

Before the United States District Court for the District of South Carolina C/A No.: 5:10-132-JFA
Jonathan David McCoy, Plaintiff, vs. City of Columbia; City of Columbia Police Department; et al., Defendants
Marie Assa'ad-Faltas, MD, MPH, ("Dr. Assa'ad-Faltas") Proposed Intervenor

Marie Assa'ad-Faltas, MD, MPH's Motion to Reopen Denial of Intervention, FRCP 60(b)

Although I authored *Brand X*, "it is never too late to 'surrende[r] former views to a better considered position.'" *South Dakota v. Wayfair, Inc.*, 585 U. S. ___, ___ (2018) (THOMAS, J., concurring) (slip op., at 1) (quoting *McGrath v. Kristensen*, 340 U. S. 162, 178 (1950) (Jackson, J., concurring))

Justice Thomas' dissent from denial of certiorari in *Baldwin v. U.S.*, 589 U.S. _ (2020)

[N]othing prevents the Eleventh Circuit from reconsidering its practices to make them fairer, more transparent, and more deliberative. ***** [T]his case rests not on issue preclusion but on *stare decisis*, and implicates [...] the precedential weight another court grants to its own opinions. But these doctrines stem from a common concern: **Decisions that bind other litigants should, at the very least, be based on more than minimal briefing.** That animating principle, in turn, casts doubt on the Eleventh Circuit's practices at issue here. [¶] Before the Eleventh Circuit addresses a procedural due process challenge to its practices, [...] it could, for example, solicit fuller briefing on those (relatively few) applications that present open questions of law.

Justice Sotomayor's statement in *St. Hubert v. U.S.*, 590 U.S. _ (2020)

An object at rest stays at rest and an object in motion stays in motion with the same speed and in the same direction **unless acted on by a greater force.** *Newton's First Law of Motion*

[T]he trumpets were blown. As soon as the people heard the sound of the trumpet, the people shouted a great shout, and the wall fell down flat[.] ***Joshua 6:20***

¹⁴ David wrote a letter to Joab and sent it with Uriah. ¹⁵ In it he wrote, "Put Uriah out in front where the fighting is fiercest. Then withdraw from him so he will be struck down and die." ¹⁶ So while Joab had the city under siege, he put Uriah at a place where he knew the strongest defenders were. ¹⁷ When the men of the city came out and fought against Joab, some of the men in David's army fell; and Uriah the Hittite died. ¹⁸ Joab sent David a full account of the battle. ¹⁹ He instructed the messenger: "When you have finished giving the king this account of the battle, ²⁰ the king's anger may flare up, and he may ask you, **'Why did you get so close to the city to fight? Didn't you know they would shoot arrows from the wall?'**" If he asks you this, then say to him, "Moreover, your servant Uriah the Hittite is dead." [...] ²⁵ David told the messenger, **"Say this to Joab: 'Don't let this upset you; the sword devours one as well as another.'**" ²⁶ When Uriah's wife heard that her husband was dead, she mourned for him. ²⁷ [...] David had her brought to his house, and she became his wife and bore him a son. **But the thing David had done displeased the LORD.** ***2 Samuel 11***

I alone have escaped to tell you.

Job 1:14, 16, 17, and 19

"None is righteous, no, not one; ¹¹ no one understands; no one seeks for God. ¹² All have turned aside; together they have become worthless; no one does good, not even one." ¹³ "Their throat is an open grave; they use their tongues to deceive." "The venom of asps is under their lips." ¹⁴ "Their mouth is full of curses and bitterness." ¹⁵ "Their feet are swift to shed blood; ¹⁶ in their paths are ruin and misery, ¹⁷ and the way of peace they have not known." ¹⁸ "There is no fear of God before their eyes." ***Romans 3:10-18***

This submission is motivated by pure love, beginning with self-love which informs love of others as oneself and love of one's enemies. But even if now-Senior U.S. District Judge Joseph F. Anderson, Jr. (DSC) ("Judge Anderson") were tempted to brand the 7 years between this submission and the last preceding one of this case "beyond frivolous," he is reminded that a **50-year interval** between one South Carolina ("SC") Circuit Judge Hayes (Uncle) pronouncing wrongful convictions and another SC Circuit Judge Hayes (Nephew) vacating them was deemed to magnify, not frivolity, but courage.

FRCP 60(b) has a no-time-limit catch-all provision; two U.S. Justices recently wrote of jurists' duties to *sua sponte* correct their own errors; and opportunities lost may never be found. Judge Anderson is the only sitting SC jurist to have been an SC state legislator **and teach a full law-school course.**

Dr. Assa'ad-Faltas, too, is unique as the only SC non-lawyer MD, MPH to have successfully defeated *pro se* ten false criminal charges, including a jury trial to acquittal and another to a jury's refusal to convict, to have also tried *pro se* five civil cases to juries in two states, to have successfully *pro se* pursued other cases before benches or administrative agencies, **and to be ingrained with moral compulsions and painstakingly-acquired scientific knowledge to offer solutions which could totally revolutionize and improve the legal system**—if only someone championed her.

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Briefly, Plaintiff McCoy alleged *inter alia* lies by three Columbia Police Department (“CPD”) officers. By October 2010, Dr. Assa’ad-Faltas had defended *pro se* to no-conviction against two known-false General-Sessions charges brought by CPD’s “special solicitor” Sara Heather Savitz Weiss (“Weiss”) and discovered *objective* proof of subornation of perjury, forgery and fabrication by CPD and Weiss. (Exx 11-21) Dr. Assa’ad-Faltas *honestly* thought a joinder of her efforts to Attorneys McCoy and Go- ing’s *might* inflect the alarming exponential growth of impunity of law-enforcement-officers’ (“LE- Os”) and prosecutors’ framing the innocent as if it were a perk of their jobs. So, Dr. Assa’ad-Faltas tried to intervene but was denied under claims that she would unnecessarily delay and complicate the case and subjected to attacks which are used against her *to this day*. (Exx 22-28 and 32)

McCoy’s case ended in 2013 with his receipt of a substantial sum none of which came from the LEO- defendants, who were not subjected to other judicial action or administrative discipline. Judge An- derson held a City of Columbia ordinance unconstitutional; but it appears to remain as-was on the books *to this day*; **and the crisis of LEOs’ and prosecutorial misconduct, even criminality, have now reached the magnitude of a national scandal for the whole world to see.**

And in this state, the crisis of dishonesty caused the resignation of USC President Caslen for doing what school children are supposedly taught to not do: plagiarize. Ironically, few want to hear commencement speeches anyway; and if General Caslen were not up to writing his own original, he could have kept his job *and endeared himself to the 2021 graduates* by giving a 30-second send-off.

BUT General Caslen, like most in power, was likely controlled by mindless adherence to tradition no matter how baseless, anachronistic, and harmful, it may have become.

This motion is thus timely and best submitted to Judge Anderson, who was once *so caringly* open- minded (without accepting any argument uncritically) to the point of evoking thoughts of sainthood. (Exx 9-A, B, 18 February 1994 transcript) The nurturing look in Judge Anderson’s eyes at p 25, lines 19-22, recreated the loving amazement in Mother Superior’s eyes when the child Marie stood up in class and objected to the school denying her, a top achiever, a weekly ribbon because some mediocre pupils wanted to once wear one and there were not enough ribbons for all. Charity may have justified that Catholic school’s “democracy of ribbons”; and selfishness may have tainted the child Marie’s fairness motive for speaking up; **but there is no justification for failure to change a system which regularly frames the innocent** (Exx 1 and 2); and the aging Dr. Assa’ad-Faltas’ motives now include self-love, which is *the opposite of selfishness*. There is no self-love in not listening.

Judge Anderson is asked to exert healthy self-love in reviewing this submission and credit both his own talent in finding use even in what he *might* reflexively suspect to be “frivolous,” and the courage *and confidence in Judge Anderson’s better angels* required for Dr. Assa’ad-Faltas to submit these revolutionary but scientific ideas to one who once unfairly branded her “beyond frivolous.”

Before expounding on how law in America needs a comprehensive scientific revolution, Dr. Assa’ad- Faltas relates a true story from her pre-medical-school-proper year, 1970/71, then-called Preliminary Natural Sciences (“PNS”), which included a year-long course in Psychology and Ethics. The professor posed an old ethical exercise: save the unborn child or save the pregnant mother’s life? Then-17-year- old Marie interrupted naively but confidently: We study to become such skilled physicians and sur- geons that we can save both lives simultaneously; and this moot exercise diverts us from such study.

With nuances, purported searched for “the lesser of two necessary evils” are similarly posited only by those too intellectually-lazy and/or too profit-tied to empty words to admit that, with sufficient study and cooperation, **no evil is ever truly necessary**. Consequently, **no sovereign ever has any interest in “finality” of a wrongful conviction**; and no party ever has a *civilized* interest in the “finality” of a fraud-induced civil judgment. Such snatch-and-run “interest” **de-civilizes Society**.

Assertion of all defenses at the first/only opportunity cannot be forced by the “interest in finality” which punishes the victim, *i.e.*, the wrongly convicted defendant, not the lawyer who chose weak de- fenses and/or neglected strong one. The injustice is starkest where the sovereign, as does SC, also trains, licenses and/or registers lawyers and unleashes them on an uninformed public.

A necessary detour is this quotation from Exhibit 3 hereto at p 9:

See *Wong v. Belmontes*, 558 U.S. 15, 20 (2009) (To establish prejudice, the defendant must show “‘a **reasonable probability** that a **competent attorney**, aware of [the available mitigating evidence], would have introduced it at sentencing,’ and ‘that had the jury been confronted with this . . . mitigating evidence, there is a **reasonable probability** that it would have returned with a different sentence.’”).

Does any one in the world, including the U.S. Supreme Court (“SCOTUS”) who wrote the quoted *Wong* opinion know whether “reasonable probability” means 1% or 51% or 99%? And is that number, even if known, fixed or does it vary from case to case?

Is “a competent attorney” different from a merely-licensed attorney? And how so?

And how does anyone determine the “probability that [the jury of the case] would have returned with a different sentence” with different defense tactics? **The answers can come only from a numerically-sufficient data base with every defense strategy correlated with results and subjected to multivariate analysis.**

MORE SIGNIFICANTLY, the substantive due process right of every criminal defendant should include being given the list of defense options correlated with the statistically-determined probabilities of success just as the informed consent of patients includes being presented with, e.g., the numeric risk/benefit of surgery versus medication versus observation.

Pretenses of impossibility of such studies are belied by the now-established, though privately run, science of jury selection which uses simulated trials in place of the double-blind controlled prospective studies used in the medical fields. **Dr. Assa’ad-Faltas felt Judge Anderson’s pain at having to sacrifice a jury study he intended to conduct on the *U.S. v. Moretta T. Brown* jury lest the result of the study taint the result of the trial; i.e, finality over science.** This submission wants to make such studies *mandatory*. **But without science, law is not even an art** (modern painters, sculptors and ballet students are also required to study human and animal anatomy); **it is glorified witchcraft dictated by tyranny of the robe.** A robed on a bench incants to twelve strangers “**you are the sole judges of credibility**” as if **such talisman transmitted to them magical powers of staring at other strangers and deciding “with finality” who is telling the truth and who is lying.** Before lending a stranger \$500.00, a banker obtains the stranger’s credit score based on history with previous loans. Before issuing a policy, an insurer uses actuarial and other *objective* tables to assess the risk. But to literally decide an accused’s life or death, the twelve are equipped with no more than incantations to “observe the witness’ demeanor,” i.e, “**go stare at the witnesses.**”

Another detour from the detour: without sycophancy, here is invoked the kindness with which Judge Anderson said in response to Dr. Assa’ad-Faltas’ apology and explanation for sometimes interrupting because she panics all her points might not be heard, “Don’t panic. I will hear all you have to say.”

Dr. Assa’ad-Faltas still panics over not living, or retaining her intellect, long enough to say what she has to say, as acquired over 12 years as an unwilling criminal defense *pro se* advocate overlapping with six years as an unwilling PCR and federal habeas *pro se* advocate, all after 20 years as an unwilling *pro se* immigration advocate. “Unwilling” means only that Dr. Assa’ad-Faltas never chose to be thrust into those legal areas, not that, once thrust there, she would have preferred representation.

Again without sycophancy (the powerful knows the sincerity of a compliment from a powerless only after that powerless has had the courage, as did Dr. Assa’ad-Faltas, to openly criticize the powerful) Judge Anderson’s kindness at 18 February 1994 Tr. p 12, lines 11-12, is invoked. **There is simply no way to arrange, by order of importance, the lessons of four decades of studying law.** But why should anyone, *a fortiori* Judge Anderson, care what Dr. Assa’ad-Faltas thinks about the law in 2021 U.S.A.? Judge Anderson would care because he teaches law in a struggling law school.

Only an outsider to the lawyers' guild can ignore its wishful thinking and see that no society in history could keep buying what that guild is selling: words, often "elastic" words, without scientific basis, moral authority, or proven results. A guild can continue selling its defective/useless product only by brute force, hence the alliance between the judiciary and the LEO guild. The judiciary creates for LEOs such things as qualified immunity which "protects all but" the most evil and idiotic and then, as just happened with "watershed," gradually admits that, even if narrowed, that exception was really not an exception at all; and "qualified immunity" really always meant "unqualified impunity."

Why should anyone want to hear Dr. Assa'ad-Faltas' experience? Because immigrants are the proverbial canary in the coal mine; and what was done to her, a life which could have contributed much to science and society gets instead destroyed to provide employment for a few parochial lawyers, is an early warning of how the continued forced selling of mere words will continue to destroy lives.

Indeed, a hypothesis is generated that the creation of the Children's Law Center by USC's School of Law caused the explosion in child abuse prosecutions and convictions often on allegations which are no more physically possible than it is possible for Planet Earth to be flat. That Center sends "experts" to testify in courts that one of every five girls and one of every twenty boys will be sexually abused. An example of that Center's fruits is the *Mangal* case. The strict disciplinarian was accused by his rebellious but still-virgin teenage daughter of having "penetrated her seal" to teach her what boys do to girls. He was convicted and sentenced to 30 years. After direct appeals, he was denied state PCR but SC's Court of Appeals ("SC's CoA") reversed the PCR denial. The Center filed *amicus* seeking *certiorari* from SC's Supreme Court ("SC S Ct") which reversed SC's CoA and reinstated the conviction. *Mangal* then sought federal habeas which was granted by Chief U.S. District Judge Harwell (DSC); but, by then, *Mangal* had served 15 years and was induced to plead guilty to non-sexual battery and be sentenced to time served. In the process, 15 or more lawyers got employed, three teenagers grew without a father, taxpayers spent \$300K on one man's incarceration, and Society learned NOTHING about the incidence and causes of *true* child abuse and how to prevent it on one side and NOTHING about the incidence and causes of *false* child abuse allegations and how to prevent them on the other.

No society can afford to incarcerate for 30 years 10% of its men and have the other 90% live in constant fear that their own flesh and blood or their own students or parishioners would, after receiving an over-zealous sex-abuse "education," suddenly "remember" that they have been sexually abused.

But that is one the inevitable prices of full employment of members of the lawyers' guild.

A higher price is public safety from the lawyer-created magic-based penalty system. It deters crime, the magical thinking goes, by imposing stiff but increasing penalties. Armed convenience store robber gets 35 years but convenience store clerk murderer gets 350 years, three life sentences, or the death penalty. Since criminals are not afflicted with lawyers' magical thinking, they know that no one lives 350 years or three lifetimes, so they reason that killing the witness(es) to the crime which can get the criminal 35 years will not substantially increase *the real, not magical, penalty* but will substantially *decrease* the likelihood of detection. The *Bernard Richard Moore* story, *supra*, is typical.

Magic-based penalty system also harms rape, kidnap, and even gravely-wounded-in-error victims: if the penalty for [any nomenclature of] battery is *in effect* the same as for murder, the wounder acquires a higher incentive to escape instead of staying by to rescue the wounded and getting caught.

What does Dr. Assa'ad-Faltas want a federal judge to do to a legislature-created penalty-system, even if magic-based? At the very least, open the door to arguments that *substantive* due-process requires the equivalent "minimal inhibitory concentration" in infectious-disease treatment. So, incarcerations in excess of scientifically-determined "minimal deterrent length" unconstitutionally confiscate public taxes to *decrease* public safety **and/or** violate the Eighth Amendment by imposing punishments in excess of what is needed to deter a specific crime or to encourage its mitigation if committed.

In addition to the systems' issuance of magic-based sentences of multiple lifetimes and centuries, SC S Ct decreed that Dr. Assa'ad-Faltas, who had on 7 April 2011 been "appreciate[d]" for her "good faith attempt" to assist that court (Ex. 27), **magically became so "vexatious, frivolous" overnight** (Ex. 28) that she needed to not only be represented by a lawyer but also to have that lawyer's proposed submissions on Dr. Assa'ad-Faltas' behalf screened by SC S Ct lest the good doctor's sud-

denly-sprung frivolity infect her forced lawyer(s), all only 14 months after SC Circuit Judge Clifton Newman had complimented Dr. Assa'ad-Faltas' *pro se* conduct and advocacy as "most pleasant and gracious" and "not frivolous at all" (Ex 14) and years after Judge Anderson had complimented Dr. Assa'ad-Faltas as "very bright," "impress[ive]" and "better than lawyers." (Exx 9A-B and 10)

Exhibit 28 is typical of guild forcing purchase of its members' products, implicitly attributing to them mysterious powers the reach of non-guild members, using LEOs to force the purchase (Exx 29-30) and threaten arrest for not purchasing, *id.*, and even accusing the non-purchaser of insanity. (Ex 21)

Dr. Assa'ad-Faltas was kept in fear of arrest by INS in the 1990s, only for it to be later proven that she had indeed been a victim of a conspiracy to deport her between Eslinger and USC (Exx 7-8) and was correct in asserting that the Government had misapplied IRCA (Immigrant Assistance Project Settlement of the nationwide class action in which Dr. Assa'ad-Faltas was a class representative in the Western District of Washington). In 1994 Judge Anderson admitted the expected three years were too long for Dr. Assa'ad-Faltas to wait for relief; in reality, relief took over 12 years. She is now in fear of imprisonment for 30 days for another bizarre tyranny by the City of Columbia.

Immigrants are indeed the canari in the coal mine. Please see also Exhibit 2, hereto.

Before George Floyd, and before Eric Garner, Dr. Assa'ad-Faltas could not breathe while in custody of Columbia's Police Department ("CPD"). She had, on 8 July 2010, been kidnapped by Larry Wayne Mason and Dinah Gail Steele *at the direction of Sara Heather Savitz Weiss*. Yet CPD arrested Dr. Assa'ad-Faltas, ***not her admitted kidnappers and charged her with disorderly conduct***. When she complained that the "too tight" cuffs injured her, CPD's agents photographed the injuries but "exonerated" the CPD officer who caused them. When, later in 2010, Dr. Assa'ad-Faltas predicted to Judge Anderson that CPD was on a path to "racial strife," he branded her "beyond frivolous."

Meanwhile, police in other U.S. cities were *literally* paralyzing older immigrants with unnecessary, illegal and ignorantly performed "leg sweeps." *E.g., Patel v. City of Madison, Alabama* (11th Cir. 2020); and, of course, there were and will be lawyers making a lot of money defending the perpetrators of death and destruction. Profiteers from death and destruction are related by blood and/or marriage to those who call Dr. Assa'ad-Faltas "frivolous" for advocating health and construction. Again, in legal parlance, Heather Weiss' father is the employer of U.S. Magistrate Judge Hodges' husband and, earlier, her brother. Heather is very close to her father; she took him to her testimony for her failed judicial candidacy and her swearing-in as not-particularly-successful interim solicitor.

Today, putting it in legal parlance, new facts justify at least a second, *unbiased* look at Dr. Assa'ad-Faltas' legal and public health ideas from 1992 to the present. Today, as protesters chant "No justice, no peace; abolish the police," justice requires another look at what Dr. Assa'ad-Faltas advocated since 2010, not abolish the police, but put it under control of the sovereign, where it always should have been under the U.S. constitutional scheme of two, not more, sovereigns and where it is everywhere else in the world.

Meanwhile, no one agrees to look at Dr. Assa'ad-Faltas' evidence of prosecutorial misconduct and subornation of perjury (Exx 14 and 31) or to look at the after-discovered evidence of the conspiracy to deport one who could instead have improved USC's national and international standing (Exx 4-11) while Eslinger shed crocodile tears about *Altekruse* being "inconvenienced by Dr. Assa'ad-Faltas (Exx 9A-B). Sixteen years later, another USC law graduate shed crocodile tears about needing to know Dr. Assa'ad-Faltas' mother's whereabouts (Ex 12) when CPD's Blanton had already, in conspiracy with that lawyer, invaded Ms. Fares' privacy (Exx 11, 13 and 19). Is it any wonder then that USC's former president plagiarized?

The 32 exhibits are attached for Judge Anderson's ready access. If he finds them too long, he need not read them but need not attach Dr. Assa'ad-Faltas for submitting them. This a rare chance to right many wrongs. If Judge Anderson does not want to take it, he is asked to not add to the wrongs.

Lovingly submitted on 28 May 2021 and simultaneously served by e-mail to Messers Robert Going and Marshall James, all God so willing.

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