

DAVID ADDINGTON AND THE BARNACLE BRANCH EXHIBITS

Remember how, in lieu of an opening statement, David Addington entered a bunch of "exhibits" into the record yesterday?

Well, it looks like Addington was trying to do a couple of things with his collection of exhibits. First, and least interesting, was to make sure he had three documents in which President Bush directly guided the nation's torture policy ready at hand:

- February 7, 2002 Bush memo calling for detainees to be treated humanely—but without Geneva Convention rights
- September 6, 2006 press conference in which Bush admitted to water-boarding Al Qaeda detainees
- July 20, 2007 Bush Executive Order establishing guidelines for interrogations

More interesting, Addington was making sure that the correspondence between HJC and OVP regarding his own testimony was readily available. And I think he did **that** for two reasons. The correspondence includes a fairly narrow description of what the expected testimony would include:

- No representations about "the nature and scope of Presidential power in time of war" or US "policies regarding interrogation of

persons in the custody of the nation's intelligence services and armed forces"

- Only "personal knowledge of key historical facts" relating to interrogation and presidential power
- No details about Vice Presidential communications to the President
- No details "relating to the Senate functions of the Vice Presidency"
- The availability of applicable legal privileges (don't miss the bit of snark where footnote 11 in the April 28 Conyers letter reminds, "I assume that counsel's citation to the 'state secrets' privilege was an oversight as that is a judge-made litigation privilege that has no application before a Committee of Congress")

In other words, Addington wanted to be ready to show his hall pass and prove that certain questions—about Dick's role in outing a CIA spy or Dick's role in killing most of the salmon in the Northwest; or about whether Dick ever told Bush that the warrantless wiretapping program was illegal; or why Dick voted to drown the federal government in a bathtub on December 21, 2005—would be out of bounds.

In addition, Addington seems to have wanted evidence of a little squabble over the ~~Fourth~~ Barnacle Branch, such as this argument:

The Committee request seeks authoritative representation on the three subjects identified in the Committee request. The Chief of Staff to the Vice President is an employee of the Vice President, and not the President. With respect to Presidential power in wartime and related issues under U.S. and international law, the Attorney General or his designee would be the appropriate witness. Regarding interrogation of persons by U.S. intelligence agencies or the armed forces, the Director of National Intelligence or his designee and the Secretary of Defense or his designee, respectively, would be the appropriate witness. You may wish to invite the appropriate subordinates of the President in lieu of your invitation to the Chief of Staff to the Vice President.

[snip]

Congress lacks the constitutional power to regulate by a law what a Vice President communicates in the performance of the Vice President's official duties, or what a Vice President recommends that a President communicate in the President's official duties, or what a Vice President recommends that a President communicate in the President's performance of official duties, and therefore those matters are not within the Committee's power of inquiry.

[snip]

... questions of privilege may arise with respect to information sought by questions, such as respect to privileges protecting state secrets, attorney-client communications, deliberations, and communications among Presidents, Vice Presidents, and their advisers. For

example, the amount of useful information a Committee of Congress would be likely to receive from a person who served as Counsel to the Vice President and then Chief of Staff to the Vice President concerning official duties is quite limited, given that a principal function of such a person is engaging in privileged communications, such as the giving of privileged advice. Also, inquiry by a House Committee concerning the Senate functions of the Vice President would not, in any event, be appropriate.

That is, Addington wanted to be ready to pick another fight about the ~~Fourth~~ Barnacle Branch of government, arguing that it somehow escapes all oversight even while having available all the privileges of the Executive Branch.

That Addington came prepared to be belligerent is no surprise. But reading these documents made me wonder why he testified in the first place. Which brings me to the last document included in his stash, Stephen Bradbury's opinion arguing that Harriet Miers is immune from testifying before HJC. Presumably, Addington was preparing to wave around a document stating that Harriet didn't have to testify because, "The President is head of one of the independent Branches of the federal Government." Presumably, Addington, if pressed, was going to argue that since the Vice President is head of the barnacle branch of the federal government his former counsel—Addington himself—didn't have to testify either.

But how pathetic is that? Addington made it pretty clear yesterday that he didn't want to testify ... but he did. I sort of wonder whether Addington couldn't get Stephen Bradbury—no opponent of the Barnacle Branch, really—to write **him** a letter excusing him from testifying. And so instead he brought Harriet's letter, ready to argue that the Barnacle Branch and an independent branch of

government are just the same legally.

Come to think of it, maybe that's why he brought all those torture documents with Bush's signature on them—just in case the Barnacle Branch argument didn't work, he could start threatening Bush.