

Justice Watch: Prosecutorial Misconduct a Felony in California



In marked contrast to the rest of the nation, the year in California has seen some great advances, especially on the social justice front. As we watch, transfixed, the scandal growing out of Orange County, California, passed a number of measures that should improve the justice system.

As Phil Locke of the [Wrongful Convictions Blog](https://wrongfulconvictionsblog.org/2016/12/29/prosecutorial-misconduct-is-now-a-felony-in-california/) (<https://wrongfulconvictionsblog.org/2016/12/29/prosecutorial-misconduct-is-now-a-felony-in-california/>) wrote this week, "Every one of the remaining 49 states needs to follow this example. This is a major step in establishing the kind of accountability prosecutors MUST face if we are to ever achieve the necessary level of ethical conduct on the part of prosecutors."

The law signed back in October makes prosecutors, who alter or intentionally withhold evidence from the defense, able to be punished by up to three years in prison. Prior to this law, the penalty was just a misdemeanor. And as we have reported, courts are required to report misconduct to the state bar.

A 2010 study by the Innocence Project found that there were more than 700 cases where prosecutorial misconduct, particularly Brady violations (withholding or suppressing evidence favorable to the defense), were found, and only in rare incidents were involved prosecutors' intentional misconduct sanctioned by the courts.

"I hear so many stories about innocent people across California, and across the country, who have been wrongfully convicted," Assemblymember Patty Lopez, author of AB 1909, said. "I just hope that when people think the rules don't apply to them, they will think twice before they abuse their power."

"When a prosecutor intentionally withholds exculpatory evidence, an unknowing and innocent defendant can be convicted, sentenced, and incarcerated for a long time," California Attorneys for Criminal Justice, a group of criminal defense lawyers that supported the bill, told the *Los Angeles Times*. "These bad-acting prosecutors rarely, if ever, face any actual consequences for their actions."

Will Law Enforcement Support Trump's Immigration Plans?

That is the key question. We know the answer in Davis is going to be no. Davis Police Chief Darren Pytel pointed out in a forum in December that Davis' law actually lines up with current state law under the Trust Act. The city police enforce state laws, not federal ones. ICE (Immigration and Customs Enforcement) has jurisdiction over federal laws, and nothing would prevent them from coming into Davis and raiding someone's home ([as they did back in 2011](http://www.davisvanguard.org/2011/06/davis-resident-still-searching-for-answers-in-wake-of-ice-raid-on-davis-property/) (<http://www.davisvanguard.org/2011/06/davis-resident-still-searching-for-answers-in-wake-of-ice-raid-on-davis-property/>)).

But under the Trust Act, particularly AB 4 authored by former San Francisco Assemblymember Tom Ammiano, California "[p]rohibits a law enforcement official from detaining an individual on the basis of a United States Immigration and Customs Enforcement (ICE) hold after that individual becomes eligible for release from custody, unless specified conditions are met."

In other words, state law would actually preclude the police from doing the very thing our sanctuary city resolution also precludes.

An article this week in the *Atlantic* asks this very question, noting, "In an interview with *60 Minutes* last month, President-elect Donald Trump made yet another pledge to remove undocumented immigrants from the United States, saying he would deport up to 3 million of them who 'have criminal records.' Similar promises—like building a wall along the U.S.-Mexico border, and [blocking federal funding](http://money.cnn.com/2016/11/19/news/economy/sanctuary-cities-trump-funding/) (<http://money.cnn.com/2016/11/19/news/economy/sanctuary-cities-trump-funding/>) to so-called sanctuary cities—were a cornerstone of his campaign."

But, "as he assumes the presidency, Trump will face not only continued public opposition to his plans, but potential obstruction by state and local law enforcement who he would need to implement any new policies."

Federal immigration agents "rely on local and state police forces to identify individuals who are in violation of immigration laws, and if so, to turn them over to the Department of Homeland Security's immigration-enforcement arm."

Rick Su, a law professor at the University at Buffalo who has researched immigration and local government, explains the significance of the cooperation this way: "The fact of the matter is, local law enforcement in this country encompasses the vast majority of law-enforcement resources." He added: "As much as we talk about federal policy and the growth of the federal government, their capabilities are quite limited given how large the country is."

In an interview, Professor Su would add, "In some ways, the Trump administration coming in is not only an immigration question. There's a bigger picture: How dedicated are they to centralize Washington control? And how committed are they to listening to what's happening in mainstream America?"

DA Will Not Retry Case of Man Accused of Assaulting BART Officers

When San Francisco Public Defender Jeff Adachi came to talk in Davis back in November, one of the stories he told was a case he was defending of a man accused of assaulting a BART officer, where a judge blocked the defense from asking the jury certain questions about their views on Black Lives Matter and civil rights issues.

The *Vanguard* reported in mid-December that the man had been acquitted of four counts of battery on a police officer. Jurors deliberated two days before finding Michael Smith, 22, not guilty Wednesday afternoon of the four counts. Jurors deadlocked 9-3 in favor of acquittal on two additional counts of battery on a police officer and one count of resisting arrest.

In a press release, Jeff Adachi and his office reported, "The trial process had been fraught with controversy, with Adachi attempting to have Judge Anne-Christine Massullo removed for bias after she ruled that the defense could not mention Oscar Grant or Black Lives Matter to prospective jurors in the racially-charged case, nor provide evidence of the confrontation on the train."

After Mr. Adachi's request was denied, Massullo remained on the case but appeared visibly angry, at one point telling Mr. Adachi on the record that "you filed a meritless challenge against me and it was a big waste of time."

Jeff Adachi said he was relieved Mr. Smith was acquitted, despite tension on the bench and the absence of a single black juror.

"The jury was very intelligent and sensitive to issues of racial profiling and police brutality," Mr. Adachi said. "My hope is that this case will make us take a closer look at excessive force among BART police officers. We owe it to the next Michael Smith that steps off the train."

The San Francisco DA's office announced on Friday that they will not retry Mr. Smith.

Mr. Adachi released a statement that said: "Michael and Andrea are relieved their nightmare is over. Michael was falsely accused of a crime," he said. "While their lives will never be the same, the specter of a criminal case is no longer looming against Michael."

—David M. Greenwald reporting