

**Blatant Judicial Bias during a Marsden motion in order to fire my attorney after my murder conviction;**

To give this context, I was informed that if I did not get the issues regarding my trial attorney (counsel's) blatant violations 'on the record' before my sentencing, I would be barred from using them on my direct appeal.

I was unprepared for this motion. On the day I was found guilty of murder, I returned to my housing unit and was told by the deputy on duty that ALL of my property had been stolen out of my cell and thrown out with the garbage. I was told that the inmate responsible was waiting out on the yard for me. The deputy told me to go deal with him. This was a set-up, as I previously had my family file three separate citizens complaints against staff. Each complaint only resulted in retaliation from jail staff which used jailhouse informants and inmate gang members to steal my property while I was out to court, and to harass me. The main informant which jail staff used, and who was the only inmate who took out the trash was not the inmate waiting for me on the yard. It was one of their other gang member informants who was standing right under a camera. I could see the set-up from a mile away. When I approached this inmate he put his hands in his waistband and said "I took your stuff go ahead and take off on me" (beat me up). If I did this, I knew that the SERT (Special Emergency Response Team) was waiting to rush in and bust my head open. They would have said that I just came back from losing my trial and attacked another inmate for no reason. So, I said to the inmate, that I already forgave him, and that I knew he wasn't the one who did this. I could actually see in his eyes, the moment which he realized how wrong he was, in being a part of something so malicious. I am including this, because, when I returned to my cell everything was gone, my canteen, food, hygiene, clothes, personal pictures, my court records, and trial notes which I needed for this Marsden motion. So, I did the best I could. I believe the theft of my property was a coordinated effort by jail staff in cooperation with counsel and the prosecutor to destroy evidence, and put me in a situation where the jail's SERT could have an excuse to make sure my story never got out. This is covered in the 'County Jail' chapter of my book. In the end none of the issues in this hearing made it into my appeal, they too were all suppressed.

On July, 24, 2009 I had a Marsden motion in order to get certain facts regarding counsel's violations or ineffectiveness on the record. There were eighteen separate complaints. I am including this, because of its evidentiary value in proving counsel withheld the five recordings from me before and during the trial. It also shows Judge Kennedy's clear bias. I would normally like to give him the benefit of doubt, however his blatant lies during this hearing prevent me from doing so.

It was clear by Judge Kennedy's responses during this hearing that his one and only concern was to protect counsel, and to uphold his stellar reputation at the time. Judge Kennedy's admiration for counsel and his bias against me caused him to misstate facts and even edify a witnesses testimony. A witness whose testimony absolutely contradicted his statements given during his recorded interview. His statements were vastly different from pretrial to trial, and evidence clearly showed that he gave perjured testimony multiple times on the stand.

**Counsel's statements – that he did not bring the recordings into the jail for me to review:**

Counsel: "He has had all of the discovery or the vast majority of the discovery except for the two CD's, one from ms. Rhoads and one from ms. Mendel (sic)." (there should have been five recordings on these CD's). RT 2940 21-23

Judge Kennedy: "Nine, the audio of the witnesses. I think you mentioned that the two discs of Mr. Mendell and Ms. Rhoads' were the only portions of discovery not provided to Mr. Medina" 2947 24-27

Counsel: "That's – there may be other particular items here and there. The bulk of the discovery was provided to Mr. Medina." 2947 28 - 2948 1-2 (*I also never received counsel's or his investigator's notes*)

Judge Kennedy asked counsel if there is a mechanism for playing DVD's or CD's in jail. Counsel stated that he believed there was. RT 2948 26-28, RT 2949 1-2

*Why was this asked when counsel never brought these in for me to review*

**Counsel's failure to interview juror #8 which was removed from the jury at the start of deliberations:**

Juror #8 asked the court for the equipment to review the un-transcribed 911 calls and witness interviews. He was immediately removed from the jury over his own objection after making this request.

Counsel claimed to try to contact Juror #8 after the trial, however he claims that Juror #8 didn't return calls, didn't seem interested in communicating with us. RT 2941, 22-26 (*This is inconsistent with the Juror's adamant objection to being removed from the Jury*).

**Judge Kennedy's Bias:**

Judge Kennedy summed up all 18 of my complaints with this answer; "I do find based on the comments of Mr. Manoukian today I think it's clear that he is one of the most experienced and

competent criminal defense lawyers that appear in this court and work in this county. He clearly has more experience trying criminal cases, in particular, and murder cases, murder cases in particular than the vast majority of attorneys who appear on both sides of the aisle, and his competence in my view very clearly demonstrated in his representation in this trial. So I do find that his representation of you, Mr. Medina, has been extremely competent, very well-qualified and, frankly, I am amazed at some of the milage he got out of some very difficult evidence against you.” 2954 11-26

“He was prepared for the witnesses, effectively cross examined them and presented witnesses on your behalf, Mr. Medina, that were, I think, as long as one could ask for, they were well-prepared, well-presented and as effective as evidence permitted.” RT 2955 15-20

Judge Kennedy’s comment “...as effective as evidence permitted.” is true, as counsel, and I believe Judge Kennedy himself helped the Prosecutor permanently conceal exculpatory and impeachment evidence which would have stopped this case from making it to trial.

*I am not claiming that counsel was incompetent or inexperienced. I am stating that he used his experience as an ex-prosecutor and mentor of Steven Moawad, to help Mr. Moawad win his first murder trial, and to protect the Walnut Creek police by covering up their misconduct. I have an overwhelming amount of evidence to prove this.*

Judge Kennedy, using Mendell as an example of an uncoached witness is beyond unreasonable, as you will see the evidence that Judge Kennedy ignored is overwhelming:

Judge Kennedy; ...the failure to object to allegedly coached witnesses, witnesses who were convinced to change their statements. Again, I don’t see any evidence of coached witnesses in this case or change in the testimony. For example Mr. Mendell testified all the way through cross-examination almost verbatim consistent with his initial statements identifying you with some uncertainty as the person who had taken a shot at him in the backyard. So I don’t see any evidence that Mr Mendell was coached. RT 2962 28, 2963 3-11

Mendell was adamant that I was not who he saw that day. During his recorded interview he told Detectives Reese and Jower that he did not think it was me. After his interview Detective Reese introduced Mendell to Lead Detective Brian McColgin. The first thing Mendell told McColgin was that he did not believe it was me. Then McColgin lied to him, and said, Rhoads positively I.D'd me, and then he told Mendell it was me. This was picked up on audio after Mendell's interview and before he was shown the six-pack photo lineup.

*When the Judge and Prosecutor found out about the Lead Detective lying to a witness which is witness tampering. Did they report this crime as it was their sworn duty to do so? No, in fact*

*the prosecutor made excuses for the detective, and told the jury that it was just an honest mistake.*

*So even when a miracle happens and the police are caught on tape committing a felony, it is just another harmless mistake. I already know McColgin planted a phone that had no service in the jacket he found in my bedroom. At the time he had no way of knowing that the phone he found was a phone I was no longer using.*

The six-pack photo lineup had the same drivers license photo of me that Mendell and Longfellow had been shown at the scene on a police car computer, with my name and info next to it. Where Mendell was heard mentioning my name and the law-suit, by Longfellow, while veiwing the picture at the scene. He knew this was a picture of me. And even after this, he was still adamant that it was not me who was there that day.

This picture of me shown to Mendell and Longfellow together at the scene was a blatant eye witness procedural violation. However, if the prosecution could get Mendell to state that he didn't know any of the pictures were of me, and it didn't change his certainty of it being me, then they could minimize the violation to the jury. Not that the jury even knew this was a violation.

While looking at picture in black and white police car Longfellow specifically remembers Mendell mentioning Nathan Medina and lawsuit at scene. RT 1200

Mendell's description of the assailant was that he had a shriveled up face like a method addict, since I never matched that description, he was coerced into saying that a shriveled up face like a meth addict means a really small chin. When McColgin brought me into the county jail, he spoke to the deputy right before the deputy took my booking photo. That deputy then told me to face my head down towards the ground and to look up at the camera or he was going to drop me. He then took the picture. This made my chin look smaller, as it was farther away from the camera, and at an odd angle. It also gave me a menacing look. You can clearly see this, as my eyes are pointed up, and you can see more of the whites of my eyes on the bottom half.

*There was literally no part of this case that wasn't tainted by the Lead Detective Brian McColgin.*

In the police reports and during trial it was claimed that when Mendell looked at the photo of me on the police car computer that he said "that looks like the guy"; *however, why is it, that after viewing that photo of me, he is adamant that it was not me? Why did two detectives have to coax him into picking my picture, the same picture he had been shown at the scene out of the lineup?*

Even after this blatant witness tampering, Mendell still did not want to pick me out of the lineup. During his reluctance, he was told by the detective to; "Just pick whichever looks most like,

whichever one seems the most familiar". *This was a not so subtle way of saying pick the picture of Nathan that we have now shown you twice.*

During trial Mendell claimed that he never knew any of the pictures were of me, they just looked like who was there that day. He also testified that he was 100% positive that no detective talked to him after his interview, until later when he found out there was a recording of the conversation. Even then he claimed to not remember what the conversation was about.

During Mendell's recorded interview he stated that he immediately dropped to his knees when the gunman approached him. This was a problem for the prosecution, as the bullet trajectory showed that the gun was fired in an upward trajectory and away from Mendell. For the prosecution to get a conviction of attempted murder on Mendell, they had to get him to testify that he did not drop to his knees, that he was, kind of hunched over, so the bullet trajectory would no longer be a problem. During trial just like he was 100% sure no one talked to him after his interview and that he didn't know any of the pictures he was shown were of me, he didn't drop to his knees.

The day after the shooting, Mendell and his girlfriend, Longfellow, were shown a 3XL black leather trench coat taken from my home, and the black Sketcher shoes, I wore when I turned myself in. Neither of these two items matched Mendell's description of the clothing worn by the assailant during his recorded interview. However, during trial he said that they both matched what he saw that day. He even said he remembered the Sketchers logo on the shoes. During his interview he never mentioned Sketchers.

4:00 – 4:10pm Mendell stepped out of the interview room. Just outside the door, within camera audio range, he was introduced to Detective Brian McColgin by Tracie Reese who just finished interviewing him. Mendell had told Detective Reese during the interview that he did not think it was Nathan Medina. RT 1412, 1582, 1583, 1694

McColgin did not know the interview room recorder was picking up their conversation. Tracie Reese is heard introducing Mendell to McColgin. This gave her first hand knowledge of McColgin's manipulation of this eye witness. A witness who she swore on an affidavit, in order to get the search and arrest warrant, that that witness positively ID'd me.

Mendell tried to tell McColgin that it wasn't me, however McColgin lied to Mendell and said that Ms. Roads positively identified me. Then Mendell said "She said it was Nathan for sure?" McColgin "Yes she did. He wasn't wearing a mask it was just a hat, a hat. A beanie rolled rolled up". And then McColgin said "Hey man its him, it was him, she positively ID'd him.

Then according to Mendell, McColgin took him to pick my picture (The same picture that he and Longfellow were shown at the scene with my info next to the photo) out of the 6 picture line

up. My picture was in the middle, on the top, and had a different look than the other five pictures. Even at this point Mendell was still reluctant. He was told by the Detective “Just pick whichever looks most like, whichever one seems the most familiar”.

It is claimed that he then stated “I think it was #2 that tried to kill me”. Both Mendell and Longfellow made comments about my picture in the lineup being the same one they were shown at the scene. (McColgin denied the conversation happened in the hallway, all the way till he found out there was a recording of it).

### **Preliminary hearing - Regarding McColgin hallway conversation– Mendell**

No one talked to me prior to the lineup 100% positive CT P 107

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Trial – McColgin hallway conversation - Mendell

Denying McColgin conversation in hallway RT 1342

Does not remember hallway conversation RT 1410 L 22

100% Positive no hallway conversation RT 1411-1414

### **After Mendell found out there was a recording of the hallway conversation**

“If you are referring to the one who showed me the lineup, I had some sort of conversation with him in the hallway before seeing the lineup. I think it was Detective McColgin. Don’t recall what the conversation was about”. RT 1435-1436

During Mendell’s recorded interview he stated that the jacket worn by the assailant was just below the waist and seemed to fit. Detective Jower filed his police report after he had shown the 3XL jacket taken from my home to Mendell and Longfellow. He then changed Mendell's and Longfellow’s statements in his police report, to match what he showed them, the day after their original interviews. PR(32) In the police report “Mendell immediately pointed to #2 and said, I think it was #2 that tried to kill me.”PR (35) According to Mendell when he didn’t want to pick my picture, he was told to “Just pick whichever looks most like, whichever one seems most familiar”.

This amounts to witness tampering, as it was my picture that he was shown twice, and which he knew was of the person Detective McColgin told him was the assailant.

*You have just read about the witness Judge Kennedy used as an example of a non coached witness.*

Since all the recorded interviews, and 911 calls were kept from the Jury and myself; Mendell, Longfellow, and Rhoads, were all able to say whatever the Prosecutor and Police coached them to say. They all claimed to recognize who they said was me, by my nose, chin, and mouth, that the assailant was wearing sunglasses, a black trench coat and a beanie. Rhoads testified that she told the detective these things during her interview. It wasn't till 2014, that I received four of the five recordings. Only two of them were usable; Rhoads and Mendell's interviews, which proved that both their testimonies were lies. In Rhoads interview she could not see who the assailant was, she claimed that she just knew it was me. This was the second time that I know of, in which she called the Walnut Creek police, claiming I committed a crime that she did not see who committed it.

*Judge Kennedy's claim of no witness coaching was a flat out lie.*

### **Prosecution Expert Witnesses:**

A GSR expert testified that GSR can fall off your hands in 4-6 hours. RT 2936 1-3

There was a blood splatter expert that testified to a physical impossibility. The assailant broke a door in half, reached over the bottom half of the door, and shot Joshua who was already lying on floor. The blood splatter sprayed a couple feet up the bottom half of the door, leaving a five inch wide vacant gap going up the door where the assailants arm was. The blood splatter expert testified that the blood would have went around the jacket.

Regarding the Jacket which was taken from my home not being tested for pepper spray.

Rhoads, testified that the assailant grabbed her from behind in a bear-hug, while at the same time pepper-spraying her. Therefore the assailant would have had pepper-spray all over himself and all of his clothing.

*The Prosecutor claimed that my Jacket was never tested for pepper spray, and then made the claim that it wasn't the states responsibility to do so, that absence of evidence is not evidence of absence. I pleaded with counsel to have it tested, however counsel claimed he could not get custody of it.*

Judge Kennedy; And again the lack of blood on the jacket or pepper spray was used very effectively by Mr. Manoukian throughout the trial RT 2964 24-27

*Counsel presented no evidence that there was no pepper spray on the jacket.*

I was charged for the attempted murder of Mendell when the evidence (bullet trajectory) was fired away from him. The prosecution hired an expert to explain away the evidence in order to get a conviction for something that did not happen.

Judge Kennedy and counsel both claimed that no expert witnesses would have come in and given testimony that would have contradicted the prosecutions expert witnesses testimony.

Regarding counsel not entering into evidence pictures of my garage side door showing scrape marks where an intruder broke into my home.

Judge Kennedy; Secondly, the pictures of the burglary of your home, I don't believe the fact that your home was burglarized was in dispute. I don't think Mr. Moawad in contending that the burglary did in fact happen, but that there was any dispute about whether or not it happened. So an additional photograph that may have supported your testimony about the burglary should not have assisted because it's not matter that anybody was contending had not happened. RT 2957 5-13

*This was also a blatant lie as the Prosecutor tried to make the argument that no one broke into my home and even used photos that were taken from an odd angle, which made it appear as if my garage side door was blocked. This was the door that the intruder entered my house through.*

Juror #8 Judge Kennedy; ..."it was Juror number 8 who was excused as in relation to his job. RT 2960 16-17

*This was also a blatant lie, as Juror #8, did not want to be excused from the Jury, he had a relative who was hospitalized, which he needed to see on a Friday afternoon, and was going to visit over the weekend. This had nothing to do with his job and he said that he would be back by Monday and on time.*

Judge Kennedy attributed many of my 18 complaints to counsels wise use of tactical decisions. In every area where counsel and I disagreed, I was basically accused of lying, in the most tactful manor that either the Judge or counsel could state.

*Did Judge Kennedy consider counsel suppressing exculpatory and impeachment evidence from his client and the Jury a good tactical decision?*

**Regarding counsel not providing discovery;**



Judge Kennedy; Number 11, you say you don't still have proof of discovery. I can't really do anything with that, since there is no detail provided, but, again, I believe that you did have the discovery and did go over it thoroughly with Mr. Manoukian. RT 2961 28, RT 2962 1-4

*This statement by Kennedy was also false, as I specifically mentioned the interviews.*

During trial counsels investigator found out that the phone records for my phone that the prosecutor was using had been altered and tripled, and the prosecutor said he accidentally erased my call logs. I had attempted to make a call after I had finished a job that morning; however, the call never connected and my battery died. The prosecution had the person I tried to call, testify that she and I had a 23 second conversation, where she claimed that I told her that I was calling from home. This made it look to the Jury, that I had lied about where I was, which hurt my credibility. I had asks counsel to get her phone records to prove that she had not received a call from me. That there was no connection.

Judge Kennedy falsely stated that her records would be a mirror image of my own. *Which was a blatant lie as there was no connection.*

The prosecutor badgered me on the stand saying that if I didn't know who else committed this crime then it had to be me. This was repeated nine times and during closing the prosecutor referred to me as a psychopath. Judge Kennedy made excuses of why it was not misconduct for the prosecutor to do this.

Judge Kennedy; ... I don't see anything that Mr. Moawad did that was inappropriate coaching or any other prosecutorial misconduct in this case. RT 2963 17-19

*There are too many examples of this that are covered in my other writing's. It is overwhelming and shows how Judge Kennedy was either incompetent or corrupt, and I don't believe he was incompetent.*