# JUSTICE DENIED

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Retail

The Magazine for the Wrongly Convicted

## Appellate Court's Turn Blind Eye to Claims of Factual Innocence

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**Sultan Alam**

Conviction of conspiracy to steal auto parts overturned 11 years after fellow police officers framed him in retaliation for filing a racial discrimination complaint against the police department.

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*Justice:Denied* - Issue 38, Fall 2007 ISSN: 1937-2388

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## Message From The Publisher

Alabama has successfully opposed forensically testing evidence in Thomas Arthur's case since before his 1991 murder conviction and his sentence of death. *Justice:Denied's* editorial in Issue 37 asserted that if the testing Arthur has sought for 17 years would lead to proving his innocence, then Alabama's killing of him would be nothing less than murder. Lo and behold, on December 24, 2007 Alabama's largest newspaper, *The Birmingham News*, editorialized in regards to Arthur's case: "The governor runs the risk of the state murdering an innocent man if he refuses to order DNA testing in capital cases where biological evidence exists." See *Justice:Denied's* Editorial on page 10.

*Justice:Denied* first reported almost eight years ago on Martin Tankleff's convictions of murdering his parents in 1988. His convictions were overturned by the New York State Court of Appeals on December 18, 2007. Two weeks later the DA announced Tankleff would not be retried. See the article on p. 6.

*Justice:Denied* also first reported in 2000 about Ken Richey's conviction of felony murder in the death of a friend's two-year-old daughter during a fire. Richey's conviction was overturned twice by the federal Sixth Circuit Court of Appeals, and the State of Ohio finally threw in the towel. Richey was released from custody on January 7, 2008. See the article on page 8.

An important common denominator of Richey and Tankleff's cases is that neither was freed by DNA. Richey was freed due to the failure of his trial counsel to challenge the junk science the prosecution relied on, and Tankleff was freed due to a combination of an investigator finding new witnesses, dogged lawyers, and an effective public relations campaign.

When I was a kid we lived on Seattle's Queen Anne hill that overlooks Fort Lawton to the west. However, it wasn't until I read *On American Soil* by Jack Hamann that I learned Fort Lawton was the scene of WWII's largest court martial during which 28 soldiers were wrongly convicted. Hamann's book resulted in the Army reopening the case in 2006. See the article on p. 15.

We have been working on an index of *Justice:Denied* from Issue 1. It should be available on our website in the spring of 2008. We will notify our readers when a planned print version is available.

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

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*Justice:Denied* volunteers directly contributing to this issue:
Karyse Philips, Editor; Natalie Smith-Parra, Editor; Terri Smith, Mailing; Katha McDonald, Mailing; and Hans Sherrer.

# "Cold Case" Detectives Close File By Fingering The Wrong Person — The Patricia Wright Story

By Patricia Ramdhan-Wright

In September 1981 a terrible crime occurred. My ex-husband, Willie Jerome Scott was brutally stabbed to death inside of his motor home, on a dark street in a seedy part of downtown Los Angeles. Seventeen years later a second crime took place. I was arrested, charged, convicted and sentenced to life in prison without the possibility of parole for Jerome's murder. Both crimes were horrifying, but the second one was sanctioned by the legal system.

**Jerome came out of the closet as gay**

Jerome and I had a wonderful, loving marriage devoted to raising our children in a happy home. We socialized with many famous musical personalities like Barry White, a frequent visitor, and various artists from Motown, including the Jackson's; Michael, Randy and Janet. We even named our son after the legendary Quincy Jones.

We had it all until one day in 1978 when Jerome informed me that he was gay. We agreed to go our separate ways, divorcing in 1979. I couldn't understand Jerome's lifestyle of homosexual lovers, and I was concerned that he had become deeply involved in the dark world of drugs and shady dealings. Somehow in spite of our differences, we still remained good friends, and I saw him when he would come by to visit our children.

**Jerome's unsolved September 1981 murder**

I was shocked and saddened to hear that Jerome's decomposed body had been found inside his motor home with a knife sticking out of his chest and a plastic bag wrapped around his head. Trash and garment bags obscured his partially decayed body and there was blood inside the motor home. He had been brutally stabbed numerous times and there was evidence of recent anal sex, but the deteriorated condition of his body made it difficult for the medical examiner to determine exactly when he died.

The original investigation seemed to focus on his murder being related to his drug use and gay lifestyle. I was questioned at length about what else he might have been involved in. I helped as much as I could, but my last contact with Jerome had been over a week earlier, when he came by our house in Lake Encino (more than 20 miles northwest of downtown Los Angeles). He told me he would return shortly to take the kids and I on a weekend outing in his motor home. He had his boyfriend with him and said he needed to drop him somewhere before we went on our outing. That was the last time I ever saw him.

Based on the details about Jerome's murder, anyone that knew him could see that something wasn't right. He had always been meticulous about his appearance and he favored expensive jewelry and watches. He had withdrawn $10,000 in cash the week of his death, but when his body was discovered he had less than four dollars in cash and the only jewelry he wore was an inexpensive ring with someone else's initials on it.

I freely cooperated with the police in 1981, and believed I wasn't considered a suspect because none of the blood found at the scene matched mine. Nor did any of the thirteen sets of fingerprints or any other forensic evidence found at the crime scene point to me in any way. Since Jerome's case remained unsolved, LAPD detectives also questioned me in 1983, 1985 and 1987.

**LAPD "cold case" unit reopens Jerome's case**

In 1995 a new LAPD "cold case" task force was established, and Jerome's case was one they considered.

There were a number of people who could have had the motive, means and opportunity to kill Jerome. His nephew was a known drug dealer and gang-banger who had many run-ins with the law by the time of his uncle's murder. The nephew's fingerprints were among the thirteen sets found in the interior of the motor home, but when the cold case detectives looked for him in 1997, he was already in prison for another violent crime so they didn't pursue him. Jerome's ex-lover, Herman Cross, was originally investigated and considered a good suspect because of his jealousy over Jerome's younger lovers and the fact that he was the beneficiary for a life insurance policy on Jerome obtained when they were together. Cross died of A.I.D.S. several years after the murder, so the cold case detectives chose not to pursue investigating him as Jerome's murderer. The last person known to have been with Jerome was a male prostitute named Ralph or Roger, but he was never located. Consequently, the detectives chose the path of least resistance by focusing on me as a suspect.

My brother Larry, angry with me at the time, fanned the flames of suspicion by pointing a finger at me. In 1995, when he was living in Connecticut, he told authorities that he had information about the 1981 murder of his ex-brother-in-law. Two LAPD detectives visited him and he signed a statement they wrote that implicated not just me, but also Larry Slaughter, a family friend, in Jerome's murder.

**Arrested For Jerome's Murder**

The real nightmare began in earnest in August 1997, when I was arrested and charged with Jerome's murder based on my brother's claim. I was taken before Judge Lance Ito (of O.J. Simpson fame), and he ordered my immediate release due to a lack of evidence.

My relief was short lived because I was re-arrested two weeks later and taken before a different judge. This time the prosecution claimed to have a taped confession from Slaughter. They considered the alleged confession as the case's "smoking gun." The detectives alleged that Slaughter was taped telling them that I hired him for $25,000 to kill Jerome. The new judge decided, without hearing the tape, that there was now sufficient evidence to hold me for trial. When my public defender demanded to hear Slaughter's alleged taped confession the detectives claimed the tape was "lost."

Even though they claimed to have Slaughter's (unsubstantiated) confession, the detectives began scrambling to find evidence against me. So they started a campaign of harassment against my family members and friends to try and induce them to provide incriminating information. As luck would have it for the detectives, by that time my disgruntled brother was imprisoned in Connecticut for child abuse related convictions. The detectives, Steve Koman and Russell Long, flew to Connecticut and questioned Larry in prison about Jerome's murder. They dangled in front of him the carrot of a "sweetheart deal." In exchange for him providing the evidence they needed for the charges against Slaughter as Jerome's murderer, and me as an accessory to stick, he would be sentenced to eight months in jail for a misdemeanor and the felony convictions would be cleared from his record.

Facing 12 years in prison targeted by other prisoners as a child abuser, he jumped at the deal and made a videotaped statement. By claiming I had made incriminating admissions, the detectives gave him the opportunity to get even with me for financially cutting him off years earlier. He implicated Slaughter as the actual murderer and me as the crime's mastermind.

**Wright cont. on p. 19**

# Eight Men Exonerated 32 Years After Execution For Treason — Relatives Awarded $67.4 Million

By JD Staff

Eight South Koreans were tried in December 1974 for committing treason by organizing the subversive People's Revolutionary Party. The government alleged that the men sought to overthrow the South Korean government and build a communist nation in cooperation with North Korea. Confessions by the men were introduced as evidence supporting the charges. The men asserted in their defense that they had been tortured into making the confessions. They also claimed that while they were critics of the government, they had not done anything except advocate democratic changes and they did not belong to any revolutionary organization.

All eight men were convicted and sentenced to death. They were executed in a mass hanging on April 9, 1975, less than eight hours after South Korea's Supreme Court upheld their convictions and sentences. The eight men were Woo Hong-seon, Song Sang-jin, Seo Do-won, Ha Jae-wan, Lee Su-byeong, Kim Yong-won, Doh Ye-jong and Yeo Jeong-nam. Su-byeong wrote in his last message before being hanged, "I have not done anything but object to the Yushin establishment. Why should I die on a false charge when I have fought only for national and democratization? My undue sacrifice will asserted by justice."

Twenty-seven years after the men were executed, it was publicly disclosed in September 2002 that the the revolutionary group the men had been convicted of organizing never existed. To galvanize public support for its harsh anti-democratic domestic policies, the South Korean government conjured a fake domestic threat by fabricating the People's Revolutionary Party out of thin air. It was also disclosed that the Korean Central Intelligence Agency had tortured confessions from the eight men, just as the men had claimed at their trial. The men's cases were re-opened based on the new exculpatory evidence. On January 23, 2007 all eight men were posthumously acquitted after a retrial.

Following the exonerations, the families of the men sought compensation by filing a lawsuit against the South Korean government. On August 20, 2007, the Seoul Central District Court awarded 46 relatives of the eight men $28 million, plus 5% interest on the award for the 32 years from 1975 to 2007. With interest the award totaled $67.4 million. (Note: The base award was for 24.5 billion won (South Korean money), which converts to US$28 million, and with interest the 63.7 billion won converts to US$67.4 million.) In making its ruling, the court stated: "Although the state is obliged to protect the basic rights of the people and guarantee the dignity and value of each one of them, it took the precious lives of these eight men by using its power to label them as an impure force in society and drive them out. Their family members have suffered from society's cold treatment, social disadvantages and consequential financial difficulties for the past three decades."

In awarding compensation, the court rejected the government's argument that the statute of limitations for filing a claim had expired, because it began to run when the wrongful executions were carried out in 1975. The court recognized that the families couldn't have filed a successful claim until the men were cleared of their wrongful convictions and executions. Consequently, "We cannot allow the government to be exempt from its responsibility by claiming that the statute of limitations has passed." The court also stated, "It is humiliating for the nation to use the statute of limitations in order to escape its responsibility. The government's claim cannot be accepted."

The compensation award was the largest in South Korean legal history related to wrongful convictions. Dozens of other critics of South Korea's government were convicted in the 1970s of trumped-up charges related to their alleged activities with the non-existent People's Revolutionary Party. Those people were given sentences ranging from 15 years to life in prison, so there could be additional exonerations and compensation awards.

The eight defendants stand before the South Korean Supreme Court on April 8, 1975. They were executed less than eight hours later.


Sources: Reflections on the court's decision to retry 'the people revolutionary party reconstruction commission case', *Korea Democracy Foundation Newsletter*, February 2007.
Families of eight wrongfully executed political prisoners awarded compensation, *The Hankyoreh* (Seoul), August 22, 2007.


# Sheila Rose Steele In Memoriam

Sheila Rose Steele speaking at a 2004 March For Justice in Saskatoon.

Sheila Rose Steele and Richard Klassen founded the injusticebusters.com website in June 1998 to publicize outrageous miscarriage of justice cases. Steele was a longtime social activist who assisted Klassen when he, his wife, and 10 other adults were falsely arrested in 1991 for allegedly abusing three foster children the Klassen's cared for in their Saskatoon, Saskatchewan home. In 1993 the charges were dropped against the Klassens. A year later they filed a $10 million malicious prosecution lawsuit against the therapist who claimed the children had been abused, the Saskatoon police officer who investigated the case, and two prosecutors. In December 2003 three of the four defendants were found liable for malicious prosecution, and in November 2004 details were disclosed of the lawsuit's settlement for $1.5 million.

Based in Saskatoon, injusticebusters.com grew to be the most prominent Canadian based website of wrongful prosecutions and other injustices. Profiling both Canadian and U.S. cases, the website featured details about hundreds of cases. A trademark feature was a distinctive poster of a wronged person with brief details about their case.


Injusticebuster.com poster for Kirstin Blaise Lobato, whose case was featured in JD Issues 26 and 34.

Steele and Klassen also engaged in direct action by organizing protests of an injustice.

Steele died on November 11, 2006. She was 63. Her son, Kevin Steele, took over administering the website, and Klassen vowed to continue the organization's activities as long as he could. In November 2007 Klassen announced that they could no longer investigate or report on new cases, but that the website will be maintained online indefinitely. The injusticebuster.com website has had many millions of visits since 1998, and it remains a valuable source of information about the cases it reported on, so the memory and vision of Sheila Rose Steele continues to live on.


Source: Remembering Sheila Rose Steele, Saskatoon *StarPhoenix*, November 14, 2006.
Settlement details released for Sask. couple accused of child abuse, *CBC News,* November 19, 2004.

# Woman Admits Fabricating Rape Accusation Against Armand Villasana – Seven Years After His Release From Prison

By Hans Sherrer


Armand Villasana

Judith Ann Lummis reported on September 16, 1998 that she had been kidnapped at knifepoint from a Springfield, Missouri Sonic Drive-in, and raped and sodomized. She described her attacker as a Hispanic in his early 20s. When 45-year-old Armand Villasana was arrested nine days later for an unrelated warrant, he became a suspect because he faintly resembled a sketch made from Lummis' description of her attacker's face. Lummis subsequently identified Villasana in a photo line-up, even though he was taller, thinner and twenty years older than the man she described to police in her statement only days earlier.

Villasana was charged based on Lummis' identification. Even though a pre-trial challenge was successful at barring the prosecution from using Lummis' line-up ID – the judge ruled it was "suggestive" because Villasana was the only Hispanic in the photo line-up – the charges against Villasana were not dropped.

The Missouri Highway Patrol crime lab informed the prosecution and Villasana's counsel prior to his trial that no semen was found in Lummis' rape kit, and no DNA testing was conducted.

**Villasana's conviction and post-conviction proceedings**

The jury disregarded Villasana's protestations of innocence, and instead relied on Lummis' in-court identification (without mention of the line-up) to find him guilty on November 10, 1999 of rape, kidnapping and forcible sodomy. The jury recommended a sentence of 70 years in prison.

After Villasana's conviction, but before his sentencing, family and friends hired two defense attorneys to replace his public defender. One of Villasana's supporters, Kathy Moore, told a reporter, "You just sit and think, how can the justice system be this way when you know he's innocent?"

The attorneys hired were Shawn Askinosie and Teresa Grantham. In researching Villasana's case they discovered that his trial lawyer had been misinformed: the crime lab in fact had evidence that could be DNA tested. The untested evidence was a vaginal swab, Lummis' sweat pants and the hospital sheet stained by her fluids. The lawyers were successful in getting a court order for DNA testing of those items. In June 2000, on the day scheduled for Villasana's sentencing, Askinosie and Grantham presented the judge with the test results that excluded Villasana as the source of any DNA on those three items. Furthermore, and just as significant, a DNA profile was identified as originating from a person other than Lummis, her husband, or Villasana.

Based on the new evidence that excluded Villasana as Lummis' attacker, the prosecution dismissed the charges against him and he was released after spending 21 months in the Greene County Jail. Villasana said at the time, "All I know is, I didn't do it. The DNA says I didn't do it." Greene County Prosecutor Darrell Moore still insisted that he believed Villasana was guilty, he just couldn't prove it.

**Villasana sues crime lab personnel**

After his release, Villasana filed a federal civil rights lawsuit (42 USC §1983) that named six crime lab employees as defendants.

The lab's official report in Villasana's case only referred to the absence of semen, and made no mention that there was additional biological evidence that could be DNA tested. Villasana' lawsuit "alleged that [serologist Joseph] Roberts and five Crime Laboratory supervisors violated Villasana's due process rights under *Brady* by failing to disclose or cause to be disclosed the underlying test documents and by failing to adopt policies and to train Roberts and other personnel to ensure "production of exculpatory or potentially exculpatory evidence." (*Armand Villasana v. Weldon Wilhoit*, No. 03-2266 (8th Cir. 06-01-2004))

In 2004 Villasana appealed to the Eighth Circuit Court of Appeals after "the district court granted the defendants' motion for summary judgment, concluding they are entitled to qualified immunity from these claims. The court reasoned that no case has extended liability under *Brady* to crime laboratory technicians and therefore Villasana failed to show "that defendants had a clearly established obligation under *Brady* to disclose exculpatory or potentially exculpatory evidence to the prosecution or to the plaintiff."" *Id*. In affirming the lawsuit's dismissal the appeals court expanded on the district court's rationale by asserting the responsibility to turn over the exculpatory evidence to Villsasana was borne by his prosecutors, and the doctrine of absolute prosecutorial immunity shielded them from civil liability: "The *Brady* doctrine imposes an absolute duty on the prosecutor to produce all materially favorable evidence in the State's possession. ... When acting in those capacities, the prosecutor has absolute immunity from *Brady* damage claims under §1983." *Id*.

**Source of crime scene DNA identified**

Missouri law requires the comparing of DNA samples collected from prison inmates with the DNA evidence in cold cases. In November 2005, more than five years after Villasana's release, a DNA sample taken from a prisoner at the Ozark Correctional Center was matched with the unknown DNA profile detected from the evidence in Lummis' case.

In June 2006 the Greene County Sheriff's Department was notified of the DNA match, and after additional testing confirmed the result, the Lummis kidnapping/rape case was reopened in January 2007.

The prisoner identified by the DNA was interviewed, and he provided a twist that no one expected. He told investigators that in 1998 he was having an affair with Lummis. After her husband questioned why she was late getting home on September 16, 1998, she made-up the kidnapping and rape story on the spur of the moment so he wouldn't find out she was cheating on him. He said that he had sex with Lummis the night she reported the attack, and that is why his DNA was detected.

Investigators then tried to find Lummis to question her about the man's claims. They were initially unsuccessful because she was on probation and she had skipped reporting. However, in checking her background, detectives discovered that she had made a nearly identical kidnapping report in Aurora, Missouri against another man that was proven to be false prior to his trial.

**Lummis admits crime was a hoax**


Judith Ann Lummis

Lummis was finally arrested for violating her probation. When confronted with the DNA test results and the statement of her ex-lover, she admitted on August 7, 2007 that to conceal her extra-marital affair from her husband, she fabricated the kidnapping and rape that she accused Villasana of committing.

**Villasana cont. on p. 6**

# Martin Tankleff's Murder Convictions Overturned After 17 Years Imprisonment

By JD Staff

Martin Tankleff the day of his release

In September 1988 17-year-old Martin Tankleff's parents, Seymour and Arlene, were murdered in their Long Island, New York home. Tankleff immediately accused his father's business partner, Jerard Steurman, of the crime. However, under intense questioning by detectives, the distraught teenaged Tankleff confessed to the murders, which he immediately retracted, and he refused to sign a statement written by a detective. Relying on the oral confession, the homicide detectives did not seriously investigate Steurman as a suspect.

Tankleff's 1990 trial was a media sensation. It was one of the first trials broadcast live, and it resulted in the founding of Court TV. Tankleff insisted on his innocence, but he was found guilty by a jury, and sentenced to 50 years to life in prison.

Tankleff's conviction was affirmed on direct appeal. However, family and friends believed in his innocence, and in 2000 *Justice:Denied* published an article about Tankleff's case (Issue 12). In 2001 private investigator Jay Salpeter began digging for new evidence.

Salpeter discovered damning evidence supporting Tankleff's original accusation that Steurman was the person behind the murders. Three men were identified as being directly involved in the crime under his direction. One of the men, Glenn Harris, admitted in an affidavit to being the getaway driver and he provided details of the crime, including the roles of his two accomplicies. Supporting the new evidence against Steurman is that he owed Seymour Tankleff $500,000, he quarreled with him over repayment of the money, he was in the house the night of the murders, he left suicide notes a week after they occurred, and he changed his appearance and fled to California where he lived under an assumed name.

Salpeter's investigation resulted in Tankleff filing a motion in October 2003 to vacate his convictions based upon the newly-discovered evidence of his actual innocence. An evidentiary hearing, during which 23 witnesses testified, commenced on May 12, 2004 in Suffolk County. Almost two years later, on March 17, 2006, the judge denied Tankleff's motion on four grounds. Two of those grounds were Tankleff didn't exercise "due diligence" in finding his new evidence, and the judge did not agree that the new evidence proved his claim of "actual innocence. Tankleff was granted leave to appeal the judge's ruling. *Justice:Denied* published another article about Tankleff's case in the summer of 2006 (Issue 33).

On December 18, 2007 the New York Court of Appeals released its written opinion. *People v Tankleff*, 2006-03617 (NY Ct of Appeals 12-18-2007)

The lower court's ruling that Tankleff did not exercise "due diligence" was the one most fatal to his motion, and the appeals court strongly rejected the judge's rationale: "The defendant's investigation resulted in a body of new evidence which required time to accumulate. He should not be penalized for waiting to amass all of the new evidence and then presenting it cumulatively to the County Court. Such conduct avoided separate motions upon the discovery of each witness, obviated the squandering of resources, and preserved judicial economy."

After an extensive analysis of the arguments of Tankleff and the prosecution, the appeals court ruled that "the newly-discovered evidence is "of such character as to create a probability that had such evidence been received at the trial the verdict would have been more favorable to the defendant." The court then ordered the vacating of Tankleff's two murder convictions and his sentences, and that a new trial be conducted "with all convenient speed."

Tankleff was released on bail on December 27, 2007. Two days later *The New York Times* published an article that for a year New York's State Investigation Commission had quietly been conducting an official inquiry into Suffolk County law enforcement's handling of the investigation into the murder of Tankleff's parents.

Four days after the *Times'* revelation that his office was under official investigation for its handling of the Tankleff case, Suffolk County District Attorney Thomas Spota announced on January 2, 2008 that Tankleff would not be retried, and that the murder charges would be formally dismissed against him on January 18, 2008.

Martin Tankleff was wrongly imprisoned for more than 17 years for the murder of his parents.

Sources:


Convicted of Killing His Parents Even Though He Tried to Save His Father's Life!, *Justice:Denied*, Issue 12.
Will The Frame-up Hold Up? The Martin Tankleff Story, *Justice:Denied*, Issue 33, Summer 2006.
http://www.martytankleff.org (Extensive case documentation is on Tankleff's website.)
Out on bail, Tankleff's goal is acquittal, *Newsday*, December 28, 2007.
New York is said to have inquiry in Tankleff case, *The New York Times*, December 29, 2007.
Suffolk DA drops Martin Tankleff murder case, *Newsday*, January 2, 2008.


Anyone seeking to overturn a wrongful conviction needs to take to heart the observation of Winston Churchill:

"Success is going from failure to failure without losing enthusiasm."

## Villasana cont. from p. 5

Several weeks later Greene County Prosecutor Darrell Moore publicly revealed that Villasana had been convicted of a hoax crime. He said, "It's outrageous. I cannot apologize to Mr. Villasana – that belongs to the complaining witness in this case. I can tell Mr. Villasana that I'm sorry." Moore said he would like to prosecute Lummis for perjury, but, "Unfortunately, the statute of limitations has run out on this case." Moore also said of Lummis' admission, "The statement she gave to the detective, there's nothing contrite about it. She just admits that she lied to protect herself."

After Moore finished his statement, Villasana told reporters, "I just thank God that I'm out free and I'm glad that everybody knows that I was innocent from the beginning." His attorney Gregory Aleshire said that a civil suit against Lummis is possible. However, Lummis has had a checkered life, and it is questionable if she could ever pay any significant amount of any judgment.

**Lummis sentenced to four years in prison**

Prior to falsely accusing Villasana, Lummis pled guilty in April 1998 to forgery and fraudulently attempting to obtain prescription diet pills. She was released on probation with a four-year suspended prison sentence, but she skipped out on her probation after Villasana's November 1999 trial. After Lummis' arrest in August 2007 and her admission that she fabricated her testimony against Villasana, her probation was revoked. In late August she was sentenced to serve her original four-year prison term. Lummis is currently incarcerated in a Missouri prison.

Sources:


Revelation clears Villasana's name: A DNA match with a Missouri inmate uncovers 1998 rape accusation as a lie, by Amos Bridges, *News-Leader* (Springfield, MO), August 24, 2007.
Convicted man freed by DNA tests, *News-Leader* (Springfield, MO), June 22, 2000.


# Perjury And Concealed Evidence Pave Way To Death Row – The Richard Clay Story

By Richard Clay

My name is Richard Clay. In May 1994 I was arrested in New Madrid, Missouri for the murder of Randy Martindale, who was shot to death in his estranged wife's home.

Physical evidence and motives for Martindale's murder do exist, but they point to his estranged wife, Stacy Martindale. For months Stacy had actively recruited her boyfriend Charles Sanders to commit the crime. Both were also charged in the murder. I didn't know Martindale, but I was acquainted with Stacy, and Sanders was a friend of mine.

Sanders was having a long-term affair with Stacy at the time of Martindale's murder. The affair started in 1990. They in fact had a child together while she was married to Martindale. In February 1994 Stacy asked Sanders to help her kill her husband. She was unhappy in her marriage and she was the primary beneficiary of her husband's $100,000 life insurance policy. During the spring of 1994, every time she met with Sanders they discussed various plans to kill her husband. This is explained in *State v. Clay*, 975 S.W.2d 121 (Mo.banc 1998).

Stacy offered Sanders $10,000 to kill her husband. Sanders testified to this during Stacy's trial, and that she gave him a check for nearly $5,000 as a down payment. Sanders said that a few weeks later he returned the check to her after refusing to kill Martindale. A carbon copy of the check was later discovered at a friend's home. Instead of destroying it as Sanders' requested, the individual gave it to the police.

The prosecution contended that after Sanders refused to do so, Stacy hired me to kill her husband. Yet no proof was ever presented indicating such an arrangement existed. Neither did anyone testify they heard me express an interest in committing the crime, nor did the prosecution present any eyewitnesses who claimed to have seen me commit the shooting, or who claimed to have seen me at the house when it happened.

**Police implicate Richard Clay in the murder**

So how did the police decide I was involved in Martindale's murder? The night of the murder, but before the police dispatcher reported the shooting, New Madrid Police Officer Claude McFerren has testified that he saw a car driving towards him with sparks flaring from its undercarriage. He also testified he turned his vehicle around to follow the car because he thought the driver might be drunk. When the car, which wasn't speeding, turned down a gravel road, officer McFerren continued on the main road that he knew intersected with the gravel road around the corner. When he next saw the car it had stopped on the gravel road, no one was inside, the engine was still running, and both doors were open. He went to the driver's side and turned the engine off. When it was reported on the police radio that there had been a murder, the Missouri Highway Patrol was contacted and a search ensued for the car's occupants. I was arrested the next day. The car was Stacy's red Camaro that I was the passenger in while Sanders was the driver.

I have steadfastly denied any connection with Martindale's murder. I testified at my trial that on that evening a few hours before the murder I got a ride from the Double Nickel Bar in Sikeston, Missouri to the nearby Ramada Inn. I went there to pick up methamphetamines from two contacts who fronted me the drugs to sell. Sanders and Stacy met me outside the Ramada Inn's bar. The three of us then went in Stacy's Camaro to her home so she could pay me for the drugs she wanted to buy. While Sanders and I waited in the car she went into the house. A couple of minutes later, Martindale arrived with his two sons and went inside. Stacy then came out and gave her car keys to Sanders. I could not hear the conversation between them, since Sanders had gotten out of the car. Sanders then got back into the car and told me we were leaving. Martindale had parked behind us, so Sanders had to pull forward into the carport where he apparently snagged a child's toy. That was what caused the sparks seen under the Camaro by officer McFerren.

> "Officer McFerren told me that no matter what they tried to make him say, he knew there were two people in the Camaro."
> (Affidavit Of Raburn Evans)

When I realized a police car was following the Camaro, I asked Sanders to let me out because I still had the drugs that I had not yet paid my suppliers for. After we stopped on the gravel road, Sanders and I took off running in opposite directions. My shoeprints were later identified as those leading away from the passenger side door. I was unaware that Martindale had been killed until I was caught the next day. Martindale's murder had not been called into the police by his wife until about the time Sanders and I ran from the Camaro.

During the police search for whoever ran from the Camaro, which resulted in my arrest, a bullet allegedly matching the make and caliber of those which were used to shoot Martindale was found in a field about 150 yards from any footprints. However, the footprints that were found 150 yards from the bullet did not match my shoes. One thing that was proven is Sanders had a gun of the same caliber as the gun used to shoot Martindale. Sanders testified at my trial that the gun disappeared from his car before Martindale was killed, and that there had been times that I borrowed his car.

Stacy told the police that she was in her bedroom when she heard gunshots, but she didn't see who was doing the shooting. After seeing her husband had been shot, she immediately ran to her next-door neighbor's house to call 911, leaving her two kids in the house. So only a minute or two at the most would have elapsed from the time of the shooting to when it was reported to the police. Later a crime lab technician testified at my trial to finding gunpowder residue on Stacy's hands. Although the prosecution claimed at my trial that I shot Martindale, my hands were not tested for gunpowder residue.

The core of the prosecution's theory at my trial was that I had hidden in a closet at the Martindale house, and I jumped out and shot him. The prosecution also claimed that after the shooting I took off alone in Stacy's Camaro and dumped the gun during the search for me. The police exhaustively searched for the murder weapon, and even drained a body of water where I had been hiding, but they found nothing. It later proved significant that Stacy's prosecutor Kenny Hulshof, who was also my prosecutor, argued to her jury the opposite of what he had argued to my jury, namely that Stacy shot her husband – not me! The prosecution also claimed that Sanders had backed out of Stacy's plot and he was not present that night. Yet, Sanders was charged with first-degree murder until after he testified at my trial, and then Stacy's trial.

**Conviction and death sentence**

I was convicted of first-degree murder in June 1995 and sentenced to death. Later in 1995 Stacy was convicted after a separate trial of second-degree murder and sentenced to 15 years in prison. Sanders cooperated with the police and prosecutors, testifying as the prosecution's "star" witness at both trials. Sanders testified about Stacy's persistent efforts to enlist him to murder her husband, that I could have taken his gun from his car, and that he was neither

**Clay cont. on page 17**

# Ken Richey Released After 21 Years On Ohio's Death Row

By JD Staff

Kenneth (Ken) Richey was twenty-one when in 1986 he was convicted and sentenced to death by an Ohio state court for aggravated felony murder in connection with the death of a friend's two-year-old daughter in a fire.

The prosecution's case was based on their argument that the child's death was caused by an arson fire set by Richey in a jealous rage against his ex-girl friend, who lived in the apartment beneath the one in which the fire started. That apartment was occupied by the young girl and her mother, who was Richey's friend. Richey's lawyer presented no evidence challenging the prosecution's contention the fire was started deliberately.

Richey's conviction and death sentence were affirmed on direct appeal.

Richey, a native of Scotland, was able to garner enough support to retain two fire experts who determined that the prosecution's experts used flawed scientific methods not accepted in the fire-investigation community to determine that arson caused the fire. Ohio denied Richey's state post-conviction appeal based on his trial lawyer's ineffectiveness for failing to challenge the prosecution's arson argument.

Richey then filed a federal habeas corpus petition. Although the U.S. District Court judge agreed that the prosecution's fire experts had been discredited, he denied the petition.

Richey appealed to the federal Sixth Circuit Court of Appeals, which in January 2005 overturned Richey's conviction and sentence on the basis he received constitutionally ineffective assistance of counsel at trial and on appeal.

Ohio filed a writ of certiorari with the U.S. Supreme Court, which accepted review of the case. In October 2005 the Court overturned the Sixth Circuit's decision. Although it reinstated Richey's conviction and death sentence, it remanded the case back to the Sixth Circuit to determine if Ohio had failed "to preserve its objection to the Sixth Circuit's reliance on evidence not presented in state court by failing to raise this argument properly before the Sixth Circuit."

After conducting the analysis ordered by the Supreme Court, the Sixth Circuit decided Ohio did not preserve its objection to Richey presenting evidence for the first time in federal court, and on August 10, 2007 again overturned Richey's conviction and death sentence.

Ohio announced its intention to retry Richey, with the state Attorney General taking over his prosecution. With Richey's retrial scheduled for March 2008, plea negotiations began behind the scenes. Richey flatly rejected pleading to any charge related to arson or that the child was murdered. In mid-December Richey and the prosecutors agreed that in exchange for a no-contest plea to attempted involuntary manslaughter, child endangerment, and breaking and entering, he would be sentenced to time served and released immediately. Richey also agreed not to sue the state for wrongful imprisonment or seek any other damages for his more than 21 years of imprisonment. The deal was a compromise for both parties, Richey insisted he did not agree to babysit his friend's child and he had nothing to do with the fire so he had no responsibility for what happened, while the prosecutors insisted they thought he was guilty of arson and murder.

Ken Richey wearing a Scottish Glengarry cap after his release.

Richeys brother, Steve, said Richey told him that the deal wasn't ideal, but that he agreed to it because wanted out of prison and was tired from decades on death row fighting for his freedom.

> "They tried to kill me, they tried to break me and they nearly won – they nearly had me in that death chamber so many times. But in the end, it's the truth that wins." Ken Richey

A hearing was scheduled for December 20, with Richey planning to fly home to Scotland the next day. However, just hours before the hearing on the morning of the 20th, Richey, who at 43 has a history of heart trouble, was rushed to the hospital with chest pains. Tests discovered that he has a 60% blockage of the arteries to his heart. Not wanting to delay his release any longer, Richey elected to have an operation after he returned home to Scotland. The plea and sentencing hearing was rescheduled for January 7, 2008.

For years Richey's former fiancée Karen Torley, who lives in Scotland, campaigned for his release. The morning of the court hearing she told reporters, "I spoke to Kenny only a few hours ago and he said he wouldn't believe it until it actually happens. I can hardly believe it myself. The past few days have just been so emotional. This is the closing of a long and painful chapter – and the start of a new one."

With media from around the world present, the plea hearing on the morning of January 7 took about 30 minutes. After a release process, Richey walked out of the Putnam County Jail, free of shackles for the first time in 7,861 days. Richey had spent more than half his life imprisoned. His first words to the press were, "It's been a long time coming." He also said, "There are innocent people on Ohio's death row – and they need your help."

Ken Parsigian, Richey's *pro bono* lawyer for the past 15 years, told reporters: "This deal represents a complete capitulation by the State. What Kenny said he would never do is plead to murder or arson – and he's not." He continued, "I've been a lawyer for 20 years and I've had huge wins for clients with billions of dollars at stake. But this is the case that means the most, that defines everything I believe in. This case didn't make a penny, but it proved a point – and the point is that we have a system in which everyone is entitled to quality representation and to justice."

Clive Stafford Smith, legal director for Reprieve, a United Kingdom charity that works on behalf of British nationals on death row in countries around the world, said after Richey's release, "There should be no mistake that this deal is nothing short of complete vindication for Kenny. The prosecutors no longer accuse him of murder or having anything to do with starting the fire. Instead, they have charged him with, essentially, failing to babysit."

Since the plea deal bars him from suing for compensation, Richey sold his story of being on death row for two decades to two tabloids and a TV station for about $100,000.

Previous Justice:Denied articles at the Ken Richey case:
"The Crime That Never Was," *Justice:Denied*, Issue 11, March 2000.
"Ken Richey's Conviction and Death Sentence Overturned A Second Time," *Justice:Denied*, Issue 37, Summer 2007.

Sources:
*Richey v. Mitchell*, 395 F.3d 660, 2005 Fed.App. 0039P (6th Cir. 01-25-2005)
*Bradshaw* v. *Richey*, 126 S. Ct. 602 (2005).
*Richey v Bradshaw*, 07a0307p-06 (6th Cir 8-10-2007)
Illness delays plea to leave death row, By John Seewer (AP), *The Cincinnati Post*, December 21, 2007.
21 years on — freedom for Kenny Richey, By Jacqui Goddard, *The Scotsman*, January 8, 2008.

# Jury Instruction's Erroneous Definition Of "Harass" Results In Tossed Conviction

Republican Party official James Tobin was federally prosecuted and convicted in 2005 of two counts related to a telephone scheme intended to interfere with voting by New Hampshire democrats in the November 2002 election. The federal First Circuit Court of Appeals reversed Tobin's convictions, ruling that the trial judge improperly instructed the jury as to the definition of "harass," an element of the crime. The following are excerpts from the Court's decision.

James Tobin

***United States v. Tobin***
No. 06-1883 (1st Cir. 03/21/2007)

[1] United States Court of Appeals For the First Circuit

[3] 2007.C01.0000085 <http://www.versuslaw.com>

[4] March 21, 2007

[5] United States of America, Appellee,
v.
James Tobin, Defendant, Appellant

[11] A federal statute makes it a criminal offense to "make or cause the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number." 47 U.S.C. § 223(a)(1)(D) (2000). James Tobin was convicted by a federal jury in New Hampshire of conspiracy to commit this offense, and of aiding and abetting another to do so, and now appeals. The events leading to the conviction are as follows.

[12] In 2002, Tobin was New England Regional Director of the Republican National Committee. Prior to the November 2002 election, Tobin traveled to New Hampshire to coordinate VIP visits to the state. During the visit Tobin was approached by Charles McGee, Executive Director of the New Hampshire Republican State Committee. There ensued a conversation regarding a plan by McGee to disrupt the operations of the New Hampshire Democratic Party on election day.

[13] During this conversation McGee asked for the name of someone who might be able to assist in a plan of this sort. Tobin provided the name of Allen Raymond, a longtime acquaintance, who owned a business that coordinated and designed telephone services for candidates and campaigns. Tobin and McGee did not speak again, but Tobin made a telephone call to Raymond to alert Raymond to expect McGee's call.

[14] McGee and Raymond spoke together and e-mailed each other several more times and agreed upon the means of disruption—telemarketers would inundate specified numbers with hang-up calls—and the price for it. … None of these calls or any e-mails were made known to Tobin. McGee provided Raymond with six telephone numbers: five were for Democratic Party phones and one was for the firefighters union, which was offering rides to the polls.

[15] Just as the polls were opening on election day, … for approximately 85 minutes, the phones at the targeted numbers rang almost continuously and the six telephone lines were blocked by repeated hang-up phone calls made by the firm that Raymond had earlier retained.

[16] On May 18, 2005, a federal grand jury returned a superseding indictment charging Tobin with crimes stemming from the phone tie-up in New Hampshire.

[17] McGee and Raymond each pled guilty to a violation of 47 U.S.C. § 223(a)(1)(C). McGee served seven months and Raymond's sentence was reduced to three months after his cooperation at Tobin's trial. Tobin proceeded to trial, which began on December 6, 2005. At trial the government's principal witnesses were McGee and Raymond.

[18] On December 15, 2005, the jury … found Tobin guilty of conspiracy to violate and of aiding and abetting a violation of section 223(a)(1)(D). Tobin was sentenced on May 17, 2006, to 10 months' imprisonment, two years' supervised release, and a $10,000 fine.

[19] Tobin's first and most far-reaching claim of error relates to the proper meaning of section 223(a)(1)(D)'s "intent to harass" requirement. From the outset, the district judge was concerned that the government was seeking to extend the statute from one directed at harassment of the called party to one embracing the disruption of telecommunications systems.

[22] On appeal, Tobin argues that "harass," in the present context, means to cause emotional distress in persons at the called number, that the jury should have been so advised, and that the "good faith" and "unjustifiable motive" language [in the jury instructions] greatly broaden the statute beyond its permissible meaning. The government responds that the attack was not preserved in the district court and is also without merit.

[23] It is true that Tobin did not ask the district judge to use the emotional distress language now urged.

[24] This omission, arguably forfeits this claim – subject always to the plain error doctrine. Whether the plain error test could be met need not be decided because we agree with a companion objection to the instruction which Tobin fully preserved, namely, that (quoting his objection f.):

[25] The references to "an unjustifiable motive" and "reasons other than a good faith effort to communicate" dilute the intent requirement, which is a specific intent to harass, not just any unjustifiable motive or any reason other than a good faith effort to communicate.

[26] We side with Tobin on this single issue. The district judge made a creditable effort to make sense of the perplexing statute. But in the end, the district court's "unjustifiable motive" and "good faith" language, used virtually to define "intent to harass," broadens the statute unduly.

[33] In sum we think that to equate harassment with any repeat calling done in bad faith is to enlarge the scope of the statute. We read subsection (D) to require an intent to provoke adverse reactions in the called party and hold that a bad motive of some other kind standing alone, is not enough.

[34] On our reading, the instruction language was overbroad and clearly prejudicial to Tobin. The government does not and could not make a harmless error argument so a remand is required.

[65] We think it fair to add that despite the unattractive conduct, this statute is not a close fit for what Tobin did.

[66] The judgment of conviction and sentence is reversed; the case is remanded to the district court for further proceedings consistent with this opinion.

# Thomas Arthur's Case Exposes the U.S. Legal System's Sordid Plea Bargaining Obsession

*Justice:Denied* Editorial
December 3, 2007

Thomas Arthur's case exposes the sordid underbelly of how the processing of a criminal case in the United States has evolved into a system that is not dissimilar from the operation of an assembly line.

An indicted or otherwise charged person begins their travail at the system's induction end and (unless their case is rejected as a defective for some reason) they exit at the other end stamped guilty or not guilty with as little interruption as possible to the smooth functioning of the process. This necessitates obtaining an overwhelming percentage of convictions by a guilty plea, since a trial clogs the system. The three most obvious factors pressuring a guilty plea are prosecutors overcharging a defendant with alleged crimes, judges who make prosecution favorable rulings, and the over-burdening and under-funding of court-appointed lawyers that most defendants rely on for representation.

A prosecutor's guilty plea offer for reduced charges is a no-brainer for most defendants when the alternative is a much more severe sentence after a likely conviction resulting from representation by an overmatched court-appointed lawyer. The fabulous success of this strategy is evidenced by the 96% of convictions obtained nationwide by a guilty plea.

The system's regularity of processing defendants is interfered with by the low percentage of defendants who insist on a trial at the peril of facing an enhanced sentence if they are convicted. That peril is magnified by the Byzantine rules governing the direct appeal and post-conviction appeal process that follows a conviction.

When Thomas Arthur protested his innocence and went to trial in 1991 for the 1982 murder of a man in Muscle Shoals, Alabama, he did so with a court-appointed lawyer paid the $1,000 mandated by Alabama law. Arthur received the representation $1,000 will pay for – which isn't much. Among other things his lawyer made no effort to investigate alibi witnesses that Arthur told him could establish that at the time of the murder he was more than an hour away in Decatur, Alabama. One thing the lawyer did do right was file a pre-trial motion for forensic testing of crime-related evidence that could exclude Arthur as being present at the crime scene. That evidence includes sperm, hairs, blood, and a bullet and bullet cartridges. The prosecutor opposed testing the evidence, and the trial judge denied the motion.

The prosecution's "star witness" was Judy Wicker. When interviewed at the crime scene, she told officers that her husband, Troy, was shot by a black man who beat and raped her. A rape kit that included semen collected from her was preserved. Suspicious circumstances led to Judy being charged with her husband's murder. At her trial she testified a lone black man committed the crime, just as she had told the police. The jury didn't believe Judy: she was convicted and sentenced to life in prison.

At the time of Arthur's 1991 trial his prosecutor was Wicker's former defense lawyer who had unsuccessfully tried to get her paroled. He made a deal with Wicker that if she testified that Arthur murdered her husband she would be released on parole. She was released within days after Arthur's conviction, and his sentence of death later that same day.

Again represented by an underpaid court-appointed lawyer, Arthur's conviction was affirmed on direct appeal. Alabama does not provide post-conviction legal counsel to death row prisoners, and Alabama's death row lacks a law library. So a death row prisoner without financial resources is dependent on finding a lawyer who will represent him (or her) *pro bono*. By the time Arthur found a law firm willing to represent him, Alabama's courts ruled the statue of limitations had expired for him to file a state post-conviction appeal, so his petition was dismissed as time barred. Likewise, the U.S. District Court ruled that the one-year time limit for filing a federal habeas corpus petition challenging his conviction had expired. In April 2007 the U.S. Supreme Court declined to review the dismissal of Arthur's habeas petition. Consequently, the merits of Arthur's post-conviction challenges to his conviction, which include the constitutional inadequacy of his trial counsel, have never been considered by any state or federal court.

On April 12, 2007, Arthur's lawyers filed a federal civil rights lawsuit (42 USC §1983) for an order compelling Alabama to do what they had refused since 1991 to do voluntarily – allow forensic/DNA testing of the case's evidence. Arthur's *pro bono* law firm was willing to have all the evidence tested at their expense. Testing the sperm collected from Judy Wicker could prove Arthur didn't rape her (or otherwise have sex with her), it could identify who did, and the other untested evidence could possibly also be linked to that same man – further identifying him as the actual murderer. That would prove Judy Wicker told the truth to the police and at her trial, and that she and Arthur had both been wrongly convicted.

The lawsuit was filed five days before Alabama Attorney General Troy King requested that the Alabama Supreme Court set Arthur's execution date. More than two months later, on June 22, Arthur's execution was set for September 27, 2007. Alabama opposed the DNA lawsuit, claiming it was a ploy to delay Arthur's execution. They also argued that testing the evidence was unnecessary because it would not directly prove his innocence of committing the murder. After the U.S. District Court agreed with Alabama and dismissed the lawsuit, the Eleventh Circuit affirmed the dismissal. Arthur's attorneys then filed a writ of certiorari in the U.S. Supreme Court.

While the Supreme Court was considering whether to review the dismissal of Arthur's DNA lawsuit, Alabama Governor Bob Riley ordered a 45-day stay six hours before Arthur's scheduled execution on September 27. The stay was to allow the state Department of Corrections time to revise its lethal injection protocol. The Alabama State Supreme Court subsequently set a new execution date of December 6, 2007. On November 26, 2007 the U.S. Supreme Court declined to review the dismissal of Arthur's DNA lawsuit.

So as this is written on December 3, 2007, Arthur is three days away from his scheduled execution for Troy Wicker's murder. The jury that convicted him did not make an informed decision. Their verdict was based on incomplete evidence because the prosecutor, with the trial judge's aid, successfully blocked forensic testing of the crime-related evidence by techniques available in 1991. Why did the prosecutor who bribed Judy Wicker to lie under oath want so desperately to prevent the testing of the evidence? Is there any reasonable explanation other than that he knew it would have excluded Thomas Arthur from being present at the crime scene? Furthermore, the only reasonable explanation for Alabama's continued opposition to the testing of that evidence by today's most sophisticated forensic/DNA techniques is the fear of what the result would be – the exclusion of Arthur, and the identification of the DNA profile of who in fact murdered Troy Wicker.

The U.S. Supreme Court is currently reviewing a challenge to the constitutionality of execution by lethal injection, so either the Court or Governor Riley may issue a stay of Arthur's execution pending the Court's decision in those cases sometime next year. [*JD* Note: The

**Editorial cont. on p. 11**

The national media has spent much ink and airtime on the efforts of people held as enemy combatants to get a federal court to consider their habeas corpus writ challenging the legality of their imprisonment. However, there is virtually no coverage of how the habeas/post-conviction "right" of millions of Americans convicted of a crime has been emasculated to the point that it is little more than a procedural formality to rubber-stamp their conviction and sentence. We have to thank law Professor Anthony Amsterdam for frankly addressing this grave problem.

# Lady Justice's Blindfold Has Been Shredded

By Anthony G. Amsterdam

Without question, the American criminal justice system is now in an acute state of denial, epitomized by its fetish for finality. Over the past quarter century, legislatures and courts have created ever more rigorous barriers against corrections of mistakes and of violations of the fundamental rights of defendants in the criminal justice system, either on appeal or in postconviction proceedings. On the one hand, there is increasing insistence that violations of defendants' rights before and at trial are not enough to warrant setting aside a conviction and awarding a new trial unless the appellate or postconviction court thinks that the defendant is probably not guilty. Conversely, there is a remarkable unwillingness to take claims of innocence at all seriously. The fixation of courts on the issue of guilt or innocence almost always takes the form of denying claims of error because the judges believe that a convicted defendant is guilty, not of willingness to provide forums for the vindication of convicted persons who present colorable claims of innocence.

A key feature of this development is the wholesale abandonment of the rights-based theory of justice that was long supposed to be the glory of Anglo-American law. That theory posited that individuals have a body of legal rights protected by fundamental law. It said that when these rights were violated, a remedy would be forthcoming. As the ancient maxim put it, *ubi jus, ubi remedium* — where there is a right, there is a remedy. The laws of the land were supposed to prescribe our rights, including the ways in which government had to treat any criminal defendant. If anyone was treated in a way that violated these rights, the courts were supposed to provide appropriate redress.

This is still the way law is taught in law schools and described in treatises, but it bears no relationship to the way courts behave in criminal cases. I am not talking about individual judges. I am talking about something more systemic and radical. We have witnessed a subversion of the very idea that criminal defendants have rights. The blindfold that Lady Justice is supposed to wear to assure that cases are decided with indifference to the outcome has been shredded. Now, as a matter of law, judges are supposed to peep through the blindfold, survey the outcomes which their rulings would produce, and tip the scales to avoid unwelcome outcomes, most notably the releases or even the retrials of guilty-looking perps.

For example, most claims of error made to appellate courts today are rejected on the ground of harmless error, without a ruling on the merits. Suppose you get convicted at a trial at which your coerced confession is admitted into evidence or the prosecutor insinuates to the jury that your failure to take the stand means you're guilty. Your constitutional right against self-incrimination has unquestionably been violated. Do you get a new trial? Not necessarily, or even ordinarily. Doctrines of harmless error originally created to avoid appellate reversals for trivial failures to observe procedural formalities have now evolved into a broad blanket rule upholding convictions whenever appellate judges conclude that even the most indefensible violations of core constitutional guarantees didn't make a difference in the outcome. Theoretically, the test of harmless constitutional error is whether appellate judges can say beyond a reasonable doubt that the error did not contribute to the guilty verdict or sentence. But in practice, it much more often boils down to whether the appellate judges think that the prosecution's evidence of guilt was potent and the sentence well deserved.

One reason why the standard gets watered down in practice is that harmless error analysis is seldom written up in appellate opinions in a way that forces the authoring judge, or his or her concurring colleagues, or anybody else, to examine it critically. Most harmless error rulings on appeal are made without explanation or are explained in such cursory terms that even lawyers familiar with the record cannot understand them. And to the rest of the world, unfamiliar with the record, such rulings are completely opaque, immune to criticism, providing no guidance in subsequent cases. Rulings made under these conditions are unrestrained by precedent or methodological discipline; little wonder that they end up turning simply on the appellate judge's sense that, on a cold record, the defendant looks damned guilty.

But harmless error analysis is only one symp tom of a more pervasive trend toward result-oriented jurisprudence in criminal cases. Increasingly, courts are developing the very sub-

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U.S. Sup. Ct. issued a stay on December 5, one day before Arthur's scheduled execution.]

A stay, however, would have no effect on Arthur's conviction. Arthur's conviction resulted from a pop-gun defense by a grossly underpaid and ill-equipped court appointed lawyer, a prosecutor hell-bent on concealing the truth and getting Arthur's conviction by any tactic no matter how unethical or even illegal, and a judge all too eager to be a modern day Judge Roy Bean. Arthur's inability to get his conviction overturned is not because he doesn't have issues that compel the granting of a retrial that comports with basic notions of due process, but because with very few exceptions, state and federal judges worship at the alter of maintaining procedural regularity at the price of disregarding the substance of a defendant's claims. The hurdles a defendant must overcome to successfully challenge a conviction – no matter how shaky or insubstantial it may be – is indicated by the fact that the very considerable legal and investigative efforts for six years by the New York law firm representing Arthur *pro bono* have been for naught.

If Arthur had pled guilty to Troy Wicker's murder he would have been sentenced to life in prison. So his punishment for insisting on his innocence and going to trial was having his sentence upgraded from life to death. That was his "trial penalty." Consequently, Arthur is not facing execution by the State of Alabama because he was convicted of Wicker's murder, but because he demanded his constitutional right to a trial. Arthur's conviction, and his sentence, are products of this country's intolerance for the small percentage of people foolhardy enough to buck the assembly-line plea bargaining system by publicly asserting they are in fact not guilty.

Thomas Arthur's case exposes for anyone who cares to look, that the underbelly of the United States' legal system is sordid: Its obsession with extracting guilty pleas to keep the system smoothly operating is based on a fundamental disregard for the truth of whether a conviction is based on the reality of the person's guilt or innocence. Arthur may be actually innocent of Tony Wicker's murder, but the legal system doesn't care to find out as it hurtles toward his execution that every court, including the U.S. Supreme Court, has thus far sanctioned without considering if his conviction is actually legitimate.

## Amsterdam cont. from page 11

stantive rules that define constitutional rights in ways that make the requirement of harmful effect a precondition to finding a constitutional violation. The *Strickland* rule defining ineffective assistance of counsel requires not only grossly substandard attorney performance, but prejudice. *Brady* violations require not only prosecutorial nondisclosure but also materiality, which is another name for prejudice. The test of improper prosecutorial argument is whether the argument was prejudicial. An indigent defendant's right to expert witnesses and other resources under *Ake v. Oklahoma* depends on whether these are necessary, which always means in appellate hindsight whether their denial was prejudicial. In all of these settings, appellate judges customarily squint at the record, conclude that the defendant looks damned guilty, and deny relief.

Consider the array of rules dealing with postconviction remedies. After a 40-year period of expansion contemporaneous with the growth of modern-day constitutional criminal procedure, the Supreme Court in the early 1980s began to cut back sharply on the availability of federal habeas corpus remedies for people convicted at state trials in which their federal constitutional rights had been violated. In 1996, swept away by the tide of rage that followed the Oklahoma City bombing, Congress enacted the so-called Antiterrorism and Effective Death Penalty Act, building on issue-preclusion and review-curbing ideas that the Court had initiated and ratcheting them up so as to make federal habeas relief for constitutional violations still more difficult to obtain. State courts and state legislatures flocked to follow the lead of the U.S. Supreme Court and Congress, restricting state court postconviction remedies for constitutional violations in a similar manner.

The rules that now govern postconviction procedure are intricately complicated, but a couple of points stand out.

First, postconviction remedies are restricted by standards of harmless error that allow even more violations of constitutional rights to go unredressed than the harmless error rules applied on appeal. Constitutional violations are disregarded unless they are found to have had a substantial and injurious effect or influence. This standard, in practical effect, leads postconviction judges to dismiss almost all claims of constitutional error in trial and sentencing proceedings by saying that the prosecution had a powerful case and therefore nothing else that happened at trial or on appeal matters.

Second, at the postconviction stage, errors that were not preserved at trial and on appeal are treated as procedurally defaulted unless the postconviction petitioner can show what is called cause and prejudice. In most cases, the only way to show cause is to prove a *Brady* violation or ineffective assistance of counsel under *Strickland*, so the result-oriented rules of those cases become an obstruction to getting even a merits hearing of most other postconviction claims. And the prejudice half of the cause-and-prejudice requirement is, as its name implies, still another device for telling judges to decline to entertain constitutional claims unless they are convinced that a criminal conviction was undeserved because of the defendant's likely innocence.

> "We have witnessed a subversion of the very idea that criminal defendants have rights." Law Professor Anthony Amsterdam

You'd think that, with all of this emphasis on the importance of innocence in the doctrines restricting appellate and postconviction relief, the courts would recognize that people with a strong claim of wrongful conviction resulting from the several common causes of factual error in criminal trials — incorrect eyewitness identifications or perjurious testimony by snitches, for example — should be entitled to have those claims heard in a postconviction forum without also showing some additional failure of justice in their cases. But, for the most part, the courts are inhospitable to postconviction claims of factual innocence. They resolutely enforce an array of technical limitations to deny applications for new trials on the ground of newly discovered evidence. Morever, they either refuse to recognize that there is any due process or other constitutional right to redress for a claim of mere innocence or they set the standard for relief so high that it cannot be met by anything short of divine revelation manifested by the physical appearance of God in the courtroom, bearing a habeas petition for the convicted defendant in his right hand and a confession by the true perp in his left.

So we have a system that concerns itself with guilt or innocence almost exclusively as an excuse for refusing to set aside convictions marred by procedural error on the ground that the convicted defendants are very likely guilty, while at the same time it seizes on every possible procedural obstacle to refuse to hear the claims of people who present convincing evidence that their convictions were factually erroneous and that they are actually innocent. The justification for this apparent paradox is said to be the system's interest in finality.
The code word finality betrays its real function as soon as you stop and ask, "Finality for whom?" My clients who have been denied postconviction relief in the interest of finality have not thereby had the books closed upon the consequences of their convictions. Some of them have been electrocuted or strapped on a gurney and poisoned to death, and others have spent lifetimes in prison after this great victory for finality was declared. Finality means finality for the courts. It means that they can close their books on a case; and often it allows them to do so with comfort only because the rules of closure are tailored to prevent inquiry into whether their judgments of prolonged incarceration or death were imposed as a result of factual error.

In saying this, and saying it sickens me, I do not at all ignore that our courts are badly overburdened and that, in order to do their difficult and vital job, they need to be relieved of any litigation that can properly be lifted from the shoulders of the judges. But we may rightly ask whether much of the work that weighs so heavily on our judges is not less important than inquiring into colorable cases of factually mistaken convictions. In answering that question, we should keep in mind that legislatures and prosecutors are every day imposing on our judges the work of administering the most punitive and over-extended system of criminal punishment in the world.

The crime rate in our country has fallen sharply since 1991, yet in that time our prison population has risen 49 percent. This is largely the result of harsher sentencing practices: mandatory minimum sentence laws, three strikes laws, and so forth.

So I ask, in closing, should we continue the course that our country has taken over the past third of a century — forever broadening the roster of crimes and increasing the severity of criminal punishments, while at the same time restricting the corrective processes available to convicted persons to secure redress for legally and factually questionable judgments of prolonged imprisonment or death?

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Sultan Alam - 2007

# Policeman Set-up By Fellow Officers Gets Theft Conviction Tossed

By JD Staff

Sultan Alam, a nine-year veteran of the police force in the English county of Cleveland (about 200 miles north of London), filed a racial discrimination claim against the police department in 1993. Prejudice against Alam's Asian ethnicity was so great that he even found a Ku Klux Klan poster on his desk.

A year after filing his claim he was charged with conspiracy to steal auto parts. Alam protested his innocence, claiming the case was a set-up by fellow officers in retaliation for his discrimination claim. Lacking proof for his allegation, Alam was convicted by a jury in 1996 and sentenced to 18 months imprisonment. He was released on bail pending the outcome of his appeal.

After Alam's conviction was affirmed on appeal in 1997, the Cleveland police fired him, his bail was revoked, and he served nine months in prison before his release on parole. He then pursued obtaining evidence that he had been set-up by his fellow officers. He acquired enough evidence supporting his allegation that a formal investigation was instituted in 2001 using officers outside the Cleveland PD. The lengthy investigation uncovered evidence that the Cleveland police concealed 21 exculpatory witness statements from both the prosecutors and Alam's trial counsel. In 2004 three Cleveland police officers and a former detective were charged with conspiracy to pervert the course of justice. Although the criminal charges were dropped against the officers, Alam filed an appeal of his conviction based on the new evidence. The prosecution did not contest Alam's appeal, conceding they had been "misled by the police."

On November 19, 2007, ten years after he had completed his prison sentence, the UK's Court of Appeal quashed Alam's conviction. The three-judge panel unanimously agreed that it was a "very grave case," because the police "deliberately misled" the prosecutors, Alam's counsel and the trial judge, "in order to suppress evidence" favorable to Alam. The chief judge said that Alam had been "deliberately targeted and wrongly implicated" in order to sabotage his discrimination claim.

Graham Brown, Alam's lawyer, said of his client's exoneration, "a grave injustice has been put right after too many years. Mr. Alam left the Court today an innocent man."

After the decision was announced, the current Chief Constable of the Cleveland police publicly apologized to Alam, "It is only right that I, as Chief Constable, apologise on behalf of the force to Mr. Alam for what happened." He also said that if Alam wants his job back he would be reinstated to the Cleveland police. Alam may be able to collect about £250,000 (about $500,000) in back pay from 1997 to 2007.

In 2006 Alam was awarded £25,000 (about $50,000) from the Police Federation for its racial discrimination against him for not supporting his 1993 claim against the Cleveland police.

Alam, who in addition to his police back-pay is eligible for compensation for his miscarriage of justice, was ecstatic his name has been cleared: "My life has been in limbo for thirteen long and painful years. I will now pick up the piece of what's left and try to build a better future, especially for my children."

Sources:
Cleared PC Alam plans to return to force, by Ron Livingstone, *Evening Gazette*, November 20, 2007
Appeal court quashes Asian police officer's conviction, *The Guardian*, November 20, 2007.

# Duke U. Hoax Rape Prosecutor Mike Nifong Convicted Of Contempt

By JD Staff

In March 2006, Crystal Gail Mangum accused several members of Duke University's lacrosse team of raping her during a party that she and another woman were hired to dance at while scantily clad.

Durham County District Attorney Mike Nifong called members of the lacrosse team "a bunch of hooligans," and from a line-up, Mangum identified three of the young men as her attackers: Reade Seligmann, Collin Finnerty, and David Evans.

DNA samples were collected by court order from all 46 white players at the party. Although Nifong disclosed to lawyers for the players that the DNA of all 46 players was excluded as matching biological matter recovered from Mangum, he said it didn't mean they were not guilty.

By mid-May Seligmann, Finnerty and Evans had been indicted for rape, sexual offense and kidnapping. However, by December 2006 it had come to light that at the time of the indictments Nifong knew that Mangum had given multiple conflicting statements to the police about the alleged assault, that she had previously made false assault allegations, and that Nifong had not disclosed that the DNA of men other than the lacrosse players had been recovered from Mangum's body.

Mike Nifong's booking mugshot at the Durham County Detention Facility.

Under intense national scrutiny and criticism for his handling of the case, Nifong dismissed the rape charges against the three men on December 22, 2006. Six days later the North Carolina State Bar filed ethics charges against Nifong, accusing him of making public statements that were "prejudicial to the administration of justice" and of engaging in "conduct involving dishonesty, fraud, deceit, or misrepresentation."

On January 12, 2007 Nifong requested NC Attorney General Roy Cooper to take over the case. After a thorough review, Cooper announced on April 11, 2007 that all the charges were being dismissed.

The NC State Bar Disciplinary Committee unanimously voted on June 16, 2007 to disbar Nifong after he was found "guilty" of 27 of the 32 ethics violations. Nifong agreed to surrender his law license, and he became the first sitting district attorney in the history of North Carolina to be disbarred. He can apply for reinstatement in 2012.

Superior Court Judge Osmond Smith, who presided over the "rape" case, held Nifong in criminal contempt of court on August 31 for lying in September 2006 when he told the judge that he had turned over all DNA test results to the defense. Nifong was sentenced to one day in jail and a $500 fine. He reported to the Durham County Detention Facility on September 7, 2007 to serve his sentence.

After the city of Durham rejected the demand of Evans, Finnerty and Seligmann for a financial settlement of $10 million each, the three men filed a federal civil rights lawsuit on October 5, 2007. The lawsuit alleges that Nifong orchestrated a wide-ranging conspiracy to frame the players. The defendants are Nifong, the city of Durham, the city's former police chief and deputy police chief, the two police detectives

**Nifong cont. on p. 16**

# Attempted Murder Conviction Tossed 29 Years After False Confession By Juvenile Who Wasn't At Crime Scene

By JD Staff

Sixteen-year-old Charlie McMenamin was held incommunicado by the Royal Ulster Constabulary (RUC) after his arrest in March 1978 for the terrorist offense of allegedly shooting at a British officer in Derry City, Northern Ireland. He signed a confession after three days of beatings and other mistreatment inflicted on him during eight interrogation sessions. He was subsequently charged with a variety of offenses based on his confession. Those charges included conspiracy to murder and illegal possession of a firearms and ammunition.

Charlie McMenamin in 1978.

In December 1979 McMenamin pled guilty to the charges at the urging of his lawyer who told him that if he was convicted after a not guilty plea he could be given a 20-year sentence. In spite of his plea, McMenamin maintained he was innocent and that he only signed the confession to stop his mistreatment. McMenamin was sentenced in January 1980 to three years imprisonment in a youth detention facility.

McMenamin didn't appeal his conviction or sentence based on his lawyer's advice that he got a "good deal."

At the urging of his mother, in September 2003 McMenamin filed an application with the United Kingdom's Criminal Case Review Commission for consideration of whether his convictions could be overturned as a miscarriage of justice.

After accepting his case, the CCRC's investigation discovered documents showing that prior to McMenamin's convictions the RUC had proof that on the two days he had been charged with shooting at British soldiers, he was 75 miles away at a juvenile training school he had to attend after running away from home. The records obtained by the CCRC also showed that the police knew that some of the offenses McMenamin confessed to and pled guilty to committing, had in fact never occurred – including the alleged hijacking of a car. The CCRC also obtained medical records of five examinations conducted of McMenamin during his three days of intense interrogation. The doctor noted during two of those exams that McMenamin had harmed himself when he tried to commit suicide by slashing his wrists with items available to him. The doctor also noted that the youngster made numerous allegations of physical mistreatment, including being thrown to the floor and kicked like a football. The doctor further noted that McMenamin had injuries consistent with his allegations. None of the police or medical records had been disclosed to either the prosecutor or McMenamin's counsel.

Although McMenamin had pled guilty and he didn't file an appeal, after a three year investigation the CCRC relied on the "exceptional circumstances" in his case to refer it in August 2006 to Northern Ireland's Court of Appeal for review on several grounds. One ground was that McMenamin was a juvenile when he was interrogated, and the law required the presence of a lawyer, parent, or independent adult at all times when he was questioned. Thus the CCRC argued his confession was invalid, and since it provided the sole evidence for his convictions, they must be quashed. Another ground of the appeal was that the police (RUC) failed to disclose the exculpatory evidence that McMenamin was known to have not been at the scene of the soldier's attempted murder, or committed non-existent crimes, and therefore his convictions must be quashed.

At the conclusion of the Court's hearing on May 10, 2007, the three-judge panel announced that it agreed circumstances of McMenamin's case were exceptional, so it was immediately quashing his convictions.

After the Court's decision McMenamin, now 45, told reporters, "This is something that I have campaigned on for a number of years and it is great to finally see it. I confessed under duress and was advised to plead guilty by my legal representatives at the time but I have always known I was innocent. I was one of the lucky ones in that I only served three years while many others who were wrongfully convicted served much longer sentences, but I felt it was important to prove that the original convictions were totally wrong."

> Charlie McMenamin was coerced to confess to non-existent crimes, and other crimes that occurred when he was miles from the crime scene.

McMenamin also said, "My mother always said to me through the years that she did not know how they got away with sending me to jail and I was pleased that she could be in court to hear that the convictions have been quashed. For years after my release from prison my family was harassed by the RUC and our home was raided and I was arrested many times. My mother had to put up with all of that and now my family has been vindicated."

The Court of Appeals issued its written opinion on June 19, 2007. (*The Queen v. Charles Columba McMenamin*, no. [2007] NICA 22, June 19, 2007) The Court explained its agreement with the CCRC that McMenamin's con-

**McMenamin cont. on page 15**

## Juror Regrets Wrongly Convicting Woman Of Obstruction

After voting to convict Joyce Buffaloe of obstruction of justice and making a false 911 call during a late night traffic stop, jury foreperson Patricia Klugherz stayed in the courtroom for her sentencing.

The 73-year-old Klugherz had been the last hold out juror, and after the verdict was announced she realized she had made a mistake: She didn't think Buffaloe was guilty. Buffaloe, a black woman, had been stopped by the police in Bradenton, Florida while her 8-year-old son was in her car. Buffaloe, who had just helped change the tire on a friend's car, felt like the two police officers were harassing her. She called 911 for help after one of the officers pointed a stun gun at her and threatened to use it on her. The police arrested her for obstructing justice by calling 911. Ironically, she wasn't cited for any traffic violation.

Klugherzthen thought Buffaloe was genuInely afraid for her and her son's safety when she called 911, and that the police were out of line in how they treated her. After the judge sentenced Buffaloe to a fine and court costs that amounted to $220, Klugherz gave Buffaloe, a single mom, that amount of money.

Klugherz later told the Sarasota *Herald-Tribune*, "It made me feel very guilty that I did it. I will always feel like I made a mistake." She said about paying Buffaloe's fine, "It's to help me as much as to help her."

When asked about Klugherz's regret at convicting Buffaloe, Prosecutor Shelli Freeland defended the charges as appropriate for her conduct. Freeland said that she gave the 35-year-old Buffaloe a break by only recommending a fine and no jail time, because she had no criminal history and her testimony seemed sincere.

Source: Juror regrets conviction and pays woman's fine, Sarasota *Herald-Tribune*, December 2, 2007.

# Soldiers Exonerated 63 Years After Wrongful Rioting Convictions

By Hans Sherrer

Fort Lawton, on Puget Sound within the city limits of Seattle, Washington, was one of the military's major west coast debarkation facilities for men and materials during World War II. It also served as a German and Italian POW camp.

Following a night of violent disturbances between Italian POWs and American soldiers, on August 15, 1944 an Italian POW was found lynched in a remote area of the fort. After an Army investigation, 43 African-American soldiers were charged with rioting, and three of those were also charged with murder. It was the first (and only) time in American history that African-Americans were charged with a mob lynching.

The court martial at Fort Lawton was the largest and longest conducted by the military during World War II. It was front-page news across the country. After a five week trial, on December 18, 1944 twenty-eight soldiers were convicted of rioting and two were found guilty of manslaughter . Several of the men were given long prison sentences, but no one served more than four years. All but one was given a dishonorable discharge.

The POWs lynching and court martial had become an obscure historical event by the time Jack Hamann, a Seattle based award winning broadcast journalist, produced a report in the 1980s based on the Army's official version of the lynching and court martial.

Some of what Hamann reported didn't match other information he learned, so in the mid-1990s he decided to look into the case further. With the aid of his wife Hamann embarked on what became years researching the events leading up to the lynching and the subsequent court martial.

Discovery of the original investigation and trial documents that had remained buried untouched for half-a-century in Washington DC archives, provided Hamann with many of the missing pieces to the puzzle of what happened at Fort Lawton on that August 1944 night.

Hamann discovered there was no evidence linking the two men convicted of manslaughter to the lynching. He also discovered there was no evidence that many, if not most of the men convicted of rioting had actually participated in the disturbance in the Italian POWs barracks. He further learned that the 43 defendants were represented by two lawyers who only had 13 days to prepare for the mass trial. Hamann also discovered exculpatory documents that weren't turned over to the defense. These documents included the Army Inspector General's 1944 report that detailed many errors in the investigation of the riot and lynching, and criticized many Army officials, including Fort Lawton's commander. Even more disturbing, Hamann identified that the person likely responsible for the lynching was a Caucasian MP. Hamann also tracked down the few surviving court martialed soldiers and got their account of the events.

Jack Hamann

Hamann's condensed his voluminous research into a book published in April 2005, *On American Soil: How Justice Became A Casualty Of World War II* (Algonquin Books).

After reading the book, in July 2005 U.S. Congressman Jim McDermott introduced a resolution with 24 co-sponsors in the House of Representatives that required the Army to investigate the appeal process afforded the 28 convicted soldiers. If it was deemed inadequate, the cases would be reopened. At the time McDermott said, "I don't think this will be controversial. Whether you're a Republican or a Democrat, you want the servicemen to be treated fairly."

One of the ex-soldiers still living that had been convicted of rioting, Samuel Snow, said in a telephone interview that there were huge problems with the case and the lack of evidence: "They didn't take no fingerprints. They didn't take no footprints. We had no representation in this trial. It wasn't a fair trial. [Maj. William] Beeks had all those men." Beeks was defense co-counsel for all 43 defendants.

The Army did re-open the case, and after 15 months of evaluation by the Army Board for Correction of Military Records, the Secretary of the Army approved setting-aside the convictions because the defendants had been denied due process by the prosecution's failure to disclose exculpatory evidence, the defendants had not been provided with effective assistance of counsel, and the defendant's counsel was not allowed sufficient time to prepare for trial.

The decision was released on October 26, 2007, and it immediately applied to the four men on whose behalf a petition had been filed to set-aside their conviction. The other 24 convictions will be set-aside as petitions are filed with the Army, although only one of those men is still alive. The four men whose convictions were immediately set-aside are Samuel Snow, Booker W. Townsell, Luther L. Larkin and William G. Jones. Snow, 83, is the only one still living, so the other exonerations were posthumous.

Samuel Snow in November 2007.

The Army's decision paves the way for the men to be issued honorable discharges, and for them or their families to be restored "all rights, privileges and property lost as a result of the convictions." In November 2007 the Army responded to Snow's exoneration by sending him a check for $725 in back pay.

The lawyers and staff of the Army Review Boards Agency acknowledged that the research documented in *On American Soil* was valuable in their evaluation of the case.

Most of Fort Lawton has been deeded to Seattle, which made it into Discovery Park, a scenic outdoor recreational area of hiking trails and play fields.


Sources:

Memorandum For US Army Review Boards Agency Support Division, St. Louis, *Board For Correction Of Military Records*, October 22, 2007.

McDermott calls for probe of '44 lynching, *The Seattle Times*, July 2, 2005.

Secretary of army reverses conviction in the largest courts-martial of WWII, *Mass Media Distribution Newswire*, November 6, 2007.

Army pays $725 in set-aside World War II case, *New York Times*, December 1, 2007.


*On American Soil* is available from *JD's* online Bookshop at, http://justicedenied.org/books.html

## McMenamin cont. from p. 14

fession to crimes that he couldn't have committed because he was elsewhere at the time they occurred, and his confession to crimes that never occurred, were "exceptional circumstances" that trumped his guilty plea and failure to appeal his conviction. His false convictions of those crimes was compounded by the illegally conducted interrogations that resulted in his confessions, and the quashing of all his convictions was warranted as the remedy. McMenamin's exonerations enables him to seek compensation for his nearly three decade ordeal.


Source of quotes:

Republican 'couldn't be happier' after convictions quashed, By Michael McMonagle, *Derry Journal*, May 11, 2007.

Commission Refers Terror-Related Convictions of Charles McMenamin to NI Appeal Court, Criminal Case Review Commission, September 7, 2006, http://www.ccrc.gov.uk/NewsArchive/news_433.htm

# Ex-federal Prosecutor Rick Convertino Sued Over Fake Terrorism Prosecution

By JD Staff

Karim Koubriti and three other Muslim immigrants living in the Detroit area were arrested weeks after the events of September 11, 2001, on suspicion of being members of a terrorist "sleeper cell." Almost a year later, on August 28, 2002, the four men were indicted for material support of terrorism and document fraud (possessing false identification papers).

In June 2003 Koubriti and Abdel-Ilah Elmaroudi, both Moroccan nationals, were convicted of the terrorism and document charges. Another defendant was only convicted of the document charge, and the fourth defendant was acquitted of all charges.

After the trial, but prior to sentencing, Koubriti and Elmaroudi's lawyers discovered that Richard Convertino, the Assistant United States Attorney in charge of the prosecution, had failed to disclose exculpatory documents that undermined the very basis for the terrorism charge, and that he may have also presented tainted trial testimony. The U.S. Department of Justice (DOJ) responded to the defendant's subsequent post-trial motion for a new trial by conducting an extensive investigation of Convertino's handling of the case.

That investigation's report concluded that Convertino had deliberately concealed exculpatory evidence and several federal agents had given falsely trial testimony. On August 31, 2004 the DOJ acted on those findings by filing a 60-page response to the defendant's motion for a new trial. The DOJ requested that the judge vacate all the convictions of the three defendants, and then order their retrial only on the document fraud charges. The DOJ conceded that Convertino had offered false testimony and withheld exculpatory evidence from the defense on the terrorism charges, and that charge would be dropped against the defendants.

Two days later, on September 2, U.S. District Judge Gerald Rosen vacated the convictions. Koubriti and Elmaroudi were then released on bail after being held for three years in the Wayne County Jail.

> **"They lied, lied, lied and lied."**
> Defense lawyer William Swor's description of the government's case after the terrorism convictions of Koubriti and Elmaroudi were vacated.

The retrial on the document charges was delayed when Koubriti challenged his retrial on the basis that it would constitute double jeopardy. On December 12, 2007 the Sixth Circuit Court of Appeals ruled that Koubriti's retrial would not place him in double jeopardy. (*U.S. v Koubriti*, 07a0475p-06 (6th Cir. 12-12-2007)) Koubriti's lawyers are appealing that ruling to the U.S. Supreme Court.

On August 31, 2007, Koubriti filed a lawsuit (42 U.S.C. §1983) in Detroit's federal court alleging that his civil rights were violated by the primary people named in the DOJ's report: Convertino, FBI agent Michael Thomas, and State Department official Harry "Ray" Smith. Convertino's defense may be prosecutorial immunity.

Karim Koubriti after his release

Koubriti had earlier filed a federal civil rights lawsuit against Wayne County. He alleged that his constitutional rights were violated by his mistreatment in the Wayne County Jail during the three years between his arrest and his release on bail. In early 2007 a federal judge denied summary judgment for Wayne Count and ruled the case can go to trial. As of early 2008 both of Koubriti's lawsuits are pending.

After a two-year DOJ criminal investigation, Convertino and Smith were indicted in March 2006 on charges of conspiracy, obstruction of justice, and false statements. On October 31, 2007, a federal jury in Detroit acquitted both defendants of all charges. The jury foreman told reporters the jury acquitted the men because Convertino could have mistakenly failed to disclose the crucial exculpatory evidence, and Smith could have misspoke when he repeatedly testified falsely during the trial.


Previous *Justice:Denied* articles about the Detroit Four case:
"Terrorism Conviction Of Two Men Tossed - Prosecutor Criminally Investigated For Frame-up," *Justice:Denied* Issue 27, Winter 2005, p. 7.
"Federal Prosecutor Resigns Under Heat of Criminal Investigation For Possible Frame-up Of 35 People," *Justice:Denied* Issue 28, Spring 2005, p. 11.
"Federal Prosecutor Indicted For Frame-up Of Four Men Innocent Of Terrorism," Issue 32, Spring 2006, p. 10.
Additional sources:
"Former Detroit terror suspect files civil rights lawsuit," *Jurist*, August 31, 2007.
"Federal jury acquits terror prosecutor," *The Detroit News*, November 1, 2007.
"Ex-terror suspect can face fraud charge," *The Detroit News*, December 13, 2007.


## Nifong cont. from p. 13

who handled the case, five other police department employees, and the lab that handled the DNA work. The lawsuit claims that Nifong's sole motive was to win support for his reelection bid, and alleges he told his campaign manager that the case would provide "millions of dollars" in free advertising.

While Nifong has had his career devastated, two Durham police officers involved in the case have been promoted.

In December 2007 the US Department of Justice announced it would not criminally investigate Nifong's handling of the case.

At least two books have been written about the case, and HBO has bought the movie rights.


Sources:
Civil suit in lacrosse case filed, *News & Observer*, October 6, 2007.
How it came to this — a lacrosse case recap, *News & Observer* (Durham, NC), October 6, 2007.
Darryl Hunt, The NAACP, And The Nature Of Evidence, *Justice:Denied*, Issue 35, Winter 2007.


# Prosecutor Changes Dates of Alleged Rapes After James Love Wins Retrial

By JD Staff

James Love was convicted by a jury in 1996 of having oral sex many years earlier with the daughter of a woman he had dated. The prosecution didn't inform Love of when the alleged crimes occurred, and it wasn't until the next to last day of his trial that the then 18-year-old testified they happened in Cincinnati in December 1988, and January and February 1989. Love collected extensive alibi evidence after his trial that he was continuously outside the United States from November 1988 to mid-May 1989. Love filed a post-conviction motion for a new trial based on that new evidence. In November 2006 the Ohio Court of Appeal overturned Love's convictions and ordered his retrial. (See, *State v. Love*, 2006 -Ohio-6158 (Ohio App. Dist.1 11/22/2006))

After Hamilton County's prosecutor failed to act on the court ordered retrial, Love filed a motion on May 31, 2007 to enforce his right to a speedy trial.

On October 2, 2007 the Hamilton County Prosecutor's Office signed a Stipulation that Love was in Mexico and Belize from November 17, 1988 until July 20, 1989, with the exception of May 17 to 21 when he returned to the U.S. to renew his Ohio driver's license. The Stipulation was an acknowledgment that Love was in another country almost 2,000 miles from Cincinnati at the time of the alleged rapes the jury convicted him of committing.

The prosecutor then filed an amended Bill of Particulars to Love's February 1996 indictment, alleging the oral sex didn't happen on the dates the alleged victim testified to during Love's 1996 trial, but between the "latter half of 1989 to April 2, 1990." Thus more than

**Love ont. on p. 17**

## Clay cont. from page 7

at the Martindale home on the evening of the murder nor in the Camaro.

In exchange for Sander's testimony the first-degree murder charge was dismissed and he was sentenced to five years probation after pleading guilty to tampering with physical evidence – a class D felony. It would later become a major issue in my post-conviction appeal that the jurors in my trial were falsely told by the prosecutor, and Sanders falsely testified, that in exchange for his cooperation he was being given a ten-year prison sentence for his role in the crime. It is also worth noting that Sander's first-degree murder charge wasn't dismissed with prejudice, so it still hangs over his head if he were to get a pang of conscience and come forward and tell the truth that he and I were in the Camaro, and that we were a mile or so from the Martindale home when the murder occurred.

**Exculpatory evidence not disclosed by the prosecution is discovered after trial**

After my conviction the State provided separate lawyers to handle my direct appeal and my post-conviction petition. My post-conviction lawyer's investigation discovered that the prosecution did not disclose several key witness interviews to my two trial attorneys. Those witness interviews supported my testimony of key events on the evening of Martindale's murder. On the night of the murder, Debra Garrett, Scott Sullivan and Samantha Fitzgerald, all of whom had no direct connection to Sanders, me, or the Martindales, were traveling home together in the same car and witnessed the police pulling up on the red Camaro. A New Madrid Police Department officer interviewed the three witnesses about what they had seen. Each person told the officer that he or she saw the Camaro stop and the driver side door and the passenger side door open simultaneously. That could only happen if there were two people in the car.

During my trial how many people were in the Camaro was hotly contested. The prosecution argued to the jury that the only person in the car was me. The non-disclosed witness interviews proved the jurors had been deceived by the prosecution's false theory. Among other claims, my state post-conviction petition claimed that the failure of my trial lawyers to investigate and find the three exculpatory witnesses was constitutionally ineffective assistance of counsel.

In 1998 the Missouri Supreme Court denied both my direct appeal and my post-conviction petition, which were consolidated into one decision. *State v. Clay*, 975 S.W.2d 121, 130 (Mo.banc 1998).

**Federal habeas corpus petition**

For my federal post-conviction I obtained a number of affidavits, supporting the claims made in my state post-conviction petition. One of those was an affidavit from Sanders dated April 14, 2001 that repudiated his trial testimony that he expected a ten-year prison sentence in exchange for his prosecution favorable testimony. Sanders' affidavit states in part:

> "4. That on the day that Rick Clay's trial was scheduled to begin, I was in a room at the courthouse with my lawyers (Dan Gralike and Nancy McKerrow), the prosecutors (Riley Bock and Kenny Hulshof) and other law enforcement officials. My lawyers were discussing my plea agreement with the prosecutors. It was on this day that I agreed to the ten-year sentence in exchange for my testimony. Riley Bock told me that the ten years would be what was on paper, but that he would not push it with my sentencing judge, meaning he would not try to push the judge to actually sentence me to ten years in prison. Mr. Bock indicated that it couldn't appear to the jury that nothing was going to happen to me or they would not believe my testimony. My attorneys said that because the prosecutor wasn't going to push the ten-year sentence, the court would never give me such a sentence. I never believed that I would receive a sentence of ten years in prison." (Affidavit Of Charles Sanders, April 14, 2001.)

There is no statute of limitations in Missouri for murder, so I believe that out of fear the murder charge would be reinstated, Sanders wouldn't admit in his affidavit to being at the Martindale house the night of the murder or driving the Camaro.

I also obtained affidavits from the three witnesses who all swore that they saw the doors of the Camaro open simultaneously when it stopped. They all also swore that they were interviewed by Officer Raymond Creasey of the New Madrid Police Department on the evening of May 19, 1994, (the evening of Martindale's murder) and that they were not contacted again by anyone prior to my trial. They also swore that they would have willingly testified as to what they saw if they had been subpoenaed to do so.

I also obtained an affidavit from Raburn Evans, Martindale's best friend, about a conversation he had with Officer McFerren when he was waiting to testify at Stacy's trial. Evans' affidavit dated February 9, 2001 states in part:

> "3. That while I was at the courthouse in Perryville, Missouri for the Stacy Martindale trial, I talked to Officer Claude McFerren about his knowledge of the homicide. Officer McFerren told me that he saw two people in the Camaro he attempted to stop on the night Randy Martindale was killed. In addition, Officer McFerren told me that no matter what they tried to make him say, he knew there were two people in the Camaro." (Affidavit Of Raburn Evans, February 9, 2001.)

I also obtained an affidavit from Len Deschler, an investigator for my post-conviction counsel. Deschler stated that he met with McFerren, who had by then been promoted to the New Madrid City Police Chief, and McFerren was agreeable to signing an affidavit titled, "Affidavit Of Claude McFerren." Deschler's affidavit states in part:

> "4. That Chief McFerren then stated, "I don't see why I can't sign this." McFerren then expressed concern that he should contact the prosecutor, Riley Bock, to obtain Bock's approval before signing the affidavit because Chief McFerren did not want to hurt his working relationship with the prosecutor by doing anything against Bock's wishes."
>
> 5. That Chief McFerren then talked to Riley Bock on the phone and stated that Bock wanted him to bring the affidavit to

**Clay cont. on page 18**

## Love cont. from p. 16

eleven years after Love's trial the prosecutor's claimed for the first time that the alleged rapes didn't occur when the alleged victim testified they happened — but many months later when Love returned to the U.S.

Love filed a Motion to Dismiss the Indictment based on double-jeopardy. Love's Memorandum cited extensive state and federal case law that a defendant can only be retried for the exact same charge he or she was tried for originally. Love argued he was being charged him with entirely new crimes, since when the prosecution had the opportunity to do so during his 1996 trial it presented no evidence that any crimes occurred on the dates alleged in the new Bill of Particulars.

A hearing on Love's Motion to Dismiss is scheduled for January 28, 2008.

Sources:
Man Two Thousand Miles From Alleged Rape Scene Fighting For New Trial – The James Love Story, *Justice:Denied*, Issue 30, Fall 2005.
Motion to Dismiss, *State of Ohio v. James Franklin Love*, Case No. B9601201, Motion To Dismiss, October 19, 2007.

**Clay cont. from page 17**

> his (Bock's) office. Chief McFerren then asked Ms. Brewer and me to follow him to Bock's office, which we did. Chief McFerren entered Bock's office with the affidavit while Ms. Brewer and I waited in the car. Approximately five minutes later, Chief McFerren reappeared and told me that Riley had told him not to sign the affidavit. Chief McFerren apologized, handed me back the affidavit, and we parted company." (Affidavit Of Len Deschler, February 9, 2001.)

The key point of Chief McFerren's affidavit that prosecutor Bock likely objected to is that it provides evidence that McFerren could have inadvertently destroyed the physical evidence that a person exited out of the Camaro's driver's side door – and thus prove there were two people in the vehicle. That second person was Sanders, and the prosecution's case against me depended on sustaining their claim that Sanders wasn't present when Martindale was shot, and that I was alone in the Camaro. If Sanders could be placed in the Camaro, the entire theory of the prosecution's case against me would collapse. The affidavit that prosecutor Bock wouldn't let McFerren sign states in part:

> "3. That while I was at the scene of the red Camaro, one of the other officers who arrived was Trooper Greg Kenley of the Missouri State Highway Patrol. Trooper Kenley asked me about a set of footprints coming from the driver's side of the Camaro. I told him that they must have been my prints as I had approached the driver's side of the car and turned off the ignition. *Any footprints that I left on the driver's side of the car would have covered prints made by the driver of the car as he exited the car*.
>
> 4. That if I had been asked about any of the above information when I testified at the trial of *State of Missouri v. Richard Clay*, I would have testified to these facts during my trial testimony." (Affidavit Of Claude McFerren, unsigned.) (Emphasis added by Richard Clay)

I also obtained an affidavit from Nina Neal that on the day before Martindale's murder she received a phone call for me and took a message for me to call the person back. In her affidavit she states that later that day when I was at her house I went to the back bedroom of her house, "presumably to return the phone call." (Affidavit Of Nina Neal, February 9, 2001.) That call was to arrange for me to front drugs to sell, some of which Stacy wanted to buy from me the next day, and which was why I was at her house just before Martindale's murder.

**Federal habeas petition granted and new trial ordered**

Based on the evidence I amassed, in 2001 U.S. District Court Judge Dean Whipple granted my habeas corpus petition and vacated my conviction and death sentence. (See, *Clay v. Bowersox*, Case No. 98-8006-CV-W-1 (2001).) He also ordered the State of Missouri to either retry me or release me within 90 days. In May 2002 Judge Whipple amended his order, but the remedy remained the same – retry or release me. Judge Whipple based his ruling on four of my grounds:

1. The prosecution's failure to disclose the terms of Sanders plea agreement under which he was only sentenced to probation instead of the ten years the jury was told was a *Brady* violation. That constitutional violation was aggravated by the prosecution misleading the jury during its closing argument that Sanders was credible because he was going to be sentenced to ten years in prison. Judge Whipple considered this *Brady* violation particularly harmful because, "the State's case against Clay crucially depended on Sander's testimony."

2. My trial counsel's failure to conduct a reasonable investigation to locate the three witnesses who saw the Camaro's doors open simultaneously was constitutionally ineffective assistance of counsel.

3. The prosecution's failure to disclose to the defense the exculpatory police statements by the three witnesses who saw the Camaro's doors open simultaneously was a *Brady* violation. In his decision Judge Whipple wrote, "the testimony of Garrett, Sullivan and Fitzgerald, probably would have resulted in a not guilty verdict, at the very least, the Court finds the verdict in this case no longer worthy of confidence."

4. The prosecution's failure to disclose to the defense that officer McFerren had possibly destroyed the evidence that a person exited out of the Camaro's driver's side door was a *Brady* violation.

The State appealed Judge Whipple's ruling to the federal Eighth Circuit Court of Appeals.

**The District Court's ruling is overturned by the Eighth Circuit Court of Appeals**

More than two years after Judge Whipple's ruling, the Eighth Circuit issued its decision that overturned all four grounds of his decision. The decision is, *Clay v. Bowersox*, 367 F.3d 993 (8th Cir. 05/17/2004).

The Court ruled it wasn't material that the prosecution failed to disclose the terms of Sanders' plea agreement for his testimony under which he was sentenced to five years probation and not the ten years imprisonment that the jury was told would be his sentence. The Court ruled that it didn't think the non-disclosed information would have affected the jury's assessment of Sanders' credibility, so my right to due process wasn't prejudiced by the prosecution's concealment. Therefore Judge Whipple had erred by ruling the prosecution had committed a *Brady* violation.

The Court also ruled that the prosecution's non-disclosure of the three witness statements wasn't material, and my trial lawyer's failure to investigate and interview those exculpatory witnesses wasn't prejudicial to my defense. The Court ruled the testimony of the three witnesses would have been cumulative to the testimony of one defense witness who testified he saw "the silhouette" of two people in the Camaro, and "When the government fails to disclose only cumulative evidence, "it has committed no *Brady* violation."" Therefore Judge Whipple had erred by ruling the prosecution had committed a *Brady* violation and that my trial lawyers ineffectively represented me.

The Court further ruled that the prosecution's failure to disclose that officer McFerren could have destroyed the footprints of a person exiting out of the Camaro's driver side door was procedurally barred, since the issue had not been litigated in my direct appeal or state post-conviction petition. Therefore Judge Whipple had erred by ruling the prosecution had committed a *Brady* violation. The Court disregarded that I didn't learn of this new evidence until after the Missouri Supreme Court denied all my state claims.

The Court also ruled, "There is no federal constitutional right to the effective assistance of post-conviction counsel." The Court made that ruling in upholding Judge Whipple's denial of an ineffective assistance of counsel claim against my state post-conviction counsel for not raising a *Brady* claim on a police report that the prosecution did not disclose to my trial counsel.

Thus with the sweeping away of all four grounds of Judge Whipple's decision, *any one of which he thought by itself merited awarding me a new trial*, my murder conviction and death sentence were reinstated by the appeals court.

**Clay cont. on page 19**

## Clay cont. from p. 18

**Conclusion and current status**

I wore no halo before my arrest for Martindale's murder. I had been a drug dealer for several years. However, I was only arrested once for drug possession and unlawful use of a weapon, a key chain's little knife. I know it was my involvement in drugs that led to my involvement in this case. I wanted to sell Stacy drugs and she didn't have the money on her to pay for them, so I went to her house where I waited in her car for her to come out with the money. If not for those actions of mine, I would not have been at her house just before Martindale's murder. I had good reason to flee from the police that night due to the illegal drugs I had on me, but I had no motive whatsoever to kill Martindale, and I had nothing to do with his murder. Yet, here I am, on Missouri's death row.

I have exhausted all my appeals, so in the absence of startling new evidence – such as Stacy unequivocally stating that I had nothing to do with her husband's murder, or Sanders coming forward and stating he was with me in the car and that my account of that evening's events is absolutely correct, or Chief McFerren coming forward and acknowledging he could have destroyed the drivers side footprints – I am simply awaiting my turn at being put to death unless Missouri joins New Jersey in abolishing the death penalty, or the Supreme Court somehow intervenes. But all that would do is transform my death sentence into life without parole – for a murder I did not commit and had no knowledge of until the day after it happened.

There is justice, just not here, and we need to find it for everyone, or we will only continue to condemn innocent men and women to prison and execution. I can be written at: Richard Clay 990120
Potosi CC - DR
11593 State Highway O
Mineral Point, MO 63660

My lawyer is Jennifer Herndon. Her email is, jennifernix@netcom.com

## Wright cont. from p. 3

Larry regretted what he said to save his own hide when he was flown to Los Angeles to testify against me at my trial. However, the detectives and prosecutors ignored him when he recanted his statement.

**1998 trial and conviction**

During my trial in 1998, the prosecution's theory of the crime was that Slaughter killed Jerome at my direction for both our financial gain. Slaughter didn't testify, but a detective testified that Slaughter confessed on the "lost" tape to committing the murder in exchange for $25,000. My brother testified that he lied in his statement: Under oath he told the jury that he knew nothing about Jerome's murder and I never made any admissions to him about the murder. A detective testified about being present when Larry gave his statement, and who is a jury going to believe: a convicted child abuser or an LAPD detective?

The prosecution contended my motive was to collect two large life insurance policies on Jerome allegedly purchased just before his death. The proof offered by the prosecutor was the videotape of an 83-year-old insurance agent. Suffering from severe, late stage Alzheimer's disease, the agent rambled on about remembering Jerome. The insurance agent was so mentally debilitated that he was totally incoherent on the tape. Yet my public defender did not even attempt to call into question his competency to "testify" via the videotape about the policies. The insurance agent, who I had no opportunity to cross-examine, died later that year. My public defender failed to question the underlying truth of the prosecution's claims about these policies. In fact, we had several children together, and the smaller policy that paid about $30,000 was purchased more than a year before Jerome's death, while the other policy was canceled before his murder. (I obtained written proof about both policies from the insurance company six years after my trial.)

The seventeen-year gap between the crime and my trial caused me severe problems in defending myself. Crucial evidence had been lost, several witnesses had died or disappeared, and a detective from the original investigation had died. The murder weapon stained by blood that did not have either my fingerprints or Slaughters' on it was "lost" by homicide detectives prior to my trial, so it couldn't be subjected to state of the art DNA or other forensic tests. Also, Jerome's heart and brain had disappeared making an independent examination of his general physical condition by an independent pathologist impossible.

The coroner that testified about Jerome's cause of death had lost organs from other cases, and in other cases he had been proven wrong in his opinion of the deceased person's cause of death. My public defender, however, failed to discover this. I found proof of the coroner's questionable findings and past conduct on my own after my trial was over. The prosecution also alleged that Jerome wasn't gay so his murder couldn't have been related to his edgy gay lifestyle. (Remember, things were much different for gay people in 1981 when Jerome was murdered.) Again, my public defender failed me by not subpoenaing witnesses who could not only have established that Jerome was living a very risky gay lifestyle, but that we divorced when he came "out of the closet" and revealed to me that he was gay.

Needless to say, largely on the basis of testimony about Slaughter's fictitious confession and my brother's recanted statement, the jury convicted me of first-degree murder and conspiracy to commit murder. I was sentenced to life in prison without the possibility of parole.

Many things didn't add up with me (or Slaughter) being charged with this crime, including the total lack of any physical or forensic evidence, or any eyewitnesses linking either Slaughter or me to the crime.

**Appeals denied**

My state direct appeal and post-conviction petition were both denied. I filed a federal habeas corpus petition in 2002 that was denied, but I was awarded a certificate of appealability in December 2003 on the issue that my constitutional right to a speedy trial had been violated by the sixteen year delay in charges being filed against me. My hopes, however, were shot down in June 2004 when the federal Ninth Circuit Court of Appeals ruled that my federal habeas petition had been untimely: It was filed *one day* later than allowed by the Anti-Terrorism and Death Penalty Act.

**Wright cont. on p. 20**



***Justice:Denied***
**Disclaimer**

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

## Wright cont. from p. 19

**Exculpatory evidence discovered after trial**

Since my conviction I have obtained exculpatory evidence, favorable expert witness statements, and notarized declarations from a number of people who were not called as a witness at my trial. An example of this evidence is that in July 2004 I obtained documentation from the New York Life Insurance Company about the two life insurance policies. The smaller policy they paid a death benefit on was taken out more than a year before Jerome's death, and the second policy was canceled by me – the policyholder – prior to his murder. This evidence demolishes the prosecution's theory of why Jerome was murdered that the jury relied on to convict me.

Additionally, on August 30, 2004 the Los Angeles County Coroner's Office sent a letter to Jerome's mother, Mabel Goffee, confirming that at the time of his murder he was so sick that he was mere months away from dying of liver disease and pancreatic fibrosis. This letter states in part, "… he could only have had a few months to live even if there had been no stabbing injuries." Jerome was on death's door when he was murdered – and I would have been paid the small life insurance policy when his disease-ravaged body had soon died naturally.

My brother Larry has executed three affidavits, in 1998, 2000 and 2004. The three affidavits are of varying length and detail, but they all express the same sentiment: In eliciting his taped 1997 statement the LAPD detectives took advantage of his terrifying situation of being imprisoned as a child abuser, and his desire to get out of prison by any way possible. Larry swore in his affidavit of July 16, 2004, "My entire statement was a big ass lie."

As luck would have it, I discovered on Christmas Day 2006 that a fellow prisoner of mine frequently saw Jerome in the downtown LA area of drugs and prostitution where he was murdered, and she knew the gay prostitute he frequently paid for sex. The woman is Elvira James, and she swore in an affidavit dated June 23, 2007 that Jerome was known as "C-Note" because he paid $100 for sex, and he was widely known to carry a large amount of cash. She wrote that because he paid top dollar, "Jerome was a "big trick" downtown." The area where Jerome was murdered was one of LA's most dangerous areas at the time. James' information provides the most logical motive imaginable for Jerome's murder: the theft of the money, jewelry and drugs he had on him or in his motor home by one or more persons who either knew of his reputation, or actually sold him drugs or gay sex. That is 100% consistent with the fact that Jerome had been robbed of his expensive jewelry, whatever drugs he had on him or in the motorhome, and as much as $10,000 in cash. James also swore in her affidavit that word on the street at the time was that a gay guy known as Ms. Ross murdered Jerome.

Slaughter executed an affidavit dated January 20, 2001 in which he swears that he made a taped statement to the LAPD, but that he said nothing suggesting that either he or I had any involvement in Jerome's murder. In fact, Slaughter says of his questioning by a detective, "I told him I did not know what he was talking about!" Slaughter's affidavit logically explains why only days after his statement the LAPD claimed the tape of it had been "lost." The LAPD couldn't on the one hand claim Slaughter's taped statement constituted a confession, and on the other hand provide the tape to my public defender when it in fact contained no incriminating evidence against either Slaughter or me. Slaughter's affidavit is also consistent with the fact that neither he nor I have been identified as the source of any crime scene evidence.

I want to emphasize that Jerome's murder involves a triple injustice: I was wrongly convicted; I believe that after his separate trial Slaughter was also wrongly convicted of first-degree murder and sentenced to life in prison; and the person or persons who actually murdered Jerome got off scot-free.

In spite of my setbacks, I have not lost faith that I will be proven innocent and set free. What I need is a skilled investigator and a determined attorney to help make this a reality. I pray someone reading this will feel "called" to help right this terrible wrong, and assist me. I can be written at:

Patricia Wright W-79941
CCWF - 516-4-3L
P.O. Box 1508
Chowchilla, CA 93610-1508

My outside contact is my son Quincey Scott. His email is, TMSCO9@aol.com

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# Federal Tax Breaks Proposed For Exonerated

Currently all compensation received by a wrongly convicted person is federally taxable as personal income, and a number of exonerated persons have gotten into trouble with the IRS over tax payments.

Asserting that federally taxing the compensation an exonerated person receives is "like throwing salt on a very deep wound," New York Senator Charles Schumer (D) introduced a bill in the U.S. Senate on December 6, 2007 that would provide those people with special federal income tax breaks.

The Wrongful Convictions Tax Relief Act of 2007 (S. 2421), if enacted, will amend the Internal Revenue Code of 1986 to exempt a "wrongfully incarcerated individual" from paying federal income taxes on "any civil damages, restitution, or other monetary award" related to their wrongful incarceration. (All other income would be subject to federal taxation.) The bill would also exempt, for a maximum of 15 years, an exonerated person without a prior felony conviction from paying income taxes on up to $50,000 earned each year after their release (or up to $75,000 if married and filing a joint return).

Schumer said at the time he introduced the bill: "The criminal justice system is not perfect, so at the very least, we ought to do what we can to make amends to the people who were wrongly convicted — a very small number of people who pay a big, big price for those mistakes. The compensation they receive should not be taxed."

A wrongly convicted person's state compensation is exempted from state taxes in California, Massachusetts and Vermont.

Sources:
S. 2421, The Wrongful Convictions Tax Relief Act of 2007. http://thomas.loc.gov/cgi-bin/query/z?c110:S.2421
Bill Would Give Tax Break to Exonerated Prisoners, *The New York Times*, December 7, 2007.

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_____ **Victims of Justice Revisited** by Thomas Frisbie and Randy Garrett - **$19.95** - 468 pgs. Tells the story of Rolando Cruz and his two co-defendants accusation of kidnapping and murdering Jeanine Nicarico in 1983 from the day the crime occurred to their exoneration in 1995 after three trials, to the trial of seven law officers accused of conspiring to deny Cruz a fair trial and falsely have him executed. #23

_____ **Innocent: Inside Wrongful Conviction Cases** by Scott Christianson - **$18.95** - 208 pgs. The 42 cases collected and graphically documented in *Innocent* reveal the mistakes, abuses and underlying factors that led to miscarriages of justice, including the presumption of guilt, mistaken identification, eyewitness perjury, ineffective assistance of counsel, police misconduct, prosecutorial misconduct, and forensics, while also describing how determined prisoners, post-conviction attorneys, advocates and journalists struggled against tremendous odds to win their exonerations. #76

_____ **Tulia: Race, Cocaine, and Corruption in a Small Texas Town** by Nate Blakeslee - **$14.95** - 464 pgs. Definitive account of the five year travesty of justice in Tulia that resulted in the wrongful conviction of 38 people on trumped up drug charges. Blakeslee is the award-winning reporter for the *Texas Observer* who broke the Tulia story in 2000. #25

_____ **Exit to Freedom** by Calvin C. Johnson Jr. with Greg Hampikian - **$18.95** - 286 pgs. After his 1983 conviction for rape and related crimes, Calvin C. Johnson Jr. told the judge, "With God as my witness, I have been falsely accused of these crimes. I did not commit them. I'm an innocent man." Sentenced to life in prison, *Exit To Freedom* is Johnson's story of how he spent the next sixteen years working to free himself before DNA testing ruled out the possibility he was guilty, and he was released in 1999. #26

_____ **The Death of Innocents: An Eyewitness Account of Wrongful Executions** by Helen Prejean - **$14** - 336 pgs. The book's first part focuses on the execution of two men who were likely innocent: Dobie Williams, a black man with an IQ of 65 from rural Louisiana represented by incompetent counsel and found guilty by an all-white jury based mostly on conjecture and speculation; and, Joseph O'Dell, convicted of murder based on a jailhouse informant who later admitted to testifying falsely for his own benefit. The book's second part details the inequities in capital prosecutions and the arbitrary imposition of the death sentence. #27

_____ **Win Your Case: How to Present, Persuade, and Prevail – Every Place, Every Time** by Gerry Spence - **$14.95** - 304 pgs. Written for defense lawyers or lay people. In his 50+ year career Spence has never lost a criminal case. He considers every case a "war," and he focuses on what is necessary to win. The book deals with waging the war: improving one's storytelling skills, conducting effective opening and closing statements and using witnesses. #72

_____ **Last Man Standing: The Tragedy and Triumph of Geronimo Pratt** by Jack Olsen - **$15.95** - 512 pgs. The story of Geronimo Pratt's 1970 conviction and life sentence for an LA murder committed when he was 350 miles away from the crime scene and under FBI surveillance in Oakland, CA. Pratt was exonerated in 1997 and awarded $2.75 million in 2000. This is a textbook case of abuse of the American legal system for political ends. #63

_____ **Last Words From Death Row** by Norma Herrera - **$19.95** - 264 pgs. Leonel Herrera was executed in 1993 after the U.S. Supreme Court ruled evidence of his factual innocence was irrelevant to issuing a writ of habeas corpus. Leonel's last request to his sister was to tell his true story. His experience demonstrates that in the U.S. the legal system is more concerned with procedure than finding the truth of a person's guilt or innocence. #88 (Pub. April 2007)

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

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

_____ **Who Killed Sarah?** by Sheila and Doug Martin - **$16.95** - 272 pgs. Although there was no physical evidence, no witnesses to the crime and no murder weapon, Penny Brummer was convicted of first-degree murder in the death of Sarah Gonstead by a Madison, Wisconsin jury in October 1994. But did Brummer do it? Or was she herself a victim of overzealous prosecutors, tunnel-vision investigators, contradictory forensic scientists, and a prejudiced judge? It's a twilight zone, but it's real. #29

_____ **Hurricane: The Miraculous Journey of Rubin Carter** by James S. Hirsch - **$15** - 384 pgs. In 1966, two men shot four people in a New Jersey diner, killing three. Rubin "Hurricane" Carter, a onetime contender for the middleweight boxing crown, and John Artis, an acquaintance of Carter's, were charged with the murders. After their convictions without any definitive evidence of their guilt, Carter began what became a 22-year effort to exonerate himself and regain his freedom. #30

_____ **Sweet Freedom** by Doug Tjapkes - **$12.99** - 224 pgs. The untold story of the friendship between African-American Maurice Carter and white journalist Doug Tjapkes. Wrongly convicted of attempted murder, Carter was released in 2004 after 28 years imprisonment. Rubin "Hurricane" Carter said afterward, "Maurice Carter's release is due basically to Doug Tjapkes' tenacity." #31

_____ **The Wrong Men: America's Epidemic of Wrongful Death Row Convictions** by Stanley Cohen - **$15** - 256 pgs. Sociologist Cohen examines some 100 instances where people sentenced to death were later exonerated. Cohen also analyzes the chief reasons why wrongful convictions occur so frequently, and he presents a convincing argument to suspect the reliability of capital convictions. #32

_____ **Devil's Knot: The True Story of the West Memphis Three** by Mara Leveritt - **$15** - 432 pgs. Dissects the prosecution's case against the three teenagers convicted of the gruesome murders of three eight-year-old boys. Leveritt demonstrates the murder investigation didn't examine other suspects, and the three youth's convictions were based on a single confession from a retarded youth, and the defendants' alleged ties to satanic rituals. #65

_____ **Arbitrary Justice: The Power of the American Prosecutor** by Angela J. Davis - **$29.95** - 264 pgs. **Hardcover**. Intense and long-overdue serious examination of the expanding power of prosecutors and their increasing politicization. Law Professor Davis explains how the day-to-day practices and decisions of prosecutors produce unfair and unequal treatment of defendants. Davis argues that the mechanisms purportedly holding prosecutors accountable are ineffectual and foster a climate of tolerance for misconduct. #84 (Pub. March 2007)

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**Merriam-Webster's Dictionary - $6.50 -** 939 pgs. Over 75,000 definitions. Good basic dictionary. #03

**Merriam-Webster's Spanish-English Dictionary - $6.50 -** 800 pgs. More than 80,000 entries and 100,000 translations. Many examples of a words use in context. English-Spanish and Spanish-English. Includes Latin-American Spanish. #04

**Roget's 21st Century Thesaurus in Dictionary Form - $5.99 -** 976 pgs. Includes more than 1 million word choices. Features easy-to-use dictionary format, plus a Concept Index that also arranges words by idea. Includes definitions for each main entry. #05

**Merriam-Webster's Vocabulary Builder - $5.99 -** 576 pgs. Good resource to expand one's vocabulary. Includes over 1,000 words with definitions and explanation of the words usage, including examples of its use in a sentence. #06

**Essentials of English Grammar** by L. Sue Baugh - **$8.95 -** 176 pgs. Explains parts of speech, punctuation, capitalization, spelling, frequently confused words, and much more. Includes style tips on how to write with economy, clarity, and accuracy. #07

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

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

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

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

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

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

**In Spite of Innocence: Erroneous Convictions in Capital Cases** by Michael Radelet, Hugo Adam Bedau and Constance Putnam - **$22 -** 416 pgs. Details how over 400 Americans were wrongly convicted in cases carrying the maximum penalty of a death sentence. Expands on well-known 1987 Stanford Law Review article by Radelet and Bedau that has been cited several times in U.S. Supreme Court opinions, most recently in June 2006. #15

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

**Wrongly Convicted: Perspectives on Failed Justice** Ed. by Saundra Westervelt and John Humphrey - **$23.95 -** 301 pgs. Articles by leading authorities explain how and why wrongful convictions occur. The book is divided into four sections: the causes of wrongful convictions; the social characteristics of the wrongly convicted; case studies and personal histories; and suggestions for changes in the legal system to prevent wrongful convictions. #18

**Suspect Identities: A History of Fingerprinting and Criminal Identification** by Simon Cole - **$18.95 -** 400 pgs. Most comprehensive book available about the history of fingerprinting and why it may not be the "gold standard" of evidence that most people believe it to be. Professor Cole is one of the world's leading critics of Court's allowing fingerprint examiners to testify as experts. A must have book by anyone with an interest in fingerprinting. #20

**Bloodsworth: The True Story of One Man's Triumph over Injustice** by Tim Junken - **$13.95 -** Kirk Bloodsworth was sentenced to death for the 1984 rape and murder of a young girl. After nine years imprisonment, DNA testing of crime scene evidence excluded him as the girl's assailant. Upon his release he became the first person exonerated by DNA testing who had been sentenced to death. #39

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**Mistaken Identification: The Eyewitness, Psychology and the Law** by Brian L. Cutler and Steven D. Penrod - **39.99 -** 300 pgs. Reviews research concerning the adequacy of safeguards protecting a person from being convicted due to a mistaken eyewitness identification. The presence of counsel at line-ups, cross-examination, and judges' instructions have proven ineffective at preventing a mistaken identification. Expert psychological testimony educating the jury about how memory processes work and how eyewitness testimony should be evaluated, shows much greater promise as a safeguard against mistaken identifications. #74

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"If one really wishes to know how justice is administered in a country, one does not question the policemen, the lawyers, the judges, or the protected members of the middle class. One goes to the unprotected — those, precisely, who need the laws protection most — and listens to their testimony."

James Baldwin

### Alabama's Governor Refuses To Order DNA Testing In Thomas Arthur's Case

The State of Alabama has opposed forensic testing of evidence in Thomas Arthur's case for 17 years, since before his 1991 murder trial, conviction and death sentence. Arthur asserts the testing could prove his innocence and identify the actual killer(s). Alabama Governor Bob Riley responded to a crescendo of calls by the media, activist organizations, legal professionals and citizens for DNA testing of the evidence in Arthur's case, by stating on December 29, 2007 that he will not order the testing.

See the *JD* Editorial on page 10.

# JUSTICE DENIED

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