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THE WALL STREET JOURNAL.

WSJ.com

MAY 3, 2011, 7:05 PM ET

Stevens Urges Congress to Crack Down on Prosecutorial Misconduct



Retired Justice John Paul Stevens said Supreme Court decisions have given local prosecutors impunity for violating constitutional rights, and urged Congress to respond by authorizing victims of misconduct to sue.

In a speech Monday night to the Equal Justice Initiative, which advocates for indigent defendants, Justice Stevens criticized the court's March decision overturning a jury's \$14 million award to an innocent man who spent 14 years on death row after prosecutors concealed evidence that could have cleared him. (Click [here](#) to see the full text of Stevens' speech.)

The case of [Connick v. Thompson](#) saw the court split 5-4 along its conservative-liberal divide. Writing for the majority, Justice Clarence Thomas rejected the freed man's theory that the New Orleans district attorney's office was negligent for failing to train its staff to comply with longstanding precedents requiring prosecutors to disclose exculpatory evidence to defendants.

Lawyers for the wrongly imprisoned man, John Thompson, made that argument because Supreme Court precedent requires proof that it was the local government's policy to violate constitutional rights before it can be held liable.

Thompson's lawyers "did not prove a pattern of similar violations" that was "the functional equivalent of a decision by the city itself to violate the Constitution," Justice Thomas wrote.

Stevens said Monday that the nature of the American criminal justice system—where most local prosecutors are elected—"creates a problem of imbalanced incentives that ought to be addressed at the state and national level."

Because district attorneys often run on tough-on-crime platforms, the pressures to ensure convictions far outweigh the rewards for respecting rights of the accused, Stevens said.

That could be fixed, he said, by making district attorneys liable when their subordinates commit outrageous violations of constitutional rights. Private-sector employees already are liable for their employees' misconduct, under a legal doctrine called respondeat superior.

The doctrine "provides a powerful continuing incentive for employers to make sure that their employees are adequately trained," Stevens said, something "especially important where electoral incentives encourage abuse." More important, he said, "it would produce a just result in cases like Thompson's in which there is no dispute about the fact that he was harmed by conduct that flagrantly violated his constitutional rights."

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