


■ **SAFETY, SECURITY & JUSTICE**

Could Scores of Convicted Criminals in OC Get New Trials Due to Prosecutors Misconduct?



BY **NOAH BIESIADA**

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The Orange County Jail in Santa Ana on April 14, 2020. Credit: JULIE LEOPOLD, Voice of OC

A host of convicted criminals could get new trials as an ongoing scandal continues to wrap up local prosecutors for having informants question people in jail who already had attorneys and then hiding the disclosures from their defense attorneys.

The controversial practice has been under review for nearly a decade.

Last year, a [U.S. Department of Justice investigation](#) publicly concluded the program “systematically violated criminal Sixth Amendment right to counsel and Fourteenth Amendment right to due process of law.”

[*Read: [Federal Investigators Call Out ‘Systematic’ Rights Violations in OC Jailhouse Informant Scandal](#)*]

Ebrahim Baytieh, a prosecutor who District Attorney Todd Spitzer said he fired in Feb. 2022 over his failure to properly disclose informants, has since been elected an Orange County Superior Court Judge, and is facing new questions over his role in the informant program.



Senior Assistant DA Brahimi Baytieh of the Orange County District Attorney’s Office. Credit: Baytieh for Judge campaign website

A 424-page motion filed by Asst. OC Public Defender Scott Sanders on Thursday alleges Baytieh violated the rights of one of the people he prosecuted while working as an assistant District Attorney by using information from interviews with informants who spoke to defendants without their lawyers present, and then covered it up for 14 years.

The motion also alleges Baytieh failed to properly oversee the confidential informant program and could throw nearly 100 cases into question.

Baytieh was unavailable for comment on Thursday afternoon.

Voice of OC spoke with one of his court clerks, who said he was in a trial but they would pass on the message.

Baytieh refused to speak on the issue of the informant scandal during his campaign for judge last year.

Sanders argues that the OCDA cover up violates a law established by Brady v. Maryland, a Supreme Court case that requires prosecutors to not suppress evidence, and that the problem runs way beyond just one case.

“Baytieh will soon be recognized as the principal architect of an evidence disclosure disaster unlike any other in this nation’s history,” Sanders wrote. “No other state or federal court has been confronted with a comparable quantity of cases infected with discovery violations.”



Defense Attorney Scott Sanders addresses reporters at a press conference. Credit: Caroline Zhu is a Voice of OC intern. You can contact her at carolinezhu2018@gmail.com

The case in question focuses on Paul Gentile Smith, who was convicted in 2010 of having murdered a marijuana dealer named Robert Haugen and burned his corpse in 1988 – a case in which Baytieh was the lead prosecutor.

But much of the evidence from that case came from the sheriffs' department and DA's confidential informant program, which saw sheriffs' deputies and prosecutors place professional snitches alongside suspects in the county jail to elicit information without their lawyers, a fact those defendants were never informed of during their trials.

It marks another chapter in the controversial jailhouse snitch program that's plagued the OC Sheriff's Department and district attorney's office.

The Department of Justice's report directly called out Smith's treatment.

“Unbeknownst to Smith, a trio of informants awaited his arrival,” federal investigators wrote. “A.A. ended up testifying against Paul Smith at Smith's trial for Robert Haugen's murder, telling the jury about how Smith had confessed to A.A. at the Orange County Jail.”

A.A. was a pseudonym used for one of the informants in the report.

During his time at the DA's office, Baytieh was the prosecutor in charge of ensuring evidence was properly turned over to defense lawyers under the law, according to Smith's motion.

Baytieh was fired by DA Todd Spitzer in February 2022, taking a prosecutor who Spitzer once called his “ethical North Star,” and firing him for failing to turn over evidence.



Orange County DA Todd Spitzer speaks to supporters during the grand opening of the OC Republican Party's victory office in Laguna Hills on March 26, 2022. Credit: JULIE LEOPO, Voice of OC

“This decision was as a result of allegations that a prosecutor failed under the prior administration to turn over information about an informant to the defense,” Spitzer said in a statement at the time.

He won an election for judge later that year, and currently sits on the bench of the OC Superior Court, despite never answering questions about his firing on the campaign trail.

[**[Read: Santana: Did OC District Attorney Todd Spitzer Fire a Top Prosecutor to Protect Himself?](#)**]

While the original case against Smith fell apart after revelations of the evidence scandal, **[with a judge granting him a new trial](#)** and vacating his earlier conviction, Sanders is asking for the renewed case against Smith to be thrown out.

Sanders also alleges Baytieh's failure to disclose the misuse of snitches in Smith's case has tainted nearly every investigation Baytieh and the officers involved ever touched after that.

“This motion identifies 98 defendants' cases in which Baytieh violated his Brady obligations by failing to disclose evidence of the misconduct committed in Smith,” Sanders wrote. “Among the more than eight dozen

cases where Baytieh was responsible for Brady violations are 45 where the defendant was charged with murder.”

In his court motion, Sanders claims Baytieh went to great lengths to cover up any misconduct, including pretending one of the informants they used wasn’t actually an informant.

Sanders alleged that Baytieh had multiple informants speaking with Smith without properly disclosing them, and also claimed that the informants tried to coerce Smith into committing more criminal acts.

And Sanders says there could be many more cases impacted by Baytieh’s conduct.

“In sum, this phase of Baytieh’s expansion of the cover-up ... has led to Brady violations in hundreds, if not thousands of unidentified cases,” Sanders wrote.

“Baytieh knew that the misconduct his investigators committed in Smith (with his blessing) required Brady disclosures in every case where they became a witness.”

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