

THE SIGNIFICANCE OF THE “OFFICIAL DUTIES” CLAIM

Here’s how Dana Jill Simpson describes Karl Rove’s involvement in the Siegelman prosecution.

What I understood, or what I believed Mr. Canary to be saying, was that he had had this ongoing conversation with Karl Rove about Don Siegelman, and that Don Siegelman was a thorn to them and basically he was going to – he had been talking with Rove. Rove had been talking with the Justice Department, and they were pursuing Don Siegelman as a result of Rove talking to the Justice Department at the request of Bill Canary.

[snip]

[After the prosecution launched by Alice Martin was dismissed in 2004] Bill Canary and Bob Riley had had a conversation with Karl Rove again and that they had this time gone over and seen whoever was the head of the department of – he called it PIS, which I don’t think that is the correct acronym, but that’s what he called it. And I had to say what is that and he said that is the Public Integrity Section.

[snip]

Q About what?

A About Don Siegelman and the mess that Alice Martin had made and it was my understanding in that conversation after that conversation that there was a decision made that they would bring a new case against Don Siegelman and they would bring it in the Middle District,

[snip]

Q Okay. And did Rob give you the name of the person at – I'm just going to call it Public Integrity – that he thought he understood Karl Rove had spoken to?

A No, he said it was the head guy there and he said that that guy had agreed to allocate whatever resources, so evidently the guy had the power to allocate resources, you know.

Q To the Siegelman prosecution?

A Yes. And that he'd allocate all resources necessary.

So, in sworn testimony, Simpson claims that, sometime before November 2002, Karl Rove had spoken to DOJ and—"as a result of Rove talking to" DOJ, they were pursuing an investigation of Don Siegelman. And then, after the first case against Siegelman had been dismissed in 2004, Rove again spoke with DOJ—with the Public Integrity Division specifically, probably Noel Hillman from the description—and got reassurances that PIN would "allocate all resources necessary" to a second Siegelman prosecution. Rove's second conversation may have also led DOJ to conduct the second investigation out of the Middle District of AL, which meant they had a marginally competent—but political loyal—USA conducting the case and they had a judge with a grudge to settle against Siegelman.

Now, Michael Mukasey appears to believe that at least one of those conversations amounted to sharing evidence with DOJ of an alleged crime, which DOJ then independently decided had merit.

Mukasey: I don't see publicizing the source of an allegation if the allegation turns out to be true.

So to take Mukasey's charitable view towards Rove's alleged actions in this matter, Rove went to DOJ in 2002 and tipped them off to a

potential crime, then went back in 2004 and made sure the division investigating that crime devoted enough resources to the case.

Taken in that charitable light, neither of those two actions are necessarily illegal. In the first, Rove is basically serving as a tipster—a good citizen (ha!) alerting the authorities of a potential crime. In the second, he is serving as an executive branch official making sure that an executive branch agency allocates resources in the way that the Administration wants it to to.

Which—again, looking at it in the most charitable light—would not be a problem, except for two things. First, there’s the reason behind the actions, as Simpson describes it:

Because Rob kept saying, I want Don Siegelman not to run. They were talking over each other in that particular — I don’t want to face — we don’t want to face Don in running again in the future.

Rove conducted those actions to make sure that Don Siegelman would not run for Governor of Alabama.

Again, that would not necessarily be a problem—dirty politics, sure, but if Siegelman really had done what they alleged he had, then it’s fair for a politician to make sure that a competing politician’s dirty laundry gets aired.

Then there’s the other problem. On Wednesday, the White House Counsel wrote a letter to Congress claiming those activities were within Rove’s official duties as Senior Advisor to the President.

We have been further advised that because Mr. Rove was an immediate presidential adviser and because the Committee seeks to question him regarding matters that arose during his tenure and relate to his official duties in that capacity, Mr. Rove is not required to appear in response to the

Committee's subpoena. Accordingly, the President has directed him not to do so.

According to Fred Fielding, Karl Rove's "official duties" as Senior Advisor to the President included channeling political opposition research on a political figure from Republican operatives to the Department of Justice so as to make sure that political figure would not run for office again. In addition, Fielding is claiming that Bush (or someone else with the authority to decide what Rove's "official duties" were) decided the appropriate person to tell DOJ officials how to allocate resources was the head of the Office of Political Affairs. Further, Fielding is suggesting that it was in Rove's "official duties" to make such resource allocation decisions with the goal of making sure particular political figures did not run for office again.

Fred Fielding has just claimed that Bush intended his Senior Advisor to dedicate his government-salaried time and direct others to direct government resources to make sure particular political figures did not run for office. Further, Fielding just claimed that Bush intended his Senior Advisor to serve as a channel for opposition research from political operatives to DOJ.

All that stuff might well have been perfectly legal, until Fred Fielding claimed that Rove was doing them in the course of his "official duties." Once Fielding claimed they were part of Rove's "official duties," though, they became crystal clear violations of the Hatch Act, which prohibits the use of government resources for political ends. Fred Fielding just proved the Hatch Act argument we've been trying to make for over a year—all with that tidy little assertion that Rove's actions in the Siegelman affair were part of his "official duties."

Now, as we reluctantly concluded yesterday when we were discussing this, these are probably just

civil Hatch Act violations, not criminal ones. And since the penalty for a civil Hatch Act violation is termination, there's no way we can hold Rove accountable on these terms (though it still seems worthwhile to make the case).

Not so some other Rove actions that would have been the subject of yesterday's hearing, though. As I pointed out during the negotiations leading to this hearing, HJC had put Patrick Fitzgerald's QFRs in their "politicized prosecutions" file—most likely because Fitzgerald alluded to information that latter came out in trial: the Chicago machine claims it was working with Rove to get Fitzgerald fired to prevent the Rezko/Kjellander prosecution.

I also can't help but wonder whether Karl wants to limit testimony to Siegelman because of something he noticed on HJC's website. HJC has put PatFitz's QFRs right there alongside all the material on politicized prosecutions. The only thing PatFitz mentioned regarding politicized prosecutions had to do with the revelations that have since come out in the Rezko trial—revelations that put at least 3 people, some of them solidly corrupt Republicans like Turdblossom, on the record with hearsay evidence about Rove working to fire PatFitz. And since Rove has already sent his BFF Michael Isikoff out to figure out what evidence there is against him, it sure seems like Rove doesn't want to testify about the conversations he had with Bob Kjellander about firing Patrick Fitzgerald.

One of the allegations that Rove would have been asked about, had Fred Fielding not given him a way out of testifying, is that he told Bob Kjellander that he would get Patrick Fitzgerald fired so as to scuttle the investigation into Kjellander himself. Now, Rove claims that he did no such thing.

But Robert Luskin, Rove's attorney, today issued an unequivocal statement about all of this to the Tribune on behalf of Rove, former deputy chief of staff to President Bush, architect of Bush's presidential campaigns and a private consultant in Washington now.

"Karl has known Kjellander for many years," Luskin said, "but does not recall him or anyone else arguing for Fitzgerald's removal. And he (Rove) is very certain that he didn't take any steps to do that, or have any conversations with anyone in the White House – or in the Justice Department – about doing anything like that."

Rather, Rove claims "he does not recall" having conversations with Kjellander about firing a prosecutor to affect the direction of an active criminal investigation. As we know with Karl and his faulty memory (ha!), "don't recall" usually remains operative only until the evidence to the contrary appears.

In other words—regardless of whether we ever find evidence from within DOJ that Rove worked to get Fitzgerald fired (one might assume that Rove protege Kyle Sampson's admission that he himself proposed firing Fitzgerald in early 2005 to be evidence supporting the case), at the very least Rove would have to testify about why three people, including some machine Republicans, testified that Kjellander had told people Rove was working to have Fitzgerald fired.

In other words, one of the alleged activities that—in a bid to help Rove avoid testifying yesterday—Fred Fielding just asserted was part of Karl Rove's "official duties" while he was at the White House was discussing with Republican targets of corruption investigations the possibility of firing the prosecutor leading that investigation to have the investigation stopped.

Fred Fielding just asserted—presumably with the approval of Bush or someone else with the authority to declare what Rove's "official duties" were—that it was Karl Rove's job when he was in the White House to obstruct criminal investigations.

Now, we've known that this Administration has been in the business of obstructing investigations for some time. But up until Wednesday, no one ever claimed that the Administration believed such obstruction fell within its official duties. Glad to see Fred Fielding clear that up.

It would take some doing to go from the assertion that the White House Counsel believes it was among the "official duties" of the Senior Advisor to the President to obstruct criminal investigations to actually prosecuting not just Rove, but with this assertion, whoever it is that believes obstruction could be among a Presidential aides "official duties" as well. But if we get a new DOJ or if Congressional Democrats somehow manage to enforce their prerogatives, then Fred Fielding's assertion on Wednesday that everything Rove would have testified about yesterday fell within his "official duties" may some day cause the White House a whole slew of additional trouble. Before, it was just Turdblossom doing what he does, on his own. But as of Wednesday, Rove's actions just got official sanction from the White House.