calunnia* (misleading and obstructing the police) for falsely implicating Lumumba in Kercher's murder.

Their trial began on January 16, 2009. Knox testified in her own defense on June 12, 2009 that the police threatened her with 30 years in prison and beat her into making false statements, that included naming Lumumba.

The prosecution's case largely hinged on forensic testimony that suggested Sollecito's DNA was recovered from Kercher's bra strap, and Knox's DNA was found on the handle of a knife recovered from Sollecito's apartment that had Kercher's DNA on the blade, although no blood was found on the knife. None of Knox or Sollecito's DNA was found in Kercher's bedroom, none of the shoeprints imprinted in blood in her bedroom were made by either of them, and none of Kercher's blood was found on any of Knox or Sollecito's clothing or shoes, or in his apartment. The judge denied the request of Knox and Sollecito's lawyers for an independent review of the DNA evidence.



Meredith Kercher

Based on the skimpy forensic evidence, lead prosecutor Giuliano Mignini wove a tale unsupported by any evidence that Kercher's murder was the result of a sex game gone wrong. One of his props unsupported by evidence was an animated cartoon shown to the jury that depicted Knox stabbing Kercher as Sollecito and Guede held her on her knees.

They were both convicted of all charges on December 4, 2009. Knox was sentenced to 26 years in prison and Sollecito to 25 years. Together they were ordered to pay 5 million euros (\$7.4 million) to Kercher's family. In addition, Knox was ordered to pay 40,000 euros (\$60,000) to Lumumba.

On appeal Guede's conviction was upheld on December 22, 2009, but his sentence was reduced to 16 years because he expressed remorse for his role in Kercher's murder.

Most observers expected Knox and Sollecito to be acquitted, so interest dramatically intensified in their case after their convictions. Instantly their case became an international cause célèbre of two apparently innocent people wrongly convicted of a horrible crime. A Lifetime movie was produced, at least 17 books were written about the case (see the list at the end of this article), and numerous websites and blogs in different countries were dedicated to analyzing the evidence or reporting about the latest developments. A key website with detailed information was Injustice In Perugia (www.injusticeinperugia.org) that had analyses of the case by former FBI special agent Steve Moore, Forensic Engineer Ron Hendry, Mark C. Waterbury, Ph.D., and Professor Chris Halkides. Another key website was Friends Of Amanda (www.friendsofamanda.org).



Raffaele Sollecito

On November 8, 2010 Knox was charged with slander based on her trial testimony accusing the police of beating her into incriminating statements out of her.

Italy's appeal system is different than the United States. The direct appeal of a conviction involves a retrial by a jury of two judges and six lay people, and the jury can consider new evidence the original jury didn't have available.

Knox and Sollecito's appeal trial began in

Knox cont. on p. 15

Knox cont. from p. 14

Perugia on November 24, 2010. Their lawyers requested that the DNA evidence be reviewed by independent examiners appointed by the appeals court. Their request was granted. The appeal had a number of adjournments, and on June 29, 2011 the independent forensic report was submitted to the court and entered through testimony. The report found the crime scene was compromised and much of the DNA evidence was exposed to contamination. Among other things the report detailed that Kercher's DNA wasn't on the knife blade, but it was likely a crumb of rye bread. The report also detailed that the bra clasp wasn't collected until 47 days after Kercher's murder and that it was moved around the room repeatedly until it ended up in a pile of garbage was too contaminated to have any reliable evidentiary value.

When Guede testified he didn't say that Knox or Sollecito were involved in the murder, but neither did he say they weren't.

With not even the thin forensic evidence relied on during the 2009 trial to support their case, during closing arguments the prosecution pulled out all the stops in trying to have Knox's conviction upheld and her sentence increased to life in prison based on smearing her character. The prosecution's descriptions of her bordered on absurd: "Amanda is one thing and another -- that is, both Saint Maria Goretti and a satanic, diabolic she-devil given to borderline behavior." She is a "witch of deception" whose life of easy sex, drugs and alcohol is hidden behind her fresh-faced "soap-and-water" looks. She was described as having the "mask of an impostor," and "We're not talking about the girl you're seeing today, who has been through four years of prison."

Another difference in Italy's legal system is the defense gets the last word. On the morning of October 3, 2011 after her lawyers concluded their arguments, Knox made her own impassioned plea to the judges. It began with:

It was said many times that I'm a different person from the way I look. And that people cannot figure out who I am. I'm the same person I was four years ago. I've always been the same.

The only difference is what I suffered in four years. I lost a friend in the most brutal inexplicable way. My trust, my full trust in the police has been betrayed. I had to face absolutely unjust charges, accusations and I'm paying with my life

for something that I did not commit.

And ended with:

Maddy was killed, was murdered and I always wanted justice for her. I'm not escaping truth. I never escaped. I'm not fleeing from justice. I insist on the truth. I insist after four hopeless years. My innocence, our innocence is true. It deserves to be defended and acknowledged.

I want to go home. I want to go back to my life. I don't want to be punished. I don't want my future to be taken away from me for something I didn't do. Because I am innocent. Just like he is innocent. We deserve freedom. We didn't do anything not to deserve freedom.

I have all the respect for this court, for the care shown during our trial. Thank you.

After 11 hours of deliberations the jury announced it had arrived at its verdict. On October 3 at about 9:30 p.m. in Perugia the chief judge announced that Knox's conviction of obstruction for falsely implicating Lumumba was upheld. She was sentenced to three years in prison and to pay him 22,000 euros (about \$29,000) restitution and his legal fees. The judge then announced the defendants were acquitted of their other convicted crimes and ordered their immediate release. Since Knox had been imprisoned for almost four years she already served her three year sentence for obstruction.

She returned to Seattle on October 4.

The acquittal of Knox and Sollecito was reported on the front pages of newspapers in the U.S., Canada, England, Italy, throughout Europe, and in Australia and other countries. For all intents and purposes their case has concluded. Although another difference in Italy's legal system is the prosecution can appeal their acquittal to Italy's Supreme Court, it would be a suicidal bet to place money on the high court reinstating Knox and Sollecito's convictions considering there is no credible evidence they had any involvement in Kercher's murder.

It can be said without any reservation that the case of Knox and Sollecito received more media attention than any other wrongful conviction case in modern history. That publicity is important because their convictions involved many of the classic elements contributing to a wrongful conviction whether it occurs in the U.S., England, Australia, China or anywhere else. Among those elements is there was an inadequate police investigation

that bordered on being shoddy. There was an intense and prolonged police interrogation of a suspect without a lawyer present that resulted in a false incriminating statement. The prosecutors decided to charge the suspects in spite of incomplete or conflicting evidence of their guilt. The suspect's convictions were largely based on unreliable forensic testimony. A key prosecution witness testified differently than what he or she had previously stated, and afterwards he received a significant sentence reduction. The trial judge allowed the prosecution to rely on character assassination and innuendo to make-up for the lack of incriminating evidence.



Amanda Knox at the airport in Rome hours after her release from prison on October 4, 2011. (Reuters)

The lack of credible evidence gave the aura that the prosecution was engaged in a quasi-witch hunt. Knox and Sollecito's ultimate exoneration was only possible because after their convictions people volunteered their time, energy and money to organize the effort necessary to enlist the aid of experts to provide their expertise *pro bono* to analysis evidence that either outright proved their innocence or cast extreme doubt on their guilt.

One of the side issues of the case is that while it was ongoing the lead prosecutor Mignini was convicted in January 2010 of abuse of office for his conduct as lead prosecutor in the infamous Monster of Florence case that involved a serial killer who has never been identified. Mignini was sentenced to 14 months in prison, but he was allowed to remain free pending appeal, and he was also allowed to continue on as lead prosecutor in Knox's case.

Perugia was once home to the hunting and burning of witches, and it was only through years of effort by many people that Knox and Sollecito were rescued from the bonfire.

The following are 18 books published about Meredith Kercher's murder case published after Knox and Sollecito were convicted in December 2009.

- The Fatal Gift of Beauty: The Trials of Amanda Knox, By Nina Burleigh (2011)
- Murder in Italy: The Shocking Slaying of a British Student, the Accused American Girl, and an International Scandal, by Candace Dempsey (2010)

Knox cont. on p. 16

Knox cont. from p. 15

- The Monster of Perugia: The Framing of Amanda Knox, by Mark Waterbury (2011)
- The Amanda Knox Story: A Murder in Perugia, by Kimberly Brown and Vook (2011)
- Injustice in Perugia: a Book Detailing the Wrongful Conviction of Amanda Knox and Raffaele Sollecito, by Bruce Fisher (2011)
- Take me with you: Talks with Amanda Knox in prison, by Rocco Girlanda (2010)
- Walking with Amanda, by Florisbela Inocencio de Jesus (2010)
- The Study Abroad Murder: Trial of the Century, by Will Savive (2011)
- Amanda Knox And The Perugia Murder, by Giacomo Brunoro, Jacopo Pezzan, and Yacine May (2011)
- University of Strangers, by Bob Pfeifer (2011)
- Darkness Descending: The Murder of Meredith Kercher, by Graham Johnson (2010)
- Angel Face: The True Story of Student Killer Amanda Knox, by Barbie Latza Nadeau (2010)
- The Murder of Meredith Kercher, by Gary C. King (2010)
- True Crime: The Amanda Knox Trial and the Murder of Meredith Kercher, by Elizabeth J. Hull (2011)
- Amanda Knox and the Perugia Murder: Italian Crimes, by Jacopo Pezzan, Giacomo Brunoro, Yacine May, and Max Dupre' (2011)
- Amanda Knox: A Verdict Overturned, by Luccius Yarminkus (2011)
- Death in Perugia: The definitive account of the killing of British student Meredith Kercher, by John Follain (2010)
- Finding Justice in Perugia: a follow-up to Injustice in Perugia: a book detailing the wrongful conviction of Amanda Knox and Raffaele Sollecito, by Bruce Fisher (2011)

Sources:

Injustice In Perugia website,
www.injusticeinperugia.org
Friends Of Amanda website
www.friendsofamanda.org
Amanda Knox is a "she-devil," Italian court told, *Reuters*, September 26, 2011
Amanda Knox Final Plea: Full Text Transcript, *International Business Times*, October 3, 2011
Amanda Knox Exclusive: Convicted Prosecutor Giuliano Mignini May Return for "Appealing" Courtroom Drama, Citing Loophole, *CBS News*, April 22, 2010

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www.forejustice.org/search_idb.htm

U.S. Sup. Ct. Limits Evidentiary Hearings In Federal Habeas Cases Involving State Prisoners

Evidentiary hearings are only granted in 1 out of 250 federal court *habeas corpus* petitions filed by a state prisoner in a non-capital case, and in about 1 out of 10 capital cases. However, that number will be reduced as a result of the U.S. Supreme Court's ruling on April 4, 2011 in the case of *Cullen, Acting Warden v. Pinholster* (No. 09-1088). The Court ruled that federal District Courts must accept the state court's findings of fact in evaluating a state prisoner's federal *habeas corpus* petition claiming an error under 28 USC §2254(d)(1). Section 2254(d)(1) applies to a claim denied on its merits by the state court. It is irrelevant if evidence can be disclosed during an evidentiary hearing in a federal District Court that proves a petitioner's claim and justifies granting the petition.

Scott Lynn Pinholster was convicted of first-degree murder for causing two deaths during a Tarzana, California home invasion in 1982. The prosecution sought the death penalty and during the sentencing hearing eight witnesses testified about Pinholster's bad character. The only mitigating evidence introduced by Pinholster's lawyers was his mother's testimony about his troubled childhood and that he was "a perfect gentleman at home."

After Pinholster's direct appeal was denied, his post-conviction lawyer investigated his case and discovered significant mitigating evidence. Pinholster's state *habeas* petition included a claim that his trial lawyers were ineffective for failing to investigate his case for mitigating evidence that could have reasonably resulted in the jury recommending a life sentence.

The superior court denied Pinholster's petition without holding an evidentiary hearing and the California Supreme Court affirmed the denial, stating his ineffective assistance of counsel claim "is without merit."

Pinholster filed a timely federal *habeas corpus* petition in April 1997 that included his state claim that his lawyers were ineffective for failing to investigate and introduce mitigating evidence during his sentencing hearing. His petition included evidence the California Supreme Court had not considered in denying his ineffective assistance of counsel claim, so his federal petition was held in abeyance while the California court

considered the new evidence. After the California Supreme Court again denied his petition, Pinholster filed an amended federal petition in November 1997.

The District Court judge granted an evidentiary hearing during which Pinholster introduced the mitigating evidence discovered after his sentencing. After considering that evidence the judge determined the California Supreme Court's decision that Pinholster's trial lawyers were not ineffective "was contrary to, or involved an unreasonable application of, clearly established Federal law" under §2254(d)(1)." The judge granted Pinholster's petition and remanded his case for a new sentencing hearing. The State of California appealed to the Ninth Circuit Court of Appeal, arguing that the District Court was required to only consider the facts that had been available to the California Supreme Court, and not any new evidence introduced during the evidentiary hearing.

In 2008 a 3-judge panel affirmed the District Court's ruling. (*Pinholster v. Ayers*, 525 F. 3d 742 (2008)). The State then sought *en banc* review of the panel's ruling. The Ninth Circuit *en banc* affirmed 8 to 3 the District Court's ruling.

The State filed a writ of *certiorari* with the U.S. Supreme Court, which accepted the case. The Court reversed the Ninth Circuit, ruling that a District Court judge is limited to evaluating a state prisoner's claim in a federal *habeas* petition based on the same evidence that the state court relied on to deny that claim based on its merits. The Court also ruled that the failure of Pinholster's trial counsel to investigate and present mitigating evidence was based on reasonable tactical decisions under the circumstances. Consequently, the Court decided the California Supreme Court had not unreasonably applied clearly established federal law to Pinholster's penalty-phase ineffective-assistance-of-counsel claim. The Court's ruling effectively reinstated Pinholster's death sentence.

The Supreme Court's ruling relied heavily on their rejection of the Ninth Circuit's determination that Pinholster's trial lawyers had a "constitutional duty to investigate," and that it was "*prima facie* ineffective assistance for counsel to 'abandon their investigation of [the] petitioner's background after having acquired only rudimentary knowledge of his history from a narrow set of sources.'"

Sources:

Cullen, Acting Warden v. Pinholster, No. 09-1088 (USSC 4-4-2011)
Court Tosses Death Sentence in Tarzana Double Murder, *Metropolitan News-Enterprise*, December 10, 2009

Torture And Hanging Of Witches Documented In English Puritan's 350-Year-Old Diary

The John Ryland Library at the University of Manchester in Manchester, England has added to its online rare documents collection a 17th century diary of Nehemiah Wallington, an English Puritan. Each page of the diary written 350 years ago was digitally photographed, and those photos are available online. Although the spelling of some words has slightly changed, the diary is remarkably easy to read since Wallington's handwriting is very legible.

Eight pages of the diary describe the treatment of alleged witches in the Essex area northwest of London.

Several pages are devoted to "The Confession of Rebecca West daughter of Anne West of Colchester in Essex." In 1645 Rebecca confessed to not only consorting with other witches, but that she had wed the devil. The techniques used to interrogate suspected witches were very effective. Before Rebecca's interrogation by Witchfinder General Matthew Hopkins began, Wallington writes, "that when she was going to the Grand Inquest with one mother

Miller (indicted for a Witch) she told mother Miller that shee would confesse nothing, if they pulled her to pieces with pincers." Hopkins was notorious for his cruel treatment of women, and Rebecca's resolve was no match for him, because when "the tortures and the flames beganne to cease: whereupon she then confessed all shee ever knew..." (Diary page 179)

Rebecca was shown mercy when her life was spared because she confessed her sins to Hopkins. But 14 other "witches" were hanged, including Anne West who her daughter Rebecca identified as a witch. Wallington writes about a 15th condemned witch who claimed that "the divel (devil) had often told her she should never be hanged and said she beleaved they could not hang her. ... before she came to the Gallows shee dyed it seemes the Devill is truer to some of his servants then some wicked men are to their neighbours." (Diary page 182)

Wallington's diary provides a fascinating first-hand glimpse into what passed for justice in England in the mid-1600's. The account of Rebecca West's interrogation shows that regardless of one's intentions to



Witchfinder General Matthew Hopkins

resist, if the right lever is pushed a person will confess to anything, including being married to the devil and that one's own mother is a witch — and then have to stand by as she is hanged.

To read the diary go to the John Ryland Library website at —

<http://enriqueta.man.ac.uk:8180/luna/servlet> — and enter into the search box, Nehemiah Wallington.

The 14 women executed as witches were:

- Anne West (Rebecca West's mother)
- Mother Miller
- Mrs. Wayt a Ministers wife
- Jane Browne
- Jane Brigs.
- Mother Forman
- Rachel Flower
- Mother Clarke
- Mother Benefield
- Mary Greene
- Frances Jones
- Mother Goodwin
- Mary Foster
- Mary Rhodes

Sources:

Nehemiah Wallington diary, John Ryland Library at the University of Manchester in Manchester, England.

Man's Conviction For Non-Existent Violation Of Federal Law Overturned By Appeals Court

Robert M. Langford was arrested by federal agents in July 2006 for allegedly attending a cockfight near Carnegie, Oklahoma. The cockfight was conducted on land held in trust for the Kiowa Indian tribe, and it is legally considered Indian land.

Langford was criminally charged with being a spectator at a cockfight in violation of the federal Assimilative Crimes Act (18 U.S.C. §13) and the Indian Country Crimes Act (18 U.S.C. §1152). He was convicted by a jury in 2007.

Langford appealed his conviction based on his claim that he couldn't have committed his convicted crime because it only applies to Indians, and he is a non-Indian.

The federal 10th Circuit Court of Appeals issued its ruling on April 11, 2011 in *U.S. v.*

Robert M Langford, No. 10-6070 (10th Cir., 4-11-2011). The Court wrote that an essential element of Langford's convicted crime is his status as either an Indian or a non-Indian. That is because there is no "federal jurisdiction for a victimless crime, perpetrated by a non-Indian in Indian country." The prosecution did not introduce any evidence during Langford's trial establishing he is an Indian and he specifically asserted he is a non-Indian, so the Court ruled, "the answer is clear. There is no jurisdiction."

The government futilely argued that Langford's status as a non-Indian was a "technicality" that should be overlooked in establishing the federal government's jurisdiction to prosecute him.

The appeals court vacated Langford's conviction since the prosecution did not prove the essential element that the federal govern-



Kiowa Chief Big Tree, who was a model for the Indian Head nickel minted in the U.S. from 1913 to 1938.

ment had jurisdiction over his alleged conduct. The Court also ordered the district court to dismiss his charge with prejudice, so he cannot be retried by the federal government.

There were at least 67 other non-Indians convicted of violating the same federal law as Langford for allegedly attending a cockfight on Kiowa land. Most of those defendants pled guilty and were fined \$300 to \$600. The 10th Circuit Court's ruling in Langford's case could result in the vacating of those convictions, since no crime was committed by any of the defendants.

Sources:

USA v. Robert M Langford, No. 10-6070 (10th Cir., 4-11-2011)

Appeals court overturns cockfighting conviction, *Tulsa World*, April 12, 2011

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Donald Wayne Good Settles Wrongful Conviction Lawsuit For \$1 Million

Donald Wayne Good was arrested in June 1983 for a bond forfeiture on a prior DWI charge. While he was in the Dallas County, Texas Jail a woman identified him from a photograph as the man who raped her several weeks earlier in her Irving, Texas home. Good, 23, was charged with aggravated rape, aggravated robbery, and burglary of a habitation. A month later the woman and her 8-year-old daughter who had been home when the attack occurred, identified Good from a line-up.

Good refused to plea bargain and he was tried in 1983. The prosecution's case was based on his identification by the woman and her daughter. There was also expert testimony that the sperm found in the rape kit, on the victim's jumpsuit, and on a blanket came from a Type O secretor, which matched Good's blood type and "one-third of the Caucasian male population." The trial ended in a hung jury.

Good was retried in 1984 with the prosecution relying on the same evidence as the first trial. That trial resulted in his conviction on all charges. He was sentenced to life in prison. A fellow prisoner wrote Good's appeal, and his conviction and sentence were overturned based on prosecutor misconduct. The appeals court ruled Good was denied a fair trial because the prosecutor improperly argued to the jury that they should find him guilty because he did not show enough emotion when the victim testified.

Good was tried for a third time in 1987. Good represented himself but he wanted to be assisted by the "jailhouse lawyer" who wrote his appeal. The judge refused and when Good continued to request the "jailhouse lawyer's" assistance the judge ordered that Good be gagged and handcuffed so he couldn't remove the gag. Under the circumstances it wasn't surprising that Good was convicted, but he was only convicted of the charge of burglary of a habitation with intent to commit rape. He was sentenced to life in prison with the possibility of parole.

His conviction was affirmed on direct appeal and he was paroled in 1993 after being incarcerated for almost 10 years from his June 1983 arrest.



Donald Wayne Good

Good's parole was revoked and his life sentence was reinstated after he was arrested for a minor property crime. In 2002 he was sentenced to serve five years in prison after pleading guilty to the property crime.

After Good's arrest for the parole violation, he filed a handwritten motion for DNA testing of the biological evidence related to the woman's rape in 1983. The Court appointed the Dallas Public Defender's Office to represent Good. The Dallas County DA did not oppose the motion and in August 2003 the court ordered testing of the vaginal swabs from the woman's rape kit.

In April 2004 the test results excluded Good and the woman's husband as a contributor to the sperm on the vaginal swab.

Based on the new evidence Good filed a *habeas corpus* petition for a new trial. His petition was not opposed by the Dallas County DA's Office and his conviction was overturned by a Dallas County judge. The Texas Court of Criminal Appeals vacated his conviction and life sentence on November 17, 2004. In December 2004 Good's indictment was dismissed.

Good remained imprisoned for his property crime conviction until his release in April 2007.

In November 2006, while still imprisoned for his property crime conviction, Good filed a federal civil rights lawsuit (42 U.S.C. §1983) in Dallas against the City of Irving; the Irving Police Department; the Chief of Police for the City of Irving, and Irving police officer Fred Curtis. In March 2007, the district court dismissed the claims against the Irving Police Department and the Chief of Police. In June 2009, the district court also dismissed all claims against the City of Irving and some of the claims against Curtis. The judge did not dismiss Curtis' alleged violations of Good's rights under the Fourth and Fourteenth Amendments when he fabricated the probable cause for Good's arrest by manipulating a photographic lineup in an effort to procure the rape victim's false identification of Good.

Curtis appealed to the Fifth Circuit Court of Appeals that the district court erred by denying his motion for summary judgment

and ruling he wasn't entitled to blanket qualified immunity. Curtis didn't deny that he engineered the victim's false identification of Good, but he argued "that the trial court's subsequent approval of the fabricated lineup absolves him of responsibility for the unfair trial and wrongful conviction it produced." In February 2010 the Fifth Circuit affirmed the district court's ruling that Curtis wasn't entitled to qualified immunity and Good's lawsuit could go to trial. On March 23, 2010 the Fifth Circuit denied Curtis' request for a rehearing. The Court wrote in *Good v Curtis*, No. 09-10341 (5th Cir. 3-23-2010):

"... we conclude that knowing efforts to secure a false identification by fabricating evidence or otherwise unlawfully influencing witnesses constitutes a violation of the due process rights secured by the Fourteenth Amendment. ... Moreover, we find that any reasonable official would know that framing an individual for a crime they did not commit by securing such an identification represents a constitutional violation. Accordingly, the appeal must be dismissed on his Fourteenth Amendment claim.

With respect to the Fourth Amendment, Curtis's efforts to secure Good's arrest notwithstanding the fact that Curtis affirmatively knew he manufactured probable cause constituted a clearly established violation of Good's Fourth Amendment rights at the time of the arrest such that the appeal on this claim must also be dismissed."

Faced with defending Good's lawsuit in front of a jury when Curtis had admitted he fabricated the photographic evidence the victim relied on to identify Good, and that identification was the basis for him being charged with committing the crimes in her home, the Irving City Council agreed on March 24, 2011 to settle Good's lawsuit for \$1 million. \$700,000 will be paid by the city and \$300,000 will be paid by its insurer. Good is now 51-years-old. His settlement amounts to about \$100,000 for each year of his imprisonment for the crime he didn't commit.

Sources:

Good v Curtis, No. 09-10341 (5th Cir. 3-23-2010)

Council approves lawsuit settlement, By Brandon Formby (staff), *Dallas Morning News*, March 25, 2011

U.S. Supreme Court Tosses John Thompson's \$14 Million Jury Award For 14 Years On Louisiana's Death Row

John Thompson spent 14 years on Louisiana's death row for a murder prosecutors in the Orleans Parish District Attorney's Office knew he didn't commit. The U.S. Supreme Court ruled on March 29, 2011 that Thompson cannot sue the DA's office under the federal civil rights law (42 USC 1983) for violating his constitutional rights by concealing evidence of his innocence.

In 1984 Thompson was arrested for a New Orleans murder. While awaiting trial he was charged with a robbery. He was tried in 1985 for the robbery and convicted. It was his first felony conviction. When Thompson was tried for the murder he didn't testify because the prosecution would use his robbery conviction to impeach his testimony. Thompson was convicted of first-degree murder and sentenced to death.

Days before his scheduled execution in 1999 a defense investigator discovered that the prosecutors had concealed a lab report that the robber had a different blood type than Thompson. Based on the new evidence Thompson's execution was stayed. Further investigation discovered evidence of Thompson's innocence of the murder that was concealed by his prosecutors.

Thompson's robbery conviction was overturned and the charges dismissed. In 2002 Thompson's murder conviction was overturned.

Thompson was retried in 2003. After hearing the evidence the prosecution concealed during his first trial, the jury acquitted him after deliberating for 35 minutes. Thompson was released in May 2003 after 18-1/2 years of incarceration.

In July 2003 Thompson filed a federal civil rights lawsuit under 42 U.S.C. §1983 alleging that DA Harry Connick, other officials of the Orleans Parish District Attorney's Office, and the Office itself, had violated his constitutional rights by withholding exculpatory (*Brady*) evidence.

The U.S. District Court judge refused to dismiss the lawsuit, and a jury ruled that Connick and DA's Office had been deliber-

ately indifferent to Thompson's *Brady* rights and to the need for training and supervision to safeguard those rights. The jury awarded Thompson \$14 million — \$1 million for each year he was on death row.



John Thompson during news conference after the U.S. Supreme Court's ruling.

The DA's Office appealed to the 5th Circuit Court of Appeals, which upheld the jury award.

The DA's Office filed a writ of *certiorari* with the U.S. Supreme Court, which agreed to review the case. After hearing arguments in October 2010, the Court issued its 5 to 4 ruling on March 29, 2011 that overturned the jury's award and dismissed Thompson's lawsuit. (*Connick v Thompson*, No 09-571 (USSC 3-29-2011)) In the majority opinion written by Justice Clarence Thomas the Court ruled that the prosecutors' failure to disclose the lab report that Thompson's blood didn't match the robbery victim was insufficient to prove the DA's Office "was deliberately indifferent to the need to train the attorneys under his authority," and thus "as a matter of law" they weren't liable.

Justice Ginsburg excoriated the majority's decision in a sharply worded 10,600 word dissent that she read from the bench after the Court's ruling was announced. She wrote:

John Thompson spent 18 years in prison, 14 of them isolated on death row, before the truth came to light: He was innocent of the charge of attempted armed robbery, and his subsequent trial on a murder charge, by prosecutorial design, was fundamentally unfair.

Throughout the pretrial and trial proceedings against Thompson, the team of four engaged in prosecuting him for armed robbery and murder hid from the defense and the court exculpatory information Thompson requested and had a constitutional right to receive. The prosecutors did so despite multiple opportunities, spanning nearly two decades, to set the record straight. Based on the prosecutors' conduct relating to Thompson's trials, a fact trier could reasonably conclude that inattention to *Brady* was standard operating procedure at the District Attorney's Office.

What happened here, the Court's opinion obscures, was no momentary over-

sight, no single incident of a lone officer's misconduct. Instead, the evidence demonstrated that misperception and disregard of *Brady*'s disclosure requirements were pervasive in Orleans Parish. That evidence, I would hold, established persistent, deliberately indifferent conduct for which the District Attorney's Office bears responsibility under §1983.

The prosecutorial concealment Thompson encountered ... is bound to be repeated unless municipal agencies bear responsibility—made tangible by §1983 liability—for adequately conveying what *Brady* requires and for monitoring staff compliance."

In an article critical of the Court's ruling, Dahlia Lithwick wrote in *Slate.com* that Thomas authored "one of the meanest Supreme Court decisions ever."

Bennett L. Gershman, one of the leading authorities in the United States on prosecutorial misconduct, wrote about the Court's ruling in an article on *Huffington Post*:

Unaccountably, the majority ignored, dismissed, or misstated the massive evidence that the jury heard and accepted that the absence of education and training in Connick's office contributed to a culture of deliberate indifference to the rights of defendants, which produced Thompson's horrific miscarriage of justice.

Moreover, the culture of misconduct in Connick's office was not unfamiliar to the Supreme Court. A few years earlier, in *Kyles v. Whitley*, the Court, in an influential 5-4 decision, vacated a capital murder conviction prosecuted by Connick's office based on egregious prosecutorial misconduct, especially hiding exculpatory evidence that, as in Thompson's case, provided a vivid example of how an innocent man had been railroaded to the death chamber by unscrupulous prosecutors.

Thompson, now 48, has received no compensation for his 18 years of wrongful imprisonment.

Sources:

Connick v Thompson, No 09-571 (USSC 3-29-2011))
"Cruel but Not Unusual," *Slate.com*,
<http://www.slate.com/id/2290036/pagnum/all/#p2>
"Cops Are Stupid, But Prosecutors Are Smart," *Huffington Post*,
<http://www.huffingtonpost.com>

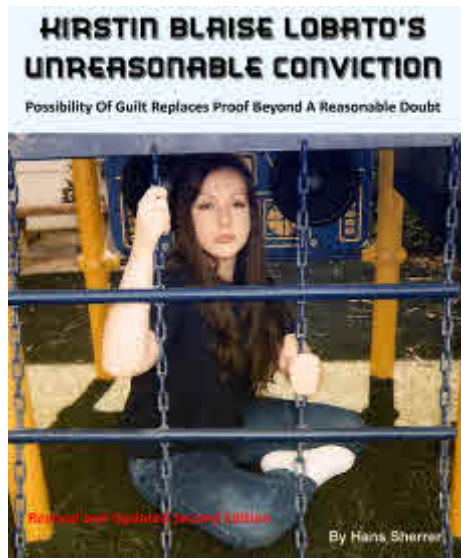
"Kirstin Blaise Lobato's Unreasonable Conviction" Updated Second Edition Now Available!

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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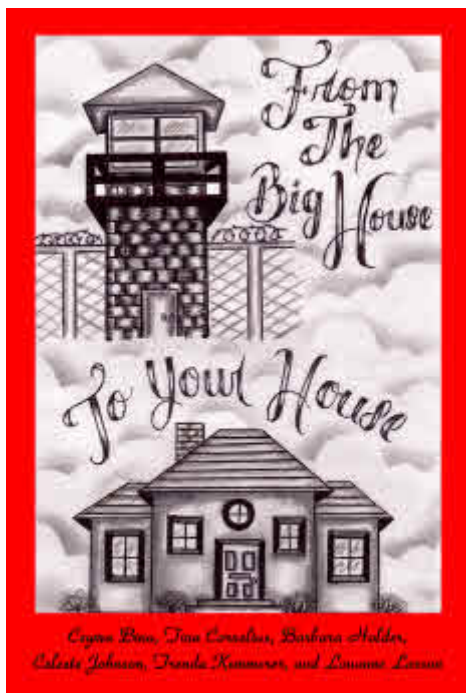
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tence in excess of 50 years. While there isn't much freedom to be found when incarcerated, using the commissary to cook what YOU want offers a wonderful avenue for creativity and enjoyment! They hope these recipes will ignite your taste buds as well as spark your imagination to explore unlimited creations of your own! They encourage you to make substitutions to your individual tastes and/or availability of ingredients. They are confident you will enjoy the liberty found in creating a home-felt comfort whether you are in the Big House, or Your House!

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Victims' Justice Revisited by Thomas Fritze and Randy Garret—\$19.95—468 pages. Tells the story of Roberto Cruz and his two co-defendants' accusation of kidnapping and murdering Jeanine Nabuco in 1981. From the day the crime occurred to their execution in 1995 after three trials, to the trial of seven law officers accused of conspiring to deny Cruz a fair trial and falsely have him executed. #23

Innocent Injustice: Wrongful Conviction Cases by Scott Christianson • \$22 - 208 pgs. The 42 cases collected and graphically documented in *Innocent* reveal the mistakes, abuses and underlying factors that led to miscarriages of justice, including the presumption of guilt, mistaken identification, eyewitness perjury, ineffective assistance of counsel, police misconduct, prosecutorial misconduct and forensics, while also describing how determined prisoners, post-conviction attorneys, advocates and journalists struggled against tremendous odds to win their exonerations. #76

Tulia: Race, Cocaine, and Corruption in a Small Texas Town by Nate Blakeslee • \$15.95 - 464 pgs. Definitive account of the five year travesty of justice in Tulia that resulted in the wrongful conviction of 38 people on trumped up drug charges. Blakeslee is the award-winning reporter for the *Texas Observer* who broke the Tulia story in 2000. #25

Ten Menacead: The Story of the 1981 Irish Hunger Strike by David Battersford - \$13.50 - 336 pgs. In 1981, several dozen Irish Republican Army members in the Long Kesh prison in Belfast, Northern Ireland went on a hunger strike to make the British government recognize them as political prisoners rather than common criminals. Ten of the prisoners starved themselves to death, including Bobby Sands, who was elected to the England's Parliament three weeks before his death. This is the most in-depth book about the strike. #124

Katherine Ketcham - 518 - 304 pgs. Professor Loftus has testified as an expert at hundreds of trials on the fallibility of memory and how it affects the reliability of an eyewitness testimony. Her book examines many facets of how defendants can be, and have been, falsely implicated in a crime by an erroneous eyewitness identification. The book includes many cases that Loftus has been involved. #52

Win Your Case: How to Present, Persuade, and Prevail
Every Place, Every Time by Gerry Spence - \$15.95 - 304 pages
Written for defense lawyers or lay people. In his 50-year career Spence has never lost a criminal case. He considers every case a "war," and he focuses on what is necessary to win. The book deals with waging the war, improving one's storytelling skills, conducting effective opening and closing statements and using witnesses. #72

Last Man Standing: The Treedy and Triumph of Geronimo Pratt by Jack Olsen - \$20 - 512 pp. The story of Geronimo Pratt's 1970 conviction and life sentence for an L.A. murder committed when he was 350 miles away from the crime scene and under FBI surveillance in Oakland, C.A. Pratt was exonerated in 1997 and awarded \$2.75 million in 2000. This is a textbook case of abuse the American legal system for political ends. 663

In The Company of Giants: The Ultimate Investigation Guide for Legal Professionals, Activists, Journalists & the Wrongfully Convicted by Paul J. Goldino, \$19.99/404 pgs. "I span 16 years on Illinois' Death Row. When I was released and paroled in 2003, it was because of the tactics and strategies described herein. In the Company of Giants will hopefully save you or a loved one from a similar fate." *—*Anderson Hobley, Chicago, Illinois. #128

Freeing the Innocent: A Handbook For The Wrongly Convicted by Michael and Becky Purdie - \$15 - Self-help manual jam packed with hands-on - "You Too Can Do It" advice explaining how Michael Purdie was freed in 2001 after 28 years of wrongful imprisonment. #01 (No Service Charge)

Kristin Blaise Lobato's *Unreasonable Conviction: Second Edition* by Hans Sharrett. \$13.176 pgs. Kristin Blaise Lobato has twice been convicted in Las Vegas of murdering a homeless man and sexually assaulting his corpse in 2001. Yet, there is no forensic, physical, eyewitness or confession evidence linking her to the murder or the crime scene, and there is no evidence she was sexually assaulted by the perpetrator. This is the full story reported in *Shante*: Denied Issues 26 & 34 = 100 (No Service Charge)

Improper Submissions - Records of a wrongful conviction by Emma Armstrong - \$10 - 370 pgs. The true story of how Karlyn Elliot was delivered into the hands of a psychotic killer by traffickers in porn and mind control. After she witnessed a murder she was prosecuted and convicted for that crime, and is currently serving two life sentences in Oregon. *Improper Submissions* documents that exculpatory, and impeachment evidence was hidden by the prosecution, and bringing by the killer (later convicted and sentenced to death) was used by the prosecution against Karlyn. #28 (No Service Charge)

From **The Big House to Your House** is a cookbook, written by six Texas state women prisoners, #1495, -132, pgs. Includes two hundred easy-to-prepare recipes for meats, sandwiches and desserts. The recipes can be made from basic items as present can purchase from their commissary, or people on the outside can purchase from a convenience or grocery store. Recipes can be adjusted for your individual tastes or availability of ingredients. #136 (No Service Charge)

against the three teenagers convicted of the gruesome murders of three eight-year-old boys. Levrentz demonstrates the murder investigation didn't examine other suspects, and the three youth's convictions were based on a single confession from a retarded youth, and the defendants' alleged ties to satanic rituals. #65

Arbitrary Justice: The Power of the American Prosecutor by Angela J. Davis—\$19.95—280 pgs. (Now in softcover with a lower price!) Intense and long-overdue serious examination of the expanding power of prosecutors and their increasing politicization. Law Professor Davis explains how the day-to-day practices and decisions of prosecutors produce unfair and unequal treatment of defendants. Davis argues that the mechanisms purportedly holding prosecutors accountable are ineffective and foster a climate of tolerance for misconduct. #84

Police Interrogation and American Justice by Richard A. Leo - \$22.95 - 384 pgs. Professor Leo is one of the world's leading authorities on false confessions. Leo shows the police have developed sophisticated interrogation methods that rely on persuasion, manipulation, deception and psychological coercion to induce an admission of guilt from a suspect. Leo argues that standard interrogation techniques produce confessions that are inherently suspect, and that false confessions are relied on to wrongly convict a person. Leo also explains that the *Miranda* warning ineffectively protects a suspect's right against self-incrimination. #10

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Merriam-Webster's Vocabulary Builder - \$6.99 - 712 pgs. Good resource to expand one's vocabulary. Includes over 1,000 words with definitions and explanation of the words usage, including examples of its use in a sentence. #06

Essentials of English Grammar by L. Sue Baugh - \$9.95 - 176 pgs. Explains parts of speech, punctuation, capitalization, spelling, frequently confused words, and much more. Includes style tips on how to write with economy, clarity, and accuracy. #07

Merriam-Webster's Dictionary of Law - \$15.95 - 634 pgs. Over 3,000 legal terms defined. Includes chapters discussing important legal cases, important laws. There's also a section on important legal agencies in the U.S., and the full U.S. Constitution. More complete than the paperback edition of a well-known law dictionary that sells for \$29.00. #08

Legal Writing in Plain English by Bryan A. Garner - \$16 - 227 pgs. A guide to clear and effective legal writing. Includes: Tips on generating thoughts, organizing them, and creating outlines. Sound advice on expressing your ideas clearly and powerfully. Dozens of real-life writing examples to illustrate writing problems and solutions. Exercises to reinforce principles of good writing. Helpful guidance on page layout, a punctuation guide that shows the correct uses of every punctuation mark, and model legal documents that demonstrate the power of plain English. Probably need at least the equivalent of a high-school education to make use of this book. #09

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 Attorney Paul Bergman & Sara J. Bergman-Barrett - \$39.99 - 680 pgs. Explains what goes on in a criminal case. Covers: arrests; 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 Attorney's 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 McAlooney - \$16.95 - 288 pgs. Hundreds of sample letters for all occasions, including: Letters to government officials and agencies; Business letters; Community 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 Vollen - \$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-ring" cases in Wenatchee, Washington where 19 people were wrongly convicted of sex abuse charges. Also included is the Amraut 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 Puman - \$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

Identification: A History of Fingerprinting and Criminal Identification by Simon Cole - \$25.00 - 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 Sherrin - \$10 - 106 pgs. Explains that the mistreatment of prisoners is not due to the rogue 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 undeserving 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 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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U.S. Supreme Court Tosses \$14 Million Award To John Thompson

John Thompson spent 14 years on Louisiana's death row because the prosecutors concealed an exculpatory lab report. After his release he sued the Orleans Parish District Attorney's Office, and a federal district court jury awarded him \$14 million — \$1 million for each year he was on death row. The U.S. Supreme Court overturned the award, ruling that the DA wasn't civilly liable for failing to disclose the evidence. See p. 19.

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