

WAXMAN, FITZGERALD, AND MUKASEY

In a response to Waxman today, Patrick Fitzgerald made it clear that Mukasey's obstruction is the only thing standing between Waxman getting the Bush and Cheney interview reports. And Waxman is none too happy about it. Good.

In his letter, Fitzgerald confirms what has been clear thus far: because Bush and Cheney avoided the dangers of grand jury testimony, their interview reports are not protected under grand jury secrecy. But if Waxman wants them, he's going to have to get them from Mukasey.

As to interviews which we have determined are not protected by Rule 6(e), we have provided responsive information to you, after allowing the appropriate executive branch agencies to review the documents consistent with the process described in my earlier letters. As discussed in prior correspondence, the Special Counsel team is not responsible for determining whether executive branch confidentiality interests will be asserted in response to particular requests by the Committee.

Consistent with the above process, I can advise you that as to any interviews of either the President or Vice President not protected by the rules of grand jury secrecy, there were no "agreements, conditions, and understandings between the Office of Special Counsel or the Federal Bureau of Investigation" and either the President or Vice President "regarding the conduct and use of the interview of interviews."

Shorter Fitz: blame Mukasey.

Which Waxman promptly did.

On June 16, 2008, the Committee on Oversight and Government Reform issued a subpoena to you for the production of documents relevant to the Committee's investigation of the leak of the covert identity of CIA officer Valerie Plame Wilson. **You have neither complied with this subpoena by its returnable date nor asserted any privilege to justify withholding documents from the Committee. In light of your actions, I am writing to inform you that the Committee will meet on July 16, 2008, to consider a resolution citing you for contempt of Congress.**

[snip]

The arguments you have raised for withholding the interview report are not tenable. When the FBI interview with the Vice President was conducted, the Vice President knew that the information in the interview could be made public in a criminal trial and that there were no restrictions on Special Counsel Fitzgerald's use of the interview. Mr. Fitzgerald clarified this key point last week, writing to the Committee that "there were no agreements, conditions, and understandings between the Office of Special Counsel or the Federal Bureau of Investigation and either the President or Vice President regarding the conduct and use of the interview or interviews."

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Vice President Cheney's attorneys have consistently maintained that he is not an "entity within the executive branch." Whether this unusual claim is accurate or not, I am aware of no freestanding vice presidential communications privilege, let alone one that covers voluntary and unrestricted conversations with a special counsel investigating wrongdoing. There certainly was no such

understanding when our Committee sought the FBI interview report of an interview with Vice President Gore. The Justice Department produced the interview to the Committee despite the fact that it contained discussion of official White House business.

In his closing remarks in the criminal trial of Mr. Libby, Special Counsel Fitzgerald stated: "There is a cloud over what the Vice President did that week." Your cooperation in this matter could go a long way to dispelling this notion or perhaps confirming Mr. Fitzgerald's fears. Either way, this Committee and the American people are entitled to know what happened.

Now, given how embarrassingly crappy DOJ's last attempt to shield these interview reports from Congress was (Waxman shreds it pretty thoroughly in his letter to Mukasey), I'm not all that confident that Waxman's threat of contempt will work. After all, Mukasey has already abased himself on this issue, why stop now? Though we'll quickly get into the interesting position where Mukasey's underlings would have to either justify his refusal to cooperate or pursue Congress' contempt charge.