

# CITY COURT:

MISDEMEANOR CONVICTIONS LEAD TO  
LIFE-LONG, “BEYOND HORRIFIC” CONSEQUENCES



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Life used to be promising for Julie.

She had finished two years of college and was nearly done with the foundational classes that would allow her to be accepted into nursing school. Her studies were going well, and she seemed on track to fulfill her dream of becoming a licensed nurse in a couple of years.

To make ends meet, Julie worked part-time as a licensed massage therapist. She'd been doing it for 13 years without a single complaint from a customer or employer. Aside from a DUI conviction years earlier, Julie never had any trouble with the law.

That life ended in city court.

Scottsdale police got a tip that someone at the massage business where Julie sometimes worked was engaging in prostitution. So they set up a sting. An undercover officer wearing a transmitting device in his pocket entered the business and met Julie at the front counter. He asked for a 30-minute massage for the posted price of \$50.

Julie led the detective into the back room and told him to get comfortable. The detective stripped naked and lay on the table when Julie went to get the \$10 in change he was due. She performed the standard massage, using up 27 of the allotted 30 minutes.

That's when the swarm of Scottsdale police crashed through the door and arrested Julie.

The undercover detective had used his cellphone to deliver the signal that it was time for his fellow officers to swoop in. He claimed that Julie had agreed to perform sex acts for money and had touched him inappropriately.

Julie vehemently denied any such conversation ever took place. The detective had paid for the standard massage, she said. She had given it to him, along with his change, and that's all. There was never any discussion about sex acts for money. There was never any inappropriate touching.

It was her word against his.

The single piece of evidence that would have resolved it all was the recording police made of the sting operation. Julie had her lawyers attempt to get a copy of the recording, certain it would clear the whole thing up.

But for some reason, the police transmitter had stopped working, either when the undercover detective entered the building or later when he took off his pants in the massage room. In any case, there was no audible recording of the conversation Julie had with the detective.

Police had destroyed the recording by the time the defense requested it.

The Scottsdale Municipal Court judge wasn't concerned. Since police said the conversation was not picked up on the recording, the tape was not evidence, so there was no harm in destroying it, he reasoned during Julie's trial in 2014.

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for much of  
anything because  
it's always going  
to hang over me.”  
- Julie

As soon as the testimony ended and Julie's lawyers rested their case, the judge pronounced her guilty of prostitution and several city ordinance violations, all criminal misdemeanors. He sentenced her to the mandatory 15 days in jail for the prostitution conviction, and fined her \$200 for the other convictions.

That's when the promising life Julie knew ended.

Because of the convictions, particularly on the prostitution charge, Julie says she realistically will never qualify for a nursing license. Even if she did, no one would hire her with that record.

Julie had to surrender her license as a massage therapist, and says it's unlikely she will ever get that back.

Julie's misdemeanor convictions will prevent her from working in dozens of professions that require an occupational license, and probably will for the rest of her life. Plus, the ease with which potential employers can check a person's criminal record makes it very difficult even to find a job that does not require a license.

She now makes a living cleaning houses.

All she is left with is the criminal convictions and the outstanding student loans she took out to finance the college education that was cut short.

"There's no hope for much of anything because it's always going to hang over me," Julie told the Goldwater Institute in a recent interview. "They don't realize that they are wrecking someone's whole existence. They think 'She'll go to jail for 15 days, and she'll have to work to pay these fines.' But it destroys everything. It destroys a person completely. You have no hope of getting your life back.

"It was horrible. You are isolated from every relationship that you have, dating-wise, family-wise, friend-wise. It's messed up every area of my life."

Julie agreed to an interview on the condition that her real name not be used. The Goldwater Institute agreed, in part because the topic was the lifelong consequences that anyone—guilty or innocent—can face because of a misdemeanor conviction in city court. All information about Julie's underlying case was drawn exclusively from court records, not from the interview.

## MINOR CRIMES, MAJOR CONSEQUENCES

If you are ever charged with a crime, chances are it will be a misdemeanor, and that your case will go to city court. Nationally, [about 80 percent](#) of all criminal cases are misdemeanors. And in Arizona, [about 72 percent](#) of all misdemeanor cases go to city courts. That amounted to 195,600 misdemeanor cases handled in city courts in 2016, the most recent year for which complete figures are available.

But unlike judges at every other level of the Arizona judiciary, those in city court never answer to voters. Instead, they are hired and retained, and can be fired, by city councils.

That makes city court judges particularly vulnerable to political pressure from the mayor, council, police, prosecutors, and budget directors, the Goldwater Institute found in its report [City Court: Money, Pressure, and Politics Make It Tough to Beat the Rap](#), published in July. That pressure might be to raise revenue through more convictions or harsher debt-collection techniques. Or it might be to go along with high-profile city crackdowns on such things as prostitution, drunken drivers, or speeders.



Misdemeanors are supposed to be minor crimes. The [maximum punishment](#) is six months in jail and \$2,500 in fines per count. Because the charges are not deemed serious, defendants in misdemeanor cases are [rarely entitled](#) to a jury trial. Indigent defendants in Arizona also [are not entitled](#) to a government-paid attorney unless they are facing jail time.

But a misdemeanor conviction in city court can wreak devastating consequences on people's lives that go far beyond a few days in jail and a fine of a few hundred dollars.

Misdemeanors are considered [criminal convictions](#), and they must be reported as such when filling out job applications or applying for a professional license. Among the [dozens of regulated professions](#) for which a misdemeanor conviction can lead to revocation or denial of an occupational license in Arizona are schoolteacher, tow truck driver, school bus driver, funeral director, embalmer, nurse, psychologist, pharmacy technician, physical therapist, pest control applicator, home inspector, veterinarian, athletic trainer, security guard, and cosmetologist.

Conviction of certain misdemeanors can prevent people from ever working in certain professions, especially if the charges involve fraud or a "crime of moral turpitude," which [can include shoplifting](#).

Someone urinating in an alley behind a bar [could be charged](#) with misdemeanor indecent exposure, and be forced to register as a sex offender.

If a misdemeanor crime is designated as a "domestic violence" offense, a conviction will [prohibit the defendant](#) from ever buying or possessing a gun. Misdemeanors deemed domestic violations can include actual physical violence against a spouse or other family member, such as an assault. But they can also include such things as having a loud argument, trespassing on an estranged family member's property, or carelessly breaking a plate or cup during an argument with a family member.

A conviction for a misdemeanor marijuana possession charge can make a person [ineligible for student loans](#) or public housing. It can also make it difficult to rent a home, since many apartment complexes run criminal background checks and will not rent to anyone with a criminal record.

Legal immigrants can face deportation after a misdemeanor conviction.

Beyond the state criminal law, local governments use city ordinances to criminalize behaviors. Such things as spitting on the sidewalk, failing to return a library book, smoking in a restricted area and having weeds on a property taller than six inches are all considered criminal misdemeanors, punishable by up to six months in jail, in various city codes throughout Arizona.

## IMMENSE POWER

The real-world consequences that can come with a misdemeanor conviction, coupled with the sheer number of cases, make the power of city court judges immense, said Erik Luna, professor of constitutional and criminal law at Arizona State University.

“The power that is wielded in these courts is not trivial,” said Luna, who organized and edited [\*Reforming Criminal Justice\*](#), a four-volume report, published in 2017, from academics and legal scholars addressing various reforms for the American justice system. “The justice that is being dispensed is very real and consequential to those who are affected by it.

“The consequences that flow from even a low-level charge and conviction can be far greater than the actual sanction that’s imposed. They can extend for years and sometimes for an entire lifetime. You are a criminal and that’s a badge of infamy that somebody will carry forward. That’s something that can affect an individual’s life and life opportunities, and sometimes in drastic, devastating ways.”

People rarely know the long-term consequences of a misdemeanor conviction when they go to court, said Jenny Roberts, professor of law at American University in Washington, D.C., and author of the report [\*Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts\*](#). Even many defense lawyers and judges are not well versed on how a misdemeanor conviction can affect a person’s job prospects, educational opportunities, and constitutional rights for the rest of their lives.

That’s one reason the vast majority of misdemeanor cases end in plea agreements, Roberts said.

People arrested for a misdemeanor offense face what seems like a simple choice. They can sit in jail and try to figure out where to come up with enough money to hire a lawyer to fight the charges. If they do that, they might lose their jobs and create hardships for their families.

Or they can strike a deal with prosecutors and plead guilty to what seems like a minor charge, pay a small fine, get out of jail, and go on with their lives.

Only later will they find out the impact that conviction will have.

## COLLATERAL DAMAGE

The legal term for punishments beyond the jail and fines is “collateral consequences.” But that’s not really correct when it comes to many misdemeanors, Roberts said.

“They are disproportionate and unfair consequences of a conviction,” she said of the unforeseen and sometimes lifelong obstacles a minor misdemeanor conviction can create. “With misdemeanors, the collateral consequences just outweigh what we call the punishment. They are the punishment in effect.

“Looking at the consequences, the real full picture of all these consequences for low-level misdemeanors, is one of the most important issues in the criminal justice system because it affects the most people. And it affects people in ways that are so much harsher than anyone would either want or imagine, and it’s so counter-productive to what we want people to be doing in society.”

The most immediate and devastating collateral consequence of a misdemeanor conviction is typically the loss of a job.

First, there is the prospect of the defendant losing his or her job while sitting in jail, or when their employer finds out. Also, many driving-related misdemeanors result in the loss of a driver's license, which makes it difficult for a person to get to work.

The most common [misdemeanor traffic crime](#) in Arizona is driving on a suspended license. A person's driver's license can be suspended for missing a court date or failing to pay fines, even if the underlying charge is nothing more serious than a traffic ticket.

If the defendant works in a profession that requires an occupational license, the conviction typically must be reported, and could be grounds to revoke or deny a license.

A misdemeanor conviction also makes it tough for someone to find a job in a profession that is not licensed, said Roberts. In most states, court records are [posted online](#), so it's easy for employers to check the histories of job applicants. Someone with a criminal conviction of any kind is likely to get passed over when there are other applicants who do not have a criminal record, she said.

Another complication is the online databases typically only list the charge the person was convicted of, not the circumstances. So a person with a disorderly conduct conviction may have been in a drunken fist fight in a bar, or simply in a shouting match with a neighbor that got heated enough for someone to call police.

## DISORDERLY AND DISARMED

That same shouting match is even more ominous if it was with a spouse or other relative, because it will be deemed a domestic violence offense. That could be enough to ban someone from ever possessing a gun again legally.

The reason is the provision in federal law known as the [Lautenberg Amendment](#), passed by Congress and signed into law in 1996. The law, named after its sponsor, Sen. Frank Lautenberg (D-NJ), imposes the lifetime gun ban on anyone who has ever been convicted of a misdemeanor crime of domestic violence. The conviction can be in any court, including city and tribal courts.

What constitutes domestic violence is the relationship between the defendant and the victim, rather than the underlying crime itself, said Marc Victor, a Chandler defense attorney with expertise in Arizona gun laws.

To qualify as a misdemeanor domestic violence offense, the crime must be committed against a person with a [defined relationship](#) to the defendant. That can be a current or former spouse, parent, child, grandparent, or some other relative. It could also be someone with whom the defendant shares a child or at some point cohabitated.

The list of qualifying misdemeanor crimes in Arizona includes [disorderly conduct](#), which can include an argument involving "unreasonable noise" or "offensive language;" [criminal damage](#), which can be breaking something during an argument; and [trespassing](#), which can include remaining on a defined family member's property after being told to leave.

Also included on the list is interfering with judicial proceedings, which is typically violating an order of protection; and custodial interference, which can include not making children available for visitation during an appointed time.



About a third of all orders of protection issued in Arizona are [issued by city court](#) judges, 10,761 in 2016.

“If you get convicted of domestic violence, whether it’s a misdemeanor or a felony, then you are a prohibited possessor and you could remain that way until the day you die,” said Victor. “These things require acts, but they don’t have to necessarily be violent. You can simply break something. As long as you do it recklessly, then it’s a criminal damage domestic violence. Disorderly conduct is just disturbing somebody. There’s no violence involved in that either. You can just simply make unreasonable noise.”

Once a person is convicted of a domestic violence offense in Arizona, the only practical way to have the right to possess a gun restored is to have the conviction set aside, Victor said.

Arizona has no provision in law that allows criminal records to be expunged, which essentially wipes the conviction away as though it never occurred. Rather, Arizona law allows someone who has completed all probation and paid all court-ordered penalties to have a [conviction set aside](#).

The conviction still must be reported when filling out job applications or seeking an occupational license.

Julie had her misdemeanor convictions set aside. But realistically, she still must report them to potential employers if asked, especially given the ease with which her criminal record can be checked online, she said.

The set-aside charge can also be used to allege prior convictions at sentencing if the defendant is convicted of a new crime.

But having a conviction set aside in Arizona does remove the restriction on firearms possession under the Lautenberg law. The application for a set-aside is made with the same court that heard the original case. Some judges are willing to grant set-asides, others are not, Victor said.

“It’s almost just the luck of the draw who gets reinstated and who doesn’t,” Victor said. “It’s not like you have a right to be reinstated, and that’s a huge problem.”

The U.S. Supreme Court has not directly addressed the constitutional issue of whether a misdemeanor conviction is sufficient cause to permanently strip someone of their rights under the Second Amendment, but it has upheld the law on other grounds.

Justice Clarence Thomas, [in a 2016 case](#), noted that no other fundamental constitutional right can be forever lost for a misdemeanor conviction. The court’s verdict in that case, in which it ruled “reckless” behavior is sufficient to trigger the gun ban, relegates the Second Amendment to a “second-class right,” Thomas wrote.

“We treat no other constitutional right so cavalierly.”

## COURT QUANDARY

Doug Sain ran afoul of Arizona’s misdemeanor domestic violence laws because of emails and a missed FaceTime call. His case wound up in Lake Havasu City Municipal Court, where he was found guilty of violating an order of protection, a domestic violence misdemeanor.

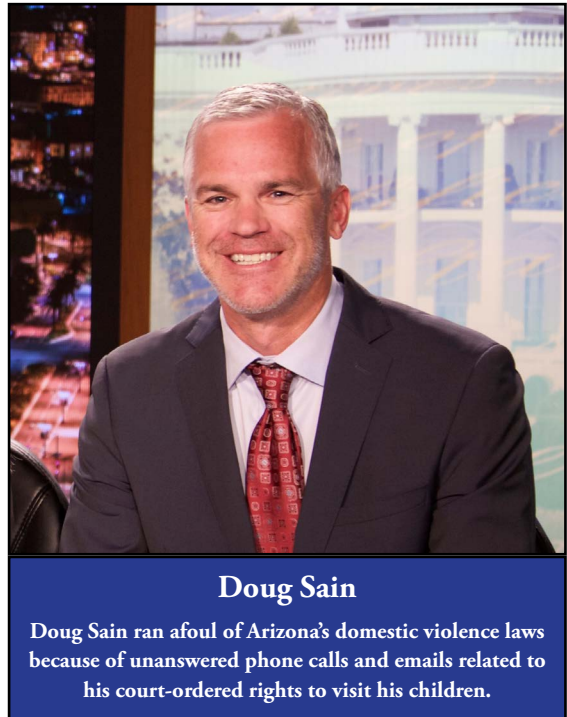
None of the charges allege there was any violence or threatened harm against his estranged wife or their children. Rather, he became entangled in domestic violence laws because of electronic communications and phone messages related to court-ordered visitation of his children.

Sain of San Diego was in the midst of a particularly ugly divorce when his estranged wife moved with their three children to Lake Havasu City in Arizona.

The couple had long battled over child custody and visitation issues. Sain's wife had separately been charged both in Arizona and California with custodial interference for failing to make the children available for court-ordered visitation, according to court records.

In February 2016, Sain's wife convinced an Arizona judge in Mohave County Superior Court to issue an order of protection prohibiting him from having contact with her or the children.

That created a quandary for Sain. He had orders from the California court handling his divorce granting him visitation rights, and he was obliged to maintain contact with his children. He also had the orders of protection from the Arizona court prohibiting contact with his children or estranged wife.



That's not supposed to happen because of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). The UCCJEA is an agreement between states that dictates exclusive jurisdiction over child custody issues, including protective orders, is vested in the child's home state. Both Arizona and California are among the 49 states that have ratified the compact.

In Sain's case, exclusive jurisdiction for all issues related to the children was supposed to be in the California court handling his divorce. Sain appealed the protective orders to the Arizona Court of Appeals, which in April 2016 agreed the original orders of protection involving the children had been issued in violation of the UCCJEA. While the appeals court did not void the orders outright, it did direct the Mohave County judge to consult with the California court and re-craft the restrictions. Ultimately, the Arizona judge canceled the orders involving the children but left the one involving Sain's wife in place. He did not create an exception allowing Sain to contact his wife to arrange court-ordered child visitation or deal with custody issues.

Over the next several months, Sain ran afoul of the restrictions in the order of protection through a series of emails and phone calls dealing with custody and visitation issues. The emails were sent through a web portal used by the California divorce court. The phone calls went unanswered.

In August 2016, Sain received a FaceTime invitation from his son per the visitation plan ordered by the California court. Sain missed the call and tried unsuccessfully to call back to reschedule. His wife called Lake Havasu City police. A few days later, Sain was arrested with his children in the car, and charged with violating the orders of protection.

In October 2016, Sain sent an email to his wife's attorney. The attorney copied Sain's wife on her reply. When Sain responded, he hit "Reply All," which caused his message to go to both his wife and her lawyer, he said.

Police were called.



Eventually, Sain was charged in five separate cases in Lake Havasu City Municipal Court with multiple counts of failing to comply with a court order, a domestic violence misdemeanor. He was convicted in November 2017 on two counts stemming from the August and October 2016 contacts, and acquitted on five others, including those related to contacts with his children under the voided order of protection.

He was also convicted of five counts of failure to appear in court for missing a single hearing involving all five cases, even the ones in which he was acquitted of all other charges.

Sain was sentenced to five days in jail, \$2,500 in fines, and two years of probation. He was also ordered to complete 26 weeks of domestic violence counseling.

Sain appealed to Mohave County Superior Court. That case is pending.

## ‘DEMONIZED’

The years-long legal ordeal in city court has led to collateral consequences that are “beyond horrific,” Sain said.

It’s destroyed his consulting business and successful career as a documentary filmmaker.

It’s complicated his ongoing child custody case in California.

It’s wiped out his retirement savings.

Worst of all, it has harmed his relationship with his children.

“It demonized me to the children by making them look at their father and say, ‘Oh dad’s a criminal. He got arrested and incarcerated,’” Sain said. “My children are always going to think ‘Dad did something wrong. He must be a criminal.’ And then these convictions only give further weight to it.

“That is a very lasting impression on my children and very traumatic to have your father pulled over, handcuffed, put in the back of a squad car, and incarcerated. That will never leave my children’s image of me.”

Sain did not own guns when his legal troubles began. He is now prohibited from possessing a gun because of the convictions.

Sain has been involved in government and politics in the San Diego area for almost 30 years, working as a land-use planner, regulatory consultant, and lobbyist.

In 2012, he launched a successful career in the movie industry when he co-produced the politically charged documentary [\*2016: Obama’s America\*](#).

The film was the top-grossing documentary of 2012, raising about \$33.4 million, and ranks as the second highest-grossing political documentary of all time, according to the entertainment site IMDb.

In 2016, in the midst of his criminal case in Lake Havasu City, Sain produced a second controversial documentary, *Clinton, Inc.*, which deals with the political and business alliances of Bill and Hillary Clinton.

Now when he approaches clients for consulting jobs, he feels obliged to disclose to them that he has two domestic violence convictions on his record. Once potential customers hear that, they want nothing more to do with him, he said.

The convictions also have provided fodder to partisan detractors to attack Sain for producing documentaries critical of the two former Democratic presidents.

“I’m toxic,” he said. “I can’t make a movie. I could not go to somebody and raise money and try and get these movies made when I have a domestic violence conviction. Opponents, and there are lots of them, will attack the movie for any reason and they will attack it for this reason. They’ll say, ‘He’s not credible. He’s a convicted domestic violence offender. He shouldn’t be trusted or believed.’ I can see it. I know it. It is devastating to my career in that field.”

The convictions in Lake Havasu City Municipal Court also had an impact on his custody case in California, Sain said. Sain has long sought primary custody of his children, but that custody case was put on hold for more than two years until the Arizona case was resolved.

At a recent hearing, the California judge refused to alter the custody arrangements, citing the domestic violence convictions and the fact that the children are now well established in Arizona.

Beyond all of that, Sain said he has spent more than \$400,000—all of the money he’d saved for retirement—on lawyers, court costs, and travel expenses fighting the Arizona criminal charges and trying to deal with their impact in his child custody proceedings.

## LIVING IN FEAR

Sandy Schenk at of Scottsdale also paid a steep price after she became entangled in city court. The trouble began as a dispute with her homeowners association (HOA). It ended after HOA board members had her arrested and eventually convicted of a criminal misdemeanor in city court.

Schenk at said she was forced to sell her condominium at a \$65,000 loss once it became clear that she would face the constant threat of civil sanctions from the HOA board and criminal charges from the city if she remained in the complex.

Schenk at bought the condominium near Mountain View and Via Linda roads in 2009, and shortly thereafter became active in an effort to recall members of the HOA board. The bitter recall effort was successful, and in 2011 Schenk at became a member of the board.

There were the usual squabbles between board members. They reached a peak when four of the seven board members authorized hiring a lawyer to sue homeowners in the complex for blog posts critical of the association, according to documents related to her court case.

Schenk at objected, claiming the payment, made against the advice of the HOA lawyer, amounted to a misappropriation of funds, she said. She demanded an investigation.

Two HOA board members who backed the lawsuit—the secretary and the treasurer—went to Scottsdale city court and obtained injunctions against harassment, prohibiting Schenk at from having any contact with them and restricting her presence in the condominium complex.



**Sandy Schenk at**

Sandy Schenk at was afraid to go on her own property after she was convicted in Scottsdale city court of violating an order of protection that resulted from an ugly dispute with fellow members of her homeowners association board.

The injunctions would become valid only when the orders were delivered to Schenk at by a process server. Schenk at said she was served with one of the orders, the one obtained by the board treasurer, but not the second one from the secretary.

She challenged the single injunction she did receive, successfully making her argument in city court. The judge dismissed the injunction in February 2012.

About a week later, Schenk at was swimming in the community pool with friends when she was approached by a police officer. The board secretary, whose injunction Schenk at said she never received, had called police and reported Schenk at was in violation of the court order.

Schenk at was arrested and jailed for 19 hours. She also was charged with violating the injunction, a criminal misdemeanor.

For the next several months, Schenk at tried unsuccessfully to have the charge dismissed, arguing she had never been served with the second injunction. If she had been, she would have challenged it when she had the other one dismissed.

Schenk at's lawyers also noted the process server's affidavit of service, which should have been filed with the court within a week, was not filed for more than a month. It was only delivered to the court the day after Schenk at successfully had the first injunction dismissed.

When Schenk at's case went to Scottsdale city court in August 2012, the judge said it didn't matter whether the process server's affidavit was filed by the legal deadline. All that mattered was that the process server said Schenk at was served.

Schenk at was found guilty of one count of violating a court order and fined \$336.

She unsuccessfully appealed to Maricopa County Superior Court.

Shortly before the trial, Schenk at decided she would need to sell her condominium, even in the midst of a nationwide real estate depression. The HOA board could allege violations of association rules and put a lien on her property. That, coupled with the fear that hostile board members could enlist the Scottsdale police to have her arrested whenever she was in the complex, made owning there untenable.

"I was in fear of any type of ownership," said Schenk at, who by then was renting out her second-floor condominium because she'd had knee surgery. "I couldn't go back there and look at my property. I couldn't go on the property, period, at that point. If I had gone back there and I had seen (the HOA secretary), she would have called police immediately, and I would have been in jail again."

Schenk at arranged a short sale of her home, meaning it was sold for less than what was owed. By then she had invested about \$65,000 in the property, all of which she lost. She now lives in a patio home owned by her brother.

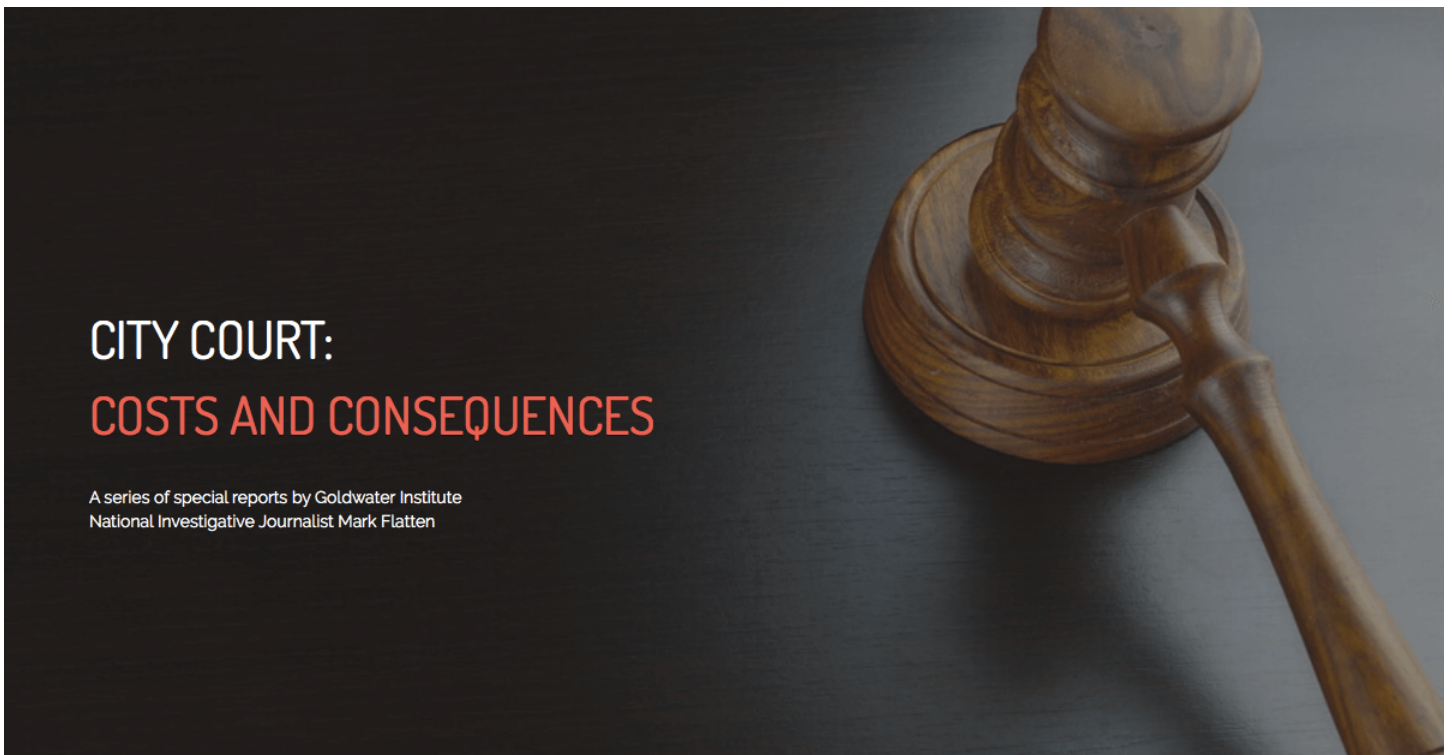
But rather than walking away quietly, Schenk at's sour experience in Scottsdale city court turned her into a community activist and self-described watchdog. She successfully petitioned to have her conviction set aside, and became active in Scottsdale city affairs.

In 2013 she was appointed to the city's [Judicial Appointments Advisory Board](#) (JAAB), which screens and reviews applicants for city judgeships. Now in her second term, Schenk at has publicly warned that the city court judges are too close to city prosecutors, and that makes it difficult for people to get a fair hearing.

Most of the other JAAB members are connected to the legal profession in some way, being current or retired judges or lawyers, Schenkat said. Having come through the city court system the way she did gives her a different perspective.

“I have observed things probably that these judges or even these lawyers haven’t seen, because I’ve been on all levels of it as a defendant,” she said. “I think I bring a lot broader perspective to what judges do and how they treat people.

“What rules the day, as far as I’m concerned, in the court is that you are guilty until you prove yourself innocent. The opposite is not true, which it is supposed to be according to our Constitution.”



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