JUDGE LAMBERTH TAKES DOJ TO WOODSHED; DOJ MOVES PEAS UNDER DIFFERENT PODS

There was an interesting, albeit little noticed, order issued about ten days ago in the somewhat below the radar case of *Royer v. Federal Bureau of Prisons*. Royer is a federal inmate who has served about half of his 20 year sentence who in 2010 started bringing a mandamus action complaining that he was improperly classified as a "terrorist inmate" causing him to be wrongfully placed in Communication Management Unit (CMU) detention. The case has meandered along ever since.

Frankly, beyond that, the root case facts are not important to the January 15, 2014 Memorandum and Order issued by Judge Royce Lamberth in the case. Instead, Lamberth focused, like a white hot laser, on misconduct, obstreperousness and sheer incompetence on the part of the United States Department of Justice (DOJ) who represents the Defendant BOP in the case.

Here are some samples straight off of Royce Lamberth's pen:

> Plaintiff's discovery requests were served on June 19, 2013. Defendant failed to respond on July 19, 2013, as required, nor did defendant file a motion for extension of time. Defendant's first error, therefore, was egregious—arrogating to itself when it

> would respond to outstanding discovery.

and

> Defendant's fourth error was on August 5, 2013, when it filed its responses to interrogatories and produced a few additional documents. The answers to interrogatories contained no signature under oath, with untimely objections signed by counsel. Even novices to litigation know that answers to interrogatories must be signed under oath. Any attorney who practices before this Court should know that this Court does not tolerate discovery responses being filed on a "rolling" basis

Lamberth then goes on to grant the inmate plaintiff pretty much all his discovery motion and hammers the DOJ by telling plaintiff to submit its request for sanctions in the form of award of attorney fees and costs. Ouch; bad day for the DOJ.

Then the court lowered the boom. After noting that DOJ's defense was "completely without merit" and "incompetent", Lamberth puts a giant stake in the heart of the holier than thou DOJ:

> Defendant's sneering argument that plaintiff is not prejudiced by all this delay by defendant because he remains incarcerated is beyond the Court's comprehension. The whole point of this litigation is whether defendant can continue to single out plaintiff for special treatment as a terrorist during his continued period of incarceration. Did any supervising attorney ever read this nonsense that is being argued to this Court?

OUCH!!

> I regret that I am away sitting by

> designation on another court with a terrible backlog, or I would hold a hearing in open court to hold the government attorneys accountable for their misconduct here. Plaintiff's discovery efforts should not be further delayed, and requiring payment of attorney's fees will make clear that the Court totally and categorically rejects the practice of the government in this case.

Well, you just don't see that every day, and certainly not in the hallowed halls of Prettyman Courthouse in DC. It is, however, something that is a long time coming to the DOJ, who has for years arrogated themselves the right to lie, cheat and violate ethical rules in their litigation at every level of court.

It is why another Chief Judge, Alex Kozinski of the 9th Circuit, also exploded recently about the DOJ's relentlessly unconscionable tactics in engaging in Brady violations. Every judge in this country's federal courts ought be taking note, and bringing the weight of court sanction down on the DOJ.

So, what did DOJ do in response to the blistering whipping Royce Lamberth laid on them in *Royer*? Exactly what you would expect, hiding the pea by switching the pods covering it. Quietly, and under the cover of weekend electronic filing on Saturday, DOJ noticed the wholesale substitution of counsel on the Royer case. It was a terse one page noticed that substantively stated only:

> The Clerk of the Court will please enter the appearances of Assistant United States Attorneys Daniel F. Van Horn and Brian P. Hudak as counsel for Defendant Federal Bureau of Prisons and remove the appearances of all prior counsel for Defendant in the above-captioned case.

There were previously four DOJ attorneys assigned to the Royer defense: Charlotte Abel was designated lead and signer of the initial pleadings, and as Laurie Weinstein (signatory on subsequent responsive answer), Rhonda Campbell and Rhonda Fields. All four were removed as counsel by DOJ Saturday, and replaced by Daniel Van Horn, Chief of the Civil Division, and Brian Hudak, another AUSA at DOJ Main.

No mention of punishment of the DOJ attorneys for their misconduct. There never is as Alex Kozinski complained so vociferously of. Even when there is no option but to have the Department of Justice Office of Professional Responsibility (OPR) open a case on a department attorney, the investigation turns into a black hole to conceal and whitewash the bad behavior. As I wrote in 2010, the OPR is an intentionally feckless, conflict infested, black hole designed by David Margolis and DOJ leaders to hide misconduct and shield their own attorneys.

Fordham University law professor Bruce A. Green, a former federal prosecutor and ethics committee co-chair for the ABA Criminal Justice Section, once famously said of OPR:

> I used to call it the Roach Motel of the Justice Department, Cases check in, but they don’t check out.

Don’t be looking for any substantive actions addressing, much less punishing, the previous attorneys Judge Royce Lamberth took to the woodshed in Royer. DOJ imperiously simply won’t stand for it, and their first move was to shuffle the pea under the shell pods under the cover of a weekend.

Out with the old, in with the new, all better now over a sleepy weekend! If past is prologue, look for DOJ to be giving awards to Abel, Weinstein, Campbell and Fields for their incompetence. After all, DOJ has a history of rewarding bad behavior, and efforts to cover it up.

Because that is the way of the DOJ.