9th Circuit OKs Lawsuit Against Prosecutors

The federal Ninth Circuit ruled in *Goldstein v. City of Long Beach*, No. 06-55537 (9th Cir. 03/28/2007), that prosecutors can be held civilly liable for damages related to their failure to perform constitutionally required *administrative* obligations under *Giglio v. United States*, 405 U.S. 150 (1972). Thomas Goldstein was convicted of murder in 1980 based on the testimony of a jailhouse informant. Goldstein's trial lawyer wasn't provided with the impeachment evidence that the informant had an extensive history of exchanging prosecution favorable testimony for a sentence reduction. After his release from 24-years of wrongful imprisonment, Goldstein filed a federal civil rights lawsuit (42 U.S.C. §1983) against the Los Angeles District Attorney and his chief deputy, alleging they failed to develop policies and procedures and they failed to adequately train and supervise their subordinates, to fulfill their constitutional obligation of ensuring that information regarding jailhouse informants was shared among prosecutors in their office. The Ninth Circuit ruled that a prosecutor only has qualified, not absolute immunity, from civil liability for failing to perform the administrative functions alleged in Goldstein's lawsuit. Excerpts from the *Goldstein* opinion follows.

Goldstein v. City of Long Beach, No. 06-55537 (9th Cir. 03/28/2007)

[1] United States Court Of Appeals For The Ninth Circuit

…

[3] 2007.C09.0001470
< http://www.versuslaw.com>

[4] March 28, 2007

[5] Thomas Lee Goldstein, Plaintiff-Appellee,
v.
City Of Long Beach, et al, Defendants, And John Van de Kamp And Curt Livesay, Defendant-Appellants.

…

[11] For Publication

…

[15] Opinion

[16] In this case, we are asked to determine whether an elected district attorney and his chief deputy are entitled to absolute immunity from suit based on allegations that they failed to develop policies and procedures, and failed to adequately train and supervise their subordinates, to fulfill their constitutional obligation of ensuring that information regarding jail-house informants was shared among prosecutors in their office. See *Giglio v. United States*, 405 U.S. 150, 154 (1972). For the reasons discussed in this opinion, we hold that they are not, and we therefore affirm the opinion of the district court.

[17] I. Background

[18] After serving twenty-four years in prison, Plaintiff-Appellee Thomas Lee Goldstein was released on April 2, 2004, following this Court's affirmance of the [U.S.] district court's order granting Goldstein's petition for habeas relief. Goldstein has now filed a complaint seeking damages under 42 U.S.C. § 1983 based on his wrongful conviction for murder. Although he has sued several individuals and entities … only his claims against Defendants-Appellants John Van De Kamp and Curt Livesay are at issue in this appeal. Van De Kamp was the Los Angeles County District Attorney at the time Goldstein was prosecuted and convicted, and Livesay was his chief deputy.

[19] The claims relevant to this appeal stem from the testimony at Goldstein's 1980 criminal trial of Edward Floyd Fink, a jailhouse informant. Fink testified that Goldstein confessed the murder to him while both were being detained in the Long Beach City Jail. Goldstein alleges that this testimony was false, as was Fink's testimony that he was not receiving any benefits for testifying against Goldstein and had never received any benefits for assisting law enforcement in the past. Fink had, in fact, been acting as an informant for the Long Beach Police Department for several years and had received multiple reduced sentences in return. Although other deputy district attorneys in the Los Angeles County District Attorney's Office were aware of the benefits provided to Fink in exchange for his testimony against Goldstein, this critical impeachment evidence was never shared with the deputy district attorneys prosecuting Goldstein's case, allegedly because no system of sharing such information existed in the District Attorney's Office at the time and because deputy district attorneys were not adequately trained or supervised to share such information. As a result, evidence that could have been used to impeach Fink was not shared with Goldstein's defense counsel, in violation of *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

[20] Several years prior to Goldstein's arrest and conviction, the Supreme Court explained that prosecutors' offices have a constitutional obligation to establish "procedures and regulations . . . to insure communication of all relevant information on each case [including promises made to informants in exchange for testimony in that case] to every lawyer who deals with it." *Giglio*, 405 U.S. at 154. Thus, Goldstein alleges that Van De Kamp and Livesay are liable under § 1983 because, as administrators of the Los Angeles County District Attorney's Office, they violated his constitutional rights by purposefully or with deliberate indifference failing to create a system that would satisfy this obligation. Goldstein further alleges that Van De Kamp and Livesay violated his constitutional rights by failing to adequately train and supervise deputy district attorneys to ensure that they shared information regarding jailhouse informants with their colleagues.

[21] Van De Kamp and Livesay sought dismissal of the claims against them, under Federal Rule of Civil Procedure 12(b)(6), based on an assertion of absolute prosecutorial immunity. The district court denied their motion on March 8, 2006, finding that Van De Kamp and Livesay's alleged conduct was administrative rather than prosecutorial and, therefore, not entitled to the protections of absolute immunity. …

…

[26] III. Discussion

[27] Courts have recognized two types of immunity from suit under 42 U.S.C. § 1983: qualified immunity and absolute immunity. *Buckley v. Fitzsimmons*, 509 U.S. 259, 268 (1993). Only absolute immunity is at issue in this appeal …

…

[30] A prosecutor is entitled to absolute immunity under § 1983 for conduct that is "intimately associated with the judicial phase of the criminal process," *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976), and "occur[s] in the course of his [or her] role as an advocate for the State," *Buckley*, 509 U.S. at 273. However, conduct is not shielded by absolute immunity simply because it is performed by a prosecutor. Id. To the contrary, a prosecutor is entitled only to qualified immunity "if he or she is performing investigatory or administrative functions, or is essentially functioning as a police officer or detective." … Thus, when determining whether absolute immunity applies, courts must examine "the nature of the function performed, not the identity of the actor who performed it." *Forrester v. White*, 484 U.S. 219, 229 (1988).

[31] Applying this functional analysis, the Supreme Court has held that prosecutors are absolutely immune from § 1983 lia bility for decisions to initiate a particular prosecution, to present knowingly false testimony at trial, and to suppress exculpatory evidence. *Imbler*, 424 U.S. at 431 & n.34. Prosecutors also enjoy absolute immunity for decisions not to prosecute particular cases, … and for gathering evidence to present to the trier of fact, as opposed to gathering evidence to determine whether probable cause exists to arrest …

[32] On the other hand, prosecutors do not have absolute immunity "for advising police officers during the investigative phase of a criminal case, performing acts which are generally considered functions of the police, acting prior to having probable cause to arrest, or making statements to the public concerning criminal pro-

Goldstein cont. on p. 13