21-458

No. USCA2 No. 20-947

IN THE

SUPREME COURT OF THE UNITED STATES

LISA. "LEE" WHITNUM – PETITIONER

vs.

OFFICE OF THE CHIEF STATE'S ATTORNEY, KEVIN KANE, JOHN WHALEN, JANE DOES 1-25, JOHN DOES 1-25, ABC INSURANCE COMPANIES 1-10

On Petition For Writ of Certiorari
To The
United States Court of Appeals For the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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I. Question(s) Presented

I. Did the Appellate Second Circuit err when they upheld the District Court's dismissal of plaintiff's amended complaint and 12 causes of action stating "Whitnum failed to plead that the charges against her terminated in her favor," when "favorable termination" was a requirement for only one cause of action?

II. Did the Appellate Court Second Circuit in 20-947 err when they defended District Magistrate Sarah Merriam's choice to issue a Recommended Ruling when it is well-known the Recommended Ruling is a means to dismiss cases against the powerful and to prevent discovery.

III. Did the Appellate Court Second Circuit err by failing to address 11 of the 12 dismissed cause of action. Instead they addressed only "malicious prosecution".

IV. Did the Appellate Court err by not recognizing the evidence that the criminal charges pressed by the defendants were a criminal frame by these very defendants? Shouldn't that make the need for "favorable termination" moot and a red-flag to at least mention some of the other 11 other causes of action?

V. Did the Appellate Court err stating plaintiff "has not plausibly alleged that any of the criminal proceedings against [her] were terminated in a manner indicating [her] innocence." This is in direct contradiction to the fact that the defendants created the criminal frame, which makes moot the need to "terminating indicating ...innocence."

VI. Did District court Magistrate Merriam display bias when she refused to mention paragraph 36 which explicitly details Prosecutor John Whalen's role in the criminal frame, specifically an examination of Prosecutor John Whalen's altering plaintiff's phone records in his report #2013-0213.

VII. Did the Courts err by not addressing the fact that the defendants opened a case already "Administratively Closed" by another police agency, the Woodbridge Police, and the role of double jeopardy and Connecticut cronyism in this matter?

VIII. Did District Court magistrate display bias when she refused to interpret the evidence presented on report #2013-0213 accurately, twisting the facts and announcing in her Order of John Whalen's lack guilt. Was this bias?

IX. Did the Magistrate Sarah Merriam use the Recommended Ruling in order to deny due process – dismissing this case at the complaint level? Did the Appellate Second Circuit err when they implied her use of the Recommend Ruling was acceptable?

X. Did the Magistrate and the Appellate Court err when they ignored the argument of *Brady Violation* and *City of Canton v. Harris,* and the fact that Defendant Kane was sent more than 40 emails from the plaintiff asking for relief from the actions of his underling, John Whalen, Assistant Chief State's Prosecutor?

XI. Did the Magistrate and the Appellate Second Circuit err by failing to mention that the plaintiff's true phone records exposed John Whalen who refused to allow any of more than six motions to dismiss to be heard to bury the evidence of his altering his report #2013-0213.

XII. Does a candidate (Congress, Senate) who speaks out against the United States funding of Israel have a right not to be criminally framed and abused by the Statewide Prosecutor's office, and the Court system. Does the Court have an obligation to look at the whole situation – the history of the players – all the causes of action?

XIII. Does the Supreme Court of the United States have an obligation to make sure that the Courts are for justice and not a vehicle for powerful people to abuse their role in order to torture political enemies as a favor for their friends.

A. STATEMENT OF SUBJECT MATTER JURISDICTION

This is an appeal of the United States Court of Appeals Second Circuit 20-947 and Federal District Court of Connecticut 3:18-cv-1991

Judges: 18-CV-1991: Magistrate Sarah Merriam, 20-947: RAYMOND J. LOHIER, JR., STEVEN J. MENASHI, Circuit Judges, ERIC KOMITEE,

B. STATEMENT OF THE CASE

This defendant-appellant respectfully submits this petition for a Writ of Certiorari to the Supreme Court of the United States for certification to appeal from the decision of the US Court Appellate Court Second Circuit Petition for the upholding of this case (Appendix A the Order dated February 19, 2021 and B the Mandate dated March 12, 2021) and the Order from the Connecticut District Court (Bridgeport) entered in this case February 2, 2021 (Appendix C). The fact that the defense failed to file a reply brief and next lied, stating that service had not been done, is not true. This fact was ignored by the Second Circuit despite the fact that the proof of service was on the record (Appendix D). The Second Circuit basically upheld with no argument by the defense!

The US Court of Appeals 2nd Circuit, despite the evidence, ruled to uphold the lower court's decision – ignoring most of the evidence and most of the plaintiff's argument. The Connecticut District Court and the US Court of Appeals 2nd Circuit erred in their determinations. This defendant-appellant, pro-se hereby moves the Court for certification to question the Appellate Court's decision on the ruling listed above.

C. SUMMARY

At various times since 2013, Defendants Kevin Kane ("Kane"), John Whalen ("Whalen") and Connecticut Office of the Chief State's Attorney ("CSAO") and other employees, as a matter of official policy and practice, wrongfully altered evidence and concealed exculpatory evidence, sought prosecution for crimes already administrative closed by another police agency, abused prosecutorial rights to harass a citizen who they disagreed with political and/or for personal reasons, deprived this litigant of her right to have a Motion to Dismiss heard, and maliciously prosecuted this litigant in violation of her rights under the Constitution of the United States and the constitutional and statutory authorities of the law of the State of Connecticut.

This litigant was criminally framed by the defendants for a crime they orchestrated. Chief State's Prosecutor Kevin Kane was sent more than 40 emails which have been put on the record, some containing copies of the Motions to Dismiss complete with the evidence of the criminal frame. He did nothing and by doing so he allowed his underling, Assistant Chief States' Prosecutor John Whalen, to use the court system to torture. Whalen was there, unabashedly and admittedly, at the behest of disgraced former judge Jane Emons – who was politically motivated to harm this litigant for political reasons.

The attempts for justice in that case has been prematurely dismissed not on the merits or the evidence – but on a "Recommended Ruling" by District Court Judge Sarah Merriam. The Recommended Ruling is designed to eliminate

cases and to eliminate the due process rights of certain citizens, such as incarcerated prisoners. This litigant is not and was not incarcerated.

To use the "Recommended Ruling" statute is to deny due process and justice forcing this litigant to defend her case at the complaint level; no discovery or due process was allowed. Clearly this was to protect the powerful. The "Recommended Ruling" is packaged as a benevolent move to aid the pro se, it is, rather, a statute used to weed out the frivolous cases or cases challenging powerful state players.

This case is not frivolous but it is up against the most powerful players in the State of Connecticut. It would take a very brave judge, to have the strength of character to fight for this litigant's rights. So far, no such judge has not been found.

D. RELIEF REQUESTED

This matter needs to be remanded for justice of the federal causes of action and/or remand to Superior Court for the lower court causes of action. Magistrate Merriam with her Recommended Ruling, by dismissing all 12 cause of action at the complaint level, eliminated the ability to reopen at the Superior Court for the lower court causes of action.

Magistrate Merriam in the ratification of the Recommended Ruling (A13) dismissed all the federal causes of action, and with it the Superior Court causes of actions. But this litigant in this writ, is fighting for due process, as she

believes she can prove her accusations and the violations of her rights – especially the right to due process.

E. ARGUMENt

I. THE 12 CAUSES OF ACTION NEED DISCOVERY AND NORMAL DUE PROCESS

What is at trial here is the system. Plaintiff is fighting for her case and her causes of action. Here they are:

1. The First Amendment
2. The Fourth Amendment
3. The Fifth Amendment,
4. The Sixth Amendment of the United States Constitution, CPL § 30.20
5. The Due Process Clauses of the United States Constitutions (U.S. Const., amend. XIV; N.Y. Const., art. I, § 6).
6. Claim for Malicious Prosecution
7. Claim for Intentional and/or Reckless Infliction of Emotional Distress
8. Claim Under 42 U.S.C § 1983
9. Civil Conspiracy Claim Under 42 U.S.C § 1985(3)
10. Direct Action Pursuant to Connecticut's rules regarding insurance companies
11. Claim Under Connecticut Constitution, Article 1, SEC. 8, SEC 9, SEC 20 and Article 17

12. Claim for Negligence and/or Negligent infliction of emotional distress.

This litigant turns the Courts attention to the two cases of which she relied heavily: *City of Canton v. Harris*: which is the Deliberate Indifference Standard in 42 USC 1983 also known as "Failure to Train Cases" and *Brady v. Maryland*, 373 U.S. 83 (1963) which specifically addressed the withholding of evidence which violates a defendant's constitutional right to due process.

II. THE 11TH AMENDMENT DOES NOT BAR A DAMAGES ACTION AGAINST STATE PLAYERS. LIE #1

In one of several bizarre statements, Magistrate Merriam claimed the that Eleventh Amendment bars a damages action against a State in federal court. But that is not true if a federal cause of action lives. Thus her determination to shoot down each federal cause of action.

III. ORAL ARGUMENT WAS DENIED

. This litigant disagreed with this Magistrate on so many points of law but Plaintiff's 17-page Objection (A36) was ignored and no reference made, and her Further Objection (A53) ignored and no reference made. This litigant pointed this out in the Motion for Clarification (A67) but it was next dismissed and renamed as an untimely Motion to Reargue! Also two requests for oral argument were also ignored. Basically Magistrate Merriam for this reason and others was seemingly using any excuse to dismiss the case.

The good Supreme Court judges know full well, as this litigant does, that there is case law on both sides of every dispute. It depend on who you are quoting. The law is subjective. But, in this case even a child could see that you don't criminally frame someone and abuse the court system to punish them. There were so many violations by the employees under Kevin Kane, a child could see it. What is our court system? Powerful people taking out vendettas and doing the bidding of their friends? That is what has happened here in nine years and these judges must know the circus atmosphere, and larger political scene, leading up to the filing of this case.

The denial by the Magistrate of this plaintiff's requested oral argument on several occasions (A53 and A67) was for this Magistrate to avoid being called by this litigant on some of her misconceptions and errors. Even if it were good faith, oral argument should have been allowed: Case in point: Magistrate Merriam stated in her order that John Whalen only delayed for two months. Not only was this not true, she was clearly to addressing the 6th and 14th Amendments. Why say that at all? Why is the Magistrate defending the prosecutor? Factually Whalen delayed the adjudication of some charges for almost three years! The Magistrate erred or lied.

IV. JOHN WHALEN DID THE BIDDING OF HIS "BUDDY" JANE EMONS AND KEVIN KANE ALLOWED IT - THE HISTORY, THE CRONYISM. ...8

To reiterate: This litigant, a Harvard graduate, first time offender in her mid-50's was a former political candidate. She was forced to appear in criminal

court for more than 35 court appearances for infractions that were either not crimes or crimes she did not commit. How it began:

The plaintiff was a married, White woman in her mid-50s, a Harvard master's degree graduate and a teacher with no prior criminal record, when she first entered a Connecticut Superior Courthouse eight years ago. A member of the peace community and a sometime political candidate[1], now retired, the plaintiff encountered former judge Jane Emons on that first day and her life has been embroiled in legalities ever since. Eight long years now and the plaintiff has been in the court system fighting against the aggressive actions of a predator: the now disgraced former judge Jane Emons.

Prior to the incidents of this case: In wasn't enough that Jane Emons railroaded into divorce and awarded not even a dime, she was instrumental in keeping this plaintiff from her infirmed husband until his death, 4 1/2 years with no access. As if that weren't enough, Jane Emons sought to have this plaintiff incarcerated. Jane Emons, to harm, abused law enforcement officers and the court system when she claimed this plaintiff rang her bell and ran, herein called "the ring-and-run", on the morning of June 22, 2013. Although Emons claimed in the Woodbridge Police Report (A127) that she saw no one, she named this plaintiff and demanded the Woodbridge Police do an investigation *including a telephone record investigation for a ring and run!* The Woodbridge

[1] This litigant ran for Congress 2008, Senate 2010, Governor 2018.

Police did just that: they investigated for three months and administratively closed the case against this plaintiff on 9-17-2013[2]. (A136 the last line)

V. PROSECUTOR JOHN WHALEN REOPENED THE RING-AND-RUN DESPITE THE FACT THAT IT WAS 'ADMINISTRATIVELY CLOSED'. 10

Due to her power Emons next had the case reopened by the defendants Connecticut States Attorney's office – for a "ring-and-run" a case already "Administratively Closed" by the Woodbridge Police. To make their case and to appease Jane Emons and to give Emons the protective order she demanded, John Whalen and the defendants, altered this plaintiff's phone records on report #2013-0213 (A145). This is provable fact: (A145) especially concentrating on the comparison between (A148) which shows the change by Whalen's report 2013-2013, this was to make the narrative on A147 that this litigant was in the vicinity of Emons' house.

It is an absolute lie and if this case were remanded and presented to a jury, this litigant can prove her claims. The testimony and affidavit of telephone expert explains clearly of the impossibility of a phone allegedly from a phone and yet linked to two separate cell towers two hours apart. It is impossible. What the criminal framers did not count on was this plaintiff being out and about in New York City on the night of their alleged criminal frame. This litigant states

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[2] Despite the fact that a police report by the Woodbridge Police states the case was administratively closed in 2013 after a three-month investigation (A136, the last line) finding no connect to Emons' doorbell by the plaintiff, Whalen reopened the case.

clearly, she was criminally framed by Assistant Chief States Prosecutor John Whalen doing the bidding of his "buddy of 35 years" disgraced former judge Jane Emons.

Most shocking is the fact that defendant, former Chief States Attorney Kevin Kane, John Whalen's boss, was apprised all along (more than 40 emails to Kane have been annexed in this case) and yet Kane refused to reel Whalen in. This is a fact that Magistrate Sarah Merriam refused to see.

VI. JOHN WHALEN REFUSED TO ADJUDICATE FOR YEARS FORCING THIS LITIGANT TO APPEAR MORE THAN 35 TIMES IN NORWALK CRIMINAL COURT

Prosecutor Whalen, doing former judge Jane Emons' bidding, used the court system to torture. Whalen even falsified evidence on his report #2013-00213 (A145 compared to A148) to appease Emons and in an obvious quest to railroad into prison. This litigant believes Whalen, Kane and Kane's other employees were just foot soldiers abusing the system because they could. Acting at the mere suggestion of a "buddy." But Jane Emons, a judge now disgraced as she was "retired" due to overwhelming complaints. Emons worked behind the scenes to abuse the system, in this case to harm this litigant for her outspoken political beliefs against the US funding of Israel.

The prolonged adjudication cost this litigant in every possible way. The refusal to allow the unlawful trespassing charge (a separate but significant misdemeanor) to be heard kept her from her own husband until his death, her

teaching job as she was not able to work with pending criminal charges and was kept from employment for 3 years as a result. Whalen knew of everything that was at stake.

VII. MAGISTRATE MERRIAM PASSING JUDGMENT ON WHALEN'S INNOCENSE IN HER ORDER WAS INAPPROPRIATE AND PROOF OF BIAS.

Magistrate Sarah Merriam passing judgment on Whalen's behavior and innocence in the Recommended Ruling was inappropriate and proof of bias. She passed judgement even before approving a viable complaint! Her Order goes on the record, and serves two purposes: to exonerate Whalen and to make this litigant look guilty which is defamation by judicial order.

Magistrate Sarah Merriam's Order accepting the Recommended Ruling and dismissing this case was full of inaccuracies and falsehoods. The only excuse for so many inaccuracies is bias.

For argument's sake let's assume that this litigant never rang Jane Emons bell on June 22, 2013 and that the only reason Jane Emons stated such a falsehood was to get a protective order against this litigant as the precise order requires a limited scope for charges such as "lying in wait" thus the stalking charge[3].

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[3] Emons' goal of the bogus ring-and-run was clearly to get the stalking charge with the ultimate goal of a protective order and the long jail terms it implies. Emons with the help of Whalen succeeded. Emons next, over several months 8-2013 through 10-2013, demanded several times that the State Police arrest this litigant every time she walked into the Stamford Courthouse. At the State Police Department's urging, this litigant had the Protective Order modified on Oct. 25, 2013 to allow access to the Courthouse.

VIII. MAGISTRATE MERRIAM RESORTS TO LYING. ACCUSES THIS LITIGANT OF NOT SEEKING SPEEDY TRIAL. LIE #2.

The selective blindness by Magistrate Merriam is shocking. She states that this litigant did not seek speedy trial (A13, A25) – absolutely not. The was a Motion for Speedy Trial filed in the Norwalk Court House which was dismissed with prejudice by Judge Wenzel (A219). And next this litigant took that denial and created an injunction in the federal court in case 3:15-cv-0959, using Wenzel's denial as an exhibit. Federal Judge Underhill refused to address the July 27, 2015 injunction (July 27, 2015 in 3:15-cv-0959) which requested that he force Whalen to bring to trial immediately or drop the charges. Magistrate Merriam had been told this and yet her Recommended Ruling – one of them - is a little flabbergasting.

IX. MAGISTRATE MERRIAM ABUSED 'FAILURE TO STATE A CLAIM' AS IT IS SUBJECTIVE. LIE #3

Sarah Merriam is clearly hell-bent to dismiss this case in any way she could and she was not above lying to do so. Please examine her behavior. The Amended Complaint (A89) is 35 pages and this litigant is very clear, having submitted many, many exhibits to back her points and still Magistrate Merriam says she can't see it and claims repeatedly "failure to state a claim." Referring to an exhibit, especially one dated stamped by the Norwalk court – is not 'failing to

state a claim,' it is proof positive and beyond dispute. Judge Sarah Meriam erred, she must be made to step down in this matter, remand is in order.

X. MAGISTRATE SARAH MERRIAM DEFENDED JOHN WHALEN IN HER RECOMMENDED RULING WITH A LIE. LIE #3

Judge Merriam has passed a judgment on Whalen's guilt in the second Recommended Ruling (A16) - even before a viable Complaint had been approved. This Selective blindness was outrageous and inappropriate. In her order she states the following:

> **The only difference between the record plaintiff confirms to be accurate, and the recitation of the records in the Whalen report, is the change of the "INBOUND" to the word "OUTBOUND" doc. #35 at 10. The import of the cell phone records at issue, according to the plaintiff, related to the cell site location information provided, not to the question of whether plaintiff make or reeved (received) a particulate call. See id. The cell site location information is unaffected by the question of whether a call is inbound or outbound. In sum, the alleged fabrication relied upon by plaintiff is utterly irrelevant to the issue she raises regarding location information.**

This is patently false and perhaps if Magistrate Merriam had allowed oral argument she wouldn't have made this inaccurate determination. The Magistrate erroneously believes that outbound call or inbound, means the call was dialed or a picked up the traditional way. Not at all. It is about the cell tower location and whether the call was placed nearby or rerouted.

On the report from the Sprint Corporation: A call INBOUND means the person is within several miles of the tower. It is a location indicator. Magistrate

Merriam didn't see that. She didn't read what this plaintiff wrote. She made an assumption, allowed no oral argument and she was wrong.

The facts show, Whalen changed INBOUND to OUTBOUND on his report #2013-0213 for a reason: to criminally frame. To place this plaintiff in the vicinity of Jane Emons' house on the morning of June 22, 2013 so he could make the claim that she rang Emons bell and ran. It is an absolute lie.

Additionally, Judge Sarah Merriam does not dispute that Whalen altered on his report the phone records. The fact this Magistrate thinks that is okay brings us to the next issue:

XI. THE MALICIOUS PROSECUTION SHOULD STAND BECAUSE THERE WAS FAVORABLE TERMINATION

Magistrate Merriam in her Recommended Ruling states the following on the charges overall:

> **2. To the extent the plaintiff also argue that the content of the cell phone record, including as set forth in the Whalen report, exonerates her from the charge that she was at a particular location at a particular time, such a claim does not relate to any alleged falsification by Whalen, but to the allegation that the defendants engaged in malicious prosecution. As previously discussed, that claim cannot stand. See Section III. A.**

What! Well by Magistrate Merriam's own admittance the malicious prosecution cause of action should stand, especially as state above, the stalking charge was dropped by Whalen on the record. (A260).

There was favorable termination because Whalen dropped the stalking charge on the record and that transcript has been annexed. The complaint was

39 pages long and this litigant did not expect to have to prove everything at the beginning. This litigant has now included the transcript where John Whalen dropped the stalking charge on the record, long before this litigant filed for Accelerated Rehabilitation for the unlawful trespassing charge for trying to see her own husband and other contrived charges. The most germane was the stalking charge and it was already dropped it, and it was the reason for the protective order. The malicious prosecution cause of action, as all of the 12 causes of action into Amended Complaint, should stand.

This plaintiff's true phone records (A148) for the night of the ring-and-run, obtained via federal subpoena, placed her in Manhattan. Please study the exhibit, specifically (A148) line. An INBOUND to the tower 72 means the call was not routed and proves this litigant was in New York City as the call hit cellular tower 72. Not only did Sarah Merriam not understand that she ignored the fact that

Whalen changed this litigant's phone records on his report #2013-00213 (A145). Magistrate Merriam refused to see this: stated the following in the Recommend Ruling (A4, A16):

> **The only difference between the records plaintiff confirms to be accurate, and the recitation of the records in the Whalen report, is the change of the word "INBOUND" to the word "OUTBOUND." Doc. #35 at 10. The import of the cell phone records at issue, according to plaintiff, related to the cell site location information provided, not to the question of whether plaintiff made or received a particular call. See id. The cell site location information is unaffected by the question of whether a call is inbound or outbound. In sum, the alleged fabrication relied upon by plaintiff is utterly irrelevant to the issue she raises regarding location information.**

What is wrong with Magistrate Sarah Merriam? Is she saying in the above that it is okay for a prosecutor to reopen a case already administratively closed by the Woodbridge Police Department (A136) last line on the page) and to alter this litigant phone records on this report?! Pile on more charges and continue to prosecute? Is Magistrate Sarah Merriam so naïve that she thinks it is okay for a prosecutor to alter your phone records? She may not have studied the evidence in the way this litigant has but what is without dispute: it is NOT okay to alter evidence. But what is very telling is why she is bothering to defend Whalen.

XII. THE TRUE PHONE RECORDS EXONERATED THIS LITIGANT AS IT IS PROOF POSITIVE OF HER INNOCENCE. SHE WAS IN MANHATTAN AT THE TIME OF THE-RING-AND-RUN

The phone record proves this plaintiff was in in New York City and it is proof that John Whalen (Kevin Kane's underling) altered plaintiff's phone records on his report #2013-0213. If a call is INBOUND to a tower it means you are within a certain vicinity and the call was not re-routed. The plaintiff was at Tower 72 and it was INBOUND (not rerouted) – therefore she was in Manhattan.

This plaintiff, says that Judge Sarah Merriam is either not paying attention or purposefully misreading the information provided. The INBOUND changed to OUTBOUND by Whalen on his report was so that on the second page

he could make the false narrative that the call had been rerouted. He knew, as plaintiff pointed out, that to make the narrative on his report #2013-0213 placing plaintiff in the vicinity of Jane Emons home that he had to change the INBOUND – which he did.

Magistrate Sarah Merriam is either biased or she is not listening to the facts.

XIII. DID MAGISTRATE SARAH MERRIAM ERR IN HER RULING BY IGNORED PARAGRAPH 36 THE MOST DAMNING EVIDENCE AGAINST WHALEN AND EMONS. LIE #4

The lie is the error of omission: Sarah Merriam completely over looked paragraph 36. In paragraph 36 of the Amended Complaint this plaintiff states the following implying that this was not a simple mistake but instead a premeditated criminal frame by Jane Emons and her buddy of 35 years, John Whalen:

> **36. Second proof: The bizarre appearance of a number on this litigant's phone record that is neither to nor from this litigant's number is a clue enough that Emons allegedly worked with a telephony conspirator. At the time of the alleged planted call, this litigant was simultaneously making a call of her own from New York City. Both calls ended at the exact same time, 00:19:13, with two separate tower locations - 56 and 72 which are two hours apart. That is patently impossible and proof positive that Emons allegedly, with premeditation, worked with a telephone conspirator to criminally frame.**

In above paragraph 36 of her Amended Complaint this plaintiff made the point that it is patently impossible for two calls from the same phone to end at the exact same millisecond and yet be linked to two separate cell towers – two

hours apart. Magistrate Sarah Merriam ignored any mention of this fact instead exonerated Whalen with her words which go on the record. Outrageous.

This litigant presented an affidavit of a telephony expert and she would like the opportunity to present to a jury an expert who will testify to the fact that two calls ending at the exact millisecond and linked to two separate cell towers, 56 and 72, two hours apart is not possible, plus the call located near tower 56, which is in the vicinity of Emons' house, is not to, nor from, plaintiff's phone number. What the hell is it doing on plaintiff's phone record? Magistrate Merriam makes no mention of paragraph 36 in her Recommended Ruling or of these two facts. Clearly she did this for a reason – bias.

God was on the plaintiff's side she was in Manhattan on the night of the ring and-run and received a call from her roommate regarding her cat. Normally plaintiff would have been home sleeping with no alibi and she'd be in prison now. A scary thought and a narrative that was clearly Whalen and Emons' goal.

The plaintiff believes it is reckless and irresponsible of Magistrate Merriam to pass judgement on a case at the complaint level. The Recommended Ruling is designed to dismiss cases that are without merit. This plaintiff says that is not what is happening here. Judge Merriam, threw the case for the powerful.

This proof goes directly to two causes of action; and the ignoring of this paragraph 36 in the Amended Complaint by Magistrate Merriam is proof of bias by this Magistrate.

XIV. DID THIS MAGISTRATE ERR WHEN SHE FAILED TO ADDRESS ANY OF THIS PLAINTIFF'S ARGUMENTS 20

On number of 72 on the docket, Motion for Clarification (A75) Magistrate Sarah Merriam dismissed it and renamed it! This litigant has supplied a Motion for Clarification (A67) which was promptly dismissed by Magistrate Sarah Merriam as a Motion to Reargue. Not at all. This litigant asked for clarification as to the dismissal for the Appellate Court and the fact that Sarah Merriam made no reference to any of this litigant's argument, ripe with case law defending her causes of action. In the Order Magistrate Merriam states:

> "This Motion is essentially a Motion to Reconsider an endorsement (Doc. No. 49) of a Recommended Ruling (Doc. No. 9), which entered on 04/09/2019. This "Motion for Clarification" (Doc. No. 54) was filed on 10/4/2019, well past the time to file a Motion to Reconsider. "

Maybe that is true, but that doesn't change the fact that Magistrate Merriam did not mention any of the rebuttal arguments in this litigant's Objection (A36) and Further Objection (A53). Bias can be the only reason why she failed to allow oral argument, and failed to respond to the Objections.

To be clear, in the Further Objection to the Recommended Ruling filed on Jan. 15, 2020 (A53), this litigant asked for Oral Argument (A54). Since this was a dismissive, dispositive motion that would have eliminated the case, didn't this litigant have a right to Oral Argument? This litigant was very clear that some of Magistrate Merriam's arguments this litigant disputed and can prove, with case law, if allowed to – the exact opposite. This litigant was asking for oral

argument because she disagreed with the Courts' ruling to eliminate all of her causes of action. They had not been fleshed out enough and the Motion for Clarification was to also clear up some misconception that the Magistrate had stated.

XV. DID THIS MAGISTRATE ERR WHEN SHE DEMONSTRATED A CLEAR DESIRE TO ELIMINATE THIS CASE BY ATTEMPTING TO ABUSE THE PAUPEROUS STATUTES

In her Recommended Ruling Magistrate Sarah Merriam attempted to use the following loophole in the law to dismiss this case. The Prison Litigation Reform Act of 1995 ("PLRA") provides that a district court "shall dismiss" an in forma pauperis complaint "if the court determines that . . . the action or appeal . . . fails to state a claim on which relief may be granted." Pub. No. 104-134, § 804(a)(5), 110 Stat. 1321, 1321-74 (1996), codified at 28 U.S.C. § 1915(e)(2) (1996).

This is the reason why Sarah Merriam used that excuse, to eliminate the causes of action. She was choosing to capitalize on the pauperus status of this litigant. This is dirty trick and her abuse of the "failure to state a claim" for all causes of action in a 35 page Amended Complaint, detailed which included 200 pages of evidence is outrageous! This litigant is articulate and perhaps a little wordy but a child could read the Amended Complaint, view the annexed evidence end determine there was guilt. Give me break, give me justice.

XVI. THE ABUSE OF 'FAILURE TO STATE A CLAIM TO WHICH RELIEF CAN BE GRANTED' IS A LIE (LIE #5) - A PLOY TO THROW THE CASE 21

There is always a reason a judge can find to dismiss a case. But this litigant should have been afforded certain rights. Not only did she state a claim, she backed it up with evidence. She was never given the opportunity for redress in the denial of Oral Argument - twice. And § 68.10 states the following:

> ...if the Administrative Law Judge determines that the complainant has failed to state a claim upon which relief can be granted. However, in the prehearing phase of an adjudicatory proceeding brought under this part, the Administrative Law Judge shall not dismiss a complaint in its entirety for failure to state a claim upon which relief may be granted, upon his or her own motion, without affording the complainant an opportunity to show cause why the complaint should not be dismissed. [Order No. 2203-99, 64 FR 7075, Feb. 12, 1999] Case 3:18-cv-01991-JCH Document 64 Filed 01/03/20 Page 1 of 3 3.

The abuse of "failure to state a claim to which relief may be granted" in the quoted law above, is to cut off at the knees poor people and/or prisoners from ever getting justice. Additionally, this legal claim is easily abused as it is primarily subjective. This litigant believes she is very articulate and clear.

The Amended Complaint was very clear, but if the court so deems: remand and rules more clarity in doing so – this litigant will comply. Let the lawyers make their arguments. Let Discovery happen. Rule § 68.10 says this litigant has right that she was never given, remand, remove Merriam and Judge Hall and grant this litigant the opportunity to do that. Or insist she get an attorney. Federal Judge Underhill was hell bent in one case to give this litigant an attorney. Then do it, here, whatever the provision to keep the case going. Whatever it takes for justice.

XVII. BECAUSE MAGISTRATE SARAH MERRIAM WAS ABUSING THIS LITIGANT'S PAUPERUS STATUS, THIS LITIGANT FILED A MOTION TO CHANGE HER STATUS. THIS MAGISTRATE ATTEMPTED TO DISMISS CITING SECTION 1915(e)(2)(A)

On January 3, 2019 in a Motion for Order (A64), this litigant attempted to change her pauperus status as she believed this Magistrate is abusing the pauperus statutes and attempting to dismiss this case on something other than the merits. The abuse of the "failure to state a claim" in the below case law is clearly a loophole to get rid of the appeals of incarcerated prisoners. Because of Magistrate's actions in her Recommended Ruling, this litigant filed that motion to change her status in this case from pauperis – to do that she is prepared to pay the $500 filing fee (A64).

In her Motion (A64) this plaintiff requested to change her status from pauperus to a paying litigant so that Magistrate Sarah Merriam could not use the loophole describe above to dismiss the case base on the subjective "failure to state a claim" – for all causes of action?

This litigant believes that this Magistrate was abusing the statute to throw the case for the powerful this Magistrate has used it in an attempt to eliminate three cause of action, at the complaint, level via a Recommended Ruling. For this reason, and to combat this strategy, this litigant asked that her status be changed away from pauperus. The request was ignored and rendered moot by dismissal.

But Magistrate Sarah Merriam knows all the angles, and if there is supposed to be any latitude for this pro se litigant, it is not possible in Merriam's courtroom. She is hell-bent to dismiss this case in favor of the powerful. Who cares whose lives they abuse. Who cares the damage they cause. Protect the powerful at all costs. In her efforts the Magistrate accused this litigant in her Motion for Order (A64) of lying and she gave her time to prove her status had change. Magistrate Sarah Merriam citied the following:

> Section 1915(e)(2)(A) of the United States Code states:
> Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that— (A) the allegation of poverty is untrue.

Magistrate Merriam stated the following,

> "Whitnum's Motion similarly raises serious concerns as to the truthfulness of her in forma pauperis application. The court orders Whitnum to show cause by February 3, 2020, as to why it should not dismiss this action under section 1915(e)(2) because her representations on her in forma pauperis application were not true."

More proof in Magistrate Merriam's ongoing quest to ignore justice, the law and to throw a case in favor of the powerful.

To thwart this crafty Magistrate, this litigant annexed on the record, her offer letter from her new job (A88) . But what can we think of a judge who would work so hard to throw a case? Magistrate Sarah Merriam is biased and remand is in order.

Additionally, the Appellate Second Circuit touched upon the Pauperus status but failed to mention the fact that when this litigant's status changed she

attempted to correct that status in order to get out from under Magistrate Merriam's loophole.

XVIII. THIS LITIGANT DID NOT REMOVE THE CAUSE OF ACTION IF SHE DISAGREED WITH THE JUDGE. A RIGHT TO DEFEND CAUSES OF ACTION VIA DISCOVERY IS IN ORDER

This litigant is not stupid and she can read. If this litigant appeased this magistrate, Sarah Merriam and stripped out all the "recommendations" there would be no case. No way. This litigant is not an incarcerated person, this is not a frivolous case. This litigant is not rolling over and appeasing this biased magistrate who expressed some serious misconceptions and resorted to some blatant lies. Magistrate Sarah Merriam was clearly out to protect the powerful and/or she has her own political bias regarding this plaintiff's stands, as a peace activist and former political candidate, against the United States funding of the Country of Israel. Clearly Merriam is biased and her actions prove it.

Regarding protect the powerful. Case in point: Magistrate Merriam said there was no malicious prosecution because all of the charges were ended with Accelerated Rehabilitation. Not true, the stalking charge was dropped on March 13, 2014 on the record in open court by John Whalen (A260) and the proof is annexed. Magistrate Merriam ignored the proof. Malicious prosecution must stand, as must the Conspiracy cause of action.

Rearguing the First and Fifth Amendments violations – shot down by Magistrate Merriam, these two causes of action should stand for the following

outlined in the 39-page Amended Complaint (A91): This is not the place to try this case, nor is the 39-page complaint complete with 20 plus exhibits annexed here (A119 through A157) but that is exactly what this biased Magistrate did.

A brief touch on the First and First Amendment Violation: John Whalen reopened a case already "administratively closed" by another police agency – the Woodbridge Police. The Woodbridge Police has already determined there was no connection with this plaintiff to Jane Emons doorbell and yet Whalen reopened the case! And Kevin Kane allowed it. Whalen reopened and resumed it at the prodding of his buddy Jane Emons. Why? Why go to such length to reopen and pile on charge after bogus charge? This litigant was a first-time offender. That never happens. Kevin Kane allowed his underling John Whalen to abuse the system. When asked why he was there, Whalen was unabashed he was there for "Jane my buddy of 35 years since we were both prosecutors." It is important to note that several of the charges against this litigant had to do with her attempting to see and speak with her own husband, which were also caused by Emons (at length in the Amended Complaint because it is germane), but the charges predated the bogus ring-and-run accusation of June 22, 2013. The orchestration by Whalen and Emons, clearly working in concert.

If allowed to proceed to deposition, this plaintiff believes that John Whalen will not lie. He knows this litigant, we they in court together for 36 court appearances over the course of three years (violating her Sixth and 14th

Amendment rights) as Whalen abused the court system to prolong litigation and he worked hard to put this litigant in prison *for something*. He would have succeeded if this litigant decided to fight back and filed against him in federal court.

Desperate to speak with her own husband and desperate to avoid jail for crimes that were either not crimes, or crimes orchestrated by Jane Emons and John Whalen, this litigant, weary of pacing every night for two years, filed a lawsuit against Whalen and Emons. In that case 3:15-cv-0959 plaintiff filed an injunction (July 27, 2015 in 3:15-cv-0959) to bring to trial or drop the charges. The injunction was mentioned above – it was completely ignored by Federal judge Underhill. What good is a Sixth Amendment right if you can't get a judge to enforce it. Kevin Kane and the defendants were apprised of all of the goings on and did nothing to reel in John Whalen. It seems the powerful in Connecticut are impervious and run amok with impunity.

XIX. FEDERAL JUDGE UNDERHILL, LIKE MAGISTRATE SARAH MERRIAM AFFORDED RIGHTS TO THE POWERFUL

Federal Judge Underhill, clearly caved into the powerful and the Injunction remains unheard on the merits to this day (July 27, 2015 in 3:15-cv-0959)! It is endemic to the Connecticut, every judge, including Magistrate Merriam, and every state employee passes the buck to appease the powerful. Nowhere was this more apparent that the Norwalk criminal court and 40 plus emails this litigant wrote to Kevin Kane and Norwalk Court Clerk Charles Kim

and others and she fought to have more than six motions to dismiss heard. All were ignored and never given a day in court. In Connecticut it is quite simply impossible to get justice or to even be heard. Back to this case.

The filing of the federal case against Whalen, clearly rattled John Whalen enough to finally get this litigant out of his cross-hairs. But all along the defendants, Kevin Kane and his office, knew exactly what John Whalen was doing. That is the failure to train, *Canton, Ohio v. Harris.*

But in addition, Whalen and Kane both knew that this plaintiff's true phone records, exonerated her and proved the criminal orchestration by their office, that is why they could not have a Motion to Dismiss heard. They buried the evidence and that is a *Brady violation.*

Specifically, this litigant was denied discovery repeatedly by the criminal court judges Wenzel, Hernandez, and Arnold. But she knew that in federal court you do not need a judge to have a subpoena sent. She filed the federal claim against Whalen for 6th Amendment violation and subpoenaed her own phone records and had them sent to federal judge Underhill who put them under seal.

The true phone records proved Whalen's orchestration of this plaintiff's phone records on his report #2013-0213. Whalen was caught and he knew it. He never suspecting such a move, as three judges four times in Norwalk Criminal Court refused to sign this litigant's subpoena to get her own phone records from Sprint Corporation. Three judges four times in Norwalk Courthouse denied the right.

Before he was exposed, Whalen was unabashed, that he was there to prosecute this litigant at the behest of Jane Emons, his "buddy of 35 years since were both prosecutors." Emons is a cruel woman, a judge now disgrace nd removed from power – a first in Connecticut history. A woman who was not only destroying this plaintiff's life, but the lives of others. Her behind scenes antics, and over the top behavior is why she is no longer a judge. Whalen was not there in good faith; he was there to use the court system to torture and he knew without the adjudication for the trespassing charge, unlawfully levied at Atria, Darien this litigant could not see her dying husband. He knew that by prolonging litigation this litigant could not go back to work as a New York City teacher. Whalen knew, he was told. The court system was used to torture and he was doing Jane Emons bidding by his own admittance to this plaintiff. That is why it was such a crime for Federal Judge Stefan Underhill to ignored the injunction request (3:15-cv-0959).

During that horrible chapter this litigant several times said to judges Wenzel and Hernandez, "Your honor, please send John Whalen back to Rocky Hill, please put me on the regular docket with the regular folk." Deaf ears. As this litigant sat there once a month for years and everyone seemed to get on with it except this case which was made to linger in total for 41 criminal court appearance in all over three years. This litigant can no longer drink coffee or red wine, as the permanent stress of believing that not only did Jane Emons railroad

into divorce, but through her friends, she was going to succeed in railroading into prison.

The founding fathers developed a Sixth Amendment right because it is cruel. A speedy trial should be everyone's right. There should be right to have a Motion to Dismiss with evidence heard fairly, there should be a right to be able to gather discovery.

This case is about making the guilty pay for what they did, or for what they allowed to happen to this litigant and her husband. He was a victim too. He died alone without the comfort of his wife thanks to the actions of a cruel woman: Jane Emons, John Whalen her minion, and the defendants in this case who allowed such an abuse of the system to happen.

Kane and the Chief States Attorney's Office must be held responsible. This is the first case, by this plaintiff, against either. The run amok behavior of so many of their employees including: Tamberlyn Conoplask, Mark Ramia, Charles Coffey, and John Whalen demands redress. Clearly they were not properly trained and Kevin Kane needs to be held responsible

The fact that Emons husband "Ed" is an employee of Kevin Kane's office is also telling. This litigant has no doubt that all of the players in this case, in this small world of Connecticut knew each other and that is how this abuse happened. What this Supreme Court needs to decide: Is the Court system nothing more than well-paid state employees abusing their role to enact political vendettas for their friends?

XX. THE CONSTITUTIONAL VIOLATIONS IN THE AMENDED COMPLAINT MUST STAND. THE DISMISSAL WAS SUBJECTIVE, SO LEAVE IT TO A JURY TO DECIDE

The "why" of all of it is clear if you know the big picture as explained in the Amended Complaint (A91). Jane Emons was out to harm this litigant because litigant, as a candidate, was vocally against the United States funding of Israel. On July 16, 2012 Emons allowed a political heckler in the courtroom

This litigant documented it to Chief Administrative Judge Barbara Quinn but in Connecticut there exists no right to preemptive or preliminary disqualification of a judge. This plaintiff was forced to endure Jane Emons. The First and Fifth Amendment should stand.

The Sixth Amendment and 14th – Whalen drove down from Rocky Hill Connecticut to Norwalk Criminal Court for more than 35 times over the course of three years. By not adjudicating the charges especially the trespassing charge he kept this litigant from her infirmed husband to railroad into divorce. This litigant had a right to due process. Please read the transcript when she tries to have the Motion to dismiss heard for the Trespassing charge (A 157). It is a travesty.

Whalen also abuse the 6th and 14th amendment to keep this litigant from her job. He knew she could not work with pending criminal charges. So every month we met in the courthouse. He spend the entire day there, three years. He knew exactly what he was doing.

XXI. EMONS' ROLE IN ALL OF THIS IS TELLING. DESPITE THE FACT THAT SHE IS NO A LONGER A JUDGE, THE SYSTEM SEEMS STILL BEHOLDEN TO HER. PLEASE BREAK THE PATTERN

The endless legalities have emerged as this plaintiff fights for justice against the actions of one woman. This plaintiff has been a clog in the system due to one woman. Jane Emons.

Jane Emons is powerful and clever and her manipulations are all about the behind the scenes contact and smearing her detractors with tears and lies. Case in point the gravamen of *Whitnum v. Emons,* FST-CV20-5022941-S, is that Emons called up Senator Kissel behind the scenes and spoke of the June 22, 2013 ring and-run to make her appear as this litigant's victim. Nothing could be further from the truth!

Kissel believed Emons! This was televised. Senator Kissel waxes at length apologizing to Emons for everything under the sun including the Holocaust. It really would been very funny if it weren't so infuriating. Despite the fact that three other people on that day Noel Rodriquez, Nina Sarli, and Derrick Meyers all testified of Emons' unlawful abuse of restraining orders. All three had had the unlawful restraining orders overturned by the Appellate court.

Still Senator Kissel believed Emons that this litigant had rang her bell and ran, an event that never happened. Emons used this litigant's well-known political stands against the funding of Israel to attempt retain her role as a judge by calling all her detractors "anti-Semitic". This was echoed by Senator

Kissel and Senator Looney and others at Emons reconfirmation hearing. Finally Rep. Minnie Gonzales piped in and put an end to the "anti-Semitic" nonsense.

At the 2-18-2018 reconfirmation hearing there were 21 judge up for reconfirmation and yet there were few complaints about the majority. Rep. Minnie Gonzales summed it up best, on page 151 of the February 16, 2018 hearing, she spoke directly to Emons,

> **"I think there may be around maybe 20 or 21 (judges for reconfirmation), and I don't see a lot of people here complaining about the rest. I receive emails after emails after emails but all the emails they were complaining about you," said Rep. Millie Gonzales.**

She then added that in those letters no one mentioned Emons' "religion or culture." End of story, and that finally put an end to the anti-Semitic accusation nonsense. Emons was not reconfirmed not because of anti-Semitism, but because of her cruelty, bad behavior, inexplicable actions, rulings in defiance of the law. The hearing is viewable at: http://ct-n.com/ondemand.asp?id=15000&jwsource=cl

This litigant never rang Jane Emons' bell and ran. And for the remainder of this litigant' life, unless she gets justice, she will be known as a person who stalked a judge, only that never happened.

Everything this litigant fought for, all her parents' sacrifices – good decent people, not the likes of Jane Emons, hardworking people who help others, not destroy. How thrilled those parent were when this litigant attended and graduated from Harvard University is all lost by the concerted smearing of Jane Emons and the judges along the way who are so beholden or blinded by Emons'

power they refused to grant this litigant justice. What these judges are saying is Jane Emons' smears and lies, her reputation is more important that this litigant's. That is unacceptable. Make the guilty pay.

E. CONCLUSION

The Amended Complaint is detailed and evidence is provided which proves the fact that Kevin Kane was apprised in more than 40 emails (A157) and he was obviously aware of what was going on. The details of all of his employees who did not follow procedure is described and remains to be fleshed out with discovery. They include Ms. Conplask, Mr. Ramia, Officer Charles Coffey, and most especially John Whalen.

Again this litigant turns the Courts attention to the two cases of which she relied heavily in the District Court case: *City of Canton v. Harris*: which is the Deliberate Indifference Standard in 42 USC 1983 also known as "Failure to Train Cases" and *Brady v. Maryland*, 373 U.S. 83 (1963) which specifically addressed the withholding of evidence which violates a defendant's constitutional right to due process. This judge claims that the Eleventh Amendment bars a damages action against a State in federal court – well only if a federal if a federal matter lives. She seemed hell-bent to stop this case at the inception, to throw out the federal causes of action for that reason. These are the causes of action and all were dismissed before discovery:

1. The First Amendment
2. The Fourth Amendment

3. The Fifth Amendment,

4. The Sixth Amendment of the United States Constitution, CPL § 30.20

5. The Due Process Clauses of the United States Constitutions (U.S. Const., amend. XIV; N.Y. Const., art. I, § 6).

6. Claim for Malicious Prosecution

7. Claim for Intentional and/or Reckless Infliction of Emotional Distress

8. Claim Under 42 U.S.C § 1983

9. Civil Conspiracy Claim Under 42 U.S.C § 1985(3)

10. Direct Action Pursuant to Connecticut's rules regarding insurance companies

11. Claim Under Connecticut Constitution, Article 1, SEC. 8, SEC 9, SEC 20 and Article 17

12. Claim for Negligence and/or Negligent infliction of emotional distress.

They were well supported and clearly written. All of these causes of action should be defended in the usual fashion with lawyers and not a Magistrate and the Recommended Ruling. The Amended Complaint was well written and clear enough for this case to move forward. The Recommend Ruling was nothing more than a vehicle to dismiss the case against the powerful. It is nothing more than a political ploy. These judges take an oath. The Recommended Ruling was not appropriate.

Respectfully,

L. Lee Whitnum Baker

L. Lee Whitnum Baker

UNITED STATES COURT OF APPEALS

L. LEE WHITNUM :

Plaintiff :

: No. CSCA2 no. 20-947

v. :

Chief States Attorney, et al. : September 23, 2021

CERTIFICATION

I certify the person preparing the certificate may rely on the word or line count of the word-processing system is 8253 words and that I used Century font size 12.

Sincerely,

L. Lee Whitnum Baker

L. Lee Whitnum

CERTIFICATION

I hereby certify that on September 23, 2021 a copy of the foregoing was sent via US mail to the following:

CT Attorney General Office

AG-Special Litigation 165 Capitol Ave., 5th Floor

Hartford, CT 06106

And to:

Phil.miller@ct.gov

Signed,

L. Lee Whitnum Baker

L. Lee Whitnum Baker, pro se

UNITED STATES COURT OF APPEALS

L. LEE WHITNUM	:	
Plaintiff	:	
	:	No. CSCA2 no. 20-947
v.	:	
Chief States Attorney, et al.	:	September 23, 2021

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