

JUSTICE DENIED

The Magazine for the
Wrongly Convicted

Klay BBJ



Rapper acquitted by appeals court of insulting the police during a concert in Tunisia.
See page 6

Shirley and Lynette Banfield



Exonerated in England of murdering Shirley's husband and Lynette's father who may be alive.
See page 7



Hilda Lopez de la Cruz

Acquitted of abortion conviction and one year imprisonment in Mexico.
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Kevin McCormick



Exonerated of manslaughter conviction in the death of a deer hunter in Minnesota.
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Karen Anne Christiansen



Acquitted by California Ct. Of Appeals of conflict of interest convictions and charges dismissed.
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Message From The Publisher

After an arduous effort to overturn their wrongful conviction, an innocent person then faces the task of pursuing compensation. After his acquittal by the Wisconsin Court of Appeals David Turnpaugh filed in July 2009 for compensation from the Wisconsin Claims Board. More than four years later he was awarded \$822. See p. 5.

Expressing one’s “freedom of speech” can result in serious reprisals by government officials. Tunisian rapper Klay BBJ was convicted twice in the summer of 2013 of insulting the police with lyrics that criticized police treatment of government critics. Klay BBJ argued on appeal his lyrics denounced injustice and authoritarianism and his convictions were annulled. See p. 6.

Being convicted of a non-existent crime doesn’t just happen in the U.S. Shirley Banfield and her daughter Lynette had their convictions of murdering Donald Banfield in England quashed because the prosecution didn’t prove he was even dead. See p. 7.

Using their cloak of omnipotence fed by popular TV shows, it is relatively easy for prosecutors to convict a person of a non-existent crime. That happened to Joshua Ryan Brewer when he was convicted of unlawfully manifesting marijuana in Medford, Oregon when he was a registered medical marijuana user. See. P. 8.

Conflicting medical evidence about a person’s cause of death can result in a wrongful conviction. That happened to Kevin Thomas McCormick when he was convicted of causing the death of a hunter who fell out of a deer stand. McCormick was exonerated when the Minnesota COA ruled the prosecution didn’t present evidence proving McCormick was “the proximate cause of” the hunter’s fatal injuries. See. p. 11.

Hans Sherrer, Editor and Publisher
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Introduction

Four-month-old Jessica Syzak died on October 12, 1995 in St. Clair County, Michigan. Almost *16 years later* her father, Scott Syzak, was convicted by a jury on May 24, 2011 of one count of first-degree felony-murder, with the predicate felony of child abuse. On July 1, 2011 Circuit Court Judge Cynthia A. Lane sentenced Syzak, 43, to the mandatory prison term of life in prison without the possibility of parole.

Mr. Syzak appealed, and the Michigan Court of Appeals [affirmed his convictions](#) on April 23, 2013.¹

The following account of Mr. Syzak's case is excerpted from his attorney Peter Jon Van Hoek's petition to Michigan Supreme Court for review of the appeals court's ruling.

Case Account

Mr. Syzak's convictions arose from a complicated incident which occurred in 1995. At that time, Mr. Syzak and his wife Candace had a four-month-old daughter named Jessica. She sustained a head injury, later determined to be a skull fracture. She was treated at an emergency room when she was brought there by her parents, and was seen by numerous doctors over the course of the next five weeks. She was never hospitalized, and her medical evaluations over that time did not reveal any degree of worsening medical condition, developmental problems, or eating or sleeping disorders. She was seen by a pediatric neurosurgeon to drain a swelling that arose on her forehead, at the site of the fracture, on the day prior to her death, but sent home from that visit with no warnings of any ongoing danger. She was placed face down in her soft-sided crib or playpen that night to sleep, surrounded by stuffed animals and blankets. The next morning her parents found Jessica in bed, not breathing, called 911 and attempted CPR, but she was pronounced dead that morning.

When Jessica was first brought into the emergency room, Mrs. Syzak told the doctors that she had been bathing Jessica, and that when she picked her up out of the bathtub Jessica was slippery and fell out of her hands, hitting her head on the edge of the tub as she fell.

An autopsy was conducted by the medical examiner Dr. Richard Anderson, who could not determine the actual mechanism that caused death, but concluded she may have died from a seizure related to the skull fracture. There was no evidence presented during the trial that Jessica was seen or

Convicted Of Murdering His Daughter Who Likely Died From Natural Causes – The Scott Syzak Story

By Peter Jon Van Hoek, Esq.*

diagnosed prior to her death with any seizures. In his trial testimony, the medical examiner who conducted the autopsy conceded there was no anatomical evidence of a seizure that he is not a neurologist, that he is not medically qualified to explain a mechanism of death arising from a brain injury, and that his conclusion as to the cause of death was an "exclusionary diagnosis," which means it was reached only because no other objective cause of death was found. He agreed he could not rule out asphyxiation as the cause of death, and found no evidence of any subdural hematoma, intercranial bleeding, or brain stem involvement during the autopsy.

The medical examiner took several slides and sections of the brain during the autopsy, and later, on the advice of Dr. Werner Spitz, a noted pathologist, he had the body exhumed, and took other samples, including from the eyes.

"The defense presented expert testimony from a Board-certified pediatric neurologist ... that the skull fracture did not cause the later death. He testified ... the fracture could not have been the cause or mechanism of death. In his opinion, Jessica Syzak died from Sudden Infant Death Syndrome (SIDS)."

At trial, the defense presented expert testimony from Board-certified pediatric neurologist Dr. Brian Woodruff. *Dr. Woodruff reviewed all of the then-available medical records and autopsy reports, and reached the conclusion that the skull fracture did not cause the later death.* He testified that in the absence of any objective evidence of brain stem involvement, the fracture could not have been the cause or mechanism of death. *In his opinion, Jessica Syzak died from Sudden Infant Death Syndrome (SIDS), as there was no objective cause of death shown by the evidence and the circumstances of her final night showed all the now-recognized danger signals of a SIDS death.*

No arrests or charges were raised in 1995, following the autopsy, even though Mrs. Syzak had admitted to accidentally drop-

ping Jessica and causing her head injury. The matter was considered by the county officials a possible homicide case, and the file remained open, but nothing further occurred until 2007, when a cold case unit of the St. Clair County Sheriff's Department began to look into the matter, at the urging of an employee of the Medical Examiner's Office. Further interviews were conducted with Mr. and Mrs. Syzak, who at that time were living in Indiana. During those interviews, both Mr. and Mrs. Syzak ultimately admitted that in fact Mr. Syzak had been bathing Jessica when she fell and hit her head, and that they had agreed Mrs. Syzak would tell the doctors she was the person doing the bathing because Mr. Syzak had a prior child abuse conviction, not involving Jessica, and feared the police would not believe his assertion that the injury was accidental.

Following these interviews, Mr. Syzak was arrested and charged with felony-murder.

In these circumstances, it became evident the major factual issue at the trial in 2011 was whether the skull fracture caused the death of Jessica Syzak. There was no real dispute, after the statements from Mrs. and Mr. Syzak were found admissible, that he was bathing Jessica when she hit her head and sustained the injury. An extensive amount of expert testimony was presented, from medical examiners, child abuse experts, radiologists, and the defense's expert.

The primary issue in the case concerns the fact that in the intervening years between the autopsy and the charges being made against Mr. Syzak, the county medical authorities lost the physical slides, samples, and other medical specimens collected by the pathologist both during and after the initial autopsy. Even though the file was officially kept open as a possible homicide, and the policy was to retain all physical evidence, that evidence in this case was lost and could not be located, after repeated searches, prior to the trial. For that reason, this physical evidence was never available for the defense expert to examine or take into consideration in reaching his conclusions as to the cause and mechanism of death. The expert testified that he would have examined that evidence had it been available to him, as it could have significantly bolstered his medical conclusion that Jessica did not die from any complications of the skull fracture.

On appeal, Mr. Syzak has argued that the trial judge reversibly erred in denying his motion to bar the testimony of the prosecution's med-

Syzak cont. on page 4

Virginia Prosecutors Contempt Of Court Conviction Overturned

The contempt of court conviction of prosecutor Catherine Marie Paxson by a Norfolk, Virginia General District Court judge [has been overturned](#) on appeal. Catherine Paxson is a 2010 graduate of Regent University School of Law in Virginia Beach, Virginia. [She works](#) as a Norfolk Assistant Commonwealth's Attorney.

On January 7, 2014 Paxson was an hour and 20 minutes late for a hearing in the courtroom of Norfolk District Court Judge S. Clark Daugherty. She kept defense attorneys, police, and about 15 people waiting for her to show up. When she appeared Judge Daugherty asked Paxson why she shouldn't be held in contempt for her extreme lateness. [Paxson told](#) Judge Daugherty she had been attending to a "brief matter in circuit court."

Judge Daugherty considered her excuse inadequate for delaying court proceedings for almost an hour and a half, and he held Paxson in criminal contempt of court and fined her \$250. With mandatory court fees Paxson was ordered to pay \$345.

Norfolk Circuit Court Clerk George Schaefer [told The Virginian-Pilot](#), "To hold somebody in contempt for being late is highly unusual." A spokesperson for the Commonwealth Attorney's Office said Judge Daugherty's ruling was surprising.

Paxson appealed her conviction. She was the defendant in the case while her employer was in the position of representing the State's interests. To resolve the appearance of a conflict of interest, Portsmouth Commonwealth's Attorney Earle C. Mobley was appointed as special prosecutor. Mobley filed a motion to overturn Paxson's conviction and dismiss the contempt charge with prejudice. The motion argued Paxson's conduct didn't constitute contempt of court. Paxson's preferential treatment as a prosecutor was demon-

strated by the motion that for a typical defendant would have been filed by Paxson's attorney, and not the prosecuting attorney.

A hearing concerning Mobley's motion [was held on](#) February 7, 2014. Norfolk Circuit Court Judge Charles E. Poston summarily [granted the motion](#) 15 seconds after the hearing began at 9 a.m. without hearing any arguments and without making a statement of his reasons for granting the motion. In overturning Paxson's conviction and dismissing the contempt charge Judge Poston only commented that Judge Daugherty's contempt ruling was "unusual."

Sources:

[Judge overturns prosecutor's contempt conviction](#), *The Virginian-Pilot*, February 7, 2014

[Norfolk judge holds missing prosecutor in contempt](#), *The Virginian-Pilot*, February 5, 2014

[RE: Catherine M. Paxson](#), No. CR14000237-00, Fourth Judicial Circuit Court of Virginia (Cir. Ct. of the City of Norfolk), Criminal Court Docket, Feb. 7, 2014

[Catherine Paxson](#) (Prosecutors), Staff Directory, City of Norfolk, Virginia

Syzak cont. from page 3

ical examiner on the basis that the defense expert did not have an equal opportunity to review **all** of the relevant evidence in the case. This issue focuses on the standards to be applied by a reviewing court when crucial evidence is lost or destroyed prior to trial, and thus unavailable to the defense.

The Appeals Court's Ruling

In their opinion, the Court of Appeals held that when the prosecution fails to maintain or preserve evidence that is potentially useful to the defense or would tend to exonerate the accused, there is a Due Process violation only if the defense can establish bad faith on the part of the state. In this case, the Court held the defense at the pre-trial suppression hearing did not show evidence of a bad faith suppression or loss of the physical evidence, and could not prove that this evidence was in fact material exculpatory evidence but rather merely potentially useful evidence to the defense. Accordingly, the appeals court held that the loss of the evidence, and its unavailability to be considered by the defense expert, was not a constitutional violation and provided no basis for suppression of the testimony of the prosecution expert who had collected and viewed that evidence.

Given the severity of the charge in this case, the strongly disputed fundamental issue of the actual cause and mechanism of death in the matter, and the passage of 16 years from the date of the death until the trial, this case



highlights crucial questions concerning the preservation of evidence and the inability of the defense to have equal access to critical evidence due to the passage of time. Requiring the defense to prove that lost or destroyed evidence was materially exculpatory, rather than only potentially useful, is essentially an impossible burden for the defense to meet where, as here, the evidence cannot be located and thus its exculpatory nature cannot be evaluated. *Clearly that evidence was of significant importance to the medical examiner who conducted the autopsy and later needed to have the body exhumed, at the direction of a nationally recognized pathologist, to gather further evidence.*

The defense expert, who was without question far more qualified and experienced than the county medial examiner to determine whether the skull fracture caused the death, was hamstrung in his review of the 16-year-old evidence in the case. Only a medical expert could determine the exculpatory nature of that physical evidence, and that opportunity for review was denied to the defense. Requiring the defense to prove bad faith on the part of the county officials in losing the evidence was an impossible hurdle to overcome. In the context of this case, where there was an obvious potential of reasonable doubt over whether Mr. Syzak was criminally responsible for

his daughter's death.

MI Supreme Court Denies review

On November 25, 2013 the Michigan Supreme Court stated, "we are not persuaded that the questions presented should be reviewed by this Court," in [denying review](#) of the appeals court's ruling.² With the end of direct review, Mr. Syzak can pursue post-conviction review of his conviction that can include claims of ineffective assistance of his trial counsel. Scott Syzak can be written at:

Scott Syzak 215189
Macomb CF
34625 26 Mile Rd.
New Haven, MI 48048

Since a prisoner can be moved at any time, you can check Mr. Syzak's current location by looking up his name – Scott Syzak – on the Michigan Department of Corrections Inmate Search webpage at, <http://mdocweb.state.mi.us/OTIS2/otis2.aspx>

Endnotes:

1. [People v. Syzak](#), No. 305310 (Mich. Ct. Of App. 4-23-2013) (Unpublished opinion)
2. [People v. Syzak](#), No. 147247 (Mich. Sup. Ct., 11-25-2013) (Denying review)

* Peter Jon Van Hoek is an attorney with the State Appellate Defender Office in Detroit, Michigan. Mr. Van Hoek represented Scott Syzak for his direct appeal to the Michigan Court of Appeal and the Michigan Supreme Court. This article is based on Mr. Van Hoek's submission to the Michigan Supreme Court dated June 11, 2013 in support of Mr. Syzak's writ of review. The substance of what Mr. Van Hoek wrote is unchanged, but for the reader's clarification the names of several people have been added.

Wisconsin Awards David Turnpaugh \$822 For Wrongful Solicitation & Bail Jumping Convictions

David R. Turnpaugh was awarded compensation of \$822 by the Wisconsin Claims Board on November 25, 2013 for his wrongful convictions in 2006 for soliciting prostitution and bail jumping. The award resulted from Turnpaugh's third petition to the Claims Board for compensation, and came more than four years after he filed his first petition in July 2009.

In March 2006 Turnpaugh was convicted of soliciting prostitution from a police decoy in Milwaukee, Wisconsin and jumping bail. He was sentenced to 60 days in jail on the solicitation conviction to be served by 3 days in jail and 57 days on electronic monitoring, and he was sentenced to one year on probation for the bail jumping conviction.

Turnpaugh appealed on the ground the prosecution introduced insufficient evidence to prove two essential elements of his solicitation conviction: He didn't offer the policewoman any money, and he didn't proposition her to have sexual intercourse. He also argued his bail jumping conviction should be overturned because it was based on his solicitation conviction.

In September 2007 the Wisconsin Court of Appeals reversed Turnpaugh's solicitation conviction based on the prosecution's failure to introduce evidence proving he offered the policewoman money for sex, and it also reversed his bail jumping conviction that was premised on his solicitation conviction. See, [State v. Turnpaugh](#), 741 N.W.2d 488, 2007 WI App 222 (2007). The Circuit Court subsequently entered a judgment of acquittal on his solicitation and his bail-jumping convictions.

Wisconsin state law provides for the payment of a maximum of \$5,000 for each year or part thereof an innocent person spends in custody. (Wis. Stats. § 775.05(1))

Turnpaugh filed a claim with the State of Wisconsin Claims Board for \$5,000 -- that covered the one-year he was in custody for both convictions. He also requested an award of \$13,682.89 reimbursement for his attorneys' fees related to his trial defense, his appeal, and his Claims Board claim.

After a hearing on December 10, 2010 the Claims Board [denied Turnpaugh's claim](#). The Board ruled he "has not presented clear

and convincing evidence that he was innocent of the crime for which he was convicted," and that he "has failed to show that he was imprisoned." (State of Wisconsin Claims Board, Hearing of December 10, 2010, No. 4 -- David R. Turnpaugh)

Turnpaugh appealed to the Circuit Court, which affirmed the Claims Board's decision.

Turnpaugh then appealed to the Wisconsin Court of Appeals, which on May 22, 2012 reversed the Claims Board's decision. The appeals court ruled in [Turnpaugh v. Claims Board](#), No. 2011AP2365 (WI Ct of Appeals) that "there was *no* evidence in support of his conviction, and he was innocent as a matter of law." and, the Board's conclusion Turnpaugh wasn't imprisoned "flies in the face of the statute ..." The case was remanded to the Claims Board for an assessment of what "will equitably compensate" Turnpaugh.

The Claims Board reconsidered Turnpaugh's claim on December 12, 2012. He was again seeking \$5,000 for his year in custody, but he increased his claim for attorney's fees to \$23,201.20, for a total claim of \$28,201.20.

On December 19 the five-member Claims Board [released their 4-1 decision](#) that Turnpaugh was "equitably compensated" with an award of \$00.00. The Claims Board's majority decision was based on their finding that although Turnpaugh "is innocent as a matter of law," he "contributed to his convictions" that were based on the policewoman's testimony he wanted to watch her masturbate -- which is not illegal. The Claims Board [ruled that](#) "as a matter of equity" Turnpaugh's legal conduct "discount[ed] any compensation to which he may have been entitled."

Turnpaugh appealed to the Milwaukee County Circuit Court that on June 12, 2013 issued its ruling in *Turnpaugh v Wis. Claims Bd*, No. 13-CV-000789 (WI Cir Ct). The [Court ruled](#) the Claims Board's finding that Turnpaugh "contributed to his convictions" was absurd because he didn't commit any crime or engage in any illegal activity, and thus by the Board's twisted "logic, almost no one would be eligible for compensation under the statute." In reversing the Board's decision Judge Paul Van Grunsven ruled "it is ordered that this case is REMANDED back to the Claims Board so that they may determine the specific amount of money to be paid as compensation to Petitioner."



The Claims Board held its regularly scheduled hearing on September 11, 2013 during which attorney Todd T. Nelson presented Turnpaugh's claim for compensation. State law requires the Board to issue its findings within 20 days of a hearing, and on October 1 the Claims Board issued its findings in all the cases it heard except for Turnpaugh's case.

On October 25 [Turnpaugh filed](#) a "Motion For Contempt And Request For A Writ Of Mandamus" that sought a court order compelling the Board to comply with the law by issuing its findings in his case. He also requested an order for reimbursement of his attorney's fees in filing the motion. The motion was docketed to be heard on December 4.

In response to Turnpaugh's motion the Claims Board issued its [four-page Decision](#) on November 25. The Board rejected considering Turnpaugh's year on probation as "imprisonment" under the statute, and determined he was imprisoned for 60 days (three days in custody and 57 days on electronic monitoring). The Board also determined the pro rata rate of compensation is \$13.70 per day of imprisonment (\$5,000 year/365 days = \$13.70). The Board thus concluded he was entitled to \$822 compensation from the State of Wisconsin. The board also determined Turnpaugh's request for \$36,025.89 in legal fees, costs, and disbursements was justified. The total award it authorized was for \$36,847.89.

Claims Board member Pat Strachota, who is a Wisconsin state representative (R-West Bend), expressed the board's anger at Turnpaugh, and at the Court of Appeals and the Circuit Court for deciding in his favor, [by filing bill](#) AB 534 on the same day the Board issued its ruling in Turnpaugh's case. If enacted, AB 534 would radically alter Wisconsin's compensation statute by making the Board's rulings final and unappealable to a court, and it would exclude compensation for electronic monitoring or types of confinement other than in a prison.

[Strachota told](#) the *Wisconsin Law Journal* when she was questioned about AB 534, "We [the Claims Board] didn't feel the circuit court had that authority" to order compensation for Turnpaugh. Strachota also took a swipe at the appeals court's ruling Turnpaugh qualified for "equitable" compensation under the statute because he was legally "innocent," in stating, "We [the Claims Board] are not a court of law and we have different rules. I think it's hard for

Turnpaugh cont. on p. 6

Rapper Klay BBJ Acquitted Of Insulting Police By Appeals Court

Ahmed Ben Ahmed, also known as the rapper Klay BBJ, has [been acquitted](#) by a Tunisian appeals court of his conviction of insulting the police during a concert.

Ahmed is a rapper in his native Tunisia under the stage name of Klay BBJ. On August 22, 2013 Ahmed's performance at the International Festival of Hammamet included songs critical of the police and government authorities. Hammamet is a resort town of about 60,000 people on the Mediterranean Sea about 45 miles southeast of Tunisia's capital of Tunis.

Shortly after Ahmed's performance he was arrested along with another rapper, Alaa Eddine Yaakoubi whose stage name is Weld El 15, who performed his song "Cops Are Dogs" at the concert. After their arrest the two rappers were [beaten by police](#) wielding batons, and they had to be taken to a hospital emergency room for treatment before they were transported to jail.

The rappers were released after several hours, but they were charged with "insulting the police," defamation of public officials, and harming public morals, under articles 125, 226 bis, and 247 of Tunisia's penal code.

A week after the concert Ahmed and Yaakoubi were convicted *in absentia* on August 30 of all the charges by the First Instance Criminal Tribunal of Hammamet. Both rappers were sentenced to 21 months in prison.

Turnpaugh cont. from p. 5

people to understand that – especially in the legal profession."

Under AB 534 Turnpaugh wouldn't have been entitled to any compensation or award for attorney fees. When asked about AB 534 he told the *Wisconsin Law Journal* that the bill appeared to be intended to prevent a case such as his from occurring again. [Turnpaugh said](#), "If the state intends to put people through a process that sucks your soul out and makes you want to kill yourself, then the current law is perfect. And now they want to make it worse."

Although Turnpaugh's Motion scheduled to be heard on December 4 was rendered moot by the Board's Decision of November 25, Turnpaugh informed Justice Denied on De-



Ahmed Ben Ahmed, aka Klay (AFP)

Ahmed appealed and he was granted a new trial on the grounds he wasn't present during his trial. Yaakoubi didn't appeal his conviction and went underground to hide from the authorities.

After Ahmed's retrial on September 18, 2013 he was again convicted of "insulting the police." Ahmed was immediately taken into custody after he was sentenced on September 26 to six months in prison.

During the October 17, 2013 hearing of Ahmed's appeal before the Grombalia First Instance Court his lawyer argued he had not insulted the police and even if he had, his songs are artistic creations protected by the right to freedom of expression under Tunisian and international law. His lawyer cited a case in France in which an appeals court acquitted members of the rap group Sniper of the charge of incitement to violence. That court determined rap songs are by their nature provocative and sometimes crude and that they must be respected and protected as a form of freedom of speech.

Ahmed's lawyer also argued the law against insulting the police (or any public servant) applies only to insulting an individual police officer and not the police as an institution, and he had been charged or convicted of insulting any particular officer. Six defense witnesses who attended the August 22 performance in Hammamet testified during the appeal hearing they had not heard Ahmed pronounce words or expressions insulting the police or other state institutions. Ahmed's lawyer argued his songs

December 2 that he intends to pursue recovering from the Board his attorney's fees and costs related to filing the Motion.

Turnpaugh's case up to the Court of Appeals' May 2012 ruling is set out in detail in *Justice Denied's* June 12, 2012 article, "[David Turnpaugh Owed Compensation For Wrongful Convictions Says Appeals Court.](#)"

Sources:

[David Turnpaugh v. State of Wisconsin Claims Board](#), No. 13-CV-000789 (Milwaukee County Circuit Court, 6-12-2013)

[David R. Turnpaugh, State of Wisconsin Claims Board](#), Claim No. 2009-031-CONY

[David R. Turnpaugh vs. State of Wisconsin Claims Board](#), No. 13-CV-789 (Milwaukee County Circuit Court), Motion for Contempt and Request For A Writ Of Mandamus, filed on October 25, 2013

[Contempt and Writ of Mandamus Turnpaugh](#), By Dan Shaw, *Wisconsin Law Journal*, November 27, 2013

denounce injustice and what he calls the authoritarianism of the current government.

After the hearing the appeals court announced it was [annulling Ahmed's conviction](#) and ordered his immediate release from custody. The court announced it would later release its ruling with its reasoning for overturning Ahmed's conviction.

After Ahmed was released Eric Goldstein, deputy Middle East and North Africa director at Human Rights Watch [told reporters](#): "It's great to see Klay BBJ free, but meanwhile he spent three weeks in prison and never should have been charged in the first place. Tunisia needs to stop arresting people for offending government officials or institutions and get rid of the laws that criminalize that kind of criticism. An artist should be able to offer critical and provocative work without fearing arrest and prosecution."

Since the Tunisian revolution in 2011 that was a part of the "Arab Spring," the government has repeatedly prosecuted speech criticism of the state it considers objectionable. The Johannesburg Principles on National Security, Freedom of Expression, and Access to Information, a set of principles that many experts agree upon and is widely used, [states in principle 7\(b\)](#):

No one may be punished for criticizing or insulting the nation, the state or its symbols, the government, its agencies or public officials, or a foreign nation state or its symbols, government, agency, or public official unless the criticism or insult was intended and likely to incite imminent violence.

Yaakoubi remains on the run to avoid arrest and begin serving his 21 month prison sentence. Yaakoubi was 15 when in March 2013 he released his video, "Cops Are Dogs." In addition to its provocative lyrics the video contains a montage of scenes showing Tunisian police hitting people. The video has received more than 3,150,000 hits on Youtube.com and can be [viewed by clicking here](#).

Source:

[Tunisia: Rapper Acquitted After 3 Weeks in Prison](#), *The Arabic Network for Human Rights Information* (Tunis), October 21, 2013

[Tunisian rapper Klay BBJ jailed for six months](#), *BBC News*, September 26, 2013

[Tunisian rapper Klay BBJ is freed from jail on appeal](#), *BBC News*, October 17, 2013



Alaa Eddine Yaakoubi, aka, Weld El 15

Appeals Court Quashes Mother/Daughter Convictions For Murder Of “Victim” Who May Be Alive

The convictions of Shirley Banfield and her daughter Lynette Banfield for the murder of Shirley’s husband and Lynette’s father Donald Banfield [were quashed](#) by England’s Court of Appeals, which recognized there is no direct evidence he is even dead.

Shirley Banfield had a tumultuous relationship with her husband Donald who was a womanizer and heavy gambler. Their daughter Lynette was born in 1971. Donald was 63 when on short notice he retired as a bookmaker in January 2001. Unbeknownst to his family, in February and March 2001 Donald withdrew a total of \$43,500¹ from his private pension fund, and in the spring of 2001 Donald and Shirley sold their home for \$260,000 (£179,000) with the intention of moving to northeast England where housing was less expensive. Donald left the family home sometime after May 10, 2001. Donald was from Trinidad and he had previously disappeared without notice, so it was almost two weeks before his disappearance was reported.

A police investigation didn’t uncover any evidence of foul play in Donald’s disappearance. He could have simply left to start a new life free of the problems with his old life.

Within six months of Donald’s “disappearance” Shirley and her daughter Lynette moved to northeast England. Shirley had proceeded with the sale of the house. She also collected Donald’s state pension after his 65th birthday in 2003. For the seven years 2003 to 2009 she was paid about \$61,000² for his state pension.

In July 2009 the police reopened Donald’s case to determine whether Donald’s disappearance may have been the result of foul play.

Shirley and Lynette were eventually charged with a number of offenses, mostly related to dishonestly obtaining financial benefits from his state pension. However, they were also charged with jointly murdering Donald. On December 22, 2011 Shirley and Lynette pled guilty to all the financially related charges, but pled not guilty to murdering Donald.

During their trial at the Old Bailey in Lon-



Lynette Banfield during her trial in 2012 (Central News)

don the prosecution’s case was that sometime during the period May 11-16 Shirley and Lynette jointly murdered Donald. Their case was largely based on the guilty pleas of the mother and daughter to the financially related charges, which the prosecution argued gave them a motive to kill Donald.

Shirley and Lynette’s defense was that Donald had a history of disappearing, that he had gambling debts of almost \$75,000 and other tangled financial affairs unknown to Shirley, that he had recently drawn more than \$43,000 from his pension, that a police officer had seen him driving a car in August 2001, he had been seen in betting shops around London after May 2001, and his cell phone was charged and able to receive calls for months after the prosecution alleged he was murdered.



Shirley Banfield during her trial in 2012 (Central News)

Shirley and Lynette’s lawyers submitted to the judge at the close of evidence there was no case to answer and the charges should be dismissed because the prosecution’s evidence was insufficient to prove Donald was murdered, which woman may have been responsible, or whether both were responsible. The judge denied the request.

The women’s lawyer argued to the jury there was no evidence Donald was dead and their admitted financial crimes wasn’t evidence he was dead, much less than that they killed him. Their barrister also argued the prosecution did not present evidence of when, where or how he was killed, who was present, or what happened to his body. Based on the joint statement of Shirley and Lynette he could be in Trinidad, or he could have died from ill health sometime after Christmas 2008 which was the last time they said they saw him and he was not well.

On April 3, 2012 the jury convicted both woman of murdering Donald. Shirley was sentenced to 18 years to life in prison, and Lynette was sentenced to 16 years to life in prison. They were sentenced to serve those sentences concurrently with their financial crimes sentences.

The woman appealed, and England’s Court of Appeal unanimously quashed their murder convictions in [R. v. Shirley Banfield & Lynette Banfield](#), [2013] EWCA Crim

1394 (7-31-13). The court ruled:

13. The Crown’s case was that between 11-16 May 2001 the Appellants both murdered DB. The defence was that absent a body and any evidence DB had in fact been killed, the Crown could not prove a death let alone a murder, nor that either or both appellant/s had committed it or was present at the time of it. The case was speculative and circumstantial.

51. This was an alleged joint enterprise murder with no body, no suggested mechanism of death, no identified day when the murder was said to have occurred, no time and no place and no suggestion of what happened to the body.

63. The submission of no case to answer should have been allowed. These appeals will be allowed and both convictions will when we complete this judgment be quashed.



Donald Banfield before his disappearance in 2001 (Mirror UK)

Lady Justice Rafferty added, “For the most evident of reasons there could be no question of a retrial.”

In England 200,000 people [voluntarily disappear](#) each year, of which 2,000 are not heard from again, and the court of appeals ruling was consistent with the fact Donald may have been one of those 2,000 in 2001.

The appeals courts ruling did not affect Shirley and Lynette Banfield’s convictions based on their guilty pleas to illegally benefiting from Donald’s state pension. Shirley, 65, remained imprisoned serving her sentence of 4-1/2 years, and Lynette, 42, continued serving her 3-1/2 year sentence.

[Click here to read R. v. Shirley Banfield & Lynette Banfield](#), [2013] EWCA Crim 1394.

Endnotes:

1 Donald withdrew £30,000 and the exchange rate in February and March 2001 was about \$US1.45 to the £.

2 Shirley was paid £34,382 and the average exchange rate from 2003 to 2009 was about \$US1.8 to the £.

Sources:

[R. v. Shirley Banfield & Lynette Banfield](#), [2013] EWCA Crim 1394

[Shirley and Lynette Banfield’s murder convictions quashed](#), BBC News, July 31, 2013

[Wife and daughter accused of killing Wealdstone man Don Banfield have murder convictions quashed](#), *Harrow Times*, August 1, 2013



Joshua Ryan Brewer Sues City of Medford For Fabricated Drug Crime

Joshua Ryan Brewer has filed a federal civil rights lawsuit against the City of Medford, Oregon, its police department and a number of persons, related to his prosecution and conviction of a drug crime that the Oregon Attorney General concedes didn't happen.

In 2009 Brewer was 24 and living in Medford, Oregon with his cousin. Brewer was the father of three children but he wasn't living with his wife. Brewer had suffered an industrial accident that severed his ulnar nerve.[Endnote 1] The prescription pain drugs available to mask Brewer's extreme pain caused by the nerve's degeneration were expensive, caused him to be nauseous, and they were addictive. To dull the pain in a way Brewer's body could tolerate, he obtained an Oregon Medical Marijuana Act (OMMA) card that allowed him to legally grow up to 6 marijuana plants and possess 24 ounces of usable marijuana.[Endnote 2]

A cousin of Brewer also had an OMMA card, and they rented a house in Medford where both of them lived, so together they could grow 12 plants and possess 48 ounces of usable marijuana at any one time. Several friends also stayed at the house, including a man named Freeman.

On September 25, 2009 Medford Police officers converged on Brewer's house and arrested Freeman who had a warrant for his arrest. There were 12 marijuana plants growing in the backyard and inside there were fresh marijuana trimmings hanging to dry. Brewer and his cousin showed one of the officers their OMMA cards and paperwork. That officer told the other officers the plants and drying marijuana were legal. Before leaving with Freeman in custody one of the officers told Brewer not to stay at the house any longer.

Less than 48 hours later two Medford police officers showed up at Brewer's house at 1:30 a.m. and claimed a neighbor reported seeing him fire a gun out of his back bedroom window. Brewer told the officers he had a gun but he had not fired it. He also told them they could check his hands and clothing for gunshot residue and check his gun to see it hadn't been fired. The officer's arrested him, but his hands and clothing were not tested, nor was his gun checked to see if it had recently been fired.

At the time of Brewer's arrest the officers

seized his gun, the 12 marijuana plants in his backyard, and the wet newly harvested marijuana that was inside hanging to dry. At the request of the arresting officers Medford's animal control seized and impounded Brewer's four dogs, even though there had been no complaints by neighbors and there were persons living in the house who could care for the dogs.



Joshua Ryan Brewer's healthy American Staffordshire terrier Aliah was destroyed by Medford's animal control. This is not a photo of Aliah. (www.staffy-bull-terrior.com)

Brewer was charged with felony possession and manufacture of a controlled substance, unlawful discharge and use of a firearm within the city, and recklessly endangering public safety. He was jailed for 17 days before he could make bail. Three of Brewer's dogs were returned to him, but one dog, a healthy pure bred female American Staffordshire terrier named Aliah, was destroyed by animal control.

After his release Brewer called Medford city officials, including Mayor Gary Wheeler, to tell them he had been falsely arrested and charged. None of Brewer's calls were returned. However, the Medford PD responded to Brewer's calls by sending him a certified letter that instructed him not to contact his elected or appointed officials about his case, and that if he continued to do so he could be arrested. A Medford PD lieutenant called Brewer and left a phone message reiterating the contents of their letter.

Prior to Brewer's trial the Jackson County DA's Office offered to drop the drug charges if he would pled guilty to firing the gun. Brewer refused the plea bargain asserting he had not fired his gun.

During Brewer's trial his next door neighbor testified she did not tell the officer she saw Brewer fire his gun. She testified she had only told the officer she heard a sound behind her house, and she didn't know if the sound was a gunshot. There was also evidence presented at trial that Brewer had a 10' high fence around his backyard so it was physically impossible for his neighbor to see his bedroom window in the back of the house. The officer testified the neighbor told him she heard gunshots from Brewer's backyard. At the close of the prosecution's case Brewer's lawyer made a motion for a judgment of acquittal on the gun related charges arguing the prosecution hadn't presented evidence proving the charges beyond a reasonable doubt. The judge granted the motion stating "it isn't even close."

Brewer also made a motion for a judgment of acquittal on his drug charges arguing the prosecution hadn't presented sufficient evi-

dence he violated the OMMA. The judge denied that motion and also refused Brewer's request to instruct the jury about his rights under the OMMA. Instead the judge instructed the jury it was Brewer's burden to prove he was compliant with the OMMA. The jury convicted Brewer of possession and manufacture of a controlled substance. The judge later sentenced him to 60 days in jail and three years of supervised release.

Brewer's probation officer refused to allow him to use medical marijuana, even though it is legal for him to do so. The probation officer however allowed Brewer to use Vicodin and other prescription pain medications that made him nauseous.

Brewer appealed. On March 28, 2012 the Oregon Court of Appeals unanimously overturned Brewer's conviction and stated in [ordering his acquittal](#):

Defendant, a registered medical marijuana user, was convicted of unlawful manufacture of marijuana, ORS 475.856, and unlawful possession of marijuana, ORS 475.864. On appeal, he argues that the trial court erred in denying his motion for a judgment of acquittal on both counts, because the evidence did not demonstrate that there was more "usable" marijuana at his address than he and his cousin, also a registered medical marijuana user at that address, could together lawfully possess as cardholders under the Oregon Medical Marijuana Act. See ORS 475.309(1); ORS 475.320. The state concedes that the trial court should have granted the motion for a judgment of acquittal as to both counts. We agree, accept the concession, and reverse defendant's convictions.

Brewer's acquittal terminated his supervised release, although he had long since completed his 60 day jail sentence.

After his acquittal Brewer requested that the Medford PD return his .357 Taurus pistol that was seized at the time of his arrest, but the police department refused to do so.

Exactly a year after his acquittal, on March 28, 2013 [Brewer filed](#) a federal civil rights lawsuit in the federal district court in Medford. The lawsuit named as defendants the City of Medford, the Medford Police Department, Mayor Gary Wheeler, Officer Ian

Brewer cont. on p. 9

15-Year-Old Girl Raped By Father Has Fornication Conviction Overturned

A 15-year-old girl who gave birth to her father's baby has had her fornication conviction and sentence of 100 lashes and house arrest overturned by the Maldives High Court.

The Maldives is an island nation in the Indian Ocean 250 miles south-west of India. As a Muslim country that is a former British protectorate, the Maldives' legal system is a combination of British common law and Shari'ah law. With its beautiful beaches and clear blue ocean water the Maldives is a popular vacation and honeymoon destination.

In June 2012 the body of a baby a 14-year-

old girl had given birth to was found buried outside her family's home on Feydhoo island. The girl was arrested, her step-father was arrested for sexually abusing a minor, possessing pornography, and murder, and her mother was arrested for concealing a crime and murder.

During police questioning the girl allegedly admitted to having a sexual relationship with a man — that was in addition to her father raping her. She was charged with fornication, since consensual premarital sex is illegal in Maldives.

On February 15, 2013 the girl was convicted of fornication. She was sentenced to 100 lashes in public when she turned 18, and eight months house arrest.

An [international outcry protesting](#) the girl's conviction and sentence was supported by Amnesty International. An Internet

petition was signed by more than two million people worldwide.

The girl appealed and the Maldivian government supported her appeal. On August 21, 2013 Maldives High Court quashed the now 15-year-old girl's conviction and sentence. The

court's ruling was based on the girl's denial she confessed to having consensual sex outside of marriage, and that because she was suffering post-traumatic stress disorder from her father's abuse she had been "unfit for trial."

After the High Court's ruling was announced, Polly Truscott, Amnesty International's Deputy Asia-Pacific Director issued a Press Release that [stated in part](#):

"No one should ever be prosecuted for sex outside marriage in the first place. And victims of sexual abuse need counselling, not punishment. The government must make sure that she has continuing access to appropriate support services.

Flogging violates the most basic standards prohibiting torture and other cruel, inhuman and degrading treatment. The Maldives authorities must comply with their international law obligations. This means urgently establishing a moratorium on flogging, annulling all outstanding flogging sentences, and making sure that the penal code does not permit prosecution or punishment for 'fornication'."

Maldivian President Mohamed Waheed was said to be "overjoyed" by the High Court's ruling.

The girl's father and mother are awaiting trial on their charges. Her father faces up to [25 years in prison](#) if convicted of all the charges.

Source: [Maldives](#): Girl rape victim to be spared outrageous flogging sentence, Amnesty International, August 21, 2013

[Rape victim, 15](#), who faced 100 lashes in the Maldives for 'fornication' has sentence QUASHED after court caves in to global outrage, *Daily Mail* (London), August 25, 2013



Maldivian young woman in traditional dress (Alamy)

Brewer cont. from p. 8

McDonald, Sgt. Benlytle, Lt. Brett Johnson, Chief of Police Randy Schoen, Deputy Chief Tim Doney, and Chief Tim George. Brewer's lawsuit seeks compensatory damages of about \$40,000 and punitive damages of \$1 million for violations of his First, Fourth and 14th amendment rights, and another \$1 million for malicious prosecution.

Brewer's 24-page complaint [states in part](#): "Plaintiff alleges that Defendants conspired and acted intentionally and/or with reckless disregard and deliberate indifference to Plaintiff's civil rights in undertaking a course of conduct which included presenting false information in reports to the District Attorney and to the Grand Jury." (p. 2) It also alleges that the "City of Medford has a history of condoning and ratifying police misconduct regarding complaints of civil rights violations rather than correcting or showing disapproval of police misconduct." (p. 4)

Brewer's lawsuit also alleges he has had difficulty finding employment because public records (inaccurately) show he has a felony drug conviction.

After Brewer filed his lawsuit the *Medford Mail Tribune* published a story on April 26, 2013 that falsely identified him as having been arrested on April 24 on charges of possession of heroin and tampering with evidence. On April 27 [the newspaper printed](#) a retraction, also published on its website, that it had falsely identified Brewer as the person who was arrested and charged: "Joshua Ryan Brewer was not arrested and does not face any charges."

Federal civil rights lawsuits often take several years to resolve, so the outcome of Brewer's lawsuit may not be known for some time.

[Click here to read](#) the Oregon Court of Appeals ruling in *State of Oregon v. Joshua Ryan Brewer*, Case No. A146981 (OR Ct of Appeals, 3-28-2012)

[Click here to read](#) Joshua Brewer's federal lawsuit, *Joshua Ryan Brewer v. City of Medford, et al.*, Case No. 1:13-cv-00541-CL filed in the U.S. District Court for Oregon in Medford.

Joshua Brewer is being represented in his lawsuit by Bend, Oregon attorney Foster A. Glass, whose website is [www.bend-law.com](#).

Endnotes:

1 "The [ulnar] nerve is the largest unprotected nerve in the human body (meaning unprotected by muscle or bone), so injury is common. This nerve is directly connected to the little finger, and the adjacent half of the ring finger." From the entry for "Ulnar nerve" in [www.Wikipedia.org](#).

2 The number of plants a person can grow and amount of marijuana he or she can possess is set-forth in the Oregon Medical Marijuana Act ORS 475.309(1); see also ORS 475.320.

Sources: [State of Oregon v. Joshua Ryan Brewer](#), No. A146981 (OR Ct of Appeals, 3-28-2012)

[Joshua Ryan Brewer v. City of Medford, et al.](#), No. 1:13-cv-00541-CL (USDC SD OR) (Filed 3-28-2013)

[Retraction: MT story confused identities of 2 men](#), *Medford Mail Tribune*, April 27, 2013

Mother Acquitted By Appeals Court Of Wilful Child Neglect Conviction

A mother has been acquitted by New Zealand's Court of Appeal of her wilful neglect conviction for smoking methamphetamine when her son was in their house.

During a police investigation of the mother's methamphetamine use a detective obtained a hair sample from her 3-year-old son. The hair tested positive for the presence of a trace amount of methamphetamine.

The mother was charged with wilful neglect of her son's welfare based on the presence of methamphetamine in his hair.

During her District Court bench trial in 2012 she testified that when she smoked methamphetamine her son was either asleep in his room, with her mother, or with a babysitter. She also testified that she thought it probably wasn't a good idea to smoke methamphetamine around her son, however she didn't know what if any effects the smoke might have on him. When she was asked how methamphetamine came to be in her son's hair, [she stated](#), "I don't know. It'll be right through the whole house, I suppose."

The judge found her guilty, ruling she had wilfully neglected her son's welfare because [she had a](#) "conscious appreciation that methamphetamine smoke was harmful and she failed to act to protect (the boy) from the effects of it."

In her appeal the woman's lawyers relied on two arguments. They argued that her lack of intent to cause harm to her son was established by the un rebutted evidence she only smoked methamphetamine when her son was asleep in another room or out of the house. They also argued the health effects of exposure to second-hand methamphetamine smoke on children has not been adequately studied, so the woman could not have known what if any risk it posed to her child.

On June 7, 2013 New Zealand's Court of Appeal quashed the woman's conviction on the basis she did not wilfully put her son in harm's way because he was either asleep in another room or out of the house whenever she smoked methamphetamine, and she did not fully understand what if any potential harm methamphetamine smoke might have on her child.

Consequently, there was insufficient evidence to support that she had wilfully endangered her son's welfare. The Court [ruled that](#) "Rather, the facts went no fur-



New Zealand's Court of Appeal building in Wellington, New Zealand

ther than placing her in the category of a parent who ... genuinely failed to appreciate her child's needs through personal inadequacy or stupidity or both."

Since the woman's conviction was quashed on the basis of insufficient evidence, a retrial wasn't ordered.

The mother's identity was not disclosed during her appeal due to a suppression order.

[Click here to read](#) the Court of Appeals ruling in *T v. R*, [2013] NZCA 212 (7 June 2013).

Source:
[T v. R](#) [2013] NZCA 212 (7 June 2013) (CA683/2012)
[P-addict's child neglect conviction overturned](#), *Stuff.co.nz*, June 7, 2013
[Mother's neglect conviction over P quashed](#), *NZCity News*, June 7, 2013

Karen Anne Christiansen Acquitted By CA Appeals Court Of Conflict Of Interest Convictions

The California Court of Appeals has acquitted Karen Anne Christiansen of her 2011 conflict of interest convictions and ordered dismissal of the charges.

On June 1, 2006 Karen Anne Christiansen began a contractual relationship with the Beverly Hills Unified School District (BHUSD) for her to provide consulting services as an independent contractor. The contract specifically detailed there was no "employer-employee" relationship between Christiansen and the BHUSD, and she could perform work for clients other than the BHUSD.

In February 2007 the BHUSD agreed to assign Christiansen's interest in her contract to her company Strategic Concepts.

In 2005 the BHUSD and Johnson Controls entered into a contract, which was modified by three "change order" agreements in 2007. At the time Johnson Controls was the



Karen Anne Christiansen, 52, outside the Santa Monica Courthouse on December 26, 2010, the day she was charged. (Scott Smeltzer, Daily Pilot (Newport, CA))

56th largest company in the United States with annual sales of \$38 billion. Acting as a consultant, Strategic Concepts recommended the BHUSD agree to the three "change orders." Strategic Concepts received no financial benefit from the "change orders."

In 2008 Strategic Concepts prepared a report concerning BHUSD facilities that raised a number of safety concerns, including seismic safety problems with several schools. The BHUSD submitted a bond measure to pay for the necessary work, which was passed in November 2008. The [BHUSD amended](#) Strategic Concepts' contract for it to provide "program and project management services" for some of the projects funded by the bond.

In August 2009 the BHUSD demanded return of all money paid by the school district to Strategic Concepts. Christiansen responded by suing BHUSD for the remaining \$372,000 she claimed was owed to Strategic Concepts.

The BHUSD responded to the lawsuit by instigating a criminal investigation of Christiansen and Strategic Concepts. On Dec 9, 2010 Christiansen was criminally charged by Los Angeles County DA's Office with four counts alleging she violated Government Code §90, which states:

"Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members."

Christiansen's four alleged violations of GC §90 were related to the BHUSD's three change orders in 2007 with Johnson Controls, and the 2008 amendment to BHUSD's contract with Strategic Concepts.

Christiansen [was arrested](#) on Dec. 26, 2010 and taken into custody. The judge set her bail at \$2 million based on the prosecution's argument that because she had no family ties to the Los Angeles area she was a flight risk. During her arraignment on January 3, 2011 her bail was reduced to \$400,000 and she was released.

Christiansen cont. on page 11

Kevin McCormick Acquitted Of Man- slaughter By Minnesota Court Of Appeals

Kevin Thomas McCormick [has been acquitted](#) by the Minnesota Court of Appeals of his second-degree manslaughter conviction in the 2010 death of 64-year-old deer hunter Jerry Donald Benedict in Clearwater County, Minnesota.

McCormick saw Benedict on a deer stand on November 6, 2010 that he thought was encroaching on his property. McCormick, 52, confronted Benedict explaining that he was trespassing. The stand toppled over while McCormick was standing on the side of the deer stand reaching up to hand Benedict a business card.

Although Benedict got up on his own and drove his ATV to the camp where his fellow hunters were, McCormick called 911 to report the incident. He told the operator Benedict "got up under his own power" and "rode away on an ATV".

When Benedict arrived back at his camp about 10 a.m. he gave no indication he was in any pain, and when he test fired his rifle to see if his scope was working properly he hit a paper plate set-up on a tree branch 40 yards away.



Kevin Thomas McCormick (Clearwater County Sheriff mug shot 2010)

After lunch Benedict and another hunter walked to another deer stand. Benedict climbed up the ladder onto the deer stand that was 10' to 12' off the ground. Later that afternoon Benedict walked back to the camp to get a chair for the second deer stand.

After sunset a fellow hunter found Benedict lying down in his cabin between 6 and 7 p.m. Benedict was moaning, struggling to breathe, and he appeared to be in pain. 911 was called and Benedict was transported to a hospital in an ambulance. A blood test established that when he arrived at the hospital after 7 p.m. he was legally intoxicated with a blood alcohol level of .08.

Benedict's chair and hat were found below the deer stand where he had spent the afternoon, while a heater and soft drink were found on top of that stand. At the hospital doctors discovered Benedict's injuries, included dislocated vertebrae, broken ribs, abdominal bleeding, and a dislocated shoulder.

The police assumed Benedict's injuries were caused by his fall on the morning of November 6, and charged McCormick with assault.

After surgery on November 16 to stabilize Benedict's spine and repair other injuries, his lung collapsed, he had renal failure, atrial fibrillation, and other complications. Benedict died on the 24th. McCormick's charge was then increased to manslaughter.

During McCormick's trial in 2011 the prosecution's case was circumstantial since there was no confession of guilt, no eyewitnesses, and no physical or forensic evidence directly tying him to Benedict's death.

The prosecution contended McCormick's reckless disregard for Benedict's safety resulted in the toppling of the deer stand and the injuries that ultimately caused his death. McCormick's defense was he didn't act with reckless disregard and there was evidence Benedict's injuries occurred after their encounter on the morning of November 6.

Two prosecution expert medical witnesses testified Benedict's death resulted from trauma sustained on November 6. Although they couldn't identify at what time it occurred or what event caused the trauma, they said it was consistent with falling from a deer stand.

McCormick's attorney called Dr. Mary Carr as an expert witness. Dr. Carr, an emergency room doctor, testified the description of Benedict's behavior after he arrived at his

McCormick cont. on page 12

Christiansen cont. from page 10

During her trial in November 2011 Christiansen's lawyer argued she couldn't have violated GC §90 because from commencement of the contract on June 1, 2006 between the BHUSD and Christiansen, and then Strategic Concepts, she was both in title and substance not a "member ...officer or employee" of the BHUSD. The prosecution argued that who was covered by the statute was flexible and so it applied to Christiansen.

The jury convicted Christiansen of all four counts on November 21. Her bail was revoked and she was immediately taken into custody. Christiansen [was sentenced](#) on January 5, 2012 to 4 years and 4 months in prison and ordered to pay restitution of \$3,539,991. She was released on \$400,000 bail pending the outcome of her appeal. It [was reported](#) the BHUSD spent more than \$2 million related to Christiansen's prosecution.

Christiansen appealed on several grounds, including that she couldn't have committed her accused crimes because she wasn't a member, officer or employee of the BHUSD

as required by the statute. The State argued, as the prosecution had at trial, that the wording of GC §90 shouldn't be interpreted literally, and so it applied to Christiansen.

On May 31, 2013 the California Court of Appeals, Second District, Division One issued its opinion in *The People v. Karen A. Christiansen*, No. B238361 (CA CA2 Div.1) that [stated in part](#):

"Because it is undisputed that at all relevant times Christiansen was an independent contractor, she was not an employee within the meaning of section 1090 ...At least for purposes of criminal liability under section 1090, an independent contractor is not an employee." (Op. cit. 8-9)

"Because Christiansen was not a member, officer, or employee of the relevant public body, section 1090 does not apply to her. We therefore reverse her convictions, vacate her sentence and the restitution award, and direct the superior court to dismiss all charges against her." (Op. cit. 2)

Christiansen, now 55, had been released on parole before her convictions were vacated.

[Click here to read](#) *The People v. Karen A. Christiansen*, No. B238361 (CA Ct of Appeals 2nd Dist, Div 1), 5-31-13.

Source:

[The People v. Karen A. Christiansen](#), No. B238361 (CA Ct of Appeals 2nd Dist, Div 1), 5-31-13

[Former Beverly Hills school official's conviction overturned](#), *Los Angeles Times*, May 31, 2013

[Ex-School Official Tied to Newport Superintendent Gets 4 Years In Prison](#), *Newport Beach-Corona del Mar Patch*, January 5, 2012

[Woman in school case arrested](#), *The Orange County Register*, December 27, 2010

Justice Denied's Website Has Had Visitors From 212 Countries

Justice Denied's website has had visitors from 212 countries through January 2014. Those visitors were from more than 18,000 cities and towns. Five of the 20 cities where the most visitors were from are outside the U.S.

McCormick cont. from page 11

camp the morning of November 6 was medically inconsistent with the injuries that ultimately were the cause of his death. She testified Benedict's injuries occurred between the time he walked to the second deer stand that afternoon and when he was found at his cabin. She testified that if he had sustained his extensive injuries in the morning he would have given indications of pain to his hunting companions at lunch, and with broken ribs and a dislocated shoulder he reasonably wouldn't have been able to drive an ATV or fire his rifle — yet he did so without giving any indication of pain or even discomfort.

To protect McCormick's state and federal constitutional right to confront the witnesses against him the trial judge ordered the exclusion of any testimony concerning any alleged comments Benedict made to anyone about the events of November 6 — since McCormick couldn't cross-examine Benedict about any comments attributed to him.



A deer stand similar to the one Jerry Donald Benedict fell from. (Minneapolis City Pages)

During Dr. Carr's cross-examination the prosecution violated the judge's order when it specifically questioned her about comments attributed to Benedict. McCormick's lawyer objected to the prosecution's line of questioning.

After the jury convicted McCormick of second-degree manslaughter, his lawyer made separate motions for a judgment of acquittal based on insufficient evidence, and for a new trial based on the prosecutorial misconduct of violating the judge's order during Dr. Carr's cross-examination. Before McCormick was sentenced his trial judge granted his motion for a new trial, but denied his motion for a judgment of acquittal. McCormick then made a motion to dismiss the complaint arguing that his retrial would violate his right against double jeopardy under the U.S. and Minnesota Constitutions. McCormick appealed after the judge denied his motion to dismiss.

McCormick's issues on appeal where the trial judge erred denying his motion for a judgment of acquittal; and the trial judge erred denying his motion to dismiss the complaint.

The Minnesota Court of Appeals issued its

majority opinion in *State v. McCormick*, No. A12-1253 (MN COA, 8-12-13) on August 12, 2013. Their decision states in part:

At trial, each element of a criminal charge must be proven beyond a reasonable doubt. ... Where any material element is to be proven by circumstantial evidence, proof beyond a reasonable doubt requires that "the facts proven by circumstantial evidence must be consistent with each other . . . and must exclude every other reasonable conclusion except that of the guilt of the defendant." [Op. Cit. 10-11]

Our review of the sufficiency of circumstantial evidence proceeds in two stages. ... First, we determine the proven circumstances. [Op. Cit. 11]

The second stage of review requires us to independently evaluate the reasonableness of all inferences to be drawn from the circumstances proved, including those inconsistent with guilt. ... If any of these inferences are inconsistent with guilt, then there is reasonable doubt as to guilt. [Op. Cit. 11]

Appellant argues that the circumstantial evidence presented is insufficient to establish that he had the requisite state of mind to be guilty of second-degree manslaughter. [Op. Cit. 11]

The circumstantial evidence admits of rational inferences other than that appellant intentionally or in conscious disregard of the risk toppled the deer stand. For example, appellant claims he was handing J.B. a business card when the stand toppled by reason of its instability. One of appellant's business cards was found at J.B.'s cabin after the incident. ... Handing a business card to a person in a deer stand which then accidentally topples does not reflect conscious disregard of a risk created by the actor. Even taking the evidence in the light most favorable to the state, ... we are compelled to conclude that there are also reasonable inferences to be drawn from the circumstances proved that are inconsistent with a reckless state of mind. [Op. Cit. 13]

A person is guilty of second-degree manslaughter when the person "cause[s] the death of another." This requires not only that the act be the cause of the death, but also that it be the proximate cause of the injury. [Op. Cit. 13]

The circumstantial evidence supports several rational hypotheses. ... There is also circumstantial evidence from this time period directly contradicting the inference that the morning fall from the deer stand caused the injuries that ultimately

led to J.B.'s death. ... a witness for the state, observed J.B. shoot a paper plate from 40 yards away after the morning incident. Evidence that J.B. rode an ATV away from the morning encounter with appellant, did not appear to be in significant pain during lunch, and then went to the second deer stand (where some of his items were found atop that stand) is also inconsistent with the inference that J.B. sustained extensive injuries during his encounter with appellant. [Op. Cit. 14]

... the burden is on the state to prove beyond a reasonable doubt that appellant's tipping of the deer stand was the proximate cause of the injuries leading to J.B.'s death. Even viewing the facts in the light most favorable to the state, the record evidence supports inferences that are inconsistent with all of J.B.'s injuries having occurred in the morning when appellant toppled the deer stand. J.B. may have fallen from a second deer stand. ... Accordingly, we hold that the state has not met its burden of demonstrating that there are no reasonable inferences from the record evidence that are inconsistent with appellant's guilt. [Op. Cit. 15]

[T]he district court erred in its application of the existing law regarding the evaluation of circumstantial evidence and should have granted appellant's motion for judgment of acquittal. [Op. Cit. 15]

Here, the district court found that the prosecutor did not commit misconduct with the intention of provoking a mistrial. This finding of fact is not clearly erroneous because the district court reasonably inferred that the prosecutor intended to circumvent the *in limine* ruling in order to negate evidence presented by appellant at trial. Thus, the district court did not err by determining that appellant's retrial does not violate the Double Jeopardy Clause of the United States Constitution. [Op. Cit. 17]

In sum, the district court correctly ruled that, under present Minnesota law, appellant's double jeopardy rights would not be violated by subjecting him to another trial because the prosecutorial misconduct that prompted the mistrial was not intended to goad appellant into moving for a mistrial. But because the circumstantial evidence presented at trial on the issues of recklessness and proximate cause supports reasonable inferences inconsistent with appellant's guilt, we conclude that the district court erred in denying appellant's motion for a judgment of acquittal. [Op. Cit. 19]

McCormick cont. on page 13

International Court Of Justice Petitioned To Nullify Conviction Of Jesus Christ

A petition to nullify Jesus Christ's conviction and death sentence is pending in The International Court of Justice in The Hague, Netherlands.

In August 2007 Naroibi attorney Dola Indidis filed a petition in Kenya's High Court on behalf of the Friends of Jesus that challenged the constitutionality of the mode of questioning, the evidence, the trial, and the sentencing and punishment of Jesus Christ. The petition's requested relief was a declaration that the proceedings were a "nullity" because "they did not conform to the rule at the material time." The ten defendants included The Republic of Italy and the State of Israel. The 25-page petition contended the proceedings Jesus was subjected to were infected with the bias and prejudice of "Judicial Misconduct, Prosecutorial Misconduct, Malicious Prosecution, Abuse Of Office, Fabrication Of Evidence and Human Rights Abuses." (§1, p. 11)

Justice Denied reported on the Friends of Jesus' petition in its [Summer 2007 issue](#). The petition was taken very seriously in Kenya, with legal experts debating the merits of its legal basis, its claims, and its re-

McCormick cont. from page 12

The *appeals court's ruling* the prosecution failed to introduce sufficient evidence of McCormick's guilt bars his retrial under the Minnesota and U.S. Constitution's double jeopardy clauses, irrespective of the court's ruling McCormick's retrial wasn't barred by the *trial court's* granting of a new trial based on the prosecution's misconduct.

On September 6, 2013 Minnesota's Attorney General's [filed a petition](#) with the Minnesota Supreme Court requesting review of the appeals court's ruling. That petition [was denied](#) on October 15, 2013.

Source:

[State of Minnesota v. Kevin Thomas McCormick](#), No. A12-1253 (MN Ct. of Appeals, 8-12-13)

[State of Minnesota v. Kevin Thomas McCormick](#), No. A12-1253, Supreme Court Docket page

[Kevin McCormick convicted of manslaughter following controversial deer stand death](#), *Minneapolis City Pages*, March 13, 2011

[Minnesota hunter convicted of manslaughter in deer stand dispute](#), *Detroit Lakes Online* (Detroit Lakes, MN), March 12, 2011



Naroibi attorney
Dola Indidis

After the High Court's ruling, in 2011 Indidis filed a petition in The International Court of Justice (ICJ) in The Hague, Netherlands on behalf of the Friends of Jesus that raised the same legal issues as the 2007 Kenyan petition. The petition asserted the ICJ had jurisdiction over the material issues because upon the attainment of independence the states of Italy and Israel incorporated the laws of the Roman Empire which were in force at the time of Jesus' trial and execution.

Indidis told the *Nairobi* newspaper [during an interview](#), "I filed the case because it's my duty to uphold the dignity of Jesus and I have gone to the ICJ to seek justice for the man from Nazareth. His selective and malicious prosecution violated his human rights through judicial misconduct, abuse of office bias and prejudice."

A spokesperson for the Friends of Jesus [told reporters](#) the petition in the ICJ was being pursued because, "The trial of Jesus, his crucifixion and his conviction violated the laws of the time, and must be corrected by modern law."

Indidis, a former spokesman of the Kenyan Judiciary, recently announced the ICJ has constituted a panel to hear the case. That couldn't be verified from the ICJ's website at www.icj-cij.org.

[Click here to read the petition](#) filed in Kenya's High Court, *Friends of Jesus v Tiberius, Emperor of Rome; Pontius Pilate; et al*, Republic of Kenya Constitutional Petition No. 965 of 2007.

Justice Denied's previous article about the case is: "[Petition Seeks To Nullify Jesus Christ's Conviction](#)" *Justice Denied*, Issue 37, Summer 2007, p. 20.

Sources:

[Kenyan lawyer takes State of Israel, Jews to Hague over Jesus' death](#), *Jerusalem Post*, July 30, 2013

[Kenyan Lawyer seeks justice for Jesus Christ in ICJ](#), *churchill.co.ke*

[Friends of Jesus v Tiberius, Emperor of Rome; Pontius Pilate; et al](#), Republic of Kenya Constitutional Petition No. 965 of 2007

Hilda Lopez de la Cruz Acquitted Of Abortion Conviction By Mexican Appeals Court

Hilda Lopez de la Cruz's abortion conviction and one year prison sentence have been vacated by the Supreme Tribunal of Mexico's State of San Luis Potosi.

In July 2009 Lopez was 18 and living in Tamuin, San Luis Potosi when she went to the hospital suffering from stomach pains. A doctor determined she was six weeks pregnant and she was experiencing a miscarriage. While she was in pain and hemorrhaging the doctor asked her questions, including if she had attempted an abortion. He interpreted that she gave an affirmative response.



Hilda Lopez de la Cruz during a press conference in Mexico City on August 27, 2013 (*Latin America Herald Tribune*)

Abortions are illegal in the State of San Luis Potosi. The doctor took Lopez while she was half-naked to the municipal police station. She was jailed overnight without medical care in the police station. She was released the next day.

Three years later, in 2012, Lopez was arrested after being charged with violating the law prohibiting abortions.

During Lopez's trial in April 2013 the prosecution's case was based on the doctor's testimony she had indicated the miscarriage was caused by her attempt to have an abortion. Lopez was convicted and sentenced to one year in prison.

Lopez appealed and in August 2013 the Supreme Tribunal, San Luis Potosi's highest court [issued its ruling](#). The Court ruled her alleged confession was inadmissible because it was obtained under duress while she was hemorrhaging. Without her alleged confession there was insufficient evidence to support her conviction, and so the Court vacated her conviction and sentence.

The rights group GIRE hired the attorney's who appealed Lopez's conviction. After Lopez's acquittal GIRE's director, Regina Tames, [told reporters](#) during a press conference in Mexico City on August 27 that between 2009 and 2011 at least 679 Mexican women were accused of abortion by

Lopez cont. on page 14

Property Destruction Conviction Quashed For Gary The Goat Eating Grass

The conviction and \$462 fine for Gary the goat's destruction of property outside of Sydney, Australia's Museum of Contemporary Art has been overturned.

James Dezarnaulds is a comedian who goes by the stage name Jimbo Bazoobi as he tours Australia with his goat Gary.

In August 2012 Dezarnaulds was charged with destroying property when his goat Gary was observed eating grass and flowers outside Sydney's Museum of Contemporary Art. He was convicted and fined \$462.*



James Dezarnaulds, aka Jimbo Bazoobi and Gary the goat (Sydney Morning Herald)

Dezarnaulds appealed on several grounds. His lawyer Paul McGirr argued the ordinance was intended to apply to the destruction of property by a person not an animal, and that Gary was only eating and there was no evidence he intended to destroy property or that Dezarnaulds put him up to it.

The hearing of Dezarnaulds appeal was a major media event in Australia. Dezarnaulds' conviction and fine **were quashed** on January 23, 2013 by Sydney's Downing Centre Local Court on the basis he "had no control over what the goat might eat, he might have preferred an ice cream." However, Dezarnaulds' request to have his legal fees was denied.

Outside courthouse, Dezarnaulds **told reporters**, "Gary's name has been cleared of all this slander. He was simply eating and I want to thank everyone for coming down here. This is actually an abuse of the laws of nature, I mean it was a goat eating grass. I'm a comedian, I can come up with jokes, but it's pretty hard to compete with cops coming up with this stuff. It's obviously a joke, but the fact that we're here it's gone a bit be-



Gary the goat wearing his hat (Sydney Morning Herald)

yond a joke."

There was speculation Gary could be charged with public urination for relieving himself outside the museum, but Dezarnaulds observed, "Gary the goat taught the cops a valuable lesson today, don't bite off more than you can chew."

* In August 2012 the exchange rate was \$1.05 Australian dollar to \$1 U.S. dollar, so Dezarnaulds' AUS\$440 fine was equal to US\$462.

Source:

[Gary the goat has his day in court ... and wins.](#) *Sydney Morning Herald*, January 23, 2013

[Owner of grass-eating goat bleats the rap.](#) *ABC News*, January 23, 2013

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Lopez cont. from page 13

medical personnel. Tames also said that of Mexico's 32 jurisdictions, only the Federal District – Greater Mexico City – has fully decriminalized abortion in the first 12 weeks of pregnancy. Several other Mexican state's allow a pregnancy resulting from a rape to be aborted, but San Luis Potosi is not one of those states.

[Click here to read a report prepared](#) by GIRE documents that in recent years 171 women were charged in Mexico with having an abortion, 151 were prosecuted, and 127 were found guilty.

GIRE is a non-profit non-governmental organization, and its website is, www.giremexico.tumblr.com. GIRE's report, "Omission and Indifference: Reproductive Rights in Mexico" is available in Spanish only at, www.informe.gire.org.mx.

Source:

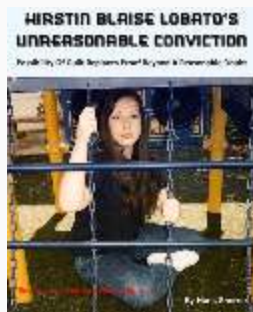
[Mexican Court Quashes Conviction](#) of Woman Who Had Miscarriage, *Latin American Herald Tribune*,

[Omission and Indifference](#): Reproductive Rights in Mexico, GIRE website.

"Kirstin Blaise Lobato's Unreasonable Conviction"

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 and didn't know anyone who knew him.
- She had never been to the murder scene.
- At the time of the murder in Las



Vegas she was 170 miles north in 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 the crime.

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.

Written by Justice Denied's editor Hans Sherrer. 176 pages, softcover.

\$13 Order from: www.Amazon.com, or order with check or money order with order form on pages 21 to order.

New Mexico Court Of Appeals Acquits Samantha Garcia Of Negligent Child Abuse

The New Mexico Court of Appeals [has acquitted](#) Samantha Garcia of her conviction of negligent child abuse by endangerment after her three-year-old son was found outside their apartment at 2 a.m.

In May 2010 Sandra Garcia lived with her three-year-old son in an apartment in Clovis, New Mexico. On May 15 a woman getting ready for work at 2 a.m. found her neighbor Garcia's son wandering outside their apartment in the parking lot wearing only a diaper and crying for his mother. The neighbor found Garcia's apartment door ajar. She was unable to rouse Garcia from her deep sleep and after changing the child's diaper and putting him in bed she called the police. Garcia's boyfriend was also asleep in her bedroom. After the police arrived Garcia was groggy and she told them she had been drinking and smoked some marijuana that night. Garcia was arrested and charged with felony negligent child abuse by endangerment.

Garcia refused a plea bargain and went to trial in the Curry County District Court.

The prosecution's case was based on testimony that at the time Garcia's son was found in the parking lot she was intoxicated from drinking alcohol and smoking marijuana.

The New Mexico statute under which Garcia was charged required the prosecution to prove beyond a reasonable doubt that she knowingly, intentionally, or negligently placed her son "in a situation that may endanger the child's life or health." NMSA 1978, Section 30-6-1(D)-(E) (2009).

Garcia made a motion for a directed verdict of acquittal at the close of the prosecution's case, arguing there was insufficient evidence to prove her guilt beyond a reasonable doubt because no evidence was introduced her son had been in a direct line of harm or otherwise exposed to anything more than a mere possibility, rather than a probability, he was in danger. Garcia also argued to the judge that the prosecution didn't introduce any evidence her intoxication contributed to her son wandering outside the apartment. The trial judge denied Garcia's motion.

Relying on what she thought was the inadequacy of the prosecution's case, Garcia neither testified nor called any witnesses in her

defense.

After the jury convicted Garcia she was sentenced to three years in prison, with her jail sentence suspended pending her completion of three years probation.

Garcia appealed, and on October 7, 2013 the New Mexico Court of Appeals issued [their majority ruling](#). In *New Mexico v. Samantha Garcia*, No. 31, 429 (Ct of Appeals, 10-7-2013) the Court reversed Garcia's conviction on the basis there was insufficient evidence to support her conviction. Judge Timothy L. Garcia wrote in the Court's majority opinion:



{8} In this case, the State argued that Defendant's intoxication was criminally negligent because it left Child without adequate supervision.

...
{11} The evidence presented by the State during trial was only sufficient to establish that Defendant was intoxicated when she fell asleep in her bedroom on the night in question. Factually, this particular event of falling asleep did not create a foreseeable risk of danger directed toward Child. ... A jury must draw its reasonable conclusions from the evidence produced at trial, it must not be left to speculate in the absence of such proof. Simply falling asleep intoxicated in a separate bedroom is not enough to establish child endangerment.

{12} The State failed to connect Child's ability to wander out of the apartment with Defendant's intoxication or otherwise prove that Defendant acted or failed to act with any resulting foreseeable risk that endangered Child's life or health. ...

{13} ... We, as a society, cannot punish parents under a theory of strict liability for every imaginable error in judgment ... "[I]f imprudent and possibly negligent conduct were sufficient to expose a care giver to criminal liability for child endangerment, undoubtedly the majority of parents in this country would be guilty of child endangering—at least for acts of similar culpability."

{14} ... The State failed to establish any connection between Defendant's intoxication and Child's act of wandering out of the apartment on the night in question. ... Our review of the record leads us to conclude that Defendant's conviction for child abuse by endangerment is not supported by substantial evidence and

must be reversed.

Judge Jonathan B. Sutin wrote in his concurring opinion:

{30} To summarize, the bare facts of this case—intoxication to some unknown degree resulting in some degree of heavy sleep and Child having left the apartment—are little different from, and could well constitute, the unastonishing circumstances that regularly exist for thousands of parents throughout New Mexico who drink alcoholic beverages, take prescribed or over-the-counter sleep-inducing drugs, and fall asleep, even including parents who forget to assure that the front door is secure. Without greater objective proof establishing foreseeability, upholding Defendant's conviction leaves far too wide a prosecutorial universe than what I believe the Legislature could reasonably have intended. As the facts stand in this case, Defendant's conduct should have been handled, if at all, pursuant to the Legislature's civil abuse and neglect laws.

The judge that dissented from acquitting Garcia wrote in his opinion that instead he would have reversed her conviction and ordered a new trial on the basis the judge failed to give a lesser offense jury instruction.

The *appeals court's ruling* the prosecution failed to introduce sufficient evidence of Garcia's guilt bars her retrial under the New Mexico and U.S. Constitution's double jeopardy clauses.

The New Mexico Court of Appeals ruling in *New Mexico v. Samantha Garcia*, No. 31, 429 (Ct of Appeals, 10-7-2013) [can be read by clicking here](#).

Source:

[New Mexico v. Samantha Garcia](#), No. 31, 429 (Ct of Appeals, 10-7-2013)

[Intoxicated mom's child abuse conviction reversed](#), Associated Press Story, *Santa Fe New Mexican*, October 8, 2013

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Woman Sues For Forced False Confession She Wasn't Raped

A woman has filed a federal civil rights lawsuit against the City of Lynnwood, Washington, police officers, and a federally and state funded organization and its employees, for violations of her constitutional rights related to her being prosecuted in 2008 for falsely reporting a rape that had in fact occurred. To protect her privacy the lawsuit identifies her by her initials D.M. D.M.'s lawsuit alleges what can at best be described as callous and inhumane treatment of her by the defendants named in her lawsuit after she reported being raped.

In August 2008 18-year-old D.M. was living in a Lynnwood, Washington apartment as part of a teen homelessness prevention program operated by [Cocoon House](#). Cocoon House received funds originating from the U. S. Department of Housing and Urban Development, the State of Washington, and Snohomish County. Lynnwood is about 10 miles north of Seattle.

On the early morning of August 11, 2008 a man entered D.M.'s apartment through a window. He threatened her with a butcher knife, bound her wrists behind her back with a shoe string he had removed from her shoes, stuffed a pair of underwear in her mouth as a gag, blindfolded her, raped her, and took photographs of her.

After the man left D.M. was able to free herself. She immediately called her upstairs neighbor and her Cocoon House case manager.

The neighbor called emergency 911. At least three Lynnwood Police Department officers responded. One of the officers wrote in his report that D.M. had "red marks" on both of her wrists where the rapist had tied them with her shoestring, and he took photographs of her wrists. The evidence collected by the police included the shoe string the rapist used to tie D.M., her underwear he used as a gag, the butcher knife he threatened her with, the kitchen knife D.M. used to try and cut the shoe string binding her wrists, the scissors that she was able to use to free her hands, her tennis shoes from which her rapist took the shoe strings, her wallet handled by the rapist, and her driver's license he left on the bedroom window sill.

D.M. was taken to the Providence Hospital Emergency Room on the day of the rape and the doctor's report states: "She did report sexual assault by an armed invader to her

apartment with trauma noted bilaterally to her wrists and abrasions to inner aspect labia minora." D.M.'s Cocoon House case manager was present when the doctor made the observations and photographs were taken.

D.M.'s written statement submitted to the police two days after the rape was consistent with what she had told the police officers that responded to the 911 call she had been raped.

Three people who had no personal knowledge about D.M.'s rape told a Lynnwood police officer they doubted she had been raped.

Three days after D.M.'s rape, two officers who believed the three people picked D.M. up in their police car. They transported her to the Lynnwood Police Station to try and extract an admission from her that she had made up the rape. Before interrogating D.M. the officers did not inform her of her *Miranda* rights against self-incrimination and that she had the right to an attorney. The officers told D.M. they didn't believe she had raped and insisted she write a statement that she had made it up. D.M. wrote a statement but it didn't mention the rape hadn't occurred. The officers continued to pressure D.M. that she had made it up, but D.M. insisted she had been raped. The detective's [report states](#): "DM became more animated, pounded the table and said that she was 'pretty positive' that it had happened." The officers continued the interrogation and telling D.M. that she hadn't been raped, and she eventually signed a statement that she had made up the rape accusation.

"Before interrogating D.M. the officers did not inform her of her *Miranda* rights against self-incrimination and that she had the right to an attorney. The officers told D.M. they didn't believe she had raped and insisted she write a statement that she had made it up."

The next day, August 15, D.M. contacted her Cocoon House case manager and [told him](#) the police "don't believe her, so she wants to get a lawyer." Her case manager didn't do anything.

Three days later, on August 18, D.M. insisted to her case manager and the Cocoon House director that she had been raped and wanted to go to the Lynnwood police and recant her statement that she signed under duress that she hadn't been raped. She told her case manager and the director that the police should be looking for her rapist and

"she just signed the statement to get out of there" (the police station). The Cocoon House employees threatened D.M. with the lose of her housing if she filed a report recanting her statement.

D.M. then went to the Lynnwood police station with her case manager and the director. D.M. told the two officers assigned to her case that [she wanted to](#) "recant her confession that she had lied about being raped." DM stated that the rape actually occurred. She began crying and said she kept seeing the vision of "him" on top of her." The detective threatened D.M. that she would be jailed if she failed a polygraph test, and he would not recommend that she continue receiving assistance from Cocoon House. In the face of the police officers and the Cocoon House case manager and director not believing she was raped, and her repeated requests for a lawyer being ignored, D.M. backed down.

At no time had D.M. been advised of her rights to remain silent, to not incriminate herself, and to have a lawyer appointed to her if she requested one.

Four days later, D.M. was arrested on August 22 for the crime of filing a false police report (RCW 9A-84-040). The prosecutor's office filed that charge against her five days later based solely on her statement, which was contradicted by the physical evidence from D.M.'s apartment collected by the police officers, the officer's and doctor's reports, and the photographs of D.M. that supported she had been raped. When D.M. was arraigned on September 25, 2008 she pled not guilty and was appointed a public defender.

On March 12, 2009 D.M. entered into a Pretrial Diversion Agreement that had [the following terms](#):

- * Costs imposed of \$500.00.
- * Supervised probation for one year.
- * Directed to report to Probation Department on April 3, 2009.
- * No criminal violations for 1 year.
- * Notify court of address change for 1 year.
- * No driving without license and insurance for 1 year.
- * Mental health evaluation for 1 year.
- * If conditions were met, the charges would be dismissed.

D.M. completed the Pretrial Diversion Agreement and the charge of filing a false police report was dismissed on April 7, 2010, and her case was closed the next day.

D.M. cont. on page 17

D.M. cont. from page 16

Almost a year later, in February 2011, 32-year-old Marc P. O'Leary was arrested in Lakewood, Colorado and charged with two rapes and an attempted rape in Colorado. When the police searched O'Leary's home they found a camera that contained more than 100 "trophy" photos of women victimized by his sexual assaults. [One of those photos](#) was of D.M. -- exactly as she had told the police in August 2008 her rapist had taken photos of her.

There were strong similarities between O'Leary's accused crimes in Colorado, the rape of D.M. and the rape of a 63-year-old woman in the Seattle suburb of Kirkland that occurred in 2008 after D.M.'s rape. Kirkland is about 15 miles southeast of Lynnwood.

Investigators discovered that O'Leary lived in Mountlake Terrace, Washington from 2006 to 2009. Mountlake Terrace is a Seattle suburb only a few miles from Lynnwood and Kirkland.

On March 16, 2011 D.M.'s case was reopened and the \$500 she had paid as part of her Pretrial Diversion Agreement was ordered returned to her. Although D.M. had not been convicted of filing a false police report because she successfully completed the Pretrial Diversion Agreement, the fact she had been charged had been reported to state and federal police agencies. On April 14, 2011 an order was entered to delete the record of D.M.'s case from all criminal justice agency files.

O'Leary was charged with the rape of D.M. and the woman in Kirkland. O'Leary pled guilty on June 6, 2012 to those rapes. As part of his plea deal he was sentenced to serve 19 years and 8 months in prison concurrently with his sentence to serve 49 years and 2 months in prison for his convicted crimes in Colorado.

At the time of O'Leary's plea and sentencing Snohomish County Deputy Prosecutor Adam Cornell [said about O'Leary's](#) rape of D.M., "The defendant came into her home and crushed her dignity sense of security and belief in the goodness of people. She suffers still."

On June 7, 2013 D.M. filed a federal civil rights lawsuit in Seattle that named as defendants Marc O'Leary, the City of Lynnwood, Lynnwood police chief Steven J. Jensen,

Lynnwood police officers Jeff A. Mason and Jerry Ritgarn, Cocoon House, and its director and D.M.'s case manager in August 2008, Jana Hamilton and Wayne Nash respectively. The case is *D.M. v. O'Leary et al*, No. 2:2013cv00971 (USDC WWA).

Among D.M.'s claims is the City of Lynnwood and its police officers Mason and Ritgarn violated her federal constitutional rights by: Arresting her without probable cause that she filed a false police report; failing to advise her of her *Miranda* rights that she had the right against self-incrimination, she had the right to remain silent, and that she was entitled to assistance of counsel; forcing her to make an involuntary statement that she hadn't been raped; threatening her with jail if she failed a polygraph test; threatening to have her housing benefits revoked; and maliciously prosecuting her in violation of her clearly established constitutional rights.

D.M.'s lawsuit seeks "an appropriate remedy and awarding Plaintiff general and special damages, including damages for pain, suffering, anxiety, humiliation, experienced in the past, the present, and to be experienced in the future pursuant to 42 U.S.C. Section 1983 and Section 1988 in an amount to be proven at trial, including punitive damages."

D.M.'s lawsuit can be read [by clicking here](#).

D.M. currently lives in Wyoming. She only has the police in Colorado to thank for her name being cleared and her criminal record expunged, because they put forth the effort to identify her photo was amongst the photos O'Leary took of his victims.

Source:

[DM v. O'Leary et al](#), No. 2-2013cv00971 (USDC WWA) (complaint filed 6-7-2013)

[Convicted rapist pleads guilty to rapes in Lynnwood, Kirkland](#), KOMOnews.com (Seattle, WA), June 6, 2012

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Marc P. O'Leary at the time of his arrest in February 2011. (Jefferson County Sheriff's Office)

Lorenzo Johnson Rally Held In Harrisburg, Pennsylvania on December 18, 2013

On December 18, 2013 [A Call to Action to Free Lorenzo Johnson](#) was held at 11:30 a.m. outside the Office of the Pennsylvania Attorney General in Strawberry Square, at 3rd St. and Walnut St. in Harrisburg, Pennsylvania. The event included a press conference and rally in support of Johnson, and to submit petitions to AG Kathleen Kane encouraging her to support Johnson's post-conviction petition and dismissal of his charges.

Participating were Johnson's lawyer Rachel Wolkenstein; exoneree and wrongful conviction activist Jeffrey Deskovic; Derrick Hamilton, an advocate for family and victims of wrongfully conviction; Bret Grote, Director of the Abolitionist Law Center, the Pennsylvania Human Rights Coalition-Fed-Up, and Johnson's wife Tazza and other family and friends.

Lorenzo Johnson was released from prison on January 18, 2012 after 16 years of incarceration, when the federal Third Circuit Court of Appeals reversed his convictions on the basis there was insufficient evidence Johnson was guilty of being an accomplice and coconspirator in the December 1995 murder of Taraja Williams in Harrisburg. Johnson's alibi defense



Lorenzo Johnson at the party celebrating his release on January 18, 2012. He was taken back into custody on June 14, 2012. (Lorenzo Johnson, Facebook.com)

was he was in New York City 170 miles from Harrisburg at the time of the murder. However, the jury relied on the key prosecution testimony of a drug addict who testified that on the night of the shooting she was drinking alcohol and had consumed a large quantity of crack cocaine. She also admitted that when first questioned by the police she told them she didn't know anything about the shooting.

Johnson was taken back into custody on June 14, 2012 to resume serving his life sentence after the U.S. Supreme Court reinstated his convictions.

In August 2013 Johnson filed a state post-conviction petition that includes the new evidence the prosecution's key witness has recanted her trial testimony as false, and new evidence pointing to the actual murder-

Johnson cont. on page 18

William DePalma Was Framed For Bank Robbery By A Policeman Faking His Fingerprint

The conviction of innocent persons in state and federal courts isn't a recent phenomenon, but is an ongoing feature of the legal system in the United States. A police officer's framing of William DePalma for a bank robbery he didn't commit was such an egregious case that it was [national news](#) in the fall of 1975.

On November 16, 1967 a police officer stopped William DePalma while he was walking on a sidewalk in Whittier, California, where he lived. The officer thought DePalma resembled the description of the man who earlier that day robbed a local bank with a pistol and put the money in a brown bag. DePalma agreed to go to the police station for questioning and while he was there his photograph was taken. All the witnesses shown DePalma's photo said he wasn't the bank robber. There was no evidence he committed the robbery, but a report about his interview and his photograph were included in the case file.

Twelve days after the Whittier robbery, the Mercury Savings and Loan in Buena Park was robbed of \$2,400. Buena Park and Whit-

Johnson cont. from page 17

ers. The State's response to Johnson's petition is due to be filed in January 2014.

On October 15, 2013 the federal Third Circuit Court of Appeals denied Johnson's request to file a second or successive federal habeas corpus petition. Although Johnson's petition was based on his new evidence supporting his actual innocence, the court ruled it did not make "a prima facie showing that his claims satisfy the applicable standard" for filing a second or successive petition.

Detailed information about Lorenzo Johnson's case is at, www.freelorenzojohnson.org.

Previous *Justice Denied* articles about Lorenzo Johnson's case are:

[U.S. Supreme Court Reinstates Lorenzo Johnson's Convictions Even Though He May Be Innocent](#)

and, [Lorenzo Johnson Back In Custody After U.S. Supreme Court Reinstates His Murder Conviction](#)

tier are in Orange County, which adjoins Los Angeles County. The method operandus was similar to the earlier robbery in Whittier, so the file for that still unsolved crime was reviewed by the Buena Park police. The file included the report about DePalma and his photograph. Shortly after that the head of Buena Park's crime lab — Sergeant James D. Bakken — reported that DePalma's left index fingerprint matched a fingerprint found on a counter at the savings and loan. DePalma's fingerprint and the crime scene fingerprint were sent to the FBI lab in Washington, D.C. — which confirmed the match.

DePalma was arrested in December 1967 and charged with committing the Buena Park robbery.

During his federal court trial in 1968 the prosecution's case was based on the testimony of two bank employees who identified DePalma as the robber, and an FBI fingerprint examiner and Bakken both testified DePalma's fingerprint matched the fingerprint found on a counter at the crime scene. DePalma alibi defense that at the time of the crime he was working 15 miles away in the City of Commerce selling food from his catering truck, was supported by the testimony of 13 witnesses.

The jury convicted DePalma and the 31-year-old father of three was sentenced to 15 years in prison. He was allowed to remain free pending the outcome of his appeal.

DePalma was broke from paying his legal expenses of \$13,000, so after the federal 9th Circuit Court of Appeals [affirmed his conviction](#) he began calling Los Angeles area lawyers and private investigators in a desperate attempt to find someone willing to investigate his case *pro bono* for evidence proving his innocence. Only one person agreed to meet with him: P.I. John Bond. Skeptical of DePalma's claim he had never been in the Mercury Savings & Loan, Bond had him take a lie detector test. DePalma passed so Bond agreed to look into his case at no charge. Bond began trying to solve the mystery of how DePalma's fingerprint could have been at the crime scene when he wasn't there, by seeking to discover the identity of the robber.

After the U.S. Supreme Court declined to review DePalma's case he began serving his sentence in August 1971 at McNeil Island Federal Penitentiary near Tacoma, Washington. Imprisoned a thousand miles north of Los Angeles, DePalma's impoverished



William DePalma in August 1975. (AP)

wife and three children weren't able to visit him.

Bond was able to obtain documents proving the prosecution had failed to disclose to DePalma's trial lawyer that the teller who had been robbed did not identify DePalma when shown his photo 10 days after the robbery. The teller then positively identified him as the robber during his trial. The prosecution also failed to disclose that both tellers told police at the scene that the robber was "Mexican" — while DePalma was Italian-Russian. The prosecution also failed to disclose there was a third witness — a woman saw the robber walk into the bank and she didn't identify DePalma.

Lawyer Joe Ball agreed to represent DePalma *pro bono* and filed a motion for a new trial based on the prosecution's *Brady* violations for failing to disclose the exculpatory evidence, new expert evidence that there were irregularities in the appearance of DePalma's fingerprint that had alleged been found at the crime scene, and that his employer had been with him 15 miles from the robbery at the time it occurred, but he had not been able to testify at DePalma's trial because he was out of the country. DePalma's motion was denied by Judge Charles Carr -- who had presided over DePalma's trial -- based on the reliability of the fingerprint testimony during the trial. [Judge Carr said](#): "I read the chances of fingerprints being duplicated are one out of millions." In May 1972 the federal 9th Circuit Ct of Appeals [affirmed the denial](#) of a new trial.

Bond had begun working for the Federal Public Defenders Office in Los Angeles on the condition he could continue working on DePalma's case, and in September 1972 the FPDs were assigned to represent DePalma.

Bond had not been successful in discovering the robber's identity, so he began looking into Bakken's background. Bakken testified during DePalma's trial that he worked for four years in the "records bureau" of a rural Minnesota sheriff's office — but when Bond called the sheriff [he was told](#), "I've got a three-man department. I don't have a record bureau, and I've never heard of a man named Bakken." Bakken also testified that he had taken criminology courses from the University of Minnesota, but when contacted by Bond the university said Bakken had never taken any classes.

After the Buena Park PD was informed in the fall of 1973 that Bakken — who still worked there -- had testified falsely about

DePalma cont. on p. 19

DePalma cont. from p. 20

his background, the Orange County Sheriff Department's crime lab began a thorough examination of the fingerprint evidence in DePalma's case and discovered it had been forged: Bakken made the incriminating fingerprint allegedly found on the counter by photocopying DePalma's fingerprint taken in 1957 after his arrest for a minor misdemeanor, when he was 17. Bakken's forgery was good enough that it fooled the FBI crime lab and the FBI fingerprint examiner who testified at DePalma's trial that it matched his fingerprint taken in 1957.

Bakken couldn't be charged with forging the fingerprint in DePalma's case because the statute of limitations had expired. However, he was indicted in November 1973 by an Orange County grand jury for falsifying evidence in a marijuana possession case by planting a fingerprint on a clear plastic bag of marijuana. Bakken was also suspected of falsifying evidence in at least six other cases. Although there was no evidence anyone helped Bakken in manufacturing evidence, his superiors looked the other way when they were informed by the investigating officer in a 1970 armed robbery case that Bakken wanted him to commit perjury that Bakken found the fingerprints of two suspects on a rifle that the officer knew from his personal examination had no fingerprints on it. The officer reported the incident to his superiors, and when no action was taken he quit the Buena Park PD and went to work for another city's police department.

DePalma insisted to prison officials that he was innocent, and even asked to be given Sodium Pentothal — "truth serum" — to prove he had not committed the robbery. In October 1973 DePalma had a parole hearing during which the prison psychologist testified that in his opinion DePalma was truthful in claiming his innocence of the bank robbery. The psychologist's testimony struck a cord because the parole board granted DePalma parole effective December 18, 1973. The parole board's action was extraordinary because at the time of his release he had only served 2 years and 4 months of his 15-year prison sentence.

After DePalma's release his public defender filed a motion for a new trial based on the new evidence that his right to due process had been violated by Bakken's knowingly false testimony during his trial.

During the hearing on February 11, 1974, the U.S. Attorney's Office moved to dismiss DePalma's indictment. Judge Carr granted the motion and DePalma was a free man.

Before adjourning the hearing Judge Carr [said about the case](#), "Nobody ever said the system was perfect. That's for the stargazers."

DePalma filed a \$5.3 million federal civil rights lawsuit (42 USC 1983) against Bakken and a separate lawsuit against the city of Buena Park. On August 12, 1975, the day a joint trial was scheduled to begin for the two lawsuits, DePalma agreed to a settlement of \$750,000. At the time it was believed to be the largest settlement of a civil rights lawsuit related to a wrongful conviction in U.S. history. After the settlement was announced DePalma told reporters, "During my trial and conviction, the taxpayers spent a lot of money that should never have been spent on trials and appeals. Literally thousands of dollars went down the drain — to convict an innocent man."

A key fact overlooked by DePalma's lawyer during his trial that would have raised a waving red flag about the reliability of the fingerprint evidence and possibly prevented his conviction — was that the tellers testified the robber held the gun in his left hand during the robbery and only his right hand was free: so it was impossible that the left index fingerprint Bakken testified was recovered from the crime scene could have been that of the robber.

One of the ironies of DePalma's case is the robber of the Whittier bank was caught after DePalma's trial. Robert Eads confessed to that and 24 other bank robberies — but the Buena Park robbery wasn't one he committed. Eads was imprisoned at McNeil Island where he and DePalma became friends while working together in the furniture shop. To this day it is unknown who robbed the Mercury Savings and Loan — just that it wasn't Eads or DePalma.

There is nothing to prevent what happened to DePalma from happening today to an innocent person, and there is no way to know how many innocent men and women are in prison because of fake fingerprint evidence as convincing to the judge and the jury as Bakken's fabrication was in DePalma's case.

Sources:

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[USA v. William DePalma](#), 461 F.2d 240 (9th Cir. 05-04-1972) (New trial denied)

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[The Fingerprint That Stole a Man's Freedom](#), *People* magazine, October 14, 1974

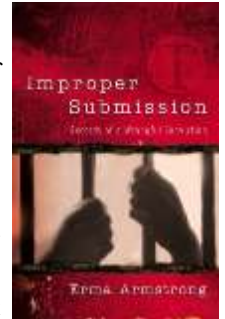
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Improper Submissions: Records of a Wrongful Conviction

By Erma Armstrong

This is the story of Karlyn Eklof, a young woman delivered into the hands of a psychotic killer. She witnessed him commit a murder and she is currently serving two life sentences in Oregon for that crime. *Improper Submissions* documents:



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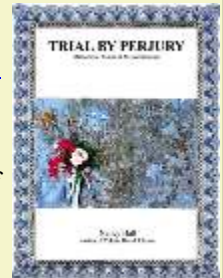
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Trial by Perjury: Millionaire, Mania & Misinformation

by Nancy Hall

This \$3.99 [Amazon Kindle e-book](#) book is

about how Celeste Beard Johnson was convicted in 2003 of capital murder in the death of her then husband Steven F. Beard, who died of natural causes in 2000. She was sentenced to life in prison.



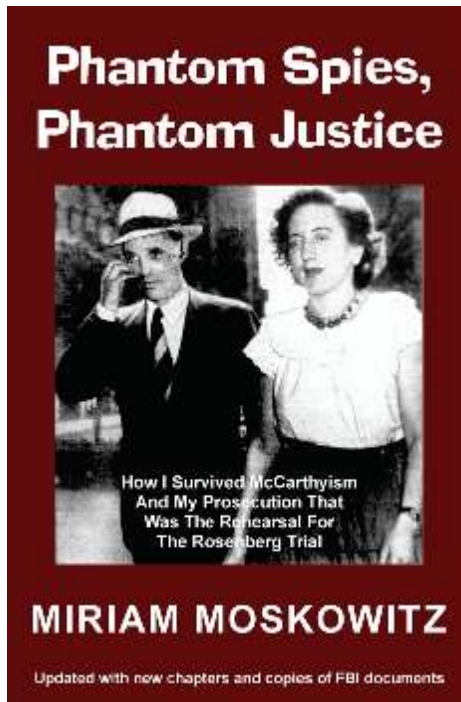
While in bed at home in Oct. 1999, Steven was shot in his stomach with a shotgun. Tracey Tarlton, a woman who became infatuated with Celeste after they met in February 1999, admitted the shooting and she was charged with Injury to an Elderly Person. Steven recovered and was discharged from the hospital on January 18, 2000. The next day he was readmitted with a yeast infection and he complained of chest pains. Exams showed he had severe heart disease and other medical problems. He died four days later. Tarlton and Celeste were charged with murdering Steven. Tarlton pled guilty and agreed to testify against Celeste in exchange for a 10-20 year prison sentence. Celeste was convicted even though medical evidence showed Steven died of natural causes — not murder. Order for the Amazon Kindle for **only \$3.99** from Amazon.com. (252 pgs)

Phantom Spies, Phantom Justice Now Available!

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

Miriam Moskowitz is an innocent person who was caught up in the whirlwind of anti-communist hysteria that prevailed in this country at the time of her trial in 1950. We know that because of FBI documents she obtained through the Freedom of Information Act decades after her conviction for conspiring to obstruct justice during a grand jury investigation.

The prosecution's case depended on the trial testimony of FBI informant Harry Gold. He testified that in 1947 *she observed* a conversation during which he and her business partner, Abraham Brothman, alleg-



edly discussed providing false testimony to a grand jury investigating possible Soviet espionage. She did not testify before that grand jury.

The FBI documents Ms. Moskowitz obtained are proof that prior to her trial Mr. Gold told the FBI *she was not present* during that alleged conversation. Furthermore, Mr. Gold told the FBI he didn't speak candidly

in front of Ms. Moskowitz because of her possible negative reaction if he said something incriminating in her presence, and he didn't like her.

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

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

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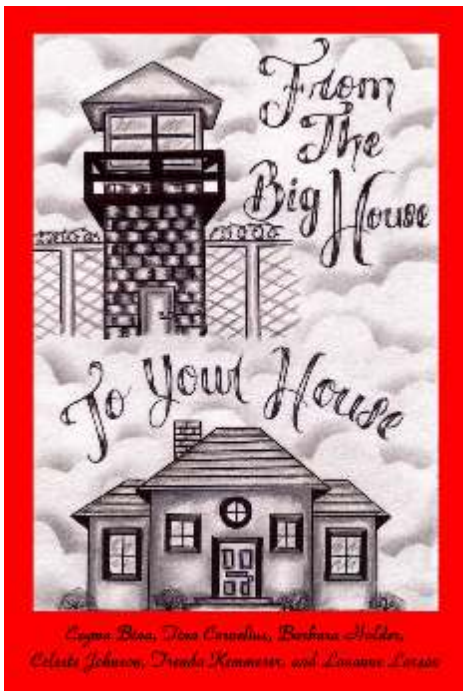
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Margaret Portman Griffey,

Asst. Attorney General of Texas, argued to the U.S.

Supreme Court in *Herrera v. Collins* (1993) that if video evidence conclusively proving a person's innocence was discovered after he or she was convicted and sentenced to death, the person's execution would not violate their right against cruel and unusual punishment if the person had received a fair trial. Leonel T. Herrera's new evidence supporting his actual innocence didn't prevent his execution by Texas in May 1993.

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