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Sacramento office opens own inquiry on Perata

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Published Thursday, Mar. 05, 2009

The fate of a corruption probe of former state Senate leader Don Perata is in the hands of Sacramento federal prosecutors, although their counterparts in San Francisco declined to pursue charges.

Sacramento prosecutors say they opened the case at the request of the FBI.

Perata and his attorney have mounted a furious counteroffensive.

His attorneys say the takeover violates a series of deals between them and the U.S. attorney's office in San Francisco without which the statute of limitations would have run out. The deals – called tolling agreements – stopped the clock while the parties were in discussions.

Those agreements do not extend to the Sacramento U.S. attorney's office and the statute of limitations now precludes prosecution, the defense attorneys insist.

Acting U.S. Attorney Lawrence Brown of Sacramento disagrees. "It is our view that the tolling agreement was between defense counsel and the United States and was not specifically limited to the (San Francisco-based) Northern District of California," he said in an interview Wednesday. "If a case is charged in this district, the defense will presumably be free to litigate that issue."

Brown said the review in his office began in October at the FBI's request but declined to say when a decision might be reached on whether to prosecute Perata.

While the decision in San Francisco not to prosecute was confirmed to defense attorneys only two weeks ago, FBI agents who spent nearly five years investigating Perata sensed much earlier that their efforts were going down the drain.

They contacted the Sacramento office in October, "after they came to understand that the U.S. attorney's office in San Francisco was likely to decline the case," Brown said. "They felt very strongly that the case warranted review by another office. We had kept a watchful eye on this case during the pendency of the investigation and considered it serious enough to warrant our careful review. It would have been irresponsible on the part of our office not to undertake a review."

Perata's attorney, George O'Connell, replied in an interview, "It's irresponsible for them to take it, and I think it was irresponsible to do what those agents did."

"Solid, experienced prosecutors in the Northern District made a judgment based on the merits and on their belief that they couldn't make a case. That isn't a hunting license for these agents to

look for an office that will take it. You don't shop things around like that. Enough is enough," said O'Connell, a former Sacramento U.S. attorney.

The 63-year-old Perata, a liberal Democrat, was the Senate's president pro tem when he was termed out Nov. 30. He has announced plans to run for mayor of Oakland, where he now lives.

The FBI investigation began shortly after he became the Senate leader. It centered on his business dealings, his family, political allies and campaign contributors who may have benefited from his actions and influence.

Perata spokesman Jason Kinney said Wednesday that "virtually all of the witnesses are in the Northern District, all of the alleged events occurred there, and all of the evidence presented to date has been heard by a grand jury there.

"Despite all of this, the (Sacramento-based) Eastern District, led by a Bush appointee, McGregor Scott, shockingly and suddenly decided to take over the case, even though it had been appropriately investigated ... and declined by another office," Kinney said.

"At best, this unprecedented action represents improper and blatant forum-shopping by disgruntled investigators rebuffed by the Northern District. At worst, it's the last cynical act of political revenge and abuse of authority by a now-discredited Bush Justice Department."

O'Connell fired off a letter Wednesday to the chairman and two other members of the House Judiciary Committee – with copies to Attorney General Eric Holder and Brown – protesting the action by Sacramento's federal prosecutors.

"Given Sen. Perata's most recent position as the leading elected Democrat in California, ... the outrageousness of the government's conduct is heightened by the fact that it occurred at the tail end of an administration which notoriously abused the criminal process to go after influential Democratic politicians," the letter says. "It is difficult for my client not to suspect improper political motivation for this last-minute grab of the case by the prosecutors in Sacramento."

But Brown said some of the best, most apolitical career prosecutors in his office are engaged in an analysis of the evidence.

"The conspiracy theories that are being advanced are simply ill-founded," he declared. "This review was not initiated by McGregor Scott."

An angry Scott, who stepped down as U.S. attorney in early January to enter private practice, said in an interview: "We didn't go seeking this thing. They came to us. In my six years as U.S. attorney, no one ever accused us of playing politics with the power of the office, and I stand by that record.

"After 12 years as an elected district attorney and presidential appointee as U.S. attorney, I have unfortunately grown accustomed to ridiculous things being said about me. This one, however, tops the list."

In a letter last week to Holder, attorney Elliott Peters, who represents Perata's son, Nick Perata, said defense attorneys and their clients agreed with the San Francisco U.S. attorney's office to stop the clock on the statute of limitations from May 8 through Dec. 31. They did so, Peters said, on the promise that "we would have an audience with the ultimate decision maker, who was the United States Attorney in San Francisco."

"Acting United States Attorney David Anderson ... confirmed that the office had declined the case in a conversation last week," he said.

"Absent tolling, it is my view that the statute of limitations would have run prior to the end of 2008. The case was investigated thoroughly, fully vetted, declined, and is now properly time-barred."

Describing the situation as "one unlike any other I have seen in my 24 years of practice, including five as a federal prosecutor in the Southern District of New York," Peters asked Holder "to conduct an inquiry into the fairness and propriety of the government's intended use of the tolling agreement."

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