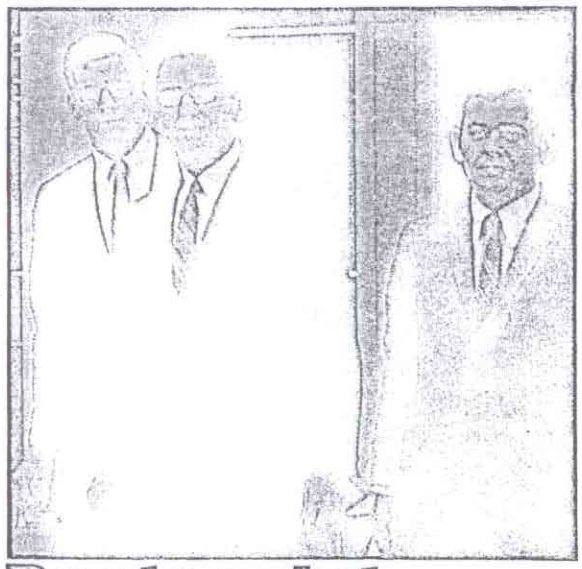
WATCHDOG FOR JUSTICE



BRIDGEPORT, CONNECTICUT TELEGRAM

From left, Attorney Michael Walsh, James Miller and Steven B. Duke.

Postscript to a Fiasco of Justice

Injustice nearly triumphed in the classic "wrong-man" case against Jimmy Miller of Connecticut. Although originally convicted of a heinous crime, then eventually found innocent in a retrial, shadows still hover over Miller. Author of this *Watchdog* report is the man who won Miller's acquittal after a three-year court battle

by Professor Steven B. Duke, Yale Law School

A Monthly Argosy Report On Our Citizens' Private War Against Crime

Last June, ARGOSY's *Watchdog for Justice* published a "story-thus-far" account of the famed James Miller "wrong-man" case in Connecticut. *Watchdog* worked closely with Steven B. Duke, a professor of law at Yale and widely known in legal circles as a fighting defense attorney.

Duke, convinced of Miller's innocence and that he was a victim of an incredible sequence of false indentifications, fought Miller's previous conviction through an array of top courts of the land and finally won a re-trial.

Just before last Christmas, a jury in Bridgeport, Connecticut, found Miller completely guiltless. But the stigma of the initial conviction still clings and distressing things still happen in Miller's life and business.

Watchdog has asked Steve Duke to write this postscript to the bizarre fiasco of justice as an epilogue that at long last tells it like it was.

Gene Lowall
Executive Director
Watchdog for Justice

IT WOULD take a book to describe the bizarre behavior of the law's machinery in the fantastic Jimmy Miller "wrong-man" case in Connecticut, or to convey a comprehensive view of the myriad legal confrontations during the half decade that Miller tried to clear his name.

In these few lines, all I can do is to suggest how close the contest was, how injustice almost triumphed and how precarious is every man's freedom.

Although James L. Miller, of Milford, Connecticut, has for six months, stood tall and completely exonerated of a vicious international crime, the stigma still clings to him and probably will remain for a long time in the minds of some.

Many ARGOSY readers will doubtless remember *Watchdog's* initial interest and disclosure of the affair as published last June.

To bring you up to date, the following is my report from the "inside" on what happened, why it did and what has resulted from one of the most incredible entanglements of the judicial process that I may ever be privileged to be a part of.

On November 14, 1969, a Federal jury of six men and six women in Bridgeport, Connecticut, found Jimmy Miller innocent of smuggling heroin in 1964. This would seem to have been the finale in a five-and-a-half-year legal battle in which the force of the Federal Government was committed to the prosecution of the wrong man. Actually though, the battle may not yet be over.

The fiasco began, so far as Miller himself knew, on a June afternoon in 1964.

The first half of the day had been routine, with Jimmy and the other ten hairdressers hard at work in the Milford, Connecticut, beauty shop that Jimmy and his wife, Helen, had built from nothing during the decade since they had met in beautician's school and married.

Jimmy Miller seemed an unlikely hairdresser type. An orphan who didn't even know his parents' name or nationality, he had grown up in New Haven slums.

He learned early to use his fists, had been a battle-group boxing champ in the Navy and later, for a time, had fought professionally. In the streets and in the service, he also learned to gamble, and was known, before and after becoming a hairdresser, as a "high roller." He was also an accomplished artist, a skill he perfected and gained great joy from until that fateful Friday in 1964. After that, he lost all desire to paint.

Despite his unlikely background, however, Jimmy found in hairdressing an outlet both for his artistic bent and his Horatio Alger-like will to succeed. By 1964, he had earned a reputation as a master hair stylist, owned several satellite beauty shops, and was on the brink of modest fortune and fame.

About noon that Friday, as Jimmy was giving a razor cut to one of his regular customers, half a dozen men barged into the shop, announced that he was under arrest, shoved him (razor in hand) against the wall and frisked him. As scared ladies scattered and swooned, Jimmy urged the men to take him to the back room to "straighten this out."

When they obliged, he cursed them for embarrassing him and upsetting the customers. A few days before, he had received a form letter threatening him with arrest if he didn't pay a string of parking tickets. Assuming that the raid related to the letter, he told the officers that he would have paid the tickets if they had just given him a phone call.

One officer thrust a paper at him but he angrily refused to read it. Handcuffed, he was hauled out to the sidewalk and ordered to read the warrant. When he finally stopped cussing and began reading, he learned that the charge was not ignoring parking tickets, but conspiracy to smuggle heroin.

He continued to read, alarmed and puzzled, then he calmed down when he didn't find his name. He told the agents that they had the wrong man. But one of them, with a mocking smile, pointed to the papers and said, "This is you—*Frank James Coppola.*"

While being processed at the jail following his arrest, Jimmy gleaned the outline of the charge. He was accused of having helped a multi-million-dollar combine to import huge quantities of heroin into the United States during the summer of 1963.

Miller insisted he was innocent. He passionately urged the officers to "give me a lie-detector test and truth serum, and if there are any other tests, I'll take them, too." Although such offers are rarely passed up by today's law enforcers, this one, repeated dozens of times during the following five and a half years, was always rejected without explanation.

In his cell the next day, Miller read in the newspapers that Federal agents had "slammed the lid" on the "largest and most profitable heroin-smuggling syndicate in the world," which had smuggled heroin worth "more than $150,000,000" into the United States. In addition to several Canadian and Mexican members of the conspiracy, the papers said, "the lone American netted was identified as Frank James Coppola, thirty-seven-year-old ex-convict who masqueraded as a legitimate businessman in the swank Connecticut suburbs where he lived and worked." Coppola, they said, was "a key cog in the New York underworld."

Since Miller's name was *not* Coppola, he was *not* an ex-convict, and was *not* a narcotics smuggler, he felt certain the mistake would be rectified as soon as his attorney could explain to the authorities who he really was.

As fate turned out, however, Jimmy Miller was not arrested because of any mix-up in names, but because two members of the international conspiracy had identified him secretly as the man to whom they had delivered 160 pounds of pure heroin—enough to supply the nation's addicts for almost a month—the previous year in a cloak-and-dagger smugglers' rendezvous in Bridgeport, not far north of New York City.

The dope couriers involved—a man and wife from Mexico—admitted delivering two loads of "stuff" (subsequently found to be worth tens of thousands of dollars on the New York narcotics market), then told authorities long afterward that they saw their contact only briefly and knew him only as Frank."

Two weeks after they made the second Bridgeport delivery, the dope couriers said, they were arrested while coming into Texas from Mexico with a third load, destined for Connecticut. They quickly confessed the whole plot and began to name their co-conspirators in Canada and Mexico. The amazing "identification" of Miller as their "drop" contact followed later.

Jimmy Miller was an unlikely-looking and suspiciously prosperous hairdresser, particularly to those who did not know him or his business—and this included police and Customs officials. He was a sitting duck! He had also been on friendly terms with some disreputable characters. What's more, he was listed in FBI files not as James Miller but as "Frank Coppola" —the result of a youthful stunt he had all but forgotten.

In 1948, shortly after he got out of the Navy, Jimmy, lacking a current driver's license, had borrowed the license of a friend by that name, then and now a respected New Haven citizen, and in no way connected with the dope smugglers.

When visiting a girl in Pennsylvania, after borrowing the license, Jimmy was arrested for a misdemeanor and gave the authorities the driver's license of his friend, Frank Coppola. As a result, although birth records, school records and service records all showed him as James Miller, the authorities were convinced that his name was "Frank."

United States v. Frank Coppola came to trial in May, 1966, almost two years after Miller's arrest on the narcotics charge and three years after the crime. Certain that the Mexican dope courier who had belatedly identified Miller as "Bridgeport Frank" would recognize his mistake and admit it as soon as they met, Miller was anxious for the trial to start. He felt confident, moreover, since he had hired as chief trial counsel the almost legendary "legal magician," Percy Foreman of Texas, who justified his modest fee from Miller by explaining that he "rarely enjoyed the luxury of an innocent client." (*continued on page* 38)

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Since Foreman had successfully defended Candy Mossler not long before, as well as hundreds of others, Jimmy was sure Foreman would have had no trouble defending him.

Yet, after a five-week trial in which the self-confessed drug-courier pair were completely uncorroborated, while some twenty of Miller's customers and employes in the beauty salon swore that, on both days he was at work in the shop, an hour's round trip from the motel where "Frank" met the couriers, the jury deliberated only an hour before finding Miller guilty as charged.

The trial judge, although noting Miller's exemplary war record and acceptable family life, sentenced him to *twelve years* without possibility of parole, and ordered him to pay half the cost of the prosecution.

Bond, pending appeal, was set at $200,000. It was raised by two dozen of Miller's friends in Connecticut who mortgaged their homes to the bondsman.

Shortly after sentencing, I joined the team to begin a new series of efforts to establish Miller's innocence. We lost the appeal, the Court of Appeals regarding it as all but frivolous. We went on to the United States Supreme Court, which held the case for seven months, then denied our petition.

Miller took and passed a polygraph (lie-detector) test and truth-serum examination. The experts' reports were turned over to the Government. I visited in prison a man who had been convicted of being the head and mastermind of the smuggling organization. He denied ever having heard of James Miller, gave me an affidavit to that effect, and offered to take a lie-detector test. There was no response from the Government.

We continued our efforts in court. Time after time, we brought in new evidence of Miller's innocence in motions for a new trial. Each time, the motions were denied by the judge who had tried and sentenced Miller; each time, he was affirmed on appeal.

Finally, through a fluke, Miller got another chance.

I discovered that the initial prosecutor had *hypnotized* the talkative male dope courier a few months before the trial and had kept the fact a secret. Armed with testimony from famed Dr. Herbert Spiegel of New York that the hypnosis could have contaminated the witness's mind and affected his identification, we returned to court in another effort to get a new trial. Predictably, the trial judge turned us down.

This, however, was too much for the U.S. Court of Appeals. Almost five years after Jimmy's arrest, the appellate court "reluctantly" granted a new trial.

I made another trip to the Justice Department, wrote to the Solicitor General and the Deputy Attorney General, outlining the massive evidence of Miller's innocence and offering to open my files in return for a hearing. Letter after letter went unanswered.

On April 1, 1969, the Department announced that Miller would be tried again. I couldn't resist commenting to the press that April Fools' Day was an appropriate occasion for the announcement.

The ultimate retrial was in October and November, 1969. The identifying "witnesses" again told their story and, parrot-like, identified Miller as the man they had met in Bridgeport in 1963 and to whom they had "delivered the goods." The guilty man was not available to testify, having gone underground.

The jury declared Miller innocent last November.

Throughout the earlier post-conviction battles, Miller remained steadfastly hopeful when observers had decided his case couldn't be won. He was buoyed constantly by dozens of friends who believed in his innocence enough to help support the battle, to mortgage their homes for his bond and even to picket the Justice Department in Washington on Christmas Day, 1968, in Jimmy's behalf. The longer the defense survived, moreover, the larger the army of supporters grew. Finally, ARGOSY featured the case in its *Watchdog for Justice* department in June, 1969.

What sustained Jimmy most of all, however, was a false assumption that a jury verdict in his favor would completely clear his name and permit him to return, as an ordinary citizen, to the life and the work he loved.

But it didn't work out that way. In the months since he was acquitted, he has learned the truth—that a miscarriage of this magnitude is irreversible.

Brainwashed by extravagant "law-and-order" propaganda, the public today assumes, I am convinced, that one who is found "not guilty" has merely *escaped conviction* on some technicality.

Many local law-enforcement officers, ignorant of the facts of the case, chose to assume, like the rest of the public, that Miller "beat the case" because he had a "tricky lawyer or a bad judge." They will hound and harass him for years, hoping to catch him doing something illegal, so they can even the score.

There is no legal way for Jimmy and his friends to recover the costs of his defense, the lost income from a business practically destroyed. There is no way to remove the emotional scars from his seven-year-old son, taunted by playmates: "Your daddy is bad. He sells pills that kill people." Policemen can follow him wherever he goes, tap his telephone and harass his friends. The war is still on, but Jimmy, by being acquitted, has ironically been deprived of his only weapon.

According to our Attorney General, winning the war on crime requires us to ignore an occasional innocent victim of the law. Yet, to my way of thinking, in our historic concern with innocence, we undermine the values that justify respect for law and order. We may in the end be as destructive of basic institutions as are the criminals we seek to curb.

Among many lessons in the Miller case, moreover, is the reminder that, if we prosecute the innocent, we grant a license to the guilty. None of the American participants in the heroin smuggling ring that was operating in the summer of 1963 has yet been brought to trial. None ever will. The Government's preoccupation with an innocent man has permitted the limitations to expire on the guilty. □