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Taint right



BY NEWS HITS STAFF

When *Metro Times* first wrote about the Wayne County judge and assistant prosecutor accused of committing a felony by allowing perjured testimony to be presented to a jury, the Prosecutor's Office refused to comment.

The controversy occurred in a case involving accused drug dealer **Alex Aceval**. At the time of our original story ("[Tainted testimony](#)," *MT*, May 3), a spokeswoman for Wayne County Prosecutor **Kym Worthy** said it was inappropriate to immediately respond to allegations made against Assistant Prosecutor **Karen Plants** and Third Circuit Court Judge **Mary Waterstone** because Aceval's case was still open, and any discussion of alleged wrongdoing might affect the outcome of Aceval's trial.

Wouldn't want to do that.

But that concern no longer applies, and Worthy has spoken. Aceval, 39, a Farmington Hills resident who faced a possible life sentence if found guilty, is now off to prison. Last week he accepted a plea bargain that will put him behind bars for the next 10 to 15 years. His co-defendant, 47-year-old **Richard Pena** of Harlington, Texas, took a plea deal of five to 15 years in prison after agreeing to testify against Aceval.

Here's the backstory:

Aceval was accused of being at the center a major cocaine distribution ring following a bust by Inkster police that netted 47 kilos of the drug. His first trial ended with a hung jury. As attorneys prepared for the retrial, they obtained previously sealed records containing transcripts of two secret meetings held between Plants and Waterstone. In those meetings, Plants disclosed to Waterstone that, both prior to the start of the first trial and during it, witnesses — including two cops — had lied while under oath.

The reason they lied, explained Plants, was that they were attempting to protect a confidential informant when grilled by a defense attorney who, contrary to the judge's orders, was asking questions that could lead to the snitch's identity being revealed. Prosecutor and judge both expressed fears that exposing the informant's name would put his life in jeopardy. And so they let the perjured testimony go uncorrected.

Now that the case is over, Worthy has issued a press release.

"This case gained attention when Karen Plants, the original assistant prosecutor assigned to the case, was accused of presenting perjured testimony," Worthy stated. "Every witness that testified in all the proceedings indicated that Ms. Plants instructed them to tell the truth at all times.

"The way that this case has been reported is disturbing. The actions of the defense — not this office or any of our witnesses — led the press to question the character of one of my principal attorneys, Karen Plants. She is known throughout the criminal justice system as a lawyer of high integrity and competence. When questioned about this matter, I asked that some members of the press wait until the whole truth could be told as the prosecution would not and could not join the further exploitation of the facts of this case before its resolution. Not only was Ms. Plants vindicated, it was shown that it was Mr. Aceval was the one engaging in, supporting and encouraging perjury in a grand scheme. He was caught and pled guilty to these charges. Even though this matter got ugly at times, the truth has prevailed, as I knew it would, and once again, justice has been served. Justice can sometimes be slow, but we are patient and confident that it won out."

Calling the press release issued Monday "bizarre," **David Moffitt**, one of Aceval's attorneys, tells News Hits he thinks Worthy's statement is a "whitewash."

As we noted in our original story, other options were available to prosecutor and judge. One would have been to declare a mistrial. Waterstone could also have put a stop to any improper questions from the defense by citing them for contempt and issuing fines or putting them in jail. To allow tainted testimony to go before a jury uncorrected, University of Michigan law school professor **Bridget McCormack** told us back in May, is "outrageous." She said at the time the matter warranted investigation by a special prosecutor.

Worthy wasn't available for comment after issuing her statement, which is too bad, because she carefully avoids addressing the central issue. Plants may, as Worthy claims, have instructed her witnesses to tell the truth. But, according to the unsealed transcripts of her secret meetings with Judge Waterstone, Plants herself admits perjury was committed, and both judge and prosecutor decided to let that testimony stand uncorrected.

Worthy needs to address that issue explicitly. So does Michigan Attorney General **Mike Cox**.

In an April letter to the Michigan Attorney General's Office, Moffitt framed the situation this way:

"It is understood that the overwhelming number of prosecutors and judges are conscientious and earnest public servants, and no aspersion is meant to be cast upon the many WCPO [Wayne County Prosecutor's Office] prosecutors that were not involved and that work daily to protect our society. It is further recognized that even the involved individuals may have acted, however misguidedly, in the belief that their wrongful means were justified by justifiable ends."

But breaking the law to convict a suspected criminal — no matter how heinous the crime — can never be justified. To bolster that argument, Moffitt cites an opinion handed down in the 2004 case *U.S. vs. Karim Koubriti*, which involved a metro Detroit man accused of assisting Middle Eastern terrorists. His

conviction was overturned after a Justice Department investigation indicated that a prosecutor in the case had withheld critical information from defense attorneys. That prosecutor now faces obstruction of justice charges that could put him in prison for up to 30 years.

In the Koubriti case, U.S. District Court Judge **Gerald Rosen** issued an opinion stating: "Although prosecutors and others entrusted with safeguarding us through the legal system clearly must be innovative and think outside the conventional envelope in enforcing the law and prosecuting terrorists, they must not act outside the Constitution."

Judges and prosecutors and cops swear to uphold the law. Our legal system is based on the belief they will do just that. If they don't, and are allowed to get away with it, the compact that holds things together falls apart. Which is why prosecution is essential if they appear to have committed a crime, just like any other alleged felon.

Otherwise, what is the deterrent?

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