

BLOCH: MAKING SOME SENSE

I'm going to revise what I said yesterday when I suggested there was no method to Scott Bloch's madness. After reading the longer document summarizing the Office of Special Counsel's Task Force investigations, several key patterns stick out:

- For investigations pertaining to DOJ, the Task Force's investigations got caught up in the turnover between Alberto Gonzales and Michael Mukasey
- For the investigations pertaining to the politicization of federal agencies, the Task Force was presented with real jurisdictional issues that presented challenges for the investigation

This doesn't mean Bloch is a particularly good manager or investigator. It appears, rather, that he got in over his head when he attempted to take on this high level investigation in May 2007 and, certainly by November 2007, had made these investigations personal.

Timing

The timing reflected in the document reveals some of the problems with the Task Force itself. It was formed in May 2007 to conduct larger investigations—primarily the politicization of government agencies (arising out of Henry Waxman's own investigation of Lurita Doan), and the politicization of DOJ. Thus, it was started after both those events had significantly played out and (in the case of DOJ) many of the players

had quit. The Task Force also inherited a couple of investigations started earlier—primarily an investigation into Rove's travel started in March 2006.

That means the Task Force didn't really get started until June 2007. On August 27, 2007, Alberto Gonzales resigned. Michael Mukasey was nominated on September 17, 2007, and approved by the Senate on November 8, 2007. Then this document was drafted on January 18, 2008. So what we're seeing in the document—particularly as it relates to anything pertaining to DOJ—are the activities taking place after the trauma resulting from the USA Purge and through the period of transition between Gonzales and Mukasey. This explains at least some of the issues surrounding the investigations into DOJ.

For example, OSC had already begun an investigation into the Iglesias firing on May 4, 2007. Remember—that investigation was originally started because the Administration stated publicly that they fired Iglesias because he was an "absentee landlord" because he traveled so much in connection with his service in the Naval Reserve. Firing Iglesias for such a reason would violate the Uniformed Services Employment and Reemployment Rights Act, which prohibits firing a service member for absences due to military service. Somehow, by May 17, the newly-created Task Force was also investigating his firing as a possible Hatch Act violation, and by May 22, it was investigating the firing of **all** the USAs. So the OSC took an investigation over which OSC had clear jurisdiction and broadened it into one in which it didn't.

As early as May 4 (that is, even before the Task Force was created), this investigation conflicted with DOJ's joint Inspector General (OIG)/Office of Professional Responsibility (OPR) investigation into the firings. On May 4 and May 29, DOJ complained about jurisdictional issues, even involving unnamed people in Office of Legal Counsel (OLC).

Now, at this point, I don't necessarily fault

Bloch for pursuing this investigation. Alberto Gonzales was attempting to bury the investigation by giving OPR sole jurisdiction, meaning the investigators would report directly to him and not produce a public report. And given the crap that has come out of the Bush OLC, who knows what OLC was saying to Bloch to justify their argument that he should drop his investigation?

The problem, though, is that OSC only would have jurisdiction if Bloch could prove that an executive branch employee—as distinct from a legislative branch employee or a local politico—pressured the USAs to conduct politicized investigations. In other words, if it was clear that Monica Goodling was pressuring Iglesias et al to prosecute Democrats, then Bloch would have jurisdiction; but if Senator Domenici and Heather Wilson did so, Bloch wouldn't have jurisdiction. And the only way Bloch might get evidence that executive branch employees were involved would be to get the kind of information that DOJ and—especially—the White House refused to turn over to Congress.

As it happens, OSC requested those documents on August 13, 2007, just two weeks before Gonzales resigned. DOJ didn't turn anything over by the OSC due date, September 13, after Gonzales resigned and just after Mukasey was nominated. The Task Force and Bloch spent the next several months wavering about whether to negotiate cooperation with DOJ or whether to subpoena documents. By the time they actually got into a real conversation with the now-Mukasey led DOJ about cooperating on January 16, DOJ was (according to public reports) deep into an OIG-led investigation into the firings. Since this document was published on January 18, just two days after DOJ asked OSC once again to hold off, we don't know from the document what has happened in the last four months.

Now, the timing concerning the politicized hiring (Monica Goodling's "over the line" stuff and civil rights hiring) is a little more

curious. The Task Force apparently did not consider investigating this crystal clear violation of the Hatch Act until August 20. For some indication of how late that was, I first figured out that Goodling was issuing loyalty oaths on March 29, and Goodling testified to "crossing the line" on May 23. Bloch told the Task Force not to open an investigation into the politicized hiring on August 29, just two days after Gonzales resigned. Now, it appears that OSC did not move on the investigation because of the DOJ investigation into these issues. But it also appears they were learning about the DOJ investigation second-hand, via David Iglesias. In other words, unlike with the USA purge investigation, Bloch did not choose to fight with DOJ over this investigation, even though this one fits more squarely into OSC's jurisdiction.

That obviously ought to raise questions—why investigate the firings, when jurisdiction is a stretch, and not the hirings, where jurisdiction is clear? That's where I stop understanding Bloch's decision. Still, given all the rest of his decisions, it wouldn't surprise me if he was just struggling to turn these investigations into something meaningful with little real consideration of what his real mandate was.

There are two more investigations that fall under this timing: Siegelman and Schlozman. Both, though, fall into that grey transition time between the resignation of Gonzales and the start of Mukasey. The Task Force started investigating the Siegelman case in September 2007, and was told not to convene the investigation in October 2007. The Task Force started investigating the Schlozman case in November 2007 and was told not to open a case a week later.

Jurisdiction

The decisions surrounding OSC's investigation of the politicization of executive branch agencies seem to come from jurisdictional issues created by the way BushCo hid their politicization on

the RNC server.

The short history of the OSC investigation into the politicization of executive branch agencies goes like this:

June 2007: The Task Force begins the investigation by requesting information from 25 executive branch agencies and the White House

September 2007: The Task Force begins to receive information in response to requests to agencies

October 2007: The Task Force receives information from White House

November 14, 2007: Bloch directs the Task Force to do some consolidation of investigations—and to close some other investigations

November 14, 2007: Bloch directs the Task Force to go after RNC emails—the Task Force registers an objection based on jurisdictional grounds

November 14, 2007: Bloch directs the Task Force to go after a large range of information wrt the Office of Public Affairs (Rove's old shop)—"the Special Counsel wants us to draft a 'hard hitting' [request] that will explain everything there is to know about OPA"—the Task Force again expresses concerns about the breadth of the requests

November 21, 2007: Bloch tells the Task Force to request all grant awards—Task Force objects that there is no evidence that suggests such information is necessary

November 26, 2007: The Task Force begins to go after RNC emails released to Congress pertaining to the USA purge

November 28, 2007: WSJ reports on Office

of Personnel Management investigation of Bloch (updated per WO's comment)

December 14, 2007: The Task Force submits a draft subpoena for the RNC emails released to Congress pertaining to the USA purge

January 16, 2008: Bloch tells the Task Force to go much broader with its request for RNC emails—to cover 10 different topics

January 18, 2008 (the day this summary was completed): The Task Force subpoenas all RNC emails concerning grants and other executive branch agencies

I find this investigation a lot more curious than the investigations related to DOJ. At one level, after the OSC started receiving a bunch of information in November, it appeared that investigators judged there wasn't much there, and got uncomfortable with the scope of the requests Bloch was forcing them to submit. That suggests that Bloch was determined to find **something**, even if there was no evidence there. At around the same time, Bloch was pushing the Task Force to push a second investigation into Lurita Doan, so it appears that in November, Bloch was desperate to prove that his signature investigations had real substance.

There's one thing I don't particularly buy about that reading, though. One of the biggest smoking guns from the Lurita Doan/GSA investigation was the treatment of email from Scott Jennings (Rove's lackey) to Doan. The email, remember, went through the RNC server. And those involved wanted to keep it hush hush. In other words, BushCo deliberately tried to hide the way it was politicizing agencies by keeping all communication about it off of government servers.

Which is why I find the investigators' proposed actions surrounding the RNC emails inexplicable. While I respect their contention that asking for

all emails sent by OPA employees using the RNC server may be too much, I also think there's ample reason to believe that those emails were deliberately used to hide stuff. And remember, we already knew by this time—in November 2007—that the RNC said it didn't have a bunch of these. So part of me wonders whether the investigators—and not Bloch—were trying to cover up BushCo Hatch Act abuses. Add in the fact that the Task Force's first request was even more inexplicable. How are emails turned over **relating to the USA purge** going to reveal anything about political briefings? In other words, after complaining that the Bloch's request for emails from the RNC was too broad, investigators then tried to request only emails that had nothing to do with the subject of the investigation!

So I don't know what to make of Bloch's big requests in November 2007. On one hand, they appear to be the work of a man obsessed, who found nothing on first glance and then decided to make hugely ambitious requests. On the other hand, his investigators seem—either out of genuine concern for their jurisdiction or because they don't want to find anything—unwilling to go after the most likely evidence of politicization.

And since they only made the big request from the RNC on January 18, 2008—the day this draft was written—we can't tell from the document what happened after they made that request.

Update: I was too deep into the timeline of the document. As William Ockham points out, Bloch starts ramping up this investigation in November just as it becomes clear the Office of Personnel Management was investigating him. That doesn't explain why his investigators wouldn't pursue the most likely potential evidence of Hatch Act violations, but it does explain why he ramped up his investigations in November. Thanks WO.

Update: Spelling typo fixed per MadDog.