TITLE Juror Number Twelve

The call up to jury duty is fundamental to our constitutional, democratic, and civil society. When it is your first time, you are happy to learn and experience it. Maybe, the days spent in court are disruptive, taking off of work, taking a big pay cut, or taking a hit to your sense of security and well-being. You may serve as juror in civil court in cases brought by citizens, institutions, or corporations or in criminal court in cases brought only by public servants, sworn to an oath of duty, called prosecutors or district attorneys.

As a juror, you are a trier of fact and you get to decide if the facts – typically a limited subset of the whole set of related facts in a case – mean an allegation is true. What jurors may not know is the extent to which the legality of a cause of civil or criminal action is valid, a matter left to attorneys, pretrial.

Could a juror ever face a trial when there is a question whether or not a crime has even occurred, let alone who did it? What if you do not have a case of a dead victim, missing cash from a safe, or fraudulent claims on a tax return? In May 2011 in Boston Massachusetts, a running shoe product manager, Bryan Gothie, sat as a juror on day one of a trial, where the prosecutor, Assistant US Attorney David G. Tobin, was effectively leaving that question to the jury of twelve…a trial that was not so much a who done it, but a trial of a man who absolutely did and say what was presented as evidence…an email.

It is subtle, but the jurors in Boston essentially had to decide whether or not facts even describe a crime, without benefit of knowing or reviewing case law, hearing legal arguments (as opposed to factual arguments), considering all the facts, or understanding definitions of relevant terms.

In the subject email the defendant – as a victim of crime himself – was coordinating his current lawsuit with the so-called victim, exercising his first amendment rights AND relaying an assertion of misconduct to the recipient, who happened to be a fellow Suffolk Law 1988 graduate with AUSA David G. Tobin, who himself was a professional associate of the recipient's fellow co-defendants in the civil lawsuit brought by the defendant in the current criminal matter. With all of those relationships and conflicts of interest, it is not difficult to see how an interested public servant could bring forth a malicious prosecution. But, what is there to stop this crazed, self-interested man, by duty representing the public and society at large, from going after citizens in criminal court? ANSWER: Citizens, like Bryan Gothie. But, Mr. Gothie had other plans. Juror number twelve and the prosecutor were not the only ones with "other plans". Judge Douglas P. Woodlock had other plans, like restricting the appointment of (competent and experienced) counsel, restricting evidence presented, restricting witnesses testifying, and worst of all, allowing, and implicitly condoning, the misconduct of both the attorney victim and the prosecutor.

Bryan Gothie, known as juror number twelve, sought to be excused after only one day of trial, for allegedly having fear of the defendant! The juror number twelve was excused (with little or no say by the Defendant), the appointed counsel did not immediately call for a mistrial, and the defendant was left to wonder just what may have occurred within the jury pool. Was there juror misconduct? Was

there prejudicing behavior? Had Mr. Gothie come to know about Access To The Courts (.org) and its revelations and analysis of bad public servants? Is there more to Mr. Gothie and his relation to this case?

A typical new juror would likely presume the good faith of the prosecutor, and be eager to responsibly listen to the facts and decide an outcome. After all, it is the juror's duty. If the FBI agent had misled the Magistrate Judge in her complaint to obtain an Arrest Warrant – including asserting false and incomplete facts, had misled the grand jury with falsehoods and facts she knew were false, and if the prosecutor had left the grand jury to decide legal definitions of relevant terms and had, admittedly and knowingly, improperly disclosed prejudicial information having nothing to do with the issue at hand, then just what does the indictment mean? ANSWER: The matter goes to trial, unless the court-appointed defense counsel challenges the legality of the claims and of the process to that point.

The thought never occurred in the mind of the court-appointed counsel, Ian M. Gold, to challenge the legality of the USA v. Jeffrey L. Clemens proceeding. Mr. Gold was a rookie to the process, but nonetheless informed of the injustices faced by the defendant, including the fact that Mr. Clemens was actually a victim of misconduct and crimes by the so-called victim! Perhaps, the motivation for inaction, and dereliction, is more money, as a trial with billable hours would be more profitable for the federal defender organization.

On the face of any communication by Mr. Clemens is never a threat, direct or implied. It is the **allegation of a threat by self-interested parties** (which involved unethical ex parte communication by the so-called victim) that is compelling here in this process, because the accuser is a federal attorney. And that attorney made sure that false and misleading statements to a Magistrate Judge and to the grand jury helped him get what he wanted first, whilst the duty-dodging District Court Judge merely ignores the attorney misconduct, allowing an ill-informed and - with Juror Number Twelve gone – a prejudiced jury to decide an essentially legal question, NOT a factual one. Juror twelve's fellow jurors were played, and prejudice played a part.

The misguided and questionable behavior of Juror Number Twelve in the USA v. Jeffrey L. Clemens trial in May 2011, and the Court handling of the juror's request to be excused (because he was supposedly threatened or felt afraid of the Defendant), embodies the essence and extent of prejudice in our legal system. Bryan Gothie, the Juror Number Twelve, is a civilian derelict.

Intentional prejudice, by players like AUSA Tobin, and the Unwritten Rules implementing it, allows for desired outcomes, rather than legitimate and logical outcomes to legal proceedings. Access To The Courts wrote out those rules in 2005 in the early months of developing the Access To The Courts (.org) website, documenting to that point a decade of abuses and prejudice by players in the legal system.

The eighteen year odyssey of the man, who Mr. Gothie helped ship to prison, facing a culture of dishonesty and self-serving intentional prejudice in our legal system, is a blip on the modern history of man. It is more of a drip…that drip from the crack in the dam that threatens the downstream masses of

people. Remember the Johnstown Flood? The wealthy, who enjoyed the man-made lake created by a man-made dam, ignored the noted failings and warnings of concerned observers. Hundreds died because the privileged class ignored the warning signs brought to their attention. The Derelicts in the legal system (and Access To The Courts have documented dozens) are doing the same thing that led to disaster over a century ago – ignoring problems, yet they continue to enjoy their relative prosperity and benefits (and paychecks), at taxpayer expense, while thousands, if not millions, suffer undue burdens and even die.

Johnstown Pennsylvania is interesting. Near that fateful town is a government agency involved in the drug enforcement realm and other matters, which was at one time the home to an employee of the Administrative Office of the US Courts. That same employee, *who is also an advocate for opening up communications between all law enforcement agencies – almost making them one big police force, across jurisdictions*, was to eventually inform the founder of Access To The Courts that his (June 2010) complaint to the DOJ about Assistant US Attorney David G. Tobin was not in their jurisdiction!

Apparently, some galoot and derelict in the DOJ Office of Inspector General had the bright idea to inform the US Courts that one of its practicing attorneys (*subject, by the way, to the Rules of Professional Conduct of the Commonwealth of Massachusetts – a fact the Office of Bar Counsel and the Office of Bar Overseers was to later ignore BEFORE the said trial*) – David G. Tobin, had been the subject of a complaint. That informing of the US Courts, who obviously did not have jurisdiction to investigate a complaint submitted to the DOJ, had the effect of undermining the complaint against the Assistant US Attorney and to undermining attempts by a criminal defendant to stave off serious prosecutorial misconduct. Case in point…

When Document 52 was submitted to the criminal docket in the USA v. Jeffrey L. Clemens case in Boston, requesting that Assistant US Attorney address appearances of impropriety, the Judge Woodlock initially gave the nod for the attorney to answer, but eventually was to ignore the appearance of attorney misconduct, literally letting the matter sit idle and be forgotten.

The odyssey does have a beginning…

From the West, to the East, from the Wretch to the Beast, Prejudice loved them all. JAC

On October 25, 1994, the Defendant noted herein experienced a case of (pre-meditated) police misconduct, having been served a provably false speeding ticket (60 in a 35), physically assaulted (as bruises and a torn shirt attest), and verbally threatened with a “I’ll be seeing you around!” This injustice occurred just a few days after being surveillanced by the Bellevue (Washington) Police Department. The reasons are not important, but it has to do with earlier Bellevue Police involvement in serving court papers in a different matter, and thus, a collusive act was hatched about this time. The effort, time, and money spent in the following months to achieve accountability of the police officer involved – Dennis L. Richards, of the Bellevue Police Department – would cause anyone to squirm and blush with awe…

Presented same day Complaint to the Police Department (deflected a day by officer Michel Pentony, so he could have a chance to collude further with other involved parties)
Rejected an edited version by officer Michel Pentony (obviously concealing or deflecting the officer misconduct)
Requested a Contested Hearing on the false speeding ticket
Faced obstruction in his attempt to subpoena the officer to the hearing (as the court withheld witness subpoena instructions, failed to file the police speeding ticket and statement, failed to provide a reasonable timeframe for the subpoenaed witness police officer to show up, etc.)
Faced a written Reporting Officer Report by Dennis L. Richards (in lieu of appearance), only to be proved utterly false later; high school physics and math proved that the speeding could not have happened.
Filed an appeal in an obstructed contested hearing (in Bellevue District Court) with Judge Linda Jacke; Judge Jacke supported the charade to put off the availability of the officer until AFTER the defendant had to return home out of state. The Commission on Judicial Conduct dismissed a complaint against her…with a lifetime of ramifications…an invitation for judicial abuse, albeit subtle.
Placed repeated phone calls to the Department for status of his Complaint
Filed an official administrative complaint with the City of Bellevue (statutory pre-cursor to a lawsuit)
Visited the Bellevue Police station to meet, by request of Detective Bob Thompson
Detained against will on September 8, 1995 by Detective Bob Thompson (over a the manner in which the complainant conducted phone calls) – unknown to the Complainant, Mr. Thompson reports an arrest for Criminal Harassment to the FBI, though never charged the Complainant, nor attempted to charge him.

One can see that a lot of time (11 months), a lot of effort (filings, hearings, calls, meetings), and a lot of stonewalling by police occurred BEFORE the department's detective assigned "to get to the bottom" of the complaint, alleges Criminal Harassment and reports it to the FBI, to begin a life of prejudiced dealings with police. And, indeed, that happened, as documented by Access To The Courts.

And we did not even mention what happened with the Complainant's brother, the founder of Access To The Courts…the brother, while attempting to report the assault, just five hours after the fact, to another police station, was arrested! It was to become known later that Bellevue Police officer Michel Pentony (who later worked for years in Special Operations…whatever that means!) had made a call to that other station, BEFORE the arrest of the founder. THAT is how and why the Clemens brothers are tied together in this odyssey. And, will be, to its rightful end.

Access To The Courts has been following this odyssey of prejudice and injustice for over 18 years…a generation. We have been party to complaints, lawsuits, letters to overseers, politicians, and others. We have had the facts on our side. We have had the law on our side. We have had the moral and ethical high ground, yet the years of diligence and documentation of the real facts seemed to have only prompted MORE abuse by police, attorneys, and the courts. Of course, times are too good for them to acknowledge that they have been cheating and stealing from the public…resources, money AND trust for generations. It is now appropriate to study the correlations and parallels of the Bellevue Matter (of

the 1990s) and the Scituate Matter (of the 2000s), two glaring examples of police misconduct and cover up, by all the players.

Jeffrey L. Clemens was suing the Town of Scituate Massachusetts, and its counsel – Stephen C. Pfaff (so-called victim of Mr. Clemens' email), as of 2009 – 2010. That followed a first lawsuit for related but separate matters in 2007 – 2008. Mr. Pfaff engaged in unethical attorney conduct AND criminal conduct in suborning perjury by Scituate Police officer Michael OHara in 2008.

Michael OHara is now noted by the OHara Report, a report that falsely claimed Mr. Clemens had been disorderly and been arrested for it. It is an often cited piece of work – more like a piece of fiction, and a tool for police parties to prejudice federal proceedings against Mr. Clemens. The Town of Scituate police department withheld 911 call tapes and radio logs for over 3 years, despite written demands and being rightful requests…such information contradicts the OHara Report.

Parallels of Prejudice

Bellevue Police (Washington) 1994+	Scituate Police (Massachusetts) 2005+
Criminal Harassment "arrest"/detainment *(1) (following a provably false officer report by Dennis L. Richards and <u>after</u> concerted effort for justice by JLC); By <u>Detective</u> Robert K. (Bob) Thompson ; Reported to the FBI, but never prosecuted	**Criminal Harassment charge *(2)** (following a provably false report by Michael OHara, attempting to justify a false arrest for Disorderly Conduct, and <u>before</u> efforts for justice); By <u>Detective</u> Robert Rappold; OHara Report provided to the FBI & Secret Service
Provably false reporting officer report following a physical assault upon the person of Mr. Clemens by police (officer Dennis Richards)	**Provably false reporting officer report** following a physical assault upon the person of Mr. Clemens by police (officer Tim Goyette)
Insufficient, botched, deferred, deflected, and/or non-existent **investigations by authorities**	**Insufficient**, botched, deferred, deflected, and/or non-existent **investigations by authorities**
Court participation in obstructing the defense against police abuses: Withholding of witness subpoena instructions Failed to allow a timely hearing with the officer RICHARDS Ignored proven evidence of ex culpability Allowed attorney misconduct in civil proceedings	**Court participation in obstructing the defense** against police abuses" Withholding of witnesses Failed to try related charges together and failed to try the matter with the involved officer GOYETTE Ignored proven evidence of ex culpability Allowed attorney misconduct in civil proceedings
Prejudice used to continually narrow defense options and "clear" errant police officers	**Prejudice** used to continually narrow defense options and "clear" errant police officers
***(1)** Quite literally the <u>first</u> criminal arrest of Mr. Clemens	***(2)** Quite literally the <u>last</u> criminal charge against Mr. Clemens by any state, county, or local entity.

An interesting observed fact is how detectives (Bob Thompson and Robert Rappold), with access to information, gained through presumed investigations, in both Bellevue and Scituate, brought unfounded allegations of Criminal Harassment against a citizen simply inquiring about police misconduct!

Bottom Line – a systemic prejudice has worked to deny Jeffrey L. Clemens his constitutional rights to confront those bearing false witness, to have due process, and to have access to the courts…despite persistent and consistent efforts over years (decades) and thousands of dollars and years in jail to attain justice. And, a running shoe product manager, by the name of Bryan D. Gothie of Sudbury Massachusetts, could not take two days to do his civil duty to hear and adjudicate. Then, why should we care whether or not police, attorneys, and judges do their duty?

It is not a rhetorical question…are there more Bryan Gothies out there? Yes, in fact, there are, and some of them may have appeared on September 18, 2008, with the help of attorney Stephen C. Pfaff, in Hingham Massachusetts, only to relegate justice to another day, for the six jurors all had to get home that one day, in what should have been a status hearing for three charges by the Scituate Police Department, but turned into an utter joke of a trial – a trial literally forced upon Mr. Clemens, without counsel representation and without preparation for a trial. AND, with a subsequent appellate reversal of that prejudiced matter, Mr. Clemens STILL faces a potential trial (for disorderly conduct), which might explain why the Assistant DA's former associate – AUSA David G. Tobin – highjacked the US Attorney Office for personal use, VERY personal use, carrying out a prosecution that benefits a group of Derelicts.

ATTC 4/8/13