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The United States Department of Injustice

21 03 2012



By [Timothy D. Naegele\[1\]](#)

The truth has begun to come out about the federal prosecution of former United States Senator Ted Stevens of Alaska. In an article entitled, “Inquiry slams prosecution of Stevens corruption case by Justice Department,” the *Washington Times* reported:

Justice Department prosecutors bungled the investigation and prosecution of Sen. Ted Stevens, a probe that was permeated by the “systematic concealment of significant exculpatory evidence,” in some instances intentionally, that would have independently corroborated his defense and testimony, a court-ordered report released Thursday says.

In a blistering 514-page report, Special Counsel Henry F. Schuelke III said Justice Department prosecutors never conducted a comprehensive review of evidence favorable to the Alaska Republican and failed to disclose to defense attorneys notes of witness interviews containing significant information.

The report also says two federal prosecutors intentionally withheld and concealed significant information from the Stevens defense team that would have seriously damaged the testimony and credibility of the government’s key witness.

Months after a jury convicted Stevens in October 2008 of accepting and concealing money for

home renovations and other gifts, the report says, a new team of prosecutors discovered, in short order, that some of the exculpatory information had been withheld. At that point, it says, the Justice Department moved to set aside the verdict and dismiss an indictment with prejudice.

New prosecutors were assigned after U.S. District Judge Emmet G. Sullivan, in a stunning rebuke, held two prosecutors in contempt for failing to comply with the court's order to disclose information to Stevens' attorneys and to the court regarding allegations of prosecutorial misconduct, which were made after trial by an FBI agent who worked on the case.

In throwing out the case against Stevens, Judge Sullivan said, "For nearly 25 years, I've told defendants appearing before me that in my courtroom they will receive a fair trial and I will make sure of it. In nearly 25 years on the bench, I have never seen anything approaching the mishandling and the misconduct I have seen in this case."

...

The Schuelke investigation lasted two years and involved the examination and analysis of more than 128,000 pages of documents, including the trial record, prosecutors' and agents' emails, FBI reports and handwritten notes, and depositions of prosecutors, agents and others.

...

Since the Stevens case was dismissed, [Justice Department spokeswoman Laura Sweeney] said, the department has instituted a "sweeping training curriculum for all federal prosecutors and has taken "unprecedented steps" to ensure that prosecutors, agents and paralegals have the necessary training and resources to properly fulfill their discovery and ethics obligations.

"Justice is served only when all parties adhere to the rules and case law that govern our criminal justice system," she said. "While the department meets its discovery obligations in nearly all cases, even one failure is one too many.

"But it would be an injustice of a different kind for the thousands of men and women who spend their lives fighting to uphold the law and keep our communities safe to be tainted by the misguided notion that instances of intentional prosecutorial misconduct are anything but rare occurrences," she said.

Kenneth L. Wainstein, counsel for Alaska federal prosecutor Joe Bottini, said the nation's criminal justice system is based on principles of fairness and due process and the fundamental requirement that criminal accusations should be leveled only when a person intentionally violates the law and not when one simply makes mistakes.

...

The Schuelke report does not recommend that any criminal charges be brought, but blames prosecutors for intentionally withholding and concealing evidence.[\[2\]](#)

It is another travesty and miscarriage of justice that the wrongdoers within the so-called "Justice Department" have not been subjected to criminal prosecution, convicted, and sent to prisons—where *true* justice will be

meted out—instead of getting “slaps on the wrist” for their criminal conduct.

While Judge Sullivan’s words and actions have been commendable, the Stevens case is *not* an isolated incident of the Criminal Division’s wrongdoing. Tragically, adequate resources do not exist to ferret out the depth of the Criminal Division’s wrongdoing, or to bring its corrupt lawyers and others—such as FBI agents—to justice.

At best, Sweeney’s comments constitute lies, obfuscation and a perpetuation of the Criminal Division’s cover-up of the systemic corruption within its ranks. The same thing is true of Wainstein’s comments.

As I have written:

[A]buse of our criminal justice system by prosecutors is “unreal” today. According to one civil trial attorney with years of experience, it is akin to “KGB material”—as rogue prosecutors go after innocent people and try to convict and imprison them.

...

“[L]awyers who are prosecutors are often less interested in fairness and justice than they are in winning at all costs, and exercising their raw power and hurting others in the process—such as those who are innocent but are convicted anyway.”

...

And I added:

“A federal official with reason to know told me that between 15-20 percent of the indictees in federal courts are probably innocent. Some are seniors who have been charged with cheating the Social Security program, and they are scared to death, so they agree to plea bargains rather than fight for their innocence.”

Anyone who honestly thinks that prosecutors are advocates of truth and justice is living in a “Mary Poppins,” fantasy world, and knows nothing about how our legal system really operates. The truth about this system is not found by watching TV shows or films. Indeed, it is seldom if ever discussed or written about, yet it is often said—by lawyers—that the only thing separating prosecutors from guilty criminals is the “badge.”

Lastly, how many innocent people have been wrongly executed for crimes they did not commit? Even more startling may be the number of innocent people who have been wrongly convicted and imprisoned. Perhaps the best remedy for such abuses is to have the “guilty” prosecutors incarcerated; and let justice be meted out with respect to them, by those in prisons.[\[3\]](#)[\[4\]](#)

In a long-overdue editorial entitled, “Department of Injustice”—and subtitled, “Prosecutors in the Stevens case deserve severe sanctions”—the *Wall Street Journal* added:

Something is very rotten at the U.S. Department of Justice. No other reasonable conclusion can be drawn from an independent report on the 2008 prosecution of then-Senator Ted Stevens.

...

Most damaging to Justice's credibility is that, three years after Judge Sullivan set aside the guilty verdicts against Stevens, the department still hasn't disciplined the men and women involved. Nor has it instituted harsher penalties for future abuses. Attorney General Eric Holder told a Senate committee last week that a separate internal inquiry at Justice is almost done, but he would not promise to make all the results public.

Speaking of public scrutiny, you've probably never heard of Matthew Friedrich, Rita Glavin, Brenda Morris, Joseph Bottini, James Goeke or Edward Sullivan. But maybe more people should know them, and learn the various roles they played in a prosecution that not only trampled on the rights of the accused, but denied the people of Alaska a fair election and literally shifted the balance of power in the U.S. government.

...

Guilty verdicts against the Republican Stevens arrived less than two weeks before Election Day in 2008, causing the previously popular Senator to lose a close race to Democrat Mark Begich. Mr. Begich would go on to provide the 60th Senate vote to pass ObamaCare in 2009.

Virtually the entire case against Ted Stevens hinged on the testimony of the government's star witness, VECO Corporation CEO William Allen. To protect his credibility, prosecutors withheld from the defense evidence that he had suborned perjury in a separate criminal investigation. Nor did prosecutors say a word in court when, according to the report, Mr. Allen offered testimony that the prosecution knew to be false.

The government's seven-count indictment for false statements accused Stevens of accepting free home renovations from Mr. Allen's company and then not reporting these gifts on federal disclosure forms.

Mr. Stevens and his wife said they had paid \$160,000 for the renovations and as far as they knew that was the total cost of the work. What the prosecutors learned in interviewing witnesses—but never shared with the defense—is that even the foreman on the job site shared the Stevens' understanding that they had been appropriately billed for all the work. Instead of sharing this evidence supporting Stevens's defense, prosecutors selectively quoted the foreman to make it appear as if he had said the opposite, and they used his comments to falsely attack Stevens.

...

It would be nice to think these abuses were rare lapses. But we wonder what else we might learn if *every* DOJ prosecution was subjected to a review like the one Judge Sullivan wisely demanded.

...

Americans hand prosecutors an awesome power—the power to destroy fortunes and futures, and in this case to reallocate national political power. We are seeing a pattern of abuse of this power, in order to win big cases. To help prosecutors remember that their job is to do justice and not simply to beat the defense team, there should be automatic and severe penalties for *Brady* violations. Prosecutors could also be required to turn over more raw data with potentially

exculpatory evidence, except in cases where it threatens national security or endangers witnesses in a criminal case.

Mr. Holder claims to have addressed the problems in the Stevens case by expanding training programs and the like. But as the nation's chief law enforcer, he should know that harsh punishment is the appropriate response when anyone violates the rights of a citizen as badly as prosecutors did in the Stevens case.[\[5\]](#)

Why should anyone be the least bit surprised that the Justice Department's Criminal Division is corrupt? Like the fish rots from the head down, the Criminal Division does as well. Anyone who differs with this conclusion has never dealt with the Division, its lawyers, or their injustices.



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e.g., www.naegele.com/whats_new.html#articles), and can be contacted directly at tdnaegele.associates@gmail.com; *see also* Google search: [Timothy D. Naegele](#)

[2] *See* <http://www.washingtontimes.com/news/2012/mar/15/inquiry-slams-prosecution-stevens-case-justice-dep>

[3] *See also* <http://www.usatoday.com/news/washington/story/2012-02-06/ted-stevens-prosecutors-justice-department/52922922/1> (“Taxpayers pay to defend prosecutors in Ted Stevens case“)

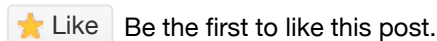
[4] *See* <https://naegeleblog.wordpress.com/2011/01/03/the-american-legal-system-is-broken-can-it-be-fixed/#comment-1700> (emphasis in original)

[5] *See* http://online.wsj.com/article/SB10001424052702304459804577283371409080312.html?grcc=b0ae03d96c2400ec757f4df24c4ff8bcZ0&mod=WSJ_hpp_sections_opinion (emphasis added); *see also* <http://blogs.wsj.com/law/2012/03/15/law-blog-doc-dump-ted-stevens-investigative-report/>

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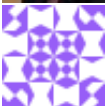
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