

# JUSTICE DENIED

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The Magazine for the  
Wrongly Convicted

## LACK OF POLITICAL WILL IN U.S. To CORRECT WRONGFUL CONVICTIONS

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Awarded \$581,700 after a judge pressured him to falsely plead guilty to carjacking.

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**Jerry Frank Townsend**

Awarded \$2.2 million after 22 years of false imprisonment for six murders and a rape committed by a south Florida serial murderer and rapist.

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Spring 2008**

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**Message From The Publisher**

In spite of the large number of wrongful convictions in the United States there has been no serious political effort in this country to either prevent them or ensure their correction. See the *JD* Editorial on page 16.

Unlike the head in the sand attitude that prevails throughout the U.S., Fritz Moen’s saga illustrates that Norway is dealing with the problem of wrongful convictions head-on. See the article on page 17.

Likewise, the Scottish town of Prestonpans doesn’t bury its sordid past, but has an annual Remembrance to honor the many people convicted of witchcraft and executed, and as a reminder that without vigilance hysteria could again triumph over reason. See the article on page 20.

*JD* first reported in 1999 on Thomas Arthur’s conviction of Troy Wicker’s 1982 Alabama murder. Three days before Arthur’s scheduled July 31, 2008 execution a man imprisoned for life for another murder confessed to Wicker’s murder. Based on the new evidence the Alabama Supreme Court voted 5 to 4 to indefinitely stay Arthur’s execution. See the article on page 11.

*JD* editorially opposed the confirmation of Michael Mukasey as U.S. Attorney General because of his documented contempt for the presumption of innocence. Mukasey’s guilty until proven innocent mentality was once again on display in his public statements denouncing the Supreme Court’s June ruling in *Boumediene v Bush* (2008) that Guantanamo Bay detainees have the right to challenge in a federal habeas petition their indefinite imprisonment without charges. Mukasey is the top law enforcement officer in the U.S., and his attitude is close to believing suspicion a person committed a capital crime is sufficient proof of their guilt to justify their summary execution. Mukasey is a former U.S. District Court judge, and one can only cringe at the thought of being an innocent person in his courtroom with as much chance as a condemned person with a noose around their neck.

Hans Sherrer, Publisher

Justice:Denied - the magazine for the wrongly convicted  
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*Justice: Denied’s* logo represents the snake of evil and injustice climbing up on the scales of justice.

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

I have handled habeas petitions for five death row prisoners. Only in one has evidence of the condemned person's innocence been overwhelming. That person is Arthur Tyler. He is an innocent man literally at the door of Ohio's death chamber.

## Arthur Tyler Is Awaiting Execution When The Actual Murderer Is Being Protected By Ohio Law Enforcement

By Richard Kerger, Esq.

Sanders Leach was shot to death on March 12, 1983 in the van from which he was selling vegetables on Cleveland's east side. Tyler was convicted of Leach's aggravated murder and sentenced to death.

Yet the police and prosecutors have known since days after Leach's death that his murderer is Leroy Head and that Tyler wasn't present.

### Leroy Head confesses six times to Leach's murder

A few days after Leach's murder, the police brought Head and two of his friends into the police station to question them concerning another murder. The police believed the three men were witnesses to the other murder, as opposed to suspects. During the questioning, Head began to look nervous. The police asked his friends why, and they told the officers that Head had shot Leach. A police report states: "In these statements they both stated that Head came to there (sic) house right after the shooting and told them that he just kill (sic) the old man who sold produce on East 66th."

When told about his friends' statements, Head asked to speak with his mother. The police transported her to the station to speak with her son. The police recorded that after meeting with Head for "approx (sic) 3 minutes, she came out of the room crying and saying that he did it."

Head then confessed to the police that while Tyler was outside Leach's van, unaware of what was taking place inside, Head had gotten into a struggle with Leach and then shot him. Head reduced his oral confession to writing: "At the first shot I starting (sic) falling over towards him, and that's when the gun went off a second time." (Police report.)

### Leroy Head Paroled June 3, 2008

Leroy Head has confessed at least ten times to murdering Sander Leach and that Arthur Tyler wasn't present. For testifying that Tyler committed the murder and pleading guilty to only being a participant, Head was given a parolable sentence — while Tyler was sentenced to death. Head was released on parole June 3, 2008 after 25 years imprisonment.

Ten days after those confessions, Head confessed again, this time to an investigator working for Tyler's lawyer. After orally confessing Head wrote out a statement admitting he shot and killed Leach: "I grabbed (the gun) and it went off — the old man fell back and I fell on top of him — the gun went off again." (Investigator's report.)

So within ten days of Leach's murder Head confessed at least six times to shooting Leach: to two friends, to his mother, orally and in writing to the Cleveland police, and to an investigator for Tyler's lawyer.

### Head recants after meeting with prosecutor

Then two-and-a-half months after the murder Head and his lawyer met with the prosecutor. Head suddenly and for the first time claimed that Tyler was the shooter. Up to that point Head had without exception said that Tyler had nothing to do with the murder and that he didn't know anything about it until afterwards. Tyler was charged with Leach's murder based on Head's revised statement.

Tyler had two carbon copy trials, the first in 1983, and the second in 1985 after his 1983 conviction was overturned because of ineffective assistance of counsel. The prosecution's theory was that since he was older than Head, he was the one who directed their activities and was the shooter. Head was the prosecution's star witness at both trials and the jury relied on his testimony to convict Tyler of aggravated murder that allowed him to be sentenced to death.

In exchange for his testimony Head pled guilty to first-degree murder and was given a sentence a life in prison that allowed for his eventual release on parole.

### Head confesses four more times after Tyler's conviction

After Tyler's conviction Head once again began repeatedly stating that he was the lone murderer — and Tyler had nothing to do with the crime. Post-conviction affidavits establish the following:

- April 27, 1986 — Head states in his own handwriting: "I shot and killed him" and that Tyler was unaware the crime was taking place.

• May 16, 1989 — Head tells Tyler's lawyers that he lied when he testified that Tyler killed Leach. Head said the prosecutor told him that if he did not testify he would be tried for capital murder, sent to a less secure prison, and the prosecutor would make sure the other inmates knew he was a snitch. (Lawyer note.)

- July 27, 1991 — Head confirms in an affidavit that he and not Tyler killed Leach: "Leach pulled a gun out and he was shot while we scuffled."

During the state post-conviction process, it was learned that Head also confessed to still another friend. On April 25, 1991, Luther Aldridge, a half-brother of Head's friend Anthony Gillis, stated in an affidavit that he had gone to Gillis' house around 6 p.m. on the day of the murder. Head was present and told Aldridge that "he had robbed and shot the vendor." (Aldridge Affidavit.) Aldridge later encountered Head in prison and asked him why he was letting Tyler remain on Death Row. Head told Aldridge that he was going to confess to the crime. (Aldridge Affidavit.)

### Federal court grants Tyler permission to depose Head

After Tyler exhausted his state post-conviction remedies in 1999, he filed a federal habeas corpus petition in 2000. The district court judge granted Tyler permission to take Head's deposition. However, Head refused to testify, citing his rights to avoid self-incrimination. A lawyer was appointed to represent Head. The deposition was rescheduled, but again Head invoked his rights under the Fifth Amendment. Tyler's counsel asked that the State grant immunity to Head so that his testimony could be obtained. The request was refused. The federal court sustained Head's assertion of his right not to testify, and subsequently denied Tyler's habeas corpus petition.

On September 20, 2005, I wrote to the Ohio Attorney General's office asking that it take steps to assure that immunity would be granted to Head so he could truthfully testify without fear of being prosecuted for capital murder or perjury. That request was greeted with silence by Ohio's Attorney General.

### Tyler files writ to compel granting Head immunity

Having obtained the side of the story they wished, Ohio's top law enforcement officials are effectively sealing the lips of the only witness who can establish Tyler's innocence

Tyler cont. on p. 4

## Tyler cont. from p. 3

and prevent the execution of an innocent man. Keep in mind: *There can be no valid assertion of the Fifth Amendment by Head unless he is going to change his testimony.* If he testifies as he did at trial, the situation would be that the shooter was Arthur Tyler and there would not be a basis for criminal proceedings against Head. It would only be that if under oath Head changed his story back to his original version where he was the shooter, that he would be potentially exposed to criminal charges. Were Head to do that, the new evidence of Tyler's actual innocence would furnish a basis to avoid his execution and challenge the validity of his conviction.

No one has ever offered a reasonable basis for Head's recantation of his many confessions, other than that the prosecutor told him that if he did not recant and point the finger at Tyler, they would seek the death penalty for him.

In a last ditch effort to obtain Head's truthful testimony, Tyler filed a complaint for a writ of mandamus in the Cuyahoga County Common Pleas Court, requesting an order compelling Ohio's Attorney General and the Cuyahoga County Prosecutor to grant immunity to Head. The judge granted the defendant's motion to dismiss and Tyler appealed to Ohio's Court of Appeal. On March 15, 2007 the Court affirmed dismissal of the writ on the technical ground that the court lacked jurisdiction to order a grant of immunity. However, in its ruling the Court suggested that what Tyler was asking the prosecutor to do was reasonable, and that the prosecutor "should seek justice in this case by granting Head immunity." *Tyler v. Petro*, 2007-Ohio-1160 (3-15-2007) at ¶19.

### The truth of Leach's murder

The circumstances of the case are simple and not at all what the jury was led to believe by Head's testimony. Tyler did not know Head before they met at a friend's house. They came up with the idea of robbing a nearby meat market, which happened to be next to the van from which Leach sold his vegetables.

The plan was that Tyler, who knew the meat market was operated by its owners, would go in and present a check to cash. The check was in a sufficiently large amount that they felt the owners would have to open the safe. When they did that Head was to swing into the room with a pistol and "clean out" the safe, while Tyler acted like an innocent bystander.

With Head outside, Tyler went in, only to find that the owners were both absent leaving

the business in the control of someone who was unable to open the safe. While Tyler was in the market trying to figure out what to do next, Head saw the old man selling vegetables and went over to rob him. As Tyler was leaving the market, he heard a shot come from the van and found that Head had killed Leach. They both then ran from the scene.

Reflect on the day of Head's arrest. He is surprised by the police and taken to the station. He becomes nervous. He asks that his mother be allowed to speak with him. She is brought to the station. In a few minutes, she leaves the interview room in tears stating that "he did it." Why would Head lie to his mother about being the shooter? And it is known that he has repeated what he told her at least ten times – including to the Cleveland police.

### Tyler is on track for execution

Yes, Tyler had a criminal record, but not for anything involving violence. He was a petty con man. He hustled pool. Yes, it was stupid for him to get mixed up with Head in the scheme to steal money from the meat market. But the murder Head committed occurred during his attempted robbery of the vegetable vendor that Tyler knew nothing about until after it happened. Head's nearly dozen confessions mirror Tyler's unwavering assertion for the past 26 years that he had nothing to do with Leach's murder.

Right now the State of Ohio is sealing the lips of the actual murderer – a man who can save Tyler. Tyler's writ of certiorari to the U.S. Supreme Court was denied in the spring of 2008, and he is running out of avenues for legal redress.

Ohio Governor Ted Strickland has the authority to stop the injustice of Tyler's case by pardoning him or commuting this sentence.

Arthur needs your help. Without it, Ohio will execute an innocent man. Wendy Alford and Karen Torley are coordinating the campaign to stop Arthur Tyler's execution. They can be emailed at, [justiceforarthurytler@gmail.com](mailto:justiceforarthurytler@gmail.com)

For more information about Arthur Tyler's case see the following websites:  
<http://torley.org/Arthur-Tyler/Arthur-Tyler>  
<http://justiceforarthurytler.blogspot.com>  
<http://www.gopetition.com/petitions/investigate-the-case-of-arthur-tyler.html>

About the author: Richard Kerger is the Toledo, Ohio defense and appellate attorney representing Arthur Tyler. He can be emailed at: [rkerger@kergerlaw.com](mailto:rkerger@kergerlaw.com)

## Conviction Tossed Against "Lyrical Terrorist"

Samina Malik was a 24-year-old woman living in London, England when she attracted attention to herself by writing poetry glorifying terrorism on the back of some sales receipts at the shop where she worked. When concerned people asked her about the rhymes, she told them she was the "lyrical terrorist."



When questioned by police, Malik, a Muslim, denied that she was an actual terrorist, but she thought it sounded "cool" to call herself the "lyrical terrorist." British authorities approached her case as one involving national security, and the search of her apartment resulted in the discovery of some documents, including an al-Qa'eda manual. Although all of the seized documents are publicly available over the Internet and there was no evidence that Malik was involved in terrorism, she was charged with storing material intended to further terrorism in violation of Section 58 of the United Kingdom's Terrorism Act of 2000.

Free speech activists in England were alarmed at Malik's prosecution that they described as based on her alleged thought crimes.

When she was convicted by a jury in December 2007, Malik became the first female convicted of a Section 58 terrorism offense in England. She was given a nine-month suspended sentence.

On appeal her lawyer, John Burton, argued that contrary to the intent of Section 58, there was no connection between any of the documents seized from Malik and any actual or planned terrorist act, and in fact a first-aid manual was one of the documents the government claimed could be used for a terrorist purpose. Burton also argued that the intent of Parliament was for Section 58 to criminalize actions intended to provide material assistance in the furtherance of terrorism — not possibly thinking about it.

On June 17, 2008 the UK's Court of Appeal quashed Malik's conviction on the basis that her writings and the documents in her possession did not constitute a violation of Section 58. She was ordered released from custody without a retrial. She was jailed for about six months prior to her trial.

Sources:  
Wicked thoughts are not a crime – yet, *The Telegraph* (London), June 19, 2008.

## Poison Drummer Rikki Rockett Cleared Of Rape – He Was 2,000 Miles From Crime Scene

Poison has been a popular rock band since its debut album in 1986. Their top hit, *Every Rose Has Its Thorn*, was the #1 record in the country for three weeks beginning on Christmas Eve 1988. Founded by drummer Rikki Rockett and vocalist Bret Michaels, Poison continues to record and play live dates. The band is currently comprised of its four original members, and their most recent album – *Poison 'd!* – was released in June 2007. The group has enough name recognition that the album debuted at #32 on Billboard's best selling album chart.



Rikki Rockett

On the morning of March 24, 2008 the band returned to the United States after playing at a heavy metal show in New Zealand – Rock2Wellington. When Rockett went through customs at Los Angeles International Airport a check of his name alerted officers that he was wanted on a felony fugitive sexual assault warrant from Mississippi. The warrant was for the September 2007 “strong arm rape” of a woman in Choctaw, Mississippi. Rockett was arrested by Los Angeles Police Department airport security officers. Across the country the media had a field day playing up the story of the aging rocker rapist.

After spending the night at the Los Angeles County Jail, the 46-year-old Rockett, whose real name is Richard Ream, was released on bail. He hired lawyers Barry Tarlow and Mi Kim to defend him against the rape charge – that he insisted he had nothing to do with.

After more than a month of intense investigation Tarlow and Kim had pieced together what actually happened. A man named John Minskoff met the woman at the Silver Star Resort Hotel & Casino in Choctaw, Mississippi. He convinced the woman that he was Rikki Rockett and she left the casino with him, after which they apparently went to a hotel room. She later reported to the local police that rock star Rikki Rockett had raped her.

Rockett's lawyers discovered that Minskoff has a history of picking up women by impersonating a rock star, and has multiple felony convictions for violent crimes and perjury. In a 1996 in-

cident, Minskoff kidnapped a 15-year-old girl in Reno, Nevada after convincing her he was a member of the rock band White Snake.

Tarlow and Kim were also able to prove Rockett's alibi that at the time of the alleged assault, he was almost 2,000 miles away in Los Angeles with his fiancée and several friends while she was trying on wedding dresses. Through travel and phone records the lawyers were also able to establish that Rockett had not been in Mississippi at any time during September 2007.

In early May 2008 Tarlow and Kim informed the Neshoba County District Attorney about the findings of their investigation. The DA's office verified the findings clearing Rockett, and in late May he was informed that they wouldn't seek an indictment for the rape charge. Rockett immediately posted that news on his Myspace.com webpage. However, it wasn't until July 1, 2008 that the DA's office publicly confirmed that the rape charge against Rockett had been dropped. The DA also revealed that the authorities were looking for Minskoff in connection with the alleged sexual assault and his impersonation of Rockett.

Rockett had never been arrested prior to the false rape accusation, and during an interview with the Associated Press he expressed his concern that if he hadn't been absolutely cleared of the charge it could have ruined his reputation: “That is one word you don't want associated with your name. Rape is right up there with murder and child molestation.”

Aware now of how easily an innocent person can instantly have their life turned upside down by being wrongly accused of a heinous crime, Rockett wrote on his Myspace.com webpage, “I look forward to helping other people who have been falsely accused of committing heinous crimes.” Tarlow had worked with Centurion Ministries in the freeing of Clarence Chance and Benny Powell in 1992 after almost 18 years of wrongful imprisonment for murder. After Rockett was told by Tarlow about Centurion Ministries, the United States' oldest innocence project, he wrote on his webpage: “My lawyers, Barry Tarlow and Mi Kim, are helping me seek out organizations like Centurion Ministries to help if I can.

This wonderful organization works to free innocent people in prison who have done serious time for crimes they did not commit.”

True to his word, on Saturday, June 28, 2008 Rockett held a fund raising party for Centurion Ministries at the Off Broadway Bistro in Valencia, California. The next day Rockett wrote on his Myspace.com webpage:

“I couldn't be happier with the benefit party yesterday.

The party was as fun as I pictured it to be, but the surprising thing was how well the charity auction went. We raised several thousand dollars for Centurion Ministries on the auction alone! This money and other silent contributions will go directly to help those who are innocent and do not have the resources to get decent legal help. Many of these people are on death row awaiting execution for a crime they did not commit.

...  
This party was simply a kick off to an idea. I hope to do this annually as a benefit while maintaining the spirit of the excitement of a party. After all, we are the lucky ones with the freedom. Celebrate it everyday.”

In addition to being a member of Poison, Rockett is also a successful entrepreneur. He founded and is president of Rockett Drum Works, a custom drum manufacturer headquartered in Woodland Hills, California. On July 3 in Salt Lake City, Poison began its forty city Live, Raw & Uncut Summer Tour 2008.

Choctaw was also in the national news in 2002 after it was discovered that three people had been convicted of the murder of a child that had never been conceived. Although it is medically impossible for the alleged mother to have gotten pregnant, and there is no evidence the child ever existed, as of July 2008 only one of those three people, Medell Banks Jr., has had their conviction overturned. See, “Medell Banks Jr.' Conviction for Killing A Non-Existent Child Is Thrown Out As A “Manifest Injustice,”” *Justice: Denied*, Vol. 2, Issue 9.

Note: According to mapquest.com, Los Angeles is 1,950 miles from Choctaw, Mississippi.

### Sources:

Poison's Rikki Rockett Arrested on Rape Warrant, *TMZ.com*, March 28, 2008.  
Rape charge dropped against poison drummer, By Chris Talbot (AP writer), *USA Today*, July 1, 2008.  
Rockett wants to help wrongly convicted prisoners, *PR-Inside.com*, May 23, 2008.  
Rikki Rockett's webpage on Myspace.com, <http://www.myspace.com/rikkirockett>  
Email from Lisa Kurtz, Centurion Ministries Office Administrator to Hans Sherer, July 10, 2008.



## James Ochoa Awarded \$581,700 After Judge Pressured Him To Falsely Plead Guilty To Carjacking

In May 2005 James Ochoa was at his Buena Park, California home watching television with his family. At the same time a man robbed two men at gunpoint and stole their car. The car was found around the corner from where the 20-year-old Ochoa lived. Since he had a record for methamphetamine possession, the police showed his mugshot to the two victims. One identified Ochoa and the other wasn't sure. Protesting his innocence, Ochoa was arrested and charged with robbery and carjacking.



James Ochoa

There were so many questionable aspects to the case that the local alternative newspaper, *The Orange County Weekly*, ran a story about Ochoa on November 5, 2005 titled, "The Case of the Dog That Couldn't Sniff Straight."

During his December 2005 trial a detective said that Ochoa was initially suspected because a police dog had followed a scent directly from the abandoned vehicle to Ochoa's front door. (This was later proven to be false.) Three days into the trial the prosecution offered Ochoa a deal — plead guilty in exchange for a two year sentence in addition to the six months he spent in jail awaiting trial. They said if he was convicted they would seek a 50-year sentence, and Judge Robert Fitzgerald told Ochoa he would sentence him to life in prison if he was convicted by the jury.

Ochoa told Judge Fitzgerald, "But it was not me [who did the crime]." Fitzgerald's response suggested he didn't think it was relevant if Ochoa was the wrong person: "Innocent people go to prison."

Afraid of being convicted and dying in prison, Ochoa agreed to plead guilty. He was subsequently sentenced to two years in prison.

What the prosecution didn't tell Ochoa's lawyer was they knew Ochoa did not commit the crime. The robber left a black baseball cap and long-sleeved gray shirt in the car. A month after the robbery the items were DNA tested by the Orange County Sheriff's forensic laboratory. Although an identifiable male DNA profile was detected, Ochoa was not that person. The robber's thumb print lifted from the car's gear shift knob also didn't

match Ochoa. So his prosecution was based on the two eyewitness identifications — while the exculpatory forensic evidence wasn't disclosed to Ochoa's lawyer.

Then on Oct. 13, 2006, during a routine check the California Department of Justice found a match between the DNA and a 20-year-old man locked up in a Los Angeles County Jail on carjacking charges. With the DNA directly linked to an accused carjacker, six days later the Orange County DA's Office filed a motion to dismiss the charges against Ochoa. Fitzgerald — the same judge who pressured Ochoa to falsely plead guilty — vacated his conviction and sentence. Later that day Ochoa was quietly released after 17 months of wrongful incarceration.

Ochoa filed a claim for the \$100 per day California state law provides for each day a person is wrongfully imprisoned. The claim amounted to \$31,700. The Victim Compensation and Government Claims Board's hearing officer recommended against granting the claim because Ochoa's guilty plea contributed to his wrongful conviction. However, on April 24, 2008 the full Board granted the claim after a review of the unusual circumstances contributing to Ochoa's false guilty plea.

Ochoa also filed a federal civil rights lawsuit against the City of Buena Park and several of its police officers. The week after the state Board awarded Ochoa his claim, Ochoa and Buena Park agreed to a tentative settlement of his lawsuit for \$550,000. So Ochoa's total compensation for his ordeal will be \$581,700.

Ochoa now lives in Texas, where his parents moved after his conviction.

Sources:  
Wrongly convicted OC man is free — and out of state, *Los Angeles Times*, November 2, 2006.  
Justice — finally, and just barely — is served, *Los Angeles Times*, April 26, 2008.  
Man jailed wrongfully for 16 months to get \$550,000 from Buena Park, *Orange County Register*, April 30, 2008.

[www.napsusa.org](http://www.napsusa.org)

**NAPS**

*National Association for Public Safety*

NAPS is a group that supports juvenile and prison reform. We call for public safety by insisting that rehabilitation be brought back into juvenile facilities and adult prisons. We call for action!

All prisoners, lawyers and youth concerned about justice should join NAPS today! For more information go to:

**[www.napsusa.org](http://www.napsusa.org)**

## Schappelle Corby Documentary On HBO

Australian Schappelle Corby's story of being sentenced to 20 years imprisonment in Indonesia on a false drug smuggling charge was featured in *JD* Issue 32, Spring 2006, "Schappelle Corby's Bali Vacation Turned In- to 20 Year Prison Sentence By Planted Drugs."



Schappelle Corby during her 2005 trial.

Documentary maker Janine Hosking filmed Corby's pre-trial and trial proceedings, along with interviews of Corby's family, friends and legal team. The cooperation of the Corby family was conditioned on Hosking's agreeing not to air the documentary until all of Schappelle's appeals were exhausted, and until other media commitments were completed. With the documentary finished but unable to be released yet in Australia, Hosking reached an agreement with HBO for it to be broadcast in the United States on August 17, 2008.

The documentary, titled *Ganja Queen*, highlights errors made by Corby's legal team in defending her, which she also wrote about at length in her autobiography *My Story*, published in Australia in 2006. (See review of *My Story* in *Justice:Denied*, Issue 37, Summer 2007.) Hosking's describes the film as "a chilling reminder of the risks all travelers take when visiting countries with vastly different criminal justice systems and cultural mores."

*Justice:Denied's* 2006 article is the only magazine feature story about Corby's case published in the United States, and *JD's* review of *My Story* is the only one published by a magazine in this country.

## Belgian Thinks U.S. Judicial System Is Backward

Shame on you AMERICA! I hate your "justice." I hate your system of punishments which sends innocents in jail! Your laws are retrograde, your only interests are money and petrol. It is time that America cleans its system and their politicians!

I live in Belgium and I am very happy not to live in your country of savages!

This was posted on the *Dallas Observer's* blog for an April 28, 2008 article about the release of James Lee Woodward after more than 27 years of imprisonment in Texas for his false conviction of murdering his girlfriend.

## New Zealand Man Cleared Of Rape When DNA Corroborates Alibi



Aaron Farmer

Aaron L. Farmer was sentenced to eight years in prison after being convicted in April 2005 of raping a 22-year-old woman in Christchurch, New Zealand. The jury relied on the woman's identification of Farmer as the man who jumped off his motorcycle and drug her into the bushes as she was walking to her brother's house after a night out drinking with friends in September 2002.

There was no physical or forensic evidence suggesting the 32-year-old Farmer committed the crime. He insisted he had been mistakenly identified as the woman's attacker, but he wasn't helped by the inconclusive result of a pre-trial DNA test of semen on a cervical swab in the victim's rape kit.

In sentencing Farmer, the judge seemed unsure of his guilt. The judge criticized the reluctance of the police to disclose evidence to Farmer's attorney, deficits in the transcript of a video interview with Farmer, and that no identity parade was conducted so the victim could compare Farmer with similar appearing men. The judge bluntly said, "when it comes to the investigation of serious crime, the community is entitled to expect better."

New Zealand's Court of Appeal quashed Farmer's conviction in June 2007, and ordered his retrial based on his trial lawyer's failure to present alibi evidence that significantly narrowed the "window of opportunity" of when he could have committed the crime. The Court ruled the evidence against him was so "weak" that he was prejudiced because the alibi evidence could have tipped the scale and influenced the jury to acquit him.

Farmer was released on bail after 26 months imprisonment to await his retrial.

There were DNA tests more sensitive than the ones available prior to Farmer's 2005 trial, so his new lawyer, Simon Shamy, pressed for retesting of the cervical swab and the attacker's skin recovered from under the victim's fingernail. The tests were conducted, and in early April 2008 Farmer was excluded as the male whose DNA was detected.

Shamy filed a motion to dismiss the rape charge. The prosecution agreed not to oppose the motion, and less than a week before

Gene Bibbins was sentenced to life in prison in 1987 after being convicted of raping a 13-year-old in Baton Rouge, Louisiana. There were allegations that the police falsified evidence to obtain Bibbins conviction. The allegations of evidence tampering gained credibility in 2002 when DNA testing unavailable at the time of Bibbins' trial excluded him as the girl's rapist. The 46-year-old Bibbins' conviction was vacated in 2003 and he was released after 16 years of wrongful imprisonment.

Three weeks after Bibbins release he was arrested for his alleged rape of a 22-year-old acquaintance in 1985. Bibbins claimed the sex with the woman was consensual, but to settle the matter in 2004 he entered an Alford plea to a non-sex crime. He was given a six-year sentence that was applied to the time he had already spent in prison, so he served no additional time.

Bibbins plea to the 1985 incident didn't change the fact that he had been convicted of a rape he didn't commit. He subsequently filed a federal civil rights lawsuit against the City of Baton Rouge, several police officers and the crime lab personnel involved in his case, alleging his conviction was caused by unconstitutional wrongdoing by the defendants. Among other things Bibbins claimed the investigating police officers ignored the victim's description of the rapist as having long curly hair, while he had short hair.

In 2005 Louisiana enacted a wrongful conviction compensation statute that permits an award of up to \$15,000 per year of wrongful incarceration, for a maximum of 10 years. Bibbins filed a claim for his false 1987 rape conviction, and in February 2006 he was awarded the maximum of \$150,000.

Farmer's retrial was scheduled to start on April 28, 2008, the charge was dismissed. Publicly the prosecutor said the charges were dropped because the victim didn't want to go through another trial. However, the decision not to proceed was likely influenced by the DNA evidence excluding Farmer that corroborated his alibi of being elsewhere at the time of the rape, and the questionable circumstances of the victim's identification of him.

After learning he had been exonerated of being a rapist, Farmer told reporters, "She was attacked - I believe that - which means that someone who attacked her is out there walking free and I did the time for their crime. The police should put a proper effort into finding who did. They had a description back then and they should have done their job."

## Gene Bibbins Awarded \$1.15 Million For False Rape Conviction



Bibbins lawsuit was scheduled to go to trial in June 2008, but after U.S. District Judge James Brady ruled the jury could not be informed about his plea to the 1985 incident, the city began serious negotiations with Bibbins' attorney. The city was also motivated by its potential multi-million dollar liability because Judge Brady ruled the jury could hear testimony concerning that the city "provided its officers with practically no training whatsoever in conducting identification techniques."

In early May the city and Bibbins agreed to settle the lawsuit for \$1 million. On May 14, 2008 Baton Rouge's Metro Council unanimously approved the payment to resolve the case. One council member, Lorri Burgess, thought the \$1 million settlement was too low compared to other compensation awards around the country, but she had no support to increase it from other members. The money will be paid in three annual payments of \$333,333.33. Bibbins will only receive about \$600,000, with the rest going to his attorneys and a payment to the Innocence Project in New York for their work on his case that resulted in his exoneration.

Bibbins total gross compensation for his wrongful rape conviction is \$1.15 million.

### Sources:

Man to get 150,000 for 17 years in prison, *New Orleans Times-Picayune*, February 7, 2006.  
Council advised to settle, *The Advocate* (Baton Rouge), May 4, 2008.  
Metro council OKs \$1 million settlement, *The Advocate* (Baton Rouge), May 15, 2008.

The Christchurch police said the case would not be reopened, even though a person with a police record might be able to be identified as the woman's assailant from the DNA profile and her description of him.

Farmer is the first New Zealander whose exoneration is attributable to DNA evidence.

### Sources:

Man freed after fresh DNA tests, *New Zealand Herald* (Auckland, NZ), April 26, 2008.

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Several shots were fired, perhaps four, possibly more, it was hard to be certain. They were fired quickly, close together and unexpectedly. The weapon was a nine-millimeter Uzi semi-automatic. Nineteen year-old Michael Fleming was shot. He lay stretched out on the sidewalk, dead. The body of his cohort, 22-year-old Ricky Warner lay beside him, unconscious. When Warner woke up later in the hospital he was paralyzed from the neck down. A bullet had struck him in the neck severing his spinal chord. Both boys were shot from behind. They had no warning. Fleming was dead instantly and Warner was unconscious before he hit the ground.

Five other young men were there that Fleming and Warner had been trying to sell drugs to. Three of them sustained minor injuries from bullet grazes and the other two were not injured. They gave statements to the police describing the shooter as a medium height dark-skinned black man.

The shooting occurred at 2 a.m. on the morning of February 24, 1990 outside the Exodus, a reggae nightclub on Chicago's North Clark Street. It was early Saturday morning and nightclubs in the area had just closed, so there were many people on the well-lit street near the shooting. A number of witnesses who saw the shooter gave their descriptions to police. The police composite drawing of the shooter depicts a 5'10", 180 lbs., mid-to-late twenties, mustached, flat nosed, dark complexioned black man.

**Ricky Warner was questioned by police two weeks after the shooting**

Two weeks after the shooting, police detectives interviewed Warner for the first time at the hospital on March 9. Although completely paralyzed and unable to move, Warner was mentally alert and articulate. Warner told the detectives he did not know who shot him and he did not see the shooter. However, he mentioned that he owed money to a man that he only knew by his nickname of "Rat." The detectives had no suspects and a lead about the unknown "Rat."

When the detectives interviewed Warner's father, he told them a man had come to his house about a year or so earlier and tried to collect a \$600 drug debt he claimed Ricky Warner owed. Ricky wasn't at home so two weeks later the man came back, trying again to collect.

**Murder Conviction Based On ID By Unconscious Man – The Lathierial Boyd Story**

By John Albert

Warner's father told the detectives he did not know who the man was, but he saw him leave in a car that had a vanity plate with the name "Rat" on it. The detectives checked around and learned that "Rat" was a nickname used by 24-year-old Lathierial Boyd.

When the detectives showed Warner a photo array that included Boyd, he identified Boyd as "Rat." But, he changed his previous statement by claiming to recognize Boyd as the shooter. That should have raised a red flag because unlike the shooter's description from the eyewitnesses, Boyd was light complexioned (not dark); 230 pounds (not 180); 6'-2" (not 5'-10"); he did not have any facial hair (no moustache); and his nose was not flat.

**Lathierial Boyd not identified in line-up**

After Boyd learned the police were looking for him, he voluntarily went to a police station. He agreed to participate in a live line-up. Nine eyewitnesses to the shooting viewed the line-up and none identified Boyd. A police report about the line-up even described Boyd as not matching the composite drawing of the shooter. Warner's father also viewed the line-up, and he selected Boyd as the person who came to his house to collect money owed by Warner.

Boyd did use the nickname, "Rat," but he never had a vanity plate on a car.

**Boyd's alibi was being asleep 20 miles from crime scene**



A is the location of the apartment of Boyd's sister Angela. B is the location of the shooting about 20 driving miles away.

The exclusion of Boyd as the shooter by the eyewitnesses is consistent with his alibi that at the time of the shooting he was 20 miles away asleep in his sister's south Chicago apartment. His sister Angela, her boyfriend Harold Casey, and Boyd were together in Angela's apartment from 8 p.m. Friday evening until 9 a.m. Saturday morning. As it happened Casey, a Cook County Deputy Sheriff for eleven years, awakened at 1:30 a.m. that morning. When he got up to use the bathroom he saw Boyd asleep in the other room.

For the careless Boyd to have committed the 2 a.m. shooting after be-

ing asleep at 1:30 a.m., he would have had 30 minutes to get dressed, leave the apartment unnoticed by the awake Casey, get outside and find some form of transportation to speedily travel 20 miles through Chicago to the exact location of the victims, find the victims in the large crowd, and get close enough to shoot them from behind.

According to Yahoo.com Maps, it takes 43 minutes driving the speed limit to travel from the location of Angela's apartment to the crime scene. <sup>1</sup> So the idea that in 30-minutes he could have done everything necessary to have committed the crime stretches credulity. And of course, Boyd would then have had to return to the apartment without his sister and Casey knowing he had left – which would have been all but impossible because Angela's highly secure apartment building required a pass key to enter, and Boyd did not have a key to either enter the building or open her apartment door. So he could not have returned without his sister and Casey knowing it.

**Boyd charged and tried for the shooting**

Relying on Warner's new statement identifying Boyd as the shooter, prosecutors charged him with Fleming's murder and Warner's attempted murder. For reasons unknown, Boyd's lawyer advised him to waive his right to a jury trial. His bench trial began in October 1990.

There was no physical or forensic evidence tying Boyd to the crime scene, and none of the more than a dozen witnesses to the shooting identified Boyd. So the prosecution's case rested solely on Warner's testimony:

Q. (By prosecutor) Do you know what Rat's real name is?

A. (By Warner) Boyd.

Q. Do you know what his first name is?

A. Lathierial. Lethoadus (sic).

...

Q. What happened about 2:00 o'clock in the morning on that day?

A. I was walking. We was walking on the same side. We was walking and I heard a gunshot and I turned around and he shot me.

Q. Who shot you?

A. Rat shot me. I know Rat. (Examination of Ricky Warner, October 16, 1990, p. 167.)

Warner also testified that after Boyd shot him he saw him run across the street and jump into a car. He denied ever telling the police he did not see who shot him, however, Detective Andrew Sobolewski had testified:

Q. Did you ask Ricky Warner who shot him?

A. Yes, I did.

Q. Did he answer?

A. Originally he answered he didn't know.

**Boyd cont. on page 9**



## Boyd cont. from page 8

(Examination of Andrew Sobolewski, August 2, 1990, p. 15.)

A nurse also testified (for the defense) that she was present when Warner told the detective he didn't see the shooter or know who shot him. She also testified he was "alert and oriented and understood what the police were asking him."

After the prosecution rested its case, Angela Boyd and Casey testified about Boyd's alibi of being at her apartment from the evening before, until the morning after the crime. However, Boyd's lawyer did not elicit Casey's testimony about waking up and seeing Boyd at 1:30 a.m., even though he knew about it. Casey's testimony about that would have exposed the prosecution's theory of Boyd committing the crime as being implausible.

The prosecution had a weak case, and Boyd's attorney only needed to make four points clear to win Boyd's acquittal: He needed to show that Warner's identification of Boyd was not medically credible because Warner was shot from behind without warning and rendered immediately unconscious; that Warner's identification contradicted the many unimpaired witnesses who did not identify Boyd in the line-up; that Boyd did not fit the description of the shooter by witnesses at the scene or match the composite drawing; and that Boyd's alibi was reliable and compelling. Boyd's attorney had the evidence available to accomplish those proofs, but he failed to do so. None of the nine eyewitnesses that excluded Boyd after viewing the line-up was brought forward to testify by Boyd's lawyer, and he did not introduce as evidence the composite drawing of the shooter that didn't match Boyd.

### Boyd convicted and his appeals denied

In spite of the poor defense showing, the judge said his decision could have gone either way. The tipping point for the judge in finding Boyd guilty was Warner's identification of Boyd, that the judge considered reliable because Warner said he knew Boyd on sight. Boyd was sentenced to 82 years in prison – 55 years for Fleming's murder and 27 years for Warner's attempted murder – with his earliest parole date in 2031 after completing 50% of his sentence, when he would be 65.

Boyd's trial lawyer handled his direct appeal. After his conviction and sentence were affirmed by the Illinois Court of Appeal in March 1993, Boyd filed a post-conviction petition *pro se* that was denied by the trial court. In June 1996 the Illinois Supreme Court denied review of the dismissal. In 1998

Boyd filed a successive post-conviction petition *pro se* that was denied by the trial court, and in November 2000 the Illinois Supreme Court denied review of his case.

### WGN-TV investigates Boyd's case

In 2001 Chicago television station WGN-TV believed there were enough doubts about Boyd's case to warrant investigating it. Their reporters interviewed dozens of people, and they were able to find seven of the nine eyewitnesses who viewed the police line-up in 1990. Jennifer Bonanno was one of those witnesses. She knew nothing about Boyd's trial because she was not subpoenaed to testify and she had lived away from Chicago for years. When the reporters told her they were investigating Boyd's case she exclaimed, "Don't tell me they convicted the preppy guy!" Bonanno had stood only three feet from the shooter, and in a February 28, 2002 affidavit she swore that after she was finished viewing the line-up she asked a detective which one was the suspect. When told it was the man to the far-left, she told the detective there is "no way in the world" he was the man they were looking for because he looked "nothing like the shooter." When WGN broadcast its report on Boyd's case, his now retired trial judge said in an interview that he would want to hear Bonanno's testimony if he was still a judge and had the case.

Boyd's trial lawyer never questioned the murdered Fleming's brother James. WGN's reporters talked with him, and in April 2001 he executed an affidavit in which he states that about five months after the shooting Warner told him that he never saw who shot him. (Affidavit of James Fleming, April 16, 2001, ¶¶3-4.)

### Post-conviction petition filed based on new evidence

Boyd filed another post-conviction petition in 2002. It was based on the new evidence uncovered by WGN-TV that the prosecution failed to disclose to Boyd's trial lawyer that two weeks after the shooting, eyewitness Bonanno had categorically excluded Boyd as the shooter. After an evidentiary hearing Boyd's petition was denied in September 2004. In May 2006 the Illinois Court of Appeals affirmed the dismissal of Boyd's petition, and four months later the Illinois Supreme Court denied review of his case.

### Prime suspects not investigated by police

Once Boyd was arrested all investigation of the case stopped. So other suspects and motives for the crime were not investigated by the police or raised during Boyd's trial. On the

day of Fleming's murder his girlfriend told the police that "he had a problem with three (3) black guys to whom he had sold some fake cocaine, and that he had some altercation with some white guys for the same reason." (Supplementary Police Report dated February 24, 1990.) It is believed that Fleming and Warner were trying to sell fake drugs outside the Exodus Club when they were shot.

Yet the police did not pursue this solid lead. WGN's investigation team focused on a prime suspect who was never questioned by the police – Yuri "Cheesy" Smith. Smith was a well-known drug dealer and a leader in the "Solid Gold Posse," a violent Jamaican street gang that controlled the territory around the site of the shooting. Smith had warned Fleming and Warner to stay away, not just because they were violating his turf, but they were hurting his business by selling fake drugs. Smith bragged on the street about shooting Warner and Fleming, and it is known that his gang was in the area on the morning of the shooting because the owner of the Booga Lou Tavern on Clark Street told police that he "was chased by a group of Jamaicans at the time of the incident."

When Bonanno was shown a photograph of Smith she said that she could not say with 100% certainty that he was the shooter, but he definitely looked a lot like the shooter. This is significant because Smith and Boyd look nothing alike, and Smith's appearance fits the shooter's description by the witnesses and the police composite drawing.

However, Smith is now dead so he can never be questioned.

### Boyd files clemency petition

Boyd has been imprisoned for more than 18 years based on what can at best be described as Warner's unreliable identification. With his legal challenges to his conviction exhausted, on February 6, 2008 Boyd filed a petition for executive clemency with the Illinois Prisoner Review Board. The petition is based on the argument that the evidence supports the pardoning of Boyd based on his actual innocence of the Exodus shootings.

The clemency petition includes many letters written by various people on Boyd's behalf. One of those letters is by WGN-TV reporter Muriel Clair and former producer Jason Jedlinski. They wrote in their letter dated Feb. 4, 2008: "We are not detectives, prosecutors or judges. But we are citizens of the State of Illinois, which prosecuted Mr. Boyd for crimes he allegedly committed against the community. After an exhaustive

### Boyd cont. on page 10

Harold David Buntin's quarter-century saga is one of the most unusual wrongful conviction cases in American legal history ... and it isn't over yet.

Buntin was 15 in 1984 when he was identified as the lone person who raped and robbed a 22-year-old dry cleaning clerk in Indianapolis, Indiana. The victim, who has impaired vision and hearing, first identified a different suspect before settling on Buntin as her assailant. Buntin protested his innocence, claiming that on the day of the assault he was in Texas, more than 800 miles from Indianapolis. After being charged with the rape Buntin was released on bail.

During Buntin's 1986 trial prosecutors introduced evidence that he had the same blood type as the rapist. Fearful of being convicted, the 17-year-old Buntin fled. The jury convicted him *in absentia* of robbery and rape and he was sentenced to 50 years in prison.

Eight years later Buntin was arrested in Florida on an unrelated charge. The police discovered he was a fugitive, and the 25-year-old was extradited to Indiana to serve his 50-year prison sentence. Buntin's conviction was affirmed two years later, in 1996.

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## Boyd cont. from page 9

examination of the record and our own firsthand reporting, we firmly believe that this case represents a miscarriage of justice and appeal to you to set this man free."

As of mid-July 2008 the clemency petition is pending. You can write to Lathierial Boyd at: Lathierial Boyd B-10106  
Pontiac Correctional Center  
P.O. Box 99  
Pontiac, IL 61764

Boyd's outside contact is:  
Nicholas A. Kurk  
Jenner & Block LLP  
Email: NKurk@jenner.com

About the author. John Albert has followed Lathierial Boyd's case for more than six years. He publishes cases of injustice on his website, <http://crimeandpunishment.org>

### Endnote:

1 The shortest route is 19.41 miles between Angela Boyd's apartment at 4820 West Ford City Drive in Chicago, and the shooting scene at 3500 North Clark Street in Chicago, and it can be expected to take 43 minutes to travel between them driving the speed limit according to Yahoo.com Maps.

# Convicted In Absentia, Cleared By DNA Testing, Harold Buntin Spent Two Extra Years In Prison Because of "Lazy Judge"

By Douglas Scott Arey

## Buntin files post-conviction petition

In 1998 Buntin filed a Petition for Post-Conviction Relief based on the prospective testing of evidence by DNA techniques unavailable at the time of his trial. While Buntin's petition was pending the lawyer hired by his mother and two sisters was successful in obtaining a court order for DNA testing of a towel that was believed to have the rapist semen on it. Unfortunately for him, the September 1999 test was only able to identify a female's DNA on the towel.

In December 1999 Buntin fired his lawyer and hired Indianapolis attorney Carolyn Rader. Buntin's PCR Petition remained on the back-burner for years until the rape kit – the contents of which had never been tested – was found in the police evidence room. Rader filed a motion for DNA testing of a vaginal swab and a swab of the rapist's skin cells recovered from the victim. The motion was granted, and Buntin's mother and sisters paid for the tests that cost more than \$4,000. On June 30, 2004 the testing of both swabs resulted in identification of the rapist's DNA profile – and Buntin was excluded as being that man.

## Buntin seeks hearing after DNA clears him

Based on the exclusionary test results Buntin was able to get a hearing scheduled to consider his PCR Petition that had been filed in 1998. The hearing was rescheduled nine times before finally being held on March 16, 2005. Although Buntin's case was assigned to Marion County Superior Court Judge Grant W. Hawkins, Court Commissioner Nancy L. Broyles presided over the hearing. A month after the hearing she took his case under advisement.

Buntin then waited, and waited, and waited for a decision. He repeatedly wrote the court about a decision without receiving a response. At his wits end, in January 2007 Buntin filed a "lazy judge" complaint with the Indiana Commission on Judicial Qualifications (Commission), "alleging that his post-conviction case had been pending for nearly twenty-two months." He also com-

plained that "Rader had not communicated with him since 2005."

As surreal as Buntin's two-decade long ordeal had been to that point, it then entered *The Twilight Zone*.

## Indiana's Judicial Commission investigates Buntin's case

The Commission opened an investigation into Buntin's complaint. In February 2007 an investigator contacted Judge Hawkins. After conducting a search of court files, Hawkins reported to the Commission that Buntin's case file could not be located.

Then about March 7, 2007 Buntin's file appeared, allegedly after being found by an unidentified court employee. The next day Commissioner Broyles issued an Order that was backdated to May 20, 2005, granting Buntin's petition for post-conviction relief.

Since the delay in issuing a ruling was under investigation by the Commission, on March 8 Judge Hawkins and Commissioner Broyles also filed a "Notice Explaining Delayed Ruling." They wrote that on May 20, 2005 Broyles granted Buntin's petition, but that a staff member or clerk's employee failed to process the Order as a post-it note on it instructed, and instead closed the file and placed it in storage (archives). So the Order was not entered into the record and copies were not provided to the prosecution and Buntin's lawyer. They also wrote the file was retrieved from storage because of the inquiry by the Commission, and that was when the error was discovered.

Even after issuing the Order on March 8, and knowing they were under investigation for delays in Buntin's case, neither Hawkins nor Broyles made an effort to promptly have the Order entered into the Court's docket, or to schedule a hearing to consider Buntin's release from prison on bail pending his retrial. So even though according to Hawkins and Broyles his petition to overturn his convictions had been granted almost two years previously, Buntin continued to languish in prison. Hawkins and Broyles did nothing in spite of being regularly reminded of Buntin's case by phone calls from his family.

## Judicial Commission prods Judge Hawkins into releasing Buntin

On April 12, 2007 the Commission contacted Hawkins and Broyles inquiring why there had been no progress in Buntin's case, and urged that they take immediate action. That same day Hawkins scheduled a release hear-

## Buntin cont. on page 11

## Buntin cont. from page 10

ing for April 20. During that hearing the prosecution dropped the charges and Hawkins ordered Buntin's immediate release.

Unlike most exonerations, Buntin was quietly released after 13 years of wrongful imprisonment without any news media present. Several days later, when word leaked out about his release, he told reporters "I'm going to move on and take care of my business. But I feel like somebody has to answer for that. I never should have been in jail – and I spent two more years there after they knew I was innocent." He also said, "It's going to take awhile to re-adjust and reconnect with my family. ... [R]ight now I'm just trying to take life a day at a time and enjoy every moment." His sister, Kim Buntin of Indianapolis, said, "I'm happy he's finally home, but I'm mad he had to go through all of this to prove his innocence."

### Buntin sues attorney and Superior Court

Buntin thought one person needing to answer for what happened to him was his former attorney Rader. In August 2007 he filed a legal malpractice suit against her for the way she handled his case, particularly after Broyles took it under advisement in April 2005.

Then in January 2008 Buntin filed a wrongful detention lawsuit in Marion County Superior Court that named Marion County Superior Court Five as a defendant. The suit also named the court clerk, Marion County, and the State of Indiana as defendants. To avoid a conflict of interest, on February 26, 2008 Indiana Supreme Court Chief Justice Randall Shepard appointed Daniel Pflęging as a special judge to preside over the lawsuit. Indianapolis attorney Michael Sutherland represents Buntin in both lawsuits.

### Judicial Commission files charges against Hawkins and Broyles

Buntin's saga took another twist on April 9, 2008, when the Commission filed a Statement of Charges in the Indiana Supreme Court alleging violations of Indiana's Code of Judicial Conduct by Judge Hawkins and Commissioner Broyles. The 11-count complaint against Hawkins, and the 10-count complaint against Broyles are based on the alleged "delay and dereliction of their duties as the judicial officers responsible for Harold D. Buntin's post-conviction case."

The Commission's complaints detail that the handling of Buntin's case was even more bizarre than was known at the time of his release. The Commission discovered during

its investigation that Buntin's case file was not retrieved from storage, it had never been "archived" to storage, and no court employee could be identified as the person who found the file – or where. It was also learned that the court's file tracking system contains no entries for Buntin's case prior to March 2007 – so its whereabouts before the Commission began its investigation is untraceable. Buntin's letters to Broyles are also missing from the case file, although it is known from other court records that at least five letters were received.

The Commission's investigation also discovered there was no May 20, 2005 order in the file, there were no computer diskette with the order on it in the file as Hawkins claimed, and an examination of Broyles work computer discovered that although it had files on it predating May 2005, there was no evidence that she had prepared Buntin's Order on May 20, 2005, or any day prior to March 8, 2007 – the day it was issued.

When confronted with these facts, Hawkins and Broyles represented to the Commission that they found the diskette with the May 2005 Order in the file, but they realized they had to make corrections to the Order. They claimed to have incorporated those corrections into the Order issued on March 8, 2007, but which they backdated to May 20, 2005. When pressed by the Commission for the computer diskette, they said they didn't know what happened to it after they printed the backdated Order, and they couldn't describe the corrections they made to the "original" Order.

The Commission also discovered that Broyles' post-it note with instructions for processing the order did not indicate the year the note was written – only the day and month are legible. When confronted with the Commission's finding Broyles admitted she might have been off by a year: she could have granted Buntin's petition in May 2006 and not 2005.

Hawkins and Broyles misrepresentations to the Commission resulted in the Statement of Charges also alleging that their lack of truthfulness constituted "conduct prejudicial to the administrations of justice."

Although other cases handled by Hawkins and Broyles may not have all the drama of Buntin's case, they routinely put off ruling on a PCR petition. The Commission's complaints against them allege that they engaged in a pattern of delaying the rulings in many PCR petitions, citing seven other cases between 2004 and 2006 in which six to twenty-eight months elapsed from the time Broyles took the case under advisement to when an order was issued.

## Commissioner Broyles issuance of orders could have far-reaching consequences

One of the charges against Hawkins (Count II) and Broyles (Count III) has potentially far reaching consequences. The Commission alleges it is a violation of Indiana law for Commissioner Broyles – a non-judge – to have engaged in "issuing purportedly final Orders in post-conviction cases without obtaining the approval and signature of the presiding judge." The Commission's charge suggests that any Indiana defendant whose post-conviction Order was not approved *and* signed by the presiding judge could have a legal basis to challenge the legality of not just the Order, but the process underlying issuance of the Order.

### Current Situation

So a quarter-century after he was falsely accused of raping the clerk, Buntin awaits the disposition of his two lawsuits, and the outcome of the Commission's charges against the two people whose inattention kept him prison for two extra years. Buntin is at least the fifth person convicted in Indiana among over 200 nationwide, who have been exonerated by DNA testing since 1989.

#### Sources:

"I never should have been in jail," *Indianapolis Star*, April 24, 2007.

Cleared of rape, Indy man sues over delay in prison release, *Indianapolis Star*, January 16, 2008.

*Harold David Buntin v. Marion County Superior 5, Crim. Div., et al*, Case 49500-0801-SJ-49, Indiana Supreme Court, February 26, 2008.

*In The Matter of The Honorable Grant W. Hawkins Judge Of The Marion Superior Court*, No. 49S00-0804-JD-157, In the Supreme Court of Indiana, April 9, 2008.

*In The Matter of The Honorable Nancy L. Broyles Commissioner Of The Marion Superior Court*, No. 49S00-0804-JD-156, In the Supreme Court of Indiana, April 9, 2008.

## Thomas Arthur's Execution Stayed By "Killer's" Confession

Three days before Thomas Arthur's scheduled July 31, 2008 execution for a 1982 Alabama murder, Bobby Ray Gilbert confessed in an affidavit that he committed the crime as a minor. Imprisoned for life for another murder, Gilbert only began telling people he committed the murder after the U.S. Supreme Court ruled that a person couldn't be executed for a crime committed as a minor. Based on the new evidence of Arthur's actual innocence his lawyers filed motions to stay his execution and for an order to DNA test the evidence to prove Gilbert's presence at the crime scene. The Alabama Supreme Court voted 5 to 4 to grant an indefinite stay, but it did not immediately rule on the motion for DNA testing.

See previous *JD* article: Alabama Has Opposed Testing Evidence In Thomas Arthur's Case For 16 Years, *Justice:Denied*, Issue 37, Summer 2007.

A tragic event on February 14, 1993 resulted in the death of a 13-year-old girl and shattered the life of her mother: thirty-year-old Lynn DeJac discovered her daughter Crystallynn's dead body in their Buffalo, New York home

Crystallynn's autopsy revealed injuries to her face, eyes, neck and hands. Dr. Sungook Baik, the associate chief Erie County medical examiner, determined that Crystallynn had been manually strangled and ruled her death a homicide.

Ten months after the murder twice-convicted felon Wayne Hudson, was indicted for a felony. Facing a third felony conviction and a mandatory sentence of 25 years to life in prison, he told police that many months before DeJac had confessed murdering her daughter to him.

In December 1993 DeJac was charged in her daughter's murder.

### **DeJac's trial**

The prosecution's case was based on the supposition that after a night of drinking DeJac strangled her daughter while in a drunken rage. During DeJac's trial Baik testified that Crystallynn was strangled, but he made no mention that a toxicology test detected a trace amount of cocaine in her body. The testimony of Hudson, Keith Cramer, an ex-boyfriend of DeJac, and Dennis Donohue, another ex-boyfriend, were keys to the prosecution's contention that when drinking DeJac had an unpredictable temper. In exchange for his grand jury testimony, Donohue was given transactional immunity from prosecution and a reduced sentence for an unrelated crime. Neighbors provided testimony that DeJac left her son in the care of Crystallynn when she went out drinking and that they didn't like her.

DeJac said in her police statement that she had dated Donohue, but she broke up with him the night before Crystallynn's death. She also said he stalked her when she went out later that night and he got into a physical confrontation with her and the man she was with at a bar. After a night of bar hopping she went home about 5 a.m. and Crystallynn was sleeping when she looked in her room. She then left to go to the home of a man she had met that night. When she returned home about 2 p.m. she found an outside door open and Crystallynn's naked body in her bedroom.

On April 20, 1994 the jury found DeJac guilty of one count of second-degree murder. She was later sentenced to 25 years to life in prison.

## **Forensics Exonerates Lynn DeJac In Her Daughter's Death After 13 Years Imprisonment**

By Larry Schlee and Hans Sherrer

Erie County District Attorney Frank Clark denied he made a deal with Hudson in exchange for his key grand jury and trial testimony against DeJac. However, it is somewhat suspicious that after Hudson testified at her trial DA Clark dismissed the felony indictment and substituted a misdemeanor to which Hudson was sentenced to probation – instead of the 25-year minimum prison sentence he was facing after a third felony conviction.

### **New evidence leads to overturning DeJac's conviction**

Buffalo cold case detective Dennis Delano wasn't convinced of DeJac's guilt, and years after her conviction he began investigating her case on his own time. By the fall of 2007 Cramer had recanted his testimony, saying he had been angry at DeJac for breaking up with him and that the detectives who interviewed him led him to believe that she had murdered Crystallynn. Additionally, DNA testing unavailable at the time of DeJac's trial revealed in September 2007 that Donohue's DNA was found on the bedding Crystallynn's body was laying on, it was mixed in with her blood on the wall, and it was found inside her (that DNA was believed to be from Donohue's skin cells). The DNA evidence incontestably placed Donohue, but not DeJac, in Crystallynn's bedroom at the time of her death.

Based on the new DNA evidence DeJac filed a motion in state court to vacate her conviction and for a new trial.

Interviewed by Buffalo television station WGRZ in mid-November, detective Delano said he was absolutely convinced of DeJac's innocence: "There's no doubt in my mind. Based on the facts I see, she's a hundred percent innocent." Delano also provided WGRZ-TV with police video footage of Crystallynn's bloody and upended bedroom and some case documents that had never been publicly released. The video suggests there was a violent struggle between Crystallynn and someone immediately before her death, which is consistent with the defensive injuries documented in her autopsy report. Armed with the video and documents, the Buffalo media's coverage of DeJac's case was favorable to her bid for a new trial, which influenced public opinion to support her.

DeJac's motion to vacate her conviction was vigorously opposed by Erie County District Attorney Frank Clark, but it was granted on November 28, 2007. After 13-1/2 years of imprisonment, she was released later that day on bail pending her retrial. DeJac, 43, became the first woman in the United States to have a murder conviction overturned based on new DNA evidence.

### **Erie County DA has forensic evidence reevaluated**

DA Clark announced he would retry DeJac based on Hudson's unrecanted testimony, and in January 2008 she was charged with depraved indifference murder, which carries a sentence of 25 years to life in prison. However, with the Buffalo media and a firestorm of callers to talk radio programs openly questioning why a new trial was being pursued, Clark quietly hired nationally renowned forensic pathologist Dr. Michael Baden to review the autopsy and toxicological reports, crime scene photos and physical evidence. After conducting his review Baden determined that Crystallynn died from "acute cocaine intoxication" rather than strangulation. Baden's finding was completely contrary to the opinion of the ME in 1993 who disregarded the cocaine because he thought it was too small of an amount to be a relevant factor in her death. Baden also estimated that Crystallynn died at 5:30 a.m., which was 30 minutes after DeJac said she checked on her that morning and left the house.

Two weeks after Baden reported his finding to the DA, the current Erie County ME, Dr. James Woytash, reported to the DA that after a review of the evidence he determined Crystallynn died from a cocaine overdose and a head injury of unknown origin. Woytash subsequently issued a new death certificate reflecting Crystallynn's revised cause of death.

### **Charges dismissed against DeJac based on new cause of death**

On February 13, 2008 Clark held a press conference and announced the findings of Baden and Woytash. He said that the bruises on Crystallynn's head could have resulted from a fall after an overdose, which would explain the overturned table in her bedroom. Clark said that because he no longer believed that Crystallynn was murdered, the charges would be dropped against DeJac. Clark told reporters, "this woman has spent a lot of time in jail which she shouldn't have served. Is the system perfect? No, it isn't perfect. But the important thing is that the justice system discovered the error and cor-

**DeJac cont. on p. 13**

## DeJac cont. from p. 12

rected it. It's unfortunate it took 14 years to do it."

After Clark's press conference, Baden, who is the co-director of the New York State Police Medicolegal Investigation Unit, told *The New York Times*, "There was sufficient cocaine in her blood to cause death and there was no other competing cause of death." Baden also said that the ME's original ruling of death by strangulation was arrived at even though there were no typical signs like bruising of the neck or damage to the windpipe. He continued, "Medical examiners also make mistakes. It should be a wake-up call for defense attorneys to have their own experts examine the evidence."

On February 28, 2008 the charges were formally dismissed against DeJac. When she appeared on NBC's *Today* program, she said that she felt suicidal at times while imprisoned, "but I felt that if I did that it would go down that I was the killer of my daughter. So, that would bring me out of it."

### Donohue charged with 1993 strangulation

DeJac has always considered Donohue to be her daughter's killer, and the evidence supports that what likely happened is what she has always alleged. A dejected Donohue stalked her and a male friend that night. He followed them back to DeJac's home at 5 a.m., and angered when DeJac left with her friend, victimized Crystallynn and somehow introduced a trace amount of cocaine into during the attack. However, regardless of the evidence against Donohue, he cannot be prosecuted because he was given transactional immunity from prosecution in exchange for his testimony in DeJac's case.

The magnitude of the DA's error in giving Donohue immunity is not only suggested by the DNA evidence that supports he had a direct role in Crystallynn's death. In September 2007 he was charged with the strangulation murder of Joan Giambra only seven months after Crystallynn's death, based on DNA testing of evidence in the case. Donohue is also being investigated for his possible role in the 1975 strangulation murder of his then girlfriend Carol Reed.

### Detective Dennis Delano suspended for leaking DeJac case info to media

The same week the charges were dismissed against DeJac, the Buffalo Police Department filed six charges against detective Delano for insubordination. He was accused of repeatedly ignoring direct orders from supe-

riors to cease investigating the DeJac case, and of releasing the crime scene video and other case material to the media, including the results of Donohue's lie detector test. If found guilty of the charges, Delano could be dismissed from the police force. Suspended until resolution of the charges, Delano has requested a formal hearing that could be held sometime in 2008. After preliminary hearing in March, Delano told reporters, "I did what I thought I had to do at the time. I don't think I did anything wrong."



Detective Dennis Delano

When she appeared on the *Today* program, DeJac defended Delano. "Detective Dennis Delano, God bless him. If it weren't for him, I wouldn't be sitting here and I'd still be sitting in prison."

Supporters of Delano in Buffalo organized a campaign for him to be honored with Fox TV's "America's Most Wanted" All-Star First Responders award. He didn't win the award, but he was one of eight finalists for the annual award that is selected from police officers throughout the United States.

Delano's problems with his superiors isn't just due to the embarrassment DeJac's exoneration caused the Buffalo PD for its botched investigation of Crystallynn's death. He also played a key role in the exoneration of Anthony Capozzi of two Buffalo rapes, and his release in April 2007 after almost 22 years of wrongful imprisonment. (In March 2008 Capozzi filed a \$41 million claim against New York State for his wrongful imprisonment.)

### DeJac files \$14.5 mil. compensation claim

On March 28, 2008, DeJac filed a claim with New York's State Court of Claims for \$14,479,043. New York's wrongful imprisonment compensation statute doesn't place a cap on claims, and an economist hired by DeJac's lawyer calculated her economic damages at \$1 million per year for her 13 years, 7 months and 8 days of wrongful imprisonment, plus \$873,792 for loss of earning and benefits over that same period of time. DeJac gave birth to twin boys only months before her conviction, and she also had an 8-year-old son. She said after the

"Medical examiners also make mistakes. It should be a wake-up call for defense attorneys to have their own experts examine the evidence."

Forensic pathologist Dr. Michael Baden

claim was filed, "I didn't get to tuck my children into bed at night. I didn't get to tell them a bedtime story. I didn't get to kiss their boo-boos. I didn't get to do any of that." Her lawyer, Steven Cohen told *The Buffalo News*, "The system failed Lynn DeJac miserably," and "the only way the system can" repay her for her ordeal of being wrongly convicted and imprisoned for allegedly strangling her daughter is by financially compensating her."

### DeJac's prosecutor upset at criticism over her 1994 prosecution

Although some people might have a hard time sympathizing with him, the man who put DeJac in prison for almost fourteen years, former Erie County prosecutor Joseph Marusak, was so stung by the overwhelming public opinion in Buffalo favorable to dropping the charges against DeJac that he set-up a website to defend his prosecution of her in 1994.

### Aftermath

For more than 13 years the legal system branded DeJac as a child-killer. Now free to pick up the pieces of her life, she has vowed to clear her daughter's name, asserting her honors student daughter was not a drug user.



Lynn DeJac after her release

Likewise, Delano doesn't believe Crystallynn died from a drug overdose. After Clark announced the charges would be dropped and before his suspension, in late February 2008 Delano flew at his own expense to Washington D.C. to attend the annual meeting of the American Academy of Forensic Sciences. He wanted to get opinions about Crystallynn's cause of death from some of the forensic experts attending the conference. Dr. Lawrence Kobilinsky, chairman of the Forensic Sciences Department at the John Jay College of Criminal Justice, was one of the experts who reviewed the autopsy report, photos, videos, and other documentary evidence. He expressed the opinion that there is no way at this point in time that anyone can come to a definitive conclusion as to how Crystallynn died. Kobilinsky thinks the only way to determine Crystallynn's cause of death is to do a thorough investigation that includes a reconstruction of events from the evening before she died until her body was discovered, and who may have had contact with her.

## DeJac cont. on p. 14

## DeJac cont. from p. 13

So the four experts who have taken the closest examination of the evidence – the two Erie County MEs, Dr. Baden, and Dr. Kobilinsky – have all expressed a different opinion about Crystallynn's death.

Scott Greenfield, a New York criminal lawyer, wrote on his *Simple Justice* Internet blog that DeJac's case is a classic example of the fallacy of the non-fact based inductive reasoning prevalent in law enforcement decision making. Investigators first decide who committed a crime, and then proceed to collect and place undue importance on evidence that supports their supposition, while at the same time rejecting as insignificant all evidence that undercuts it.

Until Delano began looking at the importance of the evidence disregarded simply because it didn't support DeJac's guilt, she was destined to die in prison because of the Buffalo police investigator's inductive assumption that she was guilty. Delano's open-mind enabled him to pursue leads and forensic testing that wasn't deemed important at the time of DeJac's prosecution because the investigators were blinded by their assumption that she was her daughter's killer. It was Delano's fact based view of the case that led to DeJac's exoneration.

DeJac feels abused by the legal system, and rightly so. Her door to freedom has been opened into yet another room in a vast cave of horrors. Justice was denied her in 1994. It is again being denied her 14 years later by closing the case of her daughter's death by branding her as a drug user who accidentally killed herself, when the known evidence raises troubling questions about how she actually died.

Lynn DeJac is the first woman to have a murder conviction overturned by DNA evidence, although the charge wasn't dropped until the medical examiner ruled her daughter's death was not a homicide.

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## Jerry Frank Townsend Awarded \$2.2 Million For False Murder Convictions

Jerry Frank Townsend was branded as a serial murderer after being convicted in 1980 and 1982 of six murders and one rape in south Florida.

Townsend was 27 when arrested by Miami police in September 1979 as a suspect in the rape of a pregnant woman. After that arrest Townsend was questioned about several Dade County murders. Townsend has an IQ of around 50 and the mental capacity of an 8-year-old, so police interrogators had little difficulty pressuring him to confess to two 1973 murders. In 1980 a jury convicted him of committing the murders and rape. He was sentenced to three terms of life in prison.

While imprisoned Townsend was interrogated about four Broward County murders that he subsequently confessed to committing. He was sentenced to four more life terms after pleading guilty to those murders in 1982.

Townsend's convictions were all based on his confessions, since there was no physical or forensic evidence, or eyewitness identification linking him to any of the crimes.

Townsend's claims of innocence fell on deaf ears until 1998, when the mother of 13-year-old Sonja Marion, one of the murder victims, convinced a Fort Lauderdale police detective to review Townsend's case file. His investigation led to DNA testing in 2000 of a semen sample on Marion's shorts that excluded Townsend, and implicated another man. Testing of evidence in another case also excluded Townsend and implicated the same man — Eddie Lee Mosely,

Mosely was dubbed "Rape Man" by the media because he was linked to more than a dozen rapes and murders. Mosely was indefinitely confined in a mental facility after being charged in two cases.

Since the MO of all the crimes was similar and Townsend's confessions to two of the murders were known to be false, prosecutors conceded substantial doubt about the truthfulness of all of Townsend's confessions to the Broward County murders. Without the confessions there was no evidence Townsend committed the crimes, and the perpetrator of two of the murders was known to be Mosely — a career violent criminal. In April 2001 additional DNA testing confirmed the previous results, and Townsend's four convictions were dismissed on June 8, 2001. Afterwards, Broward



Jerry Frank Townsend in June 2001 after being cleared of four Broward County murders.

County Sheriff Ken Jenne personally apologized to Townsend. Jenne later told reporters, "I told Mr. Townsend that I regretted, was sorry he spent the past 22 years incarcerated."

A week later Dade County prosecutors moved to dismiss Townsend's murder and rape charges. Dade County Circuit Court Judge Scott Silverman dismissed those charges on June 15, 2001, saying: "Given the preferred deficiency in the state's evidence, a lack of trust in its evidence including the obtained confessions, and in some cases what may very well be Mr. Townsend's outright innocence, it is abundantly clear that he is the victim of an enormous tragedy." The 49-year-old Townsend was immediately released after 22 years of wrongful imprisonment.

A lawyer hired by Townsend's guardian filed a federal civil rights lawsuit against the City of Miami, the Broward County Sheriff's Office, and several police officers. Among the lawsuit's claims were malicious prosecution, and that Townsend's rights were violated by his coerced confessions, the altering of interview tapes, and the withholding of exculpatory evidence.

In December 2006 the federal Eleventh Circuit Court of Appeals upheld the District Court's denial of summary judgment to the defendants, which paved the way for the case to go to trial. In May 2008 the City of Miami agreed to settle its portion of the suit for \$2.2 million.

Facing significant liability because of the four false murder convictions in its jurisdiction, Broward County did not settle its portion of the lawsuit at the same time. As of early July 2008 the case is unresolved.

Townsend was not the only man wrongly convicted of Mosely's crimes. Frank Lee Smith, was cleared of murder by DNA evidence eleven months after he died of pancreatic cancer while awaiting execution on Florida's death row. That DNA matched Mosely, who was in the victim's neighborhood and he fit the assailant's description.

Previous *JD* Story: "Innocent Man Imprisoned for 22 Years as a Serial Killer," *Justice:Denied*, Vol. 2, Issue 7.

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During the early hours of February 12, 1962, I joined other students in a vigil outside the Don Jail to protest the back-to-back executions of Ronald Turpin and Arthur Lucas. We were strenuously opposed to the death penalty and troubled by the ugly clouds hovering over both prosecutions. We had no idea at the time that Turpin and Lucas would be the last two men to be executed in Canada – or that Lucas had almost been decapitated during the bungled execution. (For some reason the authorities never told us that!)

Turpin was a small time hood who was convicted of first-degree murder of Toronto police officer Frederick Nash during a traffic stop.

Lucas, a black pimp from Detroit, was sentenced to death for the brutal murders of Therland Crater, another American who was scheduled to be a witness in an upcoming American drug trial, and Crater's common-law wife, Carolyn Newman.

Hoshowsky says in an introduction that one of the reasons he wrote *The Last to Die* is "to prevent Canadians from forgetting that Canada once had the death penalty and put more than 700 men and women to death between the time of Confederation in 1867 and 1962." Hopefully the other executed people had fairer trials than Turpin and Lucas before being hung.

What chance did Turpin have successfully arguing self-defense based on his evidence that Nash struck him with his revolver, when the trial judge, Justice George Gale, told the jury that they were entitled to consider Turpin's "previous criminal and anti-social activities" to determine if he was the type of person likely to shoot a police officer?

## ***The Last to Die: Ronald Turpin, Arthur Lucas, and the End of Capital Punishment in Canada***

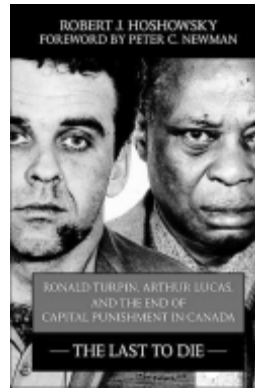
By Robert Hoshowsky  
Hounslow Press, 2007, 224 pages, softcover

Reviewed by Harold Levy

The Supreme Court of Canada also had no problems with the fact that Gale permitted the jury to hear evidence that Nash was a man of good character and unlikely to resort to violence, as stated in court by his former superior and head of the morality division.

What chance did Lucas have ... poor Lucas who never ceased protesting his innocence until he could speak no more because the state had cut most of his head off? Lucas's grounds of appeal fell on deaf ears even though they included:

- Tainted evidence by an admitted perjurer whose testimony was the sole source of information about Lucas' dealings in the drug trade;
- The same witness positively identified a revolver found on the Burlington Skyway as belonging to Lucas;
- Damning evidence about his criminal background – including the fact that his wife was a harlot and that the pair had been kicked out of Toronto by morality officers – stood in the way of an unprejudiced verdict by the jury;
- Forensic evidence filed on appeal which suggested someone with a different blood type was the killer;
- Suspicion that police had tested a human hair found underneath Newman's finger-



nails without making disclosure of the results to the defence;

- What Hoshowsky calls "the curious absence" of Lucas' fingerprints in evidence.

In his well-researched book Hoshowsky exposed the danger and resilience of capital punishment, which goes under the surface from time to time but never seems to completely disappear.

One paragraph makes the point elegantly; "Long after the hangings of Ronald Turpin and Arthur Lucas at the Don Jail, Sheriff Ambrose told reporters he would never throw away the hangman's name and contact information, just in case. "Politicians being what they are, you never know if they'll bring it back again."

Hoshowsky performs a valuable service by refusing to allow Turpin and Lucas to remain "virtual unknowns." Almost 50 years later, the stench of injustice still hangs over their deaths.

Reprinted with permission. Originally published in *The AIDWYC Journal*, Fall 2007, Volume 8. Author Robert Hoshowsky has been published in many magazines and newspapers including *MacLean's*, the *Globe and Mail*, the *Toronto Star* and *La Presse*.

*The Last to Die* can be purchased from *Justice:Denied's* BookShop for \$23. (check, money order or stamps) Use the order form on page 21, or order with a credit card from *Justice Denied's* website at, <http://justicedenied.org/books.html>

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## **Freeing The Innocent A Handbook for the Wrongfully Convicted**

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Norway, England and Scotland have each established a non-political organization that functions independent of the judiciary and prosecution to document a possible wrongful conviction or excessive sentence, so that it can be corrected after further review by the courts.

## JD Editorial

# There Is No Political Will In The United States To Correct Wrongful Convictions

Not a single applicant has been exonerated, and only 1 out of 243 applicants has even been referred for judicial review of their conviction – and that is a former policeman’s case.

The NCIIC’s record ineffectiveness is magnified because it is in a state with

Those bodies are known in all three countries as the Criminal Case Review Commission (CCRC). The hallmark of the CCRC concept is that evidence, arguments or circumstances not considered at trial or on direct appeal can be weighed in evaluating whether a miscarriage of justice has occurred in a case. These CCRCs have each proven their remarkable effectiveness at culling the meritorious cases of misjustice from the many applications submitted. (See the chart at the bottom of this page: “Norway’s CCRC success rate”) The extraordinarily high rate of courts granting relief in cases referred by one of the CCRCs is proof of their value as a back-stop to catch cases in which either the verdict or sentence is erroneous.

almost 40,000 adult prisoners. More than 100 people *per year* could be expected to be exonerated in North Carolina under the structure of Norway’s CCRC legislation. That isn’t happening, because as we prophesized in our editorial, the NCIIC is fulfilling its true function of falsely confirming “...the legal system’s effectiveness, and how rarely it errors by convicting the wrong person.” We repeat our call for repeal of the legislation creating the NCIIC, and we repeat that it is worse than nothing.

A person innocent of a crime has at least as good of a chance of being acquitted at trial in England, Scotland and Norway as in the United States. In those countries, however, there is an infinitely greater probability that a person’s wrongful conviction will be corrected either on direct appeal, or if necessary, by a CCRC referral of the case to the courts for consideration on new grounds.

The political compromises that make the NCIIC more window dressing than substantive is illustrative of the lack of political will necessary to put even the slightest dent in correcting the multitude of wrongful convictions that occur every day across the length and breadth of this country.

If each state in the U.S. and the federal government enacted legislation creating a mirror of Norway’s CCRC, it could be expected to result in more than 4,000 exonerations each year of an innocent person now trapped in prison until he or she finishes their sentence, dies from natural causes or medical neglect, or is carted off to an execution chamber. Large population states like California and Texas could have an average of more than one exoneration per day. (See the chart at the bottom of this page: “CCRC success rate projected for the U.S.”)

There is no question that the CCRC approach of non-political independent case investigation and review adopted since 1996 in Norway, England and Scotland works. It has been proven by 25 years of cumulative experience to be remarkably effective at discovering and rectifying trial court conviction and sentencing errors that were not corrected by the normal appeal process. Each state and the federal government should establish an independent CCRC organization, and we believe Norway’s implementation is the best model to emulate.

Yet in spite of the horrific human toll being exacted in this country, there is no prospect on the horizon that the current situation will change. There are at least two reason for that: Influential people in the legal system are not interested in doing anything meaningful to alleviate wrongful convictions; and, Politicians and other people outside the legal system believe that the few exonerations that now occur are aberrations of a sound system.

It is a pipe dream, however, to think that a CCRC will be faithfully implemented in this country until the lack of political will to do so is overcome. The first step, and it is a huge step, is to demolish the myth that the United States has the “best” legal system in the world. That fiction lives on in spite of the many legal jurisdictions in this country that function on a third-world level, and the inability of state and federal courts to either reliably prevent the erroneous conviction of innocent people, or correct those false convictions on direct appeal or during the post-conviction process.

The one “reform” there has been, the North Carolina Innocence Inquiry Commission (NCIIC), is deceptively named because it lacks the enabling legislation necessary to ferret out and judicially correct the large number of wrongful convictions that are affirmed on appeal. *Justice:Denied* editorialized in Issue 34 (Fall 2006) that the NCIIC is worse than nothing, and its first 18 months of operation bears that out:

However, as long as there is no perceived need on the state or federal level for a radical reform to the handling of post-conviction miscarriage of justice claims, there will be no meaningful changes to the existing deficient processes. One antidote to that situation is information. To that end *Justice:Denied* and other organizations and individuals are explaining the truth about the dire reality faced by an innocent person in this country seeking to rectify the wrong committed against him or her by a false conviction.

Country	Population (2007)	Prisoners (sentenced)	Average convictions overturned annually	Avg yearly exonerations per 1,000 prisoners	Avg sentences reduced annually	Average yearly sentence reductions per 1,000 prisoners
<b>Norway’s CCRC success rate</b> (Convictions overturned and sentences reduced after referral to courts for post-conviction review)						
Norway	4.6 mil.	3,048	8	2.625	1.75	.574
<b>Norway’s CCRC success rate projected for the United States and several states</b>						
Alabama	4.6 mil.	29,412	77	"	17	"
California	36.6 mil.	173,312	455	"	100	"
Ohio	11.5 mil.	49,889	131	"	29	"
United States	303.2 mil.	1,528,041	4,011	"	877	"

Notes: All population and prisoner figures are for 2007. The information about Norway’s CCRC is derived from “CCRC Annual Report 2007”, Cases and procedures, p. 7. Norway’s annual totals are the average of the first four years of CCRC operation from 2004 to 2007. Because of the U.S.’ assembly line criminal process that produces almost ten times as many convictions per capita as Norway, the projections for the U.S. could be significantly underestimated.



Fritz Moen was 36 when convicted in 1978 of raping and murdering 20-year-old Torunn Finstad in Trondheim, Norway. (Trondheim is a city of more than 100,000 and is 285 miles north of Oslo, Norway's capital and largest city.)

Finstad's body was found four days after she was last seen on October 2, 1977. Moen was arrested the day after her body was discovered, but he told police he had the alibi of being with many people at a woman friend's birthday party the night Finstad disappeared. The police questioned those witnesses who all corroborated that once Moen arrived at the party he did not leave until it was over in the wee hours of the morning.

Doubtful of Moen's alibi, the police repeatedly subjected him to intense and lengthy questioning. During the next several weeks Moen undermined his own alibi by giving varying accounts that ranged from staying until the party ended to leaving before the other partygoers. He also gave a number of conflicting statements that ranged from denying involvement in the crime to admitting his guilt ... sometimes during the same interrogation session. Moen's statements not only conflicted with each other, but the details he provided had inconsistencies with the crime and the crime scene. The accurate details Moen provided were included in newspaper articles he was known to have read. After participating in a crime scene reconstruction where Finstad's body was found he was able to provide several accurate details about the area, but a number were still incorrect.

There was no physical or forensic evidence linking Moen to the crime, and no witnesses saw him with Finstad on the night she disappeared. Consequently, his indictment was based on the assumption his confessions were truthful, while his denials of involvement were false. Although of normal intelligence, Moen was deaf, so he needed an interpreter to communicate effectively with non-signing people. His right arm was disabled, but his impaired physical condition evidently wasn't considered enough of an impediment to have prevented him from man-handling and strangling Finstad. Moen was convicted and sentenced to 20 years imprisonment with up to 10 years of post-release supervision. Moen's conviction was upheld on appeal, but his prison sentence was reduced to 16 years.

### **Moen convicted of second murder**

Several years after Moen's conviction, and at the same time his lawyer was considering submitting a petition to reopen the Torunn

## **Exonerated Of Two Murders, Fritz Moen Posthumously Awarded \$4 Million**

By Hans Sherrer

case, Moen was subjected to repeated questioning about the unsolved September 1976 strangulation murder and attempted rape of 20-year-old Sigrid Heggheim in Trondheim, near where Finstad was murdered. The police claimed that Moen confessed during his seventh interrogation – and the only one during which he did not have the benefit of an interpreter. Moen recanted his alleged confession, claiming it was the product of coercion and confusion, nevertheless it was relied on to charge him with murdering Heggheim and attempting to rape her.

During Moen's December 1981 trial, Heggheim's assailant was identified as having type-A blood from his semen collected from her. Since Moen didn't have type-A blood, the prosecution speculated the presence of the E-coli bacteria might have influenced a false test result. Likewise, the prosecution discounted Moen's alibi that the police had confirmed: He stayed overnight in a town about 45 miles from Trondheim and returned on the afternoon after Heggheim was last seen alive about 2:30 a.m. The prosecution argued that after last being seen Heggheim could have been alive and spent the night at her student apartment, and then been around Trondheim the next day without a single person seeing her until Moen returned to the city that afternoon.

Agreeing with the prosecution, the jury relied on Moen's disputed confession to convict him of both charges. He was sentenced to five years imprisonment to be served consecutive with his existing 16-year sentence.

Moen's attorney Olav Hestenes was so convinced of Moen's innocence that after his conviction he exclaimed, "For the first time at this desk, I allow myself to say that a travesty of justice has been committed." The judge was offended at Hestenes' remark and defended Moen's conviction.

Moen's appeal was denied.

When Moen was released in March 1996 after more than 18 years imprisonment, he was placed under preventative supervision. He was considered enough of a continuing threat that in October 1999 a District Court judge authorized his supervision for an additional five years.

### **Moen's case partially reopened**

Moen had been protesting his innocence for two decades when in the autumn of 1998 a psychiatrist at the prison where Moen served his sentence contacted journalist and private investigator Tore Sandberg. Sandberg was well-known in Norway, and he was instrumental in the 1994 exoneration of Per Liland of a gruesome double murder committed in 1969, for which Liland served a term of 24 years in custody (14 years in prison and another 10 years of preventive supervision). Sandberg was familiar with Moen's case because as a television reporter for the Norwegian Broadcasting Corporation he covered discovery of the women's bodies in 1976 and 1977, and Moen's 1978 trial.

Sandberg knew that Moen's judge, Karl Solberg, had also presided over the 1984 trial of Atle Hage, who tragically committed suicide after he had been wrongly convicted of sexually abusing his son and daughter. So with his curiosity aroused, Sandberg had several meetings with Moen. Believing that something could be wrong with his convictions, Sandberg agreed to work on Moen's case *pro bono*.

Since Sandberg had recently worked with Oslo attorney John Christian Elden on a case that resulted in the exoneration of a man wrongly convicted of rape, he asked Elden to request the police investigation files. After reading the verdicts and police files, and "speaking" with Moen through an interpreter, Elden believed his convictions could be unsound and he agreed to represent him *pro bono*.

After looking into the case for about a year, in the fall of 1999 Sandberg held a press conference in Trondheim to publicly announce that he and Elden were investigating the possibility of seeking to have Moen's case reopened. A few months later, in January 2000 Elden filed a petition in the Court of Appeal that sought the official reopening of both murder cases. The petition was based on Sandberg's investigation that exposed irregularities in Moen's "confessions" and the police investigation, exculpatory biological evidence, and the prosecution's failure to disclose favorable witness statements in both cases to Moen's trial attorney.

Elden was subsequently assigned as Moen's court appointed attorney. The prosecution opposed Moen's petition and more than two years later it was dismissed. Elden appealed the ruling to Norway's Supreme Court Appeals Committee.

**Moen cont. on p. 18**

## Moen cont. from p. 17

### Moen acquitted of Heggheim's murder

Biological evidence (semen and blood) left by their assailant was recovered from both Heggheim and Finstad. At the time of Moen's prosecutions blood typing was the available forensic testing technique, and it didn't link him to either crime – but the prosecution raised doubts about the veracity of the test results. Sandberg and Elden discovered the biological evidence no longer existed for either case. However, with the help of a medical expert Sandberg was able to prove E-coli could not have caused the semen collected from Heggheim's body to return a false type-A blood test result. That proved Moen's blood-type didn't match the semen.

Sandberg also contacted the forensic expert who autopsied both Heggheim and Finstad. In a new report the expert excluded the possibility the semen recovered from Heggheim was not from her assailant. That was important because the judge speculated in advising the jury before it began deliberating that Heggheim's boyfriend might have had sex with her shortly before she was attacked. However, there was no evidence of any such encounter, and the expert's report excluded it as a possibility.

In October 2003 the Appeals Committee announced there are "strong indications that the biological material could not come from anyone other than the perpetrator," and since Moen wasn't its source, the reopening of Moen's Heggheim convictions was allowed. However, the petition for reopening his Finstad convictions was denied.

Moen was ecstatic that it was finally being recognized that he might have been falsely branded as Heggheim's murderer. He told reporters, "They should have understood this long ago. There are many who should be ashamed."<sup>1</sup> A year later, on October 7, 2004, the Court of Appeal acquitted him of Sigrid Heggheim's murder and attempted rape.

### Moen dies after petitioning CCRC to reopen Finstad case

Less than a week after his acquittal of Heggheim's murder, Moen petitioned the newly established Norwegian Criminal Case Review Commission (CCRC) to investigate his conviction in the Finstad case. When it began operating on January 1, 2004, the CCRC was charged with recommending a case be reopened "only when an acquittal, etc, seems a reasonable possibility" after an assessment of the "new evidence" or the "new circumstances" presented by a petitioner.

After a preliminary review of Moen's petition, in November 2004 the CCRC appointed attorney Elden to represent Moen. When the 63-year-old Moen died four months later while living in a home for the deaf, his half-brother wrote the CCRC that he wanted consideration of Moen's petition to continue.

### Man makes death bed confession to murdering Heggheim and Finstad

As months passed with the CCRC processing Moen's petition, the case suddenly took a dramatic and unexpected turn. Hospitalized with his health failing, Tor Hepsø confessed to three nurses on December 18, 2005 that he had murdered two women. After talking with Hepsø the nurses contacted a priest and the local police in North-Trøndelag County. (Trondheim is in Trøndelag County.) The next day Hepsø repeated his confession to the priest, two policemen and a hospital official. Hepsø said he murdered two women in Trondheim in the 1970s, and he mentioned the names of both Heggheim and Finstad. In his weakening condition he also mentioned that Moen had been convicted of murdering Heggheim. He was somewhat hazy about some details of the murders, since he was apparently drunk when he committed the crimes. Hepsø, 67, died the next day without having made a recorded or transcribed statement, but seven people over two days witnessed his confession. Hepsø was in his late 30s when the murders were committed.

Since the CCRC was already investigating Moen's case, it was decided by the authorities that they would investigate Hepsø's admissions to evaluate their truthfulness.

### Hepsø's confession investigated

The CCRC thoroughly investigated Hepsø's adult life. They learned that he lived in Trondheim in 1976 and 1977 when both murders occurred. They also determined from his employment and other records that he was probably in Trondheim on the day that each murder was committed.

The CCRC also learned Hepsø had regularly been a heavy drinker and that he had been afflicted with mental problems throughout his adult life, including being hospitalized for mental illness before and after when the murders occurred. In 1979 he was admitted to a psychiatric institution after suffering a mental breakdown while working on an oil platform in the North Sea.

Hepsø's medical records also showed he was bothered by anxiety and depression until his death. However, in spite of his drinking and mental issues, the CCRC did not find any evidence that Hepsø ever experienced delusions or that he had ever had any inclination to admit guilt to a crime that he did not in fact commit.

The CCRC also discovered that in December 1986 Hepsø's live-in girlfriend reported to the police that from 1983 to 1986 he had committed extreme violence against her, and that on several occasions he had put his hands around her neck and strangled her to the point that she fainted. The times when he "throttled her" he also "forcibly had sexual intercourse" with her. She also said that when attacking her Hepsø hit her on the head and threatened to kill her. All of those actions by Hepsø matched the *modus operandi* of



Fritz Moen after his exoneration of Sigrid Heggheim's murder

the Heggheim and Finstad murders, except that Hepsø's woman friend survived being strangled. What the Commission learned about Hepsø's violent streak was consistent with what was found in his bible at the hospital where he died: he marked several passages concerning "a scoundrel," "a mischievous man," and a "man of violence."<sup>2</sup>

Charges were filed against Hepsø for his alleged attacks against his woman friend, but they were dropped for lack of evidence. She said that at the time of Hepsø's assaults she had been afraid to go to the hospital for her injuries or call the police, and when questioned he denied they occurred. However, in support of her allegations the CCRC discovered that Hepsø's medical records showed that in October 1987 he admitted while confined in a psychiatric hospital that he "had ended the relationship by being violent to his cohabitant."<sup>3</sup>

When interviewed by the CCRC the people Hepsø confessed to in the hospital expressed the opinion that his admissions seemed genuine. One witness said she "had the impression that it was important for Hepsø to "settle this before he died."<sup>4</sup>

### CCRC finds the new evidence is sufficient to acquit Moen of Finstad's murder

After completing its investigation of Hepsø's confessions and background, on June 15, 2006 the CCRC submitted to the Court of Appeal its "Decision" concerning Moen's petition.

## Moen cont. on p. 19

## Moen cont. from p. 18

The CCRC framed Hepsø's confessions within the context of his known behaviors and the circumstances in which he gave them, and found his death bed confessions to murdering the women were credible.

The CCRC also related a lengthy review of Moen's confession in Finstad's case, since they were the basis of his conviction. The CCRC noted that they only included publicly reported information, his prior knowledge of the Trondheim area, and information he could have learned when he was taken to the crime scene by the police. Moen's confession did not include key information such as that the cord from her rain jacket was wrapped around her neck. (The same was true for Heggheim, and Moen likewise didn't mention the cord in his discredited confession in that case.) Neither did Moen mention anything about the bag Finstad had with her.

Significantly, the CCRC enlisted a linguistics expert, Professor Arnfinn Muruvik Vonen, to determine if Moen's deafness contributed to miscommunication between him and his police interrogators and other officials. Vonen examined the one extant statement of Moen in an official proceeding: his statement to the Court of Appeal on December 17, 2001 regarding the post-conviction petition he filed in 2000. Vonen found there were misunderstandings of Moen's meaning – even though two interpreters for the hearing impaired were present to ensure his statements were properly understood. That strongly suggested that any number of Moen's statements to the police during their investigation of Finstad's murder were misconstrued. That same situation existed in the Heggheim case he had been exonerated of in 2004. Interestingly, the CCRC did not present any evidence, or make any argument about the prevalence of false confessions in general, or the specific circumstances and police conduct that are known to contribute to their occurrence – even though Moen claimed his confession to Finstad's murder was coerced.

The CCRC also related in its Decision that it “finds grounds to point out that there are clear similarities (the same *modus*) between the Sigrid and Torunn cases: both victims were young women on their way home from the students' union in Trondheim at night, they were closely related in time, the two crime scenes are located not far from each other, there was sexual abuse and both victims had suffered head injuries. Both victims were also found with the cord of their own outer jackets around their throats. In the Commission's view, these are factors which indicate that the perpetrator is the same in

both cases.” (p. 15) The similarities between the crimes is what led to Moen's conviction of them both, and Hepsø's confessions to them is consistent with the evidence they were committed by the same person.

The CCRC accepted Moen's petition to reopen his case by stating it found “grounds for concluding that the new evidence and circumstances which exist in the case in connection with Tor Hepsø's confessions on 18 and 19 December 2005, together with the remaining evidence in the case, are likely to lead to the acquittal of Fritz Moen for the murder of Torunn Finstad in 1977.” (p. 15)

### Moen acquitted of Finstad's murder

Two months after the CCRC referred Moen's case, on August 24, 2006 the Court of Appeal posthumously acquitted him of Finstad's rape and murder. Having been exonerated of both murders, Moen's case was publicly decried as one of Norway's most shameful miscarriages of justice.

In response to the public outcry, on September 8 – only two weeks after Moen's acquittal – Norway's cabinet appointed a prestigious four-person commission with the mandate to “find out why Moen was wrongfully convicted and evaluate whether changes are needed in the criminal justice system to avoid wrongful convictions in the future.” After conducting an exhaustive examination of Moen's case, on June 25, 2007 the commission submitted its findings in a 492 page report: *Fritz Moen and the Norwegian penal system*.<sup>7</sup> The commission determined there are three key reasons for Moen's two false convictions:

- The police and prosecution did not objectively consider the evidence.
- The prosecution's expert witness was not thorough in his examination of the evidence and he wasn't objective in his evaluation of the meaning of the evidence.
- Neither the prosecution nor the trial court abided by the principle that a person is considered innocent until proven guilty beyond a reasonable doubt.

The commission also singled out the Trondheim police for their failure to present a complete and unbiased report of the case to the prosecutors, the defense and the court. For example, the police did not disclose that Heggheim's diary was found, and that while she made entries each day, the last one was for the day before she was last seen. That strongly suggested the last day she was seen was the day she was murdered – which means Moen couldn't have committed the crime because the police confirmed his alibi until the afternoon after she disappeared. Further police



Attorney John Christian Elden and investigator Tore Sandberg at Fritz Moen's gravesite

wrongdoing was that they coached witnesses. Norway's Minister of Justice Knut Storberget said at a news conference, “the commission's report shows that grave errors have been committed leading to grave results.”<sup>8</sup>

### Sandberg awarded human rights awards

Tore Sandberg's role in uncovering the truth of Moen's wrongful prosecutions was widely recognized in Norway. After Moen was exonerated of Heggheim's murder, he was honored with the Zola Prize for 2005, which is annually awarded to “A person who openly and courageously has uncovered or opposed conditions that threaten human dignity, democracy and the rule of law in Norway.” (The prize is named after French writer Emile Zola whose open letter to the French people in 1898, *J'accuse*, was instrumental in making the public aware that Alfred Dreyfus had been wrongly convicted of espionage.)

After Moen was exonerated of Finstad's murder, Sandberg was awarded Amnesty International Norway's human rights prize for 2006. The award's citation reads: “The prize-winner has, through his untiring and uphill efforts, managed to force the Norwegian judiciary system to admit grave errors. His efforts have uncovered several miscarriages of justice; first against Per Liland and then the double-murder conviction of Fritz Moen. Tore Sandberg's hard work is now the principal reason why the judiciary system's handling of such cases is now standing in the dock.”<sup>9</sup> Sandberg was also honored in December 2006 as the first recipient of the Norwegian Government's biannual Human Rights Prize.

*Infringement (Overgrepet)* is Sandberg's book about Moen case. Published in October 2007, the 360-page book is only available in Norwegian.

### Moen posthumously awarded \$4 million

Although Moen had two half-brothers, he was an illegitimate child of Germany's

**Moen cont. on p. 20**

## Moen cont. from p. 19

World War II occupation of Norway. So prior to his death on March 28, 2005, Moen named two charitable organizations as beneficiaries of any compensation awarded for his ordeal with Norway's legal system. One of the charities, the Conrad Svendsen Center, operates homes and cares for deaf and blind adults. The other charity, The Signo Foundation, sponsors programs that aid the deaf.

On Moen's behalf, Elden filed an application for compensation under Norway's Criminal Procedure Act. After a period of negotiations, in April 2008 Justice Minister Storbegerget announced that the two organizations would share a posthumous compensation award of \$4 million to Moen.<sup>10</sup> Storbegerget said, "I will tender an unqualified apology and regret in regard to Fritz Moen and those who were close to him, for the injustice he was subjected to. There is no forgiving for so much suffering and injustice as Fritz Moen was subjected to. This must be avoided in the future."<sup>11</sup> It is the largest wrongful conviction compensation award in Norwegian history.

### Role of three Supreme Court justices in Moen's case questioned

The Norwegian Parliament's Control and Constitution Committee recommended on February 5, 2008 that a commission investigate the circumstances surrounding the Su-

preme Court's denial of Moen's petition in 2003 to reopen his convictions in the Finstad case. The committee also said the commission should determine if the three justices involved in the decision should be prosecuted for impeachment. The judges were severely criticized for their conduct during the Norwegian Parliament's debate about the committee's recommendation. Nevertheless, on May 27, 2008 the case against the Supreme Court justices was closed without indicting the judges.

### Nemesis: film about the Fritz Moen case to premiere in November 2008

A Norwegian film about Moen's case is scheduled to be released to theaters in Norway on November 7, 2008. The docudrama is titled *Nemesis*.<sup>12</sup> The film weaves the improbable three-decade long series of events that began with Heggheim's 1976 murder and ended with Moen being recognized in 2006 as a national symbol of a person terribly wronged by imperfections in the judicial system.

### Aftermath

The response of Norwegian officials to Moen's case is put in perspective by the fact that it is greater in scope than the repercussions from any wrongful conviction in the United States of a living person – much less someone who has passed away.

It has been suggested that a bust or statue of

Moen should be erected in front of the Ministry of Justice building in Oslo as a symbol of the responsibility of the criminal justice system to seek the truth.

**Acknowledgments.** Although Fritz Moen's case is one of Norway's most prominent criminal cases, there are few details available in English. So I want to thank Janne Kristiansen, Chairperson of the Norwegian Criminal Case Review Commission, for her assistance by translating the Commission's 5,000 word decision in the Fritz Moen case into English for *Justice:Denied*, and providing other information about the case. I also want to thank John Christian Elden and Tore Sandberg for sharing their first-hand knowledge and insights about the case, and Sandberg for reviewing this article for factual accuracy.

### Endnotes:

- 1 Murder convict may be cleared after 23 years, *Aftenposten* (Oslo), October 15, 2003.
- 2 Decision by the Norwegian Criminal Cases Review Commission in *Fritz Yngvar Moen v The Public Prosecuting Authority*, Case no. 200400198, June 15, 2006. (English translation)
- 3 *Id.*
- 4 *Id.*
- 5 *Id.* at 15.
- 6 *Id.* at 15.
- 7 Norwegian title: *Fritz Moen og norsk strafferettspleie*
- 8 "Police Kill" ("Politiet slaktes"), *Nettavisen*, TV 2 (Norway), June 25, 2007.
- 9 Amnesty International Prize goes to Tore Sandberg, *The Magazine* (Oslo, Norway), No. 3-4, Dec 2006-January 2007, Vol. 14-15, p. 90.
- 10 Fritz Moen was awarded 20 million Norwegian Kroners, and on the day the award was announced, April 17, 2008, the exchange rate to the U.S. Dollar was .20070. So Moen's award converts to \$4,014,000. Moen's application was for compensation of 28 million Kroners (25 mil. general compensation and 3 mil. in damages).
- 11 "Apology, compensation to unjustly convicted 'murderer'", *Aftenposten* (Oslo), April 18, 2008.
- 12 *Nemesis*, Norwegian Film Institute website, <http://www.nfi.no/english/norwegianfilms/show.html?id=825>

One of Scotland's darker historical events took place in Prestonpans, East Lothian from the end of 16th century until well into the 17th Century: women and men were persecuted, tortured and executed for being so-called witches. Prestonpans is about 10 miles east of Edinburgh.

The Prestoungrange Arts Festival shows respect for the memory of those who were put to death by conducting a Witches Remembrance each Halloween. The Remembrance is comprised of a play that brings to life the stories of these unfortunate people who were accused of witchcraft, and a memorial event at the Witches Gestalt, an item of public art in Prestonpans that tells the story from the passing of the Witchcraft Act by Mary Queen of Scots in 1563 right through to the 1944 imprisonment of Helen Duncan, the last person convicted of witchcraft in the United Kingdom.

The annual Witches Remembrance started in 2004 when the Baron of Prestoungrange granted an Absolute Pardon to 81 individuals (and their cats) convicted in Prestonpans of witchcraft and executed

## Prestonpans Witches Remembrance

By Kelly M. Ross

between 1590 and 1679. Those unfortunate people were identified in Scottish historian Roy Pugh's 2001 book, *The Deil's Ain (The Devil's Own)*.

The Baron also commissioned Roy Pugh to write a trilogy of Witch plays. I first learned details about the witches of Prestonpans when local theatre director Malcolm Watson asked me to play Gelie Duncan in the second of these plays, *The Cauldron*. Duncan was executed for witchcraft in 1591.

After the matinee performance on October 31, 2007 of *The Devil's Craft*, the final play of Pugh's trilogy, Mary Martin, granddaughter of Helen Duncan, joined the Remembrance ceremony. Mary laid the first Healing Herb on the ledge underneath where the 81 executed people are listed on the Witches Gestalt.



Kelly Ross in front of the Witches Gestalt in Prestonpans

After Martin spoke, John Lindsay, a local poet, recited his poem honoring the people executed as witches. His poem begins:

Death invites us all  
but surely not THAT way  
damned to a fate  
of terror, torture and dismay  
The ignorant destroyed  
by those more stupid still  
and led like flocks of hobbled sheep  
to die on Castle Hill, where  
hurt, damned, shamed as heretics  
they were torched  
by star-crossed laws of yesteryear.  
....

The fifth annual Remembrance Ceremony will be held on Halloween 2008.

About the author. Kelly M Ross lives in Prestonpans, Scotland. She has produced a series of narrated videos filmed around Prestonpans relating the area's history of prosecuting alleged witches. The videos are on YouTube.com, and can be found by searching on the terms "Prestonpans" and "Witches".



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**Oxford Pocket American Dictionary - \$12.95 - 1,004 pgs.** Over 180,000 entries. Includes over 3,000 biographical and geographical entries. Most comprehensive paperback dictionary available. #02

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

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

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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 Attorney's Paul Bergman & Sara J. Bergman-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 Attorney's Paul Bergman & Sara J. Bergman-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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**New York Times Almanac - \$11.95 - 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 - \$25 - 272 pgs. Professor 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 Vollen - \$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 Trueries 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-trung" cases in Wenatchee, Washington where 19 people were wrongly convicted of sex abuse charges. Also included is the Amirault case in Malden, Massachusetts, where bizarre false allegations were taken seriously. #52

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

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

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

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

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

**Bloodsworth: The True Story of One Man's Triumph over Injustice** by Tim 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 Ching: 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

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Richard A. Leo, Associate Professor of Law, University of San Francisco  
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### Wrongful Convictions Aren't Taken Serious In The United States

In spite of irrefutable evidence that wrongful convictions are an ongoing problem across the United States, there is no political will to do anything meaningful to prevent them, or correct them after they occur. Other countries that have much less of a problem with wrongful convictions, but who see them as unacceptable, have enacted legal reforms that are effectively detecting and correcting them.

See the editorial on page 16.

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