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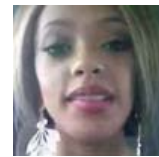
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Alejandro Perez verdict: A stunning rebuke of Carol Chambers' death-penalty chase?

By Alan Prendergast Wed., Feb. 2 2011 at 12:59 PM
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Last week's acquittal of Alejandro Perez in the murder of another inmate at the Limon Correctional Facility provides fresh ammo for critics of Eighteenth Judicial District Attorney Carol Chambers, whose determination to seek the death penalty for a prison gang homicide has resulted in a six-year debacle of prosecutorial missteps and defeats. It's tough enough to get a death-penalty verdict in Colorado. It's even tougher when the case is so troubled you can't get a conviction to stick.



Alejandro Perez

Chambers' office had initially sought the death penalty for Perez and co-defendant David Bueno in the 2004 stabbing death of Jeffrey Heird. The decision was controversial from the start, since no state prosecutor had ever sought execution in an inmate-on-inmate killing before. Even in cases with clear-cut video evidence, such as the gruesome disembowelment of Joey Estrella by cellmates [William and Rudy Sablan](#) in the Florence federal pen in 1999, the jury refused to go for the ultimate penalty.

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And the Heird killing was anything but clear-cut. There was a distinct lack of physical evidence tying Bueno and Perez to the deed. The case was largely built around the testimony of competing snitches, none of them of sterling character, and murky theories about gang payback over who snitched (or failed to snitch) on whom.

But, as first reported in my 2008 feature "[Death Benefits](#)," Chambers found an unusual way to fund a capital case against Bueno and Perez -- an obscure statute that allowed her to bill the Department of Corrections for the expenses (and even some of the paychecks) of her death-penalty team. That prompted defense attorney David Lane to declare, "What makes it a capital case is that Carol Chambers is making money hand over fist by pursuing it as a capital case."

Lincoln County District Judge Stanley Brinkley removed Chambers's prosecutors from the Perez case a few weeks after that article appeared, citing a range of concerns about [possible ethical violations](#), from failing to disclose conflicts of interest to misleading court filings to the way the case was being funded. The Colorado Supreme Court later put her office back on the case, but the death penalty was no longer part of it. Meanwhile, Bueno's jury returned a guilty verdict but refused to impose death -- and last fall District Judge Douglas Tallman vacated that conviction, blasting the prosecution for "withholding relevant and possibly exculpatory evidence."

Chambers is now appealing that decision. In the meantime, what she has to show for many years of work and hundreds of thousands of dollars expended in state funds (for both the prosecution and defense) is exactly... nothing. Perez is slated for parole soon, while Bueno continues to serve a lengthy sentence for other crimes.

Still, chief deputy district attorney Jason Siers defends the prosecution effort. "We would not have gone to trial unless we felt we had the right guys," he says. "To say we're disappointed is an understatement. I have to think the jury just didn't feel the witnesses were credible enough."

Prosecutors presented two witnesses who claimed to have heard a scream and observed Bueno and Perez exiting the cell where Heird was killed. But other witnesses refused to testify, even when faced with contempt charges; one was assaulted in jail while the trial was underway. "The prison environment adds a certain dimension to this," Siers says. "And certainly, there was a lot of scrutiny and delay because it was at one point a death-penalty case."

Lane, who was part of the Perez defense team when it was still a capital case, says it was not only the flimsiest death-penalty case he's ever seen but the flimsiest homicide case. "For prosecutors to bring a death-penalty case and at the end of the day have it end up in an acquittal, that's virtually unheard-of," he says. "It just doesn't happen."

Speculation has limited value, but it's intriguing to ponder how such a shaky case might have been resolved if the defendants (and the entire apparatus of the death-penalty defense bar, which Chambers has denounced repeatedly) hadn't been staring at extermination from the get-go. Instead, prosecutors went to trial, relying on inmate witnesses -- who, the defense suggested, had received various breaks for their testimony --



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and a case that took years to prepare and seven hours for a jury to throw out as unpersuasive.

It's not impossible to get the death-penalty in this state when the case is sufficiently heinous; Chambers herself demonstrated this in successfully pursuing capital cases against [Sir Mario Owens](#) and [Robert Ray](#) for the 2005 murders of witness Javad Marshall-Fields and his fiancée, Vivian Wolfe.

But asking death from a Colorado jury is asking a lot. The cause, it seems, must be just. And the DA pursuing it above reproach.

"Carol Chambers is a dangerous extremist," says Lane, "who needs to be out of office."

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Jim Castle 4 months ago

Cases should not be tried in the press. It is the Court of law which should decide a man's fate and not the court of public opinion. It is also inappropriate to try and "spin" a verdict after a trial to explain away why one side lost a trial. It is even more inappropriate to infer a man is guilty after a jury of citizens unanimously acquitted him as it demonstrates a complete disrespect for our system of justice.

The law does, however, authorize fair comment by an attorney when it is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. As such I am responding to the prosecution's unfair comments and to set the record straight as one of Alejandro Perez's attorneys.

The prosecution dismisses the verdict in part based on a claim that witnesses took contempt charges rather than testify. That is true. Two witnesses took contempt charges. The first witness was a man who, through his attorney, openly admitted in court that he had perjured himself in the Bueno death penalty trial. This witness indicated that he did not wish to testify in the Perez trial and thereby implicate himself in the crime of perjury in the Bueno proceedings (in Colorado, perjury in a failed capital case can be charged as attempted first degree murder). Despite the knowledge that the witness admitted to perjuring himself in the Bueno capital trial, the prosecution made the decision to grant this man use "immunity" for any and all admissions of perjury and false statements. Although the propriety of such a decision certainly can be questioned, the prosecution should not be heard to contest the verdict on the jury's inability to hear from an immunized, perjurious witness. That witness took a 6 month contempt charge rather than expose himself to a possible prosecution for attempted first degree murder. I am confident the good citizens of Prowers County, if such witness had testified, would have rejected his testimony soundly.

The second witness was a man the prosecution openly accused of conspiracy in the murder and who was not provided with an attorney. Given the 18th JD DA's office penchant for prosecution in this case can anyone blame the man.

The prosecution also blames the verdict on delays. Those delays were largely the result of appeal after appeal filed by the prosecution and hearings necessitated by government failures to produce exculpatory evidence required to be produced by the Colorado and U.S. constitutions. Alejandro Perez, meanwhile, spent 7 years in solitary confinement at Colorado State Penitentiary awaiting his day in court. A day in which each of the prosecution's claims of his guilt were soundly rejected.

The prosecution also complains of the jury not hearing evidence and witnesses refusing to testify. This is true also. The prosecution successfully blocked the jury from hearing evidence which directly linked a different inmate to the Heird murder. Witnesses did refuse to testify when confronted with evidence the defense possessed which pointed the finger at them as possibly being involved in the murder. These witness absences hurt the defense much more than the prosecution.

Instead of using the post trial commentary period to complain about the jury's decision or to insinuate Perez is still guilty the prosecution instead should have used the opportunity to admit their mistake or to focus on the sadness being experienced by the Heird family at this time.

On behalf of Mr. Perez and his attorneys our only public comments were to be that our thoughts and prayers were with the Heird and Perez families at this time. The prosecution's decision to spin the verdict, however, demanded that I submit a more thorough and specific response.

Jim Castle

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Tregg 4 months ago in reply to Jim Castle

Way to keep fighting for you client even post verdict. I am proud to know you.

Tregg

1 person liked this.

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Michael Roberts ★ 4 months ago in reply to Jim Castle

Jim, thanks for posting this long and thorough take. We're going to make it an upcoming Comment of the Day. Keep an eye out for it -- and congrats.

1 person liked this.

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esteban a, martinez 4 months ago in reply to Jim Castle

Jim, excellent response.

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