

The Boston Globe

WETWARD HO!

TODAY: Clouds in a.m., then afternoon
drizzle. High 48-53. Low 43-48.
TOMORROW: Clouds and rain through
evening. High 48-53. Low 40-45.
HIGH TIDE: 3:23 a.m., 3:31 p.m.
SUNRISE: 6:45 SUNSET: 4:16
FULL REPORT: PAGE B13

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An indictment against federal prosecutors

By Steve Weinberg

Boston lawyer Harvey A. Silverglate began outlining what became the book "Three Felonies a Day" 19 years ago, when he could no longer contain his anger at what he viewed as federal prosecutors abusing their power. Now that the book is complete, it will be interesting to watch whether a defense lawyer's indictment of those he says sometimes file criminal charges against seemingly innocent women and men will alter the balance of power.

For those less well versed in American courts, one concept is vital to appreciate Silverglate's outrage: The US criminal justice system is bipartisan. Local prosecutors (usually called the "district attorney") enforce the laws passed by the state legislature at the county level.

The other prong of the criminal justice system is federal, presided over by a US attorney. That prosecutor is appointed by the president of the United States with input from the Justice Department, then confirmed by the

BOOK REVIEW

THREE FELONIES A DAY: How the Feds Target the Innocent

By Harvey A. Silverglate
Encounter, 325 pp., \$25.95

Senate. The US attorney — at least one in each state — enforces federal laws, which cover different crimes than state laws. Federal laws are often more sweeping and less specific than state laws, giving US attorneys greater leverage against alleged criminals than district attorneys wield.

Silverglate's outrage is primarily aimed at federal prosecutors, not local ones. (Disclosure: I am the author of a study documenting the mistakes of local prosecutors, mistakes that sometimes lead to wrongful convictions. My study excluded US attorneys because the rules are so divergent.)

Silverglate illustrates his indictment with specific court proceedings, some of them from Massachusetts (alleged political



GLOBE FILE PHOTO

Harvey A. Silverglate lashes out at what he sees as an abuse of power in the courts.

corruption during the Kevin White mayoral years and the indictment of former House of Representatives speaker Thomas Finneran, among others).

Silverglate introduces his extended indictment wisely, with

a seemingly run-of-the-mill federal prosecution that led to a US Supreme Court ruling. Joseph Morrisette, trying to support his family despite bouts of unemployment, saw spent bomb casings on what appeared to be abandoned land near his Michigan home. He collected the casings, crushed them under a tractor wheel, and sold them as scrap metal for \$84. It turned out the land belonged to the US Air Force, although no sign near the area announced that fact. A US attorney in Michigan charged Morrisette with stealing government property. Found guilty, Morrisette received a prison sentence and a fine exceeding the \$84 he earned from the scrap metal. Appellate lawyers decided to represent Morrisette because they believed the federal government had overreached by charging a crime in the first place. After all, Morrisette had no inkling he was breaking the law. A unanimous US Supreme Court overturned Morrisette's conviction, noting that the time-honored presumption of innocence combined with lack of criminal

intent should have halted the prosecutor from filing the case.

Much of Silverglate's outrage is grounded in his practice of law, which began in 1967. After about 15 years, Silverglate noticed a shift in the conduct of federal prosecutors and judges (many of whom were former federal prosecutors). More and more of Silverglate's clients "were being investigated and prosecuted for conduct that neither they nor I instinctively viewed as criminal. . . . I could not rid myself of the unsettling notion that the federal criminal laws were becoming vaguer and harder to understand."

Silverglate concedes that he is an advocate and that some of his outrage might be tied to treatment of his clients. Still, many readers will likely come away from this book convinced that the combination of vague federal laws and aggressive prosecutors is a dangerous mixture.

Steve Weinberg is the author, most recently, of "Taking on the Trust: The Epic Battle of Ida Tarbell and John D. Rockefeller."