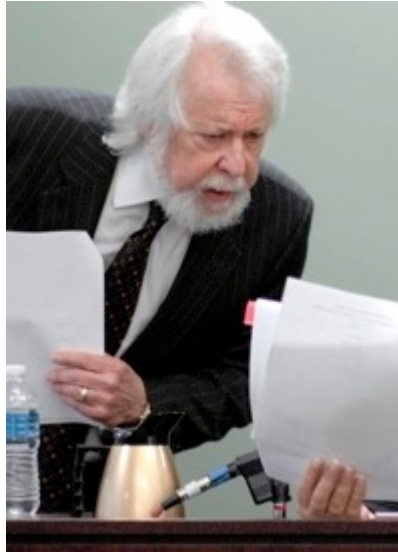




Prosecutorial Misconduct and Corrupted Justice

Prosecutorial misconduct is becoming uncomfortably familiar to Americans. The Duke Lacrosse Lynching, for example, showed how easily politicized justice or “social justice” can become injustice. As laws increasingly tend to focus on conduct which is politically incorrect, like hate crimes laws, the decision to prosecute or not likewise becomes less connected to justice and more connected to politics.

Equally troubling has been the undermining of historical views of prosecutorial ethics. Last year in *Caperton v Massey*, the Supreme Court determined that a justice on the West Virginia Supreme Court should have recused himself from hearing the appeal of this case because one of the parties to the case had just contributed \$3 Million to the judicial election campaign of the justice.



It is hard to imagine a more chilling case, though, than what happened in the 1990 capital murder trial of Charles Dean Hood in Texas. Long after the trial had ended, it came out that the trial judge and the prosecuting attorney were in the middle of a long-term extra-marital affair, which included the time period of the murder trial.

The judge and prosecutor were finally forced to admit the affair, after being questioned under oath in 2008. The United States Supreme Court last week denied Hood a new trial, because he had not raised the relationship between the judge and the prosecutor in a timely fashion — although Hood could not have proven the relationship until long after the appeal time had run.

Along with a possible miscarriage of justice, the case also has the troubling quality of throwing into doubt the guilt of a man who was probably guilty. Supreme Court decisions under the Warren Court created so many artificial barriers to proving guilt that the truly guilty have often escaped justice because they were not “Mirandized” or the search and seizure which uncovered indisputable evidence of guilt was not conducted with a search warrant or probable cause.

Americans understand justice in court. Justice should be truly impartial. It should be based upon constitutional laws which are evenly applied. Juries should see all the evidence, except for what is obviously going to be unduly prejudicial. And lawyers arguing cases before the court should not be sleeping with the trial judge.

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