



## DOJ Dismisses Genocide Charges After Failure to Make Disclosure to Defense

September 1, 2011

We have written previously about the number of times in which federal prosecutors seem to withhold crucial evidence from defendants – evidence that they are required under law to turn over. [Here, for example, is a discussion of an important Foreign Corrupt Practices Act case in which this occurred.](#)

A genocide case in Kansas poses a new instance. After charging a Kansas man with one of the most horrific crimes imaginable, federal prosecutors ended their genocide case against Lazare Kobagaya on August 26 after his defense attorneys sought sanctions against prosecutors for withholding evidence.

In his trial, the government failed to disclose information from a U.S. consular officer listed on Kobagaya's immigration application. The officer stated that even if she had known that Kobagaya was in Rwanda in 1994, she would not have questioned him about the genocide for his visa and alien registration application because he was not Rwandan, but rather a Burundian national. A key argument in the defense's case was that Kobagaya's presence in Rwanda during the genocide was not a material fact that would have caused further investigation by U.S. immigration officials if Kobagaya had disclosed it in his immigration papers. He did not make that disclosure regarding his presence in Rwanda in his application.

In May, jurors found that Kobagaya, now a U.S. citizen, lied on immigration forms about his whereabouts during the 1994 genocide. The jury did not, however, find that he had participated in the atrocities. When the jury deadlocked on a count relating to lying on his citizenship application, the prosecution informed the defense that they planned to retry the case.

In its response to the defense's motion for acquittal, [the prosecution revealed that it had failed to disclose the consular officer's statements.](#) The defense immediately latched onto that fact and wrote a letter to the judge stating that it would seek sanctions. As a result, in a stunning turn of events, prosecutors last week asked the judge [not only to dismiss the charge against Kobagaya of lying on his citizenship application, but also to set aside his visa fraud conviction.](#)

While the prosecutors may deserve a minimal amount of credit for disclosing this information even in that late stage, it is a classic case of too little, too late. An estimated \$1 million of taxpayer money had already been spent trying the case, and 84-year-old Kobagaya's life was put on hold as he was charged with monstrous crimes.



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A jury can only reach a fair verdict if it has the opportunity to hear all relevant admissible evidence. The prosecution's failure to disclose key evidence nearly cost Kobagaya his freedom. Whether the prosecution intentionally withheld the evidence to gain a desired verdict or inadvertently failed to disclose it due to negligence, the prosecution in this case did not fulfill its duty to see that justice is served. Again, it appears that Eric Holder's Justice Department is not living up to the promises of fairness and accountability that it made when it came into power.

*Crime in the Suites is authored by the [Ifrac Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.*

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