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Northern Alabama Prosecutors Accused of Brady Violation

Posted By [Andrew Ramonas](#) On September 21, 2009 @ 9:52 pm In [News](#) | [1 Comment](#)

Northern District of Alabama prosecutors failed to disclose exculpatory information about a government contractor who stood trial in 2007 on arms control charges, defense lawyers said in a court filing last week, citing newly disclosed emails.



Alice Martin (DOJ)

Lawyers for **Alex Latifi** wrote in a [motion](#) ^[1] filed Sept. 14 in the U.S. District Court for the Northern District of Alabama that former U.S. Attorney **Alice Martin** and two Assistant U.S. Attorneys violated their Brady obligations by withholding information from the defense. Latifi was acquitted in October 2007 of charges that he violated the Arms Export Control Act.

Prosecutors alleged that Latifi falsified a report to the Defense Department and sent a drawing of a Black Hawk helicopter part to China. He is CEO of Axion Corp., which manufactured military equipment, including Humvee machine-gun mounts. Axion has struggled to secure contracts since the case was brought.

The defense team of **Henry Frohsin, James Barger Jr. and J. Elliott Walthall** from Frohsin & Barger ^[2] said they have "explicit, unequivocal evidence" that Assistant U.S. Attorneys **David Estes** and **Angela Debro** and Army investigators **David Balwinski** and **Marcus Mills** allegedly conspired with trial witness **James Oglesby** to conceal evidence and defraud the court.

"All of these individuals sought to present false evidence to the court with the hope of convicting defendants of a crime they knew defendants had not committed," the defense filing says.

The testimony of Oglesby, a plant manager for the Tungsten Products unit of metal manufacturer Allegheny Technologies Incorporated, was central to the false report charge, the defense team said. Oglesby told the Army investigators that Axion did not receive parts from Tungsten Products until January 2004, and that if Latifi said otherwise he was "lying," according to court documents.

The defense lawyers said a series of e-mails about the purportedly false report contradict Oglesby's testimony and allegedly show of a conspiracy by the government. The e-mails were obtained last month through a related lawsuit.

The government did not disclose to the defense that there were Tungsten Products records endorsed by Oglesby that contradicted his testimony, the motion said. The defense said it was

not made aware of alleged conversations between Debro and Oglesby about the records before the trial began, according to the motion, which cited emails between the prosecution and a lawyer for Allegheny Technologies Incorporated.

"The ... e-mails demonstrate that the government was well aware of the import of these documents and was desperate to have them explained before the trial," the motion said. "Yet, upon receiving whatever explanation was forthcoming, the Government elected to bury this evidence. Instead, the government called Oglesby not once, but twice, to offer misleading half-truths as well as outright lies."

You can read the e-mails [h](#) [\[3\]](#) [e](#) [\[4\]](#) [r](#) [\[5\]](#) [e](#) [\[6\]](#) and [here](#) [\[7\]](#).

Frohsin told Main Justice that the actions allegedly perpetrated by the government in his client's case "cannot be condoned in our society."

"We think that the pending charges are extremely serious," Frohsin said.



[\[8\]](#)

Joyce Vance (DOJ)

Martin's successor, **Joyce Vance**, has been ordered by the court to respond to the motion by Sept. 28.

Vance's office emailed the following statement to Main Justice:

This office recently learned that defense counsel for former defense contractor Alexander Latifi and his company, Axion Corporation, intended to file accusations against former U.S. Attorney Alice Martin and two current assistant U.S. attorneys, as well as two U.S. Army criminal investigators and a prosecution witness, U.S. Attorney Joyce White Vance said.

Latifi and Axion were indicted and subsequently acquitted in a 2007 trial.

This filing by defense counsel is, of course, an advocate's point of view, Vance said. The United States will file its response, as ordered by the court, within 14 days, explaining why we disagree with defense counsel's interpretation of events, she said.

Martin told Main Justice the motion is "baseless" and that she will file a written response with the court. The former U.S. Attorney added in a brief interview that she has no regrets about the case.

The DOJ's Office of Professional Responsibility is currently reviewing an earlier complaint from defense lawyers regarding a meeting Martin attended in which AUSA Estes allegedly said: "We

don't care if Latifi is innocent. Our goal is to put him out of business," according to an [ABA Journal report](#) ^[9].

Some Alabama lawyers have raised questions about whether politics motivated the prosecution against Latifi.

The Internal Revenue Service investigated Latifi for a donation he made in 2005 to an Iranian charity for medical evacuation helicopters. Latifi, a naturalized American citizen who was born in Iran, pledged the money because he had a nephew who was unable to make it to a hospital in time, the ABA Journal reported.

Jerome Gabig, Latifi's business lawyer, told the ABA Journal in an October 2008 interview that the "check rang warning bells with Dave Estes at exactly the wrong moment." There were heightened concerns about national security in the wake of the 9/11 attacks and the U.S. invasion of Iraq.

Barger also told the ABA Journal last year that the first entry in the lead investigator's official notebook identified Latifi's political affiliation and said that he "gave \$30,000 to a Democratic politician's charity for abused children."

Martin's critics have accused her of targeting Democrats. Martin, who served as Northern District of Alabama U.S. Attorney from 2001 to June 2009, has denied the allegations.

One controversy involved her attempt to prosecute ex-Gov. **Don Siegelman** (D) in a bid-rigging case, which her office dropped after a judge barred crucial evidence. Middle District of Alabama U.S. Attorney **Leura Canary**, however, later successfully prosecuted Siegelman on corruption charges. The former governor is attempting to appeal his conviction, alleging prosecutorial misconduct.

Vance became the interim U.S. Attorney for the Northern District of Alabama in June, two months before she was confirmed by the Senate. Martin told ^[10] Main Justice in June that the Obama administration did not force her out early, and that she recommended Vance to be her successor. Vance was an Assistant U.S. Attorney and head of the appellate section in the Birmingham office.

Attorney General **Eric Holder** made a special trip ^[11] to attend Vance's swearing in ceremony last month and kissed her on the cheek at the event.

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- [14] Holder To Attend Vance Swearing-In Ceremony: <http://www.mainjustice.com/2009/08/10/holder-to-attend-vance-swearing-in-ceremony/>
- [15] Vance Takes Over As Ala. Northern District Interim U.S. Attorney:
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