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REVERSAL OF FORTUNE

No longer a Senator or felon, Ted Stevens chuckles as prosecutors feel the heat



By Julius (Jay) Wachtel. Why was [Ted Stevens](#) smiling? Known until his recent electoral defeat as the grumpy old man of the Senate, the 40-year veteran could hardly contain himself as the judge who presided over his trial appointed a special investigator to determine if Government lawyers up to and including the chief of DOJ's Public Integrity Section should be held criminally accountable. Granting an unprecedented request by Attorney General Eric Holder, the judge also set aside Stevens' October 2008 conviction for failing to disclose \$250,000 worth of gifts.

This surprise, extra-innings ending to what most assumed was a slam-and-dunk case is the latest twist in a pay-for-play scandal that has roiled Alaska politics and sent a handful of bribe-taking Alaska legislators to the Federal slammer. Two, former House Speaker Pete Kott and former Representative Vic Kohring are currently serving six and three and one-half years respectively. Stevens' son Ben, a former president of the Alaska Senate is also under investigation but has not been charged.

Stevens had been in the Feds' cross-hairs for a long time. As the longest-serving Republican member of the United States Senate, and until 2005 chair of the all-important appropriations committee, he was the go-to guy for politicians looking to finance their pet causes and for lobbyists seeking to advance their clients' interests. To make their case the Feds turned to William J. Allen, one of Stevens' Alaska businessman friends and the same guy whose testimony sunk the others. An oil millionaire whose cash reserves set politicians' hearts aflutter, Allen had pled guilty to bribery and was awaiting sentencing. Notably, the [plea bargain](#) stipulated that the Government would leave his children and assets alone.

In July 2008 Stevens was [indicted](#) on seven counts of the general Federal lying statute, Title 18, U.S. Code, section 1001, for submitting Senate disclosure forms that left out gifts of a vehicle, home improvements and furniture amounting to \$250,000. To demonstrate that these weren't innocent omissions the indictment mentioned that Allen had asked Stevens to help on matters ranging from a National Science Foundation grant to building an oil pipeline. Defense attorneys vigorously objected, as Stevens had not been charged with bribery. But in the first of a series of timid rulings, the judge allowed the material in to demonstrate the defendant's motive.

Indeed, allusions to favors were critical to the case. As a [Washington insider](#) aptly put it, "no one is going to convict [Stevens] for just failing to file his financial reports." Suggesting that there had been a quid-pro-quo was Job #1.

As the trial got underway one of Allen's former employees flew in from Alaska (against the wish of defense attorneys, the trial wasn't held there but in Washington D.C.) Summoned by prosecutors, he was [summarily sent home](#) without taking the stand. Stevens' lawyers, who were eager to question the man, were angry. They later found out that the witness would have testified, if asked, that Allen's remodeling bills had been inflated to benefit another client. Stevens, everyone agreed, contributed \$160,000 to a renovation that prosecutors argued was worth another \$188,000. But how much of that had been padded?

The defense moved for a mistrial. After scolding prosecutors, the judge accepted that dismissing the witness was an innocent mistake and let the trial proceed.

Defense lawyers then homed in on Allen. If there was a balance, why didn't he press Stevens for payment? Hadn't the senator sent notes asking that he submit all bills? Well, yes, Allen conceded, but Stevens' close friend, Bob Persons, told him to ignore the messages.

Then the other shoe dropped. After the first faux-pas the judge reminded prosecutors of their obligations under [Brady v. Maryland](#), which requires that the Government turn over all potentially exculpatory information to the defense. Defense lawyers were given an FBI agent's notes. Allen told him that had Stevens been billed, he would have probably paid.

How did the judge react? With another scolding.

On the next day Allen's account of his conversation with Parsons was more detailed. Stevens was only *pretending* that he wanted to be billed to cover his back. These devastating remarks totally surprised the defense. During trial both sides are supposed to exchange their witnesses' statements in advance. By tailoring their star

witness's testimony on an ongoing basis prosecutors were making it impossible for the defense to prepare let alone investigate. Each time that Allen took the stand promised another got'cha. Stevens' lawyers again moved for a mistrial.

Again it was denied. In this court three times was *not* a charm.

At trial's end the judge told the jurors that they could consider the government's misconduct while deliberating. Whatever good that did was probably outweighed by the [poor performances](#) of Stevens and his wife on the stand (she came off as haughty and he kept losing his temper.) No one was surprised when Stevens was found guilty on each count. And that would have been that except for a remarkable event. One of the FBI agents on the case, [Chad Joy](#), filed a Federal whistleblower complaint alleging that the prosecutors' inadvertent "mistakes" (e.g., sending the witness away, concealing exculpatory evidence) were very much on purpose. Joy also accused other FBI agents of accepting gifts from Allen, and a female agent of having an inappropriate relationship with Allen, visiting him alone and purposely wearing a skirt when he testified, a gesture that she called a "present."

The judge had finally heard enough. Realizing that he had been made the fool, he promptly held the entire prosecution team in contempt. The wheels of accountability finally began spinning. More withheld documents surfaced, *including* [prosecutor notes](#) that said *Allen didn't remember speaking with Parsons about why Stevens asked for the bills*. It's entirely possible that before this is over several prosecutors and FBI agents may find themselves without a job, perhaps even their liberty.

[CBS News on internal Justice Department inquiry](#)



On April 3, five and one-half months after America's newspaper of record demanded that Stevens resign his seat, an opinion piece on the trial entitled "[Prosecutors Gone Wild](#)" graced the *New York Times* op-ed pages. In an eloquent essay, former New Jersey attorney general John Farmer reiterated what every first-

year law student knows: a prosecutor's ultimate job isn't to convict but to seek justice. (For an earlier post on this subject, see "[Justice Was His Client.](#)") Still, after bad-mouthing Stevens for the better part of two years the *Times* couldn't just let it go. On the same date that Farmer's article appeared [the Times editorialized](#) that however grievous the Government's behavior, "the prosecutor's bad acts do not necessarily mean that Mr. Stevens was innocent of misusing his office."

In an adversarial system there are no "ties": one side must by definition lose. When careers depend on winning, truth can suffer. High-profile investigations like the Stevens case are particularly likely to provoke agents and prosecutors to cross the line. With their futures and their agencies' reputations at stake, one can only imagine the pressures they must have felt to make sure that Stevens was convicted.

There's a greater point to be made, and it's not about Stevens, who hardly cuts a sympathetic figure. It's about defendants who don't have the resources to battle teams of Federal gumshoes. Consider a case that you've probably never heard of. In 1980 [Tom Goldstein](#), a down-and-out California man was convicted of murder. Evidence against him included an eyewitness and a jailhouse informant who swore that Goldstein confessed to the killing. It later turned out that the eyewitness had been coached by detectives and that the informant, who denied getting a "deal" for testifying, in fact had a long string of such deals, a key point that prosecutors never disclosed. Goldstein served 24 years before he was exonerated.

Our vaunted adversarial system is responsible for many such goofs. Yet we're so convinced that it's the best way to get at the truth that contrarians are likely to get a scolding. As the trial wound to its conclusion, a *Times* writer, in an example of baiting worthy of Walter Duranty, accused Brendan Sullivan, Stevens' principal lawyer, of cynically exploiting Government missteps:

The principal tactic used by Mr. Sullivan has been to present a surplus of outrage after finding examples where prosecutors failed to live up to their obligations, first laid out in a 1963 Supreme Court opinion, to disclose to defense lawyers any information that could help disprove the charges. Discovering one such instance of withheld information, Mr. Sullivan threw down his papers on the lectern. "I can't do my job," he complained, assuming the expression of someone whose recent meal of bad oysters had just made itself known.

Justice isn't a game where you're supposed to hide your hand. Yet thanks to human nature that's often how it's played. Let's hope that exposing the system's dark underbelly spurs some long-needed reform. Perhaps it's fortuitous that Stevens was a rich guy. This could be that one time when benefits really *do* trickle down.