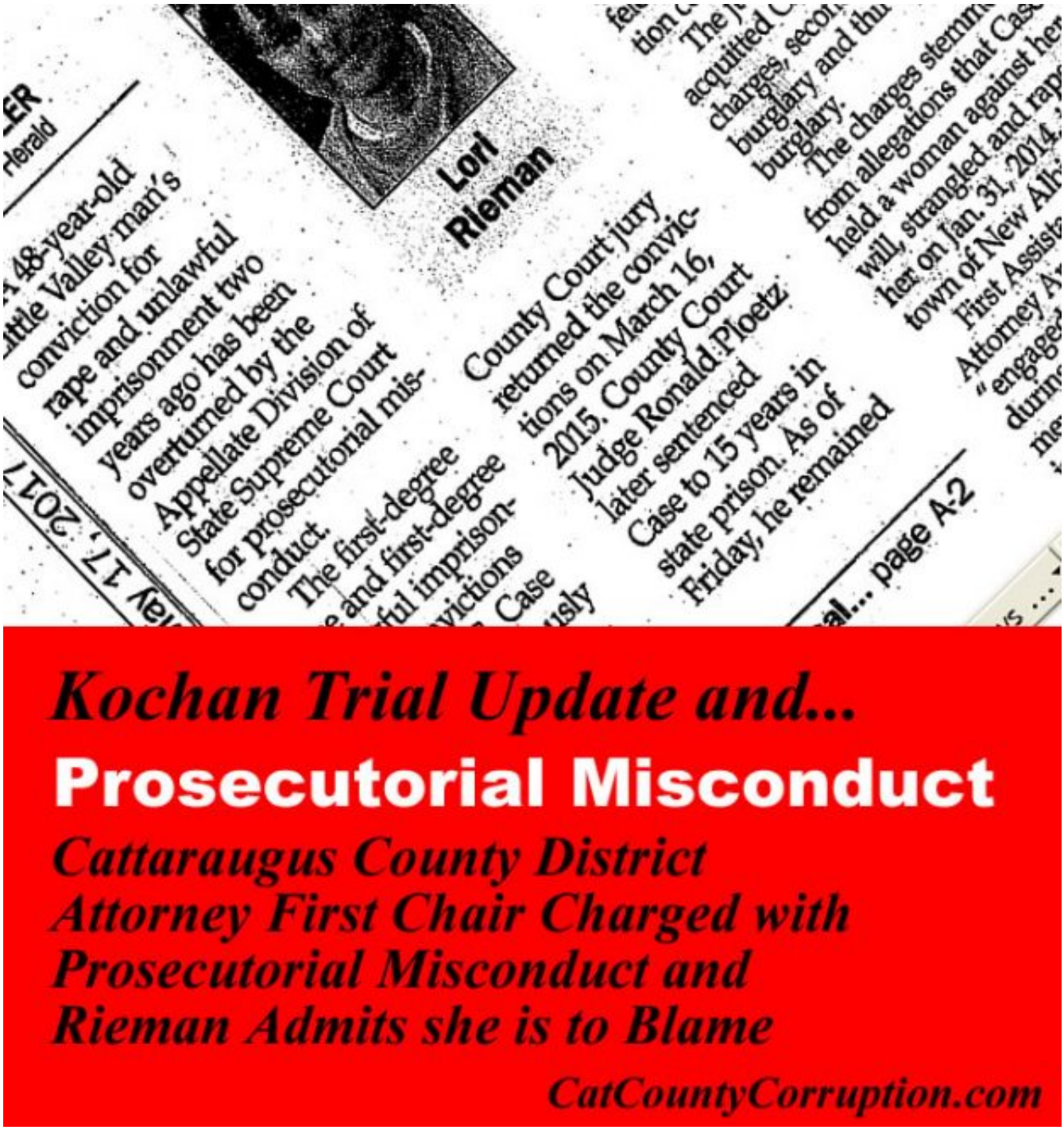
Update on the Kochan Trial and the Importance of Huntley



Cattaraugus County Judge Ronald Ploetz violating his oath of office again, or was it someone who showed up in the audience that caused him to go against Mr. Kochan's Marinida rights? In the trial of Christopher Kochan, where the original three charges were superseded one day later by three of the same charges thereby rendering them invalid and eliminating the District Attorney's ability to prosecute; ***"It is well settled that a simplified traffic information can only be amended to cure amendable defects and cannot be superseded by another"*** People v Tate 45 Misc 3d 131(A)). When Mr. Kochan called them out on that they then attempted to use a fraudulent Notice of Presentment. In order to take a matter to the grand jury that is not a Felony (Felony's are automatic), you need at least one misdemeanor charge. In this matter there was only one misdemeanor charge listed on the Notice of Presentment, which Mr. Kochan was never charged with. So the DA could not use that process either.

Judges enjoy a higher level of protection then even prosecutors;

A PEOPLE v. BAILEY, 60 Misc.2d 283,288 (N.Y. Misc. 1969); *"It is clear that a judge who acts in the absence of subject matter jurisdiction may be held liable for his judicial acts. Stump v. Sparkman, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978); Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1872). The rationale for this limitation on judicial immunity is set out in Bradley v. Fisher and reiterated in Stump v Sparkman: "Where there is clearly no jurisdiction over the subject-matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known, no excuse is permissible." Stump, 98 SCt. at 1104 n.6, quoting Bradley, 13 Wall. at 351, 20 L.Ed. 646.* ***Stump also points out that subject matter jurisdiction must be broadly construed where the issue is a judge's immunity, and notes a distinction between lack of jurisdiction and excess of jurisdiction. 98 SCt at 1105. Illustrative of a clear lack of subject matter jurisdiction would be a situation where a probate judge, with jurisdiction only over wills and estates, would try a criminal case. The probate judge would not be immune from suit. On the other hand, if a judge of a criminal court convicted a defendant of a nonexistent crime, he would merely be acting in excess of his jurisdiction and would be immune. Id. at *1496 n. 7, citing Bradley, 13 Wall. at 352, 20 L.Ed. 646."***

When you are dealing with an ethical judge this would not be an issue, however with an unethical judge they can take full advantage of their position to violate every right you have with no legal recourse for you except the court of public opinion. The 'reasoning' for this, according to the establishment, is that if a judge fears that they could be prosecuted for their conduct they would not effectively carry out their duties. This is from a time when ethical conduct was not an issue and we had a just society. The Pew Research Center reported in late 2015 that just 19 percent of Americans trust the government always or most of the time.

Yesterday jury section began. There were eighty plus people in the jury pool. DA Lori Rieman is literally running this trial like a murder trial. This is a total waste of these local citizens time and our tax dollars. The only reason Mr. Kochan went with a jury trial is because of Ploetz. Ploetz refused to recuse himself which will be taken up on Appeal, as well as his denial of a special prosecutor. He has already had to cases that laid out some serious allegations against him, which will be discussed below. If Ploetz would have shown he was unbiased or recused himself Mr. Kochan never would have gone with a jury. Judges just like Prosecutors are immune from criminal conduct against defendants. The reasoning being that if a judge or prosecutor feared they could be held accountable then would not do their jobs.

It was really sad to hear some of the stories of some of the jurors who were released. They should had never been called in the first place. Small business owners, other people who had to take care of a family members, etc… All this for trial based on a fraudulent move to county court comprising of one misdemeanor charge and nine traffic infractions. County Court is left for the serious crimes like murder and drug dealing. **One has to wonder if this sites prediction that Mr. Kochan will be murdered in the jail is being played out now. After all we had those** 3 'suicides' not too long ago that occurred within a six month time span**, no real investigations at all carried out on those. Who is, or was in charge of the investigations again?**

So by the time Mr. Kochan's Attorney reaches the 3rd panel the jury is selected. During this process Mr. Kochan's Attorney had to go up against two Attorney's from the ADA's Office yesterday, Rieman and Ensell, you wonder why he gets frustrated when he has to deal with the complete lack due process and utter incompetence when it comes to dealing with the DA's office? Ensell was the chair (lead attorney) and Rieman was the co-chair. Shouldn't it be the other way around? Rieman would claim this was Ensell's first jury trial. **ADA Ensell is stationed at the Olean City Court and has been for quite some time. It is preposterous to think that she hasn't had any jury trial in the** city of Olean Court where she ran over that poor women **in the cross walk?** Not to mention the fact that Rieman filed a grievance

complaint against him for just asking her to look into an issue of a vicious assaultthat had occurred on one of his clients in Olean.

Today (01JUN17) Mr. Kochan shows up with his Attorney and Rieman is AWOL, she is replaced by ADA Amber Kerling, her first chair (lead attorney over all other attorney's in the office). Amber was recently found guilty of prosecutorial misconduct by the Court of Appeals**, in which two charges were dismissed, which means that Rieman never should have brought them to the Grand Jury and Ploetz never should have brought them to trial to begin with. This shows you how well the District Attorney's office is run. That's what it should have read in the local papers, but of course it did not.**

Why was Reiman AWOL? It appears she was removed as the co-chair at the trial. She had a melt down yesterday (31MAY17) right after the jury had left, accusing Mr. Kochan of exercising his rights again. It's too bad the jury did not see it, however there are two video cameras in the court room now so those videos with be subject to a FOIL request. The citizens of the county need to see this outrageous conduct so they know what we are all dealing with.

So today (01JUN17) there are three people at the DA's table. Ensell, Kerling and what appears to be some new employee. Now its three against one. Former Cattaraugus Country Deputy William Hunt (laid off and back in Salamanca) is the first to take the stand. He completely leaves out the collision that he almost caused when he started to do a u-turn and cut off EPD Kowalski. The video shows that Kowalski's emergency lights go on right after. Next is EPD Larry Spry. Ensell is really concerned about verifying the only alleged video camera of the police, which there were at least two. Mr. Kochan would state on the videos that were illegally released to the Jury that Kowalski had one on also, which seemed to have disappeared, just like the videos in the court file. Senior County Court Clerk Jillian Koch is seated at the court clerks position. She is also the Town of Little Valley Court Clerk and did file a grievance against Mr. Kochan's Attorney too, claiming he was not doing a good enough job representing Mr. Kochan. It is Jillian who illegally deleted the objections of Mr. Kochan's Attorney, Mr. Kochan and family members when ADA William Preston Marshall's wife hit, *i.e. basically assaulted,* Mr. Kochan at a hearing. Jillian Koch was also instrumental in the fraudulent MHL 9.43 and CPL 730.30 orders that sent Mr. Kochan to two separate mental institutions only to have him released within 24 hours and the judge admonished for sending him there.

Sometime into the trial in walks John Ensell, the 'investigator' who appears to still be working for the Cattaraugus County District Attorney's and/or Sheriff's Office. John shows up to support his daughter ADA Elizabeth Ensell who ran into a pedestrian in the cross walk in Olean New York which caused the victim to be hospitalized and the Olean Police Department covered it up. That was more serious then all of Mr. Kochan's 'charges' combined. Why wasn't that taken to the Grand Jury? Let's not forget about his other violent drug dealing daughter Catherine N. Ensell who gets off with A misdemeanors for violent felony attacks. **Johnny takes a seat near the Cattaraugus County Deputy Director of Probation (articles already competed), which do to certain recent events makes one wonder exactly what he was doing there in the first place. All in all it appeared that four to five public employees who are paid for by our tax dollars are allowed to sit there watch a trial by the permission of their supervisors. Our tax dollars hard at work folks! Yes, all is well in land where justice goes to die….**

It was truly amazing what Ploetz allowed into evidence. Even one of the witnesses that testified stated that one of the items allowed into evidence was not relevant. If it is not relevant it should not be allowed. It appears that Ploetz and Rieman haven't learn their lesson from the 4th Appellant Division. The article to the right shows you the recent decision by the 4th Appellant division concerning the conduct of the District Attorney's Office.

This is the same tactic they pulled at the Stahlman trial **where they attempted to play off of the jurors sympathy in order to get a conviction, one of the exact reasons ADA** Amber Kerling was found guilty of prosecutorial misconduct. There must have been at least twenty pictures that dealt with the interior of Mr. Kochan's car (most of which did not show the damage to his vehicle) which amounted to nothing whatsoever. Lori stated in the article concerning Kerling that; ***"Anytime she is concerned about ethics, she comes to me".***

This is one of Cattaraugus County District Attorney Lori Rieman and her cohorts favorite tricks. Even here own peers admit it;

"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

She and her ADA's just load the jury down with a bunch of non relevant material with the blessing of County Court Judge Ronald Ploetz so the jury gets confused in the mess so they can't focus on the real issue which is the intent of Mr. Kochan to commit the only alleged crime for which he had been charged with, the Obstruction of Government Administration as well as being force to install equipment to protect himself from the illegal and unlawful harassment coming from the corrupt elements inside the Cattaraugus County Sheriff's Office.

Further for ADA Ensell to still be allowed to represent the People when the dirty laundry of herself, her father and sister are as subject to articles on this site exposing their true nature goes well beyond prosecutorial misconduct. Ploetz should have also granted Mr. Kochan's motion for special prosecutor.

As earlier stated, Ploetz like Rieman have absolute immunity also. He can deny you any and all of your rights. The only time you can go after a In today's trial evidence was introduced which violated Mr. Kochan's right to remain silent.

This all surrounds the claim by Ploetz that Mr. Kochan was not under arrest when he was blocked in, guns drawn on him in 2 seconds, window blown out in 25 seconds and then dragged out of the car, thrown to the ground head first, knocked unconscious then handcuffed, come to is hulled injuriously to his feet.

Ploetz claims that Mr. Kochan was never under arrest in one part of his order yet in another he claims he is not. One thing you can't have in a judges order is a contradiction

and that is exactly what we have here. Kowalski claimed he was arrested, Hunt claimed he was arrest and so did Graham, but Ploetz said he wasn't... Who to believe? We only need to look at the 4th Appellant Division for an answer. It's pretty clear he was under arrest.

- **The Use of Firearms:** (People v. Taylor (1986) 178 Cal.App.3rd 217, 229; United States v. Ramos-Zaragosa, 516 F.2d 141;
- **The Use of Handcuffs:** (United States v. Purry (D.C. Cir. 1976) 545 F.2nd 217, 220.); While putting a juvenile in a security office at the border, and frisking her, were not enough to constitute an arrest, handcuffing her shortly thereafter when contraband was found in her car was an arrest. (United States v. Juvenile (RRA-A) (9th Cir. 2000) 229 F.3rd 737, 743.);
- **Show of Force:** During an overwhelming show of force. (United States v. Ali (2nd Cir. 1996) 86 F.3rd 275), defendant was asked to step away from the boarding area at an airport, his travel documents were taken, and he was surrounded by seven officers with visible handguns; and Kaupp v. Texas (2003) 538 U.S. 626, 628-630 [155 L.Ed.2nd 814, 819-820], three officers, with three more in the next room, commanded the 17-year-old defendant to get out of bed at 3:00 a.m.,

and took him to the police station for questioning.) Orozco v. Tex., 394 U.S. 324
Physical Touching: The physical touching of the person of the suspect. (Kaupp v. Texas, supra, at p. 630 [155 L.Ed.2nd at p. 820.);

- **Transporting a Detainee:** Dunaway v. New York (1979) 442 U.S. 200, 206-216 [60 L.Ed.2nd 824, 832-838]; Taylor v. Alabama (1982) 457 U.S. 687 [73 L.Ed.2nd 314].)
- **Restraint:** People v Wilboiner 2012 NY Slip Op 22006 Further, to the extent that the defendant here was "in custody" when he was brought before the court on November 22 for arraignment on the new case and as a return on the warrant, his situation would seem to fit comfortably within subsection 3, which applies to a defendant "in custody." "Custody," in a related Penal Law context, is "restraint by a public servant pursuant to an authorized arrest or an order of a court.

Here is page 5 of same 22MAR17 order where Ploetz claims that because Mr. Kochan was not under arrest all his statements can be entered into the record. This is a direct contradiction to his page 8 which stated the Mr. Kochan was under arrest at the scene, which is a complete contradiction in logic. In other words, one is the truth and one is the lie. You decided.

In classical logic, a contradiction **consists of a logical incompatibility between two or more propositions.** It occurs when the propositions, taken together, yield two conclusions which form the logical, usually opposite inversions of each other. Illustrating a general tendency in applied logic, Aristotle's law of noncontradiction states that ***"One cannot say of something that it is and that it is not in the same respect and at the same time."*** The jury now gets to decide whether or not Mr. Kochan was arrested right away or later at the hospital and therefore whether or not his statements should have been admitted into the case.

So according to case law cited above, anyone of these circumstances would be considered an arrest, however according to Ploetz Mr. Kochan was not arrested.

By law Mr. Kochan's condition right at the very beginning was he was under arrest, however his Miranda Rights were not read to him until much later, so everything from the real arrest at the scene to the hospital could not be taken into evidence. Who do you believe?

The issue is that Ploetz, because of his ruling, allowed in videos that were very prejudicial against Mr. Kochan, video evidence thatthe jury now has the power to suppress, non the less they have already reviewed them which has left an impression.

People v. Huntley 15 NY2d 72 is very clear;

(a) We adopt for New York State the so-called Massachusetts procedure described in the *Jackson v. Denno* opinion at pages 378-379 of 378 United States Reports ***"under which the jury passes on voluntariness only after the judge has fully and independently resolved the issue against the accused"*** and has made express findings upon the disputed fact question of voluntariness. **We favor the Massachusetts rule for several reasons, the first being that our State Constitution (art. I, § 2) mandates a jury trial of the issue of voluntariness. Another consideration supporting this choice is that the Massachusetts rule not only meets the demand of *Jackson-Denno* that "a proper determination of voluntariness be made prior to the admission of the confession to the jury which is adjudicating guilt or innocence"** (378 U. S., p. 395) but also provides a defendant with an opportunity before the jury itself to challenge the confession.

So it is now up to the jury to determine if Mr. Kochan statements were made while he was under arrest or not, and if under arrest then everything the Jury heard they have to thrown out statement

wise, but the damage has already been done. This issue alone can be won on the appeal that may follow.