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Federal Appeals Court Exposes Pirro's Misconduct

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Last Tuesday, August 22nd the United States Court of Appeals for the Second Circuit handed up a decision in the Anthony DiSimone case. The appeal was by Westchester District Attorney Janet DiFiore's Office, as Cross-Appellee, in opposition to an earlier decision by Federal District Court Judge Charles Brieant, granting a writ of habeas corpus, on a challenge to sufficiency of evidence, which produced a conviction for Depraved Indifference Murder. The decision, which reversed the lower Court's ruling, for "procedural insufficiency," more importantly exposed the prosecutorial misconduct, and outright unlawful activities engaged in by former DA Jeanine Pirro, and now justified, and defended, by Janet DiFiore, her successor.

Specifically, although the main thrust of the original petition filed by DiSimone, with the Federal District

Court, dealt with the sufficiency of evidence presented in connection with his conviction for Depraved Indifference Murder in the death of Louis Balancio, the real significance of the decision is its detailed exposure of the calculated, and unlawful activities engaged in by a malicious prosecutor bent on convicting an innocent Defendant, for her own purposes, at any cost. The case arises from a street brawl in front of the former Strike Zone Bar, on Central Avenue in Yonkers, in

1994, between some thirty local toughs that resulted in the death of the 21-year-old college student who suffered a total of thirteen stab wounds.

Defendant DiSimone, who continued to live in plain sight in the City of Yonkers, with his wife and infant son, became the target of one of DA Pirro's more imaginative propaganda efforts. She would falsely claim that he had run off to Sicily, and that he was being pro-



tected by the Cosa Nostra. She would twice try to indict him, failing each time, while succeeding in indicting Darin Mazarella, a known criminal charged in other homicides and present at the Strike Zone incident. Finally, only after empanelling a so-called "special grand jury" and offering immunity from prosecution, and placement into a witness protection program to Mazarella, and his equally violent,

and criminal brother Nick, in return for testimony against DiSimone, was Mrs. Pirro able to secure an indictment against him.

The 29-page decision, authored by Justice Calabresi, the presiding judge of the three judge panel, who listened to the oral arguments offered by John R Bartels, Jr., attorney for Anthony DiSimone, and Valerie A. Livingston, for

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Balancio's death." Justice Calabresi states, "Whatever else it may be, it is not murder to shoot a dead body. Man dies but once."

He then gets tough with Janet DiFiore, who now appears to relish defending and justifying Jeanine Pirro's outrageously unlawful prosecutorial misconduct, declaring, "The government's contentions to the contrary are wholly without merit." He goes on, "In the first place, if there were questions about the reliability of the exculpatory information, it was the prerogative of the Defendant and his counsel, and not of the Prosecution, to exercise judgment in determining whether the Defendant should make use of it."

The Court concludes that the information was favorable to the Defendant, and material, and that its late disclosure significantly influenced the outcome of the trial. The Court further notes the existence of one very small spot of blood supposedly connecting the Defendant, on a sweater that, interestingly was never proven to have belonged to DiSimone. The Court reminds that, "No witness testified to seeing the stabbing, and the murder weapon was not recovered."

What the Court may not have known was that the Prosecution's so-called Blood Splatter Expert was hired two days before the trial, and was paid more than \$30,000 to make his assessments from photographs. Neither could the Court be aware of Mrs. Pirro's antics. Appearing several times in the trial courtroom with the victim's mother, and on television and in the press with her as well, all calculated to

improperly persuade the jury.

Judge Calabresi declares, "We hold that there is a reasonable probability that had this material (the statement implicating Djonovic) been available the result in the case would have been quite different."

Those who have observed the patterns and practices over twelve years in the Westchester District Attorney's Office under Jeanine Pirro are only too well aware of the repeated outrageous prosecutorial misconduct, and outright criminal activity engaged in to achieve her despicable self-promotional agenda. The Anthony DiSimone case is but one of a long list of serious injustices perpetrated by Jeanine Pirro and a small number of misguided and selfishly motivated prosecutors whose criminal and reprehensible actions are just now slowly coming to light.

There are numerous innocent individuals, who, like Mr. DiSimone have been incarcerated for crimes they did not commit. They and their families have paid, and continue to pay, for the mistake the People of Westchester made three times when they entrusted Jeanine Pirro to be their chief law enforcement officer. Over Time, as the courts recognize the magnitude and the frequency of Mrs. Pirro's evil, criminal deeds, under the color of law, the taxpayers of Westchester will be burdened with the cost of compensating her victims.

The Depraved Indifference Murder Statute has been a "boondoggle," abused and manipulated by prosecutors throughout New York State for 39 years, with the full knowledge and complicity of the state's highest court. Not until March 2004, with the *Gonzalez* Deci-

sion, out of Rochester, did the Court of Appeals begin to seriously, if not wholeheartedly, come to grips with the injustices worked by ruthless prosecutors through its nebulous and confusing language.

Some prosecutors more than others, those whose agendas were most self-promotional, such as Jeanine Pirro, and Charles Hynes, abused the statute to the level of criminality, frequently offering juries, and unwary judges, a smorgasbord selection of murder theories, Intentional, or Depraved Mind, counting on the notion that "juries love to compromise."

Those of us who attended the oral arguments in the *DiSimone* case, emerged from the courthouse not quite sure of what we had witnessed, given that the principle claim involved *Depraved Indifference Murder*, and yet, the three justices had continued to dwell on, and ask questions, almost exclusively, about Brady violations. Later that day we got a glimpse of what was on their minds, when the Court posted information on the *Pollicano* case, and took the most unusual step, calling upon the New York State Court of Appeals for "certification" regarding the Depraved Indifference Murder Statute, and whether the rules of interpretation under which that court has been recently operating constitute "old, or new, law."

In reality, the Federal Court was saying to the state's highest court, "You've permitted this situation that unjustly, and unfairly advantages prosecutors to go on for nearly forty years. And, now, suddenly two years ago, you began dealing with it. Well, some of the residue is landing on our steps, so please give us some guidance to help us clean up your mess." ■