

Toeing an Illegal Line

Michael Flynn | August 19, 2005

With John Roberts seemingly a shoo-in for the Supreme Court, Republicans can hardly be blamed for their excitement on the legal front, which was fervently—and sometimes angrily—demonstrated at the August 14 Justice Sunday II extravaganza, the second installment of a religious-right rally aimed at attacking—in James Dobson’s words—an “unelected, unaccountable, and arrogant” judiciary and championing conservative social causes. Taking center stage at the event, Rep. Tom Delay lambasted “activist courts” for imposing “state-sanctioned same-sex marriage” and “ridding the public square of any mention of our nation’s religious heritage.” The event also served as a rally in support of Roberts, who conservatives hope will help put the court in the hands of the “moral majority.”

Despite the White House’s continued stonewalling over the release of documents detailing some of Roberts’ past work, it is clear what his ideological leanings are and the potential impact they will have on court rulings. Although he is perhaps “no crazed ideologue intent on overturning precedents willy-nilly,” as the *Los Angeles Times* opined in a recent editorial, Roberts will tilt the bench definitively in a conservative direction on social issues, including abortion. Also, according to observers quoted in a *Los Angeles Times* report (August 14, 2005), Roberts has a track record of supporting broad executive powers, which could potentially impact everything from the treatment of “enemy combatants” to the president’s authority to use military force without congressional authorization. With the nation confronting a seemingly endless war on terror, the issue of executive powers could turn out to be the most “important issue on the court’s docket over the next few years,” as Neil Kinkopf, a law professor at Georgia State University, told the *Times*.

But a successful Roberts’ nomination won’t stem the tide of legal woes afflicting a passel of high-profile conservatives and hard-liners with close ties to the Bush administration and powerful Republicans in Congress. Together with the potentially ground-shaking fallout from the ongoing PlameGate saga, the recent indictments of Republican lobbyist Jack Abramoff and two former analysts from the American Israeli Public Affairs Committee with ties to neoconservatives in the administration have put the house that Bush built on increasingly rocky terrain.

Abramoff and Friends

Abramoff and business partner Adam Kidan were indicted by a federal grand jury in Fort Lauderdale on August 11 on several counts of wire fraud and conspiracy related to their purchase of a Florida-based gambling boats business. Already at the center of a growing controversy over money he received while representing Indian casino interests, Abramoff’s latest legal troubles involve allegedly fraudulent wire transfers he and Kidan used to purchase the SunCruz gambling business from Florida businessman Konstantinos Boulis. Boulis, who made millions on a chain of Florida sandwich shops, was shot to death in February 2001, shortly after his relations with Kidan and Abramoff soured. According to the *Washington Post* (August 12, 2005), Kidan hired Anthony Moscattello, an associate of the Gambino crime family, in late 2000, just a few months before Boulis was shot three times in the chest with hollow-point bullets.

To help seal the SunCruz deal, reports the *Post*, Abramoff “leveraged his connections with members of Congress,” including Rep. Tom Delay (R-Texas), who reportedly gave Boulis a flag that had once flown over the Capitol. Abramoff also took his lead financier for the deal to a Delay fundraising event, listed Rep. Dana Rohrabacher (R-CA) as a reference on his loan application, and wined and dined Delay aides on SunCruz jets and gambling boats. Also chipping in was Rep. Robert Ney who, at the urging of Abramoff associate Michael

Scanlon, criticized Boulis and praised Kidan in the Congressional Record.

Both Ney and Delay—as well Senators David Vitters and Conrad Burns—have been mentioned in connection with the Abramoff-Indian casinos scandal, which is the focus of congressional and federal investigations. Abramoff (along with erstwhile partner Scanlon, a former Delay aide) is accused of misusing tens of millions of dollars in lobbying fees from Indian clients, who Abramoff once described as “morons” and “monkeys.”

Although the Abramoff scandals don't appear to touch administration insiders, his shady dealings have brought unwanted attention to a number of influential Bush supporters and Christian conservatives. Reported the *Boston Globe* in early June: “Among the prominent figures who have come under the scrutiny of Senate and federal investigators are [Grover] Norquist, whose organization received \$1.5 million from tribes and fought a tax on Indian casinos [and] Ralph Reed, the former director of the Christian Coalition who allegedly used some money from Indian gaming tribes to fund his efforts to close down rival casinos and lotteries.”

L’Affaire AIPAC.

On August 9, the Justice Department announced the indictment of two former AIPAC analysts, Steven Rosen and Keith Weissman, in connection with the investigation of Larry Franklin, the Pentagon official accused of disclosing classified information about U.S. forces in Iraq. According to the indictment, the two AIPAC analysts received and passed on to a foreign power (meaning Israel, though the indictment doesn't specify) and to reporters classified “national defense information.” The indictment also reaffirms an earlier indictment against Franklin, though it drops one of the charges against him.

At the center of the AIPAC case is the effort by Franklin, a rapidly anti-Iran Pentagon analyst, to push the United

States to take a stronger stance against the Islamic Republic. To do this, Franklin passed classified information about U.S. policies and supposed threats in the region to the AIPAC experts, who in turn informed Israeli officials and a *Washington Post* reporter. Franklin apparently hoped that AIPAC could use its weight both in Israel and in the Beltway to get the administration to adopt a hardline.

Rosen and Weissman, according to the indictment, had been under investigation since as early as 1999 for attempting to influence U.S. government officials and use their contacts to acquire sensitive information. The indictment mentions a second U.S. government official,

referred to as “USGO-2,” who is alleged to have given classified information to Rosen in 2002. According to the *Washington Post* (August 18, 2005), people familiar with the investigation have identified this official as David Satterfield, currently the second-highest ranking diplomat at the U.S. Embassy in Baghdad. The indictment does not say whether charges are to be brought against

Satterfield. Two other U.S. officials, “USGO-1” and “DOD-B,” are alleged in the indictment to have given information to the AIPAC analysts, though their identities remain unknown as of this writing.

Franklin, who worked under former Under Secretary of Defense for Policy Douglas Feith, was close to a number of influential neoconservatives in and outside the administration, including Richard Rhodes, head of the Pentagon's Office of Net Assessment, and Michael Ledeen, an American Enterprise Institute scholar who arranged a meeting between Franklin, several Iranian dissidents, and the Iranian arms merchant Manucher Ghorbanifar. During the meeting, which took place in Rome in 2001 and included both Rhodes and Ledeen, the dissidents apparently gave information to Franklin about Iranian threats to U.S. troops.

Although Franklin's neoconservative associates are apparently not under investigation, the indictment seems

Although the Abramoff scandals don't appear to touch administration insiders, his shady dealings have brought unwanted attention to a number of influential Bush supporters and Christian conservatives.

to leave open the possibility that more charges will be brought in the future. Some leftist pundits, like Robert Dreyfuss, who has closely followed the neoconservatives, think that the FBI could eventually broaden the scope of its investigation to include several others members of Franklin's "network." Wrote Dreyfuss in his Tompaine.com blog: "It is clear that by probing the details of the case, the FBI has got hold of a dangerous loose end of a much larger story. By pulling on that string hard enough, the FBI and the Justice Department might just unravel that larger story, which is beginning to look more and more like it involves the same nexus of Pentagon civilians, White House functionaries, and American Enterprise Institute officials who thumped the drums of war in Iraq in 2001-2003 and who are now trying to whip up an anti-Iranian frenzy."

PlameGate redux.

Listening to the TV pundits, one would think that the alleged effort by administration figures, in particular Karl Rove and I. Lewis Libby, to disclose the identity of Valerie Plame—the CIA agent whose husband, Joseph Wilson, refuted Bush administration claims that Iraq tried to buy uranium from Niger—did not reach the level of criminal offense. But according to a widely circulated analysis published last week on the TomDispatch blog, a careful review of the 1982 Intelligence Identities Protections Act shows how practicable it would be to bring up charges against Rove. The author of the analysis, Elizabeth de la Vega, a retired federal prosecutor, highlights Rove's now infamous July 2003 conversation with reporter Matt Cooper, during which Rove is alleged to have identified Plame.

Contrary to widespread belief, writes de la Vega, prosecutions under this law are not "nearly impossible." More

importantly, she says, based on the little evidence publicly known about the case, Rove's actions arguably satisfy all of the elements set forth in the law, including that he had authorized access to classified information identifying a covert agent, he "intentionally disclosed" this information to someone not authorized to receive it, he knew that the information he was disclosing was sufficient to identify the agent, and he was aware that the government was taking action to conceal the agent's intelligence position.

Rove's actions arguably satisfy all of the elements set forth in the law, including that he had authorized access to classified information identifying a covert agent, he "intentionally disclosed" this information to someone not authorized to receive it, he knew that the information he was disclosing was sufficient to identify the agent, and he was aware that the government was taking action to conceal the agent's intelligence position.

She concludes: "Whether charges will be brought under the Intelligence Identities Protection Act or, if they were, what a jury would decide, we cannot possibly know. But we do know that it is not a law under which guilt is nearly impossible to prove—as the pundits, citing each other, have led us to believe. It also bears mentioning that experienced prosecutors never underestimate juries. Most juries are like the special grand jury described by Matt Cooper: thorough, highly-engaged people who are absolutely committed to applying the law only to the evidence they have heard in court as they are instructed to do. They are not easily fooled. They have common sense.

And they are firmly rooted in the reality-based community."

As with the AIPAC case, some commentators speculate that the Plame affair could turn into a much more widespread scandal, one that could at the very least reveal the extent to which administration figures were willing to go to mislead the public in their drive toward war. As commentator Jim Lobe wrote in a mid-July editorial: "The case may ... prove to be one more string—albeit a very central one—that, if pulled with sufficient determination, could well unravel a very tangled ball of yarn, and one that would confirm recent revelations in the British

press—the so-called Downing Street memo—that the Bush administration was ‘fixing the facts’ about the alleged threat posed by Iraqi President Saddam Hussein in order to grease the rails to war.”

Michael Flynn is a freelance writer and an IRC research associate.

USEFUL LINKS

Indictment of Steven Rosen, Keith Weissman, and Larry Franklin, August 4, 2005

<http://www.fas.org/irp/ops/ci/franklin0805.pdf>

“Real Insiders: A Pro-Israel Lobby and FBI Sting,”

Jeffery Goldberg, *New Yorker*, July 4, 2005

http://www.newyorker.com/fact/content/articles/050704fa_fact

“Plame in the Court,” Elizabeth de la Vega,

TomDispatch, August 11, 2005

<http://www.tomdispatch.com/index.mhtml?pid=11747>

“PlameGate Is Hardly a Summer Squall,” Jim Lobe,

Inter Press Service, July 18, 2005

<http://www.ipsnews.net/news.asp?idnews=29541>

Published by the Right Web of the International Relations Center (IRC, online at www.irc-online.org). ©2005. All rights reserved.

The Right Web

“Exposing the architecture of power that’s changing our world”

Recommended citation:

Michael Flynn, “Toeing an Illegal Line,” IRC Right Web (Silver City, NM: International Relations Center, August 19, 2005).

Web location:

<http://rightweb.irc-online.org/rw/358>

Production Information:

Author: Michael Flynn, IRC

Layout: Chellee Chase-Saiz, IRC