

# **FINAL JEOPARDY**

## **ANSWER: SOMETHING THAT DOESN'T OBSTRUCT OR IMPEDE JUSTICE**

**Alex, I'm going with – "What is getting a prosecutor fired for not complying with your political agenda?"**

The investigation (not of the U. S. Attorney firings despite misleading headlines) into the Iglesias firing is done. bmaz is ready to change his name to Carnac and Holder's Department of Justice has shot off a letter-ary masterpiece to the House Judiciary Committee (HJC). As per ~~Carnac's~~ bmaz's predictions, no charges.

What bmaz could not have predicted, but did link to in his post, is the actual content of the letter sent to Conyers. I don't think anyone would have predicted the cavalier way in which Holder's DOJ reaches its seemingly predetermined decision, while providing a roadmap to other legislators who'd also like to get a prosecutor fired for political convenience. Dannehy and Holder explain to Members of Congress – if a Federal prosecutor isn't filing or refraining from filing the cases you want, feel free to covertly conspire to get him fired. As long as you don't make any misguided attempt to "influence" him before you get him fired, you're good to go. Oh, and btw, phone calls to him at home to fume over his handling – not to worry, those doesn't count as an attempt to influence.

Stripped and shorn, Holder and Dannehy have said –

1. We aren't gonna investigate anything but Iglesias and we aren't saying why: "The investigative team also determined that the evidence did not warrant expanding the scope of the investigation beyond the removal of

Iglesias.”

WHAT EVIDENCE? They freakin didn’t expand the scope of the investigation to see what evidence there was, then they decide, *oh well, we don’t have any of the evidence we didn’t look for so we shouldn’t look for it since we don’t have it* ... whatever.

2. Hey, yeah, Domenici DID make a contact to smack on Iglesias about the handling of a matter currently in front of the USA’s office but: “The evidence about the call developed in the course of Ms. Dannehy’s investigation, however, was insufficient to establish an attempt to pressure Mr. Iglesias to accelerate his charging decisions.”

So similar to the lack of intent to torture – I mean, if Domenici in good faith thought he was just gathering intel on the status of political prosecutions ... um, let’s move on.

3. Instead of trying influence Iglesias, Holder and Dannehy think that Domenici *\*just\** got Iglesias fired for not pursuing political bias in his prosecutions. “The weight of the evidence established not an attempt to influence but rather an attempt to remove David Iglesias from office, in other words, to eliminate the possibility of any future action or inaction by him.”

4. This, they say, is fine. Seriously. They say there’s nothing DOJ can do about it. It’s no problem for politicians to get DOJ lawyers fired for not being political lapdogs. But to be fair, they then finish up by saying both, “In closing, it is important to emphasize that Attorney General Holder is committed to ensuring that partisan political considerations play no role in the law enforcement decisions of the Department” and (bc that wasn’t really the closing after all) “The Attorney General remains deeply dismayed by the OIG/OPR findings related to politicization of the Department’s actions, and has taken steps to ensure those mistakes will not be repeated.”

HUH? They've just said it is perfectly legal for politicians to get USAs who won't do their political bidding fired by covert contacts with the WH, but Holder is "committed" to ensuring partisan political considerations play no role at DOJ? WTH? I guess if you put those two concepts together and held them in your mind for long, you'd end up committed too.

5. Anyway, they pull all of this off by giving a Bybee-esque review of "18 U.S.C. § 1503 [that] punishes anyone [at least, anyone the DOJ selectively decides to prosecute] who '*corruptly . . . influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice.*'" It's a simple thing – according to Holder and Dannehy, Domenici didn't try to "influence" Iglesias, he just had Iglesias fired. Which obviously isn't an attempt to obstruct or impede. I mean, there's nothing that *\*doesn't impede\** a case like getting the prosecutor handling it fired.

They also explain to us that they can't go after Domenici for trying to get, then getting, Iglesias fired – at least, not under 18 USC 1503, because that section "penalizes only forward-looking conduct." So Domenici would have to be doing something that would involve forward-looking conduct. And after all, as they just said (see 3 above) Domenici wasn't trying "in other words, **to eliminate the possibility of any future action or inaction** by [Iglesias]." Oh, except for, you know, they actually say in the letter that's exactly what Domenici WAS doing. Trying to affect future action or inaction – in a forward-looking way with his forward-looking conduct.

This clarifies so many things. Who knew, until now, that the only person who got things right during the Saturday Night Massacre was Robert Bork?

Nixon wrote the first act in DOJ's current play (which is only fair, since he also wrote their anthem that it's not illegal if the President does it) when he arranged for the firing of

prosecutors who were bugging him, but in response to a livid Congressional response, using words like impeachment and obstruction, said:

“...[I]n all of my years of public life, I have never obstructed justice. And I think, too, that I can say that in my years of public life that I’ve welcomed this kind of examination, because people have got to know whether or not their President’s a crook. Well, I’m not a crook!”

And now Dannehy and Holder have made that chapter and verse – nothing wrong with firing some prosecutors if they aren’t playing politics. Poor Karl Rove – so much trouble could have been avoided if he had just known that a Democratic administration’s DOJ would take the position that it would be perfectly ok for him to get Bush to fire Fitzgerald (something that apparently made even Buscho lawyers Gonzales and Miers flinch) – no obstruction, no impeding – as long as Rove never tried to “influence” the prosecutor first.

And now DOJ prosecutors now know exactly how things work. It’s been spelled out. No one will try to influence them. It’s just that if they aren’t making Obama’s favorite politicians and fundraisers happy, well – their career may have a little accident.

With AGewhiz’s like Holder, we can rest easy. Gonzales may have been afraid to come out and state DOJ’s policy plainly. He never quite coughed out the admission that it is DOJ policy that Republican Senators who conspire with the Republican WH to get prosecutors fired for not carrying out the Republican Senator’s political agenda are acting well within their rights. Holder is not nearly so timid. He’s spelled it out. Prosecutors are fair game for Congresspersons, at least those with the right WH ties.

I guess we should be grateful he hasn't handed out paintball guns to Democratic legislators and encouraged them to mark the weak links in his legal herd – the ones that haven't been compliant enough to keep their jobs.

At least, not yet.

And besides, haven't we already learned what Holder just told Conyers in that letter?

Firing the Republicans in 2006 and 2008 didn't impede or obstruct the attacks on the rule of law one little bit.

Update: On the good news front – Happy Day fatster!