



U.S. Department of Justice
Office of the Deputy Attorney General

Professional Misconduct Review Unit
Kevin A. Ohlson
Chief

December 5, 2011
Direct: 703-762-3607
kevin.ohlson@usdoj.gov

CONFIDENTIAL AND PRIVACY ACT SENSITIVE

TO: James Goeke
Assistant United States Attorney

CC: Michael Ormsby
United States Attorney
Eastern District of Washington

FROM: Kevin Ohlson
Chief
Professional Misconduct Review Unit

SUBJECT: The Office of Professional Responsibility Report of Investigation
Pertaining to the Case of *United States v. Theodore F. Stevens*

Pursuant to a delegation of authority by the Deputy Attorney General, I have been designated to serve as the proposing official in the disciplinary matter arising out of an August 15, 2011, report of investigation by the Office of Professional Responsibility (OPR) captioned: "Investigation of Allegations of Prosecutorial Misconduct in *United States v. Theodore F. Stevens, Crim. No. 08-231 (D.D.C. 2009) (EGS)*." After analyzing the OPR report and related documents, I find by a preponderance of the evidence that you engaged in professional misconduct by acting in reckless disregard of your obligation to disclose to defense counsel certain statements made by government witness Rocky Williams ("Williams"). Further, after careful consideration of your misconduct and the *Douglas* factor information provided by the United States Attorney's Office, I propose that you be suspended without pay from your position as an Assistant United States Attorney for ten (10) calendar days. This proposal is in accordance with 5 C.F.R. Part 752, and U.S. Department of Justice ("Department of Justice" or

“Department”) Human Resources Order 1200.1, Part 3, Chapter 1, and is being made to promote the efficiency of the federal service.

I. BACKGROUND

In an August 15, 2011, report of investigation pertaining to this matter, OPR found that although you did not engage in intentional professional misconduct in the course of prosecuting the case of *United States v. Theodore F. Stevens* (the “*Stevens* case”), you did act in reckless disregard of your disclosure obligations. You have been provided with a copy of OPR’s detailed and exhaustive report, and you therefore are knowledgeable about the facts and conclusions contained in it. I hereby adopt OPR’s findings as reflected in that report. Specifically, I find that in reckless disregard of your disclosure obligations under *Brady* and Department of Justice policy (*see* United States Attorneys’ Manual 9-5.001), you failed to disclose to defense counsel certain prior statements made by government witness Williams. Moreover, I find that this failure constituted serious professional misconduct.

II. CHARGE AND SPECIFICATION

Charge: Reckless Disregard of Your Disclosure Obligations under *Brady* and Department of Justice Policy

Background to Specification: In 2003, prosecutors began investigating allegations that United States Senator Theodore F. Stevens had illegally accepted from VECO Corporation, an oil services company located in Alaska, and its chief executive officer, Bill Allen, “things of value” worth hundreds of thousands of dollars. These “things of value” included major renovations to Stevens’ home in Girdwood, Alaska.

A May 21, 2008, prosecution memorandum explicitly noted the potential defenses that the defense might raise at trial in this case. One of these potential defenses was that Stevens could claim that he thought that the invoices that were submitted to him for the construction work on his house included the costs incurred by VECO. Thus, the government was aware that Stevens might want to assert that when he paid the construction company based on the bills he received, he thought he was paying for VECO’s work as well. The prosecution memorandum noted that this claim could be predicated on the fact that Allen reviewed the construction company’s bills before they were sent to Stevens. The prosecution memo went on to opine that this defense would be objectively “incredible” because of the large amount of resources and time that VECO had expended on the construction project.

In August 2008, you and another prosecutor conducted trial preparation sessions with government witness Williams. Williams was a handyman at VECO and served as the foreman at

Stevens' house during the renovation project. During these sessions, Williams told you: Stevens said he wanted to pay for all the renovations to his house; Stevens said he wanted a contractor working on the job that he could pay; he (Williams) had reviewed the invoices from the construction company and passed them along to Allen or another VECO employee before they were sent to Stevens; and he (Williams) thought that his hours and those of another VECO employee – and possibly all of VECO's costs – were added to the invoices prepared by the construction company and sent to Stevens and his wife.

Based on the prosecution memorandum, it is clear that the government recognized that the statements by Williams were consistent with the defense's theory of the case and were potentially exculpatory. And yet, you did not turn over this information to the defense in a timely manner. Moreover, you reviewed the *Brady* letter that was provided to the defense and it said: "Williams also stated that... [he] did not recall reviewing the [construction company's] invoices." This assertion was wrong and misleading, and yet you did not take any steps to correct it.

Specification: I find that the information Williams provided to the government at the trial preparation session was material and favorable to the defense. I further find that you had a clear and unambiguous duty to disclose this information to defense counsel in a timely manner, and yet you failed to do so, which prejudiced the defendant's case. Accordingly, I find that you engaged in professional misconduct because your actions constituted reckless disregard of your disclosure obligations under *Brady* and Department of Justice Policy.

II. PENALTY

In determining the appropriate penalty for your misconduct, I have considered the factors enumerated in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981). Specifically, I find that the following *Douglas* factors weigh in mitigation:

- * OPR found that your misconduct was *not* intentional, and as noted below, I am required to give this factor great weight in determining the appropriate discipline to propose in this case;
- * You have been in public service for approximately 8 years;
- * You have an excellent work record and have received numerous awards for your service, which weighs heavily in your favor;
- * You have no prior disciplinary record;

- * Your supervisors indicate that this incident will not affect their confidence in your ability to perform your assigned duties in the future;
- * Your supervisors believe you have an outstanding potential for rehabilitation;
- * Shortly before this case went to trial, a new management team was imposed and a new trial team was created which caused disorganization and complicated your prosecutorial tasks;
- * You received poor supervision from the new management team, which resulted in disjointed areas of responsibility and ineffective guidance;
- * During this prosecution you were dealing with a voluminous number of documents and an aggressive defense team, both of which exacerbated the problems in this case; and
- * You ultimately were assigned a relatively minor role in this case during trial.

I find that the following *Douglas* factors weigh in aggravation:

- * Your misconduct was in violation of your constitutional obligations as a federal prosecutor, and it prejudiced the ability of the defendant in this case to receive a fair trial. Thus, your misconduct was extraordinarily serious, and this factor weighs extremely heavily against you;
- * Your position as an Assistant United States Attorney is one of considerable power, authority, and prominence, and it was incumbent upon you to act with the utmost discretion and professionalism when handling this case;
- * Your disclosure obligations under *Brady* and Department of Justice policy (USAM Sec. 9-5.001) were clear and well known;
- * I have contemplated whether proposing a lesser penalty would suffice under the circumstances. After careful and thoughtful consideration, I have determined that proposing a lesser penalty would not be appropriate and would not serve to deter the above described conduct; and
- * The serious mishandling of the *Stevens* case received substantial notoriety nationwide, and thus your misconduct in this case has had a long-term and extraordinarily

damaging effect on federal prosecutors' reputations for fairness and professionalism, and has reflected very poorly on the Department of Justice generally.

One final point needs to be made. The Merit Systems Protection Board requires proposing officials to consider the "consistency of the penalty with those imposed on other employees for the same or similar offenses." It is this single factor that weighs most heavily in your favor because I very seriously contemplated proposing a suspension of many more days. However, after considering the penalties imposed on similarly-situated Department of Justice employees where OPR did *not* make a finding of *intentional* misconduct, I ultimately concluded that a proposal for a suspension of a longer duration would not be consistent with the penalty "imposed on other employees for the same or similar offenses."

In sum, although I find that the mitigating factors pertaining to your case are substantial, I also find that the aggravating factors significantly outweigh them. After weighing all these factors, I propose that you be suspended without pay for ten (10) days. I find that this penalty is fully warranted, is consistent with penalties imposed on other employees in the Executive Office for United States Attorneys for similar findings of professional misconduct by OPR, and will promote the efficiency of the federal service.

III. RESPONSE TO PROPOSAL

You have the right to respond to this notice orally and/or in writing and to submit affidavits or other documentary evidence in support of your response. If you choose to respond to this proposed suspension, the Deputy Attorney General's designee will issue the decision. Your written response, if any, must be submitted within 30 calendar days from the date you receive this notice (exclusive of the date of delivery) and must be sent via electronic mail to Ms. SeLena Powell at selena.powell@usdoj.gov. If you wish to make an oral response within the same 30 day period, you must contact Ms. Powell immediately, via the email address above, to schedule a call or meeting. Your United States Attorney may join in your response, respond separately, or otherwise comment on this proposal within the same 30 day period by the procedures outlined above.

You also have the right to have an attorney or other representative of your choice assist you in preparing and presenting your response. If the person selected as a representative is an employee of the Department, management may disallow the selection if the representative cannot be spared from his or her official duties, or if a conflict of interest exists between the representation functions and the employee's official duties. You and your representative, if a U.S. Department of Justice employee, will be allowed a reasonable amount of official time, not to exceed eight hours coordinated in advance with applicable supervisors, to review the documents relied upon to support this proposal, to secure affidavits, and to prepare a response.

Before a decision is reached on whether or not to suspend you from employment, the Deputy Attorney General or his designee will give full and impartial consideration to any response from you and/or USA Ormsby. During this notice period, you will be retained in a paid duty status.

If you have questions about the procedures discussed in this notice you may contact Jane Reimus, Chief, Policy and Special Programs Division of the Executive Office for United States Attorneys at (202) 252-5315.

Please acknowledge receipt of this letter by signing in the space provided below and returning it to me via electronic mail at kevin.ohlson@usdoj.gov. Your signature does not constitute agreement or disagreement with the proposal but merely acknowledges your receipt.

<p>I acknowledge receipt of this proposed suspension.</p>	
<p>_____</p>	<p>_____</p>
<p>James Goeke</p>	<p>Date</p>