

# LEAVEWORTHY



The Newsletter of the NYSBA Committee  
on Courts of Appellate Jurisdiction



**Vol. V No. 3**  
**Fall/Winter 2016**

**Chair:**

Alan J. Pierce

**Editorial Staff:**

Cynthia Feathers, Editor-in-Chief  
John A. Cirando  
Mark Diamond  
Timothy P. Murphy  
Sharyn M. Rootenberg

**Staff Liaison:**

Patricia Wood  
pwood@nysba.org

**A reminder to our readers:**

Your contributions of ideas and articles for this semi-annual publication are welcome. Please send your submissions to [CTSAPP@nysba.org](mailto:CTSAPP@nysba.org).

*The opinions expressed herein are those of the authors or article subjects only and do not reflect the official position of the New York State Bar Association or the Committee on Courts of Appellate Jurisdiction.*

## “Never, Never, Never Give Up”\* Man Exonerated After 52 Years

\*Winston Churchill

By Mark Diamond

It was the luck of the draw that she was assigned to the case in the first place. In 1967, two years out of law school and a new associate with the Legal Aid Society in New York City, Malvina Nathanson picked up the appeal of Paul Gatling. He was in his early 30s in 1963 when he was arrested for murder. A veteran with no criminal record, he was accused of shooting to death, in an art gallery, a man who refused to hand over his money.

The evidence seemed strong. The victim’s wife was present during the shooting and identified Gatling from a lineup. Another witness said that he had seen Gatling leave the building at the time of the murder. But Gatling had an alibi and maintained his innocence from day one. He went to trial. New York had a viable death penalty at the time. So right before summations, Gatling’s family and lawyers convinced him to plead guilty to second-degree murder, a crime not subject to the death penalty. His promised sentence: 30 years to life.

This year, Nathanson and Gatling obtained what he had wanted for half a century—his exoneration. The twists and turns of the case during that time would do justice to a Dashiell Hammett novel.

Within a week of conviction, Gatling filed a motion to withdraw his plea. The motion was denied after a hearing at which one of Gatling’s lawyers testified that he had doubts about his client’s guilt even as he pleaded guilty. Gatling filed a coram nobis motion (a common-law precursor to CPL article 440 motions) to set aside his conviction on the ground that the plea was involuntary. The motion was denied and the order affirmed. In 1965, Gatling filed a second coram nobis application, noting that the victim’s wife expressed doubts about her identification and had stated that someone told her that another person was guilty. In 1966, the application was denied.

That is when Nathanson entered the case. She was assigned to represent Gatling on appeal from the denial of the second coram nobis motion. At the same time, another attorney at Legal Aid filed a third coram nobis motion. The District Attorney had not revealed that, in a previous case, alleged eyewitness Grady Reeves had made the same kind of claim that he made about Gatling, and he had been convicted of

*Continued on page 2*

## Never, Never, Never Give Up (cont'd)

perjury. The motion was denied in 1967, and Nathanson was assigned to appeal the third coram nobis denial, too. Then in 1969, Legal Aid filed a fourth coram nobis application, contending that New York's capital punishment statute was inherently coercive. The motion was denied. Nathanson was assigned to that appeal as well. In 1970, all three appeals were denied.

Convinced of her client's innocence, Nathanson began a new investigation in 1971. With the help of a Legal Aid trial attorney and two investigators, Nathanson re-analyzed the entire case. Gatling submitted to a lie detector test and a psychologist's review. Armed with evidence of his innocence and based on his exceptional prison record, the attorneys applied to Governor Rockefeller for commutation of sentence, which was denied in 1972. But when the application was resubmitted the next year, it was granted! Gatling by then had served one-third of his minimum sentence, short of the normal requirement of service of half the minimum. He was released from prison in 1974 after serving 10 years.

Upon his release, Gatling worked for The Legal Aid Society, then the New York City Department of Corrections, the Vera Institute of Justice, several hospitals, and the South Forty Program—an organization he started in prison to assist inmates with reentry. Gatling moved back to Virginia, and he and Nathanson lost touch. Three years ago, he called her from his Veterans Affairs residential facility in Virginia. Gatling had read that Brooklyn District Attorney Kenneth Thompson had started an exoneration unit, and he wanted to apply. Gatling wanted to be able to vote, but faced felony disenfranchisement laws.

So he sought to have his name cleared, not just a commutation of a sentence that was wrong in the first place. Now working pro bono, Nathanson helped Gatling with the application and made contact with Thompson's office. "They were clearly influenced by the original applications to the district attorney and Governor and decided to open an investigation," recalls Nathanson. "A wonderful ADA named Eric Sonnenschein was assigned to the case." Sonnenschein spent over a year on the investigation. His most astonishing discovery was that old police reports showed that the victim had been assaulting his wife at the time of the murder, and she was overheard threatening to kill him. Further, she had not identified Gatling from multiple lineups, but had eventually been pressured by police to identify him. The ADA at Gatling's trial knew all this, but hid it from the defense (a violation under *Brady v. Maryland*, 373 US 83, mandating disclosure of exculpatory evidence). In April 2015, Thompson called Gatling to apologize and "make

it right," and he moved to vacate the conviction. (Months later, the District Attorney died.)

On a clear day, on May 2, 2016, Nathanson sat beside Gatling in a courtroom packed with reporters. ADA Mark Hale informed the court that, "based on newly discovered evidence, constitutional violations, and in the interest of justice," the indictment should be dismissed. While granting the motion, Judge Dineen Riviezzo was visibly tearful, as were Gatling and Nathanson. Gatling is now in his 80s. He and Nathanson still talk to one another. His is the oldest exoneration ever obtained by the District Attorney's office and the first conviction by guilty plea overturned. Nathanson says she never imagined in 1967 that she would see her client exonerated after so long. "I had absolutely no doubt all this time that Paul was innocent," she said firmly. "It's funny. I began my career with Paul. I will probably end it with him 50 years later."

PHOTO BY JOHN M. MANTEL FOR DAILYMAIL.COM/SOLO SYNDICATION



Paul Gatling and Malvina Nathanson on May 2, 2016