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### April Fools, All Year Long

On April 1, 2009, CNN reported that the felony conviction of former Alaska senator Ted Stevens, meted out on the eve of his re-election loss, would be voided due to prosecutorial misconduct. A man who clearly used his elected position for personal gain - the word "bribery" is the only one that comes to mind - got away with it.

At first I thought, This must be some April's Fool shenanigans by those pranksters at CNN, but of course it is the American criminal justice system which is a perpetual laughingstock throughout the world. On April 7th, his conviction was thrown out. Clearly, American justice is not about fairness or proportionality in meting out retribution for misdeeds - it is about power and money. One standard for those who have it, and one for those who do not.

Prosecutorial misconduct is replete in our criminal justice system. Black's Law Dictionary describes it best: A prosecutor's improper or illegal act (or failure to act), especially involving an attempt to persuade the jury to wrongly convict a defendant or assess an unjustified punishment. Poor and minority accused witness it everyday. Threatening defendants and their witnesses, suppressing exculpatory evidence, inflammatory grandstanding in front of the jury, improper manipulation of the press, and numerous other means are so commonplace that they barely raise an eyebrow as they are used to fill our jails and prisons. Using

practically any means necessary to gain a conviction is taught to hungry young prosecutors with an eye on an important career, though they would hardly admit it.

Of course, when it is an elected official with high-priced defense counsel, the game changes. Unsurfacing these indiscretions on the state's part brings a voided conviction and freedom. With those of the lower classes, the convict must appeal to the higher courts which invariably rule that the prosecution's misconduct can be equated to only one thing: "Harmless error." Yes, the courts say, This or that may have been improper, but we can see all things, and this discovery would not have changed the jury's decision. These harmless errors, no matter how criminal, have landed many on death row, and no one is moved until it is his or her own son or daughter.

"The Exonerated" is a production that has woven together interviews with numerous members of the wrongly-convicted class. Famous (or infamous) actors such as Danny Glover do an excellent job of expressing the confusion and pain of these victims of the criminal justice system. In one scene, Susan Sarandon offers a superb performance as she recounts one woman's heart-breaking story. Prosecutorial misconduct led to the wrongful conviction of her and her husband, and to his unforgivable state execution. When the truth finally surfaced of this miscarriage of justice, the only apology which was offered by the state was a commutation of her death sentence to Life and immediate parole.

Shouldn't the prosecutors who used criminal means to execute an innocent man now be prosecuted for murder? Of course they

should. Why the double standard? The answer: Only in America. The American landscape is full of similar accounts of injustice, but few are interested in the uncomfortable truth. Scott Turow, who wrote Presumed Innocent, is one of the few, as is John Grisham, who wrote a scathing account of "small town justice" in The Innocent Man. And though these and a few others hardly make an impact on how the general public perceives our criminal justice system, they do offer the blatant dichotomy: The fair system which Americans believe punishes the criminal and exonerates the innocent versus the dirty truth that there exists one system for the poor and one for the rich; the ideal that permeates prime-time cop shows which holds that the bad guy goes to jail, and the reality that we merely are packing the poor and ethnic minorities into our ever-growing prison systems.

When Harlem Representative Charlie Rangel was investigated by private news organizations for numerous criminal activities, which include tax evasions, improper use of his office, and improper use of campaign funds, among other things, his constituency rallied around him, as did Alaskan Republicans who voted for Stevens on the eve of his felony conviction. It reminds one of the loyal minions who prop up Third World despots despite the murderous acts perpetrated against the citizenry. These constituencies collude with these despicable characters who preach Law and Order and virtue in government, and yet use their trusted positions for criminal activity.

On March 22, Fareed Zakaria invited former NY governor Eliot Spitzer, the ersatz paragone of Law and Order, on his

Sunday talk extravaganza mere months after his disgraceful exit. Mr. Spitzer built his political career by prosecuting prostitution rings and those, particularly on Wall Street, who used their positions of trust for wrong-doing. After being elected governor, he then used his own position and its resources to surreptitiously buy sex, even across state lines. By inviting Mr. Spitzer to espouse his various political opinions, Mr. Zakaria colludes with a corrupt system which allows the rule of law to only apply to mere citizens, and not to the likes of Mr. Spitzer. Only one question need be asked of Mr. Spitzer: "Why aren't you sitting in jail?"

U.S. prisoners who see their numbers drawn from the poor and growing exponentially, are baffled by the dichotomous system of American justice where elected officials seem to pay enough for their criminal acts simply by experiencing the shame of being <sup>caught</sup> while those of the lower socioeconomic stratum are on the fast track to prison for low level property crimes and personal drug possession. And with our nation's love affair with habitual offender laws, the poor should expect to experience not mere years, but decades or the remainder of their lives behind steel and concrete.

Congressmen like Rangel (NY-D), Doolittle (Calif-R), Hunter (Calif-R), Renzi (Ariz-R), Weller (Ill-R), Fossella (NY-R), Jefferson (LA-D), and others being investigated or who have been investigated seem to get a pass. Is it self-interest on the part of government? And voters who clamor to elect any "Tough on Crime" politician that they can seem to wilt when "their

guy" gets caught. The worst that happens to the bulk of these crooks who bilk the system which their offices have sworn to uphold and protect is that they may not get re-elected,

The politicians are not the only ones who get a pass. Let us not forget the everyday citizen, "Joe Six-Pack." When we question the general public about their own "foibles" (because they don't commit crimes), attitudes change. The middle- and upper-classes may "fudge" on their taxes, smoke a little marijuana at a Sunday barbecue in the suburbs for old times sake (just don't let the kids see), take a few odds and ends from work, a little price-fixing "to help stay competitive," inflate insurance claims (heck, I've paid enough over the years - it's my money), or <sup>commit</sup> any number of criminal offenses. The general public does not equate these crimes as criminal at all although they carry a much heavier societal burden than the number one index crime (i.e., "street crime"): property theft. Not only do attitudes about these crimes act as protection, these offenses are also difficult to detect.

Equally important, low level government employees seem immune to arrest, prosecution, and incarceration. When a police officer is observed committing a criminal act in the commission of his/her duty, the usual solution is a quiet resignation. When a prison guard is caught bringing drugs into a jail or prison, he or she is simply asked to not return to work. The prisoner receiving the drugs can most assuredly expect outside charges which will be prosecuted to the fullest extent. The list goes on and on. The majority of Americans believe in the Tough on

Crime mindset when it is the poor, who are made up predominantly of racial minorities,

Old Ted Stevens had the audacity to tell the waiting press that he had a renewed faith in the system. I bet he does as he sits in his home newly refurbished with bribe money. But what about the millions of America's poor who will be convicted using the very same illegal methods which snared slippery Ted? If what we so foolishly call "misconduct" is a "harmless error" in their situation, should it not be a harmless error for all. Or rather should we not stop these illegal tactics to win convictions, and prosecute the prosecutors who trample our civil rights to further their careers and reassure the voting public that the "bad guys" (Read: the poor) are put away for good.

We must stop claiming that we are a nation of laws, or we should become one. If stealing a twenty from a convenience store merits prison, so does cheating on your taxes, employee theft, smoking pot in the dorm room, or misusing campaign funds. Crime is crime, and fairness in prosecution applies to all equally. When prosecutorial misconduct frees a senator, yet causes men like Thomas Martin Thompson to be executed (Thompson v. Calderon, 120 F. 3d 1045), we must admit the harsh truth: we are using America's criminal justice system as the "Final Solution" to address the issue of our poor and racial minorities, and we have <sup>done so</sup> for decades - arguably much longer. With a new political psychology in America today, let our voices and votes be heard and let us wipe away the travesty we have endured for far too long. Until we do, one of the oldest truism in our culture shall remain: "American Justice: The Best Money Can Buy."