The Shelby County Mutiny: Where does Judge Stewart go to get his good name back?

By Stan Billingsley, Senior Editor, LawReader.com.

Raymond Donovan who became Secretary of Labor in the first Ronald Reagan term, was subjected to a vicious smear campaign and prosecution which continued for years. After he was exonerated, Donovan made the famous statement, "***Where do I go to get my good name back?"*** We can imagine that former Shelby County Circuit Judge Bill Stewart and his wife Sarah Dutton are asking the same question.

For over two years retired Shelby County Circuit Judge William Stewart has been the focus of a mutiny by Shelby County officials in an attempt to discredit his reputation, to remove him from his judicial office, to deny him an opportunity to participate in the Senior Judge's program where he would have been able to enhance his retirement benefits, and to convict and imprison him and his wife Sarah.

After almost two years living under the dark cloud of pending criminal charges, the Commonwealth dismissed all charges against Judge Stewart. On August 1st., Stewart and his wife Sarah Dutton appeared in Franklin Circuit Court before Special Judge John W. Potter. Sarah Dutton accepted a plea agreement where all pending charges against her were dismissed, and she entered an Alford Plea (under which she did not admit her guilt) to two misdemeanor offenses. She was sentenced to 12 months on one count and 90 days on the second count, with the sentence probated for two years. There was no fine or restitution ordered. She had not previously been charged with the two misdemeanor offenses in the plea agreement.

In order to obtain the reduced charges on his wife, and the dismissal of all charges against him, Judge Stewart agreed to withdraw his application for Senior Judge status, and to agree not to serve as a judge in the future. He had already retired from office in 2005.

Stewart was notified in July of 2004 by the Judicial Conduct Commission that an anonymous complaint had been filed against him. While the anonymous complaint claimed such violations as taking a vacation, and spending nights in his fathers home in Louisville to care for him during his final illness.

The only violation that survived was a charge of failing to recuse himself when the person hired by AOC to clean his office appeared before him on a child support matter. No matter that her employment was disclosed on the record to all parties and no objections were entered. No matter that there is no specific Judicial Ethics Rule that forbids a judge from hearing a case of another employee of AOC. Stewart, prior to a formal hearing, agreed to receive a public reprimand from the Judicial Conduct Commission for failing to recuse himself from the case.

The public reprimand did not remove Stewart from office, did not impose a fine on him, and did not suspend him. He remained eligible to apply for entry into the Senior Status Judges program,

which would have committed him to serve as a special judge for 600 days over five years, and to receive a substantial enhancement in his retirement benefits.

After termination of the hearing before the Judicial Conduct Commission, the efforts to discredit him didn't cease. In fact the effort then evolved into a criminal investigation not only of Stewart, but of his wife Sarah, who had been employed in his judicial office as Secretary. He says he made every effort to cooperate with the Judicial Conduct Commission and the Commonwealth's investigation in the belief that being innocent he had nothing to worry about. However the longer the investigation lingered, the more hostile it became towards the Stewarts. He says that virtually everything he said was ignored or disbelieved by JCC and by the Commonwealth's investigators while the allegations of anonymous accusers was taken as gospel truth.

Stewart says that at the "informal��? hearing before the Conduct Commission that one member of the Commission cut off his statements and accused him of lying. He felt at the time that he was already found guilty prior to a formal hearing at which he could present evidence in his own defense. The so called "informal hearing��? was allowed by the JCC to become highly confrontational.

The Attorney General has created a division in the Attorney General's Office known as the KBI, Kentucky Bureau of Investigation. What better way to kick off one of their first investigations than to try to nail a judge who had nineteen years of outstanding service. The KBI was requested to pursue an investigation of Judge Stewart by the actions of Shelby Commonwealth Attorney Fielding Ballard who had asked for the assistance of KSP in investigating Stewart. Ballard did not disclose to the KSP that he was one of the five authors of an anonymous complaint against Stewart filed with the Judicial Conduct Commission. **On their web site, the KBI publicizes their self-appointed objective of being a watchdog of the judiciary.**

The investigating KSP Detective could not get the Commonwealth Attorney for Franklin County, Larry Franklin, to prosecute the action, so he went to the Attorney General's office, and they jumped on the case surely aware that it would grab headlines for their Kentucky Bureau of Investigation (KBI). The refusal of the Franklin County Commonwealth Attorney to bring this prosecution was a warning sign ignored by the Attorney General's office. Detective Martin who started the investigation presumably at the request of Commonwealth Attorney Ballard Fielding, later was identified by the Commonwealth as working with the KBI. Martin attended the JCC hearing.

The Attorney General's office assigned Scott Crawford-Sutherland as the special prosecutor. He took his case against the Stewarts before a grand jury. Stewart and his wife were indicted by the Franklin County Grand Jury on a number of criminal counts relating to his service as Circuit Judge and his wife's alleged forging work-time records which allegedly claimed she claimed pay for more hours than she actually worked. She was also charged with two Class C felonies (each having a penalty of imprisonment of up to 20 years), for allegedly downloading her husbands office e-mails at his direction. It later came out via an admission by AOC that there was no

forgery, and no duty for Mrs. Stewart or Judge Stewart to submit weekly time records. One of the charges sought to convict Judge Stewart for being responsible for the time records sent to AOC. (See footnotes.)

The Stewarts both asserted their innocence to the original charges, and demanded jury trials. Their joint jury trial ended with a mistrial with the jury voting 10 to 2 for acquittal. A unanimous verdict is required to conclude a criminal trial. The Commonwealth ignored another warning sign and announced that they would retry Stewart in a second trial.

The Stewarts both maintain their innocence of all criminal acts. Why, one might ask, would Sarah agree to plea to the misdemeanor charges? Wouldn't a truly innocent person never agree to plead to a charge they had not committed? One may conclude what they may, but faced with the burdens of the prosecution and the prospect of having to raise another $25,000 to $30,000 for their pending trials, and having to bear the burden of a misdemeanor conviction with no penalty save for non-reporting probation, the decision to enter a plea becomes highly rational. Unfortunately, the price of proving your innocence may be too expensive.

On August 1st. Sarah decided to accept the plea bargain which resulted in dismissal of all charges for which she had been indicted. If she had rejected the greatly reduced plea agreement offered by the Commonwealth, she was told that both she and her husband would be tried on the original charges placed against them.

Under the original charges, if convicted, she could have been sentenced to prison for up to twenty years. Her husband could have been sentenced for up to five years if convicted. The Commonwealth also threatened to seek cancellation of his retirement benefits earned over l9 years of judicial service. The plea agreement offer by the Commonwealth ended all further prosecution of the Stewarts.

Stewart and his wife, had spent and become indebted for $120,000 in legal fees, trial preparation expenses and expert witness fees. Stewart even had to spend $13,000 to obtain a copy of his own office telephone records and e-mails from the Administrative Office of the Courts.

Stewart says that Jim Deckard, then Legal Counsel for Chief Justice Joseph Lambert, and AOC, fought him tooth and nail in trying to keep him from even obtaining a copy of his own office telephone records and only did so after the Court ordered AOC to deliver the records Stewart needed for his defense. These records were found by the court to be needed for Stewarts defense and AOC was ordered to deliver the records, but allowed to charge for their copying. AOC made special arrangements to transfer Stewart's law clerk, Carolyn Peterson to a position in the Shelby Circuit Clerk's office. Peterson was the star witness against the Stewarts. The anonymous complaint contained a statement that Peterson was overworked and that she had to so a lot of her bosses work because the judge was frequently out of the office. (Note: his judicial district covers three counties and the Judge must split his time among the three counties.) This statement in the anonymous complaint implicates Peterson in the mutiny of her own boss.

The Stewarts had to sell their home and farm in Shelby County to finance their defense at the first trial. The jury reportedly told the trial judge that "they couldn't come to a consensus since Stewart had not proven his innocence.��? Stewart had requested that the trial judge reinstruct the jury and explain to them that he was not required to prove his innocence under our system of law, but the Trial Judge John W. Potter, did not reinstruct the jury and later declared a mistrial. Judge Potter later met with the discharged jury in private.

In light of the great financial outlay involved in the first trial, and faced with having to sell their last piece of real estate and go further into debt, they finally succumbed to the plea offer. However Sarah only agreed to enter Alford pleas to the misdemeanor charges. (an Alford plea is a plea where the defendant does not admit guilt, but admits in essence that there is enough evidence for a conviction).

Sarah Duttont, at the time she agreed to the plea agreement, was still in ill health and was suffering from a severe case of shingles on her head and face which were aggravated by the stress of the prosecution. She has been told that the condition threatens her sight.

Judge Stewart said the stress of the charges and the impending trial at which she would face two Class C felony charges was too much for her to contemplate. Faced with the burden of a second trial, and the potential expenditure of another $25,000 to $30,000 in legal fees and trial preparation expenses, and the prospect of going further into debt, she accepted the offer. At the plea hearing, she informed the judge, "I did nothing wrong.��?

The Commonwealth failed to prove the original charges against either of the Stewarts, but they did succeed in bringing them both to the door of financial ruin, and they damaged their reputations to a degree that only the Stewarts can appreciate. Stewart recalls an incident where he ran into a member of the Supreme Court and the Justice refused to even speak to him.

The Commonwealth would not admit defeat. Instead of admitting that they had a weak case against the Stewarts, and only convinced two of twelve jurors in the first trial, the Commonwealth held the threat of another trial and six more months of stress and financial ruin over their heads. The price for the Stewarts going further in their quest for justice and complete exoneration was financial ruin. Is there any wonder she accepted the plea bargain? Her conviction says as much about the intimidating power of the criminal justice system as it does about her possible guilt. The Commonwealth would have looked far better if they just cleanly dismissed all charges.

The result of this prosecution is the permanent damage done to the Stewarts, but the damage goes much farther. This prosecution stands as an example to other Judges as to what can happen to them if they dare to rule against the Commonwealth in bond and probation decisions. This prosecution sends a signal to all judges, that AOC will not assist them in anyway. This prosecution will send a message to prosecutors that the Judge is a sitting duck…and any attempt to slander him can be swept under the rug.

How did a respected Judge find himself at the defendant's table?

In 2004 an anonymous complaint was filed with Judicial Conduct Commission. The Commission reviews complaints filed against judges, which allege improper conduct. The Commission has the jurisdiction to fine, suspend or remove judges from office.

The complaint claimed to be authored by unnamed citizens of Shelby, Anderson and Spencer counties. All of the participants in the mutiny were residents of Shelby County. No one from Anderson or Spencer counties were involved in writing or delivering the anonymous complaint. The authors wrote that if something wasn't done about Stewart, there would be "blood in the streets��?.

The unnamed authors said that Stewart was too easy on Hispanics and blacks, and took care of the "scum��? of society. In the long laundry list of alleged wrongs, which focused mainly on disagreements over his discretional acts, he was blamed for having too heavy of a caseload on motion days, for being late to court on occasion, and for taking deferring trials to take a vacation. It was alleged that his wife didn't come to the judges' office, where she was employed, as many days as she reported on the AOC weekly time sheet. Stewart says his wife was only employed half time and she was assigned to come in when the other workers were not scheduled. A number of other judges have been granted permission to employ their wives part time. There is no AOC regulation that prevents a secretary from taking work home to complete. Judge Stewart was accused of theft charges for signing the quarterly pay vouchers.

It was claimed that Stewart was no longer a resident of his district in that he had moved to Jefferson County. Stewart testified that he was for a time, sleeping at his father's home to care for his 90 year old father who then blind, suicidal, and suffering from Alzheimer's disease. During his alleged residence in Jefferson County, he continued to own property in Shelby County, remained registered to vote in Shelby County, and reported for work as his job required. His father has since died.

It was later revealed that the anonymous complaint was the work of other officials in Shelby County. The Attorney General's office in a letter to Stewart's attorney listed the authors of the anonymous complaint:

"Fielding Ballard, Commonwealth's Attorney for the 53rd. Circuit,
Chuck Hickman, former Shelbyville County Attorney, now Circuit Judge in Stewart's old position, Hart Megibben, former Assistant Shelby(ville) (sic) County Attorney (now Shelby County Attorney),
Judge Mike Harrod, Shelby County District Court Judge.��?

The meeting to discuss the plans for the anonymous complaint was held in Judge Harrod's office.

The removal of Judge Stewart resulted in the advancement of Hickman to Circuit Judge and Megibben to County Attorney. Stewart says Judge Harrod coveted the Circuit Judge's position, but was beat out by Chuck Hickman. Harrod did not file to retain his position as District Judge. The recovered e-mails disclosed plans by others to oppose Harrod if he sought re-election.

Stewart says Harrod was angry at him because he had overruled several decisions made by Harrod. Stewart, as Circuit Judge, was responsible for hearing appeals from District Court.

Stewart should not have been surprised that trouble was in the works for him for he had already been warned that trouble was coming. In 2003, the Administrative Office of the Courts (AOC) employed a worker by the name of Joe Gray. Gray was accused in the press of approaching three judges and apparently attempting to influence the judges in their decisions in three different cases. (See Courier-Journal article and editorial below.)

One of the judges confronted by Gray was Judge Stewart. Stewart was justifiably insulted by the blatant request that he fix a case pending before him, and made a disclosure on the record of the approach by Gray, and then forwarded a report of the incident to the Chief Justice's office. The newspapers picked up on Gray's improper behavior and wrote a number of articles about the situation. As a result Gray was apparently discharged from his job at AOC. No prosecution of Gray was instigated, and the matter seems to have dropped from view. Stewart says he received word that he would pay for having been a whistleblower.

In the January 2004 Courier-Journal article regarding Stewart being upset with Joe Gray's approach to him about the pending case, Stewart was quoted as saying that his request to AOC for funding for a law clerk for his office was turned down. At that time many judges had been assigned law clerks and Stewart's case load was the third heaviest case load for Circuit Judges in the state. He ascribed that denial of funding to his whistleblowing. (See text of Courier Journal article in Commentary below.)

Stewart's preparation for his defense turned up evidence of many e-mails from his law clerk Carolyn Peterson and Judge Mike Harrod. Stewart bases his belief on a Harrod–Gray connection largely due to a statement made by Judge Harrod in a statement to the Judicial Conduct Commission which was released to Stewart. In the statement Harrod allegedly said that Stewart shouldn't have crossed Gray. Gray has denied any involvement with such a plan against Stewart.

During his trial preparation Stewart discovered that the hard drive on his office computer had been "wiped clean��?. All of his files, forms, and case information that had been stored on his computer were missing. In order to try to restore information he needed for his defense, he employed a forensic expert who discovered a substantial portion of the files and restored them. Stewart says the restored hard drive contained records of numerous e-mails between his clerk Carolyn Patterson, and Judge Michael Harrod his accuser.

Stewart says that he was not computer literate at the time, and rarely used e-mail or accessed his office computer. Any one wishing to send an e-mail to his office sent it to an e-mail address maintained by his clerk. Both he and his clerk had agreed to use this one e-mail account for court related communications. Stewart says he frequently advised attorneys on the record that any e-mails to his office should be sent to that e-mail address.

When Stewart first discovered the missing data from the hard drive of his computer, shortly after his clerk resigned unexpectedly from her job on Aug. 19, 2004. Later he noticed that the office e-mail account had also been removed.

Sometime around Sept. 1, 2004 Stewart came into his office and found a Gregory Harrod working on his computer. Stewart says he only met Gregory Harrod on this one occasion. Stewart says that Gregory Harrod said he was just stopping by to check his computer and see that everything was working alright. Stewart was surprised as he had not heard of any problems with his computer at the time.

Gregory Harrod now denies ever having been in Stewart's office. AOC has told Stewart that they have reviewed Gregory Harrod's time sheets and he had never been sent to Stewart's office by AOC, and it was not in his job description to visit Judge's offices to maintain their computers. A few months later after this incident that Stewart discovered that his hard drive had been cleaned out thereby hiding the e-mail messages between his former clerk and Judge Michael Harrod. Copies of a large portion of the files which had been deleted from Stewart's computer were discovered in an archived area of the computer by Stewart's forensic expert who was hired to reconstruct the data that had been removed.

Stewart says the recovered e-mails detailed a relationship between Judge Michael Harrod and Stewart's former clerk. The e-mails also revealed discussions by Judge Harrod with Carolyn Peterson in which Harrod was informed the Judge's Clerk about persons who were scheduled to appear before Judge Stewart and apparently suggesting that she speak favorable of these individuals to Judge Stewart prior to his hearing of their cases. Stewart suspects that Gregory Harrod came to his office to delete the personal communications between Judge Harrod and Carolyn Peterson.

Stewart says his efforts to prepare his legal defense were hampered by efforts of AOC and the prosecution.

Supreme Court Rule 3.130(3.8)(c) places a duty on all prosecutors to:

"Make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense…��?,

Stewart says the prosecutor withheld documents his attorney had subpoenaed almost a year before trial, until days before the first scheduled date of the trial.

Upon retrieval of the e-mails between Peterson and Judge Harrod Stewart immediately contacted AOC's attorney and reported his recover of the e-mail evidence and offered to deliver them. Stewart is convinced that the revelation that his forensic expert had uncovered the archieved data on his office computer strangely caused documents in the prosecution's possession that "did not previously exist��? to suddenly appear.

Representatives for AOC came to his office after his retirement and rifled through his files before he had a chance to remove his personal records. He says they threw documents on the floor leaving the office in disarray, and removed most of his personal records.

Sarah denies opening any e-mail messages on her husband's computer. Judge Stewart says he

was the one that opened up those messages, and did so from his personal computer at his residence. He says that his wife was present and worked the keyboard at his direction. He felt he had the right to access his own office e-mail account. The Commonwealth ignored his statement on this point. He never maintained a personal e-mail account or other address for his office than that one e-mail address.

Judge Potter ruled that no one has a reasonable expectation of privacy as to e-mail messages stored on a state owned computer. Nevertheless, the Commonwealth forced the plea bargain against Sarah Dutton by threatening to try to send her to prison for twenty years because they believed she was the one who opened and viewed the e-mail records. To fully understand the charge for opening the e-mails see KRS 484.845 below. It is difficult to see how that statute used to indict Sarah Stewart would apply to this situation.

The result was that the Commonwealth was prosecuting Sarah Stewart for allegedly helping her husband recover important evidence from his own computer, but the party or parties who had deleted those messages, to keep them from being used at trail, go scott free. No privacy right of Carolyn Peterson was violated, according to Judge Potters ruling.

So acts intended to discover and protect evidence were prosecuted, but acts in obstructing justice by destroying the same evidence was ignored. That reminds us of Alice in Wonderland, where "up is down and down is up��?. There is presently no indication that these questions will ever be investigated by KBI or by AOC. This prosecutorial mentality of ��?never admit you are wrong��? and "never believe anything the suspect says��? is pervasive in this failed prosecution of Judge Stewart.

One lesson is obvious. If you believe you are innocent, it may cost you your treasure, your health, your office, your retirement benefits, and your reputation just to defend yourself.

We propose several questions regarding the prosecution of the Stewarts:

Will judges be less likely to come forward in the future and report attempts of state officials to influence their decisions, after seeing what happened to Judge Stewart?

Can the public feel confident that the plea of Sarah Dutton was due to the fact that she was honestly guilty…or was her Alford plea (in which she legally and vocally maintained her innocence) a mere Hobson's choice of a person faced with the threat of financial ruin and weary of a persecution by a prosecutor who would not admit defeat, but who was armed with the awesome power, immunity and unlimited resources of the Commonwealth?

Did the Attorney General's office jump into this prosecution too quickly, relying on weak evidence manufactured by officials who would personally benefit from a conviction of Judge Stewart? We are reminded of the famous quote of Napoleon who said: "If you start to take Vienna – take Vienna.��? Clearly, the Attorney General's office failed to take Vienna in this

case. They took their best shot at Judge Stewart and failed to obtain a conviction, but they successfully besmirched his good name, destroyed his finances, and drove him from office.

Only by threatening a re-trial of his wife and a re-trial of Judge Stewart with the possibility they could void his entire retirement benefits earned over l9 years, and with the knowledge that additional trials and appeals would cost the Stewarts a small fortune in funds they didn't have, did the Commonwealth obtain a slap on the wrist of Sarah Dutton. One can almost hear the theme from the Godfather as Don Corleone says, "I will make you a deal you can't refuse.��? (i.e. take this deal or we will take you down).

One might conclude that the Commonwealth finally realized they had a very weak case, and demanded the plea bargain just to extract themselves from an embarrassing prosecution in a manner where they could claim some small victory.

Bill Stewart and Sarah Dutton have been embarrassed and harmed financially by this questionable prosecution. The public has been deprived of the services of a respected judge. Is this an example of the quality of cases taxpayers can expect from future prosecutions advanced by the KBI?

One of the legal theories advanced by the Nazi's was to prosecute and convict an innocent person from time to time. Everyone recognized that he was innocent, and they felt that this provided an excellent lesson to the public….��? they could even convict an innocent person…ergo…we should not mess with them.��?

We do not suggest that a Judge should not be subject to the penal laws. But we do believe that before you destroy the career of a respected official whom the public has three times elected, that you should be certain that you have enough evidence to obtain a conviction. Evidence derived from mutinous officials hiding behind a cloak on anonymity, is rarely a reliable source of good evidence. The Commonwealth sought to "take Vienna��? and they failed badly in this case. The Commonwealth owed a duty to the public, a duty imposed upon them by the law, to refuse to prosecute a person on charges lacking probable cause. When their case fell apart, they should have admitted it, and taken steps to ameliorate some of the harm they had done to Judge Stewart and his wife.

We note that this case came down to the issue of how a secretary who is working is to report her hours, and who has the right to access office e-mail accounts. We are not aware of any effort by AOC to provide guidance to judges on these issues. We are not aware of any effort by AOC to try to mediate this issue with the Stewarts. No one provided Judge Stewart a chance to reply to any questions before he was the subject of a complaint process before the Judicial Conduct Commission. Before he was given a chance to remedy any complaints against him, the Commonwealth jumped in, with the biased push of Commonwealth Attorney Fielding Ballard, and took the matter to a grand jury.

AOC should have been allowed to deal with any billing claims as an administrative and civil matter. Only then, if clear evidence of a criminal act was found by AOC, the alleged victim, should criminal charges have been considered. AOC dropped the ball on this one by failing to intervene.

The Model Judicial Code of Conduct of the American Bar Association in the Preamble describes the purpose of the Code of Conduct applicable to judges. The Preamble to the Ky. Code is identical to the ABA model code and states:

"*It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.* ** ?*

"*It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.* ** ?*

The Judicial Conduct Commission works best when it recognizes that it's role is larger than just being a body that sanctions judges. It should provide guidance to the judiciary, and should work with the judiciary to remedy potential issues which bring the judiciary in disrepute. The JCC should be careful in the future in allowing its members to limit the discussion of the issues with judges invited to their informal hearings, and from allowing such informal hearings from becoming mini-grand jury inquisitions.

We would suggest that the Attorney General review the conduct of this prosecution. If he is going to unleash the KBI against the judiciary, he should also create a hearing or review body to review the ethical actions of prosecutors. Judges are subject to a review of their actions and conduct by the Judicial Conduct Commission. Legislators are subject to an Ethics committee. But no one is charged with the responsibility to monitor the ethical conduct of prosecutors.

The prosecutorial system should be required to admit a failed prosecution and should not be allowed to cover up botched prosecutions by using the threat of repeated jury trials to coerce meaningless plea bargains to save face.

The legislature should consider legislation imposing penalties for prosecutors who violate their duties to disclose exculpatory evidence and who continue to prosecute cases after all probable cause has evaporated. The need for such legislation is made all the more necessary by a recent ruling of the U.S. Supreme Court which weakened sanctions for violation of the Exclusionary Rule. The Kentucky Supreme Court has recently ruled in a number of cases, that the failure of the Commonwealth to deliver and disclose exculpatory evidence may be a "harmless error** ?
and no penalty is imposed upon prosecutors who violate their duty in such cases.

The mutiny against Judge Stewart was based in part by anger by prosecutors over decisions made by Judge Stewart to reduce bail bonds and to grant probation against the wishes of the prosecutor. They have no jurisdiction over the setting of bonds or the granting of probation. Those decisions are solely the province of the trial Judge. This area of conflict is not limited to Shelby County. Judges should not be subjected to anonymous complaints and prosecution by prosecutors who are attempting to usurp the jurisdiction of the Judiciary. Unfortunately, there is no one and no body in existence that is clearly charged with monitoring the abuses of prosecutors in such matters. The Attorney General has the power to intervene, but no Attorney General is known to ever have called down a prosecutor for such actions.

Mutiny is defined as: *"concerted revolt against discipline or a superior officer.* ��? The actions of the public officials in Shelby County who started this attack on Judge Stewart appears to fall within this definition. Their actions is alleging ridiculous claims of potential violence ("*there will be blood in the streets*��?) , and their complaints that Stewart looks out for the "*scum such as Hispanics and blacks*��? is reprehensible, and particularly so for elected officials. Their complaint that he probated convicted persons and lowered bonds, is a direct challenge to the Judges jurisdiction. The complaint that he placed a lot of work on his clerk is almost silly, …what clerk or secretary doesn't feel the same way? Instead of being punished for her assistance in the mutiny against her own boss, Carolyn Peterson was awarded with a transfer to the Circuit Clerk's office.

The officials who penned the anonymous complaint failed in their public duties. If they felt Judge Stewart was so dangerous they should have announced their concern in public to the electorate, and by doing so would have had more credibility. The use of an anonymous letter falsely attributed to citizens of all three counties in the 53rd. Judicial District, smacks of a mob mentality. If the members of the mutiny had approached Judge Stewart to personally express their concerns to him, they may have been able to obtain some redress for their complaints. We recall the scene from the Caine Mutiny where the lead defense attorney expressed his disgust for the actions of the mutinous officers who destroyed their Captain. (See quotation of this speech in the commentary below.)

Bill Stewart has leased a small basement office in the Highland area of Louisville and plans to try to build a law practice and to rebuild his reputation. He **was not** removed from office by the Judicial Conduct Commission. **He has not been convicted of any crime**. No criminal charges are pending against him. By any measure of our judicial system, he is an innocent man. But he has paid a high price in trying to prove his innocence.

Where do the Stewarts go to get their good names back?

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EXHIBITS:

SCR 3.130(3.8) SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor at all stages of a proceeding shall:

(a) Refrain from prosecuting a charge that the prosecutor knows is not supported by probable

cause;
(b) Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
(c) Make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.
[Adopted by Order 89-1, eff. 1-1-90]
COMMENTARY
Official Commentary to SCR 3.130(3.8)
Supreme Court
1989: [1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. See also Rule 3.3(d), governing ex parte proceedings, among which grand jury proceedings are included. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4. (emphasis added by LawReader)
COURIER JOURNAL ARTICLE AND EDITORIAL CONCERNING JOE GRAY:

State Courts Officer Resigns Amid Concerns He Tried To Influence Outcome Of 3 Pending Cases

R. G. DUNLOP The Courier-Journal (January 24, 2004)

During a five-year period beginning in 1997, an official of the state Administrative Office of the Courts approached judges and court employees about three pending cases and made comments that they interpreted as attempts to influence the outcomes.
But when Joseph M. Gray's alleged misconduct in one of the cases was brought to the attention of the AOC in early 2002, he received only a verbal reprimand .

Cicely Lambert, director of the AOC, said yesterday in an e-mail to The Courier-Journal that Gray was censured by her deputy, Melinda Wheeler, and that she became aware of that incident, and of the others involving Gray, only within the past week.
Lambert, who has headed the AOC since February 1999, said "it is clear that such inquiries, if made in the manner described, would be inappropriate and give rise to at least the appearance of an impropriety."

The 70-year-Gray, who worked in state government for nearly 50 years and who was paid $94,836 as an executive assistant at the AOC, resigned Jan. 16 – just days after the newspaper inquired about his involvement in the three cases and requested documents from his personnel

file. It was unclear exactly what his duties were.
[...]
Judge Sara Combs, of the Kentucky Court of Appeals, said she also would have referred the matter to law-enforcement authorities for investigation had she known of the matter in 2002.

"Any attempt to subvert the process of an elected official of doing his or her job, I think is certainly a criminal matter that should have been reported," Combs said.
Jim Deckard, Chief Justice Joseph Lambert's chief of staff and legal counsel, was informed of the 2002 incident shortly after it occurred and referred the matter to the AOC, but he apparently did not tell his boss.

Chief Justice Lambert, who has administrative responsibility for the court system, including the AOC, yesterday issued a statement in which he said he learned only last week about "some possibly inappropriate judicial contact by Mr. Joe Gray."
He said Gray's contacts dated to the 1990s "and were made without my knowledge or approval." The chief justice refused to answer questions about his statement, which came after he declined requests from the newspaper to discuss Gray.
[...]
In early 1997, the Kentucky Court of Appeals was asked to overturn a Knott Circuit Court ruling that barred the June Buchanan School from expelling two students who allegedly had violated the school's code of conduct. One of the students, Chet Bailey, is the son of then-State Sen. Benny Ray Bailey, of Knott County .

While the case was pending before the Court of Appeals, Gray appeared there unannounced and asked to speak with Chief Judge Anthony Wilhoit. The two men were casually acquainted but had never before met alone, Wilhoit said in an interview last week.

Once the two men had settled into chairs in a small office, Wilhoit said, Gray told him that "some important person" might have an interest in the case.

…After his brief meeting with Gray concluded, however, Wilhoit said he became offended. It was, he said, the only time during his 29 years on the bench that anyone in the judicial system had approached him with questionable motives about a pending case.
"He was no sooner out the door than I got to thinking, 'What have I done to make this guy think he can come in here and try to influence me, if that's what he was doing?'"
[...]
Gray telephoned Circuit Judge William Stewart in November or December 1999 about an Anderson County case involving a dispute over child support, Stewart said in a recent interview.

The case had dragged on for several years because of the parties' inability to agree on what information should be exchanged about the income of the father, Matthew Frederick. When Gray called him, Stewart said, Gray mentioned that Frederick was unhappy with the length of the case and that Frederick had complained to several political figures. "I felt like I was having my arm twisted," Stewart said, adding that the exact details of the conversation are now hazy.

Stewart said he thought Gray's call was "clearly" inappropriate, and he quickly became incensed and cut short the conversation. Stewart has been the circuit judge in Shelby, Anderson and Spencer counties since the mid-1980s and said he had never before – or since – received an inquiry about a pending case that he deemed inappropriate .

At the time of Gray's call, Stewart had a request pending for a law clerk as part of the state judiciary's budget proposal to the legislature. Although the judge said he does not recall Gray mentioning the request, he later received word from someone whose identity he cannot recall that "I might as well forget it. I got word that I was out of luck."

Stewart said he concluded that his negative reaction to Gray's telephone call had scuttled his request for the clerk, which he did not receive.

"I was burning my bridges with the person who would shepherd my request through the legislature. That's his job, as I understood it."

Gray had been an AOC employee since November 1987, and worked primarily as a lobbyist with legislators and the executive branch.

So incensed was Stewart by Gray's telephone call that he brought it up during a hearing in the case on Dec. 19, 1999. According to a videotape of the proceedings, the judge said:

"The court's office is not supposed to, first-hand, second-hand or third-hand, be called by people with political influence demanding of me to know what the status of the case is. That's highly inappropriate, highly inappropriate. That stuff's gotta stop.…"
[...]
The only known instance of intervention by Gray that came to the attention of the Supreme Court or the AOC occurred in January 2002, when Gray called two employees at the Kentucky Court of Appeals about a jurisdictional dispute in a pending divorce case.

Both employees later wrote memos about the conversations at the request of then-Chief Judge Paul Gudgel. In an interview, Gudgel said he sent the memos, along with a cover letter, to Deckard, the chief justice's chief of staff and legal counsel.

Gudgel said he no longer had a copy of his letter. Deckard and the AOC both refused to provide the newspaper with a copy of it. But the Court of Appeals allowed the newspaper to review copies of the employees' statements.
[...]

Gudgel, who retired from the Court of Appeals in November 2002 , said in the interview that he sent the employees' statements, along with the letter, to Deckard because Gray was not subject to the Court of Appeals' direction or control. Deckard acknowledged in an e-mail to The Courier-Journal that he and Gudgel discussed Gray's conversations with Stubblefield and Winther. "Upon learning of the details from Judge Gudgel, I informed the management of the Administrative Office of the Courts of Mr. Gray's comments, and he was censured," Deckard said in the e-mail.

Deckard's response did not say why he did not share his knowledge of the incident with Chief Justice Lambert. Deckard did not respond to several requests for comment about Gray or clarification of his e-mail.

Gray's personnel file contains no indication of any disciplinary actions. AOC spokeswoman Leigh Anne Hiatt told the newspaper that a sanction such as a censure or verbal reprimand would not be reflected in the file because it is unnecessary to document discipline of a nonmerit employee, such as Gray, who serves at the pleasure of a supervisor and can be dismissed at any time without cause.

Combs and the two other judges who decided the case – against the woman for whom Gray had allegedly lobbied – all said that they had no knowledge at the time of Gray's approaches to the Court of Appeals employees, and that they learned of them only after the newspaper's recent inquiries.

"I find that highly objectionable and totally inappropriate," Judge William McAnulty said of Gray's conduct.

Combs said she found it sobering to think that a different ruling might have given Gray or others the impression that he had influenced the outcome.

Courier-Journal editorial:

AOC's Lax Response

Courier-Journal Editorial (January 27, 2004)

ORDINARY citizens make certain assumptions about courts, judges and legal process. They believe, among other things, that the American justice system is fundamentally honest. Despite the occasional corrupting anomaly, the rule of law does stand between us and chaos, and the public expects it to stand upright.

That's why it was so disturbing to read Courier-Journal reporter R. G. Dunlop's account of Joseph M. Gray's conduct. Mr. Gray, a highly paid executive assistant at the Administrative Office of Courts, resigned just days after the newspaper asked about his seemingly improper involvement in three pending cases.

The judges and court employees whom Mr. Gray approached seem pretty clear, in their own minds, about what he was trying to do. They think he was attempting to influence outcomes.

He's gone from the state payroll now, but questions remain:

1. Why, when Mr. Gray's alleged misconduct in one case was brought to the attention of the AOC in 2002, was he only given an oral reprimand, which doesn't even show up in his personnel records? Appeals Court Judge Sara Combs, one of those who heard the case, said she would have brought law enforcement into the matter if she had known about his conduct. She nicely summed

up the obvious: “Any attempt to subvert the process of an elected official, of doing his or her job, I think is certainly a criminal matter that should have been reported.”

2. Why is communication so limited between Chief Justice Joseph Lambert and his chief of staff, Jim Deckard? The latter heard about the 2002 incident but referred it to the AOC without, apparently, telling the state’s top judicial officer. How can Justice Lambert properly administer the courts without full information?

3. Why didn’t then- Judge Tony Wilhoit report to the AOC that Mr. Gray visited him to discuss Appeals Court consideration of a celebrated case involving June Buchanan School’s expulsion of two students – one of them Chet Bailey, son of a powerful state senator? Mr. Wilhoit, now head of the Legislative Ethics Commission, said he viewed Mr. Gray as some kind of easily dismissable, latter-day Falstaff. But of course this is real life, not the Old Vic.

We suggest he read “Measure for Measure,,” wherein Shakespeare warns, “We must not make a scarecrow of the law, setting it up to fear the birds of prey, and let it keep one shape, till custom make it their perch and not their terror.”
One might raise an eyebrow at the Commonwealth admitting they could not convict Stewart, by dismissing all charges against him, but would prosecute him anyway unless he just went away. One might think that an innocent man should be totally cleared, and if the Commonwealth really had a case against him, they should have prosecuted it.��?

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The Caine Mutiny Court-Martial

The Caine Mutiny Court-Martial was a Broadway play and a movie. It was based on the novel by Herman Wouk which won the Pulitzer Prize in 1951.

At the end of the court martial, the mutinous officers retire to a victory dinner after having destroyed the career of Captain Queeg, and successfully been acquitted of mutiny by a Navy Court Martial Board. One of the defense attorneys who lead the defense and effectively destroyed Captain Queeg, being in his cups, and disgusted with his own actions raises his glass to the assembled officers and says:
“I’m up to the toast. Here’s to You. You bowled a perfect score. You went after Queeg, and got him. You kept your own skirts all white and starchy. Steve is finished for good, but you’ll be the next captain of the Caine. You’ll retire old and full of fat fitness reports. You’ll publish your novel proving that the Navy stinks, and you’ll make a million dollars and marry Hedy Lamarr. No letter of reprimand for you, Just royalties on your novel. So you won’t mind a li’l verbal reprimand from me, what does it mean? I defended Steve because I found out the wrong guy was on trial. Only way I could defend him was to sink Queeg for you. I’m sore that I was pushed into that spot, and ashamed of what I did, and thass why I’m drunk. Queeg deserved better at my hands. I owed him a favor, ‘don’t you see? He stopped Hermann Goering from washing his fat behind with my mother.
“So I’m not going to eat your dinner, Mr. Keefer, or drink your wine, but simply make my toast and go. Here’s to you, Mr. Caine’s favorite author, and here’s to your book.”
He threw the yellow wine in Keefer’s face. “

SUPPORTING RESOURCES:

1) The KBI has appointed itself at the watchdog for the judiciary. The following is published on their website at: http://ag.ky.gov/kbi/special.htm .
The Ky. Bureau of Investigation – Office of the Attorney General
Public Corruption / Special Investigations Branch

Agents of the KBI maintain aggressive public corruption investigation policies. As caretakers of the public trust, government officials can affect the finances and lives of its citizenry every day. The duty of this branch is to ensure that our leaders execute their duties in both an ethical and honest manner. The branch investigates numerous arenas of corruption including judicial, legislative, vendor contract, law enforcement and regulatory corruption. When federal violations are identified, the unit works jointly with the appropriate federal agency and U.S. Attorney's office in addressing those violations.
Anyone aware of such illegal activity on the part of an elected or appointed official is encouraged to contact the KBI toll-free hotline at 866-KBI-FORCE (524-3672).

2) Offense for which Sarah Dutton was originally indicted:
KRS 434.845 Unlawful access to a computer in the first degree.
(1) A person is guilty of unlawful access to a computer in the first degree when he or she, without the effective consent of the owner, knowingly and willfully, directly or indirectly accesses, causes to be accessed, or attempts to access any computer software, computer program, data, computer, computer system, computer network, or any part thereof, for the purpose of:
(a) Devising or executing any scheme or artifice to defraud; or
(b) Obtaining money, property, or services for themselves or another by means of false or fraudulent pretenses, representations, or promises.
(2) Unlawful access to a computer in the first degree is a Class C felony

Note: Dutton, at the direction of Judge Stewart accessed the Judge's e-mail account. The computer used was the Judges' personal computer. The e-mail account accessed was the only e-mail account used by his office and with the consent of his law clerk.

We have difficulty in understanding how this access was "without the owner's consent??? and how she is supposed to have "obtained money, property or services ….by means of fraudulent pretenses, representations or promises.??

In the plea bargain the charge in the indictment was reduced to a count of :

KRS 434.853 Unlawful access in the fourth degree.
(1) A person is guilty of unlawful access in the fourth degree when he or she, without the effective consent of the owner, knowingly and willfully, directly or indirectly accesses, causes to be accessed, or attempts to access any computer software, computer program, data, computer, computer system, computer network, or any part thereof, which does not result in loss or damage.

(2) Unlawful access to a computer in the fourth degree is a Class B misdemeanor.

During the plea inquiry by the court she was asked what she did by the Judge. She replied, "I did nothing wrong��?. She entered an Alford Plea which does not require an admission of guilt.
Sarah Dutton was also required to plea to the following count which was based on an allegation that although she was a salaried employee, that she did not work as many hours as required. This charge was originally based on alleged forged or fraudulent time sheets. After the indictment, AOC informed the prosecutor that she was not required to report an hourly time sheet, and she did not do so. As a salaried employee she was required to file QLR reports (Quarterly Leave Reports). She testified that she did in fact correctly file the QLR reports and reported all leave and vacation time. Judge Stewart was charged with numerous felony offenses for signing the QLR reports. All criminal charges were dismissed against Judge Stewart.

The original charges against Sarah Dutton were reduced in the plea bargain and she entered an Alford plea to:

KRS 514.040 Theft by deception.
(1) A person is guilty of theft by deception when the person obtains property or services of another by deception with intent to deprive the person thereof. A person deceives when the person intentionally:
(a) Creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind;
(b) Prevents another from acquiring information which would affect judgment of a transaction;
(c) Fails to correct a false impression which the deceiver previously created or reinforced or which the deceiver knows to be influencing another to whom the person stands in a fiduciary or confidential relationship;
(d) Fails to disclose a known lien, adverse claim, or other legal impediment to the enjoyment of property which the person transfers or encumbers in consideration for the property obtained, whether the impediment is or is not valid or is or is not a matter of official record; or
(e) Issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee.
(2) The term "deceive" does not, however, include falsity as to matters having no pecuniary significance or puffing by statements unlikely to deceive ordinary persons in the group addressed.
(3) Deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise.
(4) For purposes of subsection (1) of this section, a maker of a check or similar sight order for the payment of money is presumed to know that the check or order, other than a postdated check or order, would not be paid, if:
(a) The maker had no account with the drawee at the time the check or order was issued; or
(b) Payment was refused by the drawee for lack of funds, upon presentation within thirty (30) days after issue, and the maker failed to make good within ten (10)

days after receiving notice of that refusal. A maker makes good on a check or similar sight order for the payment of money by paying to the holder the face amount of the instrument, together with any merchant's posted reasonable bad check handling fee not to exceed twenty-five dollars ($25) and any fee imposed pursuant to subsection (5) of this section.
(5) If a county attorney issues notice to a maker that a drawee has refused to honor an instrument due to a lack of funds as described in subsection (4)(b) of this section, the county attorney may charge a fee to the maker of twenty-five dollars ($25), if the instrument is paid. Money paid to the county attorney pursuant to this section shall be used only for payment of county attorney office operating expenses. Excess fees held by the county attorney on June 30 of each year shall be turned over to the county treasurer before the end of the next fiscal year for use by the fiscal court of the county.
(6) A person is guilty of theft by deception when the person issues a check or similar sight order in payment of all or any part of any tax payable to the Commonwealth knowing that it will not be honored by the drawee.
(7) A person is guilty of theft by deception when the person issues a check or similar sight order in payment of all or any part of a child support obligation knowing that it will not be honored by the drawee.
(8) Theft by deception is a Class A misdemeanor unless the value of the property, service, or the amount of the check or sight order referred to in subsection (6) or (7) of this section is three hundred dollars ($300) or more, in which case it is a Class D felony.

3) All criminal charges were dismissed against Judge Stewart. The Commonwealth required that he (in order to obtain the reduced charges for his wife) submit a letter to AOC stating that he was withdrawing his application for Senior Judge status, and stating that he would not seek appointment to or run for election for the office of judge.

This letter is of questionable legality. Judge Stewart remains constitutionally qualified to become a candidate for any public office.