SCOTT BLOCH HEADED TO PRISON

[UPDATE: Bloch was sentenced to one month prison, one year probation and 200 hours of community service. His attorney indicated they will appeal, which could be interesting since the plea appears to, on its face, disallow appeal. And the saga of Scott the Blochhead rambles on…..]

Since mid-February an important, but little noticed, criminal case has been playing out in DC District court in which former Bush/Cheney administration Special Counsel Scott Bloch is charged with criminal contempt of Congress pursuant to 2 USC 192. As I summarized in an earlier post:

> As you will recall, former former Bush/Cheney Administration Special Counsel Scott Bloch destroyed evidence by wiping government computers clean, lied to Congress about it and conspired with the DOJ to minimize the conduct and slough it off with a sweetheart plea deal. Then, outrageously, when the court indicated it was inclined to impose the mandatory minimum month in jail, which was *mandated* by the statute Bloch pled guilty to, Bloch and the DOJ conspired to get the plea, which had already been accepted and entered by the court, withdrawn.
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> When Bloch and DOJ both worked together to get the plea withdrawn, and frustrate justice, the egregious nature of the attempt was documented here in a fully argued and supported post published on Tuesday March 1, 2011. Subsequent to that post, the court also found questions with the attempt to withdraw the plea and ordered Bloch to file a reply supporting the attempt.

At the previous date set for sentencing, on March 14, the court gave Bloch one last shot to brief his way out of the hole he dug for himself and ordered a tight briefing schedule therefore. Bloch filed his Motion for Reconsideration on March 14, The government filed their response, again colluding with Bloch, on March 17, and Bloch filed his reply on March 23.

Late yesterday afternoon, Judge Deborah Robinson ruled on Bloch's latest attempt to get out of the mandatory incarceration sentence he pled guilty to, and entered her order denying his motion. The court fairly well blasted Bloch's whining attempt to withdraw and, by extension, the continued craven collusion by the government in said attempt.

First the court gutted the claimed ability of Bloch to have a motion for reconsideration entertained on the merits at all:

> In sum, while judges of this court have, on occasion, entertained motions for reconsideration of interlocutory orders in criminal cases, no Federal Rule of Criminal Procedure, or Local Criminal Rule of the United States District Court for the District of Columbia, provides for such motions. The undersigned finds that although the pending motion is styled a "Motion to Reconsider[,]" it is effectively an effort "[to] rehash[] previously rejected arguments" regarding both the finding that the offense to which Defendant pled guilty carries a mandatory minimum sentence, and the order denying Defendant's motion to withdraw his guilty plea.

Undoubtedly Judge Robinson, recognizing the significance of Bloch's case to both the Executive Branch and Congress, not to mention the defendant himself, wanted to give Bloch every opportunity to make his record. But when decision day came, she followed the law and properly noted the procedural disfavor of such

motions as Bloch was proffering. It was smart of Robinson, however, to let Bloch play out the string before so ruling.

And then the court got to the factual merits of Bloch's argument. To say that the court found no merit in this regard is somewhat of an understatement:

> The court finds that Defendant has failed to show that the court "made an error in failing to consider controlling decisions or data[.]" Defendant blithely proclaims that the court "fail[ed] to discuss in its Memorandum Opinion – or even mention – the only two prosecutions in the past twenty years which proceeded under 2 U.S.C. § 192: *United States v. Miguel O. Tejada*, Cr. 09- mj-077-01, and *United States v. Elliot Abrams*, Cr.-91-575 (AER)[]" (see Defendant's Motion for Reconsideration at 4). However, Defendant's proclamation is belied by the record: the court has, in fact, considered both of those prosecutions
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> ….
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> The court finds that Defendant's claim that "the Plea Agreement contemplated eligibility for probation" (Defendant's Motion for Reconsideration at 4) is equally specious. No such provision is included in the plea agreement; moreover, Defendant "acknowledge[d] that [his] entry of a guilty plea to the charged offense authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence, which may be greater than the applicable Guidelines range."
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> …..
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> Finally, the proffer of the advice of counsel, offered, for the first time, through the affidavit of one of the lawyers who represented Defendant (see

> Affidavit of Ryan R. Sparacino, Esq. (“Sparacino Affidavit”) (Document No. 49-1)), is of no moment.
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> …..
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> To the extent which the affidavit of counsel has probative value at all in this context, it is that it serves to highlight the court’s finding that Defendant was aware that the offense to which he pled guilty was one for which a mandatory minimum sentence was provided.
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> ….
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> Counsel’s advice that the court was not likely to impose the mandatory minimum sentence simply because two other judges apparently had not done so is not
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> germane to any issue now before the court.

Ouch. That’s going to leave a mark. And that mark should be on the DOJ and its assigned attorney in this case, Glenn Leon, as well. It was nothing short of a craven attempt by the Obama DOJ to collude with a defendant to escape punishment because the administration does not want to have a precedent that – gasp – Executive Branch officials that lie to and are otherwise in contempt of Congress could be sent to prison. Good bet Mr. Tim Geithner is paying close attention to this ruling.

At any rate, Scott Bloch will be sentenced by Judge Robinson on his guilty plea conviction today at 4:00 pm EDT. Bloch will be sentenced to at least one month of prison. He should be sentenced to the full six months that are the upper end of the sentencing guidelines range for his plea, but it is unlikely, under the circumstances, the court will impose more than the mandatory one month.