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## Ex-judge admits legal missteps in transcripts

Lies permitted to protect witness, she says

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Former Wayne County Circuit Judge Mary Waterstone has told investigators she was stuck with lawyers she didn't trust, overmatched cops and 100 pounds of reeking cocaine when she allowed jurors to hear false testimony at a major drug trial.

Waterstone oversaw the discredited 2005 drug case against Ricardo Pena and Alexander Aceval. She and the prosecutor in that case, Karen Plants, face perjury-related felonies after prosecutors say they allowed two Inkster cops to cover up that a key witness was a paid police informant.

At a hearing Monday, a judge refused to dismiss the charges against Waterstone, Plants and the cops. A transcript of Waterstone's interviews with state investigators was filed in her criminal case. In the interviews, the judge slights Plants' legal skills and said the case should have gone to the feds.

The case "was like a nightmare," Waterstone said, with local authorities ill-equipped to prosecute a case involving 47 kilos of cocaine. "Why they thought they were capable of handling something of the magnitude of \$27 million -- that's crazy," she said.

The retired judge also said she "just didn't trust" defense lawyer James Feinberg, and feared that if he knew witness Chad Povish was a police snitch, Povish would be killed.

## Perjury-case charges won't be dismissed

The heap of cocaine stunk up a Wayne County Circuit courtroom -- and four years later the judge, prosecutor and cops are trying to shake the odor of the 2005 dope trial.

"It smelled to high heaven," Waterstone complained to state investigators of the 47 kilos of cocaine seized by Inkster police when they busted Pena and Aceval.

But, she could have been talking about the case that turned sour with accusations of perjury and conspiracy.

Waterstone, Plants and Inkster cops, Sgt. Scott Rechtzigel and officer Robert McArthur, were back in court Monday for preliminary legal skirmishes on perjury--related charges that stemmed from the cops' false testimony at a 2005 drug trial.

At that trial, the police testified that they didn't know in advance about witness Chad Povish's role in the drug deal. In fact, Povish was a paid police informant.

Plants, the prosecutor, privately told Judge Waterstone of the false testimony, and got the judge to agree that the lies were necessary to protect the witness' safety.

Jurors and defense lawyers were never told Povish was a snitch.

Detroit 36th District Judge David Robinson refused to dismiss the charges on Monday and said the state Attorney General's Office can prosecute the case.

But, Robinson said, the lead prosecutor, assistant Attorney General William Rollstin, has to step aside because he also acted as an investigator and may be called as a witness.

## Waterstone admits error

In their court filings, Waterstone's lawyers included transcripts of two interviews she gave state investigators late last year in which she vented her frustration with how the case overwhelmed the prosecution team, and admitted that she, too, messed up.

Waterstone told investigators that Plants and the cops may have been blinded by the glory of prosecuting one of the area's largest drug busts.

The lies came out of the blue, she said, "and then I was really like, holy macaroni."

She also confided her fears that telling Feinberg could lead to the witness getting killed.

"I don't want to be the one who tells Jim Feinberg that Chad Povish is the guy," she said. "Because he'll be dead tomorrow."

Told of Waterstone's comments, Feinberg laughed and said: "So now I'm a hired killer."

He added: "I guess no one is concerned about the rights of the defendant if you have so much dope."

Waterstone's lawyers declined to comment on her interviews, but said the criminal charges against Waterstone should be dismissed. One of her lawyers, Gerald Evelyn, said Waterstone's judicial actions -- even if totally wrong -- aren't criminal unless she acted with "corrupt intent."

Waterstone said in her interviews that she was driven by concerns to protect Povish's safety, while guarding against any legal missteps that could let two big-time dope men walk free.

"There isn't any question" that they lied, Waterstone said of the cops' testimony.

The case should have gone to the feds, she said.

Ben Gonek, Plants' lawyer, declined to comment. McArthur's lawyer, Douglas Gutscher, also declined to comment.

Retchizel's lawyer David Griem said the case may have been too large for one small department, but insisted cops weren't on a glory grab.

"These are two police officers who were trying to get 47 kilos of drugs off the streets," he said.

## Ex-judge says she was troubled

Waterstone told investigators that Plants was someone "I really, really, really like." She said she once arranged for Plants to adopt a golden cocker spaniel. Nevertheless, the retired judge said she didn't think Plants was up to prosecuting the drug bust.

"I certainly never thought she was good enough to handle that case," she said.

Waterstone said she was troubled by the cops' perjury, and nearly called fellow judge Timothy Kenny "who's kind of my godfather -- and say, Tim, what do you do?"

But Plants appeared with a solution. Plants told her that Timothy Baughman, head of the prosecutor's appellate division, suggested that Plants privately talk with the judge about the perjured testimony, and make a sealed record of their conversation.

Waterstone jumped at the solution because "when Tim Baughman speaks, judges listen, defense attorneys listen, police officers listen."

In retrospect, Waterstone said, "I should have probably called Tim Kenny and asked him what he would do. But I thought well, if Tim Baughman says that's the way to handle it."

Baughman has said he cannot talk about the case or his possible role in it.

Kenny, a former state prosecutor who led a regional drug task force, declined to comment on Waterstone's case but said in general that it's "not uncommon for one judge to consult another if they are facing a novel issue."

Waterstone ruefully acknowledged in her interview that she didn't research the law: "I just took the word of the Oracle of Delphi, Mr. Baughman, and I was really mistaken. And I'm sorry I did, but I did."

The perjury was unmasked after a hung jury. Both Pena and Aceval later pleaded guilty.

Feinberg said Waterstone should have followed her gut.

"She should have called Tim Kenny."

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