

# Letter: Questioning Secret Witness' constitutionality

To the community,

I read about a man that Washoe County law enforcement officers are interested in speaking too. This is regarding a case that might be developing into some kind of child abuse case of some kind. There are two points that I want to bring to the public's attention about what I have read about this case that may or may not amount to anything.

First I think it is time that I go public about how the Secret Witness program is being used unconstitutionally. I know that many of you reading this will disagree with me, but what I have to say about the Secret Witness program needs to be said. In our nation's Sixth Amendment there is a clause which is supposed to guarantee us a right to confront all witnesses used against us in a criminal proceeding. Secret Witness is a program run by the local governments that is designed to step around our right to confront a witness against us. It is a clever way that the local governments are violating our right as I describe here.

In the news story I've read, the man sought is not under any criminal charge. Also there has been a statement by the law enforcement authorities that there is not sufficient evidence to charge this man. Yet, the law enforcement authorities are issuing a statement saying, "He should turn himself in."

I believe the facts stated in the news story are clearly describing a case that has not developed sufficiently, or will not at all. In this case, the subject person is being subjected to a clever method of defamation. He is being injured publicly by nothing more than suspicion. But more

importantly, if anyone comes forward saying anything injurious toward this man, that person's identity will not be disclosed. This is where we all should recognize the Sixth Amendment violation where we all have the right to confront our accusers.

As I said, I know that many of you will disagree with me. If you do disagree, let's agree to disagree, and go forward.

I once sat in on a case where Dick Gammick, the Washoe County district attorney at the time, was accused of slandering a former employee named Renee Botello. What had happened was that Mr. Botello objected to the way Dick Gammick had prepped young children prior to prosecutions according to sex cases. A witness on behalf of Mr. Botello testified that the children were shown pornographic magazines and asked suggestive questions regarding body parts. This was done so that the children's testimony would move right in the direction Mr. Gammick wanted. Gammick was leading the children right where he wanted. When Mr. Botello objected, he quit his job, and went looking for other employment. Subsequently, Dick Gammick provided Renee Botello very bad references. Renee Botello sued according to defamation law. Dick Gammick escaped the prosecution through claiming immunity.

That's right, immunity. This case can be looked up. There is no honor among prosecutors. I personally sat in the courtroom and heard some of the testimony.

If you are still paying attention to me, then you will want to know more about immunity for prosecutors. In the late 70s and early 80s criminal prosecutors gained what is called prosecutorial immunity. Sometimes this is referred to as absolute immunity. When a prosecutor is now acting in a capacity of the job, the prosecutor is protected by absolute immunity. This immunity is only denied to a prosecutor when the prosecutor has acted outside of what constitutes their job duties. Even when a prosecutor has acted with malice toward a

person known to be innocent, that still falls within the guidelines of the immunity statute. There was a case where a prosecutor demanded that a person go to church and confess. That did not fall within the guidelines of job duties, and in that case the prosecutor was denied immunity protection.

I've noticed that most people have faith that prosecutors will act with honor. This is not wise to believe. Nor is it wise to believe that secret witness is being used honorably.

**Daniel Harvey, South Lake Tahoe**