

JUSTICE

DENIED

The Magazine for the
Wrongly Convicted

Qian Renfeng

Awarded \$258,915
for 14 years wrongly
imprisoned for murder in China.
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Terrance Williams

U.S. Supreme Court
ruled prosecutor in his
case cannot later be a
judge in his case.
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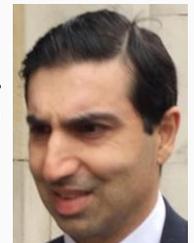
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Message From The Publisher

It is not uncommon for an innocent person to wind up in prison because of having the misfortune to be “represented” by a bumbling lawyer. Carlos Lopez-Siguenza was one of those people. He was wrongly convicted in 2004 of sexual assault for having sex with a 15-year-old girl in Atlantic City, New Jersey. His lawyer failed to investigate and confirm his claim the girl was over the legal age of 16, and so no crime was committed. A federal judge has ruled that Lopez-Siguenza’s federal lawsuit against his lawyer for malpractice can go to trial. See. P. 7.

For a person to be prosecuted and judged by the same person may seem obviously wrong. However, it took the U.S. Supreme Court to affirm that the prosecutor who approved seeking the death penalty for Terrance Williams, couldn’t later affirm his sentence as a member of the Pennsylvania Supreme Court. See p. 9.

Fair and timely compensation for a wrongly convicted person is an ongoing issue in the United States. A Justice Denied editorial argues that the wrongful conviction compensation statute being considered by the Michigan legislature is so severely flawed that it is worse than nothing. The bill should be trashed and the process should begin anew from the perspective of what benefits the victim of a wrongful conviction – and not what is politically expedient to create the illusion the problem is being addressed. See p. 13.

Since 2008 the use of a mobile device to access Justice Denied’s website has gone from zero to more than 50%. Justice Denied now has a mobile friendly website to accommodate those users. See p. 8.

Hans Sherrer, Editor and Publisher
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Justice: Denied’s logo represents the snake of evil and injustice climbing up on the scales of justice.



Indiana Governor Mike Pence successfully goaded Keith Cooper's lawyers to file a post-conviction petition on October 3, 2016, that seeks to overturn his 1997 robbery conviction. On September 20, 2016 Pence informed Cooper that he couldn't consider his pardon request until he exhausted his legal options to overturn his conviction. As a result of Pence prodding Cooper's lawyers to act on his behalf, Cooper could be awarded \$5 million or more in compensation from a federal civil rights lawsuit if he is able to have his conviction overturned by a court. He wouldn't get 5 cents if granted a pardon.

Cooper and his co-defendant, Christopher Parish, were prosecuted for charges related to the non-fatal shooting of Michael Kershner during a robbery in an apartment in Elkhart, Indiana on October 29, 1996. Cooper and Parish were tried separately.

Cooper was convicted by a judge in September 1997 of robbery resulting in serious bodily injury, but he was acquitted of attempted murder. During Cooper's trial the prosecution alleged that when committing the crime he wore a hat with the letter "J" inscribed on the front that was recovered from the crime scene. Cooper's lawyer agreed to a stipulation that a test of DNA recovered from the hat's sweatband was inconclusive and couldn't exclude Cooper as the source. Cooper, who waived his right to a jury trial, was sentenced to 40 years in prison.

Parish was convicted by a jury in June 1998 of attempted murder and robbery resulting in serious bodily injury. During Parish's trial the "J" hat allegedly worn by Cooper was introduced into evidence by the prosecution as proof of Parish's guilt. The jury rejected Parish's alibi defense — supported by seven eyewitnesses — that he was with his wife and children 110 miles away in Chicago at the time of the crime. Parish was sentenced to 30 years in prison (Concurrent 30 year prison terms for both of his convictions.).

After Parish's direct appeal of his convictions was denied in 1999, he filed a *pro se* post-conviction petition in 2000 that was based on new evidence the prosecution fabricated the claim there had been a robbery and shooting in the apartment, and that his lawyer provided ineffective assistance of counsel.

During an evidentiary hearing in August 2004 an Indiana State Police Laboratory DNA expert testified that prior to Parish's trial DNA testing of the "J" hat allegedly worn by Cooper excluded the presence of Cooper's DNA. However, the prosecution

Indiana Gov. Mike Pence Helped Keith Cooper To Seek His Exoneration

By Hans Sherrer

not only failed to disclose that exclusionary test to Parish's lawyer, but argued to the jury that the finding of the hat at the crime scene was proof of Parish's guilt. There was also testimony during the hearing that in March 2004 the DNA on the hat was matched to Johlanis Cortez Ervin. In 2002 Ervin was convicted of second-degree murder and a firearm charge in an unrelated case, and he was sentenced to 62 years in prison.

During the hearing Parish's trial lawyer Mark Doty testified he was unaware of the exclusionary "J" hat DNA test results, and the "crime scene" photographs and police reports that undermined both the prosecution's theory that the "crime" occurred in the apartment, and Parish's identification as one of the alleged perpetrators. The photos and reports supported that the fake apartment shooting story was concocted to cover-up that Kershner was actually shot in the apartment parking lot, while he was on home detention for a gun related conviction.



Keith Cooper
(Zbigniew Bzdak, Chicago Tribune)

Doty [testified during the hearing](#), "Had I done a good job, my client would not have been convicted." That testimony echoed Doty's statement six years earlier during Parish's sentencing hearing, "I feel that, perhaps due to some of my failing as an attorney, maybe I didn't do as good a job as I — as I could have."

Parish appealed the denial of his petition by Superior Court Judge Stephen Platt.

It was only because of Gov. Pence's prodding that Keith Cooper's lawyers acted in his interests by filing a post-conviction petition to overturn his conviction.

On December 6, 2005 the Indiana Court of Appeals reversed Platt's ruling, and vacated Parish's convictions and ordered his retrial based on ineffective assistance of counsel by his trial lawyer. The Court ruled that because Parish's lawyer failed to "conduct any meaningful pretrial investigation" that would have

discovered evidence the shooting occurred outside the apartment and Parish (and Cooper) weren't present, Parish was unable to undermine the trial testimony that Parish (and Cooper) were involved in a robbery and shooting in the apartment that didn't occur. The Court also ruled that Doty failed to object to an erroneous jury instruction.

In July 2006 Parish was released on bond pending his retrial.

On December 1, 2006, Elkhart Superior Court Judge Evan Roberts granted the prosecution's motion to dismiss all charges against Parish.

Cooper filed a petition for a new trial based on the evidence discovered during Parish's post-conviction proceedings. Cooper was released on April 27, 2006 after he accepted the offer of the Elkhart County DA for his sentence to be modified to time served in exchange for agreeing to drop his post conviction petition.

In 2009 Cooper filed an application for an executive pardon that included Kershner's recantation of identifying Cooper and Parish as his assailants: "It would be a blessing from God for an innocent man to get off, and I am so sorry for falsely accusing you. I swear to God I really thought you were the one. Please forgive me and God forgive me. I was wrong." (Man asks for pardon after name is cleared, *The Elkhart Truth*, March 29, 2009) Governor Mitch Daniels did not grant Cooper a pardon. After a hearing in February 2014, the Indiana Parole Board unanimously recommended Cooper's pardon.

Indiana Deputy Public Defender William D. Polansky wrote a "To Whom It May Concern" letter on January 22, 2016 that [expressed his opinion](#) Cooper was barred from pursuing his exoneration in a post-conviction petition because of his sentence modification deal in 2006. However, Polansky's letter was flawed because it did not present any evidence of a judicial order that the withdrawal of Cooper's petition in 2006 was with prejudice. Since it wasn't dismissed with prejudice, Cooper could file a petition to overturn his conviction that includes all the evidence of his innocence, including Kershner's recantation in 2009.

On September 20, 2016, Mark Ahearn, General Counsel for Governor Pence, in-

Cooper cont. on p. 4

Cooper cont. from p. 3

formed Cooper in a letter that his pardon request couldn't be processed until he exhausted his judicial remedies to overturn his conviction. [Ahearn stated](#), "...we need to be certain the judicial process is complete and has been given every opportunity to address any error that may have occurred."

On October 3, 2016 Cooper's lawyers filed a petition in the Elkhart County Superior Court requesting that his conviction be vacated and a new trial granted. If Cooper's petition is granted, it would then be up to the DA's office to either pursue a retrial, or request the dismissal of his charges. If Cooper's petition is unsuccessful, then Gov. Pence, or his predecessor, would then consider his pardon.

If Cooper is successful in getting his conviction overturned, he would be able to file a federal civil rights lawsuit seeking compensation just as Parish did.

Parish filed a federal civil rights lawsuit on September 24, 2007 against the City of Elkhart and three former Elkhart PD officers. Parish's [lawsuit alleged](#): "Almost immediately after the Kershner shooting, defendants Rezutko, Abrose, Cutler, and the other law enforcement defendants determined to falsely implicate Parish and to build a false case against him, with the aim of securing his false arrest and then his false imprisonment." After more than seven years of litigation, in November 2014 Parish and the City of Elkhart settled his suit for \$4.9 million.

The saga continues that began twenty years ago this month when Cooper and Parish were charged with crimes fabricated with the help of the Elkhart police -- who didn't even bother to learn that at that time Cooper and Parish were complete strangers who had never even met.

Sources:

[Phantom Robbery And Fake Crime Scene Leads To 30-Year Prison Sentence](#) — The Christopher Parish Story, By Christopher Parish, Justice Denied Issue 30 (Jan. 2006), 7, 37-39

[Parish's Conviction Vacated - New Trial Ordered!!](#), By Hans Sherrer, Justice Denied, Issue 30 (Jan. 2006), 7

[Charges Dismissed Against Christopher Parish](#), By Hans Sherrer, Justice Denied Issue 34 (Feb. 2007), 19

[Parish v. State](#), 838 NE 2d 495 (Ind. Court of Appeals 2005) (Reversing conviction based on ineffective assistance of counsel.)

[Wrongfully convicted Keith Cooper asks for new trial](#), By Madeline Buckley, www.indystar.com, October 4, 2016

[Christopher Parish, et al v. City of Elkhart, IN, et al](#), No. 09-2056 (7th Cir. 7-30-2010)

[Parish et al v. Elkhart City of et al](#), No. 3:2007cv00452 (USDC Ind. N) (Complaint under 42 USC 1983)

Stealing Food Out Of Necessity Not A Crime, Rules Italy's Supreme Court

On May 2, 2016 Italy's Supreme Court [issued its landmark ruling](#) that stealing a small amount of food out of necessity is not a crime.

In 2011 Roman Ostriakov was a 31-year-old homeless Ukrainian immigrant living in Genoa, Italy. Ostriakov went into a supermarket and he only had enough money to buy some breadsticks, that he paid for. However, a shopper alerted store personnel to seeing Ostriakov place food items in his pocket. Ostriakov was detained when he attempted to leave the market. Police were called, and a search of his pockets discovered two pieces of cheese and a package of sausages he had not paid for. Ostriakov was arrested and charged with theft of the cheese and sausage worth \$5.50 (€4.07).¹

Ostriakov was convicted of the theft of the cheese and sausage. He was sentenced to six months in jail and ordered to pay a €100 fine (US\$114) — which he couldn't afford to pay. Ostriakov appealed, but his conviction and sentence were affirmed in two rounds of appellate review, the last on February 12, 2015 by the Court of Appeal of Genoa.

The Attorney General of the Court of Appeal of Genoa appealed to Italy's highest court — the Supreme Court of Cassation in Rome. The Attorney General argued that Ostriakov's theft conviction and sentence should be set-aside, because his arrest before he left the supermarket prevented him from completing the theft. Therefore, Ostriakov's theft conviction should be replaced with a conviction for the lesser crime of attempted theft and his sentence reduced accordingly.

On May 2, 2015 Italy's Supreme Court set-aside Ostriakov's theft conviction, but rejected the prosecution's argument he committed a lesser crime, and acquitted him. The Supreme Court made the landmark ruling that stealing a small amount of food necessary to overcome a person's immediate need for food "does not constitute a crime" under Italian law. The [Court ruled](#):

"The condition of the defendant and the circumstances in which the seizure of merchandise took place prove that he took possession of that small amount of food in the face of an immediate and essential need for nourishment, acting



Italy's Supreme Court of Cassation in Rome (wikimapia.org)

therefore in a state of necessity. People should not be punished if, forced by need, they steal small quantities of food in order to meet the basic requirement of feeding themselves." (Supreme Court of Cassation, Judgment 18248, fifth criminal section, May 2, 2016)

The Supreme Court's ruling was favorably commented on by the press in Italy, with some of them comparing Ostriakov's situation to that of Jean Valjean in Victor Hugo's novel *Les Misérables*. Valjean served 19 years in prison after stealing a loaf of bread to feed his sister's starving children.

La Stampa published an editorial on its front-page [that stated](#), "The court's decision reminds us all that in a civilised country no one should be allowed to die of hunger."

Massimo Gramellini [wrote in an op-ed](#) titled "The Right To Be Hungry" published in *La Stampa*, "For chief judges the right to survival prevails over the property. [That attitude in] America would be blasphemy..."

An article in *Corriere Della Sera* [opined that](#) statistics support that 615 people are added to the ranks of Italy's poor every day, and it was "unthinkable that the law should not take note of reality."

It is unimaginable that Italy's *Ostriakov* ruling could be duplicated in the United States. A previously convicted defendant's sentence could be expected to be enhanced for the crime of stealing \$5.50 in merchandise -- not acquitted of committing a non-crime.

Endnote 1. In late 2011 the exchange rate was about \$1.35 per euro (€).

Sources:

[Stealing food if you are poor and hungry is not a crime](#), Italy's highest court rules, *The Telegraph* (London, UK), May 3, 2016

[Italian court rules food theft 'not a crime' if hungry](#), BBC News, May 3, 2016

[Il diritto di avere fame](#) (The Right To Be Hungry), *La Stampa*, May 3, 2016 (Translated into English with Google Translate)

Georgia Appeals Court Exonerates Kevin Andre Williams Of Committing Non-crime

The Georgia Court of Appeals excoriated the trial judge and the prosecution [in acquitting](#) Kevin Andre Williams of driving without a Georgia drivers license. The appeals court ruled Williams had committed no crime.

Williams ordeal began in December 2014 when he was stopped for speeding in DeKalb County, Georgia. He provided the police officer with his Florida drivers license. He told the officer he lived in central Florida, where he owned a home, but he was temporarily staying in Georgia while training for his job as a federal law enforcement officer. The officer ran a check and verified Williams' Florida license was current, and he learned there was no record Williams had ever been cited for a traffic offense.

Williams was not given a speeding ticket, instead he was issued a citation for "not having a license." The officer explained to Williams that his Florida drivers license was not valid for him to drive in Georgia.

The officer also told Williams he could jail him immediately, but he wouldn't if Williams agreed to get a Georgia license. Williams obtained a Georgia drivers license that same day using a temporary address in Georgia. The Georgia DMV didn't charge him for his license because he is a Marine Corps veteran. Williams is also a former Florida law enforcement officer.

Williams waived his right to a jury trial, and his bench trial was in DeKalb County Recorder's Court.

The officer's testimony that Williams had been driving with a valid Florida driver's license hurt the prosecution because it established there was no legal basis for him to be prosecuted for "not having a license." Judge LaTisha Dear Jackson then granted the prosecutor's motion mid-trial to amend the charge against Williams: the new charge was driving without a Georgia license after living in the state for more than 30 days. The prosecutor sought Williams' conviction of the new charge based on the argument that the Georgia driver's license he obtained after being stopped proved he was a Georgia resident -- and thus at the time he was cited he was required to have a Georgia, and not a Florida drivers license.

Williams waived his right to counsel and represented himself. He testified in his defense that he owned a home in central Florida where he lived. He also testified that at the time he was ticketed he was only temporarily staying in Georgia for work related training. Williams [repeatedly testified](#) in response to the prosecutor's cross-examination that he "wasn't living as a resident" and that he only had "a temporary address" in Georgia.

After Judge Jackson found Williams guilty of driving without a Georgia license, she sentenced him to jail, fined him \$600, and ordered that he serve 12 months probation.

After his conviction Williams [hired Atlanta attorney](#) Elizabeth Vila Rogan to represent him. Rogan filed a motion for a new trial, which Judge Jackson denied on May 15, 2015. Rogan then filed an appeal on Williams' behalf with the Georgia Court of Appeals.

Williams arguments in his appeal included that the state introduced insufficient evidence to prove his guilt beyond a reasonable doubt, and his waivers of his right to counsel and a jury trial were not made knowingly or intelligently.

The State basically ignored addressing the merits of Williams' arguments, and instead opposed his appeal based on the procedural argument his claims couldn't be considered because instead of filing a written transcript he filed an electronic audio recording of his bench trial. The State argued an audio recording is not a "transcript" within the meaning of OCGA § 5-6-41.

On March 28, 2016 the Georgia Court of Appeals unanimously [reversed Williams' conviction](#) in *Williams v. State*, No. A15A1973 (GA COA 2016).

Regarding the claim that Williams' improperly relied on the audio recording instead of a written transcript, the Court ruled, "But we do not consider that argument, because the State has waived this contention by failing to interpose a timely objection." [Op. cit. 5]

The Court ruled that Williams was prejudiced by the failure of the trial court "to apprise him of the risks of proceeding without the representation of an attorney, and that he was also not advised at his arraignment, before a different judge, of the risks of proceeding without a jury trial." [Op. cit. 6]

The appeals court also agreed with Williams' claim that the prosecution's evi-

dence was insufficient to prove his guilt beyond a reasonable doubt, since "the State produced no evidence to show that Williams had a "permanent home or abode in Georgia.'" [Op. cit. 18]. The Court noted, "the State, despite changing its theory of the alleged offense mid-trial, still failed to prove that Williams was in violation of the law." [Op. cit. 12]

[Writing for the unanimous court](#), Judge Michael Boggs vented the court's anger with Williams' prosecution for a non-crime:

"As a result of the State's conduct, Williams was convicted of a crime with which he was not charged, jailed, fined over \$600, and sentenced to a year of probation. Moreover, his conviction and sentence carry numerous collateral consequences, including jeopardizing Williams' current job and future prospects in his chosen career of law enforcement. As noted by this Court at oral argument, the State and the trial court had any number of opportunities to terminate this meritless prosecution, including when Williams presented a valid Florida license, when the allegations regarding Williams' residence were called into question, when the State failed to introduce sufficient evidence to prove its case at trial, when Williams produced additional evidence at the hearing on the motion for new trial, or when this appeal was briefed. Yet the State pressed on, forcing Williams to expend substantial time and money to clear his name and wasting the State's scarce resources in a failed prosecution. Even in this court, the State has attempted to avoid the consequences of this miscarriage of justice by relying not upon the merits of its case or the applicable law, but upon a baseless assertion that Williams failed to perfect the record.

"The State has the power to take liberty, but commensurate with that power is the duty to do justice." *Wesley v. State*, 225 Ga. 22, 24 (2) (165 SE2d 719) (1969). Justice was denied to Williams in this case, and accordingly, the judgment of conviction is reversed." [Op. cit. 19-20]

[The appeals court's anger](#) at Williams' treatment boiled over in a footnote:

Williams cont. on p. 6



Qian Renfeng Awarded \$258,915 For 14 years Wrongful Imprisonment For Murder

Qian Renfeng [was awarded](#) \$258,915 on August 9, 2016 for being wrongly imprisoned in China's Yunnan Province for almost 14 years after being convicted of murdering a child.

In February 2002 Renfeng was 17-years-old, and working as a nurse at the Xing Rui Kindergarten in Qiaojia County in Yunnan province in Southwest China.

On February 22, 2002 three children in the school became ill and were hospitalized. One of the children who was two-years-old died, and the other two recovered.

The police learned that Renfeng was involved in a dispute with the school's princi-



Qian Renfeng after her release on Dec. 21, 2015 (South China Morning Post)

pal and that she had prepared the children's food the day they became ill. They suspected the children may have been poisoned by Renfeng because of the dispute.

Renfeng insisted she was innocent.

However, after 12 hours of non-stop intensive police interrogation that included forcing Renfeng onto her knees for eight hours with her hands cuffed behind her back and repeatedly hitting her face with a black leather shoe, the police said she confessed to mixing rat poison in the food of the three children.

Renfeng was charged with murdering the child. Her trial in 2002 was held before an autopsy on the deceased child was completed.

During her trial Renfeng disputed the truthfulness of her confession, claiming she had not signed it, and that she had blurted out that she was guilty because she was suffering from severe fatigue and hours of torture.

The trial court rejected Renfeng's defense, and convicted her of murder based on her confession. On September 3, 2002 she was given the lenient sentence of life in prison because she was 17 at the time of the child's death. She was also ordered deprived of her political rights for life.

Renfeng's appeal was denied.

In 2010 a group of women lawyers visited the No. 2 Prison for Women in Yunnan Province to offer free legal advice. Renfeng made an impassioned plea of her innocence to lawyer Yang Zhu. An appeal was filed in her case based on insufficient evidence of her guilt. In August 2011 her appeal was rejected. The [appeal court ruled](#), "the details of the matter were clear, the accused has admitted to her crimes, the charge was correct and the sentence was appropriate."

In 2012 an online campaign advocating Renfeng's innocence went viral in China. Responding to the media attention, on May 30, 2013, the Yunnan Provincial Procura-

torate began a post-conviction review of Renfeng's case.

Almost two years later, on May 4, 2015, the Procuratorate notified Renfeng that due to "facts are unclear and insufficient evidence" it would recommend her retrial to the Yunnan Provincial High Court. The investigation discovered a number of irregularities in Renfeng's case, including that handwriting analysis showed the confession she purportedly signed had been faked by three police officers, and the deceased child didn't show toxic symptoms of rat poisoning.

On December 21, 2015 the Higher People's Court of Yunnan province acquitted Renfeng after her retrial, on the basis there was insufficient evidence to prove her guilt. The Court stated her confession had been coerced, and the prosecution's case had many contradictions and presented unreasonable explanations regarding the alleged poisoning.

Renfeng was immediately released after more than 13 years and 10 months in custody. [She told reporters](#) that her mother died in April 2015, and "My biggest regret is that I couldn't fulfil my filial responsibility towards my mother for even one day."



Qian Renfeng before her arrest in 2002 (Family photo)

In June 2016 Renfeng filed a compensation claim for up to 9.55 million yuan (about US\$1.45 million) in damages. On August 9, 2016 the Yunnan Provincial government awarded Renfeng compensation of 1.72 million yuan — the equivalent of US\$258,915.

Williams cont. from p. 5

"Footnote 2. "The process in which Williams found himself enmeshed was particularly troubling. After waiving his right to counsel and to a jury trial, Williams was at the mercy of the State, which showed no mercy. His attempts to comply with the instructions of the police officer, who then testified against him, were used by the State to win a conviction for a crime other than that with which he originally was charged, with the acquiescence if not the assistance of the trial court."

When asked about the ruling completely exonerating Williams, his attorney Elizabeth Rogan [told a reporter](#), "He was driving while black is what happened. He was a completely upstanding gentleman who got pulled over and his life got turned upside down."

[Click here to read](#) the Georgia Court of Appeals ruling in *Kevin Andre Williams v. The State of Georgia*, No. A15A1973 (GA Ct. of Appeals, 3-28-2016).

Sources:

[Kevin Andre Williams v. The State of Georgia](#), No. A15A1973 (GA Ct. of Appeals, 3-28-2016) (Reversed conviction based on insufficient evidence of guilt of every essential element.)

[Court of Appeals](#): 'Justice Denied' in DeKalb County Traffic Court, *Daily Report*, April 1, 2016

[The Rogan Law Firm](#), Elizabeth Vila Rogan webpage



Qian Renfeng holds the judgment of innocence issued by the Yunnan Provincial Higher People's Court on December 21, 2015 (CFP)

Sources:

[Moment teen nanny is cleared after serving 13 years of a life sentence for poisoning toddlers](#), *Daily Mail* (London, UK), December 22, 2015

[Nurse receives 1.72 million yuan for spending 14 years in prison on wrongful murder conviction](#), *Shanghaiist.com*, August 10, 2016



Man Exonerated Of Non-existent Sexual Assault Can Sue Lawyer For Legal Malpractice

U.S. District Judge Jerome Simandle is allowing a legal malpractice lawsuit [to go to trial](#) that was filed by Carlos Efrain Lopez-Siguenza against the lawyer who represented him at the time he was convicted in 2004 of a sexual assault that didn't happen.

Carlos Lopez-Siguenza was an El Salvadorian national living as a Legal Permanent Resident in Northfield, New Jersey in the early 2000s. Northfield is in south New Jersey a few miles west of Atlantic City.

On January 23, 2003 a complaint was filed with the police that 21-year-old Lopez Siguenza had sexual intercourse multiple times in 2002 with 15-year-old Melissa Aguilar Cruz in Atlantic City. Cruz was a native of Honduras. Sixteen is the legal age of sexual consent in New Jersey.

Lopez-Siguenza was arrested in March 2003 and indicted for two counts of second-degree aggravated sexual assault, two counts of fourth-degree child abuse, and two counts of third-degree endangering child welfare. There was no allegation that Cruz was not a willing partner -- just that she was under 16.

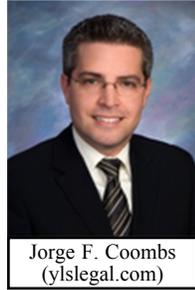
Lopez-Siguenza hired an attorney. He did not deny having sex with Cruz, but he insisted to his lawyer that she was over 16. To resolve the issue of Cruz' age, [his lawyer requested](#) that the prosecution provide a "certified and/or notarized copy of the alleged victim's birth certificate."

Assistant Prosecutor Janet Gravitz turned over a purported Honduran birth certificate handwritten in Spanish that was neither notarized nor certified, for Melissa Gabriela Aguilar Guerrero with a birth date of March 3, 1987.

Lopez-Siguenza's lawyer accepted the purported birth certificate at face value and did not investigate its authenticity -- even though there were red flags that it was handwritten and wasn't certified or notarized. Instead his lawyer told him that he had no chance to win a trial. Faced with a long jail sentence if convicted of all the charges after a trial, Lopez-Siguenza pled guilty on March 12, 2004 to one count of sexual assault in exchange for the prosecution dropping his aggravated sexual assault, endangering child welfare, and child abuse charges.

Carlos Lopez-Siguenza was sentenced to three years in prison. He was released after serving a more than a year in state prison, and he was immediately taken into federal custody for deportation since his status as a Legal Permanent Resident was revoked due to his felony sexual assault conviction. On April 22, 2005 he was deported to his native El Salvador.

On June 30, 2011 Lopez-Siguenza was arrested in Utah for being in the country illegally. His mother hired an immigration lawyer in New Jersey, Jorge F. Coombs, to investigate his immigration case and his 2004 conviction.



Jorge F. Coombs
(ylslegal.com)

Coombs had seen Honduran birth certificates before, so when he saw Cruz' purported birth certificate [he knew](#) "there was something fishy with it," because the "number was handwritten." Coombs contacted Honduras' consul general requesting information about the purported birth certificate.

On Aug. 2, 2011 Coombs received a letter from consul general that the name "Melissa Gabriela Aguilar Guerrero" did not exist in the Honduran National Register, and that the national identification number on the alleged birth certificate was not in the proper format. Furthermore, the consulate's attorney found a Honduran birth certificate for a "Melissa Gabriela Andino Munoz" born on March 3, 1984, and who was registered as living in southern New Jersey.

Coombs interviewed an ex-boyfriend of Cruz who told him that her age was well known in the Hispanic community. So Lopez-Siguenza's accuser was not 15 in 2002 as she claimed to the police, but she was 18 and two years older than New Jersey's 16 age of consent to have sexual relations.

On November 23, 2011 Lopez-Siguenza was charged in federal court in Utah with one count of being in the country illegally, with the U.S. Attorney's Office filing a notice it would seek a sentencing enhancement because he had violated his deportation order. He was ordered detained in custody pending trial.

Three weeks later, on December 11, 2011, Lopez-Siguenza filed a



Atlantic County Assistant Prosecutor Janet Gravitz (9-8-2010, Press of Atlantic City, Danny Drake)

post-conviction petition to withdraw his guilty plea and vacate his conviction, based on the new evidence that he did not knowingly plead guilty because Cruz lied to the police about her age and provided the fabricated evidence of a fraudulent birth certificate that the Atlantic County District Attorney's Office relied on to prosecute him, and which the DA's Office used to induce him to plead guilty.

During Lopez-Siguenza's plea hearing in federal court on January 23, 2012, his Utah federal public defender requested a [continuance based on](#) "complications arising from [Lopez-Siguenza's] New Jersey case." The U.S. Attorney's Office didn't oppose the request, which the judge granted.

The Atlantic County DA's Office opposed Lopez-Siguenza's petition, and presented the evidence of a second birth certificate provided by the Cruz' family -- but which also showed her birth date as March 3, 1987.

On August 3, 2012 an Atlantic County judge granted Lopez-Siguenza's petition and vacated his conviction. The judge's [ruling was based](#) on the "finding that Ms. Cruz and/or her family had perpetrated a fraud on the Prosecutor's Office, the Court, and Plaintiff [Lopez-Siguenza]."

The Atlantic County DA's Office declined to retry Lopez-Siguenza, stating it didn't want to put Cruz and her family through the stress of a trial. The DA's Office a motion to dismiss Lopez-Siguenza's indictment, which was granted on Aug. 17, 2012.

On November 2, 2012 the U.S. Attorney's Office in Utah filed a motion to dismiss Lopez-Siguenza's federal charges. The motion stated in part:

1. A conviction in State of Court of New Jersey - Atlantic County, case #03001088/001 was recently vacated against the Defendant on substantive grounds. This conviction formed the basis for the Defendant's original deportation and for the sentencing enhancement applied in the current prosecution. Had the Defendant never been convicted of the crime, it is unlikely he would have been deported or faced prosecution in this district for re-entry.

On November 7, 2012 the government's motion was granted, and Lopez-Siguenza was released after more than 16 months in federal custody following his arrest in June 2011.

Lopez-Siguenza filed a federal civil rights

Malpractice cont. on page 8

Justice Denied's Mobile Device Homepage Is Online!

Justice Denied's [mobile device homepage](#) is now online. The mobile friendly homepage has the narrow width recommended for smartphones and other mobile devices.

Justice Denied's homepage detects when it is accessed by a mobile device, and the user is automatically redirected to the mobile homepage. There is also a link to the mobile homepage in the upper right-hand corner of [Justice Denied's homepage](#).

The mobile friendly homepage was created because half of all visitors to Justice Denied's website now use a hand-held device. The following shows the growth of hand-held devices used to access [justicedenied.org](#).

Year	Desktop	Mobile	Tablet
2008	100%		
2009	99.7%	0.3%	
2010	97%	3%	
2011	92%	8%	
2012	82%	13%	5%
2013	72%	19%	9%
2014	61%	28%	11%
2015	51%	37%	12%
2016	50%	39%	11% (Jan. - June)

Justice Denied's mobile device homepage is www.m.justicedenied.org.



Four Somalis Acquitted By Finnish Appeals Court Of Supporting Terrorism

The Helsinki Court of Appeals [has acquitted](#) four people convicted in Finland of supporting terrorism.

Four Somali immigrants to Finland, three men and one woman, were tried in 2014 in Helsinki of financing terrorism by raising 3,200 euros (\$3,900) for the al-Shabab group in Somalia between 2008-2011. Al-Shabab is an al-Qaida allied group, and they were charged based on the prosecution's contention the money was to be used for committing terror crimes.

Their defense was they raised and sent the money to Somalia for charitable purposes.

One of the male defendants was also prosecuted for supporting terrorism by recruiting his brother to join al-Shabab.

The prosecution of the four was major news in Finland, because it was the country's first terror-related case.

After their convictions of all charges, the four appealed their convictions.

On March 23, 2016 the Helsinki Court of Appeals [reversed the convictions](#) of the four defendants, and ordered their acquittal based on insufficient evidence they had criminal intent. The Court ruled the four



Helsinki Courts Building, Helsinki, Finland

defendants could not have known for certain the money they raised would be used for committing terror crimes, and that their claim was credible that they believed the

money was to be used for charitable causes. The Court also acquitted the defendant who was also convicted of recruiting his brother for al-Shabab, ruling that there was no clear evidence he had done so.

Sources:

[Finnish court acquits 4 defendants of terror-linked crimes](#), *Richmond Times-Dispatch*, March 23, 2016



Visit the Innocents Database

Includes details about more than 6,600 wrongly convicted people from the U.S. and other countries.

www.forejustice.org/search_idb.htm

Visit the Wrongly Convicted Bibliography

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

www.forejustice.org/biblio/bibliography.htm

Malpractice cont. from page 7

lawsuit on March 28, 2013 in the U.S. District Court in Camden, New Jersey that asserted claims related to his 2004 conviction. Named as defendants were: the Atlantic City Police Department and several officials; the Atlantic County Prosecutor's Office; Assistant Prosecutor Janet Gravitz; and Lopez-Siguenza's criminal lawyer Mark E. Roddy. Lopez-Siguenza accused Roddy of legal malpractice, breach of fiduciary duty, and breach of contract.

After the Atlantic City PD and officials were dismissed as defendants, on March 31, 2014 U.S. District Judge Jerome Simandle dismissed Lopez-Siguenza's claims against the Atlantic City Prosecutors Office and Asst. Prosecutor Gravitz on the basis they were entitled to immunity from civil liability. On September 30, 2014 the judge dismissed Lopez-Siguenza's breach of fiduciary duty and breach of contract claims against Roddy.

However, the judge allowed Lopez-Siguenza to amend his legal malpractice claim.

On May 27, 2016 Judge Simandle allowed Lopez-Siguenza's lawsuit to go forward, by denying Roddy's motion for summary judgment and to seal documents he filed that identified Cruz as Lopez-Siguenza's accuser. [The judge's order](#) noted that Roddy does not speak Spanish, and, "He never attempted to interview persons familiar with Ms. Cruz's age, nor did he ask an investigator to do so, nor did he take any steps to question the foreign document. The suspicious signs included the facts that the name Cruz is nowhere mentioned, no second surname is listed for the father (contrary to Hispanic naming conventions), and the information is handwritten rather than typed. (Parentheses in original)." Judge Simandle refused to seal Roddy's supporting exhibits to prevent disclosure of Cruz's identity, finding that she was not under the age of 18 when she had sex with Lopez-Siguenza.

Roddy can either attempt to settle the lawsuit or he can proceed to trial and try to convince a jury that he didn't commit malpractice by failing to investigate what was Cruz' fake birth certificate, and relying on it to recommend that Lopez-Siguenza pled guilty to a crime that never happened.

Lopez-Siguenza is now married and living in Utah.

Sources:

[Lopez-Siguenza v. Roddy, Esquire et al.](#), Civil No. 13-2005 (JBS/JS) (USDC NJ) (Order of 5-27-2016 denying summary judgment for defendant Roddy on the legal malpractice claim.)

[Wrongly Convicted Man Has Malpractice Claim](#), *Courthouse News Service*, May 31, 2016

[Wrongly Convicted Man May Sue His Lawyer Yet](#), *Courthouse News Service*, Oct. 3, 2014

[Man cleared when child-sex 'victim' proved to be 18 wins right to sue lawyer](#), *NJ.com*, October 07, 2014

[USA v. Lopez-Siguenza](#), No. 2:11-cr-00956 (USDC UT) (Information filed 11-23-2011) (Docket through 1-23-12)



U.S. Supreme Court Rules Prosecutor Cannot Later Be Judge In Case

The U.S. Supreme Court ruled on June 9, 2016 that the Fourteenth Amendment's Due Process Clause [requires the recusal](#) of a judge who was previously involved in the prosecution of a case.

Terrance Williams was 18 in 1984 when he was charged along with Marc C. Draper in the beating death of Amos Norwood in Philadelphia. They were both facing a possible death sentence if convicted after a trial. Draper confessed during his interrogation, and he agreed to a plea deal for life in prison in exchange for testifying as a prosecution witness. During Williams' trial Draper's testimony suggested that the motive for killing Norwood was to rob him. That testimony provided evidence for an aggravating factor in Norwood's death necessary for the prosecution to seek the death penalty.

Williams did not confess, and testified in his own defense that he was not involved in the crime and did not know the victim. Williams was convicted of first-degree murder by the jury. The trial prosecutor submitted a memorandum to her supervisors supporting her request to seek the death penalty against Williams. Ronald D. Castille was the then-district attorney of Philadelphia, and [he wrote](#) at the bottom of the memorandum: "Approved to proceed on the death penalty."

The prosecution relied on Draper's testimony about the alleged robbery motive during the sentencing hearing, that resulted in Williams being sentenced to death.

Williams' conviction and sentence were affirmed on direct appeal, and he filed a number of state post-conviction petitions that were denied, as well as federal habeas corpus petitions that were denied.

In 2012 Williams filed a successive state post-conviction petition that didn't challenge his conviction, but sought to vacate his death sentence. The petition was based on new evidence provided by Draper when 28 years after the crime he agreed to talk for the first time to Williams' attorneys. Draper admitted that he committed perjury during Williams' trial. [Draper told](#) Williams' attorneys "that he had informed the Commonwealth before trial that Williams had been in a sexual relationship with Norwood and that the relationship was the real motive for Norwood's murder. According to Draper, the Commonwealth had instructed him to give false testi-



Terrance Williams
(PA DOC)

mony that Williams killed Norwood to rob him. Draper also admitted he had received an undisclosed benefit in exchange for his testimony: the trial prosecutor had promised to write a letter to the state parole board on his behalf. At trial, the prosecutor had elicited testimony from Draper indicating that his only agreement with the prosecution was to plead guilty in exchange for truthful testimony. No mention was made of the additional promise to write the parole board."

The Philadelphia Court of Common Pleas (PCCP) ordered the prosecution to produce all previously undisclosed documents, and held an evidentiary hearing regarding Williams' allegation that the prosecution deliberately procured false testimony from Draper and suppressed exculpatory evidence. Based on the new evidence [the court found](#) "that the trial prosecutor had suppressed material, exculpatory evidence in violation of *Brady v. Maryland*, 373 U. S. 83 (1963), and engaged in "prosecutorial gamesmanship." The court stayed Williams' execution and ordered a new sentencing hearing."

The State submitted an emergency application to the Pennsylvania Supreme Court to vacate the stay of execution.

Castille had been elected to the State Supreme Court in 1994, and in 2012 was serving as serving as its chief justice. The documents disclosed in the PCCP included the sentencing memorandum in which Castille had authorized the death penalty for Williams.

Williams filed a motion for Castille to recuse himself for bias, which the State opposed. Castille summarily denied the motion.

After briefing, the Supreme Court [vacated the stay](#) of execution and reinstated Williams' death sentence on December 15, 2014. Castille authored a 10-page concurring opinion that was longer than the Court's 8-page ruling. Castille opinion was a vitriolic defense of the prosecution's trial tactic of concealing from Williams' lawyers the deal with Draper, and he asserted it wasn't discovery evidence under *Brady*. Castille conveniently ignored Draper's perjury about the deal elicited by the prosecution during Williams' trial. Castille [castigated the PCCP's judge](#) for taking the "lawless step of essen-

tially opening the prosecutor's files to appellate's counsel..." Of course, it was the judge's order that resulted in the discovery of Castille's personal involvement in Williams' case and his approval of seeking the death penalty for Williams. Castille also asserted the judge stayed Williams' death sentence "for no valid reason." Castille was almost foaming at the mouth in expressing his disdain for the Federal Community Defenders Office, and what he described as its "obstructionist anti-death penalty agenda" in defending death row prisoners.

The U.S. Supreme Court accepted Williams' writ of *certiorari* to determine if Castille's denial of his recusal motion and Castille's participation in the Pennsylvania Supreme Court's ruling violated Williams' right to due process under the Fourteenth Amendment.

On June 9, 2016 the Supreme Court issued its majority opinion in *Williams v. Pennsylvania*, 579 U.S. ____ (2016) vacating the Pennsylvania Supreme Court's reinstatement of Williams' death sentence. The 5 to 3 [ruling stated](#):

"The Court now holds that under the Due Process Clause there is an impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case." [5-6]

...
Of particular relevance to the instant case, the Court has determined that an unconstitutional potential for bias exists when the same person serves as both accuser and adjudicator in a case. ... This objective risk of bias is reflected in the due process maxim that "no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome."

The due process guarantee that "no man can be a judge in his own case" would have little substance if it did not disqualify a former prosecutor from sitting in judgment of a prosecution in which he or she had made a critical decision." [6]

Regarding the almost 30 years that passed from Castille's approval of the death penalty for Williams when Castille was Philadelphia's DA, and him voting as a supreme court justice to reinstate Williams' death sentence, the Court's majority stated:

"The involvement of multiple actors and the passage of time do not relieve the former prosecutor of the duty to withdraw in order to ensure the neutrality of the judicial process in determining the

Supreme Court cont. on p. 10

Man Acquitted Of Rape After Completing Prison Sentence Wants Euthanasia If Not Compensated

On June 10, 2015 the High Court of Bombay acquitted Gopal Shete [of raping a girl](#) in 2008 -- three months after he had completed his prison sentence.

A mentally challenged girl was raped in December 2008 at the railway station in Ghatkopar, India, outside of Mumbai. The victim told the police that her assailant said his name was "Gopi."

Shete was 32, the married father of two young daughters, and worked in a management position in a hotel in Ghatkopar. Shete's first name Gopal, was similar to Gopi, so the police assumed he was the assailant. Although the victim did not identify Shete as her attacker, he was arrested and charged with her rape.

Shete was jailed without being granted bail, while awaiting his trial.

During Shete's trial the prosecution didn't present any physical, forensic, or eyewitness evidence linking him to the crime, or even being in the vicinity of the railway station at the time of the rape. The prosecution's case



Gopal Shete in Feb. 2016 (Nagpur Today)

was based on the similarity of his first name to that of the victim's assailant.

Shete's alibi defense was he was with his family at the time the rape occurred.

After his conviction following a bench trial, Shete was sentenced to seven years in prison with credit for the time he was jailed awaiting trial.

Nine months was taken off Shete's sentence for his good behavior, and he was released in March 2015 after six years and three months in custody.

Three months after Shete's release his appeal was decided. On June 10, 2015, the Bombay High Court set-aside Gopal Shete's conviction and acquitted him based on the insufficiency of the prosecution's unreliable name similarity evidence the trial court relied on to convict him. The [court's ruling](#) by Justice Abhay Thipsay stated: "In my opinion, this was a case where the identity of the appellant as the culprit had not been satisfactorily established. In my opinion, there was indeed a real and substantial doubt about the identity of the appellant as the culprit."

At the time of his arrest Shete was making the comfortable salary of Rs50,000 (US\$750) a month. While imprisoned Shete's wife divorced him and remarried, his two daughters were forced to live in an orphanage, and his father passed away.

Shortly after his exoneration Shete filed a petition in the High Court to be granted compensation, and he requested interim compensation because he was destitute. In February 2016 the High Court accepted Shete's claim for consideration, but reserved a ruling pending the government's response.

Frustrated at inaction on his petition, in late July 2016 Shete wrote letters to the Bombay High Court, the Chief Justice of India's Supreme Court, the Governor of the State of Maharashtra, India's President, the ministry of Home affairs and India's Chief Minister. Shete's [court's ruling](#) letter stated: "I was falsely implicated and I want compensation, otherwise I am going to end this life. So, if the court cannot give me justice, they better give me permission to end my life."

As of early August there was no report of an official response to Shete's letter.

Sources:

[After 7 yrs in jail for rape he didn't commit, man wants to end his life](#), *Mumbai Mirror*, July 27, 2016

[Youth spends 6 year in Jail now seeks 100 cr as compensation](#), *Nagpur Today* (Nagpur, India), February 23, 2016



Supreme Court cont. from p. 9

consequences that his or her own earlier, critical decision may have set in motion." [8]

The Court ruled regarding that Castille was only one of the six state Supreme Court justices who voted to reinstate Williams' death sentence:

"... the Court holds that an unconstitutional failure to recuse constitutes structural error even if the judge in question did not cast a deciding vote. ... The fact that the interested judge's vote was not dispositive may mean only that the judge was successful in persuading most members of the court to accept his or her position. That outcome does not lessen the unfairness to the affected party." [12, 13]

The judgment of the Supreme Court of Pennsylvania is vacated..." [14]

Three of the justices thought it was acceptable for Castille to participate in deciding Williams' appeal of his death sentence after

Castille had authorized the seeking of that death sentence when he was Philadelphia's District Attorney.

Two of the dissenters, Justices Roberts and Alito, [argued that](#) Castille acting as a prosecutor and a judge at different stages of Williams' case did not violate his federal right to due process. However, they conceded that it may have violated state ethics rules. "Because the Due Process Clause does not mandate recusal in cases such as this, it is up to state authorities—not this Court—to determine whether recusal should be required." [Roberts dissent, 8]

Justice Thomas dissented [for two reasons](#). First, he argued "The specter of bias alone in a judicial proceeding is not a deprivation of due process." [Thomas dissent, 1] Second, Thomas argued Castille's recusal wasn't required because Williams' post conviction petition challenging his death sentence that was denied by Justice Castille was a civil case distinguishable from his criminal case that resulted in the imposition of his death sentence that had been ap-

proved by then District Attorney Castille. Thomas wrote, "this postconviction proceeding is not an extension of Williams' criminal case but is instead a new civil proceeding." [Thomas dissent, 12]

The Supreme Court's ruling in *Williams v. Pennsylvania*, 579 U.S. ___ (2016) is online at,

www.supremecourt.gov/opinions/15pdf/15-5040_6537.pdf

When the Pennsylvania Supreme Court reconsiders Williams' case Castille won't be around to possibly contaminate the proceeding: he stepped down from the court in 2014 after reaching the mandatory retirement age of 70.

Sources:

[Williams v. Pennsylvania](#), 579 U.S. ___ (2016)

[Com. v. Williams](#), 105 A. 3d 1234 (Pa. Supreme Ct 2014)

[U.S. Supreme Court: Castille should have recused himself from Pa. death-row case](#), *The Inquirer* (Philadelphia), June 10, 2016



2015 Innocents Database Exoneration Report

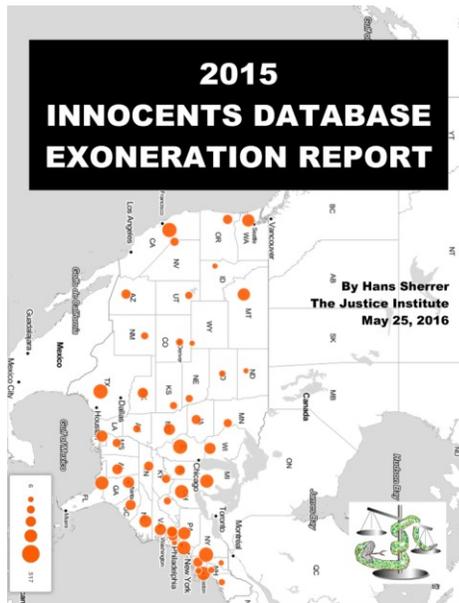
The 2015 Innocents Database Exoneration Report [is now available online!](#) The Report is a PDF document. The following is from the [Report's Introduction](#):

This is the first yearly report of information recorded in the Innocents Database through the last calendar year – 2015. The Innocents Database is an ongoing independent non profit project begun in 1997 that records every documentable exoneration in the United States and every other country. The Innocents Database is online at www.justicedenied.org/innocentsdatabase.htm and it can be accessed from Justice Denied's website at www.justicedenied.org. This Report is compiled from information available in the database online.

The database includes 6,181 cases – 3,819 U.S. cases and 2,362 international cases – that were concluded through December 31, 2015.

Since the Innocents Database was founded there has been a continuing increase in the reporting of cases in accessible digital form. That has resulted in more cases being included for recent years. However, that doesn't mean more people being exonerated today than ten or twenty years ago, it is only easier to find a larger number of recent exoneration cases. For example, Table 18 lists 316 U.S. cases and 203 international cases for 2015, and 83 U.S. cases and 96 international cases for 2005. There may have been a comparable number of exonerations in 2005 as 2015 – but finding and identifying contemporary cases is less challenging than 2005 cases, much less cases in 1995 or 1975.

Nevertheless, the 3,819 U.S. cases listed in the database through 2015 – 2,939 cases from 1989 to 2015 and 880 cases prior to 1989 –



provide data that can be useful to make general observations and identify possible trends.

The Report includes 21 Tables. Most of the Tables include information about U.S. cases for the years 1989 to 2015, and pre-1989, and several include information about international cases:

- Table 1. Number of Exonerated People By State (U.S.)
- Table 2. Number of Exonerated People By Type of Crime (U.S.)
- Table 3. Number of Exonerated People By Jurisdiction (U.S.)
- Table 4. Number of Exonerated People By Sex/Type (U.S.)
- Table 5. Number of Exonerated People by Race/Ethnicity (U.S.)
- Table 6. Number of Exonerated People By Primary Types of Exculpatory Evidence (U.S.)
- Table 7. Number of Exonerated People By Conviction Method (U.S.)
- Table 8. Number of Exonerated People Convicted After More Than One Trial (U.S.)

- Table 9. Number of State Prisoners Exonerated After Federal Habeas Granted (U.S.)
- Table 10. Number of Exonerated People Convicted By Primary Types of Prosecution Evidence (U.S.)
- Table 11. Number of Exonerated Persons Involved In A Case With A Co-Defendant (U.S.)
- Table 12. Number of Exonerated People Aided By Conviction Integrity Unit (U.S.)
- Table 13. Number of Exonerated People By Years In Custody (U.S.)
- Table 14. Average Years Exonerated Person Was In Custody Before Release (U.S. & Int.)
- Table 15. Average Years Exonerated Person Was In Custody Before Release (Homicide or Sexual Assault only) (U.S. & Int.)
- Table 16. Average Years Exonerated Person Was In Custody Before Release (NON-Homicide or Sexual Assault only) (U.S. & Int.)
- Table 17. Number of Exonerated People By County (10 or more) (U.S.)
- Table 18. Number of Exoneration Cases By Year (U.S. & Int.)
- Table 19. Number of Exonerations Involving DNA Evidence By Year (U.S. & Int.)
- Table 20. Number of Exonerated People By Country – International Cases
- Table 21. Number of Exonerated People By Type of Crime (International)

The 2015 Innocents Database Exoneration Report is online at, <http://www.forejustice.org/2015innocentsdatabaseexonerationreport.pdf>

Picture: U.S. map with bubbles to relatively represent the total number of known exonerations for each state through 2015.



Muslim's Conviction For Threatening To Behead British Political Candidate Tossed By Appeals Court

A British appeals court [has overturned](#) Aftab Ahmed's conviction of threatening to murder a political candidate. The appeals court ruled there wasn't enough evidence Ahmed intended to carry through with his threat to behead the man.

In April 2015 Ahmed was 44 and living

near Newcastle, England, which is about 250 miles north of London. Campaigning was underway by candidates on the ballot for England's general election scheduled for May 7.

On April 21, 2015 Ahmed received a UK Independence Party (UKIP) election leaflet at his home in the mail. The UKIP promoted its election manifesto [by stating:](#)



Aftab Ahmed (Chronicle (Newcastle, England))

"If you believe that we are big enough to make our own laws, in our own parliament; if you believe we should have the sovereign right to control our own borders; if you believe that we should be fiscally responsible, and stop adding to our national debts and expecting our children and grandchildren to pay the bill, then we are the party for you."

The phone number of parliamentary candidate David Robinson-Young was on the flyer. Robinson-Young was a 62-year-old lawyer specializing in employment law and

Muslim cont. on page 12

Muslim cont. from page 11

discrimination cases, and he was a former police officer.

The flyer angered Ahmed. He called Robinson-Young on the telephone, and identified himself using the fake name “Mr. Khan.” Ahmed did most of the talking during the 20 minute call, venting his anger at the British government ‘that supports bombing ‘my Muslim brothers’ abroad’. At the end of the call [Ahmed told](#) Robinson-Young, “you had better f*** off or you will be beheaded next.”

Robinson-Young contacted the police, who were able to trace the call to Ahmed’s phone.

Ahmed was charged with threatening the life of Robinson-Young, based on the threat of his beheading.

During Ahmed’s trial in the Newcastle Magistrates’ Court, Robinson-Young testified about the phone call and Ahmed’s angry continence and his threat about Robinson-Young’s beheading. Ahmed testified in his defense, denying that he made the beheading threat.

On November 2, 2015 Ahmed was convicted, and two days later he was sentenced to 20 days in jail, 12 months probation, 100 hours of unpaid community service, and ordered to



David Robinson-Young
(Chronicle (Newcastle, England))

pay £1,660 court costs and a £60 victim surcharge.

After Ahmed’s conviction Robinson-Young told reporters that the beheading threat left him feeling cold in light of violence by Muslims in England and the Islamic State’s barbaric treatment of captives. [He said](#), “Someone phoning up like that, in the light of what was going on in the world, with what happened to that poor soldier in London, and Jihadi John, meant I had to take it seriously. Doing what I was doing at the time, knocking on doors throughout the constituency, meant I took it as a real threat.”

Ahmed appealed.

On May 6, 2016 a three-judge panel in the Newcastle Crown Court allowed Ahmed’s appeal and quashed his conviction. The appeals court ruled the prosecution failed to introduce evidence to prove beyond a reasonable doubt that Ahmed definitely intended to carry through on his threat to behead Robinson-Young. The Court ruled there was sufficient evidence that Ahmed had made

the threat to behead Robinson-Young. However, it wasn’t enough [to sustain his conviction, because](#) “It may have been a throw away, angry line issued by him during a heated conversation, just before hanging up.”

Beheadings of gentiles by Muslims is a sensitive topic in England since two Muslims [attempted to behead](#) British soldier Lee Rigby on a London street in 2013. Witnesses said the men were hacking at Rigby’s body “like a butcher attacking a joint of meat” after running over him with their vehicle. A witness said the attackers were talking about religion and [one was heard to say](#), “These soldiers go to our land, kill or bomb our people, so an eye for an eye, a tooth for a tooth.”

In the 2015 election Robinson-Young came in third in the Newcastle East constituency.

Sources:

[Newcastle businessman wins appeal over his conviction for threatening to ‘behead’ UKIP candidate](#), *Chronicle* (Newcastle, England), May 6, 2016

[Newcastle man who threatened to behead UKIP candidate likened to Walter Mitty by judge](#), *Chronicle* (Newcastle, England), November 5, 2016

[Aftab Ahmed sentenced for threatening to behead UKIP candidate](#), *BBC News*, November 5, 2015

The UKIP Manifesto 2015, online at [www.ukip.org/manifesto2015](#)

[U.K. soldier Lee Rigby’s gruesome beheading described](#): Car driven directly at soldier, then body dragged into road and almost decapitated, court told, *CBC News*, Nov. 29, 2013

3rd Revised and Updated Edition of “Kirstin Blaise Lobato’s Unreasonable Conviction” Online!

The third revised and updated edition of [Kirstin Blaise Lobato’s Unreasonable Conviction](#) — *Possibility of Guilt Replaces Proof Beyond A Reasonable Doubt* is available in PDF format to be read or downloaded at no charge for personal use from [Justice Denied’s](#) website.*

The book details how Kirstin Lobato has twice been convicted of a July 8, 2001 Las Vegas homicide when the prosecution doesn’t deny it has no physical, forensic, eyewitness, confession, informant, surveillance video or documentary evidence she was in Las Vegas at any time on the day of the crime. The prosecution also concedes she was at her home 165 miles from Las Vegas at the time new forensic entomology and forensic pathology evidence conclusively proves the man died between 8 p.m. and 10 p.m. The book also details that in 2001 the 18-year-old Ms. Lobato was prosecuted

even though the Las Vegas Metropolitan Police Department and the Clark County District Attorney’s Office obtained evidence [three days after her arrest](#) she is innocent.

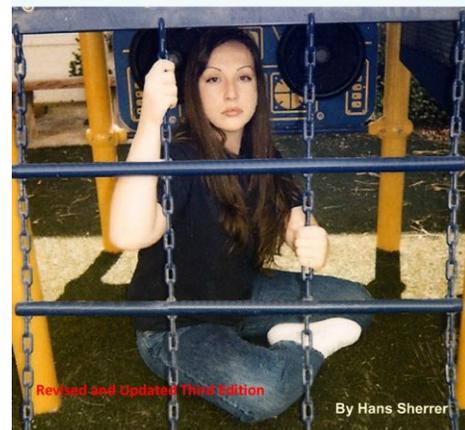
The 3rd revised edition has 57 pages of new information, that includes:

- * An updated Timeline of Ms. Lobato’s case from 2001 to the present, that begins on p. 10.
- * Six new sub-chapters in the Appendix that begin on page 150. Those include a Power Point presentation of Ms. Lobato’s case and the new evidence in her habeas corpus petition currently under review by the Nevada Supreme Court. Ms. Lobato’s petition includes new evidence her jury didn’t hear by more than two dozen expert, alibi, and third-party culprit witnesses that supports her actual innocence.

The 232-page book written by *Justice Denied’s* editor and publisher Hans Sherrer is supported by 427 source endnotes. In documents filed in the Nevada Supreme Court, the Clark County District Attorney’s Office and the State of Nevada don’t assert there is a single factual error in the book.

KIRSTIN BLAISE LOBATO’S UNREASONABLE CONVICTION

Possibility Of Guilt Replaces Proof Beyond A Reasonable Doubt



[Click here to download at no charge](#) *Kirstin Blaise Lobato’s Unreasonable Conviction* in PDF format from [www.justicedenied.org/kbl.htm](#).

Justice Denied’s webpage with information about the Kirstin Lobato case is [www.justicedenied.org/kbl.htm](#).

* The book can be printed at no charge for non-commercial use only.

Michigan's Pending Compensation Law Is Anti-Exoneree Political Window Dressing

Justice Denied Editorial
June 21, 2016

The Michigan State Senate has passed 37 to 0 a bill that provides as little money as possible to a select group of exonerated persons -- while leaving the majority of exonerated persons out to dry with nothing.[n.1] Senate Bill 291, referred to as the "Wrongful Imprisonment Compensation Act," is political window dressing that creates the misleading appearance the State of Michigan is trying to responsibly address the issue of providing reasonable compensation to wrongly convicted persons.

The best that can be said for SB 291 is that it is ill-conceived by persons unfamiliar with the subject of wrongful imprisonment compensation. The worst that can be said is that it is a mean-spirited deliberate attempt to minimize the compensation that could be awarded only to the minority of exonerated persons: those whose conviction is overturned by new evidence.

As described below, SB 291 is so discriminatory and inherently defective that the bill should be immediately scraped. From the ground up it should be rewritten to genuinely address the financial welfare of all persons the State has victimized with a conviction that has been blotted out by a court or gubernatorial pardon. It is realistic to do that because the Michigan House of Representatives has not yet voted on SB 291's companion House Bill 4536 (2015).[n.2]

If the political will doesn't currently exist to correct SB 291 -- and likewise HB 4536 -- then it should be withdrawn and nothing done regarding wrongful conviction compensation at this time. As with all legislation, once SB 291 is enacted, its numerous shortcomings will be set in stone as law and it will be almost impossible to make any meaningful correction to its provisions.

SB 291 is the worst kind of political posturing because it allows politicians and prosecutors to publicly appear to support meaningful compensation to wrongfully convicted persons -- while not actually doing so.

The following are some of the more objec-

tionable parts of Michigan's deceptively named "Wrongful Imprisonment Compensation Act." Those parts are underlined in italics, and are followed by comment about the deficiency:

Sec. 5. (1) In an action under this act, the plaintiff is entitled to judgment in the plaintiff's favor if the plaintiff proves all of the following by clear and convincing evidence:

(a) The plaintiff was convicted of 1 or more crimes under the law of this state, was sentenced to a term of imprisonment in a state correctional facility for the crime or crimes, and served at least part of the sentence.

Comment: Excluded from compensation are wrongly convicted persons who are incarcerated after their conviction, but exonerated prior to their sentencing. Since 1989 there have been at least two people in Michigan exonerated prior to their sentencing, and 135 nationally.[n.3]

Sec. 5. (1)(b) The plaintiff's judgment of conviction was reversed or vacated and either the charges were dismissed or the plaintiff was determined on retrial to be not guilty. ...

Sec. 5. (1)(c) New evidence demonstrates that the plaintiff did not perpetrate the crime and was not an accomplice or accessory to the acts that were the basis of the conviction, results in the reversal or vacation of the charges in the judgment of conviction or a gubernatorial pardon, and results in either dismissal of all of the charges or a finding of not guilty on all of the charges on retrial.

Comment: 5.(1)(b) and 5.(1)(c) are incongruent. Persons are regularly exonerated without "new evidence." [n.4] In 2015 the majority of the 316 known exonerations in the U.S. were not based on new evidence: less than 50% were based on new evidence.[n.5] Yet all persons exonerated without "new evidence" are automatically excluded by SB 291 from being eligible for compensation.

Directly regarding Michigan: At least 82 people have been judicially exonerated by a Michigan state court since 1950.[n.6] Since the bill only applies to a living exoneree, it doesn't seem likely there are any alive who were convicted prior to 1950. Over half of those 82 people were not judicially exonerated by new evidence. They are left out in the cold by the "Wrongful Imprisonment

Compensation Act."

In addition, at least 61 people in Michigan have been granted a full gubernatorial pardon since 1950 that had the effect of vacating their conviction and restored their presumption of innocence exactly the same as a judicial exoneration.[n.7] Without a pardon based on new evidence they are excluded from compensation under SB 291.

So more than 100 people in Michigan who have had their presumption of innocence restored by way of a court proceeding or a gubernatorial pardon are excluded from being granted compensation under the pending "Wrongful Imprisonment Compensation Act." That is more than 70% of the known exonerated people in Michigan. All of those people are as legally innocent of the crime(s) they were convicted of committing as every person reading this.

Additional Comment: It is unnecessary and redundant to apply the clear and convincing evidence standard to 5.(c). The legal presumption of innocence applies to every defendant involved in a case where the State's inability to prove a defendant committed a crime by proof beyond a reasonable doubt underlies the dismissal of an indictment or information; the defendant was acquitted after a trial; or a trial or appellate court rules that the guilty verdict cannot stand because the prosecution failed to introduce sufficient evidence to prove the defendant's guilt beyond a reasonable doubt. The State cannot prove the defendant "perpetrate[d] the crime and was not an accomplice or accessory to the acts that were the basis of the conviction ...", yet SB 291 imposes the requirement that a claimant must prove the negative of not doing something that it has already been legally established the State cannot prove beyond a reasonable doubt that the person did.

If a standard is imposed, it makes more sense to rely on the "balance of probabilities" test that a person did not commit the crime, which is relied on under New Zealand's compensation scheme for wrongful conviction and imprisonment.[n.8] That is a stronger test than the *less than a probability* of a constitutional violation that is relied on to overturn a conviction based on either the prosecution illegally withholding favorable evidence (*Brady v. Maryland*,

Michigan Comp cont. on p. 14

Michigan Comp cont. from p. 13

373 U.S. 83 (1963)), or ineffective assistance of counsel by a defendant's trial or appellate lawyer (*Strickland v. Washington*, 466 U.S. 668 (1984)).

Sec. 5. (2) Subject to subsections (4) and (5), if a court finds that a plaintiff was wrongfully convicted and imprisoned, the court shall award compensation as follows:

(a) Fifty thousand dollars for each year from the date the plaintiff was imprisoned until the date the plaintiff was released from prison, regardless of whether the plaintiff was released from imprisonment on parole or because the maximum sentence was served.

Comment: Fifty thousand dollars per year of imprisonment is not a progressive amount for 2016, and much less than half of what is awarded overall by Texas: \$80,000 per year plus an annuity for life based on the lump sum payment.[n.9] Furthermore, \$50,000 is less than 22% of the average of \$232,947 per year that New York awarded in 2014 and 2015 to 13 exonerated persons,[n.10] under New York's "Unjust Conviction and Imprisonment Act" enacted in 1984. [n.11] While there are a number of states that pay \$50,000 or less per year,[n.12] they are likewise not progressive with current norms of what constitutes adequate compensation.

Looking abroad, New Zealand's wrongful conviction compensation legislation enacted in 1998, provides a base of \$100,000 for each year in custody for non-pecuniary losses that include loss of liberty or emotional harm – plus payments for pecuniary losses following conviction that include loss of livelihood and future earnings.[n.13] The flexibility of New Zealand's compensation scheme that is applied on a case-by-case basis, has resulted in an average payment of \$261,284 per year of imprisonment.[n.14]

SB 291 cannot be considered to provide progressive compensation without being written to allow payments comparable to Texas, and preferably those in New York.

Additional Comment: It is unconscionable that SB 291 excludes compensation to an exoneree for the time he or she spent as a registered sex offender after

release from prison. As a registered sex offender a person is restricted where he or she can live and work, and even the types of public events the person can attend. Texas recognizes the injustice that an exoneree was required to register as a sex offender, and specifically awards compensation of \$25,000 per year or part thereof for the time an exoneree was required to do so after release from prison.[n.15]

Additional Comment 2: SB 291's exclusion from compensation the time an exoneree spent in State custody after release from prison reflects a profound lack of understanding about the negative impact that being on parole can have on a person's ability to find employment, housing, and even develop meaningful interpersonal relationships. Awarding compensation for an exoneree's time on parole is a financial acknowledgement of the destructive effect parole had on the exoneree's life. This would be exceptionally progressive, and in line with Texas, which awards compensation of \$25,000 per year or part thereof for the time an exoneree was on parole. If a parolee also registered as a sex offender, then Texas awards the exoneree a total of \$25,000 per year for both injustices.[n.16]

Sec. 5. (2) (c) Reasonable attorney fees incurred in an action under this act. All of the following apply to attorney fees under this act:

(i) The court shall not award attorney fees unless the plaintiff has actually paid the amount awarded to the attorney.

(ii) It is not necessary that the plaintiff pay the attorney fees before an initial award under this act. The court may award attorney fees on a motion brought after the initial award.

(iii) The attorney fees must not exceed 10% of the total amount awarded under subdivisions (a) and (b) or \$50,000.00, whichever is less, plus expenses.

Comment: Creates the convoluted situation that a destitute exoneree must hire an attorney with the proviso that the attorney will be paid from a successful claim. After the attorney is paid from the exoneree's award, a motion is submitted for reimbursement of the attorney fees with a cap of 10% of the total award or \$50,000, whichever is less. If the capped fee is less than what the exoneree paid the lawyer, then the exoneree wouldn't recover the total amount he or she paid in attorneys fees.

Sec. 5. (7) An award of compensation under this act is not a finding of wrongdoing against anyone. An award of compensation under this act is not admissible in evidence in a civil action that is related to the investigation, prosecution, or conviction that gave rise to the wrongful conviction or imprisonment.

Comment: This is inconsistent with the fact that an award of compensation is legally significant because the bill requires that for compensation to be granted it must be found by clear and convincing evidence that the claimant "did not perpetrate the crime and was not an accomplice or accessory ..." -- and hence the award has relevance "to the investigation, prosecution, or conviction that gave rise to the wrongful conviction or imprisonment."

Sec. 5. (11) A compensation award under this act is subject to the payment of child support, including child support arrearages, owed by the plaintiff. Child support must be deducted from an award under this act before the plaintiff receives any of the money from the award.

Comment: This financially punishes a person for being unable to pay child support because of his or her imprisonment by the State. It is logical that Michigan would add any child support payments that accrued during a person's wrongful imprisonment to their compensation. That is exactly what Texas does by adding to an exoneree's payment, "compensation for child support payments owed by the person on whose imprisonment the claim is based that became due and interest on child support arrearages that accrued during the time served in prison but were not paid." [n.17]

Sec. 5. (13) An award of compensation under this act is subject to setoff or reimbursement for damages obtained for the wrongful conviction or imprisonment from any other person.

Comment: Sec. 5 (13) is unconscionable in its implications. If a person was coerced or even outright tortured by the police into a false confession that implicated another person who was also wrongly convicted, then the State can be taken off the hook in whole or part for the compensation awarded to the wrongly implicated person by having it paid from the award to the false confes-

Michigan Comp cont. on p. 15

Michigan Comp cont. from p. 14

sor, or by requiring that he or she “reimburse” all or part of the money awarded to the person he or she was coerced into implicating!

There is one provision of Senate Bill 291 that can be commended as forward thinking.

Sec. 5. (6) In the discretion of the court, the total amount awarded under subsection (2)(a) and (b) may be paid to the plaintiff in a single payment or in multiple payments. If the court orders the compensation to be paid in multiple payments, the initial payment must be 20% of the total amount awarded or more and the remainder of the payments must be made over not more than 10 years.

Comment: This provision can keep a person from quickly blowing all the money he or she is awarded or having others leech it from him or her in short order, and then be left with nothing. (E.g., The author is aware of one exonerated who was paid a lump sum of \$250,000 and frittered away all the money in less than a month.)

Endnotes:

1. The Michigan Senate voted on June 9, 2016. Michigan Legislature, Senate Bill 0291 (2015), online at <http://www.legislature.mi.gov/%28S%28h2wxqfxfx1obflxnliambvrn%29%29/mileg.aspx?page=GetObject&objectname=2015SB-0291>.
2. Michigan Legislature, House Bill 4536 (2015), online at, <http://www.legislature.mi.gov/%28S%28z20epwb5xq1idmkl4npbr5wb%29%29/mileg.aspx?page=BillStatus&objectname=2015HB-4536>.
3. Innocents Database, <http://forejustice.org/innocentsdatabase.htm>.
4. For example, a person can be acquitted after a retrial in which the same evidence was heard, but in the first trial the judge erred by either omitting or improperly giving one or more jury instructions that was corrected in the second trial.
5. See, Hans Sherrer, “2015 Innocents Database Exoneration Report,” *Justice Denied*, May 25, 2016, online at, <http://www.justicedenied.org/2015idbrepor.html>. Less than 150 of the 316 known exonerations in 2015 were based on new evidence.
6. There are eight known judicial exonerations in Michigan of persons convicted between 1950 and 1988, and 74 from 1989 to 2015.
7. There are 15 known full gubernatorial

pardons in Michigan of persons convicted between 1950 and 1988, and 46 from 1989 to 2015. The Michigan Supreme Court has ruled an executive pardon in Michigan “reaches both the punishment prescribed for the offense and the guilt of the offender. It releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense.” *People v. Stickle*, 156 Mich. 557, 564, 121 N.W. 497 (1909) (Cited in *People v. Van Heck*, 252 Mich. App. 207, 651 NW 2d 174 (Mich. Ct. of Appeals 9-24-2002))

8. “Compensation for wrongful conviction and imprisonment,” New Zealand Ministry of Justice, online at,

<http://www.justice.govt.nz/services/miscarrriages-of-justice/compensation-for-wrongful-conviction-and-imprisonment>.

9. Texas state “Civil Practice And Remedies Code; Title 5. Governmental Liability; Chapter 103. Compensation To Persons Wrongfully Imprisoned; Sec. 103.052. Lump-Sum Compensation, and Sec. 103.053. Annuity Compensation Generally. Online at, <http://www.statutes.legis.state.tx.us/Docs/CP/htm/CP.103.htm>.

10. The 13 imprisoned for a total of 189 years, were awarded a total of \$44,020,000 in compensation. See, Hans Sherrer, “\$369 Million Compensation Awarded In 2014 And 2015 To Wrongly Convicted In U.S.,” *Justice Denied*, June 8, 2016, online at <http://justicedenied.org/wordpress/archives/3215>.

11. New York Court of Claims Act § 8-b. Claims for unjust conviction and imprisonment.

12. The federal government’s wrongful imprisonment compensation statute pays \$50,000 per year to non-capital defendants, and \$100,000 per year of imprisonment to a person who was sentenced to death.

13. “Compensation for wrongful conviction and imprisonment,” New Zealand Ministry of Justice, online at, <http://www.justice.govt.nz/services/miscarrriages-of-justice/compensation-for-wrongful-conviction-and-imprisonment>.

14. A total of \$2,732,514 has been paid to nine exonerees for 10.46 years of imprisonment. All data compiled from the Innocents Database,

<http://forejustice.org/innocentsdatabase.htm>.

15. Texas State “Civil Practice And Remedies Code; Title 5. Governmental Liability; Chapter 103. Compensation To Persons Wrongfully Imprisoned; Sec. 103.052 (b). Online at, <http://www.statutes.legis.state.tx.us/Docs/CP/htm/CP.103.htm>.

16. *Id.*

17. *Id.*, Sec. 103.052 (2). Online at, <http://www.statutes.legis.state.tx.us/Docs/CP/htm/CP.103.htm>.

Sources:

[Michigan Legislature](#), Senate Bill 0291 (2015)



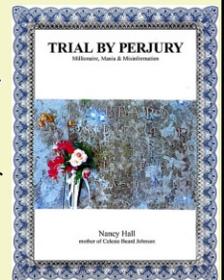
Database of Japanese Cases

The Japan Innocence & Death Penalty Information Center has a database of wrongful Japanese convictions online at, <http://www.jiadep.org>

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)

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Kirstin Lobato Has Waited Two Years For The Nevada Supreme Court's Habeas Ruling

By Hans Sherrer
September 9, 2016

Two years ago the Nevada Supreme Court heard oral arguments in Kirstin Blaise Lobato's habeas corpus case on September 9, 2014. The Court is considering Ms. Lobato's appeal of the denial of her habeas corpus petition by former Clark County District Court Judge Valorie Vega. [1] The Court's ruling is being awaited.

Ms. Lobato was convicted in October 2006 of charges related to the death of homeless Duran Bailey in a Las Vegas bank's trash enclosure on July 8, 2001. She was sentenced to serve 13 to 35 years in prison.

Ms. Lobato presented an alibi defense during her trial that she was at her home 165 miles from Las Vegas when Bailey died. That defense is consistent with the fact that during her trial the prosecution didn't present any evidence she was in Las Vegas on the day of Bailey's death. [2] New evidence by more than two dozen witnesses supporting her alibi defense is in her habeas corpus petition filed in May 2010.

Ms. Lobato's [habeas petition](#) has 79 grounds for overturning her convictions. Included in her petition is evidence her prosecutors committed *at least 293 acts of gross misconduct* that affected the outcome of her trial. Her prosecutor's misconduct was intentional because they kept doing it over, and over, and over, from the beginning to the end of her trial. Ms. Lobato argues her trial lawyers were ineffective for failing to object to her prosecutor's gross misconduct, and for failing to make at least eight motions for a mistrial and dismissal of her charges.

The pervasive prosecutor misconduct that resulted in the dismissal of criminal charges two weeks ago in a New Jersey case emphasizes the Nevada Supreme Court can grant Ms. Lobato's petition based on her prosecutor's extensive misconduct -- without even considering any of her other legal issues. The Court can also bar her retrial by ordering the dismissal of her charges.

In [New Jersey v. Zisa](#), No. 10-10-01812-i (Superior Ct. Bergen County, 8-23-2016)) the charges were dismissed with prejudice



Kirstin Lobato

based on the prosecutor's *five* acts of misconduct that included false allegations during his opening argument, the failure to present evidence during the trial alluded to in his opening statement, and the eliciting of false testimony from a prosecution witness. The New Jersey [court ruled](#) that because of the "pervasive" prosecutor misconduct Charles Zisa's retrial would violate his right against double jeopardy:

"Considering the State's lack of proofs and the weaknesses of its case, it is surprising this case was prosecuted to begin with. Looking to the trial itself, it is equally surprising a mistrial was not ordered at any point.

...
"The bedrock principle is that the State, with all its resources and power, should not be allowed to make repeated attempts to convict an individual, thus compelling him to live in a continuing state of anxiety and insecurity." [] The prosecutor had a full opportunity to try this case without injecting any prejudice into the trial. Yet, that is not what happened here. ... Given the "substantial factual evidence of intent" in the record before the court, the court finds a retrial to be an insufficient remedy as it would violate the defendant's right against double jeopardy. [] Accordingly, the remaining count of the indictment is dismissed with prejudice." [*New Jersey v. Zisa*, at 105-106.]

The prosecutor misconduct in Zisa's case was similar in some respects to that in Ms. Lobato's case, but it was dramatically less serious in scope than the misconduct committed by Ms. Lobato's prosecutors -- Clark County Assistant District Attorneys William Kephart and Sandra DiGiacomo. [3] Instead of the five instances of prosecutor misconduct in the Zisa case that was described as "pervasive" and resulted in the dismissal of the charges, there are at least *293 instances of gross misconduct* by Kephart or DiGiacomo during Ms. Lobato's trial documented in her habeas petition. That misconduct was:

- Kephart fabricated his false assertion during his direct examination of Las Vegas Metro Police Department Detective Thomas Thowsen that Ms. Lobato gave "her confession" to him -- when she has never given any statement to even being in Las Vegas on the day of

Mr. Bailey's homicide, much less ever implicating herself in his death. [4] [Ground 49]

- Kephart suborned perjury from Las Vegas Metro Police Dept. Detective Thomas Thowsen during his direct examination of Thowsen regarding his investigation of Ms. Lobato's case. [5] [Ground 52]
- Kephart committed fraud on the court by misrepresenting to Judge Vega that Thowsen's testimony regarding an alleged search for NRS 629.014 reports was not hearsay in order to prevent her from striking it as inadmissible, and that DiGiacomo aided and abetted Kephart's fraud. [6] [Ground 52]
- Kephart made at least twenty-nine references to non-existent evidence during his opening statement that Kephart claimed would be presented by the prosecution to prove Ms. Lobato's guilt -- and none of that phantom evidence was presented during her trial. [7] [Ground 65]
- Kephart and DiGiacomo during their rebuttal and closing arguments, respectively, lied to the jury "that the fracture to the back of Bailey's head was inflicted at the same time as his other wounds, because Medical Examiner Lary Simms' testified that Bailey's brain swelling that began at least two hours prior to death was "contemporaneous with the fracture" and it was his primary cause of death..." Kephart and DiGiacomo's lying was an attempt to conceal from the jury that Simms' testimony established Bailey's fatal head fracture occurred *at least two hours prior* to when his injuries occurred that they alleged Ms. Lobato inflicted. [8] [Ground 66]
- Kephart improperly inserted himself as a 13th juror when he told the jurors during his rebuttal argument, that "he personally believes [Ms. Lobato] is guilty and the jurors should follow his lead and mark their ballots to convict her as he did." [9] [Ground 67]
- Kephart and DiGiacomo during their rebuttal and closing arguments, respectively, smeared and disparaged three of Ms. Lobato's alibi witnesses solely because they had not been called to testify by her lawyer during her first trial in 2002. [10] [Ground 68]
- Kephart and DiGiacomo fabricated the assertion during their rebuttal and closing arguments, respectively, that Ms. Lobato "said she had blood on her, her clothes were bloody and that she got in

Lobato cont. on page 17

Lobato cont. from page 16

her car bloody, when there was no evidence introduced at trial supporting those fatally prejudicial claims.” [11] [Ground 69]

- Kephart made at least 130 “false, fabricated, and/or improper prosecution statements during [] rebuttal arguments that were used as a substitute for evidence of [Ms. Lobato’s] guilt the prosecution did not introduce during the trial ...” [12] [Ground 70]
- DiGiacomo made at least 123 “false, fabricated, and/or improper prosecution statements during [] closing arguments that were used as a substitute for evidence of [Ms. Lobato’s] guilt the prosecution did not introduce during the trial ...” [13] [Ground 70]

The sheer magnitude of the gross misconduct by Kephart and DiGiacomo detailed in Ms. Lobato’s petition can be considered shocking -- and particularly so when it is considered her lawyers were so asleep at the wheel during her trial that they failed to make a single objection to any of that misconduct.

The U.S. Supreme Court’s ruling in *Strickland v. Washington*, 466 U.S. 668 (1984) governs the Nevada Supreme Court’s consideration of Ms. Lobato’s grounds 49, 52, 65, 66, 67, 68, 69 and 70 that document Kephart and DiGiacomo’s misconduct. Under *Strickland* Ms. Lobato needs to establish that her “counsel’s performance was deficient and that the deficient performance prejudiced the defense.” [*Strickland*, at 687.] Under *Strickland’s* “reasonable probability” standard of prejudice Ms. Lobato “need not show that counsel’s deficient conduct more likely than not altered the outcome in the case.” [*Strickland*, at 693.] Ms. Lobato’s habeas petition and her briefs filed in the Nevada Supreme Court explain in detail why the failure of her trial lawyers to object to the avalanche of misconduct by Kephart and DiGiacomo was objectively unreasonable behavior by her lawyers, and there is a reasonable probability their failure to act rendered the jury’s verdict unreliable. [14] Thus granting her petition and overturning her convictions is warranted by the ineffective assistance of her trial lawyers.

Two sentences in the *Zisa* ruling are totally applicable to Ms. Lobato’s case: “Considering the State’s lack of proofs and the weaknesses of its case, it is surprising this case was prosecuted to begin with. Looking to the trial itself, it is equally surprising a mistrial was not ordered at any point.” [15] As

Ms. Lobato’s petition details, the prosecution’s case against her was so weak that they didn’t even introduce any evidence she was in Las Vegas at any time on the day of Bailey’s homicide. Consequently, it is physically impossible she committed her convicted crimes. However, Ms. Lobato’s lawyers didn’t even give her judge the opportunity to consider a motion for a mistrial, and to dismiss the charges as the appropriate response to the tsunami of prosecutor misconduct detailed above (and in her petition).

Typically the Nevada Supreme Court issues a ruling within six months after oral arguments, so the two years that have passed since the arguments in Ms. Lobato’s case is unusual. It can be expected the reason the Nevada Supreme Court has not issued its ruling is because it is carefully evaluating the plethora of legal issues raised in her habeas. Although it isn’t as “sexy” as some of the other issues raised in her petition, the pervasive serial misconduct of Kephart and DiGiacomo is enough by itself to justify the granting of her petition by the Nevada Supreme Court, and the dismissal of the charges against her.

While Ms. Lobato has languished in prison, her prosecutors, William Kephart and Sandra DiGiacomo have continued as highly paid Clark County employees. Kephart left the District Attorney’s Office when he was elected in 2010 to be a Justice of the Peace, and in 2014 he was elected an Eighth Judicial (Clark County) District Court Judge. DiGiacomo is still an ADA with the District Attorney’s Office. From 2007 to 2015 Kephart’s total pay and benefits was \$1,932,006.98 -- an average of \$214,667.44 per year. From 2007 to 2015 DiGiacomo’s total pay and benefits was \$1,536,143.61 -- an average of \$170,682.62 per year. [16]

Endnotes:

Author note: Hans Sherrer is President of the Justice Institute based in Seattle, Washington, that promotes awareness of wrongful convictions and conducted a post-conviction investigation of Ms. Lobato’s case. Its website is, www.justicedenied.org.

1. *Kirstin Lobato v. State of Nevada*, No. 58913 (Nevada Supreme Court). Appeal of Judge Vega’s ruling filed on August 2, 2011. Case docket online at, www.caseinfo.nvsupremecourt.us/public/caseView.do?csIID=27064.

2. Ms. Lobato’s habeas petition makes the assertion un rebutted by the State that, “No physical, forensic, medical, eyewitness, documentary, surveillance or confession evidence was introduced at trial placing the Petitioner in Clark County at any time on July 8, 2001, the day of Duran Bailey’s murder. Consequently, no evidence was introduced establishing the Petitioner was anywhere in Las Vegas, much less the Nevada State Bank at the time of his murder.” Ground 43, 219-220.

3. William Kephart is now an Eighth Judicial District Court (Clark County) judge, and DiGiacomo is still an ADA with the Clark County DA’s Office.

4. The petition asserts Ms. Lobato’s counsel was inef-

fective for failing to object to Kephart’s prejudicial statement, and to make a motion for a mistrial and dismissal of her charges. Ground 49, 244.

5. The petition asserts Ms. Lobato’s counsel was ineffective for failing to object to Kephart’s subornation of perjury, and to make a motion for a mistrial and dismissal of her charges. Ground 52, 253.

6. NRS 629.014 reports are required to be filed by medical facilities regarding the treatment of what are believed to be a non-accidental gunshot or knife wound. The petition asserts Ms. Lobato’s counsel was ineffective for failing to object to Kephart’s fraud on the court, and to make a motion for a mistrial and dismissal of her charges. Ground 52, 253.

7. The petition asserts Ms. Lobato’s trial lawyer was ineffective because he “did not make a single objection, even though it was known to her counsel that Kephart’s claims were false and prejudicial to the Petitioner [Ms. Lobato].” Ground 65, 299. The 29 statements by Kephart [are detailed in](#) Ms. Lobato’s habeas petition Exhibit 75.

8. The petition asserts Ms. Lobato’s counsel was ineffective for failing to object to Kephart and DiGiacomo’s false assertions about the evidence during their rebuttal, and closing argument, respectively. Ground 66, 300.

9. The petition asserts Ms. Lobato’s counsel was ineffective for failing to object to Kephart’s personal plea that relied on his gravitas as a prosecutor to unduly influence the jurors, and to make a motion for a mistrial and dismissal of her charges. Ground 67, 303.

10. The petition asserts Ms. Lobato’s counsel was ineffective for failing to object to Kephart and DiGiacomo’s baseless smearing of her alibi witnesses during their rebuttal, and closing argument, respectively. Ground 68, 304.

11. The petition asserts Ms. Lobato’s counsel was ineffective for failing to object to Kephart and DiGiacomo’s fabricated assertions during their rebuttal, and closing argument, respectively, and to make a motion for a mistrial and dismissal of her charges in response to both of their arguments. Ground 69, 306.

12. The petition asserts Ms. Lobato’s counsel was ineffective for failing to object to a single one of Kephart’s false assertions during his rebuttal argument, and to make a motion for a mistrial and dismissal of her charges. Ground 70, 309. The 130 statements by Kephart [are detailed in](#) Ms. Lobato’s habeas petition Exhibit 76, 11-23.

13. The petition asserts Ms. Lobato’s counsel was ineffective for failing to object to a single one of DiGiacomo’s false assertions during her closing argument, and to make a motion for a mistrial and dismissal of her charges. Ground 70, 309. The 123 statements by DiGiacomo [are detailed in](#) Ms. Lobato’s habeas petition Exhibit 76, 1-11.

14. Ms. Lobato’s petition and brief’s are available on the Nevada Supreme Court’s website for, [Kirstin Lobato v. State of Nevada](#), No. 58913 (Nevada Supreme Court).

15. *New Jersey v. Zisa*, No. 10-10-01812-i (Superior Ct. Bergen County, 8-23-2016), Dismissal Order at 105.

16. Clark County, Nevada public employee payment data is online at transparentnevada.com.



Justice Denied’s Website Has Had Visitors From 225 Countries

Justice Denied’s website has had visitors from 225 countries through August 2016. Those visitors were from more than 21,700 cities and towns. Six of the 20 cities where the most visitors were from are outside the U.S.

www.justicedenied.org

High Fence Foodie Cookbook Now Available!

High Fence Foodie is [a new cookbook](#) by Texas prisoner Celeste Johnson that was recently published by The Justice Institute.

High Fence Foodie has more than two hundred easy to prepare recipes for meals, soups, snacks, desserts, and beverages. These recipes can be made from basic items a prisoner can purchase from their unit's commissary, or people on the outside can purchase from a convenience or grocery store. They are written by Celeste Johnson, a woman imprisoned in Texas who loves to cook and try out new combinations of the simple food ingredients available to her.

High Fence Foodie's all new recipes are a follow-up to the more than 200 recipes in *From The Big House To Your House* that was written by Celeste Johnson and five fellow prisoners at the Mountain View Unit, a woman's prison in Gatesville, Texas.

From The Big House To Your House received

rave reviews on Amazon.com, with 75% of reviewers giving it 4 or 5 stars! Some of the comments are:

"A lot of the recipes are very imaginative, and fun to make. Well worth the money." J.C.

"I loved the food and was inspired by the can-do attitude of the ladies involved with this project." Dan

"My daughter got this for her husband for father's day. He loves using it!!" J.H.

"I am a college student making a limited income and these recipes are great and fulfilling for people like me who don't have a ton of \$ to spend on groceries." Alicia

"I sent this to my daughter. She absolutely loves this little cookbook!" D. G.

High Fence Foodie continues the high standard of *From The Big House To Your House*!



Celeste hopes her recipes will ignite a reader's taste buds as well as spark their imagination to explore unlimited creations of their own! She encourages substitutions to a reader's individual tastes or availability of ingredients. She is confident users of her recipes will enjoy creating a home-felt comfort whether behind the High Fence, or at Your House!

Celeste Johnson does not financially profit from sales of *High Fence Foodie*. All profits from the book's sale are donated to [The Justice Institute](#) Justice Denied to contribute to its work on behalf of wrongly convicted persons.

[Click here for more information](#) about the book's contents and to [order it from Justice Denied](#) with no shipping charge.

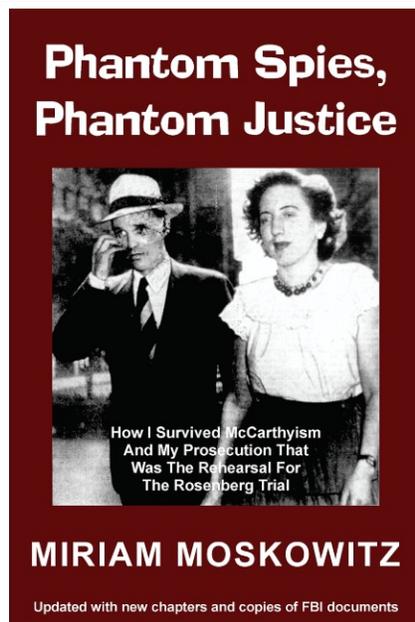
[Click here to buy High Fence Foodie from Amazon.com.](#)

Phantom Spies, Phantom Justice

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, allegedly 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.

\$19.95

(postage paid to U.S. mailing address)
(Canadian orders add \$5 per book)
302 pages, softcover

Use the order form on pages 20 to order with a check or money order. Or order with a credit card from Justice Denied's website:
<http://justicedenied.org/phantomspies.html>

Or order from: www.Amazon.com

Published By Justice Denied !!

FROM THE BIG HOUSE TO YOUR HOUSE

Cooking in prison

With

Ceyma Bina, Tina Cornelius, Barbara Holder, Celeste Johnson, Trena Kemmerer, and Louanne Larson

From The Big House To Your House has two hundred easy to prepare recipes for meals, snacks and desserts. Written by six women imprisoned in Texas, the recipes can be made from basic items a prisoner can purchase from their commissary, or people on the outside can purchase from a convenience or grocery store.

From The Big House To Your House is the result of the cooking experiences of six women while confined at the Mountain View Unit, a woman's prison in Gatesville, Texas. They met and bonded in the G-3

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

\$14.95

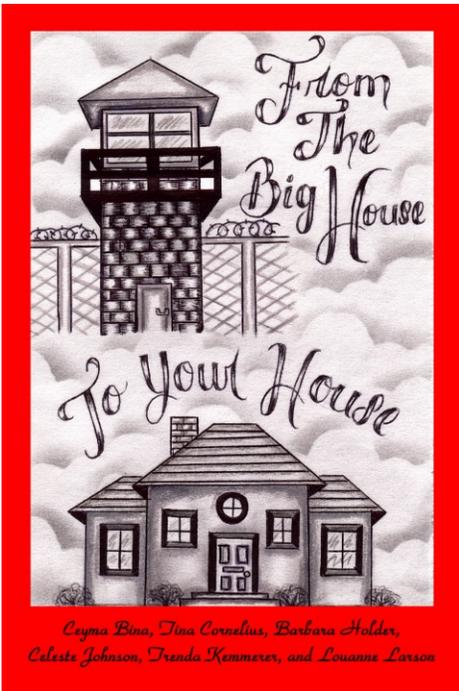
(postage paid to U.S. mailing address) 132 pages, softcover

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Or order with a credit card from Justice Denied's website:

www.justicedenied.org/fromthebighouse.htm

Or order from: www.Amazon.com



Published by Justice Denied

Edwin M. Borchard – Convicting The Innocent

Edwin M. Borchard – *Convicting The Innocent and State Indemnity For Errors Of Criminal Justice* has [been published](#) by The Justice Institute/Justice Denied.

Yale University Law School Professor Edwin Borchard was an early pioneer in exposing the causes of wrongful convictions and the inadequacy of compensation for exonerated persons in the United States. So it is important that it be remembered his works laid the foundation for today's advocates for wrongly convicted persons, and the encouragement of public policies that may prevent wrongful convictions and ensure adequate indemnification when they occur.

This 358-page book includes Borchard's key works *European Systems Of State Indemnity For Errors of Criminal Justice*, and *Convicting The Innocent: Sixty-Five Actual Errors of Criminal Justice*. The Table of Contents is:

Introduction

Chapter 1. Edwin M. Borchard: Pioneer In Analyzing Wrongful Convictions And Advocate For Compensation

Chapter 2. Edwin Borchard, Law Expert, Dead

Chapter 3. European Systems Of State Indemnity For Errors Of Criminal Justice

Chapter 4. Convicting The Innocent: Sixty-Five Actual Errors Of Criminal Justice

Convicting the Innocent (Chapter 4) has not lost its luster as one of the most insightful books published on the topic of wrongful convictions. Seventy-one years after its publication the multitude of causes underlying the cases of injustice it details not only continue to plague the legal system in the United States, but they are arguably more prevalent today than when the book was published, with the exception of confessions extracted by physical violence.

Compensating exonerated persons is as topical a subject as it was one hundred years after Borchard's article about indemnifying wrongly convicted persons. Borchard article (Chapter 3) makes it clear that many European countries were more advanced in providing indemnification 100 years and more ago, than is the norm in the United States in 2015.

\$16.95 (postage paid to U.S. mailing address) (Canadian orders add \$5 per book) 358 pages, softcover. Use the order form on pages 20 to order with a check or money order. Or order with a credit card from Justice Denied's website:

www.justicedenied.org/edwinborchard.html

Or order from: www.Amazon.com

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EDWIN M. BORCHARD
Convicting The Innocent and State Indemnity For Errors Of Criminal Justice

COMPILED AND INTRODUCTION BY HANS SHERRER

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Innocence Projects

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[Coalition For Prisoner Rights](http://www.justicedenied.org) is a monthly newsletter providing info, analysis and alternatives for the imprisoned & interested outsiders. Free to prisoners and family. Individuals \$12/yr, Org. \$25/yr. Write: CPR, Box 1911, Santa Fe, NM 87504

Justice:Denied's Bookshop

www.justicedenied.org/books.html

Almost 100 books available related to different aspects of wrongful convictions. There are also reference and legal self-help books available.

Download JD's book brochure at,
www.justicedenied.org/books/wc/jd_bookstore.pdf

Justice:Denied Disclaimer

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

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Visit the Innocents Database

Includes details about more than 6,600 wrongly convicted people from the U.S. and other countries.

http://forejustice.org/search_idb.htm

Visit the Wrongly Convicted Bibliography

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

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

Win Your Case: How to Present, Persuade, and Prevail by Gerry Spence

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Citizens United for Alternatives to the Death Penalty

Promotes sane alternatives to the death penalty. Community speakers available. Write: CUADP; PMB 335; 2603 Dr. MLK Jr. Hwy; Gainesville, FL 32609.
www.cuadp.org

[Prison Legal News](http://www.justicedenied.org) is a monthly magazine reporting on prisoner rights and prison conditions of confinement issues. Send \$3 for sample issue or request an info packet. Write: PLN, PO Box 1151,1013 Lucerne Ave., Lake Worth, FL 33460.

Dehumanization Is Not An Option

An Inquiry Into Law Enforcement and Prison Behavior

By Hans Sherrer

This compilation of essays and reviews explains that the dehumanization characteristic of institutionalized law enforcement processes is as predictable as it is inevitable. The beginning point of thinking about alternatives to the dehumanizing aspects of law enforcement systems is understanding their causes. The essays include:

- *Quiet Rage: The Stanford Prison Experiment*
- *Obedience To Authority Is Endemic*
- *Dehumanization Paves The Path To Mis-treatment*

\$12 (postage paid) (Stamps OK) Softcover. Order from:

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KIRSTIN BLAISE LOBATO'S UNREASONABLE CONVICTION

Possibility Of Guilt Replaces Proof Beyond A Reasonable Doubt



Book cover for 'Unreasonable Conviction' by Hans Sherrer

This is the story of Kirstin Lobato, who was 18 when charged in 2001 with the murder of a homeless man in Las Vegas. She was convicted of voluntary manslaughter and other charges in 2006 and she is currently serving a sentence of 13-35 years in Nevada. *Kirstin Blaise Lobato's Unreasonable Conviction* documents:

- She had never met the homeless man and had never been to where he was killed.
- No physical forensic, eyewitness or confession evidence ties her to his death.
- At the time of his death she was 170 miles north of Las Vegas in the small rural town of Panaca, Nevada where she lived with her parents.

Paperback, 176 pages, \$13

Order from: www.Amazon.com, or order with check or money order with order form on pages 20.

**NOW
AVAILABLE!**

See page 18
for details!



High Fence Foodie: From The Big House To Your House

More than 200 easy to make recipes with ingredients available from a commissary or grocery store.
Read about the book with order information on page 18.

Visit Justice Denied website

www.justicedenied.org

Read back issues, there are links to wrongful conviction websites and JD's Blog and Facebook pages, and other information related to wrongful convictions is available. JD's online BookShop includes almost 100 wrongful conviction books, and JD's VideoShop includes dozens of wrongful conviction movies and documentaries.

"I thought Mexico had a corrupt system! After what has happened to me and my family, I believe we know which system is the more corrupt one."

Frank Marta, father of Isaac Marta, *Justice Denied*, Issue 6, p. 11

Lawyers Goaded Into Seeking Keith Cooper's Exoneration

Keith Cooper ran headlong into the problem of how to get his post-conviction lawyers to actively represent his interests and pursue his exoneration. It was only after being goaded by Indiana Gov. Mike Pence that Cooper's lawyers filed a petition seeking to overturn his conviction. If successful, Cooper could be awarded \$5 million or more in compensation.

See p. 3

JUSTICE DENIED

The Magazine for the Wrongly Convicted

The scales of justice are tipped against innocent people all across the country - from Maine to Hawaii and from Alaska to Florida.

Justice:Denied provides a public voice for innocent people victimized by that tragic reality.

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