

WHISTLEBLOWERS CONCERNED THAT DOJ REFUSES TO JAIL SCOTT BLOCH, TOO

Last week, bmaz (with my kibbitzing) noted how outrageous is it that the federal government is fighting to prevent a government employee who destroyed an entire hard drive of evidence from spending even one day in jail.

But given the record of this Administration—from the mantra of “look forward” to the refusal to charge Dick Cheney for illegal wiretapping Americans to the refusal to charge Jose Rodriguez for destroying evidence of torture—I think it’s just that they refuse to send an official—one of their own—to jail. They cannot uphold the law, because the law might be upheld against them.

So, back to I guess he won’t see a cell Bloch Scott. Is DOJ really saying that a guy who wiped his hard drive shouldn’t go to jail? Yes, and they are willing to fight for him and with him to see that such is indeed the case. First the government filed a **Motion to Reconsider** dated February 7, 2011 regarding Judge Robinson’s 2/2/2011 ruling discussed and linked above. The Motion to Reconsider was basically five pages of whining that there was compelling authority to the effect the *criminal they were prosecuting* did NOT have to serve jail time. Yes, that is one hell of a strange argument for government prosecutors to be making.

Then, the willingness of the government prosecutors to fight to keep the criminal Bloch from serving one lousy second in jail goes from the absurd to

the ridiculous. A mere four days after having filed the whiny Motion to Reconsider, and before it was substantively ruled on, the government, by and through the ever ethical DOJ, suddenly files a pleading encaptioned "Governments Motion To Withdraw Its Motion To Reconsider The Court's February 2, 2011 Memorandum Opinion". In this pleading, the government suddenly, and literally, admits their February 2 Motion to Reconsider was without merit.

[snip]

Let me put that bluntly for you: the DOJ is helping a guy they have already convicted by way of guilty plea – that has already been accepted by the court – get out of that plea conviction. And they are already negotiating a different deal with the defendant, Bloch, to insure he doesn't serve one stinking day in jail.

Turns out bmaz and I aren't the only ones who find it utterly unbelievable that the government is engaging in embarrassing legal tactics to try to prevent a criminal from doing jail time. So do the whistleblowers whose lives Scott Bloch made hell. (h/t POGO)

We, the undersigned, wish to bring to your attention an important issue: the effective and ethical prosecution by the Department of Justice of Scott J. Bloch, a man who has gravely damaged the federal civil service.

As you undoubtedly know, Mr. Bloch began his tenure as head of the U.S. Office of Special Counsel, in 2003. The Office of Special Counsel's primary purpose is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing.

However, until his abrupt resignation in 2008, Mr. Bloch eroded workplace discrimination protection on the basis of sexual orientation, conducted a political purge of his own employees, attempted to intimidate subordinates from cooperating with outside investigators, deleted computer files and destroyed whistleblower cases, and made false and misleading statements under oath to Congress. After arrest by the Federal Bureau of Investigation and arraignment by the Department of Justice (DOJ) in 2008, Mr. Bloch pled guilty to criminal contempt of Congress in exchange for probation in sentencing.

The prosecuting attorney, Glenn S. Leon, Assistant U.S. Attorney for the District of Columbia, supported the defendant's request in *United States v. Scott J. Bloch* through several court hearings and pleadings.

They argue the prosecutor, Leon, could not now, after having spent so much time helping Bloch avoid jail time, honestly represent the government's interest in prosecuting him in court.

We are concerned, however, that Mr. Leon's official conduct up to now has rendered him unfit to prosecute the defendant. Rule 1.3 of the Model Rules of Professional Responsibility, Comment 1, states that "[a] lawyer must . . . act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf." (Emphasis supplied). In the instant case, Mr. Leon would have to contradict almost a year's worth of arguments in support of the defendant, and state the exact opposite in front of a judge or jury. This would erode his credibility and impartiality in the public light, as one would

not reasonably expect that he would be able to zealously advocate the government's position given his track record. The government runs the risk of getting something less than his full effort, which warrants recusal.

And so they're asking the government appoint a special prosecutor for the trial.

Attorney General Holder, we have long waited for Mr. Bloch to be held accountable in a court of law. For too many of us, the erosion of the rule of law and ethical conduct in government came with a heavy price. With our whistleblowing activities, we sought, and continue to seek, a government of laws, not of men. Please help us restore this noble and long-standing principle by appointing a special prosecutor to lead United States v. Scott J. Bloch.

After all, that's what this is about: the government's refusal to have even the most pathetic—but blatant—abuse of power be punished with jail time. A number of the people signing this letter (like Bradley Birkenfeld, whose efforts to expose rich tax cheats led to jail time for him but none for the cheats he exposed) have or are still doing jail time for their efforts to expose corruption.

It'd be nice to see one of the real criminals in our government join them.