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GOVERNMENT CORRUPTION CONFIRMED BY COURT-ORDERED INVESTIGATION

This is the defense analysis of the extensive government corruption in the failed prosecution of Senator Stevens. It summarizes the most significant misconduct, some of which was discovered within five months of the illegal verdict. The court-ordered investigation undertaken over a two-year period has unearthed even more wrongdoing by prosecutors driven to win at all costs even if it meant abandoning the Constitution and their ethical obligations.

The post-trial investigation provides a meticulous analysis of Department of Justice attorneys and an FBI agent, who disregarded the law and abandoned all decency to obtain an illegal verdict. The investigation was conducted pursuant to court order by former prosecutors Henry F. Schuelke, III, and William B. Shields since the dismissal of the case on April 7, 2009. The 514-page report of investigation was ordered released to the public on March 15, 2012 by U.S. District Court Judge Emmet Sullivan pursuant to his order dated February 8, 2012.

INTRODUCTION

The 514-page Report by court-appointed investigator Henry Schuelke and his colleague William Shields confirms that the prosecution of Senator Ted Stevens was riddled with government corruption involving multiple federal prosecutors and at least one FBI agent. Some were more knowledgeable, and thus more culpable, than others. Nonetheless, they worked together to win at all costs in an attempt to convict a sitting United States Senator in an ill-conceived prosecution.

As a direct result of the government's corrupt conduct and the illegal verdict they obtained, Senator Stevens lost his bid for re-election to an eighth term in office. The citizens of Alaska lost their champion who had served them for 40 years, and the balance of power shifted in the United States Senate.

After the trial, United States District Court Judge Emmet Sullivan held some members of the prosecution team in contempt of court for failing to comply with a court order. When the original prosecutors were found in contempt after the illegal verdict, they were replaced by three experienced prosecutors who acted diligently and honorably, adhering to the best traditions of the Department of Justice.[1] Notwithstanding the difficult assignment of investigating fellow prosecutors, they acted professionally and did their duty. They did what should have been done by the original prosecutors. They found *Brady* information and promptly disclosed it to the defense.

These distinguished government lawyers accomplished in five weeks what the original prosecutors failed to do throughout the prosecution of Senator Stevens. Each demonstrated the character and courage to do what the law required. They apparently understood, as do the great

[1] The new prosecutors were Paul M. O'Brien, David L. Jaffe and William J. Stuckwisch.

majority of Department of Justice lawyers, that their job " . . . is to do justice, . . . to do the right thing," as Attorney General Holder said on April 8, 2009, the day after the Stevens case was dismissed.

This new evidence demonstrated that the government's most important testimony in the case was fabricated. The new evidence impeached the government's star witness so clearly that newly-appointed Attorney General Eric Holder directed that prosecutors file a motion asking Judge Sullivan to dismiss the case.

The Court dismissed the case on April 7, 2009, indicating that the dismissal vitiated the illegal verdict and announcing that the Senator had never been found guilty of any crime. The Judge also said that this was the worst case of misconduct he had ever seen in his many years on the bench. The new prosecutors apologized to the Court on behalf of the Department of Justice. Their assignment was concluded. Had it not been for their diligent work, the corruption of the original prosecutors might never have been uncovered.

The trial judge was so stunned by what he had observed at the trial that he appointed Henry Schuelke, an independent lawyer with 43 years experience, including having served as a federal prosecutor, to investigate the government's misconduct to determine if any of the wrongdoers should be prosecuted for criminal contempt of court. While the Report concluded that there was not a basis to prosecute for the narrow crime of criminal contempt, it describes the government misconduct in detail.

The Report reflects the extraordinary care with which the investigation was conducted over two years. The meticulous detail paints a picture of the government's shocking conduct in which prosecutors repeatedly ignored the law. The Report shows how prosecutors abandoned their oath of office and the ethical standards of their profession. They abandoned all decency

and sound judgment when they indicted and prosecuted an 84-year old man who served his country in World War II combat, and who served with distinction for 40 years in the U.S. Senate.

The government's corruption can be broken down into three easily understood categories of wrongdoing.

Category I: The Introduction of Perjured Testimony by the Government and the Attempt to Hide from the Defense the Evidence Which Would Have Proven the Lie Conclusively

For many months prior to trial, the government was desperate to explain one key handwritten note by Senator Stevens to Bill Allen, the government's star witness. The note thanked Allen and stressed the importance of sending a bill for the work done on the Senator's Alaska home. The note (sometimes called the "Stevens note" or the "Torricelli note" because of a reference to former Senator Robert Torricelli) read as follows:

> 10/6/02
>
> Dear Bill –
>
> When I think of the many ways in which you make my life easier and more enjoyable, I lose count.
> Thanks for all the work on the chalet. You owe me a bill – remember Torricelli, my friend. Friendship is one thing – compliance with these Ethics rules entirely different. I asked Bob P. (Persons) to talk to you about this so don't get P.O.'d at him – it just has to be done right.
>
> Hope to see you soon.
>
> My best,
> Ted

The defense told the jury in its opening statement that this crucial piece of evidence proved that the Senator was innocent and that Stevens had the intent to pay for the work done on the home.

The government was troubled by the Stevens note because it was inconsistent with their theory of the case. In fact, immediately after receiving the note, the lead FBI agent on the case speculated about whether the note was "fatal" to their case. Moreover, the note was such powerful evidence for the defense that the government even pursued a hare-brained theory that the note itself was a forgery, but concluded to their dismay that it was authentic.

To deal with the note, the government pushed Allen to explain away the note. Under pressure from the government and fearing that he would be charged as a sexual predator and for suborning perjury as described below, Allen came up with a last minute story, just eight days before trial, when he arrived in Washington, D.C. to meet with prosecutors. A prosecutor elicited the conjured up story in this series of questions and answers:

> Q: Did you send Senator Stevens a bill or an invoice after you received this note from him?
>
> A: No.
>
> Q: Mr. Allen, do you remember having a conversation with Mr. Persons after you got the note from Senator Stevens?
>
> A: Yes.
>
> Q: What did Mr. Persons tell you?
>
> A: He said oh, Bill, don't worry about getting a bill. He said, Ted is just covering his ass.

The testimony was an absolute lie, made up out of whole cloth to counter the impact of the Stevens note. It came as a complete shock to the defense because Allen had never said anything like that before in the more than fifty interviews he had given to the government over the course of two years. In fact, the statements Allen made to the government on prior occasions were different than the concocted story. The conjured up story had been given to the

government by Allen on September 14, 2008, eight days before the trial was about to begin. The defense readily concluded that the story was a "recent fabrication."

After hearing Allen's concocted story for the first time on September 14, 2008, not one government attorney, not one FBI agent sought out Persons or his lawyer to ask the simple, straightforward question: "Mr. Persons, did you tell Bill Allen that when Ted Stevens wrote that note, Ted was 'just covering his ass'?" This would have been the most basic, routine investigative follow-up by any prosecutor or FBI agent. They were about to put Allen on the stand as their chief witness and elicit from him the "covering his ass" testimony which Allen attributed to Persons. Why not ask Persons if he made the statement? There is only one explanation. The government and the FBI agent must have known that Allen was lying. Therefore, there would be no point in asking.

A first-year law student, a rookie cop, or a novice reporter would instinctively know to check the accuracy of a witness statement attributed to someone else. Failure to ask Persons shows clearly that the government knew Allen's new story was a classic "recent fabrication." The government presented the "covering his ass" testimony to the jury as if it were true. But, the government did not take the most basic step to corroborate their witness's key testimony because they knew it would be denied by Persons. In fact, Persons denied making any such statement when he was called to the witness stand by the defense. He testified emphatically that he *never* said anything like that to Allen. "Crazy," he said. The government presented to the jury the most crucial piece of evidence in the case knowing that it was concocted out of whole cloth eight days before trial after pressure was imposed on Allen to come up with a better story.

Most sinister of all was the fact that five months before trial on April 15, 2008—just one week after the Senator voluntarily produced documents including the Stevens note—four

prosecutors and one FBI agent heard Allen say that he remembered the Stevens note, but had no recollection at all of a conversation with Mr. Persons about the Stevens note. The government was very worried that they had no explanation for the note. Unexplained, it was a powerful indication of Stevens' innocence because it demonstrated that he had the intent to pay for all the work done on the house and that he specifically wanted to comply with the ethical standards of the Senate. The government was desperate to undercut the note, but Allen was no help because he said he did not remember anything about the note, except the fact that he had received it.

The government's interview of Allen on April 15, 2008 did not go well. One purpose of the interview was specifically to ask Allen about the note which had recently come into the hands of the government. Prosecutors pushed Allen hard for an explanation, but got nowhere. He simply did not remember anything about the note.

When Allen concocted an explanation eight days before trial, Allen's earlier statements indicating lack of recollection became crucial *Brady* information that should have been immediately given to the defense. These earlier statements were inconsistent with the recent fabrication and proved Allen a liar on the most important testimony in the case. The duty to provide Allen's earlier statements to the defense is based in the U.S. Constitution and the Supreme Court case of *Brady v. Maryland*, a landmark case known to every lawyer and litigator in the country. Allen's earlier statements were obvious *Brady* information.

Four of the five people in the April 15, 2008 meeting actually wrote down Allen's statement that he did not discuss the Stevens note with Persons.

One prosecutor wrote: "BA recalls receiving note from TS. Doesn't recall talking to BP re: giving bill to TS."

A second prosecutor wrote: "Allen does not recall Bob P. talking to him about a bill for Ted S."

A third prosecutor wrote: "Recall Bob P. talking to you about this? BA: No. Remember Torricelli."

And, the lead FBI agent wrote: "Probably got the note. Doesn't recall BP talking to him about an invoice." The lead FBI agent later violated FBI regulations by not documenting the interview in an interview memorandum (known as a Form 302) because the interview "did not go well."

Despite their duty to disclose these notes to the defense so that Allen could be cross-examined and contradicted by the prosecutor's own handwritten notes, prosecutors hid the notes from the defense. A prosecutor's duty to disclose favorable information to the defense does not distinguish between oral statements and written materials. Each of the five government personnel in attendance at that meeting on April 15, 2008 had the duty to disclose what they wrote, and what they heard Allen say. Not one of the five did so.

Having hidden from the defense this crucial *Brady* information, the government introduced the perjured "covering his ass" testimony with impunity. The government did not think the notes would be found. If the prosecutors had disclosed the notes as they were bound to do, they would not have dared present the false testimony in the first place. Cross-examination of Allen with the notes would have been devastating to the witness and to the government's case.

Just five weeks after the illegal jury verdict, new prosecutors found the notes of two of the original prosecutors. The new prosecutors gave the *Brady* information to the defense. It was clear that they should have been provided earlier under *Brady*. It was equally clear that they proved that Allen had lied about the "covering his ass" testimony. The prosecutors' notes were

the death knell of the government's case. By hiding them, the original team of prosecutors acted corruptly in violation of the Constitution and ethical standards. The prosecutor who heard Allen deny recollection, but took no notes during the April 15, 2008 interview, was equally obligated to disclose to the defense what he had heard. He did not do so.

By April 1, 2009, it was clear beyond any doubt that the trial of Senator Stevens was corrupted by government prosecutors who had failed in their obligations. This fact was recognized immediately by the new prosecutors and by the Attorney General of the United States, who directed that the government file a motion with the Court requesting dismissal of the indictment. This was an important recognition by the Attorney General that the Stevens prosecution was the product of government misconduct. While the Attorney General acted with speed and courage in moving to dismiss the case, in reality, there was no choice. The case was over.

The Report provides evidence that prosecutors knew that Allen had falsely testified by concocting an explanation for the Stevens note. While some of the prosecutors may not have known about the existence of the handwritten notes by three of the prosecutors and the lead FBI agent, a total of four prosecutors and one FBI agent actually heard Allen's denial of recollection. They were disappointed to hear Allen's statement that he did not recall anything about the Stevens note. They pushed him to do better.

There is further indication that all of the prosecutors knew that Allen's newly created "covering his ass" story was a *recent* lie. Not only did Allen lie when he gave testimony about the "covering his ass" statement, but he lied further on cross-examination when asked when he first told the government the new story. It was crucial to the defense to demonstrate to the jury that the "covering his ass" testimony was a *recent* fabrication. Of course, a lie is a lie no matter

when it was concocted. But, if the defense can show that the lie in question was a *recent* concoction, juries and courts become particularly skeptical of the witness's credibility. Recently created stories cause jurors to disbelieve witnesses. The ability to prove that testimony was a *recent* fabrication would have destroyed the government's case, shown Allen to be a liar, and reflected badly on the prosecutors themselves.

Allen had become a cooperating witness in August 2006, two years before September 14, 2008. He gave more than fifty interviews to the government over that period. Yet, he never once said anything about Senator Stevens "covering his ass." In fact, he gave many statements to the contrary, including that Senator Stevens would have paid any bill that he received, but never said anything like the explosive, surprise, recently concocted "covering his ass" testimony.

The defense asked Allen to admit on cross-examination that he had told the government the "covering his ass" testimony for the first time recently. Allen was asked, "When did you first tell the government that Persons told you Ted was covering his ass and these notes were meaningless? It was just recently, wasn't it?" Allen responded, "No, no." This was a bald-faced lie. And, the prosecutors and FBI agent knew it. Allen lied to protect himself and to save the government's case. All the prosecutors in court that day heard this testimony. All knew that they were told this story for the first time only eight days before trial when Allen arrived in Washington to prepare for the trial. All celebrated the last minute delivery of the "covering his ass" testimony because the prosecutors could finally explain away the Stevens note.

Prior to September 14, 2008, before Allen came to Washington for the trial, the FBI agent on the case pressed Allen to think hard and to come up with a story to explain the Stevens note. Since the April 15, 2008 interview, the government continued to be gravely concerned by the lack of a good explanation. The Stevens note was seen as a powerful indication of innocence. It

showed good faith and lack of criminal intent. At one point, the FBI agent stated that she feared the note was so strong in Stevens' favor that it would cause higher-ups in DOJ to reject the team's recommendation to indict Senator Stevens.

As soon as Allen's new story was concocted and told to two team members, it spread like wildfire among the others on the team. Prosecutors were elated that Allen had come through with a story that pleased them and provided a workable counter to the Stevens note. Prosecutors saw this new story as a means of destroying a strong piece of defense evidence and turning it into evidence of a cover-up reflecting the mindset of a man who wanted something for nothing. The government used the false testimony to argue that the note was evidence that as far back as 2002 (the date of the note) the Senator was covering his tracks. It became the central theme of the government's case. Prosecutors used it to cross-examine the Senator and in closing arguments.

But prosecutors knew that when Allen testified "No, no" . . . it wasn't recent, he was lying to protect the concocted story that Stevens was "covering his ass." In fact, all were delighted with the new story and did not want the defense or the jury to know that it was recently created only eight days before trial. They were willing to let Allen lie to protect the case.

At the moment the prosecutors heard the "No, no" lie they had the duty to disclose to the Judge the fact that the government's chief witness had lied. The Supreme Court held more than fifty years ago in *Napue v. Illinois* that it violates the Constitution for a prosecutor to do nothing while a government witness lies. It also violates ethical rules governing all lawyers. Not one of the prosecutors present in court that day abided by their Constitutional and ethical obligation to correct this testimony. They sat at the government's trial table in silence.

Their silence, while unlawful, is understandable. They had indicted a sitting U.S. Senator. They had to win at all costs. To do so, they were willing to cross the line between right

and wrong repeatedly. They feared losing. They were willing to look the other way, to pretend they did not hear or did not see. They were willing to ignore the Constitution and to ignore their obligations under *Brady*. Some were even willing to go so far as to present false testimony.

Some of the miscreants knew more than others on the team. It is sometimes hard to tell who knew what when, especially given the repeated, incredible denials of recollection and responsibility uttered by experienced government attorneys as reflected in the 514-page Report to the Court. But, with respect to Allen's "covering his ass" testimony, all knew or should have known that it was concocted to solve a serious problem in the government's case. And, all did know that it was *recently* provided by Allen to the government at the behest of one or more members of the team who pressed Allen to come up with a story to explain the Stevens note.

Should this alone describe the extent of the government's wrongdoing, there would be sufficient basis for despair. But, there was much more.

Category II: The Government Introduced Other False Evidence Regarding the Value of the Home Renovation and Hid from the Defense the *Brady* Information Needed to Prove the Lie

The central theme of the government's case was that Senator and Mrs. Stevens did not pay for all of the renovations to their Alaska residence, and that the Senator was obliged to report the value of what they received. The government said the value of the renovation was more than $250,000.

The government was again troubled by key facts which heavily favored the defense and threatened the central theme of the government's case. Senator Stevens and his wife Catherine actually paid $160,000 for the renovations, and every appraiser and assessor who ever observed the renovations believed that they were worth significantly less than $160,000. In other words, the Stevens family paid more than the renovations were worth. The government set out to prove

that the value received by the Stevens family was far greater than the amount they paid. They did so by introducing false evidence and hiding evidence supporting the defense.

First, during the week prior to the start of trial, the government learned that one of the worker's testimony was so harmful to its case that they abruptly sent him back to Alaska (allegedly for medical reasons) so that the witness would not be accessible to the defense in Washington, D.C. (despite the fact that he was under a defense subpoena). The government hoped that the defense would not learn about his exculpatory evidence which devastated the government's determination of value. Senator and Mrs. Stevens testified that they believed that the $160,000 paid (most of it to a general contractor called Christensen Brothers) covered all the labor and materials for the renovation project. The government ridiculed that notion, but hid from the defense the fact that the on-site foreman (Rocky Williams) similarly understood that the charges for his labor were included in the bills sent by the contractor and paid by the Stevens family. None of this *Brady* information was provided to the defense as required. Thus, the defense was unable to contradict the government's value evidence conclusively as it would have been able to do if the exculpatory evidence was made available. Indeed, if the information was made available to the defense, the government would not have been able to put before the jury the false and misleading higher values. Rather than disclose this plainly exculpatory evidence to the defense, prosecutors (1) ordered an FBI agent to create an interview memorandum that misrepresented the scope of the interview and explicitly omitted this favorable evidence and (2) sent the witness (Rocky Williams) back to Alaska so that he would not be accessible to the defense. Thus, the government hid favorable evidence and created a bogus paper trail to cover their misdeeds.

Second, the government introduced into evidence the business records from Allen's company, VECO, which purported to show when certain construction personnel were working on the job site. It purported to reflect accurately the scope and value of the work at $188,000. Such business records are legally presumed to be accurate and are readily admissible in evidence provided they are kept in the ordinary course of business. The government called to the witness stand a company bookkeeper to attest that these records were kept in the ordinary course of business and therefore entitled to deference. All the while, the government knew that the business records were not accurate in major respects, that they contained false and inflated entries, and would mislead the jury.

The business records for one worker, Rocky Williams, reflected that he was on the job site seven days a week, week after week for months on end. In fact, the government knew that he informed them that he worked only part time. The record reflected a much higher cost of labor than was actually performed by this worker on the renovation. Moreover, this was the same witness whom the government sent back to Alaska just before trial after he provided them powerful evidence for the defense, which prosecutors concealed.

The business records for another worker, Dave Anderson, reflected that he too was full time on the job site when, in fact, he was not. He was not even in the State of Alaska for some months the records showed he was supposedly working full time on the job site.

When arguing that the records were admissible, the government knew they were not accurate. But they had to show that the renovations were worth more than the $160,000 the Stevenses paid and were thus willing to introduce false records into evidence.

Third, the government's value figure was severely undercut by its chief witness, Allen. He told the government on numerous occasions that the value of the renovations was, in his

opinion, $80,000. Stevens paid twice that amount. Contrary to their duty under *Brady*, the government hid from the defense Allen's opinion of value which contradicted the government's theory. Moreover, Allen's estimate of the value clashed with the value reflected on his own company's business records. Allen told the government on several occasions that the work on the renovation project was less than appeared in the business records and less than the government's estimate. Consistent with the government's pattern, this *Brady* information was also hidden from the defense.

Further, the government failed to disclose the fact that Allen told them that the two workers described above were drunkards and that much of the time they were on the Stevens job site was wasted time. Allen also told the government that he had personally observed these same workers doing work at Allen's own home renovation project and found them to be unproductive and excessively costly. The government hid all of this as well.

None of this crucial *Brady* information was provided to the defense as required. Thus, the defense was unable to counter the government's value evidence as effectively as it otherwise could have. The defense was able to introduce some evidence which corroborated the defense theme that Stevens' payment of $160,000 covered everything he received. The building permit estimated the value of the renovations to be $87,000; the tax assessor valued the renovations at $104,000; and a bank appraiser determined that they should have cost $124,000. But, the defense was never provided with the evidence that Allen himself, the government's star witness, considered the value of the renovations to be dramatically lower than that foisted on the jury by the government.

Category III: The Government Hid Evidence that Allen was a Sexual Predator Who Suborned Perjury from One of His Victims to Protect Himself

Notwithstanding all of the repeated government misconduct discussed above, all of it in violation of the Constitution and some of it in violation of the criminal law itself, the government's most venal conduct is found in the protection of its chief witness, Bill Allen. By lying to the Court and to the defense, the government hid critical information which was the Achilles' heel of their star witness. Allen would have been destroyed in the eyes of the jurors if the defense had been able to introduce evidence that Allen suborned perjury when he enticed a young woman to execute a false affidavit swearing that she had not had sexual intercourse with Allen when she was 15 years old, in violation of Alaska law.

The single most important mission of the corrupt government prosecutors was to prevent the defense from being able to use this evidence on cross-examination, which would have eviscerated the credibility of the government's chief witness and thus destroyed the government's case against Senator Stevens. The jurors would have seen him as the liar. They would have concluded that he concocted the "covering his ass" story and then denied that it was recently given to the government. The jury would have learned that Allen was terrified by the fact that he was under investigation as a sexual predator and of evidence that he caused one of the girls to lie to save himself from prosecution.

What lies did the government tell the court and the defense to keep this extraordinary *Brady* material successfully hidden?

First, they initially told the Court that there was nothing to the allegations that Allen was under investigation and that the Court should not permit the defense to cross-examine Allen on the issue. Prosecutors explicitly represented that they were aware of "no evidence to support any suggestion that Allen asked [the young woman] to make a false statement under oath." What

prosecutors failed to disclose to either the defense or the Court, however, is that they actually had an FBI interview memorandum, handwritten interview notes, and a sworn affidavit from a prosecutor that all stated unequivocally that Allen had asked a woman to lie about underage sex to save himself from prosecution. Based on these lies, the Court prevented the defense from cross examining Allen about these powerful issues.

Second, in order to justify their lies, a prosecutor lied to his superiors and to the DOJ ethics office about the underlying facts, stating that the girl actually said that she herself came up with the idea of the false affidavit (not Allen). The government then created a new, bogus paper trail that they produced rather than the powerful evidence about Allen's misconduct. As preposterous as this is (the notion that it was the young girl's idea to prepare a false affidavit), the prosecutors sowed enough confusion to keep it hidden from the defense. The only goal of the prosecutors was to keep the facts away from the defense, and if they had to lie to the Court and twist the facts, they were willing to do so. Once again they were successful in hiding this crucial information which could have been used in cross-examination of Allen to show that he, in fact, caused the girl to sign a false affidavit.

Allen was terrified by the prospect of being prosecuted for his conduct as a sexual predator either by the State of Alaska or possibly by federal authorities. In the weeks before the Stevens trial, state investigators told federal investigators that new allegations of Allen's sexual abuse of a minor had merit. A federal prosecutor told Allen's counsel about the state investigation, and Allen's attorney told federal prosecutors that Allen would invoke the Fifth Amendment if questioned about it during the trial of Senator Stevens. Allen would do anything to please the prosecutors who might be able to help him avoid those charges. It cannot be a coincidence that shortly after this disclosure, Allen for the first time told prosecutors that the

Stevens note was nothing more than an attempt by the Senator to "cover his ass." The defense had a right to cross-examine Allen on these issues and to argue to the jury that Allen lied and asked another to lie in order to save himself, and that he had a similar motivation to lie in the Stevens trial. But the government's deception to the court and the defense kept this information out of the case.

The right to cross-examine is a fundamental right emanating from the Constitution. It is the right to confront witnesses against you. It is said that cross-examination is the crucible from which the truth emerges. The prosecutors here denied Senator Stevens that right. In so doing, they protected their chief witness by lying to the Court and concealing evidence that would have shown Allen to be the liar he was.

Conclusion:

On the record of this Report, one can conclude that the government bargained with the devil. The government and Allen both received substantial benefits. The government conned a jury into returning an illegal verdict against a sitting Senator. The verdict lingered in the headlines for five months until government misconduct was uncovered by new prosecutors. The defense repeatedly complained of misconduct from the start of the case and specified where the evidence was likely to be found. The defense took the highly unusual step of writing to the Department of Justice three times. Each and every letter contained very specific allegations of wrongdoing by the prosecutors. The letters were ignored. There was not even an acknowledgement that the hand-delivered letters were received. When the newly appointed Attorney General Eric Holder began to see the magnitude of the wrongdoing by Department of Justice attorneys, he ordered the new prosecutors to promptly file a motion to dismiss the case.

The original prosecutors almost got away with it. Had an extraordinary trial judge, Emmet G. Sullivan, not presided over this case, the miscarriage of justice would not have been discovered. Had a new group of honest prosecutors not taken over the case after members of the original team were found in contempt, the miscarriage of justice would not have been discovered. If the trial judge had rushed to judgment and not given the defense the time needed after the illegal verdict to press its claims of misconduct, the miscarriage of justice would not have been discovered. Had Judge Sullivan not abided by his unwavering principle over 27 years on the bench that every defendant in his courtroom will be given a fair trial, the miscarriage of justice would not have been discovered.

Allen earned a multitude of benefits. His children were not indicted or prosecuted. He was allowed to sell his company for hundreds of millions of dollars by virtue of the fact that the government did not indict his company, as it could easily have done. He served less than two years in prison and is now a free man. He was not charged with being a sexual predator. We don't know why. We do know that the sexual misconduct investigation dangling over his head was a powerful incentive to please law enforcement officials by fabricating testimony.

The original prosecutors engaged in willful blindness. Allen gave them the false testimony to explain the Stevens note. This "gift" arrived eight days before trial. For prosecutors who spend their professional lives investigating, it seems odd that no one among them said: "This seems too good to be true." Instead they all rejoiced at the late delivery of a solution to a problem that haunted them from the beginning. The "covering his ass" testimony was a virtual miracle rendered at the last minute to help a tired troupe of prosecutors. That not one of the prosecutors spoke up leads to the inescapable conclusion that they were all in it together, blinded by the desire to convict a sitting U.S. Senator. Was there not an honest person

among them? Was there not a suspicious person among them? Four prosecutors and one FBI agent knew for a fact that Allen's "covering his ass" testimony was false. They were all disappointed by Allen's statement that he remembered nothing about the Stevens note when they questioned him on April 15, 2008. The FBI agent urged him to come up with an answer explaining the note, and the reason Allen did not send a bill as requested in the note. Upon urging, he did so late in the game. He did so at a time when he was scared to death by the investigation into his history as a sexual predator. Allen was a cooperating witness with a mission – to save himself by pleasing the government. The government purchased the testimony from Allen. The coin of the realm was benefits. And, when they did not like what he said, the government pressured him to do better.

Certainly Allen was counting on the government to do all it could to protect him. After all, he was the chief witness in the nation's most visible case against a sitting Senator. Allen had too much motivation to please the government. The government had too much motivation to protect its witness and to save its case.

Some of the truth emerged in the five months between the jury verdict in late October 2008 and the dismissal on April 7, 2009 due to the diligence of the new prosecutors. Further disclosure is found in this extraordinary 514-page Report prepared by the court-appointed investigator.

Sadly the effects of the illegal verdict in October 2008 were not extinguished by the dismissal of the case. For five months, headlines around the world announced the "conviction by jury" of Senator Ted Stevens. The illegal verdict was returned only eight days before Senator Stevens stood for re-election in the State of Alaska. The government's public relations machine, however, was in high gear from the moment the Senator was indicted. The government issued a

press release on the day the indictment came down. Matthew Friedrich, the Acting Attorney General for the Criminal Division, held a press conference to trumpet the indictment. The public affairs onslaught continued during the trial. A Department of Justice "Public Affairs Specialist" attended trial every day, and was often observed talking to the media. The Department devoted a portion of its website to its version of the case, including each day's trial exhibits. Immediately after the jury returned an unlawful verdict against Senator Stevens, the government trial team stood before television cameras while Mr. Friedrich stated that, "The Department is proud of this team, not only for this trial, but for the investigation that led to it." Because of the illegal jury verdict and the government's spurious assertions to the press, he lost that election by a mere 3,000 or so votes. He was certain to be re-elected but for the illegal verdict. Six-hundred thousand citizens of the State of Alaska lost their champion. The balance of power shifted in the U.S. Senate.

At the direction of Attorney General Eric Holder the government moved to dismiss the case. The new prosecutors who found and produced the damning evidence which caused the case to be dismissed, apologized to the Court on behalf of the Department of Justice for what had been done to Senator Stevens by the original prosecutors.

None of that returned Senator Stevens to the Senate. On the day of the dismissal, the Court invited him to speak. After thanking the Court, he said that he had one more legislative task to accomplish in his life and that was to do what he could to assure that no other citizen would be the victim of similar government misconduct. He said then he hoped that "when the dust settles, I may be able to encourage the enactment of legislation to reform the laws relating to the responsibilities and duties of those entrusted with the solemn task of enforcing criminal laws."

Every citizen who cares about justice and fairness will be shaken by the Report's description of what happened to Senator Stevens at the hands of corrupt prosecutors in the Department of Justice. The Stevens case demonstrates that, although the great majority of prosecutors and law enforcement officials are honest and serve with distinction, some will do anything in order to win. Senator Stevens did not deserve the treatment he received at the hands of powerful but corrupt prosecutors. We are saddened that he did not live to see the release of this Report.

On April 8, 2009, one day after Judge Emmet Sullivan dismissed the Stevens case, the newly-appointed Attorney General Eric Holder went to the courthouse where Senator Stevens was tried in order to swear in a new group of Assistant United States Attorneys in the District of Columbia. While that day's front page headlines announced the dismissal based on serious misconduct by prosecutors, the Attorney General uttered these profound words:

> "Your job as assistant U.S. Attorneys is not to convict people. Your job is not to win cases. Your job is to do justice. Your job is in every case, every decision that you make, to do the right thing. Anybody who asks you to do something other than that is to be ignored. Any policy that is at tension with that is to be questioned and brought to my attention. And I mean that."

The release of the Report underscores the importance of the Attorney General's admonition. In essence, the Attorney General warned that lawlessness by those sworn to uphold the law will not be tolerated. And, that the DOJ is committed to "doing justice" not to winning cases at all cost.

We still await the results from the DOJ Office of Professional Responsibility which has been investigating this matter on a parallel track to the Court's investigation for nearly three years. The Attorney General testified at a Senate hearing on November 8, 2011 that "I want to

share as much of [the Office of Professional Responsibility Report] as we possibly can given the very public nature of that matter and the very public decision that I made to dismiss the case."

Despite the fact that the case was dismissed on the government's own motion on April 7, 2009, nearly three years ago, all but one of the prosecutors involved in this matter are still employed by the Department of Justice. One of the prosecutors committed suicide on September 26, 2010 at a time when both investigations focused intensely on his misconduct.

We are hopeful that the facts and conclusions of that separate Department of Justice investigation will provide further insight into this tragic case in which an 84-year old distinguished, sitting Senator was the victim of blatant and repeated government corruption. The details of the wrongdoing must be disclosed so that it will not happen again. They must be disclosed so that in the future, federal prosecutors and FBI agents know that if they violate criminal law, abandon the U.S. Constitution, ignore landmark Supreme Court cases such as *Brady vs. Maryland*, and fail to comply with their profession's ethical standards, there will be consequences. Not just the consequence of a case dismissed, but consequences which affect the wrongdoers personally and professionally.

If we leave the system of justice in the hands of zealots who will do anything to win, then, it is we who are failing in our duty. We believe that the Attorney General meant what he said on April 9, 2008. But without consequences to wrongdoers, we are not confident that others do.