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Here's why we need more info on judges



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I went to bed around 10:30 the night before last, the 31st, and awoke about an hour later for no apparent reason. Or maybe because I was still steamed that reporter Norberto Santana had come up to me that afternoon and said my stuff this week on the Superior Court judge race was interesting but pointless.

There are adequate safeguards against bad judges, he argued, and the electorate being rather ill-informed as to the quality of judicial candidates doesn't really matter.

As I lay in bed contemplating what it would be like to waterboard Santana, I had the presence of mind to realize that if I went online at midnight I'd have a good shot at snagging a beachfront campsite at Doheny. On the first of each month, new sites are released for reservation.

So I shambled down the hall to my computer and while I was waiting for midnight to roll around I went to the Weekly site and got sucked into Moxley's scoop on the release from prison of a 20-year-old man wrongly convicted of a carjacking in Buena Park. Besides some police and D.A. issues, defense attorney Scott Borthwick ripped into Judge Robert Fitzgerald. Borthwick says the veteran jurist (who retired almost 10 years ago but still hears cases) had bullied the defendant, James Ochoa, into pleading guilty.

Yesterday morning, I started my own reporting and finally got a copy of the seven-page complaint Borthwick filed with state judicial officials. I also called Fitzgerald's courtroom but got a "no comment."

Despite tests that eliminated Ochoa as a contributor of the DNA found on the carjacker's hat and gun, Fitzgerald had urged Ochoa to take a plea bargain that would result in two years in prison. Fitzgerald, according to the complaint, "told Ochoa that he would be sentenced to life if convicted. He told Ochoa he could count the number of acquittals in his courtroom on one hand."

Ochoa still insisted his innocence, and "from this point forward," the complaint says, "Judge Fitzgerald did everything in his power to actively sabotage Ochoa's case." Borthwick detailed instances in which Fitzgerald closed off testimony or evidence that would have favored Ochoa. Finally, a few days later, in mid-trial, Ochoa caved and took the plea bargain. That was Dec. 8, 2005. Ochoa was sent to Centinela State Prison in Imperial.

Fast forward to last month. Investigators finally matched the DNA to another man, whom they interviewed. It became clear Ochoa was not involved. He was released from prison and driven back to O.C. by two of **T-Rack's** investigators after they bought him some clothes at Wal-Mart.

Borthwick had filed his complaint on Fitzgerald right after the trial last December. In February, the Judicial Council replied that it and O.C.'s presiding judge had reviewed the transcripts, did a "thorough investigation" and found "insufficient evidence of judicial misconduct ... that would warrant further action." Lawyers, help me out here, but that doesn't mean they didn't find any evidence, right? Borthwick told me yesterday that he now plans to refile the complaint even if all it amounts to now is "an I-told-you-so."

Presiding Judge **Nancy Wieben Stock** is out of town, but I left the following question for her with her spokeswoman: "In light of the fact it's now been proven Fitzgerald sent an innocent man to prison, do you still intend to assign him cases?"

I also want to ask her if she's concerned about Fitzgerald's track record of sarcastic comments from the bench and general judicial weirdness, including a poem he once wrote for a man he was sentencing to life in prison: "One day you will die/A funeral your warden will hold/For you will serve your entire natural life/And not be paroled." And just a week after he sent Ochoa off to prison, the conviction of a man he'd sentenced to 84 years to life for murder was overturned because Fitzgerald had failed to read the jury basic instructions about the presumption of innocence, the burden of proof and reasonable doubt.

If Stock will talk to me when she returns, I will print her thoughts in detail.

Anyway, after finishing Moxley's story the other night, I went to the state parks Web site and got my Doheny spot for next spring. Then I went to my email program and sent Santana the Moxley piece with this note: "This is why it matters."

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