

Afterword

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No man's liberty is dispensable. No human being may be traded for another. Our system cherishes each individual. We have fought wars over this principle. We are still fighting those wars.

Sadly, when law enforcement perverts its mission, the criminal justice system does not easily self-correct. We understand that our system makes mistakes; we have appeals to address them. But this case goes beyond mistakes, beyond the unavoidable errors of a fallible system. This case is about intentional misconduct, subornation of perjury, conspiracy, the framing of innocent men. While judges are scrutinized — our decisions made in public and appealed — law enforcement decisions like these rarely see the light of day. The public necessarily relies on the integrity and professionalism of its officials.

(Limone v. U.S. (D. Mass. 2007) 497 F. Supp. 2d 143, 153.)

My life changed during one of my first conversations with Chuck Murdoch. I had just filed a petition in my second wrongful conviction case based upon government misconduct, and I felt betrayed. I felt betrayed as an officer of the court, as someone who believed that I was doing my part as a criminal defense attorney representing the indigent. During the course of this particular case in San Joaquin County, I realized the impossible situation. I realized that I wasn't representing the best parts of our constitution. I was lending legitimacy to a gross injustice beyond my control. It was beyond arbitrary.

Arbitrariness is one thing. As a post-conviction criminal defense attorney, I have intimately understood arbitrariness. Over the past two decades, in my post-conviction practice throughout the state of California – from San Diego to Shasta – I have come to understand that your ZIP code fundamentally dictates your access to the constitution and its protections. This is a

principle that is not as apparent as the racial, ethnic, and class-based constitutional disparities. And, as one might imagine, it exacerbates those disparities. The limited access to constitutional protections deprives individuals of liberty in a very arbitrary manner. I have always seen this *elsewhere*, in other parts of the United States. I saw it in places like Ada, Oklahoma and throughout Louisiana and Texas. As someone who claimed to be Californian, I initially resisted seeing the systemic injustice in California. Two decades later, I am extremely familiar with the constitutional deserts in California. Truly.

However, what I discovered through government misconduct-based wrongful conviction cases cannot be described as arbitrariness. It cannot be explained by mere human error. It is something far different.

In our initial discussions, I told Chuck that I had noticed a pattern in some of the wrongful conviction cases, and that it wasn't a pattern limited to California. I asked him if he thought there might be some kind of systemic problem with informant or "witness protection" programs throughout California, which led to the prosecution and conviction of innocent people. A systemic "problem" that led the government to intentionally frame innocent people. Chuck responded, "Yes, I think that it's all related to the *Limone* case." I'm sure I thought his reference was just another jailhouse lawyer's wishful understanding of a criminal case. A tortured euphemism. But he was right. The *Limone* case really is just as simple as Chuck described it. It is a case where the government framed four innocent people in order to protect four mobster murderers. It also represents the birth of the federal witness protection program built around organized crime. It is a witness protection (or more aptly, an informant) program that most U.S. states consciously emulated to various degrees.¹ At its core, the program requires a fundamental

¹ In 1997, there were a series of Congressional Hearings to provide the states with the foundational information to set upon witness protection programs based upon the federal model. Indeed, states were encouraged to legislate the

sacrifice of humanity and the belief that the goal of curbing organized crime justifies the sacrifice - the conscious trading of one human being for another – in an arrogant chess game.

The *Limone* case involved the FBI framing four innocent people for murder in order to shield the organized crime boss Whitey Bulger's paid assassin, Joseph Barboza. On March 12, 1965, Vincent "Jimmy" Flemmi and Joseph "The Animal" Barboza murdered Edward Deegan, a small-time criminal who had insulted mob members. Deegan was shot six times by at least three different weapons. The FBI knew about the murder before it happened, but they had recruited Flemmi and Barboza as informants, so they did nothing to prevent the murder.

There is no federal crime of homicide, therefore the prosecution of Deegan's murder came under state jurisdiction. Initially, the murder went unsolved. Two years later FBI agents, intent on finally getting evidence against Bulger, cultivated Barboza as a government witness. Barboza thereafter met with state authorities and implicated several individuals in the Deegan slaying. Based principally upon Barboza's testimony, the Commonwealth of Massachusetts secured indictments in 1967 of Peter Limone, Sr., Enrico Tameleo, Louis Greco, Sr., and Joseph Salvati.

The FBI did not offer local officials the information implicating Flemmi and Barboza. The FBI chain of command, all the way up through Director J. Edgar Hoover, were aware of the false evidence presented, and the FBI did not correct the record. The four scapegoats were convicted on July 31, 1968, based largely on Barboza's testimony at trial. Greco, Limone, and Tameleo were initially sentenced to death. Congressional hearings in 2004 revealed that FBI agent Paul Rico celebrated when the scapegoats were sentenced to death, believing that the FBI

programs through statutory models. (See https://commdocs.house.gov/committees/judiciary/hju57652.000/hju57652_of.htm) In all fairness, this was four years before the truth about the FBI's program, and its human consequence, was uncovered.

misconduct would be buried along with the men.² However, in the wake of the Supreme Court's 1972 decision in *Furman v. Georgia* invalidating all death sentences then pending in the United States, their sentences were reduced to life in prison.

In the years following the convictions, important evidence came to light indicating the innocence of Limone, Greco, Tameleo and Joseph Salvati. However, the FBI suppressed much of the exonerating evidence. Barboza signed an affidavit on July 28, 1970, stating that these four men were not involved in the murder. On April 9, 1976, a lawyer who had worked with Barboza signed an affidavit stating that Barboza had admitted to giving false testimony about Limone's role in the crime. Other affidavits followed from witnesses and lawyers who said they had lied during trial or had known that Barboza gave false testimony. In 1976, Barboza was shot and killed in San Francisco, California.

Individually, the four scapegoats filed numerous appeals and petitions, but they were repeatedly denied relief. Tameleo died in prison in 1985, Greco in 1995. In the spring of 1997, Salvati's sentence was commuted and he was released on parole.

In the summer and fall of 2000, a special prosecutor investigating the FBI's use of informants came across numerous documents from 1965 demonstrating that agents had known Barboza and Flemmi had committed the murder without the involvement of Greco, Limone, Tameleo, or Salvati. In December 2000, a Massachusetts Superior Court judge held a hearing to consider releasing Limone based on information in these memos, and on January 5, 2001, Limone was released. All charges against Limone and Salvati were dismissed on January 31, 2001.

² Rico died in 2004, while facing charges that he had himself colluded with members of the mob to murder a businessman who accused them of skimming profits.

In 2004, the United States Congress held two hearings on the FBI's development of its witness protection (informant) program, entitled "EVERYTHING SECRET DEGENERATES: THE FBI'S USE OF MURDERERS AS INFORMANTS." The hearings sparked legislative changes to the FBI's informant programs and the FBI training programs for state and local law enforcement. Despite the significant evidence that the FBI's informant program was rolled out in many if not most states, there has been no comprehensive review of the FBI informant program model and its connection to wrongful convictions throughout the U.S.

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The lessons of the *Limone* case remain relevant today, as the legacy of the federal informant program remains largely unresolved. The impacts of these programs on the U.S. criminal justice system are critical to understanding how some wrongful convictions occur, how the government might justify trading actual murderers for innocent individuals.

Chuck Murdoch's case is representative of the systemic human trade at the heart of the informant program in Long Beach. As with all convictions born from illegal informant programs, it defies basic logic and decency. The system depends upon our collective blind eye to the government's reliance upon an unconstitutional informant program that suppresses basic due process in order to secure convictions at any cost.

The long history of unconstitutional informant programs in the larger Los Angeles area criminal justice system presents an important backdrop as well. Long Beach exists as a subset within the County, with shared resources and personnel. Indeed, it has a shared history that has never been fully investigated or acknowledged with respect to Long Beach specifically.³ There

³ The Los Angeles Grand Jury Report of Findings is a compendium of evidence related to the unconstitutional use of "informants" from 1989-1990. (See <http://grandjury.co.la.ca.us/pdf/Jailhouse%20Informant.pdf>.) The investigation and report was thorough and incorporated depositions and testimony from law enforcement officers, prosecutors (including attorney general representatives), judges and informants. The report provides an in depth understanding

are only indications here and there that Long Beach, like Los Angeles itself, used informant programs to secure convictions. It is a secret game, trading one human being for another, that has always resulted in innocent lives lost and wrongful convictions at the hand of the government.⁴ The degeneration of the system in Long Beach is apparent in many cases and in the parallels to scandals like Rampart.⁵ It is a system that the entire region is still struggling with, even after repeated investigations and reports, from the L.A. Grand Jury in 1989 to the federal Department of Justice on the Orange County informant scandal in 2022. It persists even today, with no resolution or reconciliation in sight.⁶

Chuck's case was born from this system. It was built entirely upon the testimony of an interested and coerced informant and the tacit agreement between the law enforcement that the

of the significant role that "informants," and the use of their known false evidence, played in Los Angeles County criminal justice system throughout the 1970's and 1980's. This report includes cases and informants moved to and from Long Beach with the knowing assistance of judges, police, prosecutors and attorney generals.

⁴ A cursory search of Los Angeles County - Long Beach wrongful conviction cases and *exonerations* based upon *Brady* violations related to informants and law enforcement and prosecutorial misconduct includes the following 6 cases: (1) *People v. Samuel Q. Bonner*, Case No. A026128 [Bonner was released in 2022 after serving 37 years based upon the State's *Brady* violations and false evidence from an informant and related police misconduct]; (2) *People v. Oscar Lee Morris*, Case No. A025767 [Morris was released in 2000 having served approximately 17 years after being wrongfully convicted based upon the State's *Brady* violations and false evidence from an informant and related police misconduct]; (3) *People v. Thomas Goldstein*, Case No. A020746 [Goldstein was released in 2004 after serving approximately 25 years based upon the State's *Brady* violations and false evidence from an informant and related police misconduct]; (4) *People v. Barry Williams*, Case No. A623377 [Williams was released in 2021 after serving approximately 35 years based upon the State's *Brady* violations and false evidence from an informant and related police misconduct]; (5) & (6) *People v. Arthur Grajeda and Senon Grajeda*, Case No. A034284 [Arthur and Senon Grajeda were released in 1990 based upon the State's *Brady* violations and false evidence from an informant and related police misconduct].

⁵ In addition, there are parallels between the cases related to Officer Perez which spurred what came to be known as the "Rampart Scandal" and the cases related to Officer Alcazar of the Long Beach Police Department. (See *Ovando v. City of Los Angeles* (2000) 92 F.Supp.2d 1011, 1014 [A wide variety of misconduct by LAPD officers including the shooting of unarmed suspects, the planting of evidence to justify those shootings, the preparation of false police reports to cover up the misconduct and the presentation of perjured testimony resulting in the false convictions and imprisonment of a number of innocent citizens.]) Both officers Perez and Alcazar were engaged in numerous criminal enterprises while in uniform as law enforcement officers and prosecuted by the Department of Justice in federal court. While Officer Perez's criminal conduct was investigated with respect to the larger police department, Officer Alcazar's was not. Officer Alcazar was partnered with Detective McMahon at the Long Beach Police Department during his employment with the department. (See record on appeal, *People v. Selvin Carranza*, L.A. Co. Case No. NA043768; COA No. B161364.)

⁶ See <https://www.justice.gov/opa/pr/justice-department-finds-civil-rights-violations-orange-county-california-district-attorney-s> and <https://www.latimes.com/california/story/2023-10-04/the-use-of-jailhouse-snitches-in-orange-county-bungled-at-least-57-criminal-cases-public-defender-says>.

ends justified trading a low level criminal like Chuck for a mobster murderer. None of the context or corruption was lost on the Honorable Ninth Circuit Chief Justice Alex Kozinski, who openly acknowledged the troubling similarities (or “patterns”) between Chuck’s case and other cases in Long Beach, particularly *Taylor v. Maddox* (9th Cir. 2004) 366 F.3d 992, *Goldstein v. City of Long Beach* (9th Cir. 2007) 481 F.3d 1170, 1171 (noting that Goldstein was granted habeas relief when it was revealed that a 1980s California jailhouse informant had not disclosed that his sentence was reduced in return for testimony), and Chuck’s own second Ninth Circuit appeal *en banc*, *Murdoch v. Castro* (9th Cir. 2010) 609 F.3d 983.

In his dissent in Chuck’s case, Judge Kozinski carefully named names as a witness to this system, identifying Officer William MacLyman as an officer from Long Beach who had been implicated in the government misconduct underlying Goldstein’s wrongful conviction, as well as Judge Charles Sheldon⁷ as the trier of fact in *Taylor v. Maddox*, which the Ninth Circuit overturned. The Ninth Circuit held that Judge Sheldon’s decision finding Taylor’s confession as an unrepresented, unaccompanied minor to have been involuntary and coerced. In a published decision, the court overturned Judge Sheldon’s application of the law as a patently “unreasonable” application of the law as applied to the facts. Remarkably, Judge Kozinski named both Judge Sheldon and Officer MacLyman as officials who did not represent the State of California with integrity.

⁷ Judge Sheldon was a prosecutor with the Los Angeles County District Attorney’s Office from 1969-1983. (See Exh. W; <https://www.presstelegram.com/2012/10/20/veteran-long-beach-judge-charles-sheldon-retires/#>.) Judge Sheldon was the head of the Organized Crime Division at the District Attorney’s Office in L.A. and the Head Assistant District Attorney at the Long Beach Branch, immediately prior to being moved up to the bench of the Long Beach Superior Court. Petitioner further notes that the underlying bar robberies took place in 1983 and involved three individuals acting in concert.

Both of these State officials helped to secure Chuck's conviction.⁸ This was specifically noted by Judge Kozinski as he reviewed Chuck's case at the Ninth Circuit. Context is important, perspective is everything. In passing, Judge Kozinski provided context to the factual findings of the Court's decision in *Taylor v. Maddox*, stating:

We note in passing that police misconduct is not unknown in the Long Beach Police Department. We recently affirmed the grant of habeas relief to petitioner Thomas Goldstein, who was convicted in 1980 of first-degree murder. See Judgment Order, No. CV 98-5035-DT (C.D. Cal. Dec. 27, 2002), *aff'd* 82 Fed. Appx. 592 (9th Cir. 2003). Habeas relief was granted because the prosecution failed to disclose to Goldstein that Long Beach officers had struck a deal with an informant, who provided critical testimony against Goldstein at trial; that they were impermissibly suggestive in handling the photographic identification of Goldstein by the only eyewitness to the murder; and that they advised the eyewitness not to retake the stand after he had misgivings about his recognition of Goldstein. Among the officers investigating Goldstein for the murder was Detective William MacLyman. *People v. Goldstein*, Case No. A020746 (L.A.Cty.Super.Ct.), at 603-04.

(*Taylor v. Maddox*, *supra*, at p. 1014, fn. 17.)

I note the same evidence "in passing."

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Chuck's 1995 cold case prosecution was fraught from the start. The entire investigation and prosecution was based upon the State's gamble that the eleven-year delay would sufficiently blur the evidence of the underlying 1983 robbery at the Horse Shoe Bar. The troubling nature of the cold case investigation and prosecution is illustrated by the numerous portions of the record that have been "sealed" without a legal basis.

⁸ Judge Kozinski referred to Judge Sheldon's brazen offer of leniency to informant Dino Dinardo, following his jury conviction and the imposition of a life sentence, as "Disgraceful." (See *Murdoch v. Castro*, *supra*, 609 F.3d at p. 1007.)

Initially, the police and prosecution edited the most important aspect of the Horse Shoe Bar robbery – the fact that the investigating officers from the Long Beach Police also investigated a second robbery, two miles away, at the Time Out Bar an hour later – which they determined to have been committed by *the same* three Latino men (referred to repeatedly throughout the police reports as “Mexican”). All initial eyewitnesses to the two bar robberies and the surrounding events describe the suspects as “two or three Mexican men.” Then, inexplicably, after publishing a press release on the bar robberies, the Long Beach Police ceased their investigation of the crimes for over a decade.

When the case was “reopened” over a decade later, in 1994, the Time Out Bar robbery disappeared entirely and inexplicably from the evidence. Without more, the State rewrote the tale describing a single bar robbery in Long Beach, focused on two Caucasian suspects. The government’s cold case investigation was purportedly catalyzed by the discovery that one of the fingerprints found at the scene eleven years prior “matched” those of Dino Dinardo. The cold case investigation conveniently overlooked the 1983 latent fingerprint analysis from the crime scene that had identified two individuals by their curiously Latino-sounding names. No eyewitness description ever “matched” Dinardo or Murdoch. No witness identified Dinardo or Murdoch from the carefully curated lineups provided by Detective Pavek in 1983 or more than a decade later, when the case was reopened. Rather, the government proceeded with its prosecution which suppressed initial evidence, relied upon coerced and unreliable statements from manipulated witnesses and compromised witnesses and informants, and delayed the agreed-upon leniency for informant Dinardo in an attempt to circumvent the constitutional requirement that the jury be apprised of any benefit that Dinardo received in exchange for his testimony.

Much as in the *Goldstein* case and the *Limone* case, the government suppressed exculpatory evidence that one of the state's witnesses was a known informant who the government used to provide evidence to support a conviction where no evidence existed. Without the suppressed evidence, Chuck did not have the means to challenge the State's false narrative of the case, which was based upon false testimony from law enforcement as well as the interested informant, Dinardo. Chuck was not provided with the exculpatory evidence until the spring of 2023.

Representing the five dissenting justices on the Court in their dissent to the denial of relief, Ninth Circuit Chief Justice Kozinski summarized:

I would certainly defer to a jury's contrary verdict if it had seen this evidence and convicted Murdoch after a fair trial, presided over by a fair judge, followed by an appeal where the justices considered all of his constitutional claims. But Murdoch had none of these.

(*Murdoch v. Castro*, *supra*, 609 F.3d at pp. 996-997 [dissent by Chief Justice Kozinski].)

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Chuck maintains his innocence, as he has done for three decades now. As noted in Kozinski's dissent almost fifteen years ago, the government's careful coordination between law enforcement, the prosecution, and the judiciary restricted the jury's review to unreliable and mostly false evidence. This is the mendacious house of cards upon which the government built his conviction. Thirty years on, Chuck is still trying to knock it down.

I am committed to a reckoning with the California criminal justice system. I believe that I will eventually find truth and justice, even reconciliation. In the meantime, I will bear witness to Chuck's story. His voice is important for everyone to hear. I recently asked him for an artist's statement to accompany his artwork at an exhibit with other wrongfully convicted individuals

and incarcerated individuals with a focus on shifting the focus of criminal justice to rehabilitation and treatment – in part to reduce the incentivized convictions and extreme sentences which contribute to wrongful convictions. Chuck provided me with the following statement:

My name is Chuck. Today I turn 67 years old. I exist inside a Roman wilderness.
My wilderness is a place I call the DARK HOUSE. I am not supposed to be here.
For 10,884 days I have been lost here.

– Chuck Murdoch 8/6/2024