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How To Get Away With Career Murder: The Unconstitutional Blueprint for Systematically Purging Whistleblowers from U.S. Law Enforcement

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How To Get Away With Career Murder: *The Unconstitutional Blueprint for Systematically Purging Whistleblowers from U.S. Law Enforcement*

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Abstract

Obviously U.S. state or federal prosecutors can be among the conspirators subjecting any given law enforcement whistleblower to retaliatory criminal prosecution. In most instances such misdeeds are only under the color of law, i.e., they are the handy work of rogue government agents and do not constitute sovereign acts. However, according to the authors, an official or sovereign choice to “prefer” these oppressors is made each time a U.S. government agency opts not to thoroughly investigate their alleged whistleblower retaliation. The authors submit that all related convictions are accordingly void. In addition to the “sworn public officer discrimination” they contend these convictions reflect, the authors propose that the corresponding role of after-the-fact accomplice to retaliatory selective prosecution offends due process provisions and extends beyond any government function cognizable under the U.S. Constitution.

I. Get ‘Em Going And Coming: Failures to Disclose Compounded by Deliberate Cover-ups or Declined Investigation Requests Equal Insurmountable Burdens of Proof

Government Corruption and the Right of Access to Courts is a 2004 Note that conveniently explains how “(b)ackward-looking access claims . . . differ from traditional denial of access-to-courts claims”.¹ The “aim is not to remove impediments to bringing causes of action in the future”.²

⁺ Attorney Zena Crenshaw-Logal*, Dr. Andrew D. Jackson, and Dr. Sandra Nunn are co-administrators of Golden Badge (GB), a nonprofit support group for law enforcement whistleblowers, accessible at <http://goldenbadge.tumblr.com/>. GB is one of several grassroots initiatives under the corporate umbrella of National Judicial Conduct and Disability Law Project, Inc. (NJCDLP), a nonprofit legal reform organization. Both attorney Crenshaw-Logal and Dr. Jackson are NJCDLP founding board members. Crenshaw-Logal is the group’s Executive Director and Jackson is its Deputy Director. Dr. Nunn, a former federal agent and national security whistleblower, is a NJCDLP board member and the group’s CFO. Nunn is also an ethics expert and National Security Specialist. Crenshaw-Logal, Jackson, and Nunn write extensively on related topics such as free speech, human rights, business ethics, government accountability, etc. Publications by Crenshaw-Logal and Nunn appear online and in print through Universal Publishers, the *American Journal of Trial Advocacy*, Wiley Publishers, Springer Publishers, and *slc Magazine*, a publication of the Southern Christian Leadership Conference.

*Bar admissions limited to the Seventh Circuit Court of Appeals.

...

Rather, backward-looking access claims allege that a suit that could have been filed in the past was not brought or was not litigated effectively, because access to the courts was at that time denied or obstructed by government officials. These cases look 'backward to a time when specific litigation ended poorly, or could not have commenced, or could have produced a remedy [now] unobtainable'.³

...

Kim's "Note seeks to answer the following question: If the government intentionally lied to you sometime in the past and either prevented you from filing a claim or from litigating a claim effectively, can you obtain relief in the present for a denial of access to courts?"⁴ The article at hand addresses any manner in which "past government action impeded or thwarted a claim or potential claim", whether a product of good faith or bad faith, some degree of negligence or malice.⁵

Kim explains, "(t)he theory behind backward-looking cases is that (a government) coverup, by preventing disclosure of evidence critical to a suit, denies or interferes with the plaintiff's right of access to the courts by preventing or undermining litigation of the claim."⁶ This article focuses less than Kim's Note on whether a "coverup" is sinister or primarily inspired by legitimate considerations such as budget constraints. Our question is: If for whatever reason the government prevents disclosure of evidence critical to a suit, can the otherwise disenfranchised claimant obtain relief in the present for a denial of access to courts?

A good place for this analysis to start is by conceding that "in the face of an ever-increasing number of lawsuits claiming constitutionally protected injuries, courts, particularly the Supreme Court, have all but taken the position that new constitutional tort claims should be presumptively denied."⁷ Of course, as Kim emphasizes, "although the idea of permitting recovery for harm inflicted in the past is new as applied to the doctrine of access to courts, the idea itself is not novel either in common law tort or constitutional tort."⁸ She goes on to endorse a sentiment exalted by this article, that being "(w)hether a plaintiff is impaired in her ability to bring a claim (because, for example,) a city refuses to waive filing fees or because city officials knowingly provide her with false information, the . . . claimant, through state-created impediments, has been deprived of her right to receive a fair opportunity to be heard in court."⁹ But Kim retreats to a "clean hands" criteria, *i.e.*, "when government officials take affirmative steps (to, for example,) thwart a potential wrongful death claim by passing it off as a suicide, or destroy evidence necessary to prove a cause of

action, there is a particularly compelling argument for providing relief”, but not otherwise.¹⁰

According to Kim, government’s “special ability to monopolize information and impede information dissemination, also carries with it a special susceptibility for abuse, which affords government officials the opportunity to effect their conspiracies.”¹¹ True — but a good faith denial holds little if any more solace than a bad faith denial for most people whose lives, liberty, and/or liberty interests hinge(s) on access to information accordingly denied. That fact is quite clear through, among other things, a 2011 Note titled *Testing Justice: Prospects for Constitutional Claims By Victims Whose Rape Kits Remain Untested*.¹² While grappling less with prospects of government corruption than does Kim’s referenced Note, Hansen’s interjects a specter of inappropriate, institutionalized, gender-based discrimination: “While some recent studies point to legal reforms and changing official attitudes as evidence that the performance of the criminal justice system has improved with respect to rape cases, the systematic under-investigation of sexual assault, as evidenced by the large number of untested rape kits, suggests that the U.S. criminal justice system still routinely discriminates against rape complainants.”¹³

Unlawful discrimination, malice, and similar considerations aside, Hansen expounds on a rather universally troubling reality (at least as of 2011) that “despite DNA’s potential probative value and reliability, thousands of collected DNA samples sit untested on the shelves of police storage facilities or in evidence lockers at criminal laboratories.”¹⁴ Our attention is accordingly shifted from apparent cover-ups to widespread government failures to investigate. Contending that “a great deal of literature exists on the rights of postconviction assailants to access DNA evidence untested at trial” and that “scant legal literature addresses this right of access for victims”, Hansen “seeks to address potential remedies for victims whose rape kits remain untested.”¹⁵

If a merger of the Kim and Hansen Notes could be titled “Two Basic Ways That U.S. Law Enforcement Agencies Create Proof Problems”, an interim Note by Joseph M. Kelleher would warrant this subtitle: “And How U.S. Courts Make Matters Worse”. In 2008, Kelleher quipped as a student at Temple University Beasley School of Law: “In 2006, without paying any particular attention to the speech-related repercussions, the Supreme Court held that when alleging retaliatory prosecution, plaintiffs must prove the absence of probable cause as a heightened evidentiary substitute for ordinary proof of causation.”¹⁶ Section B. 3. of Kelleher’s referenced Note is titled “Complicit Prosecutors: Excusing Plaintiffs from Showing No Probable Cause upon Proof of Cooperation in the Speech Punishing Scheme”.¹⁷ This section makes the excellent point that “in speech retaliation claims, the plaintiff should not be required to prove no probable cause provided he offers evidence of prosecutorial

complicity in the speech penalizing scheme.”¹⁸ Implicated by this proposal are not only Kelleher’s First Amendment concerns, but also Kim’s trepidations about government’s “ability to monopolize information and impede information dissemination” and Hansen’s unease with persistent government failures to investigate serious crimes.

II. U.S. Government Covers Up Fairly Obvious Speech Penalizing Schemes by Failing to Investigate Conspicuous Participants and Confirm Their Scope of Involvement

In the absence of a reasonably thorough government investigation of the matter, exposing a “speech penalizing scheme” perpetrated by one or more U.S. state and/or federal government officials is virtually impossible for average Americans, especially when the offense is geared to and precipitates a wrongful conviction of its target. Obviously trials, appeals, and other post-conviction procedures fail to exonerate “a substantial number” of innocent criminal defendants in America.¹⁹ Yet claims for abuse of process, malicious prosecution, and the like are substantially curtailed (as well as their court-supervised opportunities for private litigants to gather evidence a/k/a civil discovery) if targets of these torts are convicted despite their innocence of related crimes. The faulty convictions are near invincible proof of corresponding probable cause to prosecute, even when the entire process was deliberately premised on false accusations.

“Implicit in (the conclusion that prosecutors do have some duty to serve justice) is a recognition that the criminal investigative and trial (as well as appellate/post-conviction) processes are fallible and that prosecutors therefore have some functions, beyond simply presenting the prosecutions’ case, that compensate for the fallibility of the process.”²⁰ Kelleher’s Note provides some helpful insights on this role of U.S. prosecutors as “first responders” to threatened miscarriages of justice through its recap of *Hartman v. Moore* as of April 26, 2006²¹:

Contrary to ordinary retaliation claims, argued the (U.S. Supreme) Court, a retaliatory prosecution claim requires a more complex showing of causation because such claims cannot be asserted against the most immediate source of a plaintiff’s injury. This is because the prosecutor who actually brings the charges enjoys absolute immunity for actions taken in his prosecutorial posture. Therefore, retaliatory prosecution claims must be asserted against a nonprosecutorial official, such as an inspector or police officer, who improperly induced the charges to be filed but did not personally bring them. Thus, unlike ordinary retaliation claims where it is natural to assume that a defendant’s own unconstitutional intentions motivated his injurious actions, the complex chain of causation inherent in retaliatory prosecution claims

leaves courts with the difficult task of ‘divining the inspector’s influence’ upon the prosecutor.

The difficulty of proving causation, noted the Court, is further obscured by the longstanding ‘legal obstacle’ of the presumption of prosecutorial decision-making regularity (the ‘Presumption’). If unrebutted, the Presumption assumes that a prosecutor has exercised sound discretion in deciding which cases to prosecute and which to forgo. Searching for a way to simultaneously bridge the perceived causation gap and to address the Presumption, the Court determined that requiring plaintiffs to meet the heightened evidentiary causation standard of proving no probable cause simply made the most ‘sense.’ The Court argued that, although requiring the plaintiff to prove causation with evidence of no probable cause does not guarantee that the inspectors’ inducements caused the prosecution, such a showing is sufficient to rebut the Presumption. Finally, the Court grounded its choice in practicality by noting that a ‘distinct body of highly valuable circumstantial evidence’ in the form of probable cause exists in virtually all retaliatory prosecution cases and is both highly probative of causation and ‘incrementally cost-free’ to both parties.

By requiring proof of no probable cause, the Court explicitly declined to ‘address the distinct causation concern at a merely general level [by] leaving [it] to such pleading and proof as the circumstances allow.’ Although a prosecutor’s admission of a retaliatory motive would be of ‘great significance in addressing the Presumption and closing the gap,’ the Court argued that ‘these examples are likely to be rare and consequently poor guides in structuring a cause of action.’ The Court also rejected the option of structuring a cause of action that, in the alternative, ‘dispenses with a requirement to show no probable cause when a plaintiff has evidence of a direct admission by a prosecutor . . . that [his] sole purpose in initiating criminal [charges] was to acquiesce’ to another government agent’s retaliatory inducements. Again the Court emphasized that these circumstances would be rare and reasoned that ‘this would [be] like proposing that retirement plans include the possibility of winning the lottery’.²²

Undoubtedly U.S. whistleblowers take less comfort than the Nation’s High Court in the rarity of prosecutors intentionally facilitating retaliatory prosecutions.

As a former federal agent and national security whistleblower, co-writer of this article Dr. Sandra Nunn considers *Hartman* a deterrent to potential whistleblowers and the disclosures they are inclined to make. Nunn attests from personal and professional experience that the primary motivation of whistleblowers typically is to protect the public from harm. “If prosecutors can engage in retaliatory criminal prosecutions with virtual impunity, the public service otherwise provided by law enforcement whistleblowers is in jeopardy.” Nunn added, “(t)his opinion indirectly could discourage potential whistleblowers from making disclosures out of fear of retaliatory prosecution.”

By letter of February 10, 2014, a coalition of grassroots legal reform advocates asked the American Bar Association (ABA) to “consider proposing a model rule of professional conduct by which the specific responsibilities of prosecutors include an obligation to reasonably determine when an arguable need to deter alleged criminal activity through conviction and corresponding punishment is outweighed by a patent state and/or federal government interest in encouraging good faith attempts to disclose serious public and/or private sector misconduct, as well as in reasonable whistleblower/political participation/witness protection.” As the letter notes:

... most ethics codes address prosecutors’ screening function solely through provisions forbidding prosecution on less than probable cause. These provisions fail to implement the intuition (accepted by many prosecutors) that it is unreasonable for a prosecutor to pursue a case when he has significant doubts about the defendant’s guilt, even though a conviction might be obtained. Likewise, the codes seem to allow prosecutors to offer questionable evidence unless they ‘know’ it to be false, even though exploiting unreliable evidence may lead to an unjust conviction.

Zacharias, Fred C. and Green, Bruce A., “The Duty To Avoid Wrongful Convictions: A Thought Experiment In The Regulation Of Prosecutors”, 89 *B.U.L. Rev.* 1 at 22 (2009). (internal footnotes omitted).

In beseeching the ABA to act, the coalition borrowed language from Kelleher to emphasize that “the people’s right to freely criticize their own government without the fear of reprisal stands out as a value more seminal to American identity than ensuring that every possible prosecution that could be brought, is in fact brought.”²³ In any event, reprisal for First Amendment activities is not an appropriate U.S. government function.²⁴ Tell that to any American subjected to an apparent “speech penalizing scheme” spearheaded by U.S. state and/or federal government officials and facilitated by one or more prosecutors who

performed their “screening function” poorly enough in response to the matter that it presents a reasonable prospect of selective prosecution which no lawyer disciplinary and/or criminal law enforcement agency will thoroughly investigate, regardless of the public policy implications.

III. The Special Potency of Post-Conviction, Backward-looking Access Claims for Law Enforcement Whistleblowers Subjected to Retaliatory, Selective Prosecutions

There is a niche in the spectrum of whistleblower retaliation through criminal prosecution in which, ostensibly, the whistleblowing or “truth telling” is not the targeted activity. Included are (1). criminal prosecutions purportedly unrelated to First Amendment activities that are retaliatory as a matter of fact if not law; (2). prosecutions of “noble crimes”,²⁵ *i.e.* garden variety crimes – such as property conversion – that facilitate disclosures of serious public and/or private sector misconduct; and (3). heightened scrutiny pursuant to which whistleblowers are criminally prosecuted when others similarly situated would not be and/or are punished relatively harshly.²⁶ Seeming instances of these prosecutions probably strain the “Presumption” of a prosecutor’s propriety more than any other questionable circumstances.

In 2014, a coalition of grassroots good government advocates explained as follows to the Board Of Professional Responsibility Of The Supreme Court Of Tennessee:

...

While Tennessee prosecutors are obliged ‘to be impartial in the sense that charging decisions should be based upon the evidence, without discrimination or bias for or against any groups or individuals’, *State v. Culbreath*, 30 S.W.3d 309 at 314 (Tenn. 2000), ‘. . . the basic principles underlying (Tennessee’s Rules of Professional Conduct) . . . include (a prosecutor’s) obligation zealously to protect and pursue (the state’s) legitimate interests’. *See, Tenn. Sup. Ct. R. 8, RPC, Preamble (10)*. Among them is Tennessee’s documented or otherwise apparent interest in avoiding (a). the termination of a trained, experienced deputy sheriff based on improbable allegations of criminal activity against him, riddled with factual inconsistencies and uncorroborated if not directly contradicted by forensic as well as other objective evidence; (b). the suggestion that for years the Sevier County, Tennessee Sheriff’s Department employed and armed a deputy sheriff prone to unprovoked violence and inclined to feign personal injury for profit, which tendencies apparently went undocumented until purportedly confirmed by the officer’s unprovoked, aggravated assault

against his neighbor and corresponding lawsuit for injuries supposedly feigned with help from his fiancé, now wife; (c). and the derision of state whistleblower/political participant/witness protection laws as well as the First Amendment of our U.S. Constitution. *Cf, Tenn. Sup. Ct. R. 8, RPC PREAMBLE* (10) - **[Zealously Protect and Pursue Client's Legitimate Interests]**.

Essentially asserted through the fifteen (15) page disciplinary complaint with more than fifty (50) pages of exhibits²⁷ was that the District Attorney General and his two Assistant District Attorneys were obliged and failed to reasonably determine when an arguable need to deter alleged criminal activity through conviction and corresponding punishment is outweighed by a patent state and/or federal government interest in encouraging good faith attempts to disclose serious public and/or private sector misconduct, as well as in reasonable whistleblower/political participation/witness protection. Veteran attorney Beverly P. Sharpe, Director of the Consumer Assistance Program (CAP) of Tennessee's Board of Professional Responsibility (TBPR), in effect agreed that the alleged failure "to reasonably determine" constituted a serious violation of lawyer disciplinary rules.²⁸ But Sandy Garrett, TBPR's Chief Disciplinary Counsel, almost simultaneously concluded that the agency's "inquiry ha(d) not revealed sufficient evidence to proceed against (the respondent) prosecutors for violations of the Rules of Professional Conduct. Her corresponding notice of file closures neither specified the scope of that inquiry nor why the underlying complaint with supporting exhibits were insufficient."²⁹

Galvanized by attorney Sharpe's response, the complainants sought a federal criminal investigation of the Tennessee state prosecutor and his assistants in question. The coalition was described by its July 14, 2014 letter as "good government advocates working to help ensure that America's criminal justice system is not a handy tool for retaliating against law abiding government critics and well-meaning whistleblowers." They proposed to the U.S. Department of Justice, Civil Rights Division, Criminal Section (DOJ) that their evidence shared with the TBPR "presents enough markers of an untoward scheme — a criminal violation of federal rights — to warrant (the DOJ's) thorough exploration of that prospect."³⁰ After conceding that it "prosecutes criminal cases involving: Civil rights violations by persons acting under color of law", the DOJ inexplicably noted that it "cannot help . . . recover damages or seek any other personal relief", and interestingly asserted that it "cannot assist . . . in ongoing criminal cases, including wrongful convictions, appeals, or sentencing."³¹

In light of indicated events,³² Tennessee became Ground Zero for establishing the vulnerability of U.S. whistleblowers to retaliatory criminal prosecution as a matter of fact if not law. These considerations are listed in a corresponding reform campaign "Fact Sheet":

- 1). It seems that Tennessee state prosecutors are the final arbiters of when a need to deter alleged criminal activity through conviction and corresponding punishment is or is not outweighed by a patent state and/or federal government interest in encouraging good faith attempts to disclose serious public and/or private sector misconduct, as well as in reasonable whistleblower/political participation/witness protection;
- 2). Apparently that discretion cannot be abused as a matter of law unless its exercise involves one or more independent acts deemed professional misconduct by the TBPR such as when it is established that a prosecutor was bribed;
- 3). Improper conduct associated with an exercise of that discretion tends to be covert and thereby impossible to prove through anything other than comprehensive government investigation;
- 4). Establishing an appearance of impropriety with regard to a prosecutor's exercise of that discretion . . . will not trigger a comprehensive investigation of relevant circumstances by the TBPR and does not guarantee that any other government agency will investigate the matter;
- 5). While through various legislation the State of Tennessee encourages good faith disclosures of public and/or private sector misconduct, its prosecutors have virtually *carte blanche* authority to retaliate for those disclosures through specious criminal prosecutions given the limited ability of average Americans to trigger a comprehensive government investigation of relevant circumstances, even if they clearly involve questionable conduct;
- 6). Through its regulation of prosecutors, the TBPR has apparently opted to undermine the state's interest in good faith disclosures of serious public and/or private sector misconduct as well as in reasonable whistleblower, political participation, and witness protection.

As troubling as many people may consider this situation, it is more ominous in regard to law enforcement whistleblowers.

a. Law Enforcement Whistleblowers: The Blue Lives That Apparently Matter Less

Golden Badge (GB) is described as “an international union of current and former criminal law enforcement as well as correctional officers and public officials who were wrongfully disciplined, terminated, sued, or even prosecuted in apparent retaliation for their respective attempt(s) to fairly and impartially enforce law and regulations in accord with their professional obligations.” GB formally launched in early 2014, months after the now

notorious George Zimmerman was acquitted for the Florida shooting death of an African-American teen named Trayvon Martin. By the end of 2014, the U.S.A. had erupted with unprecedented public outrage over what seemed to be escalating police brutality and police militarization. Much of the focus was and remains on instances of unarmed African-American males being killed under questionable circumstances by U.S. police officers. Various related surveys, analyses, and studies received media coverage suggesting that U.S. law enforcement officers are rarely accountable for using excessive force as part of their work and/or personal lives.³³ Ironically, those of them fairly considered whistleblowers have been known to get “served-up” on a proverbial silver platter for highly questionable allegations of excessive force, brutality, domestic violence, assault, and/or battery.

“Most of the time, prosecutors don’t press charges against police — even if there are strong suspicions that an officer has committed a crime.” An April 11, 2015 Washington Post article shared that conclusion from a 2015 study by the Washington Post and Bowling Green State University of relevant conduct since 2005.³⁴ The article makes clear that when a law enforcement officer is prosecuted, juries generally resist buying into “a story where the officer is the bad guy”. Another interesting point of the article is that prosecuting and/or convicting a law enforcement officers can prompt “strained relations with the very police department that prosecutors rely on daily to help build other criminal cases.” Dr. Nunn concurs:

There is a close-knit relationship between law enforcement professionals and the legal professionals in the court system. When officers make arrests of suspects, they work closely with prosecutors and the courts to facilitate successful prosecutions of perpetrators. If a unilateral or mutual lack of trust occurs, this could seriously impact the ability of the law enforcement community to successfully work with prosecutors to bring serious criminal matters to successful prosecution and conviction.

These considerations provide an interesting if not troubling backdrop for the legal difficulties of GB members Mark P. Lipton of Tennessee and Maurice Morris of Ohio.

b. Case Studies: The Criminal Prosecutions of Former Deputy Sheriffs Mark P. Lipton and Maurice Morris

Both Mark P. Lipton of Tennessee and Maurice Morris of Ohio were Deputy Sheriffs until criminally prosecuted under circumstances that this article will substantially detail. Questions to ponder while considering those details are (1). do they suggest that Lipton and/or Morris were subjected to whistleblower retaliation by government officials enough to warrant a reasonably thorough government investigation of the matter?; and (2). do they challenge the presumption of propriety with which their respective prosecutors are

cloaked enough to warrant a reasonably thorough government investigation of whether Lipton and/or Morris were subjected to retaliatory selective prosecution?

It appears that Knoxville, Tennessee attorney David Wigler arranged for his then client, former Sevier County and Hamblen County, Tennessee Deputy Sheriff Mark P. Lipton, to undergo a polygraph examination on or about March 19, 2010.³⁵ The corresponding polygraph report reflects that . . .

(d)uring the pre-test interview, Mr. Lipton advised approximately 2 years ago he was employed as a Deputy Sheriff for the Sevier County Sheriffs (*sic*) Office in Sevierville, Tennessee. He stated the Sheriff of Sevier County was and continues to be Ronald L. Seals. Mr. Lipton indicated he was forced by Sevier County Sheriff Ronald L. Seals to surrender an individual he had arrested for driving under the influence of alcohol to Sevier County Sheriffs (*sic*) Office Supervisor Wayne Patterson against his will and was told by Supervisor Patterson if he did not surrender this individual, he and the Supervisor would lose their jobs. Mr. Lipton further advised he was required to turn over corresponding paperwork to the Sheriff the following day and he understood the arrest was taken out of the computer system so that it would appear the arrest never occurred.

. . .

According to Mr. Lipton, several months to a year or so before he described with “No Deception Indicated” the referenced DUI arrest, he reported it to the Tennessee Bureau of Investigation (TBI). At the time Lipton had voluntarily left the Sevier County and went to the Hamblen County, Tennessee Sheriff’s Department, and had been a criminal law enforcer for approximately seven (7) years. June 17th, 2009 print media reports indicate that “(t)he TBI received a request from (Tennessee) District Attorney General Jimmy Dunn to investigate allegations that Sheriff Ron ‘Hoss’ Seals possibly interfered with a DUI arrest made by a deputy within his apartment (*sic*), according to TBI spokesperson Kristin Helm.”³⁶ Dunn’s investigation request was reportedly made on June 11, 2009.³⁷

So Mr. Lipton was a law enforcement officer, but no longer Sheriff Seals’ deputy when he accused Seals of orchestrating a DUI arrest cover-up. GB administrators flagged the 2015 news stories of a Massachusetts “. . . Police Department (that) admitted to favoring job applicants who promised they would never arrest fellow officers for drunk driving”³⁸; the “Oklahoma police department resign(ing) in protest of city council interference” with a DUI arrest³⁹; and a “Denver Sheriff Whistleblower” who claimed to have been “ordered to destroy a videotape that showed an inmate being humiliated and degraded”⁴⁰. Obviously

Lipton's 2009 report of Seals was not the last time allegations of drunk driving and a related cover-up involving evidence destruction got linked to U.S. law enforcement. While there are undoubtedly a number of ways to prove this next point, one need not look beyond the aforementioned news stories to surmise that anyone attesting to a link between U.S. law enforcement and DUI cover-ups supplies fodder for whistleblower retaliation, especially if he or she is a law enforcement officer.

In 2010, the Court of Appeals of Tennessee at Nashville succinctly explained:

It is well-established that governmental action, which standing alone does not violate any law or constitution, may nonetheless be a tort if motivated in substantial part by a desire to punish an individual for exercise of a statutory or constitutional right.

...

A person making a claim that governmental action was improperly motivated, *e.g.*, in retaliation for that person's exercise of statutory or constitutionally protected rights, bears the initial burden of establishing a *prima facie* case that the challenged action was so motivated.

...

When the claim is based on circumstantial evidence, such as the timing of events or the disparate treatment of similarly situated individuals, courts are to apply the burden-shifting analysis established in *McDonnell Douglas*.

...

Once the claimant has met the initial burden of establishing a *prima facie case*, the burden of going forward shifts to the governmental entity to articulate a legitimate, constitutional reason for the challenged action.

...

A claimant may show that the reason offered was mere pretext by demonstrating by a preponderance of the evidence either that the proffered reasons had no basis in fact or that a prohibited reason more likely than not motivated the entity.

...

In making a determination of whether the evidence proves a statutory or constitutional violation, 'the court should consider reasonable inferences drawn from the totality of facts, the conglomerate of activities, and the entire web of the circumstances presented by the evidence on the record as a whole'."⁴¹

According to the Tennessee appellate court, this "analytical framework . . . is essentially the same regardless of context (*e.g.*, employment, prison, regulatory), allegation (*e.g.*, discrimination or retaliation,) or the grounds (*e.g.*, common law, statute, or constitution)."⁴²

In Ohio, '(t)o establish a First Amendment retaliation claim, plaintiffs must show: (1) the plaintiffs engaged in protected conduct; (2) an adverse action was taken against the plaintiffs that would deter a person of ordinary firmness from continuing to engage in the conduct; and (3) the adverse action was motivated at least in part by the plaintiffs' protected conduct.'⁴³ Ohio's concept of "protected conduct" hearkens to the same kind of "statutory or constitutionally protected rights" on which government is not to tread under Tennessee law.⁴⁴ However, that protection would be substantially limited for both GB members Lipton and Morris if they were acting within the scope of their employment in exposing other law enforcement officers to discipline and/or criminal prosecution. "(T)he government, as an employer, may impose certain restraints on the speech of its employees", and if 'the employee (cannot) show that he or she spoke as a citizen on a matter of public concern . . . , the employee has no First Amendment cause of action based on his or her employer's reaction to the speech'."⁴⁵

Unlike GB member Mark P. Lipton, Mr. Maurice Morris was part of the sheriff's department he publicly critiqued and criticized before finding himself subject to a questionable criminal prosecution. Morris reportedly complained to the local NAACP and Ohio Civil Rights Commission several times about experiencing race discrimination at the Lucas County, Ohio Sheriff's Department over the course of 2000 to 2005. A February 2015 news headline read, "Memphis Police Department Threatens To Demote Black Cops If They Keep Complaining About Racism".⁴⁶ The headline for a July 2015 news story based in Maryland was "Black Police Chief Fired for Refusing to Dismiss Black Officers Who Alleged Racism, Claim Supporters".⁴⁷ Apparently within the realm of life's possibilities is the prospect of law enforcement officers facing retaliation for challenging what they perceive to be improper intra-department discrimination. But the proverbial straw that seems to have broken the camel's back and triggered retaliation against Morris relates to his union activity in 2006.

In a "RESPONSE TO INFORMATION REQUEST" pursuant to its 2006 Unfair Labor Practice Charge, the Ohio Patrolmen's Benevolent Association (OPBA) complained that "in a two-day representation election . . . (its) Rival Organization prevailed by 20 votes" and alleged

that the Lucas County Sheriff, then Morris' boss, "improperly affected the outcome of the representation election."⁴⁸ Just a list of OPBA's allegations regarding the "Charged Party", then Lucas County Sheriff James A. Telb, makes clear the situation was serious, arguably explosive, and Maurice Morris was a key OPBA witness:

1. Charged Party endorsed the Rival Organization by permitting and/or inviting it to be present in the jail, in public and in secure areas, on numerous occasions during the election campaign period, including but not limited to times when Petitioner was attempting to conduct its own business with its members. The intended result was to confuse non-command employees as to who was their duly elected representative. (See Affidavits of Maurice Morris, Marilyn Widman and Justin Burnard.)
2. Charged Party endorsed the Rival Organization by allowing employees to post and distribute material that encouraged employees to "vote UAW" during the election campaign period. (See Affidavits of Maurice Morris and Marilyn Widman.)
3. Charged Party endorsed the Rival Organization by allowing command officers to escort representatives of the Rival Organization around the secure areas of the jail to speak with employees about labor issues and other matters during their work days, on numerous occasions during the election campaign period. (See Affidavits of Maurice Morris and Marilyn Widman.)
4. Charged Party interfered with Charging Party's representation of employees during the election campaign period by refusing to mediate grievances in a timely manner, giving employees the impression that their representative, Charging Party, was ineffective and powerless. (See Affidavits of Marilyn Widman and Justin Burnard.)
5. Charged Party interfered with Charging Party's representation of employees during the election campaign period by asserting blame expressly on Charging Party for the Employer's refusal to pay employees certain benefits in January 2006. (See Affidavits of Maurice Morris and Marilyn Widman.)
6. Charged Party interfered with Charging Party's representation of employees during the election campaign period by refusing to correct its records with regard to sick leave for non-command employees while making such correction to command employees and nurses, both of whom are represented by the Rival Organization. (See Affidavit of Marilyn Widman.)

7. Charged Party contributed support to the Rival Organization by permitting and/or authorizing the release of the employees' home addresses to the Rival Organization without providing the release of the same information concurrently to Charging Party. Under the collective bargaining agreement between Charging Party and Charged Party, Charged Party is to regularly provide updated lists of employees to Charging Party, and Charged Party has never provided such list voluntarily and never to include addresses of the employees. (See Affidavit of Marilyn Widman.)

8. Charged Party contributed support to the Rival Organization by permitting and/or authorizing the release of the employees' telephone numbers to the Rival Organization without providing the release of the same information concurrently to Charging Party. Under the collective bargaining agreement between Charging Party and Charged Party, Charged Party is to regularly provide updated lists of employees to Charging Party, and Charged Party has never provided such list voluntarily and never to include phone numbers of the employees. (See Affidavit of Marilyn Widman.)

9. Charged Party interfered with Charging Party's representation of employees during the election campaign period by refusing to investigate the release of either the employees' home addresses or phone numbers to the Rival Organization. (See Affidavit of Marilyn Widman.)

10. Charged Party endorsed the Rival Organization by treating more favorably a Deputy who supported the Rival Organization than a Deputy who had been filing grievances through Charging Party. (See Affidavit of Marilyn Widman.)⁴⁹

Morris' affidavit that OPBA cites is dated February 2, 2006. **Less than sixty (60) days later**, on March 31, 2006, a Lucas County grand jury indicted Morris on one count of perjury and another count of assault in relation to his attempt to arrest an alleged pedophile, Marlon Wilkins.⁵⁰

GB member Maurice Morris is undoubtedly "a person of (extra)ordinary firmness", but his March 2006 indictment stopped him "from continuing to (be a law enforcement whistleblower)" because it culminated with his conviction for misdemeanor assault⁵¹ on August 22, 2006.⁵² Presuming Morris' support of OPBA was the "protected conduct", and that indictment is "the adverse action" at issue, we need only consider whether the indictment 'was motivated at least in part by (Morris') protected conduct.'⁵³ Were Morris a Tennessee resident as is his fellow GB member Mark P. Lipton, the "circumstantial evidence" suggesting that the 2006 OPBA election dispute prompted Morris' indictment, "such as the timing of events", would oblige us "to apply the burden-shifting analysis

established in *McDonnell Douglas*.”⁵⁴ Specifically, “(o)nce the claimant has met the initial burden of establishing a *prima facie* case, the burden of going forward shifts to the governmental entity to articulate a legitimate, constitutional reason for the challenged action.”⁵⁵

As a practical matter, both Morris and Lipton face the same evidentiary challenge given their similar plight. Lipton’s claim to have been thwarted on a DUI arrest by his boss was deemed unsubstantiated by the TBI, supposedly due to lack of documentation and/or computer generated proof, though one or more witnesses reportedly corroborated his account of events. Online is what seems to be a verbatim reproduction of an August 15th, 2009 article by “The Mountain Press” ⁵⁶ in which Tennessee Deputy Attorney General (D.A.G.) James L. Dunn emphasizes that presumably Lipton “couldn’t tell investigators a specific date or time that (his disputed DUI arrest) occurred, and he couldn’t identify the subject.”⁵⁷ The article purportedly quotes Tennessee Sheriff Seals attributing the investigation to “the same group of disgruntled citizens who have brought several lawsuits against the county and recently convinced a Sevier County grand jury to request an investigation into allegations that County Mayor Larry Waters and his uncle, Solid Waste Department Director Jack Waters, misused the county garage to repair personal vehicles”, and concluding “(t)hey are, as Mayor Waters said, a cancer on our community”⁵⁸

Almost exactly three (3) months later, D.A.G. Dunn signed an indictment providing that “(t)he Grand Jurors for the State of Tennessee, having been duly summoned, elected, impaneled, sworn, and charged to inquire for the body of the County and State aforesaid, present that **MARK LIPTON** on or about **November 16, 2009**, . . . did unlawfully, feloniously and knowingly by the display of a deadly weapon, to wit” A PISTOL, cause the victim, HENRY STANTON (*sic*), to reasonably fear imminent bodily injury, in violation of T.C.A. §39-13-102, contrary to the statute, and against the peace and dignity of the State of Tennessee.” (emphasis in original).

Their applicability may vary by state, but if we consider the overriding spirit of case holdings relevant to whistleblower retaliations through selective criminal prosecution, we are left grappling with a conflict, *i.e.*, should this reprehensible conduct have even the slightest, arguable legitimacy, it gets cloaked with the prosecutor’s “Presumption” of propriety. And U. S. Supreme Court cases “delineating the necessary elements to prove a claim of selective prosecution have taken great pains to explain that the standard is a demanding one.”⁵⁹ The *Armstrong Court* explained:

...

Judicial deference to the decisions of (prosecutors) rests in part on an assessment of the relative competence of prosecutors and courts. ‘Such

factors as the strength of the case, the prosecution's general deterrence value, the Government's enforcement priorities, and the case's relationship to the Government's overall enforcement plan are not readily susceptible to the kind of analysis the courts are competent to undertake.' . . . It also stems from a concern not to unnecessarily impair the performance of a core executive constitutional function. 'Examining the basis of a prosecution delays the criminal proceeding, threatens to chill law enforcement by subjecting the prosecutor's motives and decisionmaking to outside inquiry, and may undermine prosecutorial effectiveness by revealing the Government's enforcement policy.'⁶⁰

. . .

So the sanctity of criminal law enforcement in America is clear. Needless to say, law enforcement officers are as much a part of criminal law enforcement in America as prosecutors.

b.(1). NEWS FLASH: Probable Cause Can Be Totally Fabricated

Probable cause as contemplated by the *Armstrong Court* hardly justifies deference to prosecutors in relation to other sworn public officers and particularly law enforcement officers who have addressed work-related matters as an exercise of their U.S. constitutional rights — that is, when only a reasonably thorough government investigation is likely to confirm or refute whether their supposedly protected activity prompted another acting alone or with others to fabricate the probable cause in cooperation with one or more prosecutors to precipitate corresponding criminal prosecutions. It seems that judges are no better suited for ferreting out such a scheme (through trial and appellate proceedings) than the propriety or impropriety of any other “decision whether to prosecute”.⁶¹ Yet our “Supreme Court has . . . expressed skepticism that any individual entitlement to (a lawyer disciplinary and/or criminal law investigation of the prospective crime) could properly constitute a property (or liberty) interest.”⁶² “The Court in *Town of Castle Rock* noted that even state laws that mandate that government employees take certain actions might not create liberty interests, as the law may not be intended to confer benefits on a specific class of people; for laws governing criminal investigation, enforcement, and prosecution, ‘[t]he serving of public rather than private ends is the normal course of the criminal law because criminal acts, ‘besides the injury [they do] to individuals . . . strike at the very being of society’”⁶³ Purging watchdogs and whistleblowers from U.S. law enforcement through a convergence of crimes under color of law (*i.e.*, prosecutor-involved conspiracies to fabricate probable cause to precipitate retaliatory criminal prosecutions)

and government inaction (*i.e.*, failures to reasonably investigate apparent prospects of said prosecutions) is far from serving public ends.

In Dr. Nunn's professional experience, the majority of whistleblowers tend to be highly ethical individuals who possess a strong moral compass. She is confident that forcing such individuals out can actually diminish the quality of law enforcement professionals serving the public. "Further, it sends the message to ethical individuals considering a law enforcement career that the profession and the court system does not support ethical conduct if someone is courageous enough to speak out as a whistleblower." Nunn hastened to add that such lack of support towards law enforcement whistleblowers actually emboldens those who engage in retaliation. She says, "(i)t becomes a vicious cycle of retaliation on the part of individuals who retaliate (*e.g.*, the law enforcement superior involved, the complicit prosecutor, *etc.*) against the law enforcement whistleblower — a form of professional bullying against someone who is merely trying to do the right thing as proper ethics and the code of conduct for his or her respective law enforcement agency/department dictate."

b.(2). The Red Flag of Prosecutors Who Facilitate Fairly Obvious Speech Penalizing Schemes

Interestingly the decision to prosecute both GB members Mark P. Lipton and Maurice Morris began with a prosecutor's choice to disregard their respective account of an alleged off-duty civilian attack on them.⁶⁴ In a statement to the nonprofit Plea for Justice Program, Lipton explained:

...

In 2009, I was fired as Deputy Sheriff after being charged with aggravated assault on a neighbor. A day after the altercation, onscene police decided not to make any arrests and said the matter was a private prosecution.

The next morning, November 16, 2009, my colleague and I tried to get a warrant and was told to return the next day the 17th due to a police report not being ready. On the 17th we were turned away and told I was under criminal investigation. It was a stall tactic to hold me at bay. I even have a taped conversation that the Chief of Detectives said I wasn't going to be charged. I even went to the Attorney General's office and left a message that I was just refused a warrant and to call me. To date he never has.

My colleague and I were the first to seek warrants at about 9:30 am. The accuser then was allowed at 6pm to get his warrant and I was arrested. No investigation file existed other than just standard incident forms.⁶⁵

...

While Morris, like Lipton in 2009, was off-duty on March 5, 2006, Morris was involved that day with the arrest of Marlon A. Wilkins, the aforementioned alleged pedophile.

As a Lucas County, Ohio Deputy Sheriff, Maurice Morris explained in a handwritten, March 5, 2006 "INCIDENT REPORT" that Wilkins was . . .

taken into custody on numerous active warrants From Toledo Municipal Court For Assault x2, contribute (*sic*) to unruliness of a minor, & False information to a Police Officer. Before the subject was taken into custody He Refused several times to comply with the order of a Peace Officer. The subject physically Fought with Deputy Maurice Morris & Fugitive (*sic*) Task Force Det. Burce (*sic*) Burr. Through effective communication the subject Finally calm (*sic*) down to be taken into custody and booked into LCCC without Further incident.

The matter was presented to a grand jury resulting in only Morris being indicted! Charges against him were for perjury and misdemeanor assault.⁶⁶

The following news article appeared online:

TOLEDO -- A Lucas County sheriff's deputy was indicted Thursday on two criminal charges. Detectives say 41-year-old Deputy Maurice Morris punched a man while trying to make an arrest at a local church.

Investigators say Morris also lied about the incident when he was under oath before the grand jury. The indictment handed down Thursday is for perjury and misdemeanor assault.

The alleged incident at the center of the indictment happened March 15th (*sic*) at Citizens of Kingdom Church on Airport Highway in Toledo. Sheriff James Telb received a letter from Mark Smaw, pastor of the church, in which the minister said he and several other witnesses were present when Deputy Maurice Morris and another deputy arrived to arrest Marlon Wilkins for warrants. The report says that while making the arrest, Morris punched Wilkins in the face with his fist. Witnesses said Wilkins did not at any time 'demonstrate or warrant' justification for that action.

Also according to the incident report, the victim said he pulled away in fear that Deputy Morris would harm him. He said that he never struck Morris. As Wilkins was being booked, he asked for medical attention because his face and jaw were sore. He said Morris had punched him in the face.

Deputy Morris's police powers are suspended while internal affairs investigates.⁶⁷

Accepting this account requires us to believe that sometime between February 2, 2006 (the date of Morris' OPBA affidavit) to March 5, 2006 (the date Morris helped arrest Wilkins), Morris went from being a law enforcement/union/church whistleblower, apparently sensitive about work-related civil rights matters, to a lying civil rights violator.

Before considering the prospect of **every witness** against former Deputy Sheriff Maurice Morris falsely testifying about his March 5, 2006 arrest of Marlon M. Wilkins, consider why anyone might suggest Morris is inclined to be violent without provocation. Just short of a year earlier, Morris shared certain concerns with his former boss, now former Lucas County, Ohio Sheriff James A. Telb, through this February 15, 2015 statement:

Sir,

The following incidents occurred on 02.09.05 around 1935 hrs during a church group session with the youth department of St. James Holiness church located at 3319 Nebraska in the city of Toledo. The group session is about helping the youth of this church make good decision inline with biblical teachings. Helping the youth deal with everyday issues that is related to them.

A group of young ladies ages 15 to 17 publicly voiced their concerns about the older men of this church trying to approach them in a sexual and aggressive manner. A witness to their statements is . . . an elder with the church and a youth advisor.

During a break in the session one of the young ladies (FIRST MINOR age 15) approached me in a private way and told that some of the men in this church tried to approach her. She then walked away, After revealing that, I became concerned about her statement and the statements the other young ladies made about the men of the church approaching them in a sexual manner.

Before the session concluded I asked three young ladies that if what they had stated to me publicly and in private about what the men of this church were trying to do is true. I told them that I needed to talk to them with their parents and discuss this issue with them and on Sunday morning before service starts give me the name(s) of the men and if you didn't know their names point them out to me so that I may inform the proper authorities.

I further added that I am obliged by law to report any child abuse or inappropriate sexual conduct of a minor.

On 02.13.05 at approximately 1220 hrs I approached FIRST MINOR and her mother . . . I ask to speak with them both in private. When I start to explain to the mother why I ask to speak with her. FIRST MINOR's MOTHER quickly informed me that what FIRST MINOR said to me wasn't true and the incident that she spoke of happened 2 years ago. I said to FIRST MINOR that it would have made your daughter age around 12 years old at that time of the incident. I told FIRST MINOR I can't force you to tell me what occurred with your daughter I can only pass on the information that was told to me.

Next young lady involved in this incident is SECOND MINOR age 17. The same story was told to me as the one told by FIRST MINOR's MOTHER. Ms SECOND MINOR's MOTHER is SECOND MINOR's mother. The difference is SECOND MINOR's MOTHER spoke with FIRST MINOR's MOTHER before I could get a chance to speak with her. When we did get a chance to talk SECOND MINOR's MOTHER said that this incident happed (*sic*) sometime ago and there was nothing to her daughter's story. I informed SECOND MINOR's MOTHER that she can report any criminal behavior to the authority concerning her daughter.

THIRD MINOR age 16 is the third young lady involved in this situation, THIRD MINOR didn't attend Sunday morning service and I didn't know who her parent was to make contact.

Sheriff, FIRST MINOR's MOTHER informed me later on Sunday morning that if she would have allowed her daughter to proceed with identifying the man or men who approached her. It would have shown she wasn't a good mother or other parents wouldn't have trusted their kids in her care.

It saddens me to know that someone had tried to harm the young ladies in my church. I want to protect them from this type of situations. Advise me on what to do next if anything can be done.

Thank you for any consideration in this matter.⁶⁸

It appears that via a handwritten note, Telb advised Morris to convey the foregoing information to the Toledo, Ohio Police Department.

Four (4) St. James officials — a minister and three (3) musicians — were reportedly convicted of sexual crimes against youth in Toledo. Nonetheless, it seems that Morris' vigilance in addressing alleged church-centered pedophilia helped people with questionable motives depict him as a vigilante, prone to unprovoked violence in response to prospective child predators as of March 2006. Marlon Wilkins' Pastor at the time reportedly wrote then Sheriff Telb as follows:

Greetings! I am writing in regard to an incident that occurred on Sunday, March 5, 2006 at approximately 2pm. This incident involved an employee, Maurice Morris. On Sunday afternoon, Mr. Morris and two unidentified men entered Citizens of the Kingdom, which is a church, during its Sunday afternoon service. Mr. Morris and the two men were in pursuit of Mr. Marlon Wilkins, a pianist for the church.

Upon entering the church, Mr. Wilkins was pulled back by one of the gentlemen, which disrupted the Worship Service that was taking place. This quickly escalated, placing innocent parishioners in harm's way. Uncertain as to whether or not weapons were on the premises, it placed the estimated 30 parishioners in immediate danger and fear for safety and of life and limb. Mr. Wilkins repeatedly asked for an arrest warrant, which was not presented at the time of contact. He refused to be taken in based on that fact. There were no grounds of arrest verbally spoken, only allegations from Mr. Morris. He accused Mr. Wilkins of molestation, but was not placing him under arrest for a warrant that stated such. This was simply an emotional outburst, and was evident to those looking on. Mr. Morris repeated the allegations, calling Mr. Wilkins "pervert" and "child molester", etc.

Men of the church and myself tried to de escalate the situation, asking Mr. Morris to step out of the building, and calming Mr. Wilkins, requesting him to cooperate whether or not the allegations were valid. This was done to prevent any injury to anyone nearby, though some were mildly injured any way. Eventually, two uniformed officers came to assist. Mr. Wilkins, who was calm at the time of the arrest, was handcuffed and escorted out of the building. Mr. Morris came into the church, and interrupted the service again to make an emotional plea to the people stating that; "it could be your daughter or your child, 3, 4, 9, or 7 years old." Mr. Morris went on to state that he was a Police officer for the Toledo Police under the division of Violent Fugitives. He further stated that he was a Minister at St. James Church of God in Christ in Toledo, and that he was just "doing his job". Mr. Morris made an open allegation to the congregation that Mr. Wilkins was indeed a child molester, and that they had been looking for him for one year. He further averred that he had to do his job at any and all times to keep "people like *him*" off the streets. Mr. Morris left the building then, and service continued.

As the Pastor of this local assembly, I am responsible for the building, the property within, and the persons inside of the building during service. We want people to be safe and be comfortable coming to this place of Worship. Incidents like this may cause people to be afraid to enter for fear of other incidents like this taking place. In all the world's uncertainties today, we would like to remain a sure foundation to those seeking a church that is founded on Truth and Biblical Principles.

What Mr. Morris did was both inappropriate and illegal. This incident was personal, and his allegations were not validated by any legal form such as an affidavit or an arrest warrant which is necessary to arrest someone in a public place such as a church. Had Mr. Wilkins been pursued because of fleeing a crime scene, then the uniformed, on duty officers would have been able to make an arrest. Mr. Morris, was off duty, and is understood to be a Corrections Officer, not a Police Officer.

The following violations occurred when Mr. Morris began this pursuit until its end Sunday afternoon:

- Mr. Morris is not a police officer.
- He was not on duty.
- There was no arrest warrant, which is necessary to make an arrest at any place. This warrant, if present should have been sworn and signed by a judge or magistrate.
- Mr. Morris had reasonable suspicion, but that is not enough to make an arrest, he would have had to have probable cause, and it is apparent that his allegations were based on an incident that occurred in 2005.
- Personal vendettas are not backed by law. No officer of the law or any citizen of Lucas County is permitted to take the law into their own hands. Vigilantism is not lawful, except perhaps in exigent circumstances. This was not the case. Furthermore, the Bible states that “vengeance is mine, saith the Lord” (Hebrews 10:30)
- Mr. Morris violated our first amendment right to assemble together peacefully. He came and disturbed the peace, and should be reprimanded for such. He interrupted a worship service and caused innocent bystanders to become possible victims. He placed women and children in immediate danger and in harm’s way. Police are made to protect and serve, not disrupt, accuse, and convict.
- Mr. Morris further used excessive force to arrest someone who was unarmed, and Mr. Morris had no legal grounds to pursue or arrest Mr. Wilkins. Also, Mr. Morris did participate in provoking Mr. Wilkins, but was not the arresting officer, again, because he was not in uniform, on duty, nor did he have legal grounds to arrest this man.
- When making the arrest, the Miranda Rights were not verbally stated, nor were the grounds for arrest made. Assault charges were spoken of, but should be made invalid for these people pursued a man who did not commit any crime, and his refusal to go was valid due to the fact that

there was no warrant, no legal grounds at all to arrest him. Mr. Wilkins is intelligent enough to know, being a former Military Officer, that if a warrant is present, he should go; and the disturbance would have been kept to a minimum by them simply placing the warrant on the door, which is glass, and the words on that paper would have been in view. The church facility is small, and danger would have been kept to a minimum, had these officers of the law appropriately went about this arrest.

- In the Police Academy, officers are taught that there is an order to make an arrest, even before the Academy, it is taught over and over in the classroom. For Mr. Morris' Ministerial point of view, the Bible states that all things must be done "in decency and in order" (I Corinthians 14:40) and if you have "ought against your brother you should forgive him" (II Corinthians 2:7). At no time does the law of the land or the laws of God permit anyone to take matters into their own hands, therefore Mr. Morris is in violation of both of the laws.
- Use of excessive force is not permitted unless there were exigent circumstances: i.e. a crime recently committed and he was seen fleeing the scene, or if weapons were present, and there were none. Mr. Morris outright punched Mr. Wilkins, and that is not acceptable for any officer of the law especially in a situation where there were three or more men in pursuit of *one* Mr. Wilkins. Mr. Wilkins has a right to sue Mr. Morris and the agencies responsible for the employees who violated Mr. Wilkins and the 30 innocent onlookers.
- There is a code of ethics that should be followed. As an officer, if Mr. Morris were a police officer, you are trained to be as calm as possible in escalated situations. The job of an officer is to try to de-escalate the situation, which is what I had to go and do. Also, an officer is trained to redirect the defendant's violent behavior by talking and explaining the reasons why this is happening, not overtly accuse someone of something with such emotion that the congregation was aware of. Police work can be rough but it is not be personal.

Therefore, it is the request of the church that Mr. Morris be relieved of his duties with Lucas County for he has misrepresented the law and its order. This is beyond reprimand for he has done this at two other churches in the city of Toledo, and this cannot continue. Mr. Morris should possibly seek counseling if something has occurred and he is having a difficult time dealing with it. Just because he is an "officer of the law" does not give him the right to go on personal vendettas in the name of the law, for his own sake. There are civil suits that can be filed, restraining orders, and so on that could have been filed on Mr. Morris' behalf against Mr. Wilkins, and no one would have been publicly exposed to the danger and trauma of praising the Lord and then

being forced into prayer and retreat. Finally, the men who accompanied Mr. Morris should be reprimanded for their behavior was both inappropriate and unacceptable. The names are unknown, but should be requested of Mr. Morris.

I am deeply troubled by this method of law enforcement. It is my hope that in the future this would not be an issue. We the Citizens of Lucas County have a need to trust law enforcement officials. Though I do not support refusal of arrest on Mr. Wilkins' behalf, I do understand that with recent impersonators showing up to people's homes, and pulling people over claiming to be officers of the law, that Mr. Wilkins had grounds to be afraid or concerned and to refuse being taken into custody.

...

Less than a month later, an unflattering portrayal of Morris was credited to law enforcement sources.

"The Blade", a Toledo newspaper, made the following report:

March 31, 2006 -- A Lucas County grand jury yesterday indicted a sheriff's deputy on one count of perjury after an investigation found that he allegedly harassed and assaulted a Toledo man and then lied about it in court.

Deputy Maurice Morris, 41, who also was charged yesterday in Toledo Municipal Court with one count of assault, is said to have hounded Marlon Wilkins, 29, citing and charging him in unfounded warrants over the course of a year, sheriff's Detective Rob Sarahman said.

He added the harassment culminated in an incident March 5 when Deputy Morris assaulted Mr. Wilkins in the process of arresting him during a service at Citizens of the King Church, 4224 Airport Hwy.

Deputy Morris, who was accompanied by Deputy Bruce Birr, punched Mr. Wilkins' jaw during an early afternoon church service in front of a church full of worshippers, Detective Sarahman said.

He added that witnesses said Mr. Wilkins, who refused to be arrested by Deputy Morris, already had been detained by Deputy Birr when Mr. Wilkins was struck.

It all started Feb. 8, 2005, when Deputy Morris, who was in civilian clothing, allegedly pulled a gun on Mr. Wilkins and pursued him in a car around Toledo because of the latter's romantic involvement with a juvenile girl, Detective Sarahman said.

He said the parents of the girl, who are good friends of Deputy Morris, filed a complaint with Toledo police against Mr. Wilkins on the same day contending that he was contributing to the delinquency of a minor.

But Deputy Morris, a longtime employee at the county jail, took matters into his own hands when he decided to pursue Mr. Wilkins, Detective Sarahman said.

Deputy Morris 'has no power to chase down people in his own car, especially on a simple complaint,' the detective said.

He added that Deputy Morris' employment with the sheriff's office is under review by the department's internal affairs unit and that his police powers have been suspended.

Deputy Morris, who will be summoned to appear in Common Pleas Court, was indicted for perjury after testifying in court that Mr. Wilkins tried to assault him on two previous occasions.

He had filed assault-on-a-police-officer charges, both felonies, against Mr. Wilkins after March 1 and March 5 incidents in which he claimed that Mr. Wilkins assaulted him.

But the criminal charges against Mr. Wilkins were dropped because there were no witnesses, Detective Sarahman said.

Instead, Deputy Morris was indicted yesterday for perjury, a felony that upon conviction carries a maximum sentence of five years in prison and a \$10,000 fine.

He also was charged in Toledo Municipal Court with misdemeanor assault, which upon conviction carries a maximum sentence of six months in jail and a \$1,000 fine.⁶⁹

According to an all capitalized handwritten "Witness Statement" of March 17, 2006 by a Detective Bruce Birr, Wilkens initially resisted arrest and threatened to "HURT" Morris but had been subdued when "MAURICE MORRIS PUNCHED WILKINS WITH A CLOSED FIST ONCE IN THE SIDE OF THE FACE". Morris denies assaulting Wilkins.

Witness testimony — ergo the perceived credibility of witnesses against Morris as opposed to forensic evidence — triggered the criminal conviction that ended his law enforcement career. Keep in mind that Morris, as is any U.S. state or federal prosecutor, was a sworn law enforcement officer. Morris would attest that his prosecutor, Julia Bates, was too

amenable to his criminal prosecution at the instance of former Sheriff James A. Telb, a social acquaintance of hers at the time,⁷⁰ with the help of officers subject to Telb's authority or influence as well as Wilkins, Pastor Smaw, and people subject to pressure from them, *i.e.*, a collection of people implicated by Morris' law enforcement, union, and church whistleblowing.

The presumption of Morris' propriety as a law enforcement officer was overcome by a barely plausible, albeit jury-embraced theory that for years he concealed from the Lucas County, Ohio Sheriff's Department a propensity for unlawful surveillance, weapon brandishing, and unprovoked violence triggered by alleged child predators if not others. The potential of Bates having been naïve but otherwise acting in good faith reliance on Morris' accusers was less likely post-trial. Post-conviction evidence serving to impeach their credibility (beyond their retaliatory motives that were always apparent to an extent,⁷¹) and specific testimony surfaced⁷² and was shared with appropriate authorities to no avail. Morris was denied a new trial⁷³ and reportedly advised by an FBI agent "that their office could not proceed because the US Attorney informed (the office) that the criteria given did not fall under their jurisdiction" and the Ohio Attorney General's office reportedly indicated that it "does not investigate wrong doings in local police agencies."

While Bates could claim not to have known that Morris was a law enforcement/union whistleblower, former Deputy Sheriff Mark Lipton's prosecutors lack similar flexibility. A November 23rd, 2009 media report confirms that Mr. Lipton was immediately fired by the Hamblen County, Tennessee Sheriff's Department "after he was charged with aggravated assault on a neighbor", *i.e.* Henry Sutton.⁷⁴ In covering Lipton's related lawsuit against Sutton for defamation, the November 23rd media report notes that Lipton "recently made news after saying Sevier County's Sheriff interfered with a DUI traffic stop he made while he was a deputy but those charges were unsubstantiated." Even at that time, Lipton publicly attributed Sutton's ability to precipitate criminal charges against him to retaliation for the investigation he precipitated of Sheriff Seals. Referencing those criminal charges and Lipton, the media reported "(h)e feels it is retaliation by the Sheriff . . . retaliation Sheriff Ron Seals denies."

Assistant District Attorney (A.D.A.) George Ioannides referenced Lipton's defamation lawsuit against Sutton and corresponding news coverage during Lipton's trial for aggravated assault. But there is even more compelling evidence that D.A.G. James Dunn, A.D.A. Ioannides, and A.D.A. Ashley McDermott knew or should have known that people with some knowledge of key circumstances would likely perceive a correlation between their prosecution of Lipton and his earlier allegation that Sevier County, Tennessee Sheriff Ronald L. Seals obstructed a DUI investigation. *To wit:* In explaining why he saw "no reason to dismiss charges against Mark Lipton", D.A.G. investigator, H. David Hutchison,

reported in writing that “Lipton’s creditability (*writer may have meant “credibility”*) would be in question, based on allegations previously made by Lipton against the Sevier County Sheriff Ron Seals that were investigated and unfounded by the TBI.”

b.(3). ANOMALY: (*noun*) Synonym -- The Criminal Prosecutions of Former Deputy Sheriffs Mark P. Lipton and Maurice Morris

The criminal prosecution ending the law enforcement career of GB member Mark P. Lipton was not at the direct instance of people implicated by his whistleblowing as was the case for GB member Maurice Morris. Instead, Lipton’s accusers are rumored to be relatives of the allegedly DUI-arrest-thwarting Sheriff Ron Seals by marriage.⁷⁵ By all indications, Seals was never formally determined innocent of the offense. D.A.G. Dunn’s related statement was that “(w)e are not going to guess anybody into the penitentiary and we aren’t going to guess anybody out of a job.” Of course Henry Sutton, a man with a history (*albeit relatively remote*) of suicidal and homicidal ideations, as well as his wife who, at the time, had recently pled guilty to illicit drug sales with her daughter, successfully portrayed Lipton as a menacing character (*among children anyway*), prone to unprovoked violence and to feign personal injuries⁷⁶ — all without direct verification from disinterested sources, forensic evidence, or even consistent testimony by complaining witnesses.⁷⁷

The inconsistencies, and his conviction despite them, so troubled Mr. Lipton that on April 18, 2012, he submitted to and passed with “No Deception Indicated” a polygraph examination in Tennessee “(t)o determine if (he) at any time exposed his weapon to a member of the Sutton family on 11/16/09”. About two and a half months later and miles away in Ohio, there was “(n)o deception indicated” in response to a polygraph of Maurice Morris “(r)egarding the day of Marlon Wilkins (*sic*) arrest at Citizens of the Kingdom Church”. Yet both Lipton and Morris are among the relatively few law enforcement officers prosecuted, and even fewer convicted for violence against a civilian since 2005.⁷⁸

Neither Lipton nor Morris was even accused of causing anyone permanent physical harm.⁷⁹ In contrast, most law enforcement officers guilty of killing one or more civilians over the course of 2005 to 2015 fared better than Lipton and Morris in regard to their careers and/or as criminal defendants.⁸⁰ Purported victims were more readily vindicated for ruckuses that Lipton and Morris deny, but were respectively convicted of causing, than a significant number of people shot multiple times in the back or subjected to a sex crime by law enforcement officers since 2005.⁸¹

Law enforcement officer “testimony carries almost unequalled weight with judges and juries because (law enforcement) officers are considered highly credible eyewitnesses as well as experts in the proper use of force”.⁸² That distinction eluded GB members Mark Lipton and Maurice Morris, but not their accusers. In upholding Mark Lipton’s conviction

on appeal, the appellate court noted that two of his former colleagues, one a detective, provided testimony consistent with the prosecution.⁸³ An officer and a detective also provided testimony consistent with the prosecution of Maurice Morris.⁸⁴ So much⁸⁵ for the “thin blue line” that law enforcement officers “so rarely cross”.⁸⁶

V. The Government Role of After-the-fact Accomplice to Retaliatory Selective Prosecution Knowingly Based on False Evidence Produces Constitutionally Infirm, In Fact Void Convictions

Obviously U.S. state or federal prosecutors can be among the conspirators subjecting any given law enforcement whistleblower to retaliatory criminal prosecution. In most instances such misdeeds are only under the color of law, *i.e.*, they are the handy work of rogue government agents and do not constitute sovereign acts. But each time a U.S. local, state, and/or federal government agency with authority to thoroughly investigate at least some aspect of the situation opts not to, an official or a sovereign choice is made to prefer the prospective oppressors of that whistleblower over the law enforcement whistleblower himself or herself. No matter the corresponding appearance of impropriety, the whistleblower receives only the undeniably flawed process due criminal defendants in America while his or her prospective oppressors are cloaked with the much more effective “Presumption”.

Undoubtedly many Americans trust our country’s legal system to somehow exonerate innocent criminal defendants and convicts, and are less convinced of failures in that regard than that some people are guilty despite their claimed innocence. So it may seem that criminal defendants are eventually vindicated in America unless they are more likely than not guilty of the offense(s) with which they were charged. The problem with ending our analysis there relates to the fact that convincing evidence of crimes can be fabricated, and it (*i.e.*, the problem) persists notwithstanding the lack of any U.S. constitutional right to avoid such a contrivance.

All U.S. government agencies are obliged to suspend their deference and activate whatever oversight they have in regard to prosecutors who are at least negligent in addressing the prospect that probable cause was fabricated to precipitate retaliation through criminal prosecution of one or more U.S. law enforcement officers (and perhaps any U.S. sworn public officer) for their work-related whistleblowing. That negligence may coincide with retaliatory selective prosecution, and if the potentially targeted sworn public officer(s) cannot access government machinery to attempt proving his, her, or their innocence as readily as government process can be used to supposedly prove the contrary, any resulting conviction is constitutionally infirm.⁸⁷ After all, the whistleblower is no more tainted by allegations of criminal activity than his or her prosecutor and other implicated sworn public officers. Whether or not the whistleblower was engaged in First Amendment or

statutorily protected activity, he or she is no less entitled to the “Presumption” than these dubious accusers. What preference between the former and the latter aligns with due process, equal protection, and/or separation of powers?

Sworn public officer discrimination aside, the *per se* act or process of purging whistleblowers from the ranks of U.S. law enforcement is not a government function envisioned by the Ninth and/or Tenth Amendments of the U.S. Constitution.⁸⁸ It is one thing for U.S. government agencies to forego investigating any given case; quite another to essentially decide that certain criminal law enforcers are more expendable than others and allow the former to be removed from law enforcement under highly questionable circumstances. Are not the careers of law enforcement whistleblowers contending with retaliatory prosecution knowingly based on false evidence (including but not necessarily limited to fabricated probable cause) likely doomed by the sovereign act of denying them vindication through the investigatory powers of a state and/or nation, especially post-conviction? Is not that government choice tantamount to ratifying their retaliators’ goals? It matters not whether rights “(turn) on a litigating opportunity yet to be gained or an opportunity already lost” by targeted law enforcement whistleblowers.⁸⁹ The corresponding role of deliberate or somewhat unwitting after-the-fact accomplice to retaliatory selective prosecution offends due process and equal protection provisions of the U.S. Constitution and extends beyond any government function cognizable under the U.S. Constitution.⁹⁰ All related convictions are accordingly void.⁹¹

VI. “Command and Control” or “Work Culture of Quiescence”?

According to the introduction for *What Happens When Police Are Forced to Reform?*:

Over the past two decades, (the U.S. Department of) Justice has undertaken its deepest interventions at 16 (police) departments that had patterns of excessive or deadly force, implementing reforms under the watch of independent monitors. To examine the impact, Washington Post and FRONTLINE reporters surveyed the departments, visiting four of the cities. They interviewed officials, federal monitors and civil rights advocates. They also reviewed use-of-force data, monitoring reports and local budgets.⁹²

The Washington Post/Frontline report acknowledges that “(s)ome critics have complained that federal interventions leave abusive officers in uniform because the agreements target policies and practices of an agency, not individual employees.”⁹³ Interestingly, “experts (say) reforming departments is more important than trying to punish officers.” Anecdotal evidence (*such as our profile of the Mark P. Lipton and Maurice Morris prosecutions*), suggests that the DOJ (U.S. Department of Justice) is more willing for abusive officers to remain among the ranks of America's law enforcement agencies than

law enforcement whistleblowers. Dr. Nunn agrees and notes, “Unfortunately, the law enforcement system at all levels has a reputation for mistreating those who blow the whistle within their ranks.”

This article should suggest what Dr. Nunn reports:

Law enforcement officers are often vilified at the expense of their reputation and careers simply to protect a broken system and unethical officials. It becomes all about sweeping the problem under the rug by shooting the messenger rather than fixing the problem.

Dr. Nunn and probably many others are prepared to conclude that these actions undermine public confidence in the legal system, especially as more and more issues concerning police departments and officer conduct come to light. Obviously the American public pays taxes to support law enforcement efforts and those of the court system. Most American taxpayers expect appropriate application of the law to protect the community from criminals; not misapplication of the law and taxpayer funds to go after law enforcement whistleblowers through the use of prosecutorial retaliation. But are law enforcement whistleblowers the proverbial loose lips that sink ships?

U.S. government law enforcement agencies clearly parallel the “Command and Control” (CC) work environment of U.S. military forces to an extent. The U.S. Department of Defense (DOD), *Dictionary of Military and Associated Terms* reportedly defines CC as “(t)he exercise of authority and direction by a properly designated commander over assigned and attached forces in the accomplishment of the mission . . .”⁹⁴ According to the “Command and Control Research Program”, a former DOD affiliate, the essential functions of CC are:

- Establishing intent
- Determining roles, responsibilities, and relationships
- Establishing rules and constraints
- Monitoring and assessing the situation and progress
- Inspiring, motivating, and engendering trust
- Training and education
- Provisioning⁹⁵

How ironic it is when the result is a work force obliged to disregard “the mission” or prescribed aspects of the foregoing functions on cue.

By facilitating law enforcement whistleblower retaliation, U.S. government nurtures “Work Cultures of Quiescence” (WCQ) ⁹⁶ – not the rigors of CC. Yet U.S. government regularly condemns and punishes compliance by subordinates with the dictates of rogue supervisors in supposedly CC work environments. The choice in any given instance of whether to promote WCQ or CC through investigation, discipline, and/or criminal prosecution priorities should at least have some objective standards.

While the WCQ/CC paradox is steep with public policy implications, it is not the exclusive province of U.S. government executive branches. Theoretically the constitutional rights of all law enforcement officers are implicated by the dilemma. So U.S. Courts are free to intervene and bridle related discretion.

Again, the role of deliberate or somewhat unwitting after-the-fact accomplice to retaliatory selective prosecution offends due process and equal protection provisions of the U.S. Constitution and extends beyond any government function cognizable under the U.S. Constitution.⁹⁷ Relief is surely due any U.S. law enforcement whistleblower convicted on criminal charges that may well be the product of probable cause fabricated in retaliation for his or her whistleblowing if that prospect was not thoroughly explored by appropriate oversight agencies. One or more of them likely needs to be a U.S. federal agency. Judicial imposition of such a requirement may impose a substantial criminal law enforcement shake-up, but it should be manageable as the ranks of law enforcement whistleblowers are understandably small.

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¹ See, Una A. Kim, *Government Corruption and the Right of Access to Courts*, 103 Mich. L. Rev. 554 at 557 (2004).

² *Id.* (internal footnote omitted).

³ *Id.* (internal footnote omitted).

⁴ *Id.*

⁵ *Cf., Id. at 563.*

⁶ *Id.* (internal footnote omitted).

⁷ *Id. at 565.*

⁸ *Id. at 566.*

⁹ *Id. at 566.* (internal footnote omitted).

¹⁰ *Id. at 568.* (internal footnotes omitted).

¹¹ *Id. at 573.* (internal footnote omitted).

¹² See, Milli Kanani Hansen, *Testing Justice: Prospects for Constitutional Claims by Victims Whose Rape Kits Remain Untested*, 42 Colum. Hum. Rts. L. Rev. 943 (2010-2011).

¹³ *Id. at 944-945.* (internal footnote omitted).

¹⁴ *Id. at 948.*

¹⁵ *Id. at 965.* (internal footnotes omitted).

¹⁶ See, Joseph M. Kelleher, *Retaliatory Prosecution Claims Under Hartman v. Moore: Law Enforcement's End-Run Around The First Amendment*, 18 Temp. Pol. & Civ. Rts. L. Rev. 315 at 318 (Fall, 2008).

¹⁷ *Id. at 343.*

¹⁸ *Id. at 344.*

¹⁹ See, Gross, Samuel, R., *How Many False Convictions Are There? How Many Exonerations Are There? in Wrongful Convictions And Miscarriages Of Justice: Causes And Remedies In North American And European Criminal Justice System*, C. R. Huff & M. Killias Eds. (Routledge: March 2013, In Press).

²⁰ Zacharias, Fred C. and Green, Bruce A., *The Duty To Avoid Wrongful Convictions: A Thought Experiment In The Regulation Of Prosecutors*, 89 B.U.L. Rev. 1 at 31 (2009).

²¹ *Hartman v. Moore*, 547 U.S. 250 (2006).

²² *Retaliatory Prosecution Claims at 324-325.* (internal footnotes omitted).

²³ *Retaliatory Prosecution Claims at 350.*

²⁴ See, U.S. Constitution, Amendments 9 and 10.

²⁵ Attorney Michael McCray coined this phrase. He is General Counsel for Federally Employed Women – Legal Education Fund, and chief organizer for the annual Whistleblower Summit for Civil and Human Rights in Washington, D.C.

²⁶ Unless selective prosecution among whistleblowers becomes a problem, this third category anticipates prosecutions that are ostensibly unrelated to whistleblowing.

²⁷ Coalition Disciplinary Complaint and Complainants' Exhibits A-P, *The Law Project*. n.d. Web. Last visited 12/30/15 <http://media.wix.com/ugd/fa6d06_d4473508d3cb4576ac59fd71181e5c72.pdf> and <<https://www.dropbox.com/s/g2ly9hajx4awkkh/Cmplnts%20Ex%20A%20-%20P.pdf>>

²⁸ The Law Project by Zena Crenshaw-Logal. "Landmark Decision Transforms Tennessee Into Ground Zero for Whistleblower Protection". *Daily Kos*. April 15, 2014. Web. Last visited 12/30/15. <<http://www.dailykos.com/story/2014/04/15/1292229/-Landmark-Decision-Transforms-Tennessee-Into-Ground-Zero-for-Whistleblower-Protection>>

²⁹ Garrett Closure, *The Law Project*. n.d. Web. Last visited 12/30/15 <<https://www.dropbox.com/s/k6bmwsvjon3ysye/Garrett%20Closure.pdf>>

³⁰ DOJ Investigation Request, *The Law Project*. n.d. Web. Last visited 12/30/15 <http://media.wix.com/ugd/fa6d06_4acb5beee7934ae285b6907363ca6902.pdf>

³¹ Direct DOJ Response, *The Law Project*. n.d. Web. Last visited 12/30/15 <http://media.wix.com/ugd/fa6d06_524e34566e6e4aaa85f9d65e987c520e.pdf>

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- ³² The DOJ response referenced by footnote 31, *supra*, is dated February 19, 2015. The DOJ supplied a September 2014 response to U.S. Congressman David P. Roe, noting that its “Special Litigation Section’s (*sic*) does not have the authority to assist individuals with resolving personal grievances (nor) seek relief for, or to represent, a specific person.” See, DOJ Response to Roe, *The Law Project*. n.d. Web. Last visited 12/30/15 <http://media.wix.com/ugd/fa6d06_30296bd47b56415daa17ddf934f8e29f.pdf>
- ³³ New York civil rights attorney Chase Madar conducted interviews to support his November 25, 2014 populist article, “Why It’s Almost Impossible to Indict a Cop”. See, Madar, Chase. “Why It’s Almost Impossible to Indict a Cop”. *The Nation*. November 25, 2014. Web. n. pag. Last visited 12/30/15 <<http://www.thenation.com/article/why-its-impossible-indict-cop/>>
- ³⁴ Kindy, Kimberly and Kelly, Kimbriell. “Thousands dead, few prosecuted”. *The Washington Post*. April 11, 2015. Web. n. pag. Last visited 12/30/15 <<http://www.washingtonpost.com/sf/investigative/2015/04/11/thousands-dead-few-prosecuted/>>
- ³⁵ Complainants' Exhibits B, *The Law Project*. n.d. Web. n.pag. Last visited 12/30/15 <<https://www.dropbox.com/s/g2ly9hajx4awkkh/Cmplnts%20Ex%20A%20-%20P.pdf>>
- ³⁶ Complainants' Exhibits C, *The Law Project*. n.d. Web. n.pag. Last visited 12/30/15 <<https://www.dropbox.com/s/g2ly9hajx4awkkh/Cmplnts%20Ex%20A%20-%20P.pdf>>
- ³⁷ *Id.*
- ³⁸ “Police Department Admits They Only Hired Applicants Who Promised They Wouldn’t Arrest Other Cops”. *Counter Current News*. July 25, 2015. Web. n. pag. Last visited 12/30/15 <<http://countercurrentnews.com/2015/07/police-department-admits-they-only-hired-applicants-who-promised-they-wouldnt-arrest-other-cops/#>>
- ³⁹ “Oklahoma police department resigns in protest of city council interference” *LEO AFFAIRS*. July 19, 2015. Web. n. pag. Last visited 12/30/15 <<http://www.leoaffairs.com/featured/oklahoma-police-department-resigns-in-protest-of-city-council-interference/>>
- ⁴⁰ “Denver Sheriff Whistleblower: ‘I Was Ordered To Destroy Videotape’”. Truth Voice. May 31, 2015. Web. n. pag. Last visited 12/30/15 <<http://truthvoice.com/2015/05/denver-sheriff-whistleblower-i-was-ordered-to-destroy-videotape/>>
- ⁴¹ *Teco Barge Line, Inc. v. Wilson*, 131 S.Ct. 2118 (2011), denying certiorari upon petition from *Teco Barge Line, Inc. v. Wilson*, Tenn. App. LEXIS 435; WL 2730591, *25-30 (2010). (internal footnotes and citations omitted).
- ⁴² *Id.* at footnote 9.
- ⁴³ *Riehl v. City of Rossford*, 2007-Ohio-3824, p 37 (Ohio Ct. App., Wood County 7/27/07) citing *Thaddeus-X v. Blatter*, 175 F.3d. 378 at 394 (6th Cir. 1999).
- ⁴⁴ See, *Teco Barge Line*.
- ⁴⁵ *Rodriguez v. Greater Dayton Reg’l Transit Auth.*, Ohio App. LEXIS 3553; WL 4041342, *30-31 (2013), citing *Garcetti v. Ceballos*, 547 U.S. 410 at 418 (2006). (additional internal citations omitted).
- ⁴⁶ “Memphis Police Department Threatens To Demote Black Cops If They Keep Complaining About Racism”. *Counter Current News*. February 20, 2015. Web. n. pag. Last visited 12/30/15 <<http://countercurrentnews.com/2015/02/memphis-police-department-threatens-to-demote-black-cops-if-they-keep-complaining-about-racism/>>
- ⁴⁷ New, Yvette. “Black Police Chief Fired for Refusing to Dismiss Black Officers Who Alleged Racism, Claim Supporters”. *Breaking Brown*. July 20, 2015. Web. n. pag. Last visited 12/30/15 <<http://breakingbrown.com/2015/07/black-police-chief-fired-refusing-dismiss-black-officers-alleged-racism-claim-supporters/>>
- ⁴⁸ *Ohio Patrolmen’s Benevolent Association v. Lucas County Sheriff*, ULPC Case No. 06-ULP-02-0045, CHARGING PARTY’S RESPONSE TO INFORMATION REQUEST, p 2.
- ⁴⁹ *Ohio Patrolmen’s Benevolent Association v. Lucas County Sheriff*, ULPC Case No. 06-ULP-02-0045, CHARGING PARTY’S RESPONSE TO INFORMATION REQUEST, pp 3-4.
- ⁵⁰ *Morris Indictment*. *The Law Project*. n.d. Web. n.pag. Last visited 12/30/15 <http://media.wix.com/ugd/fa6d06_918b2851ad7843ef8b704be3334ac0e1.pdf>
- ⁵¹ The perjury count against Morris was dropped.

⁵² Cf., Riehl v. City of Rossford p 37, citing Thaddeus-X v. Blatter, 175 F.3d. 378 at 394 (6th Cir. 1999).

⁵³ Cf., Riehl.

⁵⁴ Cf., Teco Barge Line, Inc. at *25, citing McDonnell Douglas, 411 U.S. at 802 (1973); McClain v. Nw. Community Corr. Ctr. Judicial Corr. Bd., 440 F.3d 320, 332 (6th Cir. 2006); and Thaddeus-X, 175 F.3d at 399.

⁵⁵ Id.

⁵⁶ See, Item #12. [S106]. n.d. Web. n.pag. Last visited 12/30/15 <<http://www.smokykin.com/tng/getperson.php?personID=1150897&tree=smokykin#cite12>>

⁵⁷ Lipton explains that he made dozens of subsequent arrests, which is why he could not remember the exact date and/or time of the disputed D.U.I arrest. He admits having been unable to select “the subject” from a photo array provided him by the TBI, but reports having shared that person’s name with the agency and offered to provide it a picture of the gentleman in advertising for his real estate business.

⁵⁸ Mark Lipton is among several people derided as “Pityful (*sic*) Pathetic Losers” in an online “Sevier County Forum” at <http://www.topix.com/forum/county/sevier-tn/T60KB7025GNATBVN1> as of December 30, 2015.

⁵⁹ United States v. Armstrong, 517 U.S. 456 at 463 (1996).

⁶⁰ Id. at 465. (internal citations omitted).

⁶¹ Cf., Anderson at 465.

⁶² See, Milli Kanani Hansen, *Testing Justice: Prospects for Constitutional Claims by Victims Whose Rape Kits Remain Untested*, 42 Colum. Hum. Rts. L. Rev. 943 at 973-974 (2010-2011). (internal footnote omitted).

⁶³ Id. at 979-980.

⁶⁴ Interestingly, Lipton lives and worked minutes from Knoxville, Tennessee. In 2014, “records from both the city and county risk management funds reviewed by the News Sentinel in a monthslong probe of three years of claims” revealed “that no matter the cost and the conduct, (Knoxville) law enforcers involved in claims rarely were fired, whether they acted badly, violated someone’s civil rights or simply fouled up.” Moreover, “(i)n only one case were officers fired and criminally prosecuted” despite taxpayers footing related five (5) and six (6) figure bills for legal fees, damages awards, and settlements. See, Satterfield, Jamie. “Investigation shows firings rare, payouts big when excessive force used”. *Knoxville News Sentinel*, posted 9/25/14. Web. n. pag. Last visited via Evernote, 12/30/15. <http://www.knoxnews.com/news/local-news/investigation-shows-firings-rare-payouts-big-when-excessive-force-used_37391881>

⁶⁵ Lipton Profile. *Plea for Justice Program*. n.d. Web. n. pag. Last visited 12/30/15 <<http://www.plea4justice.org/#!/mark-p-lipton/cby7>>

⁶⁶ See, footnote 50 *supra*.

⁶⁷ “Lucas County Sheriff’s Deputy Indicted on Two Criminal Charges”. *WTOL 11*. n.d. Web. n. pag. Last visited 12/30/15 <<http://www.wtol.com/story/4705323/lucas-county-sheriffs-deputy-indicted-on-two-criminal-charges>>

⁶⁸ This written correspondence was modified to exclude the names of referenced minors and their respective mothers.

⁶⁹ Rujumba, Karamagi. “Deputy accused of assault, perjury”. *The Blade*. March 31, 2006. Web. n. pag. Last visited 12/30/15 <<http://www.toledoblade.com/Police-Fire/2006/03/31/Deputy-accused-of-assault-perjury.html>>

⁷⁰ In 2009 Telb was indicted but later acquitted in connection with the alleged cover-up of an inmate death. See, “Lucas County Sheriff Jim Telb indicted”. *WTOL 11*. n.d. Web. n. pag. Last visited 12/30/15 <<http://www.wtol.com/story/10182732/lucas-county-sheriff-jim-telb-indicted>>

⁷¹ Wilkins was arrested based on a 2005 third-party report of inappropriate interaction with a minor, giving him and Smaw motive to avert a church scandal by shifting attention to purported misconduct by Morris.

⁷² According to Morris, various people reached out to him post-trial and shared key exculpatory information including a typed report supplied by the wife of the aforementioned Officer Bruce Birr. According to Morris, Mrs. Birr indicated that the typed report reflects what her husband dictated before he prepared an inconsistent, handwritten account of the Wilkens’ arrest.

⁷³ See, *State of Ohio v. Morris*, Appeal No. L-14-1097 in the Court of Appeals of Ohio, Sixth Appellate District, Lucas County (9/19/14).

⁷⁴ In contrast, a September 15, 2004 media “Investigation shows firing rare, payouts big when excessive force used” by members of the nearby Knoxville, Tennessee Police Department. See, footnote 64 *supra*.

⁷⁵ Certain social media profiles and an online obituary align with rumors that Sutton has a daughter married to a maternal relative of Sheriff Seals.

⁷⁶ “This case concerns the November 16, 2009 assault of Henry Sutton (‘the victim’) by the victim’s neighbor, (Mark Lipton) the Defendant, who allegedly, following a verbal altercation with the victim’s (14 year old) grandson, pointed a gun at the victim threatening to kill him and also hit him in the face with the pistol . . . Prior to trial, the State moved for admission . . . of two other acts committed by (Lipton) during the November 16, 2009 episode: one, threats made by the Defendant against the victim’s grandson, A.S., prior to the incident in question; and two, an assault on the victim’s wife, Audry Sutton, immediately following the Defendant’s assault on the victim . . . Upon Officer Ellingwood’s arrival . . . (t)he Defendant provided his name and stated that he had ‘some pain in his back.’” See, *State of Tennessee v. Lipton*, Appeal No. E2012-02197-CCA-R3-CD before the Court of Criminal Appeals of Tennessee at Knoxville, p 2 (9/4/2014).

⁷⁷ See, *State of Tennessee v. Mark P. Lipton*, Cause No. CR15118 before the Circuit Court for Sevier County - Sevierville, Tennessee, as of March 2012.

⁷⁸ See, footnote 34 *supra*.

⁷⁹ Like *Morris*, Lipton denies striking his accuser. Lipton also notes that a next-day photograph of his accuser, Henry Sutton, contradicts the forceful blow to the face that Sutton claimed Lipton gave him with a gun barrel.

⁸⁰ See, footnote 34 *supra*.

⁸¹ Sedensky, Matt and Merchant, Nomaan. “Hundreds Of Cops Kicked Off Force For Committing Sex Crimes” *Huffington Post Crime*. November 1, 2015. Web. n. pag. Last visited 12/30/15 <http://www.huffingtonpost.com/entry/hundreds-of-cops-kicked-off-force-for-committing-sex-crimes_5636133ae4b063179912afba>

⁸² See, footnote 34 *supra*.

⁸³ See, *State of Tennessee v. Lipton*, Appeal No. E2012-02197-CCA-R3-CD before the Court of Criminal Appeals of Tennessee at Knoxville, p 11 (9/4/2014).

⁸⁴ See, *State of Ohio v. Morris*, Cause No. CR06-1681 in the Court of Common Pleas of Lucas County, Ohio – Trial Transcript (August 21, 2006).

⁸⁵ And so much for the trace or lack of trace DNA evidence that at least one expert indicates is likely to implicate or exculpate Lipton. The presence or lack of that evidence has yet to be confirmed through appropriate testing of the service revolver that Lipton reportedly used to strike Henry Sutton. Of course Lipton recently learned from an expert that DNA can be planted as its age or the time-frame for its presence cannot be scientifically determined.

⁸⁶ See, footnote 34 *supra*.

⁸⁷ See, Poulin, Anne, *Convictions Based on Lies: Defining Due Process Protection*, 116 Penn St. L. Rev. 331 (2011-2012).

⁸⁸ See, U.S. Constitution, Amendments 9 and 10.

⁸⁹ See, *Christopher v. Harbury*, 536 U.S. 403 at 415 (2002).

⁹⁰ See, U.S. Constitution, Amendments 9 and 10.

⁹¹ *Id.*

⁹² Kimbriell, Kelly; Childress, Sarah; and Rich Steven. “What Happens When Police Are Forced to Reform?” *Frontline*. November 13, 2015. Web. n. pag. Last visited 12/30/15 <<http://stories.frontline.org/what-happens-when-police-are-forced-to-reform>>

⁹³ *Id.*

⁹⁴ Alberts, David S. and Hayes, Richard E., *Understanding Command And Control*. Command and Control Research Program (CCRP). Available at http://www.dodccrp.org/files/Alberts_UC2.pdf, 2006.

⁹⁵ *Id.* at 47.

⁹⁶ The phrase is an adaptation of *Culture of Quiescence* by Carl T. Bogus, 9 Roger Williams U. L. Rev. 351 at 353 (2004).

⁹⁷ See, U.S. Constitution, Amendments 9 and 10.