

# ALASKA POLITICAL CORRUPTION

THURSDAY, APRIL 23, 2009

## Feds Will Pay Some of the Legal Fees of the Ted Stevens Trial Prosecutors Washington—

The Department of Justice will pay some legal fees of the Ted Stevens prosecutors now under scrutiny—but those payments look likely to cover only a fraction of the bills to be charged by the high-priced counsel now on the case.

Both *Legal Times* and TPMMuckraker.com have reported that the Department of Justice has stated that the federal government will pay the legal bills of what some call “the Stevens Six”—but only up to \$200 per hour for a maximum of 120 billable hours per month.

That may sound like a lot to you—but if it does, you don’t know much about what lawyers charge at the big Washington, D.C. firms. Partners routinely charge more than \$500 per hour, and—as *Legal Times* points out—first-year associates right out of law school charge more than \$200 per hour.

To see the *Legal Times* article—which contains details on the attorneys retained by the prosecutors under investigation—go to <http://legaltimes.typepad.com/blt/2009/04/stevens-six-lawyering-up-big-time.html> on the Internet.

POSTED BY CLIFF GROH AT 8:16 PM 1 COMMENT:  
LABELS: TED STEVENS TRIAL

WEDNESDAY, APRIL 22, 2009

## Roundup of Investigation News Anchorage—

Here’s my effort to give the news of the day and catch up on some stuff I haven’t blogged during the last two weeks:

- Ted Stevens’ trial prosecutors and the supervisor of the Public Integrity Section—sometimes called “the Stevens Six”—are engaging well-known Washington lawyers to represent them in the court-ordered criminal contempt probe into their own conduct. One of the defense attorneys gained fame as the

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lawyer for Karl Rove—strategist of George W. Bush’s electoral victories and Deputy Chief of Staff in the Bush White House—and another of those defense lawyers formerly represented another U.S. Senator in an ethics investigation. (Hat tip to *Legal Times*.) This court-ordered investigation—and the parallel probe by the Department of Justice itself—is both high-stakes and likely to be ungodly expensive for these government employees, who are unlikely to be able to tap political contributors or well-connected friends for donations to a legal defense fund. The Website Talkingpointsmemo.com is seeking to learn if the federal government will be paying any of those legal fees for the prosecutors under investigation.

- Speaking of a legal defense fund, U.S. Rep. Don Young (R.-Alaska) is now paying all his legal bills from his legal defense fund as opposed to the campaign fund he was relying on heavily last year. (Hat tip to *Anchorage Daily News*.) Campaign records show that the 49th State’s only Congressman spent more than \$1 million on legal bills last year.
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- Despite the dismissal of the Ted Stevens case with prejudice and the resulting black eye to the overall federal investigation into public corruption in Alaska, a court order signed last Monday shows that the Department of Justice still holds the position that the probe lives on. At the government’s request, Judge Emmet Sullivan issued an order directing the independent counsel examining the Stevens trial prosecutors to keep secret the information turned over by the Department by that lawyer. According to the *Anchorage Daily News*, Judge Sullivan ruled that "ongoing investigations" could be hampered by release of "certain investigative files, documents, e-mails, grand jury transcripts, interview notes, interview memoranda and other information." Judge Sullivan also cited privacy concerns of innocent persons as another reason for his non-disclosure order. (Hat tip to *Anchorage Daily News*.)
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- The Ninth Circuit Court of Appeals heard oral arguments in the appeals of former state Reps. Pete Kott (R.-Eagle River) and Vic Kohring (R.-Wasilla). At issue were allegedly incorrect jury instructions and the trial judge’s decisions to close to the public certain hearings about the scope of cross-examination of key prosecution witness Bill Allen, the long-time VECO CEO. Kohring’s lawyer also argued before the three-judge panel sitting in

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Seattle that the Wasilla legislator's prior conflict with the wife of District Judge John Sedwick should have led the trial judge to recuse himself from Kohring's case. Kott and Kohring continue to serve their sentences in federal prison while their appeals are pending. (Hat tip to the Associated Press as published in the *Anchorage Daily News*.)

Tirebiter  
Cliff Groh

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POSTED BY CLIFF GROH AT 9:43 PM NO COMMENTS:  
LABELS: DON YOUNG INVESTIGATION, PETE KOTT, TED STEVENS TRIAL, VIC KOHRING

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TUESDAY, APRIL 14, 2009

## Ted Stevens Turned Down a Deal for a Felony Conviction with a Guarantee of No Prison Time Anchorage--

As first reported by the *Legal Times*, Ted Stevens rejected a pre-indictment offer to plead guilty to a felony and receive no time in prison.

This news comes from a recently released transcript of a bench conference, a private conversation among the lawyers and the judge that occurs at the front of the courtroom.

Following Stevens' rejection of the offer, he was indicted and tried on seven felony counts. A jury returned guilty verdicts on all seven counts, but the judge ultimately set aside the verdicts and dismissed the case due to prosecutorial misconduct.

In addition to this offer regarding the sentence, it would be interesting to know if the prosecution also tried to bargain with Stevens over the charges. Both types of bargaining—over the sentence and over the charges—are common in criminal cases.

The trial contained numerous hints that the prosecution had explored more serious charges that would have included more explicit allegations that VECO had bribed the Senator. Ultimately, the government did not charge Stevens with any crime that included any version of bribery. Instead, the indictment charged Stevens with failing to disclose gifts and liabilities on the annual financial disclosure forms he was required to file with the Senate.

Most of the undisclosed things of value at issue in the trial came from VECO--the Alaska-based oil-services giant--and/or its longtime CEO Bill Allen. The prosecution confined itself to showing favors Stevens had done for the company and favors VECO had done for Stevens without making the jury decide whether there was an explicit *quid pro quo*.

The things the government showed VECO and Allen provided Stevens included substantial renovations on his chalet in Girdwood as well as numerous other items such as furniture and lighting.

In terms of what Stevens provided VECO, the government presented evidence that the Senator:

- leveraged the government of Pakistan to allow the payment of a dividend to VECO on an investment the company had made in a pipeline in that country;
- assisted on VECO's rebidding for a National Science Foundation contract; and
- helped with VECO's efforts to get the Alaska legislature to adopt petroleum taxes set to the liking of the Big Three oil producers, Allen's main clients in Alaska.

Stevens' lawyers argued that in each of these matters the Senator was either just helping an Alaska company as he often did or merely pushing policies he agreed with on the merits.

Maybe we will learn more later about the discussions/negotiations between the federal prosecutors and Ted Stevens' attorneys--as well as the internal discussions within the Department of Justice--that occurred before the government announced his indictment last July.

POSTED BY CLIFF GROH AT 9:22 PM 1 COMMENT:  
LABELS: TED STEVENS TRIAL

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## Still Working Anchorage--

I'm still working on a post on the question of how the Department of Justice under President George W. Bush approved felony charges alleging financial disclosure violations against the longest-serving Republican Senator in history less than three-and-a-half months before that Senator faced a hotly contested general election. In the meantime, I'm working on a brief due Monday. As a result, posting will be lighter this week.

POSTED BY CLIFF GROH AT 8:29 AM NO COMMENTS:  
LABELS: TED STEVENS TRIAL

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MONDAY, APRIL 13, 2009

## Is Ted Stevens Likely to Sue the Federal Government to Recover His Legal Fees?

### Anchorage—

In the wake of the Attorney General's bombshell decision earlier this month to throw in the towel on the Ted

Stevens case based on prosecutorial misconduct, will the former Senator try to get the federal government to pay his legal fees?

The high cost of the defense would seem to make that pursuit a logical move for Ted Stevens. This blog has previously estimated that the five-week trial cost \$200,000 per week, and that doesn't count the substantial work in pre-trial preparation and post-trial litigation. The *Legal Times* has reported that "defense lawyers say Stevens easily shelled out at least \$2 million" in total legal fees.

Visual evidence of all that spending was obvious last week when the judge dismissed the case. The *Anchorage Daily News* reported that all 13 of the defense attorneys who worked on the case appeared in court—five at the defense table with Stevens and another eight in a row of chairs lining the courtroom. Even the cheapest of those lawyers is pricey—the *Legal Times* noted that a Williams & Connolly associate attorney who graduated from law school in 2004 and just joined the White House counsel's office reported that he made \$220,000 last year at the firm.

The idea of Ted Stevens suing to get those legal fees paid by the feds is popular in some circles, as shown last week by the adoption of a resolution by the Alaska House of Representatives that "demands" that the federal government grant permission for such a lawsuit by the former Senator. This resolution passed by a vote of 34 to 1.

Actually, federal law already grants permission to Ted Stevens to sue for his legal fees. The legal standards for recovering fees and the reality of the process for seeking that recovery might tip the balance in favor of Stevens walking away from the case, however. A brief tour of the law here explains why.

Federal law specifically allows a defendant who has prevailed in a federal criminal case "a reasonable attorney's fee and other litigation expenses" if the court finds that the prosecution's position was "vexatious, frivolous, or in bad faith, unless the court finds that special circumstances make such an award unjust." (Hat tip to Ashby Jones in the *Wall Street Journal's* Law Blog for this reference to a statutory note in 18 U.S.C. § 3006A.)

This statute sets a high bar for Stevens. Daniel Richman, a criminal law professor at Columbia University, told the *Wall Street Journal* that to win a motion for fees a defendant would have to show that "there was really no basis to the prosecution." Richman believes that such a

showing “is nearly impossible to make.”

Such a showing is not unknown, however. Shortly after the dismissal with prejudice of the Stevens case, a federal judge in Miami ordered the Department of Justice to pay more than \$600,000 in legal fees to a criminal defendant following revelations that prosecutors had authorized witnesses to surreptitiously tape their conversations with the defense team. (Thanks to the Letter of Apology blog.)

Such orders are still very rare, however. Stevens and his attorneys might not want to sue for legal fees because such an effort would change the current focus on prosecutorial misconduct in the course of the trial and turn the public’s attention to all the factors the Department of Justice considered when deciding whether to prosecute him. Although the *Legal Times* suggested that some see the former Senator now as “a victim of corruption,” the newspaper indicated that the process of pursuing a lawsuit to recover legal fees might make him look more like “a scheming politician.” Michael Horowitz, a lawyer in the business fraud and complex litigation group of the Washington law firm of Cadwalader, Wickersham & Taft, told the *Legal Times* that “He may be best positioned now politically to leave the record as is. He doesn’t need much more.”

POSTED BY CLIFF GROH AT 5:09 PM NO COMMENTS:  
LABELS: TED STEVENS TRIAL

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SUNDAY, APRIL 12, 2009

## Special Prosecutor Probing the Ted Stevens Trial Prosecutors More than the Headline Caricature Anchorage—

The headline on the Associated Press article was “Low-key Harley lover running Stevens investigation.”

A casual reading of the article shouts: “Fun!” Henry Schuelke, the newly selected special prosecutor probing the work of the prosecutors in the Ted Stevens trial, drives a Porsche to work, likes fast motorcycles, and gives great parties even while avoiding grandstanding.

But the reader can’t just focus on the headline and the human-interest highlights. I’ve never met this guy, but I know he is not merely the coolest uncle you could ever imagine. You don’t get to be one of the most successful and respected lawyers specializing in white-collar criminal defense unless you’re real smart and real tough.

A more complete account of Schuelke’s personality and approach to his work can be found in the book *The Man to See* by Evan Thomas. The book is a biography of

legendary lawyer Edward Bennett Williams, the founding partner of the law firm Williams & Connolly. That firm represented Ted Stevens, and Stevens' lead trial attorney was Brendan Sullivan, a protégé of Williams.

While serving as an Assistant U.S. Attorney in 1978, Schuelke beat Williams in a public corruption trial in Washington, D.C. The wisecracking Schuelke worked during the trial to throw his iconic opponent off his stride. Williams owned the Washington Redskins professional football team. If the Redskins lost on Sunday, Schuelke would sidle up to Williams and say ““Hey Ed, I’ve been busy. What happened? Skins win?””

After Williams lost the trial, his firm asked the judge to throw the verdict out based on juror misconduct. After Schuelke asked whether Williams had learned this information before the verdict and tucked it away to use in case he needed it, the defense attorney had to go on the stand himself in post-trial proceedings and defend his integrity.

Williams ultimately got the verdict thrown out and the case re-tried in Philadelphia. He won the re-trial, but it was clear that he didn't view his experience up against Schuelke as some sort of unalloyed triumph. ““Victory?’ Williams said when someone stopped to congratulate him. ‘All we did was split a doubleheader.’”

Schuelke's comment on his opponent's conduct gives some insight into his nuanced view of lawyer's ethics in litigation. ““Williams played the game with a little chalk on his shoes, but he's no different from any other lawyer in a hotly contested suit. You take advantage wherever you can get it.””

POSTED BY CLIFF GROH AT 1:16 PM 9 COMMENTS:  
LABELS: TED STEVENS TRIAL

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SATURDAY, APRIL 11, 2009

## What Happened, What It Looked Like, and What It Means (Part Three)

### **Anchorage--**

Legally speaking, the first thing to know about this dismissal is that the jury verdict finding Ted Stevens guilty of seven felony counts has been set aside and—in the words of Judge Sullivan—“has no legal effect.”

As Judge Sullivan also noted in his written order of dismissal, he never issued a judgment of conviction that would have imposed sentence on the former Senator. As a result, in a technical sense Ted Stevens was correct when he asserted right after the verdict that he had not been

convicted.

Reflecting the reality that the court's setting aside of the jury verdict eliminated any legal disability for the former Senator, the Alaska Bar Association moved immediately after the court's dismissal of the indictment to withdraw the motion for interim suspension of Ted Stevens' license to practice law in the 49th State. The Alaska Bar Association had made that motion after the jury said "Guilty" seven times last October, but the *Legal Times* reported that the Alaska Supreme Court had not yet taken action by the time of Judge Sullivan's setting aside of the jury verdict. (A court in the District of Columbia had issued an interim suspension of Stevens' D.C. law license in December, but the *Legal Times* also reported on April 9 that the licensing authority in our nation's capital is also expected to move to lift that suspension in the wake of Judge Sullivan's order.)

There are two more outstanding—and interrelated—questions about the future:

A. What happens to the trial prosecutors in the Ted Stevens case?

B. What happens to the federal investigation into public corruption in Alaska?

I wrote about these subjects at some length 10 days ago when the Attorney General threw in the towel, but that was before Judge Sullivan has ordered his own investigation of the trial prosecutors' handling of evidence and witnesses to go along with the already-ongoing internal investigation by the Department of Justice.

I will have more to write later about these topics. The short answers to Questions A and B above are that all this scrutiny of the trial prosecutors (and lead investigators) both makes the lives of those federal employees very difficult and tends to put up barriers to the successful prosecution of additional targets in the underlying investigation into Alaska public corruption.

For today, I point you to two articles:

Ashby Jones, Wall Street Journal Law Blog, "Pregaming the Ted Stevens-Prosecutors Investigation," found at <http://blogs.wsj.com/law/2009/04/08/pregaming-the-ted-stevens-prosecutors-investigation/>

William Yardley, New York Times, "New Scrutiny of Other Alaska Corruption Cases," found at <http://www.nytimes.com/2009/04/09/us/politics/09stevens.html> (note that the article misspells the last name of

former state Rep. Bruce Weyhrauch)

Coming up:

What's the story on Henry Schuelke, the private attorney selected by Judge Sullivan as the special prosecutor investigating the work of the trial prosecutors in the Ted Stevens case?

What is the likelihood that Ted Stevens will seek to get his legal fees paid by the Department of Justice?

Why did the Department of Justice charge Ted Stevens with felony counts alleging financial disclosure violations so close to an election?

Why did these discovery problems occur in the prosecution?

Why did Ted Stevens push so hard for a quick trial?

What would have happened if Ted Stevens hadn't pushed so hard for a quick trial?

POSTED BY CLIFF GROH AT 3:11 PM 1 COMMENT:  
LABELS: TED STEVENS TRIAL

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THURSDAY, APRIL 9, 2009

## What Happened, What It Looked Like, and What It Means (Part Two)

### **Anchorage—**

Given that I did not attend the hearing, the best way to present the human side of what happened at Tuesday's hearing in the Ted Stevens case is to offer extended quotations from the accounts of three sets of reporters who were there:

#### **John Bresnahan in *Politico.com*:**

*When the dismissal was announced, some Stevens family members sobbed audibly, and Stevens gave a raised-fist salute to the audience. There was applause in the courtroom as the hearing concluded, and Stevens was greeted by friends, including Richard Ben-Veniste, a prominent D.C. lawyer.*

*Stevens himself was more grateful than bitter in his courtroom comments.*

*"Without your experience and vigilance, the truth would never be known," Stevens told Judge Sullivan. "I've had a long career. I served the United States for many years. Until recently, my faith in the criminal system, the*

*judicial system, was unwavering. But what some members of the prosecution team did nearly destroyed that faith. Their conduct has consequences for me that that they will never realize and can never be reversed."*

*Stevens added: "Today ... my faith has been restored. ... Your actions gave me new hope that others may be spared of similar miscarriages of justice."*

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**Mike Scarcella and Joe Palazzolo, *Legal Times*:**

*Stevens individually thanked the [new team of] prosecutors at their table, shaking their hands. [Chief Stevens defense lawyer] Brendan Sullivan praised the new team of lawyers. "But for honest prosecutors, the system would not work," Sullivan said. He added that the prosecutors knew a loss in the case would be a blight on their careers, and so they flouted the rules to ensure they would win. "The fear of loss drove them to do what they did," he said.*

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**Nedra Pickler and Matt Apuzzo, Associated Press, via *Fairbanks Daily News-Miner*:**

*...Stevens gave what amounted to the election victory speech he never had a chance to give. Standing at the courtroom lectern wearing a pin of the U.S. and Alaska flags on his sweater, he recounted his career in government - from flying planes in World War II to serving as U.S. attorney to his storied career in the Senate.*

*He thanked his friends, his supporters and his wife. And he vowed to push his friends in the Senate for tough new laws on prosecutorial misconduct.*

*Then, with the prosecution team feeling the scrutiny that Stevens felt for years, he smiled, posed for pictures with his family outside the courthouse and said:*

*"I'm going to enjoy this wonderful day."*

POSTED BY CLIFF GROH AT 4:32 PM 1 COMMENT:  
LABELS: TED STEVENS TRIAL

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WEDNESDAY, APRIL 8, 2009

**What Happened, What Did It Look Like, and What Does It Mean? (Part One)**

**Anchorage—**

The trial judge dismissed the Ted Stevens case as expected, but went on to blast the trial prosecutors' failures in turning over evidence and to order up his own criminal investigation into that failure.

By all reports, it was quite a hearing yesterday. I was thousands of miles away from that hearing, so what follows is mostly based on the reporting of the *Anchorage Daily News*, the *New York Times*, *Politico.com*, the Alaska Public Radio Network, National Public Radio, the Associated Press, the *Washington Post*, and the *Los Angeles Times*.

Let's take the announcement, the atmospherics, and the ramifications in order.

### ***The Judge Drops Another Bomb on the Shellshocked Justice Department***

U.S. District Court Judge Emmet Sullivan announced that he had asked a private attorney to investigate the failures of the trial prosecutors to turn over evidence to the defense as legally required. That attorney will be Henry "Hank" Schuelke, a former Assistant U.S. Attorney who served as a prosecutor and a judge in the Army. (More on Schuelke in a later post.)

Judge Sullivan blistered the Department of Justice for its work in the case, stating that "In 25 years on the bench, I've never seen anything approaching the mishandling and misconduct that I've seen in this case."

The judge listed 10 specific instances of apparent missteps in the handling of evidence and witnesses by the trial prosecutors. (The best catalogue of the judge's list is in the *Anchorage Daily News*, which has the most comprehensive coverage of the hearing.)

This selection of a special prosecutor by a trial judge to investigate charges of criminal contempt of court is extraordinary but explicitly allowed under Rule 42 of the Federal Rules of Criminal Procedure. As the *New York Times* pointed out, Schuelke will operate under the court's authority and will gather evidence before recommending to the court whether to seek charges against six named prosecutors.

The six prosecutors under this newly announced probe include the five government lawyers who worked on the Ted Stevens trial: Public Integrity Section trial attorneys Nicholas Marsh and Edward Sullivan and Alaska-based Assistant U.S. Attorneys Joe Bottini and James Goeke. The other two lawyers under investigation are William Welch and Brenda Morris, who are the top two attorneys

in the Public Integrity Section, which ran the investigation. Morris did double duty as the lead trial prosecutor as well as the Section's No. 2 lawyer.

The judge said “I have not pre-judged these attorneys for their culpability, and I hope the record will find no intentional obstruction of justice.”

Judge Sullivan's announcement yesterday means that there are two investigations of the Stevens trial prosecutors now—the one run for the last six months by the Department of Justice's Office of Public Responsibility (OPR) and the new one conducted by Schuelke. (The *Anchorage Daily News* also reported that the judge also stated that he would refer a complaint to federal prosecutors in Washington, D.C. that key prosecution witness Bill Allen's attorney signaled him to answer during Allen's testimony. Allen's attorney has denied the allegation.)

The judge's blistering denunciation of Department of Justice failures in providing discovery the case of a federal detainee at Guantanamo Bay as well as that of the former 40-year U.S. Senator. The Associated Press reported that “During Tuesday's hearing, Sullivan read a primer on criminal procedure, the kind of rudimentary lecture students normally receive during their first year of law school.” (Via Scott Horton's blog in *Harper's* magazine.)

Judge Sullivan's denunciations and announcement of a special prosecutor to investigate prosecutors may affect a broader range of cases than just that of Ted Stevens. *Politico.com* reports, for example, that federal judges are increasingly “fed up” with what they see as prosecutorial misconduct and may be less likely in the future to accept representations of government attorneys in criminal cases.

Next: What was it like in the courtroom?

POSTED BY CLIFF GROH AT 5:35 PM 3 COMMENTS:  
LABELS: TED STEVENS TRIAL

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TUESDAY, APRIL 7, 2009

**It Was Ted Stevens' Day**

**Anchorage—**

Looking over the photographs of the smiling faces of Ted Stevens' daughters surrounding him as he left court with

the cloud of prosecution removed from him, I saw what a happy family looks like in public.

I was also struck by the legal work that helped free the former Senator. As I wrote on this blog back on October 5, *Washingtonian* magazine said in 2002 that Stevens' chief lawyer Brendan Sullivan's counterattacks against the government "have put more prosecutors in jail than their indictments have put away his clients."

Ted Stevens is of course not going to jail now, and his trial prosecutors have now got to lawyer up with a big legal cloud over their heads. And they can't get Williams & Connolly to defend them, which had 13 lawyers in court to celebrate their victory today.

More tomorrow.

POSTED BY CLIFF GROH AT 11:46 PM 2 COMMENTS:  
LABELS: TED STEVENS TRIAL

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MONDAY, APRIL 6, 2009

## I'll Be on the Radio Tomorrow (Tuesday)

### **Anchorage—**

I'll be on Alaska Public Radio Network's call-in program "Talk of Alaska" from 10 a.m. to 11 a.m. tomorrow (Tuesday) talking about the Ted Stevens case and the government's abandonment of the prosecution. I was also interviewed this morning by CNN radio for a story that will apparently run on that radio network tomorrow morning.

POSTED BY CLIFF GROH AT 10:52 AM 1 COMMENT:  
LABELS: TED STEVENS TRIAL

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## Really Final Linkorama of Reactions to Government's Abandonment of Ted Stevens Case

### **Anchorage—**

Here's the truly last roundup—I can't help it if the editorialists take a while to get to commenting on the story:

*New York Times* editorial entitled "Mr. Holder and the Stevens case" ("Given the flagrant partisanship of the Bush Justice Department, it is especially reassuring to see Mr. Holder ignore party lines to do the right thing by Mr. Stevens.") — [www.nytimes.com](http://www.nytimes.com) at <http://www.nytimes.com/2009/04/03/opinion/03fri3.html>

*Philadelphia Inquirer* editorial entitled "Stevens Case[:]  
The right course" ("...Holder's decision doesn't necessarily

discount the initial reasons for bringing charges....But the misconduct by federal prosecutors renders moot the question of whether Stevens was culpable - the heart of this case.”) – [www.philly.com](http://www.philly.com/inquirer/opinion/20090403_Editorial__Stevens_Case.html) at [http://www.philly.com/inquirer/opinion/20090403\\_Editorial\\_\\_Stevens\\_Case.html](http://www.philly.com/inquirer/opinion/20090403_Editorial__Stevens_Case.html)

*Anchorage Daily News* editorial “Case dismissed[:] Stevens, Alaskans ill-served by prosecution's shoddy work” (“Ending the case against Ted Stevens was the right move, but that means Alaskans will never get an impartial evaluation of the charges against him.”) – [www.adn.com](http://www.adn.com) at <http://www.adn.com/opinion/view/story/747811.html>

CQ staff, “Senators Relieved to See Stevens Case Dismissed” (“In essence, the Justice Department’s decision not to prosecute the case gave Stevens ‘a get-out-of-jail free card,’ [George Washington University law professor Jonathan] Turley said, adding that it was likely a jury would have convicted Stevens even without the evidence that defense attorneys have called into question.”) – [www.cqpolitics.com](http://www.cqpolitics.com) at <http://www.cqpolitics.com/wmspage.cfm?parm1=5&docID=news-000003090161>

Devlin Barrett (Associated Press Writer), “Justice Dept Under Microscope After Stevens Trial” (“The FBI has 2,500 pending corruption investigations across the country, and whether the targets are lawmakers or suspected crooked government inspectors, prosecutors may be more cautious in bringing charges after the Stevens debacle.”) -- <http://www.koco.com/money/19094079/detail.html>

Republican-oriented blogger suggests that concerns about bringing more attention to overzealous prosecutors led to Department of Justice’s abandonment of the case – Eric Florack, “Holder Voids Case Against Ted Stevens. But Why?” at <http://bitsblog.florack.us/?p=18793>

Blogger “with no reasonable doubt that Stevens was guilty of the crimes with which he was charged” agrees that prosecutorial errors made the Attorney General’s call the right one (“Because we have an adversarial system, lawyers on both sides treat the case as a game, stretching the spirit if not the letter of the law as necessary. Prosecutors, acting as agents of the state, are supposed to be more cognizant of justice — defense attorneys are supposed to get their guy off even if they’re sure he’s guilty, whereas prosecutors are expected to stop prosecuting if they find they’ve got the wrong guy — but it often doesn’t work out that way.”) – James Joyner, “Ted Stevens Conviction Voided,” in

www.outsidethebeltway.com at  
[http://www.outsidethebeltway.com/archives/ted\\_stevens\\_conviction\\_voided\\_/](http://www.outsidethebeltway.com/archives/ted_stevens_conviction_voided/)

Well-known conservative blogger says that Attorney General bowed to the inevitable given the prosecutors' apparent misconduct ("Of course, none of this changes the fact that Stevens had oil-company lobbyists remodeling his house and hid that fact from the Senate. The fact that prosecutors engaged in serious misconduct does not make Stevens clean. It just makes him free.") – Ed Morrissey, "Ted Stevens off the hook for good," in [www.hotair.com](http://hotair.com/archives/2009/04/01/ted-stevens-off-the-hook-for-good/) at <http://hotair.com/archives/2009/04/01/ted-stevens-off-the-hook-for-good/>

Lawyer/blogger says "The really big decision here isn't just the dismissal of the indictment, but also the decision not to start the case over again with a new prosecution. In light of Stevens' age, and his exit from office in November, you can see why that makes sense. But it also means that the probable crime Stevens committed—and let's not forget, there was pretty good evidence that he accepted \$250,000 in unreported gifts and renovations to his ski homes—goes into a small black hole of politician wrongdoing with no redress." – Emily Bazelon, "Eric Holder's Bold Move in the Ted Stevens Case," [www.slate.com](http://www.slate.com) at <http://slate.msn.com/blogs/blogs/xxfactor/archive/2009/04/01/eric-holder-s-bold-move-in-the-ted-stevens-case.aspx>

Conservative commentator and long-time Alaska journalist attacks the prosecution ("The federal government's unconstitutional and outrageous conduct has cost Stevens his reputation, his seat of 40 years in the United States Senate -- and immeasurable personal grief. Its true cost to Alaska -- in terms of leadership and effective representation in the Senate and a stolen election -- remains to be seen.") – Paul Jenkins, "We deserve the truth behind the prosecution of Stevens," [www.adn.com](http://www.adn.com) at <http://www.adn.com/opinion/comment/story/748602.html>

POSTED BY CLIFF GROH AT 12:46 AM 1 COMMENT:  
LABELS: TED STEVENS TRIAL

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THURSDAY, APRIL 2, 2009

**[Link City 3: Final Roundup of Reactions to Government's Abandonment of Stevens Case Anchorage, Alaska—](#)**

*USA Today* editorial criticizes both the prosecutors and the defendant in the Ted Stevens trial – "Stevens case

leaves taint on prosecutors, ex-senator,” in  
www.usatoday.com at  
<http://blogs.usatoday.com/oped/2009/04/stevens-case-leaves-taint-on-prosecutors-ex-senator.html>

Gov. Sarah Palin’s comments on the Department of Justice’s decision attacked as off-key and off-base – Steve Aufrecht, “And then there is Sarah Palin,”  
<http://whatdoino-steve.blogspot.com> at  
<http://whatdoino-steve.blogspot.com/2009/04/and-then-there-is-sarah-palin.html>  
[Steve Aufrecht’s blog is worth a regular read, whether it covers the Alaska public corruption trials or his adventures while visiting Thailand.]

POSTED BY CLIFF GROH AT 6:36 PM NO COMMENTS:  
LABELS: TED STEVENS TRIAL

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## Link City 2—More Reactions Roundup

### Anchorage, Alaska—

Attorneys discuss the effects of the dropping of Ted Stevens case on “POLAR PEN” and on the Stevens trial prosecutors (“The question in this case is whether the prosecutors were overzealous or overwhelmed”) – Lisa Demer, “Other cases may be affected,” *Anchorage Daily News* at <http://www.adn.com/ted-stevens/story/745183.html>

There’s a split between how Alaskans view the government’s abandonment of the case versus how people in the rest of the country see the decision – Liz Halloran, “Some Alaskans See Stevens As Good As Vindicated,”  
www.npr.org at  
<http://www.npr.org/templates/story/story.php?storyId=102610818>

Noted commentator suggests that Ted Stevens both had a lack of criminal intent and a great record of achievement for Alaskans – Michael Barone, “Former Senator Ted Stevens Deserves Praise from Alaskans,”  
www.usnews.com at  
<http://www.usnews.com/blogs/barone/2009/04/02/former-senator-ted-stevens-deserves-praise-from-alaskans.html>

Washington Post editorial on abandonment of case (“The Stevens Case: Its shocking reversal says more about the Justice Department than about the former senator.”) --  
<http://www.washingtonpost.com/wp-dyn/content/article/2009/04/01/AR2009040102976.html?hpid=topnews>

Blog post arguing that government’s abandonment of case

should not be interpreted as exoneration of Ted Stevens – Josh Marshall, “Clean Bill of Health?” at [www.talkingpointsmemo.com](http://www.talkingpointsmemo.com/archives/2009/04/clean_bill_of_health.php) at [http://www.talkingpointsmemo.com/archives/2009/04/clean\\_bill\\_of\\_health.php](http://www.talkingpointsmemo.com/archives/2009/04/clean_bill_of_health.php)

Catalogue of controversies over prosecutorial misconduct in Ted Stevens case – “Prosecutorial missteps from trial of former Sen. Ted Stevens,” *Los Angeles Times* at <http://www.latimes.com/news/nationworld/nation/lanastevens-highlights2-2009apr02,0,6335291.story>

POSTED BY CLIFF GROH AT 2:01 PM NO COMMENTS:  
LABELS: TED STEVENS TRIAL

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## Reader with Comment on Ted Stevens' Legacy Authorizes Disclosure of His Name **Anchorage, Alaska--**

The reader who volunteered that view of Ted Stevens' legacy that I posted in italics at the end of the second part of my mega-analysis of the Department of Justice's abandonment of the Stevens case has told me that he would like his name released. That reader is Mark Regan of Fairbanks, Alaska. Thanks, Mark.

And once again--what do you think will be the legacy of Ted Stevens?

POSTED BY CLIFF GROH AT 10:20 AM NO COMMENTS:  
LABELS: TED STEVENS TRIAL

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## Roundup of Reactions to Government's Abandonment of Ted Stevens Case **Anchorage, Alaska—**

Ted Stevens is writing his memoirs, and one of his Republican Senate colleagues says “I think he can get his reputation back. I don't know where he goes to get his legal fees back.” -- Paul Kane, *Washington Post*, “Ex-Senator's Friends Say This Victory Is Bittersweet,” in <http://www.washingtonpost.com/wp-dyn/content/article/2009/04/01/AR2009040104171.html?nav=hcmodule>

Many of those Senate colleagues, however, are not rushing to honor him after the announcement that the convictions will be voided because “Prosecutorial misconduct aside, Stevens' unreported gifts from a campaign contributor — who can forget the \$2,700

massage chair he claimed was a loan? — fed a popular perception of arrogance and abuse of power among Washington's elite.” — Laurie Kellman, Associated Press, “Analysis: Stevens vindicated; what of his legacy?” in [http://news.yahoo.com/s/ap/20090402/ap\\_on\\_go\\_co/s/tevens\\_vindicated\\_analysis](http://news.yahoo.com/s/ap/20090402/ap_on_go_co/s/tevens_vindicated_analysis)

Attorney General Eric Holder’s decision to drop the case totally signals both a sharp rebuke to the Bush era Justice Department and Holder’s assertion of authority over the Department, including a Public Integrity Section critics say is plagued by poor management — Josh Gerstein, “Holder’s bold stroke,” *Politico*, in <http://www.politico.com/news/stories/0409/20778.html>

The Ted Stevens conviction was “the biggest win for Public Integrity” in more than a decade and now the unit will face more scrutiny, say Josh Gerstein and John Bresnahan, “Holder abandons Stevens prosecution,” *Politico*, in <http://www.politico.com/news/stories/0409/20754.html>

Due to prosecutorial misconduct, “the crown jewel conviction of the wide-ranging, years long probe of corruption in Alaska politics is destroyed. A fitting testament, perhaps, to the Bush Justice Department's record of failure.” —Zachary Roth, “Decision To Drop Stevens Case Was Triggered By Latest Government Fumble To Emerge,” [www.talkingpointsmemo.com](http://talkingpointsmemo.com), in [http://tpmmuckraker.talkingpointsmemo.com/2009/04/it\\_sounds\\_like\\_the\\_decision.php#more](http://tpmmuckraker.talkingpointsmemo.com/2009/04/it_sounds_like_the_decision.php#more)

In a completely different view, “I firmly believe that today, the likelihood of a Republican escaping conviction for any crime in front of a DC jury is about as much as the aforementioned snowball escaping hell in solid form.” — Martin Knight, “Fratricide and Ted Stevens,” [www.redstate.com](http://www.redstate.com), in [http://www.redstate.com/martin\\_a\\_knight/2009/04/01/fratricide-and-ted-stevens/](http://www.redstate.com/martin_a_knight/2009/04/01/fratricide-and-ted-stevens/)

*UPDATE—Correction made to title on post.*

POSTED BY CLIFF GROH AT 6:34 AM 1 COMMENT:  
LABELS: TED STEVENS TRIAL

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WEDNESDAY, APRIL 1, 2009

**It's No Joke—Ted Stevens Walks on April Fool's Day  
(Part Two)**

**Anchorage—**

**What misconduct does it appear that the  
prosecutors committed?**

The instances of misconduct by prosecutors that caused these convictions to evaporate legally all fell broadly into the category of giving the defense access to evidence under the control of the prosecution. Our system holds prosecutors to special standards not applied to other lawyers who litigate and try cases. Those special obligations flow from the power the government has to bring criminal charges under our system and the protections our law gives to those charged with crimes. The law requires the prosecution to turn over—or “discover”—evidence to the defense in criminal cases, and failure to do so is a discovery violation.

The defense had complained repeatedly about discovery violations during the trial, and Judge Sullivan had excoriated the prosecutors again and again for not following the legal rules and his orders regarding discovery. This process kept going in post-trial litigation, so much so that one Washington correspondent told me that he would not be surprised if at the next hearing the judge ordered the government lawyers to drop down and do 50 pushups.

The controversy over alleged government misconduct accelerated during that post-trial litigation after the uncovering of a complaint by Special Agent Chad Joy, an FBI agent based in Anchorage. This eight-page document alleged numerous errors by Joy’s colleague Mary Beth Kepner during the federal probe into Alaska public corruption.

Two of Joy’s allegations were particularly critical for Ted Stevens’ defense. Joy charged that Kepner—the investigation’s lead agent—decided to withhold a statement of key prosecution witness and long-time VECO CEO Bill Allen that the defense could have used to hurt Allen’s credibility. Joy also alleged that Public Integrity Section Trial Attorney Nicholas Marsh “inappropriately created [a] scheme” to use the poor health of VECO veteran Rocky Williams as an excuse to send Williams back to Alaska from Washington, D.C. on the eve of trial without notifying either the court or the defense after deciding not to use him as a witness. The defense also had subpoenaed Williams, who died in Anchorage two months after the trial ended, apparently of liver disease.

Then came what the Attorney General used as the nail in the coffin—today’s revelation that the new team of government lawyers had discovered notes taken by two prosecutors of a previously unreported pre-trial interview of Allen. Today’s court filing states that these newly uncovered interview notes show that Allen stated then that he could not recall talking with Bob Persons—a

Girdwood restaurant owner and friend of Ted Stevens who served as the caretaker of Stevens' Girdwood home—about giving a bill to Stevens for the renovations VECO employees did at Stevens' home.

These notes were very problematic for the prosecution. Although the notes showed that Allen couldn't remember a conversation with Persons five months before the trial, at the trial Allen gave testimony about such a conversation that helped the prosecution and harmed the defense. Allen testified at the trial that Persons told him to ignore a note Stevens wrote Allen asking that the VECO chief send the Senator a bill because "Ted's just covering his ass." Ted Stevens' state of mind was critical in the trial, because his receipt of many valuable things—primarily from Bill Allen and/or VECO—that were not paid for and did not show up as gifts or loans on his mandatory Senate disclosure forms was not really disputed by the defense.

The notes are problematic as well because the provision of Allen's statements about Ted Stevens to the defense has come up repeatedly as a source of discovery issues, both at the trial and in Joy's post-trial complaint.

### **Why are these apparent instances of misconduct so important?**

As this blog has noted before, prosecutors are supposed to turn square corners. The traditional statement is that prosecutors are expected to strike blows that are hard but fair.

Anchorage attorney Wev Shea, who served as Acting U.S. Attorney for the District of Alaska, has been writing articles for weeks calling the prosecution of Ted Stevens "corrupt" and "unethical." While the Attorney General's statement released today was careful not to accuse any particular government lawyer of misconduct, General Holder's complete disposal of this case shows an acceptance of a dark view of what the trial prosecutors did in this case.

Conservatives sympathetic to Ted Stevens ask what would happen to a criminal defendant who didn't get to put on a \$2 million defense to help him—in the words of Stevens' lawyers, "Any citizen can be convicted if prosecutors are hell-bent on ignoring the Constitution and willing to present false evidence." Liberals wonder why those conservatives only seem to worry about government abuse of power when it is applied against someone like them. Both questions are worth pondering tonight.

## **Why did the trial prosecutors commit this apparent misconduct?**

These problems seemed to flow from three causes: the incredible speed with which this trial occurred following the indictment, the discretionary system for discovery in the federal system, and an apparently untempered zeal among the prosecutors to stamp out public corruption.

This blog has commented before on the unusual speed of this trial and the odd effects of that speed. It was apparently Ted Stevens' personal decision to plead for a trial that started so soon after the indictment that the verdict could come before the election. Ted Stevens was indicted in late July, and the trial started less than two months later. If the defendant had not demanded that the trial begin so fast, it probably wouldn't have started yet.

The speed of this trial seemed to interact in negative ways with the discretionary system for discovery in the federal system. In Alaska, there's essentially an "open file" policy in which basically all the evidence the prosecution possesses is turned over to the defense. In the federal system, by contrast, somebody goes over every page of every document and makes a variety of discretionary decisions about whether to give it up. This case appeared to involve thousands and thousands of pages of evidence. Making discretionary decisions in a fevered atmosphere of speed is a recipe for trouble, and this case seems to show that.

If there was some form of malice—as opposed to carelessness or neglect—in these discovery problems, it may have come from prosecutors who wanted to win too much. All good trial lawyers have a keen competitive spirit, but the attorneys in the Department of Justice's Public Integrity Section sometimes also appear to have a deep desire to smash public corruption by any means necessary. A missionary zeal layered on top of the normal fighting blood can make for a dangerous combination, and that combination may have produced some distorted judgments.

## **What would have happened in the trial if this apparent misconduct had not occurred?**

Ted Stevens' lawyers confidently suggested today that the jury would have acquitted the defendant if the prosecutors had not cheated: "In essence, the government tricked the jury into returning a tainted verdict against the Senator based on false evidence."

The answer to the hypothetical question of "What if?" is

not so clear, however. Asking whether the prosecutors in the Ted Stevens case would have secured a conviction without engaging in misconduct is like asking whether baseball superstar Barry Bonds would have hit all those home runs if he hadn't taken the steroids that a lot of evidence suggests that he took. It's pretty clear his natural skills and clearly clean period of performance would have led him to hit hundreds of homers, but would Bonds have passed Babe Ruth's legendary all-time record without the aid of performance-enhancing drugs?

Similarly, the prosecution had a strong case and a relatively low bar to clear under the statute. The government presented at trial numerous e-mail messages and other evidence showing that Ted Stevens knew that Bill Allen and people who regularly worked for VECO were arranging for—and performing--a lot of the work at his home in Girdwood, a ski town about 40 miles southeast of Anchorage. While Ted Stevens and his wife paid well over \$100,000 for the renovations at his chalet, it's undisputed that the Stevenses never paid Allen or VECO anything. Similarly, the prosecution showed that Bob Persons and Bob Penney also provided valuable things to Stevens that the Senator did not disclose.

Also easing the government's burden was the relatively low bar the prosecution had to clear under the relevant statute. Recall that all the government had to show to get a conviction in this case was that Sen. Stevens had received more than about \$300 a year in undisclosed gifts or liabilities. Given this low bar, all this evidence would make the case against Stevens difficult to defend against even if the defense had gotten every page of every document in the government's possession the day the indictment was announced.

Just like most analysts seem to agree that the closeness of the election returns show that Sen. Stevens would have been re-elected if he had not been convicted eight days before, a survey of journalists who covered the trial would likely show that most would say that the jury would have convicted him of at least some of the seven counts even if the defense had all of the evidence in the government's possession.

The more important point, however, is that the prosecution's conduct appears to have tainted the trial and the verdict, just like a baseball superstar's use of steroids taints his records, no matter how much talent he has. Barry Bonds is not going to the Hall of Fame, and the prosecutors of Ted Stevens are not going to see him be sentenced on any felony convictions.

## **What does today's decision mean for the trial prosecutors?**

Both the Department of Justice's court filing and the Attorney General's statement noted that the issues of prosecutorial misconduct in the Stevens trial have been referred to the Department's Office of Professional Responsibility for an internal investigation. Although OPR reviews are sometimes inconclusive, you can bet that this one will be watched closely. The trial prosecutors are under a giant microscope, and their position is very unpleasant.

## **What does today's decision mean for the defense team?**

Despite the grim faces at the defense lawyers' press conference today, you can bet they were cheering and slapping hands behind the scenes. This is a very big win for Williams & Connolly and the battalion of attorneys and paralegals who worked on this case for the defense. Particularly happy would be Stevens' lead attorney Brendan Sullivan, who went about 30 years without ever having a client spend a day in jail. That record—incredible for a criminal defense attorney—was broken recently, but with today's decision Brendan Sullivan is on another streak.

## **What effect will today's announcement have on the federal investigation?**

Former State Senate President Ben Stevens (R.-Anchorage) and U.S. Rep. Don Young (R.-Alaska) are probably breathing a little easier tonight, as they likely figure that the probe will at least slow down now. (Although numerous media reports have stated that Ben Stevens and Don Young are under investigation in the federal probe into public corruption in Alaska, neither has been criminally charged and both deny wrongdoing.) That speculation is sound, as the Public Integrity Section has only about 25-30 lawyers and three of them—or approximately 10 percent—were involved in the Ted Stevens trial. Along with those three lawyers, the two FBI agents—Kepner and Joy—apparently most active in the probe are also ensnared in the internal Department of Justice investigation into alleged misconduct.

The Department of Justice may also be more wary of Allen as a witness, and any such wariness would also help at least some of the potential defendants in “POLAR PEN,” the federal investigation into public corruption in Alaska that has run at least four years this month.

Some weeks ago, a former federal prosecutor told me that if the Department of Justice discovered substantial misconduct by prosecutors involved in handling “POLAR PEN,” there was a good chance that the Department would close down the entire federal investigation into Alaska public corruption. I thought his speculation was so wild I did not even refer to it on this blog. I still find his prediction unlikely, but it doesn’t seem so far out in the blue yonder tonight.

### **What effect will today’s announcement have on Ted Stevens’ legacy?**

Two things seemed likely to me when I heard the announcement this morning:

1. Today—on what would have been his 83rd birthday—my father would have called his old friend Ted Stevens and congratulated him on the news.
2. The chances that Ted Stevens’ name stays on Alaska’s largest airport just went up.

I would add that as a legal matter lead Stevens lawyer Brendan Sullivan was correct today when he said the upcoming voiding of the convictions means that Stevens “is innocent of the charges, as if they'd never been brought.”

And Ted Stevens himself said in a statement released through his lawyers that “I always knew that there would be a day when the cloud that surrounded me would be removed. That day has finally come.”

As a matter of history, however, the answer may be different. Posterity will weigh the Senator’s half-century of public service to Alaska as well as evidence that came out at the trial and other information that may arise in the ongoing investigation into the conduct of Ted Stevens’ son Ben Stevens. It will be all of us that will have a share in how that legacy is shaped.

So I decided to throw it open to you. What do you think will be the legacy of Ted Stevens, and how will today’s announcement affect that?

I’ll print any answers you want printed subject to some reasonable length limitations. Please let me know if you authorize the printing of the response (even if edited for length) and the printing of your name. To get you started, I will offer this assessment sent to me tonight by a reader of this blog (I’ll print the name if the reader agrees):

*“Ted Stevens did a lot for Alaska. Near the end of his career, he accepted a lot of favors from a corrupt contractor named Bill Allen. Stevens probably would have paid for the favors if Allen had billed him, but Allen didn’t bill him and Stevens should have reported the favors on the Senate gift reporting forms. The federal prosecutors had no business indicting him so close to the 2008 elections. He made tactical mistakes by demanding that trial take place before the election, and by testifying in his own irascible way, and a jury convicted him. The voters turned him out of office. Because the federal prosecutors made so many mistakes in how they handled the case, they agreed to vacate the conviction and dismiss the criminal charges. Ted Stevens’ legacy is like Brendan Sullivan’s former client’s, Oliver North’s: he did something wrong, but prosecutors’ errors tainted his trial and his convictions were set aside. That’s not to say that Ted Stevens shouldn’t have reported Bill Allen’s favors on those Senate reporting forms.”*

What do you think, folks?

POSTED BY CLIFF GROH AT 11:05 PM NO COMMENTS:  
LABELS: TED STEVENS TRIAL

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## Listen to "Alaska News Nightly" Tonight on Public Radio, and...

**Anchorage--**

...there's a good chance that you'll hear me talk about the Department of Justice's announcement today of its abandonment of the Ted Stevens prosecution. Even if portions of my interview are not on the radio tonight, you'll benefit from listening to the report, which will feature news gathered in Washington, D.C. and in Alaska.

If you can't hear this report on the radio, it will be available at <http://www.aprn.org/> on the Internet.

*Part Two of my mega-analysis still to come.*

POSTED BY CLIFF GROH AT 3:40 PM NO COMMENTS:  
LABELS: TED STEVENS TRIAL

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## It's No Joke: The Attorney General Asks the Court to Erase the Convictions Against Ted Stevens

**Anchorage, Alaska—**

This case is over.

In an astonishing development, the Department of Justice has requested that the court set aside the jury verdicts

against Ted Stevens and dismiss the indictment against him with prejudice.

The bombshell came in a three-page filing this morning that cites the Department's discovery of evidence that the trial prosecutors should have turned over to the defense. Today's filing says this evidence was uncovered last week by the new team of government lawyers brought in to investigate allegations of prosecutorial misconduct during the trial. The newly discovered evidence casts doubt on the veracity of critical evidence against Stevens provided by key prosecution witness Bill Allen. In the face of that new evidence, the motion filed today acknowledged that one of the government's own previous filings was "inaccurate."

There is so much to sort through here that this blog post will be in a question and answer format. *This is Part One of a two-part post.*

### **What is the effect of this decision on the guilty verdicts against Ted Stevens that the jury in Washington, D.C. delivered last October?**

This case is dead, and the jury verdicts will be quickly voided as a matter of law. The filing this morning is formally couched as a motion by the government in which the prosecution asks the court to set aside the verdict and dismiss the indictment with prejudice, but that is definitely just a formality. In a verdict announced last October, a jury in Washington, D.C. found former U.S. Sen. Ted Stevens (R.-Alaska) guilty of seven counts of failing to disclose gifts and/or loans on annual Senate forms. That case is not only lying on the ground with a stake in its heart, it's been buried so far under the surface of the earth the world's best oil and gas driller couldn't get to it.

Until this morning, the case was in post-trial proceedings before the judge decided post-trial motions and either went to sentencing or granted the defense some relief. That's still officially true, but Judge Emmet Sullivan will obviously grant the government's request now. He set a hearing for April 7 at 10 a.m. at which that is almost certain to occur.

### **Was this decision by the government to kill the case expected?**

Not by me. As readers of this blog—and viewers of my C-SPAN TV appearance—will recall, I predicted that Judge Sullivan would ultimately not grant the defense motions and would instead sentence Ted Stevens, thus setting up a lengthy appeal.

So much for that prediction—and so much for my failure of imagination. I never considered the possibility that the Department of Justice would pull the plug on its own case.

It appears that today's announcement amazed most other observers as well.

So congratulations goes to those who at least predicted that Judge Sullivan would either order a new trial or dismiss the indictment. One was Jeff Levin, a New Hampshire lawyer who told me some weeks ago that he thought that Special Agent Chad Joy's allegations about the prosecution's conduct that came out after the trial would lead the judge to dismiss the case.

**Why did the Attorney General make this decision to kill the case, particularly after the federal government devoted so many years and so many dollars to this prosecution?**

Let's start with the statement issued this morning issued by Attorney General Eric Holder and then go to the analysis of National Public Radio's Nina Totenberg, who broke this story early this morning.

General Holder said that based on a "careful review," he had concluded that "certain information should have been provided to the defense for use at trial." Based on that conclusion and "in consideration of the totality of the circumstances of this particular case," he determined that it was "in the interest of justice" to dismiss the indictment and end the case.

Totenberg's report suggests additional factors in Holder's decision to kill the case:

1. The increasing drumbeat of allegations of misconduct by DoJ attorneys as well as by an FBI agent would lead to "more ugly hearings" in front of Judge Sullivan.
2. Holder holds a particular place in his heart for the Public Integrity Section, the DoJ unit where the Attorney General began his legal career and the outfit which has handled the investigation and prosecution of Ted Stevens and others caught up in the federal probe into public corruption in Alaska. The two top-ranking attorneys in the Public Integrity Section were among the three Department of Justice lawyers held in contempt by Judge Sullivan in post-trial proceedings. The hearings coming up appeared likely to tarnish the reputation of that unit as well as the Department in general.

3. Holder is well-acquainted with Judge Sullivan, with whom he served on the bench as a fellow judge on the Superior Court of the District of Columbia before they both rose in government, and the Attorney General was disturbed by the harsh denunciations the trial judge has issued against the prosecution team.

4. Stevens is 85 now.

5. Stevens is no longer in the Senate, having been defeated in a re-election bid occurring eight days after the jury returned the verdicts.

6. "Perhaps most importantly, Justice Department officials say Holder wants to send a message to prosecutors throughout the department that actions he regards as misconduct will not be tolerated." According to sources contacted by Totenberg, Holder "was horrified by the failure of prosecutors to turn over all relevant materials to the defense."

I would add these additional speculations about today's announcement. Today's announcement of the discovery violation uncovered last week could be seen as either the nail in the coffin for Holder or just a post to hang his hat on so as to justify getting out of a case that he felt he had to end.

Additionally--as noted by Jason Zengerle of *The New Republic*--noted, it was easier for the Obama administration to admit errors that occurred under a past regime than to confess that it itself had made mistakes. This last factor was not a reason for today's announcement, but obviously made it less painful.

**Does the decision announced today show that the Department of Justice prosecutors in the Bush administration deliberately made mistakes to help Ted Stevens?**

No, and I would not address this question if I did not see it raised so much. The trial prosecutors clearly wanted the jury to convict Ted Stevens. A hidden agenda to go into the tank was not the problem.

**Does the decision announced today show that Democratic-leaning lawyers in the Department of Justice made up the case against Ted Stevens out of whole cloth just to get him out of office?**

No, and I would not address this question either if I did not see or hear it repeatedly. Under the analysis of anyone who understands government, the case against a

sitting U.S. Senator was so important that very high-ranking officials in the Bush administration's Justice Department—including the Attorney General—must have reviewed the case before authorizing the search warrant on Ted Stevens' house, let alone his indictment. It is highly likely that President George W. Bush was personally made aware of the status of the case before the search warrant and before the indictment.

*Coming up in Part Two: Why did the trial prosecutors commit this apparent misconduct? What would have happened in the trial if this apparent misconduct had not occurred? What does today's decision mean for the trial prosecutors? What does it mean for the defense team? What effect will today's announcement have on the federal investigation? What effect will today's announcement have on Ted Stevens' legacy?*

*(UPDATE--Edited to avoid repetition. Thanks, Bob Weinstein.)*

POSTED BY CLIFF GROH AT 12:47 PM 2 COMMENTS:  
LABELS: TED STEVENS TRIAL

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