

# WITH ALL DUE RESPECT TO THE WAPO

Amy Goldstein was one of the nicest people covering the Scooter Libby trial and Dan Eggen has been doing excellent work covering the USA Scandal. But their article on the White House's assertion that no US Attorney can take up the contempt charges that HJC is about to dump on Harriet and Josh Bolten misses some key details. Goldstein and Eggen write:

Bush administration officials unveiled a bold new assertion of executive authority yesterday in the dispute over the firing of nine U.S. attorneys, saying that the Justice Department will never be allowed to pursue contempt charges initiated by Congress against White House officials once the president has invoked executive privilege.

[snip]

In defending its argument, administration officials point to a 1984 opinion by the Justice Department's Office of Legal Counsel, headed at the time by Theodore B. Olson, a prominent conservative lawyer who was solicitor general from 2001 to 2004. The opinion centered on a contempt citation issued by the House for Anne Gorsuch Burford, then administrator of the Environmental Protection Agency.

It concluded: "The President, through a United States Attorney, need not, indeed may not, prosecute criminally a subordinate for asserting on his behalf a claim of executive privilege. Nor could the Legislative Branch or the courts require or implement the prosecution of such an individual."

In the Burford case, which involved spending on the Superfund program, the

White House filed a federal lawsuit to block Congress's contempt action. The conflict subsided when Burford turned over documents to Congress.

The Bush administration has not previously signaled it would forbid a U.S. attorney from pursuing a contempt case in relation to the prosecutor firings. But officials at Justice and elsewhere say it has long held that Congress cannot force such action.

And here are some details they miss, from Kagro X, whose batting average on Bush obstruction has been better than anyone's: