

Daily News

# D.A.'S OFFICE IGNORED WARNINGS ON SCANDAL DEPUTY D.A. SENT WARNINGS ABOUT BAD COP.

Article from:

Daily News (Los Angeles, CA)

Article date:

March 19, 2000

Byline: Greg Gittrich and Beth Barrett Staff Writers

The **District Attorney's** Office ignored early signs of corruption in the LAPD Rampart Division, despite the repeated efforts of one prosecutor to expose the actions of rogue cops more than a year before the scandal was uncovered, the Daily News has learned.

On at least two separate occasions in 1997, **Deputy District Attorney Michael Kraut** sounded alarms about the dishonesty of Officer Rafael Perez, now the central figure in the massive LAPD corruption scandal, according to confidential documents and interviews.

The prosecutor's warnings came six months before Perez stole nearly \$1 million worth of cocaine from a LAPD evidence room, triggering what would become the largest police corruption probe in city history.

Kraut's first attempt to notify his supervisors about Perez has been so widely reported that it is commonly referred to as "the Kraut memo." But the exact reasons behind the memo, the validity of Kraut's concerns about Perez, and information about how senior prosecutors addressed Kraut's concerns had not been clear.

The Daily News has learned that the tightly guarded memo was not Kraut's only effort to direct the attention of senior prosecutors toward Perez. He made at least one other attempt.

Disturbed by Perez's actions in another criminal case, Kraut again forwarded his concerns about the dirty cop up the chain of command only weeks after he wrote "the memo," according to sources and confidential documents.

However, Kraut was ignored and rebuked by his superiors, an informed source said.

When contacted recently, Kraut referred to the Daily News' findings as a ``pending criminal investigation."

Bound by his ethical duties as a lawyer and prosecutor, Kraut said he would not discuss the matter. He declined further comment.

**District Attorney** Gil Garcetti was unavailable to comment Saturday. His office assigned Head **Deputy District Attorney** Sally Thomas to speak about the issue.

Thomas said the **District Attorney's** Office has been conducting an internal review of the two cases that raised Kraut's suspicions. Thus far, there is no indication that a more thorough review of the cases would have led to exposing Perez any earlier, she argued.

Despite those assertions, the failure of the **District Attorney's** Office to immediately inform police about the possibility of Perez being dirty, based upon Kraut's concerns, has contributed to LAPD Chief Bernard C. Parks' and other investigators' mistrust of the county prosecutorial office, sources said.

Kraut's actions are the most specific examples yet known that give credence to serious questions about whether the **District Attorney's** Office should have known that Perez and other cops were framing dozens of suspects and testifying falsely to send them to prison.

``This guy (Kraut) did what he was supposed to do. He thought Perez was a bad cop and he told his supervisors. They ignored him," a source said.

``If they (the **District Attorney's** Office) had done their job, there's a good chance Perez gets nailed before he did. But they sat on it."

To date, Garcetti has rejected any criticism of his office and refused to carry out an office-wide internal investigation to determine how potentially hundreds of people could have been prosecuted and convicted based upon false evidence and testimony without raising the suspicion of anyone in his office.

Garcetti has come to refer to the scandal as the Los Angeles Police Department's ``mess."

He has turned down repeated requests to release ``the Kraut memo." While Garcetti has confirmed that Perez lied in the criminal case that first raised Kraut's concerns, he has vaguely criticized the rationale the prosecutor used.

#### LAPD BRASS NEVER TOLD

LAPD officials said Saturday prosecutors did not notify them of Kraut's concerns in 1997.

Police only became fully aware of his warnings after Perez's arrest in August 1998. Prosecutors turned over the information last year, around the time when Perez agreed to become an informant in exchange for a lighter sentence for stealing 8 pounds of cocaine from a LAPD evidence room, sources said.

Detectives interviewed Kraut and other prosecutors late last year. The probe is ongoing and LAPD officials intend to forward information about the incidents to the U.S. **Attorney's** Office and other prosecutorial agencies.

LAPD Cmdr. Dave Kalish, the department spokesman, declined comment, citing the confidentiality of the investigation.

``Clearly, we all have learned that it would be healthy if each law enforcement agency in Los Angeles conducted a comprehensive self- analysis," Kalish said. ``If the information (raised by Kraut) is accurate, it would have been helpful and of critical importance for the department in 1997."

The LAPD and **District Attorney's** Office have been feuding for months over handling of the probe. The long-simmering tension exploded last week when Garcetti accused Parks of refusing to cooperate with his office and Parks responded by accusing Garcetti of political grandstanding and lying.

#### SPOTTING A DIRTY COP

On June 16, 1997, Kraut was preparing to give his closing argument in a cocaine case against an alleged gang member when he took the highly unusual step of asking the judge to dismiss the charges.

Kraut said he had serious concerns about the credibility of police testimony in the case. Superior Court Judge Fred Wapner granted the motion, and subsequently Kraut explained his move to his superiors in ``the Kraut memo."

Kraut has repeatedly declined to discuss why he lost trust in Perez and his testimony. His reasons remain hidden in the confidential memo.

What has been learned is that Perez recently told investigators Kraut did the right thing. The case was tainted.

Perez was the key witness and testified shortly before the charges were dropped on June 16, 1997. He said he and his partner saw Gutierrez throw a white ``bundle" to the ground in an alley.

``I picked it up, opened it up and noticed it contained - I don't know - maybe about 10, flat, off-white rocks, which in my expertise, were . . . rock cocaine," Perez testified.

Kraut's concerns were not related directly to the evidence, sources said. Rather, he had proof that Perez was lying about who his partner was on the day of the arrest and other circumstances surrounding the bust.

In a sworn statement to task force investigators last September, Perez admitted that he planted drugs on Gutierrez, according to confidential transcripts obtained by the Daily News. He described his relationship with Kraut as a ``pissing match."

According to **District Attorney's** Office policy, Kraut was required to get approval from his supervisor, Head **Deputy District Attorney** Richard Sullivan.

Sullivan approved Kraut's decision and reviewed ``the memo" and the case file, but determined he didn't need to take any further steps, Thomas said.

Sullivan, who could not be reached for comment, did not notify police about the case, LAPD officials said.

According to sources and confidential documents, Kraut no longer trusted Perez. He would soon completely lose faith in him.

NOT AGAIN ...

Not long after Kraut outlined his reasons for backing away from the Gutierrez case, he reviewed the file of another failed criminal case that one of his fellow prosecutors had handled, sources said.

The file revealed that only 10 days after the Gutierrez case had been dismissed, another judge threw out drug charges against a defendant because the prosecutor could not proceed within the court-mandated time limit.

Again, Perez was involved.

Court records show Perez and his partner Nino Durden arrested alleged dope dealer Victor Perez - no relation to the officer - on June 5, 1997.

Six days later, Victor Perez posted \$10,000 bail. Over the next two weeks, things proceeded normally and **Deputy District Attorney** Janis Johnson was ready to prosecute the case as scheduled on June 27, 1997.

But on the day of the preliminary hearing, the case fell apart when the officers reported the drugs confiscated during the arrest could not be found in the evidence room.

``Perez told her that they had looked for two hours and couldn't find the drugs," a source said.

To Johnson, who could not be reached for comment, it likely appeared as an unfortunate mix-up. But when Kraut saw the file later and went over details, sources said, he called the LAPD and asked about the missing evidence.

“They put him on hold for a few moments, came back and told him it was sitting there. It was never missing,” an informed source said.

Believing Perez had again lied to prosecutors and botched a criminal conviction, Kraut wrote a note outlining his concerns and placed it in the Victor Perez file, sources said.

Just as with the earlier memo, Kraut sent the file to Sullivan, his supervisor. The file sat on Sullivan's desk for about a year, sources said.

“It became an office joke,” an informed source said. “The file just sat there and no one did anything about it until after Perez was arrested.”

Thomas said her review of the case has found no note.

“If someone is in receipt of any such note,” she said. “I'd certainly like to see it.”

Victor Perez was later re-tried on the drug charges. The second time there was no problem finding the evidence. He was sentenced to 135 days in prison, Thomas said.

#### AN OUTSIDE REVIEW?

In April 1998, Thomas said she was put in charge of the prosecutorial division where both the Gutierrez and Victor Perez cases were handled.

Upon her recommendation a few months ago, Thomas said, Garcetti ordered an internal review of the cases to determine if they were handled properly.

Thus far, Thomas said, she believes that Officer Perez would not have been nabbed any earlier if the Kraut warnings were handled differently.

If she found a note from Kraut to Sullivan regarding the Victor Perez case that didn't contain any startling new information, it would not change her assessment, she said.

Thomas said the office's current policies have been working well to catch dirty cops.

“Unfortunately, because we are trying to maintain the confidentiality of the investigation, it may have appeared that we were not sharing information,” Thomas said. “That may have appeared sinister or negative. However, we have been paying attention and what we are doing is continuing our effort to see if there is any way to improve procedurally (within the office), which is a positive thing.”

“That is exactly Mr. Garcetti's directive,” she said.

Since being taken into custody in August 1998, Rafael Perez has told investigators that he and other cops shot at least one unarmed suspect, brutally beat several people and routinely framed suspected gang members.

Some 40 criminal convictions have been set aside and hundreds more are expected to be overturned. At least 20 cops either have been fired, suspended, or have resigned. Administrative disciplinary hearings have been scheduled for many of the cops, including Durden.

The charges against Durden include his involvement in the case against Victor Perez. Kraut is expected to testify about the case during Durden's LAPD Board of Rights hearing later this year.

Calls continue for an outside review of the LAPD, but there has been significantly less pressure for a review of the **District Attorney's** Office.

“We haven't seen any prosecutorial misconduct. We haven't seen any misconduct by anyone (in the D.A.'s Office),” Garcetti told Daily News editors and reporters shortly before the March 7 county primary.

Garcetti ran second to Head **Deputy District Attorney** Steve Cooley in the primary and now must face a runoff in November.

During his meeting at the Daily News, Garcetti maintained internal reviews of his office's prosecutorial decisions are done at “every step.” Therefore, he said, he sees no reason for a special office-wide internal review or an outside examination of the law enforcement agency.

“When I hire people I tell them what their obligation is,” he said, banging his hand on the desk. “When I meet with my **deputy** in charge, head deputies, supervisors we continue to talk about our ethical responsibilities.”

“I am very confident there is not a problem within our office in this area, just talking to the people getting the feedback. I talk to a lot of people in our office. I get a lot of information. . . . I know the checks and balances.”

## RAMPART SCANDAL TIMELINE

More than a year before LAPD investigators arrested rogue cop Rafael Perez, key figure in the Rampart Division scandal, a **deputy district attorney** raised serious questions him but no action was taken.

- November 1996: Perez arrests Ubaldo Gutierrez, claiming he had 10 rocks of cocaine on him.

- June 16, 1997: **Deputy D.A. Michael Kraut** gets the charges thrown out after losing confidence in Perez's testimony. Case is thrown out. He writes a memo to his supervisors which has never been released.
- June 27, 1997: Cocaine charges against suspect Victor Perez are dismissed after Officer Perez tells prosecutor that the evidence was lost. Kraut reviews case and finds Perez's story to be bogus and so advises his superiors.
- March 2, 1998: Officer Perez steals 8 pounds of cocaine from an LAPD evidence room. He is arrested six months later.
- September 1999: Perez agrees to cooperate with investigators in LAPD corruption probe in exchange for a lighter prison sentence. LAPD detectives eventually learn about Kraut's concerns and interview him.
- Sept. 24, 1999: Perez tells investigators drugs were planted on Gutierrez.
- Feb. 25, 2000: Perez is sentenced to five years in prison.
- March 18, 2000: LAPD officials say if they had known about Kraut's concerns earlier, the information likely would have been of "critical importance" and might exposed Perez before he stole the cocaine.