

CONGRESS HAS A LEGISLATIVE NEED TO UNDERSTAND BUSH'S INTENT

Nope, I still haven't stopped obsessing over Clement's opinion on the subpoenas.

As I pointed out yesterday, Clement makes one claim that I believe is false and probably disingenuous. He claims that Bush has a nondelegable power to appoint US Attorneys, inscribed in the Constitution.

These confidentiality interests are particularly strong where, as here, the communications may implicate a "quintessential and **nondelegable Presidential power,**" such as the **authority to nominate or to remove U.S. Attorneys.**

[snip]

The Senate has the authority to approve or reject the appointment of officers whose appointment by law requires the advice and consent of the Senate (which has been the case for U.S. Attorneys since the founding of the Republic), but it is for the President to decide whom to nominate to such positions and whether to remove such officers once appointed.
[my emphasis]

As I pointed out yesterday, the Constitution explicitly allows **Congress** to legislate how and who appoints inferior officers, including US Attorneys.

but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

But we don't even have to go to the Constitution to prove that this is the case—after all, this whole scandal started after Brett Tolman snuck a provision into the PATRIOT Act that took the right to appoint US Attorneys away from judges and gave it to the Attorney Gonzales. This whole scandal started when Congress exercised its right to legislate how US Attorneys get appointed—even if Congress claims it didn't know it was doing so at the time.