

Thomas Goldstein was convicted in 1980 of a Long Beach, California murder. The lynchpin of the prosecution's case was Edward Floyd Fink's testimony that after Goldstein's arrest as a suspect he confessed to Fink while they were jailed in the same cell. During Goldstein's trial Fink testified he wasn't receiving any benefit for his prosecution favorable testimony, and that he had not received any benefit for his testimony in previous cases.

Sentenced to life in prison, Goldstein's direct and post-conviction appeals were denied.

After a decade and a half in prison Goldstein learned that Fink worked as a police informant in his case and previous cases, and that Fink was paid by having charges dismissed or his sentence reduced. In Goldstein's case charges pending against Fink were dismissed.

Goldstein filed a state habeas corpus petition primarily based on the new evidence that the prosecution failed to disclose that Fink was a police informant tangibly rewarded for his testimony, and that if Goldstein's lawyer had known that information to impeach Fink's credibility it could have changed the jury's verdict. After being denied by the state courts, in 1998 Goldstein filed a habeas corpus petition in federal district court. The federal judge granted Goldstein's petition, and the State responded by appealing to the Ninth Circuit Court of Appeals.

The Ninth Circuit affirmed the granting of Goldstein's habeas petition. The State resisted releasing Goldstein, and to avoid doing so they recharged him. However, with their star witness discredited, and without eyewitness, physical or forensic evidence linking him to the murder, the State finally dropped the charge and Goldstein was released on April 2, 2004, after more than twenty-four years imprisonment.

Goldstein subsequently filed a federal civil rights lawsuit (42 U.S.C. §1983). The defendants were the City of Long Beach, Los Angeles County and several individuals, including Los Angeles County District Attorney, John Van De Kamp, and Chief Deputy DA Curt Livesay, who were in office at the time of Goldstein's trial.

In the 1976 the U.S. Supreme Court established that a prosecutor has absolute immunity from civil liability for judicially related conduct. However, absolute immunity may not apply when a prosecutor performs investigative or administrative tasks. (See, *Imbler v. Pachtman*, 424 U.S. 409 (1976)) Goldstein only alleged he was harmed by Van De Kamp and Livesay's failure to ad-

US Supreme Court OKs Immunity For Negligent Administration Of Prosecutor Offices

ministratively ensure compliance with the constitutional requirement of the DA's Office to disclose witness impeachment material to him. (See, *Giglio v. United States*, 405 U. S. 150 (1972)) Goldstein alleged Van De Kamp and Livesay: (1) failed to properly train prosecutors to disclose impeachment material, (2) failed to properly supervise prosecutors in the disclosure of impeachment material, and/or (3) failed to establish an information system containing potential impeachment material about informants that was available to prosecutors.

Although Van De Kamp and Livesay were not directly involved in Goldstein's prosecution, they nevertheless sought dismissal of the claims against them, under Federal Rule of Civil Procedure 12(b)(6). They argued that the shield of absolute prosecutorial immunity encompasses the claims made in Goldstein's suit. The district court judge denied the motion to dismiss, ruling their alleged conduct was "administrative" in nature and distinctly different from the actions taken by a prosecutor in a judicial proceeding, which are protected by immunity from civil liability. Van De Kamp and Livesay filed an interlocutory appeal with the Ninth Circuit, which affirmed their lack of immunity for administrative conduct. (*Goldstein v Van De Kamp*, No. 06-55537 (9th Cir., March 28, 2007))

The defendants filed a writ of certiorari with the US Supreme Court, which accepted the case for review. On January 26, 2009 the Court unanimously ruled prosecutors performing the administrative functions alleged in Goldstein's suit are protected from civil liability by absolute immunity. (*Van de Kamp v. Goldstein*, No. 07-854 (USSC, January 26, 2009); 555 U.S. ____ (2009))

The Court's opinion by Justice Breyer conceded the harmful conduct alleged by Goldstein involved "administrative" procedures. However, the trial prosecutor's failure to disclose impeachment evidence about informant Fink was a predicate action of Goldstein's claim that Van De Kamp and Livesay failed to perform their "administrative" obligations of training and supervising trial prosecutors. If the trial prosecutor had disclosed the impeachment material constitutionally required by *Giglio*, Goldstein would have no pretense of a claim against Van De Kamp and Livesay for their alleged deficient administrative conduct.

Justice Breyer explained that if Goldstein's suit was allowed to proceed the anomaly would occur that while the trial prosecutor was civilly immune for failure to disclose the impeachment material on Fink, Van De Kamp and Livesay could be held civilly liable for not training or supervising him to make that material available to Goldstein.

The Court separately considered Goldstein's claim concerning Van De Kamp and Livesay's failure to establish an impeachment material "information system." Judge Breyer reasoned that Van De Kamp and Livesay are entitled to absolute immunity from that claim because the lack of such a system is only relevant to Goldstein's case by the information it would have made available to his trial prosecutor about Fink. Consequently, all administrative decisions made about what impeachment material to include or exclude from an "information system" would be related to the judicial proceedings in which the material would be used. Judge Breyer wrote, "Such decisions – whether made prior to or during a particular trial – are 'intimately associated with the judicial phase of the criminal process.'" Thus, under the absolute immunity principle set forth in *Imbler*, a prosecutor is shielded from civil liability for any material included or excluded in an "information system," or even if no such system exists.

Having determined that all three of Goldstein's claims against that Van De Kamp and Livesay are "directly connected with the conduct of a trial," the Court ruled they are protected by absolute immunity.

A prosecutor is now protected from civil liability for engaging in administrative conduct that is tangibly related to the actions of another prosecutor involved in a judicial proceeding.

"A lie goes 'round the world while truth's still putting its boots on, sweetheart."

Dialogue in the movie *Evil Angels* about the wrongful conviction of Australian Lindy Chamberlain for murdering her infant daughter who was actually killed by a dingo.

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