

ROVE'S CONTEMPT: FOR ALL THE REASONS WE'VE BEEN TALKING ABOUT

As many of you noted while we were having our little server issues this morning, HJC just recommended Rove be held in contempt by a vote of 20-14. The big challenge at this point will be convincing Speaker Pelosi—whose phone number is (202) 225-0100—to take up this recommendation immediately, and do so with the goal of holding Rove in **inherent contempt**. The ruling from Judge Bates—on Miers' and Bolten's contempt—should be forthcoming, which may or may not accelerate this process.

While we're waiting for Bates' ruling, I thought I'd look at Conyers' report on the contempt vote for Rove—not least because it hits on many of the points I've hit on here—but which journalists seem to be missing. Among other points Conyers makes are:

Rove Didn't Deny the Central Allegations against Him in the Siegelman Case

As I pointed out in this post, Rove doesn't even answer the jerry-rigged questions Lamar Smith gave him to try to get him out of testifying. In particular, Rove refused to answer questions about whether he had spoken with "any individual" aside from DOJ or Alabama officials regarding the Siegelman prosecution. As Governor Siegelman pointed out when he did our live chat last week, that doesn't even exclude conversations with Rob Riley or Bill Canary!

First, Mr. Rove's written answers to the questions posed by ranking Member Smith do not appear to resolve the questions about his possible role in the matter. For example, Mr. Rove was asked if he ever communicated with "any Department of Justice officials, State of Alabama

officials, or any individual” about the investigation or prosecution of Governor Siegelman. He answered only that he had not communicated with “Justice Department or Alabama officials” about the matter. The failure to address whether he communicated with any other “individual” suggests that Mr. Rove may have communicated with political operatives such as Bill Canary, the Governor’s son Rob Riley, non-Department of Justice Executive Branch officials such as his White House colleagues, or even members of the federal Judicial branch.

The White House Is Relying on an Untested "Absolute Immunity" Claim

As I’ve been pointing out, the only assertion by the White House on this point doesn’t even mention "executive privilege." Rather, it relies on a much more expansive "absolute immunity" from appearing before Congress, one that no court has ever recognized.

The July 9, 2008, letter from White House Counsel Fred Fielding claims that Mr. Rove “is constitutionally immune from compelled congressional testimony about matters that arose during his or her tenure as a presidential aide and that relate to his or her official duties.” As discussed in greater detail below, no general freestanding immunity exists for former presidential advisers and thus the proper course is to recognize claims of privilege only when properly asserted in response to specific questions during a particular hearing.

[snip]

Second, there is no proper legal basis for Mr. Rove’s refusal even to appear before the Subcommittee as required by

subpoena. No court has ever held that presidential advisers are immune from compulsory process – in any setting.

This Immunity Would Be Even More Expansive than Clinton's Alleged Actions in the Jones Suit

Finally, Conyers hits on a point I've been making—that Fielding has basically asserted (with no backing from DOJ, apparently) that the issues about which Rove was asked to testify were part of his "official duties" in the White House. Conyers goes even further than I have on this point, by noting that if this claim were to stand, it would mean that Rove was invoking greater immunity from testimony than even Presidents enjoy.

According to Mr. Fielding's July 9, 2008, letter, the White House believes that the matters covered by the subpoena relate to Mr. Rove's "official duties." If that assertion is to be credited, then apparently this Administration believes that Mr. Rove's official duties included the alleged pressuring of the Justice Department to criminally prosecute a political opponent of the President's party and also included ensuring the political loyalty of the U.S. Attorney corps and forcing politically unhelpful U.S. Attorneys to resign. While it is true that Mr. Rove denies at least some of these allegations, the White House claim that these alleged actions would fall within his "official duties" is disturbing. On the other hand, if the White House does not believe that such interference in the Department of Justice's prosecution function was an official duty of Mr. Rove, then either the claim of immunity fails on the Administration's own terms (because they claim the immunity applies only where official duties are involved) **or they are actually asserting a total immunity from compelled testimony for**

Presidential aides on any subject and regardless of any nexus to the individual's White House responsibilities. That form of immunity, of course, would be even greater than that held by the President, as the Clinton v. Jones case makes clear, and should be rejected as legally unsupportable. [my emphasis]

It's a pretty good summary of the audacity of Rove's claims to be immune from testifying. I mean, heck, if Clinton had to testify about his Clenis, then it seems like very little to ask for Rove to testify about all his actions involved in politicizing DOJ.