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Prosecutor **William Welch II** is up to his old tricks at the helm of Obama's record-breaking Espionage Act prosecutions against so-called "leakers," who are more often than not whistleblowers. *Politico's* Josh Gerstein **reported last week** that a federal Judge took the extreme step of barring two government witnesses from testifying in the Espionage Act case against former Central Intelligence Agency (CIA) employee Jeffery Sterling because Welch's team withheld impeachment evidence from the defense.

For those non-lawyers - Criminal Procedure 101 teaches would-be attorneys that prosecutors have a duty to provide the defense with exculpatory or impeachment evidence. It's a basic principle, which any first-year law student should know, and which, apparently, **"bully"** prosec utor Welch frequently forgets, or worse, ignores.

Welch's failure to hand over exculpatory evidence is not unique to the Sterling case. In the **co mpletely-failed** Espionage Act case against National Security Agency (NSA) whistleblower **Thomas Drake**, Welch's tactics included keeping potentially exculpatory evidence from Drake's defense team for months after the Indictment was handed down. For over six months, Welch's team failed to produce evidence that one of the allegedly classified documents Drake was charged with improperly retaining was **declassified** two months after the indictment. Welch waited ten months to turn over evidence that another document that formed the basis of an Espionage Act charge against Drake had been – **in the words of Drake's criminal defense team** –

. . . published as 'unclassified' and **had never** been deemed 'classified' until **after** it was recovered from Mr. Drake's home. (Emphasis added).

Welch also told Drake's criminal defense team that potentially exculpatory evidence relating to Drake's years-long cooperation with a Department of Defense Inspector General (DoD IG) investigation had been destroyed.

Let us not forget what Welch was up to prior to taking on whistleblower-punishing portfolio of Espionage Act prosecutions: he was heading the Justice Department team that infamously-botched case against late Alaska Senator Ted Stevens. An Appeals Court recently **upheld** a civil contempt order from the Stevens case issued against Welch's team for--you guessed it--ithholding exculpatory evidence.

Welch's abysmal conduct in the Stevens case and glaring defeat in the Drake case should have been enough for the Justice Department--and Criminal Division head Lanney Breuer in particular--to refer Welch to the state bars in which he is licensed, take away his important cases, or at least reconsider blindly supporting him. Instead, Breuer circled the wagons around Welch **even after** Justice Department's embarrassing defeat in Drake, **telling** ***Washingtonian*** :

I've grown to very much rely on his judgment, his acumen, his intellect, and his sense of justice, which I think is terrific.

Now, Welch has continued his pattern and practic of questionable conduct in the Sterling case, and the Justice Department **argued** that the Judge's ruling – **reportedly** a direct result of Welch again failing to turn over evidence – (cue the violins) ruined the government's case:

The district court's decision to strike these witnesses effectively terminated the prosecution.

Wrong. Welch ruined the government's case.

His latest blunder in the Sterling case really ought to be enough for the Justice Department to quit relying on Welch's "sense of justice," but such a result seems unlikely considering the Justice Department's track record of wildly overstated confidence in Welch. A more realistic hope is that the courts continue to refuse to swallow Welch's excuses for withholding evidence, and that the ill-advised Espionage Act prosecutions targeting whistleblowers continue to fall apart.

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