

# BOAF Today Feature Article - January 2012

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**PREFACE:** This is a story of a tragic set of circumstances. People died and the quest for justice implicated not only the contractors that installed the faulty heater, but the inspectors that approved the work.

There are several lessons to be learned from this story.

1. Building codes work. Compliance with building codes will protect lives and property. Violating building codes will put lives and property at risk.
2. Inspecting construction for code compliance is a serious and important job. Every inspection is important and deserves the appropriate attention to detail.
3. Code officials are not perfect. The doctrine of Sovereign Immunity must be respected when officials are acting in their official capacity and are therefore immune from civil or criminal prosecution.
4. Each jurisdiction is responsible for defending their employees unless deliberate malfeasance can be proven
5. In this case ICC provided legal assistance by filing a "friend of the court" brief in support of the building inspectors

This story has played out over several years of investigation, grand jury indictments and court hearings. Just recently the charges against all of the defendants were dismissed on a technicality. While it appears that these inspectors will not be found criminally or civilly guilty, I would suspect that they will always wonder if they could have prevented the tragic loss of four innocent lives.

Every day each of us has an opportunity to protect lives and property. It is incumbent upon all of us to continue to expand our knowledge of the codes, and be diligent when performing plan review and inspection.

Take comfort in the knowledge that even though there is an occasional tragedy such as the deaths in Colorado, our communities are safer because of effective building codes and the enforcement work that we do.

Discuss this article with others in your jurisdiction. What do you take away from this set of circumstances?

John O'Connor

## Contractor, Inspectors Indicted in Carbon Monoxide Deaths of Family

**By Jason Blevins**

*The Denver Post*

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A contractor and a building inspector have been indicted on homicide charges in connection with shoddy ventilation work that led to the 2008 carbon-monoxide poisoning of a Denver family at an Aspen-area vacation home.

Marlin Brown, owner of Roaring Fork Plumbing & Heating, and now-retired City of Aspen building inspector Erik Peltonen were each indicted on four felony charges of criminally negligent homicide. The two, as well as Brian Pawl, a Pitkin County building inspector, also face misdemeanor counts of reckless endangerment. The indictments were announced Sunday.

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The charges follow a Pitkin County grand jury investigation into the deaths of the four member Lofgren family, who had won a Thanksgiving 2008 stay at the house.

Assistant Deputy District Attorney Arnold Mordkin said Brown installed the boiler and venting system at the \$8.95 million home on Popcorn Lane, east of Aspen. Peltonen, a city employee working for Pitkin County, inspected the home.

Pitkin County sheriff's investigators concluded that dislodged venting pipes for the boiler that handled hot water and the driveway-snowmelt system flooded the home with "extreme levels" of carbon monoxide as the family slept.



According to police reports, 8 feet of exhaust pipe was unattached between the boiler and the vent outlet. Deputy Brad Gibson wrote in a report that it did not appear the PVC exhaust pipe had ever been glued together.

Gibson also reported that several experts who investigated the scene did not find any carbon monoxide detectors, even though a 2005 inspection report mandated the installation of the alarms.

One boiler specialist, Mark Passamanek, told investigators he thought the installer of the leaking boiler was "reckless" and the installation "was not done to a reasonable community standard," Gibson wrote.

Gibson also toured the home with Brown, who worked on the home sporadically from 2004 to 2005. Brown told Gibson he could not remember if he used glue to seal the joints of boiler exhaust pipes.

Still, Pitkin County Sheriff Bob Braudis in January 2009 said the evidence did not support negligent homicide charges. He forwarded his investigation to Mordkin, who asked a judge to empanel a grand jury, which convened in July 2009. A week shy of a year later, the 12-member grand jury made its decision.

Brown and Peltonen were arrested and released on \$11,000 bond. Pawl was released on a summons to appear. The three will make their next court appearance Aug. 16.

"This took a long time," Mordkin said. "This is a very serious situation, and you don't want to rush and you don't want to make mistakes."

Denver investment banker Parker Lofgren, 39, his wife, Caroline, 42, and their children, 10-year-old Owen and 8-year-old Sophie, were found dead by friends in the home's master bedroom the day after Thanksgiving 2008. The Lofgren's had won a stay at the house as part of a fundraiser at Denver's St. Anne's Episcopal School. The house was owned by Jonathan and Carla Thomas, whose children also went to St. Anne's.

The home's master bedroom was above a utility closet that housed the leaking boiler. The children, who had apparently awakened in the middle of the night, were found on the floor of the bedroom. Both parents were in bed, with Owen near his father, and Sophie near her mother.

Relatives of the Lofgren family said they were grateful for the indictments.

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"We feel their deaths were absolutely preventable and we are not surprised with this outcome," said Hildy Feuerbach, Caroline's older sister. "I think the negligence there was just shocking. . . . It's a tragedy that could have been averted if the people involved had done their jobs with reasonable care."

Mordkin said the home, which was for sale for \$8.95 million, had been approved for residency by county inspectors in 2005 or 2006, roughly a year after it was built.

At some point, the building-inspection process broke down, Mordkin said.

"That is our contention," he said. "Once the house is inspected, it is not the building inspector's job to make sure somebody does not do something stupid. That would be very unfair."

Messages left for Brown at his Glenwood Springs shop were not returned. A woman answering the phone at Peltonen's Basalt home said he, on advice from his lawyer, could not comment. Pawl could not be reached.

Pitkin County Commissioner Michael Owsley said Pawl and Peltonen, the latter of whom he has known for more than 40 years, are "some of the most outstanding employees we have."

"These guys are dedicated public servants who woke up every day, thinking about public safety," Owsley said. "I'm sure they are devastated and their families are devastated. The Lofgren tragedy was bad enough, and this, as far as I'm concerned, makes this an even greater tragedy."

Pitkin County attorney John Ely said he needs direction from the county commissioners on how to proceed in terms of defending the county's employees.

"This is something totally outside the box," said Ely, noting a lack of legal precedent or protocol.

The Lofgren deaths, as well as the January 2009 carbon-monoxide poisoning death of University of Denver student Lauren Johnson, prompted Colorado lawmakers in March 2009 to pass a law requiring carbon-monoxide detectors in most homes. The odorless gas kills as many as 500 Americans a year, primarily from poorly maintained furnaces and gas stoves, according to the federal Centers for Disease Control and Prevention.

The Lofgren family, in a statement, said the criminal charges and pending civil action "will send a clear message to contractors, and building inspectors and even manufacturers of heating equipment to ensure that such senseless carbon-monoxide deaths are prevented in the future."

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### **About negligent homicide**

University of Denver law professor Kristian Miccio said the key to proving negligent homicide involves a "reasonably prudent" standard. In this case, the question is whether a reasonably prudent person would know there was a deficiency in the home's ventilation system that posed a "substantial and unjustifiable risk," she said. "There has to be a gross deviation from the standard of care that a reasonable and prudent person in regular circumstances would have understood."

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**Update:** The criminal case springing from the Thanksgiving weekend 2008 carbon-monoxide-poisoning deaths of the Lofgren family -- parents Parker and Caroline, plus kids Owen, ten, and Sophie, eight -- will continue thanks to a ruling by a district judge yesterday.

But the hearing, at which the two defendants in the case pleaded not guilty, hinted at chinks in the prosecution's armor.

As reported by the Glenwood Springs Post Independent, Judge James Boyd acknowledged that "some inaccurate information" had been shared with the grand jury that indicted subcontractor Marlin Brown and onetime building inspector Erik Peltonen last July, as well as what he termed "mistakes" by the prosecutor during the deliberation process. And while Boyd ultimately determined that these flaws weren't serious enough to dismiss the charges, you can bet the team working for Brown and Peltonen will do everything they can to exploit them.

The trial is scheduled to get underway on November 28 -- two years to the day when the Lofgren's died. Look down to see our earlier coverage, including a photo gallery of the family during happier times.

**Original item, 8:01 a.m. June 13:** On Thanksgiving weekend 2008, the picture-perfect Lofgren family -- parents Parker and Caroline, plus kids Owen, ten, and Sophie, eight -- traveled to Aspen and bunked at a rental home, where they died of carbon monoxide poisoning. Last July, a grand jury indicted a subcontractor and an ex-building inspector on negligent homicide related to their deaths, and today, a judge is expected to decide if those charges will stick.

Marlin Brown and Erik Peltonen, the two men indicted, face jeopardy outside the criminal-justice system, too. Last August, a civil suit was filed against the pair, among other. It's on view below, and can also be accessed by [clicking here](#).

As we reported at the time, the document states that during the family's first evening in the rental property, at a resort called The Lodge, snow began falling, and as it accumulated on the roof, a sensor triggered a gas-fired boiler called the "Munchkin" to melt it. But something went terribly wrong. At five p.m. on November 28, 2008, family friends discovered the Lofgren's' bodies -- and they were in fearful condition, according to the lawsuit:

The decedents Parker and Caroline Lofgren were found in their nightclothes on the bed. Caroline had hemorrhaged from her mouth or nose. Owen was found on the floor by his father beside a nightstand. Sophie was found on the floor by her mother with her face bloodied. Blood was also found on the bedding of one of the bunk beds in the children's guest suite.

It was later confirmed that carbon monoxide poisoning killed the Lofgrens, with evidence pointing to the Munchkin boiler. The suit alleges that the causes of the poisoning included, but were not limited to, a disconnected exhaust vent, a disconnected fresh air intake vent, a defectively designed boiler, an improperly installed HVAC system and the absence of a carbon monoxide detector. The document argues that several of these factors "were open and obvious violations of Pitkin County Code."

A [release](#) about the suit pointed out that the Lofgrens' surviving loved ones were instrumental in getting carbon-monoxide-safety laws passed in four states, including Colorado.

# Aspen Daily News

January 2, 2012

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Building inspectors freed from monoxide death charges

Local government building inspectors, accused of playing a role in the deaths of a Denver family who perished in a 2008 carbon monoxide poisoning at a home east of Aspen, were exonerated this past fall.

The bringing of criminal charges against government employees for the deaths was rare — if not nearly completely unheard of.

A judge dismissed the felony cases against building inspector Erik Peltonen and Marlin Brown, the owner of a Glenwood Springs heating and plumbing company, in November. The charges were dropped based on a technicality and a mistake that the Aspen prosecutor had made.

Peltonen and Brown had each been charged with four counts of criminally negligent homicide in the deaths of Caroline Lofgren, 42; her husband, Parker, 39; and their two children, Owen, 10, and Sophie, 8.

In 2008, they won a stay in a mansion on Popcorn Lane a few miles east of Aspen through a fundraising auction at their children's school. A disconnected pipe in a boiler used to heat both the home and its driveway snow-melt system allowed carbon monoxide to penetrate the residence, killing the family.

After nearly a year of secret deliberations, a grand jury indicted Brown, Peltonen and fellow government building inspector Brian Pawl. Brown and Peltonen were charged with the felony negligent homicide counts and misdemeanor counts of reckless endangerment. Pawl faced only the latter charges.

But Chief Judge James Boyd of the 9th Judicial District in January dismissed the misdemeanor counts against all three men, agreeing with prosecutors that the 18-month statute of limitations on the lesser charges had expired.

Peltonen and Brown still faced the felonies, but the role of the statute of limitations was not done.

As a government building inspector, Peltonen worked for both the city of Aspen and Pitkin County, as did Pawl.

Attorneys representing the two governments contended that the prosecution flew in the face of state and county laws and could have led to a "rude surprise" for taxpayers.

The potential of criminal exposure for municipal employees who are acting in good faith and without malice had "breathtaking implications" for the ability of municipalities to recruit and retain quality staff or conduct routine operations in a timely manner, such as approving certificates of occupancy, the governments of Aspen and Pitkin County argued. They also called such filing of charges against a government employee "unprecedented" in modern times.

Boyd's eventual ruling centered on a critical error Chief Deputy District Attorney Arnold Mordkin made in the grand jury's deliberations.

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The judge refused to allow Mordkin to amend the grand jury's indictment. Mordkin was seeking to add to the indictment the date of the deaths of the Lofgren's. The date — either Nov. 27 or 28, 2008 — had been omitted in the indictment, which said only that the alleged crimes had occurred between Jan. 1, 2004, and Jan. 1, 2006. That represented when the residence was inspected before a certificate of occupancy was issued.

The latter date proved crucial during a Nov. 3 motions hearing. When the grand jury returned the indictment on July 23, 2010, it was doing so about four and a half years after Jan. 1, 2006, Boyd ruled. The judge said by law he could only rely on the 2004 and 2006 dates because they were the only ones in the indictment.

The four and a half years exceeded the three-year requirement in the statute of limitations for criminal cases, and in attempting to add the date of the family's deaths Mordkin was seeking to keep the case within the statute. That would have meant the grand jury had returned the indictment less than three years after the deaths.

Slight changes to indictments are sometimes allowed, but adding the date of death would have constituted a substantial modification that can only be done by the grand jury, Boyd ruled.

The relatives of the victims also sued in federal civil court. Their claims against Pitkin County, Peltonen and Pawl were dismissed, a day before Boyd's criminal-side ruling, after a judge said the plaintiffs failed to prove that the county and its building inspectors had created the danger that led to the deaths of the Lofgren family.

After the federal decision, the civil suit by the relatives of the Lofgren's was remanded to Denver District Court. Brown, along with nine other subcontractors who also worked on the home, and Black Diamond Land Development Corp., which owns the residence, remain defendants.

— Chad Abraham

[Defense attorney Abraham] Hutt received legal backing from attorneys representing the city of Aspen and Pitkin County, which are paying for Peltonen's defense, and from the Colorado Municipal League and the International Code Council. The entities filed a friend-of-the-court brief in support of the motion to dismiss, writing that the prosecution could have broad public policy impacts.