The Supreme Court on Trial

By Mel Lavine

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John Thompson, a New Orleans man, spent 18 years in prison, 14 of them on death row, for a robbery and murder he did not commit. One month before he was scheduled to die, a private investigator found evidence that prosecutors had hidden which would have exonerated him.

“The D.A. Stole His Life/Justices Took His Money” is how the New York Times put it Sunday in a reprise of the case decided earlier this year by the Supreme Court. It is, in fact, an opinion piece by Lincoln Caplan, a member of the Times editorial board, criticizing sharply the 5-4 decision by the conservative majority authored by Justice Clarence Thomas.

After John Thompson was freed he won a $14 million civil lawsuit against the district attorney's office "for its gross indifference to the incompetence of the prosecutors who violated his constitutional rights," according to Caplan. But the majority on the court said no, Thompson does not have a case. The justice declared that "the D.A,'s office was not liable for failing to train its lawyers about their duty under the Constitution to turn over evidence favorable to the accused."

I'm not making this up. A moment before my eye caught the Caplan piece I thought I might say something today about the Strauss-Kahn case but then asked myself what hasn't already been said about it? Nearly two centuries ago Balzac anticipated Struass-Kahn when, he said, if you want to know how the world turns look for the money. I might have said a word about Hemingway who died by his own hand 50 years ago this month before his 62nd birthday. Remarkably, much of his work, especially the short stories, still live. But the case recycled by Caplan shook me out of my reverie.

"The lawyers," he pointed out, "had kept secret more than a dozen pieces of favorable evidence over 15 years, destroying some. But the failure to provide training, said Thomas, did not amount to a pattern of 'deliberate indifference' to constitutional rights."

In her vigorous dissent, Caplan continued, Justice Ruth Bader Ginsburg said letting prosecutors call for a death sentence without making sure they know it is their duty to turn over favorable evidence may be no less "'deliberately indifferent' to the risk to innocent lives" than a failure to train police about constitutional limits on the use of deadly weapons.

In the end, said Caplan, the ruling in the Thompson case “tore down an essential bulwark for ensuring that prosecutors are properly trained and severely diminished the right of citizens everywhere to hold them accountable. The Supreme Court’s decision to shield the district attorney’s office from having to pay a monetary award for stealing 18 years of Mr. Thompson’s life is shameful.”

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