JUSTICE DENIED

The Magazine for the Wrongly Convicted

11,162 People Exonerated In Massachusetts Due To Tainted Crime Lab Evidence

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Judge Richard Posner

Admitted after retirement he decided cases on outcome he wanted and not the law.

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Contempt conviction vacated and charge dismissed by federal judge in Arizona.

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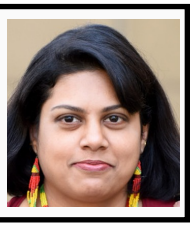
Honey Rose



Acquitted on appeal in England of manslaughter in death of optometry patient.

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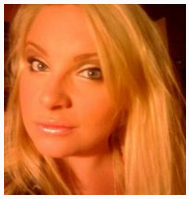

Acquitted of manslaughter by New York appeals court because she acted in self--defense.

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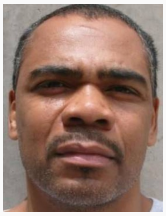
Patrick Dwayne Murphy



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Spring 2018

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Message From The Publisher

The grave threat posed to innocent people by the increasing reliance on experts to interpret evidence was exposed again in April 2018 by the vacating of 11,162 drug related convictions in Massachusetts. The evidence in those cases was too tainted to be reliable because of the discovery that Sonja Farak — who signed the "Drug Certification" identifying that physical evidence linked to the defendant was an illegal substance — had been a drug addict engaged in all sorts of wrongdoing during the entire nine years she worked as a technician in the crime lab. See. p. 3.

The grave danger of prosecutors relying on expert evidence is explained in detail in *Menace To The Innocent: Insubstantial Expert Evidence Endangers Innocent People Accused Of A Crime* (Justice Institute, 2018) that is available on Amazon.com at, **www.tinyurl.com/yc5u3kqn** . See p. 9.

It has long been known by astute legal observers that all state and federal judges are politicians in black robes. That was openly admitted by federal appeals court Judge Richard Posner when he stated in interviews after his retirement that he decided a case on the outcome he wanted, and fitted the law to support that conclusion. See p. 5. That judges are poorly disguised politicians is explained in depth in, "The Complicity of Judges in the Generation of Wrongful Convictions" (*Northern Kentucky Law Review*, 2003), online at, **http://tinyurl.com/ycptfqy7** .

Every country's legal system is an enormous bureaucracy whose left hand often doesn't know what its right hand is doing. In Ireland 14,700 convictions will overturned due to false prosecutions *after* a person paid a fine to avoid criminal prosecution for a driving related offense.

Hans Sherrer, Editor and Publisher
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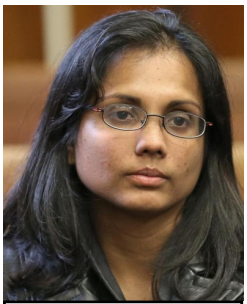
11,162 Defendants Exonerated In Massachusetts Due To Unreliable Drug Certifications By Crime Lab Technician Sonja Farak

On April 5, 2018 Massachusetts Supreme Judicial Court Justice Frank Gaziano **signed a** Declaratory Judgment that vacated 11,162 convictions in 7,690 drug related cases and ordered their dismissal with prejudice. The cases were from 2004 to 2013, and they all involved a "Drug Certification" signed by state drug lab chemist Sonja Farak that the evidence linked to the defendant was an illegal substance. Farak was indicted in 2013 for charges related to misconduct in the crime lab. In January 2014 she pled guilty to tampering with evidence in the drug lab and other charges, for which she was sentenced to 30 months in prison (12 months suspended) followed by five years probation.

The 11,162 exonerations resulting from Farak's misconduct follows on the heels of the 21,587 exonerations on April 19, 2017 **resulting from** Annie Dookhan's misconduct at Massachusetts' Hinton State Laboratory from 2003 to 2011.

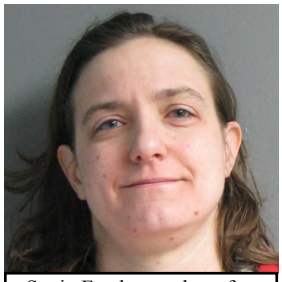
In August 2004 Farak was hired as a chemist at the Massachusetts State Crime Laboratory in Amherst. She tested evidence to determine if it was an illegal substance. It was the ideal job for Farak because she was a drug addict. Being in the lab provided her access to an unlimited supply of high-quality free drugs. For the next eight years Farak smoked crack virtually every day, and at work and home she also used heroin, methamphetamine, amphetamine, ketamine, ecstasy, cocaine, and LSD.

Farak regularly stole and consumed police-submitted drug samples, and she replaced samples with counterfeit substances and altered the weights recorded in the lab's computer system.



Annie Dookhan after her arrest in Sept. 2012 (David L. Ryan, Boston Globe)

Farak's drug use of narcotics caused her to hallucinate and have other visual distortions while working, her mind would race uncontrollably, and she would take frequent breaks to refuel on a drug.



Sonja Farak mugshot after arrest by MA State Police on Jan. 19, 2013

Farak's eight year unrestrained drug orgy at the crime lab came to an end on Friday, January 18, 2013. It might have continued for many more years except Farak was uncharacteristically careless on that day in covering her tracks: A lab supervisor found packaging from missing drug samples at Farak's workstation. The Massachusetts State Police was contacted, and the MSP immediately closed the lab.

The next day Farak was arrested. A search of Farak's car resulted in the discovery of documents in her handwriting, including mental health worksheets in which she admitted she had used drugs and stolen police-submitted samples at work.

During her tenure in the crime lab she had signed more than 10,000 "Drug Certificates" that provided expert verification evidence allegedly linked to a defendant was an illegal substance. Farak's expert evidence was relied on to obtain drug convictions in 14 Massachusetts counties. More than 99% of those convictions were by way of a guilty plea from the defendant. Numerous defendants claiming innocence pled guilty to reduce their punishment from what it would be if convicted after a trial.

On April 1, 2013 a grand jury returned indictments against the 34-year-old Farak for tampering with evidence, stealing drugs, and drug possession.

On January 6, 2014 Farak pled guilty to tampering with evidence; larceny of controlled substances from a dispensary; and, unlawful possession of a controlled substance. She was sentenced to 30 months in prison: 18 months was to be served, with the remaining 12 months suspended for five years of good behavior.

Farak was released from prison in 2015. She is on probation until 2020.

After Farak's arrest the Massachusetts Attorney General's Office not only didn't investigate the scope of her wrongdoing, but it systematically impeded the efforts of defense lawyers seeking to investigate Farak's wrongdoing. The AG's Office misled defense lawyers about Farak's conduct, withheld exculpatory evidence from defendants that sought to challenge their convictions that were based on a "Drug Certificate" signed by Farak, and even testified falsely in court about Farak's wrongdoing.

The AG's official position was Farak's misconduct affected few cases and was limited to late 2012.

Defense attorney Luke Ryan persisted, and in July 2014 he was able to obtain a court order to examine the evidence seized from Farak's car. Ryan examined the evidence in October 2014 and discovered the exculpatory documents with Farak's admissions of drug use and stealing evidence -- none of which had been turned over by the AG's Office as it was required under *Brady v. Maryland* (1963).

Ryan promptly wrote a letter to the AG's Office concerning the significance of the undisclosed documents. On November 13, 2014 the AG released almost 300 pages of previously undisclosed documents Farak's car.

The AG did nothing to address the enormous number of cases affected by Farak's criminal behavior in the crime lab and her unreliability as an analyst because of her working while in a perpetual drug induced fog.

Several defendants filed a post-conviction petition to overturn their convictions due to the new evidence of Farak's conduct. In December 2016 a Superior Court evidentiary hearing was scheduled regarding the timing and scope of Farak's misconduct and the reasons for the AG Office's failure to disclose exculpatory evidence, including documents regarding Farak's persistent drug abuse.

A six-day hearing was held. On June 26, 2017 Judge Richard Carey granted the petitions of seven defendants and ordered the vacating of their guilty plea and dismissal of their charges.

Judge Carey placed *all blame* on Farak for what she was able to do in the crime lab for more than eight years. Carey praised all of her crime lab colleagues as "principled public servants" -- even though for almost a decade they had turned a blinds-eye to all signs of her perpetual drug use and irregularities about her handling of cases and evidence in the crime lab.

Carey also placed *all blame* on two low-level assistant attorney generals -- Anne

Farak cont. on p. 4

Farak cont. from p. 3

Kaczmarek and Kris Foster -- for the elaborate years long effort by the AG's Office to sabotage defense attorney efforts to find out the scope of Farak's wrongdoing. With the exception of Kaczmarek and Foster, Carey described everyone who worked in the AG's Office as "principled public servants." The Farak crime lab scandal was widely reported statewide and known by virtually everyone in Massachusetts, but as far as Carey was concerned Kaczmarek and Foster violated court orders, violated evidence disclosure obligations, committed ethical violations, and committed perjury in court *without a single person* in the AG's Office knowing what they were doing.

According to Carey the system worked perfectly without a hick-up from 2004 to 2016 with the exception of three bad apples.

On September 20, 2017, the ACLU of Massachusetts, the Committee for Public Counsel Services, and the law firm Fick & Marx LLP filed a petition requesting that the Massachusetts Supreme Judicial Court overturn the conviction in every case in which Farak signed the drug certification. The petition sought the dismissals due both Farak's wrongdoing and the AG Office's misconduct. **The petition stated**:

> "The Commonwealth has admitted that, for nearly a decade, former state chemist Sonja Farak engaged in egregious government misconduct at the Amherst drug lab. Following Farak's arrest in January 2013, her misconduct was compounded by even more egregious prosecutorial misconduct on the part of the Attorney General's Office which ... purposefully withheld exculpatory evidence about the timing and scope of Farak's drug abuse, misled defense counsel about that evidence, and committed a fraud on the court in order to minimize the scope of the scandal.
>
> Although it has been more than four years since Farak's arrest, the Commonwealth has shirked its obligations to identify the wrongfully convicted defendants, to notify those defendants of the egregious government misconduct that tainted their cases, and to provide them with meaningful opportunities for post-conviction relief."[1]
>
> ...
>
> At present, there is no dispute that by tampering with evidence, stealing samples, and abusing drugs while working in the Amherst lab, Farak impaired her ability to analyze samples, maintain the lab's equipment, and testify in court. Nor is there now any dispute that Farak tainted the evidence in all cases in which she served as the chemist. But following Farak's arrest, the timing and scope of Farak's misconduct was in dispute, and the AGO deliberately suppressed the evidence that would have exposed its true breadth. [6]
>
> ...
>
> Likewise, every Farak-related claim that has been filed, or will be filed, has been delayed for years by the unprecedented government misconduct in this case. Thus, the scope of this Court's remedy should not be limited in any way by whether defendants filed, pressed, or lost post-conviction motions. Putting that burden on Farak Defendants would be inconsistent with the fundamental principle that the Commonwealth must bear the burdens of remedying the Amherst lab crisis." [27]

The case was resolved on April 5, 2018 when Massachusetts Supreme Judicial Court Justice Frank Gaziano signed a Declaratory Judgment with the consent of the Massachusetts Attorney General and eleven District Attorneys. The Judgment vacated 11,162 convictions in 7,690 cases in which the prosecution was based on a drug certificate signed by Sonja Frank. Gaziano also ordered dismissal of the charges in those cases with prejudice. 300 of the cases involved a juvenile.

Justice Gaziano's **order stated**:

> "Accordingly, it is ORDERED that the convictions of drug offenses under G. L. 94C that have been so identified by the respondents in the interim lists filed with this court on or before March 30,2018, shall be and are hereby VACATED AND DISMISSED WITH PREJUDICE, and any outstanding warrants associated with those convictions are recalled."

The 11,162 convictions included the following numbers of district court and juvenile convictions vacated and the charges dismissed:

- 6,110 in Hampden County;
- 1,982 in Northwestern District (Hampshire and Franklin Counties);
- 889 in Berkshire County;
- 854 Worcester County;
- 442 in Bristol County;
- 272 in Essex County;
- 216 in Middlesex County;
- 197 in Suffolk County;
- 94 in Norfolk County;
- 57 in Plymouth County;
- 49 in the Cape and Islands District (Barnstable County, Dukes County, and Nantucket County).

Farak is on probation for two more years, and she has been named as the defendant in a number of lawsuits.

Anne Kaczmarek and Kris Foster have both left the State AG's Office and are working for other government agencies.

Justice Denied articles about the Annie Dookhan case are:

"21,587 People Exonerated In Massachusetts Due To Fraudulent Crime Lab Testing," *Justice Denied*, May 6, 2017. Online at, **www.justicedenied.org/wordpress/archives/3635**.

"Annie Dookhan's Eight Year Rampage Of Faking Scientific Evidence To Convict Innocent People Was Aided By The Legal System," *Justice Denied*, May 11, 2017, **www.justicedenied.org/wordpress/archives/3639**.

Sources:

Committee For Public Counsel Services, Hampden County Lawyers For Justice, Inc., Herschelle Reaves, and Nicole Westcott vs. Atty Gen of Mass, Dist Atty for Berkshire County, Dist Atty for Bristol County, Dist Atty for the Cape and Islands, Dist Atty for Essex County, Dist Atty for Hampden County, Dist Atty for Middlesex County, Dist Atty for Norfolk County, Dist Atty for the Northwestern Dist, Dist Atty for Plymouth County, Dist Atty for Suffolk County, and Dist Atty for Worcester County, No. SJ-2017-347 (Sup Jud Ct For Suffolk County, 4-5-2018) (Declaratory Judgment vacating 11,162 convictions in 7,690 cases that were ordered dismissed with prejudice.)

Judge's Order Formally Dismisses 11,000 Drug Convictions Linked To Sonja Farak, *NEPR.net*, April 5, 2018

***Committee for Public Counsel Services**, Hampden County Lawyers For Justice, Inc., Herschelle Reaves, and Nicole Westcott v. Attorney General of Massachusetts, et al.*, No. SJ-2017 (Mass. Sup. Jud. Ct., 9-20-2017) (Petition Seeking Relief Pursuant To G.L. c. 211, § 3, and c. 231A, § 1)

6,000 drug cases to be dismissed after misconduct by chemist, prosecutors, *Boston Globe*, November 30, 2017

Second Massachusetts state chemist accused of tampering, *CNN.com*, January 21, 2013

21,587 People Exonerated In Massachusetts Due To Fraudulent Crime Lab Testing, By Hans Sherrer, *Justice Denied*, May 6, 2017

Annie Dookhan's Eight Year Rampage Of Faking Scientific Evidence To Convict Innocent People Was Aided By The Legal System, By Hans Sherrer, *Justice Denied*, May 11, 2017

Judge dismisses several drug cases, lashes out at 2 former Massachusetts assistant AGs in Sonja Farak drug lab ruling, *Masslive.com*, June 26, 2017

2017 Innocents Database Exoneration Report Available!

The *2017 Innocents Database Exoneration Report* **is available online**! The 38-page Report is a PDF document that can be read or downloaded at, **www.justicedenied.org/db/2017idbreport.pdf**.

The following is from the **Report's Introduction**:

This is the third yearly report of information recorded in the Innocents Database through the last calendar year – 2017. The Innocents Database is an ongoing independent non-profit project begun in February 1997 that records every documentable exoneration in the United States and every other country.

The database includes references to 27,303 U.S. cases and 102,307 international cases concluded through December 31, 2017. A total of 129,610 cases from 120 countries.

The Innocents Database is online at, **www.justicedenied.org/exonerations.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 38-page Report includes 30 tables of data, eight charts, and two maps. Many of the 30 tables include information about U.S. cases for both the years 1989 to 2017, and pre-1989, and several include information about international cases. The tables are:

Table 1. Known Exonerations By Year (U.S. & Int.)
Table 2. Number of Exonerated People By State
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 Type of Crime (U.S.)
Table 6. Number of Exonerated People by Race/Ethnicity (U.S.)
Table 7. Number of Exonerated People By Primary Types of Exculpatory Evidence (U.S.)
Table 8. Number of Exonerated People By Conviction Method (U.S.)
Table 9. Number of Exonerated People Convicted After More Than One Trial (U.S.)
Table 10. Number of State Prisoners Exonerated After Federal Habeas Granted (U.S.)

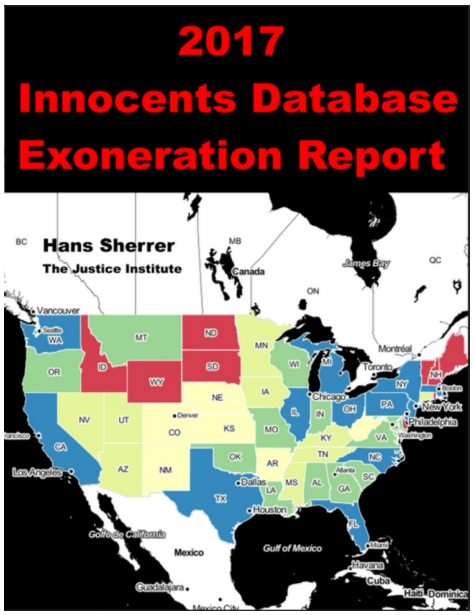


Table 11. Number of Exonerated People Convicted By Primary Types of Prosecution Evidence (U.S.)
Table 12. Number of Exonerated People By Method of Exoneration (U.S.)
Table 13. Number of Exonerated Persons Involved In A Case With A Co-Defendant (U.S.)
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Table 15. Number of Exonerations That Involved Conviction Integrity Unit (U.S.)
Table 16. Number of Exonerations Due To Original Investigation By Conviction Integrity Unit (U.S.)
Table 17. Number of Exonerated People By Years In Custody (U.S.)
Table 18. Average Years Exonerated Person Was In Custody Before Release (ALL crimes) (U.S. & Int.)
Table 19. Avg. Years Exonerated Person Is In Custody Before Release (ALL violent crimes (U.S. & Int.)
Table 20. Avg.Years Exonerated Person Is In Custody Before Release (NON-violent crimes (U.S. & Int.)
Table 21. Average Years Exonerated Person Was In Custody Before Release (Homicide or Sexual Assault only) (U.S. & Int.)
Table 22. Average Years Exonerated Person Was In Custody Before Release (Non-Homicide or Sexual Assault crimes of violence only) (U.S. & Int.)
Table 23. Average Age Exonerated Person Was Taken Into Custody For Crime of Violence (U.S. & Int.)
Table 24. Average Age Exonerated Person Was Taken Into Custody For Non-Violent Crime (U.S. & Int.)
Table 25. Average Age Of Person When Exonerated (ALL crimes) (U.S. & Int.)
Table 26. Number of Exonerated People By County (12 or more) (U.S.)
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Table 28. Number of Exonerated People By Type of Crime (International)
Table 29. Number of Exonerated People By Method of Exoneration (International)
Table 30. Number of Exonerated Persons Involved In A Case With A Co-Defendant (International)

Read the *2017 Innocents Database Exoneration Report* online or download it at **www.justicedenied.org/db/2017idbreport.pdf**.

Judge Richard Posner Admits He Didn't Decide A Case On The Law ... But The Outcome He Wanted

U.S. Seventh Circuit Court Judge Richard Posner stated in interviews after he recently retired, that during his almost 36 years as a federal appellate judge the driving force of his decision making in a case was the outcome he wanted — not the applicable law, legal precedents, or constitutional considerations. The Seventh Circuit Court is based in Chicago.

Judge Posner was confirmed by the U.S. Senate in November 1981, and he retired with one days notice on September 2, 2017. In legal circles he was one of the most well-known judges in the U.S.. He wrote 36 books and numerous articles for legal journals and law reviews. Thirty-four of his books were published after he became a federal judge.

After he retired, the 78-year-old Posner **said in an** interview published in *The New York Times*: "I pay very little attention to legal rules, statutes, constitutional provisions. A case is just a dispute. The first thing you do is ask yourself — forget about the law — what is a sensible resolution of this dispute?"

He also said that legal obstacles rarely impeded him: "When you have a Supreme

Posner cont. on page 6

Posner cont. from page 5

Court case or something similar, they're often extremely easy to get around."

Prior to his retirement, Posner had expressed similar opinions. Posner's candor in publicly admitting his pragmatic decision making process set him apart from his colleagues. However, it is known that all state and federal judges engage in similarly pragmatic behavior — they just aren't as honest publicly about what they do. A 2003 *Northern Kentucky Law Review* article — *The Complicity of Judges In The Generation of Wrongful Convictions* — **stated about state and federal judges**:

> "Contrary to their carefully cultivated public image of being independent and above the frays of everyday life, judges are influenced and even controlled by powerful and largely-hidden political, financial, personal and ideological considerations."

It is not by coincidence that judges and appeals court often make what seems to be a rationally inexplicable ruling.

Consequently, disagreements between judges about a case can be rooted in differing personal opinions, and not about the law.

Posner explained after his retirement that he decided to quit because of a major personal disagreement he had with his colleagues about one specific issue: the treatment of pro se litigants. **He told the** *Chicago Daily Law Bulletin*: "The basic thing is that most judges regard these people as kind of trash not worth the time of a federal judge."

Retired U.S. Seventh Circuit Court Judge Richard Posner (UChicago.edu)

Posner said about six months before his retirement he "awoke from a slumber of 35 years," and realized how badly pro se litigants were being treated.

He said a judge's staff lawyers review appeals from pro se litigants, and their recommendations are generally rubber-stamped by the judge. Posner said he wanted to give pro se litigants a better shake by reviewing all of the staff attorney memos before a decision was made by a panel of judges about how the case would be handled. Posner said the Seventh Circuit's director of the staff attorney program approved his proposal. However, he ran into a brick wall when the plan **was presented** to his colleagues: "The judges, my colleagues, all 11 of them, turned it down and refused to give me any significant role. I was very frustrated by that."

He was being truthful about having an epiphany regarding the treatment of pro se litigants. His most recent book is *The Federal Judiciary: Strengths and Weaknesses*, that was published in August 2017 but written many months before. In that book Posner gave the federal judiciary an A rating for treating all litigants equally. After his awakening he would apparently give it an F rating.

Posner is writing about the mistreatment of pro se litigants in a book he is working on. **He said its** publication "would be particularly awkward" if he remained a judge because it "implicitly or explicitly" criticizes judges for treating pro se litigants — who are usually indigent prisoners — as second-class citizens.

Posner also told the *Chicago Daily Law Bulletin* that when he began thinking about the pro se issue **he realized** he had lost interest in being a judge: "I started asking myself, what kind of person wants to have the same identical job for 35 years? And I decided 35 years is plenty. It's too much. Why didn't I quit 10 years ago? I've written 3,300-plus judicial opinions."

A publication date has not been announced for Posner's forthcoming book about the federal judiciary's mistreatment of pro se litigants.

Sources:

"The Complicity of Judges in the Generation of Wrongful Convictions," By Hans Sherrer, *Northern Kentucky Law Review*, Vol. 30 No. 4, October 2003, **www.forejustice.org/write/complicity_of_judges.pdf**.

An Exit Interview With Richard Posner, Judicial Provocateur, *The New York Times*, September 11, 2017.

Why did Posner retire? He cites 'difficulty' with his colleagues on one issue, *ABAJournal.com*, September 7, 2017

Judge Richard Posner retires from the 7th Circuit after 36 years, *ABAJournal.com*, September 1, 2017

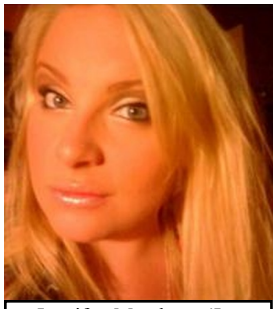
'**No need for octogenarians**' on the bench, including those on the Supreme Court, Posner says, *ABAJournal.com*, July 10, 2017

Jennifer Marchant Acquitted By New York Appeals Court Because She Killed Boyfriend In Self-defense

Jennifer R. Marchant was acquitted in July 2017 by a New York appeals court of manslaughter in the stabbing death of her boyfriend in 2013. The court ruled she acted in self-defense and ordered dismissal of her charge. On August 25, 2017 the Niagara County District Attorney **announced the** appeals court's ruling would not be appealed, ending Marchant's case.

On February 2, 2013 Jennifer Marchant's boyfriend Ralph Stone Jr., was drinking alcohol throughout the day. Marchant, 23, and Stone, 24, had a two-year-old daughter who lived with her. That night they got into a heated argument at Marchant's apartment in North Tonawanda, New York. (North Tonawanda is about 14 miles north of Buffalo.)

Stone called emergency services 911. He reported that Marchant was drinking and she was on probation, and then hung up. The 911 operator, who heard a female voice in the background, called back twice. Stone hung up both times. Before hanging up the second time **he told the** operator that "there would be trouble" if police officers were sent to the apartment.



Jennifer Marchant (Jen Marchant, myspace.com webpage)

When "officers arrived at the apartment they heard screaming and observed a male and a female struggling with each other in a bathroom. **Stone "came out** of the bathroom and lunged at" one of the officers. Upon subduing Stone, the officers observed that he was bleeding heavily and there was a knife on the bathroom floor. Stone died from a single stab wound to the chest."

Marchant told the police **at the scene** that Stone "was "coming after [her]," that she "thought he was going to kill [her]," and that she "did not know what else to do." The officers arrested Marchant for Stone's homicide.

When interrogated at the police station, Marchant **said Stone** "had chased her around the apartment during their argument, resulting in items being knocked over, that he had forced open the bedroom and bath-

Marchant cont. on page 7

Marchant cont. from page 6

room doors, and that she had retrieved the knife from the kitchen and told him to get away from her, but he would not listen." She also said "that she had closed herself in the bathroom again, but Stone forced open the door, shut it behind him, dared her to stab him, and pulled her head backward by her hair. She stated that she had made one last effort to get out of the bathroom, but Stone grabbed her by the hair again and she "just stuck him" with the knife."

Toxicology tests showed that at the time of Stone's death his blood alcohol level was 0.285 — 3-1/2 times the legal threshold for intoxication. A blood test showed Marchant was not intoxicated: she had a .06 blood alcohol level.

The investigation by North Tonawanda detectives determined that Marchant acted in self-defense. Nevertheless, the Niagara County District Attorney's Office charged Marchant with second-degree murder.

Marchant's case was widely publicized regionally because of the salacious detail that a year earlier she had ended her career as an adult movie actress. She used the stage name Scarlett Rouge. News stories typically included a reference to Marchant being a "porn star" or "ex-porn star," often in the headline.

During her trial the prosecution asserted that Marchant was unjustified in using deadly force to protect herself from Stone's assault.

Marchant's asserted she justifiably acted in self-defense: She was in fear of her life from Stone's drunken rage, **and she had a** "subjective belief that her use of deadly physical force was necessary to protect herself."

Marchant's account of what happened before the officers arrived **was corroborated by** police testimony that the bedroom and bathroom doors were damaged in the incident and pieces of their locks were found on the floor, by medical testimony that Stone had bruising on his shoulder consistent with breaking down doors, and by blood evidence tending to confirm that Stone was inside the bathroom in front of its door when he was stabbed."

On January 15, 2014 the jury found Marchant guilty of the lesser charge of first-degree manslaughter.

During Marchant's sentencing hearing on March 26, 2014, Niagara County Judge Sara Sheldon Farkas said she was conflicted: the Probation Department's presentence report stated that three veteran North Tonawanda detectives were convinced Marchant acted in self-defense and didn't commit a crime. Farkas quoted Lt. Karen Smith statement in the report: "It's a shame she was found guilty." The prosecution asked for the maximum sentence of 25 years in prison, but Farkas sentenced Marchant to 12 years **in prison, saying**, "I think there's responsibility on both sides."

Marchant's father Edwin Marchant told *The Buffalo News* that his daughter's conviction and sentence was "**Completely unjust**." He said Stone was "an abusive, violent individual, and my daughter did what she needed to do to survive."

Marchant appealed.

On July 27, 2017 the Appellate Division of the Supreme Court of New York, Fourth Department reversed Marchant's conviction. The Court ruled her conviction was factually "against the weight of the evidence" that she acted in self-defense. Her indictment was ordered dismissed since their ruling acquitted her. **The Court stated** in its 3 to 2 majority ruling:

> "It is hereby ORDERED that the judgment so appealed from is reversed on the facts, the indictment is dismissed ...
>
> ...
>
> When a defense of justification is raised, the People must prove beyond a reasonable doubt that [the] defendant's conduct was not justified. ... Defendant's statements at the scene and in her police interview evinced a belief that deadly force was necessary to protect her from decedent, and we conclude that the People did not demonstrate beyond a reasonable doubt that her belief was objectively unreasonable. Instead, the credible evidence established that decedent was in a drunken rage during a heated argument with defendant, that he had threatened "trouble" if the police came, that he had repeatedly forced open doors in the course of pursuing defendant through the apartment, that he was not deterred even when she armed herself with a knife, that he had cornered her in the bathroom and pulled her hair, and that he had grabbed her by the hair to prevent her from leaving the bathroom just before she stabbed him. Under those circumstances, we conclude that the People failed to meet their burden of establishing that defendant lacked a reasonable belief that decedent was about to use deadly physical force against her, even though decedent was not armed." [*People v. Marchant*, 2017 NY Slip Op 5918 (NY Appellate Div., 4th Dept. 2017).]

The two dissenters acknowledged that Stone physically assaulted and terrorized Marchant in her apartment and she was unable to get away from him. However, since he hadn't yet used deadly force against her, in their opinion she didn't have a reasonable basis to believe her life was in danger.

Marchant was released on bond on August 2, 2017. The 28-year-old had been imprisoned for three years and seven months.

On August 25, 2017 Niagara County District Attorney Caroline A. Wojtaszek issued a statement that her office would not appeal the ruling. She said the appeals court's ruling was based solely on an analysis of the facts, and therefore was unappealable under New York State law. **Wojtaszek's statement said**, "The Court of Appeals reviews issues of law and is generally precluded from reviewing issues of fact."

The Buffalo News contacted Jen Marchant about the DA's decision not to appeal the dismissal of her case. Marchant **replied in a** text message: "I am happy that I will remain free, that the case will be closed and I'm ready to have a peaceful and successful life."

Click here to read the ruling in *People v. Marchant*, 2017 NY Slip Op 5918 (NY Appellate Div., 4th Dept. 2017).

An unanswered question is why the Niagara County District Attorney prosecuted Marchant and sought the maximum sentence of 25 years in prison, when the investigating detectives determined she had not committed a crime -- and the appeals court agreed with the detective's assessment of the evidence.

Sources:

People v. Marchant, 2017 NY Slip Op 5918 (NY Appellate Div., 4th Dept. 2017) (Reversing manslaughter because it was "against the weight of the evidence" she acted in lawful self-defense against deadly force by her boyfriend.)

Niagara DA won't appeal dismissal of manslaughter conviction, *The Buffalo News*, August 25, 2017

Judge reluctantly gives Marchant 12 years in prison for killing boyfriend, *The Buffalo News*, March 26, 2014

Porn star convicted of killing boyfriend, WIVB Channel 4 (Buffalo, NY), January 21, 2014

Jen Marchant (North Tonawanda, NY), **Myspace.com**

Sheriff Joseph Arpaio's Contempt Conviction Vacated By Federal Judge And Charge Dismissed

Sheriff Joseph Arpaio's federal criminal contempt conviction was vacated and the charge dismissed **on October 4, 2017** by U.S. District Judge Susan Bolton. Arpaio had been convicted by Judge Bolton on July 31, 2017 after a bench trial. On August 25, 2017 President Donald Trump issued a full and unconditional pardon of Arpaio.

Arpaio was the Maricopa County, Arizona sheriff when on December 23, 2011 U.S. District Court Judge G. Murray Snow issued a preliminary injunction barring the sheriff's department from engaging in a pattern of discriminatory law enforcement actions against Latinos. Phoenix is the largest city in Maricopa County.

In May 2013 Judge Snow issued a permanent injunction that replaced his 2011 preliminary injunction.

After years of litigation, an evidentiary hearing was held, and in May 2016 Arpaio and several others were found in civil contempt for intentionally failing to implement the preliminary injunction. That finding was made even though the U.S. Dept. of Justice acknowledged that in May 2013 the sheriff's department ended its immigration enforcement policies that were relied on to support the injunction.

In 2016 Arpaio was running for re-election as sheriff. He publicly supported Donald Trump's presidential candidacy.

Although Arpaio had already been held in civil contempt, on October 25, 2016 Judge Bolton issued an Order to Show Cause "as to whether Joseph M. Arpaio should be held in criminal contempt for willful disobedience of Judge Snow's preliminary injunction of December 23, 2011." Judge Bolton was assigned the case after Judge Snow recused himself from the criminal contempt prosecution.

Joe Arpaio was defeated for reelection on November 8, 2016. He had been the sheriff since 1993.

Arpaio's trial was continued past December 2016.

Judge Bolton granted the government's motion for a bench trial, while denying Arpaio's cross-motion for a jury trial.


Sheriff Joseph Arpaio

Arpaio's contempt trial began on June 27, 2017.

On June 29, 2017 Arpaio filed a "Motion For A Judgment Of Acquittal" based on the court's lack of jurisdiction. Arpaio's motion was based on 18 U.S.C. § 3285 that provides a one year statute of limitations for criminal contempt. Arpaio argued the one-year time limit had expired because the government conceded the contumacious conduct at issue ended in May 2013 -- more than three years before the Order To Show Cause was issued.

Arpaio's four-day trial ended on June 30, 2017.

On July 6, 2017 Judge Bolton denied Arpaio's Motion for a Judgment of Acquittal.

Arpaio was **found guilty** by Judge Bolton on July 31, 2017. She found that after the preliminary injunction was issued in 2011, Sheriff Arpaio continued to engage in discriminatory conduct in detaining certain people.

Arpaio's sentencing was scheduled for October 5, 2017.

On August 25, 2017 President Trump **issued Arpaio**:

> A FULL AND UNCONDITIONAL PARDON
>
> FOR HIS CONVICTION of Section 401(3), Title 18, United States Code (Docket No. 2:16-CR01012-SRB) in the United States District Court for the District of Arizona, of which he was convicted on July 31, 2017, and for which sentencing is currently set for October 5, 2017; and
>
> FOR ANY OTHER OFFENSES under Chapter 21 of Title 18, United States Code that might
> arise, or be charged, in connection with *Melendres v. Arpaio* (Docket No. 2:07-CV-02513-GMS)
> in the United States District Court for the District of Arizona.

It was Trump's first presidential pardon. However, it was consistent with other presidents exercising their broad pardon authority conferred by Article II, Section 2, Clause 1 of the U.S. Constitution. President Obama, for example, issued a pardon to 1,927 persons convicted of a federal crime.

Three days after the pardon was issued, Arpaio filed a "Motion For Vacature And Dismissal With Prejudice." Arpaio argued that being granted a Presidential pardon before entry of the final judgment made his criminal case moot because he faced no consequences from his guilty verdict.

The next day Judge Bolton canceled Arpaio's sentencing scheduled for Oct. 5.

The U.S. Attorney's Office agreed with Arpaio in its response filed on September 11. The government's response stated: "A pardon issued before entry of final judgment moots a criminal case because the defendant will face no consequences that result from the guilty verdict. Accordingly, the government agrees that the Court should vacate all orders and dismiss the case as moot."

A number of organizations submitted amicus briefs opposing the granting of Arpaio's motion.

After a hearing on October 4 concerning Arpaio's motion, Judge Bolton **issued an oral order** vacating his conviction and ordering dismissal of his charge. As of October 5 Judge Bolton had not filed her written order.

Arpaio's pardon issued by President Trump can be read at, **www.justicedenied.org/cases/Arpaio_pardon_8-25-17.pdf** .

Sources:
Federal judge upholds Arpaio pardon and dismisses contempt case, *Jurist*, October 5, 2017.
DOJ files discrimination suit against Arizona sheriff, *Jurist*, May 10, 2012.
USA v. Joseph M. Arpaio, 2:16-cr-01012--001-PHX-SRB (USDC AZ, 7-31-17) (Findings of fact and conclusions of law finding Arpaio guilty.).
USA v. Joseph M. Arpaio, 2:16-cr-01012--001-PHX-SRB (USDC AZ, 10-19-17) (Four-page order denying govts motion to vacate all orders in case).

Menace To The Innocent: Insubstantial Expert Evidence Endangers Innocent People Accused Of A Crime

By Hans Sherrer

Menace To The Innocent: Insubstantial Expert Evidence Endangers Innocent People Accused Of A Crime **is now available on Amazon.com** at, **www.tinyurl.com/yc5u3kqn** .

Menace To The Innocent was written by Hans Sherrer, **Justice Denied's** editor and publisher. It is published by **The Justice Institute**.

The following is an excerpt from the book's INTRODUCTION:

We live in an age of magic as a way of life. At least that is how a person who lived 200 years ago could be expected to think of the modern world. In actually, we live in an age of science that to the uninitiated certainly can seem magical. Almost every man-made process we have today that wasn't available 200 years ago is the result of applying scientific principles to varying degrees to achieve the end result.

The quest to solve crimes has not been immune to the application of science. However, this book demonstrates it is not unusual for science to be misapplied, disregarded, or relied on in name only to "solve" a crime and close a case by identifying a person as the culprit. The result is a crime solved by the magical masquerading as science. This situation exists because there to no reliable mechanism to ensure the system isn't gamed by the prosecution's reliance on expert "scientific" evidence that in reality is no more reliable than a confession to being a witch by a person who simply wants to stop being dunked into a pond.

There is generally no scrutiny of crimes "solved" through expert evidence because of the resources necessary to do so, and over 95% of convictions in the U.S. are by a guilty plea that precludes any critical examination of the prosecution's supposedly expert evidence. The overwhelming majority of defendants in this country have limited – if non-existent – financial resources, and public defenders who handle the overwhelming majority of criminal cases have limited budgets, and case load pressure to take the path of least resistance and plead out every case possible.

Consequently, the legal system is structured so that the overwhelming majority of convictions that rely on the soggy foundation of suspect expert evidence – which may in fact be no more stable than quicksand – fall through the cracks into the black hole of a case closed by a plea bargain.

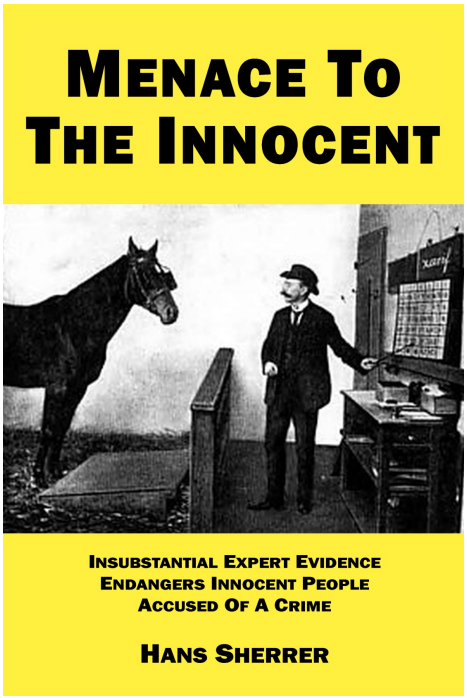
There is relatively little will-power by those within the system to correct this state of affairs. The four primary actors in the legal system's operation – judges, prosecutors, police, and defense lawyers – are integral parts of the assembly line that generates the steady flow of convictions the system depends on for its smooth functioning. The increasing reliance on expert evidence to secure convictions assists to grease the wheels of that system.

The depth of that reliance is demonstrated by how those primary actors exhibit a quasi form of Stockholm Syndrome by their psychological alliance with the use of expert evidence that often is insubstantial and undermines the credibility of the system they are a part of. That psychological state can be called "Expert Syndrome." The way experts are viewed and uncritically relied on masks that their contribution to a case is often no more reliable than the incantation of a witch doctor is to cure an illness or end a drought.

****

"*Menace To the Innocent"* goes far beyond identifying the magnitude of the problem: In its last chapters it proscribes no-nonsense solutions to rectify the problem of innocent people being ravaged by prosecutors who rely on bogus expert evidence to secure their conviction. One of those solutions is to close the FBI crime lab and all local, county, and state crime labs because they are inherently, and irredeemably biased toward the prosecution. Not incidentally, those crime labs operate in a manner that would be unacceptable for a university science lab ... much less a privately operated commercial laboratory.

The Table of Contents follows:



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Menace To The Innocent can be ordered from Amazon.com at, **www.tinyurl.com/yc5u3kqn** .

William Ashwell Acquitted Of Burglary And Escape By Mississippi Supreme Court Because No Criminal Charges Were Filed Against Him

William Scott Ashwell was acquitted **of burglary and escape** by the Mississippi Supreme Court on August 24, 2017. The Supreme Court ruled Ashwell had never been charged with the crimes, so the trial court had no jurisdiction to find him guilty in 2006 and sentence him to 15 years in prison.

On December 14, 2006 William Ashwell, upon the advise of his lawyer, pled guilty to separate charges of burglary and escape in Lawrence County, Mississippi. Judge Michael Eubank accepted his guilty pleas in both cases. Later that month Ashwell was sentenced to 15 years in prison for his burglary conviction. Ashwell was separately sentenced on December 27, 2006 to five years in prison for his escape conviction, to run concurrently with his burglary sentence.

A condition of Ashwell's sentences was that if he successfully completed a three-month drug and alcohol treatment program, and a two year Intensive Supervision Program (ISP), the remainder of his prison sentence would be suspended and he would be placed on post-release supervision for the remainder of his 15 year sentence.

After successfully completing the drug treatment program and the two year ISP program, Ashwell was released from prison.

In July 2010 Ashwell was arrested and charged with testing positive for marijuana in March 2009, and for possession of precursors with intent to manufacture methamphetamine. Ashwell's post-release supervision was revoked and he was returned to prison to complete his sentence.

In August 2013 Ashwell filed a pro-se post-conviction petition to withdraw his guilty pleas to burglary and escape, based on the trial court's lack of jurisdiction to find him guilty and sentence him for either charge in 2006. Ashwell asserted the criminal docket for both cases showed the Lawrence County District Attorney didn't file a Bill of Information against him. Thus he pled guilty to non-existent charges. In addition, Ashwell asserted his pleas were involuntary because the Waivers of Indictment filed in 2006

Mississippi Supreme Court on Feb. 1, 2017 (Courts.ms.gov)

were defective because they failed to specify the dates of his two alleged offenses.

After he filed his petition Ashwell was released on parole, after serving a total of about 5-1/2 years in custody.

In June 2014 the judge ordered the State to respond to Ashwell's petition. Ashwell was also appointed a lawyer.

The State admitted in its response that neither docket for Ashwell's cases referenced the filing of a Bill of Information.

Nevertheless, the State claimed his guilty pleas were valid. The State's defense was an affidavit by the prosecutor who handled Ashwell's two cases in 2006: the **prosecutor asserted** that in "[t]he normal procedure" for a prosecution by criminal information, "the Bill of Information is submitted by the District Attorney's Office to the Clerk of Court," and that "[t]o my knowledge, the normal procedure for a plea by Bill of Information would have occurred in this case." The State also claimed a criminal information was mentioned in the plea documents, and during the plea colloquy at the time Ashwell pled guilty.

Judge Prentiss Greene Harrell denied Ashwell's petition on November 20, 2014. Harrell ruled it was irrelevant there was no evidence in the court docket a Bill of Information had been filed in either of Ashwell's cases. Harrell ruled the prosecutor's affidavit, and the mention of a criminal information in the plea documents and plea colloquy, were sufficient to prove a Bill of Information had existed at the time Ashwell was convicted and sentenced — even though there was no physical evidence it had ever been filed.

Ashwell appealed.

On June 7, 2016 the Mississippi Court of Appeals affirmed Judge Harrell's ruling. The appeals court ruled it was within the judge's discretion to make the factual determination that a Bill of Information **must have existed**, because "All parties involved certainly proceeded as though a bill of information existed." The appeals court also ruled that Ashwell's claim about the defective Waivers of Indictment was procedurally barred by the three-year statute of limitations.

The Mississippi Supreme Court accepted Ashwell's petition to review his case.

On August 24, 2017 the Mississippi Supreme Court unanimously vacated Ashwell's convictions on the basis no Bill of Information charging him with a crime had been filed, and since he had not been charged with a crime the trial court lacked jurisdiction to find him guilty. The Court's ruling in *Ashwell v. Mississippi* **states in part**:

> ¶11. The Court of Appeals affirmed the circuit judge's reasoning that a criminal information must have existed because it was mentioned in the plea documents, plea colloquy, and a prosecutor's affidavit. But Ashwell's claim does not rest on the existence of a document which purported to be a criminal information, but rather on the fact that the State failed ever to charge him with a crime. [Op. cit. 5]
>
> ¶13. The very nature of a criminal information shows that one must be filed for the court to proceed. [Id., 6]
>
> ¶14. Likewise, this Court has recognized that a defendant is charged when the information is filed. ... So we must agree with Ashwell's contention that the circuit court lacks jurisdiction and authority to accept a guilty plea for a crime for which he never has been charged." [*Id*., 7]
>
> ¶15. Because the State never charged Ashwell with a crime, the circuit court lacked jurisdiction and authority to accept Ashwell's guilty pleas. So we reverse the decision of the Court of Appeals, reverse the judgment of the circuit court, and vacate Ashwell's convictions for burglary and escape. [*Id*.]

The Mississippi Supreme Court's ruling in *William Scott Ashwell v. Mississippi*, No. 2015-CT-00023-SCT (Miss. Sup. Ct., 8-24-2017) can be read or downloaded at **https://courts.ms.gov/Images/Opinions/CO121460.pdf**.

Ashwell is 35 and living in Meridian, Mississippi.

Sources:

Ashwell cont. on 11

14,700 Convictions To Be Overturned In Ireland Because Of False Prosecutions By The National Police Service

14,700 convictions are to be overturned in Ireland of people who were falsely prosecuted after paying a fine to avoid criminal prosecution for a driving related offense.

In Ireland citations for more than 60 traffic related offenses can be disposed of by admitting guilt and paying a fine within 56 days of a "Fixed Charge" notice being mailed to a driver. Upon payment of the fine driving penalty points are assessed based on the seriousness of the offense. The penalty points for offenses range from 1 to 3. A person is disqualified from driving for a period of time after accumulating 12 or more points.

If a person does not admit guilt and pay the fine within 56 days, a criminal prosecution is commenced with the issuance by mail of a summons to appear in court. Conviction results in assessment of up to three times more driving penalty points than if guilt is admitted and the fine been paid within 56 days.

In April 2016 it was discovered that a person summoned to appear before the court had already paid the Fixed Charge Notice for failing to have an National Car Test certificate. The Garda Síochána, Ireland's National Police Service, which is in charge of mailing out fixed charge notices, initiated an investigation.

Garda Síochána logo

On March 23, 2017 the Garda issued a statement disclosing that between 2008 and 2016, 14,700 people were criminally prosecuted, convicted in absentia, and assessed penalty points, after they had already paid the "Fixed Charge" notice fine within 56 days and been assessed penalty points. The people had not been mailed a summons to appear in court, and were found guilty after failing to appear to defend themselves.

The Garda acknowledged that the convictions and sanctions imposed on all of those people had to be set-aside because there was no lawful basis for their prosecution. The Garda acknowledged it was responsible for the situation, and began mailing registered letters to affected drivers. As of mid-July 9,380 letters had been sent out.

However, since each conviction must be separately appealed, as of mid-August 2017 only one conviction had been overturned. In that case the driver hired a lawyer and the court awarded the defendant costs "to the value of legal aid."

Sinn Féin justice spokesman Jonathan O'Brien said it was "astonishing" only one case had been through the courts, and "the whole thing has been a mess from day one." He said that delays in the Garda notifying all the persons affected was ironic, because "it was a private company that sent out these fixed-penalty notices and that company should have a list of all the drivers."

The Garda contracted with the private company to send out notices related to traffic offenses. It isn't known if the Irish government will have legal recourse against the company to recover the costs associated with correcting the 14,700 erroneous convictions. It is estimated that the total cost will run into millions of Euros. As of August 19, 2017, 1 Euro was equal to $1.18.

The Policing Authority was established in 2015 as an independent body to oversee the performance of the Garda Síochána in relation to policing services in Ireland. In response to the wrongful conviction scandal the Authority stated on its website that since June 2016 it has "repeatedly asked questions about possible wrongful prosecution and conviction of people who had already paid a fixed charged penalty."

At the same time as the Garda disclosed the wrongful conviction scandal, it also disclosed that a review of roadside alcohol breath tests found that the Medical Bureau of Road Safety recorded 1,058,157 tests had been carried out during the five years from 2011 to 2016, while the Garda's website stated 1,995,369 tests had been conducted. Ireland's Assistant Commissioner in Charge of Policing, Michael Finn, commented to the *The Irish Sun* about the inflated number of tests reported by the Garda, "The numbers don't add up. I can't say who's responsible for this."

In response to the breath test scandal the Policing Authority issued a statement that, it "is alarmed at the scale of the discrepancies disclosed between actual alcohol tests administered and the numbers recorded by Gardaí. This is not just an academic statistical matter, it is an ethical one. It raises serious questions of integrity for the Garda Síochána organisation and combined with previous issues regarding inflated activity levels, erodes confidence in the credibility of Garda data generally."

There have been no significant changes in the Garda since public disclosure in March 2017 of the 14,700 wrongful convictions it was responsible for causing, and the grossly inflated breath test data on its website.

Sources:

Thousands of Irish motorists to have driving convictions quashed as Gardai admit error: The Assistant Commissioner in Charge of Policing has apologised to the 14,700 who were wrongly convicted, *The Irish Sun*, March 23, 2017

'It raises serious questions of integrity' - Police watchdog condemn gardaí as over 14,500 traffic convictions to be quashed over error, *Irish News*, August 11, 2017

Letters reissued as motorists fail to respond to conviction quashing: Of 9,380 letters sent to motorists affected by Garda error, 3,888 drivers failed to respond, *The Irish Times*, August 10, 2017

Policing Authority Statement on Garda Síochána Road Data, *Policing Authority*, March 23, 2017

Fixed Charge Notices, An Garda Síochána, Ireland's National Police Service

Ashwell cont. from 10

William Scott Ashwell v. Mississippi, No. 2015-CT-00023-SCT (Miss. Sup. Ct., 8-24-2017) (reversing and vacating convictions because trial court didn't have jurisdiction to accept guilty pleas)

William Scott Ashwell v. Mississippi, No. 2015-CT-00023-COA (Miss. Ct. of Appeals, 6-7-2016) (Affirming trial court's dismissal of post-conviction petition on Nov. 20, 2014.)

William Scott Ashwell v. Mississippi, No. 2015-CT-00023-SCT (Miss. Sup. Ct.) (Case Docket, last viewed 8-25-2017)

William Scott Ashwell v. Mississippi, No. 2015-CT-00626-SCT (Miss. Sup. Ct.) (Case Docket, last viewed 8-25-2017)

Mississippi man's convictions voided for no charging papers, By AP, *Washington Times*, August 27, 2017

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Anneli Auer Seeks Additional $2.95 Million Compensation For Wrongful Conviction Of Husband's Murder

Anneli Auer **is seeking an** additional US$2.95 million compensation from Finland's government for being wrongly convicted and imprisoned for her husband's murder.* The US$613,000 she was paid in September 2016 was record compensation in Finland for an exonerated person. She was imprisoned for 611 days.

Anneli Auer's case is one of the most publicized legal cases in Finland's history. The sensational reporting suggests that in twice finding her guilty the district court rubberstamped her conviction by the media frenzy branding her as a wanton murderess.

Jukka S. Lahti, 51, was killed in his home in Ulvila, Finland on the evening of December 1, 2006. Ulvila is about 150 miles northwest of Helsinki, Finland's capital.

Jukka, his wife Anneli, 41, and their four children, aged 9, 7, 4 and 2, were in bed when an intruder broke into their house by breaking a glass window on their patio door.

The intruder attacked Jukka and Anneli in their bedroom.

Anneli was stabbed through her breast and a lung was punctured while trying to fight off the masked intruder who was wearing a black hoodie.

Anneli fled to the kitchen where she and her eldest (9-year-old) daughter, who got up when she heard the commotion, called emergency services while Jukka was still fighting with the intruder. Emergency services can hear Jukka's cries for help in the background,

Window in door that intruder broke (Notice what appears to be blood on the right side of the window and on the bottom window sill.)

Anneli Auer in 2016 (intokustannus.fi)

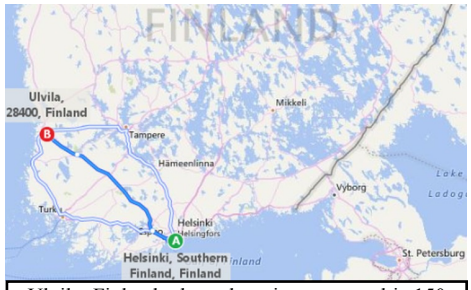
along with other sounds of an altercation.

The eldest daughter saw the back of the killer wearing a hoodie as he left the house. The three youngest children were in bed and saw nothing.

The police arrived *two minutes* after the emergency services call was made.

Jukka was dead when police arrived. He had stab wounds, and he had been beaten on the head with a heavy object. The murder weapons were not found by the police.

Jukka was a social psychologist who worked for a company that produces copper and other metals. His job was to support workers who were facing being terminated. He had received death threats in the months preceding his murder, and his murder was initially investigated as a revenge killing by a disgruntled worker.



Ulvila, Finland where the crime occurred is 150 miles from Helsinki (Bing.com maps)

Police collected fingerprints and DNA from the crime scene, but the assailant wasn't identified. (It was discovered in June 2013 that the police had contaminated the DNA evidence, so it was useless to identify the perpetrator.)

Almost three years later Anneli was arrested on September 27, 2009 and charged with her husband's murder.

During her trial the prosecution's key evidence was Anneli's emergency services call, which it interpreted as indicating there was no outside assailant in the house at that time, as she had told the police later. The prosecution also argued that Anneli staged the crime scene.

On June 22, 2010 a three-judge panel in the District Court of Satakunta voted 2 to 1 to convict her. She was sentenced to life in prison on November 12, 2010.

The dissenting judge said he didn't think the emergency call could prove beyond reasonable doubt that there was no outside killer in the house, and he questioned whether Anneli could have had enough time to stage the crime scene before police arrived *two minutes* after the emergency services call was received.

Anneli appealed. While her appeal was pending she was released on bond on May 25, 2011. She had spent 611 days in custody.

On July 1, 2011 the Vaasa Court of Appeal unanimously reversed her conviction and ordered her acquittal on the basis the prosecution introduced insufficient evidence to prove her guilt beyond a reasonable doubt.

The prosecution appealed.

In October 2012 Finland's Supreme Court reversed the appeals court's acquittal, but it did remand her case back to the district court for a new trial.

After her retrial, on December 13, 2013 Anneli was again convicted by a 2 to 1 vote. She was again sentenced to life in prison. The district court also ordered her to pay her children damages of US$22,500 (€20,000) each plus interest.

Anneli appealed.

On February 19, 2015 the Vaasa Court of Appeals reversed her conviction by a 2 to 1 vote and ordered her acquittal. The majority ruled there was not only a lack of evidence by the prosecution she was guilty, but there was considerable evidence casting doubt on her guilt.

The prosecution appealed.

The Supreme Court dismissed the appeal on December 18, 2015, letting stand her acquittal by the appeals court.

Anneli subsequently filed a compensation claim with the Finnish government for her 1 year and 8 months of wrongful imprisonment.

In September 2016 Finland's Treasury department **awarded her** compensation of US$613,000: $549,000 (€488,000) for suffering, and US$64,000 (€57,000) for loss of

Auer cont. on p. 13

Auer cont. from p. 12

income.** It was the largest wrongful imprisonment award in Finland's history. Although normally US$135 (€120) per day is paid as compensation for person's suffering during their wrongful imprisonment, the Treasury decided to award her almost seven times as much -- US$900 (€800) per day -- because of the massive publicly in Finland about the case.

Auer has accused Finnish authorities of publicly declaring her guilty after her acquittal. One instance she has cited is a police press release saying she confessed to her husband's (still-unexplained) murder, when she did not. In response to official statements she is guilty, the media has treated her as guilty in spite of her acquittal.

On August 23, 2017 Anneli **filed a claim** in the District Court of South-West Finland in Turku for additional compensation of US$2,951,000: US$2,542,000 (€2,132,000) for her suffering, and US$409,000 (€343,000) in additional loss of income compensation.*

If Anneli prevails in her new claim, she will be paid total compensation of US$3,564,000 (€3,020,00).

"*Murhalesken Muistelmat*" **is Anneli's memoir** about her life and ordeal that was published in September 2016. It is only available in Finnish. The book is a bestseller in Finland, and has sold more copies than any other book published by Into Publishing, Finland's largest book publisher. (Bing.com and other translators online translate the title to: "The Murder of the Widow's Memoirs".)

Anneli Auer's 2016 memoir "Murhalesken muistelmat" ("The Murder of the Widow's Memoirs") (Front cover) (Photo is of Anneli, Jukka, and their three children in 2006.)

"*Emergency Call – A Murder Mystery*" is a 2014 documentary about Anneli Auer's case that can viewed at no charge on Youtube.com. The documentary is in Finnish, with English subtitles. **Click here to watch** "*Emergency Call – A Murder Mystery*." The documentary has been viewed more than 75,000 times in the eight months since being uploaded to Youtube.com in January 2017.

In 2006 Anneli's company, Auer Media, founded the children/parenting website, **GamesCraftsColoring.com**. There are English, Finnish, and Swedish versions of the website that was updated in May 2017 to be more mobile device friendly.

Anneli Auer's personal blog page (in Finnish) is **www.anneliauerkirjoittaa.blogspot.com**. Its homepage states: "Anneli Auer says in her own blog about her thoughts and analyzes what went wrong with the police and other authorities."***

Www.anneliauer.com is a website with information about her case that was set-up by a supporter. The website is primarily in Finnish, but some pages are in English.

Endnotes:

* Anelli Auer is seeking €2.5 million (Euros). On August 26 the Euro had an exchange rate of 1.192397 per US$1. www.xe.com/currencyconverter.

** Anelli Auer was awarded €545,000 in September 2016. On Sept. 15, 2016 the exchange rate was 1.1248 Euro per US$1. http://www.xe.com/currencytables/?from=EUR&date=2016-09-15

*** Some of the information in this report was translated from Finnish sources to English by online translators that include Google,com's translator and Bing.com's translator.

**** In an unrelated case, in 2012 Anneli and a former male companion were convicted of child sex and abuse crimes allegedly committed between 2007 and 2009. She maintained her innocence of the charges, but her convictions (and those of her codefendant) were affirmed on appeal. She served about half of her 7-1/2 year sentence before being released in 2015.

Sources:

Anneli Auer seeks €2.5mn more for wrongful imprisonment, By Staff, Uutiset, August 23, 2017

Court of Appeal finds Auer not guilty of murder, By Staff, Uutiset, February 19, 2015

Anneli Auer's personal blog page (in Finnish)

GamesCraftsColoring.com (Auer Media)

"**Emergency Call – A Murder Mystery**" (2014 Documentary about Anneli Auer's case), First Floor Productions, Ventana-Film GMBH (Berlin), Director: Pekka Lehto, 83 minutes, (Uploaded to Youtube.com Jan 6, 2017)

"**Emergency Call – A Murder Mystery**" (2014), IMDB.com

Murhalesken Muistelmat, By Anneli Auer (Into Publishing, 2016) (Finnish only) (Bing.com English translation: "The Murder of the Widow's Memoirs")

helsinkitaxidriver.com -- a true life story of two people falsely convicted

Honey Rose Acquitted Of Manslaughter In Death Of Optometry Patient

Honey Maria Rose has been acquitted by an appeals court of gross negligence manslaughter in the death of eight-year-old Vincent Barker. In July 2016 Honey Rose became the first optometrist in English history convicted of manslaughter for failing to detect a patient's medical condition that later caused the person's death.

Honey Rose became a licensed optometrist in the United Kingdom in June 2010. In 2012 she worked at Boots Opticians in Ipswich, England. Ipswich is about 80 miles northeast of London.

On February 15, 2012 Rose conducted an eye examination of 7-year-old Vincent Barker. Retinal images were taken of both of Vincent's eyes by a technician. Rose determined he didn't need glasses, and she did not record any issues of concern about his health. Vincent had a previous eye exam at Boots Opticians in February 2011, when retinal images were also taken.

Five months later, on July 13, 2012, Vincent suddenly became sick at school. His mom picked him up, and when his condition deteriorated he was taken to the hospital where he died that night. His autopsy identified he died from acute hydrocephalus, also known as fluid on the brain. Prior to becoming sick at school Vincent hadn't exhibited any symptoms such as headaches and vomiting that are associated with hydrocephalus.

An investigation into Vincent's death resulted in the review of the retinal images taken on February 15, 2012. Dr. Vaileios Kostakis, a consultant paediatric ophthalmologist, determined the images showed significant congestion of the veins and swelling of the optic nerve in Vincent's eyes, and that he should have been given an urgent referral to hospital for treatment. Dr. Kostakis also reviewed Vincent's retinal images from Feb. 2011. He determined his eyes had been normal at that time.

Vincent Barker (Barker family photo)

Vincent's case was reviewed by Dr Helen Fernandes, a specialist neurosurgeon based in Cambridge and medical advisor to the Association of Spina Bifida and Hydrocephalus. Dr. Fernandes prepared a report in which she opined that "Vincent's condition was treatable up until the point of his acute deterioration and demise on 13th July 2012."

Honey Maria Rose outside the courthouse after her sentencing on August 26, 2016 (The Sun, London)

When the police interviewed Rose on March 7, 2013 she was shown Vincent's retinal images from 2012. She told them she had never seen the images before, "and that even an unqualified person could tell that the optical disc was not normal in Vincent's case and the optical consultant should have flagged the photographs." She suggested to the police that when she examined Vincent in 2012 she must have looked at his retinal images from 2011 when his eyes were normal. She also said that Vincent was uncooperative when she tried to use the ophthalmoscope to examine the retina of his eyes, so she relied on the retinal images.

Rose was charged with gross negligence manslaughter by:

> "(i) failing, without good reason, properly to examine the back of Vincent's eyes during his sight test on 15th February 2012 as she was required to do by reason of her statutory duty of care, and (ii) failing to refer him for urgent medical treatment as a result of the significant findings shown on the retinal images which she should have viewed."

Rose's trial began in July 2016. The prosecution relied on the evidence that Vincent's treatable condition only resulted in his death because of Rose's gross negligence by omission, for failing to perform her job as expected of a "reasonably prudent optometrist."

When the prosecution closed its case, trial Judge Jeremy Stuart-Smith denied the defense's argument that the prosecution's evidence was insufficient to give her a case to answer, and it should be withdrawn from the jury.

Rose then presented her defense that she had conducted all the required tests during Vincent's eye examination. She testified in her defense. She said she performed her required duty of care by examining the retinal images when Vincent's uncooperativeness prevented her from using an ophthalmoscope to directly examine his retinas. She also said she believed she hadn't been shown his retinal images from 2011 as she had told the police when interviewed in March 2013, but she was likely shown images of another patient by mistake. She said there "had been problems with computer system and retrieval of retinal images, about which she had repeatedly complained to" Boots Opticians. However, she acknowledged she had not formally documented the problems she had in examining Vincent. Her defense also relied on her good character, and that she had no findings against her by the General Optical Council.

After a ten-day trial the jury found her guilty on July 15, 2016.

On August 26, 2016 Judge Stuart-Smith sentenced the 35-year-old Rose to two years in prison. However, he acceded to the wishes of Vincent's parents that they didn't want Rose's three children to suffer, and he suspended her prison sentence for two years with supervision. He also ordered her to perform 200 hours of unpaid community work. In sentencing Rose the judge stated, "The question remains, why did you commit such a basic and serious error?"

Rose appealed.

The Court of Appeals for England and Wales unanimously quashed Rose's manslaughter conviction on July 31, 2017. The appeals court's ruling was based on the prosecution's failure to introduce sufficient evidence to prove her conduct was criminal and grossly negligent. The Court ruled the judge erred in not withdrawing the case from the jury at the close of the prosecution's case. There ruling also pointed out that affirming her conviction would undermine the legal test for gross negligence manslaughter that requires proof beyond a reasonable doubt that the accused could foresee from their personal knowledge that a person has a "serious and obvious risk of death." Rose had no knowledge that Vincent had a risk of death. The Court stated in *Honey Maria Rose v. Regina*, [2017] EWCA Crim 1168:

Honey Rose cont. on p. 15

Mary Zolkowski Charged With A Filing False Rape Report After Claiming She Was Raped In Three Places On Same Day

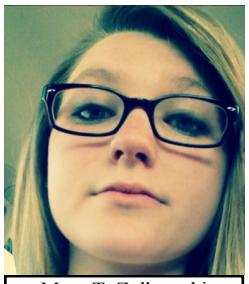
Mary T. Zolkowski has been charged with falsely reporting a felony after admitting she fabricated her claim a man raped her in Saginaw Township, Michigan.

In February 2017 20-year-old Mary Zolkowski was a student at Delta College, a two-year college near Bay City, Michigan.

On the evening of February 22, 2017 her mother called the Delta College Public Safety Office and told an officer that Zolkowski had been raped. Zolkowski talked to the officer on the phone and said she was raped in a campus parking lot at 5:50 p.m. while walking to her vehicle. She said a man grabbed her from behind, and then grabbed her face and throat and proceeded to rape her without wearing a condom. She said she only saw her assailant's hands. She said that after raping her the man got into the passenger seat of a car and fled after raping her. She couldn't describe anything about the vehicle.

She told the officer she did not want a physical exam and did not want to talk to police investigators about the rape.

The next day Zolkowski met with the college's Public Safety director and the Title XI coordinator. She told them she had dropped courses due to the incident. Although she said her neck and back were sore, neither the director or coordinator noticed any bruising. She told them she didn't want a police investigation of the rape.



Mary T. Zolkowski (Instagram)

The subsequent investigation discovered that contrary to what she told the director and coordinator, she had dropped the courses prior to February 22.

A woman's softball team was practicing near the parking lot at the time of the alleged rape, and police investigators were told that none of the staff or players noticed anything out of the ordinary.

Examination of Zolkowski's car failed to turn up any evidence of a rape.

When Zolkowski was interviewed on March 17, almost a month after the alleged incident, she told investigators a different story. She claimed to have actually been raped on February 22 at an apartment in Saginaw Township, about ten miles south of Delta College. She said she had been intoxicated and didn't give consent for sex, and that afterwards the man drove her to Delta College where her car was parked. She said she didn't want the man prosecuted for rape.

Police interviewed the man Zolkowski named as her assailant. He said he had been with Zolkowski on February 22, but they had never gone to Delta College. He also showed police investigators text messages from Zolkowski in which she claimed to have been raped by a stranger at Walmart after they had separated that day. He also showed police texts from her that she didn't want him to cooperate with the police. He also told them that Zolkowski was trying to get a refund from Delta for the classes she had dropped.

After the man was interviewed by the police Zolkowski filed a report with the Saginaw Township Police Department alleging that he shoved her to the floor in the apartment and raped her on February 22.

On May 12 Zolkowski was interviewed for a third time by police investigators. She admitted that she had willingly had intercourse with the man at the apartment in Saginaw.

Zolkowski was charged on July 31, 2017 with one count of False Report Of A Felony based on her admission she fabricated her claim of being raped at the apartment on February 22. She was arraigned on August 14, 2017 in Bay County District Court. She was freed on her own recognizance pending further proceedings.

She was not charged with fabricating being raped on February 22 in the Delta College parking lot, or the same day at Walmart, because she didn't file a police report about those alleged incidents.

Zolkowski is presumed innocent of filing a false felony report unless and until she is convicted.

Zolkowski's case is 1710440FY1 in the Bay County, Michigan District Court.

Filing a false felony report is a felony under Mich. Penal Code 750.411a, with a maximum penalty of four years in prison and a $2,000 fine.

Sources:

Woman charged with falsely reporting she was raped at Delta College, *Mlive.com*, August 15, 2017

State of Michigan v. Mary Zolkowski, No. 1710440FY1 (Bay County, Michigan District Court)

Honey Rose cont. from p. 14

94. ... "The implications for medical and other professions would be serious because people would be guilty of gross negligence manslaughter by reason of negligent omissions to carry out routine eye, blood and other tests which in fact would have revealed fatal conditions notwithstanding that the circumstances were such that it was not reasonably foreseeable that failure to carry out such tests would carry an obvious and serious risk of death. For these reasons, this appeal is allowed and the conviction is quashed.

95. We add that this decision does not, in any sense, condone the negligence that the jury must have found to have been established at a high level in relation to the way that Ms Rose examined Vincent and failed to identify the defect which ultimately led to his death. That serious breach of duty is a matter for her regulator; in the context of this case, however, it does not constitute the crime of gross negligence manslaughter."

Click here to read the appeals court's ruling in *Honey Maria Rose v. Regina*, [2017] EWCA Crim 1168 (Ct. of Appeals, 7-31-2017).

Sources:

Honey Maria Rose v. Regina, [2017] EWCA Crim 1168 (Ct. of Appeals, 7-31-2017) (Quashing conviction on basis the prosecution failed to introduce sufficient evidence to prove Honey Rose committed gross negligence manslaughter.)

Vincent Barker death: Optometrist Honey Rose conviction quashed, *BBC News*, July 31, 2017

"Why did you commit such a basic error?' Judge says Boots optometrist should have spotted boy's fatal brain problem but won't jail her after hearing his family don't want her children to suffer," *Daily Mail* (London), August 26, 2016

Gloria Navarro Got It Right In 2002 In Lobato Case, And In 2018 In Cliven Bundy Case

Gloria Navarro was the first person to publicly declare Kirstin Blaise Lobato is innocent of the July 2001 homicide of Duran Bailey in Las Vegas.

Navarro did so in May 2002 during an interview with the Las Vegas *Review-Journal* following Ms. Lobato's conviction by a jury of first-degree murder and other charges related to Bailey's homicide. At the time Navarro was a Clark County Public Defender and one of Lobato's lawyers during her trial. **Navarro declared** to the *RJ*: "She placed her belief in the justice system, and she ended up being convicted of a crime that she did not commit." She also said that Ms. Lobato turned down a plea deal for three years in prison because she is innocent. Lobato was subsequently sentenced by District Court Judge Valorie Vega to a minimum of 40 years in prison.

Navarro never retracted her statement Kirstin Lobato is innocent.

In 2010 she specifically included a reference to the 2002 *Review-Journal* article in the documents she filed with the U.S. Senate in support of her qualifications to be a U.S. District Court judge. U.S. Senator Harry Reid recommended her, President Obama nominated her, and the U.S. Senate unanimously confirmed her by a vote of 98-0 in May 2010.

Ms. Lobato's habeas corpus petition filed in May 2010 included new evidence by more than 20 people conclusively establishing Ms. Lobato's actual innocence of Bailey's homicide. The Clark County District Attorney's Office effectively acknowledged her innocence when on December 28, 2017 it filed a motion to dismiss the charges against her with prejudice — meaning she could never be recharged. The DA's motion was granted on December 29, and **she was** released on January 3, 2018 after spending a total of more than 15 years in custody.

Five days after Lobato's release, now-U.S. District Court Judge Gloria Navarro dismissed all charges against Cliven Bundy, his sons Ammon Bundy and Ryan Bundy, and Ryan Payne. The dismissal of the charges on January 8, 2018 was with prejudice ... barring them being recharged.

U.S. District Court Judge Gloria Navarro

The Bundys and Payne had been in the midst of their retrial in federal court in Las Vegas on charges related to an armed standoff with federal agents in April 2014 over grazing fees for Cliven Bundy's use of federally-owned land adjacent to his ranch in southeastern Nevada.

The men's retrial began on October 30, 2017. Their first trial ended with Navarro declaring a mistrial on April 24, 2017 because of a deadlocked jury.

On December 20, 2017 Navarro granted a defense motion for a mistrial. The motion had been filed on November 14, 2017 -- the trial's sixth day. The motion was based on exculpatory evidence the prosecution disclosed after the trial began. Some of that evidence directly contradicted the prosecution's narrative of the men's alleged crimes, and it undermined rulings Navarro had made regarding limitations on the defendant's defenses to the charges.

In granting the mistrial motion Navarro ruled the prosecution's willful failure to disclose five key pieces of evidence violated the defendant's due process right to be provided with exculpatory evidence as mandated by the U.S. Supreme Court's decision in *Brady v. Maryland* (1963):

- Records about surveillance at the Bundy ranch;
- Records about the presence of government snipers;
- FBI logs about activity at the ranch in the days leading up to standoff;
- Law-enforcement assessments dating to 2012 that found the Bundys posed no threat;
- Internal affairs reports about misconduct by Bureau of Land Management agents.

Navarro ruled the evidence was so favorable to the defense it could have changed the outcome of the trial. **She said**, "Failure to turn over such evidence violates due process. A fair trial at this point is impossible."

Navarro then had to decide if the constitutional violations by the U.S. Attorney's Office had been so egregious that they required dismissal of the charges, or that the defendant's could be retried for a third time. On January 8 she issued her ruling:

> "The Court DISMISSES this case WITH PREJUDICE as to Defendants Cliven Bundy, Ryan Bundy, Ammon Bundy and Ryan Payne. The Court hereby vacates the detention orders for Cliven Bundy. The Court further vacates the Pretrial Release Orders and exonerates the bonds of Ryan Payne, Ryan Bundy, and Ammon Bundy."

Navarro said **she ordered** dismissal of the charges instead of a new trial that would not only give the prosecution an unfair advantage, but "The court finds that the universal sense of justice has been violated. The government conduct in this case was, indeed, outrageous."

Navarro's dismissal will become final if the government does not appeal it to the 9th Circuit Court of Appeals. As of January 10 it hasn't done so.

Navarro's granting of a mistrial and then ordering dismissal of the charges based on the government's flagrant wrongdoing is a remarkable reversal from her prior rulings in the Bundy case that generated intense national criticism she was openly biased against the Bundy defendants and using her position to ensure their conviction. One critical article **dubbed her** "Queen Navarro of Las Vegas."

The Bundy case is complicated and involves more than the four defendants whose cases were dismissed on January 8. A detailed explanation of the case is the "Bundy standoff" entry on **Wikipedia.org**.

Click here to read or download at no charge the PDF book "*Kirstin Blaise Lobato's Unreasonable Conviction: Possibility Of Guilt Replaces Proof Beyond A Reasonable Doubt – Third Edition*." The book about Ms. Lobato's case was written by Justice Denied's editor and publisher Hans Sherrer.

Sources:

USA v. Cliven D. Bundy, *Ryan C. Bundy, Ammon E. Bundy, and Ryan W. Payne*, No. 2:16-cr-00046-GMN-PAL-1, filed 02/17/16 closed 01/08/18

Judge declares mistrial in Bundy Ranch standoff case, *The Arizona Republic*, Dec. 20, 2017

Cliven Bundy walks free as federal judge dismisses Bundy Ranch standoff case, *The Arizona Republic*, Jan. 8, 2018

"**Bundy standoff**," Wikipedia.org

Federal Judge Gloria Navarro Has Declared Kirstin Lobato Is Innocent, Justice Denied, March 23, 2017

Queen Gloria Navarro of Las Vegas: She swore an oath to be a Federal Judge and became Queen of her territory instead, www.redoubtnews.com, April 8, 2017

Kirstin Lobato Released!!, By Hans Sherrer, *Justice Denied*, January 3, 2018

Patrick Dwayne Murphy's Murder Conviction And Death Sentence Overturned By Federal Appeals Court

On August 8, 2017 the U.S. Tenth Circuit Court of Appeals granted Patrick Dwayne Murphy's writ of habeas corpus, **and overturned his** murder conviction and death sentence in Oklahoma. The Court ruled the State of Oklahoma did not have jurisdiction to prosecute Murphy because the crime occurred on Indian land subject to federal jurisdiction.

In 2000 Patrick Murphy was convicted of first-degree murder in McIntosh County, Oklahoma District Court. He was sentenced to death based on the jury's finding of aggravating circumstances.

Murphy's prosecution was based on the death of George Jacobs on August 28, 1999. Murphy's common-law wife of three years Patsy, had formerly lived with Jacobs and had a child with him. A couple of days before Jacobs death Murphy and Patsy had an argument about Jacobs, during which Murphy **allegedly threatened** to "get Jacobs."

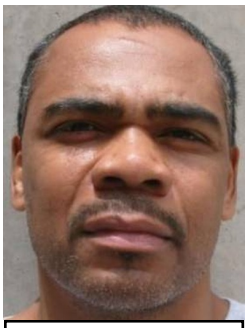
On the evening of August 28 Jacobs and a friend had been drinking for some hours.* The car they were in passed by a car with Murphy and two friends who were going in the opposite direction. Both cars stopped. During the succeeding events Jacobs' throat was cut, his stomach and chest were slashed, his face was bloody, and his genitals were cut off.

When found lying in a ditch beside the road Jacobs was still breathing, but unconscious. He died shortly thereafter.

When arrested Murphy only admitted kicking Jacobs and cutting his penis. He said Jacobs was breathing and conscious when he left.

Murphy was indicted and prosecuted for Jacobs' murder by the McIntosh County District Attorney's Office.

During Murphy's trial the medical examiner **described Jacobs'** "cause of death as blood loss from the various cutting wounds, primarily the genital and neck wounds. Death was not immediate. Jacobs bled to death in somewhere between four to twelve minutes, perhaps even longer. He described the multiple lacerations and fractures the victim suffered to his face, neck, chest, and abdomen."


Patrick Dwayne Murphy

During his trial the prosecution relied heavily on Murphy's admissions to the police, and testimony by Patsy. The judge denied Murphy's objection to admission of his police statement that he claimed was obtained in violation of his right to counsel, and denied his objection that the compelling of Patsy to testify against him violated the marital privilege.

After convicting him, the jury recommended Murphy be sentenced to death in rejecting his arguments to mitigate his sentence that included he suffered from mental retardation and had a degree of brain damage.

His conviction and sentence were affirmed on appeal in May 2002 by the Oklahoma Court of Criminal Appeal (OCCA).

A month later, in June 2002 the U.S. Supreme Court ruled in *Atkins v. Virginia*, 536 U.S. 304, 321 (2002), that the Eighth Amendment "places a substantive restriction on the State's power to take the life of a mentally retarded offender."

While is direct appeal was pending Murphy filed a post-conviction petition that included a claim that his death sentence was invalid because of his mental retardation. In September 2002 his petition was denied except for his mental retardation claim under the Supreme Court's *Atkins* ruling. After an evidentiary hearing the district court **concluded Murphy** "had not raised sufficient evidence to create a fact question on the issue of mental retardation." In March 2003 the OCCA affirmed Murphy's death sentence.

In March 2004 Murphy filed a federal habeas corpus petition that contained claims he hadn't raised in his state post-conviction petition. His federal petition remained pending while he pursued those additional claims in state court.

Murphy and Jacobs were both Indians and members of the Muscogee (Creek) Nation. All the events related to Jacobs' murdered occurred within the boundaries of the Creek Nation, which qualifies as Indian country because of its status as a reservation under federal jurisdiction.

In March 2004 Murphy filed a second state post-conviction petition that among its claims alleged:

> 1, Oklahoma lacked jurisdiction because the Major Crimes Act gives the federal government exclusive jurisdiction to prosecute murders committed by Indians in Indian country.
> 2. The OCCA's earlier denial of a jury trial on the issue of his "mental retardation" had violated his constitutional rights.

The OCCA ordered an evidentiary hearing on Murphy's jurisdiction claim.

In December 2004 the district court ruled that the state had jurisdiction to prosecute Murphy because the crime occurred on land owned by the state.

In December 2005 the OCCA affirmed the district court's ruling the state had jurisdiction, but remanded for a jury trial on his *Atkins* claim.

In December 2005 Murphy amended his federal habeas petition to include his challenge to the state's jurisdiction to prosecute him. In August 2007 the federal district court denied all of Murphy's claims. Murphy appealed to the U.S. Tenth Circuit Court of Appeals, which abated his appeal pending resolution of his *Atkins* (mental retardation) claim in state court.

In September 2009 a jury determined Murphy was not mentally retarded because he had an I.Q. score of 80, thus leaving his death sentence in place.

In April 5, 2012 the OCCA affirmed the district court's finding that Murphy wasn't mentally retarded.

Three weeks later, on April 26, 2012 Murphy filed a second federal habeas corpus petition challenging the state's resolution of the issue of his mental retardation. His petition was denied by the federal district court judge in May 2015.

Murphy appealed to the U.S. Tenth Circuit Court of Appeals, which consolidated his appeals of the denial so his first and second federal petitions.

On August 8, 2017 the a three-judge panel of the federal appeals court unanimously

Murphy cont. on p. 18

Prosecutor Immunity Bars Lawsuit After Indictment For Insurance Fraud Dismissed Against Four People

A federal judge in New York City **has dismissed** a civil rights lawsuit filed by four people whose indictments related to an alleged insurance fraud scheme were dismissed in August 2016 before they had gone to trial.

In January 2014, 106 people were indicted by a grand jury in Manhattan for Grand Larceny and Criminal Facilitation. Their indictments alleged they had engaged in an scheme to fraudulently obtain Social Security Disability insurance benefits.

Most of the people indicted were retired NYPD police officers and firefighters. They were alleged to have worked with an organization called the Lavallee Group, which sent them to selected mental-health professionals who provided documentation of

Manhattan DA Cyrus Vance announcing indictment of 106 people for SSDI fraud on January 7, 2014, with photo displayed of an indicted "disabled" man who was sport fishing on a boat. (Michael Appleton - *NY Times*)

psychiatric conditions such as post-traumatic stress disorder, anxiety disorder, and depression. Those reports were used to support what the indictment alleged were fraudulent claims for SSDI prepared by the Lavalle Group. When SSDI was granted, a claimant would pay the Lavallee Group a cash kick-back in increments of less than $10,000.

After their indictments all the defendants were arrested, and civil asset forfeiture proceedings were initiated for seizure of all proceeds they had received as a result of the alleged fraud scheme.

The fraud investigation had been coordinated by the New York County DA's Office. After the indictments the DA's Office continued to investigate the cases by sending investigators to speak to the defendant's family members, neighbors, and friends.

In August 2016 the DA's Office filed a Motion to Dismiss the indictments against four of the retired police officers: Philip Blessinger, John Byrne, Scott Greco, and Darlene Ilchert. The Motion to Dismiss stated the State no longer believed it could prove the four guilty beyond a reasonable doubt, based on "additional information and records . . . includ[ing] psychiatric reports, additional medical records, [and] work history reports, each of which was not available to the People at the time the Grand Jury voted the Indictment." The next day the DA's Office stipulated to dismissal of the civil forfeiture proceedings against the four.

On January 4, 2017 Blessinger, Byrne, Greco, and Ilchert filed a federal civil rights lawsuit under 42 USC 1983 that named as defendants the City of New York, New York County District Attorney Cyrus

Immunity cont. on p. 19

Murphy cont. from p. 17

reversed Murphy's conviction and death sentence based on **their conclusion that**, "Because Mr. Murphy is an Indian and because the crime occurred in Indian country, the federal court has exclusive jurisdiction. Oklahoma lacked jurisdiction." The Court's 126-page ruling in *Murphy v. Royal*, No. 07-7068 (10th cir., 8-8-17) **stated in part**:

> "The federal government began creating Indian reservations during the nineteenth century. ... "[T]he term ['Indian reservation'] has come to describe federally-protected Indian tribal lands, meaning those lands which Congress has set apart for tribal and federal jurisdiction." ... the term "Indian country" includes not only reservations but other lands as well.
>
> The Major Crimes Act is the jurisdictional statute at the heart of this case. It applies to enumerated crimes committed by Indians in "Indian country."
> ...
> If the Major Crimes Act applies to an Indian defendant, he or she "shall be tried in the same courts and in the same manner as are all other persons committing such offense within the exclusive jurisdiction of the United States." 18 U.S.C. § 3242.
>
> The parties agree that Mr. Murphy and Mr. Jacobs, both members of the Creek Nation, qualify as Indians for purposes of the Major Crimes Act.
> ...
> In cases decided in the late nineteenth and early twentieth centuries, the Supreme Court explained that the Major Crimes Act applied to crimes committed within the boundaries of Indian reservations regardless of the ownership of the particular land on which the crimes were committed." [Op cit. 23-26]

Consequently, the state's ownership of land on the reservation was irrelevant to determining a murder committed on that land could only be prosecuted in federal court. As required by the Anti-Terrorism and Effective Death Penalty Act, the appeals court also determined the OCCA's denial of Murphy's jurisdiction claim was contrary to clearly established federal law. The Court concluded its ruling stating:

> "Because Mr. Murphy is an Indian and because the crime occurred in Indian country, the federal court has exclusive jurisdiction. Oklahoma lacked jurisdiction.
>
> Mr. Murphy's state conviction and death sentence are thus invalid. The OCCA erred by concluding the state courts had jurisdiction, and the district court erred by concluding the OCCA's decision was not contrary to clearly established federal law. We therefore reverse the district court's judgment and remand with instructions to grant Mr. Murphy's application for a writ of habeas corpus under 28 U.S.C. § 2254. The decision whether to prosecute Mr. Murphy in federal court rests with the United States." [Op. cit. 126]

Click here to read the appeals court's ruling in *Patrick Dwayne Murphy v. Terry Royal*, No. 07-7068 (10th cir., 8-8-17).

The Court's ruling was almost 12 years after Murphy amended his federal habeas petition in December 2005 to include the jurisdiction issue.

Endnote:
* Jacobs's post-mortem blood alcohol level was determined to be .23 -- almost three times the legal limit.

Sources:
Patrick Dwayne Murphy v. Terry Royal, No. 07-7068 (10th cir., 8-8-17) (reversing conviction based on lack of jurisdiction by state court)

Court overturns Oklahoma man's murder conviction, death sentence, *The Oklahoman*, August 8, 2017

Murphy v. State, 47 P. 3d 876 (Okla. Court of Criminal Appeals 2002) (Affirming on direct appeal Murphy's conviction and death sentence.)

Judge William Kephart Is Reprimanded For Publicly Advocating Kirstin Lobato Is Guilty

Judge William Kephart Reprimanded For Publicly Advocating Kirstin Lobato Is Guilty **was a front-page news story** in the *Las Vegas Tribune that* detailed Clark County District Court Judge William Kephart's public reprimand by the Nevada Commission on Judicial Discipline after he admitted to committing five misconduct charges filed against him on May 9, 2017.

Kephart was the lead prosecutor when Ms. Lobato was convicted in 2006 of voluntary manslaughter and other charges related to the July 2001 homicide of Duran Bailey in Las Vegas.

In May 2010 Lobato filed a habeas corpus petition in the Clark County District Court that included new evidence she is actually innocent. Her habeas case is currently pending in the District Court.

Kephart was elected a District Court judge in November 2014, and at the time of the interview Lobato's habeas corpus case was pending.

The misconduct charges were based on Kephart's public interference in Kirstin Lobato's case during an on-camera interview that was broadcast on February 29, 2016, by

Judge William Kephart

KSNV News 3 in Las Vegas. During the interview Kephart advocated for Ms. Lobato's guilt and defended the correctness of her convictions.

Kephart avoided a public hearing by admitting to the charges and agreeing to the punishment of a public reprimand.

The news story is on **LasVegasTribune.net**. The article was written by Hans Sherrer, Justice Denied's editor and publisher.

The Commission's "Stipulation And Order Of Consent To Public Reprimand" **is on its website** at: **https://tinyurl.com/y9rpnfqz** . The Stipulation and Order is signed by Kephart.

The **Formal Statement Of Charges** filed on May 9, 2017 that details the charges Kephart has admitted he committed are on the Commission's website at, **https://tinyurl.com/ybdxrrt8** .

Information about Kirstin Lobato's case is on Justice Denied's Kirstin Blaise Lobato's case webpage at, **http://justicedenied.org/kbl.htm**.

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The full text of the article published in the *Las Vegas Tribune* on October 4-10, 2017 follows:

Judge William Kephart Reprimanded For Publicly Advocating Kirstin Lobato Is Guilty

By Hans Sherrer
Justice Denied (justicedenied.org)
Special for the Las Vegas Tribune

District Court Judge William Kephart has been publicly reprimanded by the Nevada Commission on Judicial Discipline (NCJD) after he admitted to publicly interfering in Kirstin Lobato's habeas corpus case during a television interview broadcast by KSNV News 3 in Las Vegas. During the on-camera interview Judge Kephart publicly advocated for her guilt, while in her pending habeas case she asserts she is actually innocent.

On May 9, 2017 the Nevada Commission on Judicial Discipline charged Kephart with five misconduct violations for his comments about Ms. Lobato's case during the interview. Kephart's signed admission to all the charges and his consent to a public reprimand for his conduct was filed with the NCJD on August 31, 2017.

Kephart was one of Ms. Lobato's prosecutors when she was convicted in October 2006 of voluntary manslaughter and other charges related to the July 2001 homicide of homeless Duran Bailey in Las Vegas. In

Kephart cont. on 20

Immunity cont. from p. 18

Vance, and five assistant DAs. The lawsuit alleged a violation of their civil rights for false arrest, malicious prosecution, abuse of process, and unreasonable asset seizure.

On May 15, 2017 the defendants filed a Motion to Dismiss the lawsuit.

U. S. District Court Judge William H. Pauley III (lawcrossing.com)

On September 1, 2017 U. S. District Court Judge William H. Pauley III granted the motion to dismiss.

Judge Pauley **ruled the** six prosecutors couldn't be sued in the performance of their duties in the case because, "All of this conduct is part and parcel of a district attorney's role in prosecuting (or deciding whether to continue to prosecute) a crime on behalf of the state."

He **also ruled suing** the prosecutors as individuals was "barred by the doctrine of absolute immunity. .. Absolute prosecutorial immunity reflects the need "to preserve the integrity of the judicial process and . . . enable zealous performance of prosecutorial duties . . . without the constant threat of legal reprisals."" Judge Pauley ruled all the claims against the prosecutors are: "based on conduct that falls squarely within the scope of absolute immunity." Judge Pauley cited a case in which a prosecutor was held to be immune after obtaining an indictment without probable cause the person committed the crime.

In dismissing the claims against the City of New York, Judge Pauley ruled the complaint failed to allege how the city violated their constitutional rights, and they also failed to comply with the notice of claim requirements.

Click here to read Judge Pauley's ruling in, *Philip Blessinger, et al. v. City of NY, et al.*, 17cv47, 17cv108 (USDC SDNY, 9-1-17).

There were valid cases of SSDI fraud against some of the people indicted. The photo that was displayed during the announcement of the indictments in January 2014 shows an indicted "disabled" man who was sport fishing on a boat.

Sources:

Philip Blessinger, et al. v. City of NY, et al., 17cv47, 17cv108 (USDC SDNY, 9-1-17) (opinion & order granting defendants motion to dismiss on absolute immunity)

Prosecutors Immune From Suit For Charging Police Officers With Fraud, Sept. 6, 2017

Philip Blessinger, et al. v. City of NY, et al., 17cv47, 17cv108 (USDC SDNY) (Docket, last viewed 9-15-2017)

Kephart cont. from 19

May 2010 Ms. Lobato filed a habeas corpus petition in the District Court that presented new evidence she is actually innocent. Ms. Lobato's case has received national and international media attention. Her case is currently pending in the District Court with an evidentiary hearing scheduled to begin on October 9, 2017.

Ms. Lobato's habeas petition is currently being handled by one of Judge Kephart's colleagues, Judge Stefany Miley. The Commission alleged in its charges, and Kephart has now publicly admitted that due to his public advocacy for Ms. Lobato's guilt, "there was or is a reasonable expectation that Respondent's interview statements could affect the outcome or impair the fairness of Ms. Lobato's case," that will be decided by his colleague Judge Miley.

Judge Kephart complicates Ms. Lobato's legal situation further because while with the DA's Office, in 2010 he wrote and signed the State of Nevada's opposition to Ms. Lobato's habeas petition that Judge Miley will be ruling on. To grant Ms. Lobato's petition Judge Miley would not only have to disregard her fellow judge's public declaration Ms. Lobato is guilty, but she would have to specifically rule against the State's defenses to her habeas claims authored by Kephart and his public written declarations that the claims Judge Miley is ruling on are meritless and should be denied.

Kephart was elected a Clark County District Court judge in November 2014.

During the February 29, 2016 broadcast interview, Kephart's statements about Ms. Lobato's case included: "I stand behind what we did. I have no qualms about what happened and how we prosecuted this matter. I believe it was completely justice done."

The NCJD's Formal Statement Of Charges filed in May 2017 states:

> "Respondent's television interview statements attested to his belief that Ms. Lobato is guilty as he indicated that justice was done, although these comments directly contrast with Ms. Lobato's claim of actual innocence, which is a subject in the case. Therefore, there was or is a reasonable expectation that Respondent's interview statements could affect the outcome or impair the fairness of Ms. Lobato's case."

The five charges of misconduct against Kephart were: 1) Failing to "maintain the dignity of office and avoid impropriety;" 2) "Failing to comply with the law;" 3) "Failing to act at all times in a manner that promotes confidence in the independence, integrity, and impartiality of the judiciary and avoiding impropriety and the appearance of impropriety;" 4) Failed at "performing judicial and administrative duties competently and diligently;" and, 5) Making "public statement on a pending or impending case."

Kephart's denied all the charges in his Response filed with the NCJD on May 25, 2017.

Kephart avoided a public hearing by admitting to all the charges and consenting to a public reprimand that was filed with the NCJD on August 31, 2017. The "Stipulation And Order Of Consent To Public Reprimand" signed by Judge Kephart states in part:

> 1. D. ... Respondent's television interview statements attested to his belief that Ms. Lobato is guilty as he indicated that justice was done, although these comments directly contrast with Ms. Lobato's claim of actual innocence, which is a subject in the case. Therefore, there was or is a reasonable expectation that Respondent's interview statements could affect the outcome or impair the fairness of Ms. Lobato's case.
>
> 2. Respondent admits to all the allegations brought against him in the Charge of Misconduct of the Formal Statement of Charges filed May 9, 2017, and paragraphs (1)(A) through (D) as set forth above.
>
> 3. Respondent agrees to waive his right to present his case and contest the allegations in the information set forth above in a formal hearing.
>
> ...
>
> 5. Respondent and the Commission hereby stipulate to Respondent's consent to public reprimand pursuant to Rule 29. Respondent stipulates to the following substantive provisions:
>
> A. He agrees the evidence available to the Commission would establish by clear and convincing proof that he violated the Code, including Canon 1, Rule 1.1 and 1.2, and Canon 2, Rule 2.5 (A) and 2.10.
>
> …
>
> C. He stipulates to a public reprimand for violations of the Judicial Canons and Rules as set forth above in paragraphs (1) (A) through (D).
>
> ...
>
> IT IS HEREBY ORDERED that Respondent is hereby publicly reprimanded for violating the Code, Canon 1, Rule 1.1 and 1.2; and Canon 2, Rule 2.5 (A) and 2.10.

The "Stipulation And Order Of Consent To Public Reprimand" against Judge Kephart is on the NCJD's website. It can be read at, **www.tinyurl.com/y9rpnfqz**.

With the conclusion of Kephart's case, the author of this article can publicly reveal that in April 2016 he filed the complaint with the NCJD about the television interview. The outcome resulting from the NCJD's investigation proves the complaint was valid.

Author note: Hans Sherrer is President of the Justice Institute aka Justice Denied that conducted a post-conviction investigation of Kirstin Lobato's case. The Justice Institute is based in Seattle, Washington and promotes awareness of wrongful convictions, and maintains the world's largest database of exonerated persons. Its website is, www.justicedenied.org.

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www.forejustice.org/exonerations.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

Database of Japanese Cases

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

Justice Denied's Website Has Had Visitors From 225 Countries

Justice Denied's website has had visitors from 228 countries through 2017. Those visitors were from more than 21,850 cities and towns. Six of the 20 cities where the most visitors were from are outside the U.S.

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Conviction Review Unit (CRU) deceived the Innocence Project about Kirstin Lobato's case

In the fall of 2016 Clark County, Nevada District Attorney Steven Wolfson established a Conviction Review Unit to review a prisoner's claim that new evidence establishes their actual innocence of their convicted crime(s).

On March 7, 2017 Kirstin Lobato filed an application with the CRU for review of her claim that new evidence proves her actual innocence of Duran Bailey's homicide in Las Vegas on July 8, 2001. She was convicted in 2006 of voluntary manslaughter and other charges related to Dailey's homicide, and sentenced to 13 to 35 years in prison.

The application was filed on Ms. Lobato's behalf by the Innocents Project in New York that was representing her.

On March 31, 2017 the CRU sent the Innocents Porject a letter informing it Ms. Lobato's application had been rejected.

The news article details the CRU deceived the Innocents Project about its handling of Ms. Lobato's application. The CRU actually mishandled Ms. Lobato's application, and by national standards should have accepted and conducted a full review of her new evidence she asserts proves her actual innocence.

The news story is on the LV Tribune's website at, **LasVegasTribune.net**. The article was written by Hans Sherrer, Justice Denied's editor and publisher.

Information about Kirstin Lobato's case is on Justice Denied's **Kirstin Blaise Lobato's case webpage**.

****

The full text of the article published in the September 20, 2017 issue of the *Las Vegas Tribune* article follows:

Conviction Review Unit (CRU) Deceived The Innocents Project About Kirstin Lobato's Case

By Hans Sherrer
Justice Denied
Special for the Las Vegas Tribune

Kirstin Lobato's application for review of her claim that new evidence proves her actual innocence of Duran Bailey's homicide in Las Vegas on July 8, 2001, was rejected in March 2017 by DA Steven Wolfson's Conviction Review Unit (CRU).

Kirstin Lobato while released on bail awaiting her retrial in 2006.

Documents obtained by Justice Denied show Wolfson's CRU deceived the Innocents Project (IP) based in New York, which submitted the application on Ms. Lobato's behalf.

More than two dozen CRUs have been set-up around the country in the last ten years as an extra-judicial method for a DA's Office to review a convicted person's claim of actual innocence based on new evidence.

Wolfson hired Dan Silverstein to head Clark County's CRU that was established in the fall of 2016.

Ms. Lobato submitted her application to the CRU on March 7, 2017 while her habeas corpus petition challenging her 2006 convictions was pending in the district court. An issue the district court is considering is her habeas claim of actual innocence supported by new evidence from more than 20 people that includes multiple experts and alibi witnesses.

Her CRU application stated six areas of new evidence proving her actual innocence:

1. New forensic evidence establishes Duran Bailey died after 8 p.m. on the evening of July 8. During Ms. Lobato's trial the prosecution did not dispute the fact she was in Panaca from late morning on July 8 until the early morning of July 9.
2. New expert psychology evidence Ms. Lobato's police statement of July 20, 2001 detailed her attempted rape in the parking lot of a Budget Suites Hotel in east Las Vegas prior to mid-June 2001, and it was not about Bailey's homicide weeks later in a west Las Vegas bank's trash enclosure.
3. New alibi evidence Ms. Lobato told many people from late May to July 4, 2001 about the attempted rape of her in the Budget Suites Hotel parking lot; and, new evidence of police perjury.
4. New alibi evidence Ms. Lobato was in Panaca the entire weekend of July 7 and July 8.
5. New forensic science evidence the physical evidence in Ms. Lobato's case excludes her from the crime scene and undercuts the prosecution's narrative of the crime.
6. New evidence Metro did not investigate suspects who had the motive, means and opportunity to commit Bailey's homicide.

The jury that convicted Ms. Lobato heard none of that new evidence.

New York's Brooklyn District Attorney's Office CRU (Brooklyn CRU) is the country's most well-known CRU and considered a national model. Twenty-three people have been exonerated as a result of its work from 2014 to 2017.

Ms. Lobato's CRU application includes five types of evidence the Brooklyn CRU has relied on to exonerate 19 people. Those types are, with the number of exonerations in parenthesis:

- Alibi corroborated (2)
- Expert analysis of crime related evidence (3)
- Alternate suspect likely committed crime (3)
- Defendant's statement unreliable link to crime (4)
- False or unreliable prosecution witness (7)

Two of the Brooklyn CRU's 23 exonerations have been based on new DNA evidence. Its most recent exoneration involved new evidence of false police trial testimony — which was also presented in Ms. Lobato's CRU application.

Silverstein is certainly aware of the Brooklyn CRU that is the national model. He wrote in a December 17, 2016 email: "We've spoken to virtually every CRU, I myself spoke to about ten chiefs ..."

Ms. Lobato's application was submitted to the CRU on Tuesday, March 7. That same day the IP was informed by Silverstein in an email: "We are travelling out of the jurisdiction on Thursday and Friday for an interview in another case." The first work day after his travelling he would be able to devote to her application was Monday, March 13.

Three days later, on March 16 the letter was produced from Silverstein to the IP rejecting Ms. Lobato's application for review. The stated reason for rejecting her case was:

"The new evidence presented in Lobato's application — the opinions of fo-

CRU cont. on p. 22

CRU cont. from p. 21

> rensic entomologists, crime scene reconstructionists, and false confession experts, additional alibi witnesses, and impeachment of Detective Thowsen's credibility — does not meet the criteria for re-investigation by the Conviction Review Unit, because it is not capable of potential substantiation."

On its face, that explanation is dishonest.

Nineteen of the 23 people exonerated by Brooklyn's CRU — *83% of the cases* — relied on the same types of new evidence Ms. Lobato submitted as proving her actual innocence. Additionally, her application included *five of the eight types* of new evidence that have resulted in all of the Brooklyn CRU's exonerations.

Furthermore, her application included types of new evidence that has resulted in at least *91% of CRU exonerations nationally*.

It is known Silverstein has been in contact with CRUs across the country. He can't reasonably feign ignorance that people are regularly being exonerated based on the same types of new evidence Ms. Lobato submitted.

The CRU's letter also stated: "New evidence that raises factual questions rightfully decided by a jury does not substantiate the petitioner's innocence in the same way as a DNA test or a third party confession."

That statement is patently false, because as explained above, the Brooklyn CRU has exonerated 19 people based on non-DNA evidence of types submitted by Ms. Lobato, and none of its exonerations were based on a "third party confession."

The dishonesty by the DA's Office regarding the rejection of Ms. Lobato's CRU application goes far beyond its disreputable claim the new evidence of her actual innocence can't be substantiated. Consider the following three examples:

First. Silverstein's stated in his rejection letter:

> "I have reviewed the entirety of your application, the affidavits and expert reports you submitted, as well as the transcript of the August 7, 2001 preliminary hearing, transcripts of both of Kirstin Lobato's jury trials from May 2002 and September 2006, the complete investigation conducted by the Las Vegas Metropolitan Police Department, and all of the motions, petitions, and other documents in the case."

The documents Silverstein cites *total over 7,000 pages*. Using a standard font the King James Authorized Bible is said to be about 1,200 pages long. So in the nine days from when the CRU received Ms. Lobato's application to when the rejection letter was produced, Silverstein claims he reviewed the equivalent of *six Bibles* full of detailed and complex information — and those nine days included a weekend and at least two other days when he was traveling while working on another case.

Second. Silverstein also stated in his rejection letter:

> "Clearly, the information presented could raise questions regarding Lobato's guilt in this matter; however, *such questions have been presented to and considered by two separate juries ...*"

That statement is inaccurate because her application presented new legal evidence of her actual innocence — not "information," and it is a fact verifiable by anyone who actually reads her case documents that "two separate juries" did not hear, and hence did not "consider," her new evidence by more than 20 people supporting her actual innocence. The following is just one example of the statements extreme falsity.

The documents Silverstein claimed to have read detail Ms. Lobato's new forensic evidence — which was discovered after her second trial in 2006 so it is impossible any jury "considered" it — that establishes Bailey died after 8 p.m. on the evening of July 8. The prosecution conceded during their argument to the jury that credible evidence establishes she was in Panaca 165 miles from Las Vegas the entire afternoon and evening of July 8 until after Bailey's body was found. The prosecution freely made that concession because it was unimportant to their case: which hinged on their narrative Bailey died in the very early morning hours of July 8, which is when the prosecution asserted she was in Las Vegas.

Thus, the jurors who convicted Ms. Lobato didn't know her new forensic evidence Bailey died after 8 p.m., a time when it was undisputed during her 2006 trial she was in Panaca.

Third. The CRU's letter to the IP rejecting Ms. Lobato's application was produced on March 16, 2017. However, Silverstein did not inform the IP her application had been rejected. Not knowing it was futile, on March 27 the IP provided the CRU with an additional forensic report concerning Bailey's time of death.

Fifteen days after the CRU's rejection letter was produced, it was sent to the IP with the date March 31 in an email that stated: "Attached, please find a letter explaining the Conviction Review Unit's decision not to accept this case for a formal reinvestigation."

From the foregoing it is known Ms. Lobato's CRU application was not rejected for legal reasons; and, the CRU did not even take the facts of her case and the new evidence of her actual innocence into consideration in rejecting her application.

It is also known the CRU deceived the IP by waiting more than two weeks to inform it Ms. Lobato's application had been rejected.

The conduct of the DA's Office regarding Ms. Lobato's CRU application has serious implications. It is conceivable she would now be free if she had been prosecuted by the Brooklyn DA's Office. An investigation of her application by the Brooklyn CRU could realistically have resulted in their advocacy for her exoneration as it has done in almost two dozen cases.

Consequently, there is reason to conclude Kirstin Lobato is currently in prison only because of the egregiously dishonest mishandling of her CRU application by Wolfson's Office.

The information in this article came from sources that include public records requests to the Clark County District Attorney's Office.

Author note: Hans Sherrer is President of the Justice Institute aka Justice Denied that conducted a post-conviction investigation of Kirstin Lobato's case. The Justice Institute is based in Seattle, Washington. It promotes awareness of wrongful convictions, and maintains the world's largest database of exonerated persons. Its website is, www.justicedenied.org.

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129,610 Cases Now In Innocents Database

The Innocents Database now includes 129,610 cases: 27,303 from the U.S., and 102,307 from 119 other countries. The database includes 26,389 U.S. cases from 2018 to 1989, when the first DNA exoneration occurred.

The **Innocents Database** is the world's largest database of exonerated persons, and it includes all identifiable exonerations in the United States, as well as internationally. The Innocents Database includes:

- 605 innocent people sentenced to death.
- 1,101 innocent people sentenced to life in prison.
- 2,324 innocent people convicted of a homicide related crime.
- 1,153 innocent people convicted of a sexual assault related crime.
- 839 innocent people were convicted after a false confession by him or herself or a co-defendant.
- 124,314 innocent people were convicted of a crime that never occurred.
- 233 innocent people were posthumously exonerated by a court or a pardon.
- 90 people were convicted of a crime when they were in another city, state or country from where the crime occurred.
- 2,068 innocent people had 1 or more co-defendants. The most innocent co-defendants in any one case was 36, and 25 cases had 10 or more co-defendants.
- 12% of wrongly convicted persons are women.
- The average for all exonerated persons is 7-1/8 years imprisonment before their release.
- 31 is the average age when a person is wrongly imprisoned.
- Cases of innocent people convicted in 120 countries are in the database.
- 27,303 cases involve a person convicted in the United States.
- 102,307 cases involve a person convicted in a country other than the U.S.

Click here to go to the Innocents Database at www.forejustice.org/exonerations.htm.

All the cases are supported by public sources for research. Those sources include court rulings, newspaper and magazine articles, and books. The database is linked to from **Justice Denied's** website.

User defined searches, and user defined sorts of any combination of more than 100 columns of data can be made for:
U. S. cases from 1989 to 2017;
U. S. cases prior to 1989;
and, **International cases up to 2017**

The database can now be sorted on a Compensation column to find such information as: the compensation awarded to persons for any year or state, or the compensation awarded in a particular type of case, such as those involving DNA or a false confession, etc.

The Innocents Database is an ongoing project that began more than 20 years ago, and now contains millions of bytes of data related to exonerations. The accessibility and usefulness of that data to the public and researchers is improved by the ability to search and sort for specific information.

Email a question, correction, or suggested addition to the Innocents Database to: **innocents@forejustice.org**.

Visit the Innocents Database

Includes details about more than 129,000 wrongly convicted people from the U.S. and other countries.
www.forejustice.org/search_idb.htm

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Justice Denied's Facebook page has information related to wrongful convictions. Justice Denied's homepage has a link to the Facebook page, **www.justicedenied.org**

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.*

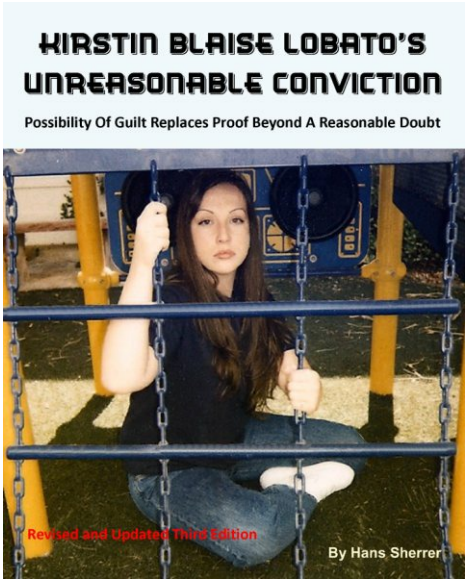
The book details how Kirstin Lobato has twice been convicted of a July 8, 2001 Las Vegas homicide when the prosecution doesn't deny it has no physical, forensic, eyewitness, confession, informant, surveillance video or documentary evidence she was in Las Vegas at any time on the day of the crime. The 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.



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.

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'thave 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.

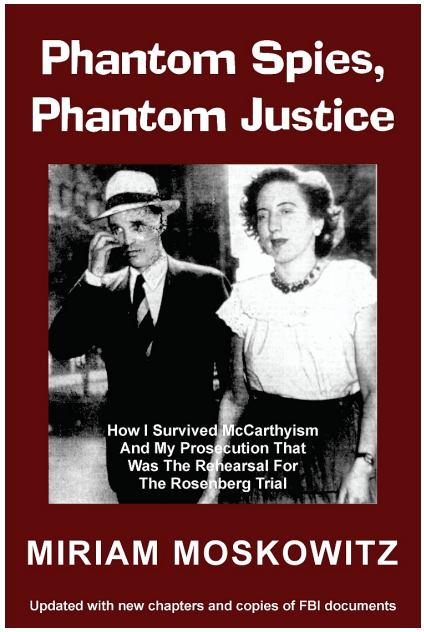
Click here to buy *High Fence Foodie* from Amazon.com.

Order with a check or money order by using the form on page 26.

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 page 26 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

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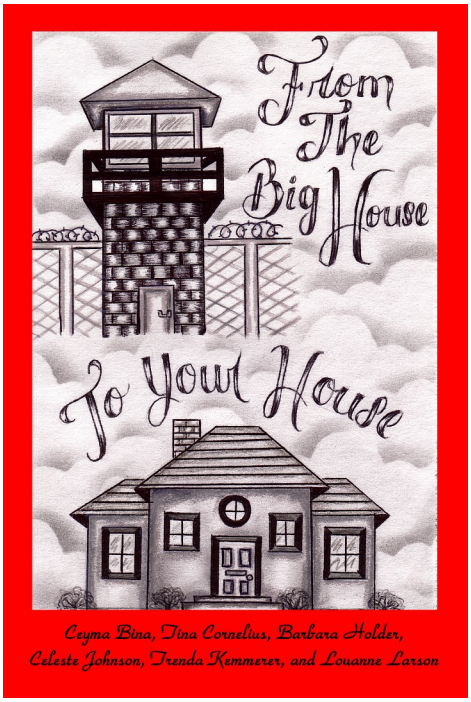

FROM THE BIG HOUSE TO YOUR HOUSE

Cooking in prison

With

Ceyma Bina, Tina Cornelius, Barbara Holder, Celeste Johnson, Trenda 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!

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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:

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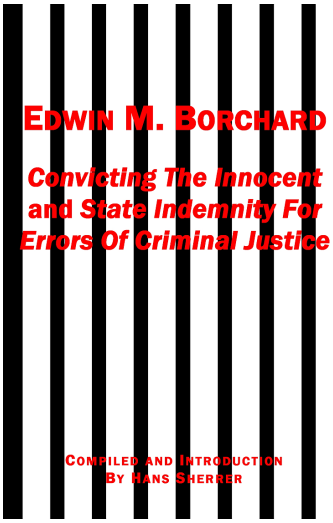

Convicting the Innocent (Chapter 4) has not lost its luster as one of the most insightful books published on the topic of wrongful convictions. Seventy-one years after its publication the multitude of causes underlying the cases of injustice it details not only continue to plague the legal system in 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.

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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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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:

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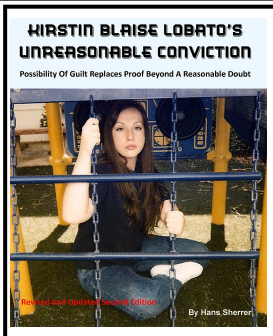

This is the story of Kirstin Lobato, who was 18 when charged in 2001 with the murder of a homeless man in Las Vegas. She was convicted of voluntary manslaughter and other charges in 2006 and she is currently serving a sentence of 13-35 years in Nevada. *Kirstin Blaise Lobato's Unreasonable Conviction*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

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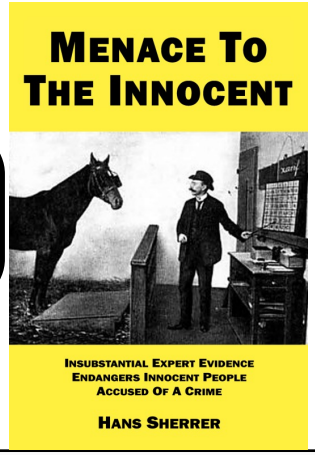

Menace To The Innocent:
Insubstantial Expert Evidence Endangers Innocent People Accused Of A Crime

By Hans Sherrer, *Justice Denied's* Editor & Publisher
Read about the book with order information from Amazon.com on page 9.

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The political nature of judges that affects their conduct and rulings is an extension of the fact that there is not a single judge in the United States, whether nominated or elected, whether state or federal, that is not a product of the political process as surely as every other political official whether a city mayor, a county commissioner, a state representative, a member of Congress or the President.

"The Complicity of Judges in the Generation of Wrongful Convictions," by Hans Sherrer (*Northern Kentucky Law Review*, V. 30, N. 4, 2003)

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11,162 Convictions Overturned By Tainted Crime Lab Evidence

11,162 drug related convictions were vacated on April 5, 2018 by Massachusetts Supreme Judicial Court Justice Frank Gaziano. The cases from 2004 to 2013 all involved a "Drug Certification" signed by state drug lab chemist Sonja Farak that the evidence linked to the defendant was an illegal substance. In 2013 it was discovered that Farak was a drug addict whose work at the lab was unreliable.

See pgs. 3

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.