ADIOS ARPAIO – THE FISCAL AND LEGAL CASE FOR REMOVAL OF SHERIFF JOE

America, indeed the nation, is in a financial and legal moribund lurch. No longer, if there ever was, is there taxpayer money and ethics left on balance to be wasted on entrenched politicians sucking at our tit. You say your's is the worst? Well, then you do not live in Maricopa County Arizona, the home of Sheriff Joe Arpaio.

It is time for Sheriff Joe to go. ADIOS ARPAIO! There is a fiscal, legal and moral case to do so.

My friend Tim Murphy, of Mother Jones, laid out the "bizarre" freak show nature of Arpaio's current reelection campaign in superb detail. But only part of the story was told, understandable as there is SO much to tell in the Arpaio saga. Here is the rest of, or at least some of the rest of, the story.

Joe Arpaio did not magically come to be Sheriff of Maricopa County. It happened because the two previous occupants of the Sheriff's Office were, shall we say, problematic on their own. There was Dick Godbehere, who was, prior to being Sheriff of the fourth largest county in the United States, literally a lawn mower repairman. No, I kid you not. And he served with the same level of sophistication you would expect of a lawn mower repairman.

Then came Tom Agnos, who was supposed to return “professionalism” to the Maricopa County Sheriff’s Office (MCSO). But Agnos was a subservient Sun City resident who led the MCSO into not just the biggest cock-up in Maricopa county law enforcement history, but one of national and international proportion. The Buddhist Temple Murder Case where nine buddhist monks and acolytes were lined up and shot in the back of the head, execution style, at the Wat Promkunaram Buddhist Temple on the west side of Phoenix.

It was out of the Buddhist Temple Murders Joe Arpaio came to be. A group of prominent Phoenix trial attorneys, both criminal and civil, wanted an alternative to Tom Agnos and the whitewashing coverup he was conducting on one of the greatest coerced false confession cases in world history. The group of trial lawyers coalesced around the upstart primary candidacy of a local travel agent with a colorful background. Yep, one Joseph Arpaio.

Joseph Arpaio promised that initial group of trial lawyers he would clean up the MCSO, release the damning internal report of the gross misconduct that had occurred in the Temple Murder Case under Tom Agnos, which lead to at least four false and heinously coerced confessions, and that he would refuse, under all circumstances, to serve more than one term in office. It was a promise made and, obviously, a promise long ago broken.

To be fair, Arpaio did release the internal report on the Temple Murder

Case, which led to five plus million dollar settlement for some of the most wrongfully arrested souls in American history. But with that promise kept within a short time of taking office, Joe Arpaio breached the solid promise he made to the people who gave him the seed funding carrying him into office. And Arpaio has made a mockery of his word, as a man, ever since by repeatedly running for office and sinking Maricopa County into depths of depravity and fiscal distress beyond comprehension, from the vantage of the MCSO.

Arpaio's false pretenses to get elected have turned into the fodder of liability for the county he was supposedly elected to serve and protect.

How deep has Arpaio's liability effected the taxpayers, and residents, of Maricopa County? To the tune of at least $50 Million dollars. AT LEAST. Because that figure not only does not count the costs of defense, and they are usually astronomical in the larger cases against Arpaio, because he never admits responsibility, but also does not consider Maricopa County is self insured and may not, necessarily, publicly disclose all smaller payouts. There may, or may not, be a lot more payout, or a lot more, we just don't know.

So, what is the ledger to date? Here it is is in all its sick glory. $50 Million dollars of unnecessary payout, all because of a man, who promised, and who was initially sponsored, and brought to election, by a group who wanted change and the diametric opposite of what came to be.

Here is the worse part: the $50 Million figure is, by all appearances, devoid of the real and hard actual costs of defending all the action on which payout was made in that spreadsheet. Hard costs are known in the legal world as attorney fees, court costs, expert witness fees, service costs, evidentiary laboratory fees – in short, fees that can add up to millions in, and among, themselves, irrespective of the underlying root

liability payouts. In short, the $50 Million you see in the ledger is but a fraction of the real cost of Joe Arpaio's criminally and civilly negligent insolence as Sheriff of Maricopa County. Nor does the figure, of course, include the losses that already should have come from the Deborah Braillard case, much less the Matty Atensio case.

Who is Matthew Atensio represented by? That would be by one prime example of tort liability counterbalance to egregious wrongdoing, Michael Manning. Who is Michael Manning? Well, Manning is the grinning man in the photograph above, with the somewhat soullessly dumbfounded Joe Arpaio at a charity fundraiser. Manning has a right to grin at the sight of the "Toughest Sheriff In America", because Michael Manning, alone, has taken the greatest portion of the nearly $50 Million (and very much increasingly counting) toll on the taxpayers of Maricopa County, the narcissistic propaganda obsessed figurine Joe Arpaio has cost. And Manning and fellow Phoenix attorney Joel B. Robbins, have laid the wood to Sheriff Joe, and the worst is yet to com in the form of the Atensio litigation and other compelling cases (not to mention Braillard which should have settled and, now, instead awaits a larger jury verdict on already determined damages).

You think the moral and tort liability train fueled and paid by the taxpayers and citizens of Maricopa County has sailed into the sunset? Oh no. There are mountains of liability and taxpayer's coffer's payouts on the horizon. The only question is if the residents and voters of Maricopa County will wake up and end the madness now, or whether they will give yet another term of office to the Most Liable and Wasteful Sheriff In American History".

The dedicated folks at "Adios Arpaio" have done yeoman's work in identifying, registering, and encouraging tens of thousands, if not more of, not just latino, but voters of all colors and stripes, to vote in this election. A heroic

effort.

But where does that leave the citizens of Maricopa County? Arguably still short against the self promoting dynamo that is Sheriff Joe Arpaio. It is a living monument to the benign destruction caused by hyped belligerence, ignorance and apathy in a designated and restricted electorate. Joseph Arpaio came into office as the the promised one term agent of well meaning, and will leave, to the shame of Maricopa County as perhaps the most disgraceful official ever elected in the county. The only question is, whether that is now or four years from now.

Will morality and justice be delayed? By the real signs on the ground in Arizona, as opposed to national hype, probably no. It will, nevertheless, be an everlasting blemish on the character of the electorate of Maricopa County. It wasn't as if you, and actually we, didn't know.

The better question is what becomes of the righteous Adios Arpaio movement? Honestly, if this level of awareness and action had been brought here in relation, early on, to the Scott Norberg deaths at the Maricopa County Jail facilities run by Joe Arpaio, perhaps soooo much more death, destruction and liability could have been avoided. Not to detract from anything, everything, existing now, that did not then, in the way of putting a stop to Arpaio, is it enough? No, likely the current effort, much less this post, is not.

But, then, let it not be said there was not effort and argument made between then and now. There is a man, Arpaio, who should be removed from office and, if the electorate's voice is willing to suffer exactly that, a remedy for the corpse of Matty Atensio, who died for Jesus's sins, but so far, apparently, not Arpaio's sins. Like an imperious "Wall Street Bankster".

Where is the bullshit in Maricopa County going to end? Will the truth of the civil, criminal

and moral liability of “The Toughest Sheriff in Town” be exposed? Only the voters of Arizona, who are not half as stupid as generally portrayed, will decide.

I sincerely hope intelligence and discretion win out over appearance and material duplicity. But, then again, such would not seem to be the characteristic of the modern Arizona electorate. It is a screwed up place in a screwed up time.

But, if the Leader of the Free World, Barack Obama,much less Joe Biden, cannot even be bothered to haul at least one of their self serving ass here to Arizona, when the election and morals are on the line, in a state in the process of turning from Red to Blue under the absentee watch, then why exactly should lifelong Democrats here give a flying fuck about the national ticket? Seriously, tell me why?

So, there is no national action, to even respectably mention, in Arizona. Arizona has been left to fend for itself as being useless and worthless by a craven two party system of two hollow jackasses but, even more significantly, by a national press system of court jester reporters, stenographers, and thin skinned puppet stringed mopes who cannot tell the difference between themselves and the common political flaming jackasses they cover. There is a national press who shouts “Semper Fi” while selling out everything they were trained and hired to do. I know several will read this, the question is who among them will adopt it, who will ignore it, and who will whine like pathetic thin skinned poseurs? Boo yah bitches, I am waiting. Show us your colors; if you cannot now in the heat of battle, then when? Answer up.

Which leaves us where we entered, with Sheriff Joe Arpaio. Arpaio is a blight upon Maricopa County. Unelect him. Adios Arpaio.

There are further vignettes to be painted regarding Arpaio. Here are a couple of particularly poignant ones. Arpaio And Thomas: The Most Unethical Sheriff And Prosecutor In

America Conspire To Abuse Power And Obstruct Justice oh, and not to mention the seminal “House Judiciary Cuffs Joe Arpaio, The Most Abusive Sheriff In America“. Read and know both if you want to know Sheriff Joe.

Unelect this guy!

WHEREIN DC SIR LANCELOTS TURN THEIR TAIL AND FLEE LIKE CANDYASS SIR ROBINS

Attention Americans:

Those brave elected and appointed representatives who represent YOU in the Federal Government are fleeing! Well, granted, I guess that doesn’t really account for the elected members of Congress who have been diddling and twiddling their thumbs, among other things, for a while now in order to suck at the tit of corporate cash, while doing nothing for you on the record at their elected jobs (no, Darrell Issa’s dog and pony show doesn’t count) and throw it around to perpetuate a fraud on you.

But, as they say in movies, that is something completely different.

No, here is the notice I take just a little umbrage with:

> Non-emergency employees (including employees on pre-approved paid leave) will be granted excused absence (administrative leave) for the number of hours they were scheduled to work unless they are:
>
> > required to telework,

> > on official travel outside of the Washington, DC, area,
>
> on leave without pay, or
>
> on an alternative work schedule (AWS) day off.
>
> Telework-Ready Employees who are scheduled to perform telework on the day of the announcement or who are required to perform unscheduled telework on a day when Federal offices are closed to the public must telework the entire workday or request leave, or a combination of both, in accordance with their agencies' policies and procedures, subject to any applicable collective bargaining requirements.
>
> Emergency Employees are expected to report to their worksites unless otherwise directed by their agencies.

As friend of the blog, Timothy Shorrock, noted:

> No government Monday. A state of anarchy will reign!

I'm with Tim, we are all SO SCREWED!

Okay, and I'm going to take a flyer that Mr. Shorrock agrees, the nation may not only survive, but actually prosper without the usual cabal of corrupt con men and bloodsuckers that generally run things in Washington DC on a "normal" day. Call me crazy, but I am going out on that limb.

Here is my issue: They are all bozos on that bus. Pretty much all of the NOAA, CNN and other data intensive models have been prediting this likely Sand path for days.

Our Men in Havana, er, I mean men and women in DC, are just figuring this out now??? Perhaps the usual rhesus monkey brains were otherwise occupied still figuring out the Administration's

housing policy.

And, look at the directive. What does it really say? That the poohbahs suggest common workers, just being notified a couple of hours before they go to sleep, do what they were already doing, or already had the option to do, and work from home. For any others unable to do so, the suggestion is they take leave.

In short, the real backbone of the federal government, the regular workers, are being treated in a tardy and tawdry manner.

By the 1% MOTUs. Shocking, no?

So, while the politicians who are not already cravenly out of town on your dime are absent, even the remaining Knights of The Pinhead Table run like crazed Sir Robins.

Ain’t that America?

Uh, yeah, so tomorrow will be different from exactly what other day you federal jackasses??

Because, Congress, the DOJ, the SEC, the FEC, the NLRB, and all the rest, BEFORE SANDY, were soooooooo totally responsive to the needs and desires of their constituents.

On a serious note, this hurricane is pretty clearly a grave matter for human safety. Care SHOULD be taken. The projected damage had the DC/Eastern Virginia/Maryland area in the cone of danger in nearly every projection.

The federal government waited until now to tell regular workers, the real backbone of our functioning government to, paraphrasing “stay at home if you have that already available, or otherwise work as best you can.

That is loathsome from a leadership of cowardly and craven Sir Robins. And, on the remote chance you do not understand what a “Sir Robin” is, watch the video.

THE US ATTORNEY FOR CIA SCRAMBLES TO COVER-UP CIA'S TORTURE, AGAIN

Bmaz just wrote a long post talking about the dilemma John Kiriakou faces as the government and his defense lawyers attempt to get him to accept a plea deal rather than go to trial for leaking the names of people—Thomas Donahue Fletcher and Deuce Martinez—associated with the torture program.

I'd like to look at four more aspects of this case:

- The timing of this plea deal—reflecting a realization on the part of DOJ that their efforts to shield Fletcher would fail
- CIA's demand for a head
- The improper cession of a special counsel investigation to the US Attorney for Eastern Virginia
- The ongoing efforts to cover-up torture

The timing of the plea deal

Intelligence Identities Protection Act cases will always be risky to bring. By trying someone for leaking a CIA Agent's identity, you call more attention to that identity. You risk exposing sources and methods in the course of proving the purportedly covert agent was really

covert. And—as the case against Scooter Libby proved—IIPA often requires the testimony of spooks who lie to protect their own secrets.

There is a tremendous irony about this case in that John Kiriakou's testimony in the Libby case would have gone a long way to prove that Libby knew Valerie Plame was covert when he started leaking her name, but now-Assistant Attorney General Lanny Breuer talked Patrick Fitzgerald out of having Kiriakou testify. Small world.

Bmaz notes that the docket suggests the rush to make a plea deal came after Leonie Brinkema ruled, on October 16, that the government didn't need to prove Kiriakou intended to damage the country by leaking the names of a bunch of torturers. That ruling effectively made it difficult for Kiriakou to prove he was whistleblowing, by helping lawyers defending those who have been tortured figure out who the torturers were.

But the rush for a plea deal also comes after Matthew Cole and Julie Tate filed initial responses to Kiriakou's subpoena on October 11. And after the government filed a sealed supplement to their CIPA motion that same day.

While both Cole and Tate argued that if they testified they'd have to reveal their confidential sources, Tate also had this to say in her declaration.

> In 2008, my colleagues and I were investigating the CIA's counterterrorism program now known as Rendition, Detention and Interrogation Program" (the "RDI Program").
>
> [snip]
>
> I understand that defense counsel has subpoenaed me to testify about the methods I may have used to obtain the identity of CIA officers during 2008 while I was researching the RDI program.

Tate doesn't say it explicitly, but it's fairly

clear **she was able to get the identity of CIA officers involved in the torture program**. Her use of the plural suggests she may have been able to get the identity of more than just Thomas Fletcher and Deuce Martinez. And she says she would have to reveal the research methods by which she was able to identify CIA officers who were supposedly covert.

Now, both Tate and Cole have a weak case to make that they were acting as journalists; Tate because she is a researcher and her byline only appears on one of the articles the WaPo published on the program. And Cole because he never published anything, and ultimately served as a go-between to a bunch of lawyers defending Gitmo detainees. And what privilege they might have is being destroyed, by the government, in its efforts to get James Risen to testify in the Jeffrey Sterling case.

In other words, the responses of Cole and especially Tate made it likely that either the government would have to argue the exact opposite of what they've argued in the Sterling case, or they'd have to let information on how to identify CIA officers into the public record.

And then they scrambled for a plea deal.

CIA's demand for a head

Now think back to how this entire case started, as I explained two and a half years ago.

> 1) DOJ has been investigating the John Adams Project since last August to find out how photographs of torturers got into the hands of detainees at Gitmo. The JAP has employed a Private Investigator to track down likely interrogators of detainees, to take pictures, get a positive ID, and once done, call those interrogators as witnesses in legal proceedings. DOJ appears concerned that JAP may have made info—learned confidentially in the course of defending these detainees—available to those detainees,

> and therefore violated the protective order that all defense attorneys work under. Yet JAP says they collected all the info independently, which basically means the contractors in question just got caught using bad tradecraft.
>
> 2) DOJ appears to believe no crime was committed and was preparing a report to say as much for John Brennan, who will then brief Obama on it.
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> 3) But CIA cried foul at DOJ's determination, claiming that because one of the lawyers involved, Donald Vieira, is a former Democratic House Intelligence staffer, he is biased. They seem to be suggesting that Vieira got briefed on something while at HPSCI that has biased him in this case, yet according to the CIA's own records, he was not involved in any of the more explosive briefings on torture (so the claim is probably bullshit in any case). After CIA accused Vieira of bias, he recused himself from the investigation.
>
> 4) So apparently to replace Vieira and attempt to retain some hold on DOJ's disintegrating prosecutorial discretion, DOJ brought in Patrick Fitzgerald to pick up with the investigation. Fitz, of course, a) has impeccable national security credentials, and b) has the most experience in the country investigating the Intelligence Identities Protection Act, having investigated the Torturer-in-Chief and his Chief of Staff for outing CIA spy Valerie Plame. In other words, DOJ brought in a guy whom CIA can't bitch about, presumably to shut down this controversy, not inflame it.

The CIA panicked because the subjects of CIA torture were learning the identities of their torturers. DOJ did an investigation to see

whether any crime had been committed, and determined it hadn't. CIA then started politicizing that decision, which led to Fitzgerald's appointment.

Fitzgerald confirmed what DOJ originally determined: the defense attorneys committed no crime by researching who their clients' torturers were.

But along the way Fitzgerald gave the CIA a head—John Kiriakou's—based partly on old investigations of him. And, surprise surprise, that head happens to belong to the only CIA officer who publicly broke the omerta about the torture program.

This entire case was an attempt to punish someone to restore the omerta on CIA's illegal activities.

The cession of a special counsel investigation to the US Attorney for Eastern Virginia

The whole thing was a distasteful witch hunt when Fitzgerald was finding the CIA their head. But at least, at that point, it had the legitimacy of someone purportedly independent of DOJ and—more importantly—the CIA.

But then Fitzgerald retired.

As I've pointed out before, after he retired, the entire reporting structure of the prosecution team got very unclear, though Neil MacBride, the US Attorney for the CIA's district, EDVA, got brought into the structure. From there on out, regardless of Brinkema's rulings (which didn't consider the argument I made), the prosecution lost a lot of the legitimacy introduced precisely because this case necessitated an independent reporting structure.

> For better or worse, it would be difficult for John Kiriakou to prove that Patrick Fitzgerald, the guy who once indicted the Vice President's Chief of Staff for obstruction into an

> investigation into whether he leaked a CIA officer's covert identity, selectively prosecuted him for leaking a CIA officer's covert identity. After all, Fitzgerald was willing to go after one of the most senior national security officials in the country for precisely this alleged crime; going after Kiriakou (and indicting him for the lies told over the course of that investigation) would be consistent with that history.
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> But to prove that the US Attorney for Eastern District of VA is not entitled to the presumption of regularity on a prosecution involving our nation's torturers? Kiriakou need only point to the USA EDVA's (then held by Paul McNulty) decision not to prosecute the Salt Pit murder—by some of Covert Officer A and Deuce Martinez' colleagues—of Gul Rahman to show that the USA Attorney for EDVA in fact should not be entitled to the presumption of regularity. On the contrary, EDVA has already affirmatively covered up the torture crimes of the CIA.
>
> And Kiriakou's job is made easier still with the reference to David Passaro's appeal. Passaro was the only CIA person (he was a contractor training Afghan paramilitaries) to be prosecuted in relation to abusive interrogation. But he would never have been prosecuted if it weren't for the government's blatant failure to provide him with discovery of a bunch of documents that would have shown the techniques he used on Ahmed Wali were approved by the CIA Director, acting pursuant to the President's authorization. In other words, Passaro's entire prosecution was built around prosecutorial abuse that served to hide that they were prosecuting the wrong guy—the guy who followed orders allowing abuse rather than the high level

> officials who authorized that abuse.

As soon as MacBride took over the case, the government argued that Kiriakou was not being selectively by citing a case in which a CIA contractor was prosecuted as a scapegoat, improperly withholding documents that would have implicated Cofer Black, George Tenet, and George Bush.

Perhaps prosecutors would have cited a prior example of a cover-up even had Fitzgerald remained on the case. But coming from EDVA—the district has been covering up CIA's torture for 8 years—it reeks of further cover-up.

It seems the CIA was entitled to independent counsel when they were demanding a head, but American citizens are not entitled to independent counsel when the CIA's covering up its own actions.

The ongoing efforts to cover-up torture

Finally, consider the context of these current plea deals.

All week, the government has been making arguments in the kangaroo court in Gitmo to prevent the detainees who were tortured from mentioning they were tortured. As Daphne Eviatar describes, to do so the government went so far as to claim the detainees' memories were classified.

> "The government is using a clever interpretation of this derivative classification scheme to protect someone from describing conduct to which they were exposed," said Lt. Cmdr. Kevin Bogucki, who represents Ramzi bin al Shibh. "His exposure to the conduct is not an exposure to secret information. This is the problem with trying to classify his memories and experiences."
>
> Whether the government can classify an individual's own memories and experiences is at the heart of the

> argument over secrecy in this case. On the one hand, the memories and experiences are his own, and the government can't control them. On the other, argues the government, these individuals were exposed (albeit involuntarily) to government secrets by having been subjected to the CIA's classified interrogation program — which we now know included "enhanced interrogation" methods that amounted to torture. The government doesn't want any information about those programs made public.

And then, on Wednesday, the Attorney General rewarded a bunch of lawyers for not prosecuting torture.

So we've got the US Attorney for the CIA's own district overseeing this case. And below him (some, though not all, of the other lawyers are from Chicago and NY), we've got a bunch of people who know **they will get a reward if they continue the CIA cover-up**.

That's the background of this plea negotiation. I realize in the normal world of legal representation, pleas look really great.

At this point, however, DOJ has serially served not to achieve justice, but to cover up the CIA's illegal torture program. John Kiriakou and his lawyers will decide what they will. But that doesn't make this plea deal a legitimate exercise of justice.

THE KIRIAKOU CONUNDRUM: TO PLEA

OR NOT TO PLEA

There are many symbols emblematic of the battle between the American citizenry and the government of the United States in the war of transparency. One of those involves John Kiriakou. Say what you will about John Kiriakou's entrance into the public conscience on the issue of torture, he made a splash and did what all too few had, or have since, been willing to do. John Kiriakou is the antithesis of the preening torture monger apologist in sullen "big boy pants", Jose Rodriquez.

And, so, people like Kiriakou must be punished. Not by the national security bullies of the Bush/Cheney regime who were castigated and repudiated by an electorate who spoke. No, the hunting is, instead, by the projected agent of "change", Barack Obama. You expect there to be some difference between a man as candidate and a man governing; the shock comes when the man and message is the diametric opposite of that which he sold. And, in the sling of such politics, lies the life and fate of John Kiriakou.

Why is the story of John Kiriakou raised on this fine Saturday? Because as Charlie Savage described, Kiriakou has tread the "Path From Terrorist Hunter to Defendant". Today it is a path far removed from the constant political trolling of the Benghazi incident, and constant sturm and drang of the electoral polling horserace. It is a critical path of precedent in the history of American jurisprudence, and is playing out with nary a recognition or discussion. A tree is falling in the forrest and the sound is not being heard.

You may have read about the negative ruling on the critical issue of "intent to harm" made in the federal prosecution of Kiriakou in the Eastern District of Virginia (EDVA) last Tuesday. As Josh Gerstein described:

> Prosecutors pursuing former CIA officer John Kiriakou for allegedly leaking the identities of two other CIA officers involved in interrogating terror suspects need not prove that Kiriakou intended to harm the United States or help a foreign nation, a federal judge ruled in an opinion made public Wednesday.
>
> The ruling from U.S. District Court Judge Leonie Brinkema is a defeat for Kiriakou's defense, which asked the judge to insist on the stronger level of proof — which most likely would have been very difficult for the government to muster.
>
> In 2006, another federal judge in the same Northern Virginia courthouse, T.S. Ellis, imposed the higher requirement in a criminal case against two former lobbyists for the American Israel Public Affairs Committee.
>
> However, Brinkema said that situation was not parallel to that of Kiriakou, since he is accused of relaying information he learned as a CIA officer and the AIPAC staffers were not in the government at the time they were alleged to have received and passed on classified information.
>
> "Kiriakou was a government employee trained in the classification system who could appreciate the significance of the information he allegedly disclosed. Accordingly, there can be no question that Kiriakou was on clear notice of the illegality of his alleged communications.

Gerstein has summarized the hard news of the court ruling admirably, but there is a further story behind the sterile facts. By ruling the crucial issue of “intent” need not be proven by the accusing government, the court has literally removed a critical element of the charge and deemed it outside of the due process proof requirement, much less that of proof beyond a reasonable doubt.

What does that mean? In a criminal prosecution, it means everything. It IS the ballgame.

And so it is here in the case of *United States v. John Kiriakou*. I am going to go a little further than Gerstein really could in his report, because I have the luxury of speculation. As Josh mentioned:

> On Tuesday, Brinkema abruptly postponed a major motions hearing in the case set for Wednesday and a hearing set for Thursday on journalists’ motions to quash subpoenas from the defense. She gave no reason for canceling the hearings.

HELLO! That little tidbit is the *everything* of the story. I flat out guarantee the import of that is the court put the brakes on the entire case as a resultnof an off the record joint request of the parties to facilitate immediate plea negotiation. As in they are doing it as you read this.

There is simply no other reason for the court to suspend already docketed process and procedure in a significant case, much less do so without a formal motion to extend, whether by one party or jointly. That just does not happen. Well, it does not happen unless both parties talked to the court and avowed a plea was underway and they just needed the time to negotiate the details.

So, what does this mean for John Kiriakou? Nothing good, at best. Upon information and belief, Kiriakou was offered a plea to one count

of false statements and no jail/prison time by the original specially designated lead prosecutor, Pat Fitzgerald. But the “word on the street” now is that, because the government’s sheriff has changed and, apparently, because Kiriakou made an effort to defend himself, the ante has been ridiculously upped.

What I hear is the current offer is plead to IIPA and two plus years prison. This for a man who has already been broken, and whose family has been crucified (Kiriakou’s wife also worked for the Agency, but has been terminated and had her security clearance revoked). Blood out of turnips is now what the “most transparent administration in history” demands.

It is a malicious and unnecessary demand. The man, his family, and existence are destroyed already. What the government really wants is definable precedent on the IIPA because, well, there is not squat for such historically, and the “most transparent administration in history” wants yet another, larger, bludgeon with which to beat the baby harp seals of whistleblowing. And so they act.

To date, there have been no reported cases interpreting the Intelligence Identities Protection Act (IIPA), but it did result in one conviction in 1985 pursuant to a *guilty plea*. In that case, Sharon Scranage, a former CIA clerk, pleaded guilty for providing classified information regarding U.S. intelligence operations in Ghana, to a Ghanaian agent, with whom she was romantically involved. She was initially sentenced to five years in prison, but a federal judge subsequently reduced her sentence to two years. That. Is. It.

So, little wonder, “the most transparent administration in history” wants to establish a better beachhead in its fight against transparency and truth. John Kiriakou is the whipping post. And he is caught in the whipsaw….prosecuted by a maliciously relentless government, with unlimited federal resources, and reliant on private defense counsel he likely

long ago could no longer afford.

It is a heinous position Kiriakou, and his attorneys Plato Cacheris et. al, are in. There are moral, and there are exigent financial, realities. On the government's end, as embodied by the once, and now seemingly distant, Constitutional Scholar President, and his supposedly duly mindful and aware Attorney General, Eric Holder, the same moralities and fairness are also at issue. Those of us in the outside citizenry of the equation can only hope principles overcome dollars and political hubris.

> Eric Holder, attorney general under President Barack Obama, has prosecuted more government officials for alleged leaks under the World War I-era Espionage Act than all his predecessors combined, including law-and-order Republicans John Mitchell, Edwin Meese and John Ashcroft.
> ….
> "There's a problem with prosecutions that don't distinguish between bad people – people who spy for other governments, people who sell secrets for money – and people who are accused of having conversations and discussions," said Abbe Lowell, attorney for Stephen J. Kim, an intelligence analyst charged under the Act.

The once and previous criticisms of John Kiriakou, and others trying to expose a nation off its founding tracks, may be valid in an intellectual discussion on the fulcrum of classified information protection; but beyond malignant in a sanctioned governmental prosecution such as has been propounded against a civilian servant like John Kiriakou who sought, with specificity, to address wrongs within his direct knowledge. This is precisely where, thanks to the oppressive secrecy ethos of the Obama Administration, we are today.

Far, perhaps, from the “hope and change” the country prayed and voted for in repudiating (via Barack Obama) the festering abscess of the Bush/Cheney regime, we exist here in the reality of an exacerbated continuation of that which was sought to be excised in 2008. Kiriakou, the human, lies in the whipsaw balance. Does John Kiriakou plead out? Or does he hold out?

One thing is certain, John Kiriakou is a man, with a family in the lurch. His values are not necessarily those of those of us on the outside imprinting ourselves on him.

If the government would stop the harp seal beating of Mr. Kiriakou, and at least let the man stay with his family instead of needlessly consuming expensive prison space, that would be one thing. But the senseless hammer being posited by the out for blood successor to Patrick Fitzgerald – Neil MacBride, and his deputy William N. Hammerstrom, Jr. – is scurrilous.

Rest assured, far from the hue and cry on the nets and Twitters, this IS playing out on a very personal and human scale for John Kiriakou while we eat, drink and watch baseball and football this weekend.

R.I.P. SENATOR SPECTER, YOU WILL BE MISSED

The Snarlin has ceased; via CBS News:

> US Senator Arlen Specter, whose political career took him from Philadelphia City Hall to the US Congress, died Sunday morning at his home in Philadelphia at the age of 82 from complications of non-Hodgkins Lymphoma. He was born February 12, 1930.
>
> His career was marked by what the pundits and Specter himself called "fierce independence." But long before Specter ever stepped onto the Senate floor in Washington DC, he made it into national prominence by serving as assistant counsel for the Warren Commission, which investigated the 1963 assassination of Pres. John F. Kennedy.
>
> Specter postulated the controversial "single-bullet theory" that was eventually embraced by the panel and still stands to this day, despite the cry of conspiracy theorists who say there was more than one gunman in Dallas that November day.
>
> "Admittedly a strange path for a bullet to take, but sometimes truth is stranger than fiction," Specter said.

We have had a complicated relationship with Arlen Specter here at Emptywheel, sometimes castigating him, sometimes praising him, sometimes laughing at him, sometimes laughing

with him. Specter engendered all those things. But I always sensed a very decent heart beating underneath Specter's surface, even if it was all too often masked by his votes for, and often vociferous support of, ever more destructive policies of the right.

For this, Specter earned the nickname "Scottish Haggis" here in the annals of Emptywheel. The term had its root in Mr. Specter's predilection for Scottish Law, and goes all the way back to the original incarnation at The Next Hurrah. For a number of reasons, offal and otherwise, it was a nickname that stuck and seemed appropos and seemed to reflect the complicated nature of Senator Specter.

On a personal note, I did not have an abundance of interaction with Sen. Specter and his office, but in that which I did have, I found him and his office to be beyond both kind and professional. One instance stands head and shoulders above the others, and surrounded the Obama scuttled nomination of Dawn Johnsen to be head of the Office of Legal Counsel (OLC). It was my contention from the outset that the whip count votes were there to confirm Professor Johnsen for the job she was perfect for. And, in the roiling aftermath of the Bush/Cheney unitary executive excesses, the country desperately needed Johnsen's intellectual sense of honesty and Constitutional integrity.

The only reason Dawn Johnsen did not get confirmed as OLC head was Barack Obama used her as false bait and cat nip for the more noisy progressive liberals. It was a glaring sign of depressing things to come from the not nearly as Constitution minded Barack Obama as had been pitched in his election run. Not only could Johnsen have been confirmed, as I pointed out before, she could also have been recess appointed by Obama. Despite all the ridicule I took at the time, that point has been proved conclusively by the later recess appointment of Richard Cordray to be head of the CFPB (another instance of Obama using a supremely qualified

progressive, Elizabeth Warren, as bait and then hanging her out to dry).

The point was never that Dawn Johnsen couldn't be confirmed, it was that Barack Obama and the insiders of his White House did not want her confirmed into leadership of the OLC. I knew that from talking to several inside the DOJ and Senate Judiciary Committee, but that was all off the record. When I found an obscure old comment from Arlen Specter indicating he was willing to support a cloture vote for Johnsen as far back as his second meeting with Dawn Johnsen on or about May 12, 2009, it was by then an old, and quite obscure comment. Specter could have walked it back or dissembled on the subject.

Arlen Specter didn't walk it back or dissemble, instead he personally confirmed it to me. With the already in the bag vote of Sen. Richard Lugar, that was the 60 votes for Dawn Johnsen at OLC. Specter knew it would infuriate both the GOP and the Obama White House, and he knew exactly what story I was writing. He stood up. Oh, and, yes, he knew about "Scottish Haggis" too. The man had a sense of humor.

For the above vignette, and several others, I will always have a soft spot in my heart for Snarlin Arlen Specter. His life and work in government spanned over five decades, he has got my salute today.

Sen. Specter repeatedly had to fight off serious cancer, and he did so with aplomb, courage and his good humor. He also was a tireless champion for the NIH and funding of cancer and stem cell research. When confronted with the last battle, the one which finally took him, Specter was upbeat, defiant and determined to get back to his part time hobby of stand up comedy. May the Scottish Haggis have many laughs wherever he may travel.

HEDGES NDAA INDEFINITE DETENTION DECISION STAYED BY 2ND CIRCUIT

As much as I, and most who care about Constitutional protections and Article III courts still having a function in balance of power determinations, the recent 112 page ruling by Judge Katherine Forrest in SDNY (see here and, more importantly, here) had fundamental issues that made review certain, and reversal all but so.

The first step was to seek a stay in the SDNY trial court, which Judge Forrest predictably refused; but then the matter would go to the Second Circuit, and the stay application was formally filed today.

Well, that didn't take long. From Josh Gerstein at Politico, just filed:

> A single federal appeals court judge put a temporary hold Monday night on a district court judge's ruling blocking enforcement of indefinite detention provisions in a defense bill passed by Congress and signed into law last year by President Barack Obama.
>
> U.S. Court of Appeals for the 2nd Circuit Judge Raymond Lohier issued a one-page order staying the district court judge's injunction until a three-judge panel of the court can take up the issue on September 28.
>
> Lohier offered no explanation or rationale for the temporary stay.

Here is the actual order both granting the temporary stay and scheduling the September 28 motions panel consideration.

This is effectively an administrative stay until the full three judge motions panel can consider the matter properly on September 28th. But I would be shocked if the full panel does anything but continue the stay for the pendency of the appeal.

DOJ FILES APPEAL: FURTHER THOUGHTS ON HEDGES AND THE LAWFARE/WITTES ANALYSIS

Last night (well for me, early morning by the blog clock) I did a post on the decision in the SDNY case of *Hedges et. al v. Obama*. It was, save for some extended quotations, a relatively short post that touched perhaps too much on the positive and not enough on the inherent problems that lead me to conclude at the end of the post that the decision's odds on appeal are dire.

I also noted that it was certain the DOJ would appeal Judge Forrest's decision. Well, that didn't take long, it has already occurred. This afternoon, the DOJ filed their Notice of Appeal.

As nearly all initial notices of appeal are, it is a perfunctory two page document. But the intent and resolve of DOJ is crystal clear. Let's talk about why the DOJ is being so

immediately aggressive and what their chances are.

I woke up this morning and saw the, albeit it not specifically targeted, counterpoint to my initial rosy take offered by Ben Wittes at Lawfare, and I realized there was a duty to do a better job of discussing the problems with Forrest's decision as well. Wittes' post is worth a read so that the flip side of the joy those of us on the left currently feel is tempered a bit by the stark realities of where Katherine Forrest's handiwork is truly headed.

Wittes makes three main critiques. The first:

> So put simply, Judge Forrest's entire opinion hinges on the idea that the NDAA expanded the AUMF detention authority, yet she never once states honestly the D.C. Circuit law extant at the time of its passage—law which unambiguously supports the government's contention that the NDAA affected little or no substantive change in the AUMF detention power.

Secondly:

> Second, Judge Forrest is also deeply confused about the applicability of the laws of war to detention authority under U.S. domestic law. She does actually does spend a great deal of time talking about Al-Bihani, just not about the part of it that really matters to the NDAA. She fixates instead on the panel majority's determination that the laws of war do not govern detentions because they are not part of U.S. domestic law. Why exactly she thinks this point is relevant I'm not quite sure. She seems to think that the laws of war are vaguer and more permissive than the AUMF—precisely the opposite of the Al-Bihani panel's assumption that the laws of war would impose additional

> constraints. But never mind. Someone needs to tell Judge Forrest that the D.C. Circuit, in its famous non-en-banc en-banc repudiated that aspect of the panel decision denying the applicability of the laws of war and has since assumed that the laws of war do inform detention authority under the AUMF. In other words, Judge Forrest ignores—indeed misrepresents—Al-Bihani on the key matter to which it is surpassingly relevant, and she fixates on an aspect of the opinion that is far less relevant and that, in any case, is no longer good law.

Lastly, Ben feels the scope of the permanent injunction prescribed by Forrest is overbroad:

> Judge Forrest is surely not the first district court judge to try to enjoin the government with respect to those not party to a litigation and engaged in conduct not resembling the conduct the parties allege in their complaint. But her decision represents an extreme kind of case of this behavior. After all, "in any manner and as to any person" would seem by its terms to cover U.S. detention operations in Afghanistan.

First off, although I did not quote that portion of Ben's analysis, but I think we both agree that Judge Forrest pens overly long and loosely constructed opinions, if the two in Hedges are any guide. This is what I often refer to as "rambling", and it is that.

Secondly, I note, significantly, Ben does not mention, much less meaningfully challenge, Forrest's discussion on, and finding of, standing for the Hedges Plaintiffs. He should, it is every bit as big of an appellate concern as the three areas he does list. Forrest, in effect, used the disdain the Obama DOJ displayed to the court in not affirmatively presenting

evidence and otherwise engaging in the initial March hearing on the merits of the plaintiffs' situation as her basis for finding standing under *Lujan v. Defenders of Wildlife*.

Forrest does an admirable job laying out a foundation for her finding of standing, but the 2nd will take some issue and it is almost certain the Roberts Court who, are ideologically led by Scalia in their ever more restrictive view of standing, will reverse Forrest. If I am writing the inevitable DOJ appeal, that is where I start. And if an appellate court, as I suspect, starts there and disagrees with Forrest, the inquiry may end right there without getting into further merits. I would not bet against just that happening.

Standing issue aside, Ben Wittes' demurrers to the Hedges opinion are also salient. Initially, I was going to deconstruct the heart of Ben's take via some older material from another Lawfare protagonist I very much respect, Steve Vladeck. Due to other duties interrupting the writing of the instant post, Steve has come along and done that for me in a post at Lawfare:

> Indeed, I'm not perplexed by the theory behind Judge Forrest's analysis, but by its application to these facts. Consider section 1021(e) of the NDAA, a.k.a. the "Feinstein Amendment":
>
> > Nothing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States.
>
> As Marty and I explained in this post, the entire point of the Feinstein Amendment was to quell concerns that the NDAA might covertly authorize the

> detention of U.S. citizens or other individuals within the United States. It did so by emphasizing that it merely preserved the (entirely ambiguous) status quo in such cases. This proviso didn't resolve the scope of the government's authority to detain such individuals; it merely provided that the NDAA didn't change that question in any meaningful way.
>
> As such, the Feinstein Amendment appears to necessarily foreclose the argument that what's "new" in the NDAA could encompass any power to detain individuals covered by section 1021(e), i.e., "United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States." Such individuals might still be subject to detention under the AUMF, but thanks to the Feinstein Amendment, only under the AUMF. And so, to the extent that Judge Forrest's analysis turns on the conclusion that the NDAA confers detention authority not provided by the AUMF, one would think she'd have to explain why the Feinstein Amendment doesn't limit the "newness" of the NDAA exactly to those individuals with less clearly established constitutional rights, e.g., non-citizens arrested and detained outside the territorial United States.

You may say to yourself, well what is there particularly positive about Vladecks' take? And it is a decent question. The answer is, admittedly, nuanced and somewhat thin. But it starts with the fact Steve is willing to consider Forrest's "central premise". And, indeed, contra Ben Wittes, I think it is more than possible to envision the Katherine Forrest framing in a world that is capable of distinguishing between *Ex Parte Milligan* and *Ex*

Parte Quirin in a more liberal Founding Fathers view as opposed to the militaristic “War On Terror” view such as is the single minded view of the Bush/Cheney to Obama Executive Branch unitary theory.

Secondly, and as Wittes appropriately notes, Judge Forrest is in no way bound by the hideous precedent that has been laid down by the DC Circuit. No, Forrest operates in the 2nd Circuit and is not bound by the crazed opinions of Janice Rogers Brown and the War On Terror Stockholm Syndrome infected DC Circuit that seems to have lost all perspective of that from whence we came. Give Katherine Forrest credit, I think she understands the slippery and craven hill she is heroically trying to climb, and that is why she engages in such rambling attempts to buck up her position.

As to Ben’s last beef, the overbreadth of the permanent injunction, well, yeah, that is the nature of the beast, no? Seriously, when any federal court is interpreting a statutory decree of Congress on a “facial”, as opposed to “as applied” basis, especially one as far reaching and contra to Founding principles as Section 1021(b) of the NDAA, the injunction has to really be that broad to engage the “face” of the statute. So, that one is not really the crux of the consideration in this case.

In conclusion, I have to, regrettably, agree with my friend Ben Wittes, the shelf life of the joy from Katherine Forrest’s decision in *Hedges et. al v. Obama* is remarkably short. That does not mean it does not have immense value though. Doomed as it may be, it is a significant and principled pushback at the treachery engaged in by the DC Circuit in the “Detainee Cases”. It almost certainly will not hold up, but I have not in recent times (maybe not since Vaughn Walker) had more respect for what a federal judge has tried to do to protect the Constitution and principles this country was built on.

CHRIS HEDGES ET. AL WIN ANOTHER ROUND ON THE NDAA

You may remember back in mid May Chris Hedges, Dan Ellsberg, Jennifer Bolen, Noam Chomsky, Alexa O'Brien, Kai Wargalla, Birgetta Jonsdottir and the US Day of Rage won a surprising, nee stunning, ruling from Judge Katherine Forrest in the Southern District of New York. Many of us who litigate felt the plaintiffs would never even be given standing, much less prevail on the merits. But, in a ruling dated May 16, 2012, Forrest gave the plaintiffs not only standing, but the affirmative win by issuing a preliminary injunction.

Late yesterday came even better news for Hedges and friends, the issuance of a permanent injunction. I will say this about Judge Forrest, she is not brief as the first ruling was 68 pages, and todays consumes a whopping 112 pages. Here is the setup, as laid out by Forrest (p. 3-4):

> Plaintiffs are a group of writers, journalists, and activists whose work regularly requires them to engage in writing, speech, and associational activities protected by the First Amendment. They have testified credibly to having an actual and reasonable fear that their activities will subject them

> to indefinite military detention pursuant to § 1021(b)(2).
>
> At the March hearing, the Government was unable to provide this Court with any assurance that plaintiffs' activities (about which the Government had known—and indeed about which the Government had previously deposed those individuals) would not in fact subject plaintiffs to military detention pursuant to § 1021(b)(2). Following the March hearing (and the Court's May 16 Opinion on the preliminary injunction), the Government fundamentally changed its position.
>
> In its May 25, 2012, motion for reconsideration, the Government put forth the qualified position that plaintiffs' particular activities, as described at the hearing, if described accurately, if they were independent, and without more, would not subject plaintiffs to military detention under § 1021. The Government did not—and does not—generally agree or anywhere argue that activities protected by the First Amendment could not subject an individual to indefinite military detention under § 1021(b)(2). The First Amendment of the U.S. Constitution provides for greater protection: it prohibits Congress from passing any law abridging speech and associational rights. To the extent that § 1021(b)(2) purports to encompass protected First Amendment activities, it is unconstitutionally overbroad.
>
> A key question throughout these proceedings has been, however, precisely what the statute means—what and whose activities it is meant to cover. That is no small question bandied about amongst lawyers and a judge steeped in arcane questions of constitutional law; it is a

> question of defining an individual's core liberties. The due process rights guaranteed by the Fifth Amendment require that an individual understand what conduct might subject him or her to criminal or civil penalties. Here, the stakes get no higher: indefinite military detention—potential detention during a war on terrorism that is not expected to end in the foreseeable future, if ever. The Constitution requires specificity—and that specificity is absent from § 1021(b)(2).

Those were the stakes in the litigation and Katherine Forrest did not undersell them in the least. Now, truth be told, there is not really a lot of new ground covered in the new decision that was not touched on in the earlier ruling, but it is even more fleshed out and also formalizes a declination of the government's motion for reconsideration filed in June as well as argument on the additional grounds necessary for a permanent injunction over the preliminary injunction initially entered. As Charlie Savage pointed out, it is a nice little gift coming on the same day the House voted 301-118 to re-up the dastardly FISA Amendments Act.

And Forrest really did go out of her way to slap back the government's bleating that courts should stay out of such concerns and leave them to the Executive and Legislative Branches, an altogether far too common and grating refrain in DOJ arguments in national security cases (p 11-12):

> The Court is mindful of the extraordinary importance of the Government's efforts to safeguard the country from terrorism. In light of the high stakes of those efforts as well as the executive branch's expertise, courts undoubtedly owe the political branches a great deal of deference in the area of national security. See Holder v. Humanitarian Law Project, 130 S. Ct.

> 2705, 2711 (2010). Moreover, these same considerations counsel particular attention to the Court's obligation to avoid unnecessary constitutional questions in this context. Cf. Ashwander v. Tenn. Valley Auth., 297 U.S. 288, 347 (1936) (Brandeis, J., concurring) ("The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of."). Nevertheless, the Constitution places affirmative limits on the power of the Executive to act, and these limits apply in times of peace as well as times of war. See, e.g., Ex parte Milligan, 72 U.S. (4 Wall.) 2, 125-26 (1866). Heedlessly to refuse to hear constitutional challenges to the Executive's conduct in the name of deference would be to abdicate this Court's responsibility to safeguard the rights it has sworn to uphold.
>
> And this Court gives appropriate and due deference to the executive and legislative branches—and understands the limits of its own (and their) role(s). But due deference does not eliminate the judicial obligation to rule on properly presented constitutional questions. Courts must safeguard core constitutional rights. A long line of Supreme Court precedent adheres to that fundamental principle in unequivocal language. Although it is true that there are scattered cases—primarily decided during World War II—in which the Supreme Court sanctioned undue deference to the executive and legislative branches on constitutional questions, those cases are generally now considered an embarrassment (e.g., Korematsu v. United States, 323 U.S. 214 (1944) (upholding the internment of Japanese Americans based on wartime security concerns)), or

> referred to by current members of the Supreme Court (for instance, Justice Scalia) as “wrong” (e.g., Ex parte Quirin, 317 U.S. 1 (1942) (allowing for the military detention and execution of an American citizen detained on U.S. soil)). Presented, as this Court is, with unavoidable constitutional questions, it declines to step aside.

If you relish such things, especially the rare ones where the good guys win, the whole decision is at the link. If you would like to read more, but not the entire 112 pages, the summary portion is contained in pages 3-14. For those longtime readers of Emptywheel, note the citation to *Ex Parte Milligan* on pages 12, 37, 51 and 79. Our old friend Mary would have been overjoyed by such liberal use of *Milligan*, especially this passage by Judge Forrest on pages 79-80:

> A few years later, in *Milligan*, the Supreme Court held:
> “Neither the President, nor Congress, nor the Judiciary can disturb any one of the safeguards of civil liberty incorporated into the Constitution, except so far as the right is given to suspend in certain cases the privilege of the writ of habeas corpus.” 71 U.S. at 4. The Court stated, “No book can be found in any library to justify the assertion that military tribunals may try a citizen at a place where the courts are open.” Id. at 73.

Indeed. Keep this is mind, because the concept of military tribunals not being appropriate to try citizens “at a place where the courts are open” is a critical one. Although the language invokes “citizens”, the larger concept of functioning courts being preferable will be coming front and center as the Guantanamo Military Tribunals move through trial and into the appellate stages, and will also be in play

should Julian Assange ever really be extradited for trial in the United States (a big if, but one constantly discussed).

So, all in all, yesterday's decision by Judge Forrest has far ranging significance, and is a remarkably refreshing and admirable one that should be widely celebrated. That said, a note of caution is in order: Enjoy it while you can, because if you are the betting type, I would not lay much of the family farm on Forrest's decision holding up on appeal.

There was talk on Twitter that the Supreme Court would reverse, but I am not sure it even gets that far. In fact, unless Chris Hedges et. al get a very favorable draw on the composition of their appellate panel in the 2nd Circuit, I am dubious it goes further than that. And one thing is sure, the government is going to appeal.

DOJ ETHICS: PIN HEADS, BLOCH HEADS & THE ROCKET

Whoooosh! And, like that, the complete acquittal in *USA v. William Roger Clemens* came and went. The five year long, over $10 million Clemens prosecution was a joke on the tax paying American public.

And so it goes for one defendant accused by the

Department of Justice. What about other defendants who have come within the purview of the DOJ for false statements, perjury and obstruction of Congress? Say, for instance, our old friend Scott Bloch.

A friend of mine asked if the following order entered yesterday in Bloch's case by DC District Court Magistrate Judge Deborah Robinson meant Scott Bloch must report immediately to Jail?

> By a petition filed on June 19, 2012, the United States Probation Office advised that Defendant requests permission to travel internationally in August, 2012. U.S. Probation Office Petition (Document No. [74]) at 1. In the petition, the Probation Office notes that on April 27, 2010, Defendant was released by this court pending sentencing, subject to the condition, inter alia, that he report his travel plans to the Probation Office. Id.; see also Release Order (Document No. 5). The release order was entered after Defendant appeared before the undersigned and entered a plea of guilty to a one-count information by which he was charged with criminal contempt of Congress. 04/27/2010 Minute Entry. However, by an order filed on August 2, 2011, Defendant was permitted to withdraw his plea. Memorandum Opinion and Order (Document No. 73) at 1, 13. In the interim, no other charge has been filed, and no further proceedings have been scheduled; accordingly, Defendant is not on release pending sentencing, and has not been since August 2, 2011, the date on which he was permitted to withdraw his plea. It is, therefore, ORDERED that the release order (Document No. 5) is hereby VACATED nunc pro tunc to August 2, 2011. (lcdar3)

No, my friend was joking; but, still, the laugh is superbly taken. Looks to me like Bloch is

scott free (some pun intended) OR (Own Recognizance) pending any other charges. Where are the new charges and/or plea?

When, if ever, will the DOJ Public Integrity Section (PIN) get around to pursuing the blatant in your face, egregious, actual crime against Congress committed by a critical federal investigative and prosecutorial attorney appointed to protect federal employees and whistleblowers instead of the silly corporate and in-bred Congressional protection racket charges inherent in the Roger Clemens, Barry Bonds and John Edwards prosecutions?

Okay, if I was Bloch's defense attorney, William Sullivan of Pillsbury, I would absolutely say this is bunk, put my client on OR or cut him loose considering the dilly dallying, thumbs in ass, conduct of the DOJ. Since I am not him, I would like to know what the heck is going on. It has been nearly a year since Royce Lamberth, somewhat surprisingly, allowed Bloch to withdraw from his plea.

In their collusive attempt to get Bloch's plea withdrawn, the DOJ and Bloch avowed they had already been discussing alternative paths for either charging or plea. That was before Lamberth allowed the withdrawal, i.e. well over a year ago. What in the world is stopping the DOJ from prosecuting this Criminal? In that same time period, they tried Roger Clemens twice, the second one lasting over two months, but apparently they just can't find the time to prosecute a real criminal like Scott Bloch, doing real damage to government and Congress

Here is the thing, the date of the "Geek Squad wipe" Bloch obstructively did to his government computers was 12/18/2006 – the statute has now presumptively run on that. House Oversight requested their depo/interview on 12/6/2007 and actually took it on 3/4/2008. So, probably, there are still offenses within the SOL but it is wasting away. This just is NOT that complicated of a gig IF you are not completely pulling punches.

Seriously, please, tell me why we are still hanging where we are? A misdemeanor level rookie municipal prosecutor could have convicted Bloch in about a day and a half, maybe two day, long trial. The crack team at DOJ lead by the heads of PIN just can't get er done? Scott Bloch should be heading to prison, not off on an Independence Day holiday vacation.

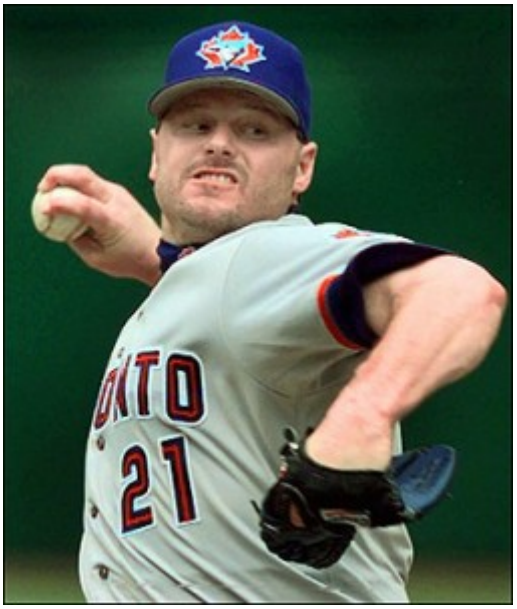
The real question here is not when will Bloch be dealt with, but why has he not been standardly, and appropriately – yet – still, even as of this quite late date within the statute of limitations? This course of conduct by the DOJ of colluding with Bloch to have him avoid accountability is a mocking joke on both the Article I Congress and the Article III Court. Yet, no questions are asked, no explanations given by DOJ, and few, if any, answers demanded by the press or Congress. The Obama DOJ, from their first moment, unequivocally, and inexplicably, aligned and sided with the criminal defendant Bloch, and diametrically opposite the interest of the public and rule of law.

Why do you think that is? Take a look at this in contrast to the way Roger Clemens was treated by the United States Department of Justice. And the way the Banksters have NOT been treated to the "niceties" of the US Criminal Justice system.

Golly, I wonder why that is? If Barack Obama and Eric Holder's DOJ cannot answer for the lack of viable Wall Street/Financial Products Industry prosecutions, and have such little to say after the catastrophically worthless persecution of Roger Clemens, maybe the DOJ could at least tell the people it represents what the hell it is doing with Mr. Scott Bloch.

Naw, that is probably just too much to ask from America's finest.

ROCKET PITCHES A NO HITTER; DOJ WHIFFS A GOLDEN SOMBRERO+2



Six up, and six down for William Roger Clemens. From Jim Bambach at Newsday:

> Former Yankees pitcher Roger Clemens was acquitted Monday on all six counts in his trial on charges he lied to Congress when he denied using performance-enhancing drugs, ending a 41/2-year battle to clear his name.
>
> The jury deliberated for less than 12 hours before reaching a verdict, capping a two-month trial at which 46 witnesses appeared, including the wives of Clemens and accuser Brian McNamee.

Yep, six counts alleged, six counts acquitted on. Not a hit on any of them. And if the jury deliberations had not have been broken up by a weekend, the verdict may well not have taken even the nine plus hours it did. From the clear call of the unanimous verdicts, I would also hazard a guess that the jury may not even have been out the short time it was but for the fact lead Clemens defense attorney Rusty Hardin opened a wee door in cross-examining the tainted prosecution star witness Brian McNamee, allowing for, eventually superfluous, rebuttal evidence

to come in by the DOJ to try to bolster their flawed criminal witness McNamee. Even that was clearly nowhere enough for the wise jury.

The entire substantive DOJ case flowed through two discredited and sham witnesses, Brian McNamee and the always questionable Fed Investigator Jeff Novitsky. If they were not discredited before, let the record reflect they are now.

More from Bambach:

> Clemens' attorney Rusty Hardin called his client "a helluva man."
>
> "This is a celebration for us," Hardin said. "Let me tell you something. Justice won out."
>
> The loss was a blow to the Justice Department and the prosecution, which last year caused a mistrial on the second day of the trial.
>
> Prosecutors declined to comment on their way out of the courthouse.

Yes, the Brave Sir Robin like crack prosecutors at DOJ so ethically turned their heads and fled like Sir Robin. Brave Sir Robin.

The focus, though, is easy to peg on Brian McNamee, and *does* he deserve it. But, remember, the single person who pushed this puppet theater, in addition to George Mitchell and corporate interest, Bud Selig, was Jeff Novitsky. One still wonders if the story of the MLB, IRS, DEA, HOS/GRC(Waxman/Congress) and Novitsky "workgroup" will ever be fully disclosed; but the surface appearance is not all that attractive.

But, hey, let's not re-cover what has already been said. Here is how I described the gig in February of 2008:

> First off, if the Federal government thinks Roger Clemens was seriously

> involved in steroid and HGH use and promulgation, investigate and prosecute him. But the government doesn't give a rat's ass about that, they are hot after Clemens because he had the audacity to challenge the God/Petraeus like Mitchell report. And make no mistake about it, if you can't believe the Clemens portion of the Mitchell report, you have to wonder about the the whole thing (save for a few general recommendations) and the quality of work that went into it. As I said below in the comments, the Congress is vested in the Mitchell report Very heavily, because they think it was the implementation of their last little dog and pony show with McGwire, Sosa and Palmeiro (by the way, you don't see any of those guys being hammered like Clemens do you?) and because George Mitchell is very close to many in the Congressional leadership including, most notably, Henry Waxman. This is all about bucking up the Mitchell report and, additionally, the work of Novitsky, who is in the middle of the whole mess and the Barry Bonds portion, whom they are dying to nail.
>
> The main issue that bugs the bejeebies out of me on this mess is a concept in criminal law known as "parallel prosecution". Simply put, what this means is multiple prosecutions, by multiple coordinated governmental entities, of one individual, at the same time, usually in an effort to gain advantage over him or deny his ability to effectively defend himself. There are many examples of this in the law, the layman simply doesn't think about it in those terms, so never really grasps the implications. One common example in drug crimes is the attempt by the government to civilly seize and forfeit the defendant's property so that he has to give testimony and answer questions in

order to keep his property while they are prosecuting him on the underlying criminal case where, of course, he has a 5th Amendment right to silence and to make the government prove his case. The problem with this is that the government is using an artifice to breach the defendant's 5th Amendment right against giving testimony against himself. If he doesn't stand in and give testimony and subject himself to full examination, he loses his property because of an alleged crime he has not even been convicted on; if he does fight, he is opening himself up to examination that can be used against him.

This is the problem with the Clemens scenario. Clemens was the big fish in the Mitchell report and, make no mistake about it, Mitchell needed a big fish for his report, and preferably a white one to offset some of the complaints made about the major focus on Barry Bonds in the past. It is my understanding that Mitchell did not originally want to name individuals in his report, but id so after being urged very strongly by congress and MLB to do so. The second that Clemens exercised his right to say "Hey, thats not right, I am innocent", the weight of the world was reigned down on him. He immediately was accused of lying and became the subject of discussions of criminal charges because he was challenging the credibility of the mighty Mitchell report. But Clemens was not afforded the

> opportunity to have the Government put up or shut up with their evidence against him and to have his right to test that evidence for weight and veracity. Instead, he was immediately under the combined microscope of the IRS, FBI, DEA and the Department of Justice (yes they are all actively involved in this; you just don't hear about it). Then, to top it off, the United States Congress starts getting in on the act and compelling testimony under oath. Before he has ever been charged with any crime. All because he had the audacity to say "I am not guilty". And all of this, at the time of the Mitchell Report, was based on the unsubstantiated tales of a known, proven liar and suspected rapist, with no physical evidence and no corroboration. That is pretty chilling if you ask me.

Evidence counts, and this is always where the real evidence, put to even the most fundamental test, has led. I'll be honest, for the worthy job the inestimable Rusty Hardin did on this case, the one huge thing he did wrong was to open the door on cross-ex of the government's witnesses, most notably McNamee for allowance of rebuttal confirmation of McNamee's alleged honesty as to other MLB players such as Andy Pettitte and Chuck Knoblaugh. But the jury clearly, and unequivocally, drew a judgment on where the credibility was between McNamee and Novitsky on the one hand, and Roger Clemens, on the other hand. The vote was the latter, and not the former.

The DOJ went six with Roger Clemens and the Rocket no-hit them. And William Roger Clemens hung a Golden Sombrero+2 on the DOJ. Hang that picture with John Edwards, Ted Stevens and Barry Bonds. Not real flattering for the PIN-Heads at DOJ.

[As a well deserved thanks, I would like to point out Jim Baumbach of Newsday, Mike

Scarcella of ALM, TJ Quinn of ESPN and Del Wilber of the Washington Post. Their Tweeting and reporting was absolutely incredible, individually and as a whole. I know what scintillating coverage from court, especially the court of Judge Reggie Walton at the DC District Courthouse is all about; over five years ago the owner of this blog and some other kick ass girls (i.e Jane Hamsher, Jeralyn Merritt and Egregious) set the standard. I do not say this gratuitously, the new crew truly did yeoman's, and incredible, work.]

Oh, and, again, after seeing this dynamic map of the incredible extent of the DOJ investigation of Roger Clemens, any more questions on why DOJ cannot get around to prosecuting banksters??