

Judge orders US to pay \$600K for taping defense

By CURT ANDERSON – 5 days ago

MIAMI (AP) — A federal judge reprimanded prosecutors and ordered the U.S. government Thursday to pay a defendant more than \$600,000, saying members of the man's defense team had been secretly recorded in a questionable witness-tampering investigation.

In a strongly worded, 50-page opinion, U.S. District Judge Alan S. Gold said three prosecutors and a Drug Enforcement Administration agent acted "vexatiously and in bad faith" in the case of Dr. Ali Shaygan, who was acquitted in March of 141 counts of illegally prescribing painkillers.

Gold also faulted prosecutors for failing to obtain permission from supervisors in the U.S. attorney's office before authorizing two witnesses to record conversations with Shaygan attorney David O. Markus and his investigator. None of the information was turned over to the defense, Gold noted, including the fact that the two witnesses were cooperating with the government.

"These events are profoundly disturbing," Gold wrote. "They raise troubling issues about the integrity of those who wield enormous power over the people they prosecute."

The opinion follows this week's decision by a federal judge in Washington to throw out the corruption conviction of former Alaska Sen. Ted Stevens because of prosecutor misconduct. U.S. Attorney General Eric Holder has put federal prosecutors nationwide on notice that they will be held to a higher ethical standard and can expect changes in Justice Department practices in the aftermath of that case.

Miami U.S. Attorney R. Alexander Acosta, an appointee of former President George W. Bush, issued a statement acknowledging errors in the Shaygan case and noting that the matter has been referred to the Justice Department for possible disciplinary action. The statement said steps were taken to ensure the situation isn't repeated.

"I've called each of our new employees into my office on the day they are hired, and told them their job is to do justice. Their job is not to win at all costs," Acosta said in a telephone interview.

The recordings came to light when one of the witnesses disclosed them while testifying in the Shaygan trial. No evidence surfaced that the defense team was attempting to tamper with witnesses; in fact, Gold concluded in his order that both witnesses appeared to be seeking bribes from the defense in their taped conversations.

"I'm doing real, real, real bad with money, you know what I'm saying?" witness Carlos Vento says on one tape, according to court records.

Later, Markus is quoted as telling witness Trinity Clendening, who authorities say had also taped conversations for prosecutors: "I am not paying any money for anything."

Gold ruled that the U.S. government must pay Shaygan \$601,795 in legal fees and costs and reprimanded the U.S. attorney's office as well as prosecutors Sean Cronin, Karen Gilbert and Andrea Hoffman. Gold also will forward a copy of the order to the Florida Bar for its review.

Markus said Shaygan had faced 20 years in prison if convicted because one patient died of a drug overdose.

"We regret that any of this ever happened in the first place, but we are grateful that Judge Gold took it seriously and did the right thing," Markus said.

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