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[Corruption Common Among U.S. Attorneys](#)

Posted on: October 1, 2010 9:32 AM, by [Ed Brayton](#)

And no, I don't mean American attorneys, I mean federal prosecutors. Balko [writes](#):

[Last week](#), USA Today published the results of a six-month investigation into misconduct by America's federal prosecutors. The investigation turned up what Pace University law professor Bennett Gershman called a pattern of "serious, glaring misconduct." Reporters Brad Heath and Kevin McCoy documented 201 cases in which federal prosecutors were chastised by federal judges for [serious ethical breaches](#), ranging from withholding important exculpatory evidence to lying in court to making incriminating but improper remarks in front of juries.

And that's just the tip of the iceberg:

The list is by no means comprehensive, and doesn't claim to be. I checked the paper's website for examples of egregious misconduct reported here at Reason: U.S. Attorney Mary Beth Buchanan's politically-charged prosecution of Pennsylvania doctor Bernard Rottschaefer; Assistant U.S. Attorney Brett Grayson's outrageous persecution of the Colomb family in Louisiana; and the bogus Mann Act charges brought against Mississippi heart surgeon, Dr. Roger Wiener. None are among the cases in USA Today's database. The paper should be lauded for its groundbreaking investigation, but as the reporters themselves acknowledge, they've really only scratched the surface. (The investigation also only looked at federal cases, which comprise just a tiny portion of the country's total criminal prosecutions.)

I would be willing to bet that state and local prosecutors, who usually are elected to office, are considerably worse than federal prosecutors, who are appointed and typically much higher quality attorneys than some of the yokels elected to office around the country.

Unfortunately, little is done when prosecutors are caught violating the rules:

Of the 201 cases USA Today reviewed in which a judge publicly reprimanded a prosecutor, the paper found just one in which a prosecutor "was barred even temporarily from practicing law for misconduct." The Justice Department refused to tell the paper about which, if any, of the cases resulted in internal discipline taken against the offending prosecutors. Rather appallingly, DOJ cited the need to protect the prosecutors' privacy. Never mind that they're public servants who have been


reprimanded by a federal judge for abusing their power. Not to mention that said power is among the most serious we afford to a government official. Prosecutors have the power to take away a citizens' freedom. Even in cases that don't result in a conviction, a federal indictment or even investigation can bankrupt the target of the investigation. The idea that prosecutors who abuse that power should be escape public scrutiny out of concern for their privacy is not only preposterous, it's another symptom of a system with misplaced priorities.

USA Today's finding of little to no sanction for misbehaving prosecutors is consistent with other studies. According to an Innocence Project study of 75 DNA exonerations, prosecutorial misconduct factored into just under half of those wrongful convictions. In none of those cases did the offending prosecutor face any serious sanction. A 2006 Yale Law Journal look at violations of the Brady rule, which requires prosecutors to turn over exculpatory evidence to defense attorneys, found "[a] prosecutor's violation of the obligation to disclose favorable evidence accounts for more miscarriages of justice than any other type of malpractice, but is rarely sanctioned by courts, and almost never by disciplinary bodies." A 2009 brief filed by the Cato Institute, the American Civil Liberties Union, and the National Association of Criminal Defense Attorneys in the U.S. Supreme Court case *Pottawattamie v. McGhee* noted that studies of wrongful convictions in California, New York, and Chicago all found that though prosecutorial misconduct contributed to a sizable majority of cases that sent innocent people to prison in those states, the misbehaving prosecutors were rarely if ever sanctioned.

This is why it is so important to get rid of this ridiculous idea of absolute prosecutorial immunity, which has no basis in the constitution whatsoever. The victims of prosecutorial misconduct face monumental consequences, spending years and even decades in prison for crimes they didn't commit and even being put to death. Those who perpetrated the misconduct rarely even get a slap on the wrist.

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Now, now. It's just prosecutorial misconduct. I'm sure the defendants wouldn't be suspects unless they had done something wrong to begin with. I doubt anybody would defend these prosecutors, protect their privacy, refuse to reprimand them, and ultimately shuffle them off to another post where they could continue to practice their calling if they were, say, raping little children.

Nobody could be that evil.

Posted by: rob | [October 1, 2010 9:47 AM](#)

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Prosecutors will be Prosecutors.

Posted by: Dave | [October 1, 2010 9:53 AM](#)

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