

# Payback for Stevens Prosecutors

TWO JUSTICE DEPARTMENT attorneys who bungled the prosecution of former Alaska Republican Sen. **Ted Stevens** in 2008 are owed back pay with interest for the suspensions they served after the department decided to void its case.

Just months after convincing a Washington, D.C., jury in 2008 that Stevens had accepted gifts without disclosing them, in violation of federal ethics rules, the DOJ acknowledged that its prosecutors had failed to turn over evidence to Stevens's lawyers that might have helped his case. The department later suspended two of its prosecutors, **Joseph Bottini** for 40 days, and **James Goeke** for 15.

The department said the prosecutors engaged in "reckless," though not intentional, misconduct. Stevens's legal team, led by Williams & Connolly attorney **Brendan Sullivan**, called the penalties "pathetic" at the time.

But as it turns out, neither lawyer will pay any price. Earlier this month, the Merit Systems Protection Board, a federal agency



**REIMBURSED:** Bottini and his Justice Department colleague win final round in a case that went awry.

charged with adjudicating appeals of discipline handed out by federal agencies to their employees, found that the Justice Department had violated its own procedures in suspending the men. The board agreed with the two prosecutors, who argued that an initial department ruling that they had not violated professional standards should not have been overturned by a supervisor.

Sullivan and his partner **Robert M. Cary** said in a statement that the Stevens case and

its aftermath should serve as impetus for overhauling the system of sanctions for prosecutors who break the rules. "Other innocent citizens have received similar mistreatment by some prosecutors who put victory before justice," they said. "Until there are meaningful sanctions for prosecutors who cheat to win, history is destined to repeat itself."

Stevens never spent any time in jail, but he lost his 2008 re-election bid shortly after the guilty verdict. He had been the longest serving Republican in the Senate, first appointed to an Alaska seat in 1968. He died in a 2010 plane crash. One of the other prosecutors in the case, **Nicholas Marsh**, committed suicide a month after the crash.

In the case, the prosecutors argued that Stevens had taken hundreds of thousands of dollars in gifts from wealthy supporters, including a renovation of his Alaska home, a gas grill and a lounge chair. Stevens's attorneys argued that he had not asked for the gifts, had expected to pay the full cost of the renovation and viewed some of the gifts as loans.

— SHAWN ZELLER

## 5 QUESTIONS

### Richard Arenberg

Co-author, *Defending the Filibuster: The Soul of the Senate*

A Senate aide to former Democratic senators

**Paul Tsongas** of Massachusetts and **George Mitchell** of Maine, Arenberg wrote his book on the filibuster three years ago at a time when the debate over its use, or overuse, seemed to be at a peak. But it's only grown stronger, so Arenberg, who now teaches at Brown University, and his co-author

**Robert Dove**, a former Senate parliamentarian for Kansas Republican **Robert J. Dole**, have put out a new edition that's critical of the Democrats' 2013 decision to make it difficult to filibuster most judicial and executive branch nominees.



**Q.** Democrats would say that the filibustering of nominees had paralyzed the Senate. What's your response?

**A.** They took a very dangerous and short-sighted means to respond and I think they've made a big mistake. I'm hopeful the new majority will scamper back from that. Otherwise the Senate continues on

a slippery slope. Eventually there will be the temptation to use the "nuclear option" to eliminate the filibuster entirely.

**Q.** But the filibuster isn't set in stone. In fact, it used to be a two-thirds vote. Couldn't it be changed again?

**A.** I think the 60-vote threshold has served pretty well for the purpose of protecting the minority and encouraging negotiation and compromise in the Senate. I guess the number 60 isn't magic but it works pretty well. It's important to understand that what is crucial about the filibuster is not so much its use but its part in the Senate's DNA. Every senator knows they need to have some cooperation from the other side in order to get significant things done.

**Q.** On the other hand, you still have majority leaders acknowledging a filibuster without requiring the minority to hold the floor. Is that excessively courteous?

**A.** It's more rational than that. In a lot of these instances, Republicans would have been able to sustain that filibuster for as long as they had to. The burden then falls to the majority. They have to keep a quorum around. If the minority asks for quorum call and there isn't one, then the Senate needs to adjourn.

**Q.** What have you observed about the way the Senate operated after the nuclear option?

**A.** The Senate spent a disproportionate amount of time on judicial nominations. Republicans, because they were upset, were requiring cloture votes on a large number of nominations that would have gone through on unanimous consent or close to it. The biggest problem with the new nomination cloture rules is that it strips away the pressures that it created on any president to consider the minority when making nominations to the federal court.

**Q.** Might there have been some other way for the Democrats to have gotten what they wanted?

**A.** A proposal that we'd made in the book is that the leadership of both parties recognize that abuse of these various rules has been undermining the functioning of the Senate and they create a select committee or blue ribbon panel. Our suggestion is that there be a prior stipulation that whatever new rules are created, they not go into effect until a future Congress one or two Congresses removed. Neither party would know whether they were negotiating for the majority or the minority.