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THE WALL STREET JOURNAL
WSJ.com

APRIL 8, 2009

Judge Orders Probe of Prosecutors

By [EVAN PEREZ](#)

WASHINGTON -- A federal judge ordered a criminal investigation into prosecutorial misconduct in the trial of former Alaska Sen. Ted Stevens, and suggested that the botched case exposed a deeper problem at the Justice Department.

U.S. District Judge Emmet G. Sullivan appointed a special prosecutor to look into possible criminal contempt-of-court charges against six federal prosecutors who the judge said repeatedly withheld evidence from defense lawyers.

Judge Sullivan, as expected, erased the corruption conviction of Mr. Stevens and dismissed the case, in line with a request last week by U.S. Attorney General Eric Holder.

The admonition struck another blow at the Justice Department, which is emerging from years of controversy over its legal opinions in terror cases and instances of what internal investigations concluded were politically tainted decision making.

A federal jury in October convicted Mr. Stevens on seven counts of failing to disclose free home renovations and other gifts from friends. The verdict came just eight days before Election Day, and the Republican lost his re-election bid by fewer than 4,000 votes, handing Democrats a crucial seat in the Senate.

During the trial, the judge cited multiple instances in which prosecutors concealed potentially exculpatory evidence. A new team of Justice Department lawyers who took over the Stevens case in January revealed last week that there was an additional instance in which material related to a key witness was held back from defense lawyers.

"In 25 years on the bench I have never seen anything approach the mishandling and misconduct I have seen in this case," Judge Sullivan said. He opened the hearing with a nearly 25-minute recitation of missteps by government lawyers, disdainfully listing the excuses government lawyers had offered: good-faith error, immaterial information, inadvertent error.

Paul O'Brien, part of the new Justice team that sought dismissal of the case, told the judge, "I apologize to the court and deeply regret this occurred."

The judge criticized the Justice Department for its internal investigation of the prosecutors, saying that after six months "the silence has been deafening." Washington lawyer Henry Schuelke will handle a new court-supervised probe.

The six prosecutors being examined are Brenda Morris, who led the prosecution team; William Welch, who heads Justice's public-integrity section; Joseph Bottini and James Goeke, federal prosecutors from Alaska; and Nicholas Marsh and Edward Sullivan, prosecutors who were dispatched from Justice headquarters to help in the investigation.

Ms. Morris, Mr. Welch and Mr. Goeke didn't return calls seeking comment. Mr. Bottini declined to comment. Messrs. Marsh and Sullivan couldn't be reached.

Mr. Stevens, wearing cowboy boots with his dark suit, briefly addressed the courtroom packed with relatives and friends, some of whom wiped away tears. The ex-senator, 85 years old, said his faith in the justice system had been shaken, but that with the dismissal of the charges, "My faith has been restored."

He lifted his arms to applause after the judge concluded the two-hour hearing.

The politics of the Stevens case aren't straightforward. It was brought against a Republican senator under a Republican administration. The prosecutors were career officials, not partisan appointees, and it was an attorney general in a new Democratic administration, Mr. Holder, who halted the prosecution.

In another recent case -- involving a doctor accused of illegally writing prescriptions in Miami -- Justice Department lawyers apologized for "serious mistakes" after admitting that they had cooperating witnesses record calls with members of the defense team. The recordings were done without the approval of U.S. Attorney R. Alexander Acosta, who told the judge about the missteps and referred the matter for an internal investigation, according to court filings.

"There is an epidemic in the criminal-justice system," said David Oscar Markus, a defense lawyer involved in the Miami case.

In a statement, the Justice Department said it takes allegations of misconduct seriously but added, "it's important to recognize that the Department's attorneys act responsibly and ethically in the vast majority of the cases they litigate."

In the Stevens case, the Justice Department said the prosecution should have given the defense notes from an April 15, 2008, interview in which Stevens friend Bill Allen, head of Veco Corp., a now-defunct oil-services company, made statements to prosecutors that contradicted the testimony Mr. Allen later gave at trial.

Judge Sullivan previously held three department officials in civil contempt for failing to turn over internal communications in connection with a whistle-blower complaint about the case from a Federal Bureau of Investigation agent. Justice officials found the April 15 notes during a review that began in February in preparation for Mr. Stevens's appeal.

Mr. Allen's trial statements were the key evidence in the case, buttressing the prosecutors' contentions that Mr. Stevens knew he was getting valuable work on his Alaska cabin done but failed to report the gifts on Senate disclosure forms. Mr. Allen's attorney, Robert Bundy, didn't immediately respond to requests for comment.

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Printed in The Wall Street Journal, page A4

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