

U.S. Ninth Circuit “So called Judges” Prove To The World They Are Agenda Driven Political Hacks

By Hans Sherrer

Every federal and state judge in the United States is a politician. A 2003 law review article [explained that](#), “Contrary to their carefully cultivated public image of being independent and above the frays of everyday life, judges are influenced and even controlled by powerful and largely-hidden political, financial, personal and ideological considerations.”[1]

Furthermore, judges are not only politicians, they are also lawyers. That is an unholy combination because public opinion polls consistently show that both lawyers and politicians have extremely low ratings by the public for honesty and integrity. Only 4% of people polled by Gallup in 2015 considered lawyers to have very high honesty and integrity, and only 3% of people consider politicians to have very high honesty and integrity.

Wearing a black robe doesn't magically imbue a politician who is a lawyer with admirable ethical qualities he or she doesn't possess. It is well-known that power corrupts and absolute power corrupts absolutely. So it is reasonable to think a judge's lack of honesty and integrity is magnified by the dictator-like power the judge wields over the life, liberty and property of the person or persons involved in a case. A huge majority of the public knows judges don't deserve veneration. A 2013 Gallup poll found that 9 out of 10 people -- 90%! -- do not think judges are very honest and ethical.

It doesn't make any difference whether a judge owes his position to the appointment process used for all federal judges and judges in some states, or the popular election process used to select judges in some states. [2] The appointment process is openly political because the political party in power wields inordinate influence over who is seated, and the elective process is inherently political because only a candidate who receives the endorsement of the state bar, police and prosecutor organizations, and the support of political party operatives can expect to be elected.

To even suggest that judges are unbiased, impartial arbiters is so contrary to what is observable in the real world that it is laugh-

The White House
Office of the Press Secretary
For Immediate Release

January 27, 2017

EXECUTIVE ORDER: PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES

EXECUTIVE ORDER

Protecting the Nation from Foreign Terrorist Entry into the United States

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 et seq., and section 301 of title 3, United States Code, and to protect the American people from terrorist attacks by foreign nationals admitted to the United States, it is hereby ordered as follows:

Executive Order 13769, The White House, Jan. 27, 2017

able on its face. It is as much a myth there are objective, unbiased judges as it is there are little green Martians, or Santa Claus delivers presents in a reindeer drawn sled. There is actually more evidence the Tooth Fairy exists than that there are unbiased judges, because children who put a tooth under their pillow do wake-up to find their tooth gone and money in its place. Judges not only play favorites, their biases generally aren't very well concealed, if at all.

That the ruling of a judge is affected by their personal biases is true for every member of a court from U.S. Supreme Court justices down to municipal court judges. The scale of justice is not evenly balanced, but it is weighted by the relevant biases of the judge or judges involved in a case.

For example, it is common practice for people to predict the outcome of a case in the U.S. Supreme Court, and other federal and state courts, based on the known political and ideological biases of the justices/judges involved. That is why during a presidential campaign in particular, the candidates put so much emphasis on the importance of their election so that a person that it is hoped will be sympathetic to the candidate's political ideology can be nominated and confirmed to the Court. We are seeing that now in the pending nomination of U.S. Circuit Judge Neil Gorsuch to the U.S. Supreme Court.

However, only occasionally does the obvious political bias of a judge or several judges become national news.

One such instance was U.S. Supreme Court Justice Ruth Bader Ginsburg repeatedly made headlines for her [derogatory comments](#) about Donald Trump and his policies during the 2016 presidential campaign. The

centerpiece of Trump's campaign was his advocacy of enforcement of U.S. immigration laws and construction of a wall along the border with Mexico to inhibit illegal entry into the United States. Ginsburg made her comments knowing Trump could be elected president and the Supreme Court would be dealing with any number of legal issues related to his administration, as it does for every administration. If Ginsburg doesn't recuse herself from every case involving the Trump administration — and particularly any immigration case — it could provoke a Constitutional crisis since it can be expected she would vote against the administration irrespective of the legal issues.

Another instance, and along the same lines as Justice Ginsburg's comments, has been the judicial response to President Donald Trump's Executive Order 13769: Protecting The Nation From Foreign Terrorist Entry Into The United States, [issued on January 27, 2017](#). In summary, the 2,866 word Executive Order put in place a 90-day pause in travel from seven countries that former President Barack Obama's administration identified as hotbeds of what President Trump refers to as radical Islamic terrorism. During that pause the Secretaries of State and Homeland Security and the Director of National Intelligence are to evaluate the United States' visa, admission, and refugee programs because “the United States must ensure that those admitted to this country do not bear hostile attitudes toward it and its founding principles.”

The Executive Order cited among the authorities for its issuance, 8 USC § 1182(f), which was enacted in 1952 [and states](#):

Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

On February 3, 2017 U.S. District Court Judge James Robart granted a motion by the states of Washington and Minnesota for an emergency temporary restraining order barring enforcement of Executive Order 13769. Judge Robart granted the order on the basis Washington and Minnesota would likely succeed on the merits of their claims of irreparable harm if the TRO was not

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issued, without citing a single fact or legal opinion supporting that conclusion, and he disregarded President Trump's authority under 8 USC § 1182(f).

The government appealed Judge Robart's ruling to the Ninth Circuit Court of Appeals. During the oral arguments on February 7, 2017, not a single question was asked by any of the three judges related to the legal basis of the Executive Order under 8 USC § 1182(f). On February 9 the three judge panel unanimously affirmed Judge Robart's ruling, without addressing or even citing a single time President Trump's legal authority to issue the Executive Order under 8 USC § 1182(f). The Court defended its action by asserting the Executive Order violated the due process rights of non-citizens outside the U.S. who want to enter the U.S.; that since the seven affected countries are predominantly Muslim it religiously discriminates against them; and that the states of Washington and Minnesota had standing to seek the restraining order because they might be injured by non-citizens from the seven affected countries not being able to visit state universities. The three judges [made it plain](#) their decision was politically motivated by noting "the massive attention this case has garnered," before ruling the public interest didn't plainly favor enforcement of the Executive Order because, "the public also has an interest in free flow of travel, in avoiding separation of families, and in freedom from discrimination." None of those reasons has anything to do with ensuring the national security of the United States that is the stated purpose of EO 13769.

The ruling of Judge Robart was predictable because he was nominated by Senator Patty Murray, who is a supporter of minimal enforcement of immigration laws, and the ruling by the three judge panel was likewise predictable because the questions the judges asked during oral arguments exposed they are card carrying members of the intelligentsia in the U.S. from which federal judges are drawn that predominantly favors minimal-enforcement of immigration laws -- regardless of their alleged political party affiliation.

President Trump responded to Robart's ruling [by tweeting](#): "The opinion of this so-called judge, which essentially takes law-enforcement away from our country, is ridiculous and will be overturned!"

Trump's reference to Robart being a "so-called judge" was understandable given that Robart's ruling did not even reference the law upon which the Executive Order was



President Donald J. Trump
(Whitehouse.gov)

based.

Trump's response to the Ninth Circuit's ruling was to publicly describe it as politically motivated [and to tweet](#): "LAWFARE: "Remarkably, in the entire opinion, the panel did not bother even to cite this (the) statute. "A disgraceful decision!" Trump [told reporters](#) the ruling was a "political decision." That was a restrained comment because the day before the ruling Trump [told a meeting](#) of the Major County Sheriffs' Association and Major Cities Chiefs Association that "a bad high school student" would understand the Presidential authority under 8 USC § 1182(f) to issue Executive Order 13769.

Again, Trump's reference to the ruling being "a disgraceful decision" and "political" was understandable given that the three-judge panel of Judges Michelle Friedland, William Canby Jr., and Richard Clifton did not even reference the statute upon which the Executive Order was based -- that "a bad high school student" would understand required termination of Judge Robart's order.

Trump's comments were consistent with the self-identification of the four judges involved in their rulings as ideologues for a minimal or non-existent U.S. border who completely disregarded the relevant statute to further their political agenda. Can they not be considered in the same category as any other political hack?

Linda Klein, the president of the American Bar Association, responded to Trump's Tweet about Judge Robart's ruling [by stating during](#) an ABA meeting in Miami:

"Let me tell you what the most important border is: It's our Constitution and the rule of law it embodies. We as lawyers are called upon to protect it. Make no mistake: Personal attacks on judges are attacks on our Constitution. There are no 'so-called' judges in America. There are simply judges, fair and impartial. And we must keep it that way. Let us be clear: The independence of the judiciary is not up for negotiation. As lawyers, we are trained to be thinkers and leaders. ... So lawyers, let's lead. Let's lead by promoting and protecting the rule of law."

Political correctness that owes no allegiance

to the truth, dictated the indefensible assertion by the head of the ABA that the legal system is comprised of "fair and impartial" judges. The mass of people in the general public who have had the unfortunate experience of appearing before a judge to contest a traffic ticket know that is preposterous. Klein may actually agree with President Trump's reasonable observation the rulings on his Executive Order were by judges who substituted their political agenda of minimal or non-existent enforcement of U.S. border protections, instead of enforcing the legal authority vested in the President under 8 USC § 1182(f) to protect the people of the United States.

The arrogant disregard of the law and braggadocious substitution of their political ideological bias that Judges Robart, Friedland, Canby Jr., and Clifton put on display for the whole world to see, is an everyday reality for people asserting their innocence [in this country](#).

Since the U.S. District Court in Seattle and then the Ninth Circuit disregarded federal law and precedents in ruling against the U.S. government in *State of Washington v. Donald J. Trump* (2017), it is to be expected that state and federal courts disregard applicable laws and precedents in ruling against powerless persons with compelling evidence their conviction is faulty.

The response of one unidentified Ninth Circuit judge to the ruling by Judges Robart, Friedland, Canby Jr., and Clifton was to *sua sponte* request that the Ninth Circuit vote whether to reconsider the three judge's ruling *en banc* -- i.e., by a panel of 11 of the circuits judges. On February 10, 2017 the federal government and the states of Washington and Minnesota were "instructed to file simultaneous briefs setting forth their respective positions on whether this matter should be reconsidered *en banc*." [3]

So it may turn out that either Ninth Circuit judges, or U.S. Supreme Court justices, will be shamed into ruling on the law and not their personal biases in *Washington v. Trump*.

[Click here to read](#) the three-judge panel's ruling in *State of Washington v. Donald J. Trump*, No. 17-35105 (9th Cir., 2-9-17).

Endnotes:

[1] Sherrer, Hans, "The Complicity Of Judges In The Generation Of Wrongful Convictions," *Northern Kentucky Law Review*, Vol. 30, No. 4, 539 (2003).

[2] Many state judges are appointed by the governor in a state that has an election process, after the retirement of an elected judge prior to the expiration of their term. This is a technique that allows a governor to try to pack a court with judges of the same political persuasion as

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Kirstin Lobato Attacked By Mass Murderer At Woman's Prison

The *Las Vegas Tribune's* [lead article on the front page](#) of its February 22, 2017 issue is, "Kirstin Lobato Attacked By Serial Killer At Woman's Prison." The article was written by Hans Sherrer, *Justice Denied's* editor and publisher. The article can be read on the *LV Tribune's* website at, LasVegasTribune.net.

The article details that on the night of February 10, 2017 serial killer Valerie Moore attacked Kirstin Blaise Lobato with a deadly weapon at the Florence McClure Women's Correctional Center (FMWCC) in North Las Vegas. Lobato was able to defend herself from being seriously injured until guards arrived to subdue Moore. Moore has been convicted of 13 murders, and she is serving life in prison without the possibility of parole. Moore is believed to be the most prolific female mass murderer imprisoned in the United States, and one of

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the governor, because regardless of whether elected or appointed, sitting judges are overwhelmingly retained in an election.

[3] *State of Washington v. Donald J. Trump*, No. 17-35105 (9th Cir.) (Order, 2-10-2017)

Sources:

[ABA President Rails Against Trump](#) Tweets Attacking Judge Who Blocked Ban, By Celia Ampel, Law.com, February 6, 2017

["The Complicity Of Judges In The Generation Of Wrongful Convictions,"](#) by Hans Sherrer, *Northern Kentucky Law Review*, Vol. 30, No. 4, 539

[Executive Order 13769](#): Protecting The Nation From Foreign Terrorist Engrty Into The United States, www.whitehouse.gov, January 27, 2017

[State of Washington v. Donald J. Trump](#), No. C17-0141JLR (USDC West. Dist. 2-3-17) (Granting nationwide temporary restraining order of Exec. Order 13769)

[State of Washington v. Donald J. Trump](#), No. 17-35105 (9th Cir., 2-9-17) (Denying govts. appeal of Judge James Robart's grant of a temporary restraining order.)

[Donald Trump Is Right About Justice Ruth Bader Ginsburg](#), The Editorial Board, *The New York Times*, July 13, 2016

[Donald Trump Tweet regarding Judge Robart's ruling](#) on February 4, 2017, twitter.com/realdonaldtrump

[Donald Trump Tweet regarding Ninth Circuit Court's ruling](#) on February 10, 2017, twitter.com/realdonaldtrump

[Trump Calls Ruling a 'Political Decision'](#), By The Associated Press, ABCNews.go.com, February 9, 2017

[Trump's Message to the Courts](#): Even 'A Bad High School Student' Would Understand the Law in Question, By Susan Jones, CNSNews.com, February 8, 2017

"Nevada Supreme Court 'Politicians' Sold Out To The DA in Kirstin Lobato Ruling," *Las Vegas Tribune*, November 30, 2016



Kirstin Lobato attacked by serial killer at women's prison



Kirstin Lobato was attacked by serial killer Valerie Moore at the Florence McClure Women's Correctional Center in North Las Vegas on Feb. 10, 2017. (Lobato file)

My Point
Las Vegas Tribune's front page for Feb. 22, 2017 issue.

the most prolific in American history.

Lobato has unwaveringly insisted on her innocence of her 2006 convictions of voluntary manslaughter and other charges related to the death of a homeless man in Las Vegas in 2001. She was sentenced to 13 to 35 years in prison.

[Justice Denied's](#) post-conviction investigation of [Lobato's case](#) discovered new scientific and medical evidence proving she was 165 miles from Las Vegas at the time of the crime. In December 2016 the Supreme Court sent her case back to the District Court for an evidentiary hearing regarding ineffective assistance of counsel by the Clark County Special Public Defenders Office during her trial, and to resolve her habeas corpus claim of being actually innocent.

Information about Ms. Lobato's case and the new evidence of her actual innocence detailed in her habeas corpus petition is on Justice Denied's Kirstin Blaise Lobato's case webpage at, www.justicedenied.org/kbl.htm.

Sources:

["Kirstin Lobato Attacked By Serial Killer At Woman's Prison,"](#) By Hans Sherrer, *Las Vegas Tribune*, February 22, 2017

Kirstin Blaise Lobato's case on Justice Denied website, www.justicedenied.org/kbl.htm

The following is the *LV Tribune* article .

Kirstin Lobato Attacked By Serial Killer At Woman's Prison

By Hans Sherrer
Justice Denied (justicedenied.org)
Special for the *Las Vegas Tribune*

Serial killer Valerie Moore attacked Kirstin Blaise Lobato with a deadly weapon on February 10, 2017 at the Florence McClure Women's Correctional Center (FMWCC) in North Las Vegas.

The *Las Vegas Tribune* [has published](#) many articles concerning the legal saga of Kirstin Lobato. For more than ten years her case has been batted back and forth between the Clark County District Court and the Nevada Supreme Court.

In 2006 Lobato was sentenced to 13 to 35 years in prison for her convictions of voluntary manslaughter and other charges related to the death of a homeless man in Las Vegas in 2001. Lobato has unwaveringly insisted on her innocence, and new scientific and medical evidence has been discovered proving she was 165 miles from Las Vegas at the time of the crime. In December 2016 the Supreme Court sent her case back to the District Court for an evidentiary hearing regarding ineffective assistance of counsel by the Clark County Special Public Defenders Office during her trial, and to resolve her habeas corpus claim of being actually innocent.

Lobato's case has garnered international attention, and the Innocence Project in New York recently agreed to represent Lobato *pro bono* in her habeas corpus case. The Innocence Project has been involved in exonerating more than a hundred innocent people nationally.

On the evening of February 10th Moore launched an unprovoked vicious attack on Lobato with one of the most dangerous weapons readily available to her: a sock full of batteries that Moore was able to sling to increase its destructive power.

Moore beat Lobato on the head and upper body before Lobato was able to neutralize Moore by putting her in a choke-hold. Moore chewed on Lobato's arm in an effort to free herself. When guards arrived, they pepper sprayed both Moore and Lobato, and subdued Moore.

Lobato suffered an injury to her head, and wounds to her arm from Moore biting her.

Guards put Moore and Lobato in disciplinary segregation pending an investigation.

The Nevada Department of Corrections in Carson City did not provide any comment when contacted by Justice Denied about Moore's assault of Lobato, and attempts to contact FMWCC Warden Dwight Neven for comment about Moore's assault were unsuccessful.

The NDOC Office of the Inspector General investigates crimes committed in a prison. When they were contacted by Justice De-

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