

How the Feds Imprison the Innocent

By [Dr. Paul Craig Roberts](#)

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Authors of serious books seldom have cause to celebrate, but Larry Stratton and I have two reasons to open the champagne. Crown Publishing, a division of Random House, has announced a second printing of the second edition of *The Tyranny of Good Intentions*, and the noted civil libertarian and defense attorney, Harvey Silverglate, has just published a book covering many of the same legal cases and vetting our conclusion that in the United States every American is in grave danger from unscrupulous prosecutors who target the innocent.

For two decades I have been attempting to make Americans aware that the danger to their liberty comes not from foreign adversaries, terrorists, or criminals, but from prosecutors, who have destroyed law as a shield of the innocent and turned law into a weapon against the innocent. *The Tyranny of Good Intentions* (the publisher's title) documents how the legal principles that protect our civil liberties were eroded by prosecutors even before the Bush regime obliterated what remained of the Bill of Rights.

The struggle has been uphill, because neither the right wing nor the left wing is emotionally content with the facts that Stratton and I present. Conservatives tend to see civil liberties as liberal coddling devices for criminals and, today, for terrorists. Predisposed to "law and order," conservatives align with police and prosecutors. They object to accounts of police misbehavior and prosecutorial abuse as propaganda on behalf of the criminal class.

The left wing tends to see law as a tool of oppression that "the rich" use to control the lower classes, and liberals fret that "the rich" get off by hiring good lawyers, while the poor and minorities are ground under. Consequently, leftists object to the demonstration that even the very rich, such as Michael Milken, Martha Stewart, and Leona Helmsley, and even law and accounting firms, are victims of wrongful prosecution. Confusing wealth with villainy, leftists cannot free themselves from the emotional predilection that a convicted rich person must have been so guilty that not even the best lawyers could get them off.

The Tyranny of Good Intentions had a second printing of a second edition because of word of mouth, not because of reviews. Neither the Right nor the Left objects to wrongful prosecution as long as the victim is a *bête noire*. Sir Thomas More's question (*A Man For All Seasons*) – what will happen to the innocent if we cut down the law in pursuit of devils? – rings no warning among Right or Left.

With this point made, I have come not to praise myself and my coauthor, but to praise Harvey Silverglate. If *The Tyranny of Good Intentions* cannot convince you, then perhaps *Three Felonies a Day: How the Feds Target the Innocent* can, and, if not, then both together surely will.

The Tyranny of Good Intentions is a broad stroke. It demonstrates how each civil liberty has been eroded away. Prosecutorial abuse is one chapter in the book.

Silverglate's *Three Felonies a Day* focuses on how federal prosecutors invent creative interpretations of statutes, sometimes creating new felonies out of vague language or thin air, felonies never legislated by Congress. Federal criminal law is today so vast and so poorly worded that Silverglate reports, truthfully, that each of us, every American, commits three felonies every day without knowing it.

Federal judges, an increasing number of whom are former federal prosecutors, permit the prosecution of Americans for crimes that the defendants did not know were crimes, crimes that never before existed until the federal prosecutor brought the charge. The invention of crimes by prosecutors violates every known legal principle in Anglo-American law. Yet it has become commonplace. Defense attorneys, a group that also increasingly consists of former federal prosecutors, as Silverglate accurately reports, have lost confidence that it is possible to defend a client from a federal prosecution and see their role, not as the defense, but as negotiator of a plea bargain that reduces the charges and prison time of the defendant, no matter how innocent.

Silverglate shows that many of the plea bargains create precedents that prosecutors can exploit to trap more innocent victims.

The reader by now is asking why prosecutors would waste time on the innocent when there are so many real crimes. Silverglate provides conclusive answers. For example, politically ambitious federal prosecutors, such as Rudy Giuliani and William Weld, pick high-profile targets to frame in order to build name recognition for political careers. Giuliani picked Michael Milken and Leona Helmsley. Weld picked Boston mayor Kevin White. Giuliani went on to be mayor of New York and a candidate for the Republican presidential nomination. Weld went on to be a two-term governor of Massachusetts. Leura Canary, perhaps at the urging of Karl Rove, picked Alabama governor Don Siegelman. Michael J. Sullivan picked Thomas Finneran, speaker of the Massachusetts House of Representatives, and so on.

From Silverglate's book, the reader can learn how federal prosecutors manage their frame-ups of innocents. For a targeted city or state political figure, the prosecutor first hunts for a criminal act somewhere in the bureaucracy. Perhaps some low-level person has extorted a bribe for a permit. Once such a person is caught, he or she is told that charges will be dropped if information is given that can be used to implicate the mayor or speaker of the House or governor. As federal district court judges now permit hearsay and uncorroborated testimony, a totally innocent high-profile person can be snared on the basis of testimony by a petty crook low in the bureaucracy.

This is the way America works today. Just as state and local police cannot stand up to the FBI, elected state and local officials are powerless in the face of their pursuit by corrupt federal prosecutors.

Silverglate himself was the attorney in some of the landmark cases that he reports. The reader, even one with the usual illusions and delusions that blind Americans to their predicament, will be scared by Silverglate's documented account, case by case, of how easy it is in "freedom and democracy" America to frame the totally innocent.

In Silverglate's concluding chapter, "For Whom the Bell Tolls," the answer is obvious even to

a naïf: "It tolls for all."

Paul Craig Roberts [[send him mail](#)], a former Assistant Secretary of the US Treasury and former associate editor of the Wall Street Journal, has been reporting shocking cases of prosecutorial abuse for two decades. A new edition of his book, [The Tyranny of Good Intentions](#), co-authored with Lawrence Stratton, a documented account of how Americans lost the protection of law, has been released by Random House.

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About the author:

Paul Craig Roberts, former Assistant Secretary of the US Treasury and Associate Editor of the Wall Street Journal, has held numerous university appointments. He is a frequent contributor to Global Research. Dr. Roberts can be reached at <http://paulcraigroberts.org>

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