



U.S. OFFICE OF SPECIAL COUNSEL

Memorandum

TO: Scott Bloch
Special Counsel

THRU: Jim Byrne
Deputy Special Counsel

FROM: The Task Force Advisors
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The Task Force Members
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DATE: January 18, 2008

SUBJECT: Summary of Task Force Activities and Recommendations

The Office of Special Counsel's Special Task Force (TF) was created in May 2007 to pursue certain complex and high profile investigations, such as the firing of the U.S. Attorneys and the political presentations given by the White House Office of Political Affairs. Since its inception, the cases reviewed by the TF have grown substantially. Below is a summary of the TF's actions and recommendations.

I. OFFICE OF POLITICAL AFFAIRS PRESENTATIONS:

During OSC's investigation into the Hatch Act complaint filed against General Services Administrator, Lurita Doan, (OSC File No. HA-07-1180) it was discovered that approximately twenty-five agencies had received briefings by the White House's Office of Political Affairs (OPA) similar to the presentation given to the General Services Administration. As a result, OSC opened a file to investigate what took place during these briefings and whether government resources had been used for the purpose of promoting or opposing a political party and/or partisan candidates.

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- June 4, 2007: The TF requests that each of the twenty-five agencies immediately preserve all records related to or mentioning the political briefings in question.
- July 18, 2007: TF sends 5.4 requests to all agencies requesting information and documentation from each agency concerning the political briefings given by OPA.
- July 20, 2007: TF sends 5.4 requests to all agency OIG offices asking for same information.
- September 7, 2007: TF sends 5.4 request to White House for all documents related to or mentioning the political briefings.
- September 2007: TF sends out supplemental requests for information and surveys to various agencies.
- September 2007-January 2008: TF receives hundreds of documents from various agencies in response to July 2007 5.4 request.
- October 9, 2007: TF receives over a thousand documents from the White House concerning the political briefings.
- October 24, 2007: TF discusses all media reports concerning selective prosecution allegations, such as Seigelman, Biskupic, Wecht, with Deputy Special Counsel. TF told that Special Counsel will not authorize opening of the Wecht (PA Coronor) selective prosecution case.
- November 11, 2007: TF interviewed witnesses at the ONDCP concerning the political briefings.
- November 14, 2007: The Special Counsel directs the TF to do the following: (1) Transfer the Hatch Act complaint against Secretary of Commerce Carlos Gutierrez (HA-07-1071) from the Hatch Act Unit to the Special Task Force; (2) Merge the existing two complaints against Karl Rove (HA-06-0723 and HA-06-1629) into the OPA investigation; (3) Draft a 5.4 Request for Information to the White House and ask for any and all email communications sent or received by any Office of Political Affairs employee (approximately 50 individuals) since January 20, 2001. The request would seek all emails sent from each employee's government email account, as well as, all emails sent or received on any RNC owned email account, such as gwb43.com or georgewbush.com. *{TF expressed concerns that this request is too broad and may exceed OSC's jurisdiction}* (4) Draft a 5.4 Request for information to the White House asking for all travel records for Air Force One from November 2003 through November 2004, to include who rode on Air Force One, the purpose of the trip and how the costs were apportioned and reimbursed; and, (5) Draft a 5.4 to the White House, specifically OPA, asking for a description of the protocols, procedures, accounting methods, division of resources, number of telephone and fax machines, etc. The Special Counsel wants us to draft a "hard hitting" 5.4 that will explain everything there is to know about OPA.
- November 21, 2007: TF told to ask for the travel records of high level

officials leading up to the election and request all grant awards for election and non-election years. After reviewing all documentation received and finding no information or evidence to suggest that agencies directed grants or agency resources to help candidates or political parties, TF believes this request is overly broad. TF suggests that we interview agency officials and then determine whether we need to request the grant awards. Recommendation is denied by the Special Counsel.

- November 26, 2007: TF provides Deputy Special Counsel with draft 5.4 requests that the Special Counsel directed the TF to create. In preparing the drafts, the TF suggests that the Special Counsel may want the emails that were released to Congress by the RNC, not the White House.
- December 13, 2007: TF again recommends that OSC open up a separate file for each agency with respect to the political briefings investigation. The TF explains that each agency should be closed and informed of the case closure once the investigation is complete. Recommendation is denied.
- December 14, 2007: TF submits draft RNC letter and subpoena requesting copies of documents the RNC has previously released to Congress relating to the US Attorney Firings.
- January 16, 2008: Special Counsel returns the draft RNC letter and subpoena to the TF. He directs that the RNC subpoena request emails on ten new topics, i.e., all emails concerning grants, asset deployment.
- January 18, 2008: TF submits revised RNC letter and subpoena, which incorporates the Special Counsel's most recent directive.

Current Status:

The Task Force is currently in the process of interviewing political appointees from twenty-two different agencies who attended the political briefings and the asset deployment meetings to ascertain what took place during these meetings. During the interviews, the TF is inquiring into whether any agency resources have been used to promote or oppose a political party or candidate for public office. This probe includes inquiring into whether the agency directed resources, such as grant awards, to those states or districts where elections were closely contested.

Recommendation:

We recommend that we only request grant award documents if evidence is discovered during the interviews or from documents produced that indicates or raises a question as to whether grant awards were somehow manipulated to promote or oppose certain candidates or parties.

II. INVESTIGATION INTO THE US ATTORNEY FIRINGS

OSC received a complaint from David Iglesias alleging that his discharge may have violated the Hatch Act and may have been in violation of USERRA. As a result of the complaint filed by Iglesias, the TF was ordered to investigate the firings of all nine U.S. Attorneys (David Iglesias, Daniel Bogden, Paul Charlton, Bud Cummins, Carol Lam, John McKay, Margaret Chiara, Kevin Ryan and Todd Graves). Specifically, the TF is investigating whether individuals currently and formerly employed or holding office in the OPA and the Department of Justice (DOJ) violated the Hatch Act by engaging in activity related to the resignation of the nine US Attorneys listed above. In order to establish a Hatch Act violation, the TF would have to prove that an individual employed or holding office in an Executive Branch Agency used his/her official authority or influence for the purpose of affecting the results of an election.

- May 4, 2007: Special Counsel and Deputy Special Counsel meet with individuals at the Department of Justice, including officials from the Office of Legal Counsel, to discuss OSC's investigation of the Iglesias complaint.
- May 8, 2007: The Special Counsel sends DOJ a letter stating OSC would not suspend its investigation relating to Iglesias.
- May 17, 2007: TF interviews Iglesias concerning his knowledge regarding his discharge. Specifically, the TF is seeking any evidence that any individual in the Executive Branch interfered or attempted to interfere with Iglesias or his office's processing of cases for the purpose of interfering with the 2006 elections.¹ Iglesias stated that no one in the Executive Branch of government attempted to interfere with or affect his office's handling of the voter fraud or public corruption cases.
- May 22, 2007: TF sends DOJ and the White House a preservation of documents request asking that documents concerning the dismissal of the US Attorneys be preserved.
- May 29, 2007: DOJ sends Special Counsel a letter again asking OSC to suspend its investigation until DOJ concludes its criminal investigation. DOJ also continues to question OSC's jurisdictional basis to investigate the dismissal of the US attorneys.
- June/July 2007: TF reviews over ten thousand documents that were released to the public concerning the firing of the U.S. Attorneys. The

¹ In October 2006 (prior to the 2006 midterm election) Senator Pete Domenici called Iglesias to ask about the progress of an investigation. Iglesias said he felt this inquiry was trying to "pressure" him to speed up indictments in a federal corruption investigation that involved at least one former Democratic state senator. When Iglesias said an indictment wouldn't be handed down until at least December, "the line went dead." Also in October, Representative Heather Wilson called about the indictments in a federal corruption investigation that involved at least one former Democratic state Senator. Iglesias, however, testified that no one in the Executive Branch questioned or tried to influence his handling of these cases.

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TF does not find any evidence of a Hatch Act violation in these documents and expresses concern about the lack of any evidence that there was a Hatch Act violation. Specifically, TF finds no evidence that anyone in the Executive Branch of government attempted to influence any of the fired U.S. Attorneys to take (or not take) some action to affect the result of the mid term elections.

- June/July 2007: TF watches Congressional hearings on the US Attorney firings.
- August 13, 2007: TF sends a 5.4 request for information to the Department of Justice requesting all information concerning the dismissal of the US Attorneys.
- September 13, 2007: DOJ's response to OSC's 5.4 is due.
- September 18, 2007: TF presents three possible courses of action to pursue in this matter: 1. issue subpoena to DOJ; 2. Immediately interview the rest of the US Attorneys; 3. allow TF to contact DOJ to discuss the 5.4 and OLC's concerns. The TF recommended the third course of action.
- October 3, 2007: TF again requests permission to reach out to DOJ to try and facilitate cooperation among our agencies. TF circulates draft subpoena for DOJ in the event the Special Counsel decides to pursue this option.
- October 9, 2007: TF is told that the Special Counsel is still considering whether to move forward with the subpoena or to try and negotiate with DOJ.
- October 17, 2007: TF is informed that the Special Counsel is entertaining the idea of allowing the TF to reach out and negotiate with DOJ.
- November 1, 2007: TF presents negotiation strategy based on the SMEAC model to advisors.
- November 9, 2007: A member of the TF contacted Paul Colborn, Special Counsel in DOJ's OLC, in an attempt to schedule meeting with OIG, OLC and OPR to discuss status of 5.4 request and negotiate cooperation from DOJ.
- November 10, 2007: TF Leader calls Colborn regarding this request.
- November 19, 2007: Letter sent to Mr. Colborn explaining in detail OSC's jurisdiction and requesting a meeting with DOJ in an attempt to come to an agreement as to how both agencies would be able to proceed with their parallel investigations.
- January 16, 2008: DOJ sends response to November 19, 2007, letter. DOJ again expresses concern that OSC's investigation could interfere with DOJ's criminal investigation into the same matters. DOJ states it is not in a position to respond to OSC's 5.4 request. They are willing to share appropriate portions of their report when their investigation is

complete.

Current Status:

TF is awaiting further guidance as to how it should proceed.

Recommendation:

Considering the TF has not found any evidence that anyone in the Executive Branch of government attempted to influence any of the nine US Attorneys to take some action to affect the result of an election, the TF recommends that OSC agree to stand down its investigation of the US Attorney Firings until the DOJ concludes its criminal investigation in exchange for DOJ's cooperation with other matters pending before the TF. After reviewing DOJ's final report concerning the firing of the U.S. Attorneys, the TF could re-evaluate whether there is any evidence of a Hatch Act violation with respect the dismissals of nine U.S. Attorneys.

III. POLITICAL AFFILIATION HIRING PRACTICES AND PERSONNEL DECISIONS AT DOJ

While investigating the above allegations concerning the US Attorney Firings, the TF watched all congressional hearings on the matter. Sworn testimony given before Congress by Monica Goodling and Bradley Schlozman indicates that certain officials at DOJ took into consideration political affiliation when determining whether to hire or promote certain individuals. In addition, Joe Rich, the former chief of the Voting Section of the Civil Rights Division, gave sworn testimony that he was ordered to change the performance standards of attorneys under his supervisor based on a person's political affiliations.

- August 20, 2007: TF submits memorandum recommending that this case be opened immediately and that the TF investigate whether individuals at DOJ committed any PPPs when they took political affiliation into consideration when hiring and making other personnel decisions. TF also presents draft of 5.4 request to be sent to DOJ concerning these allegations.
- August 29, 2007: TF is told that the Special Counsel has directed the TF not to open or investigate allegations concerning DOJ political hiring practices.
- August – September 2007: TF continues to request permission to investigate these allegations arguing the sworn testimony before Congress appears to establish a prima facie case of numerous PPPs.
- October 17, 2007: TF is told that Iglesias has heard that DOJ will issue a report before Thanksgiving on three different issues, including the allegedly politically motivated hiring practices in the Civil Rights Division at DOJ.

- November 6, 2007: TF told that the Special Counsel has authorized OSC to open an umbrella PPP complaint regarding the alleged unlawful hiring and employment practices at the Department of Justice.
- November 6, 2007: Per Special Counsel's directive, although the TF may open up the umbrella PPP case, "no other activity or devotion of resources authorized at this time."

Current Status:

TF requests permission to start investigating these allegations. Specifically, the TF requests permission to send the 5.4 to DOJ concerning these allegations that was prepared in August. DOJ's has fully cooperated with OSC's investigation into OPA and the political briefings. Therefore, DOJ may cooperate and assist OSC with its investigation into the alleged politically motivated hiring practices.

Recommendation:

The TF requests authorization to issue a 5.4 to the DOJ on these matters.

IV. SIEGELMAN

Two case files have been opened in reference to the prosecution of Don Siegelman, the former democratic governor of Alabama. In 2007, Jill Simpson signed a sworn statement that in 2002 she was involved in a conversation during which William Canary, a senior Republican strategist, said that Karl [Rove] "had spoken with the Department of Justice" about "pursuing" Siegelman, with help from two of Alabama's U.S. Attorneys. Canary said "not to worry about Don Siegelman" because "his girls would take care of" the governor. "His girls" was a reference to Canary's wife, Leura Canary, the U.S. Attorney for Middle District of Alabama, and Alice Martin, the U.S. Attorney for the Northern District of Alabama. In 2004, Siegelman was indicted in the Northern District but charges were dropped when judge threw out prosecution's evidence. In 2005, Siegelman announced that he will run again for governor. The following month, Siegelman was indicted in the middle district of Alabama. In June 2006, Siegelman was found guilty on six counts.

- September 2007: TF compiles all public information available on this matter.
- October 2007: TF watches and reviews Simpson's Congressional testimony.
- October 2007: TF creates investigation plan and drafts 5.4 to be sent to DOJ concerning this case.
- October 11, 2007: TF is informed that the Special Counsel did not authorize the Task Force to investigate these allegations and that do so is a breach. The Special Counsel requests that this file be closed immediately.

- October 15, 2007: After concerns are expressed that OSC simply cannot close a file without conducting an investigation into these allegations, the TF is directed to not further investigate this case and to wait for further instructions from the Special Counsel.

Current Status:
Open

Recommendation: TF is requesting authorization to continue with its investigation of this matter.

V. SCHLOZMAN VOTER REGISTRATION FRAUD CASE

The acting US Attorney in Missouri filed four indictments concerning voter registration fraud seven days before the 2006 elections despite DOJ policy which stated: "any investigation undertaken during the final stages of the contest may cause the investigation itself to become a campaign issue. Most, if not all, investigations of alleged election crime must await the end of the election to which the election relates." The four individuals indicted worked for ACORN, a liberal organization specializing in registering low income persons. ACORN had self reported the election fraud, fired the four employees, and was cooperating with the investigation, when the US Attorney became aware of the case in mid October. Schlozman rushed to file the indictments even though he acknowledged during his Congressional testimony that there would have been no prejudice to waiting until after the election. After Schlozman announced the indictments, the Missouri Republican Party issued a news release stating that members of ACORN had purposefully cause controversy to help Democrats steal the election and that ACORN's actions raised serious questions about the Democratic Party and Claire McCaskill's involvement with ACORN.

- November 7, 2007: TF submits memorandum outlining reasons that the Hatch Act case investigating this matter should be opened.
- November 14, 2007: TF is advised that it is not authorized to open up this file.

Current Status:
Unopened

Recommendation:

Because the facts raise the strong possibility of violations of two Hatch Act provisions, the TF requests that a case file be opened into these allegations. OSC is the only agency charged with enforcement of the Hatch Act; therefore, deferral to other agencies investigating these facts is inadvisable. In view of the significant press

coverage of these events, it could be perceived that the Office of Special Counsel was abdicating its responsibility to enforce the Hatch Act if we were to take no action in this matter. More importantly, if Schlozman initiated the four indictments immediately prior to an election in an attempt to affect the results of an election, this would constitute one of the most egregious violations of the Hatch Act.

VI. THOMPSON/ BISKUPIC

The TF conducted a preliminary inquiry into the prosecution of Georgia Thompson by the Eastern District of Wisconsin USA, Biskupic, to determine whether a file should be opened. In 2004, Biskupic did not prosecute voter fraud cases in Milwaukee. Biskupic was identified by the WH as one of the US Attorneys to be removed. In 2006, Biskupic charged Thompson with fraud for steering a state travel contract to a contributor to the incumbent Democratic governor's campaign. Thompson was convicted by a federal jury in June 2006 and served 4 months in prison. Biskupic's name was removed from the list of USAs to be fired and he is still serving as the USA. Thompson's conviction was thrown out by the 7th Circuit for insufficient facts to support the conviction and he was released. Violations may include the following: (1) agency resources were utilized to assist specific candidates or political parties in violation of section 7323(a)(1), or (2) employees engaged in political activity while on duty or in a federal building in violation of section 7324.

- September 12, 2007: TF discussed this case with advisors and a decision was made to not open a file at this time but to keep a close watch on what happens with the Congressional and DOJ investigations.
- October 3, 2007: TF advisors again discuss and determine that this case should not be opened. A memo is drafted for J. Byrne summarizing our review and decision not to open a case file.

Current Status:

Unopened. The TF continues to monitor the Congressional hearings and media reports concerning this matter.

VII. GSA OUTREACH CASES

The TF is investigating two cases from the GSA Great Lakes (Illinois) Office. The cases involve two political appointees at GSA. The first allegation is against [REDACTED] (political appointee). The complainant alleges the [REDACTED] asked him to [REDACTED]. The second allegation involves the use of GSA outreach resources to promote the Republican Party and/or Republican candidates. [REDACTED]

[REDACTED] alleged that [REDACTED] (political appointee), stated that he did not have any interest in promoting GSA business with small businesses because they do not provide funds to Republicans. [REDACTED] testified that [REDACTED]

[REDACTED] Finally, [REDACTED] alleges that there were instances where requests for services from Democratic Members of Congress' offices were ignored by the GSA director while such requests from Republicans were acted upon. Violations may include the following: (1) agency resources were utilized to assist specific candidates or political parties in violation of section 7323(a)(1), (2) employees were directed by their supervisors to engage in political activity in violation of section 7323(a)(1) or (3) employees engaged in political activity while on duty or in a federal building in violation of section 7324.

- September 20, 2007: Telephonic interview of CP [REDACTED]
- September 29 and October 1, 2007: Telephonic interviews of CP [REDACTED]
- November 8, 2007: Telephonic interview of [REDACTED]
- December 5, 2007: 5.4 request sent to GSA Office of General Counsel.
- December 6, 2007: Review of SBA Surveillance Review Report of GSA Mid-West Region (dated May 23, 2003). In-person interview of [REDACTED] former SBA [REDACTED]
- December 12, 2007: Interviews of [REDACTED] and 2 others.
- January 2008: TF received two boxes of documents in response to the December request for information.

Current Status:

Open file. The TF is currently reviewing the documents provided by GSA. Upon completion of reviewing the documents, the TF will interview the subject officials.

Recommendation:

The TF recommends that it continue to investigate these allegations.

VIII. GUTIERREZ

During OSC's investigation of EPA Administrator Johnson, a representative from the Rick O'Donnell campaign stated that the Department of Commerce did not object to the use of Secretary Gutierrez's official title being used. As a result, the Hatch Act Unit was ordered to open a complaint into this matter.

- November 14, 2007: Case assigned to TF.
- November 29, 2007: The TF sent a 5.4 request to the Department of Commerce asking for all information and documentation concerning Secretary Gutierrez appearing at the fundraising event for O 'Donnell.

Current Status:
Open

Recommendation: The TF is awaiting the response to the 5.4 request and then will proceed accordingly.

IX. DOAN II

The Special Counsel ordered that a new complaint be opened concerning allegations that the Administrator of the General Services Administration, Lurita Doan, used or intended to use agency resources for the benefit of Republican candidates and the Republican Party. The TF raised objections to this request because OSC had previously concluded its investigation into Lurita Doan and had referred the matter to the President for disciplinary action. The TF was directed to investigate whether Doan had a larger scheme in place to use agency resources for political purposes.

- First week of July: TF is requested to draft a 5.4 request to the Department of Homeland Security Office of the Inspector General (DHS OIG) for documents related to a 2005 investigation of Doan 's husband. TF raises objections questioning OSC 's jurisdiction to request such documents considering Lurita Doan was not a federal employee at the time of the DHS OIG investigation. Specifically, the TF is ordered to draft a 5.4 requesting any documents related to the DHS OIG investigation of an electronic mail message dated May 17, 2005, from Lurita Doan to Douglas Doan with the subject line, "What I was going to send."
- July 18, 2007: TF is directed to draft a 5.4 request to the White House asking for all Scott Jennings ' emails that were sent to or received from any individual employed at GSA.
- July 27, 2007: Response from DHS OIG is received but not given to the TF.
- November 1, 2007: TF directed to review investigation file received from the DHS OIG on Lurita Doan 's husband. TF discovers that the DHS OIG investigation is not related in any way to the May 17, 2005 email and questions why DHS produced the investigative file in response to the draft 5.4 request.
- November 14, 2007: TF expresses its concern over the DHS OIG report as it is not related to anything that OSC is currently investigating and the

allegations in the report fall outside of OSC jurisdiction. The TF also expresses concern because the DHS OIG provided OSC with information that greatly exceeds, and arguably is unrelated to, the specific 5.4 request that the TF drafted. TF recommends closure of this file.

Current Status:

Open

Recommendation:

TF renews its recommendation that OSC close this case. There is no evidence in the DHS OIG investigative file that supports the allegations that **Lurita** Doan violated the Hatch Act in 2007. Moreover, the TF does not have any other evidence or information to support these allegations.

X. ROVE (I & II)

These cases concern broad allegations that Rove violated the Hatch Act by unlawfully engaging in political activity during the 2006 election season.

- March 9, 2006: A 5.4 was sent to the WH requesting travel records on Karl Rove. WH reviewed Rove's travel records and reported to OSC that all of Rove's travel during the time in question was designated political, and thus, official funds were not used for Rove's travel. Additionally, they identified one trip where Rove traveled on Air Force One and it was mistakenly designated official. WH has provided records documenting the reimbursement for Rove's travel on Air Force One for the one trip where an administrative error was made.
- October 24, 2006: A new 5.4 seeking additional information was faxed to the WH.
- December 11, 2006: OSC receives WH response to October 5.4 but it fails to answer some questions posed by OSC.
- January 5, 2007: Based off the December 2006 WH response, a new 5.4 request is faxed to the WH.
- February 6, 2007: OSC learns that the attorney handling HA cases at the WH is Michael Scutter.
- **Scutter requests a detailed explanation as to how the WH response does not sufficiently address the questions posed by OSC.**
- August 30, 2007: These cases are reassigned to the Task Force.
- November 14, 2007: TF is ordered to combine these cases with the OPA political briefings case.

Current Status:

Open and incorporated into OPA investigation

Recommendation:

In light of the recent combining of this case with the OPA political briefings investigation, the TF recommends not sending a 5.4 request to the White House asking specific questions about OPA purpose and procedures at this time. The TF recommends waiting until we conclude the investigative interviews with the agencies on the political briefings and then draft a comprehensive 5.4 with all of the TF's questions concerning OPA and the briefings that occurred. At that time, the TF will ask all questions concerning the purpose and procedures of OPA.

XI. [REDACTED]

OSC received a complaint from a former schedule C who is alleging that numerous current and former employees of the Executive Office of the President committed numerous PPPs. Specifically, his complaint alleges that the Presidential Personnel Office's procedures and requirements for the selection and appointment of schedule Cs and non-career SES to independent agencies was based on partisan political reasons and violated numerous statutes regulations and executive orders. This matter was immediately referred to the task force.

- December 6, 2007: OSC receives complaint from [REDACTED]
- December 6, 2007: File is opened and immediately referred to Special Task Force Unit.
- December 6, 2007: File was given to L. Dribinsky and W. Reukauf for them to review.
- January 23, 2008: Memo delivered to Deputy Special Counsel J. Byrne, from L. Dribinsky and W. Reukauf detailing their recommendation that the case be closed as OSC does not have jurisdiction.

Current Status:

Open File.

Recommendation:

Based on the January 23, 2008 memo detailing the lack of OSC jurisdiction, the TF recommends that this file be closed.