The Power of District Attorneys

If you are among the thousands of people who moved into Las Vegas and the surrounding areas since early 1997, or if you do not live in the Las Vegas area, you likely have not heard of the Ron Mortensen case. Mortensen, an off-duty Metro police officer was convicted of murder in the first degree in the drive-by shooting of Daniel Mendoza. He is serving two life sentences without the possibility of parole. I do not believe that Mortensen was the shooter.

What needs to be told is what happened before Mortensen's indictment. What is uncontested is that Chris Brady, the driver, and Ron Mortensen, the passenger, both off duty Metro police officers, were in the truck from which six shots were fired out of the passenger side window in a drive-by shooting. Apparently, one of the bullets killed Daniel Mendoza. A forensic expert's notes doubted that the nature of the fatal injury was a result of the weapon carried by Mortensen, a Sig Sauer SL 230. However, that doubt was not resolved at the time of the trial.

Mortensen has always maintained that he was simply expecting Brady to give him a ride home after celebrating his (Mortensen's) 31st birthday at a party at which both had consumed alcohol. Mortensen further maintained that Brady unexpectedly drove into a Hispanic neighborhood where Brady grabbed his (Mortensen's) weapon from the seat and did the shooting. Subsequently, that is after the trial, Mortensen passed a polygraph test in which he said he had no intention of harassing Hispanics, and that he did not fire the weapon.

Both officers were unaware until later in the day that a bystander, Mendoza, had been killed. Whereupon, Brady met with his father, Michael Brady, a long-time Metro detective, apparently telling him that Mortensen was the shooter. Michael Brady took his son to the Metro homicide office where Christopher Brady gave an eighteen-minute statement to Brent Becker (Michael Brady's former partner) and to Paul Bigham in the presence of Michael Brady. That eighteen-minute statement was effectively the beginning and the end of the internal police investigation. Arguably, Mortensen's fate was sealed by the decision that followed the eighteen-minute investigation. He was incarcerated that very day and he has languished in prison ever since.

Michael Brady and Paul Bigham were never asked to testify about the statement under oath. Although Christopher Brady acknowledged he had reached across Mortensen's chest and pointed his gun out the window, Brent Becker attempted to discount that fact in his trial court testimony. The officers took no statement from Mortensen.

Without further investigation, Sheriff Keller reported to the local media, and it was published in the local media, that Mortensen was guilty of the drive-by shooting.

Christopher Brady was not asked to participate in a line-up. Although witness testimony would not be reliable given the nighttime lighting conditions, the fact that he was not asked to participate is significant. Brady's truck and clothes were not preserved as evidence to check for gun powder. He was allowed to wash his clothes and to modify and paint his truck before it was viewed by the trial jurors.

Within ten days of the shooting (on January 7, 1997) John P. Lukens Esq. wrote the following letter to Stephen Stein Esq., Chris Brady's lawyer.

Dear Steve:

This letter will confirm our conversation of this date. In this morning's Review Journal, there appeared a story by a writer, Tanya Flanigan. That story gave the impression that your client, Christopher Brady, would faces charges arising out of the incident wherein this office will be filing Open Murder charges against Ronald Mortensen.

This is to advise you that that story is incorrect. Based upon all evidence we have reviewed to date, we are of the opinion that Christopher Brady committed no act for which he could be prosecuted. Christopher Brady is simply *a witness who came forward with information that led to solving a crime.* (Italics are mine.)

We anticipate presenting the case to the Grand Jury on or about January 16th, 1997. Christopher Brady will be subpoenaed to appear and testify along with other witnesses.

Regard & etc.

John P. Lukens, Esq.
Chief Deputy District Attorney

If Mortensen's defense attorney, Frank Cremen Esq., can be criticized for rushing the case to trial, and he has been criticized, his rush pales in comparison to the District Attorney's rush in indicting Mortensen. Cremen tried to forgo the grand jury procedure in favor of a preliminary hearing. He wrote to Lukens on January 10, 1997:

Dear John,

I want to again acknowledge receipt of your notice that you intend to present the case against Ron Mortensen to the Clark County Grand Jury on January 16. As you know, a preliminary hearing has been set by Judge Abbatanglo for January 24, 1997. I would like to ask your office to reconsider your decision to present this case to a grand jury. I think, given the facts and circumstances of the case, it would be best for all parties concerned if the evidence were presented publicly at a preliminary hearing. Grand jury proceedings conducted in secret, without the

benefit of cross examination of pertinent witnesses, will leave a myriad of questions unanswered.

Hoping that you will reconsider your decision, and given the fact that a preliminary hearing has been scheduled, I will be issuing subpoenas for certain witnesses. If you nonetheless choose to proceed with a grand jury presentation, I would ask that certain questions, the answers to which I believe are exculpatory of Ronald Mortensen, be posed to certain of your witnesses, and in particular, to Chris Brady.

I know that by reputation, Chris Brady is considered by many of his fellow officers as a "rogue." I know that he has referred to himself as a "ghoul," a "black knight," and a "pirate." I know that he has also talked of going "marauding." *These statements I think are latent with suggestions that he is capable of the conduct that is now being ascribed to my client.* (Italics are mine) You might also ask Mr. Brady about his expressed deep hatred of Sheriff Keller and his comments, uttered within the past month, of assassinating him.

Given Brady's reputation and character, I think it is altogether necessary that inquiry be made of the investigative officers as to why Brady was not asked to participate in a line-up, when particularly two of the three witnesses for whom a line-up of Mortensen was held did not identify Mortensen, but a corrections officer for whom I think the evidence will show does resemble Mr. Brady. There is also quite a bit of confusion among the witnesses as to the length of hair of the person whom (sic) they say did the shooting. Mortensen's hair has always been short, in military style. He gets his hair cut every other week. Brady, on the other hand, has the longer modish hair in the back of his head consistent with the description given by Rosa Zurita.

I find it curious that Brady's clothing worn on the night in question was not impounded so that it could be examined for powder residue. I also find it curious that no statement was taken from Brady's father, who evidently assisted Brady before Brady presented himself to the police on Sunday evening, December 29th. It is now evident that Brady's father was present when Brady was questioned. Brady is not a juvenile, and I fail to see the need for his father's presence. I think these are fair questions that must be asked at any probable cause proceeding. The answers to these questions have ramifications far greater than the question of probable cause.

With all of these facts in mind, I would once again request that you allow the preliminary hearing to proceed. Please let me hear from you.

Sincerely yours,

Frank J. Cremen.

In 2007, I was able to get a copy of and to read the transcript of the grand jury proceeding when I visited the Clark County court house. That probable cause

hearing led to Mortensen's indictment. Upon reading the transcript I realized that Cremen's letter had had no impact: The District Attorney not only took the case to the grand jury, but Lukens chose not to challenge Brady in any way.

It is well settled in Nevada law that prosecutors are required to present evidence, exculpatory of targeted defendants, to the grand jury panel. Cremen's letter identified numerous charges that would have challenged the credibility of Brady. Nevertheless, Chris Brady was the star witness. Not only was his attorney, Stephen Stein, a friend of Michael Brady, Chris Brady's father, allowed to attend the secret proceedings, he was called as the *first* witness, and he vouched for the veracity of Brady's testimony. Why Stein was allowed to participate in the proceedings can be answered only by the District Attorney. What is clear, however, is that Stein's testimony was designed to strengthen Brady's testimony in the eyes of the jurors.

The partiality given to Brady during the grand jury proceedings is evident. For example, Attorney Gary Guymon asked Detective Brent Becker: "Without Chris Brady coming forward on the 30th, would you have been able to solve this crime?" Becker answered: "Very unlikely." Another line of questioning inferred that Brady had put his career in jeopardy by accusing Mortensen: "Officer, by coming forward you put your career in jeopardy?" Brady answered, "Yes sir I have" What was the purpose of this question, but a ploy to build up Brady in the eyes of the jury while misleading them? Chief Deputy District Attorney, John P. Lukens had already written to Brady's attorney: "Based on all evidence we have reviewed to date, we are of the opinion that Christopher Brady committed no act for which he could be prosecuted."

A juror was cutoff in mid-sentence as he or she apparently tried to get Mortensen's view of what had happened. A juror commented: "I would like to know if Mr. Mortensen ever admitted shooting…" Mr. Guymon interrupted: "To that I'm going to ask that the detective not answer that question for a number of reasons. I don't think we can talk about that issue at this point in time."

Before the jurors were to begin deliberating they were asked if there were any questions. A juror replied: "No, but no one answered my question. Did Mortensen ever admit to …" The foreman interrupted: "Your question was answered in that they are not going to answer that question just because he admits it or not. It's irrelevant for them to answer that question. The attorneys can't answer that question." The juror: "They told me the next witness would be able to answer that."

The jury began deliberation at 3:35 PM and returned at 4:00 PM on January 16, with the indictment of Mortensen. The speed in reaching the decision is a measure of the control exercised by the office of the district attorney.

The sequence of events that preceded the grand jury hearing and the grand jury proceeding itself arguably suggest that persons acting under color of law conspired

to protect Brady and convict Mortensen, in spite of the evidence that pointed to Brady's guilt and Mortensen's innocence.

The attempt to control went beyond the grand jury to include the public at large. Even before the grand jury was seated an article by Glenn Puit appeared in the *Las Vegas Review Journal* on January 11, 1997. The headline reported, "Tests show LV officer's gun used in killing." The sub-headline added, "Ballistics tests tie a bullet found in Daniel Mendoza's body to Ron Mortensen's firearm, sources indicate." Who were the sources? In a letter to me on 24 May 2007, Mortensen wrote, "A few years later Glen (sic) Puit told me it was Guymon who planted the story." Gary Guymon went on to serve as a prosecutor in Mortensen's trial. In fact, the bullet went through Mendoza's body and it was never recovered. Planting a story that tied Mortensen's name to the shooting early on could influence the public and the pool from which the jury would be drawn. The Puit story went on to report: Police have not been able to pinpoint a motive in the shooting.

In 2014, I located Glenn Puit in Oklahoma. I contacted Puit and asked him to verify what Mortensen had told me. Puit simply said he does not reveal his sources to anyone. The fact remains that the false story was leaked.

To prepare for the preliminary hearing, which had previously been scheduled, Cremen had requested internal police files describing the bad acts relating to Brady's performance. Significantly, now that the preliminary hearing had been preempted by the grand jury, Lukens wrote to Cremen: "As your client, Mr. Mortensen, has now been indicted, there is no need for Metro to produce records pursuant to your subpoena for the preliminary hearing previously scheduled for January 24, 1997." The bad acts that would have implicated Brady before the trial were now off the table.

When they were addressed on appeal, the Nevada Supreme Court ruled that two incidents reported to the internal affairs division of the police department to show a pattern of hot-headed, impulsive, and brutish behavior by Brady were not admissible: "by offering evidence for that purpose, defendant (Mortensen) was impermissibly attempting to show that the witness (Brady) acted in conformity with that type of behavior on the night of the shooting."

Cremen's letter was a theory of Mortensen's defense, which was that Brady was the shooter. The letter with the theory (highlighted by my italics) became a lost issue. The letter, itself, was not included in the file submitted for review by the Nevada Supreme Court. Having ignored the provocative issues enumerated in Cremen's letter, which was available before the grand jury proceeding, was it in the interest of the District Attorney to exclude the letter from the record? Because the letter was not in the record, the Nevada Supreme Court said that the State was not aware of Mortensen's theory of his defense until the end of March, and because the truck was altered in January, the Supreme Court ruled that the State's failure to acquire Brady's truck and clothing before they could be altered did not violate due process.

The power of the District Attorney in controlling the outcome of this case is clearly evident. To win the acquittal of Mortensen, Brady, by default would have had to be convicted. Brady was not about to be convicted in the trial of Mortensen. Brady was protected and arbitrarily exonerated by the District Attorney. Had the District Attorney decided to indict Brady and exonerate Mortensen, he could have done so, and with good reason.

In a pretrial petition for a writ of habeas corpus, much attention was focused on whether or not Brady should be charged as an accomplice. However, to charge Brady as an accomplice would in effect indicate that Mortensen was the shooter. Likely for this reason the writ was withdrawn. The emphasis by Cremen should have been to develop what his letter implied: to quash the indictment of Mortensen and to indict Brady.

To validate the prosecutors opening statement at the trial, that Christopher Brady looked like a Hispanic, Brady was allowed to change his appearance by cutting his hair and darkening his skin. Mortensen brought the change of Brady's appearance to Cremen's attention, but no protest was made.

The prosecutors, in the end, said that although Brady's and Mortensen's testimonies contradicted each other, the eyewitnesses and the physical evidence were prevailing. That is, witnesses said that Mortensen was the shooter, and the pattern of the spent shells outside the truck showed the truck was moving, making it unlikely the driver, Brady, could have reached across Mortensen, while driving, and fired the weapon.

Attorney Kathryn Monroe, director of the Rocky Mountain Innocence Center, located in Salt Lake City, wrote to me: "Studies of innocence cases have established that eyewitnesses' testimony is extremely unreliable and was responsible for 75% the wrongful convictions in the 200 DNA-based exonerations we have had during the past two decades. Even rape victims who had the chance to study the faces of their attackers for a period of time have made incorrect identifications. *Especially unreliable are the kinds of witnesses who were involved in Mr. Mortensen's case – who claim to have seen a quick, dramatic crime that takes place as a bystander."* (Italics are mine)

Detective Brent Becker said in two interviews that the shooting event lasted between only 8 to 10 seconds. Add to this, the instant crime was a drive-by shooting in poor lighting at about one A.M., where witnesses themselves could be in the line of fire. Add to this one key witness, Ruben Ramirez, an admitted drug dealer with a series of charges including robbery, domestic violence, and possession of a dangerous weapon, had criminal charges pending in the days before the Mortensen trial. On appeal, the state supreme court denied that Ramirez's impending cases affected the outcome of the jury decision.

A recent story in the Las Vegas Review Journal reported that it is common practice in Clark County for prosecutors to allow payments, for time and travel, to witnesses who are being prepared to testify for the prosecution. The article called into question the effect of this practice when illegal drug users, who are prepared as witnesses, use such payments to purchase drugs. More to the point here is, did payments affect the testimony of Ramirez against Mortensen, when Ramirez, himself, had charges pending?

Regarding the scatter pattern of the ejected shell casings, a scientific study in Force Science News, June 15, 2000, reported findings are now firm: Ejected shells can't reliably tell much about a shooter's location. "Nearly 8000 rounds fired by Los Angeles County sheriffs have now conclusively proved what Force Science Research Center first asserted more than two years ago...findings show that the ejection spread can vary up to 24 feet with the same gun fired by the same shooter, depending on how the weapon is gripped and moved."

Mortensen's writ of habeas corpus was heard in the local district court by Judge Douglas Herndon. I sat through all of the Herndon hearings. I was disappointed to learn that the court would not allow a full evidentiary hearing to examine the issues raised in the writ. The hearing, which was delayed for more than two years as Mortensen was held in the Clark County Detention Center, sought to show the cumulative effect of the single issues appealed and denied in the state Supreme Court. David Schieck, Esq. challenged the decision of Cremen in rushing to trial before all probative issues had been explored. Schieck supported his challenge, in part, by citing the state Supreme Court's conclusion that with due diligence the issues on appeal could have been discovered before the trial. The inferred lack of due diligence was a strike against Cremen, but it was and is Mortensen who is paying the price.

In judging the performance of a defense counsel, the Supreme Court of the United States in the case of *Strickland v Washington* set a standard that said, in effect, defense counsel assistance must be reasonably effective. In applying the standard, Courts decide if the performance of the defense counsel produced a just result. Chris J. Owens Esq., Chief Deputy District Attorney, argued that none of the issues, cited by Mortensen, would have changed the jury verdict. That is, Brady's bad acts, Brady's telling Marc Barry he would like to do a drive-by shooting, the failure of the State to preserve evidence that might have implicated Brady, the pending criminal cases against witness Ramirez, Mortensen's testimony that many Metro officers could have challenged the credibility of Brady's testimony, and the host of other irregularities identified in the writ would have had no effect on the decision of the jury.

Judge Herndon denied the writ of habeas corpus. For Mortensen to have prevailed, Herndon would have had to rule against the performance of Cremen. In rendering his decision, Herndon rested, in part, on his personal knowledge of Cremen's

abilities and professional reputation. With that personal knowledge, should he have recused himself? Once again, the case was headed for the Nevada Supreme Court.

When the law firm of Dempsey, Roberts, and Smith was considering a civil law suit on behalf of the Mendoza family, Kenneth M. Roberts Esq. wrote to Mortensen's attorney, Frank Cremen, "It is apparent to this firm that Christopher Brady may very well have been the individual who shot Daniel Mendoza and that he has accused Mr. Mortensen in an attempt to protect himself... I have stated before and state again, neither this firm nor the Mendoza family has any desire to see an innocent man spend the rest of his life in prison."

Aside from helping other prisoners with their appeals, since his incarceration Mortensen earned a Bachelor of Science in Law from the Southern California University for Professional Studies. Prior to his employment as a Metro officer, he earned a commission in the US Army through the ROTC program, upon graduation from UNLV.

In this case, the jury did not hear important evidence, which was available but not presented at the trial. In addition, there were contamination problems with the jury because it was not sequestered. For examples: Juror Gayle Elred was visited at home on a Sunday by Metro Detective Andy Hafen. The purpose of his visit is not known, however with alternate jurors available, Elred chose to remain on the jury rather than to be with her husband at the hospital while he was undergoing a heart procedure. Juror Roberto Ternate read about the case after he was told not to do so. Jury Foreman Scot Beck, the son-in-law of Metro Sgt. Ralph Hemington, received a call from a Hispanic the nature of which frightened his wife. Finally, the jurors had to face a host of card carriers asking for a guilty verdict and even the death penalty when they came to and when they left the court house.

On July 15, 2010, the Nevada Supreme Court affirmed the decision of Judge Herndon. It denied a new trial for Mortensen. David Schieck, the public defender opined: "In my opinion, the Court's analysis was designed to merely close the case and not address the merits of the respective issues." The issues in the appellant's opening and reply briefs fell on deaf ears. This State Supreme Court order exhausted Mortensen's appeals in the Nevada state courts, but it opened the opportunity for him to petition the federal district court for a writ of habeas corpus.

On February 23, 2011, Judge Kent J. Dawson of the Federal District Court, located in Las Vegas, granted Mortensen's petition for a writ of habeas corpus. He allowed Mortensen's longer than normal (over 250 hand printed pages) petition, and ordeed the appointment of a federal public defender. On March 1, 2011, a Las Vegas Federal Public Defender asked the Court to appoint a substitute counsel claiming a conflict of interest for a Federal Public Defender.

On March 4, 2011, Mario D. Valencia, Esq. was appointed as counsel to represent Mortensen in all proceedings. The State of Nevada was ordered to respond to

Mortensen's petition for the writ of habeas corpus by March 8, 2012. The state responded on March 9, 2012, by asking for dismissal of Mortensen's petition. Mortensen and his counsel were ordered to argue against the dismissal on or before April 23, 2012.

When Schieck appealed Herndon's decision in the Nevada Supreme Court he failed to articulate the many issues not considered in Herndon's court. Schieck assumed that the Nevada Supreme Court would remand the case back to the district court to resolve those issues. It did not. Valencia asked Judge Dawson, that if there were unexhausted state issues, to issue a stay and abeyance to allow Mortensen to return to the State Courts. After reviewing the case, Judge Dawson found there were unexhausted issues. He ruled that Mortensen could go back to the State to resolve those issues, or he could continue with a very limited federal habeas appeal.

Mortensen chose to go back to the State. But, now the AEDPA restrictions came into play. The State habeas appeal was considered as *successive*. That allowed the State district court and the State Supreme Court to cite the AEDPA procedural bars without reviewing the merits of the case. But with continuance after continuance it took a long time. It was not until February 2015 that the stay and abeyance was lifted. On February 14, 2015, Mortensen's federal habeas was reactivated with a brief explanation of what had happened in the State.

On April 3, 2015, Mortensen filed a pro per motion asking for a substitute counsel. I reviewed a letter of March18, 2015, which his counsel, Mario Valencia sent to him. It was not a letter that one would characterize as a letter in which a defense counsel is merely advising a client of the issues he must overcome to win a new trial or an acquittal. In the letter, Valencia appears not to believe the substance in the writ, which he, himself, filed. Contrary to what the writ says about Brady's truck, that it should have been but was not preserved as evidence, Valencia now says there was no requirement to do so.

Valencia seemed not to be aware of what was included in the writ. This could be true because the Federal Writ was largely a repeat of what had been prepared by the state public defender, David Schieck, for consideration in the Herndon state court, noted above.

Valencia mocks Mortensen when Mortensen says that his prior counsels believed in his innocence. Valencia writes, "The very same lawyers you hired and, as you wrote in your last letter believed you were innocent, are the very same lawyers you blame for preventing you from presenting experts. If they believed so strongly in your innocence, why didn't they hire experts to investigate those issues (the weapon, the bullets, the different calibers, the wounds, the autopsy report/photos, etc.)? Why didn't they submit expert reports, or affidavits or even have them testify?" Valencia seems not to realize that this challenge undercuts a basic premise of the writ that he, himself, filed, which is that Mortensen did not receive effective assistance of counsel.

Valencia's letter tells Mortensen that he used poor judgement in being in a truck with Brady, given Brady's reputation. He fails to note that Brady was Mortensen's acting sergeant and that Mortensen merely expected Brady to give him a ride home. Mortensen did not know that Brady would take him on a wild ride to McKellar Circle, where the shooting took place.

In the letter, Valencia implies that Brady was truthful because the jury believed him. He fails to be persuaded by the writ he filed, which indicates, that if there had been due diligence, Mortensen's trial counsel could have shown that Brady was not truthful. Valencia appears to believe the witnesses, even though the writ gives abundant reason not to believe them.

With regard to one of Brady's bad acts of which the trial jury was unaware, Valencia downplays the fact that Brady asked Carye Morris to perform fellatio on him, saying that if it had come out in the trial, it could have been very damaging to Mortensen because the state would claim that he had been complicit in that, "You helped with the stop and allowed Brady to take Morris alone knowing he was going to do something to or with her." In fact, Mortensen had no authority to allow or to disallow Brady to do anything. Mortensen simply showed up to inventory and tow the car. He had no control or interest in Brady's taking Carye Morris to jail, which is when and where the incident occurred.

Valencia wrote: "You claim there were "witnesses available" to show Brady had a penchant for going without warning on "wild rides without agreement of passengers". Who are these witnesses? Again, Valencia seems not to know what is in the writ that he filed. The writ says, "Devi Mohr, who along with Bob Whitley and Troy Barrett, was taken on a "ride" by Brady after they left a bar just a few months prior to the McKellar shooting. Mohr had provided this information to trial counsel, but the information was nor elicited during the trial testimony. This is significant because Mortensen simply believed that Brady would take him home and not drive to McKellar circle where the shooting occurred.

In summary, Valencia's letter showed that either he had not studied the writ or he did not believe what the writ claimed. In either case, the letter did not portend effective assistance by Valencia. For that reason and for the fact that Valencia was rarely available to show interest in the case, Mortensen asked for substitute counsel.

On January 26, 2016, Valencia filed a request in the United States District Court for the District of Nevada for a ruling, or a hearing, on Mortensen's motion for substitution of counsel and Valencia's motion to withdraw as counsel, noting the case was at a standstill, for all practical purposes, since March 2015.

On January 27, 2016, The Senior Deputy Attorney General for the state of Nevada Victor-Hugo Schulze, II, admitted in a notice to the Federal Court that they lack standing in or any interest in the dispute, and that restraint in the matter is the most

prudent position. Nevertheless, forgoing his own advice, Mr. Schulz opined that Mortensen is simply a controlling and manipulative client who openly disregards sound advice." Mr. Schulze was asking Judge Dawson to deny new counsel. He offered his opinion without any knowledge of the actual representation that Valencia was affording Mortensen in the critical writ before the Federal Court.

To mitigate the effects of the AEDPA, the U.S. Supreme Court in a 7 to 2 ruling (Larson v. Soto in the 2013 9th Circuit) allowed a narrow path to overcome the restrictions in the AEDPA in what it called a case of *actual innocence*.

There was some doubt noted at the time of the trial if Mortensen's gun could have fired a bullet through the body of Mendoza. That doubt was never pursued. Mortensen believes a thorough investigation of that doubt will provide a gateway to a claim of actual innocence. He told Valencia there was a video among materials that should be in the files that convincingly demonstrated that his gun was not the actual weapon used in the murder. Valencia said such a video did not exist.

On April 8, 2016, Mortensen filed the following notice to the court. "As previously stated to this court in October 2015, I had always believed that additional copies of the video of the 1998 Ballistics test supporting my gateway claim were available. As it turns out, I was correct in my assertion. The video of the test, which I believe lends support to my claims was recently located in a privately-owned storage Unit in Parump (sic), by my brother James Mortensen, on or about 3/24/2016. Copies of the video were given to a Henderson, NV based attorney, who asked petitioner in confidence not to bring his name into this Habeas Corpus at this time. The counselor and officer of this court, however, vows to keep such evidence safe until such time as it can be turned over to substitute counsel."

The fact is that Mortensen did not know which bullet from which gun had killed Mendoza. He did know that the Puit article said that the bullet found in Mendoza's body came from his gun. He had no reason at the time of the trial not to believe that false leak to the media. What he did know, was that he did not fire any gun and that Brady had fired a gun. And, he knew that when he asked Brady why he fired the gun, Brady said that he (Brady)was evil. Mortensen also knew that Brady had taken his (Mortensen's) gun home with him that night.

But, his convictions rests on the State's claim that he killed Daniel Mendoza, using a Sig Sauer. Given that the bullet that killed Mendoza was shown to have gone through him and if the evidence shows that a bullet fired from the Sig Sauer could not have had sufficient force to have gone through his body, Mortensen well may have a gateway claim to actual innocence. That the doubt was never resolved at the time of the trial indicates that Mortensen had ineffective assistance of counsel.

On September 29, 2016, Judge Dawson ordered that a substitute defense counsel would be provided and that representation by Mario Valencia was terminated. Attorney Gia McGillivray was appointed on December 1, 2016. On January 4,

2017, McGillivray cited a possible conflict of interest, which she asked Judge Dawson to resolve. As of this date, April 12, 2017, I am not aware of the Judge's decision regarding the conflict.

On July 22, 2017, Mortensen told me a new counsel, Attorney Chris Arabia, had been appointed.

My interest in this case is purely altruistic. I am not related to Mortensen, and I did not know him at the time of his trial. I lived in Las Vegas when the shooting and the trial occurred. I always felt that Mortensen had not been treated fairly. I got involved in 2007, when I realized that he was back in Las Vegas for a hearing. I had not known that he had been serving time in an Ohio state prison in Mansfield.

Since 2007, I have seen him on and visited with him on a screen, several times, when he was in the Clark County Detention Center. I visited him four times in person when he was incarcerated in the Nevada High Desert State Prison. I talked with him by phone numerous times. I have exchanged nearly 700 hundred letters with him. I have filed his letters in the order I received them. The letters reveal contemporaneous reports of his treatment in the Nevada prison system. I also kept copies of the letters I sent to him.

Edwin M. Wagner, Ph.D., Lt. Col, USAF (ret)

A Revealing Sequence of Events

The conviction of Ronald L. Mortensen for the drive-by shooting of Daniel Mendoza on December 27, 1996, is old news. In summary, shots were fired out of the passenger window of a truck driven by Christopher Brady. Ronald Mortensen was the passenger.

Does the sequence of events that followed the shooting, described below, show due process under the U. S. Constitution, or does the sequence of events described below show that persons, acting under color of law, conspired to protect Christopher Brady, the drive-by shooter, and convict Ronald Mortensen?

1. Christopher Brady's 18 minute statement about the drive-by shooting was taken by Brent Becker and another Metro police officer, Paul Bigham. Brent Becker was a close friend and former partner of Christopher Brady's father, Michael Brady, who was a long time Metro detective. Michael Brady sat in on the interview. Michael Brady and Paul Bigham were never asked to testify about the statement, under oath. Although Christopher Brady acknowledged he had reached across Mortensen's chest and pointed his gun out the passenger window, Brent Becker attempted to discount that fact in his trial court testimony. The officers took no statement from Mortensen.
2. Without further investigation, Sheriff Keller reported to the local media, and it was reported in the local media, that Mortensen was guilty of the drive-by shooting.
3. Christopher Brady was not asked to participate in a line-up. Although witness testimony would be suspect given the lighting conditions at the time of night when the shooting occurred, that Brady was not asked to participate is significant.
4. Brady's truck and clothing were not preserved as evidence to check for gun powder. He was allowed to wash his clothing, and modify and paint his truck before it was viewed by the trial jurors.
5. A scheduled preliminary hearing, for which subpoenas had been issued by Mortensen's defense counsel, Frank Cremen, to show Christopher Brady's bad performance record, was preempted by the District Attorney in favor of a secret grand jury proceeding.
6. Before convening the grand jury, which indicted Mortensen, a published report in a local newspaper said the bullet recovered from Mendoza's body came from Mortensen's gun. In fact, the bullet went through Mendoza's body and has never been recovered. Mortensen told me that Glenn Puit, the reporter, told him the false story was leaked by Gary Guymon who went on to prosecute Mortensen. I contacted Glen Puit who told me he does not reveal his sources to anyone. The fact remains that the false story was leaked.
7. Christopher Brady's attorney, Stephen Stein, a friend of Michael Brady, was the first witness before the grand jury. He vouched for the veracity of Christopher Brady, who

was the chief witness against Mortensen. Why Mr. Stein was allowed to vouch for Christopher Brady during the secret grand jury proceeding is suspect; especially given the fact that Nevada case law prevents this type of grand jury vouching

8. Although Cremen, before the grand jury met, notified Chief Deputy District Attorney John P. Lukens, in some detail, that the theory of Mortensen's defense was that Christopher Brady was the shooter, no indication of this was given to the grand jury, even though on two occasions a juror specifically asked about Mortensen's possible defense.
9. After Mortensen was indicted, Lukens wrote to Cremen, "As your client, Mr. Mortensen, has been indicted, there is no need for Metro to produce records pursuant to your subpoena for the preliminary hearing previously scheduled for January 24, 1997." Brady's bad acts were to be undisclosed. This became significant after the trial when the brutish behavior of Brady was revealed. Among other bad acts of threatening, striking, abusing, and pulling guns on Hispanic males, it was revealed that he had forced a woman, whom he had stopped for a violation, to perform fellatio on him.
10. One primary, alleged witness, Ruben Ramirez, had criminal cases pending in the district court at the time of his trial testimony. The defense was not notified by the prosecution of that fact during the trial, and did not discover that fact until after the trial.
11. Although Metro Officer Mark Barry knew that Brady had on several occasions said that he, Brady, would like to do a drive-by shooting, the trial jury was not informed of that fact. It became known when Barry testified under oath in a follow on federal investigation after the Mortensen trial.
12. To validate the prosecutor's opening statement at the trial, that Christopher Brady looked like a Hispanic, Brady was allowed to change his appearance by cutting his hair and darkening his skin.