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Tables Turned on Prosecution in Stevens Case

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Susan Walsh/Associated Press

Ted Stevens on Tuesday outside the federal courthouse in Washington where his conviction was dismissed, with his daughters, Beth Stevens, left, Lilly Stevens and Susan Covich.

By NEIL A. LEWIS
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WASHINGTON — A federal judge dismissed the ethics conviction of former Senator Ted Stevens of Alaska on Tuesday after taking the extraordinary step of naming a special prosecutor to investigate whether the government lawyers who ran the Stevens case should themselves be prosecuted for criminal wrongdoing.

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Judge Emmet G. Sullivan, speaking in a slow and deliberate manner that failed to conceal his anger, said that in 25 years on the bench, he had "never seen mishandling and misconduct like what I have seen" by the Justice Department prosecutors who tried the Stevens case.

Judge Sullivan's lacerating 14-minute speech, focusing on disclosures that prosecutors had improperly withheld evidence in the case, virtually guaranteed reverberations beyond the morning's dismissal of the verdict that helped end Mr. Stevens's Senate career.

The judge, who was named to the Federal District Court here by President Bill Clinton, delivered a broad warning about what he said was a "troubling tendency" he had

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observed among prosecutors to stretch the boundaries of ethics restrictions and conceal evidence to win cases. He named Henry F. Schuelke 3rd, a prominent Washington lawyer, to investigate six career Justice Department prosecutors, including the chief and deputy chief of the Public Integrity Section, an elite unit charged with dealing with official corruption, to see if they should face criminal charges.

Only days after a jury last October found Mr. Stevens guilty on seven felony counts, he was narrowly defeated in his bid for re-election. Mr. Stevens had been the longest-serving Republican in the history of the Senate.

The smile Mr. Stevens displayed during Tuesday's court session would have been unfamiliar to those who have followed him in the Senate, where he had a reputation as being dour and grumpy.

In a brief statement, Mr. Stevens told the court that he had long maintained an unwavering faith in the judicial system. "But what some members of the prosecution team did nearly destroyed my faith," he said. "Their conduct had consequences for me that they will never realize and can never be reversed."

Mr. Stevens was charged with failing to list on Senate disclosure forms some \$250,000 worth of goods and services he received, mostly to transform a modest chalet he owned in Girdwood, Alaska, into a more splendid residence.

During the five-week trial, prosecutors were repeatedly forced to acknowledge that they had failed to turn over information to defense lawyers as required. "Again and again, both during and after the trial in this case, the government was caught making false representations and not meeting its discovery obligations," Judge Sullivan said Tuesday.

A 1963 [Supreme Court](#) ruling, *Brady v. Maryland*, requires prosecutors to give a defendant all information they hold that might materially help the defense.

The Stevens case finally collapsed last Wednesday, more than five months after the verdict, when [Eric H. Holder Jr.](#), the recently installed attorney general, asked that all charges be dismissed because the new lawyers whom he had put in charge of the case had discovered yet another example of concealment.

During the trial, defense lawyers argued that Mr. Stevens had written a letter to [Bill Allen](#), a onetime friend and the owner of a huge oil services company, asking for a bill for all the goods and services that Mr. Allen had provided. Mr. Allen, the chief prosecution witness, discredited that letter, testifying that he had been told by Bob Persons, an emissary from Mr. Stevens, to ignore the letter because the senator was just seeking to provide a false record to protect himself.

But recently discovered notes showed that prosecutors who interviewed Mr. Allen on April 15, 2008, heard him say that he did not remember any such conversation with Mr. Persons.

Mr. Stevens's defense lawyer, Brendan Sullivan, told the court Tuesday that he had been blindsided by Mr. Allen's testimony about the letter. "It was the most explosive testimony in the case," Mr. Sullivan said.

Mr. Sullivan said that had he known of the prosecutors' notes, he would have been able to argue that Mr. Allen's account of the conversation with Mr. Persons was fabricated.

Paul O'Brien, chief of the new prosecution team that discovered the latest impropriety by the original prosecutors, said in court that "we deeply regret that this has occurred."

Judge Sullivan named six prosecutors as the subject of Mr. Schuelke's investigation, including William M. Welch II, who heads the public integrity unit, and his deputy, Brenda K. Morris. Justice Department officials said the prosecutors remained at work on



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Tuesday.

The other lawyers are Joseph W. Bottini, James A. Goeke, Nicholas A. Marsh and Edward P. Sullivan. None of them were in the courtroom Tuesday except as presences to be repeatedly flayed by the judge and Brendan Sullivan.

Judge Sullivan also criticized [Michael B. Mukasey](#), the last attorney general in the Bush administration, saying it was shocking that he had failed to respond to letters from the defense team complaining about the Stevens prosecution. Mr. Mukasey's office would not comment.

Judge Sullivan previously served on the District of Columbia Superior Court, the equivalent of a state court, to which he was appointed by President [Ronald Reagan](#).

Like other judges on the Federal District Court in the nation's capital, he has ruled on cases involving the rights of detainees at Guantánamo Bay, Cuba, and other issues of federal policy. He is now hearing a case that he will decide without a jury: the contention of animal rights advocates that the [Ringling Brothers and Barnum & Bailey Circus](#) mistreats its elephants.

Michael Madigan, an experienced former prosecutor with the Orrick law firm in Washington, said Judge Sullivan's decision to name his own prosecutor was highly unusual but was explicitly provided for in the rules of federal procedure. Under the rules, Mr. Madigan said, a judge may choose his own prosecutor for contempt investigations.

Mr. Madigan said Mr. Schuelke would "operate under the authority of the court."

"He will then recommend to the court whether to seek criminal contempt charges," Mr. Madigan said.

David Johnston contributed reporting.

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