Protecting Gideon's Promise: There Are No Potted Plants Here

Of Brady,
The New Jim Crow, and Budgets

Henderson Hill
Executive Director
Federal Defender of
Western North Carolina
An investigation of prosecutors responsible for the dismissed corruption case against the late Alaska senator Ted Stevens found evidence of "significant, widespread and at times intentional misconduct," but recommended that the prosecutors not face criminal charges.

The findings in a two-and-a-half year investigation by Washington lawyer Henry Schuelke III were revealed Monday in an order from U.S. District Judge Emmet Sullivan. Sullivan wrote that the investigation found the Stevens prosecution was "permeated" by the prosecutors' concealment of evidence they collected that could have helped the senator's defense.

Stevens had been accused of violating federal ethics laws by failing to disclose more than $250,000 in gifts and services he had used to renovate his houses. He lost re-election to the Senate seat he had held for 40 years and died in a plane crash last year.

The case against the longtime senator collapsed in 2009 after the U.S. Justice Department admitted that government lawyers failed to disclose evidence that could have undermined the case. Flaws in the case were so significant that U.S. Attorney General Eric Holder asked a federal court in Washington to throw it out even though Stevens had already been found
April 7, 2009

Judge Emmet Sullivan said today that in his 25 years on the bench, he had never seen anything approaching the "mishandling and misconduct" perpetrated by the government in the case of former Alaskan Sen. Ted Stevens, who was convicted on corruption charges in October.

Judge Sullivan Says DOJ Needs Brady Training
Infractions

- Withholding letters in which Stevens requested a bill for the work done on the chalet.
- Notes from a conversation with a foreman in which both the foreman and Stevens thought the chalet work had been included in a different invoice for other work done.
- Failing to record notes from witnesses with evidence favorable to Stevens’ defense and harmful to the Justice Department’s case.
- Withholding evidence from the prosecution’s star witness that he had had sex with a 15-year-old prostitute, and had encouraged her to lie under oath in her own trial. The latter fact could be admissible to show the star witness has a character for untruthfulness (which is called impeachment evidence, for those unfamiliar).
- Allowing FBI and IRS agents to conduct document review unsupervised, and to make their own judgments as to whether there was a legal obligation to disclose any of the documents.
- Failing to correct a witness who gave testimony to the jury that the prosecutor knew was false, and later using the same false testimony in his summation to the jury.
On January 4, 2010, the U.S. Department of Justice ("DOJ"), through outgoing Deputy Attorney General David Ogden, issued a Guidance for Prosecutors Regarding Criminal Discovery ("Guidance") and announced related organizational and training measures.

These steps were widely seen as a response to several recent embarrassing episodes in which DOJ prosecutors failed to disclose exculpatory evidence to white collar criminal defendants in high profile cases.
Convicted defendants left uninformed of forensic flaws found by Justice Dept.

Justice Department officials have known for years that flawed forensic work might have led to the convictions of potentially innocent people, but prosecutors failed to notify defendants or their attorneys even in many cases they knew were troubled.

Officials started reviewing the cases in the summer after reports that sloppy work by examiners at the FBI lab was producing unreliable forensic evidence in court trials. Instead of releasing those findings, they made them available only to the prosecutors in the affected cases, according to documents and interviews with dozens of officials.

In addition, the Justice Department assigned only a limited number of

DOJ review of flawed FBI forensics processes lacked transparency

The bombshells came at the most inopportune time.

An FBI special agent was testifying in the government’s high-profile terrorism trial against Omar Abdel Rahman, the “blind sheik” suspected of plotting the first attack on the World Trade Center.

Frederic Whitehurst, a chemist and lawyer who worked in the FBI’s crime lab, testified that he was told by his superiors to ignore findings that did not support the prosecution’s theory of the bombing.
Pursuant to Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, the government has a continuing obligation to produce all evidence required by the law and the Federal Rules of Criminal Procedure. See id. at 87 (holding that due process requires disclosure of “evidence [that] is material either to guilt or to punishment” upon request); Kyles v. Whitley, 514 U.S. 419, 437-38 (1995) (holding that the obligation to disclose includes evidence “known only to police investigators and not to the prosecutor,” and that “the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government’s behalf ..., including the police.”); United States v. Agurs, 427 U.S. 97, 107 (1976) (holding that the duty to disclose exculpatory evidence applies even when there has been no request by the accused); Giglio v. United States, 405 U.S. 150, 153-54 (1972) (holding that Brady encompasses impeachment
The New Jim Crow –
Mass Incarceration In the Age of Color Blindness
25th Anniversary of *McCleskey v. Kemp*

*How a Court Decision Fosters Racism by Ignoring It*

The criminal justice system in this country has relegated Blacks and Latinos to second-class citizen status simply because of their race or
Cumberland County Senior Resident Superior Court Judge Greg Weeks found that racial bias played a role in the trial and sentencing of death row inmate Marcus Robinson on Friday, April 20, 2012. The historic ruling means Robinson's sentence was immediately converted to life without possibility for parole. It was the first case to be decided under the North Carolina's Racial Justice Act.
*There are more African Americans under correctional control today—in prison or jail, on probation or parole—than were enslaved in 1850, a decade before the Civil War began.*

*As of 2004, more African American men were disenfranchised (due to felon disenfranchisement laws) than in 1870, the year the Fifteenth Amendment was ratified, prohibiting laws that explicitly deny the right to vote on the basis of race.*

* A black child born today is less likely to be raised by both parents than a black child born during slavery. The recent disintegration of the African American family is due in large part to the mass imprisonment of black fathers.*

*If you take into account prisoners, a large majority of African American men in some urban areas have been labeled felons for life. (In the Chicago area, the figure is nearly 80%.) These men are part of a growing undercaste—not class, caste—permanently relegated, by law, to a second-class status. They can be denied the right to vote, automatically excluded from juries, and legally discriminated against in employment, housing, access to education, and public benefits, much as their grandparents and great-grandparents were during the Jim Crow era.*
Prison Populations – Drug Offenses

1985-2000
- Two third rise in Federal inmate population
- One Half rise in state prison population for drugs

1980 - 41,100 in prison for drug offense, today ½ million

Drug arrest have tripled since 1980

Generally
1985-2000
Prison population went from 300,000 to 2 million
In 2007 - 7 million persons were incarcerated (1 of every 31 adults)

Budgets

- 1980-1984: FBI anti-drug funding increased from $8 million to $95 million
- 1981-1991 Dept. Defense $33 million to $1,042 million
- 1981-1991 DEA $86 million to $1,026 million
- Cash for Swat teams, Military equipment donated for Drug crime fighting
- National Institute on Drug Abuse $274 million down to $57 million
- Dept of Education antidrug fund $14 Million down to $3 million
1982 - War on Drugs re-announced by President Ronald Regan (Previously initiated by Nixon)

1986 Death of Len Bias for Free Basing. Death used to emphasize the need to enact Laws against Crack Cocaine

1985-1986 Govt. inspired Media Blitz on the perils of crack. Crack listed as issue of the year by Time Magazine

1986 Anti-Drug Abuse Act Federal Mandatory Minimum Penalties

1988 Anti Drug Abuse Act 100 to 1 Cocaine-Crack ratio; 5yr man-min poss. Crack; Eviction for crack convictions.

Edward Byrne Mem. State and Local Enf. Asst. Program. Millions of Fed. Aid to state and Local narcotic task forces

More than 31 million arrested for Drugs since “War” began. Unprecedented prison population
In the United States, nearly one out of every three black men in their twenties is in jail or prison, on probation or parole, or otherwise under criminal justice control. Black men are eight times more likely to be incarcerated than white men.

<table>
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<th>Year</th>
<th>Prison Population</th>
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<tbody>
<tr>
<td>2009</td>
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<tr>
<td>39.4%</td>
<td>Non-Hispanic Blacks</td>
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<tr>
<td>20.6%</td>
<td>Hispanics of all races</td>
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FROM THE BACK OF THE BUS
TO THE FRONT OF THE PRISON
THE STRUGGLE CONTINUES
Defense Funding
Atlanta Courthouse Shooter
The Offenses
March 11, 2005

Hon. Rowland Barnes
Ms. Julie Ann Brandau
S.A. David Wilhelm
Sgt. Hoyt Teasley
The Charges

- 11 different crime scenes
- 22 named victims
- Inmate escaped from custody
- Law enforcement officer assaulted within courthouse
- Judge killed during court proceeding
- Court reporter killed during court proceeding

54 Count Indictment

- Attorneys and court staff members taken hostage, assaulted
- Courthouse complex locked down during furious manhunt
- Sergeant shot and killed on courthouse steps
- Witnesses include law enforcement officers, members of courthouse community, and attorneys
- Multiple carjackings in downtown Atlanta
FROM HOSTAGE TO HERO
How ASHLEY SMITH, with faith, smarts and courage, talked her way out of the hands of an alleged killer
“At the time I saw Judge Barnes as the Master. I’m referring to the slave master. So, I mean, that’s why he was targeted. My intention, I mean as a soldier in the war, my intention was to kill him.”
Love Letters
Brady OR Keeping the Government Honest

Investigating Discovery violations, Motion to Recuse the Prosecution, Motion to Recuse the Judge, etc……
I'll keep it real with ya Dog.
I'm the type of Nigga that would
rather die on my feet, than live
on my knees.
There is no way I can allow
the same Mutha Fuckers that
kidnapped us from Africa, Enslaved Us,
 lynched us, oppressed Us with that
Segregation - Separate but Equal shit,
and continue to Fuck us over with
this Jail shit. Fuck me over
without a fight. As make no
Extraordinary Test for New Indigent Defense System

- GA Indigent Defense Act (Jan 1, 2005)
- New system for provision of counsel (Jan 1, 2005)
- GA Capital Defender Office (Jan 1, 2005)
- Courthouse shootings (Mar 11, 2005)
Fulton County bench recuses itself

Appointment of “senior” judge

GA Capital Defender Office looks into whether DA’s office should be disqualified
The Defense Function (Take 2)

Charlotte, NC
- Henderson Hill
- Jake Sussman

Atlanta, GA
- Gary Parker
- Robert McGlasson
Duty to Investigate

- **Relevant to Disqualification Motion**
  - Was it a factor in prosecutor leaving the office post-shooting?

- **Relevant to underlying rape trial**
  - Was appropriate judgment being used?
Funding fixes are few for Nichols case

AS JUDGE DEMANDS state action, one lawyer says 'a constitutional crisis' looms

How much will the Nichols trial really cost?

Defense costs in the Brian Nichols murder trial are public record, but expenses for police, prosecutors and even the court are secret in the budget of about $20 million. Some say they cannot estimates for the trial costs:

THE COURT

Judge Hilton Fuller

$220,000

Office staff

$123,000

Total cost

$743,000

THE PROSECUTION

District Attorney

$193,550

Assistant District Attorneys

$101,000

THE DEFENSE

Private Attorneys

$1,281,000

THE JURY

$245,500

EVIDENCE

$2,500

Capital Case Crisis

Official Quits in Georgia Public Defender Budget Dispute

BY BRENDA GOODMAN

ATLANTA, Sept. 6 — Last year, Christopher W. Adams, the first lawyer ever appointed to supervise the legal defense of poor people facing the death penalty in Georgia, was fired. The state has now hired a new lawyer as head of the newly created Office of the Capital Defender. Mr. Adams and his staff had defended about 80 death penalty cases without a single client's being sentenced to death — the first time that had happened in the modern history of the death penalty in Georgia. But on Thursday, Mr. Adams was cleaning out his office. He announced last week that he was giving up his practice of law, saying the deep budget cuts imposed by the state legislature this year made it impossible to protect his clients.

In a detailed letter to the chairman of the Public Defender Standards Council, Mr. Adams said his office had been given less than half the financing it needed, while taking on twice the number of cases that it had handled in the past.

A political standoff over the handling of death penalty cases.

"There are those who are philosophically opposed to the death penalty, and they won't pay for an adequate defense," said Carmen D. Hernandez, president of the National Association of Criminal Defense Lawyers in Washington.

"Georgia has reduced its death penalty cases by 50% in recent years, and as a result, Georgia's system is once again broken," Ms. Hernandez said in a statement issued Thursday. "It has gone from having high attorney to low attorneys in a few short years."

Because of the budget cuts, nearly all death penalty cases in Georgia, including that of Mr. Nichols, have been postponed. Lawyers for Mr. Nichols have asked the judge to remove the death penalty as an option if the case will not pay for an adequate defense.

Republican legislators asserted that defense lawyers and judges were using the budget crisis to reduce the death penalty. "We are not talking about a budget crisis or a budget problem," said a Republican member of the budget committee.

"There are those who are philosophically opposed to the death penalty, and they won't pay for an adequate defense."
Delusional Disorder, Mixed Type (Paranoid and Grandiose themes)

This mental disease profoundly impaired Brian Nichols' mental capacity to distinguish right from wrong. Delusional Disorder sparked a delusional compulsion that overmastered his will to resist committing violence on March 11, 2005.
During the 1981-1982 academic year, Brian completes the 5th grade at Northwood Elementary. Following this academic year, his parents place Brian in a military school.

During the fall of 1982, Brian enters the 6th grade at Mt. Washington Country School for Boys. Brian takes standardized tests and he is scored as having an IQ of 99. Brian has zero absences for the entire academic year.

Around this time, Brian begins to resist further attempts by the older family member to sexually abuse him.
High School Coach
Rape Victim
Ministers
Girlfriends
Mother
Cell mates
Family
Best Friend
The Bookends of Justice and Mercy

Pastor Donnie Moore

Dr. Alton B. Pollard, III
Brian Nichols gets life without possibility of parole

December 13, 2008
The Bookends of Justice and Mercy
The End