

Justice Denied Editorial

State And Federal Prosecutors Are Allowed To Run Wild By The Courts And State Bar Associations

Anyone who has read *Justice Denied* for any length of time is aware that the conviction of an innocent person in the United States is rarely the result of a mistake by the prosecution. The overwhelming majority of cases in which a person has been exonerated involved prosecutors who deliberately concealed exculpatory evidence and/or remained silent while one or more witnesses provided perjurious or misleading testimony. Prosecutors are required by the federal constitution to disclose to a defendant all potentially favorable and impeachment evidence under *Brady v. Maryland*, 373 US 83 (1963) and its progeny. It is black letter law in this country under *Mooney v. Holohan*, 294 U.S. 103 (1935) and its progeny that the federal constitutional prohibits a prosecutor from “knowingly” using perjurious testimony.

When the illicit conduct of prosecutors who

obtain a conviction by concealing evidence and/or presenting perjurious testimony is exposed, the most that can normally be expected from state and federal judges is to overturn the conviction and give the offending prosecutors the opportunity to retry the very defendant that they had framed. Sometimes in overturning a conviction the judges will scold the prosecutors as naughty, but that is no deterrent for the prosecutors to engage in similar illicit conduct during a retrial of that case, and in other cases they are involved in. Likewise, it is almost as often that one sees a pig fly as it is for a state bar association to seriously discipline a prosecutor for the “unethical” conduct that contributed to the conviction of an innocent person. In addition prosecutors are absolutely immune from civil liability for any of their conduct in prosecuting a person they know is innocent, even if it results in that person’s execution. To top it off, prosecutors are effectively immune from criminal prosecution no matter how many laws they violate in the course of prosecuting an innocent person — even if their criminal conduct results in the execution of an innocent person. As the Roman poet Juvenal asked: *Quis custodiet ipsos custodes?* (“Who will guard the guards themselves?”) In this country the answer is no one.

Consequently, state and federal prosecutors

know they are generally able to run wild in framing an innocent person with no expectation of any negative legal, professional, financial, or criminal consequences.

This is not a new situation. In 1999 *Justice Denied* published two articles about the lawlessness of state and federal prosecutors in the United States: [Prosecutorial Lawlessness is its Real Name](#) (Issue 6) and, [Prosecutors are Masters at the Art of Framing People](#) (Issue 9).

Houston lawyer John T. Floyd and paralegal Billy Sinclair lay bare in their recent article, [The Ethical Implications Of A Brady Violation](#), that what is euphemistically called “prosecutorial misconduct” is so rampant in this country that it “is fast becoming a norm in our criminal justice system.” Their article is well worth taking the time to read at www.johntfloyd.com.

An exception *Justice Denied* takes to their article is the subtitle that refers to prosecutors who engage in “wrongful conduct” as “rogue prosecutors,” when they are the norm. Prosecutors who scrupulously follow the law and protect a defendant’s rights that are necessary to ensure a fair trial are the rarity.



The following was a Commentary published in the [Las Vegas Tribune](#) on May 29, 2013. It is *Justice Denied*’s position that when a prosecutor of questionable integrity seeks a judicial position, persons interested in improving the quality of “justice” in the courtroom have a moral responsibility to expose that prosecutor’s conduct that may tend to disqualify him or her from holding a judicial position of public trust and responsibility.

Sandra DiGiacomo Hasn’t Exhibited The Integrity Necessary To Be A Judge

By Hans Sherrer*

A judge makes decisions that directly affect the life and property of the persons who appear before him or her. The U.S. Supreme Court has ruled a judge cannot be sued by anyone harmed by a judge’s negligent or malicious acts. Consequently, a judgeship is a

position of public trust that requires a particularly high degree of integrity.

Sandra DiGiacomo is a candidate for Henderson Municipal Court Judge Department 1. I submit that while employed as a prosecutor in the Clark County District Attorney’s Office Ms. DiGiacomo has not exhibited the integrity necessary to be a judge.

The record of Ms. DiGiacomo’s conduct as one of the prosecutors in a case now before the Nevada Supreme Court illustrates how she misused her public position to conceal the truth from the judge, the jury, and defense lawyers involved, and when the truth was exposed she tried to cover-up the magnitude of her dishonest conduct. That case is *Kirstin Blaise Lobato v. Nevada*, N.S.C. Case no. 58913.

During Ms. Lobato’s trial in 2006 the following exchange took place during Ms. DiGiacomo’s examination of Metro Crime Lab DNA technician Kristina Paulette:

“MS. DIGIACOMO:

Q. Now, directing your attention to this case, were you asked to do any DNA analysis?

A. [By Ms. Paulette] Yes, I was.

Q. What was that?

A. I was asked to examine a pubic hair combing from the sexual assault kit.

Q. And that was taken from a person by the name of Duran Bailey?

A. Yes.

Q. Okay. Were you asked to test anything else within the kit itself?

A. No, I was not. [Trans. XI-145, 9-25-2006]

Ms. Paulette proceeded to testify Ms. Lobato was excluded as the source of DNA recovered from the pubic hair.

Seven days later Ms. Paulette testified as a defense witness when Ms. Lobato’s lawyers discovered that additional DNA testing had in fact been conducted. That testing excluded Ms. Lobato as the source of DNA on two cigarette butts recovered from the crime scene. The following exchange took place between defense lawyer Shari Greenberger and Ms. Paulette:

“Q. When you previously testified, do you recall the prosecution asking you whether you tested anything within the sexual assault kit itself besides the pubic hair?

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A. [By Ms. Paulette] Yes, I do.
Q. Do you recall your answer?
A. Yes.
Q. What was it?
A. I only tested the pubic hair combing.
Q. Do you also recall testifying that you weren't asked to retest any other items?
A. Yes." [Trans. XVI-52, 10-2-2006]

When asked "Who submitted that request?" Ms. Paulette stated, "Ms. DiGiacomo." [Trans. XVI-37, 10-2-2006]

Ms. Paulette also testified the testing of the cigarette butts began eight days before she had previously testified she had not been asked to do additional testing.

Ms. DiGiacomo objected 16 times during Ms. Paulette's testimony as a defense witness. She even objected to introduction of Ms. Paulette's Report about the DNA testing she had denied being asked to conduct when questioned by Ms. DiGiacomo a week earlier.

It is a matter of public record Ms. Paulette lied when she testified that she hadn't been "asked to test anything else" in response to Ms. DiGiacomo's question, and that Ms. DiGiacomo knew she was lying because she was the person who requested the testing. Yet she remained silent. It wasn't an isolated incident or lapse in character because Ms. Lobato's appeal now before the Nevada Supreme Court documents more than 100 other instances of Ms. DiGiacomo's efforts to mislead the jury. [N.S.C. No. 58913, 9 App. 1825-1835]

Ms. Paulette got her comeuppance when she was fired in May 2011 for lying to a Metro Crime Lab supervisor about DNA testing in a case unrelated to Ms. Lobato's. Ms. DiGiacomo did not experience any negative repercussions for bringing forth Ms. Paulette's false testimony during Ms. Lobato's trial, and then trying to mask it from the jury when it was exposed as false. One can only hope the voters of Henderson don't make the mistake of rewarding Ms. DiGiacomo's apparent lack of integrity by electing her to be a judge, which will allow her to act without fear of being sued by anyone she harms.

* Hans Sherrer is the editor and publisher of *Justice Denied: the magazine for the wrongly convicted* that has reported on the Kirstin Lobato case. [Justice Denied](#) is based in Seattle, Washington.

Woman Exonerated Of Murder Must Reimburse The State For Money Paid To Experts

Monika de Montgazon has been ordered to repay more than \$42,000 that the German government paid to experts who provided new evidence that exonerated her of murdering her 76-year-old father.

In 2003 Montgazon was a 47-year-old nurse caring for her 76-year-old invalid father in the duplex they shared in Buckow, Germany with her partner. Buckow is about 10 miles south of Berlin. In September 2003 her father was killed as the result of a fire that gutted the duplex.

Investigators determined the fire was deliberately set and alcohol was likely used as an accelerant. Montgazon was the beneficiary of an insurance policy and she was arrested weeks after the fire and charged with murder, arson, and insurance fraud. She was jailed without bail while awaiting trial.

She protested her innocence, but she was convicted of all charges in January 2005. Because it was considered a murder for greed the judge showed no mercy and sentenced her to life in prison.

During her appeal her court appointed lawyer retained five fire experts, one of whom was a chemistry professor, to examine the evidence. They all determined that no accelerant was used to fuel the fire, and that it was probably caused by Montgazon's father smoking a cigarette in bed that he dropped either accidentally or after falling asleep.

Based on the new evidence Montgazon's conviction was overturned, and she was acquitted after a retrial in March 2006. She was then released after almost 2-1/2 years (889 days) in custody.

After her release no one would hire her as a nurse, so she found a job operating a disco.

Montgazon filed a lawsuit for compensation, and after years of litigation in February 2012 the Court of Appeal in Berlin ruled she was entitled to compensation of \$14.50* (€11 euros) for each of the 889 days she was



Monika de Montgazon

incarcerated. That compensation totaled \$12,915 (€9,779 euros).

The five experts who provided the new evidence that resulted in Montgazon's exoneration were paid between \$132 and \$165 (€100 and €125 euros) per hour. However, the appeals court ruled her experts should only have been paid \$110 (€84 euros) per hour, and one of the experts shouldn't have been paid for his time related to her retrial because he only testified for one minute. The Court also ruled the five experts spending 65 hours on her retrial was excessive and they should have been reimbursed less for their travel expenses when they testified. Consequently, under the court's ruling Montgazon must repay to the government \$42,263 (€32,000 euros) that was paid to the experts.

When the court's ruling became public Montgazon told reporters, "The verdict is a slap in the face for me."

After deducting the compensation awarded, Montgazon owed the government \$29,348 for her almost 2-1/2 years of wrongful incarceration.

Ulrich Schellenberg, chief of the Berlin Bar Association, criticized the ruling denying Montgazon's appeal costs as being based on academic and abstract reasoning, instead of the specific circumstances of her case that hinged on expert analysis of the evidence. He asked, "How is someone sentenced to life in prison and fighting for their freedom supposed to negotiate a rate in line with market prices with experts?" He also criticized the Court's anemic compensation award, explaining to reporters, "We have in this country no sensible compensation scheme that covers such cases."

Montgazon, now 56, appealed the Court of Appeals' ruling to Germany's Federal Constitutional Court (the equivalent of the U.S. Supreme Court), and that appeal is pending.

* All U.S. dollars are at the exchange rate of 1.3207 euros to the dollar on February 1, 2012.

Sources:

[Woman wrongly jailed for murder](#) faces €32,000 bill, *The Local* (Berlin, Germany), April 12, 2012

[Teurer Irrtum der Justiz](#), *Berliner Zeitung*, April 12, 2012 (translated to English with Foxlingo.com)

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