



1-1-1999

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Recommended Citation

Santa Clara Law Review, Other, *Books Received*, 40 SANTA CLARA L. REV. 317 (1999).

Available at: <http://digitalcommons.law.scu.edu/lawreview/vol40/iss1/9>

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BOOKS RECEIVED

Mean Justice: Prosecutorial Misconduct in California's Heartland. By Edward Humes. New York, Simon & Schuster, 1999. Pp. 492. Hardcover. \$26.00.

*Reviewed by Thomas Burg**

I. INTRODUCTION

On June 30, 1992, Alexandra Paola Dunn disappeared into the night on one of her usual pre-dawn walks in Bakersfield, California. Ten days later, a German tourist taking photographs in the desert sixty miles outside of Bakersfield came across her badly decomposed and naked corpse. In 1993, Alexandra Dunn's husband Pat, a well-liked middle-class businessman who maintained his innocence throughout the investigation, was convicted of her murder in the first degree. In *Mean Justice*, author Edward Humes argues that Pat Dunn's wrongful conviction is representative of the ruthless history of prosecutorial misconduct in Bakersfield.

Pat Dunn, a self-described "fat old man," is far from a sympathetic victim. At first even Humes himself is skeptical of Dunn's innocence. Humes heard of Dunn's case from private investigator Laura Lawhon, who told the author about a client she had in Bakersfield whom she believed was wrongfully convicted. At the time he heard Dunn's story, Humes relates, his "experience as a newspaper reporter and author writing about the justice system taught [him] that claims of innocence from convicted criminals are often made, seldom proved, and usually refuted."

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II. THE CASE AGAINST PAT DUNN

From the outset, Dunn seemed to be sandbagging his own case. On the day of his wife's disappearance, Dunn called the sheriff's office to report her missing and, instead of sounding concerned about his wife's disappearance, joked with the dispatcher about her unusual name. There were indications that Dunn had no money, whereas his wife was worth several million dollars. The Dunns often quarreled, and Pat struck Alexandra on one occasion in 1989. Dunn refused to take a polygraph test. Finally, at one point during police questioning, before the body had been found, Dunn referred to his wife as dead, something the investigating officer in the case felt was indicative of Dunn's guilt.

Humes' initial skepticism about Dunn's innocence was soon replaced by a sense of incredulity that a system could work so hard to convict an innocent man. At trial, the prosecution presented no direct evidence that Dunn murdered his wife. The prosecution showed that during the investigation, Dunn gave conflicting times concerning his wife's disappearance, that Dunn was named as the sole beneficiary under her will, and that prior to her disappearance Alexandra said that she intended to divorce Dunn. Further, when police accused Dunn of murdering his wife shortly after her disappearance, he remained silent instead of proclaiming his innocence. In a nightmarish twist, one of Dunn's closest friends became convinced, without apparent justification, of Dunn's guilt and lobbied the police for Dunn's arrest and prosecution.

With only these circumstantial facts pointing to Dunn's guilt, the prosecution had insufficient evidence to send Dunn to jail for life without the possibility of parole. Then, several weeks into the murder investigation, Jerry Lee Coble appeared on the doorstep of the Kern County District Attorney's office. Coble, an ex-convict and heroin addict, was charged in April 1991 with grand theft while on parole from prison. Coble read of the Dunn murder and went to the Bakersfield detective in charge of the investigation claiming that he had seen Pat Dunn at about 1:00 A.M. on a morning around the time of Alexandra Dunn's disappearance, dragging a body from Dunn's house to his pickup truck. Coble claimed that he was in the neighborhood looking for some drugs that he had thrown out of his car earlier in the evening. Coble's information came with one string attached: in exchange for cooper-

ating with the authorities and testifying against Pat Dunn, Coble wanted a plea agreement for his pending grand theft charges.

At trial, Coble's brother, also a convicted felon, testified that Coble told him that he had concocted the story to avoid prison and could not back out. Humes reveals that at the time Coble testified, he was under investigation by a Kern County detective for crimes committed after he entered into the plea agreement. The prosecution never disclosed this fact to Dunn's defense team. The prosecution also failed to disclose the report made by the detective who arrested Coble on the grand theft charges. At the time of arrest, Coble offered to "do whatever it takes" to stay out of prison. Shortly after discovering the body, and before Coble went to the police with his "information," a friend of Dunn's noticed a suspicious car in front of the Dunn home. He followed the car and wrote down the license number; it was later discovered that the car was registered to Coble's mother. Although Dunn's friend notified the police, they never followed up on the tip. Humes argues that this and other acts of misconduct on the part of law enforcement officials led to Dunn's unjust conviction.

III. THE HISTORY OF JUSTICE IN KERN COUNTY

Humes sets the background for Dunn's prosecution by describing Kern County as "a county known for its hanging jurists and merciless prosecutors." Bakersfield, home of former Supreme Court Chief Justice Earl Warren (described as "Bakersfield's most prominent but least appreciated figure") was immortalized in John Steinbeck's *The Grapes of Wrath* as the destination for many of the dust bowl inhabitants who fled west during the depression. Humes begins his brief history of egregious conduct in Bakersfield by discussing an infamous lynching at the turn of the century. Humes then looks at the Ku Klux Klan's control of the mayor's office, the police department, and the city council in the 1920s. Humes also addresses prosecutorial misconduct nationally, noting that of approximately 6000 death sentences imposed between 1973 and 1997, seventy-six have been reversed—and a third of which involved prosecutorial misconduct. Although these facts are compelling in and of themselves, their presence in a book centering around the Dunn case is somewhat questionable. In the preface, Humes writes, "I had found a much

larger issue to ponder as well—how a town's, and indeed an entire nation's, fear of crime and desire to be safe has made the conviction of innocent men and women startlingly common." However, after asserting this causal connection between fear of crime and prosecutorial misconduct, Humes offers no proof of a link between the two concepts in the body of the book.

IV. KERN COUNTY DISTRICT ATTORNEY ED JAGELS

The villain in Pat Dunn's story is Ed Jagels, the Kern County District Attorney. In 1975, Jagels, a young law school graduate from the wealthy Los Angeles enclave of San Marino, was driving to San Francisco from Los Angeles for a job interview. On a whim, Jagels decided to stop in Bakersfield, a small city about 160 miles north of Los Angeles. Jagels never made it to San Francisco. The ambitious young prosecutor, who, according to Humes, had "an extreme, almost vicious approach to trying cases," became Bakersfield's District Attorney in 1982.

Statistically, Jagels can "legitimately lay claim to being one of the toughest prosecutors in the United States." According to Humes, the unusually high rate of appellate reversals demonstrates that many of those convicted by the Kern County District Attorney's office under Jagels command are innocent. Pat Dunn, argues Humes, is no exception. "The conviction was won only after key, and damaging, information about some of the government's most important witnesses, evidence and theories was withheld from the defense," Humes writes.

The extent of Humes's talent as a gatherer of facts becomes apparent when he tackles the subject of Jagels's rise to power as the Kern County D.A. Humes paints a bleak backdrop for the justice system in modern-day Bakersfield. Ed Jagels was one of the first prosecutors in the country to recognize a change in the way people viewed the justice system in the early 1980s. At that time, Jagels felt that the justice system had been perverted by liberal judges and defense attorneys into a system that favored criminals over honest citizens. One of the judges attacked by Jagels was Rose Bird, then Chief Justice of the California Supreme Court. Jagels characterized Bird's consistent overturning of death sentences as pro-defense fanaticism, and targeted Bird in a suc-

cessful recall campaign. Playing a role in Chief Justice Bird's ouster brought Jagels attention on a statewide level.

Jagels was also one of the first prosecutors in the country to associate with the newly formed crime victims' movement in the early 1980s, which gained him the loyal support of crime victims groups. Jagels' move was a savvy one: the Kern County D.A. became simultaneously the prosecutor of criminals and advocate of victims. To this end, Jagels pushed for laws limiting the power of judges to rule on evidence and hand down sentences. One of the most significant of these laws is the "Three Strikes and You're Out" law, which imprisons three-time offenders for sentences of twenty five-years to life.¹

After this reworked definition of the prosecutor's role was in place, the Kern County District Attorney's office accumulated a higher rate of convictions and garnered longer sentences than any other county in California. At the same time, by Jagels' second term in office, complaints of prosecutorial misconduct tripled when compared to his predecessor's tenure. As an example, Humes discusses the prosecution of a series of child molestation rings that terrorized Bakersfield in the early 1980s. Over the course of several years, Jagels' office "uncovered" a pattern of ritualistic child sexual abuse and pornography in the community. After an aggressive prosecution, the pattern was later determined to be virtually nonexistent. The Kern County D.A.'s office destroyed many lives in the process; of the fifty-three men and women formally prosecuted in Kern County, only six remain imprisoned.

Bakersfield Chamber of Commerce President Chris Frank observed that Jagels is "very hard on crime, and that's certainly not viewed as a negative in Bakersfield."² At the same time, Jagels has alienated many in the Bakersfield community. As the wife of a Bakersfield defense attorney observed after the publication of *Mean Justice*: "For years, we've been shouting about the injustices and misconduct of the district attorney's office, and no one has listened."³ Humes's view of Bakersfield is that there is no middle ground: "you either believe in [Jagels's] vision or you support criminals. . . .

1. CAL. PENAL CODE § 1710.12 (West 1999).

2. Mark Arax, *Growing Faction in Kern County Claims Zealous D.A. Crosses Line*, L.A. TIMES, March 29, 1999, at A3.

3. *Id.*

[T]hat attitude has permeated law enforcement throughout Kern County."⁴

V. CONCLUSION

Admittedly, the role of the District Attorney is not an easy one; the public expects the prosecutor to dole out justice with a stiff upper lip. As former Los Angeles County prosecutor Vincent Bugliosi describes it, "[t]he almost automatic adjective [used by the media] to describe prosecutors is 'tough.'"⁵ As the holder of an elected office, the District Attorney must satisfy a broad range of voters to survive reelection. On the one hand, voters want a District Attorney who puts violent criminals behind bars. On the other hand, ordinary citizens are reluctant to sacrifice traditional liberty interests to remove certain constitutional hurdles that stand between a prosecutor and a conviction.⁶ District Attorneys routinely take a beating in the press for not having high enough conviction rates.⁷ Prosecutors who do not attain these high conviction rates are seen as being "soft on crime."⁸ This is true even if the low conviction rates can be explained by the use of alternative methods of punishment, such as the use of diversion programs, or by the way felony arrests are handled by the county.⁹

Mean Justice raises some difficult questions about the

4. *Id.*

5. VINCENT BUGLIOSI, *OUTRAGE* 43 (1996) (discussing media descriptions of O.J. Simpson prosecutor Marcia Clark as "tough and steely").

6. See HERBERT L. PACKER, *THE LIMITS OF THE CRIMINAL SANCTION* 156 (1968) (observing that Americans take for granted basic constitutional rights such as the freedom from being taken into custody at any time and held without limitation).

7. See Bill Wallace, *Hallinan's Record Worst in State*, S.F. CHRON., Sept. 2, 1999, at A1 (depicting the San Francisco D.A.'s office under Terrance Hallinan as inept and as having the lowest conviction rate in the state. Hallinan argues that the low convictions rate belies efforts to divert drug and other nonviolent offenders into diversion programs).

8. See Ken Garcia, *D.A. Hallinan Even Worse Than We Suspected*, S.F. CHRON., Sept. 4, 1999, at A22.

9. See Wallace, *supra* note 7. In San Francisco, charges that are dismissed against individuals who enroll in drug diversion programs or mentoring programs do not count as convictions when statistics are compiled. See *id.* Additionally, San Francisco is the only county in the state where every felony arrest is presented to the D.A. for prosecution. In other counties, local police pre-screen cases and drop charges where there is little chance of conviction. See Jerry Fuchs, *S.F. Chronicle's Cheap Shot at Hallinan Backfires*, SAN MATEO WKLY., Sept. 22, 1999, at A7.

prosecutor's role. At what point does a prosecutor's tactical omission or failure to investigate information rise to the level of misconduct? Humes himself admits that "its easy to second-guess when you've had a chance to review the trial transcript."¹⁰ Humes argues that prosecutors should have told Dunn's defense team about the report from the sheriff's deputy detailing Coble's offer, almost a year before the murder of Alexandra Dunn, to tell the sheriff's office "whatever they want," after his arrest for grand theft. John Somers, the assistant D.A. who prosecuted Dunn, who Humes acknowledges was not tainted by the allegations of misconduct that plagued other prosecutors at the Kern County D.A.'s office, asserts that "Coble had already told the jury that he wanted a deal, that he was a heroin addict. He made no bones about it. How much more could you attack his credibility?"¹¹

One of the most disturbing issues raised by *Mean Justice* is the sense that Pat Dunn's experience could easily become the living nightmare of other middle class citizens. This could be the point Humes is trying to make with the addition of a forty-seven page appendix cataloging felony cases since 1900 in which prosecutorial misconduct led to unjust convictions. A second issue addressed in the subtext of the book is that those who advocate being "tough on crime" are often those who will not feel the effects of such a law enforcement policy. Indeed, it was only after Pat Dunn saw the darker side of Bakersfield law enforcement that he thought that the police may not always be right. Ironically, until Dunn was on the receiving end of a Kern County prosecution he believed "the police could do no wrong and that everyone they arrested had to be guilty." Normally, it is only the high-crime neighborhoods, and their inhabitants, that bear the brunt of the "tough on crime" tactics. *Mean Justice* gives the reader a taste of what it might be like if these practices came home to roost in suburbia.

Humes builds his compelling argument of Pat Dunn's innocence brick-by-brick. *Mean Justice* is an outstanding non-fiction work, a result of Humes's talent of combining thorough factual research with a gift for the narrative technique.

10. Jerry Hicks, *Book Makes New Case for Murder Trial*, L.A. TIMES (Orange County), Mar. 11, 1999, at B1.

11. *Id.*

Humes's analysis of the facts is supported by extensive and well-documented endnotes. *Mean Justice* becomes troublesome when Humes addresses the problem of prosecutorial misconduct on the national level in a superficial manner.

Although *Mean Justice* has been a best seller in Bakersfield bookstores,¹² it seems unlikely that there is a movement afoot in the town to free Pat Dunn. The release of the book, however, may prompt a closer inspection of Bakersfield's criminal justice system. Pat Dunn's lawyers have filed an appeal citing evidence newly discovered by the author.¹³ In a bizarre and tragic coincidence, Pat Dunn's son, Danny, who himself had a troubled past, died after being subdued with pepper spray in the Kern County jail on the day the book was released.¹⁴

12. Russo's Books, a large Bakersfield bookstore with three outlets, sold 50 copies the book's first week. See Donald Munro, *Questions over a Jailed Father, a Dead Son and Kern County*, FRESNO BEE, Mar. 8, 1999, at A1.

13. See *id.*

14. See *id.*