

# DID BUSH CLAIM EXECUTIVE PRIVILEGE FOR ROVE LAST YEAR?

Another day, another post on Turdblossom—love ya, Karl!! "C'mon, walk out with me, walk out with me."

Today, I wanted to observe something about Rove's failure to respond to a Congressional subpoena from last year—in that case, from the Senate Judiciary Committee; they were looking for testimony explicitly related to the USA purge.

As I sort of alluded yesterday (and MadDog had some interesting points to raise) it's not entirely clear what basis Rove used to blow off the Senate last year. Here's the timeline:

June 27, 2007: Paul Clement writes a memo supporting the invocation of executive privilege for Harriet Miers and Sara Taylor—but referring generically to "current or former White House officials"—regarding the hiring and firing of US Attorneys

July 10, 2007: Steven Bradbury writes a memo arguing Harriet Miers—and Presidential aides more generally—do not need to appear in response to Congressional subpoena

July 26, 2007: Senate Judiciary subpoenas Rove

August 1, 2007: Steven Bradbury writes a memo finding that, based on the earlier Miers memo, Rove "is immune from compelled congressional testimony about matters (such as the U.S. Attorney resignations) that arose during his tenure as an immediate presidential adviser and that relate to his official duties in that capacity"

August 2, 2007: Deadline on Rove's

subpoena

August 13, 2007: Rove's "resignation"

August 27, 2007: Gonzales "resignation"

December 13, 2007: SJC votes to hold  
Rove (and Bolten) in contempt

As I pointed out yesterday, the June 27 Clement opinion did not name Rove (indeed, the opinion was written before he was subpoenaed), but it was written generally, so as to apply to the process of hiring and firing USAs generally, as well as applying to Miers and Bolten, who are named in the opinion. In his letter to Rove, Leahy mentions Bush's "blanket claim of executive privilege," suggesting he understood the Clement memo and the executive privilege claims made subsequent to that claim to apply to everyone (recall that Sara Taylor and Scott Jennings were also subpoenaed to appear during this period and both invoked privilege).

Thus, the only documents that actually have Rove's name on them are the July 10 claim of absolute immunity and the August 1 application of that to Rove. Again, as I pointed out yesterday, neither of these documents use the phrase "executive privilege."

Everything points to last year's non-appearance, unlike Thursday's, to have included a Bush executive privilege claim, though. After all, the invocation applied to Taylor and Jennings, though their names weren't on the opinion ruling it acceptable. Leahy seems to think it applies to Rove in this case (and Leahy tends to have a clearer notion of these things than some other Members of Congress). And, while I don't normally trust anything Rove says himself, Rove suggests his non-appearance last year included a claim of executive privilege.

Rove: Congress—the House Judiciary  
Committee wants to be able to call  
Presidential Aides on its whim up to  
testify, violating the separation of

powers. **Executive Privilege has been asserted by the White House in a similar instance in the Senate. It'll be, probably be asserted very shortly in the House.** [my emphasis]

Though, as always with Turdblossom, if a sentence uses the passive construction, "privilege has been asserted ... similar instance," you can never be entirely sure.

The only reason I wonder whether Bush believes he didn't invoke EP with Rove is that there may have been a reason to avoid doing so. As with the matters he was subpoenaed to testify about on Thursday, even with the USA purge, Rove was the one at the nexus of the illegality, the one taking requests from top Republicans and trying to respond to those requests by firing USAs. Specifically with the case of David Iglesias, for example, Rove was the one who couriered the demand that Iglesias get fired to Bush who, reportedly, did, personally, order Gonzales to fire Iglesias.

In other words, it's not that Rove's involvement didn't include "advice" to Bush—it did, in huge ways. But that advice is not only the most illegal aspect of the USA purge (because in several cases it amounts to obstruction of justice), but it's also the stuff that most directly implicates Bush.

Like I said, all the evidence thus far suggests Bush's invocation of executive privilege last year did extend to Rove (though I will try to double-check on Monday, between calls to DOJ). I'm just not positive we know one way or another. And in an attempt to try to figure out why the White House failed to invoke privilege this week, I'm wondering precisely what happened last year.