

mySA <https://www.mysanantonio.com/news/local/article/Judge-backs-lawyers-claim-that-D-A-in-San-11068858.php>

Ad [WOW Airline Tickets from \\$49*](#)



Judge backs lawyers' claim that D.A. in San Antonio made threats in her chambers

By **Elizabeth Zavala** Updated 10:15 pm, Wednesday, April 12, 2017



IMAGE 1 OF 5

File Photo-Bexar County District Attorney and lead prosecutor Nico LaHood, right, confers with prosecutor Jason Goss during the trial of Miguel Martinez for the January 2015 murder of Laura Carter, Wednesday, Feb. 8, 2017, in the 437th District Court in San Antonio. (Darren Abate/For the San Antonio Express-News)

A state district judge, testifying at a hearing Wednesday, backed up a claim made by defense attorneys in a murder case that District Attorney **Nico LaHood** had threatened to destroy the lawyers' practices when they told him they might raise issues of prosecutorial misconduct.

Attorney **Mark Stevens** put LaHood on the stand for more than two hours, then drew testimony from Judge **Lori Valenzuela** about an exchange last February between LaHood and the lawyers in the judge's chambers.

LaHood has denied the accusation, made in a defense motion, that he threatened to "shut down" the practices of lawyers **Joe D. Gonzales** and **Christian Henricksen** after they said they might seek dismissal of the murder charge because they were told too late about a sexual relationship between a prosecutor and a key witness three years before the killing.

The testimony Wednesday morning covered only the conversation between LaHood and Gonzales. LaHood denied threatening him.

Video: Witness takes the stand in first day of murder trial

But when Stevens, who is part of the defense team but was not in the judge's chambers when the conversation took place, asked Valenzuela if LaHood had threatened Gonzales' practice, the jurist replied: "Yes."

Asked if she considered it a direct threat by LaHood against Gonzales, the judge replied: "Yes, I did."

Stevens asked if Valenzuela thought LaHood's statements to Gonzales constituted official oppression, which is a Class A misdemeanor, and the judge replied: "I did, based on his position and statement he made. It could move to official oppression."

The courtroom was packed with lawyers who watched the judge assert that the district attorney might have committed a crime and describe behavior that appeared to violate **National District Attorneys Association** standards that say prosecutors should not express personal animosity toward opposing counsel.

The **American Bar Association**'s Canons of Professional Ethics also urge avoidance of "personal colloquies between counsel which cause delay and promote unseemly wrangling."

Stevens declined to say if he planned to file a criminal complaint against LaHood. Class A misdemeanors are punishable by a \$4,000 fine, up to a year in jail, or both.

Valenzuela recused herself from the murder case the same day defense lawyers filed the motion to dismiss the murder indictment against **Miguel Martinez**, 29.

The defense lawyers learned only after the trial started that the prosecutor who had the sexual encounter with the witness had access to their client's criminal file for a day before she was taken off the case, the motion stated.

Trying Martinez a second time would constitute double jeopardy, putting the accused person on trial twice for the same offense, the motion argued.

Senior District Judge **W.C. Kirkendall** of Seguin took over the case and conducted Wednesday's hearing.

A good deal of LaHood's testimony came in answer to Stevens' questions about news coverage of the murder case and LaHood's statements to reporters about why he wanted to personally try the case.

LaHood said he found out about the prior sexual involvement of a prosecutor with the witness, **Gregory Dalton**, days before the trial started, and said he discussed it with the chief of his ethical disclosure unit and the head of his appellate division.

Neither believed it required disclosure to the defense, he said.

"They looked it up, researched it, and it was not information that had to be disclosed," but his advisers said the information could be given to the judge "if we wanted to do something," LaHood said.

When Valenzuela learned of it, she ordered that it be disclosed to defense lawyers as a jury was being picked, the defense motion stated.

A day of testimony Feb. 8 was followed by a series of continuances and conferences in the judge's chambers before a mistrial was declared.

On Wednesday, the district attorney said he became angry when Gonzales suggested airing the allegations of prosecutorial misconduct in the news media. Stevens asked LaHood if Gonzales had "threatened first."

"He made a bad faith threat, sir," LaHood replied.

Asked about the alleged vow to shut down Gonzales' practice, LaHood said: "No, it was not said."

Valenzuela said Gonzales did not threaten to go to the news media. Asked if Gonzales appeared threatening to LaHood, she said: "In my opinion, no."

Asked how she reacted to LaHood's words to Gonzales, the judge said they "had a chilling effect on me" and prompted her to think about how the news media would cover it when it became public.

She said she imagined the headline, "DA threatens local defense attorney."

The motion did make headlines. It contained a description of an "enraged" LaHood who vowed to "shut down" the practices of Gonzales and Henricksen and "make sure they never got hired on another case again in Bexar County."

In his testimony, LaHood referred to stories in the news media about the defense allegations as a "(expletive) show."

Asked if he was enraged during the conversation in chambers, LaHood said, "No, I was angry."

Valenzuela also was asked if LaHood had been enraged, and she replied: "I think certainly some people could think that, yes."

Martinez is accused of shooting **Laura Carter**, 33, five times in the head as she sat in her vehicle in a Southeast Side neighborhood on Jan. 11, 2015.

According to the defense motion, a prosecutor assigned to the case shortly after Martinez's arrest told **Jason Goss**, an assistant district attorney, of her involvement three years earlier with Dalton, a witness who could place Martinez at the scene.

She was instructed to have nothing more to do with the case but had access to the case file for one day, the motion states.

Goss, who prosecuted Martinez in February with LaHood, gave testimony Wednesday that mostly mirrored that of LaHood's. He said he did not believe the prosecutor's involvement with Dalton was relevant and still doesn't. Though Goss said his boss was upset during the conference, he did not recall hearing LaHood threaten to "shut down" the defense lawyers' practice.

"I don't remember hearing those words," Goss said.

Henricksen testified that he and Gonzales weren't sure how to proceed when told of the prosecutor's history with the witness, and that it was LaHood who raised the option of a mistrial and choosing a new jury. The defense felt "backed into a corner," Henricksen said.

LaHood's threats made him tell his wife that night that they might have to move "because the DA is coming after me," Henricksen recalled.

Assistant District Attorney Josh Somers questioned whether Henricksen really felt threatened.

"I absolutely felt threatened," Henricksen replied.

ezavala@express-news.net

© 2018 Hearst Communications, Inc.

H E A R S T

mySA Recommended For You

Conspiracy theorist ordered held for bail hearing Tuesday

Witness details gruesome beating of San Antonio man who was cut up, body parts burned