Corruption confusion, pt. 2

By Dan Lawton

This is the second of a two-part series concerning the San Diego "Strippergate" case.

LAST IN A TWO PART SERIES

Part one appeared on Nov. 15. The series is collected at www.dailyjournal.com.

Why judicial review didn't mean justice in the "Strippergate" case.

Prosecutors are quick to say Ralph's case got a lot of judicial review, including at the 9th U.S. Circuit Court of Appeals. And they are right. But justice did not follow from that judicial review. This is because of the reality of appellate review, whose rules make it hard for an innocent defendant to get relief from a false conviction. The "harmless error" doctrine is one such rule. It bars relief even for constitutional violations if the court can find evidence of guilt that supposedly makes the error "harmless." The 9th Circuit invoked this rule in Ralph's case, holding that prosecutor Michael Wheat's blatant reference to Ralph's silence at trial, though a Fifth Amendment violation, was "harmless." An appellate court can't possibly know if such things are "harmless" without being in the jury room and viewing the impact of the violation for itself. This is impossible, of course. And so the court's ivory-tower guess as to the true impact of the violation substitutes for a retrial, or an outright reversal. The upshot is innocent men like Ralph Inzunza wind up in prison despite seemingly exhaustive appellate review. They receive the appearance of due process, a sort of assembly-line justice — but not real justice.

Systemic hypocrisy and the damage done.

Juxtaposed with our current system of campaign finance, the Inzunza case leaves the public with contempt for that system. Individual donors to federal candidates must abide by a $2,500 cap per election. But, if you're Sheldon Adelson, who cares? All you need to do is set up a "Super PAC," which can take unlimited contributions, then use the cash to support the candidates you want to win and do your bidding. So-called 501(c)(4) groups need not even disclose their contributors. And so those contributors stay anonymous, with no public scrutiny at all. This is even as they invisibly dump millions of dollars in cash into the candidates of their choice. This system blinds any prosecutor (and voters) from learning of any quid pro quo between institutional donors and the elected recipients of their cash. Judge Richard Posner describes it as "legal corruption" — a regime which allows "wealthy people [to] essentially bribe legislators." Whatever your political affiliation, no fair-minded person can view such a system except with disgust.

Disgust, too, is what any fair-minded person should feel for behavior of prosecutors in cases like "Strippergate." As a college student, I had an idealized vision of all federal prosecutors as professional, honest champions of justice. I know no private-bar lawyer who has that vision anymore. This is because lying, cheating and win-at-all-costs tactics that have poisoned too many prosecutions (like that of the late Sen. Ted Stevens). The government pursued exactly these tactics in "Strippergate." Prosecutors withheld *Brady* material until after trial. They coached witnesses Galardi and John D'Intino to lie (which they dutifully did), or at least tolerated it. They commented on Inzunza's silence during closing argument, a brazen Fifth Amendment violation. The courts supposedly are there to police such misconduct. But, instead of policing it, the courts in "Strippergate" told us, "nevermind — Inzunza was probably guilty anyway." It is too bad.

Nine years ago, then-U.S. Attorney Carol Lam piously pronounced her office the guardian of "open and honest government" in San Diego. Today, Lam works as general counsel to Qualcomm, a local company which makes cell phones. I wonder if, in her new role, Lam counsels her bosses on the pitfalls of donating large sums of cash to government officials who are in a position to act on matters affecting Qualcomm business. After all, Qualcomm and its political action committee, QPAC, donated hundreds of thousands of dollars in "campaign contributions" to U.S. Representatives and Senators in the most recent election cycle. These included U.S. Rep. Zoe Lofgren, who got $2,000 from QPAC in the most recent cycle. That is the same Rep. Lofgren who is the sponsor of a bill called the "Wireless Tax Fairness Act of 2011," which would prohibit state and local governments from imposing taxes on cell phones for the next five years. Earlier this year, the bill passed the House with strong support, including that of speaker John Boehner. Boehner got $6,000 from QPAC. Sen. Orrin Hatch is a ranking member of the Senate's Finance Committee, which now has responsibility for the bill. He got $7,000 from QPAC. Public records show that Lofgren's, Boehner's and Hatch's support of the "Wireless Tax Fairness Act" came "at or near the same time" as their receipt of QPAC's "campaign contributions." It follows that, by the courts' standard in the "Strippergate" case, they did essentially the same thing Ralph Inzunza did. The only difference is this: Ralph is a convicted felon, serving time in prison, 400 miles from his wife and children. Lofgren, Boehner, and Hatch are at liberty and go home to their families every night.

Companies and wealthy individuals that pay to play in our current system of campaign finance can rest easy. But no one who honestly looks at Ralph Inzunza's case will ever rest easy. This is because, in the end, the only thing that mattered was the government's desire to ruin him and his colleagues at any cost — and the courts' indifferent complicity in the cheating and hypocrisy that made it possible.

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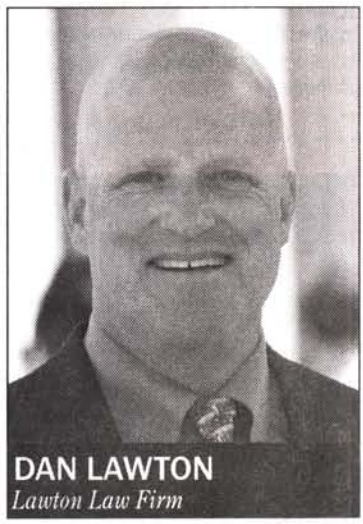

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