

Feds Ordered to Pay More Than \$600K in Legal Fees for Misconduct in Fla. Drug Case

John Pacenti
04-10-2009

In the wake of a [prosecutorial misconduct scandal in the corruption case against former U.S. Sen. Ted Stevens in Washington](#), a Miami federal judge imposed extraordinary sanctions Thursday on federal prosecutors in South Florida for secretly taping the defense team of a physician who was ultimately acquitted in a prescription drug case.

U.S. District Judge Alan Gold ordered the government to pay \$601,795 to cover legal fees, litigation expenses and expert fees for Dr. Ali Shaygan of Miami Beach after a superseding indictment was returned against the doctor last summer.

Gold also issued a public reprimand against the U.S. Attorney's office, and [U.S. Attorney Alex Acosta](#) as well as his senior staff members for failing to properly supervise the trial attorneys.

The judge reprimanded the two trial prosecutors, Sean Cronin and Andrea Hoffman, as well as their supervisor, Karen Gilbert, the narcotics section chief. Gold said Cronin and Hoffman, along with Drug Enforcement Administration agent Christopher Wells, "acted vexatiously and in bad faith." He cited Gilbert and her deputies for acting with "gross negligence."

The judge said he found the secret taping of phone calls to Shaygan's attorney and defense investigator by two informants indicative of a "win-at any-costs" culture and briefly mentioned a newspaper editorial about the recent dismissal of a conviction against Stevens, a former Republican senator from Alaska, where federal prosecutors in that case withheld key evidence.

"These events are profoundly disturbing. They raise [troubling issues about the integrity of those who wield enormous power over the people they prosecute](#)," Gold wrote in a [50-page order \(pdf\)](#). "Our system of criminal justice cannot long survive unless prosecutors strictly adhere to their ethical obligations; avoid even the appearance of partiality, and directly obey discovery obligations and court orders."

In his order, Judge Gold acknowledged that the U.S. Attorney's Office admitted its mistakes and that Acosta referred the matter for investigation by the Department of Justice Office of Professional Responsibility. Gold concluded Acosta was not aware of the secret taping of phone calls on what turned out to be a specious allegation of witness tampering by the defense.

In a statement, the U.S. Attorney's Office in Miami reiterated that it regretted the missteps and has taken action to ensure it does not happen again. Alicia Valle, spokeswoman for the office, said from the start that Shaygan was offered compensation "even though it was our belief that these mistakes were not intentional."

"Our attorneys are lifelong public servants who are committed to the pursuit of justice," Valle said. "One event should not taint the nearly 300 hard working attorneys in the Southern District of Florida."

Miami criminal defense attorney David O. Markus, the lead counsel for Shaygan, was low-key in victory over prosecutors responsible for secretly taping him and a defense investigator in a rogue witness tampering investigation. Miami attorneys **Marc Seitles** and Robin Kaplan served as co-counselors for the defense.

"The order speaks for itself. 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. "Thank goodness that the conduct did not distract the jury from finding Dr. Shaygan not guilty of all 141 counts against him."

Even before Gold issued his order, Gilbert, the office's top narcotics prosecutor, requested reassignment. Cronin was reassigned out of the criminal division.

Gold said he could issue further sanctions depending on the outcome of the internal investigation by the Justice Department. He said Cronin had allowed his personal feelings to affect the case against Shaygan.

Cronin told the defense that there would be "seismic shift" in the case if Shaygan pursued a motion to suppress a statement he made to Wells. After the defense filed its motion, Cronin filed 100 more counts against the doctor.

Gold painstakingly details how the government failed to file all DEA reports to him as requested and how it pursued its investigation of the defense team without any real merit.

"The various deficiencies in Cronin's conduct constitute unethical behavior not befitting the role of a prosecutor," Gold wrote.

The judge said he plans to forward the order to any relevant disciplinary body, such as the Florida Bar, so appropriate action can be taken. He said he will request disciplinary action be taken against Cronin and Hoffman.

Neal Sonnett, a prominent Miami defense lawyer and a past president of the National Association of Criminal Defense Lawyers, called Gold's order one of the "most thoughtful, comprehensive and bold orders I've seen regarding prosecutorial misconduct."

"This sends a very strong signal to U.S. attorney offices all over the country in how courts will deal with prosecutorial misconduct," Sonnett said. "The instances of prosecutorial misconduct are growing. Judge Gold's order will stand for example of other judges on how they should be investigated and how they should be handled."

Kendall Coffey, a former U.S. Attorney now in private practice, said he respects Gold but thinks his order goes too far. He said Gold himself noted that Acosta and his senior staff acted diligently in investigating the matter once it was brought to their attention.

"The hundreds of dedicated men and women in that office had no participation with respect to any transgressions and I would hope upon reflection Judge Gold might consider modifying those elements of the reprimand directed to an entire office," said Coffey, now a named partner with Coffey Burlington in Miami. "This is not presented as a systemic problem and whatever may have occurred among a small number in that office should not be extended to the senior management much less the entire office itself."