



A Tragic Result of the Stevens Case

January 3, 2010

We have discussed the fallout from the Ted Stevens prosecution several times in this blog. See [this post](#), [this post](#), and [this post](#).

The Jan. 3, 2011, issue of the *New Yorker* magazine has a fascinating article about another, very sad result of that case – the September 26, 2010, suicide of Nicholas Marsh, a Department of Justice attorney who was part of the prosecution team.

Jeffrey Toobin, the well-known legal commentator and former prosecutor who wrote the article, comes down quite hard on the government misconduct that led to the dismissal of all charges against the then U.S. senator. In dismissing the charges, U.S. District Judge Emmet Sullivan appointed Washington lawyer Henry Schuelke III to look into possible criminal charges against the Stevens prosecutors.

Schuelke still has not issued his report, and Toobin writes that some of the stress on Marsh may have resulted from his continuing uncertainty about what Schuelke would recommend. Evidently based on his interviews with Marsh's lawyer Robert Luskin, Toobin writes that after Schuelke interviewed Marsh, "it seemed extremely unlikely that Schuelke would have sought any criminal prosecution of Marsh."

Still, the *New Yorker* article is no exoneration of the prosecutors' conduct. Far from it. Toobin concludes that "the errors that [Marsh] and his colleagues made caused real and lasting damage to Ted Stevens, and to his family as well. Marsh and his colleagues took an important but fairly routine political corruption investigation in Alaska and tried to leverage it into a prosecution of one of the leading political figures in the country. In doing so, they failed themselves and the Justice Department."

Judge Sullivan said in dismissing the charges in April 2009 that in 25 years on the bench, he had "never seen mishandling and misconduct like what I have seen" by the prosecutors in the Stevens case.



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The judge found that the prosecutors repeatedly failed to turn over exculpatory material to the defense as required by *Brady v. Maryland*. Specifically, the prosecutors did not provide the defense on a timely basis with the notes of an interview that they conducted with Bill Allen, a key witness and a onetime friend of Stevens, that could have been used to discredit Allen's testimony against Stevens at trial.

The Toobin article, which is not online, is very much worth reading as an inside look into a prosecution gone wrong and into the intense pressures that can come to bear on everyone in the world of white-collar criminal law.

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The commentary and cases included in this blog are contributed by Jeff Ifrah and firm associates Rachel Hirsch, Jeff Hamlin, Steven Eichorn and Sarah Coffey. These posts are edited by Jeff Ifrah and Jonathan Groner, the former managing editor of the Legal Times. We look forward to hearing your thoughts and comments!

