JONATHAN TURLEY

Res ipsa loquitur ("The thing itself speaks")

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Al-Arian Prosecutor Gordon Kromberg Profiled

Published 1, July 28, 2008 Criminal law , Society

Josh Gerstein has published a profile of lead prosecutor Gordon Kromberg, including reference to our filing alleging selective and malicious prosecution. The government will file a response to that motion, and the other motions, today in the United States District Court for the Eastern District of Virginia.

My colleagues (Will Olson and PJ Meitl) and I will also be filing our response to the government's motion in limine today. For those motions, click here.

Last night, Judge Brinkema ordered the prosecutors to supply records on all past criminal contempt prosecutions — an order obviously linked to the selective prosecution charge.

For the full story, click here.

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26 Responses to "<mark>Al-Arian</mark> Prosecutor Gordon Kromberg Profiled"

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1. **1** zakimar 1, July 28, 2008 at 7:51 am

   The government should know that when they appoint Zionist Jews that this kind of thing will happen. Or maybe that's why the appoint Zionist Jews. Bush had more of them around then even Clinton. Why not appoint KKK members to oversee programs for black youths or rapist ex-cons to staff shelters for battered women?

2. **2** zakimar 1, July 28, 2008 at 7:55 am

   And before I get the usual propaganda about being an "anti-Semite", let me point out that I do not and have not made ANY "hateful" comments about the "Jewish people". I have pointed out the hateful things SOME Jews do and I make no apologies for hating Zionists. Zionism is Apartheid which is Racism and should be hated by all decent people. No person is better than any other and should be given special rights in this life or the next solely based on their race.

   Unfortunately, some races, religions and groups believe in hate and Zionists belong to this group. I am not surprised that many Americans and the US Government sees nothing wrong with Zionism because many Americans have no regard for their own indigenous people (that's Injins to those that don't know what indigenous is), didn't oppose Apartheid in South Africa and until a few months ago had Nelson Mandela on their terrorist list for decades.

3. **3** Jill 1, July 28, 2008 at 7:57 am

That's an excerpt from the upcoming book, Profiles in Mendacity, one in a series called, Lackies for Evil, isn't it?

4. [4](#) mespo727272 [1, July 28, 2008 at 8:43 am](#)

JT:

"The government will file a response to that motion, and the other motions, today in the United States District Court for the Eastern District of Virginia."
****

Please post those replies. Not everyone has Pacer and it should make fascinating reading. I do love a good fantasy.

5. [5](#) jonathanturley [1, July 28, 2008 at 9:59 am](#)

Mespo:

I shall do so unless it is under seal. Kromberg has previously used seals and ex camera filings to block both public and opposing counsel from reviewing controversial material.

JT

6. [6](#) mespo727272 [1, July 28, 2008 at 10:03 am](#)

JT:

That's as dirty as it gets in a simple contempt proceeding. Given his usual convolutions, I wonder if he'll file it in pretzel bag.

7. [7](#) [rafflaw](#) [1, July 28, 2008 at 10:23 am](#)

Mespo,

don't give pretzels a bad name by aligning them with the prosecution in this case. Good luck Professor Turley.

8. 8 mespo727272 1, July 28, 2008 at 10:28 am

I read the article and noticed that Mr. Kromberg has used the convict and perjury trap before in his "Paintball 11″ case. I also note with some amusement this passage from the profile:

"Even Mr. Kromberg's critics acknowledge that he has a strong record of prevailing in court. Last month, a three-judge panel of the 4th Circuit unanimously upheld Benkahla's convictions and rejected the arguments that he was unconstitutionally put on trial twice for the same crime."

Most prosecutors win about 93% of their contested cases, however in my experience a prosecutor losing before the ultra-conservative 4th Circuit wold be more of an anomaly. With few exceptions such as Judge Roger Gregory, the Court is decidedly pro-government, pro-business, and anti-claimant and defendant. To win here for a prosecutor is akin to the results for Russian Olympic contestants when judged by East Germans officials during the Cold War. They never lost with them.

9. 9 rafflaw 1, July 28, 2008 at 11:12 am

Mespo,
You are right that it is hard to lose when the court is stacked in your favor. It is also easier to get a conviction when you can use "double secret probation" type evidence that even the defense is not "qualified" to see, even though it is being used against him/her. It does seem that Mr. Kromberg is working hard to get a pound of flesh. I think it is correct that Kromberg is still upset over his Florida loss and is doing everything in his power to make this defendant pay for his loss. It would be good for the justice system as a whole for Kromberg to take one on the chin here.

10. 10 mespo727272 1, July 28, 2008 at 11:18 am

rafflaw:

"I think it is correct that Kromberg is still upset over his Florida loss and is doing everything in his power to make this defendant pay for his loss."
****

I think the point is that it wasn't 'his' loss but the other USA's office in FLA's loss. Hence his "bonanza" comment. (Who says "bonanza" anymore anyway–Lorne Greene?) It's looks like the "I'll show you" who has the better office mentality. It is amazing how personalities rule the world instead of good old reasoning and common sense mixed with some iota of compassion or, if you like, proportionality.

11. [11](#) [rafflaw](#) [1, July 28, 2008 at 11:22 am](#)

Mespo,
You are correct that the "loss" was on the head of the other office,but this Kromberg guy appears to be a radical, out of control, U.S. Attorney. Since Kronberg likes to quote rock bands from the past, I think the best way to describe him is to say he is "on a mission from God". And his mission isn't just to pay the taxes for a Catholic school in Calumet City.

12. [12](#) [Jonathan Mark](#) [1, July 28, 2008 at 4:16 pm](#)

"""Most prosecutors win about 93% of their contested cases,"""

What if 93% of defendants in contested cases are, in fact, guilty as charged?

In that case, the fact that prosecutors almost always win is the way it ought to be. The courts are SUPPOSED to convict the guilty. The above statistic would only be a cause for concern if defense attorneys could show that less than 93 percent of defendants were guilty.

13. [13](#) Patty C [1, July 28, 2008 at 4:55 pm](#)

Right - meaning Kromberg, doesn't get 'extra points'
- for the 93% statistic.

And what if 7% aren't, in fact, guilty as charged?

14. [14](#) mespo727272 [1, July 28, 2008 at 5:09 pm](#)

Jonathan Mark:

"In that case, the fact that prosecutors almost always win is the way it ought to be. The courts are SUPPOSED to convict the guilty. The above statistic would only be a cause for concern if defense attorneys could show that less than 93 percent of defendants were guilty."
****

This sentence would be my model of exactly what the system is not about:

First assuming that prosecutors should always win presupposes that the cops almost always get it right and that the accused are almost always guilty. That is a non-sequitur from the conviction rate since it presupposes guilt ("ought to be"). I suggest that few things, if any, in human affairs are 93% pure except maybe Ivory soap.

Second, the citizens through their counsel need prove nothing. The burden rests squarely upon the government to prove its assertions that so many are guilty and that the process is fair. They're here for us; we're not here for them.

15.   15 Jonathan Mark 1, July 28, 2008 at 11:39 pm

""'Right - meaning Kromberg, doesn't get 'extra points'
- for the 93% statistic.

And what if 7% aren't, in fact, guilty as charged?""'

Since the 7% are acquitted, it would be good if this acquitted 7% weren't, in fact, guilty as charged.

The system is supposed to acquit the innocent.

16.   16 Jonathan Mark 1, July 28, 2008 at 11:52 pm

""'First assuming that prosecutors should always win"""

I didn't assume that. I merely stated that complaining that prosecutors win 93 percent of the time isn't sufficient to show wrongdoing, because you haven't shown that less than 93 percent of defendants are guilty.

""'presupposes that the cops almost always get it right and that the accused are almost always guilty.""'

I don't presuppose that. The judges and juries find the accused are guilty 93 percent of the time. Unless someone can show that any of the 93 percent are in fact innocent I see no cause for concern.

""''That is a non-sequitur from the conviction rate since it presupposes guilt (''ought to be'').''''''

I haven't presupposed anything. You are presupposing that the percentage of defendants who are guilty is less than 93 percent. You have not shown what percentage of the convicted are in fact guilty.

""''I suggest that few things, if any, in human affairs are 93% pure except maybe Ivory soap.''''''

What does that mean? Baseball players almost always have a fielding percentage of much greater than 93 percent. Pharmacies dispense the correct medication more than 93 percent of the time.

Lots of events have probabilities greater than .93. Only an innumerate person would claim that probabilities of 93 percent don't occur.

""''the burden rests squarely upon the government to prove its assert geions that so many are guilty and that the process is fair.''''''

And if they were to prove guilt in fair trials 93 percent of the time, would you have a problem with that? You have not shown that anything wrong has occurred.

17. [17](#) Patty C [1, July 28, 2008 at 11:57 pm](#)

Yeah - so what was your point - ???

Do you understand our system of jurisprudence, as mespo explained it,
or not?

You at least understand the variable could slide, plus or minus
out of a possible 100% - either way, right?

Kromberg is no 'star' is the point!

18. [18](#) mespo727272 [1, July 29, 2008 at 12:15 am](#)

Jonathan Mark:

Patty C has done a nice job of distilling the point. My problem is that you obviously do not mean the words you use. When you say that prosecutors "ought to win" that clearly means that either you are a fascist and believe the government is always right or that 93% of accuseds are always guilty on average. Both positions are naive. Maybe you believe that the world works in reverse and that the conclusion reached justifies the premises. In my world, we work forward to say that the premises must suggest the conclusion before we consider the conclusion valid.

On your point that "[u]nless someone can show that ANY of the 93 percent are in fact innocent I see no cause for concern" (emphasis added) the Innocence Project has shown that scores of persons (215) CONVICTED in this system are factually innocent of the crime–even 16 on death row, and others serving life sentences. Wonder how many they missed? The question is does that give you cause for concern?

If you'd rather know than guess what you're opining about, see the website:

http://www.innocenceproject.org/about/

19.   19 Jonathan Mark 1, July 29, 2008 at 7:40 am

""""Yeah - so what was your point - ???""""

You cannot explain something to someone who does not wish to understand.

There may also be a problem of innumeracy here. But let's try again.

Let G = the percentage of defendants who actually, in real life, engaged in the criminal activity that they were charged with.

Let us also stipulate that $0 < G < 100$

Let C = the percentage of defendants who are convicted.

Ideally C <= G. The percentage of convicted defendants ought to be less than or equal to the percentage of guilty defendants.

However, unless we know what G is we cannot say whether C is too large. We cannot say that 93 percent is too large a value for C, or that it is unfair for defendants to be convicted 93 percent of the time.

20. **20 Jonathan Mark** 1, July 29, 2008 at 7:51 am

""""When you say that prosecutors "ought to win" that clearly means that either you are a fascist and believe the government is always right or that 93% of accuseds are always guilty on average.""""

I said that prosecutors ought to win in cases where the defendants, in fact, committed the crime. That is a normative view and not particularly a controversial one.

""""In my world, we work forward to say that the premises must suggest the conclusion before we consider the conclusion valid.""""

Agreed. That is the purpose of a trial. If the conclusion in 93 percent of cases is that the defendant is guilty then we need more information to say whether that number is too high, just right or too low. In the case of OJ it was too low.

""""On your point that "[u]nless someone can show that ANY of the 93 percent are in fact innocent I see no cause for concern" (emphasis added) the Innocence Project has shown that scores of persons (215) CONVICTED in this system are factually innocent of the crime–even 16 on death row, and others serving life sentences. Wonder how many they missed? The question is does that give you cause for concern?""""

Of course innocent defendants are sometimes convicted, and guilty defendants (OJ) are sometimes acquitted. Of course people should be concerned about convictions of the innocent. However, that says nothing about what percentage of defendants actually engaged in the criminal activity they were charged with.

If the percentage of defendants who engaged in the criminal activity they were charged with is G and the percentage convicted is C then ideally G >= C.

Without additional information there is no way to say whether 93% is too high or too low a number for C.

21. **21** mespo727272 1, July 29, 2008 at 8:07 am

Jonathan Mark:

I guess "any" means "some" to you. I guess "ought" means "if the evidence proves it'" and finally I guess 215 convictions of innocents means absolutely nothing to you. You are, however, quite generous with other people's lives and liberties.

22. **22 Jonathan Mark** 1, July 29, 2008 at 10:34 am

The 93 percent was your number. You complained that prosecutors win 93 percent of the time.

""""and finally I guess 215 convictions of innocents means absolutely nothing to you. You are, however, quite generous with other people's lives and liberties."""

We agree that some innocent defendants are convicted, and some guilty defendants (e.g., O.J. Simpson) are acquitted.

Nothing that you have written shows that the percentage of defendants who in fact committed the crimes they were charged with is more or less than 93 percent.

Nothing that you have written shows that prosecutors did or did not prove guilt in 93 percent of cases.

Nothing that you have written shows that the percentage of defendants who receive guilty sentences ought or ought not to be 93 percent.

23. **23** Jill 1, July 29, 2008 at 10:55 am

Jonathan,
Do you know of any recent studies that have this info? I will try to look this up but was hoping you might know about them. If they haven't been done, it would be a good thing to study.

Jill

24. **24** zakimar 1, July 29, 2008 at 1:08 pm

The fact that the US has, not only per capita, but the highest absolute prison population in the world and that that population is disproportionally Black and Latino means one of two things: Americans are a bunch of criminals; or the "justice" system persecutes as well as prosecutes.

25. **25 Jonathan Mark** 1, July 29, 2008 at 2:38 pm

I am afraid that I don't have any info on studies of how often defendants who go to trial are convicted.

I also don't have any info on how often courts render verdicts which are incorrect.

Thanks for asking.

26. [26](#) Jill [1, July 29, 2008 at 3:22 pm](#)

Jonathan,

I will see what I can find out and post back to this thread. I'm going to look for the most current, and I hope unbiased studies I can find. If you would do the same, I'd appreciate it.

Jill

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