

Statement of
The Honorable Patrick Leahy

United States Senator
United States Senate
June 6, 2012

Today, as promised, we continue our inquiry into ensuring that Federal prosecutors meet their obligations, whether the defendant is a prominent official or an indigent defendant. We have now seen the results of two separate investigations and two reports into what went wrong during the Stevens trial. I thank Attorney General Holder for making the report of the Department of Justice's internal Office of Professional Responsibility (OPR) available to us. We have now made it available to the public.

The investigation by the Justice Department found that several career prosecutors acted with reckless disregard of their discovery obligations and that the Deputy Chief of the Public Integrity Section exercised poor judgment in failing to supervise discovery. While the Department's OPR investigation did not find intentional misconduct, its findings are serious, and they are significant. They resulted in suspensions of two of the prosecutors.

Prosecutors bear unique responsibilities in maintaining the integrity of our criminal justice system. Our constitutional framework provides that all individuals are guaranteed the right to fair treatment and a fair trial. Without ensuring adherence to the rule of law and vigorous and competent counsel for defendants, we cannot live up to these guarantees. Because prosecutors wield so much power when it comes to charging decisions, plea bargaining, and gathering of evidence, we count on them to uphold the law, adhere to the highest ethical standards, and seek justice.

What happened in the Stevens case undermines this system and cannot be tolerated. Two separate investigations have now found that significant evidence was not disclosed to the defense, and critical mistakes were made throughout the course of the trial that denied Senator Stevens a fair opportunity to defend himself. The mistakes and poor decisions in connection with the Stevens case disturbed the Judge hearing the case and disturb me.

I know they also disturb the Department of Justice. Attorney General Holder did the right thing when he came into office and, based upon his review of the matter, decided to seek to dismiss the indictment against Senator Stevens and withdraw the case even after a jury's guilty verdict.

Today we will hear from Deputy Attorney General Jim Cole, the number two official at the Department of Justice, about the steps the Department has taken and plans to take to ensure that Federal prosecutors meet their discovery obligations so that the situation in the Stevens prosecution is never repeated.

We all want to ensure that prosecution supervisors are diligent, as well. The recent mistrial declared in the prosecution of John Edwards raises concerns about the exercise of prosecutorial judgment in that case, which was also begun under the prior administration. I worry that unfair, partisan criticism directed at the Justice Department has resulted in some being reluctant to exercise restraint.

Prosecutors make tough judgment calls all the time, and by and large they make the right ones, using their discretion in the interests of justice. More than 70 years ago while he was serving as

Attorney General of the United States, Robert Jackson spoke about Federal prosecutors, saying: "The prosecutor has more control over life, liberty, and reputation than any other person in America." As he spoke about the exercise of prosecutorial discretion, he wisely observed that Federal prosecutors need to be "diligent, strict, and vigorous in law enforcement" but also "just". I know how strongly our Attorney General and Deputy Attorney General feel about these issues and know that they are committed to justice and to ensuring that our Federal prosecutors follow Attorney General Jackson's timeless advice that "the citizen's safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility."

I talk about my time as a prosecutor in Vermont because I am proud of the dedicated public servants -the prosecutors and law enforcement officers -with whom I had the privilege to serve. Our criminal justice system is the envy of the world in large measure because good prosecutors adhere to the directive to seek justice for all parties, the Government and the defendants, not just convictions. We must ensure that all Federal prosecutors continue to meet these high standards.
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