

FBI WHISTLEBLOWER PLUGS TOOBZ STEVENS PROSECUTION

graphic by twolf

I have stated before that the case against Ted Stevens should have been dismissed for prosecutorial misconduct before it ever reached the contaminated and bizarre jury process that led to the guilty verdict.

Late today we received yet more evidence of just how true that is. From the Anchorage Daily News:

A five-year FBI agent assigned to the Alaska corruption investigation is the whistleblower who brought a complaint of misconduct against other agents and at least one prosecutor involved in the trial of U.S. Sen. Ted Stevens.

...

But the whistleblower's explosive allegations about misconduct by other members of the FBI and the prosecution suggest intimate, firsthand knowledge of the full investigation from the start, and of the activities surrounding

Stevens' trial.

"I have witnessed or learned of serious violations of policy, rules and procedures as well as possible criminal violations," the whistleblower asserted in his complaint to the Justice Department's Office of Professional Responsibility.

The whistleblower said agents got too close to sources, took gifts and favors from sources, and revealed confidential grand jury and investigation information to sources and reporters.

The whistleblower also said members of the prosecution team intentionally withheld information from Stevens' defense that was required by law to be turned over. In addition, the prosecution deliberately failed to alert the defense that it was sending a key witness back to Alaska without testifying even though that witness was under a defense subpoena.

Prosecutors and agents also failed to properly log and track evidence, the whistleblower said.

Two filings came out today: The decision and order by Judge Emmet Sullivan releasing the document, and the actual whistleblower's complaint.

This case was already so full of erratic and malicious misconduct that it was almost certain to be reversed on appeal. See this earlier post I did and this post by Christy Hardin Smith.

Stevens' attorney, Brendan Sullivan, has already lodged a motion to dismiss the charges or, alternatively, gain a new trial. Stevens has not been sentenced yet, so this is still in the trial court, not the appellate level.

The real issue is going to revolve around Federal Rules of Criminal Procedure Rule

16(a)(1)(E), which requires that the government must disclose evidence upon defense request where:

- (i) the item is material to preparing the defense;
- (ii) the government intends to use the item in its case-in-chief at trial; or
- (iii) the item was obtained from or belongs to the defendant.

Further, there is a continuing duty to disclose (Rule 16(c)), with penalties enumerated in Rule 16(d)(2):

- (A) order that party to permit the discovery or inspection; specify its time, place, and manner; and prescribe other just terms and conditions;
- (B) grant a continuance;
- (C) prohibit that party from introducing the undisclosed evidence; or
- (D) enter any other order that is just under the circumstances.

Well, let me tell you what the appropriate remedy here is. Dismissal. With prejudice; actually extreme prejudice. Then the offending agents and prosecutors ought to be immediately charged criminally. As the links to both my and Christy's earlier posts evidence, this prosecution was already bad; it has now gone to heinously malevolent.

This is blatant intentional withholding by the prosecution of exculpatory evidence. I will repeat what I said in my earlier post, once more with feeling:

When you hear legal types discussing "Brady material" or "Brady evidence", this is exactly what they are describing. Under the seminal case of *Brady v. Maryland* (maybe we should ask

Sarah Palin) the prosecution must disclose to the defendant any exculpatory evidence they possess. Failure to so disclose can result in the dismissal of a case.

The situation in Stevens' case is awfully blatant and clearly exculpatory. It should result in at least a mistrial; if I were the judge I would bounce the entire indictment with prejudice. If a defendant can't obtain relief on this fact set, then the theory in Brady v. Maryland has no meaning. Those judges in DC must be ready to explode over what this justice department has done over the last 8 years. The prosecution is in for a reaming of some sort either this afternoon or tomorrow morning. Stay tuned.

Stay tuned indeed, because if this case is not dismissed for prosecutorial misconduct and these malefactors prosecuted themselves to the fullest extent of the law, there is simply no justice left in this country. As painful as it is to say, Ted Stevens is no longer the issue here, the rule of law and the integrity of our justice system is now the issue. A powerful example must be made, and a clear, unequivocal message sent that our courts and justice system will not tolerate this kind of dishonesty and criminality for our government's prosecutors and Department of Justice.