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### Commentary: Has a U.S. Attorney Knowingly Prosecuted Innocent People?

Scott Horton  
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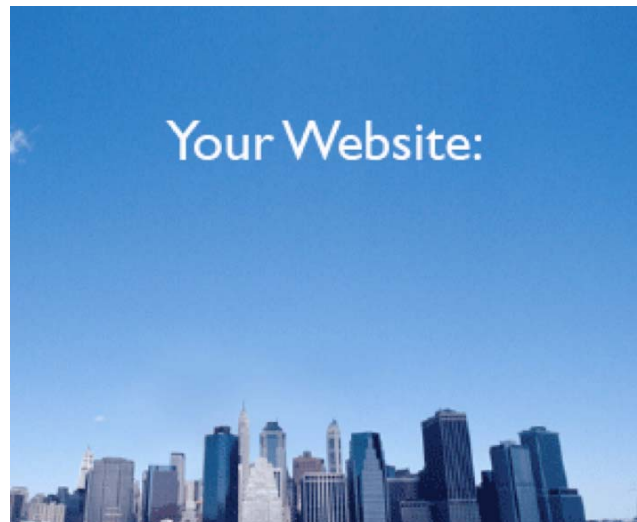
In March 2007 the U.S. government charged Axion Corp., a small business in Huntsville, Ala., with illegally giving technical drawings for a Blackhawk helicopter part to manufacturers in China. The prosecutors seized Axion's assets and took away its government contract business. The company won an acquittal at trial a year later, but by that time, it was out of business.

Axion is the latest in a string of aggressive prosecutions brought by Birmingham U.S. Attorney Alice Martin. Those prosecutions are marked by convictions overturned and innocent men wronged. Two judges have openly questioned whether she knowingly prosecuted innocent people. *The American Lawyer* has learned that the [U.S. Department of Justice's Office of Professional Responsibility](#) has opened an investigation into allegations of misconduct that were made by Axion against Martin.

A Mississippi native, Martin was a federal prosecutor in Memphis and an Alabama state court judge. She has strong ties to the Republican establishment -- her mentor is William Canary, a powerful Republican campaign consultant in Alabama who has close ties to former White House Deputy Chief of Staff Karl Rove.

Her first step into the national spotlight came with the prosecution of a group of HealthSouth Corp. executives on fraud charges starting in 2003. Seventeen corporate officers were convicted, but CEO Richard Scrushy, on whom all eyes had been focused, walked out of court a free man.

Next, she drew notice for her wide-ranging investigation of corruption into Alabama's two-year college system. In connection with the investigation, she dispatched U.S. marshals to Montgomery to serve subpoenas on Democratic



An advertisement for a John Grisham novel. On the left is a book cover for 'GET YOUR NAME IN MY NEXT NOVEL!' by JOHN GRISHAM, published by WEST. On the right, the text reads: 'I have a character in mind and I'm looking for the right name. IS IT YOURS?' Below this is a blue button that says 'ENTER HERE »'.

lawmakers on the floor of the Legislature -- a move that was stopped when the legislators pointed out that it might be a crime.

But she is best known for her crusade against former Alabama Gov. Don Siegelman, a Democrat. Martin tried to prosecute Siegelman on corruption charges, but dropped the case the day after the trial began. She then passed the baton to her colleagues in Montgomery, who brought a second, successful case against Siegelman on the basis of allegedly improper campaign donations by Richard Scrushy. An appeal is pending.

The Siegelman prosecution has been widely criticized as a frame-up by Martin, and the prosecution is now the subject of a probe by the House Judiciary Committee, which is trying to determine if it was brought for political reasons.

She most recently gained notoriety for the failed prosecution of Axion, a company started by Alexander Nooredin Latifi, an intense and amiable entrepreneur who emigrated from Iran as a young man in the 1970s. He learned engineering and slowly built the company. At its peak, the business had 60 employees and was estimated by a federal court to be worth \$50 million.

In March 2007 the government charged the company and its owner with violating the [Arms Export Control Act](#) (AECA) by sending technical drawings for a Blackhawk helicopter part to a Chinese manufacturer. The prosecutors in Birmingham, led by Martin, sought forfeiture of Latifi's assets and obtained an order that wrought havoc with the company's government contract business.

After the government secured the asset freeze, no charges were brought against Latifi or the company until March 2007. Then Axion's defense counsel -- Henry Frohsin and James Barger Jr., of Baker, Donelson, Bearman, Caldwell & Berkowitz's Birmingham's office -- made a tactical call to waive Axion's right to a jury trial. Frohsin and Barger were concerned that Latifi's connections to Iran would be played against him. "At the time of the indictment, the White House was beating the drums for possible conflict with Iran. Since the case would be tried in northern Alabama, where the defense industry and Army are colocated, we felt that we should avoid the possibility of xenophobia," says Frohsin.

After the trial started in October, the government's case collapsed quickly. What Axion had attempted to have made in China was nothing more than a tungsten blank, from which Axion intended to mill the actual part. The government was forced to acknowledge that the drawings furnished to Axion by its contractor had not been labeled "restricted," but instead were given a legend of "noncritical" and "uncontrolled," meaning that Axion had no way of knowing that their use was restricted. Moreover, the drawings had long been accessible on the Internet.

As the case progressed, the government's own witnesses were forced to concede that Blackhawk helicopters, equipped with the part in question, had actually been sold to China with U.S. government approval, demolishing the government's claim of a breach of secrecy. Not only that, but the prosecution was aware of these sales before the case was ever brought.

Still, the prosecution would not withdraw the case. It was ultimately dismissed by Judge Inge Johnson of the federal district court in Birmingham, who wrote, "Evidence was received ... that at least raises the possibility in the eyes of the district court that the government continued to investigate and prosecute the defendants even after uncovering evidence demonstrating that the defendants were not guilty."

Another failed case, another investigation. A Justice spokesman says that the Department's Office of Professional Responsibility, which investigates allegations of misconduct by Justice attorneys, is investigating Martin for "allegations of political prosecution involving both the Northern and Middle Districts of Alabama, arising out of the prosecution of former Gov. Siegelman and other matters."

Knowing what she did, why did Martin bring the case? She declined to comment for this article. But for a prosecutor, the appeal of a national security case involving arms sales to China is obvious. Or it could be, as Henry Frohsin believes, that "the fact that Alex Latifi was Iranian American was more than tempting for the Department of Justice to try to create a poster child for their arms export control activism."

Once the case was battered, why did the government persist? The answer, say defense counsel, is that the prosecutors were convinced they could convert an asset freeze and the threat of substantial prison time into a plea bargain. And the Justice Department has made a great show of prosecuting AECA cases.

Having won the case, Baker Donelson then put the government on the defensive. The firm filed a motion, arguing that the case was not brought in good faith and that the government should compensate Axion and Latifi for legal costs. Judge Johnson agreed. She wrote that the AECA "framework allows the government to effectively shut down an accused business regardless of whether the business is later acquitted at criminal trial. This result is unfair to potential defendants and, in this case as a practical matter, ruined Axion's business." She awarded \$363,000 in

costs, attorney fees and interest to Axion.

Alice Martin has not directly addressed the outcome in the Axion case. She issued a press release on May 30, indicating that the government will have to reconsider the way it approaches asset forfeiture cases, or at least be prepared to pay the target's attorney fees if it loses. Martin is also fighting the award of attorney fees on procedural grounds, claiming that the freeze orders against Axion and the decertification of the company as a government contractor had in no way harmed the business. Her crusade continues.

*Scott Horton teaches at [Columbia Law School](#), works on military contractor issues for [Human Rights First](#), and is a member of the advisory board of the [National Institute of Military Justice](#).*