

US federal court hearing highlights widespread misconduct by prosecutors

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In a revealing episode, three federal judges of the US Ninth Circuit Court of Appeals chastised a California prosecutor last month in a videotaped hearing about the validity of a murder conviction where prosecutors had offered perjured testimony from witnesses, one of whom was a Riverside County deputy district attorney at the time.

The case, *Baca v. Adams*, involves the 1995 killing of John Adair and his housemate and partner, John Mix. Defendant Johnny Baca was a friend of Adair's son and worked as Adair and Mix's housekeeper. Baca allegedly conspired with Adair's son to kill the couple and split the financial proceeds with him. The Riverside District Attorney's office brought no charges against Adair's son, the alleged co-conspirator.

At trial, one convicted felon and prison inmate named Melendez testified against Baca, saying that the latter confessed his involvement in the crime to him while the two were incarcerated together. Deputy District Attorney Robert Spira also testified at Baca's trial. Spira had previously prosecuted Melendez, and he testified at Baca's trial that Melendez was not offered any reduction in sentencing or other consideration in exchange for his testimony against Baca.

Baca was ultimately convicted and granted a new trial, where he was convicted again. His petitions at the state court level, including at the California Supreme Court, were ultimately defeated.

In 2013, the US District Court for the Central District of California considered Baca's *habeas corpus* petition. (*Habeas corpus*—Latin for “you may have the body”—is a centuries-old democratic right, allowing a prisoner to challenge the basis of his incarceration on a number of grounds, such as newly discovered evidence or the ineffective assistance of counsel.)

The District Court had assigned Magistrate Judge Patrick Walsh to evaluate various aspects of the case,

including the testimony by Melendez and Spira. Judge Walsh unequivocally found that Spira, then a licensed attorney and prosecutor, lied under oath when he testified that he had offered nothing to Melendez in exchange for the latter's testimony against Baca. Of course, lying under oath is the basis for the crime of perjury, and it is a violation of an attorney's ethical obligations to knowingly present false evidence.

The District Court still denied Baca's *habeas* petition, and the U.S. Ninth Circuit Court of Appeals reviewed this decision.

Under new court rules, the January 8th oral arguments were videotaped and posted to the court's web site. All three judges at the hearing chastised the Riverside County District Attorney's office for the blatant misconduct.

In the video, Judge William Fletcher notes that Melendez did receive a benefit for his testimony. “That's why he got his 16 down to 14 [years].... He did very well by his jailhouse snitching.”

That Melendez did receive a benefit for his false testimony was confirmed in a transcript of his sentencing hearing, a document that, as the judges noted, the Riverside District Attorney's office “fought tooth and nail” to conceal from Baca's defense attorney.

Judge Kim Wardlaw underscored the sham character of Baca's trials:

“The thing that's so troubling about this case is it's the kind of thing that makes you feel that the trial was fundamentally unfair. When you have a prosecutor get up, vouch for a witness, lying, the [California state] courts have said he lied...it just seems so fundamentally unfair,” she said.

Judge Alex Kozinski pointedly asked Deputy Attorney General Kevin Vienna if former deputy district attorney Robert Spira had been charged with perjury, to which he received a reply in the negative. Kozinski also asked if there had been any consequences for Baca's prosecutor,

former deputy attorney general Paul Vinegrad, to which Vienna replied that there had been no disciplinary action.

“What kind of encouragement does that give to young prosecutors about dealing with fabricated evidence like this?”

About the lack of disciplinary action against Vinegrad and Spira, he added, “the total silence on this suggests that this is the way it’s done. I mean they got caught this time but they’re going to keep doing it because they have state judges who are willing to look the other way.”

Over the course of several minutes, Kozinski criticized the District Attorney’s office, to the point of urging Vienna to immediately talk to his boss about dropping the Baca case altogether. Otherwise, the court would be forced to enter an order in Baca’s favor that would contain details embarrassing to the District Attorney’s office.

A 2010 report by the Northern California Innocence Project found 707 instances of prosecutorial misconduct in the state in the preceding 11 years. California state courts nonetheless upheld the convictions in these cases 80 percent of the time. Out of the 707 instances of misconduct, only six prosecutors were disciplined, less than 1 percent.

Statistics at the national level are similar. A 2013 study by the Center for Prosecutorial Integrity estimates that misconduct is publicly sanctioned less than 2 percent of the time.

At the same time, the consequences for criminal defendants are disastrous. According to the National Registry of Exonerations, prosecutorial misconduct contributes to 43 percent of all false convictions.

While careerism and zeal play a role in the ubiquity of prosecutorial misconduct, broader processes are at work. The most critical of these is the explosion of social inequality, which makes a massive police state apparatus necessary to defend the interests of a narrow financial elite. Like the police, prosecutors operate as a law unto themselves.



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