California Commission on the Fair Administration of Justice
Address by David Lockmiller
March 28, 2008

At the Commission’s January hearing, Professor Radelet was asked after his presentation: What was the number one cause for wrongful convictions in homicide cases? He responded: “perjury by prosecution witnesses, especially jailhouse informants.”

In California, Edward Floyd Fink - a heroin addict and con man - might well be considered the “Manny Ramirez” of jailhouse informants, “pinch hitting” at trial for many state prosecutors. The Topeka Capital-Journal newspaper reported in 2004 that Fink had “made deals with prosecutors to testify in more than 10 cases in exchange for a reduced sentence.” In two high-profile murder cases, his testimony was essential in obtaining convictions of the defendants, Thomas Goldstein and Thomas Thompson. The newspaper article summarized Fink’s participation in the Goldstein prosecution as follows:

“After a secret meeting with Long Beach police officers, Fink was placed in Goldstein’s cell. Fink told officers the next day that Goldstein had admitted his guilt. In exchange for his testimony, Fink was given probation instead of a two-to-three year prison sentence for theft.”

Goldstein served 24 years in prison before his conviction was thrown out. A federal Court of Appeals ruled that the prosecutor’s failure to inform defense attorneys during trial about Brady witness impeaching evidence of the leniency-in-exchange-for-testimony deal violated Goldstein’s constitutional right to a fair trial. Fink had sworn falsely that he was to receive no benefit as a result of his testimony, a statement that bolstered his credibility with the jury.

Three years after the Goldstein trial took place in Long Beach, County of Los Angeles, Edward Floyd Fink testified at the murder trial of Thomas Thompson in Laguna Beach, Orange County. Again, as in the Goldstein case, Fink testified that the defendant, Thomas Thompson, had confessed the murder to him while both were being detained in the local jail. Again, Fink testified that he was to receive no substantial benefit in exchange for his testimony; and again, his statement, made to bolster his credibility with the jury, proved false. “Shortly after Fink incriminated Thompson, his parole hold was dropped and he was released from jail on the basis of favorable information provided by law enforcement officials.” (Thompson v. Calderon, 120 F.3d 1045, 1056) Thompson was found guilty; on July 14, 1998, Thomas Thompson, a most-likely innocent man, was executed by We the People at San Quentin State Prison.

I, hereby, renew my request that this Commission recommend to the Legislature and Governor of California the enactment into law of legislation corresponding to current federal legislation, Title 42 U.S.C. 1983, but with one clarification – the legislation would specifically apply to California state prosecutors.
The clarification in the proposed legislation is necessary because, in Imbler v. Pachman, 424 U.S. 406, at page 431 and footnote 34, a six-justice majority of the U. S. Supreme Court erected a precedent granting absolute immunity within the federal legislation to prosecutors for Brady violations. The majority’s reasoning in Imbler did not rest upon any constitutional provision.

In Imbler, the three justice minority – Justices Brennan, Stevens, and Marshall – argued strenuously against the creation of this inappropriate legal obstacle to asserting Brady violation claims:

“[We] believe such a rule would threaten to injure the judicial process and to interfere with Congress’ purpose in enacting 42 U.S.C. 1983, without any support in statutory language or history. . . [T]he judicial process has no way to prevent or correct the constitutional violation of suppressing evidence. The judicial process will by definition be ignorant of the violation when it occurs; and it is reasonable to suspect that most such violations never surface. It is all the more important, then, to deter such violations by permitting damage actions under 42 U.S.C. 1983 to be maintained in instances where violations do surface.”

The U. S. Supreme Court in Brady opined: “[O]ur system of justice suffers when any accused is treated unfairly.” (Brady v. Maryland, 373 U.S. 83, 87) The proposed legislation eliminates the inappropriate legal obstacle, created in Imbler, to asserting Brady violation claims against state prosecutors, who by the nefarious means of suppressing exculpatory or witness impeaching evidence at trial, become perpetrators of injustices that lead to wrongful convictions. The statute of limitations for the proposed legislation would be consistent with that recently recommended by the Commission for “ineffective assistance of legal counsel” civil actions, a two year period which “shall commence upon the granting of post conviction relief in the form of a final judicial disposition of the underlying case.”

The legislation would read:

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of the State of California, subjects, or causes to be subjected, any citizen of the State of California or other person within the jurisdiction thereof, to the deprivation of any rights, privileges, or immunities secured by the United States Constitution or California State Constitution, shall be liable to the party in an action at law, suit in equity, or other proper proceeding for redress. The reference to ‘every person’ specifically includes state government prosecutors.”

In light of the fact that Governor Schwarzenegger has vetoed SB 609 requiring the corroboration of testimony by jailhouse informants, the proposed legislation would end the ongoing injustice. The Governor would have no reason to veto it. The legislation would bring to an end the cruelest injustice that can be inflicted by government upon innocent criminal defendants: denial of rights enumerated in the Declaration of Independence - “life, liberty, and the pursuit of happiness.”

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