

IS PERJURY CONDONED?

(2010 revision)

By Maurice L. Harris

In California there is a penal code that states in part that perjury in a capital case, that results in an execution, is also a capital crime. (Penal code § 128) Therefore during the new trial portion of my trial I asked for permission to recall a witness that I knew to be lying, in hope of using this penal code to elicit the truth before it was too late:

"The Constitution required a prompt pretrial investigation of the integrity of the government's evidence before the witness were called to the stand. This requirement is not satisfied by a tardy evidentiary hearing after the fact....it is not unlikely now that the 5th Amendment will shield them from the inquiry....By committing the witness under oath to a certain story, an admission now of untruthfulness might unveil a crime."

- Northern Mariana Islands v. Bowie, C.A.9 (2001) 243 F.3d 1109,@ 1123.

Permission was granted, however, the detective in charge was successful at sheltering this witness from the hearing, thus thwarting my ability to confront the 'untruthfulness' of that 'certain story.' Since then I have constantly wondered, 'How could he get away with this?'

Over the years now (since '96), I have sat on death row with plenty of time to contemplate this matter. I have started to see it from the detective's perspective, especially after coming across the following quote:

"If you want to understand the causes that existed in the past, look at the results as they are manifested in the present. And if you want to understand what results will be manifested in the future, look at the causes that exist in the present." (The Writings of Nichiren Daishonin, Vol.1,p.279)

So I used this formula of looking into the past to see how the manifestation of 'allowable' perjury came to be in the present.

I know that any organization takes it cues from the top, whether they are Microsoft, media outlets, or Enron. The justice system is not any differ-

ent. At the top of this system, we have the courts (up to the Supreme Court), & the legislature (up to the White House).

Constantly we continue to see leaders & their friends in high positions of governmental power commit perjury, mislead, &/or obstruct investigations. These individuals usual receive little or no punishment. This being said, here is a quick study of how our government dealt with some high profile perjurers of the past.

1. John Ehrlichman: Former domestic policy advisor (perjury & obstruction in '75) - served 18 months.
2. Elliot Abrams: Former assistant secretary of state (2 counts of misleading congress) - pardoned by George H.W. Bush in '92.
3. Lewis (Scooter) Libby: Former vice-presidential aide & highest-ranking Bush administration official (convicted for perjury & obstruction). Bush refused to rule out a possible pardon after Libby's conviction, even after stating before how he would hold anyone liable in the exposure of Agent Valerie Plame (which could've cost her life). - Bush ended up commuting Libby's sentence.

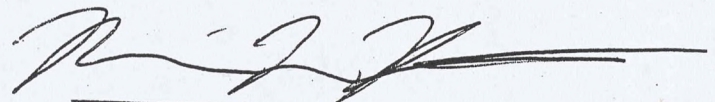
This sends the message down to the lower judicial characters that 'prosecutorial' perjurers are condoned. On the other hand, if anyone were to get a fact wrong in favor of the defensive side, these same characters will come down on them with everything from threats of harsh jail time to damnation itself.

A perfect example of using perjury to 'win at all cost' was the Duke Lacross team case a few years ago. Here, the prosecutor was trying to up his status for reelection by prosecuting members of this team for rape. There came a point during the investigation where the prosecutor knew this victim/witness was lying, or at the least, was very unreliable. One big clue was the fact this person changed her story 12 times. But instead of heeding this warning, like so many overzealous prosecutors in wrongfully conviction cases, he not only pressed forward, but put his weight behind this witness via press conferences.

Fortunately, the Duke players had enough money to fuel a campaign to expose this rouge prosecutor before the case went to trial. As a result a special prosecutor was assigned to the case, revealed the deception, dropped the charges, & recommended the original prosecutor for disbarment. The special prosecutor particularly noted how this prosecutor allowed his witness to constantly change her story while never questioning her on the contradictions. ('60 Minutes,' 4/15/07) This tactic is usually used to be able to later claim: 'I was never actually lied to!' Luckily, the players were aware enough (& had the means to) fight back, which saved them from a for sure sentence of up to 30 years. (See '60 Minutes' above)

To cure any problem, you have to first locate the source. I state that one of the sources is the nonchalant treatment of perjury of government witnesses. We need our people (or simply those who care for a real justice system) to force the call for stiffer punishment for known perjurers, & those rogue prosecutors who protect them.

There should be a limit to the amount of times any witness will be allowed to change their statements before they become ineligible to testify. Shall they continue to be allowed to keep changing stories until they hit pay-dirt with the one the prosecutor finally agrees with?



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