

# The Washington Times

## EDITORIAL: When the watchmen fail

*Abuses by ambitious federal prosecutors have become an epidemic*

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Figuring out who watches the watchers is an old dilemma. Civilized societies must put a great deal of trust in police, prosecutors and judges, and when they go bad, everyone suffers.

A former federal prosecutor, Sidney Powell, has collected horror stories and put them in a book, “Licensed to Lie: Exposing Corruption in the Department of Justice,” and it reads like a John Grisham novel. Unfortunately, it’s not fiction.

Ms. Powell told a group at Cato Institute the other day how federal prosecutors usually hold all the cards. They have the unlimited resources of the federal government at hand to enforce a network of laws that were written to limit a defendant’s ability to mount an effective defense. This is often true in state courts as well, just not so much.

Over the past three decades, there has been an explosion in the number of federal laws and a similar explosion in the hiring of federal prosecutors, now numbering 5,000, to enforce them. There are so many laws, and regulations written by bureaucrats to expand the force of the law, and many are prosecuted for violating an obscure regulation they didn’t know anything about.

A term in a U.S. attorney’s office is often a stop on the road to higher office. The higher profile the target of an investigation, the brighter the media spotlight. Taking down a big company or a celebrity is often a ticket to stardom.

The white-collar “perp walk” was invented by Rudolph W. Giuliani, a particularly successful U.S. attorney, and his prosecution in Manhattan melodramas propelled him to mayor of New York City. He could have asked defendants, such as Wall Street bond dealer Michael Milken, to turn himself in, but having the photographers at the ready for a high-noon arrest made a sharper point.

Judges rarely question such prosecutorial theatrics. Wall Street financiers aside, most defendants can’t afford to “lawyer up” for a successful defense. Such defendants nearly always take a plea bargain requiring them to admit to being guilty, even if they’re not. Refusing the deal often angers prosecutors, who then file additional charges.

When Sen. Ted Stevens of Alaska was charged with corruption in taking unreported gifts in 2008, he had the resources to defend himself. He was convicted, but vindicated when corrupt

federal prosecutors were found to have withheld evidence. The verdict was set aside — but after he lost the trial, his Senate seat and died in a plane crash. Most defendants wrongly convicted aren't that fortunate.

The Supreme Court has held that federal prosecutors have a constitutional obligation to seek justice, not convictions. Many prosecutors, however, measure their success by how many convictions they win, not by doing the right thing. U.S. Appeals Court Judge Alex Kozinski calls abuses an “epidemic” of ethical violations by federal prosecutors. The judges are the watchmen in the judicial system, and theirs is the responsibility to keep the system honest.