

THE SQUABBLE OVER SUBPOENAS IN SPRINGFIELD

When Blagojevich's lawyer threatened to subpoena Rahm Emanuel and Valerie Jarrett last week, it made a lot of sense. By causing the Obama team ongoing distraction, it would have allowed Blago to exact a price from Illinois Democrats aiming to oust him. And it would allow Blago's lawyer, Edward Genson, to see some of the evidence not shown in Obama's selective report last week (for example, the content of other conversations between Valerie Jarrett and Tom Balanoff, one of which may be referenced in the complaint yet unmentioned in the Obama report).

Sadly for Blago, though, he's going to be unable to force Rahm and Jarrett to testify. Fitz sent the legislative committee a letter requesting that Rahm, Jarrett, Jesse Jackson Jr., and Nils Larsen (the Financial Advisor advising Sam Zell on the Wrigley Field stuff) not be subpoenaed.

You have inquired whether prospective testimony by Valerie Jarrett, Congressman Jesse Jackson, Jr., Congressman Rahm Emanuel, and Nils Larsen before the Special Investigative Committee would interfere with the ongoing criminal investigation into the activities of Governor Rod Blagojevich and others. Our understanding is that counsel for Governor Blagojevich has asked the Committee to issue subpoenas requiring the testimony of those individuals on Monday, December 29, 2008.

Consistent with our letter of December 22, 2008, we believe that testimony before your Committee by any witness, including the four named above, concerning the subject matter of the ongoing criminal investigation, could

significantly compromise that investigation. The impact of such testimony on the criminal investigation would be the same regardless of whether a witness is called by the Committee or by Governor Blagojevich. Accordingly, we ask that the Committee refrain from issuing subpoenas for testimony by those four individuals (or others) which would overlap with the subject matter of the pending criminal investigation.

The committee has made it clear it will comply with Fitz's request.

Now, I think it would be a mistake to read too much into Fitz's request. After all, he's unlikely to want to pick and choose (for example, if he said "you can subpoena JJJ but not Larsen"), as that selection, by itself, would signal which witnesses he wanted to withhold. And Fitz is notoriously reluctant to show his cards before his time.

Also note Fitz's wording. This was misrepresented in some of the coverage of this, suggesting that Fitz had asked the committee not to subpoena those "mentioned" in the complaint; he describes these four as simply those who have "testimony [that] would overlap with the subject matter of the pending criminal investigation." But in fact, Fitz does not suggest that these four are mentioned in the complaint (which would have confirmed that Rahm is the Advisor named in the complaint and other details that have been all-but-confirmed in the press).

Fitz is only willing to say that these witnesses would offer testimony "overlapping" with the subject matter of the investigation.

That said, I would suggest that this might mean that Rahm has more to say than is obvious from last week's report. After all, unlike Jarrett (who was told Blago wanted HHS) and Larsen (whom Blago believed knew that the Trib would get help on the Wrigley deal in exchange for firing

reporters) and JJJ (who had a direct conversation about the seat after Blago talked about getting money for the seat), Rahm had no conversation with Blago or Harris in which an item of "personal benefit" to Blago came up (though the report itself addresses just the Senate seat discussions, I think this is categorical enough to cover all conversations with Blago and Harris, though not enough to cover conversations with John Wyma, whom Blago asked to carry a quid pro quo offer to Rahm).

Mr. Emanuel and the Governor did not discuss a cabinet position, 501c(4), a private sector position for the Governor or any other personal benefit for the Governor.

[snip]

Mr. Harris did not make any effort to extract a personal benefit for the Governor in any of these conversations. There was no discussion of a cabinet position, of 501c(4), of a private sector position or of any other personal benefit to the Governor in exchange for the Senate appointment.

Just as likely, of course, Fitz doesn't want the President-elect's Chief of Staff to say Blago said nothing incriminating.

In any case, given the committee's willingness to accede to Fitz's request, we're unlikely to find out anytime soon.