



Written by [Alex Newman](#) on September 28, 2010

## Inquiry Exposes “Pattern” of Federal Prosecutorial Misconduct

A six-month investigation by USA Today uncovered a pattern of “serious, glaring misconduct” among federal prosecutors, whose abuses have resulted in innocent citizens being put in prison and countless wasted tax dollars, the paper revealed late last week. The probe is grabbing headlines and making waves across the country.

“Federal prosecutors are supposed to seek justice, not merely score convictions,” explains the newspaper article, entitled [‘Prosecutors’ conduct can tip justice scales.’](#) But the investigation found that

“prosecutors repeatedly have violated that duty in courtrooms across the nation.”

Among the problems identified: prosecutors lying to judges and juries, hiding evidence, and breaking plea agreements.

One of the cases prominently discussed in the article involved Orlando businessman Nino Lyons, who sat in federal prison for three years. Prosecutors in the case bribed prison inmates to testify against Lyons with promises of early release, allowed felons to lie to the jury, and even hid evidence that would have proven he was innocent.

“The Court learned, bit by bit, that the government had failed to abide by its obligations under the Constitution and that the most damning testimony against Lyons had come from people who had been allowed, if not encouraged, to lie under oath,” wrote the presiding judge in the case in an opinion obtained by *The New American*.

After almost three years, Lyons was finally declared innocent. But by then he had lost his house, his businesses, and several years of his life. His family had suffered greatly. And all because, according to the judge who oversaw the case, the Justice Department had engaged in a “concerted campaign of prosecutorial abuse.”

In a video interview with Lyons, he said, “If it can happen to me, it can happen to you.” And it could. Lyons is, of course, far from the only victim. In the last 15 years, the number of people charged with federal crimes has nearly doubled, according to *USA Today*. But the vast majority of those cases never make it to trial, ending instead with a plea bargain — often obtained through high-pressure intimidation tactics. This makes it harder to identify problems since judges and defense attorneys don’t have the same opportunity to scrutinize the prosecution.

But *USA Today* still reviewed over 200 documented cases of prosecutorial abuse in which judges determined that federal prosecutors violated the law or ethics policies. And those were all *after* Congress passed a law designed to curb such problems. Judges interviewed during the probe repeatedly





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described the misconduct as “flagrant” or “outrageous.”

The paper’s investigation uncovered a pattern of “serious, glaring misconduct,” according to Pace University law professor and prosecutorial-misconduct expert Bennett Gershman. “It’s systemic now, and the system is not able to control this type of behavior. There is no accountability.” Gershman and another high-profile public-defense attorney in New York told *USA Today* that its findings were “the tip of the iceberg.” Most instances of prosecutorial misconduct are never discovered.

But at least one instance of alleged prosecutorial abuse has been in the headlines a lot lately — the case against the late Republican Senator Ted Stevens from Alaska (who died in a plane crash recently) where prosecutors allegedly hid evidence. U.S. prosecutor Nicholas Marsh, who was being investigated for criminal misconduct in the case, actually committed suicide over the weekend, according to [news reports](#). While his motivation is not publicly known yet, speculation in the media is pointing to the investigation against him as the cause of his despair.

After the original article on misconduct appeared in the *USA Today*, other papers examined the findings and focused on various cases of prosecutorial abuse in their own regions. The [Arizona Republic](#), for example, discussed the nightmare suffered by a farmer named Thomas de Jong. The federal government charged him with three felony counts of polluting. But the failed wastewater system which sparked the case was, ironically enough, designed by the federal government.

After years of litigation and \$200,000 in legal bills, de Jong was finally declared not guilty. A federal judge ruled that prosecutors acted in “bad faith,” the *Republic* reported. But, despite the eventual exoneration, de Jong lost confidence in the Justice Department. “They just want blood,” he told the newspaper. “They don’t care what’s right or wrong.”

In Iowa, the *Des Moines Register* examined a sample of ten cases of misconduct involving U.S. prosecutors in the state. And the sampling “shows prosecutors in both the state’s Northern and Southern districts have withheld exculpatory evidence, made false statements, tainted defendants in front of juries and acted in bad faith after making plea agreements,” the paper reported.

“It’s very hard for the public to comprehend, unless they know someone who’s been the target of federal prosecution, how severely the deck is stacked against the accused,” Iowa attorney Jerry Crawford told the *Register*. “The government has unlimited financial and human resources, and if one isn’t careful, prosecution can drift dangerously close to persecution. The challenge involved ... is epic.”

Other high-profile attorneys blasted the prosecutorial problems as well. “No civilized society should countenance such conduct or systems that failed to prevent it,” former U.S. Attorney General Dick Thornburgh told *USA Today*.

National publications have also jumped on the story and praised the investigation. [Harper’s](#) magazine, for example, called *USA Today*’s effort “substantial and impressive,” saying it clearly put the paper in Pulitzer prize territory.

The probe points to “a systematic evasion of the requirements of prosecutorial ethics and a collapse of ethics training and enforcement within the Justice Department, where an ethos of ‘victory at all costs’ now controls,” wrote *Harper’s* Scott Horton. “Despite his promises to clean the situation up, Eric Holder has done nothing other than arrange some ethics training courses. The Department steadily resists disciplinary action against prosecutors who misbehave and attempts to block public exposure of their misconduct through congressional probes with claims of prosecutorial immunity.” Holder refused to be interviewed by *USA Today*, as did many other officials.



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And while the topic of state-level prosecutorial misconduct was not a focus of the *USA Today* investigation, it is a serious problem nonetheless. “Recent studies reveal that prosecutorial misconduct is a systemic reality within the criminal justice system,” notes The Justice Project, a non-profit organization dealing with the criminal justice system.

“Despite the prevalence of prosecutorial misconduct all over the country, states have consistently failed to investigate or sanction prosecutors who commit acts of misconduct in order to secure convictions. This lack of accountability has led to a widespread abuse of prosecutorial power, and a flawed and inaccurate criminal justice system,” the organization points out. It also offers a list of recommendations to improve the situation.

[The Innocence Project](#), another organization that deals with prosecutorial misconduct, has also found serious issues. “Some wrongful convictions are caused by honest mistakes. In some cases, however, officials take steps to ensure that a defendant is convicted despite weak evidence or even clear proof of innocence,” the group says on its website. “The cases of wrongful convictions uncovered by DNA testing are replete with evidence of fraud or misconduct by prosecutors or police departments.”

*USA Today*’s probe was released shortly after the Department of Justice’s Inspector General released a report on the Federal Bureau of Investigation’s improper spying activities. As reported by [The New American](#) last week, the FBI targeted anti-war groups, the Quakers, environmentalists, and others in numerous “terror” investigations that the Inspector General concluded were “unreasonable and inconsistent with FBI policy.”

The public entrusts prosecutors and other federal law-enforcement officials with an immense amount of power. So, when problems such as those identified in the *USA Today* investigation come up, citizens have every right to be upset. It is to be hoped that the feeling of betrayal will be channeled into positive change so that Americans can once again have trust in a government that adheres to the Constitution.

*Photo: Barry Scheck, a DNA expert and founder of the Innocence Project, testifying before the Senate Criminal Justice Committee, March 25, 2003, in Austin, Texas: AP Images*



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