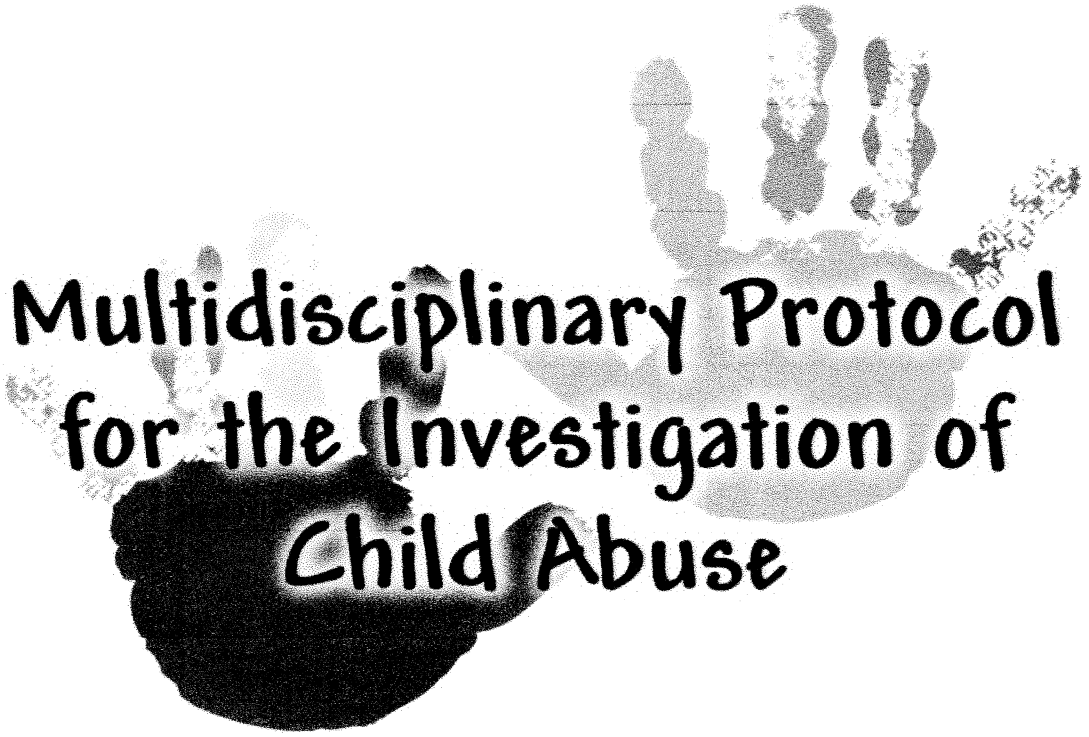

Developed by the

Interagency Council

Maricopa County Children's Justice Project

Created July 1995
Revised July 1999, September 2003, & June 2004

Richard M. Romley
Maricopa County Attorney

Police Department
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Office of the Chief of Police

8401 E. Indian School Rd.
Scottsdale, AZ 85251

PHONE 480-312-1900
FAX 480-312-1969
WEB www.scottsdalepd.com

May 29, 2007

Barb Napoletano
14896 North 102nd Street
Scottsdale, Arizona 85255

Scottsdale
11.11.

RE: Courtney Bisbee – Scottsdale Police Department Case 04-03704

(602) 506-3411
Mark Faull

Dear Ms. Napoletano,

I have received your correspondence in reference to Courtney Bisbee's case. The information you provided will be turned over to the County Attorneys Office for further review and disposition.

6/7/07 - LM - she'll send to her BlackBerry
Eid contact info again to whole list

I appreciate your concerns.

Sincerely,

Alan G. Rodbell
Chief of Police

6/12/07 - [redacted] Called, S/W Jenn
LM for Mark Faull
She C/B'd - note from Mr Faull
refer future calls to defense
attorney - organized effort
to declare her innocent - it
can't speak directly w/
family member on a good
case.

"Barb Napoletano" <bnapoletano@cox.net>
Courtney Bisbee Case 04-03704
June 27, 2007 3:26:10 PM MST
<arodbell@Scottsdaleaz.Gov>

Chief Rodbell,

I was disappointed to receive your letter stating that the information I provided would be "turned over to the County Attorney's Office for further review and disposition". Many of the errors made in her case were made by the Scottsdale Police Department. As a Scottsdale resident, it is disturbing to me that the original investigation into the false allegation was handled so poorly by my city's police department and that an innocent person can be sitting in Perryville Prison in the sweltering heat. I hope that the letter I received is just "PR" and that your Officer LeDuc and others are doing exactly what he told me in our brief phone conversation "looking into it, making it a top priority and looking at every interview". I am not asking your department to be responsible for the errors in the judicial system, but someone has to take responsibility for the errors made within your department.

A few of the errors are as follows:

- There was no search warrant
- Courtney's computer and camcorder were (and still are) missing after her house was searched
- No investigation was made into the accusers' character and criminal record, or any material facts of the case.
- False statements were given to the press about her initial interrogation
- She was harassed, threatened and insulted during her interrogation
- No medical exam was conducted which would have proven her innocent from the start. (Specifically, the accuser claimed her genital area was smooth and it was not)

Most importantly, Detective Kinder failed to follow the standards set by the Maricopa Multidisciplinary Protocol for Justice for Children. Again, I hope that what you said in your letter is simply rhetoric and the case is, in fact, being investigated behind the scenes. I would understand if it's something that cannot be shared with the public and as a concerned citizen, I hope that is the case. Thank you for your time.

Sincerely,

Barb Napoletano

Barb Napoletano

From: Rodbell, Alan #855 [arodbell@Scottsdaleaz.Gov]
Sent: Wednesday, June 27, 2007 5:05 PM
To: Barb Napoletano
Subject: RE: Courtney Bisbee Case 04-03704

Well, first of all, I don't speak in rhetoric. I did exactly what I said I would do. The CAO can review the actions of my department and come to their own conclusions as to whether the case was handled properly or not.

From: Barb Napoletano [mailto:bnapoletano@cox.net]
Sent: Wednesday, June 27, 2007 3:26 PM
To: Rodbell, Alan #855
Subject: Courtney Bisbee Case 04-03704

Chief Rodbell,

I was disappointed to receive your letter stating that the information I provided would be "turned over to the County Attorney's Office for further review and disposition". Many of the errors made in her case were made by the Scottsdale Police Department. As a Scottsdale resident, it is disturbing to me that the original investigation into the false allegation was handled so poorly by my city's police department and that an innocent person can be sitting in Perryville Prison in the sweltering heat. I hope that the letter I received is just "PR" and that your Officer LeDuc and others are doing exactly what he told me in our brief phone conversation "looking into it, making it a top priority and looking at every interview". I am not asking your department to be responsible for the errors in the judicial system, but someone has to take responsibility for the errors made within your department.

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Sincerely,

Barb Napoletano

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AZ
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Arizona Attorney General
Tom Horne
Maricopa County Attorney
Bill Montgomery
Public Information Officer, MCAO
Jerry Cobb

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- Mary Tardif GREENSBORO BEND, VT VERMONT
  phx, AZ

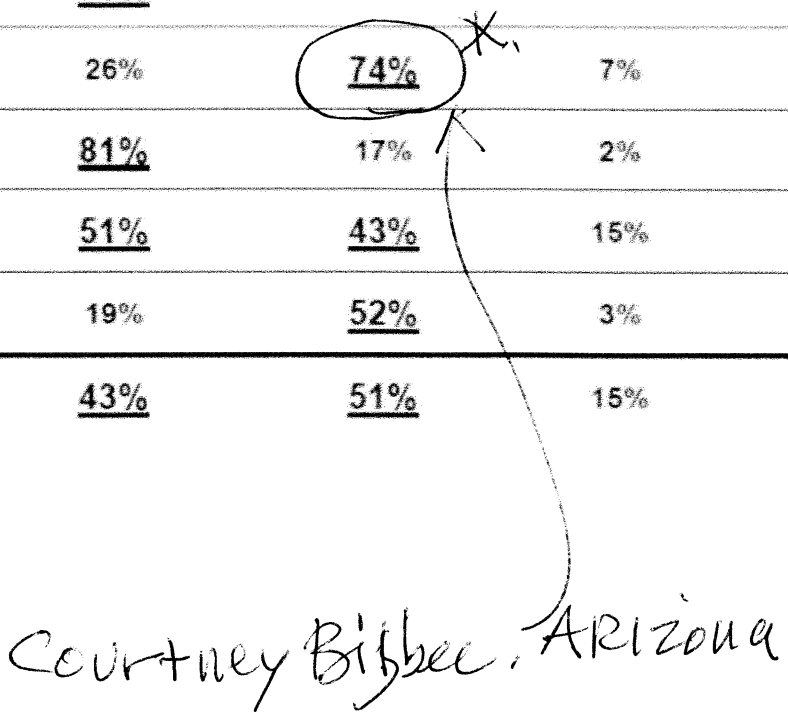
1d

2.

Exonerations in the United States, 1989 – 2012
Report by the National Registry of Exonerations
Total Exonerations Recorded = 873

Table 13: Exonerations by Crime and Contributing Factors

	Mistaken Witness Identification	Perjury or False Accusation	False Confession	False or Misleading Forensic Evidence	Official Misconduct
Homicide (416)	27%	64%	25%	23%	56%
Sexual Assault (203)	80%	23%	8%	37%	18%
Child Sex Abuse (102)	26%	74%	7%	21%	35%
Robbery (47)	81%	17%	2%	6%	26%
Other Violent Crimes (47)	51%	43%	15%	17%	40%
Non-Violent Crimes (58)	19%	52%	3%	3%	55%
ALL CASES (873)	43%	51%	15%	24%	42%



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APRIL 2008

Hope on horizon for wrongfully convicted

New ethics rules require prosecutors to right wrongs

BY LINDA BENTLEY

COURTESY PHOTO

Courtney Bisbee, pictured here with her daughter Taylor Lee, was hauled away by a SWAT team on Feb. 11, 2004 after being falsely accused of child molestation by a 13-year old male, a crime Bisbee says never happened. Bisbee was subsequently convicted and is serving 11 years flat time.

SCOTTSDALE – The American Bar Association (ABA) Standards Relating to the Administration of Criminal Justice says prosecutors have a duty "to seek justice, not merely to convict."

The ABA recently amended Rule 3.8 of its Model Rules of Professional Conduct requiring prosecutors to disclose evidence indicating a criminal defendant may have been wrongly convicted and take steps to remedy that conviction.

It's not clear if it was the disgraced and disbarred Michael Nifong, whose over-zealous prosecution of the three Duke Lacrosse team members, despite possessing evidence that exonerated them, that prompted the ABA to amend the rule, but it's good news for people like Courtney Bisbee who is serving 11 years for child molestation, a crime she didn't commit.

Despite affidavits submitted to the Maricopa County Attorney's Office over a year ago, including one from the accuser's older brother recanting his testimony, citing he was coerced into going along with a story he claims was fabricated by his mother in a sue-to-get-rich scheme, Bisbee remains incarcerated at the Perryville Women's Prison.

Stephen A. Saltzburg, the George Washington University law professor who introduced the amendments to the ABA, says "It's not a big burden. The rules are very simple. If prosecutors have new, credible evidence of innocence, they have to do something about it."

Initially the amendments were met with some concerns. However, opposition dropped off when proponents agreed to work on fine-tuning the language of Rule 3.8 and the accompanying formal comments.

Saltzberg said concerns were only over specific language not the underlying principles of the amendments, on which they all agreed.

As amended, Rule 3.8 requires prosecutors to promptly disclose information to an appropriate court or other authority when he or she "knows of new, credible and material evidence creating a reasonable likelihood" a convicted person did not commit the crime.

And, if the evidence appears to be "clear and convincing," the prosecutor must seek to remedy the conviction.

Richard Moran from Mount Holyoke College posted a comment to the ABA Journal article about the new model rule, stating, although he was not a lawyer, he was "shocked to realize a need for Rule 3.8," which he said imposes on prosecutors nothing more than the duty of an ordinary citizen to come forward with evidence concerning the guilt or innocence of a defendant or prisoner.

However, with no punishment attached, he said the rule will have little or no effect.

Moran says charging prosecutors who withhold or destroy evidence with Brady Violations, "permits the culture of corruption and indifference to human life to flourish in the halls of justice, since no one dares call these behaviors criminal, just violations, as if they were parking tickets."

Courtney Bisbee, 37, a single mother working as a nurse at Paradise Valley Unified School District at the time, has maintained her innocence throughout, believing she would be exonerated at trial.

However, on Jan. 18, 2006, Maricopa County Superior Judge Warren Granville found Bisbee guilty on two counts of child molestation, a class two felony, for supposedly "touching" a 13-year-old boy, one of a group of teens that were friends with Bisbee's babysitter.

Granville's verdict stated, "The court will submit separate finding of facts by separate minute entry."

No such minute entry was ever submitted by Granville.

According to a Jan. 25 2007 affidavit filed by the accuser's brother, now 19, he recants what he told the

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Scottsdale police detective in 2004, citing he felt pressured by the detective.

Further, he was under the influence of his mother, who he said threatened and coerced him against testifying truthfully, while advising him not to contradict his brother at trial or he would face "consequences," some of which came in the form of physical abuse, as was already demonstrated by his mother's boyfriend.

The accuser's brother also asserts he was present when their mother told his brother to lie and said, "Stick to the story and you'll be a rich kid."

Shortly before Bisbee's trial, when the county attorney switched prosecutors for her case, Bisbee was offered a plea deal that she was told was "probation eligible."

However, Bisbee wasn't interested in pleading guilty to a crime she didn't commit and looked forward to going to trial.

No sooner did the ink dry on Bisbee's verdict, the accuser's mother, who was not the custodial parent, filed a civil suit against Bisbee and the family in whose home her sons were living.

After being considered "probation eligible" to being sentenced to 11 years flat time, Bisbee is pursuing post conviction relief based on the "new" information provided to the county attorney more than a year ago.

For more information about Bisbee's case, visit www.Justice4Courtney.com

APRIL 2008

Ethics

Righting Wrongs

ABA ethics amendments confirm prosecutors' duty to disclose new evidence

April 2008 Issue
By James Podgers

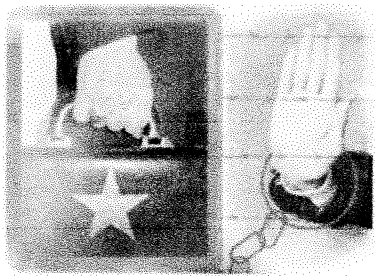

Illustration by Stuart Bradford

Recent amendments to the ABA model Rules of Professional Conduct instruct prosecutors that their ethics obligations require them to disclose evidence suggesting that a criminal defendant may have been wrongly convicted and to take steps to remedy a conviction when the evidence is clear and convincing.

The amendments to Model Rule 3.8 were approved in a voice vote by the ABA House of Delegates in February during the association's 2008 midyear meeting in Los Angeles. There was no debate on the recommendation by the Criminal Justice Section and 10 co-sponsors.

"The rules are very simple," said Stephen A. Saltzburg, a law professor at George Washington University in Washington, D.C., who chairs the Criminal Justice Section. "If prosecutors have new, credible evidence of innocence, they have to do something about it. It's not a big burden."

Saltzburg, who introduced the amendments in the House, acknowledged that they initially aroused concerns among prosecutors and the U.S. Department of Justice. But active opposition in the House failed to materialize after proponents of the amendments agreed to continue dialogue with the Justice Department and prosecutors to fine-tune the language of Rule 3.8 and the formal comments that accompany it.

"We're going to keep a conversation going," said Saltzburg in an interview after the House's action. "There's a number of things we might do." He said the concerns of prosecutors were focused on specific language in the ethics rule amendments. But he said there is "total agreement" on the principles underlying the changes.

STATES TAKE CUES FROM ABA RULES

Amendments to the ABA model rules are not automatically adopted at the state level, where lawyer regulation takes place. But when the Model Rules are revised, state-level jurisdictions often consider changing their own professional conduct rules accordingly. Most states base their conduct rules on the ABA Model Rules, although often with variations.

In this case, the amendments to the ABA Model Rules regarding the duty of prosecutors are actually based on provisions adopted in 2006 by the New York State Bar Association, according to the Criminal Justice Section's report to the House. The changes to the New York rules must be approved by the state's high court, which is expected to consider them later this year.

Prior to being amended, ABA Model Rule 3.8 did not impose an explicit ethics obligation on prosecutors to disclose new evidence that a defendant may have been wrongfully convicted. Still, the duty is well-recognized, according to the Criminal Justice Section report. The obligation was articulated by the U.S. Supreme Court more than 30 years ago in its 1976 ruling in *Imbler v. Pachtman*. In addition, the ABA Standards Relating to the Administration of Criminal Justice state that prosecutors have a duty "to seek justice, not merely to convict."

Under the amendments, as ratified by the House, a prosecutor must promptly disclose information to an appropriate court or other authority when he or she "knows of new, credible and material evidence creating a reasonable likelihood" that a convicted defendant did not commit the crime.

If the conviction was obtained in the prosecutor's jurisdiction, the defendant must be informed and further investigation initiated. If the evidence is "clear and convincing," the prosecutor must seek to remedy the conviction if it was obtained in his or her jurisdiction.

The Criminal Justice Section report cautions that the ethics duties of prosecutors should not be turned against them. "We are confident," states the section, "that disciplinary authorities will not assume that prosecutors ignore substantial evidence of innocence and will not burden prosecutors with the need to respond to and defend ethics charges that are not supported by specific and particular credible evidence that the prosecutor violated his or her disciplinary responsibilities."

Comments

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1. Posted by richard moran - Apr 3, 2008 06:51 pm CDT

   As a non lawyer and non ABA member I was shocked to realize the need for Rule 3.8. The rule imposes on prosecutors nothing more the the duty of an ordinary citizen to come forward with evidence in his possession concerning the guilt or innocence of a defendant or prisoner. Without any suggested punishment attached to the Rule it will have little or no effect. In my ongoing study of 128 exonerated death row inmates, 82 were railroaded and most of the railroading was done by prosecutors who never face disciplinary action by the ABA or the criminal justice system. If ordinary citizens supressed evidence, suborned perjury or obstructed justice by destroying evidence favorable to the defense, or withheld taped confessions to the police by another suspect, they would be facing criminal prosecution. When prosecutors do the same thing they are called "Brady Violations." This permits the culture of corruption and indifference to human life to flourish in the hall of justice, since no one dare calls these behaviors criminal, just violations, as if they were parking tickets.
   It is time for the ABA to take a strong stand against prosecutors who do not obey the law and knowlingly convict innocent defendants.
   It is doubtedly that prosecutors will follow the proposed Rule 3.8 because it will only help to uncover unethical perhaps criminal behavior on the part of themselves or fellow prosecutors. It is my experience and the experience of others that prosecutors fight tooth and nail against reopening closed cases, even when a manifestly innocent man is about to be executed.
   Richard Moran
   Mount Holyoke College

Courtney Bisbee and County Pettifogger Gerald R. Grant

By Stephen Lemons
Published Wed., Feb. 25 2009 at 9:14 AM

ER 3, 8

Courtney Bisbee **with her daughter Taylor Lee, from whom she's been separated since 2005.**

How do deputy prosecutors sleep at night, when they are charged by their elected bosses to rack up as many warm bodies in prison as possible, to overlook exculpatory evidence, to cull only those facts from a case that lead to conviction, and ignore all others?

Sure, it's their living. But after putting guilty people away year after year, it must make it difficult when they actually come across someone wrongfully convicted. You'd think they'd have the stones to admit the state effed up. But like they say, any prosecutor can convict a guilty person. It takes a real crackerjack to send an innocent person to prison. And keep 'em there.

Enter Deputy Maricopa County Attorney Gerald R. Grant, who is currently representing County Attorney Andrew Thomas' office in the case of Courtney Bisbee. As I detailed in an October cover story last year, Bisbee was falsely accused and convicted of child molestation in 2006, and is now serving an 11 year sentence in Goodyear's Perryville prison. Bisbee's case was riddled with police errors and prosecutorial gaffes. And in the time since her bench trial before Judge Warren Granville, a key prosecution witness has recanted his testimony.

There was also a separate civil case where the girlfriend of Bisbee's accuser -- Jon Valles --swore

under oath that the teen admitted to her that he lied about a relationship with Bisbee. Valles and his mother withered under questioning during civil depositions. The transcripts on this civil matter, which was settled for a very minor amount, are a creepy read. You suddenly see how easily someone who's innocent can be set up by those bearing false witness.

An absence of physical evidence marked the criminal case. There *was* evidence that could have determined with absolute certainty Bisbee's guilt or innocence. But the state chose not to collect it. The County Attorney's office wanted steamroll Bisbee into its win column. This was done, as Bisbee's Post Conviction Relief Petition alleges in some detail, with the assistance of an ineffective defense counsel.

Grant's been at the C.A.'s office since 1991, a "seasoned" vet by any measure. Still, I detect a little unnerved annoyance in his approach to Bisbee's PCR. Perhaps oddest is his need to respond to a letter from Bisbee to the judge overseeing her PCR complaint, the Honorable Gary Donahoe.

See, it's one of those legal niceties that when one side asks for an extension to file their response to a motion, the other side does not object. That is, unless someone is really going overboard. So it's understandable that Bisbee's lawyer Ulises Ferragut did not want to rock the boat when the state asked for more time to respond to Bisbee's PCR filing.

That PCR, filed late last year, is a humdinger, by the way. It includes affidavits from high-profile folks such as Alan Simpson, the lawyer that helped spring falsely convicted murderer Ray Krone from Arizona's death row; Dr. James Wood, an expert in the forensic interviewing of children, who testified in the Jon Stoll case in Bakersfield, CA, and helped free that innocent man; and Dr.Richard Ofshe, an expert in false confessions, who testified in Arkansas' West Memphis Three trial, the subject of two documentaries.

But if Ferragut was willing to make the concession on the state's request for more time, Bisbee was not. She made it clear to her counsel that she objected -- particularly since the County Attorney's office has been in possession of exculpatory testimony in her case since early 2007, and has done nothing. The C.A.'s office has not acted, even though they have an ethical obligation to do so. Prosecutors are officers of the court, and they have a duty to seek justice.

Bisbee pointed this out in a letter to the court dated January 3, explaining why she opposed the extension.

"I should no longer have to pay the price for the Maricopa County Attorney's Office deliberate indifference to the new evidence of innocence in my case," wrote Bisbee,"as well as them ignoring their professional obligations for the past two years, and then have them come to this court, and falsely state that they have just received the materials to review."

Judge Donahoe granted the state's request for more time on January 9, nonetheless. But apparently, deputy county attorney Grant felt Bisbee's January 3 letter so potentially compelling,

that it necessitated a response. Bisbee had documented that the state had this new, exculpatory material for at least two years. Several sources are on record as having forwarded this evidence to the County Attorney, including the Scottsdale Police Department.

All Grant could do was pooh-pooh a recantation by one of the states key witnesses.

"Recanting witnesses are not uncommon in criminal cases," sniffed Grant, "and Arizona's courts have long been skeptical of claims based on such testimony."

Um, but not when the recantation comes from a witness who was crucial to the original prosecutor's case. Remember, there's no physical evidence in Bisbee's case: Just the testimony of supposed witnesses, such as the accuser's brother, Nik Valles, who now says his brother lied,and that he was coerced by his mother to perjure himself.

Paul Kittredge, the state's prosecutor in Bisbee's case in 2006, stressed the importance of Nik Valles' testimony in his closing remarks.

"When you look at the credibility of the witnesses who testified to this court," Kittredge explained during his summation, "two people basically stood out in the state's mind. First would be Nik Valles..."

Yet now we're supposed to ignore Nik Valles' sworn affidavit recanting his testimony, even though the state felt that testimony was crucial to its case at the time.

Grant never addresses the other evidence extant. The civil testimony of Sarah Babcock, who very credibly testified that Jon Valles, Bisbee's teenage accuser, confided to her that he lied about he and Bisbee fondling each other. Nor does Grant mention Samantha Strandhagen, who overheard admissions from other witnesses in the case that nothing happened between Bisbee and Jon Valles. And Grant never gets into the self-impeaching statements made by Jon Valles and his mother under oath during the civil hearings.

Rather, Grant belittles Bisbee, referring to her "hyperbole" at one point. But if Bisbee's "hyperbole" were so obvious, Grant would have no need for this bit of ad hominem.

Finally, Grant pretends as if new American Bar Association Rules don't exist by stating that "Bisbee has cited no section of the ABA Standards of Criminal Justice Relating to the Prosecution Function which imposes such a duty."

Grant knows better, and so, presumably, does Judge Donahoe. So who is Grant convincing? Himself? Some invisible audience that might be reading his riposte?

The American Bar Association's Model Rules of Professorial Conduct, Rule 3.8, Special Responsibilities of a Prosecutor states:

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor's jurisdiction,

(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

In the words of Professor Stephen Saltzburg, the guy who drafted the new rules, "Prosecutors are obligated to rectify wrongful convictions."

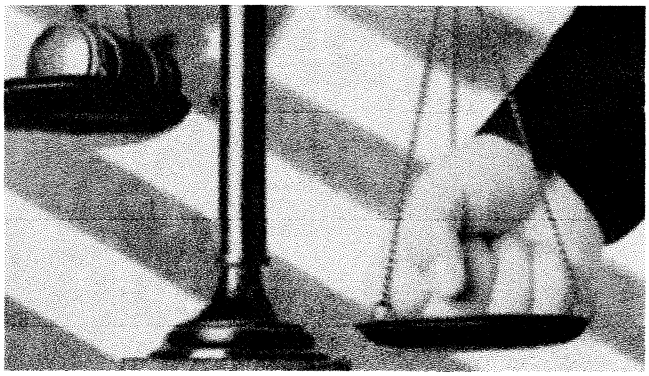
Grant could have argued that these new rules are unimportant as the State Bar of Arizona has yet to adopt them. But he didn't do that. He said Bisbee didn't cite chapter and verse, so to speak. Interestingly, Grant requested another extension on January 22, and received it from Judge Donahoe. His next deadline is March 2.

Which brings me back to my original question: Just how do you manage to sleep at night, knowing that you may be blocking the release of an innocent woman through perpetual procrastination? A bucketful of Sominex? A pitcher of warm milk and a turkey sandwich? A gallon or so of cough syrup?

Perhaps it also helps to lack what some of us non-lawyers refer to as a conscience...

Prosecutorial Misconduct – What's to be Done? A Call to Action

Posted on May 20, 2013 by Phil Locke | Leave a comment



(Graphic: The Veritas Initiative, link)

Let me begin this post with an apology to all the prosecutors out there who are personally committed to upholding the highest standards of ethics and the law. That being said, you know what they say about "a few bad apples."

Prosecutorial misconduct. Well folks, this one is a hot button of mine. Ask the average citizen, and they are totally unaware that such a thing ever happens. After all, prosecutors are honorable people who are committed to ethics, justice, upholding the law, and to helping protect the public by ensuring that the "bad guys" are sternly dealt with, and if necessary, isolated from society, or even put to death. At least this is what they tell us in their campaign speeches when they're running for election or re-election. But prosecutorial misconduct and misdeeds happen, and they happen more frequently than any normal citizen would imagine. Let's look at some **data**. The National Registry of Exonerations has compiled detailed data for 873 exonerations (wrongful convictions) for the period 1989-2012. You can see the full report here – exonerations_us_1989_2012_full_report. Here is Table 13 from that report showing frequency of causes contributing to wrongful convictions:

Preventable Error:
A Report on Prosecutorial Misconduct in California 1997–2009

by

Professor Kathleen (Cookie) Ridolfi
Santa Clara University School of Law
Executive Director, Northern California Innocence Project
Former Commissioner,
California Commission on the Fair Administration of Justice

and

Maurice Possley
Visiting Research Fellow, Northern California Innocence Project
Pulitzer Prize-winning Criminal Justice Journalist

October 2010

A VERITAS Initiative Report

SANTA CLARA LAW
LAWYERS WHO LEAD | NORTHERN CALIFORNIA Innocence Project

Prison Law Blog

Sara Mayeux

New Study: Prosecutors, Not Police, Have Driven Prison Population Growth

leave a comment »

The United States prison population has exploded over the past 40 years. But why? Have police been making more arrests? Have prosecutors been charging more people with crimes? Have judges been issuing longer sentences? Have parole boards become stricter? (All of the above?) Since many accounts of mass incarceration collapse "the criminal justice system" into a single monolith, it can be hard to know exactly what part of the system has driven the growth in the prison population.

A new empirical study by Fordham law professor John Pfaff aims to provide a more granular explanation of the causes of mass incarceration. Pfaff concludes that only one other relevant number has changed as dramatically as the prison population has: the number of felony case filings per arrest. In other words, police haven't been arresting more people:

> *[B]etween 1982 and 1995, arrests rose by 26% (from 3,261,613 to 4,118,039) while mean [prison] admissions rose by 149% (from 212,415 to 530,642); between 1995 and 2007, arrests fell by 28.6% while admissions rose by another 31.9%. It is thus clear that arrests are not driving the growth in incarceration—and by extension neither are trends in crime levels, since their effect is wholly mediated by these arrest rates.*

Rather, prosecutors have become more likely to charge those arrested with crimes:

> *[U]nlike the volume of arrests, that of felony case filings tracks the number of admissions quite closely. In the twenty-six states that provide reliable felony filing data to the National Center on State Courts, between 1987 and 2006 filings grow by 129% (from 772,042 to 1,767,202) while admissions grow by an almost-identical 132% (from 205,733 to 476,754). The decision to file charges thus appears to be at the heart of prison growth.*

However, as Pfaff explains at length, this data doesn't tell us *why* prosecutors have been filing more

Michael Morton Act signed into law

By Rodger Jones/Editorial Writer
rmjones@dallasnews.com
4:44 pm on May 16, 2013 | Permalink

MAY 16, 2013.

Picture worth 1,000 words ...

Statement from governor's office:

> AUSTIN – Gov. Rick Perry today signed Senate Bill 1611, the Michael Morton Act, which will help prevent wrongful convictions in Texas. The governor was joined by Sens. Rodney Ellis and Robert Duncan, Reps. Senfronia Thompson and Tryon Lewis, and Michael Morton for the bill signing.
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> "Texas is a law-and-order state, and with that tradition comes a responsibility to make our judicial process as transparent and open as possible," Gov. Perry said. "Senate Bill 1611 helps serve that cause, making our system fairer and helping prevent wrongful convictions and penalties harsher than what is warranted by the facts."
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> The Michael Morton Act will allow Texas' criminal justice system to be more responsive to a case, even after it has been tried, by ensuring a more open discovery process. The bill's open file policy allows for broader discovery, and removes barriers for accessing any evidence, except for items that would affect the security of a victim or witness.
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> "Discovery reform is simply vital to the reliability and quality of our justice system," Sen. Ellis said. "The Michael Morton Act will help safeguard the innocent, convict only the guilty, and provide justice the people of Texas can have faith in."
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> "I have long been an advocate for an efficient, effective and uniform court system across Texas. This legislation is a giant step forward in reaching that goal," Sen. Duncan said. "I am proud that stakeholders from across the state were able to come together and set aside their differences to improve our criminal justice system."
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> "The Michael Morton Act is an incredibly important step in creating a more just Texas criminal justice system," Rep. Thompson said. "It will improve the reliability of criminal convictions and ensure that we have a quality justice system where all relevant evidence and facts are brought to light, and allow for more efficient resolutions to criminal proceedings."

Coverage on the Trail Blazers blog said the ceremony was attended by Sen. Joan Huffman, who caused a furor Tuesday with her comments about justice reforms.

The nerve.

The New York Times

November 12, 2012

A Texas Prosecutor Faces Justice

By JOE NOCERA

In just about a month from now, Texas will witness a rare event: a former prosecutor is going to be held to account for alleged prosecutorial misconduct.

He is Ken Anderson, who for nearly 17 years was the district attorney in Williamson County, a fast-growing suburb of Austin. (In 2002, Gov. Rick Perry made him a district judge.) As Pamela Colloff writes, in a brilliant two-part series in Texas Monthly, Anderson was the kind of prosecutor who "routinely asked for, and won, harsh sentences and fought to keep offenders in prison long after they became eligible for parole."

One of Anderson's most high-profile prosecutions was of a man named Michael Morton. In 1987, Anderson prosecuted him for a heinous crime: His wife, Christine, was bludgeoned to death. Morton was then in his early 30s, with a 3-year-old son and a job at Safeway. He had never been in trouble. Yet the Williamson County sheriff, Jim Boutwell, from whom Anderson took his cues, was convinced that Morton had committed the crime.

Evidence that could be used against him — such as a plaintive note Morton wrote to his wife after she fell asleep when he was hoping to have sex — was highlighted. Evidence that suggested his innocence — most importantly, a blood-stained bandana discovered near Morton's house — was ignored. Worst of all, Anderson's office hid from the defense some crucial evidence that would undoubtedly have caused the jury to find Morton not guilty. By the time Morton was sentenced — to life — only his parents and a single co-worker believed he was innocent.

But he was. In October 2011, after 25 years in prison, Morton was set free. Nine years earlier, the Innocence Project, which works on behalf of people who have been wrongly prosecuted, got involved in Morton's case. After years of legal wrangling, they got hold of the hidden evidence, and a court agreed to allow DNA testing on the bloody bandana. The DNA test not only absolved Morton, but pointed to a man who had subsequently killed another woman.

Colloff's articles are gripping and powerful, but they're not as unusual as they ought to be. Stories about innocent people wrongly imprisoned are a staple of journalism. (Colloff herself has written about two other such prisoners in Texas.) Barry Scheck, the co-founder of the Innocence Project,

told me that the group has gotten 300 people exonerated, mostly by using sophisticated DNA testing.

Sam Millsap, a former Texas prosecutor, now crusades against the death penalty because a man he prosecuted — on the basis of a single eyewitness — was put to death. He later learned that the witness had been wrong. "I'd love to be able to tell you I am the only former elected prosecutor in the country who finds himself in the position of having to admit an error in judgment that may have led to the execution of an innocent man, but I know I am not," he said in a talk he gave a few years ago.

Very few prosecutors, however, are willing to admit they've made errors. They fight efforts to reopen cases. "They want finality," said Ellen Yaroshefsky, a professor at Cardozo School of Law. The standard for introducing evidence postconviction is that it has to be strong enough to have changed the result. It rarely is.

Some prosecutors have another incentive: hiding misconduct. Brandon Garrett, who teaches law at the University of Virginia and has written a book, "Convicting the Innocent," about exonerations, told me that in almost every case, prosecutorial misconduct is involved.

What makes the Morton case unusual is that, thanks to the Innocence Project's re-investigation, Ken Anderson will soon go before a Texas Court of Inquiry. If the court believes that Anderson's alleged misconduct rises to the level of a crime, it could refer the matter to a grand jury. But the Court of Inquiry exists only in Texas, and is almost never used even there.

In truth, Anderson isn't the only Williamson County prosecutor who faced consequences as a result of the Morton case. His successor, John Bradley, was the one who had fought for years against the DNA testing of the bandana. Seven months after Morton was set free, Bradley, who had always been a shoo-in for re-election as district attorney, was resoundingly defeated.

When I spoke to him the other day, he told me that he now believes he had been wrong to fight so hard against the DNA testing. "We shouldn't set up barriers to the introduction of new evidence," he said. Although it would mean more work for prosecutors, Bradley now believes that examining important new evidence is "a legitimate and acceptable cost to doing business in the criminal justice system."

Bradley will leave office soon. He told me he was going to start a law practice specializing in appellate work. Here's hoping he argues some appeals for the wrongly imprisoned.