

For those in positions of public trust, the fall from grace is swift and sure as it should be. The public that places people in high office have a right to know the bargain they made with their vote. It is also human nature to have an interest in the failings of others. Those failings give those of us who follow the law a sense of gratitude that our ordinary lives are extraordinarily better than those seen as more privileged. State Representative Richard Retherford is such an example of the fall. We expect our law makers to be accountable to a higher standard and this, too, is undeniable. This is true even if the law does not provide a higher standard for certain crimes committed by office holders. There are enhanced penalties for those who violate the public trust, but drunk driving and knowingly carrying a loaded firearm in such a vehicle are not among them even with a lengthy record of speeding violations and traffic accidents. Therein lays the difference between penalties at the ballot box and the jury box. One of my roles is to assure that equal justice for offenders of laws applies and that under the law, Representative Retherford has been treated no better or worse than the law provides. Of course Mr. Retherford should have known better as a CCW license holder, Marine veteran and State Representative than to drive under the influence of alcohol and knowing better does not compel unequal treatment. The public does need to know that he has not received special favorable or unfavorable treatment in the prosecution of the charges against him and he did not, as will be readily seen in this release.

When Mr. Retherford was arrested, I made sure he was not permitted to bond out of jail until his first court appearance and sought successfully the rescission of a bond about to be put into effect that would have let him out of jail shortly after sun up on the day of his arrest. This was not punitive on my part or treating him worse because of his position, but to insure that he was not treated better than other weekend alleged offenders who lack access for a quick release on bond before seeing a judge for that purpose.

There has been widespread media coverage with a blood lust by his political enemies for his resignation before the completion of the legal due process and legal presumption of innocence he had a right to expect and also sympathy by his family, friends and colleagues. He does have only himself to blame for an interested public regardless of its sentiments for or against him. Those sentiments, however just or unjust, do not control blind justice that requires Mr. Retherford to be treated like other similar cases where there is no special penalty enhancement because of his high position such as required with theft in office cases, as an example.

The Butler County Grand Jury considered his case and Mr. Retherford agreed to appear and testify. By law, the deliberations of the Grand Jury and vote of any Grand juror shall not be disclosed, but the grand jury did indict Mr. Retherford for driving under the influence of alcohol, a misdemeanor, and did not indict for the charge of improper handling a firearm in a vehicle at the time of his arrest. The loaded firearm was in a holster and under an arm rest, not on his person. That offense is a 5th degree felony and not a 4th degree as reported, but the consequences would have been no less grave for Mr. Retherford including the forfeiture of his office upon conviction of that charge. I fully support the Grand Jury's

decision. This decision should not be construed by some as license to carry a loaded pistol in a vehicle while intoxicated. Law enforcement should and will continue to arrest under such circumstance with the consequences to be determined by further legal proceedings.

I commissioned a review in my office of all similar cases since computerized reporting began in 2005. I also spoke with other neighboring prosecutors to see how equal justice is being applied in these cases where other aggravating circumstances are absent. The history of my office shows the overwhelming majority of such cases resulted in a plea of guilty to the driving under the influence of alcohol charge(OVI) and a grand jury no bill (equivalent to a dismissal) or a reduction to a misdemeanor of the weapons charge. The same or similar result is the experience of the neighboring county prosecutors that I polled. In one, treatment in lieu of conviction is the model and in another, weapons charges against first offenders without additional aggravating circumstances, like Mr. Retherford, are ignored. In another, diversion of the weapons charge without a conviction is the usual course when no aggravating circumstances exist. Of further note, three days following the arrest of Mr. Retherford, a Butler County Sheriff Deputy agreed with my assistant prosecutor in the same court as Mr. Retherford's case to dismiss a felony weapons charge against a drunk driver identical to the charge against Mr. Retherford and accept his guilty plea of driving under the influence of alcohol. As with Mr. Retherford, there were no additional aggravating circumstances regarding the firearm to justify more serious consideration. Like Mr. Retherford, he had no prior alcohol or weapons related convictions and his plea was accepted by the court. Equal justice under these circumstances has been applied in a common sense approach so that the ordinary and extra ordinary individual is treated alike. There have been a number of cases involving law enforcement officers where higher standards are the rule, as an example, that have had identical circumstances and had the benefit of this approach. One such example is a retired police officer, not a deputy sheriff, who had too much to drink after a service for a fallen officer. He chose to drive intoxicated and had, upon his arrest, a loaded pistol in his waist band. This was much more serious than the Retherford case, but the Grand Jury still ignored it. His retirement was not ruined with a felony conviction under the non-aggravating circumstances and resulted in a conviction of drunk driving. He learned much from the incident and in January this year he has been signed off by the Butler County Sheriff as a Special Deputy. Regrettably, pundits and commentators failed to recognize that it is not politics, but common sense that has saved these types of cases from a straight jacketed application of the law. The point is simple. Equal justice has always been applied to our citizens in this type of case regardless of their positions under first offended circumstances and where a loaded firearm is not used in any threatening manner and when there are no other aggravating factors.

In cases such as those involving Mr. Retherford, wide discretion is given to prosecutors on how to proceed. As one neighboring county grand jury chief assistant prosecutor I polled wisely notes which I repeat with his consent "just because we can does not mean we should" when it comes to charging serious crimes with serious consequences beyond what the law provides. Consistent equal justice is the guide regardless of social and political forces at work. Mr. Retherford has paid a price of public censure and condemnation far beyond the power of the courts to impose and his indictment for drunk driving during times of great problems with youthful abusers of alcohol is noted and will be well publicized. Those social consequences, however, do not play a role while seeking a consistent, equal and fair

application of the law. Needless to say regarding legislators, the public expects that it will never hear "drinks are on the House!" It is left to Mr. Retherford to seek redemption and make good on his oath of office to serve the best interest of the public and up to the legal system alone to ensure a just result.

No doubt there will be strong opinions about this outcome one way or the other and this case has brought out more irons in the fire than a Texas cattle ranch. None of that is my concern and for my part, with Mr. Retherford's indictment for drunk driving, the felony case against him case is closed without further comment.

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