

JUSTICE DENIED

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The Magazine for the
Wrongly Convicted

PETITION FILED IN KENYA TO NULLIFY JESUS CHRIST'S CONVICTION

SEE P. 20



Four Innocent Men Awarded \$101.75 Million By Federal Judge Nancy Gertner For FBI Frame-up

Joseph Salvati, Peter Limone, Louis Greco and Enrico Tameleo were convicted of a 1965 Boston murder based on the FBI's approval of false testimony by an FBI informant who was one of the actual murderers. Greco and Tameleo died in prison, while Salvati served 29 years and Limone 33 years before their exoneration.
See page 16



Herman Atkins

Awarded \$2 million by a jury for 12 years of wrongful imprisonment for robbery and rape.
See page 14

Harry Miller

Conviction vacated and released from 4-1/2 years imprisonment for Utah robbery committed when he was 1,900 miles away in Louisiana recovering from a stroke.
See page 4



Brandon Mayfield

Attorney awarded \$2 million for false arrest and imprisonment as international terrorist.
See page 13



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Thomas Arthur Faces Execution As Alabama Refuses To DNA Test Evidence!

John Tennison Denied CA Compensation For 14 Years Wrongful Imprisonment!

Bank Video Proves Man Is Not Golf Course Flasher!

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Summer 2007

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Message From The Publisher

Justice:Denied reported in the fall of 1999 on Thomas Arthur’s conviction and death sentence in Alabama for a 1982 murder. Arthur was hours from being executed on September 27, 2007, when Alabama’s governor ordered a 45-day stay. See the article and editorial on page 9.

William Peterson, the District Attorney For Ada, Oklahoma, hid behind prosecutorial immunity to avoid being sued for all manners of defamatory claims and slanderous utterances he made in procuring and justifying the convictions and sentences of Ron Williamson and Dennis Fritz for a 1982 murder they didn’t commit. So it is not just ironic, but cowardly, that Peterson and one of the case’s police investigators are now suing author John Grisham (and several other defendants) for libel and slander for criticizing their handling of the case. See the article on page 13.

Kudos to U.S District Court Judge Nancy Gertner for refusing to cave-in to the federal government’s ceaseless efforts to deny compensation to four men framed for murder by an FBI informant. See the article on page 16.

The Journal of the Institute of Justice & International Studies is publishing an article I wrote based on my presentation at the February 2007 Miscarriages of Justice conference at The University of Central Missouri. To my knowledge this is the first article in a peer-reviewed legal journal that presents the argument that every opinion issued by every state and federal appellate court should be published and precedential. I think this is one of the most important issues to the curbing of wrongful convictions at the trial level, and then helping ensure they will be overturned on appeal. See ordering details on page 23.

The Trials of Darryl Hunt is now available on DVD. This is a must see that sets the gold standard for wrongful conviction documentaries. It can be ordered from the Videoshop on *JD’s* website.

The world-wide interest in wrongful convictions is demonstrated by visitors to *JD’s* website. In September 2007 people from 71 countries visited, and 15 of the top 50 cities from which visits originated were outside the U.S. The third most visitors were from London, England, behind New York and Chicago. Six Canadian cities, and four Australian cities were in the top 50.

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

Information About *Justice:Denied*

Six issues of *Justice:Denied* magazine costs \$10 for prisoners and \$20 for all other people and organizations. Prisoners can pay with stamps and pre-stamped envelopes. A sample issue costs \$3. See order form on page 23. An information packet will be sent with requests that include a first-class stamp or a pre-stamped envelope. Write: Justice Denied; PO Box 68911; Seattle, WA 98168.

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If you have an account of a wrongful conviction that you want to share, send a first-class stamp or a pre-stamped envelope with a request for an information packet to, Justice Denied, PO Box 68911, Seattle, WA 98168. Cases of wrongful conviction submitted in accordance with *Justice:Denied’s* guidelines will be reviewed for their suitability to be published. *Justice:Denied* reserves the right to edit all submitted accounts for any reason.

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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.

Samuel Shapiro was last seen alive around 5 P.M. on May 9, 1973. Shapiro's secretary and mistress, Nancy Frank, last saw him walking on a Baltimore sidewalk with Dennis Mul-lene Moon.

Murder Conviction Based On Perjury And Withheld Evidence – The Douglas Arey Case

By Douglas Scott Arey ¹

Two days later, after Shapiro had been listed as missing, Douglas Scott Arey was questioned at the Baltimore City Police Headquarters about Shapiro. Arey, who knew both Moon and Shapiro, was arrested eighteen hours later on suspicion that he committed a premeditated armed robbery of Shapiro that resulted in his death. One week later Shapiro's body was found in a trunk in Pennsylvania.

The charges and evidence

Arey was subsequently indicted under a felony murder theory that Shapiro's death was the intended consequence of an armed robbery. However, out of an eight count indictment for armed robbery, larceny and theft, after arguments by Arey's attorney the trial court dismissed seven counts, and the jury acquitted Arey on the remaining count. Thus Arey's felony murder charge was based on the prosecution's false theory that he was involved in robbing Shapiro.

There was no eyewitness to the murder. The murder weapon wasn't recovered. There were no fingerprints on the trunk in which Shapiro was found. The prosecution's case against Arey was based on circumstantial evidence, his alleged confession to three police officers, a jailhouse informant, Moon's claim he was involved in the murder with Arey, and a prosecution "experts" claim that Shapiro's blood was found on Arey's shirt.

Arey's purported "confession" to three police officers

Three police officers testified during an interrogation Arey "confessed" to the murder. Yet there was no written record of it, Arey didn't initial or sign a handwritten or typed confession, and there was no video or audio recording. Even more curious, all three officers testified that none of them even wrote any notes when Arey made his purported confession. Furthermore, the State's primary witness was Moon and he testified those same three officers told him that Arey had not confessed

Baltimore P.D. Detective James Russell was a key prosecution witness in 1974 when Michael Austin was convicted of murder. Austin was exonerated and released in 2001, after 27 years of wrongful imprisonment. A few months before Austin's trial, Russell testified at Arey's trial as one of the three officers who claimed to have heard Arey "confess" to Shapiro's murder. Russell was the "lead detective" in both Arey's case and Austin's case.

anything to them and denied involvement in Shapiro's murder. The only physical evidence introduced at Arey's trial in support of his purported "confession" was about thirty words handwritten on a single page of legal paper that were supposedly "notes" written by Baltimore Detective James Russell sometime later outside the interrogation room.

Baltimore police involved in stolen property ring

To disprove the credibility of the claim that he made an undocumented confession, Arey introduced evidence that several Burglary Squad detectives were involved in a stolen property ring with Moon and Arey. That gave the police a reason to lie about Arey's involvement in Shapiro's murder. Indeed, one of the detectives who testified to hearing Arey "confess" was the brother of a Burglary Squad detective mixed-up in the heart of the stolen goods ring. The news of police involvement in the stolen property scheme made the front page of the Baltimore *Sun* in April 1974. After Arey's trial, as a result of Internal Affairs and other investigations, about seven police officers involved in Arey's case were suspended, dismissed, quit, transferred, retired or otherwise found new careers. However, because these were "personnel" matters, the official investigation reports were not publicly released or disclosed post-conviction to Arey as exculpatory *Brady* evidence.

The jailhouse informant

Like many other cases, Arey's involved a "jailhouse informant." Jerry Carneal claimed that while he was housed in a cell with Arey in the Baltimore City Jail (BCJ), Arey contracted with him to silence Moon. To prove Carneal's claim was false, Arey secured affidavits from three BCJ correctional officers that Arey had spent his entire time in protective custody because of the investigation of the Baltimore PD burglary squad's involvement in the stolen goods ring. Carneal claimed he had no special deal with the State's Attorney, but after being arrested for assault on January 15, 1973, and then agreeing to testify against Arey, he pled guilty and was sentenced in June 1973 to five years in carcer-

ation. His payoff was being paroled in January 1974 after serving only about 12% of his sentence. Carneal's sweetheart deal of being released after serving 12% of his sentence was a violation of Maryland's parole statutes. Although it wasn't disclosed to Arey until 33 years after his trial, Carneal was a professional jailhouse informant who had testified in a prior case, he gave the police false information about a non-existent "escape" attempt by Arey, and he "volunteered" to testify in another case after Arey's trial.

Moon given immunity for murder

The State's Attorney granted Moon transactional immunity from prosecution for admitting his participation in Shapiro's murder, in exchange for his "truthful" testimony against Arey. Moon's deal wasn't legal because Maryland statutes and case law didn't provide for immunity for murder. ² Furthermore, 33 years after Arey's trial he learned that Moon had been a prosecution witness in previous trials, and at the time he testified during Arey's trial he had a deal to testify as a prosecution witness at the sodomy trial of Lawrence Librich.

Moon's deal was also unusual because he had an extensive and violent criminal history, while Arey did not. Moon had previously been convicted in Maryland of crushing a woman's head with a lead pipe and paralyzing her for life. His attack resulted in him being convicted of armed robbery, assault with intent to murder, and larceny. (See, *Moon v. State*, 250 Md. 468 (1970)) He was sentenced to twenty years, but at Arey's trial he denied under oath that he had been given that sentence.

Moon's other convictions included a 1960 car theft and a 1961 escape while serving the car theft sentence. During his escape he stole a car in which he crossed state lines, and he was captured after a high-speed chase with the police shooting at him. Those events resulted in his Dyer Act and interstate flight to avoid prosecution convictions in 1962. Moon also had a dishonorable discharge from the military for a 1958 larceny for which he was sentenced to Fort Leavenworth. He was also convicted in Baltimore in early 1972 for assault by threatening with a firearm, at the same location where Shapiro was murdered a year later.

When Moon was questioned about his criminal record during Arey's trial, he denied being convicted for assault by threatening a person with a firearm in the Belvedere Hotel a year before Shapiro was shot to death in that same hotel. The State's Attorney backed Moon up by falsely denying knowl-

Arey cont. on p. 18

Harry Miller Exonerated Of Utah Robbery Committed When He Was In Louisiana Recovering From A Stroke



Harry Miller after his release

By Hans Sherrer

A woman was robbed at knife-point of her purse outside a Salt Lake City, Utah convenience store on December 8, 2000. Her purse contained \$50, and the black robber who fled on foot was not apprehended.

More than two years later, in February 2003, a Salt Lake City restaurant was robbed at gunpoint by a black man. Minutes later Harry Miller, 47 and black, was stopped and searched by police when he was seen walking several blocks from the restaurant. Although Miller didn't have a gun on him or any of the robbery proceeds, he was arrested and subsequently charged with robbing the restaurant. Those charges were later dropped for insufficient evidence. However, his arrest resulted in his picture being in the Salt Lake City PD's mugshot book.

Shortly after Miller's release, the woman robbed in 2000 was with her husband while he was looking through police photos of possible suspects in an unrelated crime. When she saw Miller's mugshot from his false arrest for the restaurant robbery, she told the police, "That looks like the guy who robbed me." The woman identified Miller even though she told police at the scene of the crime that the robber was 18 to 21 years old, while in 2000 Miller was 47-years-old and had gray in his beard.

Based on the woman's identification, Miller was arrested and charged with first-degree felony aggravated robbery. The store clerk later also identified Miller as the robber.



Miller's defense during his trial in 2003 was he couldn't have committed the crime because on December 8, 2000 he was in Louisiana, almost 1,900 miles from Salt Lake City.¹ Miller testified he was living in Louisiana when he suffered a stroke on November 25, 2000, after which he was hospitalized for four days. He then stayed at his sister's home in Donaldsonville, Louisiana while he recovered. He testified that the stroke left him partially paralyzed and unable to speak, and only after a period of time did his movement and speech somewhat return. His alibi testimony was corroborated by hospital and employment records proving that two weeks before the robbery and a week afterwards he was in Louisiana.

The prosecution argued that the robbery victim and store clerk both positively identified Miller, and his alibi evidence didn't establish that on the day of the crime he was in Louisiana, only that he was there before and after the robbery. They further argued that he could have committed the robbery in spite of his stroke caused physical and speech difficulties.

"Prison is not right for people who've never done nothing."
 Harry Miller after his release from 4-1/2 years imprisonment for a Salt Lake City robbery committed when he was 1900 miles away in Louisiana recovering from a stroke.

The District Court jury convicted Miller and he was sentenced to five years imprisonment. Lawyers Margaret Lindsay and Patrick Lindsay were appointed to handle Miller's direct appeal. (The Lindsays are brother and sister.) Prior to filing Miller's appeal brief, the Lindsays came upon information that hadn't been introduced during his trial, corroborating Miller's alibi that he had been in Louisiana when the crime occurred.

Rule 23B of Utah's Rules Of Appellate Procedure allows for a motion to remand a case back to the trial court to determine the facts supporting a defendant's claim of ineffective assistance of counsel, provided there is evidence not in the record supporting the motion. After an evidentiary hearing, the trial court submits its findings of fact to the appeals court, which makes a determination if there is sufficient evidence supporting the ineffective assistance of counsel claim. If they decide the claim is supported, then the defendant can add the claim to his or her direct appeal.

The Lindsays filed a 23B motion alleging Miller's trial lawyer didn't adequately investigate the witnesses and documentation that was available in support of his alibi. However, the motion was denied by the Court of Appeals on the basis there

was insufficient new evidence of ineffective representation by Miller's trial lawyer.

Believing that Miller had in fact been in Louisiana, the Lindsays pursued collecting additional evidence supporting his alibi. Patrick flew to Louisiana and over the course of three days sought additional documentation and witness affidavits corroborating Miller's presence in Donaldsonville on the days around the robbery. One of those witnesses, a home health-care nurse, swore she saw Miller on December 7, the day before the robbery.

Armed with the new evidence, the Lindsays filed a second 23B motion. Based on that motion's additional new evidence the Court of Appeals ordered the trial judge to hold an evidentiary hearing. The home health-care nurse who saw Miller on the 7th, and Miller's niece who cared for him after his stroke, were among the witnesses who traveled from Louisiana to Salt Lake City for the September 2005 hearing.

After the hearing the judge didn't find that Miller's lawyer had been ineffective, because there was no evidence specifically establishing that on December 8 Miller was in Donaldsonville. Consequently, the judge found it is possible Miller could have been in Salt Lake City and committed the crime during the approximately 24-48 hours when he couldn't "prove" he was in Donaldsonville.

The judge's ruling was inexplicable because when Miller traveled to Salt Lake City he did so by bus. The round-trip by Greyhound from Baton Rouge (closest depot to Donaldsonville) and Salt Lake City takes 3 days and 8 hours – plus whatever time Miller would have needed to commit the robbery and go to and from the bus station, and then wait for the next bus to leave.² Thus it was not only physically impossible for Miller to have traveled round-trip by bus between Louisiana and Utah in 24-48 hours – but his debilitating stroke may have made the trip medically impossible for him to undertake in early December 2000. On top of those considerations is the absurdity of believing Miller, or anyone else, would travel 3,800 miles to rob a woman of \$50 — which wouldn't even cover his bus fare.

The Court of Appeal reviewed the record of the evidentiary hearing *de novo*, which meant the court freshly looked at the evidence without being bound by the District Court judge's opinion. However, prior to issuing a decision, in May 2007 the appeals court vacated Miller's conviction and ordered a new trial, based on a stipulation between his lawyers and the prosecutors.

Miller cont. on p. 5

Convictions Based Solely On Co-defendant's Self-serving Testimony Tossed

State of Tennessee v. William Joshua Harwood, No. E2006-01483-CCA-R3-CD (Tenn.Crim.App. 09/04/2007); 2007.TN.0001286<<http://www.vernullaw.com>>

The defendant, William Joshua Harwood, appeals as of right from his Hamilton County Criminal Court convictions for attempt to manufacture methamphetamine and two counts of theft of property valued at over one thousand dollars. (¶7)

Elizabeth Martin testified that she returned home from a two-week trip to Italy to discover her home in disarray and smelling "like cat urine." She contacted authorities who discovered that someone had been manufacturing methamphetamine in the home. She stated that her daughter, Elsie Martin, had access to the home while she was in Italy. She also recalled that several items were missing from her home and that a pile of women's and men's clothing was found on her kitchen floor. She did not mention the defendant in her testimony. (¶17)

Judith Martin, Elsie Martin's grandmother, testified that she had traveled to Italy with her daughter, Elizabeth, only to return home to find her home ransacked. She stated that Elsie also had access to her home. Several items, including a blank check, were discovered missing from the home. Investigators later learned that the blank check had been cashed for \$5700. She did not mention the defendant in her testimony. (¶18)

Lieutenant William Lewis of the Signal Mountain Police Department, testified that when he was called to the scene of Elizabeth Martin's home he became concerned that the house had been used to manufacture methamphetamine. ... He did not mention the defendant in his testimony. (¶19)

Officer Russell Craig of the Signal Mountain Police Department testified that he is certified in clandestine methamphetamine lab processing. ... He did not mention the defendant in his testimony. (¶20)

William Harwood's theft and methamphetamine manufacturing convictions were based solely on the testimony of a co-defendant, who admitted that she testified as a prosecution witness in exchange for being sentenced to rehabilitation instead of prison. Ruling uncorroborated co-defendant testimony is insufficient evidence, the appeals court overturned Harwood's convictions and dismissed the charges. Excerpts of the decision follow.

Officer James Fletcher of the Signal Mountain Police Department testified that he transported evidence recovered from Elizabeth Martin's home to the Tennessee Bureau of Investigation Crime Lab. Agent Ashley Cummings of the TBI Crime Lab confirmed that the items contained evidence of methamphetamine. Agent David Shelton of the Drug Enforcement Administration estimated the amount of methamphetamine manufactured to be about twenty-three grams of "fairly high purity" ... None of these law enforcement agents mentioned the defendant in their testimony. (¶21)

Elsie Martin, an indicted co-defendant, stated that she was testifying in exchange for serving her sentence in rehabilitation. (¶23)

The defendant contends that the evidence is insufficient to prove his guilt for the convicted offenses because it is based upon the uncorroborated testimony of an accomplice, Elsie Martin. The state concedes and asks this

court to reverse and dismiss the defendant's convictions. (¶25)

In *State v. Bigbee*, 885 S.W.2d 797, 803 (Tenn. 1994), our supreme court explained the requirement that a conviction may not be based solely upon the uncorroborated testimony of an accomplice when it ruled that: "[T]here must be some fact testified to, entirely independent of the accomplice's testimony, which, taken by itself, leads to the inference, not only that a crime has been committed, but also that the defendant is implicated in it; and this independent corroborative testimony must also include some fact establishing the defendant's identity." (¶27)

Our review of the evidence presented at trial reveals that the only evidence implicating the defendant with any criminal activity was presented solely through the testimony of Elsie Martin. ... Accordingly, the defendant's convictions are reversed and the cases are dismissed. (¶28)

Miller cont. from p. 4

The Lindsays were then replaced as Miller's counsel by a public defender assigned to represent Miller during his retrial, that was scheduled to begin on July 12, 2007. The prosecution, however, offered to immediately free Miller for the time he had served if he would plead guilty to a misdemeanor. Miller refused, asserting he was innocent. Facing a retrial with the victim's shaky identification exposed by the credible evidence that Miller was almost two thousand miles from the crime scene, the prosecution dropped the charges on July 6. Miller was released later that day after almost 4-1/2 years of wrongful imprisonment.

Miller was overcome with emotion, later saying to *The Salt Lake Tribune*, "It was like I was a little kid and somebody slapped me upside my head. I started crying like a little baby." He was unapologetically critical of his public defender's failure to adequately investigate that he was in Louisiana, saying, "He just

stopped trying." In his southern drawl, Miller said somewhat philosophically, "Prison is not right for people who've never done nothing."

Trying to make sense of how the jury convicted Miller when only his skin color matched the victim's original description of her attacker, and there was documentary proof he had experienced a debilitating stroke in Louisiana only 13 days before the robbery, Patrick Lindsay told *The Salt Lake Tribune*, "I think sometimes juries here, and across the nation, don't come into court with an 'innocent until proven guilty' attitude."

Miller wasn't given any money when he was released from prison, so he stayed with relatives and friends in the Salt Lake City area. To get together enough money to return to Louisiana he started working as a laborer for a moving company. After *The Salt Lake Tribune* ran a story that Miller was too destitute to return home to Louisiana, local defense attorney Andrew McCullough started a fund to raise money for him. After

about a week McCullough had raised \$690. The first week-end in August 2007, Miller left for New Orleans where he had arranged to stay with his daughter until he got situated.

Utah doesn't have a wrongful conviction compensation statute. So Miller's only financial recourse may be to file a federal civil rights lawsuit (42 U.S.C. §1983) against the public defender who represented him at his trial, the Salt Lake Legal Defender Association, and Salt Lake County, for the harm he suffered because of his ineffective trial representation.

Sources:

"Wrongful Prosecution," by Stephen Hunt (staff), *The Salt Lake Tribune*, July 23, 2007.
"Vindicated ex-prisoner to return home," by Stephen Hunt, *The Salt Lake Tribune*, August 3, 2007.
Telephone interview of Patrick Lindsay by Hans Sherrer, August 8, 2007.

Endnotes:

1 It is 1,881 miles from Donaldsonville, Louisiana to Salt Lake City, according to mapquest.com, and the driving time is 27 hours and 25 minutes, less time for stops. (Last checked on August 8, 2007.)
2 Baton Rouge to Salt Lake City takes, 1d, 16h, 30m. Salt Lake City to Baton Rouge takes 1d, 15h, 35m. Information from Greyhound's website, <http://greyhound.com> (Last checked August 8, 2007.)

Twin's Conviction Of Murdering Brother Overturned

Philip Littler v. State of Indiana, No. 71S03-0704-CR-151 (Ind. 08/08/2007) [Opinion excerpts]

Eighteen-year-old Neal Littler died from a gunshot injury suffered in a fight with his twin brother, Philip Littler. Convicted of Neal's murder, Philip's direct appeal challenges the trial court's exclusion of their mother's testimony regarding Neal's prior conduct. (§10)

Defending against the murder charge at trial, Philip asserted self-defense and claimed that Neal was threatening and attacking Philip with a knife. Philip sought to present evidence of certain events and specific acts committed by Neal in the past upon which Philip claimed he reasonably relied for his belief that Neal posed a threat of serious bodily injury or death. Among his proposed witnesses, Philip listed the mother of Philip and Neal. ... The trial court granted the State's motion and refused to permit Philip to call the twins' mother to corroborate his testimony. (§§11-12)

Philip Littler's conviction was overturned and a new trial ordered by the Indiana Supreme Court in August 2007, based on the trial judge's failure to allow Philip's mother to provide testimony corroborating his testimony that he had reason to be in fear of his life when he shot and killed his twin brother in self-defense. Excerpts of the decision follow.

In this appeal, Philip seeks reversal on grounds that the trial court erroneously prevented him from presenting his mother's testimony. The State's response does not dispute that the exclusion was erroneous but argues only that any error did not affect Philip's substantial rights, appealing to what is often referred to as the "harmless error" doctrine. (§13)

Neal's death occurred when Philip and Neal got into an argument that escalated into a physical altercation. At one point, Neal brandished a knife and Philip pulled out a handgun. In his trial testimony, Philip stated that Neal then threatened to kill him and that Neal, armed with the knife, made an abrupt movement toward Philip, prompting him to fire the handgun at Neal from about three feet away, because he thought that Neal was going to stab him. Philip explained that this belief was fueled by his awareness of previous incidents in which Neal had stabbed Philip and oth-

er people, including their stepfather ... The incident was observed by Neal and Philip's fourteen-year-old cousin, who testified that Neal had pulled a knife, threatened to use it against Philip, and was moving as if to stab Philip when Philip fired the handgun at Neal. (§14)

Following Philip's testimony, the defense attempted to call their mother "for the purpose of testifying to the fact that the various instances of bad acts by Neal that Philip has testified to did in fact happen and his testimony in that regard is true." (§15)

The applicable version of the self-defense statute states: "[A] person is justified in using deadly force only if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony." Ind. Code 35-41-3-2(a) (2004). (§18)

... [T]he phrase "reasonably believes," as used in the Indiana self-defense statute, requires both subjective belief that force was necessary to prevent serious bodily injury, and that such actual belief was one that a reasonable person would have under

the circumstances. (§20)

Philip clearly asserted self-defense and provided evidence in support of this claim. Philip testified to his actual fear that Neal was about to stab him and to his knowledge of Neal's prior conduct and circumstances warranting Philip's belief that he needed to use force to prevent Neal from inflicting serious bodily injury. The cousin provided testimony that tended to corroborate Philip's version of the fight, Neal's attempt to stab Philip, and Philip's firing of the handgun in self-defense. But Philip was not permitted to provide any corroboration of his allegations of facts supporting his belief that deadly force was necessary. ... The mother's testimony confirming Neal's numerous prior stabbings, his mental condition, and his history of violent behavior would be very probative and relevant to the jury's evaluation of the objective reasonableness of Philip's belief that he needed to use force against Neal and would also lend substantial credibility to Philip's assertions. We cannot conclude that the exclusion of the mother's testimony did not affect Philip's substantial rights. The harmless error doctrine does not apply here ... (§21)

We reverse [Philip's] conviction for murder and remand for a new trial and such other further proceedings as are consistent with this opinion. (§24)

The Public Thinks Lawyers Lie

A Harris Poll® found that three out of four adults in the U.S. don't trust a lawyer to tell the truth. The only occupation trusted less are actors — who are paid to make-believe.

Doctors (85%) and teachers (83%) are considered the most likely people to be honest. Police officers rank fourth at 76%. Ordinary people encountered in daily life are considered to be truthful by 66% of the poll's respondents — just below judges (70%) and just above civil servants (62%), that includes prosecutors.

A separate nationwide Harris Poll® found that only 21% of adults think lawyers have

"very great prestige," just above entertainers (18%). In contrast, the most prestigious professions are firefighter (63%) and doctor (58%). Even more telling, 20% of adults think lawyers have "hardly any prestige at all" — whereas only 1% have the same low opinion of doctors. Police officers are considered to have "very great prestige" by 43% of adults.

The findings suggest that doctors, police officers and government employees such as crime lab technicians, can be very effective witnesses in court because of the trust the general public has in what they say.

Sources:
"Doctors and Teachers Most Trusted Among 22 Occupations and Professions," The Harris Poll® #61, August 8, 2006, www.harrisinteractive.com
"Firefighters, Doctors and Nurses Top List as 'Most Prestigious Occupations,'" The Harris Poll® #58, July 26, 2006, www.harrisinteractive.com

Vermont Enacts Wrongful Conviction Law

Vermont Governor Jim Douglas signed a law on May 30, 2007, that compensates the wrongly convicted, provides for post-conviction DNA testing, and establishes two committees, one to study the preservation of evidence and the other to study eyewitness identification procedures and recording interrogations.

The compensation law provides for \$30,000 to \$60,000 per year of incarceration, plus lost wages, attorney fees, 10 years of

eligibility in the Vermont Health Access Plan, and mental health services. Vermont became the 20th state (plus the Dist. Of Col. and the federal govt.) to enact a law providing for wrongful conviction compensation.

The DNA provisions provides for indefinite DNA testing in serious felonies and 30 months after conviction for other felonies, to applicants who demonstrate DNA evidence may "provide substantial evidence of the person's innocence."

Source:
"State Legislative Affairs Update," By Scott Ehlers, *The Champion*, July 2007, pp. 59-60.

Alexander Vantreece and his ex-wife with whom he fathered a child, both lived in Fargo, North Dakota in August 2005. Vantreece was visiting his ex-wife when she laid down in a bedroom to rest after staying up late the night before tending to their infant child. She pretended to be asleep when he entered the room and laid down beside her. After getting up and lying down three times, he pulled down her pants and proceeded to have intercourse with her while she continued feigning being asleep.

Afterwards she washed her hair but didn't shower, explaining later that she didn't want to "wash away all the evidence." She then went to a hospital where she reported being raped by Vantreece. She was examined and swabs were taken for evidence.

Following an investigation by the Fargo Police Department, Vantreece was arrested and charged with raping his ex-wife for force or the threat of force.¹

During Vantreece's trial his ex-wife testified that she was awake the entire time he was in the bedroom. She also testified that she did not attempt to resist his advance or flee from the room, and she never asked him to stop. During her cross-examination she further testified:

Q: Now, at any point did Alex hold you down and make you –

A: No.

Q: – do this with him?

A: No. ...

...

Q: He never forced you to – to lay there?

A: No. I chose to lay there ...

Q: He didn't threaten you in any way? ... Alex never did threaten you this day, did he?

A: No. ...

Q: He didn't hold your hands back, anything like that?

A: No. I was sleeping.

Q: Well, you were pretending to be sleeping?

A: Yeah.² (§21)

The jury convicted the 58-year-old Vantreece, and in October 2006 he was sentenced to 12 years imprisonment to be followed by 5 years of conditional release.

Vantreece appealed on the single issue that there was insufficient evidence to support his conviction of forcibly raping his ex-wife when no force was involved.

The North Dakota Supreme Court issued its decision on July 25, 2007. (*State v. Vantreece*, 2007 N.D. 126 (N.D. 07/25/2007))

The Court explained that the statute Vantreece was charged with violating is intended for a situation where "a woman is overpowered by violence or threat of violence. The serious nature of these criminal acts is underscored by the legislature classifying them as class AA felonies, carrying a potential sentence of life imprisonment without parole. (§18) ... To convict, the State had to show Vantreece exerted force upon the complainant which compelled her to submit to having sex with him. In the absence of force or threats of death or serious bodily injury, there was no crime ... It was not sufficient to prove Vantreece committed this crime with evidence that the complainant acquiesced in a sexual act with him ... without protest or resistance of any kind." (§21)

Rape Conviction After Consensual Sex Tossed

By JD Staff

reece was charged with violating is intended for a situation where "a woman is overpowered by violence or threat of violence. The serious nature of these criminal acts is underscored by the legislature classifying them as class AA felonies, carrying a potential sentence of life imprisonment without parole. (§18) ... To convict, the State had to show Vantreece exerted force upon the complainant which compelled her to submit to having sex with him. In the absence of force or threats of death or serious bodily injury, there was no crime ... It was not sufficient to prove Vantreece committed this crime with evidence that the complainant acquiesced in a sexual act with him ... without protest or resistance of any kind." (§21)

"The record ... is entirely devoid of any showing that Vantreece ... compelled her to submit to having sex with him."

Yet, the Court noted, "The record evidence in the case is entirely devoid of any showing that Vantreece exerted physical action or force against the complainant which compelled her to submit to having sex with him." (§22)

The Court then cited two factually similar cases. The first was a 1987 Texas case in which a man was convicted of raping a woman who pretended to be asleep while he had sex with her. The Texas Court of Appeals reversed his conviction because there was insufficient evidence to support he exerted the force necessary to constitute rape under the statute. (*Jiminez v. State*, 727 S.W.2d 789, 792 (Tex. Ct. App. 1987))

The second case was a 1987 Michigan case of a man convicted of sexually assaulting a woman who woke up to find his hand on "her genital area outside her underwear." The man immediately left after she awoke, but he was later apprehended. The Michigan Supreme Court reversed his conviction because there was no evidence the man used any "force or coercion" when he touched the woman, which the statute required for conviction. (*People v. Patterson*, 428 Mich. 502, 410 N.W.2d 733, 734 (1987))

The Court iterated that during the incident involving Vantreece and his ex-wife, he "did not utter any threats and did not exert any force to hold her down or to restrain her from moving or fleeing. Her testimony shows that

although Vantreece had sex with her, it was accomplished without resort to force or threats to compel her submission." (§26)

Since Vantreece's wife admitted she didn't resist his sexual advance in any way and he didn't threaten or force her to participate, the Court decided that "there is not substantial evidence upon which the jury could reasonably find that Vantreece compelled the complainant to submit to a sexual act with him in violation" of the law. (§28)

Vantreece's conviction was reversed by the Court's 3-2 majority. Since it was based on insufficient evidence that the sex between his ex-wife and him wasn't consensual, they ordered the trial court to enter a judgment of acquittal, thus barring his retrial.

The Court's two women members dissented, based on their belief that Vantreece exercised the amount of force required by the rape statute. They argued that because Vantreece thought his ex-wife was asleep, she "was compelled to have intercourse solely by virtue of the physical action of Vantreece forcing his penis into her vagina." (§48)

In his concurring opinion, Justice Daniel J. Crothers explained the flaw in the dissenters reasoning. He wrote, "The 'force' that must be proven is not 'physical action' standing alone, as suggested by the dissent. (§35) ... the 'force' must be that which 'compels the victim to submit' to the sexual act. ... the facts in this record do not provide sufficient evidence upon which the jury could have found Vantreece's conduct forced the victim to submit ..." (§37)

Vantreece was subsequently released after 10 months wrongful imprisonment.

Endnote:

1. N.D.C.C. § 12.1-20-03(1)(a) provides:

1. A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if:

a. That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being.

2. All paragraphs refer to *State v. Vantreece*, 2007 N.D. 126 (N.D. 07/25/2007)

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Alfred Blanche was convicted in 1988 of the rape and sexual abuse of a 10-year-old girl hosted in Blanche's household. The girl was staying in Blanche's home as part of the Fresh Air Fund Program, which was started in New York in 1877 to enable inner-city kids to spend part of their summer in the country. At the time, Blanche, a Vietnam veteran, managed a 406-acre farm in Washington County, New York.

Physicians and nurses examined the girl shortly after her accusation. They reported no physical or emotional discomfort or trauma. What they did report was being "unsure if the assault was real or imaginative." That should have set off alarm bells, because former hosts of this child indicated she made false accusations or threatened to make false accusations if she did not get her own way. Those people would not host any other Fresh Air Program children as a result of their negative experiences with this girl.

All the physical evidence was either inconclusive or exculpatory. Additional innocence indicators are the *post-trial* disclosure of a DNA test that the district attorney had previously asserted had not been done, a rape kit that was never tested, and a 1988 police report that plainly states there was no evidence of the girl being raped or sexually abused. After the DNA test was disclosed, the district attorney said it was inconclusive because of the small size of the sample. After more sophisticated DNA tests were developed, the district attorney claimed the evidence couldn't be tested because it had been lost or destroyed. However, Blanche says that he unsuccessfully sought the DNA testing after the court clerk revealed the physical evidence was still in the court's evidence locker.

Consistent with the absence of physical or forensic evidence supporting the girl's claim, is another piece of evidence not heard by the jury: Blanche consented to and passed a lie detector test while he was awaiting trial. The test was administered by a former state police polygraph expert. The district attorney's office approved of the polygraph test and paid for half of the test's costs. Yet, after Blanche passed the test the district attorney didn't drop the charges. Instead, he offered Blanche a one to three year prison sentence if he would plead guilty to reduced charges. Otherwise, Blanche faced up to 25 years in prison. Blanche refused the offer.

After Blanche was convicted and sentenced to 8 1/3 to 25 years imprisonment, he received a letter which said that in exchange for the payment of a sum of money the girl would recant. That certainly suggests that Blanche was the victim of a scam, and that

Wrongly Convicted Prisoner Refuses Parole – The Alfred Blanche Story

By Joel Freedman

the alleged sexual crimes never happened. Blanche's accuser is now about 30. Efforts to locate her to find out if she is remorseful and will recant have been unsuccessful.

By maintaining his innocence since the onset of his ordeal, Blanche was denied family reunion visits, opportunities for release, and assistance with release planning. His direct appeal, state habeas petition, and *corim nobis* petition based on new evidence have all been denied.

Seven years ago, after Blanche gave the Parole Board the information described above to support his innocence claim, he was granted parole contingent on finding a prison-approved place to live. Blanche, however, refused to participate in a sexual offender program that required him to admit guilt. Consequently the Department of Correctional Services and Attica parole staff regarded Blanche as an unrepentant child molester and failed to provide him the assistance necessary for release.

As Blanche was preparing to initiate civil action he was suddenly paroled in January 2006. He was sent out the front gate of the infamous Attica Correctional Facility after 18 years imprisonment with no notice, without a place to live, with instructions to check in with the police and area parole office, and to seek assistance from the Washington County Department of Social Services.

In April 2006, three months after Blanche's conditional release, he was arrested for an alleged parole violation. He was jailed because he used a computer to e-mail acquaintances and to do legal research he believed was necessary in his continuing fight to clear his name. He was not accused of doing anything improper with a computer. Blanche was returned to prison with the understanding he would be paroled after one year, in April 2007.

Shortly before his scheduled release, Blanche was given a lengthy list of parole conditions that included an 8 p.m. to 8 a.m. curfew, a requirement that he maintain a log detailing all his daily activities and people he communicated with, prohibitions against him being within 1000 feet of places where young people may gather, and a prohibition against his participation in any on-line computer services or possessing any photographic equipment. Although Blanche is sixty-three and has mul-

multiple health problems, he would also have to submit to electronic monitoring, periodic polygraph testing, and sex offender treatment. If Blanche became involved in a relationship with an adult woman, he would have been required to inform her of his sex offense conviction in the presence of his parole officer. Although Blanche maintains he has no history of illegal drug or alcohol abuse, he nevertheless would have been required to submit to random urine testing and to participate in substance abuse treatment programs. If the parole officer allowed Blanche to have a telephone, he would need to provide a print-out of all incoming and outgoing calls.

It is noteworthy that while Blanche's presentation of his prior exculpatory polygraph results was met with disinterest by the Division of Parole, he would now be subject to polygraph tests to assure parole compliance. Blanche was a combat photographer in Vietnam, a wildlife and nature photographer, and an editor and photographer for *Adirondack Bits 'n Pieces* magazine prior to his incarceration. Now a camera restriction would be imposed. While in prison, Blanche held prison jobs in which he mastered computer skills. Yet the parole conditions would deny him access to a computer.

Although some of the restrictions could have eventually been eased at the discretion of Blanche's parole officer, Blanche would probably have been violated for his continuing refusal to participate in sex offender therapy.

With all this in mind, Blanche refused to sign his parole release papers, even at the risk of having to serve his 25-year sentence in prison. So Blanche awaits his presumptive January 2011 release date, still proclaiming his innocence almost 20 years after the alleged incidents. While he waits for his release, he must cope from inside prison with his recent diagnoses of prostate cancer and skin melanomas.

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About the author: Joel Freedman has corresponded for many years with Al Blanche. Freedman reviews prisoners' claims of innocence as part of the services offered by the Greater Rochester Community of Churches Judicial Process Commission.

For information about the Fresh Air Fund program see, <http://www.freshair.org>

Thomas Arthur is on Alabama's death row, and since before his 1991 trial the State of Alabama has successfully opposed the forensic/DNA testing of blood, hair, sperm, clothing and other crime related evidence. Arthur claims the testing can not only prove he was not at the scene of the 1982 murder he was convicted of committing, but it can provide a scientific way to identify the actual perpetrator. (*Justice:Denied* previously reported on Arthur's case, see, "Thomas Arthur — In His Own Words," Issue 7, Fall 1999).

Alabama is one of only eight states that have no law establishing a protocol for DNA testing of crime scene evidence at the request of a prisoner. Consequently, after Arthur's *pro bono* law firm spent years fruitlessly sending formal letters to Alabama authorities requesting access to the evidence

Alabama Has Opposed Testing Evidence In Thomas Arthur's Case For 16 Years

for DNA testing at the law firm's expense, in April 2007 Arthur filed a federal civil rights lawsuit seeking a court order to compel Alabama to "search for and release ... the Requested Evidence and transfer ... the Requested Evidence to Mr. Arthur's counsel for purposes of DNA and other testing;"

Alabama is the only state that does not provide legal counsel for death row prisoners and there is no law library for death row prisoners. So by the time Arthur found a law firm to take his case *pro bono*, the time limit had expired for filing for state post-conviction review, and the federal courts wouldn't toll the AEDPA's one-year filing deadline. Thus, Arthur has had no state or federal post-conviction review of his case, even though

there are numerous prejudicial irregularities in Arthur's case that could be expected to result in a new trial, and his subsequent acquittal or dismissal of the charges. Just one of those significant issues is that Arthur's court-appointed trial lawyer, who was paid \$1,000, did not conduct *any* investigation of Arthur's alibi that at the time of the murder in Muscle Shoals, he was more than an hours drive away in Decatur. Yet there are witnesses who would have testified if contacted, and who swore in post-conviction affidavits, that they saw and talked with him in Decatur. In *Wiggins v. Smith*, 539 U.S. 510 (2003), the U.S. Supreme Court established the precedent that defense counsel's failure to "reasonably" investigate their client's case can establish constitutionally ineffective assistance of counsel.

Arthur cont. on page 10

Justice:Denied posted the following editorial on its website six days before Alabama was scheduled to end Thomas Arthur's life on September 27, 2007. Just hours before Arthur was to be administered a lethal dose of drugs, Gov. Bob Riley ordered a 45-day stay so that the AL Dept. of Corrections could alter its lethal injection protocol. As of early October, the AL Sup. Ct. has not set a new date.

Murder is defined as, "The action of killing or causing destruction of life, regarded as wicked and morally reprehensible irrespective of its legality." (*Oxford English Dictionary*, def. 1.c.) Although murder is commonly thought of only in terms of how it is defined in a statute, as a concept it predates any written laws.

Murder is what Judy Wicker was convicted of committing in 1982 in Muscle Shoals, Alabama against her husband Troy Wicker. After almost ten years of imprisonment she made a deal with the State of Alabama. She would be paroled from her life sentence in exchange for recanting her trial testimony and numerous extra-judicial statements that she had been raped by a black intruder who then killed her husband, and that Thomas Arthur had nothing to do with the crime.

Murder is what Thomas Arthur was convicted in 1991 of committing against Troy Wicker. Yet none of the plethora of crime scene evidence that included hair, blood, sperm, fingerprints, and a bullet and bullet cartridges, was forensically linked to him. The only direct evidence placing Thomas Arthur at the murder scene was the revised testimony of Judy Wicker.

Murder is a gravely serious charge, and if a State is going to make that accusation against a person, that person deserves the aid of a competent and diligent team of attorneys, who prior to trial independently investigate the case, interview witnesses, review the state's evidence, and file all necessary pre-trial motions. To accomplish those crucial tasks, Thomas Arthur's counsel was paid the princely sum of \$1,000 — the amount designated by law in Alabama.

Murder can be punished by a sentence of death in Alabama, and that was Thomas Arthur's sentence. However, Alabama does not provide a post-conviction lawyer for a death row prisoner, so by the time he was able to find a *pro bono* lawyer to handle his case the time limit had expired for him to file his state, and then a first federal habeas corpus petition. So neither Thomas Arthur's claim of innocence nor any of the irregularities related to the investigation of Troy Wicker's murder, Judy Wicker's suspect testimony, and the deficient performance of Thomas Arthur's counsel, has ever been considered by a state or federal post-conviction review

Thomas Arthur's Impending Murder

Justice:Denied Editorial

for how they affected his constitutional right to due process, a fair trial, effective assistance of counsel and to be shielded from cruel and unusual punishment. (Arthur's trial counsel has admitted that he received inadequate representation.)

Murder can be disproved, and a convicted person's claim of innocence can be vindicated, by DNA testing of crime scene evidence that can directly or indirectly exculpate that person. The State of Alabama has for many years unwaveringly opposed making the crime scene evidence in Thomas Arthur's case available to him for forensic testing at his expense. Alabama's refusal to allow post-conviction testing of the evidence has continued with its opposition to a federal civil rights lawsuit Thomas Arthur filed seeking access to the biological evidence for DNA testing that could contribute to proving his innocence. That evidence sought for DNA testing includes Judy Wicker's bloody clothing, Judy Wicker's rape kit that includes sperm recovered from her the morning of the murder, a wig and hair samples collected from Judy Wicker's car, vacuum sweepings from the Wickers' home, hair samples taken from a shoe, bullet cartridges, a bullet, and a pillow case taken from the Wickers' home.

Murder can be characterized as what a State intends when it uses its prosecutorial power to obtain a conviction and death sentence that is tainted by numerous pre-trial, trial and post-trial irregularities, and possibly illegal tactics that have a direct bearing on concealing both the truth of the crime and the possible innocence of the defendant. There are many suspect aspects of Thomas Arthur's case. Those include that the office of Alabama's Attorney General strong-armed two credible alibi witnesses to recant their post-trial sworn affidavits that on the morning of Troy Wicker's murder they saw and talked with Thomas Arthur in Decatur, which was then about an hours drive from Muscle Shoals.

Murder describes what will happen the State of Alabama and its agents commit the "wicked and morally reprehensible" act of administering a lethal mix of substances into Thomas Arthur's body until he is legally, clinically and permanently dead — when there is the all too real possibility that he is factually innocent of Troy Wicker's murder and the evidence that could prove it remains untested.

John Tension Denied California Compensation

By Hans Sherrer

In August 1989 Roderick Shannon was beaten by a group of young men and then shot to death in the parking lot of a Super Fair Market in San Francisco.

Four months later, 17-year-old John Tension was arrested and charged as an adult with the first-degree murder of Shannon. The prosecution's theory was that after a number of young men chased Shannon and caught him in the supermarket's parking lot, Tension held Shannon while Anton Goff shot him.

Tension and Goff were tried as co-defendants in October 1990. The prosecution's main evidence connecting Tension to the murder was the testimony of two young girls, Masina Fauolo, 11, and Pauline Maluina, 14. The girls testified Masina had been driving around in a stolen car with Pauline as her passenger when they saw Shannon being chased. They said they followed him to the parking lot, where they saw the shooting.

The jury found Tension guilty of first-degree murder. Prior to his sentencing, Tension filed a motion for a new trial primarily based on newly discovered evidence that Lovinsky Ricard confessed to police in No-

Arthur cont. from page 9

Consequently, Alabama's opposition to DNA testing of the crime evidence is for the same reason that Arthur wants it — the testing could result in the new exculpatory evidence necessary for Arthur to meet the requirements to file a motion for state, and if necessary federal, post-conviction review of his conviction.

Arthur's lawyers currently have two writs of certiorari filed in the U.S. Supreme Court. One seeks review of the Eleventh Circuit's dismissal of Arthur's lawsuit for DNA testing of the crime evidence. The other challenges the constitutionality of Alabama's lethal injection procedure.

Alabama Gov. Bob Riley ordered a 45-day stay hours before Arthur's scheduled execution on September 27, so that the Alabama Department of Corrections could alter its lethal injection protocol. As of early October, the Alabama Sup. Ct. has not set a new date.

Arthur's website has extensive case information, links to an online petition to Gov. Riley, and contact information, www.thomasarthurfightforlife.com

ember 1990 that he was the person who shot Shannon. Ricard also stated that Tension was not present. In June 1991 Tension's motion was denied and he was sentenced to 25 years to life in prison.

Federal habeas granted

Tension's state court direct appeal and habeas corpus petition were denied. He then filed a habeas petition in federal district court that was granted in August 2003. The court's decision was based on five violations by the prosecution of its constitutional obligation to disclose potentially exculpatory evidence to Tension, as required by *Brady v. Maryland* (1963) 373 U.S. 83, and its progeny. The federal court concluded, "Given the weakness of the prosecution's case against Tension, ... there is a reasonable probability that any one of [the five pieces of non-disclosed evidence] ... could have caused the result of Tension's ... trial to have been different." Tension's conviction was vacated and the state was ordered to release or retry him.

Two days after the decision, Tension's lawyer filed a Joint Stipulation for his immediate release from custody. The federal court ordered Tension's release on his own recognizance, and the San Francisco District Attorney's office announced it would not retry Tension for Shannon's murder.

Tension declared factually innocent

After Tension's release from almost 14 years of wrongful imprisonment, he filed a motion under California Penal Code section 851.8 for an order declaring him factually innocent of Shannon's murder. The San Francisco D.A.'s response was: "The People concur that Petitioner is factually innocent pursuant to Penal Code section 851.8." The San Francisco Superior Court then entered an order that stated in part: "... all evidence in this case ... shows that Tension is innocent of all charges relating to the murder of Roderick Shannon and that he should not have been tried for Shannon's murder."

State compensation claim

Tension filed a claim, in December 2003, under Penal Code section 4903 for \$445,300 with the state Victim Compensation and Government Claims Board ("Board"). Tension stated his innocence was "undisputed" based on the court order declaring him factually innocent. Goff, who had been released several days after Tension, submitted a separate claim for \$489,800. The California Attorney General disputed Tension's and Goff's claims of innocence. In November 2004, the Admin-

istrative Law Judge ("ALJ") issued a proposed joint decision denying the claims of Tension and Goff, concluding that each "failed to establish by a preponderance of the evidence that he is entitled to compensation pursuant to Penal Code section 4903."

In June 2005 the Board adopted the ALJ's proposed decision that the superior court's findings of "factual innocence" pursuant to section 851.8 are "not binding and inapplicable" to a section 4900 compensation proceeding. After the Board's ruling, Tension filed a petition for writ of mandate in the trial court. The court agreed with the Board in denying Tension's petition. Tension appealed.

Court of Appeals decision

The Court of Appeals decision in June 2007 rejected the trial court's ruling that, "a finding of factual innocence under section 851.8 is somehow different from a finding under section 4900 that the defendant did not commit the crime charged." The court ruled, "Both proceedings concern the identical issue: whether the evidence proves the defendant did not, in fact, commit a particular crime." (*Tension v. California Victim Compensation and Government Claims Board*, No. A112313 (Cal.App. Dist.1 06/28/2007))

However, the appeals court noted that because the San Francisco D.A. conceded Tension was factually innocent, the superior court entered its order under section 851.8 without having heard any evidence concerning Shannon's murder. The court's order "was thus the equivalent of "a stipulated judgment, or consent decree, [whereby] litigants voluntarily terminate a lawsuit by assenting to specified terms, which the court agrees to enforce as a judgment." The appeals court thus decided, "it would disserve the integrity of the court system to give preclusive effect to what was essentially a stipulated order on the section 851.8 motion."

The court concluded that the vacating of Tension's conviction and his release had nothing to do with his innocence, stating, "The federal habeas court granted relief based on a legal impropriety, not insufficiency of the evidence. ... Thus, despite the district attorney's ... stipulation, and the court's acquiescence to it, Tension was not entitled to petition for or receive a finding of factual innocence under section 851.8."

The appeals court then proceeded to discount the exculpatory value of the evidence the federal court relied on in finding that if Tension were retried, it is more likely than not that a reasonable juror would not vote to

Tension cont. on page 11

Kenneth Selby witnessed Kevin Kent's 2003 murder in Cumberland County, New Jersey. Selby provided the police with a written statement, and in February 2006 he participated in a pre-trial interview at the prosecutor's office. During the interview Selby was served with a stand-by subpoena to testify at the trial of Terrell Cornish, the man accused of killing Kent. The stand-by subpoena stated, "Do not come to court until you have called the prosecutor's office." It also instructed Selby to "call the Prosecutor's Office on Friday, March 10, 2006, and ask for Detective George Chopek. ... You will then be told when to appear."

Selby telephoned the prosecutor's office on March 10 and asked for Detective Chopek. He was told Chopek was out of the office. After Selby's call, neither the prosecutor's office nor Detective Chopek made contact with Selby prior to the beginning of Cornish's trial, which ended with a plea bargain before a verdict was reached.

In retaliation for Selby not appearing to testify, the Cumberland County Prosecutor filed for an Order to Show Cause why Selby should not be found in contempt for failing to comply with the stand-by subpoena. The contempt hearing was conducted on June 7, 2006 by Cornish's trial judge.

Before the prosecution began presenting its case the judge told Selby's lawyer, "put your client on the stand, counsel, because I

Tennison cont. from page 10

convict him. The basis of the appeals court's rationale was that even though Pauline recanted her trial testimony that she witnessed Shannon's murder, Masina didn't recant. The court determined Masina's testimony outweighed the four witnesses to the murder who attested after Tennison's conviction that he wasn't present at the scene, and Ricard's confession to being the murderer.

The appeals court also considered Masina's testimony to carry more weight than Tennison's alibi - which as a part of his lawyer's "trial strategy" wasn't presented at his trial - that he was at a party attended by 20-25 people on the evening of the crime.

The appeals court concluded that to prevail on his compensation claim Tennison had to prove by a preponderance of the evidence that he is "innocent of the crime with which he was charged," and that he did nothing to contribute to his conviction by "way of act of omission." The court decided that Tennison failed to prove he hadn't contributed to his conviction by his attorney's failure to present his alibi defense at

Contempt Conviction Tossed For Witness Who Wasn't Notified To Testify

By JD Staff

find that it's a valid subpoena. ... I'll take his testimony and hear it and then I'll have to let the Prosecutor go from there since it's your client's burden ..." (§25)

Selby's defense was that he had fully complied with the stand-by subpoena, but at the conclusion of the hearing the judge found him guilty of contempt. Selby was sentenced to 120 days in jail and a \$500 fine. He appealed his conviction, and pending its outcome his sentence was stayed.

Selby argued in his appeal "that he was not afforded the presumption of innocence, or the requirement that the State prove his guilt beyond a reasonable doubt and, most importantly, that the court shifted the burden of proof from the State to Selby." (§24) He contended that the judge's statements mandating that he testify prior to the State's witnesses was evidence the judge impermissibly shifted the burden of proof to him and denied his due process rights during the contempt proceeding.

The three-judge appeal panel issued its unanimous decision on August 22, 2007. (*In re Selby*, No. A-6383-05T2 (N.J.Super.App.Div.

trial, and that he hadn't proven his innocence. Consequently, "substantial evidence supports the Board's determination Tennison failed to carry his burden of proof. Accordingly, the Board did not abuse its discretion in denying his request for relief under section 4900."

After learning of the ruling, Daniel Purcell, one of Tennison's attorneys, said, "We're disappointed. We think this process was set up to deny John relief." Tennison did not appeal the decision to the California Supreme Court.

Tennison's federal civil rights lawsuit that named the County and City of San Francisco and several law enforcement officers as defendants, is still ongoing. In early 2006 the federal district court denied the defendant's motions for summary judgment, and as of September 2007 their appeal of that decision is being considered by the federal Ninth Circuit Court of Appeals.

Sources:
Tennison v. California Victim Compensation and Government Claims Board, No. A112313 (Cal.App. Dist.1 06/28/2007)
Interview of Daniel Purcell by Hans Sherrer, August 1, 2007.

08/22/2007)) The Court began its analysis of the law governing a contempt proceeding by citing *In re Ruth M. Buehrer* (50 N.J. 501 (1967)), in which the N.J. Supreme Court held:

[S]ince the summary [contempt] power lends itself to arbitrariness, it should be hemmed in by measures consistent with its mission. To that end, our rules embody sundry restraints ... [A] conviction is reviewable upon appeal both upon the law and the facts, and the appellate court shall give such judgment as it shall deem just.

The presumption of innocence of course obtains, and the burden of the prosecution is to prove guilt beyond a reasonable doubt.

Thus, the defendant is afforded all the rights of one charged with crime except the right to indictment and the right to trial by jury. *Id.* at 515-16.

After reviewing how Selby's contempt hearing was conducted when compared to the requirements set forth in *In re Ruth M. Buehrer*, the appeals court concluded:

By proceeding as was done in this case, the alleged contemnor [Selby], in addition to being prohibited from confronting and cross-examining the State's witnesses before the judge in order to evaluate what, if any, defense he should mount, was denied the ability to argue ... for a dismissal at the close of the State's case on the basis that the State's evidence was insufficient to warrant a conviction. The procedure employed here was fraught with real and potential problems and is inconsistent with affording the full panoply of constitutional and procedural rights articulated in *In re Ruth M. Buehrer* to one charged with an offense which may result in incarceration.

In sum, we are convinced that the trial court's ... statements as to the burden, as well as the unorthodox procedure used in prosecuting this contempt, merits a reversal and a remand for a new trial. (§§ 36-37)

As of late September 2007 the Cumberland County Prosecutor had not refiled the contempt charge against Selby.

Sources:
In re Selby, No. A-6383-05T2 (N.J.Super.App.Div. 08/22/2007) (All quotes in text are from the indicated paragraph in the decision.)
Court reverses contempt conviction of the man who didn't testify, By John Martins, *The Press* (Atlantic City, NJ), August 23, 2007.

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Media Personalities Boost Ratings By Mocking The Presumption Of Innocence

As certainly as the Earth rotates around the Sun, when a person's prosecution becomes a media event, the weight of public commentary invariably mocks that person's presumption of innocence. The prosecution of actor Robert Blake for his wife's 2001 murder was no different. Blake is best known for his lead role in the 1970s *Baretta* television series. Prior to and during Blake's trial he was the butt of comedian's jokes and media pundit's speculation about how and why he murdered his wife — not whether he did it. In Blake's case the jokes and speculation about his guilt continued after he was ac-

quitted, even though, as Law Professor Anthony D'Amato explains in the following article, it is physically impossible for him to have committed the murder. Thus it was only because the Los Angeles District Attorney mimicked the media by ignoring Blake's presumption of innocence that he was even indicted. Blake spent \$10 million defending himself during the three years from the time of his arrest to his acquittal. Without having the money to spend on the investigators who uncovered the evidence that sealed his acquittal, Blake may very well have wound-up a wrongly convicted person languishing in prison. Which of course wouldn't have bothered comedians and pundits, since it would have provided more fodder for them to mock Blake. Just as they mocked the presumption that Michael Jackson, O.J. Simpson, and most recently Phil Spector, are innocent.

All through the trial of Robert Blake for allegedly shooting and killing his wife, the former "Baretta" TV star was the constant butt of the late-night TV talk shows. On Feb. 2, Groundhog Day, Jay Leno reported that Blake came out of his murder trial, saw his shadow—and it was Scott Peterson's. Ha, ha. On Feb. 16, Leno said that Blake started crying and ran out of the courtroom because he was all alone on Valentine's Day. Leno smirked and said: "Well, whose fault is that? Hel-lo!"

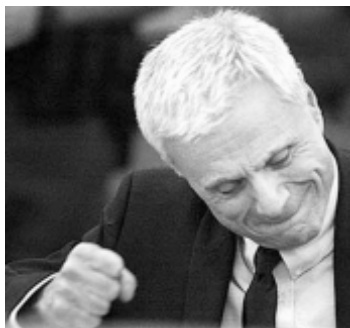
Too Much Late-Night Buffoonery At Robert Blake's Expense

By Anthony D'Amato

Leno and David Letterman, among others, will pick on anyone who is well-known, even themselves, thus demonstrating how evenhanded they are. Robert Blake brought excitement to millions of "Baretta" fans during his TV days. He is well-known, so now he can be smeared. Of course, talk-show hosts are tapping into the public's latent envy of stars. Everyone enjoys seeing them get their comeuppance.

To be sure, if Blake murdered his wife he deserves the smears. But let's look at the salient facts in the case. Blake had taken his wife to dinner at Vitello's, a popular Italian restaurant in Studio City, Calif. When they got to the car after dinner, Blake remembered he had left his gun in the restaurant. He went back to get it. When he returned to his car, he found that his wife had been shot and killed.

The three necessary ingredients to prove a felony are



The moment of Blake's acquittal

motive, means and opportunity. Did Blake have a motive? He did. The prosecutor had no problem proving that Blake intensely disliked his wife. Did he have the opportunity? Yes; he was in the vicinity of the crime when it occurred.

But the means was conspicuously missing. The gun that Blake retrieved from the restaurant was not the murder weapon. If Blake had shot his wife with a pistol at that close range, traces of its gunpowder would have been all over his hands and coat. But meticulous forensic testing turned up no gunpowder traces on Blake that matched the gunpowder traces all over the victim and in the interior of the car.

Could Blake have rigged up a clever mechanism to shield himself from the gunpowder as he fired the murder weapon? It's hard to think of what it might be, but in any event, he would have had to get rid of it and the police couldn't find the gun.

What about the murder weapon? The police covered the entire area with metal detectors and sniffing police dogs. Every investigator would have loved to find the weapon, but no one did.

Any fair-minded observer would have to conclude that it was impossible for Robert Blake to have committed the crime. Not just improbable, but impossible. He never should have been indicted. But prosecutors like to get on television, and the best way to do that is to prosecute a

notorious case. If they lose the case, they can blame the jury or the high-priced defense team. What they never mention is the fact that their decision to prosecute a person like Blake means that the police will give up investigating the crime. The trail will grow cold and the real killer will get away with murder.

Does anyone feel sorry for Blake? He lost his wife. He was wrongly indicted. He probably spent his last dime on his legal defense. Thanks to the friendly TV hosts, his reputation is being cemented as a murderer who beat the justice system by hiring a slick attorney.

No sooner had the jury returned its verdict of not guilty than Jay Leno commented: "His lawyer was very clever. The defense was based on the premise, 'What kind of idiot kills his wife after buying her dinner?'" Then with perfect timing as the uproarious laughter starts to die down, Leno adds in a softer, thoughtful voice: "I think this whole thing has mellowed Blake. Like today, he said he would kill again if he met the right woman."

Not to be outdone, David Letterman joined in on his show, "Blake says he doesn't know who killed his wife, which would make him the only one in the world who doesn't." Again, lots of laughter. As it dies down, Letterman more thoughtfully remarks: "But he's grateful for his acquittal. He thanked his team of legal warriors and the jury of 12 dumbasses." Ho-ho-ho. Even a child would laugh at that one.

Indeed, the age level of the humor is descending rapidly. Here's one of Leno's most recent, strictly for the schoolyard crowd: "Robert Blake is still out there looking for acting jobs. Did you hear the news today? He could be the new host of 'eliminate'"

Leno and Letterman are multimillionaire funnymen. But when they make a living off innocent victims of our justice system like Robert Blake, their humor is a lot less funny than it is sad.

Reprinted with permission of the author. Anthony D'Amato is a professor at Northwestern University School of Law. His extensive writings on domestic and international legal issues are on his website, <http://anthonydamato.law.northwestern.edu>

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Brandon Mayfield Awarded \$2 Million For False Imprisonment



By JD Staff

Bombs planted on four commuter trains in Madrid, Spain killed 191 people on March 11, 2004. Spanish authorities asked the FBI for help in identifying the person whose fingerprints were found on a plastic bag of detonators linked to the bombings.

Eight days later FBI fingerprint analysts identified the fingerprints were those of Brandon Mayfield, a 38-year-old Portland, Oregon attorney. Mayfield was also a Muslim. The FBI began intensive warrantless surveillance of Mayfield, his family, and his law practice, tapping home and business phone calls, monitoring emails, and secretly searching his home and his law office. In surveiling Mayfield, the FBI invoked Patriot Act provisions that eliminate the need for a warrant based on probable cause in cases involving terrorism allegations.

After six weeks of probing into every aspect of Mayfield's life, on May 6 the FBI arrested him on a material witness warrant for his suspected involvement in the Madrid bombings. However, Mayfield insisted to the federal public defender assigned to represent him, that it could not be his fingerprints on the bag because he had never been to Spain, he had not been out of the United States for ten years, and he didn't even have a passport.

Mayfield's protestations were validated on May 20 when the Spanish National Police (SNP) publicly announced that the prints on the bag matched an Algerian with a police record and a Spanish residency permit. It also became public that the SNP told the FBI on April 13 that their comparison of Mayfield's fingerprint with the one on the plastic bag was "conclusively negative." Mayfield was conditionally released the next day. Three days later the warrant against him was dismissed when the FBI conceded it had mistakenly identified his prints as matching those on the detonator bag. The FBI also issued a rare public apology to Mayfield.

In June 2004 Mayfield hired well-known attorney Gerry Spence as the lead lawyer for his civil lawsuit against the federal government. Spence said he agreed to become involved because, "Our basic rights under the Constitution are in jeopardy, and that's what this is about."

The lawsuit was filed in the U.S. District Court in Portland in the fall of 2004. In July 2005 U.S. District Judge Ann Aiken denied the government's motion for summary judgment, which allowed discovery to proceed.

A panel of international forensic experts commissioned by the FBI to investigate how the agency's crime lab misidentified Mayfield, issued its report in November 2004. It found that the three FBI's fingerprint examiners involved in the case had committed human error, caused by peer pressure to support the initial identification of Mayfield as the source of the print.

Mayfield settled the monetary part of his lawsuit for \$2 million in November 2006. However, the settlement allowed him to continue the part of the suit challenging the constitutionality of the USA Patriot Act's provisions allowing warrantless searches. When the settlement was announced Mayfield said, "The power of the government to secretly search your home or business without probable cause, under the guise of an alleged terrorist investigation, must be stopped. I look forward to the day when the Patriot Act is declared unconstitutional, and all citizens are safe from unwarranted arrest and searches by the Federal Government."

On September 26, 2007, Judge Aiken ruled that two Patriot Act provisions — authorizing secret and warrantless searches and wiretapping to gather evidence for a criminal case — are unconstitutional violations of the Fourth Amendment's protection against unreasonable searches and seizures. (The two sections are 50 U.S.C. §§ 1804 and 1823) Aiken wrote, "For over 200 years, this nation has adhered to the rule of law — with unparalleled success. A shift to a nation based on extra-constitutional authority is prohibited, as well as ill-advised." (43) *Mayfield v. United States*, No. 04-1427-AA (D.Ore. 09/26/2007). Judge Aiken's 44-page ruling will be appealed by the government to the Ninth Circuit Court of Appeals.

The Patriot Act provisions declared unconstitutional by Judge Aiken have caused much controversy since its enactment a month after the events of September 11, 2001. Only a handful of Representatives and Senators read the Patriot Act before voting for its passage — so they were unaware they were voting to undermine the rights of Americans under the Constitution.

Sources: "That's Not My Fingerprint, Your Honor", *Justice: Denied* magazine, Issue 25, Summer 2004, pp. 11-14, 19. Mayfield calls in heavy hitter, By Ben Jackett, *Portland Tribune*, September 28, 2004. (Spence quote.) Brandon Mayfield wins \$2 million against Feds, By Lew Nassa, *PDX Indy Media Cr.*, November 29, 2006. (Mayfield Patriot Act quote.) Panel: FBI peer pressure led to lawyer's arrest, AP story, Longview Daily News, November 17, 2004.

Oklahoma Prosecutor Sues John Grisham For Libel

By JD Staff

Ronald Williamson and Dennis Fritz were exonerated by DNA evidence and freed in 1999 after 12 years of wrongful imprisonment for the 1982 murder of Debbie Sue Carter in Ada, Oklahoma.

Pontotoc County D. A. William Peterson prosecuted Williamson and Fritz, and former Oklahoma Bureau of Investigation agent Gary L. Rogers investigated the case. On September 29, 2007, Peterson and Rogers filed a federal lawsuit in Muskogee, Oklahoma that alleges they were libeled and slandered by a conspiracy engaged in by the authors of four books that discuss the case of Williamson and Fritz.

The lawsuit's most prominent defendant is author John Grisham, whose many books have sold more than 250 million copies. His only non-fiction book is *The Innocent Man*, which is a quasi-biography of Williamson. Fritz is named as a defendant for *Journey Toward Justice*, his autobiographical account of his prosecution. Robert Mayer is named as a defendant for *The Dreams of Ada*, about the prosecution of two men for a woman's 1984 murder in Ada that had similarities to Carter's murder — which Mayer discusses in his book. Also named as a defendant is Barry Scheck, who was one of Fritz's lawyers and a co-author of *Actual Innocence*, that discusses Williamson and Fritz's case. In addition to these individuals, the publishers of the four books are named as defendants.

The lawsuit claims the defendants conspired to libel Peterson and Rogers, portrayed them in a false light to promote their books, and intentionally inflicted emotional distress upon them. The lawsuit claims "the defendants launched this attack through the use of speeches, interviews and simultaneously publishing three books that were all three strategically released in October of 2006." *The Innocent Man* and *Journey Toward Justice* were published in October 2006, and *The Dreams of Ad* was reissued in October 2006 with new comments by Mayer.

Fritz said when informed about the lawsuit, "It's nothing more than a power play to get people to believe (Peterson) did nothing wrong. It has no merit. We simply told the truth and I have a right to write what my thoughts were."

Sources: *Peterson, et al v. Grisham, et al*, 07-CV317 (E.D.Okla.) John Grisham named in libel lawsuit, AP report, *MSNBC.com*, September 28, 2007. (Fritz quote.)

Herman Atkins Awarded \$2 Million For 12 Years Wrongful Imprisonment

Herman Atkins was convicted in 1988 and sentenced to 45 years in prison for raping and robbing a shoe store clerk in Lake Elsinore, a Riverside County town about 70 miles southeast of Los Angeles.

Atkins, 22, proclaimed his innocence, claiming he had never been to Lake Elsinore. His claims were vindicated, and he was released in 2000, after DNA testing of semen found on the victim's sweater eliminated him as the women's attacker.

After Atkins' release a private investigator working on his behalf tracked down Eric Ingram. The lead sheriff's detective in Atkins case, Danny Miller, testified at Atkins' trial that Ingram told him he knew Atkins was a gang member and that he had seen him around Lake Elsinore in early April 1986. This tie of Atkins to being near the crime scene around the time of the attack was used in both the warrant for his arrest, and later at his trial, to corroborate the victim's identification of Atkins.

Ingram told the investigator, and signed a sworn statement, that he didn't know Atkins

and had not told Miller he had seen Atkins in the crime's vicinity. In 2002 Atkins filed a federal civil rights lawsuit whose defendants included Riverside County and Miller. The lawsuit alleged that Miller had fabricated evidence and withheld exculpatory information. After much pre-trial maneuvering, including unsuccessful efforts by the defendant's attorneys to prevent the jury from being informed that the DNA tests excluded Atkins, his suit went to trial in August 2006. After a two-week trial, a mistrial was declared after the jury deadlocked.

After the 9th Circuit Court of Appeals took the unusual step of ordering the trial judge removed for displaying bias against Atkins, the lawsuit was retried in April 2007. The jury awarded Atkins \$2 million, finding "that Miller failed to disclose favorable information to the prosecutor; specifically that he fabricated the Ingram statement."

Afterwards Atkins said, "When I was in prison, one thing that motivated me was something my grandmother often said to me. She said, 'A lie will die, but the truth lives on.' Today, Detective Miller's lies were not only exposed but put to rest."

Source: Riverside County must pay wrongly convicted man, By Henry Weinstein, *Los Angeles Times*, May 1, 2007. *Atkins v. County of Riverside*, 151 Fed.Appx. 501 (9th Cir. 09/14/2005) [U]

Bank Video Proves Man Isn't A Golf Course Flasher

On May 3, 2006, a female security officer saw a man standing with his trousers around his ankles on the edge of a golf course in South Croydon, England.

Seven days later the officer saw a man near the golf course that she recognized as the flasher. The man, Robin Lewis, 35, was arrested and charged with indecent exposure.

Lewis was tried in January 2007. The prosecution's case was based on the officer's eyewitness identification and the circumstantial evidence that he lived near the golf course. Lewis' defenses were that he was misidentified as the flasher, possibly because he lived near the course and the officer may have seen him walking near the course at a different time, and that he had the alibi of being at a local bank at the time of the flashing incident. The jury gave more credence to the testimony of the officer than that of Lewis, and convicted him by a 10-2 majority. He was fined \$3,000 (£1,500), and although spared a jail sentence, he had the stigma of a sex crime conviction.

After his conviction, Lewis obtained the closed circuit television video (CCTV) from the bank where he said he had been about the time of the flashing incident. It not only proved his alibi, but it established his clothing was different than the flasher's clothing described by the officer. It also confirmed that he was wearing his eyeglasses, which the officer didn't mention in her detailed description of the flasher.

Lewis also obtained police reports about flashing incidents at the golf course after he was arrested. The flasher wasn't apprehended, but his description by witnesses was similar to the person described by the officer who testified against Lewis.

The new evidence was incorporated into Lewis' appeal. In July 2007 England's Court of Appeal quashed his conviction, ruling "the evidence casts great doubt, in our view, on the prosecution's case." In support of not ordering a retrial and dismissing the charge on the basis of insufficient evidence, the Court wrote, "Taking all into account, we have reached the conclusion without hesitation that there was no case for Mr. Lewis to answer."

Source: Flasher has conviction squashed by 3 judges, *Croydon Advertiser* (Croydon, England), July 20, 2007.

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Acquittal After Retrial Results From Prisoner's Legal Studies



Mike Murphy after his July 2007 acquittal.

Fifty-year-old Mike Murphy was sentenced to five years imprisonment after his conviction in February 2006 of damaging property and possessing a shotgun with the intent to cause fear of violence. During the July 2004 incident in Croydon, England, two cars were damaged by a shotgun blast that frightened people in the nearby Two Brewers pub.

The jury didn't believe Murphy's defense that he was mistakenly identified. Murphy lived in Carshalton, about five miles from the pub. He testified that he was neither in the area of the pub at the time of the shooting, nor did he have a shotgun.

After his imprisonment Murphy began studying law books he obtained from the prison library, in an effort to find a legal basis to support the appeal of his conviction. He discovered legal precedents that the

judge had improperly allowed the prosecution to influence the jury by informing them that 20 years earlier Murphy had been convicted of illegal possession of a firearm.

In December 2006 the Court of Appeal quashed Murphy's conviction. The Court recognized that the prosecution heavily relied on Murphy's decades old gun possession conviction to convince the jury of his guilt, and then ruled there was too remote of a nexus between that conviction and the charges against him. The Court ordered Murphy's retrial, with the gun possession conviction excluded. He was granted bail pending his retrial and released after ten months imprisonment.

Murphy was acquitted of all charges after his retrial in July 2007. Afterwards he said, "Justice at last. When I read up on the law in jail I could see straight away something was wrong. The first jury should never have been told of that conviction. It had nothing to do with what I was facing."

Murphy also said he was considering filing a claim for money damages against the Croydon police for what he claims was false evidence given against him during his trials.

Source: "Studying helps man overturn conviction," *Croydon-Guardian* (Croydon, England), July 6, 2007.

Schappelle Corby's long-awaited autobiography, *My Story*, was published amidst much fanfare. From the time of Schappelle's arrest in 2004 for allegedly smuggling marijuana into the Indonesian island of Bali, her tragic plight has captured the hearts of

Australians. Interest in Schappelle is so intense that *My Story's* sales of more than 100,000 copies makes it a runaway bestseller in a country of only 20 million people.

For those unfamiliar with Schappelle's story, after arriving in October 2004 for a family vacation on the Indonesian island of Bali, a custom officer at Denpasar airport found 4.1 kilograms of marijuana in her boogie board bag. When questioned by Indonesian officials, the 27-year-old Schappelle adamantly denied knowing anything about the marijuana or how it got in her bag. (She did not handle her bag after she arrived in Sydney to transfer planes to Bali.)

Schappelle was charged with drug smuggling, which in Indonesia carries a maximum sentence of death by firing squad.

Schappelle's trial that began in January 2005 was a major media spectacle. The idea that a beautiful, vivacious young woman bound for a fun-filled holiday in Bali could be wrongly prosecuted for a capital drug crime captivated the imagination of Australians. Her Bali trial was at least as big of an event in Australia as O.J. Simpson's trial was in the United States, with one major exception: polls showed that more than 90% of Australians believed in her innocence.

The prosecution's primary evidence was the testimony of a customs officer that Schappelle was reluctant to open the boogie board bag when asked, and that she admitted the marijuana found inside was hers. Schappelle's defense counsel brought forward evidence that directly contradicted the agent's assertions, including eyewitness testimony that she opened

My Story

By Schappelle Corby
with Kathryn Bonella

Pan Macmillan Australia, 2006,
305 pages, softcover

Review by Serena Nicholls

the bag without hesitation and was shocked when she saw the marijuana. Defense witnesses also testified that Schappelle was a victim of a drug smuggling network operating in Australian airports.

On May 27, 2005, millions of Australians breathlessly watched the verdict announced live on national television. The Indonesian court found Schappelle guilty and sentenced her to twenty years imprisonment. Schappelle filed many appeals against her conviction and sentence, but ultimately all were for naught.

Even though the judgment and sentence sparked enormous sympathy for Schappelle, this book is the first time she has revealed, in her own words, the unheard evidence that proves her innocence. She also gives the readers an in-depth, never before disclosed account of the investigation and questioning that led to her arrest.

My Story is also a gut-wrenching account of the daily hell of living inside Bali's notorious Kerobokan prison. She describes Kerobokan as cramped and vermin infested, with raw sewerage often flooding the floor on which the female prisoners sleep among the rats.

The prison is riddled with sickness and diseases. It is difficult for people familiar with prison conditions in a western country such as Australia or the United States, to grasp the barbaric conditions in a third-world prison. Schappelle is effective in emotionally connecting the reader to the inhumane environment that is known to weaken a once healthy prisoner to the point that they can die after 10 to 15 years imprisonment.

My Story also describes the great gender divide in the prison, with



women living like 'caged animals' as they are locked up for longer hours than male prisoners.¹

Schappelle also has to fight against the intense corruption of the prison guards and police officers. She reveals a situation that occurred when she was initially jailed: The Bali police put a stash of drugs in the visitation room in the hope of later "discovering" them in her possession. This was aimed at gaining secondary evidence that she was involved in drugs and thus guilty of the crime that she had been charged with.

My Story notes the injustices that are prevalent throughout Indonesia's criminal justice system. In particular, Schappelle relates that she has shared a cell with many inmates that were found guilty of gruesome slayings, but were sentenced to less than six years. Similarly, many prisoners convicted of trafficking drugs, such as 5.2 kilograms of cocaine, received less than half of her twenty-year term. These inconsistencies in sentencing led Schappelle to argue: "I have to accept that I'm here; accept that this is my life, at least for now. But I will not accept my sentence – I don't know why I call it 'my sentence'. It's not mine. I will never accept twenty years. ... I will fight. My family will fight."²

Schappelle blames the Bali Nine for the severity of her prison sentence. She states: "I hated the Bali Nine. I felt sure their crime of trafficking heroin a month before my verdict had contributed to me getting twenty years."⁴

Schappelle is not only extremely critical of Indonesia's judicial system, but also of her legal defense team. She argues that they were incompetent and largely responsible for her inability to raise an effective defense. These allegations have received backlash from her lawyers, even to the degree that they have threatened Schappelle with litigation.⁵

Although a great deal of *My Story* revolves around the awful conditions of an Indonesian prison, Schappelle acknowledges that it is worse being innocent and serving a long sentence for another person's crime: "Perhaps the very, very worst thing about all this is that I didn't do it. I have to live this life knowing that I'm innocent, that I don't deserve to be here for one night, one hour or minute – let alone twenty years. I'm being punished for someone else's crime."⁶

Her youth adds to the emotional battle she faces. She writes: "I also thought about being locked up for years, losing my youth and growing old in prison, never having a normal life, never having a baby, never getting married."³

Overall, *My Story* successfully portrays Schappelle's situation in such a way that the reader can feel her anguish and desperation for freedom. It is a fascinating depiction of a young woman's struggle to prove her innocence while trapped within the quicksand of Indonesia's legal system. It also provides a harrowing day-by-day account of the adversities faced by a female foreigner in a primitive third-world prison.

Schappelle defiantly concludes *My Story* with the words "I sound like a broken record but I will keep saying it: I'm innocent, I'm innocent, I'm innocent."⁷

Schappelle's remarkable story is one that will be remembered by the reader for years.

About the reviewer: Serena Nicholls lives in Queensland, Australia. She has completed a Bachelor of Laws, a Bachelor of Arts in Psychology, a Graduate Diploma in Legal Practice, and a Masters of Laws. She is completing her Doctor of Philosophy in the field of wrongful conviction.

Endnotes:

- 1 Corby, Schappelle & Bonella, Kathryn (2006), *My Story*, Pan Macmillan Australia, p3.
- 2 *Id.*, at 297.
- 3 *Id.*, at 124.
- 4 *Id.*, at 249.
- 5 John Stewart & Renata Gombac, 'Legal Assistant Challenges Corby Biography', June 12, 2006, *The 7:30 Report*, ABC.
- 6 Corby, *supra*, at 6.
- 7 *Id.*, at 301.

\$102 Million Awarded For FBI Frame-Up Of Four Innocent Men

Joseph Salvati, Peter Limone, Louis Greco, and Enrico (Henry) Tameleo were convicted in 1968 of Edward "Teddy" Deegan's 1965 Boston area murder. Boston mobster Joseph "The Animal" Barboza provided key prosecution testimony linking the men to Deegan's murder. Protesting their innocence, Limone, Greco and Tameleo were sentenced to death, while Salvati was sentenced to life in prison.

In 1972 the three death sentences were commuted to life in prison without parole, when the U.S. Supreme Court ruled in *Furman v. Georgia* (1972) that the procedures involved in sentencing them (and hundreds of death row prisoners in the U.S.) were unconstitutional.

The years passed as the men languished in Massachusetts prisons. Tameleo died of respiratory failure in 1985 after 17 years of imprisonment. Greco died in 1995 from colon cancer and heart disease after 27 years of imprisonment.

In 1997 three witnesses came forward who swore that Barboza told them that he and several other men had killed Deegan. That

new evidence contributed to Massachusetts Governor William Weld's commutation of Salvati's life sentence to time served after 29 years of imprisonment.

Then in December 2000, a Justice Department investigation of the FBI's Boston office uncovered secret informant files that Barboza and another FBI informant, Vincent Flemmi, actually murdered Deegan. The files also showed that the FBI had prior knowledge of the hit on Deegan and did nothing to either stop it or to warn him. The files also included a memo that FBI Director J. Edgar Hoover was personally informed seven weeks after Deegan's murder that he was murdered by FBI informants.

The FBI knew at the time of Louis Greco's conviction and death sentence that at the exact time of Deegan's murder in Boston, Greco was more than 1,500 miles away in a Miami movie theater with his wife.

Limone's conviction was vacated in January 2001 and he was released after 33 years and 2 months of wrongful imprisonment. Salvati's conviction was also vacated in January.

Salvati and Limone, and the estates of Greco and Tameleo, filed federal lawsuits that named a number of state and federal defendants. Among the lawsuit's allegations were malicious prosecution, conspiracy and de-

priving the men's family of companionship.

In June 2003, Boston U.S. District Judge Nancy Gertner rejected the defendant's Motion to Dismiss. They argued their actions were "judgment calls" immune from liability. Gertner ruled in response, "There can be no question that the alleged conduct of federal agents in this case was not 'discretionary' ... Obviously conduct cannot be 'discretionary' if it violates the constitution, federal laws, or established agency policies and regulations. ... There can be no doubt that suborning perjury and fabricating evidence violate the constitution."¹

A bench trial of the men's lawsuits, that had been consolidated, began in November 2006 and concluded in February 2007. The government conceded that the FBI knew from the time the four men were arrested that they were innocent, and that the FBI knew the state prosecution's star witness was one of the murderers and his testimony was perjurious. However, the U.S. Justice Department lawyers argued that the men were prosecuted by Massachusetts, and "federal authorities had no duty to share information with state prosecutors, and cannot be liable for the results of a separate state investigation."² Salvati's attorney argued, "It was a rigged game, a charade, a story concocted by Mr. Barboza and assented to by the FBI."³

Judge Gertner announced her ruling on July 26 in a 235-page decision. In finding the federal government liable, she categorically rejected the argument that the FBI had no legal obligation to inform the state prosecutors that their star witness, Barboza, falsely implicated the four men in Deegan's murder.

Gertner awarded a total of \$101.75 million to the plaintiffs and their family members: \$29 million to Salvati; \$26 million to Limone; \$28 million to Greco's estate; \$13 million to Tameleo's estate; \$1 million for loss of consortium and \$50,000 for intentional infliction of emotional distress to the men's wives; \$200,000 for loss of consortium and \$50,000 for intentional infliction of emotional distress to each of the men's 10 children; and \$50,000 for intentional infliction of emotional distress to Greco's wife who divorced him in 1970, and to Tameleo's son who was an adult when his father was convicted.⁴

Additional Source: For a detailed timeline of events see, FBI's Legacy of Shame, *Justice Denied*, Issue 27, Winter 2005, p. 24.

Endnotes:

1 *Limone, et al v. United States of, et al*, No 02cv10890-NG (D.Mass. 07/17/2003) (Memorandum and Order: RE: Motion To Dismiss), pp 20-21.

2 Boston Men Cleared In Slayings Sue Gov't, WRAL.com (Raleigh-Durham, NC), November 16, 2006.

3 *Id.*

4 *Limone, et al v. United States of, et al*, No 02cv10890-NG (D.Mass. 07/26/2007) (Memorandum and Order: RE: Bench Trial), pp 223-224.

Beth LaBatte Dies in Car Crash A Year After Murder Exoneration



Beth LaBatte during her 1997 trial.

By Mike "Pie" Piaskowski
(Exonerated of murder in 2001 after six years of wrongful imprisonment.)

Only a few months after the death of Evan Zimmerman, we have lost another Wisconsin exonerate, Beth Labatte. 40, was killed September 1, 2007 in an auto accident.

In 1996, Beth and her friend Charles Benoit were both charged with robbing and causing the beating and stabbing deaths of two elderly sisters in the sister's home about 20 miles east of Green Bay. The case against Beth and Benoit was entirely circumstantial: Neither confessed nor implicated the other, there was no physical or forensic evidence linking either of them to the crime, and there were no eyewitnesses. Nevertheless, a jury found Beth guilty in 1997 on all counts. When she was sentenced to two life sentences plus 20 years, Beth told the judge, "I'm not guilty, and I know ... the Cadigan sisters aren't going to be able to rest until justice is done."

Ironically, in 1998 a jury presented with the evidence that convicted Beth, acquitted Benoit of the same crimes she had been convicted of committing.

The University of Wisconsin Innocence Project became involved in Beth's case, and was successful in getting DNA testing ordered on crime scene evidence. In June 2005 the test results were disclosed: Beth's DNA was not found on a shattered piece of a pool cue thought to be the murder weapon, nor on material found on one of the victim's shirt or on a pair of socks used to wipe up one of the victim's blood. She was awarded a new trial based on the new evidence casting doubt on her guilt. In August 2006 the prosecutor dropped all charges for lack of evidence, and Beth was set free after ten years imprisonment.

After her release Beth left her home town of Algoma and moved to Oakfield, Wisconsin to put her life back together. Her funeral was on September 6 in Algoma.

Sources:

DNA tests to reopen murder case, *Milwaukee Journal Sentinel*, July 5, 2004.

Wisconsin Innocence Project seeks retrial in sisters' deaths, *Associated Press*, Aug. 19, 2005.

Woman cleared in slayings dies, *Appleton Post Crescent*, September 4, 2007.

Ken Richey's Conviction and Death Sentence Overturned A Second Time

Ken Richey was sentenced to death in Ohio in 1986 after being convicted of aggravated felony murder in the death of a two-year-old girl during a fire. In April 2005 the federal Sixth Circuit Court of Appeals overturned Richey's conviction and sentence. In November 2005 the U.S. Supreme Court reinstated Richey's conviction and sentence, but it also sent his case back to the Sixth Circuit for review of Richey's claim that his trial attorney was ineffective. On August 10, 2007, the Sixth Circuit overturned Richey's conviction and death sentence for the second time. The court ruled the failure of Richey's trial attorney to investigate and present scientific evidence undermining the State's arson theory was ineffective assistance of counsel. Ohio's Attorney General decided not to appeal the decision, but did announce that Richey would be retried. As of early October 2007 a trial date had not been announced. Excerpts from the Sixth Circuit's decision follow:

Kenneth T. Richey v. Margaret Bradshaw, No. 01-3477 (6th Cir. 08/10/2007)

A. The Trial

In 1986, when he was twenty-one, Kenneth Richey was convicted and sentenced to death by an Ohio state court for aggravated felony murder in connection with the death of two-year-old Cynthia Collins. (§23)

The State argued at trial that in the early morning hours of Monday, June 30, 1986, Richey intentionally set fire to the apartment of Hope Collins, Cynthia's mother, due to a jealous rage directed at Candy Barchet, Richey's ex-lover. Barchet occupied the apartment immediately beneath Collins's and that night she was with another man ... The State conceded at trial that it had no evidence suggesting that Richey intended to kill two-year-old Cynthia. (§24)

The fire started in Collins's apartment around 4:15 a.m. No one saw Richey set the fire or flee the burning apartment. (§29)

The State argued at trial that Richey set the fire by using accelerants. ... To substantiate its theory, the State put on two expert witnesses from the state fire marshal's office and the state arson lab. (§31)

Richey's trial counsel, William Kluge, retained Gregory DuBois to investigate the cause of the fire and test the conclusions of the State's experts. DuBois did not

have any special expertise in arson investigations and little arson-related training. ... The work DuBois performed was limited to meeting with Bob Gelfius, the State's expert ... DuBois then informed Kluge that he agreed with the State's conclusion that the fire was caused by arson. (§32)

Prior to knowing what DuBois's testimony would entail, Kluge disclosed him as a trial witness. When the State figured out that Kluge was not going to call DuBois, Richey's only scientific expert, the State subpoenaed DuBois, who then conceded on the stand that he agreed with the State's analysis of the evidence, and agreed that the fire was caused by arson. Kluge did not object to DuBois's testimony and did not cross-examine him. (§33)

B. State and Federal Post-Conviction Proceedings

Richey challenged his conviction and sentence on direct appeal but both the state intermediate appellate court and the Ohio Supreme Court affirmed. ... Richey then filed a post-conviction petition in the state court. There, he adduced new forensic evidence that cast doubt on the State's arson conclusions. In particular, Richey retained fire experts Richard Custer and Andrew Armstrong who opined that the State used flawed scientific methods not accepted in the fire-investigation community to determine that arson caused the fire and that the samples of carpeting and wood

from Collins's apartment did not contain evidence of accelerants. In particular, Custer testified that the State's experts "ignored facts that make it just, if not more, likely that the June 30, 1986 fire was caused by the careless discard of smoking materials than that the fire was caused by arson." (§35)

Despite Richey's new evidence, the state post-conviction court denied his request for an evidentiary hearing and dismissed his petition. The intermediate appellate court affirmed and the Ohio Supreme Court declined to review the case. (§36)

Richey then filed a petition for habeas corpus relief in the [U.S.] district court. The district court found that Richey's new experts "certainly undermine the state's arson evidence," but the court nevertheless denied his petition in full. (§37)

We reversed the judgment of the district court ... (§38)

On November 28, 2005, the Supreme Court vacated our judgment and remanded for further proceedings. *Bradshaw v. Richey*, 546 U.S. 74 (2005). (§39)

A. Instructions on Remand

... the Supreme Court has remanded the case for us to further consider Richey's ineffective-assistance-of-counsel claim. (§43)

We agree with the parties that the Supreme Court's remand instructions are not entirely clear. (§46)

... Under either interpretation—Richey's or the State's—we conclude once again that the state courts unreasonably applied *Strickland* in determining that Richey was not deprived of his constitutional right to the effective assistance of counsel. (§49)

B. Analysis According to Richey's Interpretation of the Supreme Court's Remand Language

1. Our Reliance on Evidence not Presented to the State Courts

In the state post-conviction court, Richey sought an evidentiary hearing. The state court denied this request and dismissed his petition. After Richey filed his habeas petition in the federal district court, that

court granted both parties leave to take discovery. (§55)

On appeal, the State did not challenge the district court's ruling that Richey had been diligent in attempting to develop his claim in the state court. Accordingly, we have no trouble concluding that we properly relied on the evidence newly developed in the district court. (§56)

2. The Uniformity of Richey's Claim

... A review of the record shows that at all relevant times, Richey's ineffective-assistance claim has been predicated on the single theory that his counsel was ineffective in handling the scientific evidence. (§59)

Where the legal basis for Richey's claim has remained constant, and where the facts developed in the district court merely substantiate it, we cannot say that the claim has been so "fundamentally alter[ed]" from that presented to the state court as to preclude our review. (§70)

We therefore once again hold ... that the state courts unreasonably applied *Strickland* in determining that Richey had not been denied his constitutional right to effective representation. (§76)

C. Analysis According to the State's Interpretation of the Supreme Court's Remand Language

To establish ineffective assistance of counsel, a habeas petitioner must show both deficient performance and prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984). (§115)

First, at trial, the State put forth a specific theory of how Richey set the fire. The State did not rest on the circumstantial witness testimony tying Richey to the fire. The State instead maintained that Richey stole paint thinner and gasoline from the greenhouse across the street, brought them back to Collins's apartment where he poured them on her living room carpet and deck, and ignited them. The State supported its theory with detailed scientific testimony from Cryer and Gelfius. (§117)

Richey cont. on page 18

Arey cont. from p. 3

edge the conviction had occurred. This *Brady* violation was discovered by Arey after his trial when a record of it was obtained under the Maryland Public Information Act.

The long and short of it is that Moon had a very long and violent criminal history, and the jury didn't know when assessing his credibility that he had already been convicted of threatening to kill a person at the very site of Shapiro's murder.

Judge denies warrant to search Moon's home for murder weapon

The police had not recovered the murder weapon, so Arey made a motion for the police to search Moon's home for the murder weapon. The judge held that granting a defense motion for a search would be a Maryland precedent, and that it would be harassment of Moon. So what the judge did was order the police to go to Moon's home accompanied by Arey's defense counsel, and request that Moon permit a search for weapons in his home. Moon was on parole so he of course refused. The judge's refusal to issue a search warrant for the murder weapon ensured that it would likely never be found.

Records support Moon's rental of car for disposal of Shapiro's body

Moon testified that he had been with Arey at Baltimore's Belvedere Hotel at 6 p.m. on May 9, 1973, moving Shapiro's body. At that time he had in fact been across town renting a green Duster at National Car Rental. The trial was stopped in the middle of the day on April 4, 1974, so a Baltimore City policeman and a state trooper could go with sirens screaming to Friendship Airport in Glen Burnie to seize the original car rental records. The time and date stamped records showed Moon rented the car at 6:06 p.m. on May 9, 1973. Arey's lawyer used the records to prove Moon lied that Arey was with him at the Belvedere Hotel at 6 p.m. on the day of Shapiro's disappearance. The car rental records also established that Moon personally rented and returned the vehicle.

When shown the rental documents Moon admitted they were authentic, but he claimed the date and time stamps were in error on the documents he signed, both when he rented and returned the car. Moon also denied he rented the Duster to transport Shapiro's body. Unknown to Arey, however, was Moon had admitted this in his police statement, a copy of which the judge refused to order turned

over to the defense as discovery material. Arey obtained a copy of Moon's Police Statement after his trial, another *Brady* violation.

Moon's immunity deal from prosecution for Shapiro's murder was conditioned upon his truthful testimony. Yet, repeated proof of his perjury about his criminal history, his location at the time of Shapiro's disappearance, and the rental car, was not considered a deal breaker to bar Moon's testimony or invalidate his immunity from prosecution for his admission to Shapiro's murder.

Prosecution falsely claimed Shapiro's blood was on Arey's shirt

When Arey was questioned on May 11, 1973, it was his first ever police interrogation. During the long periods of time that he was left in the Interview Room with nothing to read or do, he indulged in a bad habit while awaiting each round of questioning.

Arey felt pimples on his forehead, picked and scratched them and then saw a little blood on his finger. With no tissue or running water available Arey licked his finger and applied saliva to the pimples in order to slow or staunch the minimal bleeding, and dried his finger on

Arey cont. on p. 19

Richey cont. from p. 17

The scientific evidence of arson was thus fundamental to the State's case. Yet Richey's counsel did next to nothing to determine if the State's arson conclusion was impervious to attack. ... At bottom, the record shows that Richey's counsel did not conduct the investigation that a reasonably competent lawyer would have conducted into an available defense—that the fire was not caused by arson-before deciding not to mount that defense. (§118)

[W]e can discern no strategic reason why counsel would have so readily ceded this terrain to the prosecution. (§121)

The testimony of experts such as Armstrong and Custer, both of whom have stated they would have testified on Richey's behalf had they been contacted, would have severely undermined the State's case against him. Armstrong and Custer would have attacked the State's gas chromatography analysis as unsound and out of step with prevailing

scientific standards; they would have disputed the State's conclusion that any of the samples contained traces of gasoline or paint thinner; they would have testified that the burn patterns, about which Cryer made so much, were just as consistent with a naturally occurring fire; and they would have rejected Cryer's contention that the fire's speed was indicative of arson, explaining that modern furnishings cause fires to burn more rapidly. Finally, they would have testified that the most likely cause of the fire was a cigarette smoldering in the cushions of Collins's couch. (§122)

There can be little doubt that Richey was prejudiced by his counsel's deficient performance. There is a reasonable probability that had his counsel mounted the available defense that the fire was caused by an accident, and was not the result of arson at all, the outcome of either the guilt or the penalty phase would have been different. ... Confronted with evidence debunking the State's scientific conclusions,

the trial court might have had a reasonable doubt about Richey's guilt... (§123)

III. CONCLUSION

... because the deficient performance of Richey's counsel undermines our confidence in the outcome of his trial, and because we believe that the Ohio state courts unreasonably applied *Strickland* in determining otherwise, we reverse the judgment of the district court and remand with instructions to enter a conditional writ of habeas corpus, giving the State of Ohio ninety days to retry Richey or release him. (§125)

The 11-page *Richey v. Bradshaw*, No. 01-3477 (6th Cir. 08/10/2007) decision is on JD's website at, www.justicedenied.org/cases/richey_081007.htm, or order the "Richey Opinion 0807" for \$3 (stamps OK) from: Justice Denied; PO Box 68911; Seattle, WA 98168.

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Arey cont. from p. 18

his shirt. Detective Russell observed this, which occurred within a few hours of his placement in the Interview Room.

When Arey was taken some fifteen hours later to a holding cell, Officer Robinson instructed him to remove his shirt and pants. Arey asked why. Robinson said they were needed for forensic testing. Detective Russell was present, and said, "That happened here. I watched him pick at the pimple." Robinson looked at Russell and commented it didn't matter. Keep in mind that DNA testing didn't exist in 1973, blood testing consisted then of classifying it by blood type.

Nothing was heard about the clothes for some eight months until the state claimed the deceased's blood was on the shirt. When pre-trial motions hearings were held before Judge Charles Harris, Arey moved for re-testing of the shirt. Russell testified in January 1974 that he observed Arey place the blood and saliva on the shirt, confirming Arey's testimony. Judge Harris ruled that the blood on the shirt must be retested.

After the judge's ruling, Arey's lawyer Leslie Gladstone moved for physical custody of the evidence so an independent lab could test it. The prosecution then claimed the crime lab's testing consumed the blood evidence, so there was no blood left to test.

Police lab technician faked credentials

The prosecution's expert witness, forensic technician Robert Davis, testified at trial that the blood on Arey's clothing was identified as type AB, the deceased's blood type, while Arey's blood is type O. Based on detective Russell's testimony about the source of the blood on Arey's shirt, Arey's attorney was convinced Davis' testimony about blood typing was false.

In establishing his expertise, Davis testified he graduated from West Virginia State University with blood training at the Department of Agriculture Graduate School. After his trial, Arey obtained a copy of Davis' class syllabus from Davis' graduate school professor that refuted Davis' academic claims at trial. Davis never took any college course in blood typing. His training actually consisted of one hour of instruction about blood and a 1-1/2 hour lab about blood typing, which involved the simplest introductory course work.

On cross-examination Davis claimed he followed the testing protocols for blood typing outlined in books by nationally recognized experts. However, when asked about his

various procedures, in each instance Davis claimed that either the national expert whose laboratory protocols he "followed" were in error, or else he had a different procedure than that laid out in the manual. However, regardless of the falsity of Davis' testimony, the blood remaining on the shirt can be tested using DNA techniques that were unavailable in the 1970s. (DNA testing in a criminal case was first used in 1986.) Alternatively, the trial transcript could be expertly analyzed to determine if Davis falsely testified, such as was done in the case of Bernard Webster, who was subsequently exonerated and released in 2002 after 20 years of wrongful imprisonment.

Exculpatory soil sample tests concealed from Arey until after trial

Another forensic evidence deception involved soil samples the State took from the crime scene and several other locations, supposedly to see if they matched dirt on a shovel and several other tools and implements Arey had. At trial, the State claimed it had not received test results from the soil samples sent to the FBI crime lab. However, the FBI lab results had not only been provided to the State's Attorney prior to trial, but they were exculpatory. They proved there was no relationship between Arey's tools and any of the crime scene soil samples that the prosecution introduced into evidence as circumstantial evidence of his guilt. The State's Attorney's *Brady* violation of failing to disclose the exculpatory scientific evidence was discovered when the FBI later released copies of the test results.

Arey's alibi

Arey testified he was at his antique shop, then the parking lot, Moon's carriage house, etc. looking for Moon, but could not find him between 5 p.m. and when he later found him. Arey also spoke with C&P telephone messaging service, which wrote a two-page report of their telephone contacts with Arey. Thirty-three years after Arey's trial, he obtained police reports that Moon's wife, the victim's son, and Moon all verified Arey's testimony when questioned by the police, but not one of them testified at trial remotely similar to what they told the police. Yet these police reports that impeached their testimony were not made available to Arey's trial counsel.

Conviction and appeal

Arey was convicted in April 1974 of first-degree murder and sentenced to life in prison. Arey's direct appeal was denied in 1975 by the Maryland Court of Special Appeals.

Post-conviction proceedings

Arey received no post-conviction relief of his conviction or sentence. However, in 2000 Arey's attorney admitted in writing that he failed to provide effective post-conviction assistance of counsel. That admission preserves Arey's right to a *Stovall* (144 Md.App. 711 (2002)) proceeding to reopen his post-conviction case on the basis of ineffective assistance of post-conviction counsel.

When Arey finally got his trial transcript in about 1984, after a ten-year battle, he started working on his court case. The State then promptly classified him at a lower security level. While that made him eligible for work release, it also required that he send the trial transcript out of the prison.

In May 2002 Arey filed a *pro se* Circuit Court petition for post-conviction DNA testing of the blood present on the clothing seized from him during his police interrogation. In April 2006 he was granted a hearing, scheduled for July 25, 2006, to consider his petition. However, eight days before that hearing, it was cancelled and the judge summarily denied Arey's petition for DNA testing. The judge's action was based on a Baltimore PD sergeant's affidavit that he looked through an evidence database and reviewed forms listing the location of clothes in evidence, but he couldn't find any reference to the clothes requested by Arey. Arey appealed the judge's dismissal.

After the DNA petition's dismissal, Arey submitted a Public Records request to the State's Attorney for Baltimore for a complete copy of all materials, documents, reports, etc. related to his 1974 indictment. The State's Attorney responded on August 28, 2006, "In response to your letter dated August 7, 2006, a thorough search for the above case was unsuccessful." Yet this prosecutors office that claims it has no records related to Arey's indictment has adamantly opposed all his efforts to be awarded a new trial.

MD Court of Appeals rules State must search for missing DNA evidence

On August 1, 2007 the Maryland Court of Appeals ruled in Arey's favor by deciding that before a post-conviction petition for DNA testing can be dismissed on the basis the evidence no longer exists, "the State needs to check any place the evidence could reasonably be found, unless there is a written record that the evidence had been destroyed in accordance with then existing protocol." *Arey v. State*, No. 82, September Term, 2006 (Md. 08/01/2007), 2007.MD.0000240 ¶53 <www.versuslaw.com>. The Court listed

Arey cont. on p. 20

Petition Seeks To Nullify Jesus Christ's Conviction

A petition was filed in Kenya's High Court on August 29, 2007, challenging the constitutionality of the mode of questioning, the evidence, the trial, and the sentencing and punishment of Jesus Christ. The petition's requested relief is a declaration that the proceedings are a "nullity" because "they did not conform to the rule at the material time." The plaintiff is the Friends of Jesus, and the ten defendants include The Republic of Italy and the State of Israel.

The 29-page petition contends that the proceedings Jesus was subjected to were infected with the bias and prejudice of "Judicial Misconduct, Prosecutorial Misconduct, Malicious

Prosecution, Abuse Of Office, Fabrication Of Evidence and Human Rights Abuses and Malicious Prosecution." (§1, p. 11)

If the petition satisfies the threshold procedural and substantive requirements for a constitutional review, it will be referred to a three-judge panel to consider its merits. Kenyan legal analysts have identified that three hurdles for the plaintiff to overcome are establishing the High Court's jurisdiction, that the petition's claims aren't time barred, and that the plaintiff's have standing to bring the action.

The High Court has jurisdiction over human rights issues, so it may be able to consider the petition's claims. The time bar and legal standing hurdles may be more difficult to overcome.

An interesting aspect of the petition is its

contention that both the defendant states of Italy and Israel, "upon attaining Independence has incorporated all the preceding laws that existed in the ROMAN EMPIRE at the time of the Trial in question." (§§11-12, p. 12-13)

The case is being taken very seriously in Kenya, with legal analysts debating the merits of its legal basis, its claims, and its requested relief. The Kenya Civil Liberties Union has joined the proceedings as *amicus curiae*.

The petition is *Friends of Jesus v Tiberius, Emperor of Rome; Pontius Pilate; et al*, Republic of Kenya Constitutional Petition No. 965 of 2007. It is on JD's website at www.justicedenied.org/cases/fojesus.pdf Or order "Jesus Petition" for \$5 (stamps OK) from: Justice Denied, PO Box 68911, Seattle, WA 98168.



Arey cont. from p. 19

thirteen separate locations among the traditional and non-traditional places that should be investigated for recovery of the missing evidence, stating, "a court should not conclude that evidence no longer exists until the State performs a reasonable search for the requested evidence." *Id.*

The Court also ruled on Arey's contention he was entitled to appointment of counsel to litigate his DNA petition. The Court clarified "that although there is no constitutional or statutory right to counsel at the time a petitioner files the petition for DNA testing, a court has the inherent power to appoint counsel at any stage of proceedings until he "receives favorable DNA testing results." *Id.* at ¶ 76.

The decision in Arey's case is published and precedential for all people seeking to use Maryland's post-conviction DNA testing law.

As of late-September 2007, the State is searching for the missing trial evidence, and Arey has not been appointed a lawyer.

Evidence of prime suspect disclosed 33 years after Arey's trial

At the time of Arey's arrest in 1973, he was a 24 year-old Caucasian male who had formerly been employed by Shapiro, and two years prior to his Shapiro's murder Arey had lived in one of Shapiro's apartment buildings.

Thirty-three years after Arey's trial, on August 16, 2007, the Baltimore City District Court responded to Arey's request under Maryland's Public Information Act for records about his case. Arey learned for the first time that before he was even arrested, the police had another

suspect they could not locate. That man was Charles Eugene Thornton, a 24 year-old Caucasian male employed by Shapiro until shortly before Shapiro's murder, and who lived in one of Shapiro's apartment buildings.

Days before Shapiro was murdered he had filed sworn felony charges against Thornton for embezzlement, larceny, theft and related charges. The prosecution knew before Arey's arrest that Thornton was a prime suspect because he had a compelling motive: Shapiro was the complaining witness against Thornton, so with him dead the charges against Thornton would be dismissed for want of a witness.

To smear Arey's character and make him appear to have a motive to murder Shapiro, prosecution witness Frank tried to convince Arey's jury that he committed embezzlement, larceny, theft and related charges against Shapiro. Those were the crimes that Shapiro had accused Thornton of committing – not Arey! Also, Frank attributed to Arey a supposed threat against Shapiro, "I'll get you, you dirty ...". The new evidence suggests that Thornton was the most likely person to have uttered that supposed threat.

The prosecution not only prejudiced Arey's defense by failing to disclose the *Brady* evidence of a prime suspect with characteristics virtually identical to Arey, but prejudicially influenced the jury to be more inclined to convict Arey by falsely projecting Thornton's motive and alleged crimes against Shapiro onto Arey.

The prosecution's timely disclosure that Thornton was a prime suspect would have enabled Arey's counsel to investigate and possibly uncover additional evidence implicating Thornton. Although the information the prosecution

failed to disclose about Thornton may have been enough by itself to sway the jurors to have had a reasonable doubt of Arey's guilt, additional investigation into Thornton's background and activities could have only helped influence them to have voted not guilty.

Current status

Arey is seeking a new trial and full disclosure of the truth not only to clear his name and be released from prison, but so that the Shapiro family can know the truth about Samuel Shapiro's murder.

The Maryland DOC responded to Arey winning his Court of Appeals case by inexplicably transferring him, so he can be written in care of *Justice:Denied* and it will be forwarded to him. As of early October 2007 he has not been appointed a lawyer, so he welcomes any helpful court cases, legal strategies, or assistance:

Douglas Arey c/o
Justice Denied
PO Box 68911
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Or email Arey at, www.prisonmail.org
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Arey v. State, No. 82, September Term, 2006 (Md. 08/01/2007), is available on Justice Denied's website at, www.justicedenied.org/cases/arey080107.htm Or order "Arey Opinion 0807" for \$3 (stamps OK) from: Justice Denied; PO Box 68911; Seattle, WA 98168.

Endnotes:

1 This account is based on transcripts, court rulings, other case documents, and the personal knowledge of Douglas Scott Arey.
2 See, Maryland State Prosecutors meeting, Hunt Valley Inn, January 1974, "Statutory Immunity Memorandum of Law," report of then Montgomery County States Attorney (now Judge) Sonner.



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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 Nicarone 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

Tulsa: 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 Tulsa 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 Tulsa 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: Doble 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 weighing 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 Olson - \$15.95 - \$12 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 Erna Armstrong - \$10 - 370 pgs. The true story of how Karlyn Eklor 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 impeaching evidence was hidden by the prosecution, and begging 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 Brunner was convicted of first-degree murder in the death of Sarah Gonstead by a Madison, Wisconsin jury in October 1994. But did Brunner 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 one-time 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 Tapakes - \$12.99 - 224 pgs. The untold story of the friendship between African-American Maurice Carter and white journalist Doug Tapakes. 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 Tapakes' 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 inefficient and foster a climate of tolerance for misconduct. #84 (Pub. March 2007)

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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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The Criminal Law Handbook (9th ed.) (Sept. 2007) by Attorneys Paul Bergman & Sara J. Berman-Barrett - \$39.99 - 640 pgs. Explains what goes on in a criminal case. Covers: arrests; booking; preliminary hearings; charges; bail; courts; arraignment; search and seizure; defenses; evidence; trials; plea bargains; sentencing; juveniles. Covers Supreme Court cases and changes in criminal law (through August 2007). #10

Legal Research: How to Find & Understand the Law (14th ed.) (Sept. 2007) by Attorneys Paul Bergman & Sara J. Berman-Barrett - \$39.99 - 322 pgs. Learn how to do legal research, and use a law library to seek and understand statutes, regulations and cases. Also explains online resources. Written for a layperson. Aids in saving time by narrowing your focus and formulating legal questions such as, is the issue federal or state, civil or criminal, procedural or substantive? #93

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Everyday Letters For Busy People (Rev. ed.) by Debra Hart May and Regina McAloney - \$16.95 - 288 pgs. Hundreds of sample letters for all occasions, including: Letters to government officials and agencies; Business letters; Complaint letters; Community action letters; Job-search letters; Thank-you letters. Letters can be adapted for your situation. Includes helpful tips and techniques to effectively get your message across. Includes email tips. #13

New York Times Almanac - \$10.95 - 1,008 pgs. Includes a wealth of comprehensive information about a diverse range of topics related to the U.S. and the rest of the world. Includes social, political, population, geographic information, and sports. #14

Eyewitness Testimony by Elizabeth Loftus - \$22.50 - 272 pgs. Loftus is one of the world's leading authorities on the unreliability of eyewitness testimony. She explains the basics of eyewitness fallibility, such as poor viewing conditions, brief exposure and stress. She also covers more subtle factors, such as expectations, biases, and personal stereotypes that can result in a suspect's erroneous identification. Loftus also explains that experiments have repeatedly proven that eyewitness memory is chronically inaccurate. #21

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

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

Legal Blunders by Geoff Tibballs - \$15.95 - 384 pgs. Includes 38 cases of legal blundering, including some involving wrongful convictions. The legal horror stories are shocking, occasionally unbelievable, and sometimes amusing. They run a gamut of error from the tragic misjudgments at Waco to a disastrous case of mistaken identity

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 Sandra Westervelt and John Humphrey - \$23.95 - 301 pgs. Articulates 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 Jenken - \$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

The I Chong: Meditations from the Joint by Tommy Chong - \$14.95 - 224 pgs. First person account of how Tommy Chong (of the comedy duo of Cheech & Chong) became a target of the Bush administration and how a case was contrived against him that resulted in him spending nine months in federal prison in 2003-2004. One of the most straightforward accounts of how the federal government misuses the criminal laws to prosecute critics of political policies. Written with the heart and wit that one would expect from a professional entertainer. #86

Mistaken Identification: The Eyewitness, Psychology and the Law by Brian L. Cutler and Steven D. Penrod - \$9.99 - 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

How to Argue & Win Every Time: At Home, At Work, In Court, Everywhere, Everyday by Gerry Spence - \$15.95 - 307 pgs. Most successful defense lawyer in American history shares his secrets to successfully convince others to see your point of view. He teaches some of these techniques to the lawyers who attend his Trial Lawyer's College in Wyoming to learn how to win. #17

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by Hans Sherr

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Kirstin Blaise Lobato's Unreasonable Conviction: Possibility Of Guilt Replaces Proof Beyond A Reasonable Doubt

By Hans Sherr

Kirstin Blaise Lobato has twice been convicted of a 2001 Las Vegas murder based on the prosecution's argument it is "possible" she committed the crime. That claim and her convictions are unreasonable because there is no physical, forensic, eyewitness or confession evidence placing her at the crime scene, and ten eyewitnesses and telephone records corroborate the 18-year-old Lobato's alibi of being at her parents house 170 miles north of Las Vegas on the weekend of the murder. This is the full story that was condensed in *Justice:Denied* Issue 34.

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**"Thank you for the great book. I have to share it with so many that have helped and continue to help on my appeal."
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By Michael and Becky Pardue

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Thomas Arthur
See page 9

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"The greatest crime of all in a civilized society is an unjust conviction. It is truly a scandal which reflects unfavorably on all participants in the criminal justice system."

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(In 1992 when he vacated Albert Ramos' rape conviction after eight years of wrongful imprisonment.)

"The State said for 11 years that DNA wouldn't exonerate me — but it did by identifying who actually committed the crime." Darryl Hunt



Mark Rabil and Darryl Hunt

At the Innocence Project Northwest's 10th Anniversary Celebration in Seattle, Oct. 11, 2007. Rabil was Hunt's lawyer during the entire 19 years from Hunt's 1985 conviction in North Carolina to his 2004 exoneration.

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