

Prosecutorial corruption

by Susan Estrich

Corruption is a bad thing wherever you find it, and no profession or institution, from churches on Main Street to banks on Wall Street, is immune. You've got people who abuse the trust of shareholders and people who abuse the trust of voters; you've got cops who abuse their badges and professors who abuse their tenure. But in my book there is a special place by the devil's side for corrupt prosecutors.

We depend on prosecutors to pursue corruption, to punish it and not practice it. When they themselves become corrupt, the system breaks down altogether, as it did in the investigation and trial of Ted Stevens.

I'm no fan of the long-serving Republican senator known for bringing home the goodies to Alaska. He was convicted on seven counts arising out of his failure to report some \$250,000 in goods and services on his Senate ethics form. Not to minimize that, but \$250,000 is chump change compared to what Stevens, who sponsored the bridge to nowhere, earmarked for Alaska.

But Stevens, like every defendant — Republican or Democrat, Christian or Muslim, corrupt or not — deserved a fair trial, in which the goal of the prosecutors is supposed to be justice not victory, in which the rules require that the government prove its case and the defense test it. A critical aspect of that process is the government's obligation to disclose evidence in its possession to the defense, especially evidence that might be used by the defense to cross-examine key witnesses and undercut the government's case.

The Stevens prosecutors failed to do so. Repeatedly.

Judge Emmet Sullivan, not known as a left-leaning, defense-loving liberal, chastised the government, excluded evidence and tried to fashion remedies as he went along, all the while making clear his grave dismay with the prosecution. Stevens was convicted and lost his seat. New prosecutors were assigned to review the case. Those prosecutors found yet another example of evidentiary misconduct by the prosecutors, leading Attorney General Eric Holder to announce that the Justice Department would ask Sullivan to dismiss the case. He did so on Tuesday, but not before giving prosecutors another lashing for having undermined his faith in the fairness of the system.

The question that interests me is not what happened to the career lawyers in the elite public integrity section, but why. The obligation to turn over evidence is something every prosecutor understands. Why not do it?

Some speculate the government was overwhelmed in dealing with Stevens' expensive and effective defense team, which opted for a speedy trial, further increasing the pressure on the government. There were tales of evidence boxes unopened and unexamined as the trial was beginning.

But the straw that broke the camel's back, or Eric Holder's, was apparently the deliberate decision not to turn over notes of an interview with the man who was to be the government's key witness. Why?

I don't think for a minute â€” and no one has even suggested it â€” that anyone "paid off" these prosecutors to "get" Stevens. I don't think they stacked the deck against him because they were Democrats who supported his opponent, or because one of them had a personal grudge of some sort. I don't think they did it because they believed he was innocent and this was the only way to convict him. No, this particular form of corruption is insidious not because it reflects a rejection of the values of the job of being a prosecutor, but because, in its way, it is based on them.

I'm willing to bet money that when all the investigators are through (and the Court appointed its own investigator on Tuesday), the conclusion will be that the prosecutors were careless and sloppy and all of that â€” never underestimate the possibilities of incompetence everywhere â€” but that their greatest sin was their outsized desire to "win."

They believed Stevens had engaged in wrongdoing. They spent years investigating. They crossed the line not to convict an innocent man but a guilty one. It is the most common, and most insidious, form of prosecutorial corruption.

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