

THE KIZER LAW FIRM, P.C.

207 N. Michigan Ave., Suite 202
Howell, Michigan 48843
(517) 548-1440
Fax (517) 548-1483

Thomas J. Kizer, Jr.
Bridget Passeri
Stephen LaCom-
mare, Jr.

Of Counsel
Andrea M. Banfield
Rolland Sizemore

July 5, 2017

Mr. William J. Vaillencourt, Jr.
Livingston County Prosecuting Attorney
210 South Highlander Way
Howell, MI 48843

Re: Request for Action

Dear Mr. Vaillencourt:

Attached is my letter to the Judicial Tenure Commission sent today. The word in the legal community is that you filed a complaint months ago as well with the JTC. I hope so. However, you are in the court daily and must know of the continued abuse of others by Judge Brennan and of the events last Monday in front of Hon. David J. Reader and his commentary from the bench.

More importantly, you have had evidence in front of you for months of judge Brennan's serious violations of our criminal laws and not one word has come from your office.

You are the chief law enforcement official of our county. Your duty is clear and your power equals that of our judges in most respects. We elected you to not only enforce the law with even handed prosecutions as required, but to be the conscience of this community in doing the "right" thing.

Judge Reader has separated the local bench from the behavior of Judge Brennan with his commentary on the record in a court proceeding on Monday, July 3, 2017. What are you going to do about her willful perjury; misconduct in office; obstruction of justice; and more?

I furnished your office all of the facts involving the criminal behavior and ethical breaches of Canons by Judge Brennan beginning February 17, 2017 with follow up on March 14, 2017. I believe that information precipitated your complaint to the JTC. However,

there are serious crimes already proven against Judge Brennan as seen by the testimony of many witnesses under oath.

I agree that it is not your duty to convict anyone. It is however, your duty to bring those who you are satisfied have committed crimes before the bar of justice. You did nothing to investigate the claims I made to you about the behavior of Judge Brennan in 2013 before the start of the Kowalski murder trial. (I have attached those for your review.)

You have had sworn testimony in front of you since March, 2017 showing her criminal acts. You seldom, if ever, have sworn testimony from witnesses before you charge most offenders with a crime. What is your reticence to take action now? If you are relying upon an investigation by the attorney general's office please confirm that fact. If not, please advise us why you have done nothing in regard to charging the offenders. The evidence is there.

The difficulty with your silence in the face of facts cause many to suspect your motive. Is it some sort of deference to her support when you ran for public office and then the support you provided to her in 2014 when she was seeking re-election? You have not given that as an excuse for your silence nor a reason for your failure to do anything. Please show us that you have the will to make a tough call against your political friend. You have a duty to all of us to protect us by enforcing the law—even against the powerful and those with “influence”. You were elected to do so.

In 2013 you chose silence in the face of legitimate questions, many of which you and your staff knew were relevant. You had a duty to investigate and ask questions but you gave the judge and her lover a pass, in favor of their assuring due process to an old man (Defendant Kowalski) with no “influence” who had no connection to our community. He was the victim of judicial misconduct and police misconduct.

Every day that passes becomes a greater indictment of all this wrongdoing. Your office cannot undo everything and maybe some will be left to our Attorney General to sort out, but it is time for you to speak. Speak for our constitution; for due process; and certainly for equal protection of the law. Simple as that.

The misrepresentations from judge Brennan on the bench concluding she had nothing more than a “friendship” with a lead Detective Sean Furlong (whose credibility was a key determination for the judge throughout the trial process), was a lie in itself. It was a coverup of her intimate connection to Det. Furlong. By any reasonable standard Mr. Kowalski is entitled to a new trial as the result of the concealed misconduct of the presiding judge in conspiracy with Detective Furlong during the trial.

My complaint to you in 2013 had little to do with his guilt or innocence. Mr. Kowalski may be the person responsible for the horrific murders of his relatives. This is not about

his guilt or innocence. It is about the constitutional protections and rights which must be afforded to every person. In this case, the right to a fair and impartial judge presiding over the conduct of Mr. Kowalski's trial and determining issues of credibility of witnesses and the many related matters. **Judge Brennan ruled in favor of the prosecution and in support of the credibility of her acknowledged lover (Det. Furlong) over that of the Defendant in every critical phase of the Prosecution.**

When the appeals courts decided the judge did not "abuse her discretion" in ruling in the State's favor, they had no idea of her concealed relationship; her indiscretions; her secret phone calls, meetings, kisses and no doubt more. Judicial bias during a trial is a "structural defect" which must **always** result in a new trial no matter what the evidence shows. In *Arizona v Fulminante*, 499 US 279, 309; 111 S Ct 1246; 113 L Ed 2d 302 (1991) the US Supreme Court enunciated the standard: "...once a reviewing court has concluded that judicial misconduct has denied the defendant a fair trial, a structural error has occurred and automatic reversal is required.

You dropped the ball in January, 2013. You took the word of a "judge" without so much as the slightest inquiry. You dismissed the message and the messenger in 2013 by your silence in the face of a totally false narrative by Judge Brennan at the time. (That narrative has proved to be the method used by this judge to avoid difficulty she has created by her own actions. She has tried to lie her way out of danger but has now been caught.) More importantly, people in your office knew or had some knowledge of the connection between the judge and the officer, but neither you nor your predecessor ever made inquiry. If you had done so, you would have been the one forced to file the motion to recuse judge Brennan.

Your duty in 2013 was far greater than to do nothing but suggest to the reviewing judge that you had a **jury waiting and wanted to get the trial moving**. (Take a look at the transcript of Chief Assistant Prosecutor Pamela Maas statements in front of Judge Reader if you have doubts.)

The issues raised in my letters of 2013 were on point. It was not as if the messenger had zero credibility. I had some standing and even though Judge Brennan wanted to destroy the message by attacking the messenger, you had to know the message had some credibility. Judge Reader gave you the opportunity to offer "facts". You chose your agenda over duty.

It is time for our prosecutor to take action. I urge your office to work closely and fully with the Attorney General toward achieving the prosecution of judge Brennan for her criminal acts and secondly, that your office take the necessary action immediately to provide a new trial and finally a fair trial for Mr. Kowalski. Mr. Kowalski sits in a prison cell as a result of a trial in front of a biased judge. A judge who concealed her bias. A

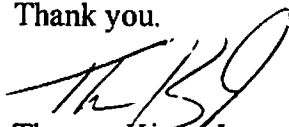
judge who lied about her bias. Officer Furlong was the key witness in the prosecutions case and both he and the judge knew it. How often they talked about the case in their approximately 1200 minutes of phone calls; in their texting; in their regular evening socializing, in just the 13 months prior to the trial we will never know. **Theirs was intimacy and desire.** There is no possibility Mr. Kowalski had an unbiased judge. Her misconduct is appalling. Walter Kowalski deserved a fair trial in front of an impartial judge. Our Constitution requires it. Your duty to assure it is referenced in ABA Standard 3-1.2. (Functions and Duties of the Prosecutor) **(b) The prosecutor is an administrator of justice, an advocate, and an officer of the court; the prosecutor must exercise sound discretion in the performance of his or her functions. (c) The duty of the prosecutor is to seek justice, not merely to convict.** (Emphasis supplied).

Walter Kowalski is 70 years old and it remains possible that with a fair trial in front of an unbiased judge he may be acquitted. If he dies in a prison cell as an innocent man because you elected to wait and see if others in the JTC or Attorney General's office would come to your rescue, then shame on you. You will have failed in your duty again as well.

Do not wait to see what happens to the judge and/or the officer from the investigation of their potential criminal wrongdoing. It is not the duty of the AG or JTC to do your duty. They have their own work to do on the investigations of legal and ethical wrongdoing. You can leave that decision to them. All we ask in our community is for you to do your job and to let us know what is going on.

Every day that passes in silence from our chief law enforcement official is an indication of special favors and special consideration to the powerful. Prove to us that you are better than that. Acknowledge your past mistakes but do not let them define you. Now please do your job.

Thank you.



Thomas Kizer, Jr.

cc: Hon. William Schuette
Attorney General

THOMAS KIZER, JR
207 N. Michigan Ave.
Ste. 200
Howell, MI 48843

January 4, 2013

Mr. William Valliencourt
Livingston County Prosecutor
Highlander Way
Howell, MI 48843

Sent by fascimile and regular mail

Re: Request for Investigation of Judge Theresa Brennan in matter of People v. Walter Kowalski

Dear Mr. Valliencourt:

Your office is acting on behalf of the State in the prosecution of Defendant Walter Kowalski for the life offense of murder. You have inherited this case from your predecessor, Mr. Morse. The purpose of this letter is to raise a serious issue which may impact the outcome of the trial of this matter and to seek action by your office in the discharge of your duty.

Specifically, I believe Hon. Theresa Brennan, acting as judge in this matter has not disclosed to the Defendant the relationship and extent thereof with two police officers, who are listed as witnesses in this case. The officers are Furlong and Corriveau.

It is my assertion that based upon information made available to me that judge Brennan has a lengthy social relationship with officer Furlong and that this officer has even been a social guest in the judge's home. Further, that a prosecutor on your staff may have been present on more than one occasion where officer Furlong was with the judge in a social setting. Secondly, as recently as November 14, 2012 officer Corriveau was in the courtroom of judge Brennan in plain clothes and she stopped the others matters before her and invited him to her chambers for a one on one meeting. I do not believe that contact has been reported to the parties. Perhaps the meeting was totally proper but it certainly seems inappropriate for a judge to meet with a police officer potential witness on the eve of trial without promptly disclosing same to all counsel. The complaints I raise relate to more than a casual inadvertent contact with witnesses. My complaint concerns a pattern of association with state witnesses by the trial judge, which, if true, are problematic at best.

I do not want a guilty person to have a conviction reversed due to a serious error committed by any judge which could easily have been avoided by prompt disclosure of the relationship and/or recusal. Equally important, an innocent person should not be subjected to the possibility of conviction resulting from a bias in favor of the testimony of state witnesses from the trial judge resulting from a close personal relationship.

I believe the duty of the prosecutor is to do everything reasonably possible to assure a fair trial and to disclose information known to your office which could impact a fair trial to any Defendant and particularly in the most serious of cases in our community. I am reasonably certain that one or more members of your staff of assistant prosecutors know of the social connection. I believe you have the ethical obligation to fully investigate this issue and provide the proper relief in order to assure the integrity of our judicial system. The judge has apparently not done so. It falls upon your office to correct this matter before a greater injustice is created.

As the result of the failure to disclose the relationship as I believe the judge is duty bound to do pursuant to MCR 2.003 (C) and the Michigan Code of Judicial Conduct, Canons 1, 2, and 3(C) the Defendant may be freed as the result of the improper and prejudicial conduct by his trial judge, unrelated to issues of guilt or innocence. I do not know whether this judge may be part of a violation of our laws for some malfeasance, misfeasance, or non-feasance in office and/or the common law offense of obstruction of justice. I request your investigation of that issue as well. At minimum the judge's actions in failing to disclose these relationships or to recuse herself may very well deny Defendant the protection of his federal and state constitutional rights to a fair trial, due process, and the equal protection of the law.

The extent of the interaction by this judge sitting in judgment of credibility issues which may also involve critical testimony of these officers demands investigation. The difficulty is that given the fact that judge Brennan has failed to make Defendant and his counsel aware of the total extent of her social interaction with the officer(s) and her potential for serious bias in their favor, there is the further perception that something more disturbing is involved beneath the surface. Likewise, if members of your staff knew of this connection and did not raise it, this is also serious. Your duty is to justice and not the judge.

The information I have available is that neither of these relationships/connections outside her official duties nor the extent thereof have been disclosed by her to the Defendant or his counsel. Nor has she suggested she should disqualify herself in order to assure fairness and its appearance to all parties.

It would appear that any investigation surrounding issues should include the following inquiries:

- How often have you socialized with either officer?
- Where did you do so?

- Describe specifically each and every contact and the circumstances surrounding each contact.
- Who was present on each occasion?
- What did your discussion with officer Corriveau involve on November 14, 2012.
- Have you ever been alone socially with either officer? If so, describe the circumstances.
- Have you discussed the murder charge with either officer in any way outside the presence of both counsel for State and Defense?

I raise these issues as a concerned member of our community. I believe I am duty bound to do so. This is a public official and a public issue of considerable importance. I regret having to raise it.

Thank you.

Thomas Kizer, Jr.
Attorney at Law

cc: Mr. James P. Hughes
Regional Administrator, SCAO

Hon. Robert P. Young, Jr.
Chief Justice, Michigan Supreme Court

F/Lt. Joel Allen
Post Commander
Michigan State Police, Brighton

Hon. David Reader
Chief Judge, 44th Circuit Court

THOMAS KIZER, JR
207 N. Michigan Ave.
Ste. 200
Howell, MI 48843

January 7, 2013

Mr. William Vaillencourt
Livingston County Prosecutor
Highlander Way
Howell, MI 48843

Sent by facsimile and regular mail

Re: Request for investigation into actions of Hon. Theresa Brennan

Dear Mr. Vaillencourt:

I am compelled to follow up on my letter requesting your full investigation into the activities of Hon. Theresa Brennan in connection with the case your office is prosecuting of *People v. Walter Kowalski*. I read in the local paper that your chief assistant suggested there are no facts in the record to evidence a bias by the judge. Judge Brennan is quoted by the paper that the only true facts are those relating to officer Corriveau being invited to her chambers to discuss a search warrant. Yet, both judges confirmed her friendship with these officers. Judge Reader even went so far as to acknowledge the widespread knowledge in the legal community of her friendships with the officers in question. "Friendships" are developed through contact. It would seem thereby that statements in my letter of January 4, 2012 referring to contacts with these officers and the judge need exploration as to their extent and nature.

No one explored the extent or nature of those friendships. No one from your office acknowledged the extent of contact between judge Brennan, your assistant(s), and either of these officers. No one from your office apparently inquired of the judge the specific concerns raised in my request. If anyone had done so, then there would be "facts" available upon which a proper determination could be made as to whether judge Brennan is so closely attached in her friendships with these officers as to make her less than impartial when it comes to weighing the credibility of the officers testimony. The extent of these "friendships" is of great importance. Is it only a casual connection from time to time at large gatherings, or are either of these relationships of a more personal nature? Judge Brennan's response was that she has these "friendships" with the officers in question but then she calls the allegations I made in referring to the friendships as untrue. She cannot have it both ways.

Only a month ago at the retirement party for the former prosecutor, I believe it is common knowledge in the legal community that she invited one or both of these same police officers to her home that evening after the festivities. Were members of your office privy to this? On the eve of such a serious case, why would the judge do so? Was the case discussed? Even if not discussed, would you permit a juror to be seated in judgment of your case if that juror was inviting the witnesses against you into her home on the eve of your trial? I think we all know the answer to that question. Equally important, such actions on the eve of trial are evidence of more than just a casual social connection. One additional question would be whether judge Brennan and officer Corriveau and/or Furlong had phone, email, or personal contact about the motion to recuse and the claims made in it on Friday before the hearing. (A FOIA request for phone and email records could assist in verifying all such contacts.) "Facts" if developed may very well show a basis for a real bias in favor of one or more of these state witnesses against the Defendant.

Judge Reader in reviewing the issue of recusal of judge Brennan had no specific facts. None were presented to him. Your office offered nothing except a conclusion that judge Brennan was not biased in favor of these officers. You had a duty to provide clarity as to the facts known to your office by your assistants who may have socialized with the judge and these officers on more than one occasion. Silence was not a proper option for your office.

The media reports statements attributed to the judges that I was motivated by something other than justice for the Defendant. Let me be clear. I do not want a guilty man to have a conviction reversed if his trial was tainted as a result of the close/inappropriate relationships between this judge and critical witnesses for the state. Judge Reader commented upon the common knowledge in the legal community of the social connection of judge Brennan to these officers. Yet, since no facts were forthcoming from judge Brennan as to the extent of her involvement with these officers and how it may impact her potential for bias, the motion for recusal was denied as lacking evidence. That was no surprise but certainly no vindication of judge Brennan.

Members of your staff may be privy to the extent of those contacts between these officers and the judge. Further, I would assume that if there was a search warrant request from officer Corriveau several facts supporting the judge's statement would be easily gathered and verified. For example, was a search warrant issued? Did your office have knowledge of it before or contemporaneously with it as the chief law enforcement officer of our county? Was there a file set up and copies left at the court? Did officer Corriveau have his trip to the court for a search warrant logged with his superiors? Was there a record made of such proceedings where someone may have been subjected to a search? Or, was the purpose of this meeting with judge Brennan in her chambers with officer Corriveau something else entirely? (As an aside, I would regret being the target of a search warrant request by an officer with whom judge Brennan had a close relationship knowing the impact of a bias in favor of the officer created with the judge by such relationship. This too must be investigated by your office--unconnected to the current case.)

Likewise, answers to questions raised in my January 4, 2013 request were never addressed. Why not? If all that was involved between the judge and these officers was just a casual social contact on a limited basis then I would agree with the conclusion of judge Reader. The paper reported that judge Brennan was tearful and emotional on the bench over this matter. Why? Was she concerned about the nature and extent of her social relationships with either of these officers? Was her demeanor on the bench an intentional act used to deflect any probing questions? Was it done to receive the sympathy of your office or to somehow convince the Defendant he had nothing to worry about concerning bias by judge Brennan?

Judge Brennan had the opportunity to act judicial. She should have specifically informed the defense of her contacts with these officers in detail. Instead, she used tearful emotion to deflect and avoid answers to the true issues. Imagine the result if she had advised the defense of the extent of her relationship with these officers with specific facts. Had she done so, that might have solved everything. Unfortunately, she chose emotion over information.

A conclusory statement by judge Brennan that she had no bias in favor of these officers if they testified in this "capital" crime case would be probed by the attorneys in detail if the judge was a potential juror. You know that and so do most law school freshmen. Your duty is justice -- not the protection and ratification of the judge's conclusory statements by your assistant. Perhaps judge Brennan will be fair during the course of this trial. I do not know. But one thing is certain: No "facts" surrounding the basis of potential bias by her in favor of these friendships have seen the light of day and her future rulings on issues dealing with the testimony of either of these officers and whether it will be influenced by her relationships with either of them is unknown at this point because you have not searched for the answers.

Bias and the appearance of impropriety are legitimate concerns. When (not "if") during this trial, judge Brennan is called upon to rule on credibility issues involving either of these two officers and if she rules in their favor to the Defendant's detriment, some higher court reviewing this matter, if the Defendant is convicted, will eventually probe or remand in order to determine the extent of these social relationships and whether such relationships materially influenced rulings by judge Brennan adverse to the Defendant. If a guilty person is freed because of the temerity and unwillingness of your office to discharge its duty then you will have to live with that knowledge.

Instead of engaging in an emotional tearful denial of bias, it would have been more helpful in preserving the integrity of our judicial system and respect for our judges if judge Brennan had fully, completely, and with specificity provided the extent, nature, and detail of her social relationships with each of these officers. Then a reviewing court would have had some facts with which to make a thoughtful, independent ruling. As it turns out, it looks like judges protecting judges and prosecutors doing the same, whether it is true or not. We deserve better.

Once again I request you to investigate and report specific findings. If judge Brennan just happened to see these officers at social gatherings, I would never have been concerned. You have an obligation to investigate and determine from "fact gathering" whether there is something seriously wrong here and potential violation of our laws. I stand by my request for a full and complete investigation of the actions of this judge. Her behavior on the bench as observed by the media is disturbing. Is she covering up something that would affect her ability to serve as judge in this case? How often have you witnessed such strange behavior by a jurist dealing in this type of motion? I have never witnessed such behavior in 45 years of practice. As Marcellas observed in Hamlet, "...something is rotten in the state of Denmark". Is that the case here? What, if anything, is the judge not revealing? If it violates the law your duty is clear. If the judge is failing to come forth with the specifics of the nature and extent of her relationship with one or more of these state witnesses that impact her duty as an impartial jurist in this case (and for that matter in others in which one or more of these officers give testimony), she may have some culpability for those actions under our law. Your duty is clear and I respectfully ask you to perform it. If you are too close to the judge to do so or if you are concerned with your own assistants connection to the matter, then please refer it to the attorney general for investigation, or request appointment of a grand jury to perform a full and complete investigation of these issues. Justice will then, and only then, be done.

Cordially,
Thomas Kizer, Attorney

Cc: Hon. David J. Reader
Chief judge

Lt. Joel Allen
Brighton Post Commander
Michigan State Police

Mr. James Hughes
SCAO

Mr. William Schuette
Attorney General of Michigan