Federal judges
see an 'epidemic'
of misconduct by
prosecutors in
California.

OUT
STATE
COURTS

PANEL
CALLS

By Maura Dolan

'Epidemic' of prosecutorial misconduct

The hearing seemed
argely routine until a stat
prosecutor approached th
ectern.

Deputy Atty. Gen. Kevi
R. Vienna was there to urg
three judges on the U.S. 9t
Circuit Court of Appeals t
iphold murder conviction
against Johnny Baca for tw
1995 killings in Riverside
County. Other courts had al
ready determined that pros
ecutors had presented fals
vidence in Baca's trial bu
ipheld the verdicts anyway

Vienna had barely start
d his argument when th
oummeling began.

Judge Alex Kozinsi
asked Vienna if his boss
Atty. Gen. Kamala D. Harri
wanted to defend a convi
:ion "obtained by lying pro:
:cutors." If Harris did no
back off the case, Kozinsl
warned, the court wou
'name names" in a rulir
:hat would not be "ver
oretty."

Judge Kim Wardla
wanted to know why Rive
side County prosecuto
presented a murder-for-hi
:ase against the killer b
lid not charge the man th
said had arranged the ki
ngs.

"It looks terrible," se
Judge William Fletcher.

The January hearing
Pasadena, posted onli
under new 9th Circuit po
cies, provided a rare a
critical examination of
murder case in which pr
ecutors presented false e
dence but were never inv
tigated or disciplined.

The low-profile ca
probably would have go
unnoticed if not for the v
eo, which attorneys emai
to other attorneys and :
bated on blogs.

GINA FERAZZI Los Angeles Times

JUDGE ALEX KOZINSKI warned that the federal court would take action if California's attorney general defended a ruling "obtained by lying prosecutors."

uestions, the three judges
pressed frustration and
t California state
ere not cracking
prosecutorial mis-
By law, federal
e supposed to defer
decisions of state
ges.

cutors "got caught
e but they are going
loing it because they
ate judges who are
to look the other
ozinski said.

ta Clara University
ofessor Gerald Uel-
id the judges' ques-
nd tone showed they
st patience with Cali-
courts. State judges
pposed to refer errant
rs, including prosecu-
o the state bar for dis-
e, but they rarely do,
en said.

t is a cumulative type
r," Uelmen said. "The
ircuit keeps seeing this
onduct over and over
n. This is one way they
really call attention to

A 2010 report by the
thern California Inno-
ce Project cited 707 cases
which state courts found
osecutorial misconduct
er 11 years. Only six of the
osecutors were disci-
ined, and the courts up-
ld 80% of the convictions
spite of the improprieties,
ie study found.

The case that sparked

adopted son, was working as
a houseboy for the couple.

A jailhouse informant
testified that Baca had con-
fided the son planned the
killing. The two were going
to split Adair's inheritance,
the informant said. Other
witnesses testified that
Adair was planning to disin-
herit his son, who was never
charged in the case.

Baca was tried twice and
found guilty both times. A
state appeals court over-
turned the first verdict. The
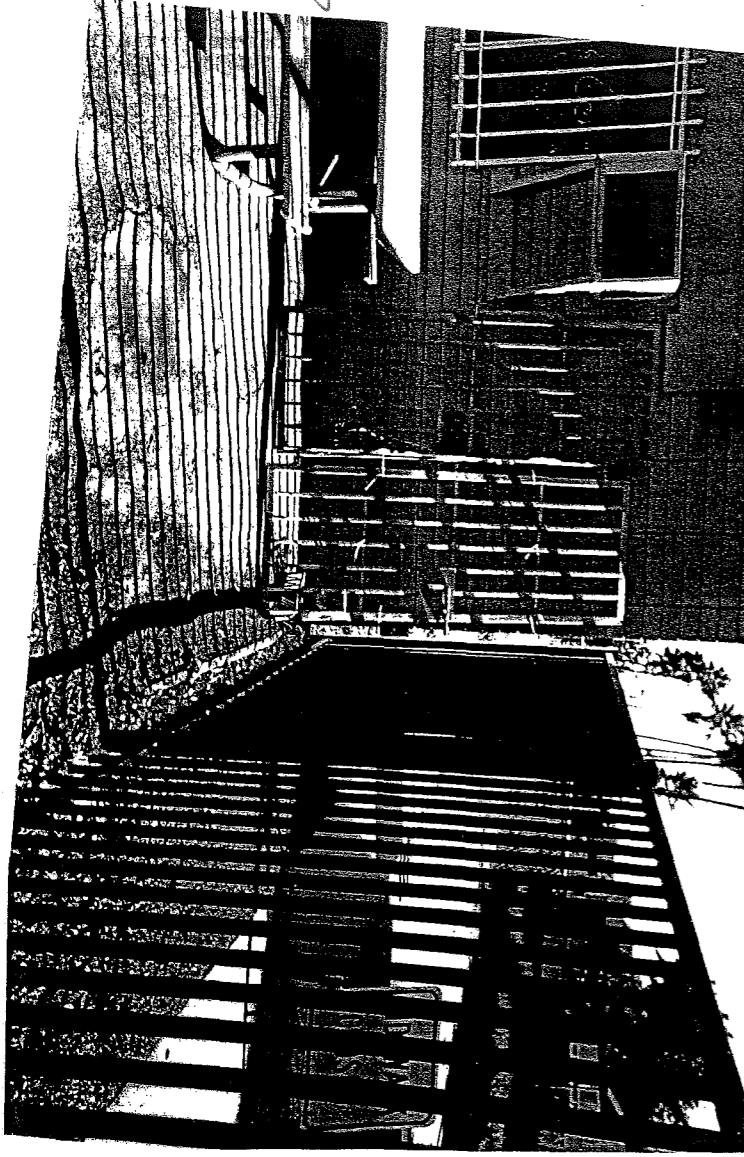second withstood an appeal,
even though the state court

testified he had asked for
and received no favors. The
prosecutor falsely corrobo-
rated that on the stand, ac-
cording to court records. Ba-
ca was sentenced to 70 years
to life.

Patrick J. Hennessey Jr.,
who has represented Baca
on appeal for nearly two dec-
ades, said he had never seen
such an "egregious" case of
prosecutorial misconduct.

"That is what bothered
me," Hennessey said. "There
was never a fair discussion of
how serious the issue was."

A U.S. magistrate who

court nevertheless was sup-
posed to defer to the state
courts.

"Sadly, this informant's
lies were bolstered by a Dep-
uty District Attorney, who
also lied," wrote Magistrate
Judge Patrick J. Walsh.
"What is obvious ... is that
the Riverside County Dis-
trict Attorney's Office
turned a blind eye to funda-
mental principles of justice
to obtain a conviction."

Armed with the magis-
trate's report, the three
judges on the 9th Circuit
panel appeared incredulous

misconduct by upholding
verdicts, a rare public criti-
cism of her fellow judges. She
suggested that state judges,
who must be approved by
voters, fear inciting the pub-
lic's wrath. Federal judges
are appointed for life.

"I understand why they
do that," Wardlaw said.
"They are elected judges.
They are not going to be re-
versing these things."

Fletcher, another Clinton
appointee, observed that
the state's attorney general
had fought "tooth and nail"
more than a decade ago to
prevent a court from seeing
a transcript that revealed
the false evidence.

"It would look terrible in
an opinion when we write it
up and name names," Kozin-
ski, a Reagan appointee, told
the government lawyer.
"Would your name be on?"

Vienna said he was not in-
volved in the case at the
time, but named others in
the office.

Kozinski demanded to
know why the informant and
the testifying prosecutor
were not charged with per-
jury. He suggested the state
bar should pull the law li-
cense of the prosecutor who
presented the evidence.

Retired Deputy Dist.
Atty. Paul Vinegrad, who
prosecuted Baca in both
trials, said in an interview
that he did not suspect de-
ceit. He said he has since
learned that his colleague

no longer practices law
could not be reached for
comment.

Vinegrad also said he be
lieved in the murder-for-hire
case he presented, but that
there was not enough evi
dence to charge the son. The
informant's testimony
against the son would not
have been admissible under
legal rules at the time, Vine
grad said.

Kozinski, who in the past
has spoken out about an
"epidemic" of prosecutorial
misconduct, asked Vienna
whether Harris was aware of
the case. Vienna indicated
she probably was not. Kozin
ski told him to get her atten
tion within 48 hours. Harri
would need to take action
her office wanted to avoid a
embarrassing ruling, Kozi
ski said.

"Make sure she unde
stands the gravity of the si
uation," Kozinski said, add
ing that the case "speal
very poorly for the attorne
general's office."

Harris, a candidate fo
U.S. Senate, change
course. Her office decide
last week not to oppose Ba
ca's challenge.

Mike Hestrin, Riversid
County's newly elected dis
trict attorney, did not con
cede that the prosecutors
"misconduct" was inten
tional, but said his office
would investigate the pros
ecutors' actions and retry
Baca.

The base, state-funded compensation for six Cal State presidents and White

cies and use of foundation funds would be reviewed.

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state tuition of $12,192,
than half of UC stud
have grants or other f
cial aid with which to pa

JOSEPH DUNN, a former state senator shown in 2006, says he was fired last week because he tried to expose "egregious improprieties" by bar officials.

Ousted top director files lawsuit against state bar

By Maura Dolan

SAN FRANCISCO — The ousted executive director of the State Bar of California sued the lawyers group Thursday, saying he was fired because he tried to expose "egregious improprieties" by bar officials.

Joseph Dunn, a former state senator from Orange County, ran the bar from 2010 until last week, when he said he was fired without explanation. The bar announced his departure Thursday, shortly before Dunn filed his suit in Los Angeles County Superior Court.

Dunn said in the suit that he had been one of a group of anonymous whistle-blowers who had complained to the bar's trustees about alleged improprieties shortly before his firing. A law firm gave the trustees the whistle-blowers' complaints this month.

The bar, funded by lawyer fees, is responsible for lawyer

licensing and discipline and for overseeing the state's 249,000 attorneys.

Dunn said in his suit that the whistle-blower complaints alleged "ethical breaches, prosecutorial lapses and fiscal improprieties" by State Bar President Craig Holden, some bar trustees and the bar's chief trial counsel.

The lawsuit said that Dunn was fired because he had been identified as one of the whistle-blowers and that Holden had orchestrated the ouster.

Holden, a Los Angeles lawyer elected bar president in September, submitted "irregular expense accounts" to the bar and sought to usurp executive authority in a bid to eventually become executive director, the lawsuit alleges.

The suit says that one of the trustees had a longtime personal relationship with a lawyer in a firm that was paid $300,000 to investigate

Dunn. The investigation was launched after a bar official whom Dunn had accused of misconduct filed a complaint against Dunn, according to the suit.

Dunn said he had received glowing performance evaluations, and his contract had been extended last year to 2016.

"It is with deep sadness and a heavy heart that Sen. Dunn has been compelled to bring this action against the State Bar of California, an organization that he has loyally served for four years," the suit said.

A spokeswoman for the bar declined to comment on Dunn's firing or the suit.

The Recorder, a legal newspaper, reported that Dunn's tenure was "marked by tumult and turnover." The paper said Dunn had fired four veteran prosecutors in 2011.

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