

OPINION: Justice, even for Stevens

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A serendipitous confluence of events has caused heightened scrutiny on prosecutors who worked on the now-dismissed corruption case against former Sen. Ted Stevens, R-Alaska. Whatever the reasons, the attention is welcome.

Stevens was convicted last October, just before losing his bid for re-election, on seven counts of lying about some \$250,000 in gifts he received, including free renovations on his house in Alaska. Last week, however, Attorney General Eric Holder asked the judge in the case to dismiss the charges because prosecutors had engaged in serious misconduct. An FBI agent had come forward to complain about the prosecutors, and an investigation showed that the prosecutors had withheld information from the defense that could have been exculpatory.

U.S. District Judge Emmet Sullivan not only dismissed the case, he appointed an outside lawyer to investigate the conduct of six members of the prosecution team. The investigation could lead to reprimands, disbarment, even criminal charges.

The recent developments depended on unique circumstances. An FBI agent got angry enough to denounce prosecutors. A new attorney general, determined to put his own stamp on the Justice Department, found a case in which he could show his fairness toward the other political party. And a judge who was already upset - he had held several people in contempt during the trial - found a situation in which he could do more than just grouse to his colleagues.

One can hope this case leads to more widespread reform, or at least more effective oversight, of a practice that is more common than many would like to admit.

The adversarial system that has evolved in our courts, in which prosecutors work aggressively to get convictions, and defendants are entitled to a defense that is just as aggressive and savvy, is generally admirable. But no human system is perfect.

Prosecutors take an oath to serve justice rather than to get convictions, and at some level most take that oath sincerely. But there are strong incentives to focus on convictions.

That's how people keep score. Withholding potentially exculpatory evidence from the defense is prohibited, but is seldom punished severely if discovered. So it happens.

Whatever the outcome of the Stevens case investigations, they should shed a spotlight on the issue of prosecutorial misconduct and deter it to some extent. Other reforms might be considered.

Timothy Lynch, who heads criminal justice studies at the libertarian Cato Institute, says that one reform might be to have a new trial automatically whenever evidence is withheld from the defense. At present, courts typically conduct an inquiry into whether the misconduct would have affected the outcome of a case before a new trial is considered.

But judges and prosecutors really dislike new trials, Lynch says, and making them automatic would be an effective deterrent.

We would suggest that more individual accountability might be appropriate. If the worst that happens is a new trial, prosecutors might consider bending the rules, but if they are subject to

personal sanctions, that would be a powerful deterrent.

Whether this case leads to institutional reform, however, the actions taken are welcome.