

## 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](http://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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