

Post-mortem of a scandal: Illicit sex, cash payments, dark money and a resignation

Opinion

Hardly anyone looks good in the story of Eric Greitens' scandals of illicit sex and shady campaign practices: not Greitens, not some members of the press, not the prosecution, not the million dollar defense team, not the criminal justice system. The scandal is a car wreck of journalistic, legal and civic ethics.

No wonder people in the capitol nicknamed the House Special Investigation Committee on Oversight SICO.

Greitens looks the worst, right down to the sickening victimization theme of his resignation speech. The former Navy SEAL, Rhodes Scholar and family values champion claimed all along, Trump-style, that the "fake charges" were part of a "political witch hunt" by Democrats and "liberals."

The claim bordered on the ludicrous in that Greitens has admitted the essential elements of the scandal. He admitted having the adulterous affair. He hasn't denied taking a photo of his partially nude mistress taped to his weight equipment in his basement. And he admitted using a donor list from his former charity to collect campaign contributions in a scheme Republican Attorney General Josh Hawley says probably violated the law.

In addition, it was Republicans who posed the greatest impeachment threat, not Democrats.

Even in his stunning resignation announcement Greitens complained about "endless personal attacks" and maintained, "I

have not broken any laws nor committed any offense worthy of this treatment.”

The press can take satisfaction for bringing the scandals to light. But Missouri Times’ publisher Scott Faughn gave the media a black eye by unethically delivering \$50,000 in cash to the lawyer promoting the sex scandal. Faughn spent three hours before the House committee managing not to say where he got the money, which was part of a \$120,000 payment.

Meanwhile, reporters found themselves trailing haplessly behind a governor who wouldn’t answer them, shouting unanswered questions his direction. “Governor did you take a photograph of that woman?” “Governor, did you take that donor list and raise campaign funds illegally?” “Governor can you survive impeachment?” “Governor, why are you using taxpayer security guards to evade the press?”

Shouting questions at high public officials has been a tradition since the late Sam Donaldson of ABC news perfected the technique during the Reagan years. The Greitens reporters think they are doing their job in highlighting Greitens’ refusal to answer questions. But they just looked rude and lent sympathy to the unresponsive governor while playing into a tired stereotype of how reporters behave.

Lawyers look terrible, too

The million dollar dream team of politically connected lawyers defending Greitens played the tried, true and tired card of attacking the woman – the hairdresser/mistress who was the key witness in the invasion of privacy criminal case. The case was dropped in early May but could be retried by a special prosecutor who has since been appointed.

The Greitens defense team included Edward L. Dowd Jr., former U.S. Attorney from the Democratic Dowd family, James Bennett, who clerked for U.S. Supreme Court Justice Anthony M. Kennedy, James G. Martin, himself a former U.S. Attorney, Scott

Rosenblum, a top defense lawyer in town, and Catherine Hanaway, the former Republican House Speaker who ran against Greitens and the third former U.S. Attorney on the team.

The extent to which the defense lawyers tried to humiliate the hairdresser came into focus during the House hearings as members of the committee read into the record the questions Rosenblum asked her in the criminal invasion of privacy case. The questions pushed the bounds of propriety in an attempt to undermine the woman's credibility.

Among the questions Rosenblum asked during a 14-hour deposition were how she performed oral sex and whether she was aroused during it. He also asked if she had a body piercing and whether the governor was playing a Fifty Shades of Grey role during the encounter.

Rep. Jay Barnes, the Republican chairman of the special House committee, told Dowd he found a portion of the conduct of Greitens' legal team "disgusting."

Rosenblum had introduced in a deposition a photograph of a woman from a pornographic site. The woman involved with Greitens denied that the photo was of her, and people on the House committee, who had questioned the woman, agreed the photo did not portray her. Barnes asked Dowd if he would stipulate the woman in the pornographic photo was not the same woman with whom Greitens had the affair, who has been identified in the House documents as "witness number one." But Dowd refused.

Barnes said Dowd's refusal "put the committee in a box." If the photo was redacted in the testimony evidence, Greitens' lawyers would accuse the committee of hiding information. If the photo were used, the Greitens' team would insinuate that the photo was of "witness number one." Barnes said the only way to resolve the situation was to reveal a photo from the pornographic website along with that of witness number one.

Dowd said he was unable to stipulate to the accuracy of the photographs because he didn't know.

"It was a Catch 22," Barnes said. In a closed meeting, the committee unanimously found the photograph from the pornographic website was not witness number one.

"I've been disappointed throughout this process by misrepresentations of fact and misrepresentations of law," Barnes told Dowd. "Yesterday's conduct in regards to those particular photographs is flat out disgusting to me."

A day later, after a dispute about evidence, Barnes amped up the criticism saying Dowd lied to the committee each of three days that week.

Dowd had complained the committee acted unfairly in denying Greitens' lawyers the chance to cross-examine witnesses, but the lawyers' abusive questions justified the committee's decision.

A weak prosecutor

The House committee hearings followed the decision of St. Louis Circuit Attorney Kim Gardner to drop the invasion of privacy criminal case against Greitens.

The prosecution was a disaster for Gardner, who had come into office on a wave of popular support that grew out of the Ferguson protests against police brutality.

Even before the Greitens prosecutions there were questions about how well Gardner was running the prosecutor's office. But the Greitens case cast an especially harsh light on her weaknesses as she was forced to drop the case after four days of jury selection. Gardner didn't have a seasoned prosecutor to take on Greitens' dream team of defense lawyers.

It also hurt that she didn't have the evidence. She didn't have the photo the hairdresser said Greitens took of her

partially nude in his basement.

Michael A. Wolff, former chief justice of the Missouri Supreme Court and dean emeritus of Saint Louis University Law School put it this way on St. Louis On the Air: “The prosecution did not have evidence that there was a photo that was transmitted to a computer or to another person. That’s one of the essential elements of the crime. So if they had started the trial and the prosecutor had made the opening statement, saying to the jury, ‘This is what we’re going to prove,’ the prosecutor didn’t have any evidence as to that particular thing. So what are you going to do in that situation? At this point you better get out.”

Wolff said the case is a “real civics lesson.”

“The governor of the state of Missouri ... was treated worse than many people in the criminal justice system and he was treated better than many people in the criminal justice system. ... We should start talking about reforming the criminal justice system. There was a lot wrong that is brought out here ... The use of the grand jury for example ... You get the grand jury to do an indictment without having presented them evidence as to all of the elements of this particular offense.

“This level of felony usually you don’t have somebody go on for four days with jury selection ... and motions for this and motions for that, there are so many motions and they went to the court of appeals a couple of times ... so there is a lot of lawyering in here that the average person doesn’t get.”

Summarizing his point, Wolff said in an email, “The average Joe would not have been charged, and he would not have had the million-dollar defense.”

The prosecution was not only tainted by a lack of evidence but also by the behavior of a special investigator hired by Gardner. Former FBI agent William Tisaby, hired to investigate instead of the St. Louis police, ended up taking the Fifth

Amendment when it turned out he had apparently lied when he said he hadn't taken notes during an interview with the hairdresser.

It's hard to work up sympathy for Greitens' civil liberties being violated by an overly zealous prosecutor when his expensive lawyers used what Gardner accurately described as a "scorched earth" strategy to derail the case. But rich, powerful politicians are entitled to constitutional rights too. And one of the most basic rights is not to be prosecuted when there isn't enough evidence or when other people wouldn't be prosecuted for the same wrongdoing.

Gardner's deal with Greitens to drop a fundraising case in return for the resignation doesn't restore Gardner's reputation. Gardner did not get an admission of wrong-doing from the the governor. Instead, she got something for herself – an agreement to release Gardner, her office and consultants from civil liability. Two portions of the seven-item agreement were blacked out, providing an unsatisfactory end to the case.

Midas touch in reverse

Then there is the unsavory way in which lawyers on both sides were funded, including the involvement of a conservative publisher.

Faughn, publisher of the Missouri Times, delivered a \$50,000 cash payment to Albert Watkins, the lawyer for the hairdresser's former husband. Another \$50,000 was delivered by a messenger, eventually bringing the payment to Watkins to \$120,000. It was the husband's secret taping of her confession that led to the story.

It doesn't take a journalism degree to know it is unethical for a newspaper publisher to secretly fund accusers in a story the news organization is writing about.

This is not only journalistic malpractice but also was relevant to the fairness of any court proceeding because the payments encouraged the disclosure and prosecution of the governor and could be seen to have encouraged testimony against him.

Watkins is a publicity-seeking lawyer with a Midas touch in reverse for legal cases he touches. It was Watkins who claimed falsely at the height of racial tensions over Ferguson that there had been a "scheme of artifice to steal newborns of color" from Homer G. Phillips hospital – a claim never supported by evidence and later disproven.

During the House proceedings, Watkins played to form. He used profanity, told a House member to "shut your mouth" and crudely described the governor's sex act.

Meanwhile, a journalist with an important role in the disclosure of Greitens' affair, Lauren Trager of KMOV, has been unfairly criticized in some reports of how the sex scandal broke last winter. News organizations have widely reported that she used a "false name" in making an appointment with the hairdresser. But Trager and KMOV have said repeatedly that she identified herself by her name and profession when talking to the hairdresser. The hairdresser pleaded with Trager not to run the story, but she also talked to Trager.

Trager and KMOV acted properly in running the story once the governor confirmed the affair.

One can sympathize with the hairdresser feeling as though her former husband, Watkins and the media dragged her into a scandal she didn't want to have to explain to her children. In an emotional interview with KSDK in late May, she said, "I didn't want this. I wasn't out to get anyone. I really was just trying to live my life."

Somewhat lost in the controversy about the money paid Watkins

is the vastly greater sums of dark money paid to Greitens' hot shot lawyers. Greitens, despite his campaign calls for greater transparency in government, used dark money during the campaign and as governor to press his political fortunes and agenda. He also used dark money to fund his legal defense and his TV ads blaming George Soros and urging conservatives "Don't let the liberals get away with it."

Hanaway, who orchestrated the GOP's successful campaign to gain control of the Missouri House in 2002, did not distinguish herself in defending Greitens on the campaign money issues. She said the donors to The Mission Continues were Greitens' friends and that "to the extent that he did refer to The Mission Continues list, it would be like you or I looking up something in the phone book."

It's a deceptively simple and misleading analogy. Looking something up in a phone book is legal, but Attorney General Hawley, himself a Republican, says obtaining the charity's list without the charity's approval and using it for political purposes probably violates the law.

It's also ironic Hanaway is defending the governor on money raising tactics when her own campaign thought Greitens was using shell companies to conceal the identity of big donors. And, the Post-Dispatch's Tony Messenger has pointed out the hypocrisy of the former U.S. attorney criticizing Barnes for talking to the FBI about possible illegal foreign donations to Greitens.

In the end, though, the final decision of Greitens to walk away may have been dictated in part by money. In his statement, he cited "millions of dollars in mounting legal bills." And there was the prospect he couldn't charge the taxpayer for his impeachment lawyers and other legal costs. Even dark money can dry up in the face of a hopeless political cause.

Hear Freivogel and other St. Louis lawyers discuss Greitens resignation on St. Louis Public Radio

<http://news.stlpublicradio.org/post/legal-roundtable-analyzes-missouri-governors-sudden-resignation>