Fear Not! Obama's Prosecutors Are on the Job

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Fear Not! Obama's Prosecutors Are on the Job

By Lester Jackson, Ph.D.

The Obama view of justice: Protect the most depraved and violent criminals, while torturing the decent. Prosecute the prematurely sick; bend over backwards to be "fair" to mass murderers. There is something scandalously wrong with what is mislabeled our criminal "justice" system -- and little basis for public confidence in the judges and prosecutors who administer it.

Recently, a little-reported yet extraordinary decision was rendered by a U.S. appeals court. The meager media mention given the case was laced with levity due to its subject matter. But it was anything but funny, for it shed immense light on the prosecutorial priorities of the Obama administration and on liberal values regarding crime.

President Obama frequently has been criticized for not enforcing the law. Attorney General Holder has been likewise criticized.

Well, we can take comfort. Obama's judges and prosecutors are on the job.

Yes, it is true that on November 5, 2009, Nidal Hasan was captured red-handed in the act of committing multiple murders, leaving absolutely no doubt about his guilt. And yes, it took nearly four years to commence his trial, with a prospect of many more years' delay yet to come.

And yes, we are unlikely to see the Obama administration prosecute any of its own appointees involved in numerous serious scandals.

However, the conscientious diligence of Obama appointees cannot be doubted. Just ask Robert S. Strong. On May 24, 2011, this 50-year-old, as a result of taking 13 medications for heart and kidney problems, had a sudden attack of uncontrollable diarrhea in the Portland, Maine federal courthouse. In trying to clean himself, he left a mess on the floor of a small bathroom that was cleaned by personnel *paid* to -- clean bathrooms. There was no damage to the facility (if "damage" refers to anything that diminishes property value or requires repair rather than cleaning with bleach).

Nevertheless, within three days -- three days! -- Strong was charged with three separate offenses: willfully damaging federal property, creating a nuisance, and creating a hazard. With a speed rarely, if ever, seen in cases involving premeditated brutality, this prematurely sick man was tried, convicted 113 days after the incident, and sentenced to seven days in jail for a "crime" committed 18 months after the massacre by Hasan. Not only that, but on July 19, just two years later, with the Hasan trial not yet started and as convicted murderers were routinely protracting cases for decades with repeated dilatory tactics, a 2-1 First Circuit opinion upheld Strong's conviction. (On August 5, after 36 years -- that's not a misprint! -- John Ferguson was finally executed for eight murders in the 1970s, including two *after* he was let loose while awaiting trial for the first six.)

The essence of the dissent (22), which must be read to understand fully the gross injustice, was that the government had violated the very law it used to prosecute Strong, and he lacked the required criminal intent in dealing with what was, after all, a wholly unexpected accident.

Moreover, even if prosecutors had proved their case, they spurned the profound wisdom of then-Attorney General (and later Justice) Robert H. Jackson's classic 1940 address to U.S. Attorneys:

> While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from ... base motives, he is one of the worst ... One of the [prosecutor's] greatest difficulties ... is that he must pick his cases, because no prosecutor can even investigate all of the cases in which he receives complaints ... What every prosecutor is practically required to do is to select the cases for prosecution and to select those in which the offense is the most flagrant, the public harm the greatest, and the proof the most certain.

Because diarrhea was involved, the few media reports that covered Strong's case treated it as something of a joke. In fact, after the Supreme Court has concocted for the most depraved criminals a right to commit murder and rape without any punishment because they are the most depraved, it is no laughing matter when a law-abiding citizen in poor health is zealously dogged by a prosecutor lacking common sense at best and having "base motives" at worst.

A seven-day jail sentence might not seem like much. But it is not the same for everyone. For career criminals and prostitutes, routine jail time is part of their "job," to be shrugged off. But even a short jail sentence can be tremendously traumatic for a decent law-abiding individual who has never been inside a jail, and aggravated when he has serious medical problems. A week in jail for such an individual is likely to take a far greater toll than six months in jail for a career criminal. And add to that the emotional cost of being charged and put on trial for the result of being in poor health by age 50.

Last year, first-time offender Thomas Pruisik Parkin received a harsh 14- to 42-year sentence for defrauding the government. This sentence for that non-violent crime was far harsher than many sentences for the most barbaric violence. But Parkin did commit a serious crime. Defrauding the government is not a minor offense. It was certainly legitimate to prosecute him, even if his sentence could be considered excessive in light of many sentences for far more serious violent crimes.

By contrast, Strong did not commit a serious crime, and, according to the devastating dissent, he committed no crime at all. A sick man who had an embarrassing and humiliating accident (25-26), he caused no injury to another person and no diminished property value or repair expense. The only "damage" was that the mess he left behind had to be cleaned by employees hired by the government to do just that. Yet this man taking multiple medications was subjected to the further trauma of being criminally tried and sentenced to jail, while some rapists and murderers receive no punishment at all.

This is not prosecutorial discretion; it is prosecutorial abuse. And not merely prosecutorial abuse, but also judicial abuse highlighting the different standards of proof liberal judges require for the violent and the non-violent.

The majority judges were clearly out to get Strong. To declare that he had been "willful," they resorted to rank speculation rather than proof. Without demonstrating any causal connections, the Clinton-Obama majority (1) asserted that he had received "implied notice" of the regulation the government itself was required, but failed, to observe to assure actual notice; (2) cited his loss (19) of a Social Security case; and (3) if that were not enough, found that he "may have" (20) -- "may have"?! -- acted willfully because of the delay in his being given access to the bathroom.

Can any honest person believe that liberal judges would ever accept "may have" as proof in a murder case? Pro-murderer fanatics will say that, where the death penalty is involved, the system must bend over backwards to be "fair." Of course, that is precisely the difference between pro-criminal and pro-victim values. One side focuses upon violent crimes; the other is fixated on protecting violent criminals and persecuting non-violent, often decent, individuals. For the fanatics, it is "unfair" to punish the usually poor violent while not going after non-violent cushy "white-collar" offenders. When the fanatics say the death penalty requires special treatment, what they really mean is that "fairness" is not as important in non-capital cases, and even less important where there is no violence at all. For them, fairness is not a matter of guilt or innocence; it is a matter of protecting those guilty of violence. And the more depraved the violence, the more "fairness" required.

While the Clinton-Obama majority in Strong's appeal bent over backwards to sustain conviction of a non-violent "crime" that few normal people would view as a crime, the Hasan massacre case has been stretched out for years, with more years to come -- all in the name of "fairness" imposing complete and shabby contempt upon victims where guilt is beyond any doubt, let alone reasonable doubt.

The Strong case is the *reductio ad absurdum* of abuse of good people by prosecutors and judges who do a very inadequate job of protecting the law-abiding from the violent. (For many other shocking examples, see here and here.) Meanwhile, the Hasan farce continues.

One final point. It is illuminating that the office hounding Strong was and is headed by U.S. Attorney Thomas E. Delahanty II, appointed by President Obama to a second term 30 years after being appointed to a first term by President Carter. The two judges in the majority were appointed by Presidents Clinton and Obama. The withering dissent was written by a Reagan appointee, Judge Juan R. Torruella.

Once again, there is something scandalously wrong with what is mislabeled our criminal "justice" system -- and little basis for public confidence in the judges and prosecutors who administer it.

And it all starts with the presidents who appoint them!

Lester Jackson, Ph.D., a former college political science teacher, views mainstream media suppression of the truth as essential to harmful judicial activism. His recent articles are collected here.