

Overzealous Prosecutions and Special Prosecutors

Overzealous Prosecution

"The Primary duty of a lawyer engaged in public prosecution is not to convict, but to see justice is done."

People v. Fishgold, 71 N.Y.S.2d 830



**Illegal, immoral and highly unethical.
Standard Pattern and Practice by DA Lori Rieman and her office.**

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Kochan Trial Update – Special Prosecutors and Recusal Motions. In the [early stages of the action that was illegally moved to the Cattaraugus County Court](#), Mr. Kochan, acting pro-se, motioned for a special prosecutor to replace District Attorney Lori Rieman and her cohorts. If a Motion for a [Special Prosecutor](#) is granted, that person replacing her has all the rights and authorities as the District Attorney, which includes moving forward with the case, dropping the charges or reducing them; ***“it is the duty of the district attorney to refrain from over-zealous advocacy”*** (*People v. Slover*, [232 N.Y. 264, 267](#))...

“...there is a marked difference between such zeal and conduct depriving a defendant of a fair trial.” (*People v. Alvarez*, [4 A.D.2d 45, 46](#).) Even in cases where the evidence support a jury's verdict of guilty, Appellant Courts are not allowed to ***“...overlook the particular trial misconduct. To do so, would amount to an improper holding that the fundamentals of a fair trial need not be respected if there is proof in the record to persuade us of defendant's guilt”*** (*People v. Mleczko*, [298 N.Y. 153, 163](#)). (*People v. Steinhardt*, 9 N.Y.2d, pp. 269-270, *supra*; *People v. Rosenfeld*, [11 N.Y.2d 290, 300](#).) Mr. Kochan's case it is clear that Rieman acted in an overzealous manner.

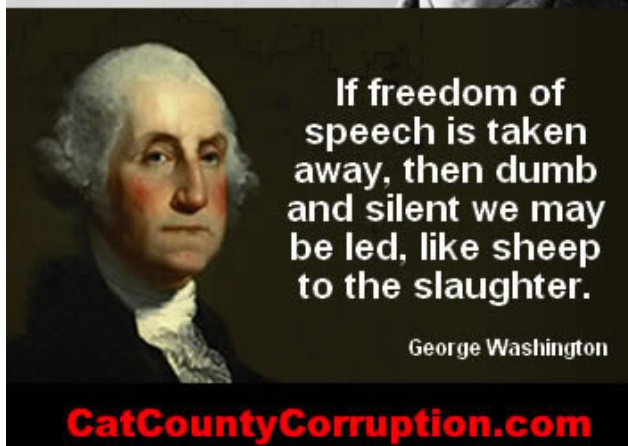
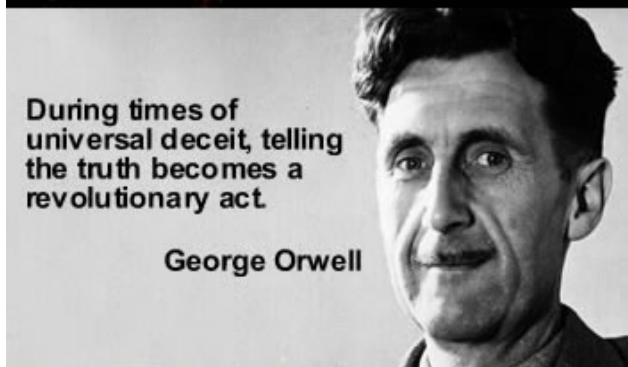
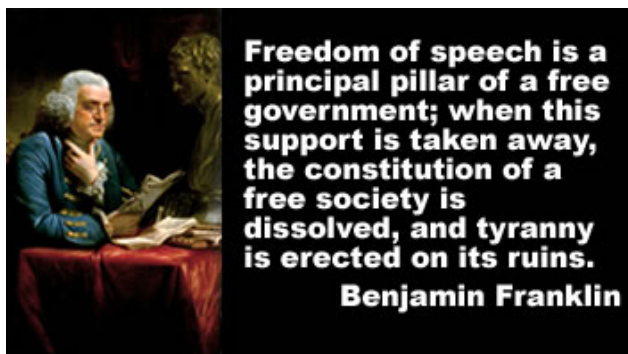
As to motions for a special prosecutor they are [appointed in state court with greater frequency than federal](#), and most often in cases where a conflict of interest arises or to avoid even the appearance such a conflict exists as well as the appearance of impropriety. ***“to be sure, a prosecutor would be well advised to step away from a case in which his or her impartiality could reasonably be questioned.”*** [People v. Nelson, 647 N.Y.S. 438, 445.](#)

In the Kochan trial they have done the exact opposite. They are literally running it like a murder trial for one simple misdemeanor and nine traffic infractions. The only ones that appear [targeted for murder](#) is Lady Justice and [Mr. Kochan](#). Rieman is out of control and she provided evidence of it on Wednesday, May 31st, 2017, right after the Jury was excused (there never should have been a jury trial in the first place if she had obeyed the law) she had a melt-down over the fact that Mr. Kochan was exercising his rights. To show you just how insane this whole trial is Rieman, as well as [Jillian Koch](#) (who is also assisting at the trial) and [Mary Reynolds](#), the personal secretary to Judge Ronald Ploetz, attempted to shut down for good [CatCoutyCorruption.com](#) by [filing a complaint with the hosting service that hosted the site. In order for them to do so they actually had to fax a copy of their drivers license to the hosting company to verify who they were to shut it down.](#)

This shutdown occurred the Thursday before Mr. Kochan was to appear for arraignment on the [illegal indictment](#) brought about by the [illegal Notice of Presentment](#) (that was never filed by the Rieman) that was brought about by the [illegal superseding simplified informations](#) that was brought about by the

[illegal superseding informations](#). Are you confused yet? That's exactly what Reiman likes to do;

“Lori likes to lie... Lori wants to bury her mistakes in cases.” [Mark Williams, Head of the Public Defender Unit, Cattaraugus County, Buffalo News. Friday, September 6th, 2013](#)



This forced Mr. Kochan to move the website offshore to [Iceland, the home of Wikileaks](#). This is unprecedented in the history of the U.S. when a District Attorney attacks a US Citizens first amendment rights and shuts down a website. This will have a chilling effect on the 1st Amendment Rights of all New Yorkers. This website publishes public records, in most cases written by the hands of public officers that documents their conduct so you the reader can decide what actually occurred.

Then you have 'ADA' Elizabeth Ensell who [ran over a pedestrian in a clearly marked crosswalk](#) who was hospitalized and the incident was covered-up by the Olean Police Department. She is the one prosecuting the Kochan matter, but according to the court this is not considered impartiality, or the mere appearance thereof, at all.

Further, Mr. Kochan has written numerous articles the criminal conduct of Cattaraugus County District Attorney Lori Rieman and her Assistant District Attorney's. The main ones he focused on was;

- DA' [Lori Rieman](#) herself, and;

- [First Chair 'ADA' Amber Kerling was charged](#) with [Prosecutorial Misconduct by the Appellant Division](#), which rarely happens, and;
- ['ADA' Kelly Balcom](#), and;
- [ADA' William Preston Marshall](#), who in one case he [threatened the wife](#) who's husband was on trial for charges that were eventually dismissed on appeal. The threat was that if the she did not testify against her husband to something she did not see Marshall would have her minor children taken away from them. **In one [federal lawsuit against District Attorney Lori Rieman](#) herself, she, as well as members of her office were accused of not having the *"temperament and psychological makeup to properly carry out their duties as responsible government officials."* [This which included 'ADA' William Preston Marshall, who was the cause of the suit.](#) and;**
- And last but not least ['ADA' Elizabeth Ensell](#). Ms. Ensell family who's father also worked for the Cattaraugus County District Attorney's Office. It appears he [has covered up at least one murder](#). Further Elizabeth's sister Catherine has had numerous run-ins with the law and always seems to get off the hook by being able to plead out to a simple misdemeanor. This includes felony assaults with deadly weapons and drug dealing, the latest being drug dealing in which she and three other people were indicted on a four count indictment. Two of the defendants did not appear to have any criminal record, one had a minor one and Catherine had quite an [extensive list of crimes by the time the drug charges came around](#), including stabbing another woman and beating another one over the head with a goldschlager bottle which required serious hospitalization. In the drug indictment matter Catherine gets to plead down to a misdemeanor and the rest all have to plead to a felony. On too Elizabeth; [She constantly lies to the courts, and to defense counsel](#) which is violation of [NY Attorney Code of Ethics RULE 3.1 \(b\) \(3\), and RULE 3.3 \(a\) \(1\)](#); *"make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;"*

That is basically the whole Cattaraugus County District Attorney's Office.

However this is not her most serious crime. ['ADA' Elizabeth Ensell's most serious crime was running into a pedestrian in a clearly marked crosswalk in Olean New York, which caused the civilian to be hospitalized and the Olean Police Department would cover it up and not charge Elizabeth with anything.](#) Now let's take a look at the alleged conduct of Mr. Kochan versus 'ADA' Elizabeth Ensell's conduct, prevailing law and let you determine what should have gone to the Grand Jury and what should not have;

"The primary function of the Grand Jury is to uncover crimes and misconduct in public office for the purpose of prosecution (see [NY Const, art I, § 6](#); [CPL 190.65, 190.55](#))." [People v Tyler, 46 N.Y.2d 251, 258-259](#). See also [People v. Rao, 73 A.D.2d 88](#).

Mr. Kochan original conduct was alleged to be driving while intoxicated and with no headlights and failure signal stop in a straight lane of traffic with no street turn offs. Mr. Kochan's blood would be tested at the hospital and show a .05% BAC content, **however it would be tested forensically at the Erie county medical examiners laboratory and come back 04% BAC indicating that the hospital sample was tampered with.** The used copious amounts of rubbing alcohol and possibly ethyl alcohol mixture as the sterilizing agent on the skin for the blood draw area. The blood draw technician also injected the needle before the mixture had time to dry. This is a complete violation of [NYCRR: 10 CRR-NY 59.2 \(d\)](#).

In Mr. Kochan's Omnibus Motion, paragraphs 18, his Affidavits and the District Attorney's office actions and documents clearly show the People and specifically "ADA" Ensell's conduct has gone well beyond the mere appearance of impropriety, see [People v Adams 20 N.Y.3d 608](#), impropriety itself as well prejudice against Mr. Kochan has occurred in this matter, see [People v Malone 46 Misc 3d 918](#). This matter is clearly tainted, see [631 F.2d at 1058-59; Armstrong v. McAlpin, 625 F.2d at 445 \(2d Cir. 1980\)](#)

Based on the actions of the District Attorney's office in this matter, as well as the fact that many have, or actually have direct interests in the outcome of this matter there is no reason to expect any type of fair and just outcome for Mr. Kochan. 'DA' Lori Rieman's conduct on Wednesday clearly proved it, see [People v. Shinkle, 51 N.Y.2d 417, 415 N.E.2d 909, 434 N.Y.S.2d 918 \(1980\)](#). It must be noted that in Shinkle the Court also rejected the view that the defendant must show actual prejudice, which in this matter Defendant clearly has, stating that since proof of impropriety would not be within the defendant's reach, it would be unjust to place such a burden on the defendant.

"District Attorneys and their assistants obligation is to protect not only the public interest but also the rights of the accused. In the performance of his duties they must not only be disinterested and impartial but must also appear to be so", see [People v. Lombard, 4 A.D.2d 666, 671 \[1st Dept., 1957\]](#); [People v. Fielding, 158 N.Y. 542, 547.](#)) **Their primary duty is to see that justice is done** ([Canons of Professional Ethics, canon 5](#)). Because it is presumed they act impartially, see [People v. Fielding, supra, p. 547](#), they have a wide latitude to determine whom, whether and how to prosecute, see [Matter of Johnson v. Boldman, 24 Misc.2d 592](#); [Matter of Hassan v. Magistrates' Ct. of City of N. Y., 20 Misc.2d 509 \[1959\], app. dsmd. 10 A.D.2d 908, cert. den. 364 U.S. 844 \[1960\]](#); [Matter of Coleman v. Lee, 1 Misc.2d 685](#). As you have seen Rieman and her cohorts have not acted impartially at all in the Kochan matter.

Public confidence in the office in the exercise of those broad powers demands that there be no conflict of interest or the appearance of a conflict. Further the County Court has the responsibility of safeguarding both the rights of the accused and the interests of the public in the administration of criminal justice. In addition it has the obligation on its own initiative to correct real or apparent improprieties which would tend to lower esteem for the system of justice which it is bound to uphold, see [People v Krstovich 72 Misc.2d 90 \(1972\)](#).

In a case of this nature, ***"defendants, and indeed the public at large, are entitled to protection against the appearance of impropriety"***. (See, Adams citing to [People v. Zimmer, 51 NY2d 390, 396 \[1980\]](#) and [People v. Shinkle, 51 NY2d 417](#)).

[Definition of impartial](#) 1: not partial or biased : treating or affecting all equally

Criminal courts are authorized to appoint special prosecutors pursuant to section 701 of the County Law which provides that ***"[whenever the district attorney of any county... is disqualified from acting in a particular case... a superior criminal court...may...appoint some attorney at law having an office in or residing in the county, to act as special district attorney during the... disqualification of the district attorney...."*** N.Y. County Law § 701 (McKinney 1972 & Supp. 1980). Section 701 is intended to provide relief to a district attorney who cannot perform his duties due to illness, disqualification or other reasons, see [Board of Supervisors v. Aulisi, 62 App. Div. 2d 644, 406 N.Y.S.2d 570 \(3d Dep't\), af'd, 46 N.Y.2d 731, 385 N.E.2d 1302, 413 N.Y.S.2d 374 \(1978\)](#), [51 N.Y.2d at 420, 415 N.E.2d at 911, 434 N.Y.S.2d at 920](#).

"A crime as a result of lawless conduct on the part of an overzealous prosecutor." [People v Rao 73 A.D.2d 88 \(1980\)](#)

"[D]efendants and indeed the public at large, are entitled to protection against the appearance of impropriety." [People v Carlin 2017 NY Slip Op 27178](#)

"Judge Wilson's sua sponte dismissal of the accusatory instrument" [People v Vargas 2016 NY Slip Op 50720\(U\)](#)

"Such a perversion of the criminal justice system by an overzealous prosecutor is illegal" [MTR. OF](#)

[NIGRONE v. MURTAGH 46 A.D.2d 343 \(1974\)](#)

"The courts, as a general rule, should remove a public prosecutor only to protect a defendant from actual prejudice arising from a demonstrated conflict of interest or a substantial risk of an abuse of confidence" ([Schumer v. Holtzman, 60 NY2d 46, 55 \[1983\]](#)). In general, "[t]he objector should demonstrate actual prejudice or so substantial a risk thereof as could not be ignored"

In [People v. Adams, 987 N.E.2d 272, 964 N.Y.S.2d 945](#) the court noted; ***"...the appearance of impropriety itself is a ground for disqualification, as our case law recognizes, when the appearance is such as to 'discourage public confidence in our government and the system of law to which it is dedicated'. In a case of that nature, 'defendants, and indeed the public at large, are entitled to protection against the appearance of impropriety'."*** Adams citing to [People v. Zimmer, 51 NY2d 390, 396 \[1980\]](#) and [People v. Shinkle, 51 NY2d 417](#).

The Cattaraugus County District Attorney's Office is out of control and the DA's conduct will effect the citizens of this county for years to come...