PROSECUTORIAL MISCONDUCT

PATHFINDER

A CASE SAMPLE:
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Kaplan University

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INTRODUCTION

“Federal prosecutorial misconduct has turned two recent high profile cases -- one involving allegations of murder, the other involving allegations of a terrorist conspiracy -- upside down.”

Representative of this disturbing trend is the case of Masters v. Gilmore, illustrating the lengths that some prosecutors and law enforcement will go in crossing the unethical line in order to obtain convictions at all cost. The cost to the victim, the families and the system is irreversible in terms of its lifelong residual affects; these types of instances further weaken the confidence in our legal system, and distort ‘the trust and perception of the public”. Highlighting these unethical acts are the constitutional right’s violations, intentional disregard for both Federal and State statutes and codes, and in some cases; out right criminal conduct, ultimately leading to overturned convictions and dismissals of cases, subsequently leading to criminal charges, disbarment and loss of position in some instances for the prosecutors involved. This pathfinder explores many of those issues.

PRIMARY SOURCES

UNITED STATES CONSTITUTION

First, Fourth, Fifth, Sixth and Eighth; and Fourteenth Amendments

FEDERAL OR STATE COURT CASES


“Plaintiff Timothy Masters brings this action under 42 U.S.C. § 1983 based on his alleged wrongful arrest, conviction, and imprisonment for the murder of Peggy Hettrick. He asserts claims against [officers in the Fort Collins Police Department, former prosecutors for the Eighth Judicial District], and the government entities for whom the individual Defendants were employed. Plaintiff alleges that Defendants inadequately investigated the Hettrick murder and [manipulated evidence during the investigation by destroying exculpatory evidence and manufacturing false, inculpatory evidence, in order to wrongfully prosecute and obtain a murder conviction against him].”
“…involves prosecutorial misconduct before a grand jury…”

Brady v. Maryland, 373 U.S. 83 (1963)

“…the Court held “that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.”

Berger v. United States, 295 U.S. 78 (1935)

“Mr. Justice Sutherland in Berger v. US, 295 U.S. 78; said the duty of the prosecution was "not that it shall win a case, but that justice shall be done." These words seemingly fall on deaf ears in the corps of prosecutors around the country. Convictions at all cost seem to be norm.”

Banks v. Dretke (formerly Banks v. Cockrell), No. 02-8286.

“On February 24, 2004, the United States Supreme Court overturned the death sentence of Delma Banks, Jr. by a 7-2 vote, concluding that Banks was denied a fair trial as prosecutors did not disclose key information to the defense. The case has been remanded to a lower court.”

“In an appeal from the U.S. Court of Appeals for the 5th Circuit, the U.S. Supreme Court granted certiorari in the case of Delma Banks, a Texas death row inmate who maintains that prosecutorial misconduct and ineffective defense counsel denied him a fair trial 23 years ago.”

UPDATED: “On April 23, 2010, the Supreme Court denied cert. to review Banks' conviction. He now faces a re-sentencing.”
United States v. MacDonald, 531 F.2d 196

“Of significance to the appeal were two facts: first, the decedents were found many years before charges were brought; and second, a non-judicial military proceeding had already exonerated appellant. On appeal, the district judge’s decision was reversed. The court, in a divided vote, held that defendant was entitled to relief because, inasmuch as the delay was lengthy, the Government’s reason for the delay in indicting [the] defendant; were unsound…”

CODE OF FEDERAL REGULATIONS

- 28 U.S.C. § 530B, Ethical standards for attorneys for the Government (McDade Amendment)

“(a) An attorney for the Government shall be subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney’s duties, to the same extent and in the same manner as other attorneys in that State.”

- 28 C.F.R. § 77, Ethical standards for attorneys for the Government

“(b) Section 530B requires Department attorneys to comply with state and local federal court rules of professional responsibility”

- 28 C.F.R. § 50.2, Release of information by personnel of the Department of Justice relating to criminal and civil proceedings

“(2) At no time shall personnel of the Department of Justice furnish any statement or information for the purpose of influencing the outcome of a defendant’s trial, nor shall personnel of the Department furnish any statement or information, which could reasonably be expected to be disseminated by means of public communication, if such a statement or information may reasonably be expected to influence the outcome of a pending or future trial.”
MINNESOTA CONSTITUTION


MINNESOTA CODE

Minn. R. 4732.0315 (2010)

4732.0315 DELIBERATE MISCONDUCT; “For purposes of this chapter, deliberate misconduct would be a registrant, employee of a registrant, or service provider who knowingly:

B.) deliberately submits to the commissioner or the registrant information that the person submitting the information knows to be incomplete or inaccurate in some respect.”

Minn. R. 4731.0280 (2010)

“Subp. 4. For purposes of this part, deliberate misconduct by a person means an intentional act or omission that the person knows:

A.) would cause a licensee, registrant, or applicant to be in violation of a rule, an order, or a term, condition, or limitation of a license issued by the commissioner; or...”

SECONDARY SOURCES

ANNOTATED LAW REPORTS

1.) Office of the City Manager, Winston-Salem, North Carolina; Sykes Administrative Review Committee Report (February, 2007).

“Report examines the investigation and prosecution of the 1984 rape and murder of Deborah Sykes, the 1983 homicide of Arthur Wilson, and the rapes of Linda E. (1984), Kathleen D. (1985), and Regina K. (1985). Focus is primarily on two questions: (1) what shortcomings were found in the Police Department’s investigation; and (2) what steps could minimize the risks of such shortcomings in future investigations?”
http://www.law.com/jsp/article.jsp?id=1202472897418&slreturn=1&hbxlogin=1

“Only a tiny percentage of prosecutors who engaged in misconduct were disciplined by the State Bar of California during a 12-year period, according to a report released...”

LAW REVIEWS and JOURNALS


3.) Burke, A.S. Talking About Prosecutors. 31 Cardozo L. Rev. 2119 (2010)


OTHER PERIODICALS

Harmful Error: Investigating America’s Local Prosecutors:
http://www.publicintegrity.org/pm/

RELATED BOOKS


 RELATED WEBSITES


“The National Police Accountability Project (NPAP) is an organization of plaintiffs’ attorneys who work on police misconduct cases. They are dedicated to ending police abuse of authority through coordinated legal action, public education and support of organizations combating police misconduct.”

2.) The Center for Public Integrity - Harmful Error: Investigating America’s Local Prosecutors

“The Center for Public Integrity is a nonprofit organization located in Washington, D.C. dedicated to producing original, responsible investigative journalism on issues of public concern. Link is to an investigative study of prosecutorial misconduct in the U.S. conducted by the Center for Public Integrity. The site includes Main Findings, Prosecutor Profiles, Analyses, Nationwide Numbers, and a database searching option.”

3.) Truth in Justice, Police, Prosecutorial and Judicial Misconduct.
http://truthinjustice.org/p-pmisconduct.htm

“Provides links to dozens of stories in several media formats about justice system misconduct. The information is organized by state.”


1. One case that cites this case for the same issue referred to in the Lexis Nexis Head notes is;


2. The case that followed was;

In addressing the ethical topic of prosecutorial misconduct; it illustrates the intricacies and nuances of the legal system, and the trust we put in those of authority to uphold our constitutional values. It is here that we rely on credible legal resources to lay the foundation of our legal research; our pathfinder addressing legal issues. The use of “Google” and its search engine work well as a catalyst to obtaining raw data related to a given research project. By phrasing a legal question or issue to be researched, we begin to narrow the issue, allowing the researcher to then move on to secondary sources of law; “Secondary legal resources include textbooks, legal journals, legal encyclopedias, and case law digests and summaries, though because of the extensive overview of the law that they provide, secondary legal resources often are an excellent starting point for legal research”; Findlaw, Lois Law School and Cornell Law Education; serves as a few examples.

Whereas, primary sources of law involve legislative, constitutional and case law, and because these are from official bodies with the authority to make law, means that they can affect the legal rights of citizens, thus Primary Law. Lexis Nexis and Westlaw would serve as primary sources best suited for United States Law and Constitutional protections provided to our citizens. Preferring to rely on the use of both, federal and state resources; encompasses and illustrates the consistency in this unethical (and criminal) practice that sometimes occurs throughout jurisdictions discussed in this pathfinder.

In conclusion, prosecutorial misconduct reinforces the importance of ethics and Law, the impact on society and further as quoted by former Pulitzer Prize journalist Maurice Possley explaining; what’s at stake “…is the integrity of the criminal justice system and how it is perceived in the public.” Potentially casting doubt on our legal system and its entirety.
REFERENCE

Office of the City Manager, Winston-Salem, North Carolina; *Sykes Administrative Review Committee Report* (February, 2007).

http://www.law.com/jsp/article.jsp?id=1202472897418&slreturn=1&hbxlogin=1


Harmful Error: Investigating America’s Local Prosecutors: http://www.publicintegrity.org/pm/


http://tinyurl.com/2cq4ojq


*National Police Accountability Project: A Project of the National Lawyer’s Guild.* http://www.nlg-npap.org/html/about.htm
REFERENCE


