

From: Huma Abedin
Sent: 4/8/2009 11:37:10 AM +00:00
To: 'humamabedin'
Subject: Fw: Putting Justice Back Into the U.S. Department of Justice
Attachments: tstevens_r350x200.jpg_0babd24c67_5f3097b9d1ff106ec86_53055db7939

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From: H <hdr22@clintonemail.com>
To: Huma Abedin
Sent: Wed Apr 08 07:28:39 2009
Subject: Fw: Putting Justice Back Into the U.S. Department of Justice

Pls print.

From: "Davis, Lanny J."
Date: Mon, 6 Apr 2009 11:13:49 -0400
To: Davis, Lanny J.<
Subject: Putting Justice Back Into the U.S. Department of Justice

April 6, 2009

"Purple Nation"

Putting Justice Back Into the U.S. Department of Justice

By Lanny J. Davis

<[http://www.washingtontimes.com/photos/2009/apr/06/24837/oSen.%20Ted%20Stevens%20\(Tom%20Ramstack/The%20Washington%20Times\)>](http://www.washingtontimes.com/photos/2009/apr/06/24837/oSen.%20Ted%20Stevens%20(Tom%20Ramstack/The%20Washington%20Times)>)

Sen. Ted Stevens (Tom Ramstack/The Washington Times)

<http://www.washingtontimes.com/news/2009/apr/06/davis-putting-justice-back-into-the-us-department/>
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<http://pundits.thehill.com/2009/04/06/justice-returns-to-the-justice-department/> <<http://pundits.thehill.com/2009/04/06/justice-returns-to-the-justice-department/>>

This is what I wrote in this space on Jan. 9.

"Sen. Ted Stevens: An Innocent Man

"Just the headline of this piece alone, it bet, strikes a number of people.

"Most people assume, or have concluded, that Sen. Ted Stevens is guilty. After all, didn't a D.C. grand jury indict Mr. Stevens on seven felony counts? Haven't the U.S. government and its federal prosecutors concluded that Mr. Stevens failed to disclose taking more than \$250,000 worth of gifts on his Senate financial disclosure forms? ...

"But just suppose all these media stories began with the following paragraph:

"_Sen. Ted Stevens, who must be presumed to be an innocent man until he is proven guilty by the U.S. government beyond a reasonable doubt, today was indicted on charges of filing false statements in Senate financial disclosure forms. As is normal, the grand jury voted the indictment based on one-sided evidence presented by prosecutors, without Sen. Stevens or his attorneys having an opportunity to be present, to cross-examine witnesses, or to present contrary evidence that could have created a reasonable doubt regarding his guilt.'

"Most media people and government prosecutors would probably say such a lead would be naive and ridiculous. What they couldn't say is that a single word of the above paragraph is untrue."

Finally, thanks to Attorney General Eric H. Holder Jr., justice has been done.

Last week, Mr. Holder decided to seek dismissal of the conviction of Mr. Stevens because of prosecutorial misconduct by senior Justice Department officials, as well as possibly one or more FBI agents who worked on the case.

When are we going to learn?

When is the media going to turn sufficient attention on corrupt or unethical prosecutors and law enforcement officers, at all levels of government — at least as much the sensational headlines that almost always result from the "indictment" of public officials.

There are only a small minority of such corrupt prosecutors and law enforcement officers — the rotten apples, so to speak. But one is one too many, since even the decision to indict can permanently ruin a reputation.

What about the issue of prosecutor-called press conferences to announce indictments? I never understood why the canons of ethics much less just Justice Department policy permits them. The indictment is damning enough — why not require prosecutors to do nothing more than publish the indictment and be silent?

Then there are the multiple examples of leaks of grand jury testimony or FBI interviews or other evidence, sometimes pre-indictment — which are violations of criminal law and which clearly prejudice the jury pool or are used for other improper purposes.

We all should re-watch the movie "Absence of Malice." In the movie the prosecutor deliberately leaks investigative files to put pressure on a businessman, played by Paul Newman, who he believes is connected with the mob. The reporter, played by Sally Field, reports the leaked story on page one — and the businessman's life is virtually ruined. But he is a totally innocent man.

So in revenge, he brilliantly sets up the reporter and the prosecutor with a phony story that is also leaked, as he expects, and results in a false story that is easily disproven. The outcome: the reporter is forced to resign and her journalistic career is ruined and the rogue prosecutor is fired for unethical behavior by a senior Justice Department official, played by Wilford Brimley.

Oh, such a happy ending. If only it could happen in real life.

In the Stevens case, U.S. District Judge Emmet Sullivan already had held in contempt-of-court William Welch, head of the DOJ's Public Integrity Section (belying the name of the section he heads), Patricia Stemler, and chief trial prosecutor, Brenda Morris, for prosecutorial misconduct involving violations of the so-called "Brady" rule. This rule, known to everyone in the law enforcement system, is based on the 1963 Supreme Court case, Brady vs. Maryland, that held that the government must turn over to the defense any evidence that might help the defendant. Due process rights guaranteed by the Constitution require this, the Brady Court held.

Now we know from senior advisors to Mr. Holder that FBI interview notes that would have undermined the testimony of one of the key prosecution witnesses were withheld from Mr. Stevens' defense counsel. And we also know that the decision to ship out of town another key prosecution witness occurred not because he was "ill," as prosecutors misleadingly told the court and defense counsel, but rather, because he had performed badly in a mock, dress-rehearsal cross-examination by prosecutors, who decided they would rather not have him testify.

So Mr. Holder did the right thing when he decided to seek dismissal of Mr. Stevens' conviction and not to retry him.

But now Mr. Stevens has a right to ask, "Where do I go to get my good name back?" Or, no doubt, he could also rightly ask, since he was convicted eight days before the November 2008 elections: "Where do I go to get my Senate seat back?"

FBI agent Mary Beth Kepner, the lead agent in the investigation, and the senior Justice Department officials (Mr. Welch, Ms. Stemler and Ms. Morris) are of course entitled to the presumption of innocence on the misconduct charges to which they are subject. And without the leaks and innuendo in the press to which Mr. Stevens was subjected.

But the DOJ's Office of Professional Responsibility should continue its investigation of these individuals. If they are found to have violated the law, they should be indicted, stand trial, and if convicted, in my opinion, go to jail. Violations of the law by people whose public job is to enforce the law should be held to particularly harsh penalties.

One of my heroes as a public prosecutor is the former U.S. Attorney Joseph DiGenova, a Republican and also one of the few independent counsels who looked into a matter and decided there was no evidence and decided not to proceed. On the Stevens case, Mr. DiGenova said, "the power to prosecute is the power to destroy....The significance [of this] misconduct is monumental."

As for our new attorney general, he deserves all our thanks in reminding all Americans — and we needed reminding after the last years of the prior administration's Justice Department — that principle must guide DOJ policy, not politics.

Mr. Holder offered five simple words in asking to dismiss Mr. Stevens' conviction: "In the interest of justice."

That says it all. Thank you, Eric Holder. I only hope from this point on everyone in the law enforcement system of the United States remember those five words as their singular mission.

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Lanny Davis, a Washington lawyer and former special counsel to President Clinton, served as a member of the President Bush's Privacy and Civil Liberties Oversight Board from 2006 to 2007. He is the author of "Scandal: How 'Gotcha' Politics Is Destroying America." This article appeared in The Washington Times today, April 6, 2009.

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