

WILLIAM WELCH LEAVING DOJ; MAIN JUSTICE CIRCLES THE ETHICAL WAGONS

Apparently the thrill is finally gone, or at least soon to be gone. Carrie Johnson at NPR has just reported:

A federal prosecutor who led the elite public integrity unit when the case against the late Alaska Sen. Ted Stevens collapsed has told associates he will leave the Justice Department.

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A spokeswoman for the Justice Department and a representative for Welch had no comment on his departure, which one source said he characterized as a "retirement."

Welch had been scheduled to lead a controversial prosecution later this year of former CIA official Jeffrey Sterling, who is accused of leaking secrets to New York Times reporter James Risen. That case has drawn widespread media attention because it could set important precedent on the issue of whether reporters enjoy some sort of legal privilege that could help them protect their sources.

This is interesting, actually fascinating news. As Carrie notes the Sterling matter is hanging in the lurch. In fact, it is waiting on an interlocutory appeal decision from the 4th Circuit over claims that the DOJ, once again led by Welch, played fast and loose with critical evidence disclosure. I do not, however, think that the impetus behind this somewhat surprising announcement. The 4th case appears to have completed briefing with the government's filing

of a redacted reply about six weeks ago; however, I don't think a decision is likely coming that fast and federal appellate courts are not that leaky. Although, to be fair, District and Circuit courts do, occasionally in media intensive cases, give the parties a heads up a decision is coming.

More likely, this is more fallout from the Ted Stevens case and the Schuelke report. In fairness to Welch, he was not one of the hardest hit DOJ attorneys in Schuelke's report, but he was blistered by Schuelke at Schuelke's testimony in front of the Senate Judiciary Committee in late March:

Schuelke said tight deadlines before the lawmaker's October 2008 trial and a series of missteps within the Justice Department's public integrity unit where leaders William Welch and Brenda Morris "abdicated supervisory responsibility" contributed to the evidence sharing lapses. The failings prompted new Attorney General Eric Holder to abandon the case in 2009; Stevens died a year later in a plane crash after he had lost his Senate seat.

The odds are fairly good that the DOJ is putting the finishing touches on its long awaited OPR report on the Stevens fiasco and, after Schuelke, needs a sacrificial lamb. And Welch is a prime candidate to be sacrificed. But that would beg the question of what will they do about Brenda Morris, whose conduct in Stevens was much more egregious and central, as a supervisor, that even that of Welch. And it should not be forgotten that Brenda Morris was also smack dab in the middle of another catastrophic black eye for the DOJ, the Alabama bingo cases. So, there are some real questions for DOJ there.

As to William Welch though, with both the OPR report nearing completion, and the prospect of a House Judiciary inquiry looming later this week,

it would seem that Welch's newfound desire for "retirement" has a bit of a forced edge to it.

One last thing should be kept in mind: the legislation proposed by Lisa Murkowski and having key bi-partisan backing after Stevens and the Schuelke Report, to reform federal evidence disclosure rules for the DOJ. The DOJ is literally, and cravenly, apoplectic about the proposed reform and has promised they have "learned their lesson" and that everybody should just "trust us".

DOJ had been fighting disclosure reform hard for quite a long time; but there will never be better momentum than is present now, and they know it. Any seasoned criminal defense attorney will confirm that the far more open and reciprocal discovery rules found at the state level in several more enlightened jurisdictions (I can vouch for this in Arizona, which is one of them) work far better than the archaic disclosure rules extant in federal court. It would be a huge benefit to fairness in the criminal justice process, and it IS an attainable goal. And that, too, may be why we are seeing the sacrifice of William Welch.